



Parliament of New South Wales

# Committee on the Independent Commission Against Corruption

Report 2/57 – August 2020

Review of the 2018-2019 Annual Reports of  
the ICAC and the Inspector of the ICAC



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

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## Chair's foreword

This report by the Committee on the Independent Commission Against Corruption (ICAC) deals with the Committee's review of the 2018-2019 annual reports of the ICAC and the Inspector of the ICAC.

The Committee's report has three chapters. The first chapter provides an update on the Committee's inquiries and its ongoing work. The second chapter addresses the operations, resourcing and strategic issues of the ICAC and the Inspector during the reporting year. Finally, the third chapter deals with the core work of the ICAC and the Inspector, noting any major themes in the work that has been undertaken in the 2018-19 reporting period.

### *Funding and resourcing*

The ICAC's funding model and associated funding concerns were key issues of discussion with the ICAC and the Inspector at this year's public hearing. This echoed similar discussions at last year's hearings, and follows on from issues raised in the Committee's last report.

The Committee learnt last year that the Audit Office of NSW is auditing the effectiveness of the financial arrangements of the ICAC, amongst other organisations. This includes reviewing the roles of the Department of Premier and Cabinet and Treasury in the funding process. The Government response to the Committee's last report indicated that this review is consistent with the Committee's recommendation that the NSW Government examine a new independent funding model for the ICAC.

The Committee also heard that there have been further developments relating to the funding of the ICAC. This includes a special report tabled by the ICAC, *The need for a new independent funding model for the ICAC*, which outlines concerns about its current funding model and proposes a possible future model. Additionally, the Legislative Council Public Accountability Committee made recommendations about the funding arrangements of the ICAC and other integrity agencies in its report, *Budget process for independent oversight bodies and the Parliament of NSW*. Further to these developments in NSW, the Committee also noted that a new funding model for the Victorian anti-corruption agency, the Independent Broad-based Anti-corruption Commission, commenced.

The Committee acknowledges the ongoing work being undertaken in this area, and looks forward to the report of the Audit Office being completed. This will allow the Committee to have a clear and fulsome understanding of the funding issues raised by the ICAC and others. The Committee will reflect on any findings and recommendations made by the Auditor-General, and consider the report in the context of the issues that have been raised with the Committee.

The Committee was pleased to find that the Office of the Inspector of the ICAC is adequately resourced to perform its functions. This was in regard to the Inspector's salary, and resources more broadly.

*Operations during COVID-19*

The Committee commends both the ICAC and the Inspector for continuing to carry out their important work during the COVID-19 pandemic, and transitioning to remote working effectively and efficiently.

While some aspects of the ICAC's operations were postponed, such as in-person training for public officials and public inquiries, the Committee heard that the ICAC was seeking advice regarding how compulsory examinations might be able to go ahead. Further, during this time, the ICAC published a useful guide about corrupt conduct during the COVID-19 pandemic. The guide highlighted risks relating to fraud and corruption that can arise during uncertain and tumultuous periods, and measures that can be taken to protect government funds.

*Governance and strategic issues*

In last year's annual review, the Committee noted that the three Commissioner structure at the ICAC was working well. This year, the Committee examined how the new Chief Executive Officer (CEO) role within the ICAC was operating. The Committee was pleased to find that the role has been beneficial for the ICAC's operations, and is of the view that the position has been a positive addition to the ICAC's executive structure.

The Committee also heard evidence regarding the ICAC's Key Performance Indicators, and found that it is important that they reflect any significant changes to the environment in which the ICAC is carrying out its work. This will ensure the targets are meaningful, and accurately take into account the nature of the work being done by the ICAC.

The Committee has also recommended that when an annual reporting period falls within an election year, the ICAC should include an explanation in its annual report about why there may have been fewer meetings with the ICAC Committee due the election and subsequent reconstitution of the Committee in the new Parliament.

*Dealing with internal ICAC complaints*

The Committee was interested in hearing about the processes the ICAC has in place to deal with complaints about its staff. The ICAC noted that they had received and investigated three complaints against ICAC staff within the 2018-19 reporting period. The Committee heard that the Inspector was informed of all matters and conclusions reached by the ICAC, and had determined that the ICAC had appropriately investigated the matters and taken satisfactory disciplinary action.

Further, the ICAC outlined that there would be a spectrum of different actions available for the organisation to take in response to complaints, depending on the nature of the allegation. This would range from the involvement of the NSW Police in response to allegations involving criminal offences, independent investigations if appropriate, or internal investigations to deal with more minor complaints.

*Corruption prevention in local government*

The Committee asked ICAC representatives questions regarding its work in the local government sector, noting that 29% of all matters received in the reporting period relate to

this sector. The ICAC noted that this large number may be due to people's regular interaction with local government.

The Committee questioned the ICAC about whether the disclosure regime in relation to pecuniary and non-pecuniary interests is satisfactory for local government elected representatives and staff. The Committee was interested to hear the ICAC's views, which included a suggestion for expanding the disclosure requirements to include spouses and members of the same economic unit.

The Committee heard about a range of corruption prevention initiatives in this area, including workshops tailored to the sector, and the employment of specialist local government staff. The Committee is satisfied that the ICAC is actively working on corruption prevention in this area.

#### *The audit function of the Inspector*

The Committee heard about the importance of the Inspector's audit function, noting that this function works to prevent incidents from happening, rather than waiting for an incident to form the basis of a review. The Committee supports this view, and reiterates the importance of the audit function.

The Committee noted the Inspector's audit of counsel assisting the ICAC, and supports the Inspector's approach to continue to monitor the conduct of counsel assisting following the audit. The Committee is also looking forward to reviewing the Inspector's other audits into search warrants and the welfare of persons who are the subject of ICAC investigations as part of its next review.

I thank the Inspector, the ICAC Commissioners and senior staff from the ICAC for their contributions at the public hearing. I also thank my fellow Committee Members for their interest and input into this review. Finally, I thank the Committee staff for their assistance.



**Tanya Davies MP**  
**Chair**

## Findings and recommendations

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The Chief Executive Officer role within the ICAC is beneficial to the ICAC's operations.	
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It is important that the Key Performance Indicators of the ICAC reflect any significant changes to the environment in which the ICAC is carrying out its work.	
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When the annual reporting period falls within an election year, the ICAC should include an explanation in its annual report about why there may have been fewer meetings with the ICAC Committee due to the election and subsequent reconstitution of the ICAC Committee in the new Parliament.	
Finding 4 _____	25
The Inspector of the ICAC's audit function is important, particularly to identify any areas of the ICAC's processes which may benefit from changes.	



## Chapter One – The Committee's inquiries

- 1.1 This chapter provides a broader context for the Committee's report by highlighting other relevant work of the Committee.
- 1.2 In the Committee's previous *Review of the 2017-2018 annual reports of the Independent Commission Against Corruption (ICAC) and the Inspector of the ICAC*, the Committee considered the issue of reputational impact arising when an individual is adversely named in ICAC's investigations.
- 1.3 This was an issue of interest for the Committee at the public hearings with the ICAC and the Inspector. In that report, the Committee found that the reputational impact experienced by people named in investigations of the ICAC can be serious, and is not addressed fully by the available remedies. The Committee also found that an exoneration protocol is one possible remedy available to address the reputational impact of being named in the investigations of the ICAC.<sup>1</sup>
- 1.4 On 8 May 2020, the Committee adopted a new inquiry into the reputational impact on an individual being adversely named in the ICAC's investigations, which is currently in progress.
- 1.5 Issues of reputational impact and an exoneration protocol have been considered by the Committee and others previously. However, the Committee believes that these are important matters which should be further reviewed.
- 1.6 In the Committee's previous report, the Committee found that the three Commissioner structure at the ICAC is continuing to work well. The Committee also heard that the current individuals appointed as Commissioners are outstanding.<sup>2</sup> The Committee is very pleased that this is the case. However, the Committee also wants to ensure that appropriate safeguards and remedies are in place to deal with reputational impact issues into the long term future, regardless of any changes in the individuals who are occupying the offices of Commissioners of the ICAC.
- 1.7 Following the Committee's reputational impact inquiry, the Committee will then review the *Independent Commission Against Corruption Act 1988* (ICAC Act) to determine whether it continues to be effective and appropriate. The Committee has previously found that the ICAC Act is working well.<sup>3</sup> However, by 2021, earlier changes to the ICAC Act and the revised structure of the ICAC will have been in place for several years. It is therefore appropriate to consider whether those changes continue to be effective in the medium term, or whether any further changes are needed.

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<sup>1</sup> Committee on the Independent Commission Against Corruption, [Review of the 2017-2018 annual reports of the ICAC and the Inspector of the ICAC](#), Report 1/57, Parliament of NSW, November 2019, pp 16-17.

<sup>2</sup> [Review of the 2017-2018 annual reports of the ICAC and the Inspector of the ICAC](#), p 1; Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 18 October 2019, p 3.

<sup>3</sup> [Review of the 2017-2018 annual reports of the ICAC and the Inspector of the ICAC](#), pp 1 and 5.

## Chapter Two – Operations, resourcing and strategic issues

### Funding and resourcing

#### An independent funding model for the ICAC has merit

- 2.1 The funding process for the ICAC and associated funding concerns were key issues of discussion with the ICAC and the Inspector of the ICAC at the public hearings both last year and this year.
- 2.2 The Audit Office of NSW is currently auditing the effectiveness of the financial arrangements and management practices of the ICAC, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission including the roles of the Department of Premier and Cabinet and Treasury in these processes. In particular, the Audit Office is assessing:
- how the integrity agencies assess the funding requirements for meeting their legislative mandate;
  - whether the existing funding mechanisms effectively support integrity agencies to achieve their legislative mandate; and
  - whether integrity agencies monitor the efficiency of their operations.<sup>4</sup>
- 2.3 The Government response to the Committee's previous report highlighted the Audit Office of NSW's audit as being in line with the Committee's recommendation that the NSW Government examines a new independent funding model for the ICAC in the current budget cycle.<sup>5</sup>
- 2.4 The Committee is awaiting this report of the Audit Office of NSW to obtain a complete picture of the funding issues raised by the ICAC and others. The Committee will reflect on any findings or recommendations the Auditor General makes in the context of the other material the Committee has considered about this issue.
- 2.5 The Committee's previous report also found that it is appropriate to consider a funding process for the ICAC which is separate to the process that applies to other government or independent agencies. The Committee noted that there are many important differences between the ICAC and other government or independent agencies and that the ICAC's independence must be maintained.<sup>6</sup>

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<sup>4</sup> [Correspondence](#) from The Hon. Mark Speakman, Attorney General, to the Clerk of the Legislative Assembly, 14 May 2020; Audit Office of NSW, [Financial arrangements and management practices of integrity agencies](#), viewed 4 July 2020.

<sup>5</sup> [Review of the 2017-2018 annual reports of the ICAC and the Inspector of the ICAC, Recommendation three; Correspondence](#) from The Hon. Mark Speakman, Attorney General, to the Clerk of the Legislative Assembly, 14 May 2020.

<sup>6</sup> [Review of the 2017-2018 annual reports of the ICAC and the Inspector of the ICAC, Finding three](#) and pp 9-10.

2.6 The Committee's view in its earlier report was that the NSW Government should investigate the possible funding model put forward by the ICAC along with any other appropriate funding mechanisms. The Committee commented that any model chosen should ensure that the ICAC is sufficiently funded to continue its core work, provisions for CPI and wage rises, and factors in the fluctuating nature of operational costs.<sup>7</sup>

2.7 Since the Committee's report late last year there have been some further developments in relation to these issues, in addition to the new audit by the Audit Office of NSW (referred to above):

- the ICAC tabled a special report in Parliament, *The need for a new independent funding model for the ICAC*, which outlines concerns about its current funding model and proposes a possible future model
- the Public Accountability Committee made recommendations about the funding arrangements of the ICAC and other integrity agencies in its report, *Budget process for independent oversight bodies and the Parliament of NSW*; and
- a new funding model for the anti-corruption agency in Victoria, the Independent Broad-based Anti-corruption Commission, commenced.

2.8 At the recent hearing with the ICAC, the Chief Commissioner also updated the Committee on its future budget situation and the impact of this on the ICAC's work:

The forward estimates released by the Government as part of the 2019-20 budget in the latter part of 2019 forecast substantial cuts to the Commission's budget for the 2020-21 year. In addition, additional savings measures were announced following the 2019 general election that were to apply to the Commission's budget from 2020-21 onwards. As was made clear by the Commission to the Legislative Council's Public Accountability Committee, should that forecast budget become reality there would arise the prospect of up to 31 employment positions in the Commission being made redundant, many involving frontline officers. It is plain that such a budget outcome would have a drastic impact on all of the work of the Commission.<sup>8</sup>

2.9 The following section of the Committee's report highlights some of the main developments on funding model issues since the Committee's last report.

### **The ICAC developed a detailed funding model**

2.10 At last year's public hearing, the Chief Commissioner described a new funding model for the ICAC 'having the underlying principles of certainty, flexibility, transparency and accountability and ensuring absolutely the Commission's independence.'<sup>9</sup>

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<sup>7</sup> [Review of the 2017-2018 annual reports of the ICAC and the Inspector of the ICAC](#), p 10.

<sup>8</sup> The Hon. Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, [Transcript of evidence](#), 15 May 2020, p 4.

<sup>9</sup> The Hon. Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, [Transcript of evidence](#), 21 October 2019, p 5.

- 2.11 At that time, the Chief Commissioner identified the following elements of a proposed model:
- Only the Parliament would have the authority to determine the funding for the ICAC.
  - Parliament would be assisted by an independent person to assess, advise and recommend to Parliament the funding appropriations for the ICAC. This individual would receive the ICAC's budget case and support material for the upcoming financial year. They would also receive information and submissions from relevant stakeholders such as DPC and Treasury.
  - The independent assessor would recommend to Parliament the amount of appropriations by the Parliament to the ICAC. The assessor would also recommend the amount of provisional funds available to be drawn down by the ICAC in the upcoming year on application by the ICAC for other necessary expenses.<sup>10</sup>
- 2.12 The ICAC further developed this model in the Special Report it tabled in Parliament in May 2020, *The need for a new independent funding model for the ICAC*. Following the reports of the ICAC Committee and the Public Accountability Committee, the ICAC sought legal advice about the current funding model for the ICAC. The advice of Mr Bret Walker SC was that aspects of the current funding arrangements, particularly the involvement of the Executive in the process, are incompatible with the ICAC's independence and are unlawful.<sup>11</sup>
- 2.13 The ICAC's Special Report provides an overview of the model proposed by the ICAC in relation to the ICAC's core annual funding:
- The model proposed by the Commission is for the appointment by the Presiding Officers of the Parliament (the President of the Legislative Council and the Speaker of the Legislative Assembly) of an 'eminent person' as an ICAC budget assessor to establish the Commission's core annual funding requirements to maintain its operational effectiveness and for that amount to be included in a report provided to the Presiding Officers and tabled in Parliament. Parliament would approve a budget amount for the Commission, which would then be appropriated from the Consolidated Fund.<sup>12</sup>
- 2.14 The ICAC's Special Report also outlines how supplementary funding for the ICAC could be dealt with:
- The proposed funding model also makes provision for supplementary funding that the Commission might require in any given year to meet unforeseen contingencies. If satisfied that such funding was required, the ICAC budget assessor would publish in the Gazette and in a special report to Parliament the amount of additional funds required to be provided. The required funding would then be appropriated from the Consolidated Fund without the need for special appropriation legislation.<sup>13</sup>

<sup>10</sup> Mr Hall, [Transcript of evidence](#), 2019, p 5.

<sup>11</sup> Independent Commission Against Corruption, [The need for a new funding model for the ICAC](#), May 2020, p 4.

<sup>12</sup> [The need for a new funding model for the ICAC](#), p 5.

<sup>13</sup> [The need for a new funding model for the ICAC](#), p 5.

- 2.15 At the recent public hearing with the Committee, the Chief Commissioner elaborated on how the independent person could carry out their assessment process:
- He or she will consult with this Committee; will consult with the ICAC Inspector; will receive budget submissions from the Commission; and will receive submissions from all relevant stakeholders, including Treasury. The eminent person will make independent inquiry as necessary. Following analysis, he or she will publicly report to the Parliament. This process will provide the Parliament with accurate and reliable assessments upon which it could be confident that in the public interest it could rely. The process, from first to last, would be transparent and the reasons for such assessments would be made public.<sup>14</sup>
- 2.16 The ICAC proposes that this individual could be appointed by the Presiding Officers of the Parliament, similar to how the Parliamentary Budget Officer is appointed (with appropriate modifications). The ICAC suggests that the Chief Commissioner should be required to agree with the list of candidates to be provided to the Presiding Officers in case there are any conflicts (such as a person already under investigation by the ICAC).<sup>15</sup>
- 2.17 The ICAC also noted that the ICAC Committee could have a veto power over the appointment of any individual to the role, similar to the role it has in relation to the appointment of a Commissioner or the Inspector.<sup>16</sup>
- 2.18 The Chief Commissioner highlighted the possible characteristics of an ICAC budget assessor:
- It would plainly be somebody who has performed at a high level in management, in particular, involving financial management issues. It may be the head of a national corporation. It could be somebody who is in a consultancy, such as the one I mentioned at KPMG or Deloitte or one of the other large firms. But the person would not only need the attributes of being able to understand the number crunching side of things but would also need to have an appreciation of management and corporate governance but, most importantly, a person who, in the community, is regarded as a person of unquestioned integrity. They are the sort of position description type concepts that I would envisage.<sup>17</sup>
- 2.19 Some of the key elements of the ICAC's proposed role for the ICAC budget assessor in determining the ICAC's core funding and flexible funding needs are highlighted in the ICAC's Special Report at pages 35-38.
- 2.20 The ICAC also suggested that the ICAC Committee could be given the function of monitoring and reviewing the exercise of the ICAC budget assessor's functions with the ability to report to Parliament on any matter relating to the assessor's functions or connected with the exercise of those functions. The ICAC Committee also performs such functions with respect to the ICAC and the Inspector. In

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<sup>14</sup> Mr Hall, [Transcript of evidence](#), 2020, p 4.

<sup>15</sup> [The need for a new funding model for the ICAC](#), p 34.

<sup>16</sup> [The need for a new funding model for the ICAC](#), p 34.

<sup>17</sup> Mr Hall, [Transcript of evidence](#), 2020, p 10.

addition, the Public Accounts Committee has similar functions with respect to the Parliamentary Budget Officer.<sup>18</sup>

### **The Public Accountability Committee recommended a funding model for oversight bodies**

2.21 In late 2019, the Public Accountability Committee started an inquiry into the budget process for independent oversight bodies and the Parliament of NSW. That Committee tabled a report in March 2020 which made the following recommendations which are relevant to the ICAC:

#### Recommendation 1

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

#### Recommendation 2

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

#### Recommendation 3

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

#### Recommendation 4

That the NSW Government remove the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission from the Premier and Cabinet cluster.<sup>19</sup>

2.22 The Public Accountability Committee saw merit in a single funding process applying across all the independent oversight bodies.<sup>20</sup>

2.23 In relation to the ICAC, the Public Accountability Committee's recommendations mean that the ICAC Committee would be involved in the ICAC's budget process by reviewing the ICAC's annual budget submissions and making recommendations as to funding priorities. The Public Accountability Committee envisages the following elements to such a process:

<sup>18</sup> [The need for a new funding model for the ICAC](#), p 39.

<sup>19</sup> Public Accountability Committee, [Budget process for independent oversight bodies and the Parliament of NSW](#), Report 5, Parliament of NSW, March 2020, p x.

<sup>20</sup> [Budget process for independent oversight bodies and the Parliament of NSW](#), p 35.

- The review process would be transparent and the ICAC Committee would consult with stakeholders such as Treasury and the Department of Premier and Cabinet on the budget submission. The process would include the ICAC Committee inviting submissions and holding public hearings.
- The ICAC Committee would table a report in Parliament recommending the annual appropriation for the ICAC. If the Government did not support the ICAC's submission in full, the report would include the Government's reasons given as part of the consultation process.
- If the Government did not support the ICAC Committee's recommendation, the Government would table a statement of reasons in the Parliament.<sup>21</sup>

2.24 The Public Accountability Committee also recommended that integrity bodies such as the ICAC would have access to a contingency fund with access being limited to prescribed circumstances. In this scenario in relation to the ICAC, approval from the ICAC Committee would be required. The Public Accountability Committee noted that a confidential hearing may be necessary before such approval is granted:

Clearly there may be circumstances where the political implications of any such funding request may require a large degree of discretion in the disclosure of the need for the supplementary funding. The committee accepts that each agency has the capacity to walk this delicate line of disclosure and discretion when making such funding requests.<sup>22</sup>

### **ICAC prefers a different funding model to the Public Accountability Committee's proposal**

2.25 In the ICAC's Special Report, the ICAC considered the funding model proposed by the Public Accountability Committee (discussed above).

2.26 The ICAC said it 'fully endorses' recommendations three and four in the Public Accountability Committee's report. Recommendation three relates to the ICAC being directly allocated its funding through appropriation legislation, rather than via a Minister so the ICAC is not subject to reductions in funding during a financial year. Recommendation four proposes removing the ICAC from the Premier and Cabinet cluster.<sup>23</sup>

2.27 The ICAC also said it 'fully endorses the rationale' of the funding model proposals in recommendations one and two of the Public Accountability Committee's report.<sup>24</sup> However, for various reasons the ICAC prefers a different model:

While there is, with respect, merit in the model proposed by the PAC, the Commission considers there are problems with it, some of which are particular to the Commission and that call for an alternative model.<sup>25</sup>

<sup>21</sup> [Budget process for independent oversight bodies and the Parliament of NSW](#), pp 35-36.

<sup>22</sup> [Budget process for independent oversight bodies and the Parliament of NSW](#), p 36.

<sup>23</sup> [The need for a new funding model for the ICAC](#), p 8.

<sup>24</sup> [The need for a new funding model for the ICAC](#), p 8.

<sup>25</sup> [The need for a new funding model for the ICAC](#), p 32.

2.28 The following is a summary of the views of the ICAC on why it prefers a different model to that proposed by the Public Accountability Committee:

- The ICAC considers there would be substantial benefit to the Parliament to have independent and objective analysis of the material by someone with the requisite level of financial and budgetary experience.
- The ICAC said it may not be appropriate for details of the ICAC's program for the coming year to enter the public domain (such as its investigative and public hearing schedule), through public submissions and hearings.
- Due to secrecy provisions in the *Independent Commission Against Corruption Act 1988*, and to maintain the integrity of the ICAC's operations, the ICAC noted that it may not be possible or appropriate to disclose certain information to Committee members where it may prejudice an investigation. The ICAC says this could mean the ICAC Committee is not able to adequately assess the funding request.
- The ICAC believes Government Committee Members may be put in a difficult position if the ICAC Committee received a submission from the Government suggesting that the ICAC should receive less funding than it requested. The ICAC said that if there was a failure to achieve consensus, this could undermine public confidence in the process.
- The ICAC has jurisdiction over politicians which may lead to difficulties where the ICAC is investigating, or has made adverse findings against, other members of a political party to which Committee Members belong. The ICAC said that in circumstances where the Committee recommended funding below the level sought by the ICAC, there may be a perception that the decision was influenced by the ICAC's findings even where Committee Members sought to act objectively.
- The ICAC also highlighted that timing could be an issue for the ICAC Committee, particularly in election years. The ICAC noted that the current Committee was only reconstituted in June 2019 following the March 2019 State election.<sup>26</sup>

### **A new funding model for the anti-corruption agency in Victoria commenced**

2.29 The ICAC has previously highlighted to the Committee a new funding model for the anti-corruption agency in Victoria, the Independent Broad-based Anti-corruption Commission (IBAC), which the ICAC considered in developing its own proposed model.<sup>27</sup> This new model in Victoria recently commenced. The Integrity and Oversight Committee of the Parliament of Victoria has new functions in relation to the draft annual plans and budgets of the IBAC, the Victorian Ombudsman and the Victorian Inspectorate.<sup>28</sup>

<sup>26</sup> [The need for a new funding model for the ICAC](#), pp 32-33.

<sup>27</sup> Independent Commission Against Corruption, [Answers to questions on notice](#), 17 June 2020, pp 1-2.

<sup>28</sup> Parliament of Victoria, [Integrity and oversight committee – function of the committee](#), viewed 10 July 2020.



- 2.30 Under the new model, the IBAC's budget for each financial year is determined in consultation with the Integrity and Oversight Committee at the same time as the annual plan. The following steps are part of the process:
- The IBAC prepares a draft annual plan describing its proposed work program for that financial year and provides the plan to the Integrity and Oversight Committee for its consideration.
  - The Committee then provides the IBAC with any comments about the plan, including any suggestions for changes.
  - After the passage of the annual appropriation legislation and after considering the Committee's suggestions, the IBAC would finalise its plan. The IBAC would be required to indicate in its annual plan any changes suggested by the Committee which were not adopted.
  - Before the financial year begins, the IBAC would provide the annual plan to the Committee and table it in Parliament.<sup>29</sup>

### **The Inspector supports a new funding model for the ICAC**

- 2.31 In the Inspector's 2018-19 annual report, he called for the Government to give consideration to a new funding model for the ICAC. The Inspector supports a non-politicised process for funding the ICAC and one that is not subject to bureaucratic management or oversight:

A reconsideration of the current funding model to one which takes in to account the entirety of the Commission's ever-increasing workload, particularly following the introduction of the three Commissioner model would ensure that the Commission can continue to expose and investigate serious corrupt conduct.<sup>30</sup>

- 2.32 At the public hearing with the Committee, the Inspector expressed the view that there are various ways that a new model could operate, however, he stressed the importance of Parliament being involved in any new model.<sup>31</sup>
- 2.33 The Inspector did not nominate a preferred model. However, he told the Committee that he has some doubts about the model in Victoria, which he sees as 'pretty bureaucratic'.<sup>32</sup> The Inspector also expressed his view that he did not know that a process through the ICAC Committee, as proposed by the Public Accountability Committee, is the appropriate way of doing it.<sup>33</sup>

### **The Office of the Inspector is adequately resourced**

#### **Finding 1**

**The Office of the Inspector of the ICAC is adequately resourced to carry out its functions.**

<sup>29</sup> [Independent Broad-based Anti-corruption Commission Act 2011](#), sections 167 and 168.

<sup>30</sup> Office of the Inspector of the ICAC, [Annual report for the period ending 30 June 2019](#), October 2019, pp 3-4.

<sup>31</sup> Mr Bruce McClintock SC, Inspector of the ICAC, [Transcript of evidence](#), 15 May 2020, p 19.

<sup>32</sup> Mr McClintock [Transcript of evidence](#), 2020, p 19.

<sup>33</sup> Mr McClintock [Transcript of evidence](#), 2020, p 28.

- 2.34 The Committee was pleased to learn from the Inspector of the ICAC that he is satisfied that his current level of resources is sufficient to enable his office to carry out its role. He also told the Committee that his salary is adequate.<sup>34</sup>
- 2.35 The Office of the Inspector of the ICAC shares premises with the Office of the Inspector of the Law Enforcement Conduct Commission (Inspector of the LECC). The Inspector shares two staff with the Inspector of the LECC, a Principal Legal Advisor and a Business Coordinator.<sup>35</sup>
- 2.36 The Inspector of the ICAC's office is a cost centre within the NSW Department of Premier and Cabinet. His office's expenditure was \$448,935 for the reporting period, compared to \$469,582 in the previous reporting period. The Inspector is paid a daily rate of \$4600 being the Attorney General's rate paid to Senior Counsel at the time of the Inspector's appointment on 1 July 2017.<sup>36</sup>
- 2.37 When questioned by the Committee, the Inspector said he did not believe the current funding arrangements for himself and his office affected his independence.<sup>37</sup> The Inspector said that if it were necessary, he could ask the Department of Premier and Cabinet for additional funding for a specific purpose.<sup>38</sup>
- 2.38 The Inspector of the ICAC told the Committee that one issue that had impacted on his work since 30 June 2019 was his appointment as Assistant Inspector of the LECC to deal with a particular complaint. The Inspector said that the work associated with this appointment had slowed down his ability to get some things done in his role as the Inspector of the ICAC.<sup>39</sup>

## Operations during the COVID-19 pandemic

### The ICAC and the Inspector continued their work during the COVID-19 pandemic

- 2.39 The Committee commends both the ICAC and the Inspector for continuing to carry out their work during the COVID-19 pandemic.
- 2.40 The ICAC offices closed in late March 2020 and staff worked remotely from 26 March 2020. The ICAC continued to receive and deal with, complaints and reports relating to allegations of corrupt conduct.<sup>40</sup> The Hon. Peter Hall QC, Chief Commissioner of the ICAC, summarised how the arrangements were working:

The work of the Commission has continued at a high level through this period and the Commission's governance arrangements have ensured that decisions on complaints, the investigation work and corruption prevention activities have continued as seamlessly as possible.<sup>41</sup>

<sup>34</sup> Mr McClintock [Transcript of evidence](#), 2020, p 21.

<sup>35</sup> [Annual report for the period ending 30 June 2019](#), p 11.

<sup>36</sup> [Annual report for the period ending 30 June 2019](#), p 11.

<sup>37</sup> Mr McClintock [Transcript of evidence](#), 2020, p 27.

<sup>38</sup> Mr McClintock [Transcript of evidence](#), 2020, p 21.

<sup>39</sup> Mr McClintock [Transcript of evidence](#), 2020, p 18.

<sup>40</sup> ICAC, [NSW ICAC premises temporarily closed – important information](#), viewed 1 July 2020.

<sup>41</sup> Mr Hall, [Transcript of evidence](#), 2020, pp 2-3.

- 2.41 Some aspects of the ICAC's operations were postponed. For example, in-person training for public officials was cancelled, with the ICAC investigating online delivery options. Compulsory examinations and public inquiries also were not held. However, the ICAC was seeking specialist advice as to how compulsory examinations might be able to go ahead.<sup>42</sup>
- 2.42 The Inspector's office also closed as a result of the COVID-19 pandemic and staff were working remotely. The Inspector said he did not believe there had been any material decline in the work that he and his staff had been able to get through.<sup>43</sup>

#### **The ICAC published a useful guide about corrupt conduct during the COVID-19 pandemic**

- 2.43 In April 2020, the ICAC published a guide, *Managing corrupt conduct during the COVID-19 outbreak*, which was provided to the Premier, all departmental secretaries and published on the ICAC's website.<sup>44</sup>
- 2.44 The ICAC's guide draws attention to fraud and corruption risks that arise during periods of disruption and economic downturn and measures to assist with protecting government funds. The Chief Commissioner explained some of the factors that drive the issues addressed by the paper:

One is that the normal controls and management of controls in ordinary times tends to fall away either because the staff numbers reduce, or for other circumstances, and that opportunities by the unscrupulous are there because the corruption controls are not being properly supervised and in place.

The other is, of course, that there may be people who are driven to do something that they would not otherwise do by reason of circumstances that have befallen them.<sup>45</sup>

- 2.45 The guide identifies and deals with various risks in relation to:
- working from home
  - procurement and purchasing
  - cyber fraud and online hoaxes
  - stimulus funding and new programs.<sup>46</sup>
- 2.46 The ICAC reported that the anecdotal response that it has received to its guide has been positive. A number of agencies, along with the NSW Local Government Professionals and the Institute of Professional Auditors, have asked the ICAC to give online presentations based on the new guide. The OECD also referenced the

<sup>42</sup> [NSW ICAC premises temporarily closed – important information](#); Mr Hall, [Transcript of evidence](#), 2020, p 3.

<sup>43</sup> Mr McClintock [Transcript of evidence](#), 2020, p 18.

<sup>44</sup> Mr Hall, [Transcript of evidence](#), 2020, p 2.

<sup>45</sup> Mr Hall, [Transcript of evidence](#), 2020, p 11.

<sup>46</sup> Independent Commission Against Corruption, [Managing corrupt conduct during the COVID-19 outbreak](#), April 2020.

guide in its publication, *Public integrity for an effective COVID-19 response and recovery*.<sup>47</sup>

## Governance and strategic issues

### The CEO position has been a positive addition to the ICAC's executive structure

#### Finding 2

**The Chief Executive Officer role within the ICAC is beneficial to the ICAC's operations.**

- 2.47 The Committee is of the view that the creation of the Chief Executive Officer (CEO) position has been beneficial to the operations of the ICAC. By establishing a dedicated position that manages the administrative functions of the organisation, the Commissioners and other operational staff are able to dedicate their time to relevant operational work. Additionally, the Committee heard this role has allowed for more consistent administration and management of the organisation.<sup>48</sup>
- 2.48 In last year's annual review, the Committee examined the three Commissioner structure at the ICAC and found that it was continuing to work well.<sup>49</sup> This year, the Committee turned its attention to learning about how the CEO role contributes to the ICAC's operations.
- 2.49 The Committee heard evidence about the functions of the CEO in the ICAC. This was a position created as part of the structural changes to the ICAC which introduced the three-commissioner model in 2017. Mr Phillip Reed was appointed as the ICAC's inaugural CEO from 2 July 2018.<sup>50</sup>
- 2.50 In its annual report, the ICAC outlined the role of the CEO, stating that:
- The CEO provides advice to assist the Commissioners in their decision-making, resource allocation and strategic planning, and provides leadership and guidance to the executive management team.<sup>51</sup>
- 2.51 When asked by the Committee to describe how the introduction of this role had impacted the structure of the organisation, Mr Reed stated that:
- ...the organisation of the ICAC has now got a governance structure that allows more separation between the day-to-day administration, which is what the CEO role under the ICAC Act is accountable for, and the operational work of the Commission, which is the work that most people see the end result of through public inquiries and reports.<sup>52</sup>

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<sup>47</sup> Independent Commission Against Corruption, [Answers to questions on notice](#), 17 June 2020, p 5.

<sup>48</sup> Mr Phillip Reed, Chief Executive Officer, Independent Commission Against Corruption, [Transcript of evidence](#), 15 May 2020, p 5.

<sup>49</sup> Independent Commission Against Corruption, [Annual report 2017-18](#), October 2019, pp 1-2.

<sup>50</sup> [Annual report 2017-18](#), p 12.

<sup>51</sup> [Annual report 2017-18](#), p 12.

<sup>52</sup> Mr Reed, [Transcript of evidence](#), p 5.

- 2.52 The Committee heard from the ICAC that by creating a dedicated CEO role, which has a focus on the 'day-to-day management of the organisation', other staff are able to be more dedicated to the operational work of the ICAC. Further, having a specific role dedicated to the administrative side of the organisation allows the ICAC to be managed in a way that is consistent with other NSW public sector agencies.<sup>53</sup>
- 2.53 The Chief Commissioner of the ICAC stated that the introduction of a CEO has made a 'substantial contribution' to the ICAC, noting that this is a necessary role at the organisation.<sup>54</sup>

#### **SIRU is assisting the ICAC to prevent and uncover corruption**

- 2.54 The Committee received an encouraging update about the ICAC's Strategic Intelligence and Research Unit (SIRU), specifically in regard to how it has assisted the ICAC's operations since its establishment. This is a continuing area of interest for the Committee since the public hearing last year.
- 2.55 SIRU began operating in the 2018-19 reporting period, and is a joint initiative of the investigation and corruption prevention units of the ICAC. As noted in the ICAC's 2018-19 Annual Report, the objectives of SIRU are as follows:
- proactively identify individuals, organisations, departments or other entities who are suspected of being involved either as the principal, or associate of the principal, in corrupt activities, for referral to the Investigation Division
  - develop strategic intelligence products that will inform and guide (and in some cases recommend courses of action) in the allocation of the Commission's resources
  - produce strategic intelligence reports that identify emerging corruption risks, trends, and serious and systemic issues that form part of the work undertaken by the Corruption Prevention Division
  - enhance the Commission's intelligence function through the establishment of a national anti-corruption intelligence network and the development of technical systems and methods to analyse data.<sup>55</sup>
- 2.56 When describing the work of SIRU, and how it has contributed to the overall operations of the ICAC, the Chief Commissioner stated that:
- SIRU has established itself as a reliable source of strategic intelligence that feeds the Commission's investigations and in its corruption prevention functions. Moreover, it operates as a standalone unit, creating self-initiated intelligence products that enhance the Commission's ability to expose and prevent corrupt conduct.<sup>56</sup>
- 2.57 The ICAC's annual report also gave an overview of SIRU's work:

<sup>53</sup> Mr Reed, [Transcript of evidence](#), p 5.

<sup>54</sup> Mr Hall, [Transcript of evidence](#), 2020, pp 5-6.

<sup>55</sup> Independent Commission Against Corruption, [Annual report 2018-19](#), October 2019, p 31.

<sup>56</sup> Mr Hall, [Transcript of evidence](#), 2020, p 3.

The unit is diligently working to produce strategic intelligence products that will inform and guide our resource allocation along with strategic intelligence reports that will identify emerging corruption risks, trends and serious and systemic issues as part of our CP [corruption prevention] work.<sup>57</sup>

2.58 The Chief Commissioner updated the Committee on SIRU's operations, noting that its work is now being linked to the investigative structure of the ICAC. This integration arose following a review of SIRU's initial operations, and has resulted in greater collaboration between SIRU and the Investigation Division during preliminary investigations.<sup>58</sup>

2.59 The Committee learnt that the work of SIRU has led to four preliminary investigations, one of which had been referred to the Investigation Division, where it is now an ongoing investigation. Further, SIRU operations have allowed the ICAC to identify 'corruption hotspots' which were previously not detected.<sup>59</sup>

#### **The ICAC collaborates with similar entities to enhance its work**

2.60 The Committee was interested to learn more about how the ICAC collaborates with similar entities locally or in other jurisdictions to enhance its work. The Committee supports these kind of partnerships to share strategic intelligence, collaborate on mutual issues and share tradecraft.

2.61 The Committee heard evidence regarding the establishment of a national anti-corruption intelligence network. This is part of SIRU's operations, and is made up of intelligence representatives from all Australian states and territories. When describing the network, the ICAC stated that:

The network focuses on proactive and strategic intelligence and seeks to provide a platform for sharing tradecraft and collaborating on mutual issues.<sup>60</sup>

2.62 The network is primarily made up of state anti-corruption and integrity commissions, in addition to one Commonwealth agency. Members include:

- The Australian Commission for Law Enforcement Integrity (ACLEI)
- NSW Law Enforcement Conduct Commission (LECC)
- NT Office of the Independent Commissioner Against Corruption (NT ICAC)
- QLD Crime and Corruption Commission (QLD CCC)
- SA Independent Commissioner Against Corruption (SA ICAC)
- TAS Integrity Commission
- Victorian Independent Broad-based Anti-corruption Commission (IBAC); and

<sup>57</sup> [Annual report 2018-19](#), p.4

<sup>58</sup> Mr Hall, [Transcript of evidence](#), 2020, p 3.

<sup>59</sup> Mr Hall, [Transcript of evidence](#), 2020, p 3; [Annual report 2018-19](#), p 32.

<sup>60</sup> [Annual report 2018-19](#), p 32.

- WA Corruption and Crime Commission (WA CCC).<sup>61</sup>
- 2.63 The inaugural network forum was convened by SIRU, and held in Sydney in August 2019. Forum topics included proactive structures and functions and the various systems and methodologies utilised across jurisdictions in support of preventative and investigative functions. This forum will be held annually, and be hosted and organised by different jurisdictions each year.<sup>62</sup>
- 2.64 In evidence provided to the Committee, the ICAC outlined what kind of information sharing has occurred between jurisdictions since the forum was held. This has included strategic priorities and emerging corruption risks, trends in under-reporting and risk mitigation advice in response to COVID-19. However, it was noted that the network operates on a ‘strategic intelligence level’<sup>63</sup>, with the focus being on thematic and trend analysis. This means that operational and tactical intelligence information is not shared through the network. Information sharing of that kind is dealt with separately, and is governed through established requests for information protocols.<sup>64</sup>
- 2.65 When outlining the progress of the network, the Chief Commissioner told the Committee that to date, no barriers have been identified with regard to how the relevant states and territories have been able to collaborate and share information.<sup>65</sup>
- 2.66 The ICAC also referenced the work of the National Intelligence Network (NIN), which is comprised of state and territory integrity and anti-corruption agencies, but does not include the relevant Commonwealth body (ACLEI). When outlining the functions of this network, the ICAC stated that information sharing functions operate well amongst the relevant bodies. Further, relationships established as part of the NIN have been able to form the foundation of the national strategic intelligence network.<sup>66</sup>

**The ICAC’s KPIs should reflect any significant changes to the environment in which it works**

### **Finding 3**

**It is important that the Key Performance Indicators of the ICAC reflect any significant changes to the environment in which the ICAC is carrying out its work.**

- 2.67 The Committee was interested in learning more about whether some of the ICAC’s Key Performance Indicators (KPIs) and targets are too ambitious. In the Committee’s view, for targets to be meaningful, they must take into account the nature of the work being done by the ICAC. This includes ensuring that targets are able to adapt to any significant structural or environmental trends and changes when required. The Committee agrees that it is important to have

<sup>61</sup> ICAC, [Answers to questions on notice](#), p 6.

<sup>62</sup> ICAC, [Answers to questions on notice](#), pp 6-7.

<sup>63</sup> ICAC, [Answers to questions on notice](#), p 7.

<sup>64</sup> ICAC, [Answers to questions on notice](#), p 7.

<sup>65</sup> Mr Hall, [Transcript of evidence](#), 2020, p 15.

<sup>66</sup> ICAC, [Answers to questions on notice](#), p 7.

targets but also supports KPIs being adjusted, if necessary, to reflect operational changes.

2.68 The Chief Commissioner of the ICAC outlined their use of these kinds of targets:

I believe it is important to have targets. However, in my experience they do not override or trump the quality that goes into the work. The Commission is ever mindful that investigations must be carefully undertaken. If key performance indicator milestones need to be adjusted, application is made to have it increased or extended and that application is considered. Where there is obviously good reason to extend it, it will be extended. So there is no sort of rigid system whereby no matter what the time line has to be met. But it is important to have some milestones, and the particular idiosyncratic difficulties sometimes in particular cases require more time and is always a matter that is discussed and evaluated.<sup>67</sup>

2.69 This was reiterated by Commissioner McDonald, who stated that it may be useful to review past KPIs, and determine if the investigation environment has changed.<sup>68</sup> An example of such a change was given, with Commissioner McDonald noting the impact of the increased use of digital information. Due to the significant increase in digital material received by the ICAC through search warrants, more time is required for investigators to review this material, meaning that relevant targets relating to the time taken to examine that material may need to be updated.<sup>69</sup>

#### Meetings between the ICAC and the ICAC Committee can be fewer during an election year

##### Recommendation 1

**When the annual reporting period falls within an election year, the ICAC should include an explanation in its annual report about why there may have been fewer meetings with the ICAC Committee due to the election and subsequent reconstitution of the ICAC Committee in the new Parliament.**

2.70 The Committee accepts that sometimes election years in New South Wales can impact on the number of meetings between the ICAC Committee and the ICAC. The Committee considers that it would be beneficial for the ICAC to explain this in annual reports that fall within an election period, to provide some context for the public. There may not be a general awareness in the community that there is effectively no ICAC Committee for what usually amounts to a few months in the earlier half of an election year.

2.71 At the hearing on 15 May 2020, the Chair drew the Chief Commissioner's attention to the table of key quantitative results for accountability activities in its 2018-2019 annual report, which indicated that the ICAC had zero meetings with the ICAC Committee within that reporting year.<sup>70</sup>

<sup>67</sup> Mr Hall, [Transcript of evidence](#), 2020, p 3.

<sup>68</sup> Ms Patricia McDonald SC, Commissioner of the ICAC, [Transcript of evidence](#), 15 May 2020, p 3.

<sup>69</sup> Ms McDonald, [Transcript of evidence](#), p 3.

<sup>70</sup> [Annual Report 2018-19](#), p17



- 2.72 The 56<sup>th</sup> Parliament in New South Wales ended with the expiration of the Legislative Assembly on Friday 1 March 2019.<sup>71</sup> The Committee was reconstituted for the 57<sup>th</sup> Parliament under a resolution passed on 18 June 2019.<sup>72</sup>
- 2.73 The Chair highlighted that asterisks have been used in previous reports to denote explanatory information on various items within the report.<sup>73</sup> The Chair suggested that the same approach could be used in future annual reports in relation to meetings with the Committee, particularly when reporting falls in an election year.
- What I wanted to perhaps suggest—I know that in other tables you have had various asterisks next to reports or findings and you put explanatory information next to your asterisk. I wonder that in future if a State election does fall within a reporting period, perhaps you make reference to that because certainly the Parliament did not sit for close to five months and then this Committee itself was not reconstituted until June 2019. That may give some understanding as to why there were no meetings.<sup>74</sup>
- 2.74 The Chief Commissioner acknowledged the need to provide an explanation, and agreed that the ICAC will make that inclusion in future annual reports.<sup>75</sup>

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<sup>71</sup> [Constitution Act 1902](#), section [24B](#).

<sup>72</sup> Parliament of New South Wales, Committee on the Independent Commission Against Corruption, [Resolution establishing the committee](#), viewed 3 July 2020.

<sup>73</sup> Mrs Tanya Davies MP, Chair, Committee on the Independent Commission Against Corruption, [Transcript of evidence](#), 15 May 2020, p [15](#).

<sup>74</sup> Mrs Davies, [Transcript of evidence](#), p [15](#).

<sup>75</sup> Mr Hall, [Transcript of evidence](#), 2020, p [15](#).

# Chapter Three – Core work of the ICAC and the Inspector

## Complaints

### The ICAC has processes in place to deal with complaints about its staff

- 3.1 The Committee learned that the ICAC received and investigated three complaints against ICAC staff within the 2018-2019 reporting period. The Committee was also interested in hearing about the policies and procedures that the ICAC would follow where there is a complaint against a staff member or concerns about inappropriate conduct.
- 3.2 Two of the matters in the reporting period involved alleged bullying and harassment towards other ICAC staff members. The third matter involved an alleged breach of the ICAC's network access policy.<sup>76</sup>
- 3.3 The ICAC's annual report details the actions taken in relation to each staff member. The Committee also learned that one of the staff members, whom a complaint was made against, is no longer employed by the ICAC. The Inspector was informed of all matters and conclusions reached by the ICAC. He determined that the ICAC had appropriately investigated the matters and taken satisfactory disciplinary action.<sup>77</sup>
- 3.4 Complaints about ICAC staff can be made directly to the ICAC or the Inspector of the ICAC. A memorandum of understanding between the ICAC and the Inspector provides that the ICAC will notify the Inspector of such complaints that come within the Inspector's functions.<sup>78</sup> The Inspector may decide to investigate the complaint or refer it back to the ICAC for internal investigation and report its findings to the Inspector.<sup>79</sup>
- 3.5 In terms of how the ICAC would approach a complaint about one of its staff, the Committee heard that there would be a spectrum of different actions depending on the nature of the allegations. The Committee heard from the Chief Commissioner that the ICAC would aim to inform the Inspector about any allegations about ICAC staff that need to be investigated as soon as possible:

It is important that the Inspector is aware of these matters early and can follow what is happening and what our response to the problem has been.<sup>80</sup>

- 3.6 At the more serious end of the spectrum, the Chief Commissioner said allegations suggesting criminal offences would result in an immediate investigation. If it was

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<sup>76</sup> [Annual Report 2018-19](#), p 50.

<sup>77</sup> ICAC, [Answers to questions on notice](#), p 3; [Annual Report 2018-19](#), p 50; [Annual Report for the period ending 30 June 2019](#), pp 19-20.

<sup>78</sup> [Annual Report 2018-19](#), p 49.

<sup>79</sup> [Annual Report 2018-19](#), pp 49-50.

<sup>80</sup> Mr Hall, [Transcript of evidence](#), 2020, p 12.

serious enough, the individual in question would be suspended until the investigation was completed. The NSW Police Force and the Inspector would also be notified.<sup>81</sup>

- 3.7 Commissioner McDonald advised the Committee that, apart from allegations at the potentially criminal end of the spectrum, the ICAC may engage an independent investigator to carry out an investigation and report to the ICAC on the findings. A more minor allegation may result in an internal investigation. Commissioner McDonald described how action within the ICAC might proceed:

But again, we have protocols that look at that and determine the appropriate investigative stage and then, of course, it is referred to generally the Commissioners or the Chief Commissioner for a determination of what are the findings and then what action has to be taken, if any. But throughout the Inspector is notified. He is informed initially about the allegations and while we are going through the process of investigation the Inspector is being updated the whole time.<sup>82</sup>

### **The ICAC has received some complaints specifically referring to the COVID-19 pandemic**

- 3.8 An area of interest for the Committee was whether the ICAC has noticed any trends in the complaints it has received during the COVID-19 pandemic. The Committee would like to follow up on this issue again in due course, once there is more data for the ICAC to analyse.
- 3.9 The ICAC explained that in fact there was a slight decrease in the number of complaints received between 1 March and 1 May 2020 compared to the same two-month period in 2019.<sup>83</sup>
- 3.10 The ICAC received 357 reports between 1 March and 1 May 2019. It received 302 reports between 1 March and 1 May 2020; eleven of which explicitly referred to the COVID-19 pandemic.<sup>84</sup>
- 3.11 The majority of the complaints related to the health and local government sectors. Corruption prevention advice was also sought from departments within those sectors.<sup>85</sup>
- 3.12 The ICAC anticipates that the number of reports will increase when agencies resume business-as-usual practices.<sup>86</sup>

### **The proportion of allegations about improper use of records or information increased**

- 3.13 Apart from trends in COVID-19 complaints, the Committee was also interested in learning more about the increase in the proportion of allegations to the ICAC about improper use of records or information.

<sup>81</sup> Mr Hall, [Transcript of evidence](#), 2020, p 12.

<sup>82</sup> Ms McDonald, [Transcript of evidence](#), p 12.

<sup>83</sup> ICAC, [Answers to questions on notice](#), p 4.

<sup>84</sup> ICAC, [Answers to questions on notice](#), p 4.

<sup>85</sup> ICAC, [Answers to questions on notice](#), p 4.

<sup>86</sup> ICAC, [Answers to questions on notice](#), p 4.

- 3.14 In particular, the proportion of section 10 complaints<sup>87</sup> relating to this issue increased to 27 per cent from 19 per cent, with 331 reports received in 2018-2019, up from 238 in the previous year.<sup>88</sup>
- 3.15 The ICAC highlighted that local government had the largest amount of complaints, but indicated that the overrepresentation could be due to the high level of people's interaction with local government and the personal interest they take in these issues.<sup>89</sup>
- 3.16 The ICAC stated that allegations against local councils of improper use of records or information were mostly associated with development applications and land rezoning, allocation of funds, and alleged bribery.<sup>90</sup>
- 3.17 The health, custodial services, and transport and waterways sectors also had large numbers of complaints.<sup>91</sup>
- 3.18 SIRU analysis revealed that the increase in reporting of improper use of records had been the result of internal audits that focused on identifying the misconduct, or the result of improvements in IT systems and analytics to identify unauthorised access to data.<sup>92</sup>
- 3.19 The ICAC indicated that it will continue to monitor this area.<sup>93</sup>

**The Inspector has completed all legacy complaints and released a complaints handling policy**

- 3.20 The Committee was pleased that the Inspector finalised the remaining legacy complaints to his office during the reporting period and that he will now refocus on his audit function.<sup>94</sup> The Committee has more to say about the Inspector's audits further in this chapter.
- 3.21 The Inspector also produced a complaints handling policy and procedure, in response to a recommendation by the ICAC Committee in its previous report.<sup>95</sup> The Committee considers that this is a useful document to assist complainants and to provide transparency about the complaint-handling process.

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<sup>87</sup> Under section 10 of the ICAC Act, any person can make a complaint to the ICAC about a matter that concerns or may concern corrupt conduct under the Act. In the ICAC's *Annual Report 2018-19*, it notes that complaints made by employees and contractors of NSW public authorities that meet the criteria set out in the *Public Interest Disclosures Act 1994* are also classified as section 10 complaints – see [Annual Report 2018-19](#), p 22.

<sup>88</sup> [Annual Report 2018-19](#), p 23; ICAC, [Answers to questions on notice](#), p 5.

<sup>89</sup> ICAC, [Answers to questions on notice](#), p 5.

<sup>90</sup> ICAC, [Answers to questions on notice](#), p 5.

<sup>91</sup> ICAC, [Answers to questions on notice](#), p 5.

<sup>92</sup> ICAC, [Answers to questions on notice](#), p 5.

<sup>93</sup> ICAC, [Answers to questions on notice](#), p 6.

<sup>94</sup> Mr McClintock, [Transcript of evidence](#), 2020, p 18.

<sup>95</sup> [Review of the 2017-2018 annual reports of the ICAC and the Inspector of the ICAC](#), p 8; Office of the Inspector of the ICAC, [Complaint handling policy and procedure](#), viewed 15 July 2020.

## Public inquiries

### The ICAC will look at different ways to hold public inquiries during the COVID-19 pandemic

- 3.22 The ICAC is not currently holding any public inquiries, however, it is looking into alternative approaches to hold a public hearing, if the COVID-19 lockdown continues.<sup>96</sup> The ICAC advised that Operation Skyline still has some public hearing days remaining and they are hoping to hold these hearings once the ICAC gets past the difficulties presented by COVID-19.<sup>97</sup>
- 3.23 For a number of the public inquiries that have been completed, the ICAC is in the process of writing reports, some at a significant stage of completion.<sup>98</sup>

## Corruption prevention in local government

### Local government is an area which has a number of ICAC matters

- 3.24 The Committee was interested to learn more from the ICAC about its work in the local government sector. The Committee is satisfied that the ICAC is involved in a range of initiatives to assist with corruption prevention in this area.
- 3.25 In the 2018-19 reporting period, the ICAC received 585 matters relating to the local government sector, which comprised 29% of all matters.<sup>99</sup>
- 3.26 The ICAC stated that, while local councils make up a large number of complaints received, its over-representation in the complaints statistics ‘may be due to the high level of people’s interaction with local government and the personal interest many take in the decisions of their local council.’<sup>100</sup>
- 3.27 The Committee heard from the Chief Commissioner at the hearing that due to the large number of complaints received each year, the ICAC’s Corruption Prevention area liaises with the Local Government Association and local councils:<sup>101</sup>

We are mindful of the fact that because it has produced a lot of complaints over the years—not all of them, of course, having been substantiated—there is a real need for the Commission from a prevention point of view to remain in contact and to keep providing services that local government need to have.<sup>102</sup>

- 3.28 Mr Lewis Rangott, Executive Director, Corruption Prevention Division, also highlighted that the ICAC’s Corruption Prevention Division have training workshops tailored around local government. In addition they have a specialist town planner and another principal officer with previous employment in local government on staff for planning matters:

<sup>96</sup> Mr Hall, [Transcript of evidence](#), 2020, pp 7-8.

<sup>97</sup> Ms McDonald, [Transcript of evidence](#), p 8.

<sup>98</sup> Ms McDonald, [Transcript of evidence](#), p 8.

<sup>99</sup> [Annual Report 2017-2018](#), p 94.

<sup>100</sup> [Annual Report 2017-2018](#), p23

<sup>101</sup> Mr Hall, [Transcript of evidence](#), 2020, p 16.

<sup>102</sup> Mr Hall, [Transcript of evidence](#), 2020, p 16.

We do have a specialist training workshop that we deliver that deals with planning issues. I always try to make myself available to anyone in the local government sector who wants to talk about corruption prevention issues as well.<sup>103</sup>

- 3.29 The Chief Commissioner told the Committee that matters have also been referred back to local councils for their investigation where it is appropriate to allow the local council to look into and address the problem themselves, and report back to the ICAC.<sup>104</sup>
- 3.30 In response to a question from the Committee about whether the Office of Local Government's guidelines which outline best and practice for the sector should be mandatory in certain circumstance, the ICAC referred to its investigation in Operation Ricco. This was an investigation into the former City of Botany Bay Council chief financial officer and others.<sup>105</sup>
- 3.31 The ICAC supports the actual and proposed reforms following this investigation including:
- appointment of the Auditor General as the external auditor for all councils
  - induction and professional development programs for all councillors
  - revisions to the Model Code of Conduct for Local Councils in NSW
  - creation of audit, risk and improvement committees.<sup>106</sup>

#### **A pilot project involving SIRU is helping with corruption prevention in local government**

- 3.32 The Committee was interested to learn that the Strategic Intelligence and Research Unit (SIRU) has created a database to identify and quantify the problems in different local government areas.<sup>107</sup>
- 3.33 Extensive analysis was conducted by SIRU, which established a baseline for complaints and compared the range of complaints across local councils. The analysis identified the councils with the greatest number of complaints and identified councils at risk of potential corrupt conduct based on complaint trends and other data information.<sup>108</sup>
- 3.34 The project concluded in December 2019, however, the ICAC and another contributing agency have agreed to continue the project and expand the datasets.<sup>109</sup>
- 3.35 The ICAC believes that a successful project could prevent corrupt conduct in local councils by allowing information sharing between the ICAC and other

<sup>103</sup> Mr Lewis Rangott, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, [Transcript of evidence](#), 15 May 2020, p 16.

<sup>104</sup> Mr Hall, [Transcript of evidence](#), 2020, p 16.

<sup>105</sup> ICAC, [Answers to questions on notice](#), p 10.

<sup>106</sup> ICAC, [Answers to questions on notice](#), p 10.

<sup>107</sup> ICAC, [Answers to questions on notice](#), p 7.

<sup>108</sup> ICAC, [Answers to questions on notice](#), p 8.

<sup>109</sup> ICAC, [Answers to questions on notice](#), p 8.

stakeholders, such as the Office of Local Government, to identify at-risk councils; assist local councils with risk assessments; and identify local councils that would benefit from training.<sup>110</sup>

### **The ICAC described selection criteria and expertise for local councillors**

- 3.36 Continuing its interest in corruption prevention within the local government sector, the Committee was keen to hear the ICAC's views about any selection criteria or expertise for councillors and senior management in councils.
- 3.37 The ICAC believes that councillors and senior staff should have a sound understanding of administrative law principles. Councillors must participate in induction and professional development training. Guidance provided by the Office of Local Government provides scope for dealing with some administrative law principles.<sup>111</sup>
- 3.38 The ICAC highlighted the challenge that some councillors may have when undertaking their role:
- The Commission's experience is that some councillors find it challenging to balance their role as community advocates with their duty to apply the law in an objective manner, in particular under the *Environment Planning and Assessment Act 1979* and environmental planning instruments. This area also appears to be addressed by the OLG guidance relating to induction training and professional development.<sup>112</sup>
- 3.39 The ICAC advised that a council's general manager and other employees in senior management positions should be subjected to pre-employment screening and ongoing periodic rescreening.<sup>113</sup> The ICAC noted that its publication, 'Strengthening employment screening practices in the NSW public sector,' can assist with this.<sup>114</sup>
- 3.40 The ICAC also believes it is important that disclosures by candidates for election to council are accurate, such as in relation to a candidate's status as a property developer.<sup>115</sup>

### **The ICAC gave its views on the disclosure regime within local government**

- 3.41 The Committee was also interested to hear more from the ICAC about whether the disclosure regime for local government in relation to pecuniary and non-pecuniary interests is sufficient.
- 3.42 The ICAC noted that councillors are required to disclose pecuniary interests at relevant council meetings. However, in the ICAC's view, pecuniary interests should prevent a councillor from having any involvement in the matter:

<sup>110</sup> ICAC, [Answers to questions on notice](#), p 8.

<sup>111</sup> ICAC, [Answers to questions on notice](#), p 8.

<sup>112</sup> ICAC, [Answers to questions on notice](#), p 8.

<sup>113</sup> ICAC, [Answers to questions on notice](#), pp 8-9.

<sup>114</sup> Independent Commission Against Corruption, Chapter 2: Designing an employment screening framework, [Strengthening employment screening practices in the NSW public sector](#), February 2018, pp 12-18

<sup>115</sup> ICAC, [Answers to questions on notice](#), p 8.

...councillors obtain information and carry out official functions outside of these meetings (e.g. attending briefings and site visits and liaising with constituents). This could mean that a conflicted councillor, who might be prevented from voting on a matter due to a pecuniary interest, still has confidential information about the matter and an influence over the outcome.<sup>116</sup>

- 3.43 The ICAC spoke of the difficulties for councillors in determining whether a non-pecuniary conflict of interest is significant, particularly as they are not under the supervision of a manager which can lead to a degree of subjectivity. The ICAC noted that short of introducing an umpire to determine non-pecuniary interests, it is a difficult issue to resolve.<sup>117</sup>
- 3.44 The ICAC highlighted that councillors and designated officials are not required to disclose the pecuniary interests of their spouse and family members, which may lead to a councillor arranging their affairs through their family to avoid disclosure.<sup>118</sup> The ICAC previously recommended that parliamentarians be required to disclose pecuniary interests of spouses and members of the same economic unit and, at that time, spoke of the benefits it saw in expanding the disclosure regime:
- The benefits of expanding the [pecuniary interest] register include added transparency, minimising perceptions of members avoiding scrutiny, and dealing with the potential for family interests to influence decision-making.<sup>119</sup>
- 3.45 The ICAC suggests that the same principle could be applied to local government,<sup>120</sup> and that a continuous, ongoing disclosure of pecuniary interests would have a positive impact on the management of conflicts of interest and better transparency for decision-making.<sup>121</sup>
- 3.46 The ICAC also supports the Information and Privacy Commission's guideline which requires pecuniary interest returns to be publicly available (subject to a public interest test which may allow for some redactions).<sup>122</sup>
- 3.47 The ICAC highlighted a recent decision of the Supreme Court which limited the means by which councillors can be disciplined including for failures to disclose and manage conflicts of interest. The ICAC advised that the Office of Local Government is considering a response to this decision.<sup>123</sup>

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<sup>116</sup> ICAC, [Answers to questions on notice](#), p 9.

<sup>117</sup> ICAC, [Answers to questions on notice](#), p 9.

<sup>118</sup> ICAC, [Answers to questions on notice](#), p 9.

<sup>119</sup> Independent Commission Against Corruption, [Reducing the opportunities and incentives for corruption in the State's management of coal resources](#), October 2013, p 43.

<sup>120</sup> ICAC, [Answers to questions on notice](#), p 9.

<sup>121</sup> ICAC, [Answers to questions on notice](#), p 10.

<sup>122</sup> ICAC, [Answers to questions on notice](#), p 9.

<sup>123</sup> ICAC, [Answers to questions on notice](#), p 9.



## Audits

### Finding 4

**The Inspector of the ICAC's audit function is important, particularly to identify any areas of the ICAC's processes which may benefit from changes.**

- 3.48 The Inspector noted the importance of his audit function to prevent incidents from happening, rather than waiting for a specific incident to be the basis for a review. The Inspector told the Committee that he considers his audit function to be as important as his complaint handling function, if not more important.<sup>124</sup>
- 3.49 The Committee agrees with the Inspector that his audit function is important, particularly to identify any areas of the ICAC's processes which may benefit from changes.
- 3.50 In the Committee's *Review of the 2017-2018 Annual reports of the ICAC and the Inspector of the ICAC*, the Committee found that the Inspector's audits of counsel assisting and the welfare of the ICAC witnesses were significant, and that the Committee would examine both audits in its next review.<sup>125</sup> The Committee highlights these audits below, along with a new audit about search warrants.

### **The Inspector will continue to monitor the conduct of counsel assisting following his audit**

- 3.51 The Committee supports the Inspector's approach to continue to monitor the conduct of counsel assisting the ICAC following his audit into the ICAC's procedures for dealing with and managing counsel assisting. The Committee agrees with the Inspector that it is critical that counsel assisting behaves fairly towards those who are examined. The Committee notes that failures in this area can potentially reduce public confidence in the work of the ICAC and have undesirable consequences for those under examination.
- 3.52 In his audit report, the Inspector highlighted the importance of the role of counsel assisting the ICAC:
- Counsel assisting has a critically important role in ICAC investigations and public inquiries and indeed, sets the tone of the process. When counsel assisting behaves unfairly, the process and the findings of the Commission will be undermined and be seen to be unfair, or there is, at least, a serious risk that that will be perceived to be the case. It is fundamental to both the just and effective performance of the Commission's important public functions that it behaves fairly towards those who come before it and is perceived to have done so towards persons who may ultimately be the subject of adverse findings by it.<sup>126</sup>
- 3.53 The Inspector completed his audit into the ICAC's procedures for dealing with and managing counsel assisting in investigations and public inquiries in late 2019. The audit was prompted by continuing concerns the Inspector had about

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<sup>124</sup> Mr McClintock, [Transcript of evidence](#), 2020, pp 18; 20.

<sup>125</sup> [Review of the 2017-2018 Annual Reports of the ICAC and the Inspector of the ICAC](#), p 14.

<sup>126</sup> Office of the Inspector of the ICAC, [Report pursuant to sections 57B\(5\) and 577A of the Independent Commission Against Corruption Act 1988 concerning an audit under section 57B\(1\)\(d\) thereof into the Independent Commission Against Corruption's procedures for dealing with counsel assisting in investigations and inquiries under Part 4 of the Act](#), (Special Report 20/02), December 2019, p 2.

complaints made to his office about counsel assisting the ICAC in Operation Spicer in 2014. The Inspector also wanted to examine whether the ICAC's present procedures to determine whether there was a risk of a repetition of the conduct.<sup>127</sup>

- 3.54 The Inspector's audit report notes that the conduct of counsel assisting in some instances of Operation Spicer was inappropriate and unfair to the persons whose conduct was being examined by the ICAC.<sup>128</sup>
- 3.55 In his report on the audit, the Inspector said he had concerns about the conduct of counsel assisting in Operation Spicer and that it 'caused serious damage to the public standing of the Commission which may well have reduced its ability to perform its important public function of attacking corruption in this State'.<sup>129</sup>
- 3.56 At the public hearing with the Committee, the Inspector noted that the ICAC made findings that were independently justifiable, even when taking into consideration the conduct of counsel assisting in Operation Spicer.<sup>130</sup>
- 3.57 The Inspector's report highlighted that Operation Spicer occurred in 2014, before the implementation of the three Commissioner model in 2017 and prior to the appointment of the current commissioners.<sup>131</sup>
- 3.58 The audit found that the current procedures of the ICAC are 'operating satisfactorily, appropriately and in accordance with the relevant legislation'.<sup>132</sup> The Inspector is also confident that the inappropriate conduct he identified in the audit is unlikely to be repeated.<sup>133</sup> The Inspector does not believe any legislative changes are necessary or any additional protections for witnesses.<sup>134</sup>
- 3.59 The Inspector advised he would monitor the conduct of the ICAC's public inquiries for the remainder of his tenure to satisfy himself that counsel assisting acts fairly and appropriately. If there is repetition of what occurred in Operation Spicer, the Inspector would take steps to investigate.<sup>135</sup>
- 3.60 In addition, the Inspector advised that formal practices and procedures could only go so far, as the people who you appoint are just as important.<sup>136</sup>
- 3.61 The Chief Commissioner of the ICAC agreed with the findings of the Inspector's report, noting that the report is important so that people can appreciate the high standards expected of counsel assisting.<sup>137</sup> In addition, the Chief Commissioner

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<sup>127</sup> [Special Report 20/02](#), p 3.

<sup>128</sup> [Special Report 20/02](#), p 1.

<sup>129</sup> [Special Report 20/02](#), p 3.

<sup>130</sup> Mr McClintock, [Transcript of evidence](#), 2020, p 23.

<sup>131</sup> [Special Report 20/02](#), p 1.

<sup>132</sup> [Special Report 20/02](#), p 1.

<sup>133</sup> [Special Report 20/02](#), p 1.

<sup>134</sup> [Special Report 20/02](#), pp 39-40.

<sup>135</sup> Mr McClintock, [Transcript of evidence](#), 2020, p 23; [Special Report 20/02](#), p 1.

<sup>136</sup> Mr McClintock, [Transcript of evidence](#), 2020, p 21.

<sup>137</sup> Mr Hall, [Transcript of evidence](#), 2020, p 13.

expressed his views on the importance of counsel assisting and how they add value to the work of the ICAC:

It provides assistance to the Commission in that you have got somebody who has his or her own independent role from the Commissioner, although there is always some liaison and communication between counsel assisting and the Commissioner. But it is not just the principle that two heads being better than one. It is having some distance sometimes between counsel assisting and the Commissioner that can often serve a more objective and analytical approach.

Counsel assisting are normally very skilled in advocacy, skilled in analysing facts and familiar with the rules of evidence. Although the rules of evidence do not apply to the Commission, some of the principles upon which they are based and some of the principles that we are required to apply in terms of standard of proof are familiar to counsel assisting. They plainly maintain those principles in mind as they proceed in terms of both the probative value of evidence, where to find it, principles of fairness in terms of putting matters to witnesses so that they have a fair opportunity to respond to, and to ensure fairness all round. That is a very summary way of saying that the role of counsel assisting is extremely valuable.<sup>138</sup>

- 3.62 The ICAC made the distinction that counsel-assisting are only used for public inquires and that the ICAC has their own in-house lawyers to provide legal analysis in compulsory examinations.<sup>139</sup>

#### **The Committee will consider the Inspector's welfare of witnesses audit in its next review**

- 3.63 The Committee looks forward to reviewing the Inspector's audit into the welfare of persons the subject of ICAC investigations. The Committee considers that this is a very important issue. The Committee was interested to hear an example from the Chief Commissioner of the ICAC at the recent public hearing about how the ICAC has been mindful of the welfare of a person involved in one of its investigations.
- 3.64 In his annual report for the period ending 30 June 2019, the Inspector advised that his audit would consider 'the means by which ICAC protects the welfare of its witnesses, particularly the mental welfare of persons that are the subject of a Commission investigation'.<sup>140</sup>
- 3.65 At the recent hearing with the Committee, the Chief Commissioner of the ICAC said the ICAC is mindful that there could be stress and mental health issues encountered during the course of its work.<sup>141</sup>
- 3.66 The Committee also heard from the ICAC that there are a number of policies and procedures in their operations manual which deal with risk management. The approach analyses what might be a risk and how to deal with the risk. However

<sup>138</sup> Mr Hall, [Transcript of evidence](#), 2020, p 8.

<sup>139</sup> Mr Stephen Rushton SC, Commissioner of the ICAC, [Transcript of evidence](#), 15 May 2020, p 8.

<sup>140</sup> [Annual report for the period ending 30 June 2019](#), p 26.

<sup>141</sup> Mr Hall, [Transcript of evidence](#), 2020, pp 16-17.

upon further review of their policies and procedures, the ICAC noted there wasn't an overarching policy so the ICAC is now developing a new central policy.<sup>142</sup>

3.67 The Chief Commissioner provided the Committee with an example of how the ICAC is mindful of the welfare of witnesses in Operation Skyline:

The reason as to why it has drawn out as long as it has is that one of the main persons of interest in that investigation has brought to our attention that he was suffering from some form of mental illness, without going to the detail of it. I have adjourned that matter five times now by reason of the medical evidence that was presented. The medical evidence, though, we needed to be sure, was sufficient to warrant repeated adjournments. We engaged a consultant psychiatrist to examine the person in question to understand what the competency of the person who wants to give evidence and what the capacity was for that person who is presently self-represented to cross-examine witnesses and to give evidence himself.<sup>143</sup>

3.68 In Operation Skyline, the Chief Commissioner also agreed to take evidence from the individual in a private session of the public inquiry and gave him the opportunity to provide a narrative statement for his defence.<sup>144</sup>

3.69 The Chief Commissioner noted that the ICAC doesn't want anybody to suffer injury or harm through the investigations they conduct and they would do their best to be mindful of the mental health of witnesses on a case-by-case basis.<sup>145</sup>

#### **The Committee will also consider the Inspector's search warrants audit in its next review**

3.70 The Committee was interested to learn that the Inspector has also commenced an audit in relation to search warrants executed by the ICAC. This will be another area of interest for the Committee in its next review.

3.71 The Inspector is currently auditing how the ICAC complies with the law in relation to search warrants. The Inspector advised that part of his function is to prevent incidents from happening, rather than waiting for a specific incident to be the basis for a review.<sup>146</sup>

3.72 The Inspector advised he chose to do an audit on search warrants as it is a significant area that involves the infringement of an individual's rights and liberties and it is important that processes and procedures are correctly followed. The Inspector also noted that it had been an area has been previously been examined.<sup>147</sup>

3.73 The Inspector invited the committee or any member of the committee to forward to him for consideration any issue that the committee or any member thinks should be considered as part of his audit on search warrants.

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<sup>142</sup> Mr Roy Waldon, Executive Director, Legal Division and Solicitor to the Commission, [Transcript of evidence](#), p 17.

<sup>143</sup> Mr Hall, [Transcript of evidence](#), 2020, pp 16-17.

<sup>144</sup> Mr Hall, [Transcript of evidence](#), 2020, pp 16-17.

<sup>145</sup> Mr Hall, [Transcript of evidence](#), 2020, p 17.

<sup>146</sup> Mr McClintock, [Transcript of evidence](#), 2020, pp 19-20.

<sup>147</sup> Mr McClintock, [Transcript of evidence](#), 2020, p 20.

## Appendix One – Committee's functions

Under section 64 of the *Independent Commission Against Corruption Act 1988*, the functions of the Committee are to:

- Monitor and review the exercise by the ICAC and the Inspector of the ICAC of their functions
- Report to Parliament, with such comments as it thinks fit, on any matter appertaining to the ICAC or the Inspector or connected with the exercise of its functions to which, in the Committee's opinion, the attention of Parliament should be directed
- Examine each annual and other report of the ICAC and the Inspector and report to Parliament on any matter appearing in, or arising out of, any such report
- Examine trends and changes in corrupt conduct and practices and methods relating to corrupt conduct, and report to Parliament any change which the Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector
- Inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

Nothing in the ICAC Act authorises the Committee to:

- Investigate a matter relating to particular conduct
- Reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint
- Reconsider the findings, recommendations, determinations or other decisions of the ICAC in relation to a particular investigation or complaint.

## Appendix Two – Conduct of the review

This report fulfils one of the Committee's obligations under its establishing legislation, the *Independent Commission Against Corruption Act 1988* (the ICAC Act). The Committee's functions include examining each annual and other report of the ICAC, and of the Inspector of the ICAC, and reporting to Parliament on any matter appearing in or arising out of those reports. This report is the result of the Committee's review of the ICAC's and the Inspector's 2018-2019 annual reports.

Under section 76(1) of the ICAC Act, the ICAC is required to prepare, within the period of four months after each 30 June, a report of its operations during the year ended on that 30 June and to furnish the report to the Presiding Officer of each House of Parliament.

Under section 77B of the ICAC Act, the Inspector is required to prepare, within the period of four months after each 30 June, a report of the Inspector's operations during the year ended on that June 30 and to furnish the report to the Presiding Officer of each House of Parliament.

The ICAC investigates, exposes and prevents public sector corruption and educates the community and the public sector about corruption. Its principal functions include investigating complaints of corrupt conduct; examining laws, practices and procedures to detect corrupt conduct and to secure changes in work methods or procedures that may be conducive to corrupt conduct; advising and instructing public authorities and officials about changes in practices and procedures to reduce the likelihood of corrupt conduct; and educating the public and providing information about the detrimental effects of corrupt conduct and the importance of maintaining integrity in public administration.<sup>148</sup>

The Inspector oversees the ICAC's work and his or her principal functions are:

- auditing the ICAC's operations to monitor compliance with the law of the State;
- dealing with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct by the ICAC or its officers;
- dealing with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasion of privacy) by the ICAC or its officers; and
- assessing the effectiveness and appropriateness of the ICAC's procedures relating to the legality or propriety of its activities.<sup>149</sup>

As part of its review of the ICAC's and the Inspector's 2018-2019 annual reports, the Committee held a public hearing on 15 May 2020. Witnesses from the ICAC and the Inspector appeared before the Committee – see appendix three for the names and titles of the witnesses. The transcript from the public hearing is available on the Committee's webpage.

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<sup>148</sup> [Independent Commission Against Corruption Act 1988, s13.](#)

<sup>149</sup> [Independent Commission Against Corruption Act 1988, s57B.](#)

## Appendix Three – Witnesses

As part of its review of the ICAC's and the Inspector's 2018-2019 annual reports, the Committee held a public hearing on 15 May 2020.

### Friday, 15 May 2020, Macquarie Room

The Hon. Peter Hall QC	Chief Commissioner, Independent Commission Against Corruption
Mr Stephen Rushton SC	Commissioner, Independent Commission Against Corruption
Ms Patricia McDonald SC	Commissioner, Independent Commission Against Corruption
Mr Philip Reed (appeared via teleconference)	Chief Executive Officer, Independent Commission Against Corruption
Mr Andrew Koureas	Executive Director, Corporate Services Division, Independent Commission Against Corruption
Ms Bernadette Dubois	Executive Director, Investigation Division, Independent Commission Against Corruption
Mr Lewis Rangott	Executive Director, Corruption Prevention Division, Independent Commission Against Corruption
Mr Roy Waldon	Executive Director, Legal Division and Solicitor to the Commission, Independent Commission Against Corruption
Mr Bruce McClintock SC	Inspector of the ICAC, Office of the Inspector of the ICAC

## Appendix Four – Extract from minutes

### MINUTES OF MEETING 5

Tuesday 19 November 2019

Room 1254

#### Members present

Mrs Tanya Davies (Chair), The Hon Taylor Martin (Deputy Chair), Mr Justin Clancy, Mr Ron Hoenig, Ms Tania Mihailuk, Mr Jamie Parker, Mr Rod Roberts, Mr Dugald Saunders, Mrs Wendy Tuckerman.

#### Officers present

Ms Clara Hawker, Mr David Hale, Ms Abigail Turingan, Mr Ze Nan Ma, Ms Mohini Mehta.

The Chair opened the meeting at 1.32pm.

#### 1. Apologies

Mr Mark Coure, The Hon Adam Searle.

#### 2. Confirmation of minutes

Resolved, on the motion of Mr Martin, seconded by Mrs Tuckerman:

That the minutes of meeting 4 held on Monday, 21 October 2019 be confirmed.

#### 3. Matters arising

\*\*\*

#### 4. Correspondence

\*\*\*

#### 5. \*\*\*

#### 6. Review of the 2018-2019 annual reports of the ICAC and the Inspector

Resolved, on the motion of Mr Parker, seconded by Mr Saunders:

- That the Committee review the 2018-2019 annual reports of the ICAC and the Inspector of the ICAC, and that the review be reported to Parliament and published on the Committee's website.
- That the Committee hold a public hearing or hearings for the review in 2020 on a date or dates to be determined, and invites the Chief Commissioner, Commissioners and senior staff of the ICAC, and the Inspector of the ICAC, to appear to give evidence.
- That the Chair circulate draft questions and briefing information to members out-of-session.

#### 7. Next meeting

The Committee adjourned at 2:13pm until a date to be determined.



## **MINUTES OF MEETING 6**

Friday 8 May 2020

1.34pm

Room 814/815 and Webex

### **Members present**

Mrs Tanya Davies (Chair) (via videoconference), The Hon Taylor Martin (Deputy Chair) (via videoconference), Mr Justin Clancy (via videoconference), Mr Ron Hoenig (via videoconference), Ms Tania Mihailuk (via videoconference), Mr Jamie Parker, Mr Rod Roberts, Mr Dugald Saunders (via videoconference), Mrs Wendy Tuckerman (via videoconference), Mr Mark Coure (via videoconference).

### **Officers present**

Clara Hawker, Jessica Falvey, Madeleine Dowd, Abegail Turingan (via videoconference), Ze Nan Ma.

The Chair opened the meeting at 1.34pm.

#### **1. Apologies**

The Hon. Adam Searle

Resolved, on the motion of Mr Coure, seconded by Mr Clancy:  
That the apologies be accepted.

#### **2. Confirmation of minutes**

Resolved, on the motion of Mrs Tuckerman, seconded by Mr Coure:  
That the minutes of meeting 5, held on Tuesday 19 November 2019, be confirmed.

#### **3. Correspondence**

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4. \*\*\*

5. \*\*\*

#### **6. Inquiries**

##### **6.1 Review of the 2018-19 annual reports of the ICAC and the Inspector of the ICAC**

Resolved, on the motion of Mihailuk, seconded by Mr Martin:  
That the Committee holds a public hearing for the review of the 2018-19 annual reports of the ICAC and the Inspector of the ICAC on Friday 15 May 2020.

Committee Members confirmed their attendance at the hearing.

6.2 \*\*\*

7 \*\*\*

#### **8 General Business**

## **9 Next meeting**

The Committee adjourned at 2.14pm until 9.30am on Friday 15 May 2020 for the public hearing for the review of the 2018-2019 annual reports of the ICAC and the Inspector of the ICAC.

## **MINUTES OF MEETING 7**

Friday 15 May 2020

Macquarie Room, Parliament House

Also via teleconference for Members and witness participating remotely

### **Members present**

Mrs Tanya Davies (Chair), The Hon Taylor Martin (Deputy Chair), Mr Justin Clancy (via teleconference), Mr Mark Coure, Mr Ron Hoenig, Ms Tania Mihailuk, Mr Jamie Parker, The Hon Rod Roberts, Mr Dugald Saunders (via teleconference), The Hon Adam Searle (via teleconference), Mrs Wendy Tuckerman (via teleconference).

### **Officers present**

Clara Hawker, Jessica Falvey, Madeleine Dowd, Abegail Turingan (via teleconference) Ze Nan Ma.

The Chair opened the meeting at 9:31 am.

### **1 Apologies**

Resolved, on the motion of Mr Coure, seconded by Mr Searle:

That Mr Hoenig will be an apology for the morning session of the hearing with the Independent Commission Against Corruption witnesses.

### **2 Confirmation of minutes**

Resolved, on the motion of Ms Mihailuk, seconded by Mr Parker:

That the minutes of meeting no 6, held on 8 May 2020, be confirmed.

### **3 \*\*\***

### **4 Review of the 2018-19 annual reports of the ICAC and the Inspector of the ICAC**

Resolved, on the motion of Mr Coure, seconded by Mr Roberts:

- That the Committee takes evidence from witnesses from the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption at the public hearing on 15 May 2020.
- That the Committee permits audio-visual recording, photography and broadcasting of the public hearing on 15 May 2020.

- That the Chair sends questions on notice to the Independent Commission Against Corruption and the Inspector following the public hearing if required and that answers be requested to be returned within two weeks of being forwarded.
- That the Committee publishes the transcript of evidence taken at the public hearing, after correction, and the answers to questions on notice, on the Committee's webpage.

## **5 Public hearing**

The Chair declared the public hearing open at 9:45 am and the witnesses and public were admitted.

The following witnesses representing the Independent Commission Against Corruption were called:

- Ms Patricia McDonald SC, Commissioner, sworn and examined
- The Hon Peter Hall QC, Chief Commissioner, sworn and examined
- Mr Stephen Rushton SC, Commissioner, sworn and examined
- Mr Philip Reed, Chief Executive Officer, affirmed and examined and appeared via teleconference
- Mr Andrew Koureas, Executive Director, Corporate Services Division, sworn and examined
- Ms Bernadette Dubois, Executive Director, Investigations Division, sworn and examined
- Mr Lewis Rangott, Executive Director, Corruption Prevention Division, affirmed and examined
- Mr Roy Waldon, Executive Director, Legal Division and Solicitor to the Commission, sworn and examined.

Mr Clancy left the meeting at 11:17 am.

Evidence concluded and the witnesses withdrew.

Mr Hoenig joined the meeting at 12:15 pm.

The following witness representing the Office of the Inspector of the Independent Commission Against Corruption was called:

- Mr Bruce McClintock SC, Inspector of the Independent Commission Against Corruption, affirmed and examined.

Evidence concluded and the witness withdrew.

The Chair closed the public hearing at 1:21 pm and the public withdrew.

## **6 General business**

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## **7 Next meeting**

The Committee adjourned at 1:23 pm until a date to be determined.

## **UNCONFIRMED MINUTES OF MEETING NO 8**

Wednesday 5 August 2020

1.31 pm

Room 814/815

### **Members present**

Mrs Tanya Davies (Chair), The Hon. Taylor Martin (Deputy Chair), Mr Justin Clancy, Mr Mark Coure, Mr Ron Hoenig, Ms Tania Mihailuk, Mr Jamie Parker, The Hon. Rod Roberts, Mr Dugald Saunders, The Hon. Adam Searle, Mrs Wendy Tuckerman.

### **Officers present**

Clara Hawker, Jessica Falvey, Madeleine Dowd, Abegail Turingan (via videoconference), Ze Nan Ma.

The Chair opened the meeting at 1.31 pm

#### **1. Apologies**

There were no apologies.

#### **2. Confirmation of minutes**

Resolved, on the motion of Mr Saunders, seconded by Mr Coure:

That the minutes of meeting no 7, held on Friday 15 May 2020, be confirmed.

#### **3. Outgoing correspondence**

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#### **4. Incoming correspondence**

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#### **5. \*\*\***

#### **6. Review of the 2018-19 annual reports of the ICAC and the Inspector of the ICAC – Consideration of the Chair's draft report**

The Chair spoke to the previously circulated draft report.

The Committee agreed to consider the draft report chapter by chapter.

The Committee agreed that chapters one and two stand part of the report.

Resolved, on the motion of Mr Hoenig, seconded by Mr Parker:

That the following sentence be added to page 28 of the draft report as paragraph 3.73:

The Inspector invited the committee or any member of the committee to forward to him for consideration any issue that the committee or any member should be considered as part of his audit on search warrants.

Mr Hoenig moved that the following finding and recommendation be added to page 27 of the draft report, after paragraph 3.62:

#### **Finding 5**

a. In view of the Inspector's finding about the conduct of Counsel Assisting in *Operation Spicer* in par 3.54 and par 3.55 that counsel's conduction was; "inappropriate and unfair to persons whose conduct was being examined" and his conduct "caused serious damage to the public standing of the Commission" any finding or findings of fact needs to be reconsidered by re-examining all evidentiary material.

b. Unless there has been thorough re-examination of the evidentiary material a conclusion that the findings in *Operation Spicer* were "independently justifiable" would be unfair and contrary to principle. See *Wood v R [2012] NSWCCA 21 McClellan CJ at CL pars 25-29*.

c. The matters highlighted by the Inspector in his conclusions about Counsel Assisting referred to in a. above cannot be said to be "insignificant" in applying the test in *Whitehorn v The Queen (1983 152 CLR 657 at 663-664 per Deane J*.

### **Recommendation**

That an independent review of all evidentiary material in *Operation Spicer* be examined to determine whether some, any or all findings and findings of fact should be set aside.

Discussion ensued.

Question put.

The Committee divided.

Ayes: Mr Hoenig and Mr Roberts.

Noes: Mrs Davies, Mr Martin, Mr Clancy, Mr Coure, Ms Mihailuk, Mr Parker, Mr Saunders, Mr Searle, Mrs Tuckerman.

Question resolved in the negative.

Resolved, on the motion of Ms Mihailuk, seconded by Mr Coure:

- That the Committee adopts the draft report (as amended), and that it be signed by the Chair and presented to the House.
- That the Committee authorises the secretariat to make appropriate final editing and stylistic changes, as required.
- That once tabled, the report be published on the Committee's website.

7. \*\*\*

8. **General business**

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9. **Next meeting**

The Committee adjourned at 2.11 pm until a date to be determined.