



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

Budget process for independent oversight bodies and the Parliament of New South Wales

Final report



Report 7

February 2021

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Public Accountability Committee

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Terms of reference

1. That the Public Accountability Committee inquire into and report on the budget process for independent oversight bodies and the Parliament of New South Wales, and in particular:
 - (a) Options for enhancing the process for determining the quantum of funding of the following bodies, including the transparency of this process:
 - (i) Independent Commission Against Corruption
 - (ii) Law Enforcement Conduct Commission
 - (iii) Audit Office of New South Wales
 - (iv) NSW Electoral Commission,
 - (v) NSW Ombudsman, and
 - (vi) Parliament of New South Wales (Legislative Council and the Department of Parliamentary Services)
 - (b) Any other related matter.
2. That the committee report by 5 February 2021.¹

The terms of reference were self-referred by the committee on 14 October 2019.²

¹ The original reporting date was the last sitting day in April 2020 (*Minutes*, Legislative Council, 15 October 2019, p 504). The reporting date was extended to 30 September 2020 (*Minutes*, Legislative Council, 12 May 2020, p 893), then to 5 February 2021 (*Minutes*, Legislative Council, 22 September 2020, p 1341).

² *Minutes*, Legislative Council, 15 October 2019 p 504.

Committee details

Committee members

Mr David Shoebridge MLC	The Greens	<i>Chair</i>
The Hon Robert Borsak MLC	Shooters Fishers and Farmers Party	<i>Deputy Chair</i>
The Hon John Graham MLC	Australian Labor Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Matthew Mason-Cox MLC	Liberal Party	
The Hon Peter Primrose MLC *	Australian Labor Party	
The Hon Natalie Ward MLC	Liberal Party	

* The Hon Peter Primrose MLC substituted for the Hon Courtney Houssos MLC from 22 November 2019 for the duration of the inquiry.

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Chair's foreword

This is the second and final report of the committee in relation to the budget process for ICAC, the Law Enforcement Conduct Commission (LECC), the Electoral Commission, the Ombudsman, the Audit Office and the Parliament of NSW.

As with the First Report, the conclusions and recommendations of this committee come with the broad support of all members of the committee, representing political parties from across the political spectrum. This is strongly indicative of the widely accepted need to create a far more robust and independent funding model for the critical oversight bodies in NSW.

The inquiry was established in October 2019. In November 2019 the committee was advised that the Auditor-General had received a ministerial reference to conduct an audit in relation to the financial and management arrangements of four of the independent oversight bodies specified in the committee's terms of reference. To avoid any potential conflict of interest the committee resolved to conduct the inquiry in two stages and deliver an initial report concerning bodies other than the Audit Office in the first instance and a final report after the Auditor General had completed her audit.

The committee tabled its first report in March 2020. The report recommended a range of reforms including:

- The parliamentary oversight committees for the ICAC, the LECC, the Ombudsman and the Electoral Commission should review the annual budget submissions of each agency and make recommendations as to the funding priorities.
- ICAC, the LECC, the Ombudsman and the Electoral Commission should have access to contingency funding to address any unforeseen financial demands, should be funded directly through the Appropriation Act rather than through the relevant minister, and should be removed from the Government 'cluster' system.
- This committee, the Public Accountability Committee (PAC), should review the annual budget submission of the Department of the Legislative Council and give directions as to the funding priorities of the Department as well as any requests for supplementary funding.
- The PAC should also review the annual budget submission of the Department of Parliamentary Services (DPS), in collaboration with any committee appointed by the Legislative Assembly for the same purpose, and give directions as to the funding priorities of DPS as well as any requests for supplementary funding.

In this report the committee revisits the budget process for the bodies examined in the first report in light of recent developments. These include the publication of the Auditor-General's report concerning funding arrangements for ICAC, LECC, the Electoral Commission and the Ombudsman, the tabling of two special reports to Parliament by ICAC concerning ICAC's funding, and receipt of a supplementary submission concerning the Parliament's budget process from the Clerk. The committee also examines the budget process for the Audit Office for the first time. In summary the report:

- reiterates the committee's recommendations relating to the oversight bodies that were directed to the government in the first report
- calls on the government to implement the committee's recommendations in relation to the Parliament from the first report and
- makes separate recommendations in relation to the budget process for the Audit Office.

As noted in the report the budget process for the Audit Office is somewhat different to that for the other bodies examined by the committee as the Audit Office is largely self-funded from audit fees and is not specifically funded through the Appropriation Act. The committee's recommendations concerning the Audit Office are that:

- This committee, PAC, should review any budget bids by the Audit Office, in collaboration with the Public Accounts Committee of the Legislative Assembly, and make recommendations to the Parliament as to the funding priorities of the Audit Office.
- Annual funding for the Audit Office's performance audits should be provided as a separate amount in the Appropriation (Parliament) Bill rather than as a government contribution.
- The Audit Office should be removed from the Premier and Cabinet cluster.

Although the government is required to respond to Legislative Council committee reports within 6 months, as chair of the committee I will address these issues at the commencement of the 'take note' debate on this report immediately the Clerk reports its receipt to the House. I anticipate that notice will also be given of a number of motions to implement the recommendations of this report as they relate to the Legislative Council.

On behalf of the committee I thank all those who have participated in this inquiry, as well as my committee colleagues for their considered and constructive input and the extremely professional and patient assistance we all received from the secretariat.



David Shoebridge MLC

Committee Chair

Recommendations

- Recommendation 1** **24**
 That the parliamentary oversight committees for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission review the annual budget submissions of each agency and make recommendations as to the funding priorities.
- Recommendation 2** **24**
 That the annual budgets for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission include a set contingency fund to address unbudgeted financial demands, with access to the funds governed by prescribed criteria and approval of the relevant parliamentary oversight committee.
- Recommendation 3** **24**
 That the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister, so they are not subject to reductions in funding during the financial year.
- Recommendation 4** **25**
 That the NSW Government remove the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission from the Premier and Cabinet cluster.
- Recommendation 5** **25**
 That the Legislative Council refer the following terms of reference to the Joint Standing Committee on Electoral Matters:
- That the Joint Standing Committee on Electoral Matters inquire into and report on the adequacy of the funding allocation of the NSW Electoral Commission for the 2023 election, in particular taking into account the latest advice around issues of electoral integrity arising from foreign interference in elections.
- Recommendation 6** **26**
 That the Parliament of New South Wales review and ensure the provision of adequate staffing and resourcing to Hansard services.
- Recommendation 7** **27**
 That the NSW Government work with the Legislature in adopting the United Kingdom model of funding for the Parliament of New South Wales.
- Recommendation 8** **27**
 That the Legislative Council designate the Public Accountability Committee to review the Department of the Legislative Council's annual budget submission and give directions as to the funding priorities of the Legislative Council, as well as any requests for supplementary funding.

- Recommendation 9** **27**
That the Legislative Council designate the Public Accountability Committee to review the Department of the Parliamentary Services' annual budget submission, in collaboration with any committee appointed by the Legislative Assembly for the same purpose, and give directions as to the funding priorities of the Department of Parliamentary Services, as well as any requests for supplementary funding.
- Recommendation 10** **27**
That following further consultation by the President with the Speaker and Premier, the Legislative Council seek the concurrence of the Legislative Assembly in the appointment either of a joint committee or alternatively of two separate committees of the two Houses meeting together for the further consideration of an appropriate funding model for the Parliament of New South Wales as a whole, based on one of the models in place in either the United Kingdom or Canada.
- Recommendation 11** **38**
That the Legislative Council designate the Public Accountability Committee to review any budget bids by the NSW Audit Office, in collaboration with the Public Accounts Committee of the Legislative Assembly, and make recommendations to the Parliament as to the funding priorities of the Audit Office.
- Recommendation 12** **38**
That annual funding for the NSW Audit Office's performance audits be provided as a separate amount in the Appropriation (Parliament) Bill rather than as a government contribution.
- Recommendation 13** **39**
That the NSW Government remove the NSW Audit Office from the Premier and Cabinet cluster.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 14 October 2019.

The committee received 57 submissions and 2 supplementary submissions.

The committee held three public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts and tabled documents and answers to questions on notice.

Chapter 1 Introduction to the second report

Purpose of the second report

- 1.1** This report completes the committee’s inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales.
- 1.2** The terms of reference for the inquiry, adopted in October 2019, required the committee to examine the budget process for:
- five independent oversight bodies – the Independent Commission Against Corruption (ICAC), the Law Enforcement Conduct Commission (LECC), the NSW Electoral Commission, the NSW Ombudsman and the Audit Office of New South Wales, and
 - the Parliament of New South Wales (Legislative Council and Department of Parliamentary Services).
- 1.3** However, in November 2019, the Auditor-General advised that she had received a ministerial request to conduct an audit in relation to the financial and management arrangements of the other four independent oversight bodies referred to in the committee’s terms of reference – the ICAC, the LECC, the Electoral Commission and the Ombudsman. To mitigate any perceived conflict of interest the Auditor-General suggested that the committee’s consideration of the Audit Office be deferred until the completion of her audit.³
- 1.4** In response to the Auditor-General’s request the committee resolved to conduct the inquiry in two stages. Firstly, to receive evidence from bodies other than the Audit Office and deliver a first report, and second, to hold a further hearing after the Auditor-General had completed her report and deliver a final report after that.⁴
- 1.5** The committee tabled its first report on the inquiry in March 2020, recommending a range of reforms to the budget process for the ICAC, the LECC, the Electoral Commission, the Ombudsman and the Parliament.⁵ The government responded to that report in September 2020, indicating that it would await the Auditor-General’s report before determining its position. The Auditor-General delivered her report in October 2020.⁶
- 1.6** This report (Chapter 2) revisits the budget process for the four oversight bodies considered in the committee’s first report and the Parliament in light of issues raised in the Auditor-General’s report, further evidence to the committee’s inquiry and other relevant developments. The report (Chapter 3) also addresses the aspect of the terms of reference that was not examined in the first report – the budget process for the Audit Office.

³ Public Accountability Committee, NSW Legislative Council, *Budget process for independent oversight bodies and the Parliament of New South Wales*, Report 5, March 2020, p 1.

⁴ Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales*, p 1.

⁵ Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales*.

⁶ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020.

Chapter 2 Further consideration of the budget process for ICAC, LECC, the Electoral Commission, the Ombudsman and the Parliament

In this chapter the committee revisits the budget process for the four independent oversight bodies in light of the Auditor-General's report on the financial and management arrangements of those bodies. The committee also notes recent publications in which ICAC has expressed further views on ICAC's budget process with the advice of Mr Bret Walker SC, and a recent bill passed by the Legislative Council to improve the budget process for the oversight bodies. The committee then revisits the budget process for the Parliament in the light of a supplementary submission concerning the Parliament's budget position.

The committee goes on to note issues raised in the government's response to the committee's first report on this inquiry. Finally the committee discusses the Legislative Council's amendment to the Parliament (Appropriation) Bill 2020 to provide additional funding for the ICAC and to require the Treasurer to consult with the Parliament on its funding needs.

The budget process for the independent oversight bodies – the Auditor-General's report

- 2.1** In its first report on this inquiry the committee described the budget process in New South Wales and the manner in which that process is applied to ICAC, LECC, the Electoral Commission and the Ombudsman. The key elements of the process identified in the report were:
- the provision of annual funding
 - the provision of supplementary funding
 - the imposition of efficiency dividends
 - participation in the Premier and Cabinet cluster.
- 2.2** The report raised concerns about the application of each of these elements of the budget process to the four independent oversight bodies and made recommendations for reform.
- 2.3** Since the committee completed its report, the Auditor-General in her October 2020 report entitled *The effectiveness of the financial arrangements and management practices in four integrity agencies* has made recommendations concerning the application of these elements of the budget process to the same four bodies.⁷ That report essentially found that the current budget process does not

⁷ The Auditor-General's report used the term 'integrity agency' to refer to ICAC, LECC, the Electoral Commission and the Ombudsman. This report instead uses the term 'independent oversight body', consistent with the first report.

have sufficient safeguards to protect the independence of the oversight bodies and set out a number of principles to guide the introduction of further safeguards.⁸

- 2.4 A summary of each of the key elements of the budget process and the views expressed by the committee and the Auditor-General is provided below.

The provision of annual funding

The current process

- 2.5 The independent oversight bodies each receive a separate amount of annual funding which is approved by Parliament in the Appropriation Act. This arrangement is intended to recognise the fact that the oversight bodies are independent of the government of the day. However, the amount of the funding which is included in the Act for each independent oversight body is determined by Cabinet following a process that is managed by Treasury in accordance with outcomes that are set by the government.

The committee's first report

- 2.6 In its first report the committee acknowledged that the annual appropriations process reflects the principle that the government is responsible for the financial management of the state. However, the committee found that the way in which that principle is currently applied conflicts with the fact that the independent oversight bodies are responsible to Parliament, not the government, and require independence from the government to carry out their functions. The committee also found that the current process has led to instances of underfunding of these bodies.
- 2.7 To address these concerns the committee recommended that a new process should be adopted to enhance transparency and accountability in the making of funding decisions. Under this process the relevant parliamentary oversight committee for each independent oversight body, following consultation with stakeholders including Treasury and the Department of Premier and Cabinet (DPC), would recommend to Parliament the annual appropriation for the body:

Recommendation 1

That the parliamentary oversight committees for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission review the annual budget submissions of each agency and make recommendations as to the funding priorities.

⁸ Evidence, Ms Margaret Crawford, Auditor-General for NSW, Mr Ian Goodwin, Deputy Auditor-General for NSW, 23 October 2020, p 3.

The Auditor-General's report

- 2.8** The Auditor-General advised that the current approach to determining annual funding is consistent with the legal and constitutional framework whereby the government is responsible for the prudent management of the state's finances. However, the Auditor-General stated that this approach is primarily designed to determine funding for government agencies.⁹
- 2.9** The Auditor-General stated that the role of the integrity agencies in providing independent scrutiny of the Executive Government could influence decisions about their funding and that the existing safeguards for managing this risk are 'not sufficient'.¹⁰ The Auditor-General concluded that the current approach to determining annual funding for these agencies 'presents threats to their independent status'.¹¹
- 2.10** The report acknowledged that the independence of each of the integrity agencies could be impacted differently due to differences in their functions and jurisdiction.¹² For example, the Auditor-General noted that:
- Members of Cabinet or Treasury officials could be affected by an ICAC investigation but there is no independent advice to Cabinet on ICAC's funding requirements and no transparency to Parliament about the reasons for decisions made about ICAC's budget. The absence of these safeguards creates a threat to the ICAC's independence and the potential to limit its ability to fulfil its legislative mandate.¹³
 - There is a risk that decisions about the Electoral Commission's funding could be influenced by its investigations into electoral integrity and potential breaches of electoral law that could involve members of Cabinet or the political party that holds government. If realised this would be a threat to the Commission's independence and its ability to fulfil its legislative mandate.¹⁴
 - As the Ombudsman's investigations generally do not include members of Cabinet, the risk that decisions about its budget could be affected by its investigations is relatively lower. However, the Ombudsman's investigations can comment on policies which may have been endorsed by Cabinet or a minister and cover systemic issues for which ministers and department heads are responsible.¹⁵

⁹ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 4.

¹⁰ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 5.

¹¹ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 4.

¹² Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 5.

¹³ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 15.

¹⁴ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 24.

¹⁵ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 30.

- The LECC's investigations have the potential to have a negative impact on a Minister for Police, who is a member of Cabinet, and the government of the day. There is a risk that decision makers for LECC's funding could be influenced by these considerations. Further, LECC has less independence than the other integrity agencies as it is not classified as a separate GSF agency under the *Government Sector Finance Act 2018*.¹⁶

2.11 The report also noted specific issues concerning the quantum of the annual funding provided to each of the agencies in recent years. For example:

- ICAC's expenditure exceeded the amount of funding it received in recent years even though the demand for assessments of potential corrupt conduct remained steady and the ICAC's investigation activities increased.¹⁷
- The Electoral Commission has not received the full funding amount it has requested in recent years. The conduct of elections is a key element of the democratic system and underfunding this function could have serious consequences.¹⁸
- The Ombudsman's size and revenue has reduced in recent years because several of its functions have been transferred to other agencies or jurisdictions. The fact that the Ombudsman's work is unlikely to align with government priorities may make it difficult for the Ombudsman to make a compelling case for funding increases.¹⁹
- While the LECC has not sought increases to its appropriation funding in recent years, there are no formal mechanisms to question or challenge these decisions if it did have concerns about its funding in the future.²⁰

2.12 To address these risks the Auditor-General recommended a new funding model for the integrity agencies, informed by specified principles including greater transparency and an expanded role for Parliament. Recommendation 1 of the Auditor-General's report stated:

1. Acknowledging that the government of the day is responsible for the financial management of the state, NSW Treasury and DPC should implement a funding model for the integrity agencies that addresses potential threats to their independence while ensuring their accountability. This should be based on the following principles:
 - The integrity agencies are required to demonstrate their accountability as prudent managers of their financial resources.
 - Parliament's role in the budget process should be expanded to ensure Cabinet is provided with more independent advice on the funding requirements for the integrity agencies.

¹⁶ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 38.

¹⁷ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 18.

¹⁸ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 24.

¹⁹ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 33.

²⁰ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 35.

- There should be transparency to Parliament and the relevant agency for decisions made about funding for the integrity agencies.
- There should be structured oversight by Parliament of the performance and financial management of the integrity agencies.²¹

2.13 In her foreword to the report the Auditor-General explained that while the report's recommendations are directed to Treasury and DPC, consistent with the role of the Audit Office, the Parliament has an important role in determining the appropriate funding model for the integrity agencies and in safeguarding their independence.²²

The provision of supplementary funding

The current process

2.14 While annual appropriations are their principal source of funding, the independent oversight bodies may also request supplementary funding to cover unforeseen expenditure during the year. Requests for supplementary funding by these bodies are determined by DPC. The provision of supplementary funding to an independent oversight body requires a reallocation of funds available for other agencies within the Premier and Cabinet cluster.

The committee's first report

2.15 The committee's first report found that ad hoc supplementary funding provided to the oversight bodies is an inadequate way to address their unpredictable resource requirements. The committee raised concerns about the lack of transparency in the supplementary funding process and the inconsistency of that process with the independence of the oversight bodies. To address these concerns the report recommended that the oversight bodies should have access to a 'contingency fund' with access to the fund requiring approval by the relevant parliamentary oversight committee:

Recommendation 2

That the annual budgets for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission include a set contingency fund to address unbudgeted financial demands, with access to the funds governed by prescribed criteria and approval of the relevant parliamentary oversight committee.²³

²¹ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 9.

²² Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 1.

²³ Public Accountability Committee, NSW Legislative Council, *Budget process for independent oversight bodies and the Parliament of New South Wales*, Report 5, March 2020, p 36.

The Auditor-General's report

2.16 The Auditor-General found that a reliance on DPC for supplementary funding creates a potential threat to the independence of the integrity agencies and could lead to conflict if DPC became the subject of an investigation by one of the integrity bodies.²⁴

2.17 For example in relation to the ICAC, the Auditor-General stated:

Asking a DPC Secretary to make decisions between funding for ICAC and another agency in the DPC cluster is inappropriate because neither a DPC Secretary nor a Premier is responsible for ICAC's functions or actions. Further, ICAC's jurisdiction means it could be seeking additional funding to investigate a senior government official. If funding requests were not granted, this could create a perception that decisions about ICAC's funding were compromised.²⁵

2.18 The Auditor-General also noted that, while the DPC Secretary stated in evidence to this inquiry that he did not scrutinise requests from ICAC in any detail because of concerns that this could be perceived as inappropriate, DPC has engaged in some financial management discussions with the ICAC, and in previous years DPC maintained a greater distance from the financial management of the ICAC.²⁶

2.19 The Auditor-General adopted a similar position in relation to the Electoral Commission:

Asking a DPC Secretary to make decisions between funding for NSWEC and another agency in the DPC cluster is inappropriate because neither a DPC Secretary nor a Premier is responsible for the functions or actions of NSWEC. Further, if the only mechanism available for NSWEC to seek additional funding is via a DPC Secretary, this could lead to a situation in which NSWEC is seeking funding from the potential subject of an investigation.²⁷

2.20 In addition to concerns about the impact of the supplementary funding process on the independence of the integrity agencies, the Auditor-General also found that the provision of supplementary funding to ICAC in 2019–20 may not have been consistent with the *Appropriation Act 2019*. In that regard the Auditor-General noted that:

- ICAC's annual appropriation was made under Part 4 of the Act
- DPC sourced the supplementary funding for ICAC from DPC's annual appropriation under Part 2 of the Act

²⁴ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 6.

²⁵ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 21.

²⁶ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 21.

²⁷ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 27.

- Section 25 of the Act stated that funding under Part 2 could only be used for the purposes specified in Part 2.²⁸

2.21 To address these concerns the Auditor-General recommended that the provision of supplementary funding to the integrity agencies should be consistent with appropriation legislation and with the independence of those agencies. Recommendation 3 of the Auditor-General's report related to the cluster arrangement (discussed in the following section of this report), and the first part of the recommendation stated that:

3. NSW Treasury and DPC should ensure that the use of cluster-based financial management arrangements does not diminish the independence of the integrity agencies and is consistent with the requirements of appropriation acts and other relevant legislation. This includes ensuring that:

- the provision of additional funding to the integrity agencies outside the budget process is consistent with appropriation legislation and includes sufficient safeguards to protect the independence of the integrity agencies...²⁹

2.22 In evidence before the committee the Deputy Auditor-General, Mr Goodwin and the Auditor-General, Ms Crawford, indicated that the committee's recommendation concerning the establishment of contingency fund would address concerns about the lack of independence in the current process for accessing supplementary funding, while also ensuring accountability on the part of the oversight bodies:

The CHAIR: Would that mechanism satisfy the independence concerns that you have set out in your report?

Mr GOODWIN: Setting aside a contingency fund—

The CHAIR: With prescribed criteria to access and approval by a relevant parliamentary oversight committee.

Mr GOODWIN: Yes. Prescribed by a parliamentary committee, I think it would go a long way to dealing with some of the issues identified.

Ms CRAWFORD: What we were trying to achieve in our audit is to make sure that we had the right balance between being able to access additional funding required to fulfil our mandate but also the accountability and responsibility that goes hand-in-hand with that. Whatever mechanism, in our view, needs to get that balance correct.

²⁸ This issue does not arise in relation to supplementary funding provided in previous years because the Appropriation Acts in 2014–15 to 2018–19 did not include provisions stating that funding appropriated under Part 2 could only be paid out for the purposes specified in Part 2. See Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 6.

²⁹ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 9, Recommendation 3.

The CHAIR: Auditor-General, I am not asking you to endorse that as the only mechanism. I am simply asking your view about whether or not that mechanism would address those concerns in the balanced way that you ask.

Ms CRAWFORD: I think it has many of the key elements. I will stop there—the key elements, yes.³⁰

The application of efficiency dividends

The current process

- 2.23** In the same way as with government agencies, annual budget allocations for the oversight bodies may be reduced by the imposition of efficiency dividends and other savings measures. Such savings are generally removed before the Appropriation Bill is introduced into Parliament, but in some cases have been deducted from funds approved by Parliament. This approach is facilitated by the fact that the Appropriation Act does not directly appropriate funds to each independent oversight body but rather appropriates a sum to the relevant minister, the Premier, ‘for the services of’ each body.

The committee’s first report

- 2.24** The committee’s first report found that the oversight bodies gave compelling evidence about the imposition of efficiency dividends on their budgets and acknowledged doubts as to the legal authority for deducting budget savings from the amounts approved by Parliament. To address these concerns the committee recommended that each oversight body should be directly allocated its annual funding through the Appropriation legislation rather than the funding being allocated to the relevant Minister so that the bodies are not subject to reductions in funding during the financial year:

Recommendation 3

That the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister, so they are not subject to reductions in funding during the financial year.³¹

The Auditor-General’s report

- 2.25** The Auditor-General found that the mechanisms for applying efficiency dividends and budget savings to the integrity agencies ‘create tensions with their independent status’.³²

³⁰ Evidence, Ms Crawford, 23 October 2020, p 5; Mr Ian Goodwin, 23 October 2020, p 5.

³¹ Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales*, p 37.

³² Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 4.

2.26 The Auditor-General also found that the legal basis for restricting the integrity agencies' access to appropriation funding is contestable³³ as there are two competing interpretations of appropriation legislation:

- Treasury and DPC take the view that the Appropriation Act provides funding for the integrity agencies to a Premier and does not specify that a Premier must provide the full amount of funding to the agencies. This interpretation leads to the view that a Premier can restrict access to appropriation funding that was approved by Parliament.³⁴
- An alternative interpretation would take account of factors specific to the integrity agencies, such as their independence of ministerial control, the nature of the investigations they may undertake and the fact that they are accountable to Parliament. This interpretation leads to the view that a reduction of the agencies' access to appropriation funding could diminish their independent status.³⁵

2.27 As to the second interpretation the Auditor General observed:

If this alternative interpretation is used, then a Premier would require an express source of power to limit the availability of appropriation funding to the integrity agencies. If a Premier could reduce the integrity agencies' access to funding that was appropriated by Parliament, their independence could be compromised and their ability to fulfil their legislative mandate could be diminished.³⁶

2.28 In an opinion appended to the Auditor-General's report, the Crown Solicitor addressed the question of whether it would be open for a minister, including the Premier, to apply an efficiency dividend or similar mechanism to reduce the availability of funds appropriated to the minister for the services of the integrity agencies under the Appropriation Act. In response the Crown Solicitor stated:

In my view a minister to whom such funds had been appropriated would not ordinarily have any power to reduce the total sum of the appropriated sums available to the agency. The total sums have been appropriated to the Legislature in an Appropriation Act, and an express source of power would be required in order to reduce the amounts of those appropriated funds.³⁷

³³ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, pp 5, 41.

³⁴ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, pp 40, 42.

³⁵ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, pp 40, 42.

³⁶ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 6.

³⁷ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, Appendix 3, NSW Crown Solicitor, 'Financial arrangements & management practices in integrity agencies', 13 March 2020, p 81.

- 2.29** The Crown Solicitor went on to advise that the minister could impose terms and conditions on a delegation of authority to an agency to withdraw appropriated funds such as by limiting the circumstances in which those funds may be expended but any such terms and conditions could not have the effect of limiting the exercise of a statutory function of the agency.³⁸
- 2.30** To address the concerns in this area the Auditor-General recommended that the process for applying efficiency dividends be reassessed to ensure it is consistent with appropriation legislation and with the independence of the integrity agencies. Recommendation 2 of the Auditor-General's report stated that:
2. NSW Treasury and DPC should reassess whether the process used to apply efficiency dividends to the integrity agencies is consistent with appropriation legislation and the independence of the integrity agencies.³⁹

Participation in the Premier and Cabinet cluster

The current process

- 2.31** Public sector agencies are grouped into 'clusters' for various administrative and financial management purposes. Agencies are required to report against outcomes assigned to their cluster and to frame funding requests in terms of their contribution to these outcomes. The independent oversight bodies sit within the Premier and Cabinet cluster which is led by DPC.

The committee's first report

- 2.32** The impact of participation in the Premier and Cabinet cluster underpinned many of the committee's concerns in its first report regarding matters such as the provision of supplementary funding and the allocation of efficiency dividends to the independent oversight bodies. The committee concluded that the positioning of these bodies within a cluster creates the appearance that they are subordinate to the Executive Government, and makes it challenging for the bodies to compete against government priorities to receive the funding they require. The committee therefore recommended that the independent oversight bodies be removed from the Premier and Cabinet cluster:

Recommendation 4

That the NSW Government remove the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission from the Premier and Cabinet cluster.⁴⁰

³⁸ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, Appendix 3, NSW Crown Solicitor, 'Financial arrangements & management practices in integrity agencies', 13 March 2020, pp 81-82. See also Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 43.

³⁹ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 9.

⁴⁰ Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales*, p 37.

The Auditor-General's report

2.33 In a second opinion attached to the Auditor General's report, the Crown Solicitor described the cluster concept as an organisational tool for government which is particularly relevant at the ministerial level where coordinating or lead ministers of a cluster have particular responsibilities in the cabinet, budget and appropriation processes relating to a cluster. However, the Crown Solicitor took the view that a cluster is 'a term of reference with no established legal meaning or effect'.⁴¹

2.34 In her report, the Auditor-General expressed particular concern about requirements for the integrity agencies to report to DPC on their activities and outcomes. In that regard the Auditor-General noted that the integrity agencies have been asked by DPC to develop plans and report against the state outcome of 'accountable and responsible government'. The Auditor-General said that this outcome is broad enough to be consistent with the general role and functions of the integrity agencies. However, as the integrity agencies are not subject to direction by a minister or department and report directly to Parliament on their functions: 'it [is] inappropriate for the integrity agencies to be asked to report against objectives and outcomes that are set by theNSW Government and administered by DPC'.⁴²

2.35 To address these concerns the Auditor-General recommended that the use of cluster-based financial management arrangements, including any requests to report on outcomes, should not diminish the independence of the integrity agencies. The second part of Recommendation 3 of the Auditor-General's report stated:

3 NSW Treasury and DPC should ensure that the use of cluster-based financial management arrangements does not diminish the independence of the integrity agencies and is consistent with the requirements of appropriation acts and other relevant legislation. This includes ensuring that:

...

- any request for the integrity agencies to report on activities and outcomes as a part of outcome budgeting reforms is consistent with their independence.⁴³

2.36 In evidence before the committee, the Auditor-General, Ms Crawford, confirmed that the aspect of the cluster arrangement which involves the integrity agencies reporting against performance criteria set by the government is inconsistent with their statutory independence:

The CHAIR: ... if you are reporting against criteria about performance and outcomes that are not set by an independent statutory agency but by the Executive of the day, that is one element that is not consistent with statutory independence, correct?

Ms CRAWFORD: Correct.⁴⁴

⁴¹ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, Appendix 3, NSW Crown Solicitor, 'Financial arrangements & management practices in integrity agencies; advice 2', 8 April 2020, p 100.

⁴² Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, pp 7, 45.

⁴³ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 9, Recommendation 3.

⁴⁴ Evidence, Ms Crawford, 23 October 2020, p 13.

2.37 However, Ms Crawford also suggested that participation in the cluster would not be problematic if it was limited to administrative matters and was consultative in nature rather than involving the agencies being directed to act in particular ways:

Ms CRAWFORD: ... All agencies have to be part of some administrative arrangement. Provided those arrangements are consultative about connections and administrative matters, then the DPC cluster is perhaps the most relevant. If it becomes something more in terms of directing or requiring, then that does not work for an integrity body.⁴⁵

The budget process for the Parliament – Supplementary submission

2.38 The key aspects of the budget process for the Parliament are similar to those which apply to the independent oversight bodies outlined earlier in this chapter. For example:

- While the Parliament's annual funding is approved by Parliament in the Appropriation (Parliament) Act the amounts of the appropriations set out in the Act are determined by the government of the day.
- Any requests for supplementary funding for unforeseen expenses during the year are determined by Treasury.
- Annual funding has routinely been subject to the application of efficiency dividends and other budget savings.
- While the parliamentary departments are not treated as part of a cluster they have been subject to outcome budgeting requirements.

2.39 In its first report the committee made recommendations for reform of this process drawing on matters discussed in a submission and evidence provided by the Department of the Legislative Council and the Department of Parliamentary Services in December 2019. Since then the two Departments have provided a supplementary submission to the inquiry.

2.40 An outline of the committee's recommendations and of the issues discussed in the supplementary submission is provided below.

The committee's first report

2.41 To ensure a greater level of independence in the method of funding the Parliament, the committee's first report supported the adoption of new funding arrangements based on the model in the United Kingdom where the House of Commons Commission recommends the amount to be incorporated into the appropriation bill for that House. The committee therefore recommended that the government work with the Legislature in adopting the United Kingdom model of funding for the Parliament of New South Wales:

⁴⁵ Evidence, Ms Crawford, 23 October 2020, p 13.

Recommendation 5

That the NSW Government work with the Legislature in adopting the United Kingdom model of funding for the Parliament of New South Wales.⁴⁶

- 2.42** The committee further stated that irrespective of whether the government agrees to adopt the House of Commons approach, the Parliament itself should make changes to the way in which its funding is determined. To that end the committee recommended that this committee should make recommendations concerning the annual budget and any supplementary funding for the Department of the Legislative Council, and that this committee, the Public Accountability Committee, in consultation with a committee appointed by the Legislative Assembly, should perform the same role in relation to annual and supplementary funding for the Department of Parliamentary Services:

Recommendation 6

That the Legislative Council designate the Public Accountability Committee to review the Department of the Legislative Council's annual budget submission and give directions as to the funding priorities of the Legislative Council, as well as any requests for supplementary funding.

Recommendation 7

That the Legislative Council designate the Public Accountability Committee to review the Department of the Parliamentary Services' annual budget submission, in collaboration with any committee appointed by the Legislative Assembly for the same purpose, and give directions as to the funding priorities of the Department of Parliamentary Services, as well as any requests for supplementary funding.⁴⁷

- 2.43** In the longer term the committee recommended that the budget process for the Parliament as a whole should be the subject of further consultation between the Presiding Officers and the Premier with a view to establishing a model based on one of the models in place in either the United Kingdom or Canada:

Recommendation 8

That following further consultation by the President with the Speaker and Premier, the Legislative Council seek the concurrence of the Legislative Assembly in the appointment either of a joint committee or alternatively of two separate committees of the two Houses meeting together for the further consideration of an appropriate funding model for the Parliament of New South Wales as a whole, based on one of the models in place in either the United Kingdom or Canada.⁴⁸

⁴⁶ Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales*, p 53.

⁴⁷ Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales*, p 54.

⁴⁸ Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales*, p 54.

Supplementary submission

2.44 In their supplementary submission the Department of the Legislative Council and the Department of Parliamentary Services advised that there has been significant improvement in the Parliament's budget position since their initial submission in December 2019.⁴⁹ Of note:

- The requirement for the Parliament to fit into the government's outcome budgeting framework is being replaced with the Parliament's own strategic planning and reporting framework, with reporting of performance being confined to annual reports instead of to the Expenditure Review Committee of Cabinet.
- There has been a deferral of efficiency dividends and additional budget savings for 2019-20, and a reversal of the application of efficiency dividends in the next two years.
- Additional funding to cover some of the budget risks discussed in the initial submission has been approved.⁵⁰

2.45 However, the Departments also advised that:

- There has been no formal exemption of the Parliament from efficiency dividends and other savings measures in the future.
- There are still significant budget risks that have not been addressed or have only been addressed in the short term.
- The budget process 'still relies wholly on the Executive to approve funding'.⁵¹

2.46 The Departments went on to state that a Budget Review by officials from Treasury and the Parliament which commenced in November 2019 has developed draft recommendations that are closely linked with the recommendations of this committee, and that the release of the Auditor-General's report in October 2020 should enable Treasury to complete the Review.⁵²

The NSW Government's response to the committee's first report

2.47 The government responded to the committee's first report in September 2020 addressing the first five recommendations of the report, namely those which were addressed to the NSW Government.

⁴⁹ Supplementary Submission 55a, Department of the Legislative Council and Department of Parliamentary Services, p 3.

⁵⁰ Supplementary Submission 55a, pp 3-4.

⁵¹ Supplementary Submission 55a, pp 3-4.

⁵² Supplementary Submission 55a, p 5.

2.48 In response to Recommendations 1 to 4, which concern the budget process for the independent oversight bodies, the government stated:

The Government is committed to giving the matters raised by the committee due consideration. The Government will carefully consider the report of the Auditor-General, when received, as well as the committee's report, in determining its position in relation to these issues.⁵³

2.49 In response to Recommendation 5, which concerns the budget process for the Parliament, the government stated:

The Government also notes that recommendation 5 calls for the adoption of a specific funding model for the Parliament of NSW. However, recommendation 8 calls for Parliament to convene a committee (or committees) for further consideration of its preferred funding model. The Government will consider its approach following completion of the Auditor-General's report.⁵⁴

Subsequent views expressed by ICAC and Mr Bret Walker SC

2.50 Since the tabling of the committee's first report ICAC has expressed further views concerning the budget process for ICAC in a series of published documents: a special report to Parliament entitled *The need for a new independent funding model for the ICAC* (May 2020), a response to the Auditor-General's report (October 2020) and a second special report to Parliament entitled *A parliamentary solution to a funding model for the ICAC* (November 2020).

2.51 The first special report included an opinion by Mr Bret Walker SC concerning the budget process as it applies to the ICAC. The response to the Auditor-General's report included a supplementary opinion by Mr Walker.

2.52 An outline of the issues addressed by the ICAC and Mr Walker is provided below.

First special report to Parliament

2.53 In its first special report to Parliament the ICAC elaborated on proposals it had previously put forward for a new funding model for ICAC in which an independent 'eminent person' would be appointed to determine the ICAC's annual and supplementary funding.⁵⁵ ICAC also commented on the funding model recommended by this committee in its first report.

2.54 With regard to the committee's model ICAC endorsed Recommendations 3 and 4 concerning direct appropriations by Parliament and removal from the Premier and Cabinet cluster but expressed reservations about Recommendations 1 and 2 concerning annual and supplementary funding. In relation to Recommendations 1 and 2, the ICAC 'fully endorses the rationale' but

⁵³ NSW Government, *Inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales - Government response*, 24 September 2020, pp 1-2.

⁵⁴ NSW Government, *Inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales - Government response*, 24 September 2020, p 2.

⁵⁵ ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, pp 5, 38.

supported adoption of a different funding mechanism.⁵⁶ The ICAC argued that the committee's recommended process gives rise to problems such as:

- The relevant parliamentary oversight committee may not be in a position to properly assess ICAC's funding requests where the disclosure of relevant information to the committee is not possible as it might prejudice an investigation⁵⁷
- Government members of the committee might find it difficult to support funding above the amount identified in the government's submission⁵⁸
- Where ICAC is investigating or has made findings against a member of the party to which a member of the committee belongs a perception may arise that the committee's funding decision has been influenced by the ICAC's findings, leading to a loss of public confidence in the process.⁵⁹

Opinion by Mr Bret Walker SC

2.55 In the opinion attached to the special report, Mr Bret Walker SC advised that the law requires that ICAC's independence be given effect in the arrangements which are made for the funding of its operations.⁶⁰ On this basis Mr Walker advised that the current funding arrangements for ICAC are 'not fit for purpose'.⁶¹

2.56 As to the steps which should be taken to address the problem Mr Walker advised that 'a parliamentary solution presents as that which principle best supports'⁶² and that the improvements recommended by this committee would assist in eliminating the 'unlawful' aspects of the current funding arrangements for the ICAC:

... there is much to be said for the improvements recommended by PAC in its Report. They would go a long way to eliminating the undesirable – unlawful, as I see them – aspects of the current funding arrangements for ICAC. Put shortly, they spare senior bureaucrats the impossible burden imposed by fiscally supervising the organ of government intended to supervise the whole administration in relation to possible corruption.⁶³

2.57 In her report the Auditor-General noted Mr Walker's view that the involvement of the executive government in ICAC's funding arrangements are unlawful. In response to that view the Auditor-General submitted that the executive government's involvement is in accordance with the legislative framework for appropriations and Westminster conventions but that the involvement

⁵⁶ ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, p 7.

⁵⁷ ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, p 32.

⁵⁸ ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, p 32.

⁵⁹ ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, p 33.

⁶⁰ ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, Appendix 1, Mr Bret Walker SC, 'The independence of ICAC, and its budget process', pp 15-16, paragraph 41.

⁶¹ ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, Appendix 1, Mr Bret Walker SC, 'The independence of ICAC, and its budget process', p 16, paragraph 42.

⁶² ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, Appendix 1, Mr Bret Walker SC, 'The independence of ICAC, and its budget process', p 17, paragraph 45.

⁶³ ICAC, Special Report, *The need for a new independent funding model for the ICAC*, May 2020, Appendix 1, Mr Bret Walker SC, 'The independence of ICAC, and its budget process', p 17, paragraph 46.

of DPC, Treasury and Cabinet in funding decisions for ICAC creates threats to ICACs independence that are not mitigated adequately under the current financial arrangements.⁶⁴

Response to the Auditor-General's report

- 2.58** In its response to the Auditor-General's report the ICAC argued that while a new funding model for ICAC is required, the ICAC does not believe DPC and Treasury should be involved in implementing the model proposed by the Auditor-General.⁶⁵ This position was based on the view that executive government involvement in ICAC's funding arrangements is unlawful as it is incompatible with ICAC's independence.⁶⁶

Supplementary opinion by Mr Bret Walker SC

- 2.59** In his supplementary opinion appended to the ICAC's response to the Auditor-General's report, Mr Walker advised that the law does not permit any substantive role to be performed by senior bureaucrats from DPC or Treasury in decision-making concerning the ICAC's funding.⁶⁷ Rather, Mr Walker advised that 'the Houses [of Parliament] are the best suited of all available centres of political power in New South Wales to devise and promulgate a better ICAC funding model'.⁶⁸

Second special report to Parliament

- 2.60** In its second special report to Parliament ICAC argued that following the tabling of the Auditor-General's report, which identified risks and threats to ICAC arising from the government's influence over funding, there is now an urgent need to establish a new funding process for ICAC.⁶⁹ ICAC contended that the Parliament is the appropriate institution to address these risks and to establish an independent funding process for ICAC given that ICAC is accountable to the Parliament and its work assists the Parliament to perform its constitutional role of scrutinising and holding the government to account.⁷⁰

⁶⁴ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, p 21.

⁶⁵ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, Appendix 1: Response from ICAC, p 49.

⁶⁶ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, Appendix 1: Response from ICAC, p 49.

⁶⁷ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, Appendix 1: Response from ICAC, Attachment, Mr Bret Walker SC, 'The independence of ICAC, and its budget process, Supplementary opinion', p 1, paragraphs 2, 3.

⁶⁸ Auditor-General for NSW, *The effectiveness of the financial arrangements and management practices of four integrity agencies*, Special Report, 20 October 2020, Appendix 1: Response from ICAC, Attachment, Mr Bret Walker SC, 'The independence of ICAC, and its budget process, Supplementary opinion', pp 3-4, paragraph 12.

⁶⁹ ICAC, Special Report No. 2, *A parliamentary solution to a funding model for the ICAC*, November 2020, p 3.

⁷⁰ ICAC, Special Report No. 2, *A parliamentary solution to a funding model for the ICAC*, November 2020, pp 10, 14.

ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2020

- 2.61** In November 2020 a cross bench member of the Legislative Council, the Hon Robert Borsak MLC, introduced a bill which proposed reforms to the budget process for the ICAC, the LECC, the Electoral Commission and the Ombudsman.
- 2.62** The bill included provisions which:
- require the relevant joint parliamentary committee for each independent oversight body to review the information prepared for use in Budget preparations by the body and make recommendations to the Treasurer on priorities for funding, having regard to that information
 - specify that an appropriation made by the annual Appropriation Act to each oversight body is taken to include, as a contingency fund for the annual reporting period, an amount equal to 25 per cent of the appropriation made, which could be accessed on approval by the relevant joint committee subject to requirements prescribed by the regulations
 - require an appropriation made by the annual Appropriation Act to each oversight body to be paid directly out of the Consolidated Fund to the agency
 - specify that LECC is a separate GSF agency under the *Government Sector Finance Act 2018*.
- 2.63** The bill was passed by the Legislative Council with the support of the opposition and cross bench. During debate on the bill the Special Minister of State, the Hon Don Harwin MLC, indicated that the government had not had a chance to fully consider and consult on the bill. Mr Harwin said that the government is considering the Auditor-General's recommendations and will finalise its position in 2021. Mr Harwin also stated that the government will consider this committee's further report when tabled.⁷¹
- 2.64** Following its passage by the Legislative Council, the bill was forwarded to the Legislative Assembly for concurrence, but has not progressed beyond the first reading in that House.

Amendments to Appropriation (Parliament) Bill 2020

- 2.65** On 24 November 2020, the House adopted three amendments to the Appropriation (Parliament) Bill 2020 relating to the funding of the ICAC and the Parliament.⁷² Amendment number two inserted additional appropriations in relation to the services of the ICAC:

This Act appropriates the sum of \$7,300,000 to the Independent Commission Against Corruption out of the Consolidated Fund for the following services of the Independent Commission Against Corruption for the year 2020–21—

- (a) services relating to reporting to Parliament,
- (b) services relating to responding to demands from Parliament.

⁷¹ NSW Legislative Council, *Hansard*, 18 November 2020, Hon Don Harwin MLC, p 49.

⁷² *Minutes*, NSW Legislative Council, 24 November 2020, p 1784.

2.66 In moving the amendment, Mr Shoebridge indicated as follows:

On the commission's analysis and on the evidence presented to the [Public Accountability Committee], the failure to properly fund ICAC over the course of its history has led to an effective \$7.2 million cut in funding as measured against the CPI. That in no way addresses ICAC's additional need for resources because of the increased sophistication of corruption in New South Wales. The amendments seek to at least reinstate the status quo for the ICAC by reinstating the \$7.2 million in funding that has been stripped from it year by year.⁷³

2.67 Amendment number three inserted a new provision in relation to the funding of the Parliament:

The NSW Treasurer shall consult with the presiding officers and party leaders (including a representative nominated by each of the Greens and the Animal Justice Party) of the NSW Legislative Council to establish new annual budgets for the Legislative Council and the Department of Parliamentary Services for the year 2021-22 by 30 April 2021.

2.68 In moving the amendment, the Hon Mark Latham indicated as follows:

Members have just carried a motion to give the Independent Commission Against Corruption its independence, so we should also ensure that the Legislative Council has funding independence as a House of the Parliament.⁷⁴

2.69 The Appropriation (Parliament) Bill 2020, with the Council amendments, was returned to the Legislative Assembly on 25 November 2020.

2.70 On the Legislative Assembly receiving the bill with the Council amendments, the Treasurer, the Hon Dominic Perrottet, moved that the Assembly disagree to the Council amendments and that the bill, without the Council amendments, be presented to the Governor for assent pursuant to section 5A of the *Constitution Act 1902*.⁷⁵ This section provides that whilst it is open to the Council to reject, fail to pass or suggest any amendment to a bill 'appropriating revenue or moneys for the ordinary annual services of the Government', notwithstanding the actions of the Council, the Assembly may direct that such bill, with or without any amendments suggested by the Council, be presented to the Governor for assent.

2.71 In adopting the approach that he did, the Treasurer relied on advice from the Solicitor-General, Mr Michael Sexton SC, that the bill fell within the operation of section 5A of the *Constitution Act 1902*. Mr Sexton's advice was that the funding of the Legislature is one of the responsibilities of the government, and as such falls within the meaning of the words 'ordinary annual services of the Government' in section 5A.⁷⁶ Mr Sexton's advice adopted with approval the earlier advice of the then Solicitor General Keith Mason QC of 7 May 1992 (SG92/50).⁷⁷

⁷³ *Hansard*, NSW Legislative Council, 24 November 2020, p 70.

⁷⁴ *Hansard*, NSW Legislative Council, 24 November 2020, pp 75-76.

⁷⁵ *Votes and Proceedings*, NSW Legislative Assembly, 19 November 2020, p 1032. Although recorded in the *Votes and Proceedings* of 19 November 2020, the sitting day of 19 November 2020 in the Legislative Assembly in fact continued over several calendar days.

⁷⁶ Solicitor General, 'Question of meaning of term "ordinary annual services of the Government" in section SA(1) of the Constitution Act 1902', Advice 2020/26, 20 Nov 2020, pp 2-3.

⁷⁷ Solicitor General, 'Ordinary annual services of the Government', Advice 1992/50, 7 May 1992.

- 2.72** The Committee notes that certain authorities question the validity of this approach. *New South Wales Legislative Council Practice* cites various legal bases for arguing that the Legislature is not an instrument of the government and that the government does not provide services through the Legislature. Of note, it cites the adoption by the Parliament in 1993 of section 24B(3) of the *Constitution Act 1902*, concerning the early dissolution of the Legislative Assembly, which specifically carves out from its operation a bill which 'appropriates revenue or moneys for the Legislature only'. Rather it argues that the precise meaning of the phrase 'ordinary annual services of the Government' must be understood in the context of the constitutional settlement of 1933, when sections 5A and 5B were inserted into the *Constitution Act 1902* after approval by the electors at a referendum to address deadlocks between the Houses.⁷⁸
- 2.73** *Oggers Australian Senate Practice* concisely states in relation to the federal Appropriations (Parliamentary Departments) Bill that 'As this bill is not for the ordinary annual services of the government it is amendable by the Senate'.⁷⁹
- 2.74** Ultimately, the Assembly, on division, disagreed to the Council amendments and returned the following message to the Council:
- The Legislative Assembly having considered the message date 25 November 2020 in which the Legislative Council requested the concurrence of the Legislative Assembly with amendments to the Appropriation (Parliament) Bill 2020, informs the Legislative Council that the Legislative Assembly disagrees with the amendments and further that pursuant to section 5A of the Constitution Act 1902 proposes to forthwith present the Bill together with the Appropriation Bill and cognate Payroll Tax Amendment Bill to Her Excellency the Governor for Royal Assent.⁸⁰
- 2.75** This was only the second time section 5A of the *Constitution Act 1902* had been used in this manner, the previous occasion being in 1996, again in relation to the Appropriation (Parliament) Bill of that year.
- 2.76** The bill, without the Council amendments, was assented to by Her Excellency the Governor on 27 November 2020. The message from the Assembly to the Council indicating its course of action in this matter is due to be reported to the House when it next sits on 16 February 2021.

Committee comment

- 2.77** The matters discussed in this chapter demonstrate an urgent and compelling need for reform of the budget process for the independent oversight bodies and the Parliament. The importance of greater transparency and an expanded role for Parliament have been accepted not just by the independent oversight bodies and two parliamentary departments, but also by the Auditor-General and Mr Bret Walker SC.

⁷⁸ S.Frappell and D.Blunt (eds), *New South Wales Legislative Council Practice*, 2nd edn, (Federation Press, 2020), pp 612-3, 615-8, 629-32.

⁷⁹ R Laing (ed), *Oggers' Australian Senate Practice*, as revised by H Evans, 14th ed, (Department of the Senate, 2016), p 420.

⁸⁰ *Votes and Proceedings*, NSW Legislative Assembly, 19 November 2020, pp 1032-1033.

- 2.78** The current funding arrangements cannot be allowed to continue; apart from the risks which they pose to the independence and mandates of the bodies concerned, the lawfulness of aspects of the arrangements has been called into doubt. The Legislative Council has recently recognised the urgent need to address these issues by its passage of a bill to provide greater independence and transparency in the funding of the independent oversight bodies, namely the ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2020. It is notable that this bill was passed by a majority of the members of the House representing a wide range of different political beliefs.
- 2.79** The funding model for the independent oversight bodies recommended in the committee's first report is broadly consistent with the principles recommended by the Auditor-General in her recent report and with the measures put forward in the ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2020:
- In Recommendation 1 the committee proposed a new process for determining annual appropriations in which the relevant parliamentary oversight committee would make recommendations on funding priorities having regard to submissions from the independent oversight body as well as Treasury and DPC. The Auditor-General recommended that a new funding model should be implemented to address potential threats to the independence of the oversight bodies based on principles which included transparency and greater parliamentary involvement.
 - In Recommendation 2 the committee proposed that the annual budgets for the oversight bodies should include a contingency fund to address unbudgeted financial demands, with access to the fund being subject to approval by the parliamentary oversight committee. The Auditor-General recommended that the provision of supplementary funding should include sufficient safeguards to protect the bodies' independence and agreed that the committee's recommendation would address such concerns.
 - In Recommendation 3 the committee proposed that the Parliament directly allocate annual funding to the oversight bodies to avoid the government imposing funding reductions such as efficiency dividends. The Auditor-General confirmed that the legal basis for restricting access by the oversight bodies to appropriation funding is contestable and recommended a reassessment of the current arrangements to ensure consistency with legislative requirements and the independent status of the oversight bodies.
 - In Recommendation 4 the committee proposed that the oversight bodies be removed from the Premier and Cabinet cluster. The Auditor-General recommended that cluster arrangements should not be used to diminish the independence of the oversight bodies and appeared to contemplate a limited continuation of the arrangements in a manner which would not involve the oversight bodies being subject to direction. The committee's recommendation for removal from the cluster would not preclude any of the oversight bodies voluntarily entering into arrangements with central government agencies which might assist the bodies to keep in touch with administrative developments in the wider public sector. Removal from the cluster would not involve any loss of accountability as the agencies would report to Parliament, for example in their annual reports, against their own strategic planning frameworks.

- 2.80** Further support for the committee's approach to reform is provided by the opinion of Mr Bret Walker SC attached to the ICAC's first Special Report. Mr Walker advised that aspects of the funding arrangements for ICAC which conflict with ICAC's statutory independence are not just undesirable, but unlawful. He further advised that the improvements recommended by this committee would go a long way towards eliminating the unlawful aspects of the current arrangements.
- 2.81** The committee acknowledges that the ICAC has expressed reservations about the committee's recommendations concerning annual and supplementary funding citing factors such as the potential for conflicts of interest to arise involving members of the parliamentary committee. However, the committee believes that as it is the Parliament which approves funding for the oversight bodies, it is the Parliament or its designated committees which are best placed to adopt suitable additional safeguards to address particular circumstances which might arise in the funding process.
- 2.82** Now that the Auditor-General has completed her report the committee asks the government to address each of the recommendations relating to the oversight bodies that were directed to the government in the committee's first report.
-

Recommendation 1

That the parliamentary oversight committees for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission review the annual budget submissions of each agency and make recommendations as to the funding priorities.

Recommendation 2

That the annual budgets for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission include a set contingency fund to address unbudgeted financial demands, with access to the funds governed by prescribed criteria and approval of the relevant parliamentary oversight committee.

Recommendation 3

That the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister, so they are not subject to reductions in funding during the financial year.

Recommendation 4

That the NSW Government remove the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission from the Premier and Cabinet cluster.

- 2.83** Separately, the committee remains concerned about the implications of evidence received from the NSW Electoral Commission, which is dealt with in the committee's first report at paragraphs 3.26 to 3.31, including a specific reference to the next NSW election:

Further, the Commission stated that Treasury's forward estimate for the conduct of the 2023 State election is again based on the 2015 amount with CPI growth only and is more than \$30 million short of what the election will cost to oversee and conduct.⁸¹

- 2.84** This matter needs further scrutiny. Accordingly, this committee believes that this matter should be referred to the Joint Standing Committee on Electoral Matters for further review, possibly immediately following the next Federal election.
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Recommendation 5

That the Legislative Council refer the following terms of reference to the Joint Standing Committee on Electoral Matters:

- That the Joint Standing Committee on Electoral Matters inquire into and report on the adequacy of the funding allocation of the NSW Electoral Commission for the 2023 election, in particular taking into account the latest advice around issues of electoral integrity arising from foreign interference in elections.
-

- 2.85** In relation to the funding process for the Parliament, the Auditor-General's findings concerning the oversight bodies and Mr Walker's opinions concerning ICAC support the committee's recommendations for reforms to the budget process for the Parliament, which is not just an oversight body but a separate arm of government.

- 2.86** In its first report the committee found that it is not appropriate for the Parliament to be funded as if it is simply an executive government agency and that the Parliament's funding priorities should be determined by the Parliament and its members following consultation through an appropriate mechanism. To realise this vision the committee made four recommendations for reform of the Parliament's budget process. These recommendations in part mirrored the principles underpinning the committee's recommendations concerning the independent oversight bodies and in part reflected the unique status of the Parliament as the elected representative body at the apex of the accountability framework of the state:

⁸¹ Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales*, p 17.

- In Recommendation 5 the committee proposed that the government work with the Legislature in adopting the United Kingdom model of funding for the Parliament of New South Wales. The committee considered that this model strikes the appropriate balance between providing the Parliament with a degree of autonomy in the setting of its budget informed by the Parliament's own priorities, while still allowing appropriate regard to be had to the financial position of the state.
- In Recommendation 6 the committee proposed that the Legislative Council designate this committee, the Public Accountability Committee, to review the Department of the Legislative Council's annual budget submission and give directions as to the funding priorities of the Legislative Council, as well as any requests for supplementary funding.
- In Recommendation 7 the committee proposed that the Legislative Council designate this committee, the Public Accountability Committee, to review the Department of the Parliamentary Services' annual budget submission, in collaboration with any committee appointed by the Legislative Assembly for the same purpose, and give directions as to the funding priorities of the Department of Parliamentary Services, as well as any requests for supplementary funding.
- In Recommendation 8 the committee proposed that following further consultation the Legislative Council seek the concurrence of the Legislative Assembly in the appointment either of a joint committee or two separate committees of the Houses meeting together for the further consideration of an appropriate funding model for the Parliament of New South Wales as a whole, based on one of the models in place in either the United Kingdom or Canada.

2.87 Since the publication of the committee's first report the committee has been told that the Parliament's budget position has improved in certain respects such as by the limited temporary deferral of efficiency dividends and the provision of additional funding for specific matters. However, the committee has also been told that notwithstanding these limited improvements the Parliament still relies wholly on the executive to approve funding and there remain unresolved questions concerning the Parliament's capacity to address budget and capital risks in future years. The recent evidence discussed in this report has strengthened the committee's conviction that its recommended reforms to the Parliament's budget process are vital to ensure that the Parliament can continue to properly perform its constitutional and representative roles.

2.88 The Committee remains concerned in particular about the delays in the delivery of Hansard, especially for committees, as a result of inadequate staffing and resourcing. The scrutiny of parliamentary deliberations that the timely delivery of Hansard transcripts allows is crucial to support public trust in the Parliament as an institution.

2.89 Given that adequate staffing and resourcing of the Hansard team is essential to the proper operation of the NSW Legislative Council, the Parliament of New South Wales should provide funding accordingly.

Recommendation 6

That the Parliament of New South Wales review and ensure the provision of adequate staffing and resourcing to Hansard services.

- 2.90** Accordingly, with the tabling of our final report, we call on the government and the Legislative Council to implement the recommendations from the committee's first report which concern the Parliament's budget process.

Recommendation 7

That the NSW Government work with the Legislature in adopting the United Kingdom model of funding for the Parliament of New South Wales.

Recommendation 8

That the Legislative Council designate the Public Accountability Committee to review the Department of the Legislative Council's annual budget submission and give directions as to the funding priorities of the Legislative Council, as well as any requests for supplementary funding.

Recommendation 9

That the Legislative Council designate the Public Accountability Committee to review the Department of the Parliamentary Services' annual budget submission, in collaboration with any committee appointed by the Legislative Assembly for the same purpose, and give directions as to the funding priorities of the Department of Parliamentary Services, as well as any requests for supplementary funding.

Recommendation 10

That following further consultation by the President with the Speaker and Premier, the Legislative Council seek the concurrence of the Legislative Assembly in the appointment either of a joint committee or alternatively of two separate committees of the two Houses meeting together for the further consideration of an appropriate funding model for the Parliament of New South Wales as a whole, based on one of the models in place in either the United Kingdom or Canada.

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- 2.91** The Committee notes that the Legislative Council attempted in part to address these issues and recommendations in relation to the funding of the Parliament through the adoption on 24 November 2020 of an amendment to the Appropriation (Parliament) Bill 2020. It regrets that the Legislative Assembly chose not to support this amendment, and resolved that the bill, without the Council's amendment, be presented to the Governor for assent purportedly pursuant to section 5A of the *Constitution Act 1902*.

- 2.92** To prevent such disagreement between the Houses in the future, the committee reiterates its belief that the government should adopt in the Appropriation (Parliament) Bill 2021 a funding model for the Parliament, together with the independent oversight bodies, which recognises their independence of government and provides an appropriate role for the Parliament in determining the funding of both the Parliament and the independent oversight bodies.
- 2.93** The committee believes that its recommendations provide a path for reform which will enhance transparency in funding decisions, better align the budget process with fundamental constitutional principles and ensure accountability in the expenditure of public funds.
- 2.94** In the absence of such an approach it is likely the constitutional limit on the Legislative Assembly to present budget bills to the Governor other than for the ordinary annual services of the Government without amendments adopted by the Legislative Council will need to be separately tested. It would of course be preferable for these matters to be determined by political consensus, centred on the need for the Parliament and critical state oversight bodies to be financially independent, than by judicial determination.

Chapter 3 The budget process for the Audit Office

As noted in chapter 1, the committee did not consider the budget process for the Audit Office of New South Wales in the first phase of its inquiry in light of the Auditor-General's ongoing audit of the four independent oversight bodies. However, the committee turned to consider the matter following the completion of that audit in October 2020. The committee's consideration was assisted by a submission from the Auditor-General and evidence provided at a hearing.

This chapter outlines the role of the Audit Office and the current funding arrangements for the office. It then details evidence provided to the inquiry concerning potential threats to the independence and mandate of the Audit Office arising from the budget process. The chapter also considers funding arrangements for audit offices in other jurisdictions.

The role of the Audit Office

- 3.1** The Audit Office is a statutory authority established under the *Public Finance and Audit Act 1983* which conducts audits for the Auditor-General of New South Wales. The Audit Office's purpose is '[t]o help Parliament hold government accountable for its use of public resources' while its vision is 'to generate insights that inform and challenge government to improve outcomes for citizens'.⁸²
- 3.2** The Audit Office conducts financial and performance audits, principally under the *Public Finance and Audit Act 1983* and the *Local Government Act 1993*:
- Financial audits provide an independent opinion on government entities', universities' and councils' financial statements, and identify whether the financial statements of these bodies comply with accounting standards and relevant laws, regulations and government directions.
 - Performance audits review whether public money is spent efficiently, effectively, economically and in accordance with the law.⁸³
- 3.3** The Auditor-General can also be requested by the Treasurer, a minister or both Houses of the Parliament to perform other audit or audit-related services. These can include audits of agencies' compliance with specific legislation, directions and regulations.⁸⁴

Current funding arrangements

- 3.4** Unlike the other independent oversight bodies considered in this report the Audit Office does not receive an annual appropriation from Parliament under the Appropriation Act.⁸⁵ Rather, the Audit Office is largely self-funded: most of its revenue comes from charging auditees the cost of conducting their financial audit. The Audit Office also receives a government contribution to cover the cost of carrying out performance audits and the cost of reporting to parliament the

⁸² Submission 57, Auditor-General for NSW, p 3.

⁸³ Submission 57, p 3.

⁸⁴ Submission 57, p 3.

⁸⁵ Submission 57, p 7.

results of its financial audits.⁸⁶ For example, of its total revenue in 2019-20, the Audit Office received:

- 83 per cent (\$52 million) from charging auditees for the conduct of their financial audits
- 16 per cent (\$10.2 million) from the government contribution towards performance audits and reporting the results of financial audits to Parliament
- 1 per cent (\$556,000) from other own source revenue.⁸⁷

3.5 The Audit Office operates a working account established by Treasury within the government's Special Deposits Account. The fees paid by auditees and the government's annual contribution are paid into this account. The total costs of the Audit Office are met from the account including the cost of staff, accommodation, technology and investments needed to stay abreast of the latest tools and techniques of auditing.⁸⁸

3.6 As a result of being largely self-funded, the Audit Office has not been extensively exposed to the budget bid process that underpins the annual State Budget.⁸⁹ However the Audit Office has had some involvement in the process:

- As part of the 2020-21 State Budget process, the Audit Office submitted a 'Parameter and Technical Adjustment' to Treasury seeking additional funding to cover the increased cost of delivering the performance audit mandate.
- Each year the Audit Office has sought budget adjustments relating to the timing of when it expects to incur expenditure, changes between what is classified as capital and operating expenditure, and changes to the Audit Office's audit fee revenue because of changes to the auditee base.⁹⁰

3.7 The Audit Office is also subject to other aspects of the budget process. For example it is expected to operate within agreed expenditure control limits unless they conflict with the Audit office's statutory functions,⁹¹ has become subject to government efficiency savings, and is part of the Premier and Cabinet cluster and is therefore expected to report to DPC on budget and performance outcomes.

3.8 The Legislative Assembly's Public Accounts Committee conducts a review of the Auditor-General and Audit Office's activities at least once every four years in accordance with section 48A of the *Public Finance and Audit Act 1983*. The review enables the Audit Office to demonstrate its accountability as a prudent manager of financial resources and provides structured oversight by Parliament of the performance and financial management of the Audit Office.⁹²

⁸⁶ Submission 57, p 4.

⁸⁷ Submission 57, p 4. Own source revenue is generated by seconding staff to other agencies: Evidence, Mr Ian Goodwin, Deputy Auditor-General for NSW, 23 October 2020, p 6.

⁸⁸ Evidence, Ms Margaret Crawford, Auditor-General for NSW, 23 October 2020, p 2.

⁸⁹ Submission 57, pp 3, 5.

⁹⁰ Submission 57, p 5.

⁹¹ Submission 57, pp 5-7.

⁹² Submission 57, p 8.

Potential threats to independence arising from the budget process

- 3.9** The Auditor-General stressed that independence from the government of the day is critical to the ability of the Audit Office to perform its role:

The Auditor-General and the Audit Office play an important role in helping the Parliament of New South Wales hold the Government to account for its use of public resources. The Auditor-General and the Audit Office can only be objective and effective if they are independent from the audited entity and are protected from outside influence. Any perceived or actual compromise of independence can have a detrimental impact on the parliament's and/or the public's trust in the effectiveness of the Auditor-General and the Audit Office. Protecting the independence of the Auditor-General and the Audit Office is vital.⁹³

- 3.10** The inquiry was told the Audit Office has largely operated without direct involvement from the government but that there are aspects of the process that have the potential to threaten the Audit Office's independence and mandate.
- 3.11** The evidence received by the committee in relation to each potential threat is set out below.

The government contribution for performance audits

- 3.12** While the Audit Office negotiates the fees it charges for financial audits based on the hours required and risks involved⁹⁴ it plans its performance audit program to fit the funding envelope set by the amount of the government's annual contribution.⁹⁵
- 3.13** In her submission the Auditor-General stated that the need to fit within the funding envelope of the government contribution for performance audits 'has sometimes resulted in audit requests made by members of Parliament and the public being declined or deferred'.⁹⁶
- 3.14** At the hearing the Auditor-General specified that the amount of the government contribution can operate as a threat to her office's mandate as it determines the number of performance audits the office can carry out:

The Hon. MATTHEW MASON-COX: Is that where your concerns are in relation to, potentially, statutory independence restricted mandate?

...

Ms CRAWFORD: ... the budget process, the way it works, does have some threats to us. So one threat of course is the amount of funding that the government contributes for performance audits because that, by its nature, does determine the number of performance audits we are able to carry out ...⁹⁷

⁹³ Submission 57, p 6.

⁹⁴ Evidence, Mr Ian Goodwin, 23 October 2020, p 6.

⁹⁵ Submission 57, p 3.

⁹⁶ Submission 57, p 3

⁹⁷ Evidence, Ms Crawford, 23 October 2020, p 7.

Expenditure controls

3.15 The Auditor-General advised that expenditure control limits imposed by the government have the potential to threaten the independence of the Auditor-General and the Audit Office.⁹⁸ Expenditure controls include limits on how much can be spent on employee related costs (enforced through the labour expense cap), how much can be spent on capital purchases (enforced through the capital expenditure authorisation limit) and the overall spend (enforced through the net cost of services limit).⁹⁹

3.16 Even though the Audit Office is largely self-funded, the Auditor-General stated that measures such as the labour expense cap still have the potential to constrain the Audit Office's ability to fulfil its mandate:

Ms CRAWFORD: ... even on the financial audits side and our general operations, even though we are raising our own revenue and spending that, we still comply with all the Treasury policies and guidance about expenditure caps and the like. So that could, depending on how those expenditure limits played out, also potentially have some impact. The labour expense cap, for instance—if we had a cap there and then all of a sudden a new agency was created, we would be constrained in our ability to fulfil our mandate based on that expense cap.¹⁰⁰

3.17 The Auditor-General discussed in evidence a further example of how expenditure controls may impact on the independence of the Audit Office, namely cases where DPC has asserted that overseas travel by the Auditor-General or her deputy needs to be approved by DPC:

Ms CRAWFORD: ... There have been perhaps attempts to say that any potential overseas travel by myself or my deputy would have to be approved by the DPC Secretary. We basically pushed back on that to ask the question: What is the legal obligation for that to occur? That matter is still—I do not believe it has ever been answered.¹⁰¹

Efficiency savings

3.18 The Auditor-General advised that the positioning of the Audit Office within the DPC cluster has the potential to threaten the independence of the Auditor-General and the Audit Office because efficiency savings are allocated by the principal department within the cluster:

Under the current NSW Government financial management framework, the Audit Office and Auditor-General is, at times, faced with independence threats because NSW Treasury operate the State budget process at a cluster level, including the allocation of efficiency savings. Under this approach, there is a general expectation that agency budget pressures are managed within the cluster. It is also the responsibility of the principal department to allocate whole of government efficiency savings to agencies within its cluster.¹⁰²

⁹⁸ Submission 57, p 3.

⁹⁹ Submission 57, p 7.

¹⁰⁰ Evidence, Ms Crawford, 23 October 2020, p 7.

¹⁰¹ Evidence, Ms Crawford, 23 October 2020, pp 12-13.

¹⁰² Submission 57, p 7.

3.19 The Auditor-General stated that in 2016-17, 2017-18 and 2018-19 the Audit Office was exempted from the government's efficiency savings and understood that this was because the Audit Office is largely self-funded. However, the Auditor-General noted that the Audit Office had 'nevertheless imposed its own internal savings to minimise price increases to auditees while also remaining financially viable'.¹⁰³

3.20 In 2019-20 DPC advised that the efficiency savings announced as part of the 2019-20 State Budget would apply to the Audit Office. The submission from the Auditor-General stated that the Audit Office was not consulted in relation to these changes and disagreed with how the saving had been calculated:

The reason for this change was not communicated to the Audit Office, nor was the Audit Office consulted in determining the amount allocated to it. In September 2019, the Audit Office advised DPC that it disagreed with how the saving had been calculated.¹⁰⁴

3.21 The Auditor-General went on to state that DPC has allocated efficiency savings of \$483,000 to the Audit Office in 2020-21, increasing to \$740,000 in 2028-29.¹⁰⁵ However, the Auditor-General considers that the question of whether efficiency savings will be applied to the Audit Office remains unresolved:

At the time of preparing this submission, the matters of applying efficiency dividends to the Audit Office and the quantum remain unresolved. The Audit Office has not processed a budget adjustment in NSW Treasury's Prime system to reflect the allocation of efficiency savings over the forward estimates and planning years.¹⁰⁶

Reporting to DPC

3.22 The Auditor-General told the committee in evidence that, while participation in the Premier and Cabinet cluster allows her office to connect with colleagues and stay informed, to the extent that the cluster arrangement involves reporting to DPC, it conflicts with the Audit Office's independence:

... we are listed as part of the DPC cluster arrangement. As an administrative arrangement that connects us with our colleagues and with others it means that we can keep abreast of good information and chat to colleagues about latest things that people are doing et cetera ... we do not want to be a separate, isolated agency. We need to stay connected to continue to be relevant. But we do want at all times to preserve our independence and not be included as part of arrangements in a cluster that might require us to report as if we are reporting to DPC and the Government.¹⁰⁷

¹⁰³ Submission 57, p 5.

¹⁰⁴ Submission 57, p 5

¹⁰⁵ Submission 57, p 5.

¹⁰⁶ Submission 57, p 5.

¹⁰⁷ Evidence, Ms Crawford, 23 October 2020, p 12.

- 3.23** The Auditor-General specified that while the Audit Office is not directed to report to DPC on budget outcomes, there is an expectation that it will do so:

...we are requested to participate in outcomes budget reporting as part of the DPC cluster arrangements. Now it is a request not a direction per se but it is an expectation that we will participate in things like that.¹⁰⁸

- 3.24** The Auditor-General further advised that while the Audit Office appears to fit within the budget outcome ‘accountable and responsible government’, the process of reporting against that outcome has developed to a point where it is creating escalating tensions for her office:

Accountable and responsible government which, on face, you would say, "Well, we fit quite neatly within that." The measures were things that we would be reporting in any case so that was quite okay. The whole outcome budgeting process is now developing further, which we would support as an office in general terms, but it does start to then present further and greater tensions for us in how we are included against those measures.¹⁰⁹

- 3.25** The Deputy Auditor-General, Mr Goodwin, argued that there should be transparency in the way the Audit Office’s outcomes are determined and that the outcomes should reflect the distinction between the role of an oversight body and that of a government agency:

... I think we would look for better and more transparent engagement around how those outcomes are being determined and one that reflects, I guess, the unique role of an oversight body as compared to a body that delivers against government policy.¹¹⁰

- 3.26** Mr Goodwin then gave an example to demonstrate the challenges for the Audit Office in reporting against outcomes set by the executive government:

... Even if you look at the words, "accountable and responsible government"— so government should be accountable and responsible, but if government is not, the role of the Auditor-General is to report that to the Parliament. The failing of a government in being accountable and responsible is really a failing against the government's performance. The failing would be on our side if we do not hold that to account and report it. So even while we have tried to work within the system, if you closely examine the words, you can see that there is actually a disconnect in terms of where the performance responsibility sits.¹¹¹

- 3.27** Mr Goodwin noted that the Audit Office has its own strong performance measures which are published in its annual report and take account of the Audit Office’s relationship with Parliament:

... when you look at our annual report, we are very strong around performance measures. We have a number of performance measures that we monitor ourselves as we see our relationship with the Parliament. That includes parliamentary surveys and how parliamentarians are seeing the value, objectivity and independence of the Auditor-

¹⁰⁸ Evidence, Ms Crawford, 23 October 2020, p 12.

¹⁰⁹ Evidence, Ms Crawford, 23 October 2020, p 14.

¹¹⁰ Evidence, Mr Goodwin, 23 October 2020, p 14.

¹¹¹ Evidence, Mr Goodwin, 23 October 2020, p 14.

General's work. That is a little bit different, perhaps, to how that DPC outcome is drafted.¹¹²

Comparisons with other jurisdictions

- 3.28** In her submission to the inquiry, the Auditor-General drew the committee's attention to the requirements of an international standard on the independence of audit offices which includes principles relating to financial autonomy. The Auditor-General also referred to a recent survey which rated the independence of Auditors-General in various jurisdictions against the international standard and described a range of different funding models.

The international standard on the independence of audit offices

- 3.29** The International Organization of Supreme Audit Institutions (INTOSAI) has developed an international standard on the independence of audit institutions known as the 'Mexico Declaration on SAI Independence'. This declaration recognises that audit institutions require functional and organisational independence to carry out their mandates.¹¹³

- 3.30** Principle 8 of the declaration indicates that audit institutions should have financial and managerial/administrative autonomy and appropriate human, material and monetary resources to fulfil the audit mandate.¹¹⁴ It includes the concepts that:

The Legislature or one of its commissions is responsible for ensuring that SAIs [supreme audit institutions] have the proper resources to fulfil their mandate...

SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfil their mandate.¹¹⁵

- 3.31** In relation to whether these concepts are implemented in New South Wales, the Auditor-General observed that 'there is no legislative committee that is responsible for ensuring the Audit Office has the proper resources to fulfil its mandate' and further, that 'the Audit Office does not have a formal direct appeal to the Parliament of New South Wales if the resources provided are considered insufficient'.¹¹⁶

- 3.32** A recent survey of the extent to which Auditors General in Australia and New Zealand comply with the INTOSAI principles¹¹⁷ concluded that the Auditor-General for New South Wales continues to score lower on overall independence relative to many other jurisdictions, including New Zealand, Victoria, Queensland, Western Australia, Tasmania and the Australian Capital Territory.¹¹⁸

¹¹² Evidence, Mr Goodwin, 23 October 2020, p 14.

¹¹³ Submission 57, p 6.

¹¹⁴ Submission 57, p 6.

¹¹⁵ Submission 57, p 7.

¹¹⁶ Submission 57, p 7.

¹¹⁷ Australasian Council of Auditors General (ACAG), *Independence of Auditors General, A 2020 update of a survey of Australian and New Zealand legislation*, March 2020.

¹¹⁸ Submission 57, p 8.

3.33 In terms of the INTOSAI principle concerning financial and managerial/administrative autonomy, the survey found that the Auditor-General for New South Wales scores well in terms of autonomy in appointing staff and running the Audit Office, but does not score well in relation to financial independence.¹¹⁹

3.34 In her evidence to the committee the Auditor-General stated that the key element of the INTOSAI principle concerning financial autonomy which is missing in New South Wales is a role for Parliament in developing budgets for the office:

Ms CRAWFORD ... the key principle is that there be a role for Parliament in the oversight of the budgets for an Auditor-General. That is the key missing element.

The CHAIR: That is not just a retrospective role, that is a role as the budgets are being developed. I think that is an important—

Ms CRAWFORD: In the preparation, correct. That is the key principle when it comes to the financial arrangements. That is where we do not rate as highly as some others.¹²⁰

Funding models

3.35 The cross-jurisdictional survey referred to above found that there are measures to protect the financial autonomy of Auditor-General in the United Kingdom and New Zealand:

- In the United Kingdom the Comptroller and Auditor-General presents the National Audit Office budget to the Public Accounts Commission. The Treasury is able to make submissions to the Commission about the budget, but it is the Commission that makes a recommendation to the House of Commons about whether to accept the budget.
- In New Zealand, the Parliament decides on the level of funding for the Auditor-General, who submits his or her annual budget through the Speaker to Parliament directly. As in the United Kingdom, this approach reverses the decision-making process, with the Parliament making the decision after considering submissions from the Executive. Further, under the New Zealand approach, the Speaker is the “Vote Minister” responsible for the Auditor General’s appropriation, ensuring that the Executive is not able to constrain the use of the appropriation.¹²¹

3.36 The survey found that no Australian jurisdiction has adopted this level of separation of the budget from the control of the Executive. However, some jurisdictions have introduced requirements for the Parliament or a committee of Parliament to have some input into the budget process, either being consulted about or empowered to recommend on the Audit Office budget:

- In the Commonwealth, the Joint Committee of Public Accounts and Audit is required to consider the draft estimates of the Auditor-General and to make recommendations to both Houses of Parliament and to the Minister who administers the *Auditor-General Act 1997* (Cth).

¹¹⁹ Submission 57, p 8.

¹²⁰ Evidence, Ms Crawford, 23 October 2020, pp 7- 8.

¹²¹ Australasian Council of Auditors General (ACAG), *Independence of Auditors General, A 2020 update of a survey of Australian and New Zealand legislation*, March 2020, p 47.

- In the Australian Capital Territory, the Public Accounts Committee through the Speaker recommends financial appropriation for the Officers of the Parliament and if the Appropriation Bill is less than the recommended appropriation the Treasurer must present a statement to the Assembly on the reasons. The Committee may also recommend additional amounts if the Auditor-General is of the opinion that the appropriated funds are insufficient to enable certain audits to be undertaken promptly.
- In Western Australia, regard is to be had to any recommendations as to the budget made to the Treasurer by the Joint Standing Committee on Audit.
- In Victoria the Auditor-General's budget is determined in consultation with the Parliamentary Committee.
- In Queensland the Treasurer must consult the Parliamentary Committee in developing the proposed budget of the Audit Office.¹²²

3.37 A further difference in funding models is that in the other Australian jurisdictions the performance audit function is funded as an appropriation from Parliament whereas in New South Wales it is funded as a government contribution. In that regard the Deputy Auditor-General for New South Wales, Mr Goodwin, told the committee:

Within the Australian context ...on the performance audit side, I believe that all the jurisdictions are funded through the Parliament through an appropriation. While our contribution comes in as a government contribution, the nuance difference here is that it is not coming through as an appropriation from the Parliament, it is coming through the Executive side. That has been a practice that we have existed with for a number of years. On the financial audit side, the majority of auditors-general would have a model similar to our model, which is a cost recovery model.¹²³

3.38 Mr Goodwin observed that funding models for audit offices in different jurisdictions reflect the constitutional backgrounds in those jurisdictions.¹²⁴

Committee comment

3.39 The Auditor General and the Audit Office perform a critical role in scrutinising the performance of government agencies and the lawfulness of the expenditure of public funds. However the evidence to the inquiry revealed that there are aspects of the budget process that have the potential to threaten the Audit Office's independence and mandate. Many of the problems with the Audit Office's budget process are similar to those which affect the bodies discussed in chapter 2. However, as the Audit Office has a different funding basis to those bodies the steps which are required to address the deficiencies in its budget process differ to some extent from those which are relevant to the other bodies.

¹²² Australasian Council of Auditors General (ACAG), *Independence of Auditors General, A 2020 update of a survey of Australian and New Zealand legislation*, March 2020, pp 47-48.

¹²³ Evidence, Mr Goodwin, 23 October 2020, p 8.

¹²⁴ Evidence, Mr Goodwin, 23 October 2020, p 8.

- 3.40** With respect to the other bodies the committee's first recommendation concerned the need for review of the annual budget submission:

Recommendation 1

That the parliamentary oversight committees for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission review the annual budget submissions of each agency and make recommendations as to the funding priorities.

- 3.41** Unlike these bodies the Audit Office does not provide an annual budget submission as it is funded from fees charged to auditees for financial audits and by an annual government contribution for the conduct of performance audits and the reporting of the financial audit results. However, the inquiry was told that the Audit Office has submitted bids for additional funding for particular matters. The committee believes that any such bids should be subject to an independent review process similar to that which is proposed for the other bodies in Recommendation 1. Given the nature of the accountability framework which applies to the Audit Office the committee proposes that this committee, the Public Accountability Committee, in collaboration with the Legislative Assembly's Public Accounts Committee, should have the role of reviewing such bids and making recommendations to the Parliament as to the funding priorities of the Audit Office.

Recommendation 11

That the Legislative Council designate the Public Accountability Committee to review any budget bids by the NSW Audit Office, in collaboration with the Public Accounts Committee of the Legislative Assembly, and make recommendations to the Parliament as to the funding priorities of the Audit Office.

- 3.42** A further issue which arises in relation to the Audit Office is the mechanism by which the annual contribution for its performance audits is delivered. The amount of this contribution can impact on the Audit Office's ability to conduct performance audits including those requested by members of Parliament. However, the contribution is provided by the executive government without being seen or approved by Parliament. By comparison, audit offices in other Australian jurisdictions receive an annual appropriation from Parliament for their performance audits. The committee notes that constitutional requirements may vary in different jurisdictions but believes that the NSW Audit Office's performance audits should be funded by a parliamentary appropriation, as occurs elsewhere in Australia. This would provide stronger protection for the independence of the Audit Office which is essential for the effective conduct of its audits including those requested by members of Parliament.

Recommendation 12

That annual funding for the NSW Audit Office's performance audits be provided as a separate amount in the Appropriation (Parliament) Bill rather than as a government contribution.

- 3.43 The committee's third recommendation concerning the other oversight bodies proposed that the bodies should be protected from government-imposed funding reductions by having their annual funding directly allocated to them in the Appropriation Act rather than indirectly through the relevant minister:

Recommendation 3

That the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister, so they are not subject to reductions in funding during the financial year.

- 3.44 In Recommendation 12 above the committee proposes that the annual government contribution for the Audit Office's performance audits should be replaced by an allocation in the Appropriation (Parliament) Bill. If this approach is adopted the Audit Office would receive the amount specified in the Appropriation (Parliament) Act and would not be subject to government-imposed funding reductions in the performance audit side of its operations.
- 3.45 The committee's fourth recommendation concerning the other oversight bodies proposed that they be removed from the Premier and Cabinet cluster:

Recommendation 4

That the NSW Government remove the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission from the Premier and Cabinet cluster

- 3.46 The Auditor-General advised the committee that the aspect of the government cluster arrangement which involves the Audit Office reporting to DPC is inconsistent with the Audit Office's independence. The committee also heard that the Audit Office has its own strong performance measures against which it publicly reports which take account of the nature of its relationship with Parliament. In light of this the committee believes that the Audit Office should be removed from the Premier and Cabinet cluster. Removal from the cluster would not preclude the Audit Office voluntarily entering into arrangements with DPC which would permit it to remain connected with other government agencies and abreast of relevant information.

Recommendation 13

That the NSW Government remove the NSW Audit Office from the Premier and Cabinet cluster.

- 3.47 Like the independent oversight bodies considered in Chapter 2, the Audit Office supports accountability and provides assurance that is integral to our system of government. The committee's recommendations for reform of the Audit Office's budget process acknowledge the unique nature of the role performed by that office while also addressing the key themes to emerge from this inquiry – the need for greater transparency and accountability to Parliament in the budget process. The committee asks the government to implement these

recommendations to promote good governance and improve the management of the state's finances.

Appendix 1 Submissions

No.	Author
1	Centre for Public Integrity
2	NSW Independent Commission Against Corruption
3	Office of the Legislative Assembly for the Australian Capital Territory
4	Legislative Council of Western Australia
5	Local Government NSW
6	NSW Electoral Commission
7	The Hon. Walt Secord MLC
8	NSW Ombudsman
9	Mr Jamie Parker MP
10	Law Enforcement Conduct Commission
10a	Law Enforcement Conduct Commission
11	Name suppressed
12	Name suppressed
13	Mr Jake Kane
14	Mr Napoleon Miller
15	Name suppressed
16	Name suppressed
17	Mr Barry Lalor
18	Name suppressed
19	Name suppressed
20	Name suppressed
21	Name suppressed
22	Name suppressed
23	Name suppressed
24	Mr John Hoskin
25	Name suppressed
26	Name suppressed
27	Mr Leo Clement
28	Name suppressed
29	Name suppressed
30	Name suppressed
31	Name suppressed

No.	Author
32	Ariane Blanch
33	Name suppressed
34	Mr Cameron Scott
35	Mr Peter Morris
36	Name suppressed
37	Name suppressed
38	Name suppressed
39	Name suppressed
40	Name suppressed
41	Name suppressed
42	Name suppressed
43	Name suppressed
44	Mr Liam Hooper
45	Name suppressed
46	Mr Chris Dwyer
47	Mr Mark Tarrant
48	Ms Isobel Deane
49	Name suppressed
50	Name suppressed
51	Workers Compensation Independent Review Office
52	Mr Luke Ramshaw
53	Confidential
54	Confidential
55	Parliament of New South Wales (Department of the LC and DPS)
55a	Parliament of New South Wales (Department of the LC and DPS)
56	NSW Government
57	Auditor-General of New South Wales

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Thursday 12 December 2019 Macquarie Room, Parliament House, Sydney	The Hon Peter Hall QC	Chief Commissioner, Independent Commission Against Corruption
	Mr Stephen Rushton SC	Commissioner, Independent Commission Against Corruption
	Mr Philip Reed	Chief Executive Officer, Independent Commission Against Corruption
	Mr Roy Waldon	Executive Director, Legal Division and Solicitor to the Commission, Independent Commission Against Corruption
	Mr Andrew Koureas	Executive Director, Corporate Services Division, Independent Commission Against Corruption
	The Hon. Michael Adams QC	Chief Commissioner, Law Enforcement Conduct Commission
	The Hon. Lea Drake	Commissioner for Integrity, Law Enforcement Conduct Commission
	Ms Michelle O'Brien	Chief Executive Officer and General Counsel, Law Enforcement Conduct Commission
	Ms Christina Anderson	Finance Manager, Law Enforcement Conduct Commission
	Mr John Schmidt	Electoral Commissioner, NSW Electoral Commission
	Mr John Cant	Executive Director, Information Services, NSW Electoral Commission
Mr Steve Robb	A/Executive Director, Elections, NSW Electoral Commission	

Date	Name	Position and Organisation
	Ms Rachel McCallum	Executive Director, Funding, Disclosure and Compliance and General Counsel, NSW Electoral Commission
	Mr Matthew Phillips	Executive Director, Corporate, NSW Electoral Commission
	Mr Simon Thompson	A/Manager, Finance and Chief Financial Officer, NSW Electoral Commission.
	Mr Michael Barnes	NSW Ombudsman
	Mr Paul Miller	Deputy Ombudsman (Reviews, Investigations and Community Services), NSW Ombudsman
	Ms Ainslee Scott	Director (Corporate), NSW Ombudsman
	Mr David Blunt	Clerk of the Legislative Council and Clerk of the Parliaments, Parliament of New South Wales
	Mr Mark Webb	Chief Executive, Department of Parliamentary Services, Parliament of New South Wales
	Mr John Gregor	Director, Financial Services, Department of Parliamentary Services, Parliament of New South Wales
Friday 13 December 2019 Macquarie Room, Parliament House, Sydney	Mr Tim Reardon	Secretary, Department of Premier and Cabinet
	Mr Mike Pratt AM	Secretary, NSW Treasury
Friday 23 October 2020 Jubilee Room, Parliament House, Sydney	Ms Margaret Crawford	Auditor-General for NSW
	Mr Ian Goodwin	Deputy Auditor-General for NSW

Appendix 3 Minutes

Minutes no. 7

Monday 14 October 2019

Public Accountability Committee

Room 1136, Parliament House, Sydney, 2.09 pm

1. Members present

Mr Shoebridge, *Chair*

Mr Banasiak (*substituting for Mr Borsak*)

Mr Farlow

Mr Graham

Mrs Houssos

Mr Khan

Mr Mason-Cox

2. Previous minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no. 6 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 23 August 2019 – Email from an individual, to Chair, providing information to the committee in relation to a letter sent to the Minister
- 29 August 2019 – Letter from Ms Carmel Donnelly, Chief Executive, SIRA, to Chair, providing a clarification to the transcript of 12 August 2019
- 6 September 2019 – Letter from Hon Rob Stokes MP, Minister for Planning and Public Spaces, to Chair, declining again to provide the register of certain buildings with combustible cladding in NSW
- 13 September 2019 – Email from Mr Andy Keane, Licensed Builder, to Chair, informing the committee of a current major issue facing many consumers of property purchase
- 15 September 2019 – Email from Ms Carol O'Donnell, to committee, providing additional comments relating to the inquiry and the Bush Heritage Annual Report
- 26 September 2019 – Email from Ms Carol O'Donnell, to committee, providing additional information on group housing management, financial service literacy and training strata or land managers
- 9 October 2019 – Letter from Hon Robert Borsak MLC, Hon John Graham MLC and Mr David Shoebridge MLC requesting a meeting to consider terms of reference relating to the budget process for independent oversight bodies and the Parliament of New South Wales
- 11 October 2019 – Email from Mr Chris Rumore, Sydney Wharf ACP Sub-committee Chair, to secretariat, providing additional information in relation to rectification of flammable cladding in the Sydney Wharf residential complex.

Sent:

- 30 August 2019 – Letter from Chair, to Hon Rob Stokes MP, Minister for Planning and Public Spaces, reiterating the committee's request for the register of certain buildings with combustible cladding in NSW.

Resolved, on the motion of Mr Banasiak: That the committee keep the following correspondence confidential, as per the request of the author:

- 23 August 2019 – Email from an individual, to Chair, providing information to the committee in relation to a letter sent to the Minister.

4. Consideration of terms of reference

The Chair tabled a letter proposing the following self-reference:

Inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales

1. That the Public Accountability Committee inquire into and report on the budget process for independent oversight bodies and the Parliament of New South Wales, and in particular:
 - (a) Options for enhancing the process for determining the quantum of funding of the following bodies, including the transparency of this process:
 - i. Independent Commission Against Corruption,
 - ii. Law Enforcement Conduct Commission,
 - iii. Audit Office of New South Wales,
 - iv. NSW Electoral Commission,
 - v. NSW Ombudsman, and
 - vi. Parliament of New South Wales.
 - (b) Any other related matter.
2. That the committee report by the last sitting day in April 2020.

Resolved, on the motion of Mr Graham:

- That the proposed terms of reference be amended by inserting '(Legislative Council and the Department of Parliamentary Services)' after 'Parliament of New South Wales'.
- That the committee adopt the terms of reference as amended.

5. Conduct of the inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales

5.1 Proposed timeline

Resolved, on the motion of Mrs Houssos: That the committee adopt the following timeline for the administration of the inquiry:

- submission closing date – Sunday 17 November 2019 (five weeks)
- hearings – two hearing dates in the week of 9 December 2019, subject to consultation with members on availability.

5.2 Stakeholder list

Resolved, on the motion of Mr Graham: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.3 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales. It is no longer standard practice to advertise in the print media.

6. Inquiry into the regulation of building standards, building quality and building disputes

6.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 74a, 117a, 166, 167, 169 and 171.

6.2 Partially confidential submissions

The committee noted that submission no. 146a was partially published by the committee clerk under the authorisation of the resolution appointing the committee.

Resolved, on the motion of Mr Farlow: That the committee keep the following information confidential, as per the request of the author: name of the author in submission no. 146a.

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission nos. 168 and 170, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.

6.3 Confidential submission

Resolved, on the motion of Mr Farlow: That the committee keep submission no. 172 confidential, as per the request of the author, as it contains identifying and/or sensitive information.

6.4 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice, answers to supplementary questions and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Vijay Vital, Owner, Mascot Towers, received 25 August 2019
- Ms Rose Webb, NSW Fair Trading Commissioner, Mr John Tansey and Mr Peter Dunphy from the Department of Customer Service, received 28 August 2019
- Ms Carmel Donnelly, Chief Executive, SIRA, received 29 August 2019
- Ms Jane Hearn, Deputy Chair, Owners Corporations Network of Australia, received 29 August 2019
- Mr David Chandler, OAM, NSW Building Commissioner, received on 4 September 2019
- Mr Chris Seet, Assistant Secretary, NSW Plumbing Trades Employees Union, received on 22 August 2019
- A/Prof Hazel Easthope, City Futures Research Centre, UNSW, received on 3 September 2019
- Cr Linda Scott, President, Local Government NSW, received on 3 September 2019
- Ms Kathlyn Loseby, President NSW, Australian Institute of Architects, received on 5 September 2019
- Mr Chris Duggan, President, Strata Community Association, received on 9 September 2019
- Ms Alisha Fisher, Chief Executive Officer, Strata Community Association, received on 9 September 2019
- Mr Jonathan Russell, National Manager for Public Affairs, Engineers Australia, received on 5 September 2019
- Mr Brett Mace, Chief Executive Officer, Australian Institute of Building Surveyors, received on 9 September 2019
- Association of Accredited Certifiers, received 6 September 2019
- Mr Ian Robertson, Secretary, Development and Environmental Professionals' Association, received on 06 September 2019
- Master Builders of NSW, received on 10 September 2019
- National Fire Industry Association, received on 29 August 2019
- Ms Rose Webb, NSW Fair Trading Commissioner, Mr John Tansey and Mr Peter Dunphy from the Department of Customer Service, received 6 September 2019
- Ms Carmel Donnelly, Chief Executive, SIRA, received 6 September 2019.

6.5 Transcript clarification

The committee noted the correspondence received 29 August 2019 from Ms Carmel Donnelly, Chief Executive, SIRA, in relation to a clarification of the transcript of 12 August 2019.

Resolved, on the motion of Mr Khan: That a footnote be included in the transcript of 12 August 2019 noting the clarification received by Ms Carmel Donnelly, Chief Executive, SIRA.

6.6 Interim report

The committee noted the NSW Government's release of the draft *Design and Building Practitioners Bill 2019* for public consultation. The committee also noted that the consultation period will close on 16 October with the final bill expected to be introduced into Parliament by the end of the year.

Mrs Houssos moved: That the:

- committee defers tabling the interim report until consideration by the committee of the draft bill
- hearing on Tuesday 5 November 2019 focus on the draft bill, instead of flammable cladding
- committee meet on Monday 11 November 2019 to consider the interim report
- committee table its interim report by Wednesday 13 November 2019.

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Farlow, Mr Khan, Mr Mason-Cox.

Question resolved in the affirmative.

6.7 Hearing on the draft bill - Stakeholder list

Resolved, on the motion of Mrs Houssos: That the committee invite the following stakeholders to provide a submission by Sunday 27 October 2019 commenting on the NSW Government's draft bill and to appear as a witness at the hearing on 5 November 2019:

- Master Builders NSW
- Urban Development Institute of Australia
- Property Council of Australia
- Engineers Australia
- Institute of Public Works Engineering Australasia
- Australian Institute of Architects
- Electrical and Trades Union of Australia
- NSW Plumbing Trades Employees Union
- Unions NSW
- Construction Forestry Maritime Mining Energy Union
- Local Government NSW
- Mr Michael Lambert
- Mr Brett Daintry.

Resolved, on the motion of Mrs Houssos: That the committee invite the following NSW Government representatives to appear for 1.5 hours at the end of the hearing day on 5 November 2019:

- NSW Fair Trading Commissioner and department officers
- NSW Building Commissioner
- Ms Bronwyn Weir, in her capacity as supporting the Building Commissioner with the draft bill.

6.8 Hearing on the draft bill – questions on notice

The committee noted the short turnaround time for tabling the interim report.

Resolved, on the motion of Mr Banasiak: That there be no questions on notice taken at the public hearing to be held on Tuesday 5 November 2019 or supplementary questions from members.

6.9 Further inquiry activity

Resolved, on the motion of Mr Graham: That the committee adopt the following timeline for the future activities of the inquiry, subject to consultation with members on availability:

- public hearing on flammable cladding – one day hearing in the week of 9 December 2019
- *in-camera* hearing to examine construction industry workers – Monday 24 February 2020
- public hearing in a regional area such as Newcastle (regional area TBC) – date to be canvassed with members once the 2020 sitting calendar for the Legislative Council is confirmed.

6.10 Final report tabling

Resolved, on the motion of Mrs Houssos: That the committee extend the inquiry reporting date to 14 May 2020.

6.11 Request for document

The committee noted the correspondence from Hon Rob Stokes MP, Minister for Planning and Public Spaces, again declining to provide the *register of certain buildings with combustible cladding in NSW* in response to the third request from the committee.

Mr Graham moved:

That the committee notes that:

- the Solicitor General has indicated that Legislative Council committees likely have the power of committees to order the production of State papers, and
- this position has also been expressed by the House in the *Sessional order – Order for the production of documents by committees*, adopted 8 May 2019.

That notwithstanding the likely power of Legislative Council committees to order the production of State papers, in view of the timeframes of this inquiry and the importance of obtaining the required information in a timely manner, the committee authorises the Chair to order the production through the House under standing order 52 of the document known as *The register of certain buildings with combustible cladding in NSW*, in the possession, custody or control of the Secretary of the Department of Planning, Industry and Environment.

That the committee write to the Minister for Planning and Public Spaces to:

- advise that the committee is not pursuing its request for the document known as *The register of certain buildings with combustible cladding in NSW*, as the committee has resolved to authorise the Chair to order the production through the House under standing order 52,
- advise that the reason for ordering the production of this document through the House is in view of the timeframes of this inquiry and the importance of obtaining the required information in a timely manner, and
- reiterate the committee's power to order the production of State papers.

That the committee authorise the publication of the following items of correspondence relating to the order for papers:

- 13 August 2019 – Letter to the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, from the chair, requesting that the Minister provide two documents: first, the project delivery agreement between the Sydney Olympic Park Authority (SOPA) and Ecove relating to SOPA's ownership in the Opal Tower development, and second, the register of buildings with combustible cladding, and inviting the Minister to appear with NSW government officials at a hearing
- 13 August 2019 – Letter to the Hon Rob Stokes MP, Minister for Planning and Public Spaces, from the chair, requesting that the Minister provide two documents: first, the project delivery agreement between the Sydney Olympic Park Authority (SOPA) and Ecove relating to SOPA's ownership in the Opal Tower development, and second, the register of buildings with combustible cladding
- 15 August 2019 – Letter from Ms Katie Stevenson, Chief of Staff to the Hon Rob Stokes MP, Minister for Planning and Public Spaces, to the chair, responding to the committee's request for documents

- 15 August 2019 – Letter from Mr Gavin Melvin, Chief of Staff to the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, to the chair, declining the committee's invitation for the Minister to appear at a public hearing and responding to the committee's request for documents
- 19 August 2019 – Letter from the chair to the Hon Rob Stokes MP, Minister for Planning and Public Spaces, requesting the Minister again provide certain documents and extend the request to the department
- 19 August 2019 – Letter from the chair to the Hon John Sidoti MP, Minister for Sport, Multiculturalism, Seniors and Veterans, requesting the Minister provide a certain document and extend the request to the relevant department
- 22 August 2019 – Letter from the Hon Rob Stokes MP, Minister for Planning and Public Spaces to the chair, advising that his office is seeking advice from the Department of Planning, Industry and Environment relating to the requested cladding register and that he will provide a further response after 23 August 2019
- 26 August 2019 – Letter from Hon Rob Stokes MP, Minister for Planning and Public Spaces, to the chair, again declining to provide the documents requested by the committee
- 30 August 2019 – Letter from Chair, to Hon Rob Stokes MP, Minister for Planning and Public Spaces, reiterating the committee's request for the register of certain buildings with combustible cladding in NSW
- 6 September 2019 – Letter from Hon Rob Stokes MP, Minister for Planning and Public Spaces, to Chair, declining again to provide the register of certain buildings with combustible cladding in NSW.

Question put.

The committee divided.

Ayes: Mr Banasiak, Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Farlow, Mr Khan, Mr Mason-Cox.

Question resolved in the affirmative.

7. Adjournment

The committee adjourned at 2.30 pm until Tuesday 5 November 2019 (public hearing).

Sarah Dunn

Committee Clerk

Minutes no. 10

Thursday 21 November 2019

Public Accountability Committee

Members' Lounge, Parliament House, Sydney at 1.33 pm

1. Members present

Mr Shoebridge, *Chair*

Mr Borsak, *Deputy Chair (arrived 1.35 pm)*

Mr Farlow

Mr Graham

Mrs Houssos

Mr Khan

Mrs Maclaren-Jones (*substituting for Mr Mason-Cox*)

2. Draft minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no. 9 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 13 November 2019 – Letter from Ms Margaret Crawford, Auditor-General for NSW, to Chair, asking the committee to defer consideration of the Audit Office for the Budget process inquiry until it completes an audit into the effectiveness of the financial arrangements and management practices of other statutory bodies
- 13 November 2019 – Letter from Mr Philip Gall, Chairman, Owners Corporation Network, to Chair, thanking the committee for the opportunity to appear for the building regulations inquiry and providing further comment on amendments made to the *Design and Building Practitioners Bill*
- 15 November 2019 – Letter from Mr Andrew Young, Clerk of the Parliaments and Clerk of the Legislative Council, Parliament of Victoria, to Chair, declining to provide a submission to the Budget process inquiry.

4. Inquiry into the regulation of building standards, building quality and building disputes

4.1 Hearing on Flammable Cladding – Witness list

Resolved, on the motion of Mr Graham: That the Chair's proposed list of witnesses, as well as the Tenants Union and the Construction, Forestry, Maritime, Mining and Energy Union be invited to appear at the hearing on Wednesday 11 December 2019.

Resolved, on the motion of Mrs Houssos: That the committee take evidence from the author of confidential submission no. 172 *in camera* on Wednesday 11 December 2019.

4.2 Newcastle hearing

Resolved, on the motion of Mrs Houssos: That the committee hold an off-site hearing in Newcastle on Wednesday 19 December 2019.

5. Inquiry into the Budget process for independent oversight bodies and the Parliament of NSW

5.1 Correspondence from the Auditor-General

Resolved, on the motion of Mr Graham: That the committee receive evidence from statutory bodies other than the Audit Office at the next hearing and subsequently deliver a first report, and then have a further hearing after the Auditor-General has completed her report and deliver a final report following that.

5.2 December public hearings

Resolved, on the motion of Mr Khan: That the committee invite the following witnesses to appear at a public hearing on Thursday 12 December 2019 for one hour each:

- Independent Commission Against Corruption
- Law Enforcement Conduct Commission
- NSW Electoral Commission
- NSW Ombudsman
- Parliament of NSW
- NSW Government.

6. Adjournment

The committee adjourned at 1.43 pm, until Wednesday 11 December 2019, Macquarie Room, Parliament House (public hearing – Building regulations inquiry)

Sarah Dunn
Committee Clerk

Minutes no. 11

Wednesday, 11 December 2019

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 9.18 am

1. Members presentMr Shoebridge, *Chair (until 5.18 pm)*Mr Buttigieg (*participating from 9.50 am until 10.55 am, from 2.00 pm*)Mr Farlow (*from 1.30 pm*)

Mr Graham

Mrs Houssos

Mr Khan

Mr Mason-Cox (*from 10.40 am*)**2. Apologies**Mr Borsak, *Deputy Chair***3. Previous minutes**

Resolved, on the motion of Mrs Houssos: That draft minutes no. 10 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 19 November 2019 – Email from Mr Duncan Kennedy, to secretariat, raising a number of issues in relation to the defective installation of security locks on homes and requesting to appear as a witness at the next committee's hearing and provide a submission
- 20 November 2019 – Email from Mr Duncan Kennedy, to secretariat, providing further information in relation to the defective installation of security locks on homes
- 21 November 2019 – Email from Mr Peter Goudie, to secretariat, requesting to appear as a witness at an upcoming hearing
- 21 November 2019 – Email from Mr Peter Goudie, to secretariat, providing additional information to support his request to appear as a witness at an upcoming hearing
- 25 November 2019 – Email from Ms Sarah Low, Manager Regulatory Policy, Department of Customer Service, to secretariat, advising that Mr David Chandler and Mr John Tansey are not available to attend at the allocated time for the hearing on 11 December 2019
- 26 November 2019 – Email from Mr Rodger Hills, Executive Officer, Building Products Industry Council, advising they are unable to appear at the hearing on 11 December
- 28 November 2019 – Email from Mr Luke Walton, Executive Director, Department of Planning, Industry and Environment, to secretariat, advising that the Building Policy Unit responsible for implementing the government's response to flammable cladding has now formally shifted to the Department of Customer Service and so decline the invitation to attend the hearing
- 29 November 2019 – Email from Ms Sarah Low, Manager Regulatory Policy, Department of Customer Service, to secretariat, advising that there is no other senior officer who can attend in Mr John Tansey's place at the hearing and requesting the committee change the hearing time
- 30 November 2019 – Email from Mr Chris Rumore, to secretariat, confirming attendance at the hearing subject to the identity of his strata scheme not being disclosed
- 3 December 2019 – Email from Mr Damian Spruce, Government Relations Manager, Fire and Rescue NSW, to secretariat, confirming attendance of Assistant Commissioner Mark Whybro AFSM at the hearing on combustible cladding
- 6 December 2019 – Email from Ms Anita Campbell, Executive Officer, National Fire Industry Association, to secretariat, declining the invitation to attend the hearing on 11 December 2019

- 6 December 2019 – Email from Ms Sarah Low, Manager Regulatory Policy, Department of Customer Service, to secretariat, advising that Ms Rose Webb and Mr John Tansey will re-schedule their commitments to attend the hearing
- 11 December 2019 – Email from Ms Kate Boyd, General Counsel, Department of Premier and Cabinet, to secretariat, declining the committee's invitation for Mr Tim Reardon, Secretary of NSW Department of Premier and Cabinet and Mr Mike Pratt AM, Secretary of NSW Treasury, to give evidence at 1.00 pm on Friday 13 December 2019 to the inquiry into the Budget process.

Sent:

- 19 November 2019 – Email from secretariat, to Mr Duncan Kennedy, advising that he can make a late submission and his request to be a witness will be considered by the committee at their next meeting
- 21 November 2019 – Email from secretariat, to Mr Peter Goudie, advising that his request to appear as a witness will be considered by the committee at their next meeting.

5. Inquiry into the regulation of building standards, building quality and building disputes**5.1 Partially confidential submission**

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submission no. 176, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author.

5.2 Public submission

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 176a.

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submission no. 177.

5.3 Requests to appear as a witness

Resolved, on the motion of Mr Khan: That the committee decline Mr Duncan Kennedy's request to appear as a witness at an upcoming hearing.

Resolved, on the motion of Mrs Houssos: That the committee invite Mr Peter Goudie to appear at the hearing scheduled on Monday 24 February 2019.

5.4 Due dates for answers to questions on notice

Resolved, on the motion of Mrs Houssos: That witnesses who appear before the committee at the hearing on Wednesday 11 December 2019 be given until Tuesday 28 January 2020 to respond to any questions taken on notice and/or supplementary questions.

5.5 Allocation of questions

Resolved, on the motion of Mrs Houssos: That the allocation of questions be left in the hands of the Chair.

5.6 Playing video footage during the hearing

Resolved, on the motion of Mrs Houssos: That the Chair be permitted to play video footage as part of questioning witnesses at the hearing.

5.7 Participating members

Resolved, on the motion of Mr Khan: That Mr Buttigieg be permitted to participate in the *in camera* session during the hearing on 11 December 2019.

6. Inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales**6.1 NSW Government submission**

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submission no. 56 from the NSW Government and email a copy of this submission to the witnesses who are appearing before the committee on 12 December 2019.

7. Inquiry into the regulation of building standards, building quality and building disputes

7.1 *In camera* hearing

The committee previously resolved to take *in camera* evidence from an individual.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Madeleine Foley, Ms Sarah Dunn, Mr Joseph Cho, Ms Monica Loftus, Mr Andrew Ratchford and Hansard reporters.

The following witness was sworn and examined:

- Witness A.

Witness A tabled a number of documents.

The evidence concluded and the witness withdrew.

7.2 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Chris Rumore, Resident and Chair of the sub-committee owners corporation
- Mr Ravendra Mawjee, Resident in a building containing flammable cladding.

Mr Rumore tabled the following documents:

- Email from Mr Rumore, to Hon Kevin Anderson MP, Minister for Better Regulation and innovation, in relation to the flammable cladding issues in New South Wales, dated 9 August 2018
- Letter from Hon Kevin Anderson MP, Minister for Better Regulation and innovation, to Mr Rumore, in response to his email, dated 31 October 2019.

Mr Mawjee tabled the following document:

- Document containing key messages to convey to the committee.

Mr Mason-Cox joined the meeting at 10.40 am.

The evidence concluded and the witnesses withdrew.

7.3 Election of Deputy Chair

The Chair noted the apologies of Mr Borsak and called for nominations for the Deputy Chair.

Mr Khan moved: That Mrs Houssos be elected Deputy Chair for the purposes of the meeting.

There being no further nominations, the Chair declared Mrs Houssos elected Deputy Chair for the purposes of the meeting.

7.4 Request to take photos

Resolved, on the motion of Mr Mason-Cox: That representatives from Local Government NSW be permitted to take photos during Cr Linda Scott's appearance before the committee.

7.5 Public hearing

The public hearing resumed.

The Chair reminded the following witness that they did not need to be sworn, as they had been sworn at another hearing for the same inquiry:

- Cr Linda Scott, President, Local Government NSW.

The witness was examined by the committee.

Cr Scott tabled the following document:

- Motions from the Local Government NSW 2019 Annual Conference.

The evidence concluded and the witness withdrew.

The Chair reminded the following witness that they did not need to be sworn, as they had been sworn at another hearing for the same inquiry:

- Mr Karl Sullivan, Head of Risk and Operations, Insurance Council of Australia.

The witness was examined by the committee.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Leighton Drury, State Secretary, Fire Brigade Employees Union
- Ms Anastasia Polites, Senior Industrial Officer, Fire Brigade Employees Union.

The evidence concluded and the witnesses withdrew.

The media and the public withdrew for the lunch break.

Mr Farlow arrived at 1.30 pm.

7.6 Newcastle hearing

The committee noted the visit to Newcastle that was previously scheduled for Wednesday 19 February 2020 and deferred consideration of changing this date.

The committee noted the proposed itinerary for the Newcastle visit:

- depart NSW Parliament at approximately 6.30 am
- meet with a representative from the Chamber of Commerce or local council for a briefing and tour of relevant sites in Newcastle
- hold a public hearing at a location TBC in the Newcastle CBD
- return to Sydney by 6.30 pm.

7.7 Newcastle hearing – Witness list

The committee noted the Chair's proposed list of witnesses.

Resolved, on the motion of Mrs Houssos: That the Chair's proposed list of witnesses be invited to appear at the Newcastle hearing, subject to the available time on the day, and that members are to advise the secretariat of any additional stakeholders to be invited.

7.8 *In camera* hearing – Witness list

The committee noted the Chair's proposed list of witnesses.

Resolved, on the motion of Mr Graham: That the Chair's proposed list of witnesses be invited to appear at the *in camera* hearing on Monday 24 February 2020, subject to the available time on the day, and that members are to advise the secretariat of any additional stakeholders to be invited.

7.9 Reporting timeline

Resolved, on the motion of Mr Farlow: That the committee adopt the following reporting timeline for the final report:

- Monday 30 March 2020 – Chair's draft report provided to members with seven days to review, noting the new sessional order regarding provision of Chairs' draft reports
- 12.30 pm, Monday 6 April 2020 – Report deliberative
- Thursday 9 April 2020 – Report tabled.

7.10 Partially confidential submission 159

Resolved, on the motion of Mr Graham: That the committee:

- note that submission no. 159 was previously published by the committee
- now resolve to keep confidential identifying information that would disclose the name of the residential building, as per the request of the author.

7.11 Public hearing

The public hearing resumed.

The Chair reminded the following witnesses that they did not need to be sworn, as they had been sworn at another hearing for the same inquiry:

- Mr Philip Gall, Chair, Owners Corporation Network
- Ms Jane Hearn, Vice Chair, Owners Corporation Network.

The following witnesses were sworn:

- Mr Chris Duggan, President, Strata Community Association NSW
- Mr Leo Patterson Ross, Senior Policy Officer, Tenants' Union of NSW.

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The Chair reminded the following witness that they did not need to be sworn, as they had been sworn at another hearing for the same inquiry:

- Mr Greg Ewing, Sydney Division General Manager, Engineers Australia.

The following witnesses were sworn:

- Ms Sarnia Rusbridge, National Seminar Coordination Chair, Society for Fire Safety, Engineers Australia
- Mr Edmund Ang, NSW Chapter Chair, Society for Fire Safety, Engineers Australia.

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The Chair reminded the following witness that they did not need to be sworn, as they had been sworn at another hearing for the same inquiry:

- Mr Darren Greenfield, State Secretary, Construction, Forestry, Maritime, Mining and Energy Union – NSW Branch.

The following witness was sworn:

- Mr Nigel Davies, National Assistant Secretary, Construction, Forestry, Maritime, Mining and Energy Union.

The witnesses were examined by the committee.

Mr Davies tabled the following document:

- Letter from Mr Michael O'Connor, National Secretary, Construction, Forestry, Maritime, Mining and Energy Union, to Hon Mike Baird MP, former Premier of NSW, raising concerns in relation to external cladding on buildings, dated 26 May 2015.

The evidence concluded and the witnesses withdrew.

The media and the public withdrew.

8. Inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales

8.1 NSW Government invitation to attend the hearing

The committee noted the correspondence from Ms Kate Boyd, General Counsel, Department of Premier and Cabinet, dated 11 December 2019, declining the committee's invitation for Mr Tim Reardon, Secretary of NSW Department of Premier and Cabinet and Mr Mike Pratt AM, Secretary of NSW Treasury, to give evidence at 1.00 pm on Friday 13 December 2019 to the inquiry into the Budget process.

Mr Graham moved: That the Chair respond to Ms Boyd requesting that Mr Reardon and Mr Pratt reconsider the invitation to give evidence at 1.00 pm on Friday 13 December 2019, noting that should they again decline, the committee has the power to issue a summons under the *Parliamentary Evidence Act 1901*, and requiring a response by 12 pm Thursday 12 December 2019.

Question put.

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge.

Noes: Mr Farlow, Mr Khan, Mr Mason-Cox.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

9. Inquiry into the regulation of building standards, building quality and building disputes

9.1 Public hearing

The public hearing resumed.

The following witnesses were sworn and examined:

- Mr Mark Whybro AFSM, Assistant Commissioner Community Safety, Fire and Rescue NSW
- Mr Dave Hudson, Deputy Commissioner, Investigations and Counter Terrorism, NSW Police Force.

Mr Whybro tabled the following documents:

- NSW Customer Service, Combustible cladding dashboard, dated 29 November 2019
- NSW Customer Service, Combustible cladding dashboard, dated 6 December 2019.

The evidence concluded and the witnesses withdrew.

The Chair reminded the following witnesses that they did not need to be sworn, as they had been sworn at another hearing for the same inquiry:

- Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service and NSW Fair Trading Commissioner
- Mr John Tansey, Executive Director Regulatory Policy, Better Regulation Division, Department of Customer Service.

The witnesses were examined by the committee.

Mr Shoebridge departed at 5.18 pm.

In the absence of the Chair, the Deputy Chair, Mrs Houssos took the chair for the purpose of the meeting.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.30 pm.

The media and the public withdrew.

9.2 Tended documents

Resolved, on the motion of Mr Farlow: That the committee keep confidential the following document tendered during the public hearing:

- A number of documents, tabled by Witness A.

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following documents tendered during the public hearing, with the exception of identifying information that would disclose the name of the building, which is to remain confidential, as per the request of the author:

- Email from Mr Rumore, to Hon Kevin Anderson MP, Minister for Better Regulation and innovation, in relation to the flammable cladding issues in New South Wales, dated 9 August 2018, tabled by Mr Chris Rumore
- Letter from Hon Kevin Anderson MP, Minister for Better Regulation and innovation, to Mr Rumore, in response to his email, dated 31 October 2019, tabled by Mr Chris Rumore.

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following documents tendered during the public hearing:

- Document containing key message's to convey to the committee, tabled by Mr Ravendra Mawjee
- Motions from the Local Government NSW 2019 Annual Conference, tabled by Cr Linda Scott
- Letter from Mr Michael O'Connor, National Secretary, Construction, Forestry, Maritime, Mining and Energy Union, to Hon Mike Baird MP, former Premier of NSW, raising concerns in relation to external cladding on buildings, dated 26 May 2015, tabled by Mr Nigel Davies.
- NSW Customer Service, Combustible cladding dashboard, dated 29 November 2019, tabled by Mr Mark Whybro AFSM
- NSW Customer Service, Combustible cladding dashboard, dated 6 December 2019, tabled by Mr Mark Whybro AFSM.

10. Adjournment

The committee adjourned at 5.32 pm, until 9.00 am Thursday, 12 December 2019, Macquarie Room, Parliament House (public hearing – Budget process inquiry).

Sarah Dunn

Committee Clerk

Minutes no. 12

Thursday, 12 December 2019

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 8.57 am

1. Members present

Mr Shoebridge, *Chair*

Mr Buttigieg (*participating*) (from 9.13 am)

Mr Farlow (from 9.00 am)

Mr Graham

Mr Khan

Mr Mason-Cox (from 9.06 am)

Mr Primrose

Mr Searle (*participating*) (from 9.15 am, left from 11.01 am to 11.46 am)

2. Apologies

Mr Borsak

3. Correspondence

The Committee noted the following items of correspondence:

Received:

- 21 November 2019 – Email from the Office of the Opposition Whip, to the secretariat, advising that the Hon. Peter Primrose will be substituting the Hon. Courtney Houssos for the remainder of the Budget process inquiry.
- 29 November 2019 – Email from Ms Kate Boyd, General Counsel, Department of Premier and Cabinet, to the secretariat, declining to nominate witnesses for the Budget process hearing on 12 December 2019.
- 3 December 2019 – Email from Ms Kate Boyd, General Counsel, Department of Premier and Cabinet, to the secretariat, declining the Chair's invitation to re-consider nominating witnesses to the hearing on 12 December 2019.

Sent:

- 29 November 2019 – Letter from the Chair to Ms Margaret Crawford, Auditor-General of New South Wales, advising that the committee will delay receiving evidence from her until the completion of her audit.
- 5 December 2019 – Letter from the Chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, requesting that he reconsider his availability for the Budget process inquiry hearings.
- 11 December 2019 – Letter from the Chair to Mr Mike Pratt AM, Secretary, NSW Treasury, requesting that the reconsider the committee's invitation to appear at the hearing on 13 December 2019.
- 11 December 2019 – Letter from the Chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, requesting that he reconsider the committee's invitation to appear at the hearing on 13 December 2019.

Resolved, on the motion of Mr Graham: That the committee publish the correspondence received and sent to Ms Margaret Crawford, Auditor-General of NSW, dated 13 November and 29 November 2019 respectively, regarding the committee's decision to defer consideration of the Audit Office until the completion of the audit.

4. **Inquiry into the Budget process for independent oversight bodies and the Parliament of New South Wales**

4.1 **Public submissions**

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submission nos. 1-10, 17, 24, 27, 32, 34-35, 44, 46-48, 51-52 and 55.

4.2 **Partially confidential submission**

Resolved, on the motion of Mr Khan:

- That the committee keep the following information confidential, as per the request of the author: names in submission nos. 11-16, 18-23, 25-26, 28-31, 33, 36-43, 45 and 49-50
- That the committee authorise the publication of submission no. 44 with the exception of sensitive information which is to remain confidential, as per the recommendation of the secretariat.

4.3 **Confidential submissions**

Resolved, on the motion of Mr Khan: That the committee keep submission nos. 53-54 confidential, as per the request of the author.

4.4 **Return of answers to questions on notice**

Resolved, on the motion of Mr Graham : That the due date for answers to questions on notice be 24 January 2020 with potential for extension to 31 January.

4.5 **Report deliberative**

Resolved, on the motion of Mr Farlow: That the report deliberative be held 18 March 2020 from 10.00-11.30 am.

4.6 **Allocation of questions**

Resolved, on the motion of Mr Primrose: That the allocation of questions be left in the hands of the Chair.

4.7 Election of Deputy Chair

The Chair noted the apologies of Mr Borsak and called for nominations for the Deputy Chair.

Mr Khan moved: That Mr Primrose be elected Deputy Chair for the purposes of the meeting.

There being no further nominations, the Chair declared Mr Primrose elected Deputy Chair for the purposes of the meeting.

4.8 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- The Hon. Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption
- Mr Stephen Rushton SC, Commissioner, Independent Commission Against Corruption
- Mr Philip Reed, Chief Executive Officer, Independent Commission Against Corruption
- Mr Roy Waldon, Executive Director, Legal Division and Solicitor to the Commission, Independent Commission Against Corruption
- Mr Andrew Koureas, Executive Director, Corporate Services Division, Independent Commission Against Corruption.

The Hon Peter Hall QC tabled the following document:

- Spreadsheet of Independent Commission against corruption entitled "Emerging Risks"

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- The Hon. Michael Adams QC, Chief Commissioner, Law Enforcement Conduct Commission
- The Hon. Lea Drake, Commissioner for Integrity, Law Enforcement Conduct Commission
- Ms Michelle O'Brien, Chief Executive Officer and General Counsel, Law Enforcement Conduct Commission
- Ms Christina Anderson, Finance Manager, Law Enforcement Conduct Commission.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Schmidt, Electoral Commissioner, NSW Electoral Commission
- Mr John Cant, Executive Director, Information Services, NSW Electoral Commission
- Mr Steve Robb, A/Executive Director, Elections, NSW Electoral Commission
- Ms Rachel McCallum, Executive Director, Funding, Disclosure and Compliance and General Counsel, NSW Electoral Commission
- Mr Matthew Phillips, Executive Director, Corporate, NSW Electoral Commission
- Mr Simon Thompson, A/Manager, Finance and Chief Financial Officer, NSW Electoral Commission.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Barnes, NSW Ombudsman
- Mr Paul Miller, Deputy Ombudsman (Reviews, Investigations and Community Services), NSW Ombudsman

- Ms Ainslee Scott, Director (Corporate), NSW Ombudsman.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr David Blunt, Clerk of the Legislative Council and Clerk of the Parliaments, Parliament of New South Wales
- Mr Mark Webb, Chief Executive, Department of Parliamentary Services, Parliament of New South Wales
- Mr John Gregor, Director, Financial Services, Department of Parliamentary Services, Parliament of New South Wales.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.30 pm.

The media and the public withdrew.

4.9 Tendered documents

Resolved, on the motion of Mr Khan: That the committee accept and publish the following document tendered during the public hearing:

- Spreadsheet of Independent Commission against corruption entitled "Emerging Risks".

5. Adjournment

The committee adjourned at 3.31 pm, until 1.00 pm, Friday 13 December 2019.

Madeleine Foley
Committee Clerk

Minutes no. 13

Friday, 13 December 2019

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 12.45 pm

1. Members present

Mr Shoebridge, *Chair*

Mr Farlow

Mr Graham

Mr Khan

Mr Mason-Cox

Mr Primrose

2. Apologies

Mr Borsak

3. Inquiry into the Budget process for independent oversight bodies and the Parliament of New South Wales

3.1 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Tim Reardon, Secretary, Department of Premier and Cabinet
- Mr Mike Pratt AM, Secretary, NSW Treasury.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.00 pm.

The media and the public withdrew.

4. **Adjournment**

The committee adjourned at 2.15 pm, *sine die*.

Madeleine Foley

Committee Clerk

Minutes no. 17

Friday 20 March 2020

Public Accountability Committee

Preston Stanley Room, Parliament House, 10.06 am

1. **Members present**

Mr Shoebridge, *Chair*

Mr Donnelly (substituting for Mr Graham, until 10.30 am)

Mr Franklin (substituting for Mr Mason-Cox)

Mr Khan

Mr Primrose

Mr Searle (substituting for Mr Graham, from 10.30 am)

Mrs Ward

2. **Apologies**

Mr Borsak

3. **Previous minutes**

Resolved, on the motion of Mr Khan: That draft minutes nos. 14, 15 and 16 be confirmed.

4. **Correspondence**

The committee noted the following items of correspondence:

Received:

- 2 December 2019 – Letter from Ms Tracy Dunford, Special Counsel and Ms Colleen Palmkvist, Partner, Lander & Rogers Lawyers, to Chair, providing comment on the *Design and Building Practitioners Bill 2019* in light of proceedings of owners of a residential apartment block in Lidcombe with damage
- 24 December 2019 – Email from Mr Philip Reed, CEO, NSW Independent Commission against Corruption, to the secretariat, forwarding copy of NSW Treasury advice to agencies about the 2020-21 budget process provided to agencies dated 16 December 2019
- 29 January 2020 – Letter from Mr David Blunt, Clerk of the Parliaments, to the committee, forwarding the final draft of Chapter 17 Financial Legislation from the forthcoming edition of *New South Wales Legislative Council Practice*
- 21 February 2020 – Email from Ms Maria Barreto-Tilman, Group Marketing Manager, Dincel Construction System, to the secretariat, providing links to videos of various building product fire tests

- 2 March 2020 – Email from Dr Laura Crommelin, Research Lecturer, City Futures Research Centre, UNSW, to secretariat, regarding the informal meeting held with some committee members and attaching a draft conference paper on building defects
- 4 March 2020 – Email from Dr Laura Crommelin, Research Lecturer, City Futures Research Centre, UNSW, to secretariat, following up on a query and attaching a link to an article in The Conversation on building defects
- 6 March 2020 – Email from Mr Eric Aubert, Media Manager – Policy and Regulation, Department of Customer Service, to secretariat, requesting a copy of a document tendered at the building standards hearing on 24 February 2020.

Sent:

- 6 March 2020 – Email from secretariat to Mr Eric Aubert, Media Manager – Policy and Regulation, Department of Customer Service, responding to a request for a copy of a document tendered at the building standards hearing on 24 February 2020.

Resolved, on the motion of Mr Khan: That the committee authorise the publication of correspondence from Ms Tracy Dunford, Special Counsel and Ms Colleen Palmkvist, Partner, Lander & Rogers Lawyers, to Chair, providing comment on the Design and Building Practitioners Bill 2019 in light of proceedings of owners of a residential apartment block in Lidcombe with damage, dated 2 December 2019.

Resolved, on the motion of Mr Khan: That the committee keep confidential the attachment to the email received from Dr Laura Crommelin, Research Lecturer, City Futures Research Centre, UNSW, dated 21 February 2020.

5. Inquiry into the regulation of building standards, building quality and building disputes

5.1 Supplementary submission 127a

Resolved, on the motion of Mrs Ward: That the committee publish the first page of submission no. 127a but keep the additional pages confidential, as per the recommendation of the secretariat.

5.2 Report deliberative date

Resolved, on the motion of Mr Khan: That the meeting scheduled for Monday 6 April 2020 to consider the chair's draft report be postponed, and that the chair canvass members' availability on Friday 24 April 2020. If this date is not suitable, the date of the deliberative meeting will be determined by the chair in consultation with members.

5.3 Minister's request relating to the Government response

Resolved, on the motion of Mr Franklin: That the chair write to the Minister for Better Regulation and Innovation to:

- note that the committee has considered the Minister's request to provide one combined response to the first and final reports
- advise that under Legislative Council standing orders, there is no provision for a committee to extend the due date for a government response, and therefore the Minister is unable to extend the due date for a response to the first report in order to provide a combined response
- inform the Minister of the likely tabling date for the final report.

6. Inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales

6.1 Answers to questions on notice and supplementary questions

The committee noted that answers to questions on notice from the following organisations were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Parliament of New South Wales
- NSW Ombudsman
- NSW Independent Commission Against Corruption
- NSW Government.

6.2 Correspondence to Auditor-General

Resolved, on the motion of Mr Donnelly: That the committee write to the Auditor-General to:

- note the committee's resolution to delay taking evidence from the Auditor-General until she completes her review of the funding arrangements for the oversight bodies
- advise of the tabling date for the committee's first report
- request an update on the progress of her review.

6.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Budget process for independent oversight bodies and the Parliament of New South Wales*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 3.51:

'At a Budget Estimates hearing in March 2020, the Electoral Commissioner described three unanticipated events that have placed significant pressure on the Commission's budget: changes to the conduct of the upcoming local government elections due to the spread of the coronavirus, implementing legislative changes limiting cash donations, and the Government's decision to relocate the Electoral Commission to new premises, resulting in increased rent. The Commissioner pointed to a contingency fund as one solution to enable the Commission to carry out its functions in the face of such anticipated budget pressures. (FOOTNOTE: Inquiry into the Budget Estimates 2019-2020, Portfolio Committee No. 1, Legislature and Premier hearing, 16 March 2020, pp 26 - 28)'

Mr Khan moved: That the following paragraphs and recommendations be omitted:

- Paragraph 3.96
- Recommendation 1
- Paragraph 3.97
- Recommendation 2
- Paragraph 3.98
- Recommendation 3
- Paragraph 3.99
- Recommendation 4
- Paragraph 3.100.

Question put.

The committee divided.

Ayes: Mr Franklin, Mr Khan, Mrs Ward

Noes: Mr Primrose, Mr Searle, Mr Shoebridge

There being an equality of votes, question resolved in the negative on the casting vote of the chair.

Resolved, on the motion of Mr Searle: That paragraph 3.96 be amended by:

- omitting 'The committee therefore recommends that a joint committee with a non-government majority be established to review the annual budget submissions of the ICAC, the LECC, the Ombudsman and the Electoral Commission, and any requests for supplementary funding.' and

inserting instead 'The committee therefore recommends that each relevant parliamentary oversight committee established for each body should be allowed to review the budget submission from each agency'

- omitting 'The joint' before 'committee would table a report in both Houses' and inserting instead 'Each Parliamentary oversight'.

Resolved, on the motion of Mr Searle: That Recommendation 1 be amended by omitting 'That the Legislative Council seek the concurrence of the Legislative Assembly in the appointment of a joint committee with a non-government majority to review the annual budget submissions of the ICAC, the LECC, the Ombudsman and the Electoral Commission, and give directions as to the funding priorities of these bodies.' and inserting instead 'That the parliamentary oversight committees for the ICAC, the LECC, the Ombudsman and the Electoral Commission review the annual budget submissions of each agency and make recommendations as to the funding priorities.'

Resolved, on the motion of Mr Searle: That paragraph 3.97 be amended by omitting 'ICAC, Ombudsman and the LECC' and inserting instead 'the ICAC, the LECC, the Ombudsman and the Electoral Commission'.

Resolved, on the motion of Mr Searle: That Recommendation 2 be amended by omitting 'ICAC, the LECC and the Ombudsman' and inserting instead 'the ICAC, the LECC, the Ombudsman and the Electoral Commission'.

Resolved, on the motion of Mr Searle: That paragraph 3.97 be amended by omitting 'joint committee following, if necessary, a confidential hearing of that committee' and inserting instead 'relevant parliamentary oversight committee following, if necessary, a confidential hearing of the committee'.

Resolved, on the motion of Mr Searle: That Recommendation 2 be amended by omitting 'joint committee' and inserting instead 'relevant parliamentary oversight committee'.

Resolved, on the motion of Mr Searle: That paragraph 3.98 be amended by omitting 'recommends' and inserting instead 'is of the view' and inserting 'should' before 'be exempt'.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 3.98: 'Each of these bodies should be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister as the case is at present, so they are not subject to reductions in funding during the financial year.'

Resolved, on the motion of Mr Searle: That Recommendation 3 be omitted: 'That the ICAC, the LECC, the Ombudsman and the Electoral Commission be permanently exempted from the application of government imposed savings of efficiency dividends.' and the following recommendation inserted instead: 'That the ICAC, the LECC, the Ombudsman and the Electoral Commission be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister, so they are not subject to reductions in funding during the financial year.'

Resolved, on the motion of Mr Searle: That Recommendation 4 be amended by inserting 'NSW Government remove' after 'That the' and omitting 'be removed'.

Mr Khan moved: That the following paragraphs and recommendations be omitted:

- Paragraph 4.49
- Paragraph 4.50
- Paragraph 4.51
- Paragraph 4.52
- Recommendation 5
- Recommendation 6
- Paragraph 4.53
- Recommendation 7
- Paragraph 4.54

- Recommendation 8.

Question put.

The committee divided.

Ayes: Mr Franklin, Mr Khan, Mrs Ward

Noes: Mr Primrose, Mr Searle, Mr Shoebridge

There being an equality of votes, question resolved in the negative on the casting vote of the chair.

Resolved, on the motion of Mr Searle: That paragraph 4.49 be amended by:

- omitting 'ACT is an' and inserting instead 'UK is the'
- inserting the following final sentence: 'One of the models operating in Canada would also achieve the same outcome and be as suitable for the Parliament of New South Wales.'

Resolved, on the motion of Mr Searle: That the following recommendation be inserted following paragraph 4.49: 'That the NSW Government work with the Legislature in adopting the UK model of funding for the Parliament of New South Wales.'

Resolved, on the motion of Mr Searle: That paragraph 4.50 be amended by omitting 'However, the committee acknowledges that adoption of any new mechanism for the funding of the Parliament also affects the Legislative Assembly, which has not been the subject of this inquiry. Accordingly, the committee stops short of making a recommendation for the immediate adoption of a model such as that in place in the ACT.' and inserting instead 'If the NSW Government does not accept the above recommendation, or until it does, the committee is of the view that the Parliament itself should begin to make changes in how its funding is determined.'

Resolved, on the motion of Mr Searle: That paragraph 4.53 be amended by omitting 'therefore recommends' and inserting instead 'is strongly of the view' and inserting 'should' before 'be exempt'.

Resolved, on the motion of Mr Searle: That Recommendation 7 be omitted: 'That the Government permanently exempt the Legislative Council and the Department of Parliamentary Services from the application of government imposed budget savings or efficiency dividends.'

Resolved, on the motion of Mr Searle: That paragraph 4.54 be amended by omitting 'potentially based on the model in place in the ACT' and inserting instead 'based on one of the models in place in either the UK or Canada'.

Resolved, on the motion of Mr Searle: That Recommendation 8 be amended by omitting 'potentially based on the model in place in the ACT' and inserting instead 'based on one of the models in place in either the UK or Canada'.

Resolved, on the motion of Mr Searle: That:

- (a) The draft report as amended be the report of the committee and that the committee present the report to the House;
- (b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry be tabled in the House with the report;
- (c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- (d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- (e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- (f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- (g) Dissenting statements be provided to the secretariat by 3 pm Friday 20 March 2020;
- (h) That the report be tabled on Tuesday 24 March 2020;
- (i) That the Chair inform the committee if he intends to hold a press conference.

7. Adjournment

The committee adjourned at 11.06 am, *sine die*.

Madeleine Foley
Committee Clerk

Minutes no. 34

Friday 18 September 2020
Public Accountability Committee
Jubilee Room, Sydney at 9:06 am

1. Members

Mr Shoebridge, *Chair*
Ms Faehrmann (*participating member from 9:06am to 10:00am; and from 10:24 am to 4:04pm*)
Mr Graham
Mr Khan (*from 9:06am to 10:23am; from 10:48am to 12:30pm; and from 12:59pm to 4:22pm*)
Mr Mason-Cox (*from 9:06am to 10:00am; and from 10:00am to 1:20pm*)
Mrs Ward (*via video link*)

2. Apologies

Mr Borsak, Deputy Chair
Mr Searle
Mrs Houssos

3. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 33 be confirmed.

4. Correspondence

The committee noted the following correspondence:

Received:

- 15 September 2020 – Email from Mr Matthew Chesher, Director Legal and Policy, MEEA, to the secretariat, declining the invitation to appear as a witness at the hearing on 18 September 2020 (pandemic inquiry)
- 10 September 2020 – Email from Mr Anthony Trimarchi, Executive Manager – Policy and Government, Clubs NSW/Clubs Australia, to the secretariat, declining the invitation to appear as a witness at the hearing on 18 September 2020 (pandemic inquiry) (*attached*)
- 7 September 2020 – Letter from Ms Margaret Crawford, Auditor-General for New South Wales, to the chair, advising that she expects to table a final report on her audit on financial arrangements and management practices of the ICAC, LECC, Ombudsman and Electoral Commission by mid-October 2020

Sent:

- 14 September 2020 – Email from the secretariat to Ms Adelaide Cuneo, Parliamentary Liaison Officer, Office of the Minister for Families, Communities and Disability Services, confirming the hearing with Minister Ward on 7 October 2020 (pandemic inquiry)
- 3 September 2020 – Letter from the chair to Ms Margaret Crawford, Auditor-General for New South Wales, seeking an update on the progress of her audit on financial arrangements and management practices of the ICAC, LECC, Ombudsman and Electoral Commission

5. Inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales

Resolved, on the motion of Mr Graham: That the committee:

- Allocate the afternoon of Friday 23 October 2020 as the final hearing for the inquiry
- Invite the Auditor-General to attend a hearing on 23 October 2020, and request that she provide her submission to the inquiry immediately on tabling of her report into the financial management arrangements of the independent oversight bodies, preferably by 16 October 2020, in order for the committee to have sufficient time to consider it in advance of the hearing
- Inform the oversight bodies that there will be a hearing with the Auditor General on 23 October 2020, and invite them to provide further submissions by 5 pm Wednesday 21 October
- Reconsider whether to proceed with an open call for submissions following the hearing on 23 October 2020.

6. Inquiry into the NSW Government's management of the COVID-19 pandemic

6.1 Witnesses for hearing on live music, arts and night time economy on 18 September 2020

Committee noted that it previously agreed (via email) to a proposal from the Chair outlining arrangements and witnesses for the hearing on the pandemic's impact on the live music, arts and night time economy.

6.2 Consideration of topics and witnesses for hearing on 23 October 2020

Consideration deferred to a later date.

6.3 Answers to questions on notice and supplementary questions

Committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from the Hon Brad Hazzard MP, Minister for Health and Medical Research, received on 8 June 2020
- answers to supplementary questions from the Hon Brad Hazzard MP, Minister for Health and Medical Research, received on 8 June 2020 and 23 June 2020
- answers to questions on notice from Mr Michael Pratt AM, Secretary, NSW Treasury, received on 12 June 2020
- answers to questions on notice from the Hon Sarah Mitchell MLC, Minister for Education and Early Childhood Learning, received on 15 June 2020
- answers to questions on notice from the Hon David Elliot MP, Minister for Police and Emergence Services, received on 22 June 2020
- answers to questions on notice from the Hon Damien Tudehope MLC, Minister for Finance and Small Business, received on 22 June 2020
- answers to questions on notice from the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, received on 22 June 2020
- answers to questions on notice from the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, received on 22 June 2020

Committee noted that the following answers to questions on notice were partially published by the committee clerk with the exception of identifying and/or sensitive information, in accordance with previous committee resolutions:

- answers to questions on notice from Ms Rose Webb, Fair Trading Commissioner and Deputy Secretary, Better Regulation Division, , received on 15 July 2020
- answers to questions on notice from the Hon Bronnie Taylor MLC, Minister for Mental Health, Regional Youth and Women, received on 9 July 2020

6.4 Election of Deputy Chair

Resolved, on the motion of Mr Khan: That Mr Graham be elected Deputy Chair for the hearing on 18 September 2020.

6.5 Allocation of questioning

Resolved, on the motion of Mr Khan: That the allocation of questioning be left in the hands of the Chair for the hearing on 18 September 2020.

6.6 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn:

- Mr James Hulme, Director of Advocacy, Committee for Sydney
- Cr Linda Scott, President, Local Government NSW

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Ms Emily Collins, Managing Director, Music NSW
- Mr Nicholas Pickard, Executive Director, Public Affairs, Communications and Events, APRA AMCOS
- Ms Julia Robinson, General Manager, Australian Festivals Association
- Mr John Wardle, Consultant, Live Music Office

The witnesses were examined by the committee.

Mr John Wardle, tendered the following documents:

- Correspondence from APRA AMCOS, Solotel Group, Sydney Festival, Sydney Fringe Festival and the Live Music Office to various ministers of the NSW Government concerning support for the live music and performance sector in New South Wales
- Proposal from Mr Alex Masso regarding COVID-19 safety measures for school music ensembles
- Department of Education (Queensland) guidelines titled *Instrumental music program guidelines for managing hazards associated with COVID-19*
- Survey results document titled *Live Music and Performance Venue Impacts from COVID-19 Australia*

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Ms Kerri Glasscock, Executive Director and Chief Executive Officer, Sydney Fringe Festival
- Mr Christopher Tooher, Executive Director, Sydney Festival
- Ms Penelope Benton, Acting Chief Executive Officer, National Association for the Visual Arts
- Ms Nicole Beyer, Executive Director, Theatre Network Australia
- Ms Kartina Douglas, NSW Coordinator, Theatre Network NSW

The witnesses were examined by the committee.

Ms Nicole Beyer, tendered the following document:

- Theatre Network Australia, Member Insight NSW Government response to COVID-19

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Mr Sean Morrissey, Deputy Chief Executive Officer, Australian Hotels Association
- Mr John Green, Director, Liquor and Policing, Australian Hotels Association
- Mr Michael Rodrigues, Chair, Night Time Industries Association
- Mr Karl Schlothauer, President, Independent Bars Association

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Mr Sam Nardo, Chief Operating Officer, Century Venues
- Mr Mark Gerber, Chief Executive Officer/Founder and Licensee, Oxford Arts Factory
- Ms Caroline Buckingham, Owners, Butcher's Brew Bar
- Ms Tyla Dombroski, General Manager and Director, Crowbar Sydney

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn:

- Ms Caterina Giorgi, Chief Executive Officer, Foundation for Alcohol Research and Education
- Ms Kate DaCosta, NSW Campaigner, Alliance for Gambling Reform

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4:04 pm.

6.7 Tended documents

Resolved, on the motion of Mr Khan: That the committee accept and publish the following document tendered during the public hearing, with the exception of identifying information:

- Correspondence from APRA AMCOS, Solotel Group, Sydney Festival, Sydney Fringe Festival and the Live Music Office to various ministers of the NSW Government concerning support for the live music and performance sector in New South Wales, tendered by Mr John Wardle, Consultant, Live Music Office
- Proposal from Mr Alex Masso regarding COVID-19 safety measures for school music ensembles, tendered by Mr John Wardle, Consultant, Live Music Office
- Department of Education (Queensland) guidelines titled *Instrumental music program guidelines for managing hazards associated with COVID-19*, tendered by Mr John Wardle, Consultant, Live Music Office
- Survey results document titled *Live Music and Performance Venue Impacts from COVID-19 Australia*, tendered by Mr John Wardle, Consultant, Live Music Office
- Document titled 'Theatre Network Australia, Member Insight NSW Government response to COVID-19', tendered by Ms Nicole Beyer, Executive Director, Theatre Network Australia

6.8 Open invitation to relevant Ministers to participate in roundtable

Resolved, on the motion of Mr Graham: That the Chair write to the NSW Government providing a copy of the transcript and making representations about the need for urgent roundtable discussions between relevant Ministers and witnesses appearing before the committee on 18 September 2020.

6.9 Government witnesses to appear on 7 October 2020

Resolved, on the motion of Mr Graham: that Government witnesses from the portfolios of Customer Service, Planning, Create NSW and Health be called to appear on the afternoon Wednesday 7 October 2020 to respond to evidence on the pandemic's impact on the live music, arts and night time economy, as per the following arrangements:

PANEL A (2 HOURS)**Portfolios areas:**

- Customer Service (including Liquor and Gaming)
- Planning (including to respond to issues surrounding outdoor dining)
- Create NSW

Witnesses: Ministers, Secretaries and senior Departmental officials

PANEL B (1½ HOURS)**Portfolios areas:**

- Health NSW

Witnesses: Secretary and Chief Medical Officer

This is to commence at 12.30pm and conclude at or before 5.00pm.

7. Adjournment

The committee adjourned at 4.22 pm, until 9:15 am Monday 21 September 2020 (public hearing).

Anthony Hanna

Clerk to the Committee

Minutes no. 40

Friday 23 October 2020

Public Accountability Committee

Jubilee Room, Parliament House, Sydney at 1.02 pm

1. Members present

Mr Shoebridge, *Chair*

Mr Graham

Mr Khan

Mr Mason-Cox

Mrs Ward (*arrived 1.08pm*)

2. Apologies

Mr Borsak, *Deputy Chair*

Mr Primrose

3. Inquiry into the Budget process for independent oversight bodies and the Parliament of New South Wales**3.1 Public hearing**

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, Auditor-General for NSW
- Mr Ian Goodwin, Deputy Auditor-General for NSW

Mrs Ward departed at 2.15 pm.

The evidence concluded and the witness withdrew.

The public hearing concluded at 2.29 pm.

3.2 Correspondence

The committee noted the following items of correspondence:

Received:

- 28 September 2020 – Letter from Mr Mark Webb, Chief Executive and Mr David Blunt, Clerk of the Parliaments, Parliament of New South Wales, requesting clarification on Parliament's second submission to the inquiry (budget process inquiry)
- 7 October 2020 – Email from Ms Lauren Berrell, Associate to the Chief Commissioner, Law Enforcement Conduct Commission (LECC), to the secretariat, requesting that the LECC submission not be published until after publication of the Auditor-General's report (budget process inquiry).

Sent:

- 24 September 2020 – Letter from the Chair, to Ms Margaret Crawford, Auditor-General for NSW, inviting her to attend a hearing on 23 October 2020 and to make a submission to the inquiry (budget process inquiry)
- 6 October 2020 – Letter from the Chair, to Mr Mark Webb, Chief Executive and Mr David Blunt, Clerk of the Parliaments, Parliament of New South Wales, responding to their request for clarification about a second submission to the inquiry (budget process inquiry).

3.3 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 10a, 55a and 57.

3.4 Future conduct of the inquiry

Resolved, on the motion of Mr Khan that members advise the secretariat by COB Wednesday 28 October 2020 if they wish to hold another hearing.

4. Inquiry into the integrity, efficacy and value for money of NSW Government grant programs

4.1 Future conduct of the inquiry

Mr Graham moved: That:

- a. That the committee repurpose the hearing date of 9 December 2020 from a focus on arts programs to the Stronger Communities Fund
- b. The following witnesses be invited to appear at the hearing on 9 December 2020:
 - Mr Matthew Crocker, Former Advisor in the Office of the Premier.
 - Appropriate representative/s from the Deputy Premier's Office
 - Appropriate representative/s from the former Minister for Local Government (Minister Upton's) Office, including Mr Kevin Wilde.
 - Mr Tim Hurst, Office of Local Government.
- c. Members have until 5.00 pm Wednesday 28 October 2020 to provide comment on the above proposed witnesses and to nominate appropriate representatives from the Offices of the Deputy Premier, the Hon John Barilaro and the former Minister for Local Government, the Hon Gabrielle Upton.

Question put.

The committee divided.

Ayes: Mr Graham, Mr Shoebridge.

Noes: Mr Khan, Mr Mason-Cox.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

5. Adjournment

The committee adjourned at 2.38 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Draft minutes no. 45

Tuesday 2 February 2021

Public Accountability Committee

Room 1043, Parliament House, 11.06 am

1. Members present

Mr Shoebridge, *Chair*

Mr Borsak, *Deputy Chair*

Mr Graham

Mr Khan

Mr Mason-Cox, *via WebEx*

Mr Searle (*substituting for Mr Primrose*)

Mrs Ward

2. Inquiry into the Budget process for independent oversight bodies and the Parliament of New South Wales

2.1 Consideration of Chair's draft final report

The Chair submitted his draft report entitled *Budget process for independent oversight bodies and the Parliament of New South Wales: Final Report*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Khan: That paragraph 2.71 be amended by inserting 'Mr Sexton's advice adopted with approval the earlier advice of the then Solicitor General Keith Mason QC of 7 May 1992 (SG92/50).' after 'in section 5A.'

Resolved, on the motion of Mr Khan: That paragraph 2.72 be amended by omitting 'doubt' and inserting instead 'question'.

Mr Khan moved: That paragraph 2.77 be amended by omitting 'an urgent and compelling'.

Question put.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward

Noes: Mr Borsak, Mr Graham, Mr Searle, Mr Shoebridge

Question resolved in the negative.

Mrs Ward moved: That paragraph 2.78 be amended by omitting 'recognised the urgent need to address these issues by its passage of' and inserting instead 'passed'.

Question put.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward

Noes: Mr Borsak, Mr Graham, Mr Searle, Mr Shoebridge

Question resolved in the negative.

Mr Khan moved: That paragraph 2.78 be amended by omitting 'The current funding arrangements cannot be allowed to continue; apart from the risks which they pose to the independence and mandates of the bodies concerned, the lawfulness of aspects of the arrangements has been called into doubt.'

Question put.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward

Noes: Mr Borsak, Mr Graham, Mr Searle, Mr Shoebridge

Question resolved in the negative.

Mrs Ward moved: That paragraph 2.78 be amended by omitting 'It is notable that this bill was passed by a majority of the members of the House representing a wide range of different political beliefs.'

Question put.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward

Noes: Mr Borsak, Mr Graham, Mr Searle, Mr Shoebridge

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That the following new paragraphs and a new recommendation be inserted before paragraph 2.83:

Separately, the Committee remains concerned about the implications of evidence received from the NSW Electoral Commission, which is dealt with in the Committee's first report at paragraphs 3.26 to 3.31, including a specific reference to the next NSW election:

Further, the Commission stated that Treasury's forward estimate for the conduct of the 2023 State election is again based on the 2015 amount with CPI growth only and is more than \$30 million short of what the election will cost to oversee and conduct.

This matter needs further scrutiny. Accordingly, this Committee believes that this matter should be referred to the Joint Standing Committee on Electoral Matters for further review, possibly immediately following the next Federal election.

Recommendation X:

That the Legislative Council refer the following Terms of Reference to the Joint Standing Committee on Electoral Matters:

1. That the Joint Standing Committee on Electoral Matters inquire into and report on the adequacy of the funding allocation of the NSW Electoral Commission for the 2023 election, in particular taking into account the latest advice around issues of electoral integrity arising from foreign interference in elections.

Resolved, on the motion of Mrs Ward: That paragraph 2.82 be amended by omitting 'calls on' and inserting instead 'asks'.

Resolved, on the motion of Mrs Ward: That paragraph 2.83 be amended by omitting 'strengthen' and inserting instead 'support'.

Resolved, on the motion of Mr Graham: That the following new paragraphs and recommendation be inserted after paragraph 2.85:

The Committee remains concerned in particular about the delays in the delivery of Hansard, especially for committees, as a result of inadequate staffing and resourcing. The scrutiny of parliamentary deliberations that the timely delivery of Hansard transcripts allows is crucial to support public trust in the Parliament as an institution.

Given that adequate staffing and resourcing of the Hansard team is essential to the proper operation of the NSW Legislative Council, the Parliament of New South Wales should provide funding accordingly.

Recommendation X:

That the Parliament of New South Wales review and ensure the provision of adequate staffing and resourcing to Hansard services.

Mrs Ward moved: That paragraph 2.86 be omitted.

Question resolved in the negative on the voices.

Mrs Ward moved: That paragraph 2.87 be amended by:

- omitting 'It regrets that' before 'the Legislative Assembly'
- omitting 'chose not to' and inserting instead 'did not', and
- omitting 'purportedly'.

Question put.

The committee divided.

Ayes: Mr Khan, Mr Mason-Cox, Mrs Ward

Noes: Mr Borsak, Mr Graham, Mr Searle, Mr Shoebridge

Question resolved in the negative.

Mrs Ward moved: That paragraph 2.88 be amended by omitting 'To prevent such disagreement between the House in the future,'.

Question resolved in the negative on the voices.

Resolved, on the motion of Mrs Ward: That paragraph 3.47 be amended by omitting 'calls on' and inserting instead 'asks'.

Resolved, on the motion of Mr Borsak: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat by midday Wednesday 3 February 2021;

The report be tabled on Friday 5 February 2021;

The Chair hold a press conference on Friday 5 February 2021.

3. Adjournment

The committee adjourned at 11.41 am, until 9.45 am, Monday 8 February 2021. (*Public bearing for the inquiry into the integrity, efficacy and value for money of NSW Government grant programs*)

Stephen Frappell
Committee Clerk

