

**REPORT ON PROCEEDINGS BEFORE**

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

**2018 REVIEW OF THE ANNUAL REPORTS OF OVERSIGHTED  
BODIES**

**At 814-815, Parliament House, Sydney on Monday, 12 March 2018**

**The Committee met at 9:30 am**

**PRESENT**

Mr Lee Evans (Chair)  
Mr Stephen Bromhead (Acting Chair)  
The Hon. Wes Fang  
The Hon. Trevor Khan  
Mr Paul Lynch  
Dr Hugh McDermott  
The Hon. Adam Searle

**FIONA RAFTER**, Inspector, Office of the Inspector of Custodial Services, affirmed and examined

**The CHAIR:** I declare open the Committee on the Ombudsman, Law Enforcement Conduct Commission and Crime Commission hearing—the 2018 review of annual reports and oversight bodies. I thank witnesses for appearing before the Committee today. Before we proceed do you have any questions on the hearing process?

**Ms RAFTER:** No, Mr Chair.

**The CHAIR:** Do you want to make a short opening statement before we begin questions?

**Ms RAFTER:** Yes. Thank you for the opportunity to appear before you today in relation to the 2016-17 annual reporting period. I have in attendance with me today three staff from my office, Ms Kate Smithers, Ms Laurie Cullinan and Ms Gabriella Smith. I can advise the Committee that it has been another busy year for the Office of the Inspector of Custodial Services. During the 2016-17 year we recruited additional permanent and temporary staff to the office, implemented a monitoring framework to enable reporting on the implementation of recommendations, finalised the clothing and bedding report, completed the inspection of all Juvenile Justice centres in accordance with the statutory time frame, inspected eight adult correctional centres and 13 24-hour court cell complexes. We also conducted 48 liaison visits to adult and juvenile centres across New South Wales. We also recruited Aboriginal Official Visitors to each juvenile justice centre and commenced the recruitment and appointment process for Official Visitors to each adult and juvenile justice centre from October 2017.

I am pleased to report that I was able to roll over \$300,000 from the the 2016-17 year into the 2017-18 financial year. As a result, the reported 2016-17 annual budget has been reduced by \$300,000 to \$2.1 million, and the 2017-18 annual budget indicates an increase by the same amount to \$2.4 million. This resulted in an underspend of \$200,000 for the 2016-17 year. However, we have also recently received additional recurrent funding of approximately \$400,000 in this financial year. This has meant an increase in our budget to \$2.8 million for this financial year. I have already sought a roll over of any unspent funds into the 2018-19 year.

The additional funding has enabled us to convert temporary roles into permanent positions and recruit additional staff. I currently have a staffing establishment of 11 with seven permanent and four temporary positions. This is an increase of two permanent positions. We have two permanent positions being occupied with temporary staff at the moment and two staff on extended leave. I intend to use the additional funds to convert the temporary positions to permanent positions this year and create additional temporary positions to retain those temporary staff. I believe this will assist us to inspect the 40 adult correctional centres, 13 24-hour court cells and five residential centres we are required to inspect every five years, and six Juvenile Justice centres that we are required to inspect every three years.

Additional funding has also enabled the office to increase the number of Official Visitors appointed to centres last October to service increasing prisoner numbers in the adult correctional system. We now have 92 Official Visitor appointments in total. We have increased our Aboriginal Official Visitors and we now have six Aboriginal Official Visitors for Juvenile Justice and six for adult corrections. This has enabled us to start using our Aboriginal Official Visitors to assist with the inspection of centres where there are high numbers of Aboriginal inmates. We have also created an Aboriginal intern position in our office to provide administrative support to the program. An Official Visitor conference was held during the reporting period and also one in October 2017 at the commencement of the new term of appointment for Official Visitors.

We have a a number of reports that we are working on relating to inspections conducted in the 2016-17 year—one report is close to tabling, one incorporating feedback from the agency, one with the agencies for consultation, and one being drafted.

However, the most pressing activity for the office is the inspection of the adult correctional centres by October 2018. There are 14 adult correctional centres and five residential centres still to inspect by October 2018 to meet the legislative requirement of the Act. We have issued terms of reference and commenced inspections relating to minimum security centres, health services, and programs, education and employment. We are yet to issue the terms of reference for the residential centres and compulsory drug treatment centre.

Finally, with the ratification of the Optional Protocol to the Convention Against Torture [OPCAT] in December 2017 we have turned our attention to ensure that we are ready by December 2020.

**Mr STEPHEN BROMHEAD:** Inspector, in your opening statement you gave evidence of the rollover of some of your budget. You spoke also about an increase to your budget. Is the office budget adequate to undertake your role and responsibilities?

**Ms RAFTER:** We can always use more but the increase in the budget is certainly going to assist with employing those additional staff and turning the temporary positions into permanent positions. However, it will become more apparent after we proceed past October 2018 because we have been having to do a lot of inspection work at the end of the five-year period, whereas once we are through this initial five-year period I will be able to plan to have inspections happening over the course of the five-year period. So yes, for the moment it should enable us to achieve what we need to achieve by October 2018 and then I will have to see thereafter.

**The Hon. ADAM SEARLE:** Do you think you will meet all your deadlines by October 2018?

**Ms RAFTER:** There is always a risk. We have a plan in place. We have resourced the inspections. We have the dates of the inspections timetabled. We have consulted with the relevant agencies but there are always unforeseeable eventualities which may put the completion of all of the inspections by the time frame at risk.

**The Hon. ADAM SEARLE:** When do you envisage the terms of reference for the residential facilities will be prepared and released?

**Ms RAFTER:** I have a Senior Inspection and Research Officer returning from extended leave who is due to return to the office in May. When that officer returns my intention is to ask them to commence that inspection. So shortly thereafter I would envisage that there would be a terms of reference issued in respect of those five residential centres and the compulsory drug treatment centre.

**The Hon. TREVOR KHAN:** Two rapid-build facilities have been opened in the past six months. Is that right?

**Ms RAFTER:** Yes, that is correct.

**The Hon. TREVOR KHAN:** Have you undertaken any inspections of those two facilities?

**Ms RAFTER:** I have attended both of those facilities for their openings. I have actually seen those centres; however, at the time that I visited those centres, there were no inmates in the centres at that point. I have appointed Official Visitors to those centres, who have commenced visiting and meeting with inmates. Those centres are on the forward timetable, but they will not be inspected formally before October of this year because of the requirement to inspect the other centres.

**The Hon. TREVOR KHAN:** In light of the fact that they are, at least in my perception, somewhat different in nature from the other facilities, do you think that a delay until October is appropriate?

**Ms RAFTER:** I have the Official Visitors in there regularly. They visit those centres once a fortnight. If there is anything that is of concern, they will report that to me. It is possible for me to commence an inspection. I have the powers to do an announced or unannounced inspection.

**The Hon. TREVOR KHAN:** Indeed you do, yes.

**Ms RAFTER:** I will be keeping a close eye on those new centres, but at this point I do not have any reason—

**The Hon. TREVOR KHAN:** Nothing has been raised with you.

**Ms RAFTER:** Nothing has been raised.

**The Hon. TREVOR KHAN:** Australia is a signatory to the International Covenant on Civil and Political Rights, is it not?

**Ms RAFTER:** Yes.

**The Hon. TREVOR KHAN:** Is there an optional protocol to that convention?

**Ms RAFTER:** Are you talking about the Optional Protocol to the Convention Against Torture [OPCAT]?

**The Hon. TREVOR KHAN:** My understanding is the Federal Government has signed up to an optional protocol to the convention in the past few months. I think there is nothing in the background. I

understand that that would give the Federal Government some opportunity to undertake inspections of custodial facilities run by the States. Are you aware of that?

**Ms RAFTER:** Yes. I have been involved in discussions relating to the implementation of OPCAT. OPCAT was ratified in December 2017.

**The Hon. TREVOR KHAN:** I am out by a month.

**Ms RAFTER:** The coordinating body is the Commonwealth Ombudsman. What is allowed to occur is a delay in implementation, and that has been triggered. That satisfies the time frame of December 2020 in which OPCAT needs to be fully implemented. As a result, prior to ratification and post-ratification I have been involved in several meetings about the role of the office in OPCAT. The Commonwealth Ombudsman is the coordinating body for Australia. The Ombudsman will work with the States and Territories to address the issue that you raised about the Commonwealth commencing to inspect State facilities. The intention, and the way that OPCAT has worked in other jurisdictions, is that it is not meant to impose a further oversight but is meant to complement the existing oversight agencies.

**The Hon. TREVOR KHAN:** That is how they always start.

**Ms RAFTER:** It complements the existing oversight agencies. My understanding is that the New South Wales Government is in consultation with the Commonwealth about which agencies will be a national preventive mechanism for the OPCAT. I would envisage that my office will be one of those for New South Wales, because we have legislation and we have powers. We have independence by reporting to Parliament. We are able to make recommendations, so we meet in many respects the requirements.

**The Hon. TREVOR KHAN:** Yes, indeed. New South Wales legislation is vastly superior to some of the other States in that respect, is it not?

**Ms RAFTER:** Yes, I agree with you.

**The Hon. ADAM SEARLE:** Can you tell us where your review of the Official Visitor program is up to?

**Ms RAFTER:** Yes, I can. That is not yet finalised. I used the Official Visitor conference that we held in October 2017 to consult with the Official Visitors around aspects of that review. The review is intending to enhance the program. With the ratification of OPCAT I am also considering, as part of that review, the role of Official Visitors to assist with the implementation of OPCAT, given their powers and the frequency of visits that we have to the centres. It is not yet finalised, and I would hope that it will be in this financial year. One of the recommendations that I will be making to the Minister is that the term of appointments for Official Visitors increase.

**The Hon. ADAM SEARLE:** At the moment is it five years?

**Ms RAFTER:** No, it is two years. The end of those two years comes around frequently, and there is an administrative process that is involved in recruiting for 92 positions. I believe that, given the process that we go through, we could extend that period of appointment.

**The Hon. ADAM SEARLE:** In what other ways are you looking to enhance the program?

**Ms RAFTER:** Increasing diversity, and we have been doing that already with an increase in the number of Aboriginal Official Visitors to centres. I would like to see even more Aboriginal Official Visitors appointed to the centres.

**The Hon. TREVOR KHAN:** How many Aboriginal Official Visitors have you got?

**Ms RAFTER:** We have 12 now.

**The Hon. ADAM SEARLE:** Out of how many?

**Ms RAFTER:** Currently 92.

**The Hon. TREVOR KHAN:** What is your objective? Would it be about a quarter?

**Ms RAFTER:** That would be representative of the adult population.

**The Hon. TREVOR KHAN:** Indeed it would. Is that your objective?

**Ms RAFTER:** That would be my aspiration, yes.

**The Hon. ADAM SEARLE:** But not a target.

**The Hon. TREVOR KHAN:** We will get to semantics later.

**Ms RAFTER:** We have 50 per cent Aboriginal Official Visitors in Juvenile Justice, which is also representative.

**The Hon. TREVOR KHAN:** You referred to the appointment of Official Visitors to the two rapid-build prisons. I understand that at Cessnock it is a wing within Cessnock jail. Is it essentially a self-contained unit within Cessnock jail?

**Ms RAFTER:** No, it is outside of the perimeter of Cessnock.

**The Hon. TREVOR KHAN:** Is it?

**Ms RAFTER:** Yes. It is a completely different centre in that respect. You do not go through the main gatehouse that you would otherwise enter through. It is a separate centre.

**The Hon. TREVOR KHAN:** It is fully self-contained?

**Ms RAFTER:** Yes, it is gazetted as a separate correctional centre.

**The CHAIR:** The results of the key performance indicators for the reporting period showed a 54 per cent increase in numbers of liaison visits and a 32 per cent increase in the number of centre inspections compared with the previous reporting period. To what do you attribute this increase?

**Ms RAFTER:** The increase in liaison visits was largely due to me making sure that I visited every centre in New South Wales after I commenced in the role. We also use the liaison visits now as part of our monitoring framework that we have implemented. We attend the centres for liaison visits when we are advised that a recommendation has been achieved to check whether we accept that. We also use the liaison visits to meet with our Official Visitors as well. That is why there has been a significant increase there. With the inspections, it is because of the legislative requirement that we have to inspect the adult centres once every five years. That has naturally seen an increase in the number of inspections that we have conducted to enable us to meet that legislative time frame.

**The CHAIR:** Thank you very much for appearing today. The Committee may send you some additional questions in writing. Your replies will form part of your evidence and be made public. Would you be happy to provide written replies to any further questions?

**Ms RAFTER:** Of course, Mr Chair.

**(The witness withdrew)**

**ELIZABETH TYDD**, Chief Executive Officer and Information Commissioner, Information and Privacy Commission, sworn and examined

**SONIA MINUTILLO**, Director, Investigation and Reporting, Information and Privacy Commission, sworn and examined

**DAVID MARCUS**, Acting Director, Business Improvement, Information and Privacy Commissioner, affirmed and examined

**The CHAIR:** Before we proceed, do you have any questions about the hearing process?

**Ms TYDD:** No, thank you.

**The CHAIR:** Would you like to make a short opening statement?

**Ms TYDD:** Thank you for the opportunity to present to you on the exercise of the functions of the Information Commissioner and to assist you in the examination of the Information and Privacy Commission [IPC] annual report and other reports of the Information Commissioner. I am conscious and respectful of the important oversight role of the Committee to ensure transparency and accountability. With that in mind, I commend to the Committee the IPC strategic regulatory and business plans, together with our public reports. The valuable contribution of Ms Samantha Gavel, the NSW Privacy Commissioner, in the development of these public commitments has ensured that the IPC is well placed to respond to information governance issues comprehensively. From that vantage point, we are now able to impart the IPC's expertise in privacy and information access from a holistic perspective to deliver sound advice to agencies and promote better government service delivery to citizens.

In those public commitments the IPC's priorities for 2017-19 are summarised as: implementing a comprehensive, risk-based compliance monitoring process; supporting agencies to uphold privacy and information access rights in contemporary models of service delivery; promoting credible advice to government agencies and citizens that promotes open government and privacy rights and builds community confidence; strategic engagement with our stakeholder groups; equipping our regulated sectors with resources and services to deliver good information access and privacy outcomes; and, internally, instilling a culture of regulatory expertise in our people.

I would like to provide the Committee with a brief overview of the IPC's performance as described in our 2016-17 annual report before turning to the 2016-17 report on the operation of the Government Information (Public Access) Act. In summary, applications to the IPC continued to grow, with an increase of 11 per cent in the number of complaints and reviews lodged with the IPC. New models of service delivery by agencies present new opportunities and also challenges and the IPC report also recognises a significant increase in our advising function, confirming the IPC's role as a credible regulatory adviser.

New demands require us to apply our resources proportionately and strategically, and this year we have fortified our data-driven approach to the identification of regulatory risks both in information access and in privacy and to implement proactive regulatory activities to support both functions. That approach has guided the identification of our future priorities and commitments and ensures that we move beyond complaints handling to fulfil our strategic regulatory functions. At the same time, we are focusing our resources on ensuring delivery of outcomes within our customer service time frames across both information access and privacy following its reintegration within the IPC. We are implementing new processes in casework to ensure that the IPC has the capacity and capability necessary to deliver quality, effective and timely services. Page 34 of our annual report provides an independent assessment of our overwhelmingly positive culture.

Turning to the report on the operation of the Government Information (Public Access) Act, significant trends are identified as a 20 per cent increase in the number of applications received by agencies over the last two years, reflecting the increasing value the community is placing on the right to access information. There was also a 20 per cent increase in the number of applications for other than personal information and, pleasingly, the increase in release rates went from 68 per cent to 71 per cent. I am confident that reflects the IPC's focus in that regard. Timeliness in decision-making by agency has declined a little. Previously 3 per cent of those were not decided within the statutory frame time. That is now 5 per cent. There has been a decline in the "push" pathways under the Government Information (Public Access) Act both for open access requirements and also for reviews of the programs for proactive release.

Going forward, the IPC will engage with identified agencies to promote opportunities for improvement across all four pathways and provide new or enhanced tools to agencies to monitor and improve performance.

This includes our innovative agency dashboard to better equip agencies to oversight their Government Information (Public Access) Act functions and also provide transparency to citizens. We are committed to providing new or enhanced guidance in areas such as the use of the public interest test to better support new service delivery arrangements and providing additional training and resources to staff at all levels on how to better manage information release to support open government. Pleasingly, 2016-17 has seen New South Wales continue to offer leadership nationally in promoting effectiveness of information access rights and supporting Australia's participation in the global push for open government.

**The Hon. TREVOR KHAN:** Hear, hear.

**Ms TYDD:** I am honoured to continue to lead that work on behalf of all State and Territory information commissioners and ombudsmen. Likewise, the Information and Privacy Commission's [IPC] regulatory leadership and influence has well positioned New South Wales agencies to better uphold information access and privacy rights. Our achievements this year are a yet to be launched e-learning module that brings together input from all information management experts—and that includes cybersecurity, digital service delivery, privacy, information access and State records. This initiative is a first, and like others contained in our forward plans, it confirms our commitment to enabling sound information management practices through leadership and a future-focused approach to strategic regulatory outcomes that balance, promote and respect information access and privacy rights.

**The CHAIR:** You note that the first national dashboard on the use of information access rights was published in December 2017 with the Open Government partnership's National Action Plan. How did New South Wales compare with other jurisdictions, and why does Victoria have significantly higher numbers of applications than other jurisdictions?

**Ms TYDD:** The metrics designed in that dashboard reflect international best practice on metrics for information access rights. It also reflects the differences between the legislative models in States and Territories who are providing the data. Respectful of those differences, information commissioners have also published—that is available on our website and their websites—a compendium of the legislative provisions, so that an appreciation that some of the aspects of the legislation that are reported on by way of outcomes and metrics are actually able to be considered through the lens of the differing legislative regimes. The question you raise, Chair, is a significant one because in relation to the Victorian approach to information access it is not a push model of the legislative right to information access. Only Queensland and New South Wales have that push model.

In that regard it can be hypothesised that, because we are required in New South Wales and in Queensland to proactively release more information, it may be that the applications per capita—and that is reported as per 1,000 head of population—are less than those jurisdictions where they do not have a push model or a proactive release approach to information access. Victoria is one such jurisdiction that does not require agencies to proactively release in the way we do in New South Wales. Queensland and New South Wales are the only two second tranche legislative models for information access. We provide some guidelines as to how information access might be delivered in this new, more contemporary approach to information access legislation.

**The Hon. ADAM SEARLE:** In this review last year I asked you whether or not you were conducting an investigation of Transport for NSW. Can you tell the Committee where that investigation is up to?

**Ms TYDD:** I can, thank you. Mr Searle, the investigation process is completed. Under that investigation there are also reporting requirements—and they are set out in the Government Information (Information Commissioner) Act and also in the Government Information (Public Access) Act. Factors that go to the application of the legislation in that regard that govern the reporting requirements include: how the legislation operates; procedural fairness; other factors, such as public interest disclosure and the requirement to maintain confidentiality in that regard; advice received in relation to the interface of those complex legislative arrangements and of the matters that are currently subject to the investigation; and finally, the compliance purpose to be served through the reporting process. The reporting process is still current and I am not able to provide an outcome at this stage. I do anticipate being in a position to provide an outcome in the very near future.

**The Hon. ADAM SEARLE:** Is this the investigation referred to in your annual report at the bottom of page 26 and on page 27?

**Ms TYDD:** I believe that would be correct.

**The Hon. ADAM SEARLE:** Is that the one that was referred to you by the Independent Commission Against Corruption [ICAC]?

**Ms TYDD:** I believe that would be the correct reference.

**The Hon. ADAM SEARLE:** This is relating to the alleged deletion of records for the purposes of avoiding disclosure. Is that the nature of the investigation?

**Ms TYDD:** The nature of the investigation that was received by me from ICAC involves a number of particulars. One of those particulars does go to the consideration of the offence provisions under the Government Information (Public Access) Act.

**The Hon. ADAM SEARLE:** To be clear—I am referring to your annual report—you have conducted your investigation and, as at the time of the annual report, it was envisaged that a final report would be issued to the relevant agency in late 2017. Was that achieved?

**Ms TYDD:** That was not achieved, Mr Searle.

**The Hon. ADAM SEARLE:** When do you anticipate that being achieved?

**Ms TYDD:** I anticipate that will be achieved within the coming weeks. A number of factors go into investigations such as this, including the requirement for procedural fairness, and I am sure there is an awareness that time frames can require lengthening in response to procedural fairness requirements.

**The Hon. ADAM SEARLE:** Obviously people who are the subject of complaints or allegations need to be able to respond to them adequately.

**Ms TYDD:** All parties. And considering also, I would add, the complexity of the issues raised in the investigation, particularly those that go to factors such as public interest disclosure, that may well require additional consideration.

**The Hon. ADAM SEARLE:** What are the rest of the stages? You complete your report to the agency. Is that what happens next?

**Ms TYDD:** The Government Information (Information Commissioner) Act and also in the Government Information (Public Access) Act, as I said, contain numerous reporting provisions. Commencing with how investigations are conducted, the Government Information (Information Commissioner) Act is quite specific in that investigations are to be conducted in the absence of the public. The Government Information (Information Commissioner) Act, together with the Government Information (Public Access) Act, provide other mechanisms for reporting. There is a requirement to report to both the Minister and the agency in respect of an investigation conducted by the Information Commissioner.

**The Hon. ADAM SEARLE:** To pause there: When you say "the Minister", is it the Minister for the Act or the Minister for the subject agency?

**Ms TYDD:** The Minister for the subject agency.

**The Hon. ADAM SEARLE:** In this case that would be the Minister for Transport and Infrastructure.

**Ms TYDD:** Correct.

**The Hon. ADAM SEARLE:** Please continue.

**Ms TYDD:** There are other factors that go to the provisions of reports, as I indicated, because there are other provisions under the Government Information (Public Access) Act around reporting. There are also factors under the Government Information (Public Access) Act that have been used effectively, particularly for the purpose of elevating compliance, and they go to reporting provisions under the functions of the Information Commissioner set out at section 17 of the Government Information (Public Access) Act. There are a number of reporting provisions in both suites of legislation.

**The Hon. TREVOR KHAN:** Could you expand on that a little? You have said that there are a number of complications. What are those factors?

**Ms TYDD:** The factors for reporting requirements?

**The Hon. TREVOR KHAN:** Yes.

**Ms TYDD:** Strict requirements in relation to the conduct of an investigation under the Government Information (Information Commissioner) Act require, upon finalising the investigation, a provision of reports to



the agency head and to the Minister. There are other provisions under the Government Information (Information Commissioner) Act that require, if the Information Commissioner is satisfied that the functions have not been exercised in accordance with the Act, to provide some other additional reporting.

**The Hon. TREVOR KHAN:** What does that mean? What is additional reporting?

**Ms TYDD:** There is a mandatory requirement under the Act to report to those agencies. Without going to the legislation I am reasonably confident it involves going to the head of the Department of Premier and Cabinet [DPC] if the matter demonstrates a failure to exercise functions. In the absence of a finding of the failure to exercise functions effectively, then the reliance is upon the two reports that must be provided as I set out. The additional requirements: turning first to the Government Information (Information Commissioner) Act, there are requirements for reports of the Information Commissioner to be considered by this Committee. Under the Government Information (Public Access) Act, which is the legislation generally relied upon for the exercise functions of the Information Commissioner, there are the requirements to monitor, audit, provide reports to assist both agencies and citizens in elevation of information access, compliance and to ensure that the right to information access and how it operates is more available to citizens in terms of increasing their awareness of those rights. So there are a number of reporting provisions.

**The Hon. ADAM SEARLE:** So you finish your report and you give it to the agency and to the Minister. What is the next step? What happens?

**Ms TYDD:** Considerations, such as the factor I set out—that is, the requirement to uphold the public interest disclosure legislation—would be considered. Consideration of other requirements, such as the elevation of compliance generally, are also considered. One of the many factors considered in that elevation of compliance is whether or not the issues identified might be systemic across other agencies and what compliance function the provision or some form of report might serve those agencies in elevating compliance generally with the Government Information (Public Access) Act.

**The Hon. ADAM SEARLE:** Just pause there. Your annual report states that the investigation concerns an alleged deletion of records to avoid release pursuant to the Government Information (Public Access) Act. It seems like a fairly serious matter to me. If those matters are proven, what flows from that?

**Ms TYDD:** If those matters are proven, that may well demonstrate a failure to exercise functions properly on the part of the agency. That is associated with another reporting requirement. Depending upon the facts established in the matter, there might be additional insights that might apply to agencies more broadly and appropriate guidelines, reports or recommendations may well be provided to other agencies to assist in the elevation of compliance generally.

**The Hon. ADAM SEARLE:** What do the Minister and the agency do with your report? Do they have to refer it to some other agency if the law has not been complied with?

**Ms TYDD:** I can only speak from the visibility of the Government Information (Public Access) Act and Government Information (Information Commissioner) Act in this regard. Of course, I have mentioned the Public Interest Disclosure Act.

**The Hon. ADAM SEARLE:** There are provisions for prosecutions under the Government Information (Public Access) Act.

**Ms TYDD:** That is correct; there are provisions for prosecution and they would flow. The provisions for referral deal with both the Director of Public Prosecutions and the Attorney. If found, a referral to the Director of Public Prosecutions may well be made.

**The Hon. ADAM SEARLE:** You also said that the investigation concerned more than just that allegation; it concerned other matters. Are you able to give the Committee a flavour of those other matters?

**Ms TYDD:** I can tell the Committee that there are five offence provisions under the Government Information (Public Access) Act. Some of those offences go to persons who are alleged to have deleted information. Some of them also go to how information access decisions are made.

**The Hon. ADAM SEARLE:** Within Transport for NSW?

**Ms TYDD:** By the agency concerned. Some of them go to influencing the decision in relation to the Government Information (Public Access) Act. In part, the issues that you raise in relation to the deletion of records might need to be considered through a number of those offence provisions, not only to the one you referred to earlier. There are five offence provisions under the Government Information (Public Access) Act.

**The Hon. ADAM SEARLE:** Can you tell the Committee whether or not one of the matters that you may be looking at in this investigation relates to an allegation that the agency took a particular approach to Government Information (Public Access) Act requests, such as an automatic refusal? Is that one of the matters you may be considering?

**Ms TYDD:** I do not believe our investigation—which went to systems, policies and procedures of the agency in accordance with the Government Information (Information Commissioner) Act—identified matters relevant to your question in relation to an automatic refusal. Certainly, our investigation involved a discrete set of facts. But we did consider the policies, processes and systems as required under the Act.

**The Hon. TREVOR KHAN:** Do I take it that your answer to Mr Searle's inquiry is no? Is that what I can conclude from that answer?

**Ms TYDD:** If I am correctly understanding the question—that is, that the facts involved an assertion that matters were automatically refused—

**The Hon. TREVOR KHAN:** A blanket refusal?

**Ms TYDD:** That is not correct.

**The Hon. ADAM SEARLE:** To be clear, I am not suggesting that was an official agency policy. I am wondering whether there was a practice that you encountered that touched on that allegation.

**Ms TYDD:** We reviewed systems, policies and practices established to support the exercise of Government Information (Public Access) Act functions. The concern that you raised was not apparent. It is not apparent in either the report on the operation of the Government Information (Public Access) Act by the agency or the soon-to-be-released agency dashboards that also set out release rates for agencies. In the circumstances you are describing, if it was an automatic refusal then we would probably see something like a 100 per cent refusal rate of outcomes for that particular agency. That was not reflected in our report on the operation of the Government Information (Public Access) Act.

**The Hon. ADAM SEARLE:** Does your report remain confidential?

**Ms TYDD:** Which report?

**The Hon. ADAM SEARLE:** The one that is the subject of your annual report here, under "Commissioner investigation".

**Ms TYDD:** They are the matters currently under consideration.

**The Hon. ADAM SEARLE:** Yes. But when you conclude your report and you deliver it to the Minister and the agency, does it get published at any point? Does the Committee ever get to see it?

**Ms TYDD:** The factors that we consider would be the form of the report and whether or not it was deemed to be appropriate to provide guidelines addressing systemic issues to all agencies or to agencies within a particular sector. As members are aware, there are five sectors under the Government Information (Public Access) Act. Factors such as that, in regulatory outcomes and promoting sound regulatory outcomes, would inform that decision. Those matters are currently under consideration.

**The Hon. TREVOR KHAN:** If you came to the conclusion that Mr Brown, head of section Y, on particular days sat down at his computer and deleted material holus-bolus to avoid a Government Information (Public Access) Act request, does the conclusion that you have drawn form a document that becomes available to the public—

**The Hon. ADAM SEARLE:** Or to the Committee.

**The Hon. TREVOR KHAN:** Yes, through the Committee, through tabling in Parliament, or by some other mechanism? I think that is what the member is asking.

**The Hon. ADAM SEARLE:** That is one of the things I am asking.

**Ms TYDD:** The scenario you are indicating would be predicated on a finding that an offence has been prima facie made out, and it would warrant referral under the Act to the Director of Public Prosecutions. If the matter then proceeded to be dealt with summarily in the Local Court, that would proceed to some kind of public ventilation of those issues.

**The Hon. TREVOR KHAN:** Indeed, it would. A number of us sit on the Independent Commission Against Corruption Committee and the Law Enforcement Conduct Commission Committee and in this context

will see reports that will make conclusions about conduct by particular people. The question is: In a report you generate in the circumstances you describe, is there a report that becomes available to the public that lets people know your conclusion—not what the court would conclude but what you would conclude?

**Ms TYDD:** There is the capacity for those reports to be made. However, as I said, the factors, including operation of the Public Interest Disclosures Act, the systemic issues and the compliance value, would deal with that. Sometimes in the scenarios or the situations you are highlighting, summaries of outcomes may well be provided. Certainly, those options are available to me as Information Commissioner and are under active consideration.

**The Hon. TREVOR KHAN:** So you could redact names and the like to protect people?

**Ms TYDD:** That is correct.

**The Hon. TREVOR KHAN:** Or to protect a prosecution in a sense. But you can disclose something?

**Ms TYDD:** Correct.

**The Hon. TREVOR KHAN:** But that is within your gift?

**Ms TYDD:** Thank you, yes.

**The Hon. ADAM SEARLE:** And that is a matter you said was under consideration.

**Ms TYDD:** That is correct.

**The Hon. ADAM SEARLE:** It seems topical to ask you what you think has led to the 53 per cent increase in the number of access complaints.

**Ms TYDD:** The increase in the number of access complaints is something we keep under active consideration as well. We are seeing issues around open access disclosure. Members would also be aware that we are seeing issues in relation to fees and charges generally. Those two factors are very significant in our forward work program. Raising awareness of the Government Information (Public Access) Act and ensuring that citizens are very well aware of their right to apply for information and their right to obtain it by way of proactive release, are also a factor. There has been a 5 per cent increase in citizens' awareness of their right to access information. That is largely attributable, I think, to the Information and Privacy Commission's work program. That increase has gone from 84 per cent in 2014 to 89 per cent of respondents in 2016. So a heightened awareness may also contribute to that. I would also reference new ways of delivering services and a heightened awareness of both information access and privacy in that regard—information sharing arrangements that lead to an increase in the advices. We have also had a significant increase in the number of advices. Those advices come from agencies or may be in response to proposals under consideration.

**The Hon. ADAM SEARLE:** Are those considerations also driving the 43 per cent increase in privacy complaints?

**Ms TYDD:** I will not speak for my colleague in relation to those matters today given her personal circumstances.

**The Hon. ADAM SEARLE:** Are any of the people with you able to answer that question?

**Ms MINUTILLO:** I think it is fair to say that the increase in privacy complaints is also being driven by—the privacy legislation extends to both private and public health providers. A large number of the complaints that we see are driven from complaints about people's need to access private provider health information that is their own. That is often the driver behind the increase in complaints.

**The Hon. ADAM SEARLE:** Mr Chair, when is the Privacy Commissioner likely to appear before the Committee?

**The CHAIR:** A date has not been set at this stage.

**The Hon. WES FANG:** Your report says that the Information and Privacy Commission has been developing guidelines to assist agencies with the release of information captured using closed-circuit television and audiovisual technology. How is that progressing?

**Ms TYDD:** These new ways of capturing information, storing information and providing services require a regulator to be very much on the front foot to support agencies and also to promote information access, but being respectful of privacy. Last year the Information and Privacy Commission conducted a number of roundtables with agencies that had the largest volumes of digital holdings in relation to information. Through

that open dialogue with the regulated sectors and applying our expertise, but also having regard to developments in other jurisdictions such as Queensland, we have developed guidelines to assist agencies in promoting the effective distribution sharing and release of digital information, but also ensuring that they are respectful in relation to privacy.

So we have developed guidance following consultation with those agencies and it is being applied. That guidance is also reflective of new developments in case law and that is included in the guidelines that we have provided. We will continue to do this because information no longer appears on paper, it is rendered in many forms. As a regulator we need to be responsive to contemporary issues such as this. I am pleased to say that the audiovisual or digital information guidance was very well received by agencies.

**The CHAIR:** Thank you for appearing before the Committee today. You may be sent some additional questions in writing. Your replies will form part of your evidence and be made public. Would you be happy to provide written replies to any further questions?

**Ms TYDD:** I would. Thank you.

**(The witnesses withdrew)**

**(Short adjournment)**

**TERENCE LIONEL BUDDIN**, Inspector, Office of the Inspector of the Law Enforcement Conduct Commission, sworn and examined

**ANGELA ZEKANOVIC**, Principal Legal Advisor, Office of the Inspector of the Law Enforcement Conduct Commission, sworn and examined

**IAN McCALLAN-JAMIESON**, Senior Investigation and Compliance Officer, Secure Monitoring Unit, Office of the Inspector of the Law Enforcement Conduct Commission, sworn and examined

**The CHAIR:** Before we proceed, do you have any questions about the hearing process?

**Mr BUDDIN:** Not for my part.

**The CHAIR:** Would you like to make a short opening statement before the Committee begins with questions?

**Mr BUDDIN:** Thank you for the opportunity to make some observations about the first eight months of the operations of the Office of the Inspector of the Law Enforcement Conduct Commission. As Committee members are well aware, I took up the position as part-time Inspector of the Law Enforcement Conduct Commission [LECC] on 1 July 2017. Not only was I new to the role but the LECC staff only commenced operations on that day. That obviously entailed establishing a new office, albeit in the same premises as those occupied by the outgoing Inspector of the Independent Commission Against Corruption [ICAC] and the Police Integrity Commission [PIC]. Their last day was on 30 June 2017. Bruce McClintock, SC, was appointed as the new part-time Inspector of ICAC at the same time, and together we constitute the new Inspectorate. Given that I was only formally appointed on 28 June 2017, there was no real opportunity to receive a handover from my predecessor.

Accordingly, much time and effort was devoted to setting up the new office but with very little administrative support. In that context, may I publicly express my gratitude to one person in particular, Susan Raice. Ms Raice occupied the position of Principal Legal Advisor in the previous Inspectorate and had been appointed to a similar position at LECC during its transition phase. For perfectly understandable reasons, she took three weeks planned leave, which coincided with the final days of the previous Inspectorate. That meant for its first two weeks the new inspectorate operated with the support only of a part-time personal assistant. Ms Raice very graciously agreed, with the blessing of the senior executive team at LECC—namely, the Chief Commissioner, the Chief Executive Officer and the Solicitor to the Commission—to delay her start date at the LECC for three months to enable the Inspectorate to navigate its initial period. I am not sure how the office would have coped without her organisational skills, guidance and calming influence. Moreover, Ms Raice was instrumental in preparing the final annual report of the Office of the Inspectorate of the Police Integrity Commission, which was tabled in October 2017. That report went out under my name in accordance with transitional provisions created for such a contingency although I, of course, had not been in the chair for the period covered by the report.

Once Ms Raice left to start with LECC, the office was fortunate to obtain the services of Ms Angela Zekanovic. She commenced duties in late November on secondment from LECC, where she had been working in the chief executive officer's area of responsibility. That secondment was arranged at the instigation of the Chief Commissioner of LECC, to whom I am most grateful. A particular challenge arose for Ms Zekanovic because in her first week the part-time personal assistant suddenly resigned and could not be immediately replaced. Ms Zekanovic thereafter took on additional administrative functions. I acknowledge and thank her for her contribution, which has been beyond the call of duty. Since early February we have been fortunate to have had the services of Renee Armstrong in the part-time role of business coordinator. She is on secondment from the chambers of the Office of the Director of Public Prosecutions. She has fitted into the role seamlessly and, like Ms Zekanovic, has been performing her services at a very high level for both me and the Inspector of ICAC.

The other issue that has attracted much of this agency's attention in its first six months of existence arose from the fact that I was given statutory responsibility for the operation of the Secure Monitoring Unit [SMU], which is required to both conduct regular inspections of covert warrants that are issued in this State and then to report upon those inspections. That unit is constituted by two full-time officers, Mr McCallan-Jamieson and Ms Heather Brunello, who have been fulfilling their roles very effectively for a number of years. That role had previously been performed from within the Ombudsman's office. They had performed their roles under a delegation from the Ombudsman, whose power to do so had had a statutory basis. Regrettably, no similar statutory power to delegate was conferred on my office at the time the functions of the SMU were transferred. That meant that those officers were, at least at that stage, unable to perform a critical part of their role.

Considerable time and energy was then devoted to rectifying that position. The result was that section 128A of the Law Enforcement Conduct Commission Act was inserted and that provision commenced its operation on 25 September 2017.

I also wish to commend Mr Ian McCallan-Jamieson and Ms Heather Brunello for their professionalism and dedication in immediately attending to conducting the inspections which were then outstanding. Furthermore, during the period between August and December 2017 five annual reports were produced by the office in compliance with various statutory requirements concerning inspections of covert warrants. Needless to say, I am solely responsible for signing off on those annual reports. I should also acknowledge my appreciation to the former Acting Ombudsman and his senior team, and to the Department of Premier and Cabinet for facilitating the handover of those staff members. Moreover, appreciation is due to the Ombudsman's office for continuing to accommodate those two officers until such time as the Inspectorate moves to new premises when the current lease expires.

For completeness, I should add that Ms Zekanovic and I recently attended the Covert Applications Unit [CAU] of the NSW Police Force at a time when the two SMU officers were conducting their inspections. Inspector Wayne Kelly kindly walked us through aspects of the unit's operations, it being the front-end clearing house for covert warrant applications made by the NSW Police Force. The CAU, which coordinates all those activities, has been in existence for a little over 10 years and has a staff of 15, at least three of whom are solicitors. We were provided with information and documentation about enhancements which have been made to the application process in recent years as well as a recognition of some of the challenges with which the CAU is grappling.

I now turn my attention to what I had originally believed was going to be my core function as the Inspector of LECC—namely, the oversight of that agency. I wish to record at the outset that my office has received nothing but complete cooperation from everyone at LECC. That cooperation has taken various forms. The first is the ongoing and timely provision of various kinds of information and with the Committee's indulgence I list those: first, all policy documents, protocols and Memoranda of Understanding [MOUs] with other agencies; secondly, notice of all LECC internal Committee meetings, a number of which I have attended as an observer; thirdly, minutes of all such meetings; and, fourthly, a monthly audit schedule which sets out the number of occasions on which LECC has exercised its statutory powers—for example, notices which it has issued, the use of investigative tools such as search warrants, the number of critical incidents that are monitored and the number of determinations made under section 19(2) of the LECC Act, which provides that various decisions made by LECC must be authorised by the Chief Commissioner and at least one other Commissioner.

I have also informed myself about LECC's activities by means of exchange of formal correspondence with the Chief Commissioner as well as through informal meetings with him which have occurred fairly frequently. I have now had face-to-face meetings with all members of the senior executive of LECC—that is, with each of the Commissioners, the Chief Executive Officer and the Solicitor to the Commission. In due course I intend to meet with staff members from all the different parts of the organisation, particularly those at the operational level, for the purpose of understanding how they conduct their daily activities. Thus far I have only been able to meet the members of the assessment team, whose task it is to initially assess and process all complaints received by LECC, of which there are a very significant number. I receive details of those complaints on a weekly basis. However, as a result of those meetings the Chief Commissioner and I have exchanged correspondence, the effect of which is that LECC is in the process of reviewing all aspects of its assessment functions.

That experience prompts me to say something about another of my core functions—namely, the audit of LECC operations. This is an area in which I candidly acknowledge that I have much to learn. To that end I will be drawing upon the experiences of those who perform similar auditing functions including LECC itself, the Office of the Director of Public Prosecutions, ICAC and perhaps even the Auditor-General. Last year I attended a conference with my counterparts from those interstate jurisdictions which have comparable positions to mine—but not identical—namely, Queensland, Victoria and Western Australia.

As for the future, I indicate that my office and LECC are currently working cooperatively in order to revamp what is contained in the monthly audit schedule. We are seeking to enhance the information which is currently received to include more detailed information about important decisions such as section 19 determinations and the oversight of critical incidents. Future plans may include strategies such as desk audits. Other projects are still at the discussion stage.

Finally, may I say something briefly about complaints which my office has had to address in accordance with section 122(2)(b) of the LECC Act. To date there have been 37 such complaints, of which only

10 remain outstanding. A number of those complaints upon close examination were found not to fall within the office's jurisdiction essentially because they related to, for example, the conduct of police officers and not, as the Act requires, to the conduct of LECC and/or its officers. A number of other complaints have arisen because the party in question is aggrieved by a decision by LECC declining to pursue the matter any further. It is gratifying to report that there have been two separate occasions on which LECC has accepted responsibility for having made administrative errors in the manner in which it has conducted its own internal processes.

**The CHAIR:** Do Committee members have any questions?

**Mr PAUL LYNCH:** Inspector, one of the things that I think has come to your attention is non-compliance by the police with some of the provisions of the Surveillance Devices Act. I am wondering whether you have at any stage seen any reference to a review of the Surveillance Devices Act or whether you have been consulted in relation to that review, which is now five years overdue.

**Mr BUDDIN:** The short answer is no, but can I say something in relation to the non-compliance issue that you raise? There was correspondence that was generated out of my office in about October last year that was serious non-compliance in relation to certain reporting requirements. So this is manner and form as distinct from what might be regarded more substantively, which is no doubt what informed your question. In relation to that, I was very heartened to get a response from the Commissioner of Police, which indicated that he was appointing a dedicated sergeant to address that outstanding issue of late reporting. There were at that stage something in the order of 160 such reports that were outstanding.

Mr McCallan-Jamieson and Ms Brunello, who are actually doing inspections as we speak—not literally as we speak—have found that the appointment of that particular person has resulted in that entire number of 160 being cleared in a fairly short period of time. The actual appointment of that dedicated officer, who is solely responsible for doing that, has really been quite productive. So the Commissioner has honoured his promise, and that is gratifying. But in relation to your more substantive question, no I have not been consulted.

**Mr PAUL LYNCH:** That is all I have.

**Mr BUDDIN:** Perhaps can I say just one thing by way of conclusion in terms of how I see the role, because it is still very much evolving? You probably picked up the sense that there is both a formal communication and an informal communication, and the fact that I have had a professional association with the Chief Commissioner of LECC for 20 years I think is not unhelpful. So even when we are in vigorous disagreement, and no doubt there will be occasions on which we are, hopefully that will be dealt with respectfully. I view my role not as a micromanager in any way, shape or form, but someone who perhaps, being informed about the Commission's activities, can provide a separate pair of eyes and ears.

**Mr STEPHEN BROMHEAD:** I have one question but there are two parts to it. The staffing structure, is that adequate, and is your budget adequate?

**Mr BUDDIN:** In relation to the staffing, I think it would have been apparent from that rather lengthy preamble that that was a challenge that I had not been anticipating. I do not think I have been part of a small start-up organisation since I started solicitor's practice 30-odd years ago, and a lot of the same challenges came to mind fairly readily—as those of you who have been involved in such an exercise know. There is a challenge in the sense that everybody in the office works part-time and there are inevitably going to be occasions on which there are competing demands which have to be met at the same time. So my sense is—and this is a bit of a thought bubble—that we are going to need at least one part-time additional lawyer.

**The Hon. TREVOR KHAN:** One full-time?

**Mr BUDDIN:** No, I think part-time perhaps as well, but perhaps at a rather more junior level, simply because Ms Zekanovic is not in a position where she can serve two masters at the same time. I hope I will not be accused of not observing gender neutrality because it just so happens that there are two males that she has to provide support to. But there are occasions on which we are both going to require her to assist us at the same time. So I do see that as being a problem and I think that has a knock-on effect so far as the budget is concerned. I am scheduled to have a meeting with the gentleman at the Department of Premier and Cabinet towards the end of this month to resolve budget issues.

It is also true to say that we are not entirely sure what things are going to look like when we move to the new premises, but certainly provision has been made for an expansion of the existing floor space—but, of course, that has to accommodate the two people from the Secure Monitoring Unit in their floor-to-ceiling secure facilities. A fair bit of work has been done in preparation for that move, which we anticipate to be around about the middle of the year.

**The Hon. ADAM SEARLE:** Inspector, apart from the challenges that you have outlined about commencing, how have your expectations of the role differed from the actuality, and what do you see as the key challenge for the next 12 months?

**Mr BUDDIN:** In a sense, I am a bit blinded by what the first six months were like, but in many ways that was a blessing because I think it was important to allow LECC time and space to be able to work out its own processes without too much outside interference. There were lots of questions about staffing and all the normal things that relate to start-ups. I certainly was not expecting—I was not even aware of the fact that I was going to be taking on—this responsibility so far as the Secure Monitoring Unit was concerned, and I certainly was not anticipating that they were not going to be able to perform that key inspecting function. But, having said that, a number of people were very supportive in facilitating the change and, of course, thank you to the legislators of New South Wales. So it is only in more recent times that I have been able to redirect my attention, as I said, to what I thought was going to be the key function.

In that respect, I do not suppose there have been any major surprises. One of the things that I have been interested in is the three-Commissioner model. From my observation—bearing in mind that I am not there when the decisions are made—it is working commendably well because there is a range of skill sets. The Chief Commissioner's record speaks for itself: nearly 20 years on the bench and a fair bit of international experience. Commissioner Drake has a lot of experience in workplace relationships, which is absolutely key. Commissioner Saidi has had a lot of experience as an advocate appearing for and against police interests. Having that range of skills is fairly important. I found that very interesting, as a way of going about decision-making.

**The Hon. ADAM SEARLE:** Do you think that has been supported by the fact that, in relation to the other two Commissioners, they have a distinct portfolio of responsibilities. They are not—all three of them—at large?

**Mr BUDDIN:** I think there is something to be said for that, although it is important that they remember that can be a benefit and a boon on one level but also can provide its own challenges. There could be—I am talking at a theoretical level—a problem about parts of the organisation operating in silos. I have made some comments about that, and particularly about the way in which the legal team operates. Because of my own background I have a predisposition to see lawyers as closer to the centre of the universe than they should be seen.

**Mr PAUL LYNCH:** Entirely sensible.

**The Hon. ADAM SEARLE:** That is understandable.

**Mr BUDDIN:** I can see that at least half of the Committee is going to be in furious agreement and the other half will wonder why on earth lawyers—

**The Hon. TREVOR KHAN:** I think we have the numbers.

**Mr BUDDIN:** It is a matter of arithmetic; I can plough on. I have lost my train of thought.

**Mr STEPHEN BROMHEAD:** You were talking about the silos.

**Mr BUDDIN:** That can be a bit of a problem but I think the fact that they have primary responsibility for one particular area is important. I know that they do a lot of collective decision-making. That seems to be working pretty well. My indication, from face-to-face meetings with them, is that they think it is working commendably well. I suppose the acid test will be when they disagree with one another. As I understand it, in relation to key matters that has not, thus far, occurred.

**The Hon. ADAM SEARLE:** Thank you, Inspector.

**The CHAIR:** Thank you for appearing before the Committee today. We may send you some additional questions in writing. Your replies will form part of the evidence and be made public. Would you be happy to provide written replies to any further questions?

**Mr BUDDIN:** Certainly.

**The CHAIR:** Thank you very much for joining us today.

**(The witnesses withdrew)**



**PATRICK SAIDI**, Commissioner for Oversight, Law Enforcement Conduct Commission, sworn and examined  
**AMBER WILLIAMS**, Chief Executive Officer, Law Enforcement Conduct Commission, sworn and examined  
**MICHAEL ADAMS**, Chief Commissioner, Law Enforcement Conduct Commissioner, affirmed and examined  
**LEA ANN CECILIA DRAKE**, Commissioner for Integrity, Law Enforcement Conduct Commission, affirmed and examined

**The ACTING CHAIR:** I welcome to the public hearing representatives of the Law Enforcement Conduct Commission. Before we proceed, do you have any questions about the hearing process?

**Mr ADAMS:** No.

**The ACTING CHAIR:** Would you like to make a short opening statement before we begin the questions?

**Mr ADAMS:** First, I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal people of the Eora nation, and pay my respect to their elders both past and present. This is the inaugural meeting of our organisation, and the Committee plays a vital role, in my view—in the view of all of us—not just for the Law Enforcement Conduct Commission but also the Ombudsman and the Crime Commission. These are not occasions for self-congratulation, although I have indulged in some. They are mainly occasions for bad news, which has taken up more than my allotted space. However, against the context that we are doing our job efficiently with the resources we have, we would simply like to do more. I suspect that that is the complaint of every public institution. I apologise for not having given earlier the written submissions which I made to give Committee members a chance to read them. I hope you have had a chance at least to glance over them. They outline some of the achievements of the Commission in our first eight months of operation and highlight what the writer of these remarks described politely as potential budget challenges. You will understand what is really meant by that phrase.

However, let me do a little boasting on behalf of the Commission. Since 1 July 2017 the Commission has received and assessed almost 2,000 complaints about the conduct of police and Crime Commission officers and administrative employees, with complaints containing something like 4,800 allegations. We have actively monitored the investigation of 26 critical incidents by the NSW Police Force and attended the scene of 16 of them. We have commenced four extensive prevention and education research projects, the results of which I look forward to sharing in due course. We have finalised 376 oversight investigations with about another 500 currently being reviewed or being available for review.

We have met, in what I think is a new development in this area, with representatives from more than 50 community and government organisations as part of our new community engagement strategy. We have conducted 25 private examinations. We have tabled two annual reports. We have delivered five briefs of evidence to the New South Wales and Commonwealth Directors of Public Prosecutions, but I hasten to add the work done on those briefs was fundamentally done by the Police Integrity Commission [PIC] before us and we carried them on. We have commenced 78 integrity investigations, including preliminary inquiries and investigations. We have attended a number of police and Crime Commission forums, including the Police Aboriginal Strategic Advisory Council, regional management meetings and Professional Standards Command's meetings. I detail some of those in the detailed submission.

This commitment to mutual communication—we learning the work and business of the police and they learning our business—has been very useful to both police and Commissioners. We intend to continue this interaction. We have reached out also to the Independent Commission Against Corruption [ICAC], the Australian Commission for Law Enforcement Integrity, the Victorian Independent Broad-based Anti-Corruption Commission and the Queensland Crime and Corruption Commission.

**The Hon. TREVOR KHAN:** I am sorry to interrupt, sir. The Chair has fallen violently ill.

**Mr ADAMS:** I hope he gets well soon. These meetings—in which we are able, because they are confidential, to share information that undoubtedly is highly confidential—have been very helpful to us and, I hope, useful to them.

I need to raise this matter: The Commission was established supposedly on a budget-neutral basis, incorporating the approved budgets and funding levels, including all efficiency dividends of the Police Integrity Commission, the police and compliance branch of the Ombudsman's Office, and a small amount of funding relating to the Inspector of the Crime Commission. However, it is plain that this has not been done and we

cannot continue as we are if the budget remains as it is. We probably have reached what can fairly be described in some respects as a brick wall. We have taken on a great deal of work but now we have reached the stage at which we have to very carefully examine whether we can take on more or significantly more work without undue delays and other problems of, I think, placing inappropriate pressure on staff.

The Committee will readily understand that complaints come undigested. They need careful analysis. They need a deal of research even before you can decide whether or not they are worth investigating. That kind of analysis cannot be done by a quick glance. There is a very substantial degree of analytical and judgemental skill that has to be applied to a very large number—something like 130 or so a week—that we are receiving. That relates to incoming complaints.

Then we have oversight where complaints are referred to the police. We need to ensure that those investigations are adequate and appropriate and we have to check each police report, which requires going through often files an inch or so thick of material. That is intensive; it is intelligence intensive work. We cannot work like biscuits on a conveyer belt. That does require attention. Plainly you have to cut your coat according to the cloth. We are working out more brutal filtering systems, as I stated in our submission, in the hope that we can focus on the important matters.

Some matters will undoubtedly slip through and we have to take the view, which is the one endorsed—indeed, proposed—by the legislation, that the police are the primary body for investigating complaints against police officers. We have to take that on trust, as we do largely but more than we would otherwise wish to do if we had even the same staff that the PIC and the Ombudsman had. Amongst matters that you would think were no-brainers, but Treasury seems to take the attitude that any money spent is badly spent and would prefer not to have any money spent at all; that is the default position.

**The Hon. ADAM SEARLE:** We have never experienced that.

**Mr ADAMS:** They are doing their best. For example, we have three Commissioners, the PIC had one. You think you might realise that you now had to finance two additional Commissioners, but there is no allowance made. A statutory position of a chief executive officer [CEO], no allowance made. This is before you get into attempting to equalise investigative resources and research resources and the rest. However, as I say, I am sure this is the kind of complaint frequently made to Committees of Parliament by statutory institutions. We just have to do the best with what we have got and pray that somewhere someone will be whispering in someone's ear and something will happen. You are quite right if you detect a certain doubt about the utility of that process.

The NSW Ombudsman's Office has emphasised the need for equivalent levels of staffing in the LECC oversight division, as was in the Ombudsman's Police and Compliance Branch. And Professor McMillan advised this was between 32 and 36 full-time equivalent roles, but those roles did not come over by a substantial margin. Despite the operational pressures I have to—and I do this much more than formally, but heartfelt—congratulate and acknowledge the enormous commitment of our staff to the work of LECC. There is real enthusiasm. They feel they are doing a useful job of work. They are doing that work under considerable pressure and the standard of work that we Commissioners get to see, because we ultimately have to make decisions about the course of investigations, is truly very high indeed. That is true of oversight. And investigations are highly professional. We have a good staff. We would like to do more. We need more resources.

**The ACTING CHAIR:** Commissioner, you spoke about staff and budgeting?

**Mr ADAMS:** Yes.

**The ACTING CHAIR:** How many staff does LECC currently have and do you know how many staff PIC and the Ombudsman had?

**Mr ADAMS:** We do have that information.

**Ms WILLIAMS:** We currently have at this stage 115 roles within our organisational structure. In terms of staffing, the majority of those are filled. We have a couple that we are in the final stages of recruitment for now. In terms of the people, or staff that came across from the Police Integrity Commission and the Ombudsman, we had 45 staff come across from the Police Integrity Commission through a competitive process and we had seven staff come across from the NSW Ombudsman's Office.

**Mr ADAMS:** The Deputy Chair was asking how many did PIC and the Ombudsman have.

**Ms WILLIAMS:** In total, 135 staff.

**Mr ADAMS:** But for less work. They did not have critical incidents, which is entirely new, and they did not have the Ombudsman's oversight.

**Ms WILLIAMS:** The 135 included both the PIC and the Ombudsman.

**Mr ADAMS:** Right, okay.

**The Hon. ADAM SEARLE:** It is still 20 less?

**Mr ADAMS:** Indeed, and no allowance for the Commissioners, which is very substantial.

**Ms DRAKE:** And no allowance for critical incidents, which we have put the resources into because it is such an important area of work and that has taken away from other areas. To go out to that many critical incidents, to keep an eye on the process—thumb on the scales as the Chief Commissioner would say—that area has been attended to by staffing to the detriment of others. We have moved them across because it is an entirely unfunded new area.

**The Hon. TREVOR KHAN:** Are you able to identify the number of full-time equivalents in terms of that role?

**Mr ADAMS:** We actually have that in our submission.

**The Hon. ADAM SEARLE:** Is it 45 staff?

**Mr ADAMS:** No, not in critical incidents.

**Ms WILLIAMS:** In critical incidents we have five full-time equivalent staff at this point in time, plus a portion of the director role which oversees that function. From our perspective, it is not enough but that is what we anticipated on the number of critical incidents from last financial year. At this stage we have almost met that number.

**The Hon. TREVOR KHAN:** How do you populate a critical incident team? Obviously the incidents do not necessarily occur between nine and five?

**Mr SAIDI:** You are raising a point which I wanted to raise, of the pressures on the critical incident team. There are five, and if you look at the submissions we prepared, of the five one member of the team has been on call approximately 45 per cent of the time. Of the other members of the team, I do not think there is one member of the team that has been on call less than 25 per cent of the time. We are placing an enormous burden on the five members—particularly when you take into account that the critical incident team do not just spend time at the scene but they are required to put up with a great deal of trauma, emotional distress, traumatic experience, dead bodies, horrific situations. Of the five people who need to turn up, no amount of counselling, debriefing or looking after their welfare in the long term that we can provide can be good enough. We are going to burn them out and we are going to turn them into exhausted human beings if we leave it at five.

**Mr ADAMS:** Can I point you to pages 5 and 6 of our submissions where we deal with critical incidents and point out that our present rate of oversight cannot be sustained.

**The Hon. ADAM SEARLE:** Yes.

**Ms DRAKE:** Neither can taking those staff out of the investigation areas. I speak to my own interests here, which is what I do. To staff that area you have to take them out of other operational areas, which leads to a failure to investigate as many matters than would be optimum. You have to do that because it is such a critical area but rotating staff in and out of there is not an option either because it is an area that requires expertise and familiarity.

**Mr PAUL LYNCH:** Have you raised these concerns with the funding bodies, with the Government?

**Mr ADAMS:** We are presently engaged in a budget process, where we have raised this

**Ms WILLIAMS:** Before we were established the Expenditure Review Committee [ERC] made a decision that we would be budget neutral, using the existing budgets. We have a little less than that due to the situation that the Chief Commissioner has already explained. We plan on making a formal request to Treasury for future additional funding. However, a recent circular advises that in order to ask for further funding we need to find offsets in order to fund that.

**Mr ADAMS:** So in other words, no; it is the Pea and Thimble trick.

**Ms WILLIAMS:** It is how we manage that. That will not stop us from making a formal request for funding.

**Mr PAUL LYNCH:** If there was an in-principle decision taken to make it budget neutral why is it not budget neutral? What has happened?

**Mr ADAMS:** We are bound to be polite. We cannot answer that question honestly, frankly. No will—it is perfectly obvious. When it came to actually finding the money there was no will to ensure that it was done.

**Mr PAUL LYNCH:** Effectively what has happened is not so much a new or more efficient oversight of a policeman's conduct but a budget-cutting exercise?

**Mr ADAMS:** That is the effect.

**Ms DRAKE:** I do think we still have an efficient oversight organisation despite that because of the efforts of the staff and the way in which it has been organised. The result of the Tink recommendations having a Commissioner for Integrity and a Commissioner for Oversight has produced benefits, Mr Lynch, but the fact is the recommendation was to accept all of the Tink recommendations, and the one as to funding was not accepted despite that undertaking. It has resulted in difficulties for us but I would still say that we do have an efficient organisation. How long we can maintain that is a different matter.

**Mr ADAMS:** I might say that when I was appointed, the Minister told me that the Government had accepted in full the Tink recommendations—not unsurprisingly. I read those before I met the Minister. I was very pleased with that assurance.

**Mr SAIDI:** Can I also add one further matter about critical incidents which falls within my area? I do not know how many of you follow the *7.30 Report* and similar type shows but last week the *7.30 Report* had a segment on the fellow who unfortunately was shot by police at Bathurst. I think it was fair to say it was critical for police in how they handled mentally unwell persons. Similarly in recent days there has been a great deal of publicity and angst amongst members of the Aboriginal community about the fellow at Redfern/Botany who fell from the thirteenth floor of a block. The members of the community—and one can understand why it is so important to them—held a demonstration in relation to police actions and the police were accused of murdering the gentleman, which is a reasonable perception on the part of the Aboriginal community albeit incorrect.

We have to deal with matters such as that. They are really important matters from the community perspective. The community expects us to oversight any suggestion that the police murdered someone, to use their language, or any suggestion that a mentally unwell person has been badly treated by the police. Our role is an extremely important role which is why it was set up but we are not able, and if this continues, we will not be able, to meet the public interest expectation of us in looking after the interests and welfare of the community when it comes to police conduct or misconduct. It is a very vital area to be addressed, as other areas are.

**Mr PAUL LYNCH:** Mr Chief Commissioner, in your submission you say there were 51 cases of serious misconduct in the period 1 July last year to 31 January which merited investigation but were not investigated because of a lack of appropriate funding. What sort of matters are you talking about there?

**Mr ADAMS:** Most of them fell into the criminal association area which is always troubling, given the history of corruption in the NSW Police Force. The way it starts is, "Mate, all I want to know is"—this event or that event—"would you look it up on COPS?" So that happens and then a week later, "Look, there is just this other inquiry I got from this guy, would you look it up?" You don't want to. "Well, here's 100 bucks." Then that officer, gradually of course, gets into the pocket and much more serious requests. For example, disclosure of search warrants being executed and the police turn up and there is nothing there.

I think it is generally true. We were unaware of—and I think this is a reasonable view—any corruption remotely like the Wood Royal Commission corruption but you have got to nip it where it starts. Not all of them, by the way—51 is a very disciplined number—drug use by police officers where it is associated with dealing, sexual abuse is another, sexual harassment. In these particular cases we would have thought that we would bring to those investigations a benefit that the police do not have because we have compulsory powers and the police do not. That is something, by the way, we will raise in our annual report.

The present structure of the legislation is that we cannot have joint investigations with the NSW Police Force. In other words, when we investigate, the NSW Police Force has to stop, whereas there are good arguments for saying we should be able to jointly investigate. Their investigative resources are substantially more than ours, but they do not have the benefit of having a compulsory process of disclosure over a wide range of matters. It seems to me to be a no-brainer that you would work together naturally in cases where there is no question of the NSW Police Force investigators compromising the integrity of their investigation. But there are many of those really. Because of Mr Tink's view that there should be some kind of hermetically sealed fields of

operation between LECC on the one hand and police on the other, except in the area of our oversight, and that provision reflected that view.

The other point that I might make in this context while we are dealing with the subject is Mr Saidi, who is highly qualified to conduct hearings, cannot do so because the Act prevents the Commissioner for Oversight from conducting hearings for a reason which I am unable to discern. They are not reasons ever explained by Mr Tink; but it is difficult to understand. He is in charge of oversight so sometimes, not infrequently we have found, we are overlooking a matter investigated by police and we think for some reason disclosed or perhaps because of some inadequacy or some conflict of interest which has compromised the investigation we should take it over. Now, it makes sense Mr Saidi who is in charge of that oversight should take it over and conduct any examinations that he thinks are appropriate in that context. Instead, myself and Ms Drake, have to take that over ourselves and conduct those matters. Well, that is simply wasting a resource.

**The Hon. TREVOR KHAN:** Do I take it that what you would prefer is that the legislation essentially allowed the organisation—although I take your point with regards to who—take over an investigation perhaps for a period of time and then be able to hand it back?

**Mr ADAMS:** More than that. We can do that now. What I am saying is we should be able to jointly investigate matters. Of course you select them and you have operational arrangements that are appropriate between us and police. I am able to say this with a high level of confidence because we have attended the Internal Review Panel and the Commissioner's Advisory Panel which meets jointly, presided over by the Commander in charge of Professional Standards. We have been very impressed, as I say in our report, with the objectivity, the detail and the seriousness with which they decide what to do when findings are sustained. There is no defensiveness, there is no sort of rescue mindset; it is objective and reasonable.

Sometimes we might have come up with a different outcome but the outcome that they come up with is entirely defensible and reasonable and that has given us a much higher degree of confidence in their approach, their arrangements at that level than we would have had when we started. That is the advantage, of course, of continuous interaction; you develop mutual trust. Neither of us are in each other's pocket. Of course, sometimes they make a decision we do not like, and we make a decision they do not like. But I think the level of communication, compared to that which operated when PIC was about, is much improved.

**The Hon. TREVOR KHAN:** In terms of the 51 that you have identified, do I take it that your complaint is not that the police will sweep it under the carpet; it is that they may not have the necessary tools?

**Mr ADAMS:** That is right. We would have brought something additional to the table in those cases.

**The Hon. TREVOR KHAN:** I am not downplaying your evidence.

**Mr ADAMS:** No, not at all, but in all events we have limited resources and we have to focus on where the greatest profit is, if you like, for your investment. That is plain with endemic issues. We have a class of case that we particularly wish to focus on to see if we can understand the case in a general way and therefore, in cooperation with police, work out ways of training, ways of organisation, ways in which to prioritise work that deal with the endemic issues. Violence is one of them; it is extremely troubling. One of the problems is that there are occasions when extremely ugly looking violence is entirely defensible and justified. But when it comes onto *YouTube*, there are gasps of horror from the public. We want to be able to say—

**The Hon. TREVOR KHAN:** And some of us.

**Mr ADAMS:** Indeed. We want to be able to say, "Yes, this was over the top, but although that looks ugly it is justified for these reasons." That would give the public some assurance that there is an objective referee keeping an eye on these incidents, so that the public can be assured that the bad cases of overused violence are being sorted out and the other incidents, which we find are appropriate violence, are publicly justified, publicly explained. Generally, what one wants to do is improve public confidence in policing.

**Ms DRAKE:** There is some advantage also in working together in that the process that the police have to follow, given the fact that police can refuse to answer questions in circumstances, a lot of the cases go for a long time, and the matters of misconduct are not resolved until a hearing before a court. There is a different standard for misconduct from when an officer might be convicted of a criminal offence. Those questions can be answered before us in a way that they cannot be answered by a police investigation because of our compulsory powers. That gives the Police Commissioner a tool to deal with the ongoing employment of an officer, without waiting and paying for the 12 to 18 months it takes for the matters—

**Mr ADAMS:** Or years.

**Ms DRAKE:** —or years—to be resolved. So there is a very big cost saving, and our role in watching the Internal Review Panel [IRP] is having some input into that process and talking to people afterwards, which we have been doing. I have a long background with the Fair Work Commission and in industrial relations and that has meant that our focus has shifted a little bit. The Police Commissioner has been very keen to save money and deal with employment issues earlier, rather than later. That power to ask questions and compel an answer is a very useful power. The more we can use that in cooperation with the Police Commissioner, the more an efficient, cost-effective outcome is possible. He has been very keen to have that cooperation. Quite frankly, the relationship has been excellent. We go to the IRP so that we can look at what they consider to be misconduct.

**The Hon. TREVOR KHAN:** Might there be some stakeholders in this area that have a different view about a more liberal use of your compulsory examination powers?

**Ms DRAKE:** Do you mean perhaps the Police Association?

**The Hon. TREVOR KHAN:** I will not mention any names.

**Ms DRAKE:** I have found from our meetings, we do not have the view that they are outside of this process. We met them before the Commission started, and every time an issue of importance comes up we talk to them. They will sometimes have a different view, and I have known some of those officers for a very long time in my industrial career. I have the view that, whilst occasionally on behalf of particular members they will take a stand, they have exactly the same view about having a force free of corrupt conduct.

**The Hon. TREVOR KHAN:** I have no doubt that that is the case, but everyone sets their limits and sets parameters in different spots.

**Ms DRAKE:** Yes, but this is not meant to be the kind of power that you use as a matter of course. This is a very discreet, sensitive matter where you use a great deal of discretion. In those cases, although people will be sensitive about it, I think they would not be hysterical.

**Mr ADAMS:** My sense is that they take a pretty absolute position on public hearings. They do not like public hearings, although one has to bear in mind some context. Thousands of police officers give evidence in criminal trials throughout the State all the time. It is not like giving evidence in public is a surprising matter or something that they are not to some degree trained in or should not expect. Our processes in a public hearing, with evidence given in chief and cross-examination, is not very different.

**The Hon. TREVOR KHAN:** Commissioner, I think we saw in Prospect that the Police Association's position has evolved. They saw that the Ombudsman's inquiry had significant downsides in terms of the private hearings. Their position may be slightly more nuanced than it has been in the past. I am not speaking for the Police Association, but they seem to have evolved quite a lot including in support of the establishment of LECC in that regard.

**Mr ADAMS:** Yes, I think that is fair. We have endeavoured to bring them into the process as much as possible. For example, in developing our arrangements with the police for critical incident oversight and our general powers of investigation and oversight, we brought them in at an early stage. We have given them our drafts of the proposed MOUs and said, "You give us your response; I'm asking for this." I was a bit cynical about the value of the response that we would get; I thought it would be slogans. I was completely wrong. It was professional, analytical and helpful. It is experiences like that that show that there is a degree of mutual trust. I have to agree that there is a degree of what I would not call distrust but a degree of difference due to mutual care, because our interest is plainly not their interest; they are an industrial organisation. Leaving aside public hearings, which I think they will always oppose, they now realise that we give them a demonstrable fair go. There are no surprises. We do not ambush officers in the witness box.

**Ms DRAKE:** We have now got a process, a dedicated person and a protocol, for when we serve an officer. I take the view that slamming a summons on a person out of the blue and causing them immense stress et cetera can have dire consequences. As an organisation, we ring the Police Association. I cannot tell which officer I might be serving and they cannot tell me who their members are because of privacy policy, but we generally say, "We're going to serve a summons at a particular place," and so we ensure that their welfare officers are there. That is process we have introduced, which they much appreciate. They always have someone on the premises, and usually they know exactly who you were talking about, but we are constrained from mentioning names. Someone is always there when a summons is served.

**Mr ADAMS:** That is new.

**Ms DRAKE:** I think there has been a recognition of each body's professional obligations in a better way. You can never be perfect, but I think it is better.

**Mr PAUL LYNCH:** I move to another topic. Chief Commissioner, have you had your attention drawn to an article in *The Australian* on 3 March concerning the deaths in December 1987 of two young Aboriginal women, Mona and Jacinta Smith, on Enngonia Road, Bourke?

**Mr ADAMS:** No, I do not believe so. We get daily press reports and it may have come up, but with many I must say that if I would have seen it and I saw it was 1987, I think I would have put it to one side because we are more interested in current matters. But, no, I am afraid.

**Mr PAUL LYNCH:** There were reasonably serious allegations of police misconduct. Do I take it from what you have said that if you were to receive a complaint there would be no consideration given to investigating it?

**Mr ADAMS:** No, certainly not. If there was a complaint with some material and it was unresolved even after 20 years we would certainly look to see whether we could usefully do anything. We would certainly look to see whether the police investigation, for example, was inadequate. Time would not be an automatic matter. All I am saying is when I am reading a press report and I see an old one I am unlikely to pick it up.

**Ms DRAKE:** We get reports directly from people. Like we might have from those girls' families and we would deal directly with them. We also get reports from magistrates and judges. We have got a new process in line where we are providing those persons with forms to make them notifying us quick and easy. But I would know if there had been such a report, Mr Lynch. I am pretty well certain there has not been.

**The Hon. TREVOR KHAN:** Are there any historic—I will call them—investigations being undertaken?

**Mr SAIDI:** Historic in terms of how many years?

**Mr ADAMS:** How many years ago?

**The Hon. TREVOR KHAN:** I am talking again in the 10- to 20-year category.

**Mr SAIDI:** We have got matters which can go back to 2009 at the moment. But I do not think there is anything that goes back beyond there.

**The Hon. ADAM SEARLE:** Your report notes that there were 81 open or active critical incident investigations outstanding when you commenced operation. Are you able to say how many of those you have been able to close?

**Mr ADAMS:** I cannot tell you. The major problem, as I gather, is that many of them are awaiting coronial outcomes, which can be some years, unfortunately. Because the police have now taken the view that they will not do a closing report, hence we do not get to because their investigation has finished. So there is nothing for us to look at until they give us a report. They are not going to do that report until the coroner has finished the coroner's work. A significant number of those are awaiting coronial outcomes. I have started a process of asking about the others and I am afraid I—

**The Hon. ADAM SEARLE:** Perhaps you could take it on notice. Of the 81 matters, I would like to know how many have been closed since 1 July and the reasons why the others have not. Also since 1 July, how many critical incident investigations have been opened and how many of those have been closed?

**Mr ADAMS:** That is in the document. That is in the submission.

**Ms DRAKE:** Last time we met Mr Evans at LECC he came down with yourself and other members and we raised with him the question of the possibility of having critical incidents involving police prioritised in some way in the Coroner's Court. That would be a great boon to the police generally, because there is stress and worry of having that outstanding for such a long time, and in addition to the family. I do not think it improves the relationship or the family's attitude to the police to have the matter going on. There seems to me to be a reasonable argument for prioritising those matters. We have not heard anything about that, but it is a worry.

**The Hon. TREVOR KHAN:** That would in itself mean reducing the priority of other matters before the coroner.

**Ms DRAKE:** No, there are matters of equal priority of other importance that should have the same sort of speed, but there are a number of matters that are not necessarily as high a priority. There are some matters that are fairly standard work for the coroner. I think that those matters of equal standing involving the police and not involving the police could be given some lift. The strain and struggle on officers who are continuing to serve is very high.

**The ACTING CHAIR:** The courts have the same prioritisation of matters. If a person is in custody they go straight to the top.

**Ms DRAKE:** It is that kind of concern. That is all.

**Mr SAIDI:** Can I take up from Commissioner Drake on that point and in part answer your question? As I understand it—but you will be provided with the figures—of the 81 critical incidents open as of 1 July, my understanding is that very few have been finalised. Of the ones which we have taken over from 1 July, none have been finalised in terms of a report. There are good reasons for that, as the Chief Commissioner said earlier. We cannot under the terms of the legislation finalise our critical incidents until such time as they go through the coronial jurisdiction where a death is involved. We can when there is a non-death and even a serious injury.

**The Hon. ADAM SEARLE:** So this goes to the resourcing of the Coroner's Court?

**Mr SAIDI:** I also indicate, following up again from what the Chief Commissioner said, that there have been discussions with the Police Association, with the police and with the Coroner's Court about this issue. Everybody recognises it as an issue and everybody agrees something has to be done about it. We need in some way to get critical incidents finalised much earlier than what they are being finalised, particularly those that go to the coroner. If the State Coroner were here, or the Acting State Coroner, they would throw figures at you—as they have at me—in terms of they believe they are well and truly under-resourced and that is the explanation why they cannot get to them earlier. Whether that is acceptable or not is a different issue, but it is an issue that must be addressed.

**Ms DRAKE:** Mr Khan, you asked me the question about the prioritisation of other matters and whether lifting them up would delay others. Perhaps that might. But the thing that worries me is these matters involving critical incidents have in them questions of police process and the police remain working. If there is a criticism being made or an outcome which needs change—although I understand the police on the side work on that themselves in the meantime—that recommendation might cause other problems, that failure to get to it quickly, and that as a matter of public interest I think should have some priority.

**The Hon. TREVOR KHAN:** I understand your point. Before we come to a conclusion I would like to hear from the coroner. I do not know whether we have that capacity, but he might have a different perspective.

**The Hon. ADAM SEARLE:** We can only ask.

**Mr ADAMS:** I would be very surprised. Part of the problem is until you have got a coroner you cannot have a very useful discussion. That is part of the problem. Can I just go back to the 81 matters? As I understand it, the vast bulk of those cannot be finalised because there are no reports from police about them so we cannot move them on. That is my understanding. We have reported to the police on that. We have researched 29, some of which we did find unexplained delays—that is, delays that were not explained by awaiting a coronial hearing. We have raised these with police. What they are saying, which is fair enough, is, "There were a number of issues essentially with our record keeping and reporting. We have now resolved those." Certainly the critical incidents which we have been oversighting since we have been active appear to be complying with the guidelines. These matters have fallen to the wayside because they have been concentrating on the current matters.

**Mr SAIDI:** If I can come back to Mr Khan's question—

**The Hon. TREVOR KHAN:** I am causing trouble today.

**Mr SAIDI:** You are, but you can rest assured we are taking notice of what you say. If the coroner were here, based on what the Acting State Coroner told me, one of the difficulties they have in dealing with critical incidents quickly is that they are funded to the extent of perhaps less than half of what the Victorian Coroner's Court is funded; similarly with the other States, Queensland and others. I am answering vicariously from issues I have raised with them.

**The Hon. ADAM SEARLE:** I have three final matters. In relation to Operation Tusket, do you have a projected completion date for your report and can you tell us which area of practice and which specialist command it relates to?

**Mr ADAMS:** Yes, I do not see why not. This relates to police record-keeping for some child abuse offenders. The Police themselves have recognised for some time they have fundamental issues and they are actively increasing resources and undertaking reorganisation of that structure to do something about it. But it is highly sensitive, of course.

**The Hon. ADAM SEARLE:** Of course.



**Mr ADAMS:** But I must say I am thinking in terms of three months or so for an interim report. The fact is there have already been significant improvements but by the time the current process is completed I think we will be looking at three months or something.

**The Hon. ADAM SEARLE:** Are you able to adequately resource the sexual discrimination investigation you refer to at part 3.2?

**Mr ADAMS:** We have sexual discrimination or sexual harassment investigations which we are currently investigating because we have given it a high priority.

**Ms DRAKE:** Could I answer that?

**Mr ADAMS:** You could, yes.

**Ms DRAKE:** I have the investigations in a number of particular matters that relate to sexual discrimination against female police officers. That investigation is proceeding and I think it has about two months to go. There has been some difficulty in talking to the particular police officers. I went to the inter command—something or other, they have all these acronyms—a couple of weeks ago and talked to the workplace equity people and the human resources commander. They have a really active interest in this area, the people in charge of it. I have had a look at the Ombudsman's report, following against the Ronalds' report. Generally I think there is a shortfall between the Ombudsman's recommendations and what is occurring, but I do not think it is the lack of will. We have between us looked at the Australian Federal Police, the Victorian police and the South Australian police report.

I have raised this question in a general way with the Commissioner of Police and with the commander in this area, and what I would prefer, and what I am going to recommend to him, if he is interested, is that we have a joint review of this area and see if there is in fact a gap between the Ombudsman's recommendations and what is actually happening in the force. That is where we currently are. I am going to go out to speak to Ms Talbot, who is in charge of this area again and try to get together a joint approach. I think it is better to have the Police and us in and do this together than have an outside review. That is my current plan. I have not run it past the other two Commissioners, but that is where I am up to.

**The Hon. ADAM SEARLE:** In relation to the integrity investigations, you describe in the submission an effective cut in resources available from the Police Integrity Commission [PIC] to your organisation of more than 20 per cent, which obviously has led to the 51 matters not being fused together that you would prefer to investigate. I note also that you say that your assessment officers are shouldering an assessment workload of about 130 matters a month.

**Mr ADAMS:** A week.

**Ms WILLIAMS:** That is a month per officer.

**The Hon. ADAM SEARLE:** Per officer per month. The submission also says the appropriate benchmark would be 60 to 70. Where does that benchmark come from? I am not doubting it; I just want to know where it comes from. Given the almost double workload and the cut to the investigations, which on any reasonable analysis is not sustainable in the long term, what will it mean for the ability to deliver the service that you are currently delivering?

**Ms DRAKE:** In the discrimination area, unless we can do this jointly, we will not be able to do it.

**Mr ADAMS:** What it means is that we are referring, as we are now, many more matters back to the police to investigate than we otherwise would. I hasten to say, we oversight those responses. They do not disappear into the void, but that is the consequence of our not being able to do it. The 60 to 80 figure is what we got from our staff.

**Ms WILLIAMS:** They have looked at other jurisdictions and similar workloads.

**Mr PAUL LYNCH:** You say you are overseeing far less police investigations now than the Ombudsman used to.

**Mr ADAMS:** The difference is between what one might call oversight review oversight monitoring. Active oversight is as they are investigating we are following the process of investigation. That, of course, is the best way because if there is some gap or problem you can see it early and it can be corrected. By the time you get a report, the investigation is complete. The extent to which then you can actually get a preferred outcome becomes much more difficult. You wanted to add something to that?

**Mr SAIDI:** Yes. If you look at the statistics we have provided you with, at the moment we have four active oversights. An active oversight requires an individual staff member to dedicate most, if not all, of his or her time to that investigation because it is real-time monitoring. It involves our investigator going to interviews with police and citizens. It involves our investigator addressing his or her mind to the issues which need to be addressed, what arises during the course of the investigation, to look at the background material, and to have a look at what other matters may be involved in the investigation over and above what the police investigator himself may believe. It requires, depending on the nature and scope of the investigation, that when we take over an active instigation it comes close to taking one of my investigators offline and devoting himself or herself to that investigation.

Real-time monitoring of an investigation, or active monitoring, has a great attraction to it because if you look at what was initially to be investigated, once you get matters such as, for example, the phones being off or matters of that kind, as any anti-corruption body will tell you, it is amazing how when you start off with a less serious type of investigation you end up with a very serious type of investigation coming through the conversations of the police officers, etcetera. In other words, it can lead you to other areas. Indeed, we have got one where exactly that has happened. I do not have the staff to be able to actively monitor investigations. I just do not have it, and if I do not have the staff and I do not have the ability I am not serving the public interest, and that is the reality.

**Mr ADAMS:** Can I add another factor, which is important, which is our relationship with police? If say in a police station there is one active investigation being monitored, every police officer knows that is happening. They are immediately aware that the Law Enforcement Conduct Commission [LECC] is taking an interest. If they never hear of LECC, they act on the basis that LECC is not there or LECC does not care or LECC cannot do anything. It is really important that we build up this relationship, but hopefully a relationship of trust. Take the example of one where the investigators say, "Yes, we are talking to LECC, they are fine. They have done this well, they understand our explanations." It increases trust between police and LECC. It has advantages outside just ensuring that an investigation is adequate or appropriately undertaken.

**The ACTING CHAIR:** Are there any final questions?

**The Hon. TREVOR KHAN:** Do I take it that in a legislative sense the two amendments to the legislation that you would seek at least, is the Commissioner for Oversight in a position to undertake compulsory examinations or private examinations? That is one.

**Mr ADAMS:** Yes.

**The Hon. TREVOR KHAN:** The second is for the commission, so I will be more general in the phraseology. Will the Commission be capable of using its compulsory examination powers jointly with the police during an investigation to which the police are the primary investigating body?

**Mr ADAMS:** Indeed.

**Ms DRAKE:** Yes.

**The Hon. TREVOR KHAN:** Nothing more?

**Mr ADAMS:** There will be.

**Ms DRAKE:** A direction to Treasury would be nice.

**The Hon. TREVOR KHAN:** I was looking at legislative matters.

**The Hon. ADAM SEARLE:** We are looking at the sort of things we may be able to influence.

**The ACTING CHAIR:** Chief Commissioner, do you have anything else that you wish to raise with us?

**Mr ADAMS:** There is a matter I would like to raise with the Committee in private.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**MICHAEL BARNES**, NSW Ombudsman; affirmed and examined

**CHRIS WHEELER**, Deputy Ombudsman, Public Administration, NSW Ombudsman, affirmed and examined

**STEVE KINMOND**, Deputy Ombudsman, Human Services and Community and Disability Services Commissioner, NSW Ombudsman, sworn and examined

**DANNY LESTER**, Deputy Ombudsman, Aboriginal Programs, NSW Ombudsman, sworn and examined

**The ACTING CHAIR:** Welcome. Before we proceed, do you have any questions about the hearing process?

**Mr BARNES:** Not from me.

**The ACTING CHAIR:** Would you like to make a short opening statement before we begin the questions?

**Mr BARNES:** I would like to take the opportunity, and indeed I am grateful for the opportunity, to speak to the Committee today. Before I provide an overview of the work that the office has performed in the last year and that is reported in our annual report, I take the opportunity to acknowledge the contribution of Professor John McMillan, who ended his term as Acting Ombudsman on 3 December last year. Professor McMillan joined the office at a critical time. The Operation Prospect investigation, the largest and most complex ever undertaken by the office, was at an advanced stage and its completion was a high priority. In short, he was given the hospital pass from hell that he caught and ran with. His leadership to finalise this controversial investigation at the same time as the office was transferring its police function work and parts of its disability roles, as well as undertaking the work outlined in the annual report, has earned Professor McMillan the respect and gratitude of the staff of the office. I wish to publicly thank him for his contribution to public administration in this State.

I have now been in the role for a little over three months. Although I had a general understanding of the NSW Ombudsman's role, the number and breadth of activities undertaken by the office have surprised me. I concede it has been a steep learning curve, but the staff of the office have been very ready to assist. I am most impressed by their commitment and dedication. The 2016-17 annual report highlights the range of matters dealt with by the office and in my view demonstrates its value to the people of New South Wales who are dissatisfied with their response from a government agency and/or who are vulnerable children and adults who are recipients of community services.

First, some numbers: Last year we received over 46,000 new matters, an increase of 11 per cent from the previous year. There was a 6 per cent increase in complaints about State and local government services and an increase of 71 per cent in community service complaints. Notifications about employment-related child protection concerns increased by 24 per cent and disability reportable incidents by over 20 per cent. We delivered 409 training workshops to 7,500 people. We coordinated the Official Community Visitor [OCV] scheme that supervises visits to more than 1,700 services that cater for children and people with a disability. Our 2016-17 OCV annual report records that 2,800 visits were made to 1,350 services.

Of course numbers tell only part of the story. The report highlights a range of works undertaken by the office during the reporting period. I will mention just a few of those activities. A major strategy for delivering the Premier's priority No. 12, improving government services, involves ensuring the consumers of those services can easily give feedback to service providers. Complaint Handling in the Public Sector—or CHIPS, as it is referred to—is an ongoing project between our office, the Customer Service Commissioner and the New South Wales Department of Finance, Services and Innovation.

Stage one of the project involved government agencies adopting and implementing six commitments of effective complaint handling through their policies and procedures. Stage two involved developing and rolling out Feedback Assist, a web-based portal that provides citizens with a "no wrong door" whole-of-government complaints system. Following legislative amendments, our office is now able to refer online complaints about public authorities received through Feedback Assist to the correct agency. This is still gearing up. We are currently finalising a large-scale review of agencies' implementation of the effective complaint handling commitments and have provided preliminary reports to most clusters. We will be tabling a report in Parliament on the implementation of the CHIPS commitments midyear.

Improving the management of asbestos has been an ongoing focus of the office. In April 2017 we tabled a second report about the Government's approach to handling asbestos issues, highlighting the dangers

asbestos presents to the health of the community. We repeated our earlier recommendation for a single agency to provide leadership and coordination in managing asbestos risks. We understand that although the Government has, in principle, accepted our recommendation, there are a number of issues that need to be considered including, of course, funding.

As Committee members may recall from previous hearings, we have been undertaking investigations into water use, compliance and enforcement for about a decade. We have completed three formal investigations into complaints concerning those matters. In November 2017 the then Acting Ombudsman tabled a report on those investigations, identifying two recurring issues—whether the water compliance and enforcement function has been properly understood, supported and resourced within Government, and whether the function had suffered rather than benefited from a history of frequent administrative restructuring. That report laid the foundation for a further investigation looking at related issues aired in the *Four Corners* program broadcast in the middle of last year. That investigation has now been completed. We are drafting the provisional findings and recommendations. We expect that procedural fairness processes will occur in April and, subject to any unexpected delays, I will be tabling a report in Parliament around the middle of the year.

On a separate but related matter, the Committee would be aware that last week we tabled a report that concluded that statistical data about enforcement actions provided by WaterNSW and published in our November 2017 special report were incorrect to a significant degree. I concluded the inaccuracies were due to incompetence and carelessness rather than dishonesty, and I recommended that the Chief Executive Officer of WaterNSW review the systems and policies used by the agency for storing, collating and verifying data, to ensure that reports provided to regulatory authorities and government are accurate and reliable.

Our annual report mentions a number of other formal investigations of public sector agencies that commenced or progressed during the reporting year. However, as the Committee would appreciate, I am not in a position to provide the specifics in a public forum on those matters until we provide our report to the agencies concerned and to Parliament. Our annual report highlights our continuing work in improving the outcome for vulnerable children. We contributed to the Royal Commission into Institutional Responses to Child Sexual Abuse by providing information about individual cases, taking part in hearings and meetings, and making submissions in response to discussion papers.

In December 2017, the Royal Commission released its final report, comprised of 17 volumes containing 189 recommendations, many of which reflect the submissions the Ombudsman's office made to the commission. The Commission endorsed that reportable conduct scheme and recommended that a scheme modelled on it be rolled out nationally. The Commission made important recommendations about the scope of the reportable conduct scheme, which reflect the views expressed in our March 2016 report to this Parliament. If the royal commission's recommendations are implemented, there are potentially significant jurisdictional and resourcing implications for our office. In particular, the recommended expansion of our reportable conduct jurisdiction, which will bring in religious and other recreational bodies, will require the development of an expanded stakeholder engagement and capacity-building strategy.

In 2016 and 2017, we conducted an inquiry into behaviour management in schools, with a particular focus on students with complex needs and challenging behaviours. We tabled our report, containing some recommendations, in August 2017. The New South Wales Parliament inquiry into the provision of education to students with disability or special needs in schools recommended that the Government urgently implement the 39 proposals contained in our report. Education has responded positively to our inquiry, although it is yet to determine how to respond to one of the key proposals concerning the establishment of a standing Committee to work with the department to identify practice and policy challenges and improvement in the delivery of education to vulnerable and challenging children. The president of the Children's Court supports the proposal because many of these children are chronic absentees from school, live in out-of-home care in youth refuges and disproportionately appear before the Children's Court.

Our disability-related work continued to be a priority as we transition a number of our functions to the NDIS Quality and Safeguards Commission. We provided input and feedback to the New South Wales and Commonwealth agencies to guide the development of the National Disability Insurance Scheme Quality and Safeguarding Framework, including in relation to the role and functions of the NDIS Quality and Safeguards Commission. Some of our current functions in relation to people with disability will transfer to the Commission from 1 July 2018, including those relating to complaints about disability services, disability reportable incidents, the deaths of people with disability in residential care, and inquiries and projects relating to NDIS participants and providers. However, the Quality and Safeguards Commission will not have jurisdiction over matters that predate 1 July 2018. Consequently, we will need to complete any complaints or notifications and death reviews that we receive on or before 30 June. Decisions about some of our current roles remain outstanding or require

further discussion and clarification. We are continuing discussions with relevant Commonwealth and New South Wales government agencies to address the gaps we foresee arising, including discussions with the newly appointed NDIS Quality and Safeguards Commissioner, Graeme Head.

I would now like to say something about the handling and oversight of matters relating to abuse, neglect and exploitation of people with disability in community settings. The annual report notes that having an effective interagency response to these matters can be relatively straightforward if there is access to the right information, adequate powers and the cooperation and support of key government and non-government agencies. The Committee may be aware that we currently have a standing inquiry under section 11(1)(e) of the Community Services (Complaints, Reviews and Monitoring) Act, which enables us to receive and respond to allegations of this abuse of people with disability in community settings. But this function may not continue past 30 June 2018.

We are currently in discussions with the Department of Premier and Cabinet for my office to continue to carry out this role for a further 12 months until a longer term arrangement is agreed and established. This will address the immediate gaps in relation to adults with disability. However, we have consistently emphasised the critical need to extend this work to include vulnerable adults—that is, the handling and oversight of allegations of elder abuse that currently are not addressed. We continue to work with disability service providers to build their capacity to prevent and effectively respond to reportable incidents and the abuse and neglect of people with disability more broadly. This included working with the best-practice working group—a group of over 40 disability leaders established to support and inform our work.

I would now like to talk about our work in relation to the Opportunity, Choice, Healing, Responsibility and Empowerment [OCHRE] plan. The annual report provides a summary of how we are monitoring and assessing OCHRE, the New South Wales Government plan for Aboriginal affairs. Further detail will be included in our first comprehensive report to Parliament about this project, which we expect to table in August this year. The upcoming report will include a focus on accountability arrangements as well as how to strengthen the New South Wales Public Service to better serve Aboriginal people.

During the reporting year, Deputy Ombudsman Danny Lester continued to meet frequently with relevant agencies, communities and other stakeholders about the progress and challenges of the implementation of OCHRE. As the Committee may recall, in May 2016 we tabled a special report on fostering economic development for Aboriginal people in New South Wales, setting out what we believe to be the key areas of reform needed to deliver tangible and sustainable improvements to economic outcomes for Aboriginal people in New South Wales.

In September 2016, the Legislative Council Standing Committee on State Development tabled the final report of its inquiry into economic development in Aboriginal communities. A number of the Committee's recommendations were consistent with those in our special report. In December 2016, the Government released OCHRE's "Growing NSW's First Economy", the Aboriginal economic prosperity framework, fulfilling a commitment made under the original OCHRE plan in response to recommendations contained in our previous reports to Parliament. The framework reflects most of the recommendations in our May 2016 report.

We finalised the Operation Prospect investigation which, as the Committee knows, was the largest single investigation ever undertaken by the Ombudsman's office. It involved handling more than 330 complaints, inquiries and public interest disclosures and conducting 107 hearings and 67 interviews with 131 witnesses. In December 2016, the then Acting Ombudsman tabled his eight-volume report on the Operation Prospect investigation. He also has since tabled two supplementary reports on developments since the tabling of the original report, one in May 2017 and a second in December last year. Although the investigation is finalised, we are still doing post-investigative work. For instance, we referred eight individuals to the DPP to advise as to whether there was sufficient evidence to charge them with criminal offences. We have received a response in relation to seven of those individuals. We expect an advice from the DPP on the remaining matter this month or next month. If that matter proceeds to prosecution, the office will retain one investigator to assist the DPP with brief preparation and to give evidence in the subsequent proceedings.

During 2016-17, we published reports about our specialised functions, most of which are published annually and relate to the preceding 12 months. During the year under review we tabled the NSW Child Death Review Team report; the Official Community Visitor annual report; Oversight of the Public Interest Disclosures Act annual report; Public Interest Disclosures Steering Committee annual report; Law Enforcement (Controlled Operations) Act annual report; and "Report of Reviewable Deaths in 2014 and 2015: Child Deaths, Volume 1".

We made submissions on a large range of topics. We issued discussion papers on numerous issues. We released new and revised guideline material on investigating and reporting on allegations of disability and

child abuse, as well as resources on the forum on addressing the abuse, neglect and exploitation of people with disability. We released the third editions of our Effective Complaint Handling Guidelines and the Good Conduct and Administrative Practice Guidelines for State and local authorities. I know that funding has been an issue that has been of interest to Committees in the past, so I want to let you know that we were successful with our bid for additional funding as part of our 2017-18 budget process. Our allocation was permanently increased by \$2.85 million.

Before I conclude, as this has been my first opportunity to address you as Ombudsman, I would like to give you some indication of my plans for the office in future. I commenced my term in a period of significant change for the office. Because of the changes, of which you are aware, and the increases in complaint and other work, I believe that it is timely to evaluate the effectiveness and efficiency of the existing structures and processes to meet the ongoing demands of the office.

I recently finalised a brief to engage a consultant to work with me, my executive and the staff of the office to frame a refreshed statement of corporate purpose to articulate the office's values, to identify our goals and to guide our performance over the next five years. The review will also recommend a structure and distribution of business units and functions best suited to achieve the office's goals and the discharging of our statutory responsibilities. I would be happy to keep the Committee informed of the progress of this review, if you wish.

In conclusion, I wish to assure the Committee of the office's continuing desire to work constructively with you. I thank you for the opportunity to provide you with this overview. I and my deputies will be happy to answer any questions you might have.

**The ACTING CHAIR:** Thank you for the comprehensive statement. You spoke about disability services. There has been an increase in complaints of 42 per cent since 2015-16. Are there any things that you can attribute that increase in complaints to?

**Mr KINMOND:** The major increase in complaints in recent years I would link to the increased presence that we have as a result of the introduction of the Disability Reportable Incidents Scheme. That commenced at the end of December 2014. One can see that there has been an increase in complaints since that time. The other thing that I would draw attention to is that several years ago we were engaged by the Department of Family and Community Services. They approached me about providing \$1 million of funding relating to a disability rights project. We have now trained 1,200 people. Importantly, of the 1,200 people that we have trained, well over 700 relate to direct training for people with disability; we are using peer support training.

I think that it is clear that the issue of the rights of people with disability is much more in the mind of the community. Parents have an understanding not only of their right to complain but the support they will receive. Service providers, via the introduction of the Disability Reportable Incidents Scheme, are more attuned to the importance of bringing matters forward and raising concerns. Rather than seeing the increase in complaints as a problem, I actually see it as a sign that issues that perhaps had been hidden for far too long are now being brought to light.

**The ACTING CHAIR:** You also spoke about the NDIS. Can you tell us about what the national framework will be for oversight and your department's involvement, nationally?

**Mr KINMOND:** The Quality and Safeguards Commission has been a particular area of interest for us, now, over a number of years. Initially, we were not particularly hopeful of the establishment of a powerful national body with a range of functions. Along with our Victorian colleagues in the disability field, we advocated strongly for a strong Quality and Safeguards Commission. The Federal Government made a decision to establish a \$50-million-a-year entity, with complaint handling functions and reportable incidents functions. That is, to some extent, a reflection of the success of the Disability Reportable Incidents Scheme that was established in New South Wales only a few years ago, with the absolute support of Parliament.

It will have a registration function and a senior practitioner function to look at the use of restrictive practices. In addition, there will be, for the first time, a screening system for workers in the disability area. That is of critical importance, and the success of the Working with Children Check scheme in New South Wales reflects the importance of having an effective screening system. The good thing about the screening system under the national Quality and Safeguards Commission is that it will be national, and nationally consistent.

We are pleased, to some extent, with the success of our advocacy for a strong quality and safeguard commission. That will mean that most of our functions will be transferred to that Commission, but with the agreement of the Commission and the Government we anticipate that we will finish what we have started.

So I anticipate that in the next financial year—whether it is in the complaints area, the systems work or in connection with the review of the deaths of people with disability—there will be a substantial amount of work that we will do.

We are also in early discussions with Government in connection with what role the Ombudsman might play in the future in connection with promoting the rights of people with disability. It is critical for me to note that the National Disability Insurance Scheme is about disability service providers and their accountability. There is still the very significant outstanding issue as to the ongoing responsibilities of the State in connection with people with disability.

**The Hon. ADAM SEARLE:** I would like to ask some questions in relation to the report you handed down last week correcting the record about water compliance and enforcement. I have read the report, and I note, in particular, your conclusions about the level of awareness amongst senior management about the compliance function which—I am putting it fairly neutrally—was seriously lacking. I am still struggling to understand how this came about. In particular, on page 15 you say that there were a number of opportunities when senior executives either were aware or should have become aware of the inherent unlikelihood of the information they were provided. For example, given that staff were not given PIN books until August, how they could have ramped up so many enforcement functions in such a short space of time. How did this happen?

**Mr BARNES:** We have theories, and we have evidence. We will stick to the evidence. Mr Wheeler supervised that investigation. He can probably tell you most about it.

**The Hon. ADAM SEARLE:** Mr Wheeler, tell us what you know.

**Mr WHEELER:** I think very few of the senior managers were aware that they did not have the PIN books until very late in the piece. The fact that PIN books had only been supplied in October, or whatever date it was, was not something that was spread around the whole organisation. Various senior managers were slightly aware of certain information, but not the full deal. They also relied on the data they were given, which was taken out of the database, not knowing that, for the people who were asked to find that data, there had been a miscommunication between the request that we made and what was passed on to them. So they actually went back into the days when DPI Water controlled that function.

So there were people who were particularly busy—there was a very short time period in which they wanted to give us that information—and they relied on what was given to them, even though, to some of them, it looked a bit strange. Nobody really focused on that. They were happy with what it showed.

**The Hon. ADAM SEARLE:** I bet they were. But there is a big difference between 105 penalty infringement notices and two, and there is a big difference between 12 prosecutions and none. How could that basic information be stuffed up in that way? I mean, what does the evidence show? What other conclusions have you drawn?

**Mr WHEELER:** What we can say, quite clearly, is the evidence—and we interviewed pretty much everybody who was involved in this, from bottom to top—shows that there is no intention to mislead.

**The Hon. ADAM SEARLE:** So they were just incompetent.

**Mr WHEELER:** I would not go there. I would say that maybe because of the time pressures under which they were working, the amount of work, all the requests for information that were coming in from various sources and various inquiries, that nobody really looked at it closely enough. They just accepted it, passed it on and said, "Right, let's give that to the Ombudsman." Nobody actually went down and said, "Let's analyse this. Let's compare it to the previous data."

**The Hon. ADAM SEARLE:** Accepting that for the moment, whoever's job it was to extract information about the 12 prosecutions, and there being none, where did that information come from? It is one thing to say you extracted information from a different time period, and therefore the numbers were a bit out.

**The Hon. TREVOR KHAN:** Let him answer the question. Do not give the explanation. Let him answer the question.

**The Hon. ADAM SEARLE:** I am just giving him some context.

**Mr WHEELER:** As I see it they extracted things going right back.

**The Hon. ADAM SEARLE:** Into the mists of time.

**Mr BARNES:** But the 12 prosecutions were real. They had not occurred between July 2016 and November 2017.

**Mr WHEELER:** The people who were getting the data together, who wrote to the experts on the serum database anyway, understood that they were to go right back, even to when DPI Water had the function. The people who gave them that information did not realise that there had been a miscommunication. The data they got, they relied on.

**The Hon. ADAM SEARLE:** So it was a quality assurance thing.

**Mr WHEELER:** Yes, definitely.

**The Hon. ADAM SEARLE:** Mr Wheeler, you briefed the Minister and his office in February this year?

**Mr WHEELER:** We had a consultation with the Minister.

**The Hon. ADAM SEARLE:** How did that come about?

**Mr WHEELER:** Before we make a final report, we have to give the Minister an opportunity to consult under section 25 of the Ombudsman Act, and we gave the Minister an opportunity to consult.

**The Hon. ADAM SEARLE:** And he took you up on that offer.

**Mr WHEELER:** Ministers generally do.

**The Hon. ADAM SEARLE:** That is very wise.

**The Hon. TREVOR KHAN:** Particularly good Ministers.

**The Hon. ADAM SEARLE:** Well, we will come back to that. Was that the only contact that you or your organisation had with the Minister's office in connection with this investigation?

**Mr WHEELER:** Apart from organising the consultation, I think there may have been some contact after that. But, basically, I think that was about when the report might be sent to Parliament. I think we gave the general idea about when that would be handed down. But, yes, that was it.

**The Hon. ADAM SEARLE:** Your office had been advised by WaterNSW about the inaccuracy in the information provided in the previous December.

**Mr WHEELER:** Yes.

**The Hon. ADAM SEARLE:** How did they come to realise the information—was it something that you had extracted through your investigations, or was it something that they self-identified and offered up?

**Mr WHEELER:** When we, and very soon after, received the information, soon after the November report was tabled, it came to our attention that the statistics were most probably in error, so we started a formal investigation as soon as we believed there were some grounds. WaterNSW then went and looked at all individual records. They went back in detail looking at the records and realised that there had been a complete error, and wrote to the Ombudsman, and apologised for that, and gave the results of their investigations.

**The Hon. ADAM SEARLE:** Okay. When you briefed the Minister on this matter in February, do you recall him being surprised by the information—that the information provided to you by WaterNSW was inaccurate?

**The Hon. TREVOR KHAN:** He is a good card player. He might not have been able to tell.

**The Hon. ADAM SEARLE:** It is my turn to remind the Hon. Trevor Khan not to supply the answer for the witness.

**Mr WHEELER:** I cannot actually—I really cannot recall whether he was surprised or whether he had been informed beforehand. I do not know. He was not happy.

**The Hon. ADAM SEARLE:** I think that is probably something we could all agree on. But apart from organising the meeting around that consultation, that was the only contact the Ombudsman had with the Minister's office about this matter.

**Mr WHEELER:** Yes. Before that, no—we have no cause to have contact with Ministers generally, other than if we are seeking information from them.

**The Hon. ADAM SEARLE:** Sure. When you were compiling the data, what was it that caused you to think there had been an error?



**Mr WHEELER:** We asked for some clarification even before it went into the report and overnight we got some information about that. They suggested some footnotes. But within days of the report being tabled, we received information from current or former staff of both DPI Water and WaterNSW, who indicated that they believed these records were quite inaccurate.

**The Hon. ADAM SEARLE:** These are the matters that you refer to in your report about staff expressing surprise about the herculean efforts that would have been required to generate that sort of activity.

**Mr WHEELER:** That is correct.

**The Hon. ADAM SEARLE:** When you say "the earlier report", that is the November report?

**Mr WHEELER:** No. The report that went into Parliament. Yes, I am sorry—my mistake. The November report, correct.

**The Hon. ADAM SEARLE:** Yes. That is the report that embodied the wrong statistics.

**Mr WHEELER:** Yes.

**The Hon. ADAM SEARLE:** It is fair to say, though, is it not, that the senior executives at WaterNSW should have identified this themselves.

**Mr WHEELER:** One would have expected that.

**The Hon. ADAM SEARLE:** Okay. What steps have been taken, or are you aware are being taken, to ensure that the quality of data going forward is protected?

**Mr WHEELER:** The recommendation in the report, I think, would have focused the minds of WaterNSW senior staff significantly. I do not believe that there will be a problem into the future.

**The Hon. ADAM SEARLE:** As you are conducting this investigation, how could the community be assured—or how could even we be assured—that similar errors were not being made by WaterNSW in relation to the provision of information to other inquiries or other public disclosures?

**Mr WHEELER:** I do not know what information was provided to the other inquiries, but I would assume that the people who were involved in the other inquiries would have gone back and checked as soon as it became clear that the information we received was wrong.

**The Hon. ADAM SEARLE:** I guess, as you say, that is a matter that remains to be seen.

**Mr PAUL LYNCH:** In relation to the report that you tabled last week, has the Office of the Ombudsman ever had to table that sort of report about any other government department or agency?

**Mr WHEELER:** As far as I can recall, going back a fair way—

**Mr PAUL LYNCH:** Indeed.

**Mr WHEELER:** —there has never been an occasion when we have needed to publish a correction report.

**Mr PAUL LYNCH:** What does it say about the attitude of the staff in WaterNSW that they allowed this to happen? What does it say about their regard for the Ombudsman and the processes of the Ombudsman?

**Mr WHEELER:** As I mentioned earlier, I do not believe this was intentional. If it was intentional, it would have been insane. This was an error that occurred and I think, as we have put in that report, it was because of the pressure of work; because of the short time period in which they were asked to provide it; and the fact that it fit with their narrative. They had a belief that they were doing a lot of work in this area. They had hired a whole number of consultants who were going over the various matters. They were closing files. They were preparing matters for prosecution. They really did believe that they were doing a great job.

**The Hon. ADAM SEARLE:** It sounds like Walter Mitty.

**Mr WHEELER:** When they had the meeting with the former Ombudsman before that report was tabled in November, they were very pleased to inform us about how they were achieving such a good result. I think it was a miscommunication. That was the primary cause of the problem, or several miscommunications.

**Mr PAUL LYNCH:** What is your view of the conduct of compliance and enforcement functions by WaterNSW?

**Mr WHEELER:** That is a very broad question.

**Mr PAUL LYNCH:** You can give me a very broad answer then.

**The Hon. ADAM SEARLE:** Are they fit for purpose?

**Mr WHEELER:** This is an issue that we are looking at in the ongoing investigation, which is being drafted at the moment. I would prefer not to pre-empt or comment on that, particularly until we have done our procedural fairness. This would not be right.

**The Hon. TREVOR KHAN:** That is very reasonable.

**The Hon. ADAM SEARLE:** We would not suggest otherwise. That is a report that I think the Ombudsman indicated is likely to see the light of day by the middle of this year—without holding you to a specific date.

**Mr BARNES:** Yes, that is right.

**The ACTING CHAIR:** As there are no further questions, we will conclude this section of the NSW Ombudsman and proceed with the NSW Child Death Review Team. I invite Mr Barnes to remain seated.

**The Hon. ADAM SEARLE:** As I indicated, I have other matters to attend to this afternoon: There is no disrespect intended to the office of the Ombudsman, nor does it reflect in any way my view of the seriousness of the next part of the inquiry.

**The ACTING CHAIR:** Thank you for appearing before the Committee today. We may send you some additional questions in writing. Your replies will form part of the evidence and be made public. Are you happy to provide a written reply to any further questions?

**Mr BARNES:** Certainly.

**(The witnesses withdrew)**

**MONICA WOLF**, Director, Systemic Reviews, NSW Child Death Review Team, affirmed and examined  
**MICHAEL BARNES**, NSW Ombudsman, Convenor, NSW Child Death Review Team, on former oath

**The ACTING CHAIR:** Would one or both of you like to make an opening statement?

**Mr BARNES:** I will make a brief opening statement. Thank you for the opportunity to inform you of the work of our Committee. I will touch upon the work of the Child Death Review Team since our last meeting. As the Committee may be aware, legislation governing the team's reporting changed in 2016 to provide for biennial, rather than annual, reporting of the deaths of children in New South Wales. Our final annual child death review report was tabled in 2016. The former acting Ombudsman discussed this report with the Committee at the 2017 hearings. Our first biennial report will be tabled as soon as practicable after the end of 30 June this year and preparing this report will be a major focus for the team for this year.

Although the review report is biennial the Child Death Review Team is still required to report to Parliament on an annual basis about its activities. This annual report also provides details about the extent to which our previous recommendations have been implemented. One of the main functions of the Child Death Review Team is to make recommendations to help prevent or reduce the deaths of children in New South Wales. Our annual report ensures an open dialogue around the agency's progress in addressing the recommendations and, if they are not accepted, the reasons why.

The current report details responses to 16 open recommendations. In some cases we have seen positive outcomes. For example, a recommendation that New South Wales should develop a joint agency response to the investigation of infants who die suddenly and unexpectedly is being actively taken up by government and we are engaging with that process. Another example is that schools in New South Wales now have a standard action plan for asthma flare-ups following recommendations from our earlier review. In some areas there has been significant change and development, and our work is focused on monitoring the implementation of existing or proposed strategies. For example, in relation to the suicide deaths of children and young people a major initiative in New South Wales is the trial of LifeSpan, a program which draws on evidence-based strategies to prevent and reduce suicide.

LifeSpan is aiming to reduce suicide deaths by 20 per cent. The program is not specific to young people and it is still undertaking a trial but we will certainly be monitoring the outcome of that trial. Two of our recommendations that have not been accepted, which I draw to your attention, concern quad bikes and children being injured or killed by using quad bikes, and proposed amendments to swimming pools—again, issues which have sadly resulted in numerous deaths. Acting Chair and Committee members, there is a lot more in the report but that is all I propose to say. I and Ms Wolf are happy to answer any questions.

**The ACTING CHAIR:** I note there is a recommendation that your organisation join with Health Protection NSW in looking at being able to report the number of deaths of children that were preventable by way of vaccine. How is that progressing?

**Mr BARNES:** We have published a report in relation to that. Ms Wolf will provide a summary of that report.

**Ms WOLF:** The report that we published was on vaccine-preventable infectious diseases and the recommendation was part of that report. When working on the data the National Centre for Immunisation Research and Surveillance identified that there were a number of deaths that we had identified that Health Protection had not and vice versa. We are now in the process of establishing a data exchange so we can clearly identify children who die from vaccine-preventable diseases. We are also improving our data collection to collect the correct pathogens so that exchange is fulsome.

**The ACTING CHAIR:** How far are we from having a fully integrated exchange of data?

**Ms WOLF:** Well, now. We annually exchange information; we have begun this year.

**Mr BARNES:** That report identified 23 deaths that were considered preventable had the children been vaccinated. It did not support the idea that there are countercultures out there that are rejecting vaccinations. It was more that people were not aware of the dangers, for example, of flu to young children. So the main cause of the deaths were flu and meningococcal, not the sorts of vaccinations that people have more far-out views about.

**The Hon. TREVOR KHAN:** What is the mechanism by which you identify these deaths that previously were being missed?

**Ms WOLF:** It has to do with the identification of the pathogen. Sometimes it is about coding of causes of death. Influenza sometimes can be present in a death but it will not be the underlying cause. It is about capturing a much more comprehensive set of information about those deaths. This is also over time. The report went back some 10 years when I do not think the data collection was as good as it is now. I believe it is much better.

**Mr BARNES:** That ties in with another project we are doing. We are putting much more effort into trying to identify with precision the specific cause of natural cause deaths. Children die so much more quickly from some diseases than do adults. It is often difficult to determine what the cause of that death is. For a significant proportion of children after autopsy a cause is not identified. Things like influenza will not be recorded as the cause of death. We are involved in a project with some paedologists and some people at the forensic pathology at Glebe to try and reduce those numbers that are undetermined.

**The Hon. TREVOR KHAN:** Is that only a problem with children? I am thinking that the elderly or those who have some comorbidity may well fall into the same hole.

**Mr BARNES:** Around 10 per cent of all deaths are determined to be undetermined after autopsy but that proportion is higher among children.

**Mr PAUL LYNCH:** Bearing in mind your previous role, do you have a view about the delays in the Coroner's Court?

**Mr BARNES:** Do I have protection if I talk about coroners?

**Mr PAUL LYNCH:** You have as much protection in talking about that as you do in talking about anything else here.

**Mr BARNES:** Thank you. All you need to do is compare the Report on Government Services [ROGs] data for the amount spent on coroners in this State with the other major states.

**Mr PAUL LYNCH:** Would you say there is much less spent on the Coroner's Court here?

**Mr BARNES:** ROGs data from last year said New South Wales spent \$5 million, Queensland spent \$7.5 million and Victoria spent \$12.2 million.

**Mr PAUL LYNCH:** We had a discussion earlier this morning with the Chief Commissioner of the Law Enforcement Conduct Commission about how delays in coronial inquests impacted on what he is doing, which is why I am asking rather than plucking it out of the air. I take it from your answer that you think there should be more resources allocated towards the Coroner's Court here and that is the way to solve what people see as significant delays.

**Mr BARNES:** It would undoubtedly help reduce delays and would also mean that more matters would go to inquest. We inquest a very small number of matters in New South Wales compared to the other States.

**The ACTING CHAIR:** You have identified a 2.3 per cent higher incidence of death amongst Aboriginal children and five times higher injury amongst Aboriginal children. Is there a role your office can play? Are there reasons behind it that we could look at for prevention?

**Mr BARNES:** I am not sure. I am not sure if Ms Wolf has an answer.

**Ms WOLF:** No, I do not. We certainly aim to look at Aboriginal child deaths in every area we review, and we make a point of it, but there are a lot of things underneath that that we are not able to resolve. It is certainly an ongoing issue. It is always a very high rate.

**Mr BARNES:** This might not be directly to point, but recently we appeared before another Parliamentary Committee looking at child suicide. As you would know, there is a disproportionate rate of suicide among Aboriginal people and indeed among Aboriginal children. But when you controlled for things like social disadvantage that disproportion disappeared. So it was not so much Indigenous children committed suicide at a higher rate, it was people in their social circumstances committed suicide of a disproportionate rate.

**The ACTING CHAIR:** The Committee may send you some additional questions in writing. Your replies will form part of the evidence and be made public. Are you happy to provide a written reply to any further questions.

**Mr BARNES:** Most certainly.

**(The witnesses withdrew)**

**(Short adjournment)**

**PETER BODOR**, Commissioner, New South Wales Crime Commission, affirmed and examined

**MICHAEL WILDE**, Executive Director, Corporate Services, New South Wales Crime Commission, affirmed and examined

**The ACTING CHAIR:** We will proceed with the inquiry. Thank you for attending today. Before we proceed, do you have any questions about the hearing process?

**Mr BODOR:** No.

**The ACTING CHAIR:** Would you like to make an opening statement?

**Mr BODOR:** Yes, I would. Thank you for this opportunity. As you know, it is my first appearance before the Committee since being appointed as Commissioner in November last year. This statement aims to give the Committee an overview of some of the matters raised in the annual report, which is the subject of this hearing, as I understand it, and to update some of those matters where appropriate. You will all know that we do not make decisions to arrest or charge—police do. You will all know that we do not make confiscation orders—the Supreme Court does. However, I can say with alacrity that the key measures of our contribution in the fight against organised and serious crime and success are, nonetheless, identifiable.

It is questionable to pinpoint statistics as an accurate performance indicator—certainly they do not tell the whole story. Our annual report in 2016-17 published in late October on page three provides some numbers for your assistance. To add to that, in that period we held 125 coercive hearings and a further 80 hearings since the beginning of the current financial year, so we are busy. Progressive indicators, since the annual report, tell us that we are holding our own and on track in all areas, including confiscations.

I will give a little attention to strategies. We are in the process of what is being called a re-engineering with draft Cabinet submissions being prepared. For that reason, you would understand that I am restrained to some degree by Cabinet-in-confidence classifications in respect of much of the material that is currently under consideration. I am happy to deal with matters that are outside of that and I will be cautious or conservative, if you will bear with me. Naturally many of our staff are very unsettled and it is, at times, a great concern for them with the unknown that any restructure would naturally bring to an organisation. For us this is an important matter as our staff is our most important asset. I say this against the backdrop of what has been historically a matter of interest to this Committee and that is the People Matters survey in staff environments.

To the extent that we can charter a strategic direction, we are necessarily looking at the short term with regard to the pending re-engineering. Currently we have a business case, a new policy proposal before Treasury and that is to extend our capability as part of the 2018-19 budget process. If successful, we can expect an increase in confiscations and a bigger return to the people of New South Wales driven by our operational divisions. Beyond that, the strategic direction for the New South Wales Crime Commission will depend upon the budget and re-engineering.

I will refer to one of the matters that is currently being considered in re-engineering to the extent that I can, and that is that we are looking at extending dual capabilities that will develop and that is mainly in the areas of cyber-enabled and cybercrime. Apparently the Minister is very supportive of that future direction, and we are currently in talks with the NSW Police Force seeking to identify possibilities to maximise co-ordination in this very expensive area of law enforcement and investigation.

I have noted that this Committee has been historically interested in understanding how we assess our contribution and identify successes to provide confidence that we are meeting community expectations, and satisfying government objectives. You all know we deal with hardened crooks. You all know that they are hardened crooks because they are after money. We also chase their money, their dirty money. They are trying to clean it; we are trying to take it. We also deal with terrorists. A lot of that is intangible in many ways. As organised crime grows, so do our external engagements. In that real world environment, another measure of success, rather than raw numbers, are the relationships that we have with other law enforcement agencies, at both interstate and Federal level and, indeed, overseas. We are building those relationships constantly, and I can say with confidence that our relationship with New South Wales police has improved dramatically in recent times and our expertise is in high demand with our partnership agencies.

You will recall that in previous hearings of this Committee there was much talk about the difficulty brought about in investigating organised crime, having regard to encrypted devices being the major

communication device between organised criminals. I am keen to report one very significant success, which occurred in the last few days. I do not believe it has hit the press yet, but we have taken down, in conjunction with other people within this country and overseas—namely, the United States—a very significant communication service that has now crashed and is offline. There are thousands of organised criminals in Australia who do not have encrypted communications as of the last few days. That has been a very exciting development. No doubt, like Lazarus, someone will get into the market and encrypted communications will come back in one shape or form, but whatever criminal activity is going on, using those Phantoms Secure Blackberries is now nugatory.

Another matter I wish to make particular mention of is our continued presence in the terrorism space. This Committee would be keen, I would imagine, to understand what we do there. We have a small presence, but it is an invaluable presence, and we are involved in almost every counterterrorism investigation in the country. With the benefit of our coercive powers, we are well poised to deal with surge capabilities as case situations arise. Not long ago, as you would understand, our agility gave us the opportunity to intervene in Operation Silves, which disrupted a major aviation threat in New South Wales. This operation received significant media attention. The intent was to put an explosive device on an airline.

I will briefly deal with Operation Prospect. It is probably the elephant in the room. As you know, Mr Hastings took a view regarding the Operation Prospect inquiry, which was delivered in late 2016, I believe. He was the subject of much questioning at this Committee in May last year. After appearing before this Committee, Mr Hastings, as he indicated he would, reviewed a further report by the Ombudsman and, over a period of time, reconsidered the recommendations. He concluded that the Commission would apologise where it was satisfied that it could be shown that the Commission had a measure of responsibility for detriment or harm suffered by a person. In late October, as one of his last actions as Commissioner, he apologised to 10 out of 16 of the people recommended by the Ombudsman. There the matter rested. Days later, he went into retirement. Upon his retirement I was appointed as Commissioner in early November 2017.

The second Ombudsman's report on developments was published on 1 December. That report, if I may use the vernacular, reignited the fact that there were six extant apologies in the view of the Ombudsman. The Ombudsman reiterated his earlier report, which I think was in April or May, that apologies are an important and highly regarded remedial justice option and part of a process of restorative justice, essentially. I am familiar with that concept from my professional career as a barrister for almost 40 years. I have been involved in the process of considering and advising in respect of apologies under the Civil Liability Act. I took the view that it was necessary for the Crime Commission to issue apologies to the remaining six individuals. The apologies were issued in the first week of December. I hope that has achieved closure in a long-running controversy, so that all parties and agencies can move forward from the events of almost 20 years ago.

There is one other matter that I wish to draw brief attention to, and that is a matter that was raised in our annual report, at page 26. There was reference to a report being prepared in reference to the Criminal Assets Recovery Act and company structures and consideration of the registration of trusts. That report was prepared in late October 2017. It focused on trusts used to conceal the proceeds of crime, interest in property purchase using the proceeds and the activity of professional facilitators, such as lawyers and accountants, in assisting to establish those trusts and corporate structures to conceal assets. We identified that the value of assets being managed by criminally linked trusts and corporate structures is believed to be in the high hundreds of millions of dollars in New South Wales, possibly billions of dollars. We have provided that advice to the NSW Police Force, Commonwealth Treasury, AUSTRAC and identified certain opportunities to be pursued with legislative reform, should those organisations wish to take it up. Of course, there are adjustments in the report for State and Federal requirements and bodies. Those are the matters I wish to raise in my introductory statement.

**The ACTING CHAIR:** Thank you very much.

**Mr PAUL LYNCH:** Mr Bodor, you have raised the issue of re-engineering. In addition to whatever Cabinet process was going on, is there a separate statutory review of the Crime Commission Act?

**Mr BODOR:** There is one due in the calendar year of 2018, or to be more precise, at the expiration of five years from the passage of the Crime Commission Act 2012. My recollection is that the Crime Commission Act 2012 commenced around September of that year, so somewhere between September 2017 and September 2018, if I am correct, a statutory review is required.

**Mr PAUL LYNCH:** Do you know if anything has been done about that statutory review?

**Mr BODOR:** No. My understanding is that the perception is that the re-engineering would take care of that. But I am starting to get close to Cabinet submissions.

**Mr PAUL LYNCH:** There has thus been a process of some sort involved with the re-engineering. Who is conducting that process on behalf of the Minister?

**Mr BODOR:** I understand that the Secretary of the Department of Justice is at the forefront and that the nuts and bolts are being attended to by the Office for Police.

**Mr PAUL LYNCH:** Is that Mr McKenna?

**Mr BODOR:** Yes, or his office.

**Mr PAUL LYNCH:** Has the Commission been consulted in the process of this work?

**Mr BODOR:** Yes, we have had a number of meetings, the first of which was very shortly after Mr Hastings' retirement. Thereafter we have had a handful of meetings—I do not know precisely how many—and on 15 December last year Mr McKenna and a few others from his office came to the Crime Commission and gave a presentation to the staff of the Crime Commission outlining what were perceived to be the considerations at the time.

**Mr PAUL LYNCH:** What were the considerations at that time?

**Mr BODOR:** The considerations at that time were that there would be a review of the leadership structure of the Crime Commission, and that included the potential for what is called a CEO model. Also that there would be a significant emphasis on flattening the structure, to use modern management speak. I take it that flattening also means thinning, but we will see what it means. Also that there would be a focus on adding a cybercrime capacity to the Crime Commission. I think that that terminology may have been a broad generalisation, which does not take in the reality that cybercrime is very much an international activity, and really in New South Wales we are more capable of dealing with cyber-enabled crime but also cybercrime where it might be identified here.

**Mr PAUL LYNCH:** Is the CEO model to which you have referred a model where the chief officer of the Commission is no longer legally qualified?

**Mr BODOR:** That would be the proposal, as I understand it.

**Mr PAUL LYNCH:** Do you think such a model would improve or undermine the effectiveness of the Commission in combatting serious crime?

**Mr BODOR:** I cannot see it improving the model and I think it makes the Commission very vulnerable. I think that the discipline that somebody with special legal qualifications brings to the Crime Commission is important. It is important because there are not only statutory powers that we have to look at and we have to be very cognisant of at every step—that is, hearings, notices and the like—but there is also an enormous amount of legislation that we have to confront of a daily basis. One of the things that the Commissioner brings to the Crime Commission is that they can instantly—perhaps with reference to some piece of legislation—understand and factor in any potential vulnerabilities like whether it is a controlled operation or it is dealing with the Law Enforcement Conduct Commission or the Police Integrity Commission or the Ombudsman or whoever. That means the highest-level decisions that affect the Commission are made by somebody who understands the implications and repercussions.

Indeed, it was Mr Patten in 2012 when he prepared his report who had then considered the CEO model. He was not in favour of it either for much the same reasons that I am talking about. He focused on the hearing powers, I think, but for much the same reasons he felt that the Crime Commission was too small an agency to significantly benefit from a CEO-led model like the Independent Commission Against Corruption, for example. As Mr Hastings identified last year, ordinarily one would assume and interpret that a person with special legal qualifications is not qualified to lead an agency which is also a large government business. But he certainly learnt the organisation and, with a very competent Executive Director of Corporate Services who has that which a person with special legal qualifications does not have, he is supplemented adequately to ensure the viability of the organisation. What a CEO brings on the other hand, if it is a former policeman or policewoman or somebody of that type of background and with the business capacity, is an operational focus. It is a debate. I have made my position clear and I think the position is that a CEO model is the one that we are looking at.

**Mr PAUL LYNCH:** You have mentioned that the Crime Commission and its staff were advised of some of the considerations. Has there been any real consultation in the sense of opinions flowing from the Crime Commission and staff back to those conducting the review?

**Mr BODOR:** I have used my executive to advise me how their particular divisions and areas would be impacted, whether it is corporate services or whether it is what we call criminal investigations or financial

investigations. I have included where I thought appropriate their contributions. But it has not gone below executive level and that is partly because it is Cabinet-in-confidence and I was required to keep it limited to Cabinet-in-confidence.

**Mr PAUL LYNCH:** Do you know if ex-Commissioners Hastings, Singleton or Bradley have been consulted?

**Mr BODOR:** Ex-Commissioner Hastings was asked to give a report on the re-engineering of the New South Wales Crime Commission last year, which he did. He prepared a 38-page report. I know nothing about Singleton or Bradley.

**The ACTING CHAIR:** Thank you both for appearing before the Committee today. We may send you some additional questions in writing. Your replies will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

**Mr BODOR:** Certainly.

**(The witnesses withdrew)**

**The Committee adjourned at 15:04**