REPORT ON PROCEEDINGS BEFORE

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

2024 REVIEW OF ANNUAL AND OTHER REPORTS OF OVERSIGHTED AGENCIES

At Macquarie Room, Parliament House, Sydney, on Friday 21 March 2025

The Committee met at 9:30.

PRESENT

Mr Philip Donato (Chair)

Ms Karen McKeown
The Hon. Rachel Merton
The Hon. Cameron Murphy (Deputy Chair)
Mr Mark Taylor
Mr Tri Vo

PRESENT VIA VIDEOCONFERENCE

Ms Sue Higginson

The CHAIR: Good morning, everybody, and welcome to today's public hearing for the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission's 2024 review of annual and other reports of oversighted agencies. Before we start, I acknowledge the Gadigal people, who are the traditional custodians of the land on which we meet here at Parliament today. I pay my respects to Elders of the Eora nation, past and present, and extend that respect to other Aboriginal and Torres Strait Islander people who are present or viewing the proceedings online. Welcome to this public hearing.

My name is Phil Donato. I'm the Chair of this Committee. I'm joined by my parliamentary colleagues Karen McKeown, the member for Penrith; the Hon Rachel Merton, from the Legislative Council; Mark Taylor, the member for Winston Hills; and Tri Vo, the member for Cabramatta. Deputy Chair the Hon Cameron Murphy, of the Legislative Council, is presently tied up in other meetings but will be with us shortly, and Ms Sue Higginson, also a member of the Legislative Council, will be dialling in shortly. I thank the witnesses who are appearing before the Committee today, and I declare the hearing open.

FIONA RAFTER, Inspector of Custodial Services, affirmed and examined

The CHAIR: I welcome our first witness. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages, website, and other public communication materials. Please inform Committee staff if you object to having photos or videos taken. Ms Rafter, would you like to make a short opening statement before the commencement of questions?

FIONA RAFTER: Thank you for the opportunity to appear before you today. Firstly, I would like to acknowledge the Gadigal people of the Eora nation and Elders past, present, and future. The Inspector of Custodial Services is an independent statutory office that was created in October 2013 pursuant to the *Inspector of Custodial Services Act 2012*. We have a legislative mandate to inspect each adult facility every five years and juvenile justice centres every three years. Our focus is the treatment and condition of people in custody and improving custodial practice. I commenced in this role in April 2016. Since that time, the office has completed 169 inspections and 540 visits. The office has tabled 41 reports, containing a little over 1,200 recommendations, relating to inspections or reviews. We currently have reports in various stages of completion relating to the inspection of 14 facilities and two reviews. During the 2023-24 year, we conducted 15 inspections, 119 liaison monitoring visits, and tabled eight reports relating to 15 inspections and one review.

So far this financial year, we have tabled six reports and completed five adult inspections. We are about to commence unannounced inspections of the six Youth Justice Centres. Parklea Correctional Centre is also due to be inspected later this year. We will also be working on several reviews during this year. I am pleased to report that we recently published our Inspection Standards for Aboriginal people in custody in New South Wales, and I would like to acknowledge the work of the Aboriginal staff in my office, Karen Breeze and Ivan Slater, who led the consultation and development of the standards. I am also pleased to report that the *Inspector of Custodial Services Amendment Act 2025* was recently passed. The Act incorporates amendments recommended by the statutory review of the legislation, and amendments that respond to the Astill inquiry, by clarifying and enhancing the role of Official Visitors.

New South Wales has the largest Official Visitor Program in Australia. In the annual report last year, we reported 93 Official Visitor appointments, with 31 of those appointments held by Aboriginal people and 53 per cent of official visitor positions held by women. I would like to acknowledge the work of the Official Visitor coordinator in my office, Ivan Slater, and the work of the Official Visitors. Official Visitors are paid $239 per visit. I think it is time that they received a pay rise. Last year, we held an Official Visitors conference for the first time since the COVID-19 pandemic. The conference is our primary induction and training mechanism, and a major theme of last year's conference was learnings from the Astill inquiry, and the important role that Official Visitors play in prisons. Last year, Official Visitors to adult custodial facilities dealt with 10,889 complaints and over 12,500 inquiries. Whilst most of these were able to be resolved at a local level, we have observed an increase in serious allegations being made to Official Visitors and to my office since the Astill inquiry.

Finally, this Committee made a finding in your report last year that my office could provide more comprehensive information about steps being taken by Corrective Services NSW and Youth Justice NSW to implement my recommendations. I am pleased to advise the Committee that the Inspector of Custodial Services Amendment Act contains a new provision, 16A, that provides me with an express power to request information from the agencies in relation to the progress of implementation of recommendations and why recommendations are not being implemented. The implementation of the new provision will require some additional resourcing of my office and probably the agencies, but it is very welcome. Thank you.

The CHAIR: Before we begin questions, I wish to inform you that you may wish to take questions on notice and provide the Committee with the answers in writing within seven business days after receiving the questions. I'll ask the first question before I go to my colleagues. Corrective Services NSW responded to the recommendations in your inspection report of the Shortland and Cessnock correctional centres. Is that right?

FIONA RAFTER: Yes.

The CHAIR: What has come out of that?

FIONA RAFTER: That particular report, we haven't completed the verification process, because it was tabled late in the last financial year. The response to that report crossed with the preparation of the annual report. That is why we included the report and the recommendations in the last annual report. Justice Health had provided us with their response, but Corrections had not provided us with their response at the time of the preparation of

the last annual report. They have since that time prepared a response to us, but I haven't done a verification process as to whether they have achieved recommendations they claim to achieve. That's a process that we undertake after June every year in preparation of this report.

The CHAIR: You mentioned in your introduction about unannounced inspections of Youth Justice or juvenile facilities. When do you think they are likely to commence, and do you have the resources to be able to do that?

FIONA RAFTER: Youth Justice have been informed. The terms of reference have been issued and provided. I'd rather not say exactly when they're going to commence. They know we're coming, but they don't know when.

The CHAIR: I understand that. And you have the resources to be able to do that? Or do you need additional resources?

FIONA RAFTER: I will be doing those unannounced inspections, and I've actually engaged two consultants to assist me. I'm in the process of engaging a health consultant, and another consultant to help me with those.

Ms KAREN McKEOWN: You mentioned a significant uptick in complaints following the Astill report. Have you any indicative figures or data about what percentage of those are possibly vexatious complaints that have been lodged? The reason I ask the question is I have heard that there seems to be a bit of a strategy out there within the population that are incarcerated, that this is a bit of a payback, or a way to—I'm trying to think of the most appropriate words here for anyone who is in Corrective Services who are doing their job to the best of their ability. But there seems to be this—I suppose it's that complaints are significantly on the increase, and they're taking up a lot of resources. Are you in a position to comment on that, or not?

FIONA RAFTER: My role doesn't investigate the complaints or the allegations. I have heard some of that commentary as well. The complaints that I've received, I've not been advised that any of them are vexatious. I do receive a response as to where particular allegations might be at—whether they've been referred to police, whether they're moving to assessment, to investigation—depending on where exactly I refer them to. I'm not aware of any that have been found to be vexatious. There may be some where it's difficult to find sufficient evidence, but that doesn't necessarily mean vexatious.

Mr MARK TAYLOR: During your opening comments, you made reference to the Astill inquiry, and also Official Visitors. Can you give us a rundown on what you say were the lessons learned out of Astill, particularly directed at the Official Visitors Program?

FIONA RAFTER: When my office was created, there was always an Official Visitor Program. It was operated by Corrective Services. When the independent office was created, the responsibility for managing the Official Visitor Program moved across to my office. We inherited a program that had been run by Corrections, and I would describe it as not particularly diverse. It also, when it was run by Corrections, asked Official Visitors to take complaints from people in custody and staff. My belief was that people in custody did not have a lot of confidence to go to Official Visitors with anything that was a serious complaint, because they might have seen official visitors spending a lot of time with staff. That's how Official Visitors were trained back then; they were taking complaints from staff, as well.

We've made a lot of changes over the years. It is a much more diverse group of people. I think that we've worked very hard to build trust. The amendments that have been made to the Act in response to the Astill inquiry make it really clear that Official Visitors are there to deal with complaints from people in custody. I think that's really important to building that level of trust, that they can be a trusted, independent person that's in a correctional centre, regularly, that people can make a complaint to. The other change that's been made to the legislation is, it's made really clear that Official Visitors can come to me with that complaint. It was a practice that we'd put in place, but it didn't have the legislative foundation, because until the recent amendment Act was passed—but it's yet to be proclaimed. Although I had the responsibility for managing the program, the relevant legislative provisions were still within the Corrective Services Act and the Youth Justice legislation. So that was a recommendation that came from the statutory review, that all of those provisions come within my legislation. Then, there's been additional amendments made in response to the Astill inquiry to clarify that role of the Official Visitors.

Mr MARK TAYLOR: So the Astill inquiry basically gave you a clarification of the roles and separation. Are you now responsible for the training of those Official Visitors?

FIONA RAFTER: I always have been.

Mr MARK TAYLOR: Have there been changes in those training packages since the Astill inquiry?

FIONA RAFTER: Last year we held our first annual conference since before the pandemic. We had tried to organise things, but every time we made an attempt there'd be an outbreak. A big focus of the conference was learnings from the Astill inquiry, and reinforcing what had been the practice that we had been training people to do. Having it actually within the legislation, now, is what we really need. And we will be doing more training now that the legislation has actually passed.

Mr MARK TAYLOR: When those Official Visitors do a report, does that physical report ultimately go to the Minister?

FIONA RAFTER: Yes.

Mr MARK TAYLOR: Is there a time frame for those reports to go up?

FIONA RAFTER: The Official Visitors must provide a report to me and to the Minister once every six months. The KPI that I have in my office is to try and get those reports—because they come into us, I read them, and then I forward them to the Minister—is two weeks. But if we've got Official Visitors that don't put their reports in on time—and there's a lot of Official Visitors—there are some challenges. That can be because people are on leave, they're sick. There are a whole variety of reasons. We sometimes find it difficult to meet that timeline of two weeks.

Mr MARK TAYLOR: Is that through a lack of resourcing or a lack of training with the Official Visitors? What's the fundamental problem for meeting the timeline?

FIONA RAFTER: We have focused the training on the reporting as well. That was a big component at the conference last year—that was another part of it, doing the reporting. There's always work that can be done to have better reporting. Official Visitors come with different skill sets. Some are much better in engagement than report writing, but it is a requirement of the role. So there's always more training that we can do. As far as my office, yes, it's a very big program. I've had to bring in additional resources—not additional, but divert resources in my office to support it during periods like the six-monthly reporting cycle. So resourcing is an issue.

Mr MARK TAYLOR: Are you successfully attracting Official Visitors to the role? How is your attraction going to getting Official Visitors into the program?

Ms KAREN McKEOWN: Recruitment and retention.

Mr MARK TAYLOR: That's the word I was looking for.

FIONA RAFTER: We still get really high levels of interest in the metropolitan area, which is great. We get more suitable people than places to fill. Corrections has more facilities in the regions. We usually do pretty well out of the Cessnock region as well. Okay up in the west—around the Blue Mountains area—where there's a number of facilities in close proximity there, we do okay. Broken Hill remains our biggest challenge. We actually found a really good OV for Broken Hill, who went through the induction training, the conference, and they were doing really well, but they found alternative employment, which probably pays more than $239 a day. I don't know that for sure, but they found alternative employment.

We did think we had a really good replacement, but it takes quite some time. The checks that we put in place for official visitors to go—because they've got free range when they go into the correctional facilities—is pretty much to the same standard as employees of Corrections. So those security checks take quite some time as well. So we thought we had a replacement, but ultimately we lost that replacement, so Broken Hill is still our biggest challenge. Up around Grafton can be challenging as well. There's a few areas that it takes a lot of work from the Official Visitors coordinator. We advertise, we advertise online, we do targeted recruitment in community groups. It's fairly constant with such a big program.

Ms SUE HIGGINSON: Inspector, I apologise for my rudeness because I missed your opening statement. Given we were on the Official Visitors, do you have a level of confidence, post-Astill inquiry and the findings—and also now subsequent revelations about the failings of prisoner or inmate confidence—that they can speak with Official Visitors? There are two parts to this question. One, do you have any confidence about the system that may have changed, around providing more trauma-informed capacity for Official Visitors to hear the grievances or complaints or concerns of inmates? And, if so, what do you think has changed to make that something that we can have confidence in?

FIONA RAFTER: The Astill inquiry focused on Dillwynia Correctional Centre in particular, which is where the offending of Astill took place. Before the inquiry had commenced, I already had put a very experienced Official Visitor in there a couple of years before, and I had great confidence in her. Subsequently, I appointed an Aboriginal official visitor in Dillwynia. Since the Astill inquiry commenced, I authorised her to go into that centre

once a week, and then I also put another very experienced Official Visitor into that centre as well. So I've got a great degree of confidence in those Official Visitors at that centre.

I also had the Official Visitor who has some mental health background. I asked her to take on Silverwater Women's Correctional Centre as well. At the other facilities that hold women—Wellington and Mid North Coast and Clarence—I have Aboriginal women appointed as Official Visitors to look after those particular women's sections there. That's quite deliberate, because of the high numbers of Aboriginal women in those centres, and the fact that the women get moved around the system. So sometimes somebody may be in another centre, but they might raise something that relates to something that happened in another centre. So it's really important that I've got those key Official Visitors in those locations.

Ms SUE HIGGINSON: Is it fair to say, do you think, that your Official Visitor Program, prior to the inquiry, contributed and assisted in uncovering some of the terrible things that were happening at Dillwynia?

FIONA RAFTER: I gave evidence at the Astill inquiry and I produced all of the documents that I had and a number of allegations. What was really interesting—I had received some allegations, but they didn't relate to Dillwynia. There was quite clearly a lot of fear and trust issues in Dillwynia. I think it took the Astill inquiry for women in custody to have confidence that they could come forward, that they would be believed. Because the Astill inquiry found that was a real issue.

Ms SUE HIGGINSON: Thank you [audio malfunction].

The CHAIR: You're just dropping out.

Ms SUE HIGGINSON: Another thing I wanted to ask you about was your recommendations in relation to closing [audio malfunction].

The CHAIR: Ms Higginson? You just dropped out. Have you got a question, the Hon. Rachel Merton?

The Hon. RACHEL MERTON: Thank you very much, Inspector Rafter. I think I'm on the air.

Ms SUE HIGGINSON: It's my bad luck.

The Hon. RACHEL MERTON: Sue's back.

The CHAIR: We'll go to the Hon. Rachel Merton, and then we'll go back to you, Sue.

The Hon. RACHEL MERTON: The Official Visitor Program, and the appointment process behind that, how does that work?

FIONA RAFTER: Official Visitors are appointed by the minister or ministers responsible for Youth Justice and Corrections. Ideally, we have two major recruitment rounds every two years. Official Visitor appointments can be for up to four years. We try to run them so that their terms won't all expire on the same date. During those major recruitment rounds, we actually start the process about six months before. We advertise through various means, and we do targeted recruitment, particularly for Aboriginal Official Visitors. We found that traditional means of advertising and any association with government, there wasn't a lot of trust, so I developed, in conjunction with my Aboriginal staff, some more targeted advertisements. People who are interested fill out an application package. Then we hold interviews. Interviews are conducted by staff in my office. After that, they have to complete security checks. After they've completed the security checks and criminal history checks, I will make a determination if I want to recommend them to the Minister for appointment. Then the recommendations go into the Minister's office.

We allow six months. Particularly if we are looking to find either new appointments or reappointments of 30-plus, then we have to allow that amount of time. In between those major recruitment rounds, people get sick, they find other employment, they move—all of the things that happen to everybody—then we have vacancies arise, and we have to start recruiting again. What we do, though, is we provide coverage at centres. We don't allow a gap to happen. We use existing appointed Official Visitors to cover where there is a vacancy that has arisen between the major recruitment rounds, and then we'll start recruiting. It will usually take several months. Once the appointment letter comes back from the Minister, then we start the security awareness training, the induction, the mentoring and the training program. There's a lot of time invested in finding Official Visitors. That's why it's really critical for us to retain them.

The Hon. RACHEL MERTON: Inspector Rafter, by definition, Official Visitors are classified as independent community members.

FIONA RAFTER: Yes.

The Hon. RACHEL MERTON: The list of appointed Official Visitors, is that publicly available—as to who's been appointed and who's doing what?

FIONA RAFTER: Yes, it should be on GOView.

The Hon. RACHEL MERTON: In light of independent community members, in terms of support services around the not-for-profits or the church community area, how does how does that fit in allowing access to those individuals as Official Visitors?

FIONA RAFTER: Could you just clarify that?

The Hon. RACHEL MERTON: In terms of religious leaders or support groups or community support groups, do they fall under the Official Visitor category?

FIONA RAFTER: No, they don't.

The Hon. RACHEL MERTON: Just in reference, I think there's a long history of church visitors, community visitors going into prisons to provide support, clearly, with the consent of the relevant individual. I'm just wondering, do those people fall under the Official Visitor Program?

FIONA RAFTER: No, they don't. The Official Visitor Program is separate from that. Within Corrections, there is a chaplaincy program. That's run through the New South Wales Chaplaincy Services. They appoint chaplains to each correctional centre, and then those chaplains become responsible for ensuring that there are other religious leaders or services, like imams et cetera, that are coming in to provide relevant services for the population. Every centre should have an Aboriginal Elder visiting, because there's an Aboriginal Elder Visiting Program. There's funding to every correctional centre to provide this, but a lot of our reports have found over the years that that had completely fallen over—though I have seen a lot more work happening, because we've been reporting on it. That's been happening, having Aboriginal mentors or Elders back visiting.

The Hon. RACHEL MERTON: The average profile of what we would determine as an independent community member, as an Official Visitor, could you just give us an insight who some of these visitors might be?

FIONA RAFTER: One of our appointments is somebody who has previous experience working in the Ombudsman's office, but they're retired. Then we have Aboriginal Elders. We've had an absolutely fabulous Aboriginal Elder who's also a lay pastor. He's been working—he's been visiting at Wellington Correctional Centre, Orana Youth Justice Centre, and the Dubbo court cells for me. I appointed him just after I started. He is an amazing man who is very wise. He has done a fabulous job for us. Then we have other people with backgrounds in education. We have lawyers with human rights experience. Over the years, I'm pretty happy that we've made the program a lot more diverse, but we can do better. We can always do better. We strive to increase the diversity. I think that is really important.

Ms SUE HIGGINSON: I'm sincerely sorry for my technology problems. Can you hear me now? Is everything okay?

The CHAIR: We can.

Ms SUE HIGGINSON: Fantastic. I finally found some stability in life. Inspector, thank you. One of the things I also wanted to just ask you about was in the two of your most recent reports. Just talking about the—what do we call them?—antiquated facilities, and your recommendations that certain wings are no longer used for inmates. Also, in reference to ligature points, I'm just wondering if you can provide us any insights in addition to your reports, obviously, which are fantastic and very comprehensive. I'm just concerned that the government, from where I sit, is possibly not moving fast enough. I have had a number of conversations with, I think, now the former acting Commissioner, Leon Taylor. He's assured me that some actions have been taken in reference to your recommendations, but others haven't. I'd just love to get some insights from you about that, so that it can inform what we do in terms of our priority, any recommendations that we have about some of these facilities.

FIONA RAFTER: The first time I appeared before this Committee, just after I commenced in this role, in 2016, the Committee asked me a question about my immediate observations of the New South Wales system. Part of my response was the age of the infrastructure—that New South Wales still had quite a number of 1800s Victorian[-era] prisons that they were operating. It's still a major issue. There was a huge injection of funding and a program, called the Better Prisons program, some years ago by the former government. They built a lot of additional capacity in the New South Wales correctional system. I was very hopeful at that time that that would enable them to close some of the 1800s infrastructure that they were still reliant upon. By the very nature of them, they genuinely don't have showers, they have not much ventilation, and hanging points as well.

It's disappointing that there is still so much Victorian-era stock that's still being used. I don't believe it's safe for people in custody. I don't think it promotes rehabilitation. I don't think it's safe to use for people on remand. As you well know, I've commented about the use of those type of facilities for Aboriginal people on remand. I think it's time that government needs to make some decisions and close that type of infrastructure. It's also not good for staff. Those facilities were not built during a time when dynamic security was known as something that was very important, so there's generally not very good lines of sight in those buildings as well. It's not safe for the people who are in custody, but they're not good facilities for staff to be working in as well, in my view.

Ms SUE HIGGINSON: Just one more thing I wanted to raise with you. What is the situation when pregnant women are in prison and then having to give birth whilst they're in custody? I have personally read some terrible, terrifying accounts of how women have been dealt with when they have been pregnant and then given birth and then they remain in custody. Do you have any insights in relation to this particular issue and whether you've made any recommendations that I have not yet had the benefit of seeing? I'm still relatively new to this aspect of what I can only describe as some horror as to what has been recounted to me. I'd be very grateful for any views you might have.

FIONA RAFTER: I can't comment on any particular individual cases, but what generally happens is that if a woman comes into custody and they are pregnant—and tests are done immediately upon coming into custody, and then there's usually a test done several weeks later as well—they will be moved to Silverwater Women's. Silverwater Women's has the major health service. They are linked in with the maternity services at one of the major hospitals. My recollection is that it's Westmead. The prenatal service that's provided at Silverwater—I've had health consultants go into Silverwater Women's with me. They found that the service there was good. It's not to say that there might be individual women who have had a poor experience, but looking at the system, that system works. The issue would be if they come into custody at one of those far-reaching centres. They all have health, but they won't have the specialty services for pregnant women. They will have to be moved to Silverwater Women's to access that.

The CHAIR: We might continue on. Sue Higginson, I'm just conscious of the time, and I've got Mr Vo, who hasn't asked a question yet. We've got Mr Barnes and the Crime Commission waiting as well. Perhaps any further questions, Ms Higginson, you can put them in writing and address them to the inspector.

Mr TRI VO: Thank you, Ms Fiona Rafter, for appearing in the hearing today. How many Official Visitors are there?

FIONA RAFTER: There are currently 92 appointments. Last year's annual report reported 93, because we had 13 in Youth Justice. There are now 12 appointments in Youth Justice, but we have a couple of vacancies at the moment that we're currently recruiting for.

Mr TRI VO: In adult correctional centres, inquiries received by Official Visitors increased by 60 per cent and complaints increased by 28 per cent between 2022-23 and 2023-24. What has caused this increase in the numbers of inquiries and complaints made to Official Visitors across adult correctional centres?

FIONA RAFTER: A couple of things. The reason that there's such a dramatic increase is because there was a dramatic decrease during COVID. During the pandemic, we were the only state that continued to operate the Official Visitor Program. All of the other states stopped all visitors, including Official Visitors. I negotiated with the Commissioner of Corrections and the head of Youth Justice to keep the program going. They were supportive of doing that. I had to take some steps to protect both people in custody—because infections were likely to happen, the reason visitors were stopped—from people coming in and out, and also to protect the Official Visitors. The age demographic of the Official Visitors back then was older. We have tried to bring in some youth as well. I was very mindful of that. If there was an outbreak, I would stop them from going in. Consequently, the level of their service met the legislative requirement, but it decreased. That's why we've seen such a dramatic increase as well.

I would like to think that people in custody have confidence in the program to actually resolve their issues. The main focus of Official Visitors is to take complaints and resolve them at the local level. So finding people's lost property—and there's lots of that, because there's lots of movement around the system—making sure they're getting a health appointment, trying to resolve things for people at the local level. The serious allegations are the small part of their work. The bulk of it is actually resolution of complaints at the local level. They don't have a power to investigate, so it's all about complaint resolution, for the most part.

Mr TRI VO: Does your office receive sufficient funding for its statutory functions?

FIONA RAFTER: We always need more. The more we have, the more we can do. I think that the Astill inquiry and a number of other things that have happened in Corrections over the past few years show that they need more oversight, not less, and so more resourcing is important.

Mr TRI VO: Have you applied for any additional funding to address these constraints?

FIONA RAFTER: We have received some additional funding in this financial year's Budget, but it's on track to be spent. With the passing of the new legislation, I provided advice to the government on what was required for them to proclaim the provisions. Some of that requires additional resourcing, particularly around the monitoring and reporting, and further support for the Official Visitor Program. One Official Visitor coordinator is no longer enough in my office. As I say, during the particularly busy periods I have to divert resources from the rest of the office to support that person. That's what I've made clear.

The CHAIR: Thank you, Inspector. That concludes the time allocation for the giving of your evidence. Thank you for appearing before the Committee today. You'll be provided with a copy of the transcript of today's proceedings for any corrections. The Committee staff will also email any questions taken on notice from today, and any supplementary questions from the Committee. Thank you for appearing and have a good day. Thank you for coming in.

(The witness withdrew.)

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

NICOLE LAWLESS, Assistant Commissioner, NSW Crime Commission, affirmed and examined

MICHAEL WILDE, Chief Operating Officer, NSW Crime Commission, affirmed and examined

The CHAIR: I welcome our next witnesses from the NSW Crime Commission. Thank you for appearing before the Committee today to give evidence. We're running a little bit behind time—my apologies for that. Please note that Committee staff will be taking photographs and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly social media pages, website and public communication materials. Please inform Committee staff if you object to having photos or videos taken. Before we proceed, do any of you have any questions about the hearing process?

MICHAEL BARNES: No, thank you.

NICOLE LAWLESS: I do not.

MICHAEL WILDE: No.

The CHAIR: Would anyone like to make a short opening statement before we commence questions?

MICHAEL BARNES: First, let me thank you and the Committee for the invitation to meet and discuss the work of the Crime Commission today. We recognise that the Parliament has granted the Commission extensive intrusive powers, and so we readily acknowledge that we must be accountable to the Parliament via this Committee. May I take the opportunity to highlight a few of our achievements during the reporting period, and identify some of our emerging priorities. Our annual report for 2023-24 shows that the Crime Commission had a productive and successful year. The top level numbers are these: At any one time, we have approximately 100 criminal investigations on foot, and approximately 350 proceeds of crime applications before the Supreme Court. In 2023-24, we finalised 39 criminal investigations and commenced 60 new jobs. We finalised 46 proceeds applications and commenced 53 new matters.

On both fronts, our workload is increasing—a challenge we have to manage. It may be of assistance to the Committee if I outline our macro structure before giving some detail of the performance and outcome of the various business units. The Commission is split into three divisions: the Operations Division, Legal and Confiscations Division, and Corporate and Enterprise Services. Operations has two primary responsibilities: to investigate organised and other serious crime; and to collect, collate, analyse, and share intelligence. Our investigative jurisdiction is serious and organised crime. Offences that we generally focus on include homicide, terrorism, organised crime, kidnappings, the most serious drug offences, and associated financial and money laundering activity.

We work closely with the New South Wales Organised Crime Squad, who are co-located in our building with other State Crime Command specialist squads such as the Homicide Squad and the Criminal Groups Squad, and various LACs [Local Area Commands] and PACs [Police Area Commands] who seek our assistance. For example, this year for the first time we accepted two referrals from the Child Abuse Squad. I'm not suggesting that the infanticide and the grievous bodily harm of a child that we investigated are the work of organised criminals, but they are quite clearly serious crimes, and there's no doubt that the use of our coercive hearings contributed to the resolution of those matters. We also work closely with the AFP [Australian Federal Police], and in joint operations, the Australian Criminal Intelligence Commission. We are part of the joint counter-terrorism team, and in that capacity we are involved in CT [counter-terrorism] jobs and have representatives on the committees that manage that work.

I'll provide just a few headline details from some of our criminal investigations undertaken during the relevant reporting period. In Strike Force Tromperie, the Commission assisted the Organised Crime Squad to target a transnational network whose members are involved in the importation, manufacture, and supply of illicit drugs, clandestine tobacco, and firearms, as well as homicide and money laundering. The investigation culminated with 38 search warrants executed across Sydney, and the arrest and charging of 25 persons, as well as the arrest of the syndicate's principal in Lebanon. Approximately $1 million in cash, $2 million in cryptocurrency, 20 luxury watches, a Lamborghini, 25 firearms, 75 kilograms of drugs, and 65 dedicated encrypted communication devices were seized.

In Strike Force Springfield, the Commission's intelligence analysis and technical capabilities led police to a drug laboratory in south-west Sydney, resulting in the seizure of prohibited drugs, 300 kilograms of precursors, and the arrest of a person for manufacturing a large quantity of prohibited drugs. Also seized were a 3D printer, a Glock, and parts of an AR-15 firearm. As a result of executing that search, a further warrant was

executed with the assistance of the Queensland Police Service, which successfully disrupted a separate lab, manufacturing a large quantity of methylamphetamine, the seizure of another fully functioning AR-15 semiautomatic military-style weapon, assorted firearms parts, and two tasers. Two real estate properties valued at over $2 million were restrained.

Culti is a joint investigation with NSW Police Force into the manufacture and supply of MDMA across eastern Australia that commenced in April 2024. Commission-led analysis and technical capabilities helped lead officers attached to the State Crime Command's Raptor Squad and the Lake Illawarra Police District to a drug lab in south-west Sydney that resulted in the seizure of MDMA with an estimated street value of $4.5 million. In June, seven people were charged and remain before the court. In Strike Force Orsino, the Commission and the New South Wales Police targeted outlaw motorcycle groups [OMGCs]. Our special powers enabled the charging of seven OMCG members with offences including large commercial supply of prohibited drugs, kidnapping, shoot with intent to murder, and theft of vehicles used to facilitate murders. These investigations also helped identify a professional facilitator from the real estate sector, who was charged with participating in a criminal group.

These are just a few examples that help illustrate the varying nature of the work the Commission does, and how our specialist services help advance investigations. We've also had a strong role in investigating public-place shootings. Taskforce Magnus was established in July 2023 to disrupt organised crime networks who engage in murder, kidnappings, and shootings. The Commission has worked collaboratively with the NSW Police Force, providing analytical and technical services, and using its coercive power to progress the investigation of those crimes. Magnus encompassed 10 police strike forces, with several public-place shootings and four homicides. Within the reporting period, there were 23 arrests and 132 charges laid.

The Commission's Strategic Intelligence Unit [SIU] produces material identifying current and emerging crime trends and threats. It provides insight into criminal organisations, the individuals behind them and the methods they use, the markets they seek to dominate, and the systems and capability that allows them to operate. The SIU developed the Commission's second annual Picture of Organised Crime report, which provided a comprehensive overview of the serious and organised crime landscape in New South Wales. That work helps guide strategic decision-making and assists the Commission to determine where and how we should apply our limited resources.

The SIU also led a research project focused on the misuse of trackers by organised crime networks to facilitate their criminal activities, including the targeting of their competitors. An unforeseen finding related to the extent to which domestic and family violence offenders used the devices, and the extent to which some private investigators were prepared to assist them in that abuse. The Project Hakea final report was published in June 2024, and made findings and recommendations supporting public safety and law enforcement responses.

I'll say something about our human sources program, but as you would appreciate for issues of safety and ongoing effectiveness, I need to be discreet. The Human Sources team manages a carefully identified stable of informants. Some are high-level organised crime figures, others are associated with such criminals. It's recognised that meeting with these people involves risks, in terms of personal security for our handlers, potential for blackmail, and the making of false corruption claims. Nonetheless, it is an essential capability that allows us to pursue investigations and achieve outcomes that would otherwise not be possible. Organised crime networks still use dedicated encrypted devices, but they are more wary following a number of successful operations penetrating those systems. This has led to a renewed recognition of the importance of human intelligence.

In the reporting year, 558 intelligence reports were disseminated to other law enforcement agencies, the majority as a result of collecting information from our human sources. The Commission employs a Digital Financial Analyst and technical officers —sorry, more than one analyst and more than one technical officer. They are expert at extracting data from phones and computers, downloading CCTV vision, installing listening and tracking devices, and undertaking numerous other sensitive but extremely effective investigative tasks. Their assistance is regularly sought by other law enforcement agencies because of their expertise, responsiveness, and their innovative and agile way of delivering those services. Our officers undertook 304 technical deployments and forensic examinations in the financial year 2023-24.

Hearings are an important part of the Commission's unique investigative tools. Witnesses are compelled to answer questions, even incriminating questions, and to produce documents or things relevant to the investigation. We recognise the very intrusive nature of those powers and respect that the Legislature made access to them conditional upon our external Management Committee, chaired by a retired Supreme Court judge, granting a reference to undertake the investigation in question. Seventy-nine coercive hearings were convened in 2023-24.

The CHAIR: Sorry to interrupt you, Mr Barnes, I'm just conscious of the time. We might stop you there and go to questions. You can table that that introduction, if you like.

MICHAEL BARNES: I'll do that.

The CHAIR: Thank you for the work that the Commission does. We've just heard some serious work in terms of identifying serious criminal behaviour in our communities. I was looking at your annual report and looking at the joint arrests and charges for the 2023-24 period, and I see there's quite a significant spike in the arrests last year. I'm looking at page 13 of your annual report, under the title "Joint arrests and charges". Arrests: 161; charges 1,108. You've obviously been busy in the last couple of years, and that's a significant increase over the last five years, especially in relation to the charges statistics. Can you put that down to anything specific? Is it that you've got more staff, is it more criminal activity happening? What do you say about that pattern?

MICHAEL BARNES: Both of the options that you suggest are true. We do have more staff and, unfortunately, crime seems to be continuing to flourish. I'd say, though, the main contributor is increased collaboration with other law enforcement agencies. We've really focused on ensuring we have good communication, and that other law enforcement officials are aware of our capabilities and the assistance we can provide. As I said, the Organised Crime Squad is co-located in our building and we meet regularly with the major squads in the State Crime Command. We've also taken seriously the impact of crime on the regions. Throughout the last calendar year, we participated in seven taskforces that focused on various regions throughout the state, and we contributed intelligence analysts and other capabilities to assist those. So I think that would be the explanation for the increase in charges.

The CHAIR: I was going to say—I think you've touched on it there—the collaboration with other law enforcement agencies is quite good?

MICHAEL BARNES: Excellent. You'd be aware that there is some tension in the federal-state relationship. We don't get involved in that. We ensure we work well with agencies from across the country and across the state.

Mr TRI VO: Thank you so much for attending the hearing today. How does the Commission assess or qualitatively assess the impact of its work on serious and organised crime in New South Wales?

MICHAEL BARNES: You're right, Mr Vo, that working out what's effective and what isn't—what is an important part or unnecessary—is a process that we need to go through. The difficulty we have is there are more applications to access our capabilities than we have capacity to satisfy. I do acknowledge that in the past it's been a bit ad hoc. To some extent, it might have been a little dependent on personal relationships between law enforcement officers and officers within the Crime Commission. We've sought to address that by developing a matrix that assesses the likely impact of our involvement, both in terms of its contribution to pursuing our strategic goals, and the likely impact it will have on crime generally.

That is prospective rather than retrospective, but before we start any job, a committee made up of Ms Lawless and the other executive director in the Operations area, together with some of the directors, look at the information that's available in the application from the external agency and assess how likely it is, if this operation was to go ahead, that we would make a contribution and that it would have a significant impact. We tend to do that, as I said, prospectively. It's much more difficult to do it retrospectively, other than by referring to the charges that the Chair has already mentioned. I'm not too sure that just the numbers of charges is a good measure, but it's difficult to get any other measure.

Mr TRI VO: You mentioned before in your report it can be dangerous but it's quite necessary that sometimes your organisation meets some of the criminals. In the past, have there been problems with that?

MICHAEL BARNES: I think law enforcement generally recognises that human source management is one of its most high-risk activities. It requires our staff to go out and meet in private with high-level criminals. In a pure world, we would have nothing to do with those people other than to target them for investigation, but that's not reality. The people who know most about organised crime are those involved in it and, perhaps surprisingly, many of them are quite happy to talk, as long as they're not talking about their own activity. They're happy to talk about the activity of their competitors and other people that they're aware of who are committing these offences. There are different mechanisms that can be used to minimise the risk. For example, we never send an individual by themselves. They always have to report as soon as they return to the office on what they were made aware of. We try and rotate people through that squad. Although we've only got four officers in the source handling team, so that makes it difficult. But I accept the thrust of your question. It is a high-risk activity that has to be very carefully monitored, and there are certainly plenty of stories across the sector of problems developing in that area.

Mr TRI VO: Are there any legislative barriers or operational difficulties to the full recovery of proceeds of crime?

MICHAEL BARNES: No. The legislation is effective, and we are now very successfully exercising the powers under the Criminal Assets Recovery Act to confiscate the proceeds of crime. It's very resource intensive. It's very difficult, or it can be challenging, to recruit people with the appropriate forensic accounting and legal skills. Indeed, that's one of the reasons for our restructure, to bring the Confiscations area and the Legal area together under one Executive Director and Assistant Commissioner. That's the area Ms Lawless manages. It's challenging, but I think we're being fairly successful in that area.

Ms KAREN McKEOWN: Just a follow on from that last question. How is the new Legal and Confiscations division functioning since it was merged 12 months ago?

MICHAEL BARNES: It's succeeding almost beyond expectations. It was a significant disruption of the organisation. There were many fine people who'd worked in that area for many years and, it's fair to say, there was a degree of resistance to the restructure. That did result in a diminution of our take for the 2023-24 financial year. But the best example I can give of how successful the restructure has been is to tell you that, for the first seven months of this year—so July to end of January just passed—we got confiscation orders that were more than double for the whole of the previous financial year, so it's working very successfully.

The Hon. CAMERON MURPHY: Thank you, Commissioner, for coming along and giving evidence today. I also want to ask about the Criminal Assets Recovery Act [CARA]. You set out on page 17 of the annual report the number of applications in each category that you've made to the Supreme Court. Were there any applications that were refused by the Supreme Court, and are there any that were withdrawn?

NICOLE LAWLESS: Not to my knowledge, with respect to that particular reporting period. There have been times when we've discontinued over the course of the CARA legislation. If it's not appropriate, obviously, if the evidence falls away, if there's a criminal conviction that is not made out, then we reassess and we might withdraw on that basis. I'm not aware of any order not being made by the Supreme Court, particularly in the initial instance, given that the threshold is relatively low, and then we conduct our investigation subsequently.

The Hon. CAMERON MURPHY: The ones that were discontinued, they're not set out in the annual report are they, those figures? Or were there none in this period?

NICOLE LAWLESS: It's possible that there were none in that period. I would have to take that question on notice.

The Hon. CAMERON MURPHY: If you could do that and just let me know. If you could provide a breakdown in a similar fashion to the one in the annual report, setting out the categories, and if there were any that were discontinued or withdrawn.

NICOLE LAWLESS: Yes. We can do that.

Ms SUE HIGGINSON: I just want to ask something that may be something that you're not comfortable to answer. I'm just wondering, to what extent do you engage with the AFP in relation to any active investigation or considerations of matters that may be under investigation, and whether you have any direct contact with the AFP when they are working with the NSW Police Force during investigations?

MICHAEL BARNES: We have a healthy professional relationship with the AFP [Australian Federal Police] and indeed their Commissioner sits on our Management Committee. We contact and work regularly with the AFP in Sydney under Assistant Commissioner Dametto. Indeed, currently one of our senior forensic accountants is seconded to the AFP so we can learn more about how they discharge that function. We are also with them on the Joint Counter-Terrorism Taskforce and, in that capacity, we are involved in investigations with the AFP.

Mr MARK TAYLOR: Commissioner, I missed the KPMG consultancy review that obviously took place. What was that review of and what were the outcomes?

MICHAEL BARNES: That was the review into our intelligence capability, whether we had it structured, and whether the processes they were using were likely to be the most effective. It made a number of recommendations designed to ensure that we got the biggest bang for the buck, so to speak, in relation to that capability, whether we had appropriate technology, whether the ongoing professional development of those officers was the best it could be.

Mr MARK TAYLOR: Are you able to expand on any of the changes that you've done since that review?

MICHAEL BARNES: We've made a number of changes. For example, we've appointed two officers who will be ongoing in their involvement in reviewing professional development and professional practice among intelligence analysts. There was no major restructure as a result of the KPMG review. It was more about fine-tuning.

The CHAIR: We've still got some allocated time available, so I'll ask a couple of more questions. In relation to the confiscation of proceeds of crime, or the full recovery of proceeds of crime, that is obviously—I can see in your annual report—a large component of the work that you do. Are there any legislative barriers that you're experiencing in relation to the full recovery of proceeds of crime?

MICHAEL BARNES: No, we're satisfied with the legislation the way it is. There is some uncertainty about some of the new amendments that were made a year or so ago. We're concerned that they don't quite marry up with some of the other provisions that were already in the Act. Before we come back to the government and suggest an amendment, we want to trial that through the courts and see whether our concerns have any basis or whether, indeed, they will function as intended.

The CHAIR: I note in your annual report that in relation to ongoing improvements under the complaint handling policy and procedures, that were changes were made in 2022-23. How is that going? Has there been any improvement in that area?

MICHAEL BARNES: We are oversighted by the Law Enforcement Conduct Commission. They regularly review our operations. We load material onto a portal they can access directly, and so get access to information that might be relevant to their oversight function. The complaint mechanism, or the complaint handling mechanism, is supervised by Mr Wilde. I might get him to respond to those details.

MICHAEL WILDE: We have a very close relationship, in terms of transparency and accountability, with the Law Enforcement Conduct Commission. We give them full, unfettered access to any complaints. They can monitor those complaints and supervise those on a routine basis. The processes that we made changes to were based on an audit undertaken by the Law Enforcement Conduct Commission. We accepted all the recommendations of that. A lot of it was about fine-tuning, about how we do it. They also recognised that we're not a complaints-based agency, which is a major function that they hold. They've worked with us in helping establish those processes to make sure that there's full accountability.

Mr MARK TAYLOR: Commissioner, in your opening statement, you mentioned difficulty in attracting and retaining staff with skill sets in forensic accounting et cetera. Have you got any ideas around how you can solve that type of problem? Can you farm out that task to consultancy roles? Can you have some national-type support?

MICHAEL BARNES: It's difficult because of the sensitivity of the information and the necessity to have high-level security clearance to access the material. There's also a lot of competition in the market for people like forensic accountants. The NACC [National Anti-Corruption Commission], private industry and the like are sucking up forensic accountants as fast as they can be produced. We've explored ways of growing our own, so to speak, getting people in soon after graduation, training them ourselves, and hoping that they will remain with the organisation and progress through to higher levels within the Crime Commission.

The Hon. CAMERON MURPHY: The Salinger review into the Personal Information and Privacy Act adherence by the Commission, was there an incident that sparked that or was that just a general review? This is the one that you talk about on page 27 of the annual report.

MICHAEL WILDE: There was no specific review. What we've been doing is improving our information security management systems. A significant part of that was taking on board privacy recommendations across government. We took the opportunity to do a deep dive into our organisation to ensure that we were actually managing privacy of information. The last thing we wanted to do was leak that. It's just part of our continuous improvement program.

Ms KAREN McKEOWN: I know that your People Matter Employee Survey [PMES] results improved from 2023 to 2024. I was just interested in what you might attribute this to and how do you ensure that those results continue to improve?

MICHAEL BARNES: The survey is a good source of information for me and the executive about what's working well in the agency and, more importantly, opportunities for improvement. As you say, the '24 survey had a bigger response rate than we had previously, in that 85 per cent responded—significantly higher than the sector generally, and higher than our previous response rate. Some of the very positive outcomes were

pleasing. As I say, we still note that there is room for improvement, and significant work has been undertaken to identify opportunities for that improvement and to implement them. Mr Wilde can give you more detail of that.

MICHAEL WILDE: We've made a deliberate approach in the last couple of years of putting together a staff consultative committee, having greater engagement with staff. We also had gone through a number of periods of change, which have already been referred to. Those have been settled down. The executive structure we have has settled down. We're trying to look at those PMES results. Based on the 2024 results, as an example, we've been developing action plans. It's not just coming from the executive. It's about engagement with managers but also staff, to deal with the key issues. That's been something we've done each year and we continue on that path.

Mr TRI VO: Part of your work deals with a lot of false or misleading evidence. Do you currently have enough powers to identify and deal with false or misleading evidence?

MICHAEL BARNES: We certainly have extensive powers, and it would be wrong for me to suggest we need more powers. We need to exercise those powers most effectively. Senior serious organised criminals are not stupid. They engage in stupid activity when they start shooting each other in the street and drawing attention to themselves, but they tend to be lower down the hierarchy of offenders, the ones who are engaged in that or, indeed, people who are simply contracted to do that sort of work. The principals are far removed from it. We have a well-informed, very focused adversary, or suite of adversaries. They are very agile. They find new ways to make money or to leverage systems in a way that delivers what they want. Our powers aren't the issue. It's up to us to ensure that we exercise them as most effectively as they can be exercised to maximise the impact on organised criminals.

The CHAIR: Mr Barnes, Ms Lawless and Mr Wilde, thank you for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections. As I said earlier, Mr Barnes, feel free to provide the rest of that opening address. I do apologise for cutting you off short there. The committee staff will also email any questions taken on notice from today and any supplementary questions from the committee. Thank you for appearing. Have a great day.

(The witnesses withdrew.)
(Short adjournment)

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

The Hon. PETER JOHNSON, **SC**, Chief Commissioner, Law Enforcement Conduct Commission, sworn and examined

ANINA JOHNSON, Commissioner, Law Enforcement Conduct Commission, affirmed and examined

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

The CHAIR: I welcome our next witnesses—representatives from the Law Enforcement Conduct Commission. Thank you all for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages, website and public communications materials. Please inform Committee staff if you object to having photos and/or videos taken. Before we proceed, do any of you have any questions about the hearing process?

PETER JOHNSON: No, thank you.

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

PETER JOHNSON: We're pleased to appear before you today at this public hearing. We acknowledge that this Committee plays an important statutory role in the oversight of the Commission. We were pleased to welcome the members of the Committee on their visit to the Commission on 11 September 2024. I refer briefly to some topics mentioned in the 2023-2024 annual report, before noting some of the ongoing work of the Commission. Reference was made in the annual report to the Court of Appeal proceedings concerning production of documents by the NSW Police Force to the Commission, exercising its real-time monitoring function of critical incident investigations. A joint protocol was entered into by the Commission and the NSW Police Force in August 2024, concerning provision of sensitive information.

As a practical process for obtaining information, the joint protocol is working in most cases. However, the Police Force has raised technical arguments about the construction of the legislation, which has seen the Commission being refused access to some material. In the Commission's view, the solution lies in the legislative clarification, so that the scope of the Commission's powers to obtain information in this context is beyond doubt. Following on from the Operation Mantus report in December 2023, which is referred to in the annual report, the commission published the Operation Pamir report in October 2024. Both the Operation Mantus and Pamir reports examined police charge room practices surrounding interviewing of vulnerable suspects and the right to silence. The Police Force has informed the Commission that an extended review of the Charge Room Standard Operating Procedures has been undertaken, and we expect to hear shortly from the Police Force in this regard. This is an important area, and we will examine closely the Police Force response to a significant and troubling problem.

Since the annual report, the Commission has published several reports, including the review under the *Terrorism (Police Powers) Act 2002* in November 2024, a review of the NSW Police Force's use of advice and guidance as a form of management action in December 2024, and a review of the NSW Police Force body-worn video policy and practice in March 2025. This was a particularly significant report, given the vital importance of effective body-worn video usage to contemporary policing. Last Friday the Commission launched an interactive recommendations register on its website. This facility will assist the community to see the NSW Police Force responses to Commission recommendations. Next month, the Commission will publish its final report on police bail compliance checks, following the issues paper released by the Commission in May 2024, in consideration of a wide range of submissions received in response to the issues paper.

The Commission has undertaken engagement with communities in the regions, including Wagga Wagga in May 2024, Tamworth in November 2024, and Dubbo and Broken Hill in February of this year. This engagement is important. It allows the communities in the regions, both the general community and police, to engage with the Commission face to face, and it assists this commission to hear firsthand of regional issues. This is an important two-way process. Other regional engagement is proposed by the Commission in the balance of this year. The Commission is undertaking a number of investigations concerning incidents in police stations and the exercise of police powers concerning suspects in police stations. Without referring to the details of these investigations, we consider these to be important areas which, in different ways, build upon the work of the Commission and Operation Mantus and Operation Pamir concerning the treatment of suspects in police stations. It's expected that public reports will issue concerning those investigations.

Another area of close interest to the Commission concerns domestic and family violence. This is a matter of considerable community concern. This is particularly so where the alleged offender is a police employee. The Commission is commencing a project exploring the response by the Police Force to allegations of domestic and family violence committed by its own employees. This project will allow the Commission to follow up on its 2023 report into the police responses to domestic and family violence, and consider the changes in practice made by the Police Force Domestic and Family Violence Command since then. It's expected that this project will culminate in a further public report by the Commission on this most important topic. These comments refer briefly to some areas of the Commission's work. We will now do our best to answer the questions you have of us today about the work of the Commission.

The CHAIR: Thank you, Mr Johnson. We'll now move to questions from the committee. Before we begin the questions, I wish to inform the witnesses that they may wish to take questions on notice and provide the Committee with an answer in writing within seven business days after receiving the questions.

The Hon. CAMERON MURPHY: I want to ask about a matter I read on ABC online on 28 January this year, where there was a report about a complaint that was made to the Law Enforcement Conduct Commission by a police sergeant on a long drive. The allegation was an officer was forced to urinate into a bottle while the sergeant filmed his genitals. Are you familiar with that matter?

PETER JOHNSON: Yes, I am.

The Hon. CAMERON MURPHY: The ABC reported that it was referred back to the police for investigation and there was a decision made not to proceed with a criminal investigation of that matter, as I understand it. Is that right? Do you know any more about that?

PETER JOHNSON: That was my understanding, although there was, I think, an investigation carried out by the police and certainly disciplinary action taken with respect to the officer in question.

The Hon. CAMERON MURPHY: Is there a reason that something like this wouldn't be dealt with as a criminal matter when it, on its face, appears to be?

The CHAIR: I'm not sure if that question is in order, Mr Murphy. They can't speculate as to why the police didn't take action. Unless you wish to answer it?

PETER JOHNSON: I think we can provide some information about it to assist the Committee. I'd ask Mr Kirkpatrick to say something about this.

GARY KIRKPATRICK: We are aware of the circumstances of the matter. We are aware of the outcomes, by way of which the police dealt with it as a disciplinary matter after they conducted a criminal investigation. There are reasons why the threshold wasn't met for a criminal prosecution.

PETER JOHNSON: I would like to emphasise, as I understand it, there was disciplinary action which was significant in its nature. So this is not a matter where there was no action.

Ms SUE HIGGINSON: I have a question related to Mr Murphy's question. I want to ask, not so much about the criminality of the behaviour, but what's clear is that the Law Enforcement Conduct Commission was notified about the event, and then the event was referred back to the police to deal with. Was there nothing that raised the alarm in terms of this being something that goes to a deeper, more systemic cultural or behavioural issue within the Police Force and—in the event it would hit that kind of nerve for the Commission—whether there is something there, in terms of integrity or those sorts of matters, and whether or not the Law Enforcement Conduct Commission believes or thinks that it has a role or function there?

ANINA JOHNSON: I think your concerns are well placed, Miss Higginson, but that doesn't mean that they're not able to be dealt with by police. The Commission has a number of oversight opportunities in relation to the way in which the police are handling that matter, and if we had been dissatisfied with the police response, we could certainly have stepped in. But if the police are addressing the cultural issues in an appropriate way then, generally speaking, it's appropriate for the Commission to leave that matter with the police to deal with, and to concentrate our investigatory efforts in other matters.

That's not to say that we're not aware of it, or that we couldn't pick up those kind of cultural issues where they come about. Mr Kirkpatrick and I were in the room at the time at which that matter was discussed—as observers, I should say—at the police committee that deals with these high-level disciplinary matters, and that information gathered as part of that confidential but much more informal discussion also informed the Commission's views about whether there was concerns about the police response to the matter and whether they

were taking the cultural issues seriously. I think we're comfortable that they were well and truly alive to the cultural issues there.

Ms SUE HIGGINSON: To finish that, is there some kind of loop, for want of a better term—accountability process—that would allow other members of the Police Force, not just those police officers who dealt with the matter, the senior ones or the professional standards, but is there any system of accountability where peers or other members within the Police Force are able to say—do they get to report back to the LECC or say, "Look, we just don't think this was satisfactory"? Where does somebody go if they are an existing member of the Police Force and they weren't satisfied with the resulting disciplinary outcome, which simply resulted in the officer, I think, getting a slightly lesser wage arrangement with the Police Force? Possibly a demotion—I can't recall off the top of my head.

ANINA JOHNSON: Certainly the Commission has received complaints over the years from effectively internal police complainants who are concerned about the outcome of police investigations or disciplinary matters. That's how a number of our investigations have commenced or continued, so they're certainly able to raise concerns with us, and they do. My understanding is there's no formal mechanism within the police for reporting back on disciplinary outcomes. You wouldn't expect that, because there are privacy concerns for the officer involved, in terms of relaying the outcome for that particular officer back through the Police Force. We have also seen, and we would certainly encourage the police to provide general reminders about appropriate conduct, what is and isn't appropriate, coming out of incidents such as this, as well as taking more general cultural review, performance management within the team or command of the police where this incident occurred.

Finally, I would say, despite what I said earlier about privacy, what happens in the Police Force is not always as tightly contained as one might expect. They're obviously an organisation that works so closely together—talk gets around—so I expect that the outcome of it would become known to people, including the disciplinary outcome that this officer sustained. Mr Kirkpatrick might want to add something further.

GARY KIRKPATRICK: A couple of issues in this matter first raised by Mr Murphy, but also perhaps to give some comfort to Ms Higginson. Commissioner Johnson said both her and I were present where this matter was discussed. The matter was first dealt with by police, and the police internal system within Professional Standards was not satisfied that it had been dealt with properly and appropriately, and they brought it to the committee that we sit on as observers. There was much discussion within that committee, which consists of Assistant Commissioners, as to the appropriateness of this person being in the New South Wales Police, whether there was an option for a 181D referral or what other options—if there was no criminal action—were available to that committee.

In the end, the officer was transferred to another area where there was higher supervision, and where his specific skill set was no longer relevant. So it was seen as an appropriate place to put him, so he could be under direct supervision, but also not be a subject matter expert in the area, which he was in the particular area where the conduct had taken place. Just as importantly, as raised by Ms Higginson, the witnesses involved were all consulted as to their satisfaction with how the matter was dealt with within the New South Wales Police. So there was that sense checking, as to whether the action was appropriate, and whether the witnesses were satisfied.

Mr TRI VO: The Hon Peter Johnson, you mentioned the joint protocol before in your report. Has the joint protocol improved access to New South Wales police documents for critical incident monitoring, and how has it impacted monitoring effectiveness?

PETER JOHNSON: It has assisted in most cases in that there is a process of access, a practical arrangement, obviously not one which is a legal arrangement in the sense that it's a product of statute. But the difficulty that remains in some cases, and a limited number of cases, is a narrow construction taken by the Police Force about what class of documents they may be compelled to provide to the Commission. It comes down almost to an argument about what section 114 of the Act means, and whether the document can only be compulsorily provided to the Commission if the investigating officer has actually called for it or looked at it. Our view is that it goes much broader than that, and that that's a wrong construction, for a start. But it also does not sit comfortably with what the Court of Appeal said, that there is a statutory requirement for a cooperative arrangement between the police and the Commission in this very important area, where the Commission is required to provide real time monitoring, in the public interest, in this important area. I can provide you with an example, if you wish, of the type of document as to which there is a current controversy. Would you like to have that?

Mr TRI VO: Yes.

PETER JOHNSON: One of the matters that went to the Court of Appeal involved the sad death of Krista Kach at Stockton on 14 September 2023. She was a lady who, in a situation that developed that day, ended

up dying because of the use of a bean bag round. Immediately following that incident, then Acting Commissioner Hudson announced that the use of bean bag rounds would be suspended pending a review. That's what happened. There is a report of the ballistics review that looks into the use of bean bag rounds, which the Commission knows exists, but which the police take the view that we are not entitled to see. We think that view is legally wrong.

We also think that it's wrong in the eyes of the community, who would have an expectation that, where there was a public announcement that a review was being undertaken and that a report of the review would be obtained by the police, that that would necessarily falls within a class of documents that must be provided to the Commission. That does not mean, of course, that it automatically becomes a public document. It would be a document that we see for our purposes. That's what the joint protocol does. But, at present, there has been a refusal to provide that document. That is an example which we see as being inconsistent with the statute and inconsistent with the public interest, and a clear example, in that case, of the police attitude not meeting either the law or the public's expectation.

Mr MARK TAYLOR: I haven't read your overarching Act. Are you satisfied that the overarching Act gives you the power, basically to obtain all documents unless there's a current investigation going on or it's privileged for that particular reason? You're satisfied the overarching ability to access documents is there and that the police are taking exceptions on particular issues as they come up? Where do you stand on all of that?

PETER JOHNSON: If we're talking about the class of documents under the critical incident monitoring function, there is the capacity through the joint protocol to get documents, unless there is this technical legal argument that's been raised with us to say that they're not obliged to give that to us. But moving beyond that, to the whole Act, there is a strong argument to say that an oversight body, such as this Commission, should be entitled to see any documents in the custody of the police so that the Commission, in the interests of the public, can exercise its oversight function, knowing that those documents would not be then further published without a clear explanation.

That's not what happens in practice. We have different categories of documents and we have arguments from the police, from time to time, resisting the provision of documents, unless they fall within a particular technical statutory category. Those arguments, I have to say, in the view of the Commission, are largely flawed. It is a defensive approach, and one which means there is a delay, there is a debate, and often a limit on the Commission to carry out the oversight function which it does on behalf of the community.

By way of contrast, the Inspector for our Commission has the right to see all the documents within our Commission. That provides some assistance to the community to know that there's oversight of us, and there are other agencies and other oversight bodies where there is a freer access to material. What I am raising is really the product of the way that the 2016 Law Enforcement Conduct Commission Act was drafted, where there are different categories of information, different categories of material. There is a strong argument to say that, if the Commission seeks to receive information to allow it to carry out its duties, it should receive it knowing, of course, it will be protected thereafter. There is a series of controversies now on that issue, and this is partly why I mentioned in my opening remarks that some legislative amendments would be timely, in our view.

ANINA JOHNSON: Could I just jump in on two additional things there? Mr Taylor, I think you said perhaps in your question, and I may not have heard it properly, that the Commission is entitled to material under the critical incident monitoring function unless it's privileged or subject to it. In fact, what the Court of Appeal decided was that public interest immunity does not apply in that context. So the joint protocol doesn't deal with public interest immunity. The Court of Appeal has already said that's not applicable. The joint protocol is really a practical arrangement for getting information that the police consider to be highly sensitive, and to get it to the Commission in an even safer and more secure way than we ordinarily would, and to keep it even more tightly locked down than we would. It's really a practical mechanism. It doesn't deal with questions of privilege.

Perhaps I'd just note, too, in addition to what the Chief Commissioner said, particularly in the context of critical incident monitoring, there's a statutory requirement on the Commission and the police to collaborate. The other challenge here is that, while we've experienced the police taking very technical arguments across a number of domains, particularly in the context of critical incident monitoring, to take a technical argument in the face of a statutory obligation to collaborate for all the public interest reasons that the Chief Commissioner has pointed out, we think that is difficult to defend.

Mr MARK TAYLOR: But your indication that there may be some legislative opportunity is not about opening that access, it's about clarifying that you do have that access. Does that make sense?

PETER JOHNSON: It would certainly clarify it if there was a simple obligation to provide the material, as opposed to having a number of different provisions about which, as happens, lawyers end up raising questions

and arguments developing. There should be a simple, single pathway knowing that the material is protected within the commission so that it can be used by the commission. Some of the material may have a relevance to a critical incident function. Some of it may have relevance to an investigation. It isn't a situation where there is a single use for information that may come in, but it would be an amendment to the Act that would not just, if I could use the term "tweak" the words in section 114 about the critical incident aspect but would provide a general overall obligation to provide the material to the commission when the commission is exercising its functions. It's a broader potential amendment or series of amendments that we would see.

Mr MARK TAYLOR: To bring that conversation into this committee's context, you are expending a lot of resources and money and time and effort having those discussions between you and the organisation?

PETER JOHNSON: That is the fact, and the simple fact is, the Commission's real-time monitoring of the sad death of Krista Kach has not got the benefit of that report, which would clearly inform our commission. That aspect has stopped. With many of these things, the coronial process takes a long time. We're running separate to but associated with the coronial process. It's important that we get this material in a timely fashion for the critical incident monitoring function, but more generally too, where we're exercising our oversight functions with respect to the police. It's our view that the community would have greater confidence in the police, and the Commission for that matter, if there was a ready flow of the information to the Commission, so that we could oversight the material. In a sense, the police could say the Commission is their form of insurance. That's a term sometimes used in the oversight context.

Mr TRI VO: Are the recent amendments regarding wanding search powers affecting Law Enforcement Conduct Commission operations or resources? Do you think the current provision regarding oversight of these new powers also creates any other risk?

PETER JOHNSON: The wanding area was one—as you may recall, last year there was a question as to whether our Commission was given a statutory function to keep the operation of the legislation under scrutiny. The government's view was that shouldn't happen. There is going to be a review to be undertaken by the Police Minister 12 months after the assent to the Act. We have no direct role in relation to the wanding legislation. We have been keen to find out what has been happening since it commenced. We have information about the areas in which it's been used, declarations have been made, and we've seen what are fairly regular public statements about what the product of it is. So far, we have not had a complaint made directly to the Commission about this, but we checked with the police and they've had two.

Our concern is that it's clearly an area where there's interaction between the police and members of the community. There is a real need for the police to be acting in their best and most effective way. One aspect we took up was the desirability of the police always having their body-worn video activated when they're wanding. It's our understanding so far that that seems to be the practice, although the police keep referring back to their Body-Worn Video Standard Operating Procedures, which still speak in terms of a discretion rather than an obligation. It seems in this area, practice to date has seen that they've been using the body-worn video, a very important means of, again, ensuring public confidence in the exercise of that police power. We are watching it with interest. We will deal with any complaints as they come through. We are keen to see that law operating fairly and reasonably and, of course, within the confines of the law itself.

ANINA JOHNSON: I think, Mr Vo, that illustrates Mr Taylor's point very well. The Commission's powers to review the way in which those knife wanding law amendments have been used are constrained by the narrow types of access to material that we're entitled to access under the statute. We either need to ask the NSW Police Force—and I say ask because we've got no power to require—to provide us with de-identified data on the use of the wanding law, or we have to satisfy ourselves that there are grounds for investigating it under part 6 of our Act. That requires us to have information that would allow us to reach a conclusion that there's a potential for either individual officer serious misconduct or agency maladministration.

We're really waiting for an accumulation of complaints on an issue before we could launch an investigation. The kinds of things that the Chief Commissioner was talking about, to check whether police are routinely turning on their body-worn video, to check whether there's a disproportionate targeting of particular community members, we can't do at the moment, unless the police volunteer to provide us with de-identified information. That's one of the fundamental disadvantages of the Act as it's currently constructed, because it requires us to satisfy particular statutory hooks on which to hang a request for information.

The CHAIR: Mr Johnson, you mentioned in the introduction speech domestic violence offences involving the NSW Police Force pertaining to where sworn police officers are identified as perpetrators of domestic violence. I note on page 63 of the annual report titled domestic and family violence—firstly, is the Commission made aware of when a police officer is charged in relation to a domestic violence related offence?

PETER JOHNSON: I think we are as a matter of course. Usually there would be an investigation, which would lead to the charge. It would come to our attention in the course of that process.

The CHAIR: I see that the Commission made 13 recommendations that focus on strengthening and improving the police response to investigations of domestic and family violence. I'm just reading here that the Police Force agreed in principle to 10 recommendations, six of which relate to policy and procedural changes to the standard operating procedures, and there have been ongoing discussions with commission staff about some other remaining issues. Where are those discussions up to? Are you satisfied with where things are at in relation to that space? Can you give us an update?

PETER JOHNSON: If I could make one comment and then ask the Commissioner to add some comments. An area which has concerned us, and there was a recommendation made in that report, that where there is an investigation of an officer, the investigation should not be carried out within that officer's command because of the concern about either bias or appearance of bias. The approach of the police is that they don't accept that as the ordinary approach. An assessment will be made by an inspector within the command as to whether it can or can't be done within that command. Sometimes it does get referred to another command. Our concern has been that the police force is a closely knit group of people. In a particular command, to have someone viewed as a colleague under investigation involves issues of close proximity to the investigation, which really should not see it being done by the local command.

That also bears on the complainant's view as to whether they really want to complain. It's a big step for a partner of a police officer to complain to police about that, knowing their partner is still a serving police officer, usually carrying a firearm, and having access to other facilities, which, in the age of coercive control and other types of conduct, can serve to dissuade a complainant coming forward to the police. We were very concerned about that. Our discussions with other agencies since then have emphasised the importance of that. The police are still maintaining the position that they will decide whether to refer it to another command, depending on the case. Beyond that, I might ask Commissioner Johnson, who's got a more detailed knowledge of this area than myself, to carry on.

ANINA JOHNSON: Sometimes we acknowledge there will be practical challenges, particularly in a regional or rural setting. To refer an investigation to another command might mean referring it to a command that's several hundred kilometres away. We acknowledge that if you're looking at immediate safety issues, then maybe it does need to be dealt with by the local command. With all the potential conflicts of interest, that might be the least-worst option available at that point in time. But one possible solution, and it's similar to the approach that I understand has been taken in Victoria, is for the Domestic Violence Command to have an oversight and a scrutiny of all of these police perpetrated allegations of police perpetrated domestic violence. They are significant numbers, but they're not overwhelming numbers, as we understand it. We think that would give some comfort, potentially, to complainants, to think that there's someone outside who will be having a look at how this matter is being dealt with.

The Domestic Violence Standard Operating Procedures have been under review for some time now. They're still under review, as I understand it. To the best of my knowledge, we haven't received a draft for comment. We don't always get a draft for comment where they're still being reviewed and still being updated. It's something that NSW Police Force takes seriously. Again, Mr Kirkpatrick and I have sat in on IRP [Internal Review Panel] decisions where we can see these allegations are being assessed by senior police officers. At that level, I'm comfortable that police have a zero to low tolerance of domestic violence within their force at that senior level. The extent to which that trickles down is difficult to say. I think there's also a very important piece about putting processes in place for complainants so that they know that their matter will be considered and monitored outside of the police—where their partner works—recognising just how easy it is to manipulate a sense of fear, if someone who is the perpetrator is working for the police.

I add that the Commission takes allegations of domestic violence made against serving officers, or police employees, for that matter, very seriously. It's something that we give a high degree of attention to in our complaints assessment process, and it's something where we will always review all of the investigations where a domestic violence allegation has been investigated by police. So we do certainly keep those under scrutiny, but that requires a complaint to have been made, and I think that's where the rate limiting step is, is complainants feeling comfortable enough to bring that forward. Finally, I'd add in it's something that the Commission has a project under development for, to have a look at the way in which allegations of police-perpetrated domestic violence are being handled by the police, and if there are opportunities for improvement. That project is still in development, so I won't talk any more about it at this point in time, but it's certainly something that we're aware of, concerned about and looking at closely.

GARY KIRKPATRICK: Further to your opening question on this subject matter around whether LECC is informed as to an officer being charged—the process, as the Chief Commissioner indicated, there would be a complaint, there would be an investigation by police, and then there may be a criminal charge. At that initial stage, the command, or the Commander at the command, is required to inform Professional Standards.

The CHAIR: When it's under investigation?

GARY KIRKPATRICK: As to the allegation and the commencement of the investigation. LECC has a system of receiving complaint matters on the police conduct management system. We can see those on a daily basis. But also, myself and two directors attend Professional Standards on a fortnightly basis and receive a briefing. We will receive a briefing early in that phase, that there are these allegations. There is now an investigation, who's conducting the investigation, what the interim risk management process is, does the officer still have a firearm, is the firearm being removed—things of that nature. Then, as that investigation tracks, if it ends up with a criminal prosecution we will learn of it, and the police are required to inform us regularly as to charges upon officers.

Mr TRI VO: Every time a police officer is accused of domestic violence, there will be a complaint sent to your office, is that right?

PETER JOHNSON: Yes. If the complaint is made to us directly, we hear of it in that way. If the complaint is made to the police, we will hear about it as well, because we are informed of these matters promptly, so I think the process allows us to become aware of that class of complaint reasonably quickly.

ANINA JOHNSON: When the allegation of a domestic violence offence is made, in addition to dealing with it as a criminal matter, there should also be a police misconduct matter that is raised. It's the police misconduct allegation that we have visibility over, and that system is automatically ingested into our database on a daily basis, and so we have an opportunity to review it. There may be a delay between the making of the criminal allegation and putting it onto the misconduct system. That requires police to organise to put it onto both systems. They're probably prioritising the criminal system rather than the misconduct one, but they should be dealing with both promptly.

Mr TRI VO: In your report earlier today, you said currently there's a review about officers being accused of domestic violence. You mentioned before your concerns about giving confidence to a complainant to make a complaint to the police station. Has that been conveyed to the review yet, or will it be conveyed in the future?

ANINA JOHNSON: The review is our project that we're undertaking. We've had that concern relayed to us through Domestic Violence NSW, who we've had a number of conversations with, and other stakeholders have also raised that. I think it's been discussed here in this forum, as well, in various committees. That's something that we'll be focusing on as part of our review. But we have also relayed that concern to the Domestic Violence Registry, which has now changed its name to the Domestic Violence Command. They said they'd considered the prospect of the Command being a part of a supervisory process within police, and have decided that's not appropriate for the moment.

The Hon. RACHEL MERTON: To pick up the issue relating to wanding, Commissioner, you made reference relating to my colleague's comment there about police misconduct. In terms of oversight of wanding and if there have been allegations relating to misconduct on that, I am just wondering whether there might have been any reports or if you've had any involvement with this?

ANINA JOHNSON: At the last check of our database, there was no direct to LECC complaints about individual officer misconduct, and there were two complaints to the New South Wales Police, which we will then have oversight of as well, dealing with wanding. To the best of our knowledge, that's all that there has been so far.

PETER JOHNSON: That's the position. Of course, wanding has only been in operation since about 9 December, 2024. We're still in relatively early days, although there have been quite a few declarations in different parts of the state. As time goes on, we will get a clearer picture as to whether there is any pattern of complaints coming out of that exercise of police power.

The Hon. RACHEL MERTON: In terms of the two cases or complaints relating to that, are they still open, or have they been completed?

ANINA JOHNSON: No, they're still under investigation at the moment.

PETER JOHNSON: One of them is certainly under investigation by the police. It occurred in the northern part of the state affected by the recent flooding. So there's been some delay in the next step, but it's with the police and we are keeping a very close eye on it.

The CHAIR: Thank you. I did see in the report your people matter survey results. They're very good. Congratulations. Excellent uptick in all the responses there, so well done. That concludes your appearance before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. Thank you all for turning up, and keep up the great work. Enjoy the rest of your day. Thank you.

(The witnesses withdrew.)

BRUCE McCLINTOCK, **SC**, Inspector of the Law Enforcement Conduct Commission, affirmed and examined

The CHAIR: I welcome our next witness. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages, website, and other public communication materials. Please inform Committee staff if you object to having photos or videos taken. Before we proceed, do you have any questions about the Committee hearing process?

BRUCE McCLINTOCK: No, none at all.

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

BRUCE McCLINTOCK: Yes, I will make a very short opening statement. I'll deal with two things. First, just to remind the Committee of what my role is, because it is a fairly unusual role. I also want to say something that was prompted by the evidence from the Chief Commissioner and the Commissioner. Just to remind you, my role as Inspector under the *Law Enforcement Conduct Commission Act 2016* is essentially to do two things. It's to deal with complaints about the Law Enforcement Conduct Commission. In the financial year under consideration, I received something like 76 complaints. The second part of that role is to audit the operations of the Commission to ensure that it's complying with the law. I do that on an ongoing basis. As part of that, I have quarterly meetings with the Commissioners and with the chief executive and, if necessary, Mr Kirkpatrick.

In addition to that, I have another role that's quite distinct, and that is to be the head of what's called the Secure Monitoring Unit, which is charged under various pieces of legislation such as the Surveillance Devices Act, the Telecommunications (Interception and Access) regime, which is both a federal Act and a state Act, the Law Enforcement (Controlled Operations) legislation, covert search warrants, and there's one other that isn't particularly significant.

The role of that unit is to ensure that the law is being strictly complied with in relation to every one of those warrants. The employees in the Secure Monitoring Unit go out and inspect the files and all of the agencies, including the police, who actually obtain and act upon those warrants. They inspect every file—well, that's the aim—which distinguishes them from, say, the federal agency, which is the Commonwealth Ombudsman, which does the same for the Commonwealth, which operates on a sampling approach. Those are my functions. In essence, the aim is four employees in the Secure Monitoring Unit. My establishment, as the strict Inspector function, is Miss Tran, my principal legal adviser, whom I share with Ms Furness—the Inspector of the ICAC—and an administrative employee, whom I also share.

The one thing I wanted to comment on coming out of the Commissioner's evidence was the reference made to it being a good thing if the Commission could have automatic access, so to speak, or mandated access to all documents and records of the Police Force. When I was inspector of the ICAC from 2017-22, I was aware that there's a provision in the ICAC Act that says the Inspector is entitled to access to all information in the hands of the ICAC. There's an equivalent provision in the Law Enforcement Conduct Commission Act. I am, as Inspector, entitled to anything that the Commission has. I would have thought there's a lot of sense in having a similar provision in the legislation in relation to the Commission and the police.

It would, as the Chief Commissioner in effect said, mean that there was not the same particular instance in relation to the particular types of investigations. It seems to me that it makes sense. After all, the Commission is the integrity agency for the police, and you would expect them to have access to whatever they wanted. It would also obviate the need for disputes like the case that the Chief Commissioner mentioned, which ended up in the Court of Appeal, where there was a claim for public interest immunity over documents that the Commission wanted in relation to that bean bag death incident that the Chief Commissioner mentioned. That is all I wish to say by way of introductory remarks.

The CHAIR: Thank you, Mr McClintock. We'll now move to questions from the Committee. But before we do, I must inform you that you may wish to take questions on notice and provide the Committee with an answer within seven business days after receiving the question.

Mr MARK TAYLOR: To use a colloquial term, you have been around for a little while. I'll rephrase that and say you're very experienced in integrity agencies. You mentioned a couple in your opening statement, but you do have further experience—I believe Northern Territory, and maybe have done reports or papers in relation to integrity agencies throughout Australia. Could you expand on your experience? I want to develop that idea about oversight and access to documents.

BRUCE McCLINTOCK: I've done two inquiries into the New South Wales ICAC legislation. The first was in 2004-05, which led to substantial amendments to the ICAC Act in 2005. I also did a further inquiry in 2015 with the Hon A.M. Gleeson, the former Chief Justice of Australia, which followed the High Court's decision in Cunneen [v ICAC]. Probably the most significant, from the point of view of the question you asked, was the first one that I did in 2004-05, because it was in that report that I recommended the creation of the office of Inspector of the ICAC. I did not know at the time that I would end up being the Inspector of the ICAC 12 years later, as it turned out I became. I've been reminded by the current Chief Commissioner of the ICAC, Mr Hatzistergos, that he'd foreshadowed in an earlier ICAC parliamentary committee, the appointment of an Inspector.

Lying behind the idea there was one specific reason. The previous oversight arrangement had become unworkable. It was a kind of management committee consisting of the Commissioner of Police and laymen, and there was just simply too much work for it to be effective, so that was part of the rationale. But the real rationale is, of course, that you have an agency, or agencies in fact, that have enormous coercive powers. They can compel evidence. They're not constrained by the privilege against self-incrimination. They have the powers in effect of a super police force, and powers going beyond what the police have.

Parliament at the time, obviously and correctly, thought that any agency with powers like that needed a degree of oversight and needed the ability—or had to have someone in a position to deal with complaints about abuse of power but also, probably as significantly, to audit the operations of the respective Commissions to ensure that they were behaving lawfully. While the complaint handling function—I might say this, as a practical matter—occupies most of my time, the audit function is in fact probably the most important. That doesn't mean that you have to sit there like a company auditor ticking off the accounts and vouching them. You can do it in many ways, and one of the ways I do it is, for example, quarterly meetings with the commissioners. Of course, I have many special purpose meetings with them, as it were, as well. Is that sufficient for your purposes, Mr Taylor?

Mr MARK TAYLOR: No, because we could be here or a while, Inspector, if you went on.

BRUCE McCLINTOCK: If you want to ask a follow-up question—

Mr MARK TAYLOR: The follow-up question is: The overall encompassing sentence that's in the Act about access to documents by the oversight agency, the Law Enforcement Conduct Commission's ability to access the NSW Police Force documentation, is that typical of what you've seen in other oversight agencies, or is it restricted and placed into categories which are different?

BRUCE McCLINTOCK: I can't answer in relation to the Commonwealth National Anti-Corruption Commission. There might, for example, in relation to that—I don't know—be issues about defence, security, and things like that but, generally speaking, the integrity agencies do have the right to compel production of documents from anyone whom they supervise.

Mr MARK TAYLOR: Following from that then, from your experience and from your role at the moment as Inspector of the Law Enforcement Conduct Commission, you are obviously confident that the ability to retain confidential information within the Law Enforcement Conduct Commission is certainly satisfactory, if not good?

BRUCE McCLINTOCK: It's—I was going to say it was outstanding, but the real question is, to use your word, is it satisfactory? It's definitely satisfactory.

Mr MARK TAYLOR: Over the lengthy period of time that you've been around, to use a colloquial term, technology's obviously improved a lot over the period of time, so is the transfer of information from the organisation to the integrity agency actually becoming easier and more efficient?

BRUCE McCLINTOCK: Unquestionably. It's a truism for someone my age. When I was a barrister, I used to get a trolley full of 20 of these folders. My colleagues now get one USB stick with all the same information on it. It's the same for all of us.

Mr MARK TAYLOR: I'll ask one more then. Is there any information then, that an organisation would have that the oversight agency shouldn't have access to? Unless it was live information that was about an investigation that was taking place and handing over the information would seriously compromise the investigation. Provided, I suppose, they comply with relevant Acts like the TI Act or whatever it is.

BRUCE McCLINTOCK: I find it hard to see, given the nature of the agency, why they shouldn't have access to everything. You'd expect the oversight agency to use its good sense and discretion not to, say, demand in the middle of a recorded interview that they wanted live access to that in real time. As I've said on many, many previous occasions, the real guarantee of how these agencies operate is the appointment of the people who actually

head them and run them. If you have competent people, the agency will run well. If for some reason there's a problem with the person in question, it won't. So you really, in a sense, have to trust the people who do it to behave in a sensible and rational way. I can say, on my observation, the current Commissioners and their senior staff plainly do that.

Ms KAREN McKEOWN: Can you update us on your plans about the amalgamation of the Secure Monitoring Unit with that of the Commonwealth Surveillance Devices Commissioner? You had indicated previously that there was—

BRUCE McCLINTOCK: There's been movement in that field. First, by way of background, so the Committee understands, in New South Wales there's an agency called the Surveillance Devices Commissioner, which is Mr Don McKenzie. He operates in relation to the surveillance devices legislation under a delegation from the Attorney General. The legislation requires that the Attorney General be, in effect, informed of every application for a surveillance device warrant, and gives the Attorney General the right to be heard in relation to that. The Attorney General, not surprisingly, has delegated that to the Surveillance Devices Commissioner. He's been operating for a couple of years and, on my observation, he has improved very considerably the product that goes to the Supreme Court judges who grant the warrants. There's an issue as to whether his powers should be extended to the telecommunications interception regime. That is something that I support. The Attorney General has it under consideration. I'm not officially aware of the precise status of what's happening, but the Surveillance Devices Commissioner and I had a meeting with the Attorney General at which we suggested that should happen.

Prior to that—this comes back to the precise question—there have been suggestions, and I thought of it myself, that perhaps my Secure Monitoring Unit [SMU] should be amalgamated with the Surveillance Devices Commissioner. On mature reflection, I thought that wasn't, in the end, a good idea. The reason why was because the Surveillance Devices Commissioner is at the front end, so to speak. He checks the warrant applications before they go to the Supreme Court. I'm at the back end checking whether, once the warrant has been executed, the law has been complied with. There are many aspects of what the compliance is like. Have the documents been destroyed within the various time limits? Because it's compulsorily acquired information, there is a requirement that ultimately, after it's been used for example as evidence in a case, that it be destroyed. It seemed to me that there was, in effect, a conflict between the two positions, and that part of the role of the SMU might well be assessing the adequacy of things that have happened earlier. In the end, I came round to thinking it was not a good idea, and the Surveillance Devices Commissioner accepts that and, in fact, agrees with it.

There are other things going on in the space as well. You mentioned the Commonwealth. There's been suggestions that the Commonwealth Ombudsman should take over the telephone interception functions of the SMU. I don't think that's a good idea, for a number of reasons. I'm biased, obviously. I think my Secure Monitoring Unit does a better job and it does a more complete job. The Ombudsman operates on a sampling basis. I don't know what proportion they sample. Our aim is to inspect every warrant. By inspecting every warrant, you're going to pick up the mistakes, which you may well miss if you adopt a sampling approach. At various times, I've been concerned that the office might be forced to go to a sampling approach, simply because of the amount of material that they have to get through. We're looking to expand the office so that we have adequate staff to deal with it. Four to five should be adequate for the purposes we have in mind. I hope that answers your question.

Mr TRI VO: Have complaints made to your office indicated improvements or ongoing concerns regarding lax processes, including the time it takes the commission to assess a complaint?

BRUCE McCLINTOCK: A substantial number of the complaints to me are actually not within my jurisdiction. They're complaints about the police. People do Google searches and we come up, and they complain about—not surprisingly. They see "Inspector of the Law Enforcement Conduct Commission" and think that we're an agency for receiving complaints about the police. That's a bit less than half. I tell the complainant to go to the Law Enforcement Conduct Commission. The rest of the complaints—there's a substantial number which are about refusals of the Commission to take action, or about a decision of the Commission to refer the matter back to the police. I can easily understand how laypeople would be concerned about a complaint of theirs against the police being referred back to the police, but the reason why is that's what the legislation says.

It says that the police are the primary agency for dealing with complaints about the police. That comes out of the Wood royal commission, because Commissioner Wood thought that if you had a separate agency dealing with complaints about the police, it would not be conducive to the police taking responsibility for fixing things up. There have been issues about the speed with which the Commission deals with complaints. That is improving. There have been other issues that I've raised with the Commission. A recent one, which I may not actually have raised with the Commission—I certainly intend to—was a complainant who it didn't seem to us had been adequately informed of what had actually occurred about her complaint.

It was a complaint about a police officer obtaining an apprehended domestic violence order against both parties to the relationship. That apparently is against the police protocols—it should be, supposed to be, one—but it didn't appear to us that the complainant had been adequately informed. That's something we're actually checking at the time and to follow up. It's things like that. In the scheme of things, they're relatively minor. The Commission takes the complaints seriously. They have to. They have complaint-handling sections and so on. When they come to deal with the matter, they deal with it appropriately. As I said, the frequent complaint is referring the matter back to the police, but the Commission has no option under the legislation. When the complainant complains to me about that, I try to explain to them that that's where it comes from; that is the law.

Mr TRI VO: You mentioned in the report that when you were the Commissioner for ICAC you had all the information available given to you, but for LECC they don't get all the information from the New South Wales Police. There's a pushback from the New South Wales police. What do you think are the real reasons for that? Is it because the New South Wales police is a powerful organisation or is it for public safety or is it for public interest? What are your thoughts on it?

BRUCE McCLINTOCK: I would really be speculating, Mr Vo. I'm not privy to—what you're thinking about, I think, is the case that both I referred to earlier and the Chief Commissioner referred to, which was decided by the Court of Appeal in June last year, where the police were resisting handing over the documents about the beanbag death. I might just explain why I thought that was a very short-sighted thing on the part of the police too. There are protocols about when you can fire a beanbag round, or the circumstances. One of them is the distance between the officer discharging the beanbag round and the person who it's aimed at. I don't recall precisely what the actual distance is. Just assume that the beanbag round had been discharged at a greater distance than was required by the protocol, but the person still died.

One would think then that it would be very relevant to the Commission to know, because there might well be something wrong—I'm speaking hypothetically, obviously—with the protocol. Maybe the distance should be extended. If the beanbag round was discharged under their specified distance, obviously, there's an issue about why the officer in question did that. I would have thought that all of the information about the circumstances in which an officer is entitled to discharge a round should have been put before the Commission. I also have to say that it's disappointing that two government agencies——they're all part of the New South Wales government—have to end up in litigation, as happened then. I can't really speculate about why it happened. I just thought the police were being short-sighted. To be honest, that's what the Court of Appeal thought because, in effect, that was the result of the decision—that the public interest immunity didn't permit the police to keep the information back from the Commission.

Ms SUE HIGGINSON: In relation to the beanbag death, my understanding with that one was there wasn't a distance specified, in terms of the standard operating procedures, that the tragedy of this one is the death has given rise to something we ought to have had in place beforehand. I could be wrong. That was a dreadfully tragic, awful, messy situation.

BRUCE McCLINTOCK: Absolutely. I chose the distance issue to illustrate why I thought the police were being short-sighted in refusing to hand it over, as you can see immediately the possible relevance. Without the information, the Commission might never have known what the actual issue was. In any event, it's been sorted out now, and as the Chief Commissioner said, they've got a functioning memorandum of understanding or protocol with the police, so the issue has been resolved. That's related to but is separate from the issue of whether there should be some form of requirement or some form of entitlement on the part of the Commission to access everything that the police may have.

Ms SUE HIGGINSON: This leads to the question I had intended to ask. You actually spoke directly to the question I had planned to ask before I'd even asked it, but when we talk about the very underpinning principle of the police being the appropriate body to be investigating matters—so the police can take responsibility, as was born from the Wood royal commission. That was 30 years ago now. Our society has changed to some degree. The Police Force has grown. There are new technologies. There are so many different ways that we are operating in 2025 compared to 1995 or 1997. Some of the principles in the Wood inquiry remain true now—true 100 years ago; true in 100 years time. Do you think that there is a case now to say, "Perhaps it is time to review the very legislation"? As you identified, it's the legislation that now underpins the entire scheme, the entire operation. Do you think there is a case that it is a healthy time, now, to have a review about the current legislation, the way it operates, the scheme, the oversight? I know that there are many excellent ways and features of the current system, but do you think a review could potentially be healthy to the system that we currently operate?

BRUCE McCLINTOCK: Ms Higginson, there's a general answer to your question: It never hurts, ever, to review anything. The only thing I'll say is this: This 2016 Act grew out of work done by Mr Andrew Tink, who

had been Member for Eastwood, to my recollection, and shadow Attorney General, and whom I had known at the bar. I think he did an outstandingly good job with the recommendations he made, that ultimately ended up as the Law Enforcement Conduct Commission legislation. If you're suggesting that the complaint handling function should be taken away from the police, I actually don't think that's a practical thing. The reason why is that you would need probably to double or at least treble the size of the Commission to deal with the complaints that are now handled by the police.

It's a very substantial job. In addition, one of the things that I don't think has changed about the police, no matter what the technology changes are, is that the NSW Police Force needs to own its own—I was going to say "misconduct". That's unfair. But it must own the behaviour of its own officers, in the first instance. The beauty of the current system, I think, is that you have the police owning those problems, but oversighted by an independent agency, the Law Enforcement Conduct Commission, who can and do step in if they feel that the police have not dealt with the problem in question adequately. They do it repeatedly; they'll step in and take over the investigation, and so on. I personally think that's the better way of doing it.

I don't think it's been affected by the technological changes, the changes in policing and so on, of which you're absolutely correct—there's been very, very many. Obviously this is one of those areas that perhaps the formal review is not necessarily the way to go. It's an area, perhaps, where when you see a problem, fix it up then, whether it be by legislation or by changing it or by letting the Commission do it. That happens all the time. The litigation between the Commission and the police is a good example of something that might prompt a review and result in changes along the lines I've suggested. That's a very long answer, Ms Higginson, and I apologise.

Ms SUE HIGGINSON: No, it's very helpful indeed. It was primarily to understand. Absolutely the police have to own their culture, have to be accountable to it, but it is about, "Are there places where we are experiencing gaps in terms of how that's done?" I think it's not so much the accountability part of the Law Enforcement Conduct Commission being able to hold the police to account, because even if that's delayed, what we are seeing is there is a good, strong tendency towards that happening. It's more the integrity component of the work, in terms of the police. This is not coming from any remote attack on police. This is about, how do we assist police, and those police officers that are looking for more public trust through building of integrity? We used to have the Police Integrity Commission, the PIC, and we just seem to have lost the word "integrity". I know it's in everything we do—I realise that. But is there more we could be doing to be more proactive to build and assist police with that integrity—both perception and real life—in terms of that ongoing social contract with the community?

BRUCE McCLINTOCK: I've never been impressed by the benefit of names. I mean, the ACT Integrity Commission is called the "ACT Integrity Commission". Is it any more effective for that reason than the New South Wales ICAC? I don't know. But some of what you've just raised probably would be better directed towards the Chief Commissioner, and Commissioner Johnson. I'm one step removed from dealing with the police, because as I said earlier, I can't deal with the police under the Act; I can only deal with the Commission. But again, I might say there were historical reasons for choosing the Law Enforcement Conduct Commission, because it was an amalgamation of the old Police Integrity Commission and half of the NSW Ombudsman, and the functions that that the Ombudsman had in relation to the police. I might say, it's a much better model than the previous situation, which like a lot of things, had just sort of grown up as that happened. That was the benefit of the Tink review, that he actually was able to look at it and say, "This is what we should do."

Mr TRI VO: You mentioned we still have the investigations or the complaint handling process by the New South Wales police. Can you summarise that process, the internal process by the New South Wales police?

BRUCE McCLINTOCK: It's a little bit hard to do that. I mean, there's the Professional Standards Command, for a start, which is there to deal with professional standards. But then, of course, many of the complaints are then referred back to the local commands to deal with. I don't think I can take it any further than that. I can easily provide a response on notice, although whether it would be any more informative than what I've just said, I'm not sure, but it's entirely up to you.

Mr TRI VO: Who usually deals with the complaints? Is it someone higher up in the local area command?

BRUCE McCLINTOCK: Yes, it's always someone considerably superior to the person about whom the complaint's been made.

Mr TRI VO: And who does it?

BRUCE McCLINTOCK: You don't get a senior constable determining a complaint about a sergeant.

The CHAIR: Mr McClintock, thank you for appearing today at the Committee.

BRUCE McCLINTOCK: It's always a pleasure, Mr Donato. I hope I've been of use to the Committee.

The CHAIR: You certainly have.

BRUCE McCLINTOCK: I've said this before, but the Committee really is my boss. You're the people that I answer to.

The CHAIR: I thank you for turning up. You'll be provided with a copy of the transcript of today's proceedings for corrections. The Committee staff will also email any questions taken on notice today, and any supplementary questions from the Committee. Thank you for your attendance today. Enjoy the rest of your afternoon.

BRUCE McCLINTOCK: Thank you.

The CHAIR: The Committee will now break for lunch and return at 1.30 p.m.

(The witness withdrew.)

(Luncheon adjournment)

CHRIS CLAYTON, Acting Information Commissioner and Chief Executive Officer, Information and Privacy Commission, affirmed and examined

SONIA MINUTILLO, Acting Privacy Commissioner, Information and Privacy Commission, affirmed and examined

The CHAIR: Thank you both for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photographs and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages, website and public communication materials. Please inform Committee staff if you object to having photos or videos taken. I note Ms Minutillo and Miss McKeown have declared a prior acquaintance, and that's been disclosed to the Committee. Would either of you like to make a short opening statement before the commencement of questions?

CHRIS CLAYTON: I welcome the opportunity to appear before the Committee today and to assist in your examination of the Information and Privacy Commission annual report for 2023-24. As Acting Information Commissioner and CEO, I would like to acknowledge the previous Information Commissioners—Elizabeth Tydd, now Australian Information Commissioner, and Rachel McCallum, now NSW Electoral Commissioner—who oversaw the work of the IPC during the reporting period. The 2022-23 reporting period was another busy year for the IPC, with increases in casework across the Commission's wide remit in addition to implementing the new Mandatory Notification of Data Breach Scheme, which Sonia will speak to.

The IPC received more applications for reviews and complaints in the reporting period than the previous period, a 4 per cent increase, to 744 cases, resulting in a cumulative 9 per cent increase over the previous two reporting periods. Inquiries received from the public also increased slightly in the reporting period, up 1 per cent, to 3,123. Further, the IPC provided 560 information access and privacy advices to support compliance by agencies, a 25 per cent increase on the previous reporting period. As the former Information Commissioner remarked in her overview to last year's annual report, the increasing case and advice volumes and new data breach functions highlight the need for the IPC to be appropriately funded to fulfil new and ongoing statutory and corporate governance obligations as well as its legislative role for promoting integrity through awareness for transparency and privacy.

I fully support these comments and observe firsthand the importance of having adequate funding and long-term budget certainty to enable the Information Commissioner and Privacy Commissioner to discharge their independent statutory functions. Whilst all public sector agencies must be fiscally responsible, a small agency with just over 30 people does not have the inherent budget and funding flexibility to deliver its wide legislative remit. As Acting CEO, I have been constructively engaging with the government, within the bounds of the current Budget process, on addressing budget and funding constraints.

Returning to the work of the IPC, we continue to promote information access and privacy rights with the public and agencies we oversight. Education and awareness-raising activities are a critical part of any effective regulatory or oversight scheme. The IPC produced a wide range of new and updated guidance materials during the reporting period, together with engagements and events to support good information access and privacy practices by agencies. Further, the IPC continues to take an active interest in how information access and privacy rights are impacted by and preserved when agencies implement increasingly complex forms of technology. This is certainly an area that will continue to have regulatory focus into the future for us.

As outlined in last year's annual report, 2022-23 saw the conclusion of our previous strategic plan and the development of the new four-year plan. The new strategic plan, which commenced in July 2024, focuses on four key priorities that emphasise the IPC's role as a New South Wales public sector integrity agency, the need for it to be an informed contributor and guide, the intention to raise awareness about information governance across all oversighted agencies, and a commitment to improve engagement with its staff and community stakeholders. I look forward to the IPC reporting against the new strategic plan in future annual reports.

Finally, I would like to thank the team at the IPC, and the recently appointed Privacy Commissioner, for their support during the four months I have been acting in the CEO and Information Commissioner role. I've been impressed by their dedication and drive in the pursuit of information access and privacy rights in New South Wales.

SONIA MINUTILLO: I also welcome this opportunity to appear today to assist the Committee with its review of the exercise and functions of the NSW Privacy Commissioner during the 2023-24 reporting period. That period was particularly notable from a privacy perspective due to the commencement of the Mandatory

Notification of Data Breach Scheme in November 2023. It was an important and welcome privacy reform that contributes to privacy protection, data management practices, increased agency awareness to and in response to data breach instances. Importantly, it establishes the framework which ensures that individuals that may be affected by an eligible data breach that is likely to result in a serious risk of harm are notified and supported to take measures to safeguard their privacy and reduce that risk of harm.

The significance of the Scheme is evidenced by the consistent flow of notifications that have been received and reported. Those notifications are representative across all of our regulated sectors that are within our remit. While one-third of those data breaches that we have seen reported were due to malicious attacks, most were indeed caused by human error, which continues to highlight the need for both cybersecurity enhancements and strong privacy practices, but also an investment in our people as our first line of defence. In preparation for the scheme's start, the IPC conducted extensive work to support, prepare, and enable agencies in fulfilling the requirements under the Scheme, which involved a whole suite of resources and guidance, e-learning tools, and self-assessment tools.

Throughout 2023-24 and as notifications have been received, the IPC has continued to engage with agencies offering advice on privacy practice, their data breach response, and their overall compliance with the Scheme. We've continued to support both agencies and citizens with resources to understand the Scheme, how the Scheme works and what their rights are in relation to the Scheme. Education and awareness are an essential part of capability uplift. The successful implementation of the Scheme has been facilitated by additional funding that was allocated to the IPC, and that additional funding was indeed supported for a further four-year period. It is both welcome and it will support us and enable us to continue in our important work. As a core statutory function, future and sustained funding that provides certainty will be necessary for the Scheme to achieve its objectives and its purpose.

In May, we also marked Privacy Awareness Week [PAW], an important initiative of the Asia Pacific Privacy Authorities. It provides an invaluable opportunity to highlight and promote the importance of privacy to agencies and the public. Pleasingly, we had a record number of PAW champions who signed up to spread the message about the importance of privacy in their agencies. Digital technology and, in particular, AI technologies, have and will continue to be a key feature of the privacy discourse as technology is looked at to improve policy outcomes, develop efficiencies, undertake data analysis and very much more. The same underlying principles that impact on any project or program are equally relevant for a project that involves technology, including AI.

Good data governance and privacy practices are critical to the safe and ethical use of this technology that engender community trust and confidence. Our continued work with agencies to assist them to meet the privacy challenges posed by new technology, so that we can all ensure the benefits of technology are gained while ensuring the rights of citizens are being protected, remains an important regulatory focus for us.

As the Acting Information Commissioner has observed, we have seen an increase in our complaints work. In a privacy context, we saw a notable increase in the number of privacy complaints that were received, increasing from 66 to 112 in the last reporting period. That was also accompanied by a slight increase in the number of privacy reviews that we received. This uptick highlights the growing concerns around privacy issues and underscores the importance of our ongoing efforts to address and resolve these complaints effectively, and to support both agencies and citizens. I, like the Acting Information Commissioner, would like to acknowledge and extend my thanks to the staff of the IPC. It would not be possible for the IPC to deliver on its important statutory functions and its goals without the expertise and the enormous efforts of its staff. I'd like to acknowledge and thank them for their commitment and hard work, and in particular their support of me in my time as the Acting Privacy Commissioner.

The CHAIR: Thank you, Ms Minutillo. Just before we commence, we'll now move to questions from the Committee, but before we do I wish to inform you both that you may wish to take questions on notice and provide the Committee with an answer in writing within seven business days after receiving those questions. I'll start, before I turn to my colleagues for questions. Mr Clayton or Ms Minutillo, whoever is best appropriate to answer it: You both describe an increasing uptick or workload that your agencies are being responsible for or being allocated now. How do you respond to those unexpected increases? For example, if there's a data breach, things need to be responded to fairly urgently. How do you pivot and respond to those particular cases?

CHRIS CLAYTON: I might start and then I can hand to Sonia. I think the biggest element of it is to understand, in a deep way, our regulatory interventions that we can have at play. There are going to be some that are ones that aren't as mandatory, if I could call it that, as others. For instance, in a short-term constraint it could be that we divert resources from more proactive compliance activities to address, for instance, a data breach, or a particular review that's been submitted to us. I think it's about how we can work in an agile way within the

resources that we have. We've got, whilst a small team, a team that has got a strong breadth of experience that allows them to work across streams of work, so that they can contribute to the work in the most time-effective way. It's something that probably reflects the benefit of having the Privacy Commissioner and the Information Commissioner serviced within one organisation. It allows that cross-pollination and cohesion in the work we do in a way that if we were separate agencies in our own right, we probably wouldn't have that level of flexibility. I might invite Sonia to say something.

SONIA MINUTILLO: I was just going to say additionally that I think one of the benefits of the IPC is that our staff are experienced in both information access and privacy, and that brings certain benefits by allowing us to utilise our resources across the work and not in dedicated specifics of the work. That enables us to reprioritise work when it's necessary and when we need to. I think that's an expertise of our staff that we benefit from.

The Hon. CAMERON MURPHY: Thanks for giving evidence today, Commissioners. I want to ask a couple of questions around artificial intelligence. The recent Legislative Council inquiry into artificial intelligence in New South Wales, through Portfolio Committee No. 1, made recommendation 5, which was that the government consider maintaining a publicly available register of automated decision-making systems within government and its agencies and when they're applied. I note that you've said that you're suggesting that there should be amendments to the GIPA Act in order to allow you to collect information about that. Do you see that as the best way to create that type of register? So you're gathering the information from each government department and agency, and then you might be the central source to publish information about where that's occurring?

CHRIS CLAYTON: I think the first element to that is the resource commitment to maintain an ongoing register of that nature is quite significant. Any requirement of the IPC to maintain that register would need to be adequately funded so that we could maintain a complete and accurate level of information. I think what the previous Information Commissioner has said around that is that the GIPA Act could be a vehicle as an alternate mechanism to a centralised register by promoting the greater use of existing mechanisms, like the Agency Information Guides that all agencies in New South Wales are required to maintain and make public. That could be a vehicle where agencies are obligated to, in a more rigorous way, provide information about the types of artificial intelligence or automated decision-making technologies that are being applied, and could be produced through—At the moment, the way the GIPA Act speaks about the Agency Information Guide, it talks about it in quite a principled way, and one could interpret it as expecting information of that nature to be already published. I think there would be a benefit in being clearer in the legislation around that expectation.

The Hon. CAMERON MURPHY: How are agencies going at the moment? Do you think they're adequately disclosing the use of AI?

CHRIS CLAYTON: I haven't necessarily seen evidence to suggest that they are. I think that there's certainly an educative piece that's still required to bring to the front of people's minds that these emerging technologies are matters of public interest and should be disclosed in any way that will be useful to the public to understand how the agency operates. I might ask Sonia if she's got anything to add.

SONIA MINUTILLO: Not particularly, but I think that there is an opportunity that already is available, through some of the existing provisions, to assist agencies to communicate their activities around the use of artificial intelligence, or ADM, whether it's a Privacy Management Plan or through the Agency Information Guides. These mechanisms are currently available and can assist them in creating that transparency and communication of their activities to the public more generally.

CHRIS CLAYTON: If I could just supplement that as well: The IPC have been developing our regulatory priorities for the remainder of the new strategic plan. One of those core priorities is how we respond as a regulator and an oversight agency to the increasing use of technology by agencies. We do actually see it as quite an important priority for the IPC to ensure agencies are fulfilling the rights of the public to information about how technology is being used.

The Hon. CAMERON MURPHY: I think that's important. It just keeps popping up. The other day we were sitting in estimates in relation to planning and public spaces and learnt for the first time that there's an AI model being rolled out so people can self-assess their development applications, for example. It just seems to be permeating its way across all sorts of areas—some where you wouldn't necessarily expect it. How's that going with the government? Have you had any progress talking to them about changes to GIPAA, the register and so on?

CHRIS CLAYTON: Probably more broadly we're having conversations with the government around what we see as opportunities for modernisation or enhancements to the GIPA Act. The GIPA Act turns 15 this

year. If nothing else, its a timely milestone for us to reflect on the way the GIPA Act has evolved, or the way it needs to evolve, to meet the needs of the public. We've internally developed over many years—certainly prior to my time, but something that in my short period of time I have engaged with—a list of legislative enhancements that we would like the government to consider to the GIPA Act. One of those, at a macro level, is how the GIPA Act can be better suited to the unique circumstances of emerging technology. Fifteen years ago, when the GIPA Act was written, technology was around, but it wasn't as prevalent as it is today. I think that by, at the very least, reflecting on how the legislation might be enhanced—not in a way that makes it any less technology agnostic or principles based, but certainly allow that reflection to see what enhancements could be made to the legislation.

Mr TRI VO: Thanks for coming to the hearing today. Also, congratulations on being the Privacy Commissioner. Can you comment on the IPC's current funding arrangements? Would you like to see any changes to the funding model? Has this been discussed with the government?

The Hon. CAMERON MURPHY: More money.

CHRIS CLAYTON: I welcome the question, Mr Vo.

Ms KAREN McKEOWN: It's almost like a Dorothy Dixer, isn't it?

Mr TRI VO: We would like to have details.

The Hon. CAMERON MURPHY: I am waiting for someone to say, "I want less money."

CHRIS CLAYTON: I do respect the fact that we are using public money, so any use of public money must be efficient and effective and present value for money. The current approach to the funding of the IPC is via the Department of Customer Service. We receive a grant from the Department. That is somewhat different to the arrangements by which other independent integrity agencies are funded. For instance, the Ombudsman receives an appropriated amount. The integrity agencies are also now treated somewhat differently, both in legislation—in the Government Sector Finance Act—but also through the charter for budget independence that is established as a Treasurer's Direction. We do not have that same level of arrangement. It's something that the previous Information Commissioner, in the annual report last year, commented on, that this is something that we would like to pursue with government as a way of further enhancing the important independence that we hold.

Discussions are occurring, but we recognise that it's not necessarily as simple as just flicking a switch and changing the approach that has been established. I should also say that we have an incredibly positive working relationship with the Department of Customer Service. They are very supportive of the work that we do and engage in conversations with me and the previous Information Commissioner about the importance of setting an appropriate budget. It's something that I have taken up in my acting capacity. I can confirm that we have submitted a request for budget enhancement for the next budget period to recalibrate the amount of expenditure limit that we have, but also the funding to make sure that the amount of funding we receive matches that expenditure.

Mr TRI VO: Earlier you mentioned the recent increases in the workload, especially with the Mandatory Notification of Data Breach Scheme. Do you think the funding arrangements for that are adequate?

CHRIS CLAYTON: The funding arrangements—and I'll invite Sonia to speak in her capacity—that were approved by government were from this financial year, as in the current financial year, were $1.4 million for a four-year period. The IPC requested ongoing funding, but that was not provided by government. What that essentially means is that we have a statutory scheme that we are responsible for complying with that has time-limited funding. We will engage with the government on that process to secure ongoing funding. I am not of the view that there was an adverse reason why that wasn't funded. I understand that, as it was a new scheme, there was an interest to understand how the Scheme would operate in practice before that ongoing funding was then set at an optimal level. I might hand to Sonia to expand on that.

SONIA MINUTILLO: Thank you. That's correct. The Scheme, whilst it's been in operation for 18 months, is still relatively new and in its infancy. But we do see a steady number of notifications, some of which are quite complicated and very challenging in terms of the issues that they raise, and therefore do require sufficient resourcing to enable the expertise and the support and the guidance and the enablement of agencies to respond to those data breaches. Additionally, that's responding to the Scheme. That's one component. But it needs to also have a parallel component, which is about building capability and helping agencies to be enabled to respond to data breaches when they happen.

Mr TRI VO: You mentioned the funding is for four years. What's the usual process as we approach the fourth year?

CHRIS CLAYTON: The intention would be that we would develop a budget submission that would reflect on and draw on the experience of the scheme in practice, draw on the understanding of how our role—operating within the new Mandatory Notification of Data Breach Scheme—should be optimally funded. We would then have conversations with both the Department of Customer Service but also with Treasury to expand and explain the rationale for what we consider to be optimal funding. We recognise, as I referenced earlier, that as a public sector agency we must be prudent with the use of our money, and we're also operating within a complex state financial arrangement where funding isn't necessarily always going to be at its optimal level for all agencies. That then comes back to the strength of the evidence that we can provide to support the funding that we believe we require to fulfil the intent of Parliament in establishing the Scheme.

The CHAIR: Can I just jump in there with a question? You just touched on it then, Mr Clayton. How is the Mandatory Notification of Data Breach Scheme performing?

CHRIS CLAYTON: Sonia?

SONIA MINUTILLO: I would say that the Scheme is performing in the way that it was intended. We receive a regular and steady number of notifications each week. We published a trends report at the end of June—I think it was in October we published the report—which gave an early indication of the seven months of reporting under the Scheme. At that time we'd seen something like 52 notifications that had been made in that short seven-month window. The majority of those notifications—about 79 per cent, approximately—were attributable to human error. The other 30 per cent were attributable to malicious activity, including cyber. The representation of that human error is pretty consistent across each of the three sectors, being government, universities, and the local council sector.

I think what we're seeing, as the Scheme has continued, is continued notifications. Those numbers have continued to grow. In some senses, the success of the Scheme is actually bad news, in the sense that the only reason the Scheme is successful is because there are notifications occurring, which means that people's personal information has been breached. But we're expecting, based on the data that we're currently seeing, that what we saw in the first seven months to be reflected in the full 12 months reporting that we're currently working on and preparing, which means that we're going to see, again, something like about one-third of the data breaches being malicious, caused by malicious activity, and about 70 per cent will be driven by human error. One of the significant things that we saw, and I expect will change in the next report, is that the number of persons who have been affected will be significantly more than what we saw in the first seven months, and that is attributable to a couple of specific incidences that were reported that involve very large numbers of individuals.

The CHAIR: When you said human error earlier, what can you put that down to?

SONIA MINUTILLO: The types of human error are attributable to things like emails, sending the wrong—attaching personal information and sending it to a person that is not intended to be the recipient of it, and unintended disclosure by a publication of information that wasn't intended, so someone's put something out on a website potentially that includes PI [personal information]. And at the other end also, we're seeing some instances where information that pertains to an individual, that is their personal information, has been attached to the wrong records. So it's being attached to someone else's records, which effectively is not that person's personal information. They're the types of human errors we're seeing.

They're difficult challenges, but they do require an investment in supporting people to take the time that is necessary when they're interacting and exchanging in, and, through email, looking at what opportunities that can be explored to secure the transfer of that information, if email is to be used as the common device that we all use for communicating. But also looking at, what are the assurance processes that are built in, around checking the controls that are in place, and investing in people, so that people understand what it is, in terms of the functions that they're exercising, and what does personal information mean, because that will enable them to recognise that they're utilising personal information. I think we want to ensure that we're encouraging that right culture, that people are bringing those issues forward. So human error might be the large contribution component of why the data breaches have occurred. But every time a data breach occurs, even if it's human error, it's important that we look at what happened, and what can we do to remediate, correct it, and prevent it from reoccurring. We need to ensure that we've got the culture that is encouraging a reporting behaviour across organisations.

The CHAIR: Thank you both for appearing before the Committee today. You'll each be provided with a copy of the transcript of today's proceedings for corrections. The secretariat will email any questions taken on notice from today and any supplementary questions from the Committee. Thank you both for attending today, and enjoy the rest of your afternoon and weekend.

(The witnesses withdrew.)

KATHRINA LO, Commissioner, Office of the Public Service Commissioner, affirmed and examined

TIANNA JAESCHKE, Director, Policy and Programs, Office of the Public Service Commissioner, sworn and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages, website, and public communication materials. Please inform Committee staff if you object to having photos and videos taken. Before we proceed, do either of you have any questions about the hearing process?

KATHRINA LO: No.

TIANNA JAESCHKE: No.

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

KATHRINA LO: I will, and I do have a copy here for the Hansard staff.

The CHAIR: Fantastic. Thank you.

KATHRINA LO: I welcome the opportunity to appear before the Committee, and I will make a brief opening statement. Before proceeding, I would like to acknowledge the Gadigal people of the Eora nation and pay my respects to their Elders. Since I last appeared before the Committee, there have been significant changes affecting the Public Service Commission, or PSC. As the Committee may be aware, the government committed to a review of the *Government Sector Employment Act 2013*, or GSE Act. The initial phase of the review in 2024 found that the Public Service Commissioner's integrity functions are appropriately exercised by the Commissioner as an independent statutory officer at arm's length from the Executive. It also found that a number of other functions—including those relating to workforce planning, workforce data, and the annual State of the NSW public sector report—should be moved to the Premier's Department.

To give effect to these changes, the Commissioner's objectives and functions were amended by the *Government Sector Employment and Other Legislation Amendment Act 2024*. The Commissioner's objectives now include promoting the highest levels of integrity, impartiality, accountability, and leadership across the government sector; ensuring that government sector recruitment and selection processes comply with the merit principles and adhere to professional standards; fostering a public service culture in which integrity, trust, service, and accountability are strongly valued; and building confidence in the public sector.

The Commissioner's functions now include leading the strategic development and management of the government sector workforce in relation to recruitment, equity, and diversity; general conduct and compliance with ethical practices; learning and development; and executive employment arrangements. Under the new arrangements, I continue to be an independent statutory office holder appointed by the Governor under the GSE Act. On 1 July last year, an Administrative Changes Order provided for the abolition of the PSC as a separate agency. From this date, staff of the PSC became employees of the Premier's Department. A group of 16 staff employed by the Premier's Department have been assigned to the Office of the Public Service Commissioner, or OPSC, to support me in exercising my statutory functions. The OPSC has been allocated a budget of $6.5 million in 2024-25 to meet both employee and other operating expenses.

Before I outline the OPSC's priorities and key programs of work under the new arrangements, I'd like to take this opportunity to highlight some of the PSC's achievements over the past few years. The PSC made significant progress in implementing the Aboriginal Employment Strategy and supporting the sector to uplift its cultural capability. Key deliverables included an anti-racism guide, a cultural capability guide, and the Everyone's Business cultural capability training package. We're particularly proud that the Aboriginal Employment Strategy has contributed to a significant increase in the number of Aboriginal senior executives in the sector. The number has tripled over the past decade, with 60 per cent of the growth occurring in the past few years.

Disability inclusion and employment was also a key focus area for the PSC. Deliverables include disability inclusion training for people managers, and the development of an accessible office design framework in collaboration with Property and Development NSW. We also drove the implementation of recommendations arising from a 2022 disability review. While there's more work to do on disability inclusion and employment, the sector is now seeing an upward trend in people identifying with disability in the workforce profile, with the figure being 2.7 per cent in 2024. There's also an upward trend in the number of people identifying with disability in the People Matter Employee Survey, with the figure being 6.9 per cent in 2024.

The PSC also played a key role in supporting gender equality in the sector. This included contributing to paid parental leave reforms and the issuing of a Commissioner's Direction to agency heads to implement a sexual harassment prevention policy that meets certain minimum standards by 1 March 2024. To support the sector, the PSC developed a model sexual harassment prevention policy, training for people managers on preventing and responding to sexual harassment, and an online interactive tool which provides information on sexual harassment.

The PSC also undertook groundbreaking work to increase the representation of culturally and linguistically diverse, or CALD, employees in senior leadership. Our flagship program was a sponsorship program running in 2023 and 2024 which paired high potential CALD employees with senior executives. I would also like to highlight the various programs that have contributed to uplifting sector capability, which have now been transferred to the Premier's Department. These include the award-winning NSW Government Graduate Program, the NSW Leadership Academy, the Human Resources Community of Practice, and various internship and mentoring programs.

I now turn to the OPSC's priorities and programs of work under the new arrangements. Having regard to the limited resources available, I have carefully prioritised the work of the OPSC to ensure my statutory obligations can be met, and that we can maximise the support we provide to the sector. Our approach includes identifying and leveraging opportunities for collaboration and partnership both within and outside the sector. For example, we have partnered with the New South Wales branch of the Institute of Public Administration Australia to deliver sector wide events for the International Day of People with Disability and International Women's Day. We're also continuing to partner with the Australia and New Zealand School of Government to provide applied ethics training for senior executives across the sector.

The OPSC has a strong focus on integrity and ethics, and I have established a dedicated integrity and governance team. I have issued a new mandatory Code of Ethics and Conduct for New South Wales government sector employees, following a comprehensive review of the previous code. The new code commenced on 1 November last year. To support the implementation of the new code and foster a pro integrity culture in the sector, the OPSC has developed a mandatory e-learning module on the new code. We've created a new ethics hub on our website that contains resources that we will keep adding to over time, and we've established a new sector wide Community of Practice for Ethical Behaviour, in collaboration with the integrity agencies.

The OPSC recently released guidance for government sector employees on using social media in a private capacity in a way that is consistent with the ethical framework and code. We're also planning the first Values Week for the sector later this calendar year. This week will have a dedicated focus on how to bring to life the core values of integrity, trust, service, and accountability through a range of events and resources. We're also in the early stages of developing an integrity maturity assessment tool that can be used by agencies. In relation to equity and diversity, we continue to focus on disability inclusion and employment. In November last year, I issued a statutory direction to government sector agency heads to implement a workplace adjustment policy that meets the minimum standards specified in the direction by 1 November this year. To support agencies, we've developed a model workplace adjustment policy and other resources, including a guide to facilitate constructive conversations between managers and employees with disability on workplace adjustments. We're also working with the Premier's Department to progress implementation of recommendations made by the Disability Royal Commission regarding disability employment.

In relation to Aboriginal employment and cultural capability, we will shortly be initiating an external review of the Aboriginal Employment Strategy, and continue our work around anti-racism to support the Closing the Gap priority on transforming government organisations. We're also leveraging the learnings from the CALD sponsorship program to create a toolkit to assist agencies that want to develop their own sponsorship programs. In relation to recruitment and merit, we're currently reviewing the NSW Capability Framework with a view to embedding digital capabilities and strengthening cultural capabilities. We're also reviewing the evidence on the effectiveness of psychometric assessments in recruitment, and whether such assessments disadvantage particular groups of applicants, such as people with disability or with English as a second language. We're currently scoping a review of compliance with merit requirements by agencies, and will commence the first set of reviews later this calendar year.

I wish to make two brief final comments. The first relates to the importance of maintaining the Commissioner's independence under the new arrangements. This will include ensuring the OPSC has budget certainty and security going forward, and ensuring that I am able to make decisions about how the OPSC's budget is spent, including the appropriate balance between employee and operational expenditure. It will also include ensuring I have appropriate employment delegations to manage staff in the OPSC. I'm actively working with the Premier's Department to this end. Finally, I want to express my thanks and pay tribute to the staff of the OPSC for their dedication, focus and resilience during what has been a period of significant change. It's worth noting

that the 2024 People Matter Employee Survey was conducted in the midst of implementing the machinery of government changes, and I'm proud to say that employee engagement in the OPSC remained very high during this time. In fact, it was 13 points higher than the sector average. Thank you, Chair.

The CHAIR: Ms Jaeschke, did you wish to give an opening address?

TIANNA JAESCHKE: No, thank you.

The CHAIR: We'll now move to questions from the Committee. Before we begin the questions, I wish to inform you both that you may wish to take a question on notice and provide the Committee with an answer in writing within seven business days after receiving that question. I want to talk about the structural changes, Commissioner—you've obviously discussed that in your opening address—in relation to the abolition of the Public Service Commission on 1 July last year. Can you tell us how that's impacted your role, the responsibilities of your position and also changes to staffing levels?

KATHRINA LO: The role and the functions are set by the Government Sector Employment Act. I went through some of the key objectives and functions in my opening address, so I won't take up the Committee's time by going through all of those again. In terms of staffing, as I said in my opening address, 16 staff have been assigned to my office. That's obviously significantly smaller than the number of staff that were at the Public Service Commission.

The CHAIR: Which was how many?

KATHRINA LO: It was around about 130 staff. For the Commission, we were significantly smaller than the Australian equivalent. When you look at headcount versus the size of the sector's workforce, we were actually doing pretty well in comparison. In terms of the impact on staff who were employed at the Public Service Commission before the changes took place, three executive roles have been deleted. Those executives have left the sector and received a termination payment in accordance with their legislative entitlements. Three non-executive staff have accepted voluntary redundancy. The remainder of staff have been either assigned to roles in my office or assigned to roles in the Premier's Department. I think a very small number have been assigned to roles in the Cabinet Office.

Those staff who were impacted and didn't have a role in the new arrangements were referred to the Workforce Mobility Placement Policy. They have received mobility placements through that process, which is an excellent result. We do have a very small number of staff who are on long-term leave, secondment, or parental leave. They will be dealt with when they return to the sector. That could mean referring them into the mobility pathway program. That's basically a summary of what happened to the staff who were at the Public Service Commission before it was abolished.

The CHAIR: That sounds like a fairly significant structural change.

KATHRINA LO: Yes, it is.

The CHAIR: How does that impact on the independence of the role that you perform, or your agency performs, and being able to continue that?

KATHRINA LO: Independence is preserved in a number of ways. The Government Sector Employment Act actually provides in section 14 (1) that the Commissioner is not subject to the control and direction of the Premier in exercising the Commissioner's functions. Since the office of the Public Service Commissioner has been established, financial delegations have been put in place. We're currently working through employment delegations. I would like to see how that plays out. We've certainly provided some feedback on a draft set of employment delegations, but that is an ongoing process at the moment.

Mr TRI VO: Thank you for coming to the hearing today. You said 16 staff assigned to your office. How many did you say before? 100 and something?

KATHRINA LO: There were about 130 staff in the Public Service Commission, noting that the functions of the Public Service Commissioner have now been split.

Mr TRI VO: How many have been assigned to the Premier's office?

KATHRINA LO: There were 63 assigned to either the Premier's Department or the Cabinet Office, with the vast majority going to the Premier's Department.

Mr TRI VO: Thanks for that. In your opening, you mentioned it, but how effective were the Commission's initiatives to enhance diversity and inclusion in the New South Wales public sector workforce during 2023 to 2024?

KATHRINA LO: I spoke in my opening about the quite incredible gains that have been made, in terms of Aboriginal staff in senior leadership. Under the previous government, there was a target, and the sector collectively met that target well before the target date. The sector as a whole should be commended for that. With disability employment, there are basically two measures to that. There's a measure with Workforce Profile. I mentioned that the most recent figure was 2.7 per cent. There's also the People Matter Employee Survey. The figure there is 6.9 per cent. My view is that the People Matter Employee Survey is the more accurate measure, because that survey is undertaken annually, whereas with the Workforce Profile, that is drawn from agency HR systems. Often staff are asked once they join an agency to fill in their EEO [Equal Employment Opportunity] data. Agencies do not necessarily follow up that information while that employee is with the agency. The People Matter Employee Survey is something that happens every single year.

Mr TRI VO: What factors have contributed to the decline in the median tenure among public sector employees, which is at its lowest in the last decade? Seven years is similar to average length.

KATHRINA LO: I think, without being able to dig a bit deeper into that, I wouldn't be able to provide that reason. Agencies generally would run exit surveys and things like that and probably have a better understanding of why turnover is occurring in their own agencies. That type of information doesn't need to be reported centrally to me. In fairness, I don't think that I could speak on behalf of agencies without that information.

The Hon. RACHEL MERTON: If I could just touch on the Code of Ethics and Conduct, what are the significant changes in the new Code, and how is this information being communicated to employees across the sector?

KATHRINA LO: The old Code had been in place for quite some time, so it was the right time to do a comprehensive review of that Code to make sure that it remains fit for purpose. We had a very comprehensive review process. That involved extensive consultation with agencies, unions, the integrity agencies, in terms of what they were seeing in the cases they were looking into or the audits they were doing. We also did research around what is best practice now, what are the sorts of issues that are emerging, what we are seeing in other jurisdictions. The mechanism for mandating a code is now different because of the recent amendments to the GSE Act. I can now mandate a code by publishing it in the gazette.

Previously, I had to rely on my statutory direction powers to agency heads to get them to implement a code. I think this more direct mechanism is simpler and better. There are some new areas in the Code. I think we really wanted to make sure that public servants are aware of how to engage in social media, given the rise of social media. The Code also needed to be updated to refer to other developments that had occurred. For example, the relatively new Public Interest Disclosures Act. We also wanted to make sure that harmful behaviours were made very clear—things like harassment and bullying—and make sure that they were seen as absolutely unacceptable. I think the other thing we wanted to do is to make sure that the Code was written in plain English, and very accessible. I think that's necessary, because it covers many thousands of public servants that work in many different functions, and it covers people from the most senior executives to administrative staff.

I think that's probably a summary of where we ended up with the Code. In terms of how we're working to embed it and ensure it's being rolled out properly, as I said in my opening, we had developed a mandatory e-learning module. Every single public servant that must comply with the Code must do that module. We've established an ethics hub on the Public Service Commission website that provides foundational information for public servants. We've provided some additional training resources to support discussions on ethical issues. We supported agencies by providing other collateral and material they could use for internal communications. We've established a sector-wide Community of Practice for Ethical Behaviour, and that Community of Practice has already met several times. The next time it's meeting is 3 April, and that event will be hosted by the NSW Ombudsman. The topic will be around artificial intelligence and the use of automated decision-making.

There's basically a theme at each meeting. I opened our inaugural meeting, where we had one of the Robodebt whistleblowers come and speak to public servants, and a panel of very senior people, including the Ombudsman and the Information Commissioner and somebody from the ICAC, participated in a panel discussion and answered questions from participants. We are really pleased to see that the number of members of that Community of Practice is growing. Something that we will be doing this year, given that the Code is mandatory, is checking in with each agency to make sure that they've implemented the Code, to understand how many of their staff have completed the mandatory training, and how they've embedded the mandatory training in induction procedures for any new staff that that join from now on.

The Hon. RACHEL MERTON: Just picking up that point—being that the Code is mandatory, how are breaches managed?

KATHRINA LO: If there is an allegation of a breach, it is managed by the agency itself. The agency exercises employer functions. They are the ones that decide whether an investigation is required, and if a breach is then proven, they decide on the punishment to be imposed—if I could put it that way. Having said that, the Government Sector Employment Act does set out some high-level process requirements that provide for procedural fairness, and sets out a range of actions that can be taken, from caution to termination of employment, depending on the seriousness of the breach.

The Hon. RACHEL MERTON: And would you have any knowledge in terms of the Code being mandatory, in terms of enforcement of the code? What prompted the communication on social media by yourself?

KATHRINA LO: That was quite interesting. When we were doing the consultations during the Code review, some of the people we consulted with were actually the teams in agencies that deal with allegations of misconduct. They were telling us that they were dealing with more matters involving social media use, which probably isn't surprising given that we live in a digital age and social media use is a very common thing. We were listening to that feedback, and also through our own observations on social media, like LinkedIn—in the lead-up to the last election, I observed a couple of posts where I thought an observer might question whether that particular public servant is truly apolitical, given the slant of the post. We thought it was well worth providing some additional guidance, given that in a Code you can only really provide a relatively high-level framework that is able to cover a whole range of scenarios. We thought some supplementary advice that deals with some real-world scenarios would be better in a separate document. Hence, we developed the social media guidance.

The Hon. RACHEL MERTON: Around an election period, have supplementary materials been provided around the Code?

KATHRINA LO: It was published last week—well ahead of the next election. I think we will do some work ahead of the next election in 2027 to remind people of their obligations to be impartial and to be apolitical, and to be above reproach if they are engaging in social media.

The Hon. RACHEL MERTON: Would some of those materials possibly be made available to the Committee, Mr Chairman, in terms of some of the supplementary—

The CHAIR: Could they be provided?

KATHRINA LO: They certainly can. We'll provide you with the link. They're published on our website, in the ethics hub.

Ms SUE HIGGINSON: With the big changes that have taken place, and the movement of people, have there been any consistent themes in terms of—obviously, without disclosing anything confidential, have there been any consistent themes that have come to your attention? In terms of the cultural shift, the change, and the movement of people going into Premier's—the sort of changes that have taken place, whether they be concerns or positive feedback, that sort of thing, that you've had a bit of an eye across.

KATHRINA LO: The next People Matter Employee Survey will probably provide more information, I think, with any change, and there's obviously change occurring all across the sector at different times and for different reasons. That can be challenging for people, but what I would say is that I and my Deputy Commissioner at the time tried to lead that change in a very positive way, and to get people to see change as opportunity, as well. I think that's the sort of message that we really wanted to send to our people: to take a positive approach to change, to see the opportunities in it, to support them, and for them to support each other through change. But the main message also being to keep focused on what our objectives are and how we ultimately serve the people of New South Wales, and just to keep our eye on the ball through that change. I'm sure things are settling down, but without a measure, it's really hard for me to comment on that. I think the next People Matter Employee Survey will give us some information.

Ms KAREN McKEOWN: The Commissioner's Guidelines for conducting section 83 inquiries were due for review in May 2023. Do you have any update in relation to when these revised guidelines will be released?

KATHRINA LO: We're actually reviewing them now, in the context of the machinery of government changes. I expect that probably in the next month or so I will be able to finalise those and make those available, and I'm more than happy to send those to the Committee, out of session, if you think that would be helpful.

Ms KAREN McKEOWN: That would be great, thank you.

Mr TRI VO: I'm just going backwards a little bit—can you tell us a bit more about the inquiry powers under section 83 of the Government Sector Employment Act?

KATHRINA LO: Yes, I can. Those inquiries enable either myself or the Secretary of the Premier's Department to conduct an inquiry into any matter relating to the administration or management of a government sector agency. There were some amendments relatively recently—I think it was in 2023—which provides that a report on those inquiries can now be published if the Commissioner or the Secretary, depending on the case, considers it to be in the public interest. However, those publication provisions don't apply retrospectively. Since the enactment of the GSE Act, there have not been a lot of GSE Act inquiries under section 83. The approach very much is, in terms of how I've approached it, that they are probably a last resort and you invoke those powers if something has gone quite wrong. I've got guidelines that were just referred to in terms of how that would be guided in terms of a decision as to whether to step in and conduct an inquiry.

I think the focus for me—and I think it's more effective—is if we work on preventing perhaps those inappropriate things from happening, and building and helping that sector build capability. I definitely think that's the preferable approach than dealing with something after something bad has happened. Although, I wouldn't hesitate in the appropriate situation to invoke those powers, if necessary.

Mr TRI VO: During your time, or according to your knowledge, are you aware or have you used section 83 inquiries yet?

KATHRINA LO: I have used it once and my predecessors have used them on a number of limited occasions.

Mr TRI VO: How does the process under section 83 interact with the new Public Interest Disclosures Scheme?

KATHRINA LO: They're two separate statutory powers. They can coexist very neatly. That's probably the level of detail that I can comment on without seeing a particular situation in front of me. I think that the Ombudsman does, as you would be aware, produce an annual report on numbers. We're going to see more reports of—or more disclosures than we are inquiries, if I can put it that way.

Mr TRI VO: Do you think maybe the Public Interest Disclosures Scheme is a proactive thing and, by disclosing, maybe there will be less section 83 inquiries in the future, or there may be not be as many?

KATHRINA LO: I wouldn't want to speculate on that, given that the Public Interest Disclosures Scheme is still relatively new and there's also a statutory review built into that. I think it's important to collect data and make those assessments based on the data, the evidence and the experience of that legislation.

Mr MARK TAYLOR: I might just make a comment, Chair. I've just had an opportunity to go through your ethical examples on social media, and I'll just congratulate you on them. I think they're excellent. They're very clear and they cover a lot of different scenarios. It must be challenging, particularly with the large number of staff in the sector, and everyone's varying perspectives they come from. So congratulations; they're very good.

KATHRINA LO: Thank you, Mr Taylor. I give my wonderful team credit for that.

The CHAIR: Thank you, Commissioner and Ms Jaeschke, for appearing before the Committee today. You will each be provided with a copy of the transcript of today's proceedings for corrections. The Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee to you.

(The witnesses withdrew.)

(Short adjournment)

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

MONICA WOLF, Chief Deputy Ombudsman, NSW Ombudsman, affirmed and examined

LEANNE TOWNSEND, Deputy Ombudsman, Aboriginal Programs, NSW Ombudsman, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages, website and public communication materials. Please inform Committee staff if you object to having photos and video taken. Before we proceed, do any of you have any questions about the hearing process?

MONICA WOLF: No.

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

PAUL MILLER: I'll firstly begin by acknowledging that we are meeting here on the traditional lands of the Gadigal people of the Eora nation. I pay my respects to Elders past and present. I'm particularly pleased to be appearing before the Committee this year, which in April will mark 50 years since the appointment of the first Ombudsman in New South Wales. Appearing with me today is Ms Monica Wolf, Chief Deputy Ombudsman, and Ms Leanne Townsend, Deputy Ombudsman, Aboriginal Programs. I particularly wanted to introduce the Committee to Leanne, who was appointed to the role of Deputy Ombudsman in March 2022, but who is formally appearing before this Committee for the first time after a period of parental leave. I think I undertook at the last hearing to present Leanne to the Committee for its interrogation, so here she is.

Leanne leads our work monitoring and assessing Aboriginal programs, and in particular, OCHRE, the New South Wales Government's flagship plan for Aboriginal Affairs. The Committee will be aware that earlier this calendar year we tabled our second report under the Aboriginal Programs function. Last year our Act was amended to broaden the scope of our functions in this space, so that, in addition to programs under OCHRE, there is now a general definition of Aboriginal programs, in section 25K, that may be monitored by my office. Our monitoring will now also cover any other government programs primarily directed to the health or cultural, economic, education, or other wellbeing of Aboriginal persons or communities. Leanne, I'm sure, will be pleased to provide further information to the Committee about our oversight functions and that recent report. Before I briefly touch on some of the other highlights of our work since our last appearance, I wanted to briefly mention where things are at in terms of our legislative remit and powers and the funding processes for our office.

On funding first, last year we were consulted on the government's draft Treasurer's Direction and bill to codify the Government's new Budget management model for integrity agencies, which commenced in October 2024. I wrote to the Cabinet Office at that time, noting that what was being proposed was a significant improvement on previous processes and, for that reason, we supported the model. That said, I also noted that my office remains supportive of the further reform recommendations that had been made by the Public Accountability Committee and the Auditor-General concerning funding arrangements for integrity agencies.

As to actual funding decisions, after a significant re-baseline of our budget over the last few years that has seen us restore staffing levels to what they were around a decade ago, we do not anticipate seeking additional base funding in the current Budget process. Any funding requests are expected to be related to one-off or specific funding demands, such as for cybersecurity enhancements, or related to our office lease inquiry, for example. Of course, there is always more we could do with more funding, but, having gone through this period of significant change and growth, our focus in the immediate term is bedding down the changes and making sure we are now using the funding to most efficiently and impactfully discharge our functions.

To that end, I might digress briefly to mention that we are currently commissioning an external review of our office, seeking an experienced expert who can review our governance process and performance against best-practice ombudsman craft internationally. This independent review forms part of our ongoing commitment to transparency, accountability, and continuous improvement, not just for those we oversight but also applied to ourselves. We are expecting this review to be completed by the next annual report. I will of course share its conclusions and recommendations with this Committee.

In relation to legislative changes, the *Ombudsman and Other Legislation Amendment Act 2024* was passed in August 2024. In addition to changing the definition of Aboriginal programs, as I mentioned, other key

changes include that public authorities now have an explicit duty to cooperate with the Ombudsman when carrying out all our functions, as well as a duty to use their best endeavours to assist the Ombudsman. This change arose from the Robodebt Royal Commission and mirrors an amendment made in respect of the Commonwealth Ombudsman. The Act was also amended to expressly recognise our longstanding and important function of providing education and training services in areas relating to our functions.

Quickly then turning to some highlights since our last appearance, we've obviously tabled our office's annual report, our public interest disclosures annual report, as well as our Child Death Review Team annual report, which is the subject of a separate hearing after this one. We've tabled seven special reports, including our first report on the operation and administration of the Mandatory Disease Testing Act. As well as the OCHRE report I've already mentioned, another significant systemic report we have issued concerns our investigation of the Corrective Services inmate discipline process, which has recommended a wholesale reform of that system, given the flaws we identified. We also tabled a major report assessing how well DCJ is achieving the objectives of the child protection system.

I want to mention briefly our practice of publishing six-monthly casebooks, which we plan to continue routinely going forward. These casebooks provide an outline of all formal investigations we completed, and a sample of complaint outcomes achieved. As the Committee is well aware, our complaint work is not public, and confidentiality requirements mean we are generally not permitted to discuss individual complaints. Most do not result in a formal investigation. This is because we generally aim to resolve complaints at the earliest stage possible and, if a satisfactory outcome can be achieved through less formal investigatory actions like inquiries or conciliatory engagement, we will take that action. This means that a large part of our complaint handling and investigation work is not externally visible, so these casebooks provide an important mechanism to showcase some of the examples of this work, demonstrating both its breadth and also its impact.

These casebooks also provide an important opportunity to support capacity and improve practice across the entire public sector. Despite the diversity of contexts, many of the lessons we can draw from the complaints we receive resonate more broadly. During 2023-24 and the current year to date, we have also continued to focus on public sector improvement initiatives. In November we released the suite of complaint handling resources for agencies, including an update of our complaint management guidelines and an update of our Apologies Guide, which is an important resource for agencies, setting out why apologies matter, and what to consider when preparing one.

I was also very pleased with the engagement from the sector in our inaugural PID [public interest disclosures] Awareness Week. Held in August last year, hundreds of public officials logged into the live online sessions covering topics aimed at increasing understanding and awareness of the PID Act. Many more watched the video recordings after we posted these to social media channels. Our proactive work to lift public sector capability will continue to be of strategic importance to my office. Also of strategic importance is keeping up, as an oversight agency, with changes that are occurring within the public sector we oversight.

We have, over recent years, taken a deliberate focus on the burgeoning adoption of AI and other automated decision-making [ADM] and decision support technology by government agencies. Last year we completed our significant investigation of Revenue NSW, finding that at times it had used ADM in ways that were both unlawful and wrong. We also tabled our work for the first time to develop a comprehensive map of the current and planned uses of ADM across the public and local government sectors. We were pleased to be able to share that work and its insights with the recent parliamentary committee on AI, and look forward to further developments in that space, while we continue to be alert to the use of ADM technology, including where it may be relevant to the complaints that we receive.

Before I close, I do want to take the opportunity to publicly recognise and thank the people of the NSW Ombudsman for all their commitment and efforts, particularly over the last year. Even though the Ombudsman Act, unique among the integrity bodies, refers only to one individual, the Ombudsman, the reality is of course that the functions and achievements of the office are not mine but the collective contribution of the institution. I noted earlier that we have been able to secure significant new funding over recent years. That of course is a positive development, but it is important to acknowledge the change impact that this has had on our people as we have sought to grow our capacity across all areas of our office, embed new functions, and design and deploy entirely new processes and systems, all while still delivering exemplary service to the public and Parliament in our day-to-day work. That's probably all I need to say by way of opening. We're obviously available to answer any of your questions.

The CHAIR: Thank you, Mr Miller. Does anyone else wish to make an opening address or statement?

MONICA WOLF: No, thank you.

The CHAIR: We'll move to questions from the Committee. Before we begin the questions, I wish to inform the witnesses that they may wish to take a question on notice and provide the Committee with an answer in writing within seven business days after receiving the questions. We will now go to questions. I'll ask the first couple of questions. This may be best to be addressed to you, Mr Miller, as the Ombudsman. I note in your annual report on page 18, in relation to the Charter of Independence for NSW Integrity Agencies—how is that working? Can you give us an update on how you think that's working? Do you think its provisions are adequate?

PAUL MILLER: Thank you, Mr Chair. The Charter of Independence in a way reflects what had already started to happen, in terms of last year's Budget process. So perhaps first I should reflect on that process, which was in many respects a much more positive process than it had been in previous years. We support the Charter of Budget Independence for Integrity Agencies. As I said in my opening, and I've said to the government, it is a significant advance on the previous processes, not just in terms of its express recognition of the intersection between certainty and transparency of funding decisions and the status of our bodies as independents, but also in terms of some of the practical elements of that new process, which include a role for this parliamentary committee, in terms of scrutinising decisions of the Expenditure Review Committee of Cabinet if they reject a budget proposal that's put to them by one of the integrity agencies.

And, of course, that is still the significant gap between what is embedded in this new process and what was recommended by the Public Accountability Committee and also by the Auditor-General, which is that both of those bodies had recommended a much more parliamentary-led process, by which they essentially meant parliamentary committee making the recommendation as to the appropriate Budget allocation for integrity agencies, whereas the process, even as embedded in the new charter, is still very much a Cabinet-led process.

The CHAIR: Would you say it's improved the engagement with the Cabinet Office, the Premier's office and the Treasury, or how would you describe it?

PAUL MILLER: I would say that it reflects an already improved relationship with those bodies. I think there was already recognition of the need to improve the relationship with the integrity agencies from their perspective. I think it has helped to clarify the role of those agencies, so, to be fair to them, to clarify what their role is in respect of the integrity agencies. I think part of the problems, historically, had not necessarily been ones of animosity or any lack of goodwill. It had genuinely been a lack of appreciation that integrity agencies do stand somewhat differently to other government agencies when it comes to funding prioritisation, for example.

The Hon. RACHEL MERTON: Thank you very much for joining us this afternoon. Mr Miller, if I could ask about the Strategic Plan 2020-25. In reference to outcome 1 in terms of the satisfaction and service provided, I note the survey indicated 24 per cent of people who made an actionable complaint thought it was resolved effectively and 23 per cent of people who made an actionable complaint thought the outcome was fair. I'm just wondering what your reflections might be on those results.

PAUL MILLER: We've started in the last few years implementing a series of surveys to try to better measure the service that we're delivering. Essentially, we offer five surveys: a broad community survey, complainant survey, stakeholder survey, a survey of parliamentarians—and thank you to those parliamentarians who responded to that survey—and also an inmate survey, which is separate from the complainant survey. One of the things that I think those surveys have demonstrated is something I think we expected—and it's also very apparent from other jurisdictions, like the Ombudsmen who conduct similar surveys—is that, in many respects, the satisfaction of complainants with the service provided by an ombudsman is often very closely connected to whether or not they achieve the outcome that they're looking for from their complaint.

That's totally understandable, but it is a perennial challenge for an office like ours to explain to complainants that when we say we are independent, we don't just mean we're independent of government agencies, we're independent of you as well. We're not advocates for you. We're standing in the middle impartially making decisions. I think a lot of those survey results do reflect an expectations gap between the service that we are discharged to provide by the Parliament, and the service that people might expect from us. That's our challenge to meet to manage that expectation, and a lot of work we're doing is in around raising awareness, but also raising awareness in the right way, in terms of raising awareness of what we can do and what we can't do. We have tried, through the survey design, as best we can to tease out the difference between, "Okay, you didn't get the outcome that you wanted, but did you still feel listened to in the process? Were we still courteous, at the very least, in dealing with the complaint?"

For those which don't necessarily show up in the top level KPIs, we do tend to get better results. The reflection of complainants is generally much more positive, in terms of what they think about the individual Ombudsman officer who has served them. But, as I said, I think there is still a challenge to go in meeting that expectation. The other point I should probably make is that I mentioned in my opening, that we have received

significant additional funding, and that has meant that, in recent years, we are able to take action, and more action, on more complaints than we have previously.

I think it's true to say that in the last couple of years we've more than doubled the number of complaints where we've taken investigatory action of some sort on. That will obviously drive an increase in the service satisfaction that we are able to provide, but in circumstances where we receive over 10,000 actionable complaints a year, we cannot necessarily take the kind of action that complainants might, in an ideal world, want and expect in relation to their particular complaint. We've just started in recent years the survey program, and one of the challenges is to actually work out what an appropriate benchmark and target is, what we should be targeting. Because I would love to say, "I want everyone who complains to the office to respond favourably when they're reporting that they're satisfied with the service." But that's not realistic, and it's not the sort of outcomes that any other ombudsman service is achieving either.

The Hon. RACHEL MERTON: Mr Miller, just a follow-up, is there a time frame in which you operate as to your response to inquiries?

PAUL MILLER: We have internal KPIs in terms of how quickly we respond. Those are broken down in terms of acknowledgement, whether we're going to take action, what action we take, et cetera. Because we are taking action on a significantly larger volume of complaints, if you look at our average time from when a complaint comes in to when we close it, our average time will have increased, but that reflects the fact that we're taking more action on those complaints. So if we're making inquiries of the agency, obviously it takes a longer time for them to respond. On average, I think we aim to respond—we acknowledge complaints immediately, particularly if they come in on the phone, obviously.

The Hon. RACHEL MERTON: I guess just in the event if an investigation is to take place—whether there's a time frame there. You can imagine we get feedback, "Some go on and on and on." But I also acknowledge it's case by case too.

PAUL MILLER: With investigations, what we do is we set a time frame in the investigation plan itself because, as you say, different investigations will be expected to take a different amount of time. To some extent, it's difficult to set a hard deadline, because sometimes you don't know where your inquiries are necessarily going to take you, and there are some elements of the time frame that are out of our control, like some of the information gathering with agencies and the procedural fairness steps, which really depend on how long agencies take to respond, and it's not uncommon for agencies to seek extensions. That said, we aim to complete all of our investigations within 12 months. I think the fastest we've done is within one month where we completed an investigation.

The Hon. RACHEL MERTON: As you were just saying, the length of the investigation is obviously recorded?

PAUL MILLER: Yes. The other thing that's relevant here is, unlike, for example, the ICAC, where many of their investigations are public and where their investigations are often focused on wrongdoing or alleged wrongdoing by particular individuals, because our investigations occur in the absence of the public—they tend to be very much focused on agencies and systems, rather than identifying a particular individual perpetrator or wrongdoer—there often isn't the same external demand from the person or the agency under investigation to expedite the investigation. It's not like they have the sword of Damocles hanging over them the way they do, for example, in an ICAC investigation. So getting that expeditious response from agencies I think is just as important.

Mr MARK TAYLOR: On the Mandatory Disease Testing Act, I think in your annual report you said that you were undertaking or are still completing the report, but I think that was handed down in February. Is that correct? What were the significant outcomes of that report?

PAUL MILLER: Yes, that is correct. The report was handed down at the beginning of this year. Our role under that regime is to monitor and then report on the operation and the administration of the Act. Under the Act, following the tabling of our report, what that has triggered is now an obligation on the Minister and the Department to do essentially a policy review of the legislation. We were essentially looking to provide the evidence that would go into that policy review. Notwithstanding that, the core recommendation that I've made arising out of that report is that consideration should be given to whether that regime continues at all. We found significant reason to doubt whether it is effective in achieving its objectives around improving the health and welfare of frontline workers.

Just to highlight some of the key issues that were identified in that report—and there were a lot—we found that a significant proportion of the applications being made for a mandatory disease test related to incidents where a frontline worker was exposed to saliva only. So that's most likely spitting or biting. In a significant

proportion of those cases, testing did proceed, whether that was by way of an order or by way of obtaining the consent of the third party to testing. Now, in circumstances where the Chief Health Officer's guidelines make it clear that there is no real risk of transmission, that is a concerning finding all on its own.

Coupled with that, there are procedural issues throughout the legislation. One of the biggest is around that issue of obtaining the consent of the person proposed to be tested—because a significant number of applications result in testing, but result in testing by way of consent, and there are issues in terms of the way that consent is obtained. There are issues around the fact that, if testing does proceed by way of consent, then effectively all of the protections under the legislation fall away. The testing proceeds outside of the legislation. We also confirmed what was feared by some stakeholders when the legislation was being debated before the Parliament, which was that there is a significantly disproportionate impact on Aboriginal and Torres Strait Islander people. There's also a significantly disproportionate impact on young people.

Mr MARK TAYLOR: In relation to those disproportionate impacts, are they disproportionate to the wider community or disproportionate within the actual applications? Do you understand the difference?

PAUL MILLER: Yes, I do. It's disproportionate in terms of the number of applications made in respect of them. But in terms of that disproportion, one thing that I should point out is that, as you'll obviously be aware, the corrective system is already disproportionately impactful on Aboriginal and Torres Strait Islander people. That does not explain the disproportion in respect of mandatory disease testing, though, even within the corrective system.

Mr MARK TAYLOR: In relation to Corrections, did you form any view about the number of applications put in by the police service as opposed to correctional service? Were you concerned there may be missing reporting or concerns in that space?

PAUL MILLER: No. We're not concerned about under-reporting to us in relation to that. Even though the regime applies to many, many frontline workers—everyone in the health system, for example—apart from one application in respect of NSW Ambulance that did not proceed to testing, all applications have come from New South Wales Police or Corrective Services. We didn't see any concern in terms of the disparate volume—and it's hard to tell, because there's no readily available baseline data on how many incidents could potentially have resulted in one of these applications being made. But we did notice significantly different practices within the two agencies, in terms of how they make decisions and who makes decisions about making mandatory disease testing orders. I would have to say that the concerns in respect of decision-making were more heightened in respect of New South Wales Police than they were in respect of Corrective Services.

One advantage that Corrective Services of course have is that within the prison system—at least, the public prison system—all health services are provided through Justice Health, and so they have readily available to them an expert medical advice service that is already providing services to inmates. In fact, what we've seen since our report is that the number of MDT applications from Corrective Services has declined significantly. The reason for that is that where an incident occurs within a prison, where a frontline worker believes that it would be beneficial to them for the inmate to be tested, for example, they have an alternative mechanism whereby Justice Health, completely outside of the MDT regime, is the one that approaches the inmate to seek consent. That's then done through a kind of medical relationship rather than through the statutory regime.

Mr MARK TAYLOR: Right at the start of your answer, did you say that you or your report did not identify any benefit to the wellbeing of those frontline workers?

PAUL MILLER: Yes. Well, we didn't find any evidence of it. It's one of those things that's really hard to evaluate, particularly because the objectives of the legislation are focused not just on the physical wellbeing of workers but also on their psychological wellbeing. A lot of the emphasis in the debate was around the psychological harm caused to frontline workers by the uncertainty, particularly in that window period before their own testing will be conclusive as to whether they've contracted a disease or not. We couldn't see any evidence in terms of physical wellbeing, in the sense that we couldn't see any evidence that any testing of a third party resulted in a change to either the prophylactic treatment that was provided to the worker, or the outcomes for the worker, in terms of whether they contracted a disease or otherwise. In terms of psychological benefit, we did a survey of the workers who had made an MDT application. The survey responses did not indicate that the regime, from their own perspective, had been a benefit to them. To the contrary, many of them reported that they found that the whole MDT regime process added to their stress and anxiety, rather than taking it away.

Ms KAREN McKEOWN: Can you provide an update on your reviews of child protection placements, Intensive Therapeutic Care and residential out-of-home care? When do you expect these will be finalised? I'm also on the Committee on Children and Young People, so this is of particular interest for me.

PAUL MILLER: We're doing three major standalone pieces of work in relation to the child protection system at the moment. The first is an investigation into the DCJ response to ROSH reports—Risk of Serious Harm reports. That's an investigation into whether the responses on a system level to those reports involve or constitute maladministration. We've known for a very long time that in relation to reports of children suspected of being at ROSH, the number of face-to-face responses that the agency provides is relatively low, I think around 25 per cent, and hasn't been increasing. What we're really focusing on is whether the triaging and then response to those reports is contrary to law, wrong for some other reason, or unreasonable. That investigation should be completed in the second half of this calendar year.

The next piece of work we're doing is the inquiry into Intensive Therapeutic Care, which is the replacement for residential care. It's the pointy end, in many respects, of the out-of-home care system, providing services to children most in need. That inquiry is underway. It's expected to be completed toward the end of this calendar year. The third one I'll mention, although I don't think you raised this, is that one of the functions that we have under CS-CRAMA, our community services complaints legislation, is an ability to do a review of the situation of children in care—either individual children or, more appropriately, generally speaking, a cohort of children. We're doing an in-care review at the moment. Internally at least, we're calling it the whereabouts review, which is looking at children who are in a residential out-of-home care placement, but who are not actually recorded as being in that placement—so looking at the threshold question of why they're not in that placement, the reasons they're not in that placement, and whether they're effectively safe, wherever they may be. That's also expected to be completed before the end of the year. Did you want to add anything?

MONICA WOLF: No, I think you've covered that.

Mr TRI VO: Thank you. Thanks for being here for the hearing today. How many people are working or part of the New South Wales Ombudsman?

PAUL MILLER: I think the current FTE sits at around 250 to 260.

Mr TRI VO: You have noted some changes you would like to see made to the definition of "serious wrongdoing", "maladministration" and "public officials" in the *Public Interest Disclosures Act 2022*. Why would these changes be beneficial to the operation of the public interest disclosure scheme in New South Wales?

PAUL MILLER: Thanks for the question. When the then-new PID Act was being introduced, I did note that, although that reform is a significant reform and did implement all of the recommendations, I think, of this committee, that had led to that reform, we considered that there were opportunities for further consideration for improvements to that legislation. There are, to my mind, some significant gaps in terms of whistleblower protection, in terms of the categories of serious wrongdoing that are covered. Our legislation, unlike legislation in some other jurisdictions, does not include within the categories of serious wrongdoing matters such as serious risk to public health and safety or serious risk to the environment.

While I think that it is important that public officials who raise reasonably based concerns about wrongdoing in that respect should be entitled to equivalent whistleblower protections, that doesn't necessarily mean that those should be included in the PID Act. I recognise, for example, that there are some whistleblower protections in the health care complaints legislation, for example. When you look at disclosures about risks to health and safety, there may be other mechanisms for that to happen. I've raised those suggestions with the PID Steering Committee, which is the advisory body that comprises all of the relevant integrity agencies as well as Cabinet Office, New South Wales Police, et cetera. It is on their agenda to consider whether to provide advice to government about a proposed reform along those lines.

Mr TRI VO: Overall, how is the public interest disclosures operating model working under the 2022 PID Act overall?

PAUL MILLER: Thanks for that question. The Act has been in place since October 2023, just over a year. During that year, we've very much focused on trying to play a supportive role with agencies, in terms of their implementation of the regime, rather than a more compliance or enforcement sort of role. That's reflected, I think, in the annual report that we tabled in November on the PID Act. That report shows that there are a significant number of public interest disclosures that have been made across the sector under the new legislation. Most of those public interest disclosures relate to or make allegations of corrupt conduct. It is perhaps not surprising that that would be the category most likely to result in a whistleblowing report.

There were just under 2,000 recorded voluntary public interest disclosures. Of those, about 300 were investigated. There were 81 cases where serious wrongdoing was found to have occurred as a result of it being disclosed in a whistleblowing report. In terms of how well the Act is working, in terms of identifying wrong conduct, it is working. There are at least 80 cases where wrongdoing wouldn't have come to light but for the

operation of the regime. The opportunity of a new piece of legislation like that, particularly one that in many respects is radically different from the previous Act, in terms of its no-wrong-door approach—the new ability for public officials to make PIDs to their managers and not have to find the one or two people who are designated as their disclosure officer—has really been an opportunity to raise awareness among the sector, both for those public officials who might in their career find themselves in a position where they have something to disclose, but also raising awareness generally across agencies about the importance of what we call a positive speak-up culture.

Mr TRI VO: You mentioned a bit about it before. It's good that we have the Whistleblower Support Team because if we encourage people to make disclosures then we should have a support team. How is the new Whistleblower Support Team functioning since its establishment?

PAUL MILLER: This is a new team that we've decided to establish within our office. We've always had a function of providing general advice and guidance both to agencies who might be dealing with PIDs but also to public officials who may have or may be contemplating making a PID. What we've done with the Whistleblower Support Team is to, within our own office, more clearly structurally separate out that advice function for whistleblowers or would-be whistleblowers. It's a team of five people. What it's really providing is a safe space for public officials to come and explore their rights and their options, to understand the PID Act and what protections apply, to help them develop appropriate expectations about what may happen if they do make a disclosure, or what may happen going forward. In some respects, it's also an opportunity to actually be able to speak to someone about your disclosure. Because, obviously, if you've made a PID within an agency, generally speaking you're not permitted, or it's not otherwise appropriate for you to speak about that with the people who you normally consider to be your peers and your support. So even just having someone who you can talk to is important.

It is important, I suppose, to say what our PID Whistleblowing Support Team is not. It is not a source of advice. We can't tell people whether they should or shouldn't make a PID, for example. Our advice is very much general. We can't provide legal advice either. What we can do is refer people to places where they can get legal advice and other sorts of support as well. Not infrequently, we're starting to see that the kind of support that people are looking for as they're going through this process—which can be a lonely process—is not necessarily legal support but mental health support.

Mr TRI VO: Thank you for the information. I have no further questions.

Ms SUE HIGGINSON: Thank you, Ombudsman, and others there today. I'm going to leave at 4.00 p.m., Chair, I apologise. I have another hearing I have to race to. I was wondering, Ombudsman, if I could ask you something in relation to Corrections work. I know so much has happened and so much really important work has come from your office in relation to Corrections and getting some significant, much-needed reforms. It came to my awareness recently through the Astill inquiry—and I know that that has been a terrible process for all involved in terms of the revelations and the findings. One thing that I was made aware of, in particular, recently was that—and this is a slightly historic issue. Where the question is going is what can you tell me has changed, in terms of our system of complaints, from Corrections?

I spoke to an inmate, somebody who was a victim of the terrible wrongdoing at Dillwynia Correctional Centre. They said to me directly, in no uncertain terms, that when they complained to the Ombudsman and through the Ombudsman complaints process, it failed them really badly. They felt that they weren't taken seriously. There's a bunch of facts that satisfied me that there was a real failing. We won't go into those now. That was some years ago. We're talking about 2018-19 that some of that evidence came out. I would love to hear from you. What do you say? Would we never be in a position where we would make such errors again because our Ombudsman complaint processes for inmates in Corrections are so much more improved?

PAUL MILLER: Without knowing the details, it's hard to respond, but I understand—and I couldn't respond to the details anyway, so I appreciate you not asking. In terms of our current process—a few comments arose out of the Astill inquiry. I can speak to those, which I think will help to answer your question. These were concerns among inmates—which are sometimes raised with us, and I think the Inspector has indicated are raised with her—about fear that their communications with the Ombudsman, or with Official Visitors, or whoever they're speaking with, will not be treated confidentially. In terms of written communication, that's fear around whether, for example, Corrective Services may read that correspondence. There's fear about whether phone calls are listened to, et cetera.

In relation to that concern, I can certainly assure and we do assure inmates all the time that there are very strict and clear legislative provisions around communications—not just written communications, but oral communications as well—not being monitored in any way by Corrective Services. The provisions talk about correspondence arriving unopened, which it does. It also now talks about calls not being monitored. So there's

that as well. But, in a practical sense, we are very confident with Corrective Services that they do not engage in any inappropriate overstepping of those provisions.

In terms of any concerns around a fear that if a complaint is made to the Ombudsman, there may be repercussions for the individual concerned—and I understand that fear. Particularly for those in an environment where so much of their life is dependent upon the—I was going to say the whims; I don't mean the whims. There is a lot of control over every aspect of a person's life in a correctional facility, as you would expect. If those concerns are raised with us, we reassure inmates now. Again, it is a statutory offence to take detrimental action against anyone as a result of making a complaint to us. We never communicate complaints back to the centre from which the complaint arose. Sometimes that's a concern, but we do not do that in our practice.

The other thing is that quite often the complaints that we receive—we receive such a significant volume of complaints, often about similar things, that it is not necessary for us when we engage with Corrective Services to refer to any individual who may have made a complaint to us. I think it is sometimes true that sometimes one thing follows another. For example, a person might have called us on Monday and then on Wednesday their cell is subject to a random search or what have you. Sometimes some things do just follow like that. And there may be a perception of one thing being linked to the other. But we've not, I have to say, seen any evidence of general reprisals being taken against people for even asking to contact the Ombudsman.

Notwithstanding that, I do recognise that, even with all of that, the concerns and the fear that people might have, even about asking to contact the Ombudsman, are real. That's frankly one of the reasons why I think the move to rolling out iPads and online ability to contact us in a way that much more clearly cannot be monitored—in the sense that the officers in the centre don't even know that that contact is being made—would be a positive development.

Ms SUE HIGGINSON: That's really helpful. Thank you very much.

Mr MARK TAYLOR: You operate under a number of Acts which give you power to get agencies to give you information. Have you been in a situation in the last 12 months where it's been necessary to take court action to get that information off an agency? Have you hit any examples of resistance to provide you information which you believe your agency is entitled to receive?

PAUL MILLER: There are a few things I'll say in response to that. We haven't met resistance in the sense of agencies refusing to provide us with information, except on one occasion, which relates to a claim that the information that we'd requested is Cabinet information. Generally speaking, our challenge is not with getting the information per se; it's getting the information in a timely way. To provide an example of that, I publicly announced that we are investigating certain agencies' response to legal advice regarding the charging of merchant fee surcharges. After that investigation had commenced, the upper House passed a resolution calling for those and other relevant agencies to produce documents to the upper House. It was suggested to me that that might be a concern to my investigation and whether that was something that I might want to take up with the Legislative Council.

My response to that, frankly, was, I couldn't see how the Legislative Council requesting those documents would impede my investigation in any way. Indeed, the fact that the Legislative Council is able to get those documents within 14 days may actually be a significant support for my investigation in circumstances where our routine request is four weeks. In almost every case, we get a request for an extension to that. We have to be reasonable with agencies. They have a job to do, and we don't want to overburden them, but we're not in a situation—because it's our fiftieth year, we're getting some work done on the history of our office. We're not where we were in the early days of this office, where there was active resistance to the Ombudsman. There is not active resistance to the Ombudsman, I wouldn't say.

The Cabinet document is interesting because, unlike the Audit Office, for example, we still have a provision in our legislation that means that we cannot compel agencies to produce Cabinet information to us. We, in one of our investigations, requested information which the agencies declined on the basis that it was Cabinet information. That's a legitimate basis, under our Act, for them to decline that. Where we had some difficulty was that under the legislation the Cabinet Office as it is now is charged with the responsibility for certifying that a document is Cabinet information. What we said was, "That's fine. If you can't produce the information, don't. But if we don't get the information, we want a certificate from the Cabinet Office that it is Cabinet information." I think that took about 12 months or more to get.

Mr MARK TAYLOR: How many agencies do you engage with? How many agencies do you get information from?

PAUL MILLER: I was tempted to take it on notice, but I don't think I could even answer it on notice. We oversight thousands of agencies.

Mr MARK TAYLOR: Out of those thousands of agencies, you haven't had any situation where you've hit resistance to such an extent that you've had to go to court?

PAUL MILLER: Not in my time as Ombudsman, no. But just to put on record, I'd be willing to do so if that situation arose.

The CHAIR: Thank you for appearing before the Committee today. You'll each be provided with a copy of the transcript of today's proceedings for correction. Committee staff will also email any questions taken on notice from today and any supplementary questions from the Committee. Thank you, Mr Miller. I know you're staying. Thank you, Ms Townsend, and thank you, Ms Wolf, for your attendance today.

(The witnesses withdrew.)

PAUL MILLER, PSM, Convenor, Child Death Review, on former affirmation

HELEN WODAK, Deputy Ombudsman, Monitoring and Review, Child Death Review Team, affirmed and examined

The CHAIR: I now welcome our final witnesses for the day, representatives from the Child Death Review Team. Mr Miller, you're appearing for the second time today. Thank you both for appearing before the Committee today to give evidence. Please note that Committee staff will be taking photos and videos during the hearing. The photos and videos may be used for social media and public engagement purposes on the Legislative Assembly's social media pages, website and public communication materials. Please inform Committee staff if you object to having photos or videos taken. Before we proceed, do either of you have any questions about the hearing process?

HELEN WODAK: No, thank you.

The CHAIR: Would either of you like to make a short opening address or statement before the commencement of questions?

PAUL MILLER: I do. Thank you, Chair. Before I do, and with your indulgence, can I just correct one answer that I provided in the previous hearing?

The CHAIR: Sure.

PAUL MILLER: It was in response to the question about our work in the child protection space. In terms of the whereabouts project, I'm advised that that work is expected to be completed, in the sense of a report tabled, in the first half of 2026, rather than by the end of 2025.

The CHAIR: Thank you for that correction, Mr Miller.

PAUL MILLER: First, can I acknowledge all members of the NSW Child Death Review Team [CDRT] and extend my thanks to each of them for their ongoing contribution to this important work. As the Committee is aware, the CDRT is a team of independent experts and senior-level agency representatives. Each member brings special expertise and experience to the table, as well as a strong commitment to the overall goal of the Team, which is to prevent and reduce the likelihood of deaths of children in New South Wales. The CDRT meets formally as a team four times a year, but the members also make significant contributions out of session through participating in various subcommittees which provide advice on particular issues or projects, such as suicide; providing expert advice on cases, for example, clinical care; and best practice, such as Indigenous data sovereignty.

I will just quickly outline some of the activities of the CDRT since my last appearance in, I think, May 2024, and provide information by way of update. The CDRT tabled its annual report for 2023-24 on 31 October. The report describes the various activities of the team over the financial year. It provides information about the team's annual member survey, research activities, and other reporting as required by the legislation. It also includes highly detailed information about agencies' progress in implementing past CDRT recommendations. We actively monitor and follow up with agencies about those recommendations, and the annual report is an important part of keeping agencies accountable for their commitments.

The CDRT reported positively on the implementation of four recommendations. These related to strategies to promote information to vulnerable families about infant safe sleeping, resources to assist parents and carers identify infant illness, research into child restraints and seatbelt practices in regional and remote areas, and an audit of the SUDI [Sudden Unexplained Death in Infancy] medical history protocol. In its annual report, the CDRT has made a new recommendation to NSW Health to review its Management of Sudden Unexpected Death in Infancy policy and to consult relevant stakeholders. This recommendation has been accepted by Health. We are continuing to monitor a recommendation to NSW Health relating to the provision of targeted, sustained, and intensive therapeutic support to young people at high risk of suicide. We will be tabling the CDRT's next annual report in October this year. In that, we will provide a detailed update on the progress of both of those recommendations.

We will also this year be tabling our next biennial report, detailing information regarding the deaths that occurred during the 2022 and 2023 period. Since our last report, we've reviewed the biennial's format to improve accessibility, efficiency, and impact on prevention. While I cannot report publicly at this stage about the information in that forthcoming report, I am conscious that, at the last hearing of this Committee, we drew attention to the increasing rates of suicide in particular among children and young people in our last report. In that context, I can draw the Committee's attention to other information that is already publicly available—for example,

in the NSW Suicide Monitoring System data, which shows 47 deaths by suicide of children and young people aged under 18 in New South Wales in that two-year period of 2022-23. That data is an estimate, pending the final determination of the manner of death by the coroner, but it would represent a reduction from the 58 deaths that occurred in 2021 and 2022, which I reported previously to this Committee.

Turning to the CDRT research function, the CDRT adopted and published a formal research framework in September 2024. This articulates the purpose of CDRT research, the principles underpinning it, the criteria used to help prioritise and determine projects, governance arrangements for both internal and external research, and strategies to ensure research has impact. Since our last appearance, the CDRT has commenced two new research projects. The first is a follow-up review of perinatal deaths from severe brain injury in New South Wales over the period from 2020 to 2023. The second is a review of suicide-related deaths among LGBTIQA+ people.

The follow-up review of perinatal deaths builds on preliminary work reviewing such deaths in the period from 2016 to 2019, which we reported in our last biennial report. The research aims to understand key contributory factors in infant deaths from severe perinatal brain injury; identify opportunities and make recommendations for the prevention of future deaths; and identify and assess the adequacy of clinical practice guidelines and policies, adherence to these guidelines and policies, and any changes made since our preliminary study. We are currently seeking tenders for an external research organisation to undertake this research. The review of suicide-related deaths among LGBTIQ+ young people aims to examine the factors, behaviours, and circumstances that surround these deaths; to gain a greater understanding of them; and to identify potential ways to reduce the likelihood of future deaths. Again, we will be commissioning an external research organisation for some components of that project.

At our last appearance, we provided information about a research project being undertaken for the CDRT by the Ngarruwan Ngadju First Peoples Health and Wellbeing Research Centre's report into suicide deaths in Aboriginal and Torres Strait Islander young people. The CDRT received an internal draft of that report in 2024. Having done so, the CDRT and the Research Centre have agreed that, rather than the CDRT preparing its own separate public report, the research report itself can and should be refined and tabled as a public report. That is considered most appropriate, particularly given the Aboriginal-led authorship and cultural sensitivities involved. It is also noted that, as well as the CDRT members reviewing and commenting on this research, the research itself is supported by a First Nations Advisory Committee.

The CDRT anticipates tabling that final research report in the next few months. A community report to Aboriginal stakeholders and communities, including those who participated in the research, is also being prepared. Although the report will not identify any individuals who have died, there is, of course, a need to be highly sensitive in the manner in which this report is released, including for the families and communities of the young people who have died. That dissemination program will be led by the Aboriginal research team.

I have three final points to mention. First, I recently wrote to this Committee to advise of a one-off agreement to provide New South Wales de-identified unit record data relating to child deaths for the period of 2020 to 2021 to the Australian Institute of Health and Welfare. The provision of these data will help test the feasibility of establishing a National Child Death Data Collection to collate data on demographics and details of the death event, including cause and category of death, for all child deaths in Australia. This is very early work, but the idea of establishing a national data collection has been around for a long time and, in principle, there appears to be much value in such an initiative. Secondly, the CDRT is currently developing its five -year strategic plan, due to commence on 1 July. The upcoming plan for 2025 to 2030 will align with the NSW Ombudsman's own strategic plan over the same period, and both will be published on our website.

Finally, I should note recent membership changes within the CDRT since my last appearance, including the appointment of the state's new Chief Paediatrician, Dr Helen Goodwin, to the team, and the proposed appointment of the new Mental Health Commissioner, Jennifer Black. We are also grateful that the state's former Chief Paediatrician, Dr Matt O'Meara, has agreed to stay on the CDRT as an independent member. Helen Wodak leads the NSW Ombudsman's Death Review Unit staff that support the CDRT.

I've already expressed my thanks to members of the CDRT. I would just like to add my thanks here to my own staff who support the team's functions, including by reviewing and coding deaths, maintaining the state's register of child deaths, undertaking and commissioning research and analysis, and of course in preparing the reports of the CDRT. The staff are deeply committed to their work and the purpose of preventing child deaths. The office has a range of strategies to respond to the risk of vicarious trauma, given the often very challenging and distressing information and issues those staff are exposed to. Helen and I would be happy to expand on any of the points I've mentioned or to answer any other question you may have.

The CHAIR: Thank you, Mr Miller. We'll now move to questions from the Committee but, before we begin, I wish to inform you both that you may wish to take questions on notice and provide the Committee with an answer in writing within seven business days after receiving the questions. I'll begin by asking questions. Firstly, can I say thank you both for the work that you do in this space. It's difficult work, very challenging work in the sensitivities involved around this work, but it's very important work as well. I thank you both, you and your team, for the work that you do in this particular space. I wanted to just touch on the Suicide Monitoring System—Mr Miller, you described it earlier in your opening address—and the statistics. It is pleasing to see that there has been a reduction from what it was a couple of years ago. As I understand it, that monitoring system has been enhanced and improved over the last couple of years. Is that right, in terms of getting the data and the statistics quicker?

PAUL MILLER: Yes, that is correct. The important point to note there is that it is intended almost, in effect, to be real-time monitoring of suicide data. For that reason, while it's very useful operationally, some caution does need to be exercised around it. As I said, we'll be reporting on the 2022-23 period in our next report. The numbers may change as certain deaths, particularly through the Coroner's work, are classified.

The CHAIR: How would you describe the partnership that the CDRT has with other government agencies for you guys to access the information to do the work that you do?

PAUL MILLER: I'll answer briefly and then I'll hand to Helen, who probably has the greater day-to-day interaction with the agencies. The first thing to note is that the CDRT membership includes senior level representatives from most of the agencies that you would probably expect to be on the CDRT: Health, Police, DCJ, for example. One of the important points to note, though, is that those members are there because of their expertise and their contribution as individual members. They are not there to represent, present, or toe the agency line. Our relationship with agencies is supported by having those members there, and we do get a lot of support for them when we engage with agencies, but our relationship with agencies in some respects is separate from that relationship. In terms of that engagement, I'll hand over to Helen to speak about that work.

HELEN WODAK: Thank you. We have well-established processes with agencies about particular records that we seek. We have a schedule that we are continually reviewing and revising that goes to what types of records we seek for certain categories of death. We have very well-established processes with government agencies in relation to those. But we also seek records from individual GP practices, private psychology services, and other services like that who are less used to our processes and functions. We provide them with a fact sheet and contact details and liaise with them about that. Very, very rarely we have issues in that space. They have a duty to provide us and to assist us, and we refer that to them. But often it's a lack of familiarity with us, whereas in most circumstances there's a lot of familiarity with the records that we need and how we need to seek them.

The CHAIR: I'll open the floor up to questions. Ms McKeown?

Ms KAREN McKEOWN: Thank you. Can you just tell me the distinction between the suicide-related death and suicide death? How do you determine the terminology used for the research projects?

HELEN WODAK: Do you want to answer that?

PAUL MILLER: I'll have a go and you can correct me if I'm wrong. We're using the term "suicide-related" at the moment in relation to our proposed new research around LGBTIQ young people. Part of the reason for that is recognising that there will or there may be circumstances where a death appears potentially to be suicide but it hasn't formally been recognised as such, for example, by the coroner. We don't want to exclude those from the potential scope of the research project, so that's all that that distinction really means. It's just recognising that there can be a gap between the formal recording of the cause of death and whether something comes within the scope of the research.

HELEN WODAK: Often they're deaths that are potentially categorised as death by misadventure, but there's enough information that we have available to us to suggest, as the Ombudsman said, that there is some grey there. We wanted the research to be as comprehensive as possible, which is why we've chosen that terminology. But the majority of the deaths that we'll be looking at are deaths that have been classified as suicides.

The CHAIR: Any other questions? Mr Vo.

Mr TRI VO: Thanks again for being here at the hearing. How many staff of the Ombudsman's office are involved in the day-to-day of the CDRT? We know that the team of NSW Ombudsman staff manage the day-to-day work of the CDRT. Earlier we were given the figures of 250 or 260 people involved in the NSW Ombudsman. Out of that figure, how many of the Ombudsman's staff are involved in the day-to-day of the CDRT?

HELEN WODAK: I'm embarrassed to say that I might take it on notice, because there's been some recent staffing changes, but it's approximately 20. I can't give you an exact figure because there's been a number of changes just in the last few weeks, but approximately 20.

PAUL MILLER: We have two discrete death review functions, in a sense. As Ombudsman, we have a reviewable death function. There are certain deaths—in particular, children who die by reason of abuse or neglect or who were in state care—that's an Ombudsman reviewable death function, then there is separately under the legislation the Child Death Review Team, and the work we do to support that team. At present, some of our staff are blended across those two areas.

HELEN WODAK: Yes, that's correct.

Mr TRI VO: Thanks. You mentioned before that the child suicide rate for 2022 was something like—was it 50-something?

PAUL MILLER: Yes, I think there were 58.

Mr TRI VO: And in 2023 it went down to 40-something.

PAUL MILLER: According to the monitoring service, at the moment it's 47.

Mr TRI VO: It's gone down. What about the year before that, 2021? You may not have that figure.

HELEN WODAK: No, but that's the combined figure.

PAUL MILLER: Sorry. These are two-year periods. It was 58 over the—

Mr TRI VO: Oh, I see, sorry.

PAUL MILLER: For 2020 and 2021 is 58, and 2022 and 2023 combined is currently, according to the monitoring service, 47.

Mr TRI VO: Would the figures for, say, 2018-19 be higher than those figures?

PAUL MILLER: Higher than the 47?

Mr TRI VO: Yes, higher than the 47.

PAUL MILLER: I might have to take that on notice.

Mr TRI VO: I think that's pretty much prior to COVID. I'm quite interested in knowing the figures before COVID-related.

PAUL MILLER: I've got a chart before me—you won't have it in front of you, but it's figure 58 from our last biennial death report, which indicates that annually, from 2015 to 2021, the rate has been relatively stable at around 3.7 per 100,000. This is children aged 10 to 17, except for a slight dip in 2018, where it was closer to three. So I think the answer to your question will be that, if the final figure is 47 or around 47, then yes, that will be lower than both previous periods.

Mr TRI VO: So overall it's gone down?

PAUL MILLER: One thing we have to say here is—and it's true in a lot of the work that we do in this space. It's awful to say that the numbers are small, because the numbers are not small when you think that each number is a human being, but from a statistical perspective, it's very difficult to draw any conclusions from any one data point. Even if it is the case that the number this year is 47, I wouldn't be quickly concluding that that necessarily indicates that there's a long-term downward trend that's about to begin.

Mr MARK TAYLOR: It's a bit erroneous to use percentages et cetera because the numbers are quite low.

Mr TRI VO: Could you provide an update on the progress of the project report for the review of the suicide deaths of Aboriginal children and young people?

PAUL MILLER: As I mentioned in my opening, we'd originally planned for that report. We commissioned the research centre, which was based out of Wollongong University, which is actually led by Aboriginal members of our CDRT—affiliated with that research centre leading that project. The original intention had been that the research team would do their research, and then they would provide a report to the CDRT, and then the CDRT would prepare a report with its advice, which we would provide to Parliament. What has been decided to be done instead is for that research work to be fully developed into a report that the research team itself can provide to Parliament.

As I said in the opening statement, given the content of that research, it's entirely appropriate. And not just the content of the research, but the methodology that has been adopted throughout that work, which has very much been based on taking a strengths-based approach to looking at this issue. So really engaging with the communities that have been impacted by youth suicide, and looking at not only the deficit narrative around this issue, but also a lot of the protective factors that communities themselves identified were either missing or would be supportive. The report itself should be tabled within the next few months. It's just being finalised by the research team. It will include their recommendations to government about what should be done in this space, and the CDRT will essentially be inviting government to consider those recommendations.

Ms KAREN McKEOWN: At the very top of your opening statement, you talked about an external independent review. Can I ask if there was anything in particular which triggered you to do this, or is it basically a due diligence on yourself, if you like, as an agency?

PAUL MILLER: So this is in relation to the Ombudsman office as a whole?

Ms KAREN McKEOWN: Yes.

PAUL MILLER: No, there hasn't been a trigger, in that sense.

Ms KAREN McKEOWN: I just thought I'd ask.

PAUL MILLER: Part of it is a recognition of the fact that we haven't been externally reviewed, certainly since I've been Ombudsman. There is, internationally, a practice that is developing among ombudsmen's offices to be reviewed, and there's a peer review service that's offered by the International Ombudsman Institute. That's one possible route that we may take for the work. But, frankly, as much as anything, it's genuine curiosity to ensure that we are discharging our functions in accordance with best practice. Again, internationally, particularly in circumstances where—as I said, when I came into this role, every time I came before this Committee, every time I spoke to government, I essentially was complaining about the chronic underfunding of the office. Now, we're not in that situation anymore, and the Parliament, and therefore public, have made the decision to invest in this office. I think it's incumbent on us to make sure that we are operating as effectively and efficiently as we possibly can.

The CHAIR: I'm interested in finding out about geographical or environmental factors in relation to youth suicides. I was just having a look at your latest annual report. You talk about drownings, you talk about transport, homicide, suicide, and other natural causes. But have you observed a pattern or a trend in relation to the location of where suicides seem to be more problematic than others? Is it higher in regional areas as opposed to the metropolitan areas, or are you in a position to give any comment on that?

HELEN WODAK: We look at a range of demographic factors for all of the categories of death, and we report on those in the biennial report. Some of those include geographic area, child protection history, a range of other demographic factors. It is something that we look at, and we look at whether or not there are statistically significant differences in relation to those. As the Convenor said, it sometimes can be hard, with the numbers, to necessarily see patterns, geographically. We've spoken a bit about the suicide monitoring that happens. Part of the reason that that's real-time data is to monitor any outbreaks in terms of the contagion impact.

Because our work is not real-time monitoring, it's a different type of work. It's not aimed at that initial response, frontline process, but geographic and remoteness and all of the other demographic factors is something that we look at, always, as part of our patterns and trends work. I can say, also, in terms of the Aboriginal suicide project that we have spoken about, part of that work did look at where those deaths occurred and the communities that were visited as part of the community consultation—that was kept in mind in terms of the decisions in relation to those communities.

The CHAIR: I'm happy for you to take it on notice, but are you able to advise the Committee, in terms of those statistics that you have, that you know about through the register, a breakdown, geographically? This is a particular issue that I'm very interested in, and I come from a regional community. I can tell you, anecdotally—to me, it seems to be that perhaps regional areas are far more overrepresented in terms of youth suicides. I think that's obviously for a number of reasons, but we don't have a lot of services as well, right? But I'd be curious, and I'm happy for you to take it on notice and get back to the Committee, if that could be information that could be provided?

HELEN WODAK: I'm happy to take that on notice, thank you.

The CHAIR: Thank you both for giving evidence, and thank you for the important work, like I said at the beginning, that you and your departments do. It's very challenging. Thank you for appearing before the Committee today. You'll each be provided with a copy of the transcript of today's proceedings for corrections.

The Committee staff will also email any questions taken on notice from today, and any supplementary questions from the Committee. Thank you both for appearing today, and enjoy the rest of your day and weekend. That concludes our public hearing today. I'd like to place on record my thanks to all the witnesses who appeared today. I'd like to thank my parliamentary colleagues, Committee members, Committee staff, Hansard, and everyone involved in organising today and preparing all the minutes and ensuring today's smooth operation.

(The witnesses withdrew.)

The Committee adjourned at 16:40.