

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

**INQUIRY INTO BUDGET PROCESS FOR INDEPENDENT
OVERSIGHT BODIES AND THE PARLIAMENT OF NEW SOUTH
WALES**

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At Macquarie Room, Parliament House, Sydney, on Thursday 12 December 2019

The Committee met at 9:15

PRESENT

Mr David Shoebridge (Chair)

The Hon. Mark Buttigieg

The Hon. Scott Farlow

The Hon. John Graham

The Hon. Trevor Khan

The Hon. Matthew Mason-Cox

The Hon. Peter Primroe

The Hon. Adam Searle

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The CHAIR: Good morning everybody. Welcome to the first hearing of the Public Accountability Committee's inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales. The inquiry is examining the budget process for how the quantum of funding for the key independent oversight bodies is determined and the transparency of that process. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land and pay my respects, on behalf of the Committee members and those present in the room, to the elders, past, present and emerging of the Eora nation and extend that respect to all Aboriginal peoples present.

Today is the first of two hearings of this inquiry. We will hear today from the Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the New South Wales Electoral Commission and the NSW Ombudsman. We will also hear from the New South Wales Legislative Council and the Department of Parliamentary Services from the New South Wales Parliament. I note that the Committee has decided to delay receiving evidence from the Auditor-General until the completion of her audit of financial arrangements and management practices of the independent bodies. Before we commence I would like to make some brief comments about the procedures for today's hearing.

Today's hearing is open to the public and is being broadcast live by the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines while members of the media may film or record Committee members and witnesses people in the public gallery should not be the primary focus of any film or photography. I would also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may also be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances witnesses are advised that they can take a question on notice and the Committee has resolved for those answers to be provided by 24 January 2020. Witnesses are advised also that any messages should be delivered to the Committee members through the Committee staff. To aid audibility of this hearing I remind both Committee members and witnesses to speak into the microphones. The room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. Finally, could everybody please either turn their mobiles to silent or off for the duration of the hearing.

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PETER HALL, QC, Chief Commissioner, Independent Commission Against Corruption, sworn and examined

STEPHEN RUSHTON, SC, Commissioner, Independent Commission Against Corruption, sworn and examined

PHILIP REED, Chief Executive Officer, Independent Commission Against Corruption, affirmed and examined

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

ANDREW KOUREAS, Executive Director, Corporate Services Division, Independent Commission Against Corruption, sworn and examined

The CHAIR: Would you like to take the opportunity to make a brief opening?

Mr HALL: Thank you, chair. We have provided a written submission as the members of the Committee will be aware. I have prepared an opening statement. With the leave of the Committee it might be a little longer than two or three minutes, and I am mindful of the fact that the Committee wants to use the time for questions, but given the complexity of the funding issues I thought an overview would be beneficial.

The CHAIR: I think we would all benefit from a overview.

Mr HALL: I will confine myself to no more than 15 minutes, if that is in order. Members of the Committee, issues concerning the funding of the Independent Commission Against Corruption cannot be properly considered unless relevant matters concerning the historical background and the context of the commission are appreciated and the legal principles that underpin its independent jurisdiction are taken into account. Prior to its establishment by legislation in 1988 New South Wales had seen a Minister of the Crown jailed for bribery, a public inquiry into two other Ministers, a former chief stipendiary magistrate jailed for perverting the course of justice, court cases involving judicial figures, and so on. This undoubtedly was a low point in the history of this State. Trust and confidence in Government and public administration in this State had been damaged like never before.

The ICAC was Australia's first anti-corruption commission, in the nature of a standing royal commission, with a broad jurisdictional basis established to fight corruption and importantly to raise and maintain standards of probity in Government and in public administration. It was given extraordinary coercive powers the like of which had never been given to any institution on a permanent basis before. A central objective was to restore trust and confidence in government and public administration. In the course of the second reading speech, which I will make brief reference to, then Premier Nick Greiner drew attention to two matters. One concerned the powers to be given to this body and the other one was its foundation and independence.

The independent statutory coercive powers were emphasised as essential. A body such as the commission was to have the skill base, the strategies and methodologies to identify and expose corruption that ordinary police agencies and the like simply did not have the power to investigate that type of criminal activity. The Premier also emphasised the independent status of the body to be established and the implications of independence. The Premier is reported in *Hansard* on 26 May 1988 at page 674. He stated:

The commission will have an independent discretion and will decide what should be investigated and how it should be investigated. That is the whole point of having a commission independent of the executive Government and responsible only to Parliament.

Mr Greiner further stated at page 678:

In exercising the functions and powers under the legislation the commission is not subject to direction and control by the executive Government.

And yet we have seen that executive Government, through the bureaucracy, have a direct or decisive role in relation to the budget processes for the commission, including the processes leading ultimately to the annual appropriations by Parliament. Parliament in enacting the Independent Commission Against Corruption Act, passed with bipartisan support, intended that the commission would be independently resourced through Parliament by Parliament. The commission was not only to have an unprecedented jurisdiction to be exercised in matters of high public interest and given unprecedented coercive powers but it would be given the necessary resources to do the job. It would be given the resources via Parliament and as determined by Parliament.

Soon after I commenced my term as Chief Commissioner of ICAC, I sought additional funding—commonly referred to as grant funding—on the basis that I considered was strong and urgent, and that the funding was essential. A very senior member of the bureaucracy, in our telephone conversation, said with words to the effect, "Chief Commissioner, the ICAC must learn to live within its budget like any other government agency."

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That to me was a most surprising and revealing statement. I replied with words to the effect, "But do you not understand the commission is not a government agency?" I sought to explain the unforeseeable and the unpredictable nature of the commission's investigative work and the resource intensity of its processes. I sought to explain that it is not an entity that, for example, produces X number of widgets in a given year. It is not a service provider, as that expression is used in relation to government departments and agencies. ICAC's functions are not measured in numbers. It has no resemblance in law or, in fact, to a government agency.

The silence at the other end of the phone led me to believe that he was unconvinced. The bureaucracy has on occasions hinted to me that if the commission cannot operate within its budget, then it must be mismanaging things. This betrays a lack of informed understanding as to the nature of the commission's work and of the resources that it requires. In July of this year I invited senior bureaucracy members of the Department of Premier and Cabinet [DPC] to come to the commission to meet with the commissioners, all directors of every division of the commission and Mr Reed as CEO, the purpose being to understand the nature of our systems, processes and related matters.

My July invitation has yet to be responded to but it remains open. Whilst I am not, of course, at liberty to discuss the commission's strategies and its methodologies in investigating corrupt conduct, a sense of what is required in terms of resources can be gauged by observations made by former Commissioner Ipp. I quote from one of his reports:

The investigation and exposure of corruption is an especially difficult task. Secrecy is at the core of corrupt conduct, and the parties to corruption have a common interest in maintaining that secrecy. Few paper trails are left and, occasionally, false paper trails are created. The persons likely to be involved are often experienced and astute in the avoidance of protocols designed to prevent corruption. Corrupt conduct is often the product of careful planning and considerable patience. This operation is a prime example of corruption of this kind. It was a difficult task to unravel the camouflage and obstacles that had been created to disguise what actually occurred.

Soon after the three-commissioner model came into operation in August 2017 I determined with my fellow commissioners that all the processes of this commission should be examined—it had been operating for close on 30 years—and that this examination be done by an independent consultancy, which turned out to be KPMG.

The KPMG report formed the basis of the business case that was later submitted by the commission for the 2018-19 budget. The budget was announced in May 2018. It resulted in a substantial increase and I acknowledge the contributions made by the Premier, the Hon. Gladys Berejiklian, the Department of Premier and Cabinet, and the Treasury in bringing about that result. I also note subsequent public statements of support for the ICAC by the Premier, which are reassuring. What became evident in the early life of the commission was that anti-corruption investigation work is unpredictable and that is for a number of reasons. It is simply not possible at the beginning of a budget year to predict the number of matters that the commission will be required to investigate.

It is not possible to predict the resources or the powers that will be required to be used to investigate any particular matter until the commission is down the track, considering options, strategies and methodologies. Experience over many years has established that through no fault of Parliament itself, parliamentary appropriations for the commission have been insufficient for the commission as an independent agency to undertake the work under its statutory charter in a given year. It is not consistent with, and is not in accordance with, the legal principle of independence of the commission in the exercise of its particular jurisdiction.

The Parliament is dependent upon the Executive Government to advise it, to put forward its conclusions as to what the resources of the commission should be in determining the annual budget and appropriations to be made by Parliament. Despite the fact that parliamentary appropriations for the commission over 30 years now have proven to be inadequate, there has been no process in place for Parliament to determine—on an independent, analytical basis—what supplementation is required for commission funding during the year. Over many years it has been DPC that has been employed to supplement the commission's parliamentary appropriations. Whilst this approach provided what I might refer to as a stopgap measure, it suffered from significant flaws.

In this way, through grant funding, the commission, as a matter of practice but not of law, has become reliant upon the Executive Government to supplement the shortfall in parliamentary appropriations. As long as DPC provided the necessary support for the commission, there grew up an acceptance of this model—this ad hoc, informal administrative process—for supplementary funding. This, however, was not a process that operated in accordance with any legal principles, nor did it have any statutory warrant at all. It was wholly a matter of based on expediency. However, the approach had within it inherent risks, the most significant of which is that it rendered the commission vulnerable. Executive Government, for whatever reason, could reduce grant funding. It could refuse an application by the commission for grant funding. This could result in delay, which can be a very significant matter, in investigating corruption for a number of reasons.

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It could also significantly disrupt or derail the commission's ability to pursue its program of investigations. In 2016 the Executive Government, for reasons that have never been explained at least to me or to my knowledge, ceased providing grant funding for the 2016-17 budget year. That had devastating consequences to the commission. The commission for the first time in its history was forced by reason of the reduction in funding, now not available through DPC or otherwise, to implement a redundancy program. This was the first redundancy ever in the history of the commission. The program resulted in 12 forced redundancies, I should add, at significant cost to the public purse, and a loss of a whole investigation team. I need not say what that did to the morale of those staff members who survived or what it did to the capacity of the commission to function at the required level for quite some time.

Late last year the commission made application for a funding called a PTA, which I think is probably a term familiar to members here. It, in effect, was based upon the new three-commissioner model. There had been no financial modelling for this three-commissioner model and hence we engaged KPMG once again to do the modelling, to provide an evidence-based analysis as to what it would mean in terms of extra resources, more staff, three commissioners working, sometimes overlapping inquiries, and what it meant in terms of dollars. The PTA application to Executive Government was a little over \$4 million, based on the KPMG analysis.

A copy of that KPMG report was provided of course to the DPC. The request was refused, not a dollar. Reasons? No reasons. This of course is not strictly what we might call accountability in government, but nonetheless that is the unfortunate situation. So as at present the commission does not have in place a financial model that will enable three commissioners to operate as we had for a period of time at full pace. I put an end to that once I got complaints, not complaints so much as information that the staff had been run completely off their feet running overlapping inquiries, with the three of us operating at the one time, and because of the risks to health of the employees, that was not going to continue, and it has not. The concern is that such devastation through turning off the funding tap could happen again.

If the funding is in the hands of the Executive Government it is a vulnerability to which I have referred earlier that the commission faces. On 9 July 2019 DPC sent an email to me, which included in the following terms, including the paragraph: "I trust the above addresses the issues raised in the multiple requests put to DPC over a period of time. We all want a sustainable funding model for the ICAC. However, the ultimate aim should be that the ICAC receives an annual appropriation covering all forecast workload and search demand and delivers outcomes within that budget and independently"—and I emphasise the words—"without further supplementation from DPC or other sources."

DPC has not resiled from the views expressed in that letter. Indeed, in its submission to this inquiry it would seem that it maintains that position. What has developed into a dependence of the commission on the Executive Government for grant funding should never have been allowed to develop. Rather, that independence of the commission on the Executive Government, as Mr Greiner had emphasised, has meant that the commission has become dependent and subject to the fatal exercise of funding decisions by the Executive Government. The shortcomings in parliamentary funding to which I have earlier referred under the appropriation Acts should be addressed by Parliament not by the Executive Government.

The only approach that complies with the independence principle to which Premier Greiner referred is a mechanism whereby Parliament in an agile fashion can turn to an objective, analytical analysis to guide it, to assist it by recommendations as to what the appropriate budget should be, what the appropriate grant funding should be, or fixing a range for Parliament to determine for itself where it considers. That is a proper objective, independent decision-making process that would equip Parliament with the means of being able to deal with all funding but on a strictly independent basis, accountable and transparent.

Members of the Committee, I realise the time and I will not continue for very much longer. I wanted to say, if I might, that the principle of independence is the bedrock of the commission to its independence. It ensures that the commission and its officers undertake their functions free of control, free of interference, free of influence from the Executive Government, members of the Executive Government and public authorities of course all being subject to the commission's jurisdiction. It was most certainly not the intention of the New South Wales Parliament when it created the commission as a statutory corporation with a special charter, as a unique legal entity, that it would become subject to or dependent in any way on the Executive Government. As I have said, some in the Executive Government have difficulty in accepting the legal effect that the commission is in no sense an agency of government or a service provider.

Whilst the commission, of course, is completely independent from the courts, it does share one thing in common with the courts. The former Chief Justice of the High Court, in talking about courts and judges, observed, "The courts are institutions which belong to the people and the judges exercise their powers for the people."

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Similarly, the commission is an independent entity, created by Parliament, which from its creation belongs to the people. Like the courts, the commission belongs to the people and the commissioners exercise their powers for the people. The work of the commission must not be undermined; it must not be constrained, either directly or indirectly, perhaps through resource issues. Parliament's will must prevail. New and sophisticated forms of corruption have emerged over the past decade or so and left unchecked, it will continue to spread. Maintaining and, where necessary, increasing the resource capability of corruption agencies is absolutely essential. Not to do so or even reducing funding will be music in the ears of those unscrupulous persons who, for extraneous purposes, are motivated by greed or motivated by the desire to manipulate the exercise of public power for their ill-gotten gains or objectives.

The time has arrived to repair the funding system for the ICAC. It is now a matter of some urgency that a funding mechanism that is truly independent be established. Members of the Committee, I conclude by saying that, as you would be well aware, both oversight agencies of the commission are at one on this issue. They have expressed in strong terms that there is a need for independent political and bureaucratic processes—expressed in strong terms and the parliamentary committee has said that it should be looked at in the current budget cycle. It recognised that there is urgency to this. We acknowledge that it will take some time to work through to establish such an independent mechanism. We are happy to engage with any agencies or stakeholders to provide any information required to examine the issue, subject to our restrictions on disclosing operational matters.

There will, therefore, need to be some form of transitional arrangement to be put in place until it is established. As our submission has indicated, if what is forecast to be the budget for 2020-21 comes about, the unfortunate devastation that occurred in 2016 will be worse. Our calculations are—and we can provide a document in a moment which will supplement what we have already said in our submissions—the calculated redundancies could be up to 31 members of staff. That would be devastating. Firstly, as a matter of law, the Parliament has established this commission and it must be resourced, good times or bad. It is not for, with respect, the bureaucracy to say, "Well, in the bad times you have to take a hit". No, no. Parliament did not intend that. Parliament established the commission for good times and bad and wanted it fully resourced in good times and bad.

Government agencies, we understand, have to have economic factors restricting them sometimes, the number of widgets they produce and the number of services they provide. That is unfortunate for many government departments but as a matter of law that cannot happen to the Independent Commission Against Corruption. It is acting contrary to Parliament to do so. It is acting contrary to law and the principle of independence to cut resources. Members of the Committee, thank you for your leave to outline these matters and I apologise for having done so at some length. Could I just hand up, if I might, with your leave, a document that sets out the financial funding in prospect if nothing is done.

The CHAIR: Thanks very much, Mr Hall. We will have that distributed.

The Hon. ADAM SEARLE: Chief Commissioner, you indicated that Mr Reardon had not taken up your offer extended in July 2019 for a briefing. Have any reasons been forthcoming from the Department of Premier and Cabinet or from Mr Reardon about why they have not taken that up?

Mr HALL: Mr Searle, the answer is no.

The Hon. ADAM SEARLE: The ICAC and also the NSW Electoral Commission, in the submissions to this inquiry, have painted a fairly bleak picture about the impacts on those two agencies of the current funding models and the forecast budget allocations—pretty bleak in terms of the deliverables, if you like, and the outcomes expected of both authorities. I see that the Electoral Commission and the Ombudsman have set out, in a great deal of detail, a possible alternative funding arrangement involving collaboration between Treasury and parliamentary oversight committees and other mechanisms borrowed, perhaps, from other jurisdictions, including New Zealand. Have you or the ICAC formed a view about either of those submissions to this inquiry in terms of what might be a better approach, bearing in mind your two conceptual principles?

Mr HALL: Mr Searle, it would not be appropriate, in our respectful submission, that the Independent Commission Against Corruption be, as it were, put into a group which would have funding issues determined by an arrangement such as you mentioned. We have taken advice. We have done some work on what an independent model would entail, both as a matter of law and the necessary amendments or legislative steps to be taken. But because the commission is different on a number of bases, which I will not go into now, from either of the agencies you have mentioned—for example, LECC and the Electoral Commission—it needs to have its own independent funding system. It would be most undesirable to, as it were, create another—

The Hon. ADAM SEARLE: An integrity cluster?

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Mr HALL: Well, yes. I do not think it would be of assistance to the other commissions for us to be involved in the same pond, as it were. I think they should be dealt with separately. Amongst other things, none of our employees are covered by public service regulation. There are a whole raft of differences between us and the Electoral Commission and other independent committees. The unique factors that impact on us, I think, are limited and unique to us.

The Hon. ADAM SEARLE: But you do not have an in-principle issue, for example, with budget setting for your agency which involves input from a parliamentary oversight committee? You mentioned, for example, the Victorian body on page 40.

Mr HALL: Not at all, no. Indeed, I have not developed it further by reason of time, but we acknowledge, importantly—as you would expect an integrity agency to acknowledge—that the independent mechanism must have both transparency and accountability safeguards built into it. It is public money, at the end of the day, that we are talking about. We have considered a model which would ensure that relevant stakeholders—whether it be Department of Premier and Cabinet, Treasury or whoever else, including the commission—would be heard by the parliamentary advisor, arbitrarily, or whatever you want to call that eminent person who would be completely neutral and completely able, maybe with some assisting staff, to deal with what would be required to effectively advise Parliament. But those factors, as I say, are very unique to our commission.

The Hon. ADAM SEARLE: My final question relates to your submission. On pages 23 and 24 you outline some of the evidence given by Mr Reardon to budget estimates about the allocation of public funds to the ICAC. You take issue with that evidence; you say it is factually incorrect. I think you paint a picture of, as it were, money in theory being allocated to the ICAC by Parliament, and then Department of Premier and Cabinet and Treasury clawing it back. Can you elaborate upon that? What actually happens in practice?

Mr HALL: Yes. Could I, with your leave, ask Mr Reid in a moment—our CEO—to deal with some issues on that?

The Hon. ADAM SEARLE: Of course.

Mr HALL: Before he does, one of the problems—and this is a matter that affects all independent commissions or agencies—is that these efficiency dividends, which were increased to 3 per cent some time ago, and the now proposed savings dividends cut deeply into the amount that the Parliament has authorised that we have. In other words, you give with one hand but then you claw back and take back through these dividends. It does work; I can see how it works with government agencies. It does not work, certainly, for our commission. We have a very small back office. We have made efficiencies over the years. Any savings will come from retrenching or terminating frontline staff. It is just a no-brainer, if I could use that expression. It does not work, but it does inflict pain and damage upon the commission.

Mr REED: In answer to your question, what we have identified here is something that does not accord with what the secretary of the Department of Premier and Cabinet said—this is on page 23 of our submission—about the appropriations going directly out of the Parliament towards the independent agencies and special officers and that that appropriation then goes to the agency. Clearly—and it is reflected in their submission to this Committee as well—it is appropriated to the Premier. That is the model. We obtain the money by a process of drawdowns under delegation that are issued by the Premier. That is the overarching model. Usually, where savings have been flagged in advance of a budget, they are embedded; moneys have been removed, say, from the forward estimates in the appropriation bill coming forward for passage through the Parliament. But we identified here a couple of occasions where money has been taken after the appropriation Act has been passed, before the money comes to the commission. Whilst it is relatively small amounts, it highlights the fact that the appropriated amount is vulnerable to that process of—you could call it interference through the executive processes.

We then go on to take issue with a statement that the appropriation bill sets down—in this case, it was \$104 million to ICAC over four years when, of course, the appropriation bill only ever deals with one year. Even the forward estimates are difficult to find; they are not actually in the budget papers that go in parallel with the passage of the appropriation bill but are not part of the bill. They are actually mostly only on the Prime system of Treasury, where we get to see what are the forward estimates. They might add up to \$104 million but all you will ever know with certainty, to a point, is how much you will get for that particular year. If some new impost is put in after the budget, moneys will be withheld out of the budget for that particular year and we have no control over that.

The Hon. JOHN GRAHAM: Some of those arrangements have been in place for a long time in government. One of the things that a range of the submissions have drawn attention to is the new cluster arrangements perhaps intensifying this development. Do you agree with that view?

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Mr HALL: I do. The cluster system obviously has its purposes—its rationale—for government agencies. But for us to be sitting in a room with other agencies that have nothing to do with corruption or law enforcement or anything is a strange situation to be in. It is like the Chief Justice of the Supreme Court being asked to come and sit down with other agencies that have nothing to do with the law or with the administration—

The CHAIR: The Chief Justice sitting down with the former Family and Community Services head and arguing over budgets. That does not happen with an independent court.

Mr HALL: No.

The CHAIR: And you say it should not happen with an independent corruption commission?

Mr HALL: Indeed, Mr Shoebridge.

The Hon. JOHN GRAHAM: In fact, the Government's submission agrees that, when it comes to grant funding, that is very much a live discussion. In fact, any funds allocated to the ICAC require reallocation from other areas within the cluster.

Mr HALL: However the Executive wants to reallocate funds is a matter for the Executive Government. The overriding principle above that is the one I mentioned: Parliament has directed, in effect, that we be resourced so that we can fulfil our statutory charter. Whether our money comes from some of the other agencies within the cluster is of no relevance to us at all. My personal belief is that I do not think there is much purpose in us being a part of this cluster arrangement. As I have said, everyone around the table are Government agencies. There is only one who is not and that is the commission. That is another reason why—sharing nothing in common with the pool, the cluster—there should be a separate, independent mechanism.

The Hon. JOHN GRAHAM: In some jurisdictions bodies similar but not identical to the ICAC are exempt from the efficiency dividend arrangements. What view do you want to indicate to the Committee about the in principle approach you recommend for efficiency dividends?

Mr HALL: For quite some time I have held a strong view that it is wrong. It is also, in my own respectful opinion, completely inappropriate to be subjecting independent commissions to an efficiency dividend, which, as I have said before, can only have one effect and that is to cut frontline troops. That is not what Parliament wanted to see.

The CHAIR: Could I ask you how that works in practice? You get told in May I think what the appropriation will be—\$23 million or \$24 million—and then from that appropriation, which eventually gets legislated, a proportion is clawed back through the efficiency dividend or the savings dividend. How does that work in practice in your communications with the Executive?

Mr HALL: I might ask Mr Reed to address your question.

Mr REED: In practice we have no transparency or opportunity to participate in that decision-making, except putting something in at the very beginning of the budget cycle. So, we await the outcome and then we have to live within it to a point. For this financial year I will give you the example. When we were advised of the appropriation for this financial year and it became law under the Appropriation Act for this year we had already predetermined what the budget would look like for the organisation. To balance it we had to cut and preserve staff. On this particular occasion we had to cut quite a lot out of operating expenses, which is a small part of our budget. That left us with almost no money to do our public inquiry program—there was \$36,000. Before the end of last financial year we actually formally applied for a grant to DPC.

We asked for about \$1.26 million for six months and they then delivered early in the new financial year on 9 July a response that said they would give us \$2.5 million for the full financial year, but that would be it. That then allowed us to reset the budget to establish the inquiry program for the 2019-20 year that is currently running. Had we not got that funding we would not have been able to do any public inquiry in this current financial year, but we would have been able to at least maintain an investigative capacity. But those are the sorts of swings and roundabouts that occur. I mean, you cannot not abide by the appropriation level, but for many years now, going almost right back to 2001-02, we have relied on getting grants from either Treasury or DPC more recently to supplement the budget during those individual years.

The CHAIR: How does it work as a matter of legal principle? The Parliament passes an appropriation bill, there is a line item in there for ICAC and then the secretary, without going back to Parliament, claws back a proportion of it. What is the legal mechanism they used to claw back from an appropriation like that, which is passed through Parliament?

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Mr HALL: I am afraid I cannot answer that question, Mr Chair. I am happy to take it on notice and come back to you. I do not know if Mr Reed can assist you.

The CHAIR: Well, we might see if Mr Reed can assist.

Mr REED: I do not know that there is a legal mechanism. It is rare, because if you see our submission on page 23 it is not the biggest amounts that have come out. There is a graph in here on page 27 that highlights the scale of what the savings measures are, but most of those have already been removed out of the appropriation before the bill is tabled. So Parliament is active in that regard.

The Hon. TREVOR KHAN: I think that might explain, really, in a sense, the question I was asking. In terms of what is normally the efficiency dividend, that is actually built into the figure that appears in the budget.

Mr REED: Yes, that is correct.

The Hon. TREVOR KHAN: But it is these other amounts that have been—it is not what is generally described as the efficiency dividend that is the hidden deduction. It is other ones.

Mr REED: That is correct.

The CHAIR: Going forward, you have looked at what the forward allocations are in prime. They are not yet legislated.

Mr HALL: No.

The CHAIR: If they come into effect what will you not be able to do? I mean, what it is that you are going to have to stop doing as the ICAC?

Mr HALL: The most concerning effect would be it would limit our capacity to conduct public inquiries. Public inquiries, unlike other bodies in other States, are a central feature, as the Committee is well aware, of the Independent Commission Against Corruption. There has been debate over the years as to the importance of them, but they are important. I rely not only on my own experience, but on the joint report of the former chief justice of the High Court, Murray Gleeson, and Bruce McClintock in their joint independent panel report that revisited the question of public inquiries. Suffice to say that the value of public inquiries was fully endorsed by the two authors of that independent panel report. The fact that a former chief justice of the High Court has given it its imprimatur, along with Mr McClintock, is good enough for me.

Public inquiries are expensive, but there is also a need for compulsory examinations to be conducted before any public inquiry and sometimes during. They require legal representation and so on and costs are incurred. It might be said, "Look"—if you do not understand how we work—"ICAC is not managing its money. They have the same person in three times for three separate compulsory examinations. Why could they not have just done it in one? That would have been cost effective." Well, it is not accidental that we sometimes have witnesses come back twice or three times and occasionally even more than that. It is all part of the strategy, without going into any more detail about it. But they are all part of the cost and that would probably be affected. Also, the capacity to conduct compulsory examinations.

Could I also say, of course, the immediate impact would be that if we only got the forward estimates we would have to make, as I said before, up to 31 redundancies. Some of those would have to come from key areas in our commission, particularly those involved in investigations. It would hit our investigative capacity hard. It would mean that we would have to delay and revisit whether we can reprogram for the next year. Can I just say one thing: If you want to talk about dollars and cents and the value of ICAC, we had a recent investigation, the details of which I am not in a position to disclose, but it resulted in evidence being obtained in what could be seen to be a major fraudulent scheme. I am talking about millions of dollars. We disseminate information, which we did in this particular case, to the Crime Commission. The Crime Commission, in my experience when I was on the Supreme Court, moves swiftly to get freezing orders or restraining orders under the Criminal Assets Confiscation Act because people who engage in fraud usually do not leave their assets sitting around. They move them quickly.

In this particular case the Crime Commission obtained from the Supreme Court recently restraining orders on three real estate assets, a large parcel of money in cash, shares, and so on and so forth. Had we not been actively engaged in that matter, the Crime Commission have acknowledged to us that they would not have had the basis to get the orders. We had executed search warrants and the like, so we went from covert to overt and the party was over. The relevant persons who had been ripping off, allegedly, the particular agency in question may have continued for years for all we know. I suppose you could say it is not of course being able to quantify and take into account, yes, the commission does return a dividend. If you want to talk about dollars and cents then

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delay would be, for that reason, in answer to your question, Mr Shoebridge, important, because sometimes you lose the evidence, witnesses get lost, and money and assets dissipate. Delaying through inadequate resources would be detrimental.

The Hon. JOHN GRAHAM: Without going into the details of that individual example, was that one of the investigations that was under financial pressure as a result of these decisions?

Mr HALL: That is, with respect, a very good question. It is related to a matter that was on our program for May but there was this concurrent investigation going on and we had in any event separate teams working on that particular one. I cannot say that one was decisive, it was relevant to it because it involved the same people.

The CHAIR: Going forward, if you lose 30 of your team of just on 120 or so, inevitably you will be unable to do investigations like that?

Mr HALL: Absolutely.

The Hon. MARK BUTTIGIEG: In essence from the figures I can see here you are talking about, if this were to be realised, a 25 per cent reduction in investigative staff which, going forward to 2023-24, a 30 per cent reduction in investigative staff, which essentially means the Government is saying we are going to cut our priority focus on corruption by 30 per cent, is it not? To be frank that is essentially what we are saying here?

Mr HALL: With respect, I agree that is an appropriate analysis. As I have said, if you cut back our resources you cut back our capacity and those engaged in corrupt dealings are happy to hear that. I, with respect, agree.

The Hon. SCOTT FARLOW: Commissioner, just going through your submission and some of the annual reports and as you indicated in your opening statement there is a fluctuation and cycle to some of ICAC's work. Looking back, from 2009-10 you have had budget allocations anywhere from \$18.8 million up to \$27 million. How do you handle that fluctuation? In terms of that do you have staff that come on during those peak periods? Are there staff that are temporary? What sort of structure do you have in the commission that meets the needs you have?

Mr HALL: We do have the ability to take investigators from other agencies on secondment, which we do and have done most recently when there is an acceleration in work, particularly around matters that go to public inquiries. The staffing levels can be increased on a temporary basis. The disadvantage is that if we have what KPMG said we could have you have a permanent staffing of the investigation division and the accrued knowledge that permanent employees acquire is vital. Sometimes a particular matter can be identified as relevant to something else the commission is doing. The corporate knowledge, if you like, is shared between permanent employees. Those who only come for six months do not have the background even to the matter that they are being asked to work on but they do not have the other more general knowledge. There is some disadvantages in that. Although, if we need the additional staff that is what we will do. I had early in my term said there are peaks and troughs. I have to say, I will ask Commissioner Rushton to speak, I do not think we have had many troughs since we started in 2017.

The CHAIR: It is the nature of New South Wales.

Mr RUSHTON: I completely agree. We have been working flat out from day one. Indeed, I am not complaining. I would never have applied for an increase in stipend but for part of the year last year I was doing pro bono because there was so much on. We just cannot predict what is going to come through the door next and, as we pointed out in our submission, matters from the Electoral Commission we do not know when they are going to come. They are expensive and important, as the current public hearings demonstrate.

The CHAIR: But even the additional requirements to fund the three commissioner model, there was never a budget allocation for that?

Mr RUSHTON: No.

The CHAIR: And inevitably that funding had to come from somewhere as well.

Mr HALL: There still is not, the only analysis that has been done is the KPMG analysis. I should add there has been no criticism of the KPMG analysis. There are two KPMG reports and there has not been criticism as to anything in either of them.

The CHAIR: Is that not part of the problem?

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Mr REED: Could I just indicate that the money received, the \$3.76 million last financial year, included money for the two part-time commissioners that had not been in the budget until the beginning of the last financial year, so that was covered. Just so the record is correct, that was asked for and provided.

The CHAIR: Is not part of the problem that you make your budget bids, you send your final budget proposal in February and then there is radio silence, no response back, no feedback upon why items are or almost inevitably are not funded and then you eventually get the message in May? It is hard to imagine how you go to the next year and put a further budget bid up if you have not got any feedback about why you did not succeed with the prior one. At a minimum surely we should be calling for transparency at least in that process?

Mr RUSHTON: There is not at the moment. We have to engage, as we have, in horse trading, in effect, but we do not get a response. The KPMG reports have been, quite frankly, ignored. The audit established by Department of Premier and Cabinet and Treasury was conducted where they were invited in and we were completely transparent. We do not know what the result of that audit is apart from the fact that Treasury made an accounting error where they thought \$5 was \$5 million.

Mr REED: That is \$5,000 was seen to be \$5 million. It is the scale of numbers they deal with compared to us.

The Hon. SCOTT FARLOW: They are used to the three zeros.

Mr REED: It was the top of the column did not have the three zeros.

The CHAIR: Given the scale of the cluster you are working with it is hard to know what level officer is dealing with your budget requests because if the secretary is dealing with billions and billions your request for \$1.2 million or \$2.5 million may not even get to his or her desk?

Mr RUSHTON: It does. My impression is, and correct me if I am wrong, that he is actively engaged in considering what we put up but we do not seem to get a response apart from one that tells us "act within your means."

The CHAIR: That says, "No." We have almost run out of time.

The Hon. MATTHEW MASON-COX: Chief commissioner, I just wanted to get to the nuts and bolts in terms of what you see as a way forward. You have a few potential models that you have suggested at the back end of your submission: The eminent person, a tribunal type or oversight committee, the Victorian model if you like. What do you think is the best model and why and what do you think the role of particularly the oversight committee should be in that regard?

Mr HALL: The recently adopted Victorian model is a step in the right direction but it is not the model that we would recommend. That does not mean that the parliamentary joint committee be excluded from it. The essential elements of it are that something in the nature of the salaried officers tribunal only had one respected person, who made the recommendation to Parliament and I think those recommendations were always accepted. Some of you of undoubted eminence, impartiality and ability, who would have the assistance as required for people to do the number crunching and so on, could formally convene as a tribunal to hear and receive material from all of the stakeholders, which would include the Treasury and DPC.

It would include the oversight committee for it to provide guidance. The mechanism would have two streams: one that is dealing with the advisory role and assistance to Parliament for the appropriations, and the other would be the inevitable need for top-up funding. One approach may be for the eminent person to assess, based on past history and so on and what is known about current investigations, an upper mark or ceiling, which would be, as it were, a provisional fund that Parliament would endorse. But it would be subject to formal applications being made by the commission, fully supported, as it always has done, with a grant funding for the basis for the request to draw down.

The eminent person again would convene and consider material in submissions and either authorise it or not, as the case might be, thereby providing Parliament with both the necessary assistance and guidance, and dealing with the sometimes unexpected situation that the commission has faced with, so that there would be a mechanism that would be both agile and efficient but, most importantly, would do the work the Parliament needs somebody to do. It would be somebody who would have to have an understanding of the commission's processes. It is a concern that large departments like Treasury have a lot on their plate, but without knowing how we operate, without knowing the contingencies and issues that we have to deal with, how you can put a number on a budget I do not know, unless you understand.

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The Hon. MATTHEW MASON-COX: In relation to that gateway process, I think you called it, obviously we have got the core funding, which you suggest the eminent person would determine, and the gateway would then look at the supplementary funding based on workflows. Would you see the oversight committee perhaps oversighting that gateway funding and obviously the core funding as well, but having public hearings to examine that to understand from the commission directly and from the eminent person and whoever else might have an interest the sort of factors that have gone into establishing those figures?

Mr HALL: Yes, I certainly would have no objection to that and I can see some benefits in that gateway. It is a possibility.

The CHAIR: Commissioner, I think we will properly have some questions on notice about the nature of the agreed protocol and the like. I will hand over to the Hon. Peter Primrose at this point simply because we are running out of time. I remind the Committee that all of this time comes out of morning tea.

The Hon. PETER PRIMROSE: On that basis, I will be short. I was going to ask you to elucidate on the Independent Commission Against Corruption conclusion that is on page 2, which states:

The budget-setting process is covered by the cloak of secrecy surrounding the NSW Treasury and ERC process.

But I think the Chair's questions in particular address some of those. May I ask you then whether, given that it is almost morning tea—you mentioned earlier an audit that had been undertaken by Treasury and DPC—the results of that audit been made available to the ICAC?

Mr HALL: Can I address this very briefly but give you a little bit of context? We had sought grant funding for a public inquiry program involving more than one investigation starting in May. I had written to DPC—I cannot recall the exact dates but it was some date in February this year—indicating the urgency of having the grant by reason of the fact that one of the inquiries was part heard and there were multiples parties with lots of lawyers involved. We could not afford to adjourn it if we could avoid it. It would be very costly, so we needed to have the funding. I had not heard anything so I wrote again, as I recall, in March. I did not get any response on the application.

There had been an email sent to Mr Reed at some stage but it indicated, "Come to the cluster meeting and we will talk about it." However, the cluster meeting would have been far too late. That would have been a program, as I recall it, at the end of March; we needed to have the funding will in advance of the due date in May. It was in those circumstances that I considered in the interest of the commission that I had no option but to seek the assistance of the Premier, which I did. It was a step that I was reluctant to take because it was right in the middle of the election period. The Premier promptly dealt with it within a couple of days or thereabouts and authorised the funding as plainly necessary.

Subsequent to that DPC indicated that it and Treasury wanted to come and inspect our books in effect. I said, in effect, the welcome mat is out. They did come. Mr Waldon and Mr Koureas were party to consultations, which spread out over two or three days, as I recall it, to take them through all the processes and so on and so forth. That occurred in May, as I recall it, of this year. I think the subtext was: "You must be mismanaging the place." We heard nothing as a result of that, call it an audit—it was an ad hoc audit of kinds. Had we been mismanaging, I am sure we would have heard from them pronto; we heard nothing. Mr Primrose, I hope that answers your query. We do not know what the outcome of that audit was.

The Hon. PETER PRIMROSE: Presumably, you would not be aware of any efficiencies you may have been able to bring in as a consequence of the findings of that audit.

Mr HALL: That is true.

The CHAIR: You are just applying a Jones and Dunkel inference against them.

Mr HALL: Well, that is right.

The CHAIR: If it would have assisted—I thank you all for your evidence today and also on behalf of the Committee for the work you do throughout the year. Unfortunately, we have run out of time.

Mr HALL: Thank you.

(The witnesses withdrew.)

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LEA DRAKE, Commissioner for Integrity, Law Enforcement Conduct Commission, affirmed and examined
MICHAEL ADAMS, Chief Commissioner, Law Enforcement Conduct Commission, affirmed and examined
MICHELLE O'BRIEN, Chief Executive Officer and General Counsel, Law Enforcement Conduct Commission, affirmed and examined
CHRISTINA ANDERSON, Finance Manager, Law Enforcement Conduct Commission, affirmed and examined

The CHAIR: Thank you all for your attendance today and thank you as well for the submission, which the Committee has read and digested. This is the opportunity for a brief opening statement.

Mr ADAMS: Mr Chairman, I had not thought I would make an opening statement, I must say, but I will repeat something that is in this report. I entirely accept that it is the responsibility of the democratically elected government to determine how taxpayers' money is to be spent. The whole assumption is that is a responsibility of government; it is not my responsibility, it is not our responsibility. The question, though, is whether there is a rational process for assessing how that money should be spent and although I have an interest as a member of the civic community in the processes for education, transport and all those things, I have a particular interest naturally in how that process applies to the funding of my commission.

The point that I make is that it is evident that the funding process is arbitrary. It is essentially arithmetical. It does not concern itself with tasks or responsibilities, or what is desirable in the public interest as to the extent of the commission's work. There is a parliamentary instruction about that through the statute, but of course the extent to which we can fulfil the statutory obligations depends upon the resources with which we are provided. I am hoping that the proposal for the Auditor-General to examine the work of our commission will be an opportunity to analyse the resources that we need for the work that we do. There are some possible grounds for cynicism but I am hopeful that that analysis will be appropriately deep, that is, dig into our work and appropriately assess what work it is.

We have not had the funds to do a KPMG exercise or analysis. We simply rely on the data. It is evident that the data is not considered as material to the assessment of what resources ought to be made available. The funding was essentially an accident of history, that is, the Police Integrity Commissioner had certain funding, the Police Oversight Division of the Ombudsman had certain funding. The recommendation of the Tink report, accepted by the Government, was there should be a new organisation, my commission, that should undertake those tasks, together with one other specific task, which was the oversight of critical incident investigations and that the Government accepted that the funding which had hitherto been available would be available to the new commission.

For reasons which have been previously explored in public, that did not happen and in addition we have the application of the efficiency dividend. As I have said, I entirely accept the Government is entitled to order its budget and it is entitled to say, "Look, we have got to provide 30 dialysis machines for people who are dying of kidney failure. I'm sorry we can't give you that money" or that kind of argument. They do not have to explain to us but that is an entirely reasonable process. The problem is that the implication of the language is by working harder and better you can do just as good a job even if you lose resources but that is stated without any analysis, without any inquiry, without any ability of ours to explain why that is not the case—perhaps it is ability; perhaps they are just unable to do so—and without any response to us as to, "Well, you could look at this or that". In other words, a rational process of resource allocation.

What I am here primarily to do is—I think one accepts the work we do is necessary. That is a given. That is what the Parliament has done, that is what the Government has said is important and there is no doubt about that. What I am concerned about is: What is the rational way of dealing with resources? We support the proposal of the ICAC that the system for allocating funds in this space needs to be more rationally directed to the desirable public interest which each such organisation serves and not arbitrarily assessed according to particular departmental budgetary limits.

The CHAIR: Did you have any observations to make in response to the Government's submission? It was received very late and I think it was distributed yesterday.

Mr ADAMS: The only response I make is that which is implicit in what I have said and what is in our submission. I make the comment that the structure outlined implies but does not explain any process by which there can be any to and fro, any swapping of useful information. We tell the DPC, "If you apply this rule we have to lose this many staff." It goes into some pool of information but there is in no sense any dialogue.

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The Hon. JOHN GRAHAM: Thank you for your submission. I simply wanted to ask about two issues: one was your reference to the efficiency dividends where you say that initially the advice was for an efficiency dividend of 3 per cent, which is reasonably standard but on further analysis you were then advised that the savings are expected to be closer to 6 per cent from 2019-20 and are ongoing and permanent. Could you just give us some background as to why that has happened?

Mr ADAMS: I am afraid you are asking the wrong person.

The Hon. JOHN GRAHAM: Indeed.

Mr ADAMS: We are told, we are not consulted.

The Hon. JOHN GRAHAM: Yes, but that is double the amount applying elsewhere?

Mr ADAMS: My finance manager does have some information.

Ms ANDERSON: So the 3 per cent was the initial efficiency dividend, which was announced the year before. The additional amount was the late efficiency dividend that was announced basically on budget day this year, so the 6 per cent is an accumulative efficiency dividend.

The Hon. JOHN GRAHAM: Okay. You have spelt out the dollar figures for those, which are certainly significant. Secondly, you have said you support the submission of the ICAC in relation to what a more rational process might be. I ask you to expand on that point. Is it the principles that the ICAC is outlining that might apply; they have given evidence just now that I think you might have heard about their specific preference for a model—just any more detail about what you would see as a future more rational process?

Mr ADAMS: My response to the ICAC proposed model was essentially anything that gives transparency and rational calculation I am entirely in favour of, accepting that the Government is entitled to make political decisions about budgets, and the model proposed by the ICAC, Mr Hall, seems to me to be a sensible model but there is more than one way of skinning that cat. The point is more what the objective is.

The Hon. JOHN GRAHAM: So your concern is really more the principle.

Mr ADAMS: Exactly, yes.

The Hon. MARK BUTTIGIEG: I think their objectives were twofold: One was the transparency of the process and the rationale behind the budget, but the other one was independent decision-making on the allocation of the budget and separation from government.

Mr ADAMS: Yes.

The Hon. MARK BUTTIGIEG: Have you got a view on that?

Mr ADAMS: The first is unarguable. It plainly should be more transparent because that leads to a more rational process, providing—and I think this is accepted—that the process is, as Mr Hall in substance says, an eminent person, an independent transparent process and a recommendation to Parliament and then Parliament decides. It is at that level the political considerations have their rightful place because, they might justly say, "Our budgetary restraints are this and that so we cannot allow that amount of money in this space." I hope I am not taking a technical point. It is just about the point of independence. I accept you cannot have true independence. What you want to have is an independent process of assessment and recommendation.

The Hon. MARK BUTTIGIEG: Which is a slightly different view to what the ICAC took, which is that they needed a more inoculated version of independence than the model you are talking about.

Mr ADAMS: Yes. There is no reason why that process ought not to be completely independent in the sense of the ultimate recommendation.

The Hon. MARK BUTTIGIEG: Correct.

Mr ADAMS: Of course government should be entitled to have its input in this area, but ultimately the recommendation is completely independent.

The Hon. MARK BUTTIGIEG: The figures you have projected from financial year 2019-20 to 2023 indicate that would manifest itself in around about a 10 per cent cut to funding, more or less.

Mr ADAMS: Yes.

The Hon. MARK BUTTIGIEG: What material effect would that have on your ability to deliver what you are doing? Does that directly relate to job cuts?

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Mr ADAMS: Yes. Our difficulty is this: First of all, we have an absolutely minimum back-office—if I can call it that—unit. We cannot reduce that further without breaching our other financial and other government obligations. It must mean operational staff. Our situation now is if I lose 10 per cent, we go off the cliff. It is not just a diminution of work. We have been adjusting our work processes to attempt already, under our present limits, to focus on what we see as important work. We are having increasingly brutal filtering systems in place to enable us to do what we can do. We have pretty well reached the end of our tether.

In other words, if we have losses of this kind, this does not just have a pro rata reduction in our work. It is a fundamental obstacle in our doing any real compliance, I am afraid. Can I just add this: We are very different from the ICAC in terms of our investigative model. The Act provides that the police are primarily responsible. Essentially our two roles are we investigate, essentially, where the use of our compulsory powers bring something to the table that the police do not have. We are not yet in the State of New South Wales where we are willing to give the police powers to compulsorily examine members of the public. That has to be independently done; that is accepted, I think.

The CHAIR: Although they gave it a go in the High Court recently.

Mr ADAMS: They did, yes, and they only narrowly lost. At one level, because of our excellent relations with police—at the top levels, at least—we go to their panels that consider disciplinary and other consequences of adverse findings. Over the period, I have gone; Commissioner Saidi has gone; Commissioner Drake has gone. We are very impressed with the level of objectivity, the lack of defensiveness and the thoroughness of the process. Indeed, it is a massive investment of resources from their point of view. So we have very good confidence, where a complaint is sustained, that they will do it.

We focus naturally, then, on the not-sustained matters in terms of our oversight. But as I said, we can bring, and we have brought, useful methods to investigating matters that are not open to the police. That is a primary test of whether we investigate. But then we have to monitor what the police do, and the efficiency and adequacy of that is variable. But our problem is that we do not know, when we look at it, which ones are bad. We know that most of them will be okay, but which most? So that is our fundamental problem: How do we filter out those we are reasonably confident are going to be alright and those that we need to look at closely?

The Hon. TREVOR KHAN: Where I was going—you have taken part of it, and you would be aware that I have taken an interest in your organisation for some time. Mr David Shoebridge and I have taken particular interest in it. It seems that there is greater predictability, in a sense, in your funding model than with ICAC. Are we in agreement?

Mr ADAMS: That is true. Of course, we have had cases where—and it does not come down to much more than this. We have got experienced people on our committee, and I have been around for a fair bit, and your nose twitches. That is not a statutory test, but occasionally you start pulling on a string and you find it opens up quite serious matters which are not apparent at the beginning. In that sense, then, what you think is going to be a relatively minor investigation becomes a much greater investigation. But we are not facing the kind of industrial-scale corruption that we see ICAC dealing with. Also, the nature of the corruption that we see is much different in scale. We have moved on a long way from the Wood royal commission.

The Hon. TREVOR KHAN: Your nose did twitch relatively recently. I do not wish to go into it, but you were involved in a public hearing. How much strain does a public hearing such as you have recently been undergoing put, in a budgetary sense, on your operations?

Mr ADAMS: It is very considerable. The main payout is to counsel assisting. We do try to do these in-House; aside from anything, it is good for our people to get that experience. You have got experienced commissioners who are oversighting. That is one; outside counsel is our major expense. Bringing witnesses is another expense, and their associated travel.

The Hon. TREVOR KHAN: And transcription costs?

Mr ADAMS: Yes, transcription costs also are significant. But they gobble up resources. When a commissioner is sitting, we cannot do other work. We have investigators who are involved. We have our own legal team. Then, of course, we do a report, which requires investigators, legal team and commissioner. So they do absorb a substantial proportion of resources.

The CHAIR: It is both a financial cost and an opportunity cost at the same time.

Mr ADAMS: Indeed. That is exactly right, if I may say so.

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Ms DRAKE: I was just saying to Chief Commissioner Adams, it is not like ICAC where they come across a particular piece of corruption, which they have to go and get special funding for. Ours is a constant, with one source of interest in the police, and that is a constant thing that we look at. We are not suddenly acquiring some outside work. It is whether or not we can do the work and find the misconduct and corruption in the existing source of work.

The Hon. TREVOR KHAN: So that need for independence, with regards to supplementary funding, which I think we heard of with ICAC, is not as much of a—

Mr ADAMS: It is much less crucial from our point of view, but the trouble is you never know what is around the corner.

The Hon. TREVOR KHAN: But that is not intended to denigrate what your submission is.

Mr ADAMS: No, but one does not know what is around the corner. I mean, you will remember—a number of people here were adults when the Wood royal commission was on—those early rollovers. But although that required a lot of the investigation before it got to public hearings, there were a lot of quite accidental disclosures that happened to be opportune and you never know. We know that there must be significant corruption going on. Otherwise, for example, bikie gangs could not be the major manufacturers of methamphetamine in New South Wales. It can only be done with some degree of inside information. Naturally, that is kept very secret. These are highly sophisticated criminals. It is extremely difficult to discover and they are a lot more paranoid now than they were in Royal Commissioner Wood's day.

Of course, the police are continuously attempting to monitor information flows and all those kinds of things. So we know that goes on. The difficulty is, in an organisation which fundamentally moves by complaint—so we are reactive in substance, which is inevitable—but you never know when something will arise. In that situation I would have no hesitation in making a request for finance and my assumption would be that if you make a good case you will get the money.

The Hon. TREVOR KHAN: If you needed to make a supplementary request for funding, who would you make it to?

Ms ANDERSON: We have been told that it goes through the cluster. So it would need to go to DPC first, have its approval and then, if it approves it, it can go to Treasury after that.

The CHAIR: But that is that same opaque process that ICAC referred to. You make your request and then commuter says yes or the computer says no.

Ms DRAKE: And the drugs have moved on.

The CHAIR: Yes.

The Hon. PETER PRIMROSE: I have a sense from what you are saying that there is a constant feeling of being constrained in terms of your activities. I quote from one of your comments on page 5, "Continual inroads on the budget available to pay staff means that the quality of the oversight the commission is able to carry out on the police investigations and the number of investigations the commission can itself undertake is constantly under threat." I know you have addressed some of that already, but it just strikes me that you are talking about being constrained in your activities, that is all.

Mr ADAMS: We are constrained on two levels. First of all, the numbers. For example, we are down on our official compliment because I am not going to advertise for permanent staff to tell them in six months, "I am sorry, we have run out of money." I see that as just dishonourable. You would have to be up-front and say, "I am sorry, we can only guarantee this job for six months." The kind of people who we would be interested in would be saying, "I am sorry, I have three other offers." That is a continuing problem. How far can we recruit good people. There is a lot of competition out there, I can tell you, for the kind of quality people that we need. If there is going to be a Commonwealth organisation we will look like desert island.

The problem with investigations is we do have a significant number of items of information from various sources that we would investigate if we could. This is especially so when you have inside information. It is a pleasing mark of improvement of culture within the police. We are getting an increasing proportion of complaints come from within the police force. Ten years ago that would never have happened. So that is a big improvement. But they sometimes say, "We do not trust the police to investigate this. We want you to do it." We try to give them real priority. In some cases we cannot. We wait, but the problem with waiting is the whole thing becomes stale.

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The Hon. PETER PRIMROSE: Sorry, you said, "we can't".

Mr ADAMS: We have ongoing investigations that we need to finish. We put them on a line hoping we are going to get to them in a reasonable time, we find we can't and they have to drop off. Or what we are now doing is saying, "Unless it is a really simple and obvious matter, we need to simply pass it on to police."

The CHAIR: Commissioner Drake, did you want to add something to that?

Ms DRAKE: The reason we cannot do it is we have unfilled positions and we cannot fill them. In any event we would increase our investigative team if we could and we would be able to do those things. But you cannot have an increased number of police and a decreased corruption body. It just will not function; you cannot get to that work. One of the roles that is underestimated in investigations is the analyst's role. That information that you gather, which the chief referred to, information comes in—I heard the ICAC Commissioner refer to expertise, knowledge in the area and a backlog of information.

This is accumulated by analysts and they are an essential part of an investigative team. They are not always working on a particular investigation, but they are like black holes into which information goes and a name will pop up and out it will come again. They know things, they have history and to not have a sufficient number of analysts is to truly handicap us. That is something that sits behind the investigations all of the time.

The Hon. MATTHEW MASON-COX: Ms Anderson, as part of the Premier and Cabinet cluster you would be subject to the Auditor-General performance audits and financial audits.

Ms ANDERSON: Yes.

The Hon. MATTHEW MASON-COX: How often does that happen?

Ms ANDERSON: The financial audit is yearly and we have had one special audit since LECC and then the performance audit that is about to start. That is the only performance audit that the LECC has had.

The Hon. MATTHEW MASON-COX: Would you be of the view that the Auditor-General has a pretty good grasp of your operation?

Mr ADAMS: Not yet.

Ms ANDERSON: No.

Mr ADAMS: Not yet. We have had that discussion.

Ms ANDERSON: The audit teams rotate, so you do not have a lot of—because we were in Justice they tend to put them on a cluster basis. So the team that we previously had under Justice was different to the team that the Police Integrity Commission [PIC] had and will now be different going forward for LECC. In the past two years we have actually had three different order teams.

The Hon. MATTHEW MASON-COX: What I am asking is that what you are really perhaps looking for is an independent view with appropriate qualification, if you like, of what your budget should be, in the same way that ICAC is looking for a transparent and above-reproach review of what their needs are. Could the Auditor-General provide that as a baseline?

Mr ADAMS: The Auditor-General I think could make a significant contribution to that process but, ultimately, at the simplest level, how many investigations you need to do, or how much resources you need to devote to monitoring police investigations, that is not really—

The CHAIR: That is not an audit role. It is more of a policy role, is it not?

Mr ADAMS: It is a policy role, that is exactly right. I understand there are various interested persons in that. We would, of course, like to have a role in developing that. The auditor could look at the present scope of work, analyse what is involved—the work hours, the systems, all of those very useful things—but, ultimately, cannot say, "Well, you need 10 people or 15 people."

The CHAIR: Commissioner, you say that your work is largely predictable, insofar as you have the same agency that you are overseeing at all times. There is a flow of work that comes out of it, but there are two aspects I would like to discuss about the unpredictability of the work. One is express referrals, additional reviews that are given to you by the Government or the Parliament. The Tink review said that if that kind of ad hoc special project is required then ad hoc funding should be delivered with it. In that regard, you were recently given the requirement to review the consorting laws. Was there any funding attached to that?

Mr ADAMS: No.

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The CHAIR: What is likely to be the funding impact of that or the resource impact of that one review?

Mr ADAMS: We need two more full-time staff to do that work. We do not have funding for that. We have put in an ad hoc, but inadequate, review to start things going and Ms Anderson was doing some work on this.

Ms ANDERSON: The cost for the two positions we have estimated in today's dollars to be about \$265,000. I have had preliminary ad hoc discussions with Treasury. It does not meet their threshold of anything they would say, "Yes, we are going to give you extra funding for that", because they do not see it as being material and DPC has said, "We may be able to give it to you but we cannot guarantee that we will be able to help." We have no guarantee going forward that if we were to put the people on that we would actually be able to pay them.

The CHAIR: I assume those positions would just be a part of the cost because you are also required to take some of the commissioner's time, the support team, the admin team; that is a fraction of the actual costs.

Ms ANDERSON: That is just directly to put on the two people.

Ms DRAKE: The Government wants it done but Treasury will let us know.

The CHAIR: The other aspect in terms of predictability and unpredictability is that the Government has decided to increase the size of the police force by some 1,500 additional positions. I think you could safely assume that they will have the same kind of conduct issues for that additional 1,500 as the existing 16,000 but no additional resources have been provided to your body to oversight that?

Ms DRAKE: No.

The CHAIR: What impact do you think that will have going forward?

Mr ADAMS: What it will mean is that we more brutally filter what we look at. We have to skim examine rather than actually examine a whole lot of complaints. We have to take that risk. I have told my staff, "You just do your best. I will take the risk and if government complains that we are not looking at enough I will say there is a really simple solution". It is not fair for them to feel they are not doing a conscientious job and not backing up. They have to make a judgement call on a limited examination because they have to try and focus on things that are worthwhile. I have told them, "You just do your business. We will take that risk and if there is a complaint about it I will explain to government why it is necessary".

The Hon. MARK BUTTIGIEG: In effect, a 10 per cent reduction in funding according to your projections on a 10 per cent increase?

Mr ADAMS: Yes.

The Hon. ADAM SEARLE: Commissioners, you paint a stark picture of the difficulties that your agency is facing. Have you read the submissions made by the Electoral Commission and the Ombudsman to this inquiry?

Mr ADAMS: No, I have read the ICAC. I have not read the other submissions.

The Hon. ADAM SEARLE: What do you make of the ICAC's proposal of a new funding formula or approach?

Mr ADAMS: I think it is essential. Something along those lines, whether that particular model or not. Can I note a significant feature of our work that hopefully will result in less work. First of all, there are two areas where this occurs. First of all, in our education and prevention area we have examined a number of areas of complaint but the two I would like to mention are Suspect Target Management Plans [STMP] and stripsearching. In taking a systemic approach we have had positive responses to what we have been saying. We would hope that changes at a corporate level, changes at a training level, changes in the way in which they instruct officers to conduct these searches and the circumstances of searches, which will hopefully will result in fewer complaints. Systemic examinations have an ongoing effect—aside from the fact that they improve things—from our work point of view we are hoping they reduce work. STMP is the same.

Ms DRAKE: You are probably aware that the chief has been doing hearings in relation to festivals and public events, but I have a number of hearings in relation to individual aspects of stripsearching in regional communities. I have had some positive contact with local area commanders who are perplexed by this problem of ignorance of the law and how this can emerge from the academy to the practice in policing. What happens in the middle? Arising out of a recent hearing—I have not done my report yet, so I cannot tell you much about it—we have discussed having some education and training by the commission. The counsel assisting at my hearing talked

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at length with the local area commander, looked at the conduct and said, "How do we fix this?" One of the things we are doing which is useful is that we are devising a type of more Socratic education: This is the situation. What was wrong? What should you have done? What you did not do?

We are going out to this town in February with counsel assisting, the head of police in that area, Mr Crandell, the head of the professionals standards, and command and me. Because I am going to see how it goes. The chief has agreed to fund that one local area command visit. I have spoken to the Commissioner of Police about it and he is interested and we will look at moving that area of education into different regional centres. If there is a cluster problem or if we think there is a problem in an area as to knowledge and education we can take it to those areas. One of the things that the chief is referring to that is coming out of these hearings, and the more systemic thing, is that it is identifying what the problem is and it is somewhere in between the academy and practice.

The plan is to go to this area, have those sessions and see what difference it makes and then the commissioner is going to look at moving that into other areas. Of course, we will not be funding it at that stage. We can afford to fund one. We are probably pushing it to do that but we have decided to do it. We are going to see how it works. That is what flows from looking at the big issues: Do not worry about one particular officer so much but how do we fix the problem? I am quite excited about those education programs and I would be very disappointed if we could not afford to do them, to move on from just individual instances of misconduct. It is the greater work, really.

The CHAIR: That kind of work, I assume, given your own statutory obligations, will be impossible with the funding cuts you are talking about?

Ms DRAKE: We cannot really do it now. We are pushing the envelope to do this one but I really think it would be worthwhile and you have a great local area commander who wants to agree to it and he is a lovely fellow and he sees the need. The Commissioner of Police has said, "yes." We are going to try it but we cannot do that.

The CHAIR: Maybe you will get the LECC budget caravan to travel around New South Wales?

Ms DRAKE: Maybe. Maybe we will make particular applications for particular areas, I do not know. I suspect the Commissioner of Police is more likely to take it up as an education tool if it is effective. It flows from what the chief said about systemic change.

Mr ADAMS: I mentioned one but I should mention another feature. It is difficult to persuade government of this and that is the utility of investing in front loading. In our oversight area we have investigations that are inadequate which could not comply with police requirements. We are haphazard. And so what you do, since ultimately that is going to be corrected, that has to be corrected at a command level. If it is corrected you hope the lesson is learnt and accordingly you are not going to have that problem with that investigator or that command again and, progressively, you hope the call for us to be more interventionist will fall. We are not remotely at that stage yet. One can see the possibility of fruitful exchange in that area.

So we are not rapping knuckles. We are endeavouring to engage positively to change and improve conduct so then, aside from the fact that the police do their job better, it reduces our need to investigate those matters and we can concentrate on others. If one takes a longer view, say a five- or six-year view, one would be hoping that you could have more or less work on a fairly stable financial basis because you have knocked a lot of the rubbish away. Now, it is unpredictable and that is a hope, but that is what one is looking to do.

The CHAIR: These the kind of sophisticated discussions that do not happen in the current budget process because you put your budget requests in—

Mr ADAMS: And they say no.

The CHAIR: And that is it.

The Hon. SCOTT FARLOW: Chief Commissioner, what is the current breakdown you have for operational staff compared with support staff?

Ms ANDERSON: Operational staff at the moment are about 78 per cent.

The Hon. SCOTT FARLOW: Compared with support staff?

Ms ANDERSON: Yes.

The Hon. SCOTT FARLOW: In terms of the support staff, what do the support staff entail?

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Ms ANDERSON: We have finance, human resources, information technology and a registry area.

The Hon. SCOTT FARLOW: When you talk about transcription services, is that support staff or operational?

Ms ANDERSON: The transcription services are contracted in on a needs basis. They are not actually included in those figures.

The Hon. SCOTT FARLOW: When you were discussing previously efficiency dividends and the like, you made some comment that you were told to make an efficiency dividend but are not necessarily given the support as to where to make those efficiencies, from either DPC or any other sort of element of government.

Mr ADAMS: Well, it is scarcely surprising since nobody comes to the commission to see where you might usefully to do it. I do not wish to be—if I can be crude for a moment—a smart-arse about this—they would not have the information that would enable useful suggestions.

The Hon. SCOTT FARLOW: I was just wondering with respect to the Auditor-General's report that has been commissioned, whether you think that that process may help you in being able to find some of those initiatives, with the Auditor-General taking a greater understanding of your work and the work of the commission as part of that process.

Mr ADAMS: That is always possible, providing they dig deep enough. We have asked for that. We have seen this, I can tell you, as an opportunity; I do not see it as a threat. I see it as an objective outsider. But as I said to them—we had a meeting yesterday—"Your auditors have to come down and sit down with our assessors, our investigators and with our legal staff and see what work is actually involved, how do you translate complaints from the police system into our system, how do you then analyse them for the purpose of assessing what you do with them." If they have that kind of concrete information, highly intelligent, objective people will make useful suggestions, I am quite sure. I am hopeful of that outcome, providing they are prepared and able—I am not quite sure what time frames have been put on—to invest that kind of inquisition, as it were.

Ms DRAKE: Mr Farlow, I do not want you to think that efficiencies are not something that we have extensively developed and applied already. We have been under financial constraint. We have not hired people with the threat of possible termination in employment there because we think it would be inappropriate. Efficiencies have been the focus of our organisation for some time now because of this pressure. Workplace efficiency has been my bread and butter for a considerable period of time before I took this appointment. I am certain that with the best will in the world and the knowledge that they will apply—and I am sure the Auditor-General is a woman who will apply those skills—there is not much fat there. We are doing that already because we think it is important. I just want to make that point.

The Hon. MATTHEW MASON-COX: To build on that, you really need an independent sort of assessment of your baseline funding, right? You need that done in a transparent way. Do you see the Auditor-General process that you are embarking on now as a way to, if you like, validate a baseline funding.

Mr ADAMS: Potentially.

The Hon. MATTHEW MASON-COX: Why I ask that, to come back to the line of questioning I was putting to you before, is that the same thing and the same issues arise for all the integrity organisations and the same pressures are in the current budget processes. There is an opportunity through the Auditor-General's review and inquiry to look through and validate baseline funding. There will be obviously different variances there. ICAC has a more variable budget than yours, as you have identified. But through that process, there would be an independent view from a government-independent auditor, to assess what your baseline needs and future needs might be, which could then be, if you like, are accepted or reviewed by your parliamentary oversight committee as a means to try to deal with what a realistic budget should be, moving from now into the future. Do you have a comment on that?

Mr ADAMS: The only complication of that—and I think it is a significant qualification—is that, for example, take the 570 outstanding police investigations that we have to assess to see whether they are being properly conducted. How do you select? You know you cannot do them all. How do you select which ones you are going to have a look at? Well, in part you say we have X amount of staff and X amount of hours, so we can expand these resources. The Auditor-General can help with that, but the judgement call—which ones are important, which ones are potentially important, which ones are potentially trivial—the Auditor-General has no expertise to deal with that. I am sure there can be a useful input in ways in which you approach the analysis, but ultimately, outsiders cannot really make that judgement call. What we can do is that we can describe, within degrees of uncertainty, the kinds of outcomes the particular analyses would have, and some independent person,

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such as the process recommended by the ICAC, would then make a recommendation that—accepting this analysis of that analysis, or making this adjustment or that adjustment—this is an appropriate amount of funding, being properly informed about the judgement calls.

The CHAIR: In short, you need a transparent and open process where you can have a merit-based assessment of your budget needs.

Mr ADAMS: Exactly.

The CHAIR: That is surely just a very basic minimum requirement for an independent statutory body.

Ms DRAKE: Yes. Do you want us to do the job for which we have been employed? If you want us to do the job for which we have an employed, what are the minimum requirements of funding to perform that role?

The CHAIR: And have that as an iterative process rather than as a unilateral, secretive process in the Executive.

The Hon. MATTHEW MASON-COX: It can be iterative but the question I am asking you is do you think the Auditor-General can do that with you in a collaborative way?

Ms DRAKE: I do not know. We met them yesterday.

Mr ADAMS: We are going to find out.

Ms DRAKE: We are going to find out.

The Hon. MARK BUTTIGIEG: In a sense, what you are saying is that—correct me if I am wrong—the message I am hearing is that a lot of this is academic because you are so cut to the bone and you have found all the efficiencies you can possibly find, the issue is that you just do not have enough funding. Let us cut to the chase: That is what you are saying, is it not?

Ms DRAKE: Yes, that is right.

The CHAIR: But also I think we need to look at the terms of the Auditor-General's review are. The Auditor-General's review is into the effectiveness of the financial arrangements and the management practices. It is really not going into this transparency or open process for budget-setting, is it?

Ms DRAKE: No.

The CHAIR: It is a different inquiry.

Ms DRAKE: I did not really understand the question when I read it at the auditor's meeting yesterday. I felt, is this going to address the issue—which is, have we got enough assets to do the job that we are employed to do—or are they just wondering whether we do it efficiently or not? I am not sure.

The CHAIR: Maybe counsel assisting could help on the meaning of the effectiveness of the financial arrangements. Who knows what that means.

The Hon. PETER PRIMROSE: This is a simple one and I feel almost silly asking it, given the conversation we have just had, but on page 21 of the Independent Commission Against Corruption's submission, the ICAC concluded:

The budget-setting process is covered by the cloak of secrecy surrounding the NSW Treasury and ERC process.

Would you agree with that?

Mr ADAMS: Well, except that I am not fond of metaphors, yes.

The CHAIR: How would you describe it?

Mr ADAMS: It is opaque.

The Hon. PETER PRIMROSE: And how does that opacity—we have already heard some of it—affect you?

Mr ADAMS: We do not get to put in; there is no dialogue. We cannot respond to, we do not know what working assumptions there are. We cannot correct mistakes of fact, errors of judgement or any of those matters. A process which should be, to some extent, information gathering is not information gathering.

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The CHAIR: What about the oversight committee having a role in you presenting your budget bids and then the oversight committee then seeking a response from the Executive to those budget bids? Would that be one model of getting additional transparency?

Mr ADAMS: Part of the difficulty with that is the members of the oversight committee are extremely busy on other committees—

The Hon. TREVOR KHAN: Too right.

Mr ADAMS: And the extent to which they can devote time to the necessary—I mean, if they got appropriate staff that could be done. I am not saying it is not an appropriate course and, frankly, independent oversight by people who, as it were, in this space at least have no axe to grind cannot hurt.

The CHAIR: We have unfortunately run out of time unless there is any burning question that any member of the Committee has not been able to put. Were there any final observations you wish to make?

Mr ADAMS: The compliments of the season.

The CHAIR: And happy holidays to all of you as well. We will be having a brief morning tea and we will resume at 11.30, but thank you very much.

(The witnesses withdrew.)

(Short adjournment)

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SIMON THOMPSON, Acting Finance Director, NSW Electoral Commission, affirmed and examined

MATTHEW PHILLIPS, Executive Director, Corporate, NSW Electoral Commission, sworn and examined

JOHN SCHMIDT, NSW Electoral Commissioner, NSW Electoral Commission, affirmed and examined

RACHEL McCALLUM, Executive Director, Funding, Disclosure and Compliance and General Counsel, NSW Electoral Commission, affirmed and examined

JOHN CANT, Executive Director, Information Services, NSW Electoral Commission, affirmed and examined

STEVE ROBB, Acting Executive Director, Elections, NSW Electoral Commission, affirmed and examined

The CHAIR: Welcome to the inquiry. Thank you for your attendance and thank you for your submission, which the Committee has received and digested. Would you like to make a brief opening statement.

Mr SCHMIDT: Thank you, Mr Shoebridge. If I could crave the Committee's indulgence, I have a brief general statement but I might lead off then to a quick analysis of some feedback on the Treasury and DPC submission.

The CHAIR: That would be greatly appreciated. That saves our first round of questions.

Mr SCHMIDT: I am preaching to the converted, of course, when I point out that the NSW Electoral Commission is established under the Electoral Act. It is constituted as an independent body and my office is that of an independent statutory officer. One of its objects is to facilitate and protect the integrity of representative government in New South Wales, a fundamental element of the maintenance of a democratic system, and we should be proud of what we have got. I must stress at the outset that the problems which we have outlined in our submission and we can talk about today—I am not suggesting the difficulties faced by the commission are the result of deliberate efforts by anybody to impede the work. Rather, I believe they reflect challenges which arise out of the current budget process and the cluster model, and the inability of those processes and that model to address the operational requirements of small independent integrity agencies.

I have a number of observations that I will make in the course of this, but to give you a contextual basis: The most fundamental problem facing the commission is its staffing funding model. Everything else flows from that—the ability to carry out any functions, deliver any project, deliver elections, implement legislation. If that is not fixed, we will at best continue to struggle to carry out some of our functions effectively and efficiently and at worse there will be a major failure in some aspect of our services, for example, an election event. Attached to our submission you will have seen the Bendelta report, which I commissioned to look at that staffing structure. That Bendelta report was also presented to the Public Service Commission and it was praised. There was very positive feedback about model actually for other New South Wales government agencies and it was presented to Treasury—the second successive bid we have made for a revisitation of our funding structure for our staffing, to no avail.

As the report points out, there are a number of issues with the staffing structure. Roles with ongoing status make up only 55 per cent of our payroll. We have a high-cost temporary and contract employment model and a highly transient workforce relying on contracted staff who cost significantly more than ongoing staff with an average tenure of contractors ranging over 2.13 years. The Auditor-General has put out reports saying that there are real problems with government agencies relying on contractors for delivery of core services. Sixty-two of our workforce, that is 29 per cent, are contractors; 41 per cent of the senior executives are temporary. There is an overreliance on overtime and excessive hours, reflecting the imbalance between workload and available staff capacity and that became very plain to me in the course of the last election.

The NSW Electoral Commission has been funded historically as an events-driven organisation and that, if you went back in time, would be a fair way of doing it, so you have peaks and troughs and in New South Wales the cycle tends to be two years because of local government elections, State general elections and Aboriginal land council elections also as part of that. Since about 2014, though, we have been in a constant cycle of elections. In the preparation for the State general election in 2015, the 2015 Aboriginal land council elections, the 2016-17 local government elections, the 2019 State general election, we have just completed the 2019 Aboriginal land council elections and we are now preparing for the 2020 local government elections. At the same time there has been an unprecedented series of developments of new legislation being introduced and requests for us to develop various initiatives by the Government, for example, the pre-election online disclosure of donations and a raft of other measures.

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During my three years as commissioner it has been an ongoing battle to maintain our core capability. To the extent possible—and I believe this follows on from the practice that had to be adopted by my predecessor—to maintain continuity of key staffing, it is a constant battle of moving from one funding bucket to another. Even with these efforts, at the end of June this year, following the State general election, we exited 37 people. It should be noted that since that time we have had to rehire nine positions because we are now preparing to the local government elections so we let people with expertise go. A few months later we have to rehire them. That was bad enough. Things are going to get a lot worse in the next few months. Based on our current funding for the coming financial year, in next October we will have to exit 138 roles out of a total of 257, 54 per cent of the existing workforce. The 138 roles are currently project-funded and do not include the 10 roles which have been identified for the further efficiency dividends, which have been advised.

They do include the eight positions I have raised at budget estimates, which are the local government enforcement provisions, enforcement audit and customer service. Just to give you a flavour of how extreme the challenges we face are, those eight positions expire at the end of June. We are preparing for the local government elections in September. It would be quite reasonable for some of those people to start looking elsewhere for jobs; that assumes that we might get funding to keep them going. What can I do? At this point in time, we are seriously considering having no on-the-ground enforcement activities as part of the local government elections, because what is the point? We could send people out there; we would have to cut back on our enforcement and audit activities within the office for all the other functions we have. What capacity would we have to investigate matters which were discovered as part of those on-ground activities?

Of course, it is standard practice to exit some staff following election events. However, 32 of the roles out of the 138 I mentioned earlier, which we must exit by October 2020, have been identified as being ongoing critical to delivering our functions—not just election events. These include our regulatory and compliance responsibilities, ongoing cybersecurity requirements, maintenance of our core election systems, corporate services and the elections themselves. Without these staff our business will be compromised. For example, at the end of October, with the staff going, we will be exiting IT staff who have supported our core election systems for the past 10 years. As such, these systems may not be ready for SGE 2023. There is a whole other issue, which I will not go into great detail here, about replacement of our current IT system.

The CHAIR: SGE is State general election?

Mr SCHMIDT: Sorry, yes; State general election 2023. There is a whole other issue about our core election systems. They are more than 10 years old. They have been written down completely. The Auditor-General has asked in annual reviews what are our plans for replacement. If we were a properly funded organisation, we would be making plans and preparing a business case to go to Treasury for many millions of dollars to replace those systems. I do not have subject matter experts I can spare to do that work now. It is too late for the State general election in 2023. We have to aim for the 2027 State general election. After the local government election is over, we will be in a process—depending what resources they have—to start putting together a business case for a very large procurement exercise. If we lose these critical staff, we also lose skills, knowledge and expertise, which we will then need to rehire and train in the lead-up to another event. This, in turn, makes the costs of running those events more expensive and raises a greater risk of failure.

I welcome this review. I welcome the Auditor-General's review. I have been asking since I have been in this job with central agencies that our operations be reviewed to try and find a proper funding base. In meeting with the Auditor-General I stress that I expected she would find some deficiencies. I welcome that transparency. But I have also said to her that if she identifies those efficiencies, call them out but also to what extent the current funding model has led to those problems arising and our inability to address them. I am concerned what concrete outcomes can be achieved at this point in the lead-up to the next budget round. The ICAC Chief Commissioner also raised this concern. We really do need to have some interim solution.

In June this year, I had the good fortune to have a meeting with the Premier, Minister Harwood, Mr Reardon and one of my staff talking about, in general terms, the budget issues. As part of that the Premier advised that Mr Reardon is working on a revised budget process for small agencies. In September I wrote to Mr Reardon asking for advice about the status of that, because we are preparing our budget bids at the moment. I did not get a response from him; I got a response from the acting chief people officer, offering assistance in us finding ways to meet our efficiency dividends but no reference to this new revised budget process. I was disappointed that there was no reference to that in the submission that you have received. You may wish to pursue that tomorrow.

Six months has elapsed since my discussion about that. I presume some work was done. The answer may be that that work is now in abeyance pending these deliberations and the findings of the Auditor-General. Be that

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as it may, it would be interesting to know what work had been done and perhaps some hint of a revised process for us. Turning to the joint submission from Treasury and the Department of Premier and Cabinet—again, some indulgence: if I could work backwards, because I think the narrative works a little bit better that way. If you go to page 8, I believe it is, there is a section there headed "Independence" where we start off with a positive statement:

It is important that independent statutory bodies are, and are perceived to be, independent from the government agencies that are subject to their jurisdiction.

But then:

At a practical level, it is also difficult for the Premier and Cabinet cluster budget to be managed where ad hoc funding is sought by agencies within the cluster during the year, after the annual appropriation.

Annual ad hoc bids has been the nature of what we have done for the past few years. New legislation—Electoral Act—complete rewrite. Electoral Funding Act—complete rewrite. They were not part of the budget cycle. We had to go to government and ask for money. As I point out in the submission, with the Electoral Funding Act I received nothing except money to support parties with public funding. Some of the rationales given for that were somewhat unconvincing if we are talking about a clear and transparent process for delivering a budget. "Accountability for financial management"—we move up the page:

There is also the consideration of whether appropriate accountability measures are in place regarding the use of public resources by independent oversight bodies.

We are subject to a whole raft of independent audit. We have the Auditor-General. I appear before the Joint Standing Committee on Electoral Matters [JSCEM]. I am appearing here today. Again, I would be interested to know: Is there a suggestion from Treasury and the Department of Premier and Cabinet that there is something amiss in the way I am operating my business?

The CHAIR: Plus your annual auditing requirements and annual reports.

Mr SCHMIDT: Yes, like any other government agency. Anyway, I am not quite sure what they are getting at there. Then we come to the paragraph immediately preceding that heading of "Accountability for financial management". This goes, I think, to your role:

The Committee may wish to consider whether additional transparency is in fact necessary given that existing Parliamentary processes, including the annual Appropriations Bill, the Budget Estimates process and the Committee system, already ensure that the resourcing of independent oversight bodies is subject to a very high degree of public and Parliamentary scrutiny.

I have not looked at the *Hansard* for the appropriation legislation. I suspect there is no reference to my funding in it or to the other independent integrity agencies. I am willing to be proven wrong. I raised at the budget estimates process my concerns about the funding model and how we are going. I feel a great responsibility to the Parliament. I ultimately serve the public in ensuring democratic processes and that there is a Parliament in place. But I have an oversight role in relation to members of Parliament, with their funding and disclosure requirements and the actual election of yourselves to this place. I do not know, with the existing systems, how you could possibly have an insight into my budgetary processes and the challenges that I face and how those decisions are made as part of the budget process, because I do not know. You have heard that from a whole raft of people today. We get very little feedback as to how decisions are made. We turn back to page 7:

It is critical that the government of the day is able to assess the funding needs of all agencies in the context of the State's broader financial position and the need to ensure that all essential services are provided to a standard that meets public expectations.

I have for two years been trying to get money for cybersecurity. The New South Wales Government has signed up, through the COAG process, to review the cybersecurity for all electoral bodies because of recent developments in foreign elections.

The Hon. MATTHEW MASON-COX: Keep the Russians out.

Mr SCHMIDT: It could be anybody, but the threats that are present there. The year before last we put in a bid. Treasury said it was not going to get any favour. We withdrew it. They asked us to put it back in. We put it back in and we got \$100,000 to do a business case. We put that business case in last year; we got nothing. I am not compliant. The organisation is not compliant with the New South Wales Government's cybersecurity requirements. I cannot see how I can become compliant unless additional funding—but I would have assumed that that funding would be relevant to ensuring that all essential services are provided to a standard that meets public expectations. I assume the public would expect that when I am running elections, my systems meet the New South Wales Government's cybersecurity requirement. The submission further states:

It has been suggested to the Inquiry that funding for oversight bodies should not be determined as part of a normal Budget process that treats that level of funding as optional or subject to prioritisation against internal Government-of-the-day spending priorities.

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No such suggestion. I am not suggesting that I get priority. If you look at the bids that I have put in in the last financial year, they were things that I was doing because the Government wanted them to be done. The second stage of implementation of the Electoral Act has not been funded. I have talked about cyber security. Basic things like accommodation. We are being asked to move accommodation because of Government policy. We have not been given rent to cover the overlap period between our current accommodation and the new accommodation. We have not been given money to physically move people to the new place.

We will get a fit-out, which is supplied by Property NSW, but for any enhancements on top of that—perhaps a new telephone system, because our current telephone system does not warrant moving across—we have received no money. But that is a priority for the Government; I presume it is a priority because it would not have made me move from quite considerable accommodation where I was unless it was a priority.

The Hon. MATTHEW MASON-COX: Where have you moved to?

Mr PHILLIPS: It is 231 Elizabeth Street. It is the southern Sydney CBD hub.

Mr SCHMIDT: And we go on:

It may be assumed that any inadequacies in the performance of integrity agencies' functions, and the reasons for those deficiencies, would be examined and reported on by the Committee through its inquiry process.

I sit ready to answer any comments or questions you might have about my deficiencies.

The Hon. JOHN GRAHAM: That is a generous offer.

The CHAIR: We will get to them, Commissioner.

Mr SCHMIDT: I look forward to it.

The Hon. JOHN GRAHAM: We are not extending a reciprocal invitation.

Mr SCHMIDT: Then we come to the way DPC has described its role in the budget process. To a reader with no knowledge of how this works in practice, and you have been hearing some of these details today, it would appear that they are almost a benign bystander, that they provide some guidance. Have you read those words there? They provide some guidance to agencies, but we deal directly with Treasury. There is a suggestion there, and I do not know why this has been raised, that DPC did not make any amendments or alterations to the submissions made by independent oversight bodies. We certainly have not raised that and I do not know of any other submission that has made the suggestion, but *c'est la vie*.

DPC is intimately involved in our funding bids. Mr Reardon has stressed that he wants to know about our budget bids. He wants to know the details. He has told me he knows my budget better than I know it myself. We work with DPC officers. We go to meetings with Treasury with DPC officers. There is a core, ongoing relationship where they are fundamental to that process. The difficulty is that as an independent integrity agency we do not get to brief separately to the Expenditure Review Committee [ERC] or the Ministers. We do not see what those briefs say, we do not participate in the discussions before the Expenditure Review Committee and we do not get feedback. You are in this double bind that, on the one hand, you do not know until it is too late for planning what has or has not been approved and you cannot learn from the experience.

If a budget bid has been knocked back it is obviously useful to know why, because you may be able to take steps to fix it next time. Sometimes the reasons we get are a bit unusual. For example, as you will note in one of the examples I give in the submission, the Government had endorsed a recommendation—multiple recommendations over the years—from JSCEM about electronic mark off in polling places. We had been given money to do that work and we started work on it. Things kept intervening. I have talked about the small number of subject matter experts; we can only do so much work. There was the split local government elections and there was the prioritisation of online disclosure of funding in the lead up to the election. So we rolled over this money twice and then we sought a further rollover into this financial year.

The world had moved on, technology had improved and we said to Treasury, "We would like now to make that real-time electronic mark off," so that you can get the maximum benefit from it. The Treasury response—I will be corrected if I misrepresent it—was, "That is a different proposal. No, you will have to put in a fresh budget submission and start from scratch." We did not get that rollover and it is now too late. I am not going to be doing a trial of electronic mark off in the lead up to the next election. Contingent upon that recommendation from JSCEM was another endorsed by the Government that we trial in-booth electronic voting. I will not be doing that because unless you have electronic mark off you cannot do in-booth voting trials as well. I will just see if there are any further comments. I think that is enough.

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The CHAIR: Well, that all seems to be going very well.

Mr HALL: Yes. I find it very therapeutic.

The Hon. PETER PRIMROSE: You have essentially covered most of my questions. You were sitting in the gallery when I asked the previous witnesses about the comment made by the ICAC regarding the cloak of secrecy surrounding New South Wales Treasury and the ERC processes. In your submission, for example, in relation to page 34, you spoke about cyber security and the fact that you are not compliant with the Government's cyber security policy. The very last clause you state is, "Without any further explanation you were knocked back." That seems to be coming up repeatedly. Again, I just wonder, do you concur? What other examples are there that you may be able to point to of the fact that you do not get any feedback, you do not get comments on submissions you put up? This cloak of secrecy seems to be a common theme.

The CHAIR: Perhaps tell us about the occasions you have had feedback and we could start there and assume the rest is devoid.

Mr SCHMIDT: I will pass over to Mr Phillips in a minute. Another example I think is illustrative is, on the one hand we are told about—Treasury do not use the words—the purity of the process. So we have a rigorous process. In my experience with the Electoral Funding Act where, as I say in the submission, I have raised repeatedly with central agencies that everyone knew the Electoral Funding Act was coming—it was a commitment. We knew that there would be implementation costs for that. So I said to central agencies, "Look, we need some money in advance to get some preparatory work done." Treasury said, "No, there is no bill. You cannot get money for a bill that has not been passed." Now, that has never been the case. I have been in government long enough to know that is not the case.

But they said, "No, you cannot. Wait until the bill goes through and then you come to us and you will have assessed the cost." It was passed in May, it commenced on 1 July. We went straight back to them and said, "Okay, it has gone through. Where is the money?" "I am sorry, it is too late in the budget process. You will just have to make a bid next time around." We had funded implementation internally. We could not do the communication we wanted and we had to cut down on other services we provide across the board in various areas. It just did not make sense, but that was an example where we did not get the money. However, outside that, we also foreshadow—because there was increased funding for political participants—that money miraculously appeared.

I do not begrudge the members around the table in the parties for getting that funding, but for some reason that was okay even though it fell under the same problems that I had experienced with the general funding for the implementation of that Act.

Mr PHILLIPS: Just to add, I note that we engage in an extensive process of briefing of the central agencies—Treasury and DPC—prior to any budget submission. They take place over a series of months and they reflect where the business case is at that time. But when we have finalised business cases developed we front up to Treasury and do face-to-face briefings. We did that with Treasury and DPC last year. What we do not know, then, is—we do not see the ERC minute and we do not see the Cabinet minute that goes up—whether all or part of our funding submissions actually goes before Government. There is no transparency on that. We have good relationships with our Treasury analysts and so, as I said, we engage in that process.

There is no transparency in what goes up. There is also no transparency, really, on the reasons why. You will see why a decision has been made to either partially fund one of our bids or not fund in its entirety. You will note in our submission on page 20 we talk about our funding bids that we put up for the State general election. You will note that there were five areas that were just struck out of our bid. We were not provided with any formal correspondence or really anything verbally from Treasury on why those particular items were struck out. You will note that some of those are rather important items such as security at election centres and some costs that are outside of our control such as the increase in postage. We are not provided either with transparency with respect to our bids that we make. We made a considerable number in the last budget process and we will do so next budget, but we are not given any information as to what was considered by Government and then the reasons why bids were not accepted.

The CHAIR: What sort of process would you envisage to have that engagement? Could that be usefully done in the parliamentary oversight committee or the model proposed by the ICAC? What is your proposed solution to it?

Mr SCHMIDT: I think we have to get away from the current cluster arrangement to start. If you have the mega agencies I can see it working as they have such vast amounts. They have, of course, considerable demand

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on those moneys but they have the capacity, they can make a small change here or there and push expenditure out that will free up money. They still have cuts like everybody else but we do not have any room to move. We should not be in a cluster arrangement. It is not going to deliver an appropriate outcome.

I genuinely believe we require more transparency here. We need more transparency and I believe a parliamentary committee probably is the way to go with some of this, where there should be a report with the bids that integrity agencies put in. There should be a report, if it is going to be left purely in the hands of the Government of the day, as to how they are dealt with, how those matters were ultimately handled, and if they were not approved in full the reasons why they were not. I think the Parliament has a right to know that and so does the general public. We need to get out of the current structure, it is not delivering.

The Hon. ADAM SEARLE: Mr Schmidt, you indicate at page 36 about providing the appropriations directly to the integrity agencies. The ICAC was certainly heading in that direction. On page 38 you talk about using a reporting mechanism to a parliamentary oversight body by Treasury so there is full transparency about, I guess, how they treat submissions from the integrity agencies. Do you see the new model comprising essentially those two elements?

Mr SCHMIDT: My preference ultimately would be that it is a direct appropriation. We do have direct appropriation which we have not used, I now realise, where in the Electoral Funding Act any money for public funding of political participants has a direct appropriation already but to date we have gone through the Treasury process and argued our case. I do not think it is inappropriate for us to argue our case, but ultimately there is no power for Treasury to refuse. We can determine, based on fairly clear criteria, how much public funding there should be and that money is appropriated. There is a provision in the Electoral Act which has been around for about 175 years, a variation thereof, of the Governor providing funding for a warrant to Treasury, as it used to be, to fund. That envisages, I assume, under current modern law that would be the executive council but direct funding a la the Victorian model would be an excellent outcome: With advice, with engagement with Treasury and with input from a parliamentary committee it would produce transparency and certainty.

The Hon. ADAM SEARLE: You make the point at the top of page 37 that there is a Victorian provision similar to New South Wales but it seems to be applied differently. Can you step us through how it works in Victoria?

Mr SCHMIDT: As I understand it for a start it is not the Governor, it is literally a direct appropriation. The Committee may want to make contact with their counterparts in Victoria to hear from a parliamentary perspective but, as I understand it, the commissioner in Victoria determines how much money he thinks he will need to do his various functions, including elections, but has discussions with Treasury, with the parliamentary committee. Ultimately when the decision has to be made, his word is "I need X dollars" and it is appropriated.

The Hon. ADAM SEARLE: Does he then inform Treasury and as a matter of law Treasury has to comply?

Mr SCHMIDT: I assume that is the case.

The Hon. JOHN GRAHAM: Can I ask about one of the aspects of the Government submission you did not get to while you were working backwards through it. That was in relation to how the budget process worked this year given it is an election year. I note in your submission you draw attention to one of the issues from your point of view, which is there is no direct avenue for making budget submissions to responsible Ministers by virtue of a cluster arrangement. In the Government submission they indicate that after the election, given it is an election year, elected Ministers who wish to submit additional bids following briefing by their agencies had an avenue to raise these with the Treasurer or the Premier. Although they go on to say, "Given the physical context Treasury did not open a formal second round for all agencies". How did this work in practice for the Electoral Commission?

Mr PHILLIPS: I will take the question. The process you have articulated is correct. The original process for the budget for 2019-20 was they invited significant agencies, which we do not fall into. So, we missed out on the first round. I think this is in our submission as well.

The Hon. JOHN GRAHAM: But just step us through how this works. Significant agencies got to bid, you did not?

Mr PHILLIPS: Significant agencies, transport, the large agencies; we did not. There was another round whereby we were an independent agency. The standard rules were that clusters were able to put in one bid and independent agencies did not have to comply. We were able to put in not just one as the cluster but individually so we made one submission, plus we made a series of other preliminary technical adjustments where existing

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funding exists and we are seeking some supplementation. We went through that process. Those bids were made, most of which were supported by a comprehensive business case. Treasury did the analysis and then it was we assumed that all of those bids—we consulted with Treasury during those to flesh out the details so they could understand why we put in those submissions. You will see in our submission which ones were funded in full, or partial, and the like. We do not know because we never saw the ERC budget committee minute whether or not Treasury had agreed to fund those processes and so forth.

The Hon. JOHN GRAHAM: All of that is in line with your submission and the Government's submission, although they are silent on the significant agencies question in the Government submission. I understand that.

Mr PHILLIPS: I think the process is right.

The Hon. JOHN GRAHAM: It is the bit at the end; that following the election elected Ministers who wish to submit additional bids following briefings from their agencies had an area to raise these with the Treasurer or the Premier?

Mr PHILLIPS: No.

The Hon. JOHN GRAHAM: Taking your point that one of the issues here is you have a separate Minister who you may want to brief, was that avenue open, in practice, for the Electoral Commission?

Mr PHILLIPS: No.

The Hon. MARK BUTTIGIEG: Commissioner, you mentioned during your opening statement about the variability of staff and the necessity to have to put people off and the long-term efficiency effects that has because you denude your skill base and all the rest of it. I suppose the intuitive response would be from government, "That is related to the ebbs and flows of the elections". Can you give us a sense of proportionality? You are arguing that there is a case for a longer term tenure?

Mr SCHMIDT: The numbers called out for the critical staff are the ones. It is a subset, 32 out of the 138. We need ongoing funding just because of the nature of the business of the organisation as it is in 2019.

The Hon. MARK BUTTIGIEG: Part of the problem is that you do not get to have those conversations with Treasury or the Government because there is not a lot of dialogue?

Mr SCHMIDT: We have put business cases in for two years in a row. There was a PricewaterhouseCoopers report the previous financial year and for this financial year it was the Bendelta report. We argue our cases as to why this is required. Yes, we do have a chance to engage with them, but to no avail.

The CHAIR: It is a one-sided engagement. You make your case but you have no idea how or if there is a merit based decision at all to it?

Mr SCHMIDT: I have no basis.

The CHAIR: It is void?

Mr PHILLIPS: Can I raise the point that when you make submissions to Treasury as part of the budget process you rank and prioritise your bids. Workforce planning was our number one. Treasury did not fund our number one. They pick and choose from the list. We have no visibility, again, around which projects they fund, which ones they partially fund and in what priority order.

The CHAIR: You do not know on what basis—I was going to say random, but it is an unknown basis. Your top priority often does not get funded and a lower priority is funded from Treasury and there is no explanation why?

Mr SCHMIDT: Yes, and there is an additional fact here—the death by a thousand cuts. In addition to the budget savings, which everybody has talked about, it is not unheard of for us to be given capital to implement a new information technology [IT] system or a reform but no operating expenditure to pay for the licences or for the people to support those arrangements going on. So over time there is an incremental build-up of expectations that you will be able to internalise this cost and you just cannot do it.

The Hon. PETER PRIMROSE: Following on precisely from that, page 24 states:

The focus on reducing the employment costs ... is particularly counterproductive for small agencies, who are left with no choice but to engage more expensive contractor resources ...

Can you speak to that as well?

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Mr PHILLIPS: We have a very small labour expense cap budget. We have 113 employees who are funded—they are ongoing—and some temporary staff. That is all that we can fit within that envelope and Treasury fund accordingly. What we then have is a series of project buckets for specific capital items and the like, where we bring on people for a defined period of time. If the funding is only for six months or 12 months, you can engage people only for that time. We cannot bring on, which would vastly reduce our cost, more temporary or ongoing staff to deliver that work and they are out there. We must bring on project staff through a series of labour hire firms, recruitment firms and so forth for a defined period because we can engage people only for the length of the funding period, so we must engage consultants or contractors to deliver that work.

The Hon. JOHN GRAHAM: You say in the submission that you understand that there was a small agencies fund previously. Do you have any more detail about how that did operate?

Mr PHILLIPS: That was for businesses development. Many years ago—I look to the chief financial officer there for what year that ceased—there was a few years ago a central fund that Treasury held to fund the development of business cases. That has been abolished.

Mr SCHMIDT: To expand upon that, I do not begrudge inquiries because I want to throw light onto these issues but in addition to having to get expertise in or take some of your own experts offline to prepare the business cases, which may or may not ever be considered or whatever—then we had the Independent Pricing and Regulatory Tribunal [IPART] review for Local Government. That was intensive work. We are now engaged with the Auditor-General's work with preparations for this. Again, I do not begrudge it, but for a small agency, there is just not that capacity.

The Hon. JOHN GRAHAM: It has a disproportionate effect.

Mr SCHMIDT: As I have said, the refresh off our core IT systems is going to be perhaps the biggest project that the organisation has ever undertaken. It will have to be done at this point in time with internal resources, which means I do not know what my chief information officer is going to be able to do with maintaining some of the core systems or they are tinkering along while we just do the business case.

The CHAIR: In some cases, you get funded to do the business case. You pointed out you got \$100,000 to do a business case, so I assume there was organisational enthusiasm behind that project—because clearly, why would the Government fund the business case unless it had some intention to do it?—and then the business case gets rejected for unknown reasons—

Mr SCHMIDT: Yes.

The CHAIR: —at an unknown point, in an un-transparent budget process.

Mr CANT: That \$100,000 gave us the opportunity to get PricewaterhouseCoopers, an external organisation, to assist with the production. We felt that we had been able to prepare a business case, which had some, I guess, real detail behind it. One of the challenges with the small agencies is preparing business cases that enough detail to actually be able to satisfy. This is one where we did think that we had a good opportunity to prepare a comprehensive business case and that we could actually properly assess what the cost would be because we actually had some experts looking at what the cost association would be with various parts and implementation would be. We put all the effort in and did not get funding. We did not get feedback as to why those particular parts of the funding were not provided.

Mr PHILLIPS: Can I expand on that a little bit? You made the point around Treasury providing funding for the business case. I have just referred to the CFO and that is the only business case we have been funded to develop at least for the past five or six years. It is not a regular course of events that Treasury provides funding for business case. This was a one-off in a project that we originally put up in its entirety for Government to fund, which was rejected initially. I think the commission has already made mention that we were invited back to resubmit that business case. There was great enthusiasm in the organisation and we thought that was going to be funded. Then ultimately we got \$100,000 to develop a business case and that was it.

The Hon. TREVOR KHAN: This morning—by the sounds of it, you heard it. In my view—I will say this is not a concluded view because you never know what happens with our decision-making, but without expressing a concluded view—it seems to me that Commissioner Hall made a compelling case as to why funding for ICAC should be separated from Executive Government. I think it is fairly obvious why, both in regard to ongoing and supplemental funding. The case put by the Law Enforcement Conduct Commission [LECC] was different in a number of ways, but what I invite you to do is to further expand, apart from the perversity of government decision-making—and I have heard a lot about that and I accept that. I think you can get a lot of ministers, who would come before us and would make precisely the same observations with the process that they

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have been through in terms of the budget process. What I am inviting from you is to expand on why my initial sympathy for the position that ICAC puts should be extended to your organisation? What is inherent about the services that you provide and what is dangerous about Executive Government that justifies a separation from the common budget process?

Mr SCHMIDT: I am happy to do so.

The Hon. TREVOR KHAN: Excellent.

Mr SCHMIDT: The provision of electoral services with integrity is fundamental to the maintenance of confidence in our democracy and for the smooth operation of that. Through inadvertence, with government funding decisions, the capacity of the Electoral Commission to deliver those services can be compromised. Cybersecurity may be an example of that. To date New South Wales has not had—and we have worked very closely with the national intelligence agencies—a successful cyber attack on our electoral systems, but it could happen. The failure to properly fund that so that we are up to an agreed standard of what we need to do is unacceptable. That can then go across a whole range of our activities in the electoral space. We talked about security guards, a very basic requirement, you would have thought, for election events, because we get break-ins. Ballot boxes have to be guarded in early voting. The whole election for electoral districts can be thrown out because there has not been proper security. Treasury, in its infinite wisdom—

The Hon. JOHN GRAHAM: Not "can be thrown out", they have been thrown out.

Mr SCHMIDT: Yes, in Western Australia, there was a loss of ballot papers. Treasury, in its infinite wisdom, decided that that was not a funding requirement that should be given to us. We rearranged within our budget, moved things around and we provided what I think was an acceptable level of security to meet that need, but if they had reduced our budget even further, maybe I would not have been able to provide that service. You cannot maintain the integrity. I am willing to be exposed to all sorts of accountabilities, questions and inquiries as to the reasonableness of what I spend, but I cannot justify a system where the integrity of the actual election can be called into doubt in a budgetary process when no real explanation is given as to why the full amount of funding is not given. It just does not make sense. I do not think the people of New South Wales would understand that either.

The CHAIR: You say your organisation functioning at a reasonable level is a kind of bedrock for the rest of Parliament and representative Government. I assume that is your position.

Mr SCHMIDT: Absolutely.

The Hon. MATTHEW MASON-COX: Treasury-bashing is a popular pastime. I do think it is worth acknowledging that it plays an important role in terms of measuring, if you like, the budgetary bids that come in from agencies, but also creating some tension in the system, which I think through that process can drive better outcomes. But the transparency and accountability of that is important. I think you made some good points in that regard. I am interested in that Victorian model as to how practically that would apply here in your circumstances. You know, and you have been saying to us that you understand, what you need to run your organisation. You have got a figure. You would be happy to have that interrogated through a budgetary process with Treasury and presumably the Auditor-General, who obviously is involved in performance audits, financial audits annually in that regard and then I suppose because there is an oversight committee, to look at the Victorian model.

I want to get your views on it. You go through that initial, if you like, rigorous process and then bring it to the Parliament and then have a public hearing in relation to that, where Treasury can be involved, you can be involved, the Auditor-General as an independent officer can be involved, indeed any other relevant organisation, and that process can be seen to be open and transparent, come up with a figure, if you will, and the parliamentary oversight committee would be confirming or recommending a figure to the Treasurer for the budget. What is your view on that as a process?

Mr SCHMIDT: I would welcome the transparency. It would depend if he is making a recommendation, how binding that was. There are many details but the broad thrust of what you have outlined, I think, would be very healthy. I would like to be in a room with representatives from Treasury and other people, or the Auditor-General, who are raising questions and presumably would have had those discussions in the lead-up to the process anyway. I think it would be an unusual situation to imagine but it would happen potentially where we would come into a room like this and be at odds but then we would have the discussion and would see where it goes. I want to stress that I do not want to be seen as engaging in a Treasury-bashing exercise.

I was chair of the New South Wales budget committee for many years and I have seen the process from a central agency perspective and we have a good working relationship with our Treasury officials. Being a small

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agency we work with Treasury officials up to a certain level. They make recommendations; we do not know what their recommendations are. They may be equally as disappointed as we are as it disappears up the process to the pinnacle and the ultimate decisions are made. It may well be that in the lead-up to the coming budget process I might need to sit down with the Treasury Secretary and have a discussion about our bids, but we will see how that progresses.

The CHAIR: What about a process where there is a default publishing of your bids at the outset of the process? I think there is an IT platform that you enter your bids on—

Mr SCHMIDT: Yes, the Prime system.

The CHAIR: —and then it goes into that Prime system, what about a process where at least at a minimum your initial bids are actually made public at some point and may be forwarded to the oversight committee; starting there with the transparency?

Mr SCHMIDT: In broad terms I do not have a major issue. I think that the process would be that I would have had discussions with Treasury obviously and DPC and may be the Auditor-General, depending what role the Auditor-General plays in something like this but once they are crystallised, I think our submission suggests that the budget should be made public and a report given to Parliament and the government of the day, if it is not an automatic appropriation, the Government explains why an agency asked for X but was given Y.

The Hon. TREVOR KHAN: But which agencies then would be covered by that process? Surely not only yours? Would it be all small agencies?

Mr SCHMIDT: Well, I know; where do you draw the line?

The Hon. TREVOR KHAN: Yes.

Mr SCHMIDT: There is a floodgate argument here, to some degree. ICAC has made a strong argument; I am making a strong argument.

The Hon. MATTHEW MASON-COX: The integrity focus.

Mr SCHMIDT: But they are very different.

The Hon. TREVOR KHAN: They are different arguments and they are different statuses of bodies. I have to say you could apply this rationale to the whole of the court system. A fundamental part of our system of government is the operation of our courts and I know if you had the Chief Justice come along I am sure there could be considerable complaints about the funding of the court system.

The CHAIR: Do you want to amend the terms of reference, Trevor?

The Hon. TREVOR KHAN: No, no. The question becomes: Where do you put these? Do you treat all the bodies that come and make representations to us in precisely the same bucket or is each of them different and if so, what is the response to it? That is what I am struggling with.

Mr SCHMIDT: Yes, and there is no simple solution, but one suggestion, I think, is one of the recommendations we have made that maybe there should be a Minister for the integrity agencies—a cluster as such might not be the right way of looking at it, but that person would be able to bring a coherent perspective and a voice.

The Hon. MATTHEW MASON-COX: That is the Premier, isn't it?

Mr SCHMIDT: Well, the Premier has got a lot on her plate so I am not begrudging the Premier's engagement. She covers the entire State. Maybe we need an integrity Minister.

The CHAIR: But we are talking about those bodies that have clearly identified statutory independence and then a series of crucial integrity roles underpinned by that statutory independence?

Mr SCHMIDT: Yes, and the Parliament has described them as being independent.

The CHAIR: We are hitting constantly that argument about, "Yes, by all means you can have all the statutory independence you like, but if you are starved of funds it means nothing in reality"?

Mr SCHMIDT: Yes.

The Hon. TREVOR KHAN: Commissioner Adams put the argument quite differently from Commissioner Hall.

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The CHAIR: I think I said that.

The Hon. TREVOR KHAN: Commissioner Adams said that it is really up to government to decide whether they are going to fund dialysis machines or they are going to fund me and I have to work within that system. That was his essential proposition. Hall's position was different. Hall's position is because actually the funding that we get may actually impact upon Executive Government, that is a real problem. There is quite a difference there.

The CHAIR: There are different threads and different themes in it and I suppose that is why we get the benefit from the different agencies. It is not a one size fits all.

The Hon. TREVOR KHAN: That is why I am articulating it publicly because that is what I am struggling with. There are different impacts and there are different undertones. One can be incompetence or just weird decision-making that goes on and the other circumstance can be straight malevolence in regards to a refusal of funding. That is particularly the worst thing that needs to be protected against.

The Hon. MARK BUTTIGIEG: Mine was a follow-up on this theme because it is probably one of the elephants in the room. The clear implication of some of the IPART stuff that came out and this defunding regime we are in is that this is just another service which the private free market can provide. You have this situation where in council elections there is a perceived encouragement for them to outsource their elections to private providers and that goes to the heart of what we are talking about: How important is it for an independent statutory body like the Electoral Commission to carry out and perhaps have monopoly functions over elections because in essence the degree of importance you place on that answers the questions we have all been asking? Have you got a view on that?

Mr SCHMIDT: I do.

The Hon. ADAM SEARLE: What is that view?

The CHAIR: Whether or not it is covered by the terms of reference of this inquiry is another matter, but I will allow the commissioner to answer it as he sees fit?

Mr SCHMIDT: If we are talking about State elections I am absolutely adamant it is a monopoly. I cannot imagine the people of New South Wales being comfortable with a private provider providing election services. With local government, as part of the current arrangement it has changed slightly. Councils either engage the Electoral Commissioner or can outsource if they cannot run them themselves anymore. I understand two councils have engaged external providers. I will answer it this way: When I appeared at the public hearing for the IPART review, my position was—and this was of course in the context of: Are we charging too much, are we over servicing, et cetera? The people of New South Wales who vote at a local government election are entitled to the same level of service and integrity as they receive when they vote at a State election. That is my position.

The CHAIR: We have almost run out of time but Mr Graham has a final question.

The Hon. JOHN GRAHAM: Just one quick clarification in terms of what is at risk here. You talked about the second stage of implementation of the changes to the Electoral Act. What are those changes?

Mr SCHMIDT: I might pass to Mr Cant in a moment, but as he will illustrate it is an example of we are having to do piecemeal changes to our systems rather than actually fixing the problem but Mr Cant can articulate that better than me.

Mr CANT: When we put together the costs associated with delivery of the Electoral Act changes, the short-term activities that we had to do to actually get the systems to be able to run the State general election, because we did not have a huge length of time to actually get the systems set up and tested so we essentially had to make compromises so what we did for the State general election is we essentially hardcoded the systems to run a State election. The second part was to enable us to actually configure the systems so that they could run State legislation and local government legislation as required.

The Hon. JOHN GRAHAM: Ultimately a better way to do things but you just did not have time or funding?

Mr CANT: Yes. I guess the position we are now in is that in the lead-up to the local government elections we are having to undo the changes we had to make for the State so that we can go back to being able to run local and it will mean that the next time we have to run a State election, we will have to redo all of the work again.

The Hon. JOHN GRAHAM: Great, thank you. That is useful.

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The CHAIR: We have unfortunately run out of time. I am certain we could have spent as much time again investigating these matters but could I thank you all for the work you do throughout the year and also for your assistance today and the evidence to the Committee.

Mr SCHMIDT: Thank you very much to the Committee. I appreciate it and seasonal solicitations to you all.

The CHAIR: Happy holidays.

(The witnesses withdrew.)

(Luncheon adjournment)

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MICHAEL BARNES, NSW Ombudsman, affirmed and examined

PAUL MILLER, Deputy Ombudsman, Reviews, Investigations and Community Services, affirmed and examined

MS AINSLEE SCOTT, Director, Corporate, sworn and examined

The CHAIR: Welcome to the afternoon session of the inquiry into budget process for independent oversight bodies and the Parliament of New South Wales. We will commence this afternoon's hearing with evidence from the NSW Ombudsman. I welcome Mr Miller, Mr Barnes and Ms Scott to the inquiry. Thank you for your very comprehensive submission, which we have all read and digested. Now is the opportunity, if you would like, to give a brief opening statement.

Mr BARNES: Thank you, Mr Chairman. I would like to make a brief opening statement; then, if there are any difficult questions, my colleagues will answer them. We welcome this inquiry into the budget process of the Parliament and its independent oversight agencies. We are cognisant that the inquiry is into the process, the method or arrangements for setting the budget of the agencies in question and not the quantum of those preparations. We are not here to beg for more money. We wish to discuss the principles and practicalities of alternative procedures for setting our budget because we submit the current arrangements are inconsistent with the essential nature of my office.

You will have seen from our submission our concerns stem from the fact that the independent statutory agencies are shoehorned into a Cabinet process that has been designed for ministerially controlled departments and other agencies of the executive. In our submission, that process is not appropriate for the independent oversight bodies—bodies, we submit, that can accurately be described as parliamentary statutory offices. Each of these bodies has been established to perform prescribed statutory functions which typically involve overseeing, investigating or otherwise seeking to ensure the integrity of the executive government decision-making and action. To the extent that they do that, they augment the role of Parliament in holding the Government to account. In our case, we provide a mechanism by which citizens who have been treated unfairly by officials can seek to have that set right. For the reasons I will detail shortly, we contend that the current budget arrangements are inconsistent with this mandate.

In our submission, a deficiency with the current budget process is that it indirectly and, in some cases, directly operates against two fundamental prerequisites that are essential if we are to perform our statutory functions. First, our office must have sufficient independence from the executive to ensure that it is, and is seen to be, entirely impartial, disinterested and objective. Second, we must have resources adequate to undertake those functions. In relation to independence, the fact that the funding for the oversight bodies is determined through a behind-the-scenes Cabinet process inevitably risks a perception that they are just another part of the ministerially controlled arm of government. It creates in those bodies an inherent dependency on the Government for sufficient funding support. Even if this has not in practice weakened the resolve to hold government to account, the public perception that control over the purse strings provides leverage or indirect influence seems inescapable.

The risk of such a perception arising is exacerbated by an almost total lack of transparency surrounding the current budget process. Public confidence in the system of public sector oversight depends upon the public accepting that the integrity sector agencies are indeed independent of government. Current arrangements risk undermining that confidence, which risks contributing to the continuing decline of public trust in our democratic institutions. The threat to independence that has been heightened in recent times by the treatment of the oversight bodies as part of the so-called cluster that is headed by the Department of Premier and Cabinet has been mentioned this morning already by the other witnesses. We, too, share those concerns. Clusters—at least insofar as they are said to include independent oversight bodies—have no legislative backing or sanction. Nevertheless, the practices of Treasury and the Government mean that they have assumed a significance that directly challenges the independence of the oversight bodies.

In relation to the need for adequacy of funding, there is, in our respectful submission, a basic structural flaw in the current budget process, which is this: The mandate, objectives and functions of the independent oversight bodies have been determined and entrenched in legislation by Parliament, not the government of the day. However, under the current budget process, the oversight bodies are required to compete for funding against the Government's own funding priorities. That competition is effectively determined by government in a Cabinet process that is closed to external review. We are now being instructed to frame our budget bid in terms of how they will deliver the Premier's Priorities rather than the Parliament's. Outcomes-based budgeting may work for

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large line departments, but it is inconsistent with our independent mandate and impractical for such a small organisation as ours.

The Government's submission sets out at the very highest level their outcomes-based budget process. However, what they show there is only the tip of the iceberg of where the Treasury and the Government seem to be heading with outcome-based budgeting. Requiring agencies to frame budget submissions and budget performance around government-determined outcomes will inevitably involve Treasury in an increasingly granular involvement in the core operations of agencies. That even includes the setting of operational and performance key performance indicators. That presents a very real threat to the independence of the oversight bodies, and we have concerns about the direction in which outcomes-based budgeting seems to be headed for that reason. There is a statement in the Government's submission that I might quote:

The entire State spending has been mapped to the State Outcomes that the NSW Government wants to achieve for its citizens.

Later, it states:

DPC leads the NSW public sector to deliver on the NSW Government's commitments and priorities.

The point is that the priorities and objectives of the independent oversight bodies are not set by the Government; they are set by the Parliament. The statutory functions of the independent oversight bodies are not optional activities. Therefore it should not be the case, in our respectful submission, that the Government can trade off these activities against its own priorities.

Appropriately, the terms of reference of this Committee are focused on the process by which funding is fixed, rather than on the actual amount of that funding. It is no coincidence, however, that the Committee is looking into this issue at a time when bodies like ours have come under increasing funding pressure. Recent correspondence from the secretary of the Department of Premier and Cabinet informing us that he has decided to make further cuts to our funding of \$10.4 million over the next 10 years will exacerbate those pressures. I have written to the secretary informing him that it is not possible for my office to achieve those savings, euphemistically and inaccurately referred to as efficiency dividends, and to still perform our mandate in accordance with the statutory intent and parliamentary and community expectations.

Yesterday we received the submission made on behalf of the New South Wales Government to this inquiry. We take the description of the budget process referred to in it as correct. Indeed, it is really the first time that we have been made aware in such detail of the process. Of course, that goes to one of the weaknesses of the budget process that concerns us: It is largely not transparent to us. It occurs in a black box. To take an example, the submission notes that the Department of Premier and Cabinet has access to the submissions we make in Prime before they proceed to the Expenditure Review Committee. That was news to us; indeed, we had previously been advised by officers of Treasury that that was not the case. I should also take the opportunity to respond to something else in the Government's submission. It is suggested that:

... repeated requests for supplementary funding may indicate a problem with an entity's financial management practices.

In the case of the Ombudsman's office, \$10 million and supplementation was obtained during the period 2012 to 2017, but that was because of two things—

The Hon. TREVOR KHAN: I can think of one of them.

The CHAIR: Let's not go back there again.

Mr BARNES: I will mention it by name only. We will go no further. The most recent, in 2016-17, was to cover redundancies arising from the transfer of our police oversight functions to the LECC. As the Committee is probably aware, when the Government established the LECC it decided not to transfer any of the existing staff either from the Ombudsman's office or from the Police Integrity Commission [PIC]. They started their personnel recruitment from scratch. That inevitably led to a significant number of redundancies that had to be funded. All other grants of supplementary funding were provided to support a certain operation of which we are all aware. It was the largest ever undertaken by the office—probably by any Ombudsman's office in Australia. The then Ombudsman was asked by the Government to undertake that investigation and the Government indeed introduced legislation to enable it to happen.

The Hon. ADAM SEARLE: We remember.

Mr BARNES: Thank you. In each case the need for extra funding was due to changes to our jurisdiction as a result of decisions by Government that could not have been foreseen by the office. Accordingly, in neither case could it be said that the request for funding was due to what the drafters of the Government's submission refer to as a "problem with financial management". The final point I wish to make concerns accountability, which

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is that we accept the essential check and balance to the independence of the oversight agencies. The need for bodies like ours to have a guaranty of independent and adequate funding must be balanced against accountability.

Any budget process needs to be designed to ensure that there is both proper scrutiny of the information provided by the independent agencies about how the funding they say they will need in the upcoming period and proper scrutiny of how effectively and efficiently those independent agencies have expended the funding that was provided to them in the preceding period. Given that the oversight bodies report directly to Parliament, in our view this scrutiny function is appropriately performed by Parliament through its committee structure. Parliament should publicly hold us to account for how we oversight the actions of Executive Parliament, rather than that being undertaken by Executive Government itself in secret.

Models for this approach exist elsewhere. In our written submission we have provided some details of the New Zealand arrangements, those soon to come into force in Victoria and I note that the submission by your department have made reference to the protocol that applies in the ACT. We commend all of those models to you for consideration. We are happy to take any questions.

The Hon. JOHN GRAHAM: Firstly, thanks for your submission. It is probably the most comprehensive one.

The Hon. ADAM SEARLE: It is the most developed.

The Hon. JOHN GRAHAM: Yes, both at a principal level but also some of the practical information you have put in there. In relation to the efficiency dividend, which you have referred to today and in the submission, I just wonder what is your—in principle you have talked about some of the practical impacts—in principle view about the application of the efficiency dividends to these oversight bodies?

Mr BARNES: They do not work for small agencies like ours. They cause practical problems because we are so confined to where we can make savings that it is extremely difficult to give effect to them.

The Hon. JOHN GRAHAM: So it is a small agency view. Is there an oversight body view that means they should not be applied?

Mr BARNES: As a matter of principle we also raise objection. Clearly, although they might have originally been designed to make savings of waste, they are now used, I think it would be accepted, as a way of finding funds to reallocate to new government functions, priorities or initiatives. Whereas we would contend that our functions are essential to the ongoing operations of the Parliament and the democratic process. So, as I have said, they are not functions that should be traded off against new government initiatives.

The Hon. JOHN GRAHAM: You have spelt out a range of the models and you have just referred to them in at least three jurisdictions in some detail. You have also spelt out the principles, which I have found really helpful, about how this might be approached. Is there anything you are particularly attracted to in the specific models that you think should form the basis of the Committee's view about how this might be imported to New South Wales?

Mr BARNES: I have had lengthy discussions with the New Zealand Ombudsman about how the process works there. He explains, as I hope we have in the submission, that he puts up a work program to the committee that makes to determinations. That committee gets input from Treasury or other branches of government that can respond to the proposals put by the Ombudsman. There is then a public determination of a recommendation made by the committee to Parliament. He tells me that, as a matter of practice, the recommendation of that committee is always accepted. We recognise that a committee of Parliament might often be controlled by the party that also has government, and there is therefore a potential weakness in the structure that that could be overcome, that the majority could be exercised to subvert the process. We are told that that does not occur in New Zealand.

The Hon. JOHN GRAHAM: Although there is probably a slightly different electoral system.

Mr BARNES: Certainly.

The Hon. JOHN GRAHAM: I have certainly never seen anything like the Treasury brief, which has more recommendations for support than I have ever seen in a similar document in this jurisdiction. It is quite extraordinary, but that is all public.

Mr BARNES: Yes, that is right. That is the advantage of it. It is all going public. If you do not get it, you know why you are not getting it and the agency then has to make do with what they have got.

The Hon. ADAM SEARLE: Ombudsman, you set out at page 31 the principles you see informing a possible future funding system and one of them is that the integrity body should not be part of the DPC cluster.

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Our whole system is really based on the idea that all Executive agencies are responsible to Parliament through a Minister, and all our bodies, like yours and the Electoral Commission, are in many ways independent. Technically they had been regarded legally as part of Executive functions. How would this work? Would there be an independent oversight bodies cluster? Would that not report through a Minister? How in practice would that be achieved?

Mr BARNES: I think we mentioned that there are two common themes developing in the literature around addressing that issue. One is the Parliamentary statutory officers, that they are directly responsible for Parliament and oversighted by Parliament. A more adventurous and far-reaching approach that has been considered by quite a number of jurists, even in this State, is to create a fourth branch of government: an integrity sector. We do not want to go there, but I think if you are starting with a blank page you might consider that. Indeed, some places—like Taiwan, for example—has a fifth branch of government, which is largely accountability function.

We say that that is not something that would practically ever be introduced in a Westminster system. But the idea of officers of the House, as they call them in the UK, or Parliamentary statutory officers, is recognised in Westminster parliaments. It provides that the supervision of the agencies is not via the Executive, so they would not even be referred to as Executive agencies. They are agencies created by statute but answerable to the Parliament.

The Hon. ADAM SEARLE: That seems a more appropriate classification, at least to me.

The CHAIR: Did you have the benefit of reviewing the ICAC's submission?

Mr BARNES: I have.

The CHAIR: There is a different model proposed in the ICAC submission. Do you have any observations about the appropriateness of that model to the Ombudsman?

Mr BARNES: The most significant difference is they are an independent arbiter or expert. We would say a Parliamentary committee that was charged with determining our budget could consult whomever they thought appropriate. If they wanted to introduce an inspector or expert adviser, of course they would be free to do that. That expert's report would also form part of the committee's proceedings and again would be open to scrutiny. The same level of expertise and independence would be accessed but via the Parliamentary committee process.

The Hon. ADAM SEARLE: Ombudsman, do I understand your submission correctly, that there should be consultation between Treasury, obviously the agency concerned and the Parliamentary oversight body? But is it your submission that it is the oversight committee of the Parliament that should ultimately set the budget of your agency?

Mr BARNES: Yes, it is. That is correct. We would say that consultation would be between the committee and Treasury, not us and Treasury.

The Hon. ADAM SEARLE: Okay.

The Hon. TREVOR KHAN: So, should it be the oversight body that sets the budget, or is it the recommendation of the oversight body to the Parliament that sets the budget?

Mr BARNES: You are right. All appropriation has to go through Parliament, so it would be a recommendation.

The Hon. TREVOR KHAN: I am not trying to quibble, but yes.

Mr BARNES: I think we also outlined an alternative model at more than one committee, whether you have a public accounts committee of the Assembly determining the budgets of the oversight agency, and the joint Parliamentary committee, which currently oversees us and other agencies, holding or conducting the scrutiny of how we perform against that budget. You can separate the functions in that way as well.

The Hon. ADAM SEARLE: The Electoral Commissioner was talking about a situation which I think prevails in Victoria, at least in relation to the Electoral Commission, where essentially there is a statute that says that the functions will be underwritten by public funds. It is almost like, I do not like the term, a blank cheque. That is, whatever the functions required by law that are reasonably incurred will simply be paid. What do you think about that model? Should that model be subject to parliamentary concurrence at least by an oversight committee perhaps?

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Mr BARNES: I would have trouble supporting a blank cheque approach, in that Parliament needs to appropriate funds on an annual or cyclical basis and each Parliament should do that without being bound by decisions a previous Parliament made. I cannot see how that would be consistent.

The Hon. JOHN GRAHAM: Are you aware of any other similar legislative provision for any of the other oversight bodies? Obviously this one was longstanding and not utilised currently but are there any similar examples you are aware of?

Mr BARNES: No.

The Hon. TREVOR KHAN: I was just going to make an observation. Twelve months ago when I was in Vanuatu I was looking at the Vanuatu Ombudsman's system and the starving of their Ombudsman now over a decade, probably two decades, and the destruction of its function by simply not giving it the money it is necessary to operate.

Mr BARNES: I think they even took the car off him which was about the only assistance he was getting.

The Hon. TREVOR KHAN: It is quite extraordinary.

The CHAIR: That is a little down the track yet.

The Hon. TREVOR KHAN: My concern with an oversight body in a sense making a recommendation to the House is taking into account it going to the lower House and the somewhat disciplined approach that on the whole applies in the lower House and assuming that the Government members on the oversight committee went somewhat rogue, which they have been known to from time to time, how that would translate through the House if our strong party structure then whips people into line?

Mr BARNES: That system can only prevail with legislative amendment.

The Hon. TREVOR KHAN: I agree with that.

Mr BARNES: That would signify the Government was supportive of a new approach for settling of the budgets of those agencies. If as you described happened that would be a clear departure from the objectives of the legislative amendment and it would be happening in open proceedings. Nothing would prevent it but it would be apparent.

The CHAIR: In a number of human rights acts, the Victorian and Australian Capital Territory human rights acts, they expressly provide that the Parliament can legislate in breach of their charters but in doing so there needs to be a certificate supplied by the Attorney General and they have to identify why they are doing it and explain why they are doing it. What about that as a check and balance, a transparency and openness regime mutatis mutandis to apply to oversight bodies and their budget?

Mr BARNES: So if the Parliament was not minded to accept the recommendation of the committee for example?

The CHAIR: Yes. If the budget did not reflect the recommendation from the committee the certificate needs to be attached to the budget identifying that the recommendation had not been accepted and identifying the rationale why it had not been accepted, putting the Government into print, if you like.

Mr BARNES: My concern is those certificates would become more and more frequent.

The CHAIR: That has not quite been the experience under human rights charters. It has had a positive effect upon the executive, most studies would show that. The alternate model is whatever the committee recommends must be implemented as a budget, is that your referred model?

Mr BARNES: That is not the New Zealand model, it says what Parliament recommends or what Parliament appropriates is what happens without the executive needing to introduce the legislation. In effect they have delegated that function to the committee and by convention the Parliament accepts the recommendation of the committee.

The Hon. ADAM SEARLE: Formally it is a vote of the Parliament but essentially the committee sets the budget?

Mr BARNES: Yes.

The Hon. MATTHEW MASON-COX: It would be a brave Parliament I assume that would seek to overrule the committee which had gone through such a rigorous process?

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Mr BARNES: I would hope so.

The CHAIR: I think you could point to a series of recommendations from the Public Accountability Committee that have been routinely ignored by the Government of the day.

The Hon. JOHN GRAHAM: I was very surprised by your evidence that this was the first time you had been made aware of some of the elements of the process of the budget. Each of the agencies has said it is very opaque. This brief document spells out in more detail for an agency the process of the budget. I was surprised to hear you say that. Can you give us any more detail on that question?

Mr BARNES: In Treasury terms we are a very, very small agency. Our interface with Treasury happens at the 7/8 level, an officer at 7/8 level. He or she I am sure deals with us with bone fides at arms length.

The Hon. JOHN GRAHAM: In good faith.

Mr BARNES: But my expectation, my speculation would be that person is also not fully aware of the processes that happen at a higher level and therefore perhaps has inadvertently misled us.

The Hon. MARK BUTTIGIEG: We heard evidence earlier from other agencies and this is a common theme that emerges, that the agency submits a budget with line items in it and a justification for the funding model and there is no real reason as to why it comes back with a rejection. In fact, what seems to be occurring is that there is a unilateral random line item crossing out. Sometimes the priorities that the agency might think are important are not necessarily important to government. Is that the experience of your agency.

Mr BARNES: Yes, we get no explanation for why the quantum appropriated is what we get. We simply get a response that tells us what the forthcoming year's budget will be.

The Hon. MARK BUTTIGIEG: So there is no ability or framework for you to judge whether or not you are actually doing the right thing in the eyes of the Government because you do not know why it has been rejected.

The Hon. TREVOR KHAN: Ask some Ministers, they will tell you the same story.

The Hon. SCOTT FARLOW: This is how budgets work.

The Hon. MARK BUTTIGIEG: The other thing I wanted to explore is you stress that there is this transparency probity issue but there is also the diminution of independence. The two are not necessarily associated in theory. In other words, you could propagate the argument that, well, you are getting less funding but that does not mean you are not independent, it just means you have to pick your cases more judiciously. What would you say to that?

Mr BARNES: If we are not properly funded we cannot discharge the functions that Parliament has given us to do.

The Hon. MARK BUTTIGIEG: Are these functions specifically enough defined for you to make a judgement that, as a result of reduced funding, you are not actually carrying out the duties the Parliament has asked you to do?

Mr BARNES: There are certain things we have to do: We have to accept complaints; we have to assess them; we have to provide a reason if we are not going to investigate them; along with a lot of other functions that are listed on page two of our submission. These are not matters we can choose not to do. We must do them. If we have insufficient funding then we do them not as thoroughly or we do not do the discretionary functions or significantly wind them back; most particularly, investigations.

The Hon. MARK BUTTIGIEG: In effect, that is the situation you are in now, you cannot discharge those functions?

Mr BARNES: We are not able to discharge them to the extent we would were we better funded.

The Hon. TREVOR KHAN: That is a slightly different response. I am not being critical.

Mr BARNES: I am not going to come here and say we are not discharging our statutory functions.

The Hon. ADAM SEARLE: But nevertheless, it is your evidence that the discretionary functions are being significantly impacted by the current situation?

Mr BARNES: Undoubtedly.

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The CHAIR: At page 19 of ICAC's submission there are a series of dates and what happens in the budget process, from November through to June the previous year. It indicates that in February the final budget proposal is put on the online Prime system by ICAC and then the next time they receive information about it is actually in May when budget decisions can be viewed online on the Prime system. Whilst there are a series of steps that are undertaken inside the budgetary process of going to the ERC and Cabinet and the like, none of that has any interaction with ICAC. Is it the same for the Ombudsman?

Mr BARNES: It is my understanding. Ms Scott can confirm that.

Ms SCOTT: That is correct, yes.

The CHAIR: Could you give an example of a budget proposal that you thought was essential to the functioning's of your agency that you popped in in February and that Computer said no to in May?

Mr BARNES: I will ask Mr Miller if he can identify one of those.

Ms SCOTT: We put forward one around counsel assisting for a four-year time period and it got knocked back in the later years, so we got funded for it for two years only, with no explanation as to the reason as to why.

The CHAIR: What was the function of counsel assisting?

Ms SCOTT: I might ask Mr Miller to elaborate on that.

Mr MILLER: It is basically a legal function to support investigations. At that stage we were finalising Prospect—this was a couple of years ago—but we were moving into a new model where we were trying to protect, in a sense, our investigations function because, as the Ombudsman articulated earlier, due to the risk of our non-discretionary functions like receiving complaints encroaching on our investigations function we made a decision to create an investigations unit in order to ensure that we can conduct investigations. It is essentially the legal support for the conduct of investigations.

The CHAIR: Bringing money in-house was going to provide, I assume, a series of benefits, perhaps including overall cost over the course of the year rather than separately engaging the external bar every time you had an inquiry. Is that the rationale?

Mr BARNES: That is right. Then they can work on, supervise and manage multiple investigations at the same time.

The CHAIR: A shameful proposition from the bar's perspective, I might add but anyhow, I can see how it would save the agency money.

The Hon. MATTHEW MASON-COX: I just have a quick comment. In your budget process design considerations, I note that the budget-setting process should be overseen by a parliamentary committee rather than by Treasury and Cabinet. It makes sense to have a single parliamentary committee to do that job. You mentioned the Public Accounts Committee. One concern this Committee might have is that the Public Accounts Committee in New South Wales is not a joint public accounts committee and hence we have a Public Accountability Committee, which you appear before today, which duplicates that role. In that context, I wanted to get your view on whether the role should be actually performed by, if you like, the oversight committee in the absence of a joint public accounts committee. Do you have any view on that?

Mr BARNES: That would certainly be a functioning model. The joint parliamentary committee that oversees us, the LECC and a number of other agencies could do that. It is a significant workload increase for that committee but there is no reason in theory why it could not discharge that function.

The Hon. MATTHEW MASON-COX: It would be a significant workload for any committee.

Mr BARNES: That is true.

The CHAIR: It would obviously require secretarial support to function.

Mr BARNES: Certainly.

The Hon. TREVOR KHAN: That is there. The Legislative Assembly provides it.

The CHAIR: To a degree. Could you talk about the mandated savings and the efficiency dividend, and how that works in practice? The budget papers provide an appropriation for the Ombudsman's office. What happens after that in terms of the efficiency dividend and how are you informed of it?

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Ms SCOTT: We receive the budget papers. It includes the Treasury-allocated efficiency dividend. For this year, though, there was an additional efficiency dividend applied as well from DPC. That happened on the day. We were notified that a quantum was coming at the point of the budget papers being provided to us that day.

The CHAIR: I will stop you there. Had that differed to what you saw when you went online and looked at the Prime in May?

Ms SCOTT: Yes. In Prime we actually got the Treasury efficiency dividend defined and we were notified that further cuts were coming, which was notified to us by DPC in August.

The Hon. TREVOR KHAN: Can we go back a step? It seems to me that even when it appears on Prime, there is still some jiggling potentially that is going to go on in settling the budget, so what you look for is the tabling of the budget as the time when you will have your figure. Is that right?

Ms SCOTT: Correct.

The Hon. TREVOR KHAN: That figure that appears in the budget paper includes the efficiency dividend—that is, the efficiency dividend has already been taken out.

Ms SCOTT: Correct, from Treasury.

The Hon. TREVOR KHAN: So we have got that figure. Now as I understand what we got from there, at least in terms of ICAC, is that once the amount has been appropriated and somehow ends up in DPC, there have been said to be further deductions from the figure that you were, in a sense, expecting to receive. Is that right?

Ms SCOTT: That is correct.

The Hon. TREVOR KHAN: That is the August figure that you are talking about.

Ms SCOTT: That is correct.

The CHAIR: That is less than what was passed by Parliament in the line item in the budget.

The Hon. TREVOR KHAN: Exactly.

Ms SCOTT: That is correct.

Mr MILLER: Sorry, can I correct that? The DPC savings apply over 10 years. What DPC said in its letter is, "To allow your agency additional time to prepare for the forward year impacts, DPC will absorb your agency's share in full year 2019-20." In fact, that statement is unnecessary because DPC would have no power to have taken savings off us in full year 2019-20 because Parliament had already said that. The DPC savings will apply from next year and going forward. It is not the case that DPC has taken money off us for 2019-20 that Parliament had already set out in the appropriation.

The Hon. TREVOR KHAN: When you have a look at the ICAC submission, at least as I take it, the suggestion made in the ICAC submission is that there were further deductions from the appropriated figure.

The Hon. MARK BUTTIGIEG: That financial year, yes.

The Hon. ADAM SEARLE: In fact, it was the clear evidence. Their evidence was that the money was allocated presumably to the Premier as the cluster Minister with the sort of maximum drawdown as specified but even within that envelope, there were moneys not advanced to the agency but withheld on account of further efficiencies—misnamed, as you call them.

Mr MILLER: If that is the case—and it is not the case for us—I am not sure with what legal authority DPC would take that action.

The Hon. TREVOR KHAN: Indeed. Would you have a look at the ICAC submission and perhaps come back to us?

The CHAIR: Which is exactly why I asked ICAC that question.

The Hon. ADAM SEARLE: This is something that we are interested in.

The CHAIR: If Parliament had set a budget item, on what possible basis could the secretary be rewriting the budget papers? I probably disagree with the Hon. Adam Searle's reference to them as being a maximum budget. I think it is the budget in the line item.

The Hon. ADAM SEARLE: Well, it is the maximum amount to be advanced under the appropriation.

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The CHAIR: Well, it is an entitlement, but anyhow, that is an argument for another day.

The Hon. TREVOR KHAN: It is a lawyers' fight.

The CHAIR: It is a fight with the future Labor government. I know that Mr Mason-Cox has asked a number of times whether or not there might be a role for the Auditor-General. The Auditor-General is currently doing the review. Obviously, the current review is limited to its current terms about financial efficiencies and management structures. But going forward, do you see a possibility for the Auditor-General having a role, or a potential role, in assessing budgetary requests from the Ombudsman?

Mr BARNES: As you would understand, the Auditor-General audits our accounts every year. It is now doing this performance audit. If a parliamentary committee is charged with setting budgets for independent agencies, they would be entitled to seek assistance from wherever they thought appropriate, there is no reason to Auditor-General could not discharge their function if the committee that had the responsibility for that would assist them.

The CHAIR: So bringing that expertise in as required through the oversight body, as opposed to having the Auditor-General perhaps run its eyes over maybe not the operational aspects of your organisation, but the back office elements of the organisation.

Mr BARNES: They do that every year already. Every year they sign off our accounts in accordance with appropriate finance standards and the like.

The CHAIR: I think it is a slightly different function from into what Mr Mason Cox was suggesting. I will allow him to speak for himself.

The Hon. MATTHEW MASON-COX: Why do I not do that?

The CHAIR: It is a repeated invitation.

The Hon. MATTHEW MASON-COX: It is a design principle. What you are putting to us is a little bit of a different design in the sense that the parliamentary oversight committee would simply access whatever information it needed, be it from Treasury, be it from the Auditor-General, be it from other interested parties in order to come to a determination, which would then be put to Parliament.

What I was putting to other witnesses earlier today was bringing that process into the front end because you, as the Ombudsman, know what your budget needs are and that can be teased out with the normal process with Treasury, augmented with input from the Auditor-General, who may have given some advice on some of the performance measures or other recommendations on audit processes, come together with a view on what should be your budget, bring it to a parliamentary oversight committee, which then has a public process, be it hearing or otherwise, where those things are teased out, other witnesses are brought in as necessary as part of that process. They are just design principles. I think in the end you get to pretty much the same spot, it is just a case of how you wish to design it in the first place, would that be a fair comment?

Mr BARNES: I am sure that Ms Crawford has among her staff experts in assessing operational performance and the like. It might well be they got assessed.

The CHAIR: The only other aspect I would want to touch upon was ICAC in its submission and evidence pointed out that some of its work is unpredictable and there suddenly may be a need for a surge of resources to deal with one particular inquiry. Is there that same unpredictability in the Ombudsman's work or is it a more predictable and even flow? You have got your core work and you know roughly what it will be over the next X years?

Mr BARNES: I think it is more predictable. I am not saying it is entirely predictable. Things arise and they need to be dealt with but not nearly in the same way that it can happen with ICAC. Because we have such discretion—

The Hon. TREVOR KHAN: Because you have got small, repeat investigations as opposed to the mammoth, sort of spectaculars that go on before ICAC?

Mr BARNES: Yes, that is largely true. We have got 40,000 contacts. We end up with a reasonable number of investigations but that is largely because we have been constrained. We have had so little discretionary spending left that we have done far fewer systemic investigations than we would choose to do. We are not after gotcha type investigations. We are after improving systems to make better the delivery of government services, so that is something you are able to plan more.

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The Hon. TREVOR KHAN: And have you seen a reduction in the number of those style of investigations undertaken. It is obviously before your time but you have obviously got access?

Mr BARNES: Yes, certainly we do far fewer investigations than we have in previous times.

The Hon. TREVOR KHAN: Would you be able to provide us with some indication, say over the last whatever is a suitable period for you in terms of tracking that style of reduction?

Mr BARNES: I will certainly do my best.

The Hon. PETER PRIMROSE: I would like to go back, if I can, to an earlier line of questioning. As I understand it from today's evidence and from yours, from the oversight bodies there is a question of the effects of a quantum of funding in terms of your ability to do those activities you are required to do by decision of the Parliament. There are concerns about what the ICAC referred to as the cloak of secrecy about the whole funding process but one of the things that really has not, I do not think, been as overtly raised—and I go to pages 19 and 20 and I will just read this out:

... potentially more serious, problem is that this process inherently confers on the Secretary of DPC a *de facto* discretion to approve or veto the exercise of particular functions. This constitutes a direct threat to the independent and impartial exercise of those functions. For example, if funding is sought because the oversight body has identified the need for a new and major investigation, the ability of the Secretary of DPC to provide or refuse funding constitutes, in effect, an ability to approve or veto the undertaking of that investigation.

It seems to me that that implies a third concern about actual interference—I am not aware of any suggestion that has occurred, but we are talking about the potential for that? Can you just elaborate on that a little bit?

Mr BARNES: I might ask Mr Miller to do that.

Mr MILLER: Yes, we certainly do not make the claim that that has occurred but it goes to the question of annual funding versus supplementation during the year. As the Ombudsman has set out, for us, because our work is relatively predictable in terms of volume and planning, we do not tend to approach DPC for supplementation during the year the way that I have heard that ICAC, for example, finds itself needing to do. The issue raised in the submission there is that the mere fact that an organisation like ICAC has to ask the Secretary of DPC for funding for particular activities, whether or not there is any possibility in fact that the Secretary would in effect exercise a veto, there must be a perception at the very least that he has the ability to do so.

Mr BARNES: And you heard Judge Hall's uncomfortable evidence this morning about having to go to the Premier during an election period to seek funding for an urgent investigation.

The Hon. ADAM SEARLE: That seems undesirable?

Mr BARNES: It seems undesirable to me as well.

The Hon. PETER PRIMROSE: That certainly raises my concerns and I just think the Committee will probably take a much closer look at that. Thank you.

The CHAIR: Are there any final questions?

The Hon. JOHN GRAHAM: I want to return to the point that was being made before about the development of an initial proposal that might end up in front of a parliamentary oversight committee about the scale of the budget. Returning to that discussion, even if that committee was making a judgement, it presumably would not be making the first judgement about the scale of that budget. I know you have provided this in your submission but how does that work in the New Zealand example?

Mr BARNES: They have got a base budget that they have had for successive years. They demonstrate that they need extra funding because they are adopting new functions and they put that before the committee and suggest, "This an appropriate function for us to discharge. If we are to discharge it, we will keep doing everything we did last year that cost us \$30 million, but we will need another \$5 million to do this." This year they have got extra funding to do further outreach work in the Pacific consistent with their Government and our Government's concern that other powers are having influence in the Pacific and the concern about the Ombudsman's institution within those small nation states deteriorating so they got extra funding to do more outreach work.

The Hon. JOHN GRAHAM: So the parliamentary committee might make a determination but the first bid is effectively coming from the agency itself, from the outside?

Mr BARNES: That is right. It goes to the committee saying, "Here's what we got last year. Here's how we spent it. We need this much extra for the CPI increase in our salaries and here's a new function that we think

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we should undertake". They need to persuade the committee that is an appropriate function for them to pursue. If they do that then that committee makes a recommendation that it be funded.

The Hon. TREVOR KHAN: Can I just ask a question?

The Hon. JOHN GRAHAM: Sure.

The Hon. TREVOR KHAN: Let us assume that that occurs in, say, February that the submission is made, somewhat similar to what would be now, I suppose. The submission is made to the committee in about February. The committee considers it over the next month or so and then comes up with a recommendation that the submission made by the Ombudsman be accepted. Is that then the subject of a separate vote in the House or would you perceive it simply disappearing into the budget process and everyone again gets a surprise on a date in May when it does or does not come through?

Mr BARNES: I am not sure what happens in New Zealand in relation to that aspect. I can make inquiries if you would like.

The Hon. TREVOR KHAN: Thank you. It seems to be that if it disappears in the budget process—

Mr BARNES: You have not gained much.

The Hon. TREVOR KHAN: No.

The Hon. JOHN GRAHAM: I have one more deep follow-up on the detail. I am referring to principle 9 of your budget process design considerations. On page 36 you were indicating before you do not support a blank cheque approach. This is in relation to supplementary funding requests during the year. One option might be having a provision similar to the existing section 4.13 of the Government Sector Finance Act authorising a payment essentially. In principle how is that working? What is the approval process in that instance?

Mr MILLER: I am not sure whether it is actually being utilised in practice now by government. Essentially the way it works is like a contingency fund that bodies like ICAC could draw upon during the course of the year.

The Hon. JOHN GRAHAM: So maybe on notice then I would be interested in: What is the approval process for that option?

The Hon. MARK BUTTIGIEG: Earlier on we heard evidence from the Law Enforcement Conduct Commission that in an ideal world they would like to take a more proactive approach in using some of their funding, and you touched on this, Mr Barnes, in respect of the Ombudsman's role of making sure that organisations learnt from their mistakes and put proper systems in place so that you presumably do not get as many complaints down the track. A similar point was made by the Law Enforcement Conduct Commission with respect to police, but they cannot do that because the funding envelope is getting squeezed year on year. It almost becomes a vicious cycle, then, because they do not have the ability to perform that role and then they get more work and less funding. Do you have a similar sort of role where you would provide that sort of training and proactive approach to organisations if you could do so?

Mr BARNES: Most definitely. A major focus of our inquiry focus is to identify system improvements that should reduce incidents of customer dissatisfaction with government decisions or government processes. A broad range of inquiry is needed if you are to make worthwhile recommendations. It would be wrong to make recommendations based on a small sample of cases. The broader you can spread your inquiry, the more likely it is that you will get worthwhile recommendations. That is expensive and time-consuming, and so we have found that we have not been undertaking that sort of function. Water was probably the last time it happened and that is a couple of years ago now.

The CHAIR: But particularly where the role of your organisation has a necessarily large focus on complaints, getting away from the scandalous to the structural, if you like, in terms of your work can be very hard if you have got this inflow of complaints.

Mr BARNES: That is right.

The CHAIR: Therefore, if your budget is very tight, you can never get beyond the complaints and go to the structural. That is a poor summary of the LECC's proposition. Do you find those same propositions operating to date?

Mr BARNES: It is even worse than that, in that we have an obligation to respond to complaints. We can do that constructively and resolve the complainant's concerns or we can simply decline to take any action in

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relation to the complaint. The third option, to conduct investigations, is not even being considered in this conversation. We are just saying, "How do we get the complainants out of the building?" Instead of seeking to resolve the complaints by conciliation or some preliminary inquiries to get a better outcome, we find increasingly we are just declining complaints off the bat. The percentage of complaints that are declined has steadily climbed in the past five years.

The CHAIR: Could you give us some data on that on notice?

Mr BARNES: Yes.

The CHAIR: I thank all three of you for your evidence today and, as the Hon. John Graham said earlier, your extremely detailed submission, which has been helpful for all of us in answering some of the structural and policy-based issues that this inquiry confronts. Thank you.

(The witnesses withdrew.)

(Short adjournment)

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DAVID BLUNT, Clerk of the Legislative Council and Clerk of the Parliaments, sworn and examined

MARK WEBB, Chief Executive, Department of Parliamentary Services, affirmed and examined

JOHN GREGOR, Director, Financial Services, Department of Parliamentary Services, sworn and examined

The CHAIR: I welcome Mr Blunt, Mr Webb and Mr Gregor to our final session today. Thank you for the detailed submission that you have provided from the two departments. Now is an opportunity to give a brief opening statement. In the course of that you might address anything that you wish to the very recently received Government submission.

Mr BLUNT: Thanks very much, Mr Chair and members of the Committee. The chief executive of DPS, Mr Webb, and I have a brief opening statement. It consists of five points. I will begin with points one and two, hand over to Mr Webb and then conclude with point five, after which it is over to you for your questions. Point one is very brief and just concerns the scope of our submission. The submission is made jointly on behalf of the Department of the Legislative Council and the Department of Parliamentary Services. In line with the comity between the Legislative Council and the Legislative Assembly, the fact that your Committee is a committee of the Legislative Council and, indeed, the specific terms of reference for this inquiry, our submission does not purport to represent the views of the Department of the Legislative Assembly, nor is it the submission of the presiding officers. It is the submission of the two departments.

I would observe, though, the President received a copy of the submission once it had been received and was published by the Committee. The President has not raised any concerns about the content of the submission, which I am very grateful for. Why is this part of the hearing so important? If I could take you to page 7 of our submission and start with the little quote at the bottom from then Chief Justice Gleeson in the New South Wales Court of Appeal in the very first of the Egan cases.

The capacity of both Houses of Parliament, including the House less likely to be 'controlled' by the government, to scrutinise the workings of the executive government, by asking questions—

I would probably add there, "through parliamentary committee inquiries." Back to Justice Gleeson—

and demanding the production of State papers, is an important aspect of modern parliamentary democracy. It provides an essential safeguard against abuse of executive power.

However, this safeguard is undermined if there is insufficient funding to support the exercise of that scrutiny by Parliament. The Latimer House Principles endorsed by the Commonwealth heads of government in 2003 stated:

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

In fleshing out those Latimer House Principles, the follow-up document from 2008 known as the *Edinburgh Plan of Action* called for a number of specific points of action, including:

Parliaments should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances.

Once again the Commonwealth Parliamentary Association and World Bank Institute have observed that parliamentary budget independence should be seen as a "necessary prerequisite to good parliamentary governance." Further:

... operational autonomy should not act as a barrier to the fostering of good relations with the executive, which is essential if legislation and public sector policies are to be fit for purpose.

Extrapolating from those very strong principles, fundamental principles that are connected with the separation of powers and the importance of financial independence for Parliament, our submission sets out six key principles that we think are important for consideration by this Committee, which are on pages 14 and 15 of our submission:

1. An agreed institutional mechanism needs to be established to ensure a greater level of independence in the determination of the quantum of funding to be included in the annual Appropriations (Parliament) Bill.
2. The quantum of funding to be included in the annual Appropriations (Parliament) Bill should be set in advance of the Government's budget setting process for Executive Government agencies, so that Treasury and the ERC then know the funding envelope available for budget determinations for the Executive Government.
3. Treasury must have the capacity to provide input to the institutional mechanism established (see point 1 above) on prevailing economic and fiscal conditions that must be taken into account in determining the quantum of funding. It should be presumed that any such advice will be provided openly and transparently.

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4. (a) The NSW Parliament should be exempted from New South Wales Government efficiency dividends, or—
If the efficiency dividends are to be applied—
- (b) the amounts saved through any efficiency dividends must be retained by Parliament for redeployment to parliamentary priorities, rather than being allocated to New South Wales Government priorities.
5. The Department of the Legislative Council and Department of Parliamentary Services should be held to account for their financial management and performance and be subject to a rigorous and transparent budget process by the institutional mechanism established (see point 1 above).
6. The NSW Parliament should not be represented as forming part of any executive government "cluster", or part of the "cluster arrangements".

They are our essential submissions.

Mr WEBB: We did want to draw the Committee's attention to the recent budget estimates hearing where we provided evidence related to the subject matter at hand. We do recognise that this Committee is looking into the process of setting the budget, not the quantum of budget that should be available to the Parliament. We do not intend to repeat any of that evidence, but we do think it gives some good examples of the impact of things like efficiency dividends over time. We commend that evidence to you to consider. We also wanted to emphasise that as a parliamentary administration we are committed to the efficient operation of the Parliament and an effective Parliament; the most efficient way of providing an effective Parliament, if you like.

We are strongly committed to making sure that we are efficient, but we are of the strong belief that those efficiencies should be reinvested—as Mr Blunt said, in the principles—in the priorities of the Parliament, not the priorities of Executive Government. I should also know that we also have a demonstrated track record of finding efficiency. You would have seen in our submission that the Parliament has been subject to some form of efficiency dividends since 2004-05 and we have met those efficiency dividends since then.

Our budget is substantially lower than it would have otherwise been without those efficiency dividends, and we have met that over a long period of time. But as I know you have heard from other agencies, in a smallish organisation—300 people in parliamentary administration versus a 400,000-person public sector—there is a finite ability to absorb efficiencies without the underlying investment in systems and modernisation of those systems that allow for more efficiencies to happen.

We also wanted to really emphasise that ultimately the Parliament's priorities for investments need to be set by the Parliament. At the moment, the way in which submissions that go up for funding are assessed is based around a concept of importance which prioritises the Premier's Priorities, government announcements and commitments that have been made. I think it is fairly self-evident but I will say it anyway: It would be highly inappropriate if our priorities were being set within that framework. As a result, it is very easy to put our submissions aside because we do not meet a category of what "important" actually means. That was the third point.

The fourth of Mr Blunt's five points that we are making is that we wanted to make the Committee aware that we have, in good faith, entered into a joint review of the Parliament's quantum of funding with Treasury. We do that in good faith. The outcome of that review will be provided to both the Treasurer and the presiding officers and we wanted to make the Committee aware of the fact that we are engaged in that process. That process will involve consultation with members as well. Given that it is going on in parallel to this inquiry, we did want to make you aware of that. That is the end of the fourth point. I will turn back to Mr Blunt for the fifth.

Mr BLUNT: The final point was that I wanted to draw your attention to the specific recommendations we are making on page 16 of the submission. There are three recommendations there. We believe that they are measured proposals. The recommended mechanisms already exist in other parliaments within Australia. For instance, the Australian Senate has had an appropriations and staffing committee review and report upon the budget needs of the Department of the Senate since 1982. The House of Representatives has had a similar committee since 2010. It is my understanding from consultations with senior officers in the Senate that whilst this mechanism is certainly not a fully independent model for the establishment of the Australian Parliament's budget—as we see, for instance, in Canadian jurisdictions—nevertheless that committee has played a useful role.

Similarly, in terms of recommendation 3 for a budget protocol, the Australian Capital Territory Legislative Assembly has had such a budget protocol with the Australian Capital Territory Government since 2014. I am informed that discussions are ongoing and it could be expected in the near future that budget protocol will cover not only the Office of the Legislative Assembly, but also the Auditor-General; the Electoral Commission; the integrity commission, which is their version of ICAC; and the ombudsman. Finally, a couple of little things about those recommendations: The implementation of recommendation 1 for a committee of the

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Legislative Council to examine the Department of the Legislative Council budget bids would, of course, simply be a matter for the Legislative Council to determine and implement by way of resolution if it was supported. Similarly, recommendations 2 and 3 could be initiated in the same way, although it would require cooperation in relation to number 2 from the other House and number 3 from the Executive Government.

Two final points about those recommendations: If recommendation 1 was implemented, additional attention being applied to the budget needs of the Department of the Legislative Council would be most welcome. Like Mr Webb, we would be happy to outline the sorts of matters that would be likely to be examined through any such review by a Legislative Council committee. However, even if the recurrent funding needs of the Department of the Legislative Council were secured, without appropriate funding for the Parliament as a whole—I am particularly talking about the Department of Parliamentary Services, but it equally applies to our colleagues in the Legislative Assembly—there will not be any capacity for innovation. In order to realise the sorts of opportunities that are out there for innovation and enhancements in areas like broadcasting of parliamentary proceedings and the use of information and communication technology, significant additional funding, both capital and recurrent, is required. That is not just a matter for the Department of the Legislative Council.

The last point is that it needs to be borne in mind that the Appropriation (Parliament) Bill includes only one global appropriation for the Legislature as a whole: a figure for expenses and a figure for capital funding for the Legislature. The bill does not break that appropriation down by Legislative Council, Legislative Assembly and the Department of Parliamentary Services. It is split after the event; ultimately it is a decision by the presiding officers after the Appropriation (Parliament) Bill has been enacted, on the recommendations of the department heads and director of finance. Therefore, if these recommendations were implemented and a committee or committees reviewed the budget submissions of the Department of the Legislative Council and the Department of Parliamentary Services, it will not be readily apparent when you see the appropriation bill when it is introduced whether those budget bids, if they are endorsed by a committee, have indeed been successful. Some further dialogue or scrutiny would be required or a budget protocol would need to be in place so that there is an explicit statement by the Treasurer, when the Appropriation (Parliament) Bill is introduced, about any departures from recommendations by a parliamentary committee.

The CHAIR: Thank you for that. Did either of you have any observations on the Government's submission? It did not overly long dwell on the funding of the Parliament.

Mr BLUNT: Could I make two very brief observations? On page 6 of the submission, there is a single paragraph which describes the purpose of there being a separate Appropriation (Parliament) Bill. I would draw the Committee's attention to the parliamentary debate that took place in 1992 on the Constitution (Fixed Term Parliaments) Amendment Bill, which inserted section 24B (3) into the Constitution Act. That was the trigger. It was the following year that we saw for the first time a separate parliamentary appropriation bill. That parliamentary debate makes clear that it was the intention of the Parliament—I quote, for instance, from Mr Hatton in the Legislative Assembly:

It opens a window in the Constitution to provide for an appropriation bill to be separate from the Budget and therefore enhance the independence of the Parliament.

I am not sure that that paragraph tells the full story. Let me put it that way.

The CHAIR: It tells a story; we can all agree on that.

Mr BLUNT: The final observation that I make is that on page 7 of the Government's submission, there seems to be a—I do not want to ascribe motives to the authors of the submission; that would be entirely inappropriate. But there seems to be a suggestion that what is at stake here in relation to the budget-setting mechanism for the independent oversight agencies and, by implication, for the Parliament is the financial prerogatives of the Legislative Assembly. All I would say in that regard is that enhanced opportunities for parliamentary scrutiny of financial proposals, which could well be enhanced opportunities for scrutiny by both Houses of relevant budget proposals, surely enhances the parliamentary institution as a whole and enhances responsible Government, which is what we are all here for.

Mr WEBB: Fully endorsing those two points, the only other point that I would add comes from page 8 in the "Accountability for financial management" section, which ascribes a motivation for the requests of supplementary funding. I have taken it as more an indication of the processes amongst the integrity agencies within the Department of Premier and Cabinet, but I would make the general point about this:

requests for supplementary funding may indicate a problem with an entity's financial management practices.

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I would respectfully submit to the Committee that that is only one of very many reasons why you might be making a request for supplementary funding. In the case of the Parliament, significant underinvestment over a long period of time means the chance of something going wrong within a year is increased greatly. The idea that at the start of the year we can accurately forecast exactly which bit of equipment is going to break down or which thing is going to go wrong through the course of the year, and that our failure to make such a prediction is an implication that we are not managing our finances well—I would push back against that suggestion fairly strongly.

The CHAIR: You make it clear that there is a whole series of structures and processes in place which suggest that the failure of something throughout the budget year is, to adopt your words, almost certain.

Mr WEBB: Yes, I think that is right. It has been 40 years since the tower block—the section of the building we are in at the moment—was constructed. You would have seen from the section on capital investment that while the building depreciates at approximately \$15 million a year, our only assured capital investment on a year-to-year basis comes from the minor capital works, which is currently at \$2.9 million. I would again respectfully submit that over a long period of time, the ability of \$2.9 million to fix \$15 million worth of degradation builds up over time.

The Hon. ADAM SEARLE: Mr Blunt, at pages 21 and 23 of your submission you discuss the position of the Canadian Parliament and, I think, the Ontario legislature. I want to make sure I understand what happens there. Rather than Executive Government introducing legislation year on year for the financing of the Parliament, as it were, officers of the Parliament in their own process develop the dollar figure. Do they formally put it to the Parliament or do they give it to the Government, which then puts it to the Parliament?

Mr BLUNT: You have directed the question to me, but can I defer to Mr Webb, who has seen this in action?

The Hon. ADAM SEARLE: Of course.

Mr WEBB: To take the Ontario example, they have their Board of Internal Economy, which has on that board a representative from any party that has achieved major party status. So it has a certain number of members. As you say, the administration creates the submission. Drawing on whatever external expertise they need to, that Board of Internal Economy—essentially a committee of the Parliament—reviews the submission. If it approves it, the Treasury is instructed to allocate the money.

The Hon. ADAM SEARLE: Is there a standing legislative authorisation of that, or is it just a matter of practice and convention?

Mr WEBB: There are two elements to it. I am happy to take it on notice to check the details, just in case I have got it wrong.

The Hon. ADAM SEARLE: I am happy for you to do that.

Mr WEBB: My understanding is that there is a standing approval for that. There is also a cultural element. It has been in practice since the 1970s. One question I asked of the Ontario legislature when we were there—at the time they only had two parties that had major party status. I said, "If you have a Government member and an Opposition member, surely the Government member just does what the Government wants you to do." They looked at me like I had grown a second head and said, "No, of course not. The person who is assigned to that—their job is to scrutinise the Parliament. The Executive has got nothing to do with it." I think there is a cultural practice element of it—that the people assigned to that committee seem to take very seriously the idea that it is a process separate from Executive Government.

The Hon. ADAM SEARLE: Even though three of the commissioners, as it were, in Ontario are actually Ministers?

Mr WEBB: Yes.

The Hon. ADAM SEARLE: That is interesting. In terms of the Parliamentary appropriation, Mr Blunt, you indicated that there was a single amount; it is not broken down into its constituent parts. Could it be? Should it be, do you think, as a matter of practice?

Mr BLUNT: I think that in 2008 the budget papers moved to a framework whereby not only was there a single amount in the Appropriations (Parliament) Bill, but the budget papers themselves stopped identifying specific amounts for the Legislative Council, the Legislative Assembly and Joint Services. Prior to that you had a single amount in the appropriation bill but the budget papers themselves had no statutory authority but

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nevertheless were a good guide. The budget papers did break it up into those three amounts. We do not even have that. It is a good question that you ask.

The Hon. ADAM SEARLE: I am happy for you to take it on notice and have a think about it.

Mr BLUNT: I cannot see any reason from a parliamentary point of view why you could not have three lines in the Appropriation (Parliament) Bill for the Legislative Council, Legislative Assembly and the Department of Parliamentary Services. Perhaps when you have Mr Pratt before you tomorrow you might like to ask him to talk about outcome-based budgeting, which seems to be very important to Treasury at the current time. He will no doubt have some views on that matter. But from my point of view and from the parliamentary point of view, I cannot see any reason why the Appropriation (Parliament) Bill could not be more specific.

Mr WEBB: Could I add one little thing on top of that? Because the Parliament's appropriation sits separately from the other appropriation for the broader public sector, the flexibility that exists in the public sector to move money around the public sector is not present in the Parliament. The combination does give us some flexibility if emerging issues—if there is an underspend happening in one part of the Parliament, the ability to move funds around to address it. There is obviously a very collegiate relationship between the three departments to that end. If a separation was happening, I would also probably submit that some form of intra-year contingency would need to be part of the appropriation to allow us—

The CHAIR: A proportion set aside to be determined on a needs basis.

Mr WEBB: That is right, exactly. Otherwise, because we have so little flexibility—because the quantum of parliamentary administration funding is 0.04 per cent of the total State budget. This is not a huge amount of money to move around. So our ability to adapt in the year is something I would want to see looked at in terms of formulating a new approach to the appropriation.

The CHAIR: When we are talking about the detail, you would have seen from the ICAC's submission that they have a timeline about how the budget process works its way through. ICAC's timeline is that in February a final budget proposal is uploaded by ICAC and, I assume, also by Parliament onto the online Prime system. Then the next that is heard from ICAC and, I assume, also from Parliament is when in May a decision is communicated, again through Prime, and you can access Prime and identify the decision. Is that the same for Parliament? It goes in in February and then goes into a black box and comes out again in May?

Mr WEBB: Yes. We make some initial—there is a process in November to just flag what might be coming up. But the final proposals, as you say, go into the Prime system around February, especially—not just the budget but new policy proposals or other causes for additional funding to go in. There is a process that happens there. Sometimes the presiding officers are given the opportunity to go to the Expenditure Review Committee and talk to the submissions; sometimes not. We sometimes get informal indications of how well our things are going, but the next formal state, as you say, is around late April into May and that time period.

The CHAIR: When you access Prime, I assume that your budget proposals include the granular detail about what is required for the Legislative Council, what is required for the Department of Parliamentary Services and what is required for the Legislative Assembly. When you access the Prime system again in May, does it have any of that granular detail?

Mr GREGOR: The proposals, that will only be where it is additional funding proposals that we are putting in, but certainly they will all be there. I was watching the independent bodies discussions earlier. I think we have a direct relationship with Treasury; so there is no involvement of DPC in between our pasts and the Treasury. So there is a direct relationship there. The submission is still going to Prime. We do also forward them; that all happens. We do have some liaison with our Treasury officers on those proposals, meetings with them to work through further detail with them and then ultimately they make their assessment and that goes on to the ERC for their ultimate decision.

The CHAIR: So that role of the DPC secretary that we have seen in the ICAC submission, that does not happen.

Mr WEBB: That does not happen.

The CHAIR: But other than that, if we extract that from the process that is the parliamentary model, say, on occasion the two Presiding Officers may go and make the case out directly to the ERC.

Mr WEBB: Yes, especially for new policy proposals that come through.

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The Hon. ADAM SEARLE: Just on the efficiency dividend so called, is that applied before the budget figure is arrived at and the appropriation bill delivered?

Mr WEBB: That is correct. The appropriation bill that comes through has included the efficiency dividend. We do not see the money in the first place.

Mr BLUNT: Just for the sake of completeness, whilst that is ordinarily the case, last year?

Mr WEBB: Not yet, last year.

Mr BLUNT: Last year we discovered that the amount that was in the Appropriation (Parliament) Bill had been calculated on the basis of a particular percentage efficiency dividend—I think it was 2 per cent.

Mr GREGOR: Two per cent.

The Hon. TREVOR KHAN: Sorry, what was that?

Mr WEBB: Two per cent.

Mr BLUNT: Two per cent in 2018-19 and then Treasury indicated to us that they were applying an efficiency dividend of 3 per cent. When we pointed out that Parliament had appropriated a particular amount after some months it was conceded that they could only apply 2 per cent because the Parliament had appropriated an amount. However, we found that this year that was put back in; so our 3 per cent went to 4 per cent.

The Hon. ADAM SEARLE: Right, but is it the case that the amount in the appropriation bills passed by the Parliament, that dollar figure is actually advanced to the Legislature? There is no attempt by the Government to reduce the amount on new bases?

The CHAIR: Other than as I just articulated.

Mr WEBB: Yes, that is right. We do not get all of the money in advance, I should be clear. Every fortnight we have to say this is how much money we think we are going to spend in the next fortnight and we get advanced that amount of money. So it is literally a fortnight-by-fortnight thing. But yes, with that exception—a very important exception—in mind, the full amount of the appropriation is available to us. As I mentioned before, where we do sometimes run into difficulty is if something happens within the year where additional funding is required or the appropriation is already set. For instance, members' entitlements are funded not on the value of the members' entitlements but on the historical spend of those entitlements. If you were all to exercise all of your entitlements we would be several million dollars over budget for the year, if you were to exercise every entitlement that you had.

The Hon. MARK BUTTIGIEG: Okay.

The CHAIR: Point taken.

Mr WEBB: Because we are not funded to the full value of your entitlements. If we had a bumper year and you were utilising your entitlements at a much higher rate, we would exceed the appropriation of the Parliament for that year.

The Hon. ADAM SEARLE: I think this is a question for the Clerk.

The Hon. TREVOR KHAN: Sorry, can I just ask: Does Mr Blunt agree with all that was just put? I just noticed some facial expressions that may have indicated at one point perhaps some expansion on what has just been said.

Mr BLUNT: We were additionally invited to apply an additional savings amount this financial year—

The Hon. TREVOR KHAN: Invited?

Mr BLUNT: —with the support of the Presiding Officers, and we have declined to take up that opportunity.

Mr GREGOR: That was actually to the tune of 2.5 per cent of our employee-related expenses. It was not quantified but it was post the appropriation and we received the letter after the budget was handed down to that effect.

The Hon. MARK BUTTIGIEG: Was this before or after the 2 per cent clawback?

The Hon. TREVOR KHAN: You see, it is always a good idea to keep an eye on facial expressions.

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The Hon. MARK BUTTIGIEG: So 2 per cent and then a try-on of 3 and then a 2 per cent clawback and then again, on top of that—

Mr GREGOR: Two and a half per cent.

Mr WEBB: This year we had essentially a 4 per cent efficiency dividend to catch up the 1 per cent that we had avoided the year before and then we were invited—it was not mandated but we were invited—to give up a further 2.5 per cent of our employee-related expenditure and we declined that invitation.

The CHAIR: But I assume there is the fear that just as Parliament dodged a bullet on the 1 per cent previously, that when you see the budget papers in the next year the lack of accepting the invitation may be taken into account in the setting of next year's budget. Is that the concern?

Mr WEBB: That is something we are very aware of.

Mr GREGOR: And that actually compounds to a further 2.5 per cent in that following year; so it will actually be 5 per cent next year.

Mr WEBB: The invitation was to give up 2.5 per cent each year in a two-year period.

The Hon. PETER PRIMROSE: The term "invitation", I love.

The Hon. SCOTT FARLOW: Will it come in a gold envelope?

Mr GREGOR: It probably will.

Mr WEBB: So yes, that is a very real concern.

The CHAIR: We are making light of it now but a 2.5 per cent reduction in the employee expenditure—I assume that wages are a significant proportion of the budget.

Mr WEBB: Yes.

The CHAIR: What would the effect of that be?

Mr WEBB: Significant. A 3 per cent efficiency dividend, say for instance, is about \$1 million out of Parliament's appropriation. Two and a half per cent of the wages proportion—

Mr GREGOR: I calculated it to be \$980,000.

Mr WEBB: Yes. To give you a sense, the average employee costs from cleaners to a Clerk is about \$110,000 a year.

The CHAIR: Is that \$110 million?

Mr WEBB: Sorry, \$110,000 per person. That would represent a nine-person reduction in our staffing levels each year that was put forward. To give you a sense, there are about 280 staff that work in the Parliament, so taking nine out each year on top of efficiency dividends would be a significant amount.

The Hon. ADAM SEARLE: The appropriation parliament legislation, in theory that could be amended in the Legislative Council, could it not? It is not like the general appropriation bill where the lower House can either ignore any amendments made or bypass the Parliament and go to the Governor.

Mr BLUNT: Mr Searle, I am happy to answer your question of course, however, I would just caution that given the observation I made about page seven of the Government's submission and the reference to essentially the financial prerogatives of the Legislative Assembly, and not wishing to turn this matter into a—

The Hon. TREVOR KHAN: Dispute between the Houses.

Mr BLUNT: —yes, a dispute between the Houses, because of course in any parliamentary reform, any reform to this institution, the easiest way for it to be scuttled is by it becoming a matter of contention between the two Houses.

The Hon. ADAM SEARLE: I understand. I am just interested to know your view.

Mr BLUNT: Nevertheless, you have asked me the question. Can I draw your attention to the reference in the submission to footnote 28 on page nine? There are different views as to whether the Appropriation (Parliament) Bill is or is not a bill appropriating moneys for the ordinary annual services of the government. There are people who have suggested that parliamentary appropriations do fall within the definition of appropriations to the ordinary annual services of government.

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In my view, things changed and were clarified in 1992 with the passage of that legislation to which I referred earlier, including section 24B (3) of the Constitution Act, which made clear that in the context of fixed four-year terms of parliament an amendment to the Appropriation (Parliament) Bill or the Appropriation (Parliament) Bill failing to pass would not constitute a trigger for an early election, so it would not constitute a matter of confidence in the government.

The CHAIR: Clearly placing it in a different category to the annual appropriations bill.

Mr BLUNT: Yes. But it is not without contention.

The Hon. JOHN GRAHAM: That is understood. Can I just ask about the past proposals, jumping back to 1992, that were examined by the Parliament and the observation that if you did enshrine a parliamentary corporate body in legislation, it would leave it open to judicial scrutiny? I think the learning at that time was to perhaps use the standing orders instead. Can you give us a little bit more background about what the thinking was at that time or your view about that now?

Mr BLUNT: I think there is always a line of thought that when you legislate about anything you provide an opportunity for disputation to go to the courts and if you legislate about anything to do with Parliament you potentially run the risk of opening up parliamentary proceedings to judicial intervention, and that is something to be avoided wherever possible. It is part of the comity between legislative and judicial branches and centuries' old body of law on parliamentary privilege. Whilst that was one of the concerns that was raised about the early nineties proposal, my understanding is that the strongest concerns that were expressed at the time from the Legislative Council point of view were rather around the risks of a body that was proposed to be constituted at that point of time in terms of its membership being weighted towards the Government, that it would place matters that are currently within the independent sort of rubric of the Parliament into the lap of the Governor and that if the body as it was proposed to be constituted back then had a significantly greater number of Legislative Assembly members on it than Legislative Council members, the interests of the council would be at risk of being subsumed.

The Hon. JOHN GRAHAM: Jumping to your recommendations on page 16, you have already made the point that the first of those could be proceeded with already by standing order.

Mr BLUNT: Yes.

The Hon. JOHN GRAHAM: The third of those, which is about the budget protocol that deals with the issue you are talking about where the appropriation bill rolls up the three agencies into one, could that issue just be dealt with by agreement and protocol with Executive Government or is it something where the council could advance that through the standing orders as well?

Mr BLUNT: There are precedents already—for instance, with the Parliament's memorandum of understanding with the ICAC and the memorandum of understanding with the NSW Police.

The Hon. TREVOR KHAN: Have we still got a current one?

Mr BLUNT: Yes, we do indeed. The Privileges Committee of the Legislative Council has suggested improvements and a new one, but there are still existing MOUs in place; they were promulgated by way of a notice of motion being given in one House, the matter being decided by the House, agreed to by the outside body, agreed to by a resolution of the other House. So that protocol could start in the same way: someone could give a notice of motion on 25 February.

The Hon. JOHN GRAHAM: My last question is this: You referred to the joint review which is in progress. That will go to the Treasurer and to the Presiding Officers. It will be the subject of consultation with members, but obviously it may be of interest to this Committee given its work. Is that something that you would be comfortable sharing, if it is appropriate, with this Committee?

Mr BLUNT: If this Committee asked for it then yes.

The CHAIR: I think we just did.

Mr BLUNT: You can take it as read. We would be happy to share the results of that review.

The Hon. MATTHEW MASON-COX: When do you expect that to come to a conclusion?

Mr WEBB: Given the Christmas break we are aiming to conclude it in February. There is, as you would imagine, a fair bit of work associated with going through all of the operations of Parliament. It is underway.

The CHAIR: Could I just go to what the risks are in a chronically underfunded Parliament? You have two tables on pages 12 and 13, which set out the risk gradings. Table 1 is largely dealing with issues in relation

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to staffing or entitlements and the like. The number one risk is in terms of insufficient funding for special constables, which shows a \$2.2 million deficit in the current financial year. How do you determine that there is a \$2.2 million deficit in relation to special constables?

Mr WEBB: Back in 2014, when the national security threat level was increased, we did a review of the level of security here at Parliament House and determined that an additional deployment of special constables was required. That additional deployment came to an additional \$2.2 million. It is essentially a doubling of the special constables level here. That additional appropriation has been a year-by-year prospect; so every year we have to resubmit to get that additional \$2.2 million. It has been forthcoming up until this financial year, but in this financial year we put the normal submission in to say no change to the threat level, no advice from security agencies or others that the threat level particularly to the Parliament has reduced, so we will continue on with the same level, and unfortunately that request was declined. So the \$2.2 million essentially represents the additional funding that we have asked for every year since 2014 not being approved this year.

The CHAIR: Was there any reason given in the refusal?

Mr GREGOR: They just did not see it as being a—it did not fit the criteria that they were looking for as critical funding, from what we can gather.

The CHAIR: You say "from what we can gather"—

Mr GREGOR: We do not have a clear reason as to why it was not supported.

The CHAIR: Was any reason given?

Mr WEBB: Only that the budget submissions this year had an urgent and unavoidable criteria.

The CHAIR: So additional criteria?

Mr WEBB: Yes, to say that it had to be a priority and it needs to be urgent and unavoidable. We can only essentially surmise that our submission was not considered to be urgent and unavoidable. I should say, just for the comfort of the members, I have continued the level of special constable support at that—

The Hon. TREVOR KHAN: That is fairly obvious.

The Hon. MARK BUTTIGIEG: But somewhere else has obviously had to suffer.

Mr WEBB: Currently I am projecting that I will go over budget by \$2.2 million, which takes me outside the appropriation given to DPS to performance work. But, to be honest and to be blunt, in the absence of advice that the threat level to Parliament House has reduced, I view going over my budget as the lesser of two evils in this particular instance. But that is not a situation I prefer to be in.

The Hon. MARK BUTTIGIEG: But how does that work? If you get advanced money and the money is not there, where do you get it from?

Mr WEBB: We have a thing called a cash buffer. Some members might recall that a few years ago Treasury changed the cash management processes and brought all the cash back essentially and only allocates out enough money for agencies to do their work; I mentioned that fortnightly process we go through. We are also given a cash buffer, just to keep us liquid. If anyone has been a director of a company: we need to pay our bills as they fall due, and all those kind of good things. Normally that cash buffer would run to a few million dollars. At the moment I am projecting that we will have about \$200,000 in the bank at the end of the year, so essentially I am eating into the cash buffer.

The CHAIR: It is a sort of liquidity measure?

Mr WEBB: Yes, that is right.

The CHAIR: And that puts at risk—

The Hon. TREVOR KHAN: Everything else.

The CHAIR: Everything else?

Mr WEBB: That is quite correct.

The Hon. MARK BUTTIGIEG: Or if you get a one-off aberration you can't fund it.

The CHAIR: I was trying to find a way of saying that.

The Hon. TREVOR KHAN: We're giving it all the one thing.

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Mr WEBB: That would be our concern, yes.

The CHAIR: Which then brings me to the next aspect in your Table 2, because when we say everything else is at risk, your Table 2 makes it clear that there are a series of failures that are almost certain or likely, and that includes failing of the broadcasting of Parliament, failing of the business systems, failing of infrastructure—and I assume that means the building itself?

Mr WEBB: Yes, that is correct.

The CHAIR: —building and plant equipment asset failure, ICT assets failure, concerns about protecting the work health and safety of people at electorate offices?

Mr WEBB: Yes.

The CHAIR: And then compliance with what the Auditor-General has said we should do in terms of reporting on members' entitlements?

Mr WEBB: That is correct.

The CHAIR: So with a \$200,000 cash buffer sitting there, and if one of these infrastructure failings happens—

Mr WEBB: I would have no capacity to respond to it, that is correct.

The Hon. MATTHEW MASON-COX: You would seek supplementary funds?

Mr WEBB: I would, yes, that is right, but with no capacity within the remit of the Parliament to respond to it, I would need to go Treasury and say, "We have had an emergency situation unfold" and make a request essentially for a cash buffer adjustment that would give us some money in the bank so we could address the emergency but the capacity for the Parliament to deal with that within the Parliament is not there.

The Hon. TREVOR KHAN: David, you don't have to seek to adduce further evidence. I think I am convinced.

The Hon. MATTHEW MASON-COX: I do have a couple of other questions.

The CHAIR: The only thing I wanted to ask is: There is a very large figure there on infrastructure of Parliament.

The Hon. MATTHEW MASON-COX: No, you are right; check that.

The CHAIR: What does that cover?

Mr WEBB: The building and all its assets are valued at over \$500 million. That particular line item refers to everything that is involved with keeping the building up and running, so everything from the diesel generators down on level one, the lighting system. Some of you might have noticed that we got some criticism after the recent election about the bells not ringing everywhere in the building and tighter numbers. The reason that was an issue was we have not updated the bells for 40 years since it came through. The lifts, the elevators, everything that has to do with the building, the infrastructure around the building, all are tied up in that.

The Hon. JOHN GRAHAM: For the other agencies we have talked to, if they did get a supplementation like that, it would come out of the DPC cluster. Given the evidence earlier, would that be the case?

Mr WEBB: No. We are not in any way connected to the DPC cluster. The only potential source for additional money for the Parliament in a year is the Treasurer's Advance, so the Treasurer's contingency fund essentially. There is nothing that is dedicated to the Parliament.

Mr GREGOR: And that was where the last supplementation that was made to the Parliament came from, which is going back to about 2013-14. Since then we have not had anything forthcoming.

The Hon. ADAM SEARLE: At pages 20 and 21 of your submission you talk about the arrangements relating to the United Kingdom Parliament to build the House of Commons. It seems that there is a process where essentially the House develops its budget, provides it to Executive Government, which then simply incorporates it in their legislation without further independent assessment or critique, so that really goes to a comity relationship between the Executive and the Legislature. That is a matter that could potentially be dealt with in meeting your recommendation No. 1. That could work if agreement was reached with the Executive about how this could be approached.

Mr BLUNT: Combined with a protocol.

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The Hon. ADAM SEARLE: But I think technically you need a member of the Executive to introduce the Appropriation Bill in the lower House?

Mr BLUNT: Yes.

The Hon. ADAM SEARLE: So any outcome would currently need to be—

The Hon. TREVOR KHAN: It is more an informal arrangement than say Ontario has got.

Mr WEBB: Yes, that is my understanding. It is more an accepted practice than perhaps the more formal process that Ontario has.

The CHAIR: Mr Mason-Cox.

The Hon. MATTHEW MASON-COX: That is precisely what I wanted to clarify. In your perfect world, and I know that the Legislative Assembly is not with you today, is that where you think things should go?

The Hon. TREVOR KHAN: Ontario, you mean?

The Hon. MATTHEW MASON-COX: No, the UK system?

Mr BLUNT: Each of the models outlined in Appendix 1, that is, the UK House of Commons, House of Lords, the Canadian House of Commons, the Canadian Senate and Ontario are robustly independent. They do, however, in a bicameral context, and with the culture of the Australian parliaments and the New South Wales Parliament, come with risks implementing such a model here. That is not to say those risks cannot be overcome and worked through. We felt constrained from recommending any of the models in Appendix 1 for two reasons, I think: Because of those risks, and they are real risks that need to be addressed, but secondly because of the comity principle. We cannot purport to speak for our colleagues in the Legislative Assembly or for the Legislative Assembly. Hence, what we felt was within our authority to be able to recommend to this Committee were the things that would be within the competency, for instance, of the Legislative Council alone—

The CHAIR: To either establish in our own right or to initiate a process?

Mr BLUNT: That is right. Hence our recommendations one, two and three.

The Hon. MATTHEW MASON-COX: Informally, where is the Legislative Assembly at? Are you able to give us an indication?

The CHAIR: I do not think that the witnesses can—

The Hon. ADAM SEARLE: I think that is definitely an off one—

Mr BLUNT: I think that would be a matter for a committee of the Legislative Assembly to take up with our esteemed colleagues.

The Hon. ADAM SEARLE: Mr Blunt, the Westminster model, if I can call it that, if it were to be adopted, would not require legislative or institutional changes but each of the other models would?

Mr BLUNT: Yes, that is correct.

The CHAIR: Each of those models that you point to all have a statutory process and a legislative structure but they also have important cultural elements in them as well and I think that is probably one of the reservations that you make in putting any one of them forward because the bare bones of the protocol and the legislative model are only part of what makes them work. There are important cultural features in each of them, would that be fair to say?

Mr GREGOR: Yes.

Mr BLUNT: That is exactly right and I suspect that the cultural development, the cultural evolution, that would be required to embed such reforms maybe more or less challenging for one or either House.

The Hon. ADAM SEARLE: To speak plainly, the New South Wales Legislative Assembly appears historically to have a much tighter party discipline approach than might apply in some of the other jurisdictions which are discussed in these models, would that be a fair observation?

Mr BLUNT: I do not think that is a controversial observation for me to agree with. I think I can do that without creating any trouble.

The Hon. ADAM SEARLE: I mean that is the point, isn't it?

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Mr BLUNT: I agree.

The CHAIR: Yes. You did mention Darwinian. I think we have effectively gone to our allotted time. On behalf of all the Committee, I thank you all not only for the evidence today but also for the really considered research and thinking that went into that submission. I am fairly certain all members appreciate it.

Mr BLUNT: Mr Chair, can I just respond to that by paying tribute to the Director of Finance, who had the job of welding together the views of two department heads and two departments, did the research and put the submission together.

The CHAIR: Mr Gregor, your diplomacy is well noted. Thank you.

Mr WEBB: Thank you.

(The witnesses withdrew.)

The Committee adjourned at 15:28.