



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

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

First report



Report 5

March 2020

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Public Accountability Committee

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Terms of reference

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

The terms of reference were self-referred by the committee on 14 October 2019.¹

¹ *Minutes*, NSW Legislative Council, 15 October 2019 p 504.

Committee details

Committee members

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

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

** The Hon Natalie Ward MLC replaced the Hon Scott Farlow MLC as a substantive member of the committee from 31 January 2020.

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Chair's foreword

This inquiry examined funding processes and outcomes of four key integrity institutions in NSW – the ICAC, the Law Enforcement Conduct Commission (LECC), the Electoral Commission, and the Ombudsman – and the NSW Parliament.

These institutions perform a vital role in maintaining the health of our democracy, by fighting corruption, ensuring fair elections, preventing abuses of government power and holding the government to account. To perform their functions each institution requires a high degree of independence from the government of the day and adequate resourcing. However, funding for these critical institutions is currently decided by the government of the day, largely behind closed doors. Despite their unique position each of these bodies follows a budget process that is substantially the same as the process for determining the funding for normal government departments. After years of reduced funding none of these integrity institutions have the resources they need to perform all of their statutory and constitutional functions.

The public has a right to expect a high degree of openness and transparency in government decision-making when it comes to the funding of the core integrity institutions of the State and the Parliament. Other jurisdictions have established budget processes that provide much greater transparency and accountability than exist in New South Wales.

To address these concerns this report recommends a range of reforms including a public review of the annual budget submissions of the oversight agencies and the Parliament by key parliamentary committees.

- The parliamentary oversight committees for the ICAC, the LECC, the Ombudsman and the Electoral Commission should review the annual budget submissions of each agency and make recommendations as to the funding priorities.
- This committee, the Public Accountability Committee (PAC), should review the annual budget submission of the Department of the Legislative Council and give directions as to the funding priorities of that Department as well as any requests for supplementary funding.
- The PAC should also review the annual budget submission of the Department of Parliamentary Services (DPS), in collaboration with any committee appointed by the Legislative Assembly for the same purpose, and give directions as to the funding priorities of DPS as well as any requests for supplementary funding.

The report also includes recommendations concerning:

- contingency funding for the integrity bodies to address the inevitable unforeseen financial demands
- the need to fund such bodies directly through the Appropriation Act rather through the relevant minister
- the removal of the integrity bodies from the Government's 'cluster' system
- a funding model for the Parliament based on the models in place in the United Kingdom or Canada.

The committee urges the government to work with the Parliament in reforming the funding arrangements for these key institutions, as has occurred in many other jurisdictions, in the interests of good government in this State.

In its final report on this inquiry the committee will address the budget process for the NSW Audit Office, once the Auditor-General has completed the audit requested by Special Minister of State.

On behalf of the committee I thank all those who have participated in this inquiry, as well my committee colleagues and the secretariat.

A handwritten signature in black ink, appearing to read 'D. Shoebridge', written in a cursive style.

David Shoebridge MLC
Committee Chair

Recommendations

- Recommendation 1** **36**
That the parliamentary oversight committees for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission review the annual budget submissions of each agency and make recommendations as to the funding priorities.
- Recommendation 2** **36**
That the annual budgets for the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission include a set contingency fund to address unbudgeted financial demands, with access to the funds governed by prescribed criteria and approval of the relevant parliamentary oversight committee.
- Recommendation 3** **37**
That the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister, so they are not subject to reductions in funding during the financial year.
- Recommendation 4** **37**
That the NSW Government remove the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Ombudsman and the NSW Electoral Commission from the Premier and Cabinet cluster.
- Recommendation 5** **53**
That the NSW Government work with the Legislature in adopting the United Kingdom model of funding for the Parliament of New South Wales.
- Recommendation 6** **54**
That the Legislative Council designate the Public Accountability Committee to review the Department of the Legislative Council's annual budget submission and give directions as to the funding priorities of the Legislative Council, as well as any requests for supplementary funding.
- Recommendation 7** **54**
That the Legislative Council designate the Public Accountability Committee to review the Department of the Parliamentary Services' annual budget submission, in collaboration with any committee appointed by the Legislative Assembly for the same purpose, and give directions as to the funding priorities of the Department of Parliamentary Services, as well as any requests for supplementary funding.
- Recommendation 8** **54**
That following further consultation by the President with the Speaker and Premier, the Legislative Council seek the concurrence of the Legislative Assembly in the appointment either of a joint committee or alternatively of two separate committees of the two Houses meeting together for the further consideration of an appropriate funding model for the Parliament of New South Wales as a whole, based on one of the models in place in either the United Kingdom or Canada.

Conduct of inquiry

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

The committee received 56 submissions.

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

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

Chapter 1 Introduction to the first report

Purpose of the first report

- 1.1 The terms of reference for the current inquiry shown on page x of this report include a requirement for the committee to consider the budget process for five specified independent oversight bodies and the Parliament of New South Wales. The specified oversight bodies are the NSW Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the NSW Electoral Commission, the NSW Ombudsman and the Audit Office of New South Wales.
- 1.2 Following the establishment of the inquiry on 14 October 2019 the Auditor-General of New South Wales wrote to the Chair of the committee advising that she had received a request from the Special Minister of State under section 27B(3) of the *Public Finance and Audit Act 1983* to conduct an audit in relation to the effectiveness of the financial arrangements and management practices of the following bodies:
 - NSW Independent Commission Against Corruption
 - Law Enforcement Conduct Commission
 - NSW Electoral Commission
 - NSW Ombudsman.²
- 1.3 The Auditor-General advised that, as the terms of reference for the committee's inquiry include the Audit Office as well as the agencies that will be subject to the Minister's requested audit, a perceived conflict of interest had arisen. In light of this the Auditor-General requested that the committee consider options to mitigate the perceived conflict and noted that one option could be to defer the committee's consideration of the Audit Office until the completion of her audit.
- 1.4 In response to this correspondence the committee resolved to receive evidence from statutory bodies other than the Audit Office and deliver a first report, and to hold a further hearing after the Auditor-General has completed her report and deliver a final report following that.³
- 1.5 This first report therefore considers the budget process for the bodies specified in the terms of reference with the exception of the Audit Office. A final report addressing the budget process for the Audit Office will be published after the Auditor-General has completed the audit requested by Special Minister of State.

² Correspondence to the Chair from the Auditor-General of New South Wales, 13 November 2019.

³ Legislative Council Public Accountability Committee, Minutes No 10, 21 November 2019, item 5.

Report outline

- 1.6 This report is in five chapters. The following chapter, Chapter 2, outlines the annual budget cycle and the Outcome Budgeting framework, the government cluster structure, the process for developing annual budget allocations for individual agencies, the Appropriation Bills and relevant constitutional issues.
- 1.7 Chapter 3 considers the circumstances of the four bodies specified in the terms of reference with the exception of the Audit Office. It examines the role of each agency, and documents particular aspects of the budget process raised by each body and their respective proposals for reform of the budget process. The chapter concludes with the committee's proposed model for a new budget process to apply to these bodies.
- 1.8 Chapter 4 is focused on issues specific to the NSW Parliament (the Department of the Legislative Council and Department of Parliamentary Services only) and options for reform of its funding arrangements.
- 1.9 The final chapter considers the budget process for a further independent oversight body, the Workers Compensation Independent Review Office, which is not listed in the terms of reference but provided a submission to this inquiry.

Chapter 2 The annual budget cycle

This chapter outlines the annual budget cycle for New South Wales public sector agencies including the Outcome Budgeting framework, the government cluster structure, the process for developing annual budget allocations for individual agencies, the Appropriation Bills and relevant constitutional issues.

Outcome budgeting

- 2.1** The New South Wales Budget is prepared in line with an approach to the allocation of public resources known as Outcome Budgeting which aims to align financial and performance reporting with governance and decision making.⁴ In accordance with the Outcome Budgeting structure the State spending has been mapped to a number of State Outcomes that the Government wants to achieve for the citizens of New South Wales. Outcome Indicators have been assigned to every State Outcome to track results against spending.⁵ State Outcomes cover the expenditure of government 'clusters'.⁶

The government cluster system

- 2.2** New South Wales Government entities have been consolidated into clusters or groups of entities which are said to have shared or related policy goals. This arrangement is said to improve government services and outcomes for the community by pursuing common objectives across agencies, better integrating services, and helping to allocate resources between areas. A cluster is not a legal or reporting entity; individual agencies are separate entities that must prepare financial and annual reports.⁷ Each cluster includes a coordinating minister, a number of portfolio ministers, a principal department and a group of cluster entities.⁸
- 2.3** The establishment of public sector agencies as clusters commenced in New South Wales in 2009 when existing departments were consolidated into 13 'principal departments'. The concept of clusters received further impetus following the passage of the *Government Sector Employment Act 2013*⁹ although the concept of clusters is not created by any legislation.¹⁰ The eight clusters currently in place reflect machinery of government changes that came into effect on 1 July 2019.¹¹ A total of 38 State Outcomes have been allocated across the eight clusters.¹²

⁴ Submission 56, Department of Premier and Cabinet (DPC) and NSW Treasury; NSW Government, *Budget Estimates 2019-2020*, p ii.

⁵ Submission 56, DPC and NSW Treasury, p 2.

⁶ NSW Treasury 'Outcome Budgeting', Policy and Guidelines Paper TPP 18-09, December 2018, p 6.

⁷ NSW Budget 2019-2020, Budget Paper No 3, *Budget Estimates 2019-2020*, p ii.

⁸ DPC, *NSW Public Sector Governance Framework*, February 2013, p3; <https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Programs-and-Services/Governance/736f5dc2ba/NSW-Public-Sector-Governance-Framework-2013.pdf>

⁹ Submission 8, NSW Ombudsman, p 17.

¹⁰ Submission 8, NSW Ombudsman, Attachment A, 'The current NSW budget process – relevant legislation', p 2.

¹¹ NSW Budget 2019-2020, Budget Paper No 3, *Budget Estimates 2019-2020*, p xii.

¹² NSW Budget 2019-2020, Budget Paper No 3, *Budget Estimates 2019-2020*, p ii.

- 2.4** The independent oversight bodies examined in Chapter 3 of this report sit within the Premier and Cabinet cluster which is led by the Department of Premier and Cabinet (DPC).¹³ The same cluster also includes a range of other entities.¹⁴ The statutory functions of the independent oversight bodies are included in the Outcome Budgeting framework through one of the State Outcomes that have been assigned to the cluster, 'Accountable and responsible government', which encompasses: 'Ensuring a robust democracy, upholding the integrity of Government, fighting corruption, enhancing public sector capability and improving service delivery'.¹⁵
- 2.5** The Legislature is not treated as part of any cluster¹⁶ but is part of the Outcome Budgeting framework and has been assigned its own State Outcome and Outcome Indicators.¹⁷ The Parliament's State Outcome is: 'Effective Parliament and accountable government', which is described as follows:
- The Legislature supports services delivered by the Parliament. This includes accurately processing bills and amendments, and promptly publishing Hansard and House documents.
- The Legislature also educates the community about the role and function of the Parliament. As well, it ensures the availability and accessibility for Members, staff and the community to the Parliamentary precinct and Electorate Offices.¹⁸
- 2.6** Of course as a separate constitutional body the Legislature not the Executive determines its own actions and outcomes.

Developing annual budget allocations

- 2.7** The process for determining the annual budget allocation to individual government departments and agencies, including the bodies examined in this report, is as follows. Before the end of each financial year budget allocations are prepared for inclusion in the Appropriation Bill and Budget Estimates for the coming year. The process by which these amounts are developed is summarised below:
- The budget process is managed by Treasury under the *Fiscal Responsibility Act 2012*. It is a similar process across all government agencies including the independent oversight bodies and the Parliament.¹⁹
 - Generally an agency's base budget is confirmed on the basis of ongoing operational requirements over the medium term (four years) and adjusted for indexation each year.

¹³ Submission 56, DPC and NSW Treasury, p 4.

¹⁴ These include the Public Service Commission, the Australian Museum Trust, the Library Council of NSW, the Sydney Opera House Trust, Infrastructure NSW, the Greater Sydney Commission and Parliamentary Counsel's Office: Submission 56, DPC and NSW Treasury, p 6.

¹⁵ Submission 56, DPC and NSW Treasury, p 4.

¹⁶ Submission 56, DPC and NSW Treasury, p 4.

¹⁷ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 9.

¹⁸ NSW Budget 2019-2020, Budget Paper No. 3, *Budget Estimates 2019-2020*, p 9-1.

¹⁹ Submission 56, DPC and NSW Treasury, p 3.

An agency is required to make a submission to Government for any new or incremental funding required or other adjustments to the budget estimates.²⁰

- Budget submissions and Treasury's advice are considered by the Expenditure Review Committee of Cabinet.²¹ The deliberations of the Committee are kept confidential in accordance with Cabinet conventions and consistent with the principle of collective ministerial responsibility. The outcome of these deliberations is reflected in the annual Appropriation Bill which is presented to the Parliament for scrutiny, debate and approval.²²
- The development of budget allocations is subject to whole-of-government budget savings or efficiency dividends which are generally allocated to individual agencies through the cluster system.²³

2.8 As the principal department of the Premier and Cabinet cluster, DPC has a role in the budget process for agencies within the cluster including in relation to the apportionment of budget savings. DPC also participates in the budget process to the extent that it has a broader role in leading the State public sector in delivering on the Government's commitments and priorities and ensuring services are delivered on time and on budget.²⁴

2.9 The main steps in the appropriations process for the oversight bodies are shown below, based on ICAC's submission to the inquiry.²⁵

Figure 1 Timeline of the appropriations process

Month	Action
November	Treasury writes to agency heads, Chief Executive Officers and cluster secretaries outlining key deadlines to support preparation of the budget.
February	Oversight body requests new or increased funding for the coming financial year by submitting a Final Budget Proposal on Treasury's online system, Prime.
February/March	Oversight body's Final Budget Proposal is considered by Treasury and DPC. The Secretary DPC submits the budget bid for the Premier and Cabinet cluster to Treasury.
March	Treasury provides a brief to the Expenditure Review Committee (ERC) with recommendations as to whether funding bids from the oversight body and other public sector agencies should be supported or not.

²⁰ Submission 56, DPC and NSW Treasury, p 3.

²¹ Submission 56, DPC and NSW Treasury, p 3; Submission 2, NSW Independent Commission Against Corruption (ICAC), p 19.

²² Submission 56, DPC and NSW Treasury, p 3.

²³ Submission 56, DPC and NSW Treasury, pp 5-6; Evidence, 13 December 2019, Mr Tim Reardon, Secretary, DPC, p 3.

²⁴ Submission 56, DPC and NSW Treasury, p 4.

²⁵ See Submission 2, ICAC, p 19.

Month	Action
March/April	ERC meets and makes decisions impacting cluster agencies.
April/May	Cabinet considers ERC decisions and approves funding decisions.
May	The budget decisions are available to be viewed by agencies in Prime.
May/June	Treasury prepares consolidated budget papers for tabling in Parliament.
June	Treasurer hands down the Budget.

The Appropriation bills

- 2.10** The annual Appropriation Bill provides for appropriation from the Consolidated Fund of the funds required for the services of the Government during the coming financial year. The amounts proposed in the Bill reflect the outcomes of the process for determining budget allocations described above.
- 2.11** The Bill appropriates a sum to the coordinating ministers for each cluster for their principal department for the coming financial year. Resources are then allocated to agencies within the cluster through grant funding with the support of portfolio ministers and the secretary of each principal department.²⁶ However, a number of smaller agencies classified as special or independent offices are funded through separate appropriations in the Appropriation Bill 'to maintain their independence from Government'.²⁷ These include the four independent oversight bodies considered in this report.
- 2.12** The Parliament receives a separate appropriation from the Consolidated Fund through the Appropriation (Parliament) Bill. This is discussed further in Chapter 4.
- 2.13** The Appropriation Bill and the Appropriation (Parliament) Bill are introduced in the Legislative Assembly by the Government and have traditionally been passed by both Houses of Parliament in the form in which they are introduced.²⁸ At the same time as the Appropriation Bills are introduced the Government tables the Budget Papers. These include the Budget Estimates which contain details of recurrent expenses and capital expenditure for the coming financial year for each cluster and agency including independent oversight bodies and the Parliament.²⁹
- 2.14** The expenditure of appropriated funds during the year is subject to scrutiny by various means including reports by the Auditor-General, inquiries by the Legislative Assembly's Public Accounts Committee and the Legislative Council Public Accountability Committee and budget estimates inquiries by committees of the Legislative Council.

²⁶ NSW Budget 2019-2020, Budget Paper No. 3, *Budget Estimates 2019-2020*, p xi.

²⁷ NSW Budget 2019-2020, Budget Paper No. 3, *Budget Estimates 2019-2020*, p xi.

²⁸ The question of whether the Legislative Council may amend the Appropriation (Parliament) Bill is not settled: see *New South Wales Legislative Council Practice*, Second Edition, chapter 17, pp 15-17.

²⁹ NSW Budget 2019-2020, Budget Paper No. 3, *Budget Estimates 2019-2020*, pp i, 5-46 – 5-57, 9-1 – 9-6.

Supplementary funding

- 2.15** Agencies which receive a separate annual appropriation from Parliament may apply for additional funding from the Government during the year to supplement that appropriation. Supplementary funding is not a special appropriation but requires a reallocation of funds from within the cluster to which the agency belongs.³⁰ Accordingly, independent oversight bodies in the Premier and Cabinet cluster apply to DPC for supplementary funding. However, as the Parliament does not form part of a cluster it cannot draw on cluster funds and its only source of supplementary funding is the Treasurer's advance.³¹

Constitutional issues

- 2.16** The annual budget cycle, in which funding is requested by the Government and approved by the Parliament, has its origins in principles and practices which evolved in relation to the Westminster Parliament.
- 2.17** It was a central factor in the development of parliamentary influence and power that the Sovereign was obliged to obtain the consent of Parliament to the levying of taxes to meet the expenditure of the state.³² The provisions of the *Bill of Rights 1689* prevented the Executive from raising taxes or expending funds without the authority of Parliament.³³ One consequence of this arrangement is that the Government is accountable to the Parliament:

In the British constitutional tradition, the 'power of the purse' is central to the ability of Parliament to call government to account. The power of the purse flows from the basic constitutional principle that government expenditure must be authorised by legislation.³⁴

- 2.18** Another consequence of this arrangement for managing public finances is that the Parliament's financial control is inherently reactive in nature while the Executive has the financial initiative.³⁵ According to the leading authority on parliamentary procedure in the United Kingdom, *Erskine May's Treatise on the Law, Privileges and Usage of Parliament*:

the role of Parliament in respect of State expenditure and taxation has never been one of initiation: it was for the Sovereign to request money and for the Commons to respond to the request. The development of responsible government and the assumption by the Government of the day of the traditional role and powers of the

³⁰ Submission 56, DPC and NSW Treasury, p 5.

³¹ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 13.

³² [https://erskinemay.parliament.uk/section/5682/financial-relations-between-the-crown-and-parliament/para 33.2](https://erskinemay.parliament.uk/section/5682/financial-relations-between-the-crown-and-parliament/para%2033.2).

³³ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 4.

³⁴ F. White and K. Hollingsworth, *Audit, Accountability and Government*, Oxford University Press, 1999, p 1, quoted in Parliament of Victoria, Parliamentary Library and Information Service, *Independence of Parliament*, Research Paper No 3, May 2017, p 10.

³⁵ Parliament of Victoria, Parliamentary Library and Information Service, *Independence of Parliament*, Research Paper No 3, May 2017, pp 10-11.

Crown in relation to public finance have not altered this basic constitutional principle: the Crown requests money, the Commons grant it, and the Lords assent to the grant.³⁶

- 2.19** The system for managing State finances which developed in the United Kingdom is reflected in aspects of provisions of the New South Wales *Constitution Act 1902* which stipulate that:
- The appropriation of money from the Consolidated Fund may only be done by an Act of Parliament (section 45)
 - Bills imposing taxation or appropriating public revenue must originate in the Legislative Assembly (section 5)
 - The Legislative Council may suggest amendments to the Appropriation Bill in relation to appropriations 'for the ordinary annual services of the government', but in such a case the Legislative Assembly may direct that such bill, with or without any amendments suggested by the Council, be presented to the Governor for assent (section 5A). This provision was adopted by the New South Wales Parliament in 1932 for the resolution of disputes over money bills.³⁷
- 2.20** The NSW Government submission to this inquiry asserted that the Assembly is accountable for the financial management of the State and that this principle is relevant when considering new funding models.³⁸
- 2.21** It has been argued, however, that Parliaments can have greater influence in determining the budget and funding for independent officers than they traditionally have had without trespassing into the financial initiative.³⁹ Indeed, as will be seen in later chapters of this report, a number of Westminster-style Parliaments have adopted procedures which allow for much greater levels of consultation, transparency and accountability in the development of appropriations for independent and parliamentary bodies than has traditionally been the case. As an example, the United Kingdom House of Commons itself has established mechanisms for recommending and managing the budget for that House which provide a significant measure of independence from the normal budget processes of the Government.
- 2.22** It is also relevant to consider the nature of the relationship between the budget process and the operation of other aspects of the system of government. One concern which has emerged is that in the absence of measures to ensure adequate transparency and accountability, the government's right to allocate budget priorities for oversight agencies and the Parliament has the potential to indirectly limit the Parliament's ability to carry out its constitutional functions of scrutinising and holding the government to account. This in turn has the potential to weaken the Parliament's independence and the separation of the legislative and executive functions, critical components of the network of checks and balances on which our system of democracy is based.

³⁶ [https://erskinemay.parliament.uk/section/5682/financial-relations-between-the-crown-and-parliament/para 33.2](https://erskinemay.parliament.uk/section/5682/financial-relations-between-the-crown-and-parliament/para%2033.2).

³⁷ New South Wales Legislative Council Practice, Second Edition, chapter 17, pp 30-31.

³⁸ Submission 56, DPC and NSW Treasury, p 7.

³⁹ Australian Capital Territory Standing Committee on Administration and Procedure, *Officers of the Parliament*, March 2012, Report 4, p 54, para 8.16

Committee comment

- 2.23** The independent oversight bodies examined in this report each receive a separate annual appropriation which is approved by Parliament in the Appropriation Act. This arrangement is intended to recognise the independence of these bodies from the government. However, the process for deciding on the amount to be proposed in the Appropriation Bill for such bodies is substantially the same process as is followed for determining the budget allocations for executive government agencies. Once an agency has lodged its budget bid then the entire process of scrutiny and either approval or rejection is controlled by the Executive without any independent review and without any public disclosure. Similar arrangements apply with respect to the Parliament. While the Parliament's annual appropriation is approved by Parliament itself, the amount which is proposed for Parliament's approval is the outcome of a process that is controlled by the government.
- 2.24** The next chapter considers the budget process, funding arrangements and supplementary funding arrangements for the NSW Independent Commission Against Corruption, Law Enforcement Conduct Commission, NSW Electoral Commission and NSW Ombudsman.

Chapter 3 The budget process for oversight bodies

This chapter examines the budget process for the NSW Independent Commission against Corruption (ICAC), the Law Enforcement Conduct Commission (LECC), the NSW Ombudsman and the NSW Electoral Commission. The chapter initially provides an overview of the roles performed by these four agencies. Subsequently it considers the historical and projected funding of these bodies and concerns expressed by all four bodies about current budget processes. The chapter concludes by presenting the committee's views on the measures which should be taken to reform the budget process for the oversight bodies.

The roles of the oversight bodies

The ICAC

- 3.1 The ICAC was established in 1988 in response to public concerns about the integrity of government in New South Wales following a series of public scandals which included the gaoling of a Minister of the Crown for bribery, a public inquiry into two other Ministers and court cases involving judicial figures.⁴⁰
- 3.2 The ICAC's statutory mandate is to investigate, expose and prevent corruption involving or affecting public authorities and public officials, and to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community. The ICAC also investigates certain conduct which may be referred to it by the NSW Electoral Commission.⁴¹ In exercising its functions, the ICAC focuses on matters involving or likely to involve serious corrupt conduct and systemic corrupt conduct that other agencies are not able to adequately investigate.⁴²

The LECC

- 3.3 The LECC was established in 2017 as a permanent independent investigative commission to provide oversight of the NSW Police Force and the NSW Crime Commission. It was established in response to a recommendation from a long-running Legislative Council committee inquiry⁴³ and a review by the former Shadow Attorney General, Andrew Tink AO ('the Tink review'),⁴⁴ which recommended the creation of a single civilian oversight body to replace the Police Integrity Commission (PIC) and the Police Division of the NSW Ombudsman's Office. The Tink review also recommended that the new body should have additional oversight powers concerning the investigation by police of critical incidents involving police.⁴⁵

⁴⁰ Evidence, the Hon Peter Hall QC, Chief Commissioner, ICAC, 12 December 2019, p 2.

⁴¹ Submission 2, ICAC, p 5; *Independent Commission Against Corruption Act 1988*, sections 2A and 13A.

⁴² Submission 2, ICAC, pp 7, 9; *Independent Commission Against Corruption Act 1988*, section 12A.

⁴³ NSW Legislative Council, Select Committee on the Conduct and Progress of the Ombudsman's Inquiry 'Operation Prospect', *The conduct and progress of the Ombudsman's inquiry 'Operation Prospect'* February 2015, Recommendation 6, pp xiii, 119

⁴⁴ Mr Andrew Tink AM, *Review of Police Oversight*, 31 August 2015, NSW Department of Justice.

⁴⁵ Submission 10, Law Enforcement Conduct Commission (LECC), p 1.

- 3.4 The Tink review's recommendations led to the enactment of the *Law Enforcement and Conduct Commission Act 2016* and the subsequent establishment of the LECC in 2017. The LECC's principal functions are to detect, investigate and expose serious misconduct and maladministration in the NSW Police Force and the NSW Crime Commission, and to monitor or oversee the NSW Police Force's investigation of critical incidents and complaints against police.⁴⁶

The Electoral Commission

- 3.5 The Electoral Commission is responsible for conducting general elections and by-elections for the NSW Parliament, general elections and by-elections for local government councils which engage its services, and elections for registered clubs, statutory boards, the NSW Aboriginal Land Council and state registered industrial organisations.⁴⁷ The Commission also has extensive regulatory and integrity functions in relation to political participants including to administer electoral funding legislation and to investigate and enforce breaches of electoral funding, disclosure and lobbying laws.⁴⁸
- 3.6 The Commission exercises its functions in accordance with the aims of the State's electoral administration framework which include to 'enable the citizens of New South Wales to participate freely in fair and transparent electoral processes' and 'to facilitate and protect the integrity of representative government in New South Wales'.⁴⁹

The Ombudsman

- 3.7 The Office of the Ombudsman was established in 1975 pursuant to the *Ombudsman Act 1974*. In common with similar offices in other jurisdictions, the Ombudsman's core activities concern the handling of complaints and the conduct of investigations about the conduct of public authorities. Other functions of the Ombudsman include monitoring Aboriginal programs and disability reportable incidents, reviewing and monitoring community services complaints, reviewing child and disability deaths and overseeing the public interest disclosure scheme.⁵⁰
- 3.8 Ombudsman's offices internationally share a core mission of protecting people against the violation of rights, abuse of public power, unfair decisions and maladministration, and seeking to making government actions more open and public administration more accountable to the public.⁵¹

⁴⁶ Submission 10, LECC, p 1.

⁴⁷ Submission 6, NSW Electoral Commission, pp 4-5.

⁴⁸ Submission 6, NSW Electoral Commission, p 4.

⁴⁹ Submission 6, NSW Electoral Commission, p 3; *Electoral Act 2017*, section 3.

⁵⁰ Submission 8, NSW Ombudsman, pp 2-5.

⁵¹ Answers to questions on notice, NSW Ombudsman, 28 January 2020, p 11.

Historical and projected funding of the oversight bodies

- 3.9** During the inquiry, the committee received evidence from all four oversight bodies that their historical and projected levels of funding have placed, and will continue to place, significant constraints on their operation.

The ICAC

- 3.10** The ICAC's evidence to the committee suggested that corruption investigations are resource-intensive, given that corruption is a secret activity and that the perpetrators have every interest in obstructing detection.⁵² Further, the Chief Commissioner told the committee that: 'New and sophisticated forms of corruption have emerged over the past decade or so and left unchecked, it will continue to spread'.⁵³ Nevertheless, despite the resource-intensive nature of the ICAC's investigatory role, the committee was advised that ICAC's annual appropriations have been below the level of inflation for most of the 30 years since ICAC was established.⁵⁴ The ICAC has calculated that if appropriation funding had kept pace with inflation, the Commission's appropriation for 2019-20 would be least \$7.2 million more than is currently being provided.⁵⁵
- 3.11** The committee was also told that ICAC applied for increases in recurrent funding in seven of 12 annual budget processes between 2008-09 and 2019-20, but was fully successful on only two of those occasions. On four of the seven occasions its applications for increased funding were rejected.⁵⁶
- 3.12** Reflecting on these outcomes, the Chief Commissioner stated that the ICAC's appropriations over many years have been 'insufficient for the Commission as an independent agency to undertake the work under its statutory charter in a given year'.⁵⁷
- 3.13** The ICAC further indicated that the projected funding for its operations set out in the forward estimates provide for a reduction from the \$27.399 million which the ICAC is due to receive in 2019-20 (which included an amount of supplementary funding not in the original 2019-20 budget) to \$24.814 million for 2020-21. The ICAC stated that this amount will be further reduced by an amount of \$673,000 in additional budget savings of which ICAC has been advised.⁵⁸
- 3.14** The ICAC argued that in real terms this funding reduction for 2020-21 is even greater if allowance is made for salary increases in line with the government's wages policy and the

⁵² Evidence, the Hon Peter Hall QC, Chief Commissioner, ICAC, 12 December 2019, p 3, citing observations by former Commissioner Ipp.

⁵³ Evidence, the Hon Peter Hall QC, 12 December 2019, p 5.

⁵⁴ Submission 2, ICAC, pp 16, 22, Figure 1 'Appropriations the Commission has received since its inception'.

⁵⁵ Submission 2, ICAC, p 36.

⁵⁶ For the amounts of the ICAC's increased funding requests and the outcomes of those requests see Submission 2, ICAC, pp 20-21.

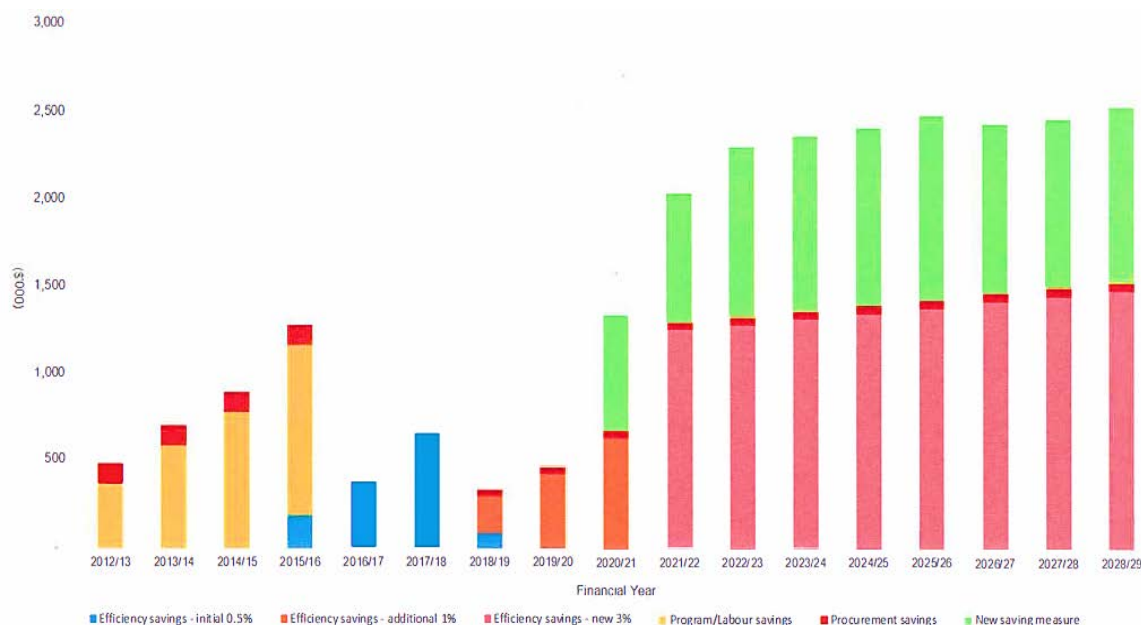
⁵⁷ Evidence, the Hon Peter Hall QC, 12 December 2019, p 3.

⁵⁸ Submission 2, ICAC, p 3.

relevant Award and for increases in fixed costs such as rental.⁵⁹ In light of those increases the ICAC has calculated that it will need additional funding of about \$4.7 million on top of its appropriation funding 'just to maintain its 2019-20 level of operations'.⁶⁰

- 3.15** Moreover, the ICAC advised that the forward estimates provide for further reductions in funding in future years to \$24.248 million in 2021-22, and to \$24.206 million in 2022-23.⁶¹ The ICAC noted that as these figures are only estimates, there is no guarantee that the ICAC will actually receive the projected amounts.⁶² The ICAC also advised that the figures do not include additional budget savings which have been foreshadowed in correspondence to the ICAC.⁶³
- 3.16** The budget savings which have been imposed on the ICAC since 2012-13 and which are foreshadowed for future years are shown in Figure 3.1 below.

Figure 3.1: ICAC savings measures since 2012-13 and predicted savings to 2028-29



Source: Submission 2 ICAC

- 3.17** The ICAC indicated that funding reductions need to be met primarily through reducing staff numbers and reducing the use of compulsory examinations and public inquiries in corruption investigations.⁶⁴ The ICAC submitted that it has little flexibility to reduce expenditure in response to funding reductions as variable costs have already been reduced as far as possible to

⁵⁹ Submission 2, ICAC, pp 3, 29.

⁶⁰ Submission 2, ICAC, p 3.

⁶¹ Submission 2, ICAC, p 29.

⁶² Submission 2, ICAC, p 29.

⁶³ Submission 2, ICAC, p 29.

⁶⁴ Submission 2, ICAC, p 26.

meet previous savings imposed on the ICAC,⁶⁵ and discretionary, non-staffing and non-fixed cost operational expenditure is very small.⁶⁶

- 3.18** In this regard, the ICAC has calculated that to make the requisite savings of approximately \$4.7 million required by the projected budget for 2020-21, the ICAC would need to reduce its full-time equivalent (FTE) staff by up to 31 positions. The ICAC stated that this would represent about one quarter of its staff and would reduce its FTE staffing level to the lowest number in the ICAC's 30-year history.⁶⁷ The ICAC advised that such a reduction would have an 'immediate and devastating effect' on its frontline services and therefore its ability to fight corruption.⁶⁸
- 3.19** The Chief Commissioner told the committee that inadequate resourcing through the forward estimates would have a detrimental effect on the ICAC's investigative capacity, causing delays in its investigative program and potentially resulting in the loss of evidence, the loss of witnesses, and the dissipation of corruptly-acquired assets before they can be captured by the processes of the law.⁶⁹

The LECC

- 3.20** In evidence to the committee, the LECC advised that at its commencement it had a recurrent budget of \$25.4 million, but was advised by Treasury that it would be required to meet an efficiency dividend of 3 per cent for the succeeding four years. In 2019, the LECC was advised that the savings will be closer to 6 per cent from 2019-20 and are ongoing and permanent.⁷⁰ The LECC's submission indicated that the following efficiency dividends will be applied to the funding of LECC out to 2022-23.

Figure 3.2 Efficiency savings imposed on LECC 2019-20 to 2022-23

	2019-20	2020-21	2021-22	2022-23
Total efficiency dividend	\$402,000	\$1,249,000	\$1,914,000	\$2,175,000

Source: Submission 10 Law Enforcement Conduct Commission

- 3.21** The LECC indicated to the committee that its initial budget was not capable of funding the structure which is necessary to perform the inherited work of the two agencies it replaced and the new function of critical incident investigation monitoring.⁷¹ In particular, the LECC advised the committee that at its commencement in 2017, no additional allowance was provided for the creation of a team to perform the new function of monitoring critical incident investigations or for the salaries of the two additional commissioners which were included in the LECC's

⁶⁵ Submission 2, ICAC, pp 3; 26.

⁶⁶ Submission 2, ICAC, p 4.

⁶⁷ Submission 2, ICAC, p 3.

⁶⁸ Submission 2, ICAC, p 3.

⁶⁹ Evidence, the Hon. Peter Hall QC, 12 December 2019, pp 8-9.

⁷⁰ Submission 10, LECC, p 3.

⁷¹ Submission 10, LECC, p 3.

structure and their support staff.⁷² The LECC argued that this funding model was inconsistent with the views put forward in the Tink review, which had recommended that the new body should have access to the budgets of PIC and the Police Division of the NSW Ombudsman's Office adjusted for any additional functions.⁷³

- 3.22** The LECC also submitted that continual inroads into the budget available to pay its staff means that the quality of the oversight it is able to carry out and the number of investigations it can undertake is constantly under threat.⁷⁴ In evidence to the committee, the Chief Commissioner, the Hon Michael Adams QC, indicated that due to funding constraints, the LECC is not filling all of its available positions,⁷⁵ ongoing investigations are being delayed, and the LECC is focusing on the more simple and straightforward matters for investigation.⁷⁶ The Chief Commissioner also stated that the LECC's projected funding to 2023 amounts to an approximate 10 per cent reduction and that this would impact on operational staff.⁷⁷
- 3.23** The LECC further advised that in November 2018 the Government announced an increase in the size of the NSW Police Force by 1500 sworn officers, but no additional resources have been provided to the LECC to reflect the additional oversight which such an increase in police numbers will require.⁷⁸
- 3.24** The LECC also advised that a new statutory function was conferred on the LECC in early 2019 to review the operation of the consorting laws which will require two additional experienced staff for the next two and a half years.⁷⁹ However, LECC's Finance Manager, Ms Christina Anderson, told the committee that in preliminary funding discussions, Treasury has advised that the consorting laws review does not meet its threshold for extra funding. Ms Anderson also advised that the Department of Premier and Cabinet (DPC) has indicated that it can give no guarantee that it will be able to help with the provision of funds for the review.⁸⁰

The Electoral Commission

- 3.25** The Electoral Commission has historically been funded as an events-driven organisation with resourcing tightly correlated with major election events. In line with this approach, the amount of the Commission's annual appropriations vary in size in line with the four-year election cycle.⁸¹ Coupled with this, there are complex requirements underpinning the terms on which staff can be employed, depending on whether funding is sourced from the Labour Expense Cap or non-

⁷² Submission 10, LECC, pp 2-3.

⁷³ Submission 10, LECC, pp 1-2.

⁷⁴ Submission 10, LECC, p 5.

⁷⁵ Evidence, the Hon Michael Adams QC, Chief Commissioner, LECC, 12 December 2019, p 15. See also Evidence, the Hon Lea Drake, Commissioner for Integrity, LECC, 12 December 2019, p16.

⁷⁶ Evidence, the Hon Michael Adams QC, 12 December 2019, p 16.

⁷⁷ Evidence, the Hon Michael Adams QC, 12 December 2019, pp 13-14.

⁷⁸ Submission 10, LECC, p 5; Evidence, the Hon Lea Drake, 12 December 2019, p 17.

⁷⁹ Submission 10, LECC, pp 3-4.

⁸⁰ Evidence, Ms Christina Anderson, Finance Manager, LECC, 12 December 2019, pp 16-17.

⁸¹ Submission 6, NSW Electoral Commission, p 10.

recurrent project funds.⁸² However, the Commission submitted that the major event funding model no longer adequately supports the organisation's expanded role as a provider of many different types of elections while also being responsible for extensive regulatory and integrity functions throughout the electoral cycle.⁸³

- 3.26** The Electoral Commission stated that the funding model has led to workforce problems such as a high proportion of temporary and contract staff,⁸⁴ as well as risks to projects aimed at delivering core election services and improvements to election systems.⁸⁵ The Commission also advised that it has repeatedly sought to address the challenges posed by the staff funding model through the annual budget process, without success.⁸⁶
- 3.27** The Electoral Commission also referred to cases where the funding provided for 'protected items' such as the conduct of a State general election appear to have been inadequate.⁸⁷ For example, the Commission stated that the budget allocation for the 2019 State election in the 2018-19 budget process was based on the initial budget allocation for the 2015 State election with CPI adjustments, but failed to take account of a \$6 million overrun which occurred in 2015 or the fact that a number of new or increased costs would be incurred in 2019.⁸⁸ Further, the Commission stated that Treasury's forward estimate for the conduct of the 2023 State election is again based on the 2015 amount with CPI growth only and is more than \$30 million short of what the election will cost to oversee and conduct.⁸⁹
- 3.28** In addition to concerns about protected funding, the Electoral Commission referred to instances in which the outcomes of funding submissions by the Commission appear to have been inconsistent with earlier Government decisions or otherwise idiosyncratic. These included instances in which only temporary funding has been provided for ongoing statutory functions,⁹⁰ insufficient funding has been provided to support the implementation of policies of the Government itself,⁹¹ funding approved for a project in one year was not allowed to be carried forward when the funds remained to be spent,⁹² the Government invited a funding submission

⁸² Submission 6, NSW Electoral Commission, p 5; Attachment, Bendelta, *NSW Electoral Commission - Workforce Strategy and Resource Plan*, 14 February 2019, pp 1, 15; Evidence, Mr Matthew Phillips, Executive Director, Corporate, NSW Electoral Commission, p 29.

⁸³ Submission 6, Electoral Commission, p 10.

⁸⁴ Submission 6, NSW Electoral Commission, p 17; Evidence, Mr John Schmidt, NSW Electoral Commissioner, 12 December 2019, pp 22 and 29.

⁸⁵ Submission 6, NSW Electoral Commission, p 17.

⁸⁶ Submission 6, NSW Electoral Commission, pp 17-18.

⁸⁷ Submission 6, NSW Electoral Commission, pp 20, 28-29.

⁸⁸ The Electoral Commission subsequently achieved a significant budget increase to deliver the 2019 State election but not all items in its budget submission were funded including items the Commissioner considered to be essential to the conduct of a safe and robust election which had to be funded from other areas: Submission 6, NSW Electoral Commission, p 20.

⁸⁹ Submission 6, NSW Electoral Commission, p 20.

⁹⁰ Submission 6, NSW Electoral Commission, p 22.

⁹¹ Submission 6, NSW Electoral Commission, pp 13, 34.

⁹² Submission 6, NSW Electoral Commission, p 25.

but then failed to provide the funds,⁹³ and funding was not approved for items ranked by the Commission as high priority when funding was approved for low priority items.⁹⁴

3.29 A submission to the inquiry from Local Government NSW also noted that the estimates provided by the Electoral Commission of the costs of conducting the 2020 local government elections show significant increases since the last round of elections in 2016 and 2017⁹⁵ and that there have been higher increases for regional and rural councils⁹⁶ at a time when their communities have been enduring the impacts of extreme drought.⁹⁷ In light of these concerns, Local Government NSW recommended that the Electoral Commission should be adequately funded to minimise the financial burden on councils and ratepayers and ensure that 'local government elections ... do not result in inequities between ratepayers and communities in the price of maintaining democracy'.⁹⁸

3.30 The efficiency dividends which have been projected for the Electoral Commission over future years in proportion to its recurrent budget are shown below:

Figure 3.3: Savings targets for the NSW Electoral Commission 2019-20 to 2028-29

NSWEC	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Treasury Efficiency Savings Targets	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
Existing Efficiency Dividend Savings	1,419	1,646	1,456	1,492	1,529	1,567	1,607	1,647	1,688	1,730
Whole Government Budget Savings	0	1,233	1,044	1,517	1,010	1,316	895	1,418	988	1,275
Total Budget Savings Target	1,419	2,879	2,500	3,009	2,539	2,883	2,502	3,065	2,676	3,005
Recurrent Budget Total	31,943	28,458	25,048	25,205	26,278	26,977	27,421	27,430	28,788	29,542
Recurrent Employee Costs Portion	20,992	17,690	18,133	18,015	19,043	19,512	19,999	19,870	21,021	21,538
% Reduction in LEC from 30/6/2019	6.8%	16.3%	13.8%	16.7%	13.3%	14.8%	12.5%	15.4%	12.7%	14.0%

Source: Submission 6 NSW Electoral Commission

3.31 The Electoral Commission has calculated that to achieve the savings target for 2019-20 the Commission will need to reduce its core workforce by approximately 12 full time positions or around 10 per cent of its full-time workforce on 1 July 2020 – two months prior to the 2020 local government elections. These positions are in addition to compliance and service staff positions which are at risk due to insufficient funding relating to local government elections.⁹⁹ The Commission submitted that the savings measures will also lead to an even greater reliance by the Commission on contractors and temporary staff which is ultimately more costly and entail an increased risk of failure of election events.¹⁰⁰

⁹³ Submission 6, NSW Electoral Commission, pp 33-34.

⁹⁴ Submission 6, NSW Electoral Commission, pp 11 and 24.

⁹⁵ Submission 5, Local Government NSW, p 4.

⁹⁶ Submission 5, Local Government NSW, pp 5, 6.

⁹⁷ Submission 5, Local Government NSW, p 6.

⁹⁸ Submission 5, Local Government NSW, p 6.

⁹⁹ Submission 6, NSW Electoral Commission, p 27. For details of the local government election positions at risk see Submission 6, NSW Electoral Commission, p 22, Box 4.

¹⁰⁰ Submission 6, NSW Electoral Commission, p 28.

The Ombudsman

- 3.32** The Ombudsman advised the committee that it has been required to meet the following budget savings:

Figure 3.4: Savings targets for the NSW Ombudsman 2019-20 to 2028-29

2019-20 (\$000s)	2020-21 (\$000s)	2021-22 (\$000s)	2022-23 (\$000s)	2023-24 (\$000s)	2024-25 (\$000s)	2025-26 (\$000s)	2026-27 (\$000s)	2027-28 (\$000s)	2028-29 (\$000s)	10 Year (\$000s)
0	(822)	(917)	(1,192)	(1,234)	(1,255)	(1,304)	(1,204)	(1,207)	(1,258)	(10,393)

Source: Answers to questions on notice, NSW Ombudsman, Attachment A

- 3.33** The Ombudsman also informed the committee of instances where funding constraints resulting from the current budget process have had negative impacts on the performance of the Ombudsman's functions. For example:
- The Ombudsman has conducted 'far fewer' systemic investigations than the Ombudsman would have chosen to do and the rate of formal investigations that have been finalised is declining.¹⁰¹
 - The percentage of formal complaints the Ombudsman has declined to pursue by investigation or other action has steadily climbed in the past five years.¹⁰²
 - A current investigation by the Ombudsman concerning housing authorities' responses to requests from public housing tenants for property modifications has a narrower scope than would otherwise have been the case.¹⁰³
 - In 2018-19 the Ombudsman conducted only one audit of one State government agency under its oversight functions relating to public interest disclosures where there are approximately 420 public authorities and 130 local councils which may be subject to such audits.¹⁰⁴
 - The Ombudsman's Office is not always in a position to investigate allegations of reprisals against public officials who have made a public interest disclosure.¹⁰⁵

The accuracy of the figures provided by the oversight bodies

- 3.34** At the hearing on 13 December 2019 the committee questioned Mr Tim Reardon, Secretary of DPC, and Mr Mike Pratt AM, Secretary of NSW Treasury, on the accuracy of the figures concerning the efficiency dividends put forward by the oversight bodies as outlined above. Mr Reardon and Mr Pratt undertook to come back to the committee in writing after considering the accuracy of these figures:

¹⁰¹ Evidence, Mr Michael Barnes, NSW Ombudsman, 12 December 2019, pp 42-43; Answers to questions on notice, NSW Ombudsman, 28 January 2020, pp 3-4.

¹⁰² Evidence, Mr Barnes, 12 December 2019, pp 44-45; Answers to questions on notice, NSW Ombudsman, 28 January 2020, p 10.

¹⁰³ Answers to questions on notice, NSW Ombudsman, 28 January 2020, pp 4-5.

¹⁰⁴ Answers to questions on notice, NSW Ombudsman, 28 January 2020, p 6.

¹⁰⁵ Answers to questions on notice, NSW Ombudsman, 28 January 2020, p 6.

The CHAIR: I think all four agencies have set out what they understand the cuts to be over the budget cycle. The Ombudsman's submission does it in detail, the electoral commission's submission does it in detail, the Law Enforcement Conduct Commission does it in detail and the ICAC's submission does it in detail. In fact, for at least three of those four, they have a table setting out what they understand the cuts to be in the future. If you can test any of them or you have a different position, I invite you to explain it now; and if you cannot now, do it on notice.

Mr REARDON: Yes, thanks, Mr Shoebridge. I have just not had time to look at the submissions, to be frank with you. The only comment I would make is we have provided letters from myself to the agencies, so if they have replicated those we would—

The Hon. JOHN GRAHAM: The Government's submission does not contest any of those figures so far. If there was any contest, we would certainly want to know before we, then, deliver.

Mr REARDON: If the question is just purely to accuracy, that this is the numbers that we provided in tables and if they have been reflected—

The CHAIR: I think we can say that unless you can test them, we are going to assume they are right.

Mr PRATT: We will come back, Mr Graham...¹⁰⁶

- 3.35** In their answers to questions on notice, Mr Reardon and Mr Pratt advised that 'DPC and NSW Treasury have nothing to add to the budget figures raised in the public submissions of the ICAC, the LECC, the Ombudsman and the Electoral Commission.'¹⁰⁷

Concerns expressed about the current funding process

- 3.36** The committee notes that a range of concerns were expressed during the inquiry in relation to the budget funding process of the independent oversight bodies. These are discussed below.

Determination of the initial funding bids each financial year

- 3.37** During the inquiry, the ICAC stated that the amount it will receive through annual appropriations is initially determined by the DPC Secretary as part of the funding requirements for the Premier and Cabinet cluster before consideration by Treasury and the Expenditure Review Committee (ERC).¹⁰⁸ The ICAC also stated that the DPC Secretary submits the cluster budget to Treasury with prioritised rankings of individual agency budget bids.¹⁰⁹ Similarly, the

¹⁰⁶ Evidence, 13 December 2019, p 5.

¹⁰⁷ Answers to questions on notice, DPC and NSW Treasury, 30 January 2020, p 4.

¹⁰⁸ Submission 2, ICAC, p 20.

¹⁰⁹ Submission 2, ICAC, p 19.

Electoral Commissioner stated that DPC is 'intimately involved in our funding bids'¹¹⁰ while the Ombudsman stated that DPC has an important role in the budgets of the oversight bodies.¹¹¹

- 3.38** In the NSW Government submission, Treasury and DPC advised that DPC is not responsible for determining the amount appropriated to the independent oversight bodies, that the oversight bodies are treated as part of the DPC cluster for budget reporting purposes, and that DPC 'provides guidance' to cluster agencies during the budget process.¹¹² Similarly, in evidence before the committee, the DPC Secretary Mr Reardon described his role as that of trying to assist the independent bodies in his cluster to achieve their budget outcomes¹¹³ and to help them with their budget bids.¹¹⁴
- 3.39** Treasury guidelines for the 2020-21 budget process provided to the committee by ICAC specify that funding bids from independent entities such as ICAC 'do not need to be' prioritised against other bids in the cluster ministerial letter to Treasury.¹¹⁵ However, the guidelines make it clear that funding proposals must reference their impacts against the cluster's Outcome and Business Plan¹¹⁶ and that both Treasury and DPC 'will evaluate funding proposals prior to consideration by the ERC'.¹¹⁷

Consultation and transparency in the appropriations process

- 3.40** The evidence given to the committee during the inquiry, particularly from the ICAC, is that there are few opportunities for agencies to consult with key decision-makers in relation to their individual funding bid during the appropriations process. For example, the ICAC stated that:
- When the ICAC submits its budget proposals on Prime there is no formal consultation process whereby the ICAC is able to explain to DPC or Treasury the business case for its budget bid.¹¹⁸
 - Treasury consults with the DPC Secretary but not with relevant agencies prior to finalising its recommendations to the ERC.¹¹⁹

¹¹⁰ Evidence, Mr Schmidt, 12 December 2019, p 25.

¹¹¹ Submission 8, NSW Ombudsman, p 19.

¹¹² Submission 56, DPC and Treasury, p 4.

¹¹³ Evidence, Mr Tim Reardon, Secretary, DPC, 13 December 2019, p 6.

¹¹⁴ Evidence, Mr Reardon, 13 December 2019, pp 9-10.

¹¹⁵ NSW Treasury, *2020-21 Budget: Guidelines for submitting proposals under Outcomes Budgeting*, December 2019, p 5.

¹¹⁶ NSW Treasury, *2020-21 Budget: Guidelines for submitting proposals under Outcomes Budgeting*, December 2019, p 2.

¹¹⁷ NSW Treasury, *2020-21 Budget: Guidelines for submitting proposals under Outcomes Budgeting*, December 2019, p 7.

¹¹⁸ This is a relatively recent change. Up until about two years ago there was a mechanism in place where relevant agency chief financial officers met with DPC and senior NSW Treasury staff to present and explain funding requests and respond to any questions: Submission 2, ICAC, p 18.

¹¹⁹ Submission 2, ICAC, p 19.

- Treasury's brief to the ERC does not include a copy of the ICAC's Final Budget Proposal, so the ERC does not have before it the detail of what was sought by the Commission.¹²⁰

3.41 The ICAC's evidence further indicated that where its budget bids are not supported, the ICAC is often not informed of the reasons why. For example:

- When DPC finalises the DPC cluster budget bid and provides the bid to Treasury, there is no requirement for the DPC Secretary to advise the ICAC whether or in what way the amount of funding sought by DPC on behalf of the Commission differs from what was sought by the ICAC.¹²¹
- If the proposed funding is less than that sought in the Final Budget Proposal, no explanations are provided as to the reasoning behind that decision.¹²²
- The Treasury brief to the ERC is a cabinet in confidence document that is not available to the affected agencies.¹²³

3.42 Similar evidence was provided to the committee by other oversight bodies.¹²⁴ Mr Pratt clarified that agencies receive feedback from a Treasury analyst before they submit their budget bids, but confirmed that they receive no feedback once the bid is submitted until they are notified of the outcome on Prime following the ERC and cabinet process.¹²⁵

3.43 Evidence from the oversight bodies suggested that the secrecy surrounding the budget allocation process is inconsistent with the fact that such bodies are independent of the government and carry out mandates set by Parliament. The Ombudsman also suggested that the fact that the budget-setting process occurs behind closed doors contributes to below-optimal funding outcomes for independent oversight bodies, as the government has its own priorities which are in competition for a finite pool of funding.¹²⁶

3.44 However, Treasury and DPC submitted that any proposals for greater transparency would need to take account of the confidentiality of Cabinet deliberations in relation to the Budget which has been recognised by the courts as 'an application of the principle of collective responsibility'. They also questioned whether additional transparency in the budget process is necessary given that in their view existing parliamentary processes already ensure that the resourcing of independent oversight bodies is subject to a high degree of public and parliamentary scrutiny.¹²⁷

¹²⁰ Submission 2, ICAC, p 19.

¹²¹ Submission 2, ICAC, pp 18-19.

¹²² Submission 2, ICAC, p 20.

¹²³ Submission 2, ICAC, p 19.

¹²⁴ See, for example, Submission 6, NSW Electoral Commission, p 19; Submission 8, NSW Ombudsman, p 16.

¹²⁵ Such feedback is of an informal nature and is not provided to the oversight body in writing: Evidence, Mr Mike Pratt, Treasury Secretary, 13 December 2019, pp 7, 8.

¹²⁶ Submission 8, NSW Ombudsman, p 12.

¹²⁷ Submission 56, DPC and NSW Treasury, p 8.

The criteria for allocating budget savings

- 3.45** The NSW Government submission stated that in the 2019-20 Budget, DPC apportioned efficiency savings to agencies in the Premier and Cabinet cluster on a *pro rata* basis according to the operational expenses of each entity in its cluster and adjusted for any protected items. The submission also indicated that variations to the savings required of some agencies in the cluster would impact on the savings required of others.¹²⁸ In evidence before the committee, Mr Reardon confirmed that as Secretary of DPC he has flexibility in the application of savings to agencies in the cluster and that, in order to exclude an integrity agency from such savings, he needs to allocate greater savings to other areas of the cluster.¹²⁹
- 3.46** During the hearing on 13 December 2019 following evidence concerning budget savings, Mr Reardon was asked whether the budget process has the potential to give rise to conflict between government priorities and the functions of the oversight bodies. Mr Reardon responded that the independent functions of the integrity bodies have been integrated into the government's budget deliverables through the 'Accountable and responsible government' outcome. He also stated that while the integrity bodies are required to comply with budget requirements, they are not subject to policy direction.¹³⁰
- 3.47** Correspondence from DPC referred to in the ICAC's submission described the rationale for savings which had been allocated to the Premier and Cabinet cluster as being to strengthen the State's fiscal position and 'support streamlined service delivery'. However, no explanation was provided as to how the savings imposed on the ICAC would support the ICAC's service delivery.¹³¹ The correspondence also described future savings as 'ongoing and permanent' and 'to be applied predominantly to labour expenses'. However, no analysis was provided of the extent to which any reduction in 'labour expenses' will impact on the ICAC's ability to fight corruption.¹³²
- 3.48** Other oversight bodies also gave evidence suggesting that budget savings have been allocated to their organisations without any consideration of the organisation's capacity to absorb them or the impact on the organisation's operations.¹³³ The Ombudsman submitted that the lack of any assessment of the extent of any claimed inefficiencies suggests that the primary purpose of the efficiency dividend policy has become to redistribute fiscal resources from existing activities to new government initiatives.¹³⁴
- 3.49** The Ombudsman also noted that funding shortfalls can have disproportionate effects on small agencies as such agencies are often established to fulfil a specific function which limits their

¹²⁸ Submission 56, DPC and NSW Treasury, p 6.

¹²⁹ Evidence, Mr Reardon, 13 December 2019, pp 3-4.

¹³⁰ Evidence, Mr Reardon, 13 December 2019, p 6.

¹³¹ Submission 2, ICAC, p 28.

¹³² Submission 2, ICAC, p 28.

¹³³ Submission 6, NSW Electoral Commission, p 35; Submission 8, NSW Ombudsman, p 26; Submission 10, LECC, p 6.

¹³⁴ Submission 8, NSW Ombudsman, p 27.

capacity to reprioritise or trim discretionary functions.¹³⁵ The Ombudsman noted that in the Commonwealth Government's current budget, agencies with an average staffing of less than 200 have been excluded from the application of this year's efficiency dividend.¹³⁶

The deduction of budget savings after the passage of the Appropriation Act

- 3.50** The ICAC advised that budget savings are generally removed from the forward estimates prior to the Appropriation Bill being introduced into Parliament each year, but that on some occasions additional imposts may be deducted after the Appropriation Act is passed. For example in 2018-19 the sum of \$210,000 was removed from ICAC's appropriated budget because the Government determined that an additional 1 per cent in efficiency savings measures be imposed on top of the existing 2 per cent savings impost. A further \$38,000 was also removed by DPC for 'procurement' savings.¹³⁷ The ICAC stated that such cases have been rare and involved relatively small amounts¹³⁸ but that they demonstrate that the amount appropriated by Parliament is 'vulnerable to ... interference through the executive processes'.¹³⁹
- 3.51** In relation to this issue, Treasury and DPC stated that the amount that each special office receives in the Appropriation Act 'represents a maximum amount that each of these offices can spend'.¹⁴⁰ The Treasury Secretary, Mr Pratt stated that that then 'becomes the policy of government in terms of any further cost efficiency that they wish to apply going forward'.¹⁴¹ Treasury and DPC asserted that this arrangement is consistent with the principles of representative and responsible government which provide that ministers are electorally and publicly accountable for the expenditure of public funds within their portfolios.¹⁴² They also asserted that a recent Auditor-General's report concerning compliance with the *Public Finance and Audit Act 1983*¹⁴³ provides support for the view that ministers are lawfully entitled to withhold approval for expenditure by agencies including independent oversight bodies.¹⁴⁴
- 3.52** The Ombudsman told the committee that DPC has not withheld any funding appropriated to the Ombudsman under an Appropriation Act, and that as far as they are aware, DPC had never sought to do so.¹⁴⁵ In regard to the legal basis for DPC to withhold funding appropriated under the Appropriation Act, the Ombudsman further advised: 'As we noted when we appeared

¹³⁵ Submission 8, NSW Ombudsman, p 27, referencing comments made by the Commonwealth Parliamentary Joint Committee of Public Accounts and Audit in *The efficiency dividend and small agencies: Size does matter*, Report 413, December 2008, at p xix.

¹³⁶ Submission 8, NSW Ombudsman, p 28.

¹³⁷ Submission 2, ICAC, p 23.

¹³⁸ Evidence, Mr Philip Reed, Chief Executive Officer, ICAC, 12 December 2019, pp 6, 8.

¹³⁹ Evidence, Mr Reed, 12 December 2019, p 6.

¹⁴⁰ Submission 56, DPC and NSW Treasury, p 6.

¹⁴¹ Evidence, Mr Pratt, 13 December 2019, p 4.

¹⁴² Answers to questions on notice, DPC and NSW Treasury, 30 January 2020, p 2.

¹⁴³ NSW Auditor-General, *Compliance of expenditure with section 12A of the Public Finance and Audit Act 1983 – Law Enforcement Conduct Commission*, provided to the Parliament on 21 February 2019.

¹⁴⁴ Answers to questions on notice, DPC and NSW Treasury, 30 January 2020, p 2.

¹⁴⁵ Answers to questions on notice, NSW Ombudsman, 28 January 2020, pp 1-2.

before the [Public Accountability Committee], we doubt whether DPC has any legal authority to take such action.¹⁴⁶

The availability of supplementary funding

- 3.53** The oversight bodies, and the ICAC in particular, highlighted the need for small agencies to have access to *ad hoc* funding to enable them to respond to unforeseen matters that may arise during the financial year, together with the risks if a request for supplementary funding was refused.
- 3.54** The ICAC told the committee that supplementary funding has formed 'a vital part' of its overall funding since at least 2012-13¹⁴⁷ due to the inflexibility of the budget process and unpredictable outcomes of business cases to Treasury for new funding.¹⁴⁸
- 3.55** As to the reasons for its reliance on supplementary funding the ICAC advised that while agencies are required to provide their funding proposals in February for the coming year, it is not possible to predict more than 12 months in advance what matters of serious corrupt conduct and systemic corrupt conduct will require investigation in the coming year,¹⁴⁹ what matters the ICAC may receive by way of complaint or referral or what investigation opportunities might be identified by ICAC's intelligence and research unit.¹⁵⁰ The ICAC also stated that there is no such thing as a standard corruption investigation¹⁵¹ and that it is not possible to predict the resources or powers that will be required to investigate any particular matter.¹⁵²
- 3.56** At a Budget Estimates hearing in March 2020, the Electoral Commissioner described three unanticipated events that have placed significant pressure on the Commission's budget: changes to the conduct of the upcoming local government elections due to the spread of the coronavirus, implementing legislative changes limiting cash donations, and the Government's decision to relocate the Electoral Commission to new premises, resulting in increased rent. The Commissioner pointed to a contingency fund as one solution to enable the Commission to carry out its functions in the face of such anticipated budget pressures.¹⁵³
- 3.57** Other oversight bodies told the committee that they have sought supplementary funding in response to legislative changes conferring new functions, jurisdictional changes or the circumstances of a particular inquiry.¹⁵⁴ The Ombudsman advised that small agencies with non-

¹⁴⁶ Answers to questions on notice, NSW Ombudsman, 28 January 2020, p 2.

¹⁴⁷ Submission 2, ICAC, p 25.

¹⁴⁸ Submission 2, ICAC, p 24.

¹⁴⁹ Submission 2, ICAC, p 4.

¹⁵⁰ Submission 2, ICAC, pp 4, 15.

¹⁵¹ Submission 2, ICAC, p 12.

¹⁵² Evidence, the Hon Peter Hall QC, 12 December 2019, p 3.

¹⁵³ Inquiry into the Budget Estimates 2019-2020, Portfolio Committee No. 1, Legislature and Premier hearing, 16 March 2020, pp 26 – 28.

¹⁵⁴ Submission 6, NSW Electoral Commission, p 12; Evidence, Mr Schmidt, 12 December 2019, p 24; Evidence, Mr Michael Barnes, p 35.

discretionary statutory functions lack the means to meet unforeseen demands internally without withdrawing services.¹⁵⁵

- 3.58** Treasury and DPC acknowledged that there may be unforeseeable matters that arise during any given financial year but maintained that '[a]ll agencies are expected to assess and prioritise all expenditure to ensure that services are delivered within the budget available'.¹⁵⁶ They also stated that it is difficult for the Premier and Cabinet cluster budget to be managed where *ad hoc* funding is sought during the year and suggested that 'repeated requests for supplementary funding may indicate a problem with an entity's financial management practices'.¹⁵⁷ In light of these considerations the Government submission stated that *ad hoc* supplementary funding is not 'a sustainable funding approach' and does not 'promote transparency or accountability for financial management'.¹⁵⁸
- 3.59** In relation to this issue, the ICAC submitted that the aim of doing away with supplementary funding for its services is 'alarming in the extreme' given that the inherent unpredictability of its anti-corruption work renders assessment of the required amount of funding by way of annual parliamentary appropriations 'impossible to quantify'.¹⁵⁹ The ICAC also suggested that DPC's views as to the future of supplementary funding conflict with the practice of Premiers past and present who have accepted the need for the ICAC to have supplementary funding when required.¹⁶⁰

The supplementary funding process

- 3.60** The ICAC told the committee that, while shortfalls in its annual appropriations may be addressed by supplementary funding, such a process has inherent risks as the refusal of a funding request could disrupt or derail ICAC's ability to pursue its investigations program.¹⁶¹ To illustrate this concern the ICAC referred to recent instances where funds required for public inquiries were only provided after repeated requests and to an approach to the Premier for assistance¹⁶² and where there has been a substantial reduction in supplementary funding which necessitated staff redundancies.¹⁶³ The ICAC also expressed the view that a reliance on the discretionary decision-making of members of the Government for supplementary funds 'potentially challenges and may impair the Commission's independence'.¹⁶⁴
- 3.61** The Ombudsman submitted that the supplementary funding process places the Secretary of DPC in an inherently conflicted position as the approval of a funding request involves taking funding away from other agencies in the cluster and poses risks to the Department's ability to

¹⁵⁵ Submission 8, NSW Ombudsman, pp 19-20.

¹⁵⁶ Submission 56, DPC and NSW Treasury, p 8.

¹⁵⁷ Submission 56, DPC and NSW Treasury, p 8.

¹⁵⁸ Submission 56, DPC and NSW Treasury, p 8.

¹⁵⁹ Submission 2, ICAC, p 32.

¹⁶⁰ Submission 2, ICAC, p 32.

¹⁶¹ Evidence, the Hon Peter Hall QC, 12 December 2019, pp 3-4.

¹⁶² Submission 2, ICAC, pp 30-31; Evidence, the Hon Peter Hall QC, 12 December 2019, p 11.

¹⁶³ Submission 2, ICAC, p 29.

¹⁶⁴ Submission 2, ICAC, p 29.

deliver on the Government's priorities within a finite budget.¹⁶⁵ The Ombudsman also argued that the process confers on the Secretary a 'de facto discretion' to approve or veto the exercise of particular functions which constitutes a 'threat to the independent and impartial exercise of those functions'.¹⁶⁶

- 3.62** The committee also heard that DPC does not want to be involved in making decisions on supplementary funding requests from the oversight bodies. The Secretary of DPC, Mr Tim Reardon, observed: 'I actually do not want to be in the position to have to make calls about whether I can or cannot give them more ad hoc supplementary funding'.¹⁶⁷
- 3.63** However, Mr Reardon did not share concerns about the potential for the supplementary funding process to compromise the performance by these bodies of their functions. During questioning by the committee, Mr Reardon accepted that the supplementary funding process involves a 'tension' between Government priorities and those of the independent oversight bodies but denied that this amounts to a 'core conflict' given that 'accountable and responsible Government' is among the budget outcomes for the cluster.¹⁶⁸

The perceived undermining of the independence of the integrity agencies

- 3.64** During the inquiry various concerns were expressed that the current funding arrangements of the oversight bodies undermine their independence.
- 3.65** For example, the Electoral Commission acknowledged that while the Government has discretion to allocate public resources between the agencies and programs it creates, integrity and electoral administrators created by Parliament should not have to compete with those priorities in order to discharge their statutory functions.¹⁶⁹
- 3.66** Further, while accepting that Cabinet confidentiality is fundamental to the proper operation of the system of representative government the Electoral Commission argued that: '[i]n the case of integrity agencies established by the Parliament, ... being subsumed in the State budget process undermines their independence and limits the transparency of annual resource allocation'.¹⁷⁰
- 3.67** The Ombudsman argued that a budget process which makes an oversight body dependent on executive agencies and ministers may result in the body being unduly mindful of its financial dependency when exercising its functions and create an impulse towards a more cautious approach when taking public action that could be seen as critical of, or cause embarrassment to, government.¹⁷¹

¹⁶⁵ Submission 8, NSW Ombudsman, p 20.

¹⁶⁶ Submission 8, NSW Ombudsman, p 20.

¹⁶⁷ Evidence, Mr Reardon, 13 December 2019, p 12.

¹⁶⁸ Evidence, Mr Reardon, 13 December 2019, p 16.

¹⁶⁹ Submission 6, NSW Electoral Commission, p 35.

¹⁷⁰ Submission 6, NSW Electoral Commission, p 36.

¹⁷¹ Submission 8, NSW Ombudsman, p 14.

- 3.68** The Ombudsman also submitted that a dependency on the government for sufficient funding can give rise to a public perception that control over the purse strings gives the government leverage or an indirect influence over the oversight body. The Ombudsman suggested that this is problematic as public confidence in the system of public sector oversight depends on the public accepting that the integrity agencies are indeed independent of government.¹⁷²

Proposals for reform

- 3.69** The committee notes that during the inquiry, all four agencies discussed in this chapter presented options or proposals for reform of their funding arrangements. These are examined below.

The ICAC's views

- 3.70** The key concerns raised by the ICAC in relation to the budget process involved the impact of the process on ICAC's independence and on its capacity to continue to perform the functions with which it has been charged by Parliament. As to the impact on its independence, the ICAC submission stated:

There is no independent process for the Commission, which was established as a unique independent agency. It is not - in substance or in form - a government agency. Yet, all funding is determined by the government of the day by a process appropriate for government agencies and under processes that are not transparent. The Commission has little capacity to influence the outcomes of the process and no opportunity to put its case directly to the ERC or the full Cabinet.¹⁷³

- 3.71** As to the impact of the current funding arrangements on the ICAC's ability to carry out its statutory functions, the ICAC observed:

Ultimately, insufficient funding means that matters which should, in the public interest, be investigated will not be able to be investigated with the real risk that cases of serious and systemic corruption will go unchecked. The only persons who would welcome that outcome would be those intent on benefitting or enriching themselves through undetected corrupt conduct.¹⁷⁴

- 3.72** Similar concerns have been expressed by both of the oversight agencies for the ICAC.¹⁷⁵ In his most recent annual report, the Inspector of the ICAC stated that:

to ensure the ultimate statutory independence of the Commission, funding for it should be determined via a non-politicised process and one that is not subject to bureaucratic management or oversight.¹⁷⁶

¹⁷² Evidence, 12 December 2019, Mr Barnes, p 34.

¹⁷³ Submission 2, ICAC, p 21.

¹⁷⁴ Submission 2, ICAC, p 36.

¹⁷⁵ Evidence, the Hon. Peter Hall QC, 12 December 2019, p 5.

¹⁷⁶ Office of the Inspector of ICAC, *Annual Report for the period ending 30 June 2019*, p 2.

- 3.73** In its most recent review the Joint Committee on the ICAC recommended that the Government examine a 'new independent funding model for the ICAC in the current budget cycle'¹⁷⁷ and found that it is 'appropriate to consider a funding process for the ICAC which is separate from the process that applies to other government or independent agencies.'¹⁷⁸
- 3.74** To address these concerns the ICAC proposed a new funding model for the ICAC which provides for two annual budget amounts, a fixed component and a flexible component, which would be determined via an independent process. The key elements of the new funding model are as follows:
- The fixed component would provide funding to cover the ICAC's normal operational requirements for the coming year. This would be determined following a review by an 'independent, eminent person' appointed by the Governor or through some other transparent and independent process.¹⁷⁹
 - The eminent person could convene as a tribunal to receive submissions from the ICAC and other interested parties and if necessary be supported by 'assessors' to assist in the task of determining an appropriate level of funding for the financial year. The tribunal's determination could be tabled in both Houses of Parliament as a report prior to the State Budget being presented and then be included in the Appropriation Bill.¹⁸⁰
 - The flexible component would cover any additional legal and transcription costs for public inquiries and compulsory examinations, investigations that emerge during the year that cannot be readily absorbed into the existing work program, and any need for new technical equipment or other additional capital expenditure. Access to the flexible component would be via an 'application-based gateway process' in which applications for funding would be made to and determined by the eminent person.¹⁸¹
 - Neither the fixed nor the flexible component model would be subject to Government saving measures, in line with precedents in which federal Government bodies have been excluded from budget savings or in which such action has been recommended.¹⁸²
 - ICAC would not continue to be part of a cluster.¹⁸³

¹⁷⁷ NSW Parliament, Committee on the ICAC, *Review of the 2017-2018 Annual Reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption*, Report 1/57, November 2019, p 9.

¹⁷⁸ NSW Parliament, Committee on the ICAC, *Review of the 2017-2018 Annual Reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption*, Report 1/57, November 2019, p 9.

¹⁷⁹ Submission 2, ICAC, p 38.

¹⁸⁰ Submission 2, ICAC, p 40.

¹⁸¹ Submission 2, ICAC, p 38.

¹⁸² Submission 2, ICAC, p 39. For example, the ICAC advised that the Australian Government announced in the 2015-16 budget that it would exempt the office of National Assessments (now the Office of National Intelligence) and the Office of the Inspector-General of Intelligence and Security from the ongoing application of the efficiency dividend imposed on Commonwealth agencies.

¹⁸³ Evidence, the Hon. Peter Hall QC, 12 December 2019, pp 5, 7.

- 3.75** In its submission to the inquiry, the ICAC also noted that recent legislation in Victoria¹⁸⁴ provides for the draft budgets of three integrity bodies¹⁸⁵ to be determined in consultation with the relevant parliamentary oversight committee before being specified in the annual appropriation bill.¹⁸⁶ In evidence to the committee the Chief Commissioner stated that he did not recommend the Victorian model for the ICAC's budget process but that he would have no objection to a parliamentary committee having input into the process.¹⁸⁷ Further, in response to questioning by the committee the Chief Commissioner agreed that the role of the ICAC's oversight committee could extend to overseeing the core and gateway funding and holding public hearings at which the factors that went into establishing the ICAC's budget would be explored.¹⁸⁸

The LECC's views

- 3.76** In evidence to the inquiry the Chief Commissioner of LECC, the Hon Michael Adams QC, argued that it is a matter for the Government of the day to determine budget priorities but that there needs to be a rational process for allocating resources. Mr Adams further argued the process should include greater opportunities for LECC to be informed of and respond to the premises on which funding decisions are made.¹⁸⁹ Similarly in its submission to the inquiry LECC maintained that its funding should follow from the character and extent of its functions rather than 'arbitrarily being reduced by an arithmetical calculation without regard to functional impact'.¹⁹⁰
- 3.77** When questioned in relation to the ICAC's proposed funding model the Chief Commissioner of LECC stated that the ICAC proposal 'seems ... a sensible model' although he noted that there are different ways of achieving the objective of greater transparency and a more rational process of resource allocation.¹⁹¹ The Chief Commissioner also argued that there cannot be 'true independence' in the funding model as political considerations have a rightful place in the funding decisions which are made.¹⁹²
- 3.78** While the evidence suggested that differences in the functions of ICAC and LECC may result in differences to their respective funding needs,¹⁹³ the Chief Commissioner maintained that there is a need for an independent element in the process for recommending LECC's funding to Parliament such as that proposed by ICAC.¹⁹⁴

¹⁸⁴ *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (Vic). Part 5 of the Act, entitled 'Greater budget independence for Ombudsman, the IBAC and the Victorian Inspectorate', commences on 1 July 2020.

¹⁸⁵ The Victorian Ombudsman, the Victorian Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate.

¹⁸⁶ Submission 2, ICAC, p 40.

¹⁸⁷ Evidence, the Hon Peter Hall QC, 12 December 2019, pp 6, 10.

¹⁸⁸ Evidence, the Hon Peter Hall QC, 12 December 2019, p 11.

¹⁸⁹ Evidence, the Hon. Michael Adams QC, 12 December 2019, p 12.

¹⁹⁰ Submission 10, LECC, p 6.

¹⁹¹ Evidence, the Hon Michael Adams QC, 12 December 2019, p 13.

¹⁹² Evidence, the Hon Michael Adams QC, 12 December 2019, p 13.

¹⁹³ Evidence, Hon. Michael Adams QC, 12 December 2019, p 14; Evidence, the Hon. Lea Drake, p 15.

¹⁹⁴ Evidence, the Hon Michael Adams QC, 12 December 2019, pp 19-20.

The Electoral Commission's views

- 3.79** The Electoral Commission proposed that the Electoral Commission and all integrity bodies established by Parliament should be directly funded by way of a special appropriation in their establishing legislation. The Commission suggested that this could be achieved by modifications to provisions such as section 265 of the *Electoral Act 2017* and section 134 of the *Electoral Funding Act 2018* which already contain special appropriations provisions.¹⁹⁵
- 3.80** In the alternative the Commission expressed support for a separate budget process for integrity agencies in which each agency would develop a budget submission and provide the submission to a parliamentary committee for consideration. The committee would hold hearings on the budget submission and take evidence from relevant organisations which could include Treasury, and the Auditor-General.¹⁹⁶ If the Government did not approve the agency's budget submission in full the Government's reasons would be included in the committee's report.¹⁹⁷
- 3.81** In support of these approaches the Electoral Commission referred to developments in a number of other jurisdictions.¹⁹⁸
- 3.82** In Victoria section 118(2) of the *Electoral Act 2002* appropriates the money required for the administration of that Act to the extent necessary. The Electoral Commission advised that this provision is implemented in a different way to similarly-drafted provisions in New South Wales electoral legislation in that:
- although Victorian Treasury still plays an important role in the oversight of the VEC [Victorian Electoral Commission] controls around its expenditure, there is also opportunity for oversight about budget matters by the relevant Victorian parliamentary committee. The outcome appears to be that VEC is not required to jostle with other Government priorities to ensure the adequacy of its annual funding.¹⁹⁹
- 3.83** The Electoral Commission also cited reports from Canadian jurisdictions which show examples of parliamentary oversight of budget processes in relation to electoral administrators.²⁰⁰
- 3.84** In British Columbia a committee of the Legislative Assembly makes recommendations on the budgets for statutory officers including the Chief Electoral Officer, the Ombudsperson and the Police Complaint Commissioner. The committee also considers supplementary funding requests on an as-needed basis throughout the year.²⁰¹
- 3.85** In Canada the annual parliamentary appropriation for the federal elections authority covers only the salaries for permanent positions; the other expenditure of the agency is funded under a

¹⁹⁵ Submission 6, NSW Electoral Commission, p 36.

¹⁹⁶ Evidence, Mr Schmidt, 12 December 2019, p 30.

¹⁹⁷ Evidence, Mr Schmidt, 12 December 2019, p 27.

¹⁹⁸ Submission 6, NSW Electoral Commission, p 37.

¹⁹⁹ Submission 6, NSW Electoral Commission, p 37.

²⁰⁰ Submission 6, NSW Electoral Commission, p 37, footnote 2.

²⁰¹ Legislative Assembly of British Columbia, Select Standing Committee on Finance and Government Services, *Annual review of the budgets of statutory officers*, December 2019, pp ii, 1.

statutory authority which draws directly from the Consolidated Revenue Fund and is not subject to annual parliamentary approval.²⁰²

- 3.86** The Electoral Commission submitted that if its suggestions for reform of the budget process for the oversight bodies are not supported there are a number of other improvements to the budget process which could be explored for small and/or independent offices.²⁰³ These included consultation with individual agencies in relation to the allocation of savings²⁰⁴ and the formation of a separate 'integrity cluster' for the integrity agencies.²⁰⁵

The Ombudsman's views

- 3.87** The Ombudsman submitted that while there are other bodies in New South Wales which operate at arm's length from the Government and have oversight functions, the bodies listed in the terms of reference for this inquiry share a common role in 'maintaining and enhancing a foundational bedrock of integrity, which is necessary to assure continuing public confidence and trust in all of the other agencies, activities and services of Government'.²⁰⁶ The Ombudsman further submitted that:

Free and fair elections, institutions free of corruption, and lawful, just and reasonable government decision-making are foundational objects that Parliament has mandated as essential, irrespective of the Government's particular priorities.²⁰⁷

- 3.88** In support of such an analysis the Ombudsman noted that there is a close connection between the role of the oversight bodies and the concept of a 'Parliamentary Statutory Office' which has developed in other jurisdictions to denote offices with a special relationship of accountability to Parliament and independence from the Executive.²⁰⁸ The Ombudsman also referred to proposals which have been advanced for these types of bodies to be considered as constituting a fourth branch of government, an 'integrity branch', that is functionally distinct from the traditional executive, legislative and judicial branches.²⁰⁹
- 3.89** While acknowledging that such concepts have not been adopted in New South Wales, the Ombudsman argued that in order to support the independence of the core integrity institutions and ensure the provision of adequate funding a separate budget process should be developed in which the funding of each body is set by Parliament following a parliamentary committee process.²¹⁰

²⁰² Elections Canada, *Overview of Elections Canada and the federal electoral system, Briefing Book*, December 2019, p 5.

²⁰³ Submission 6, NSW Electoral Commission, pp 37-40.

²⁰⁴ Submission 6, NSW Electoral Commission, p 40.

²⁰⁵ Submission 6, NSW Electoral Commission, p 38.

²⁰⁶ Submission 8, NSW Ombudsman, p 8.

²⁰⁷ Submission 8, NSW Ombudsman, p 23.

²⁰⁸ Submission 8, NSW Ombudsman, p 6.

²⁰⁹ Submission 8, NSW Ombudsman, p 7.

²¹⁰ Submission 8, NSW Ombudsman, pp 7, 9.

- 3.90** To illustrate potential models for such a process the Ombudsman referred to procedures in Victoria, where recent legislation provides for the budgets of certain integrity bodies to be developed in consultation with the relevant oversight committee,²¹¹ and New Zealand, where a parliamentary committee recommends the budgets for three statutory officers who have been classified as 'Officers of Parliament', including the Ombudsman.²¹²
- 3.91** Based largely on the New Zealand model the Ombudsman identified a series of considerations which should be taken into account in any enhanced budget process for the oversight bodies considered in this report.²¹³ Those considerations include:
- The budget setting process should be overseen by a parliamentary committee rather than by Treasury/Cabinet. The relevant committee could be a single committee for all the oversight bodies which would have the benefit of enabling the development of expertise in the scrutiny of budget proposals,²¹⁴ or the existing oversight committees which already review the exercise of statutory functions by the bodies.²¹⁵
 - Treasury/the Government must be given the opportunity to provide advice on funding, and all advice should be made public.²¹⁶ Advice from Treasury and the Government on the overall fiscal position of the State may also be relevant when setting the budgets for the oversight bodies.²¹⁷
 - To allow for supplementary funding where necessary, consideration could be given to providing a 'contingency' amount in the Appropriation Act or a direct appropriation for exigencies, similar to the mechanism currently available to the Treasurer under section 4.13 of the *Government Sector Finance Act 2018*. This could be accessed following approval by or notification of the committee responsible for recommending the oversight body's budget, and reported on in the Budget Papers for the following year.²¹⁸
- 3.92** The Ombudsman acknowledged that the manner in which the individual oversight bodies are ultimately funded as a result of this process may be quite different. For example, the Ombudsman stated that the Ombudsman's primary concern will be to ensure sufficient and certain funding year-on-year against which to plan and prioritise its activities whereas the Electoral Commission may need flexibility to scale its staffing capacity up and down across the electoral cycle.²¹⁹

²¹¹ Submission 8, NSW Ombudsman, p 31.

²¹² Submission 8, NSW Ombudsman, pp 29-30.

²¹³ The budget process design considerations identified by the Ombudsman are set out in Submission 8, NSW Ombudsman, pp 33-38.

²¹⁴ Submission 8, NSW Ombudsman, p 33.

²¹⁵ Evidence, Mr Barnes, 12 December 2019, p 40.

²¹⁶ Submission 8, NSW Ombudsman, pp 34-35.

²¹⁷ Submission 8, NSW Ombudsman, p 35.

²¹⁸ Answers to questions on notice, NSW Ombudsman, 28 January 2020, pp 9, 16-17; Submission 8, NSW Ombudsman, p 36.

²¹⁹ Submission 8, NSW Ombudsman, p 33.

- 3.93** The Ombudsman also submitted that the oversight bodies should no longer be publicly represented as forming part of the Premier and Cabinet cluster but if thought necessary could be presented as a separate 'integrity' cluster or group.²²⁰

Committee comment

- 3.94** The committee accepts that the four independent oversight bodies examined in this report, together with the Audit Office of New South Wales, are the bedrock of government accountability in New South Wales. It is vital that the oversight bodies are not prevented from performing their important work by inadequate funding.
- 3.95** The committee is troubled by evidence that all four oversight bodies examined in this report have been historically underfunded, and on current projected funding, will remain so:
- The ICAC indicated that its funding has been below the level of inflation for most of the three decades since it was established, and painted an alarming picture of the organisation's future financial position, if efficiency dividends are imposed, including substantial reductions in staff numbers and fewer public inquiries. It is clear that reform of the budget process is needed if the ICAC is to continue to carry out the functions it has been charged by Parliament to perform. The case for the Commission to have adequate and secure funding is compelling.
 - The LECC indicated that when it commenced 2017, its budget was not capable of funding its inherited work as well as its new functions, and that these funding shortfalls will worsen into the future and significantly impact the work of the LECC.
 - The Electoral Commission described circumstances in which funding that it considers to be vital for the proper functioning of the electoral system has been refused, and where its capacity to conduct elections in the future may be compromised. Put simply, there can be no more alarming outcome for representative democracy in New South Wales than such an outcome.
 - The Ombudsman indicated that due to funding restrictions it is conducting fewer and more limited investigations and is unable to fulfil all of its core statutory functions to an acceptable level.
- 3.96** It is accepted that public resources are finite and that all expenditure of public funds involves a weighing up of competing priorities. However, when the priorities in question involve such a core element of the democratic system as the conduct of fair elections, the combatting of corruption, the oversight of the NSW Police Force and protecting the public against abuse of public power, the Parliament and ultimately the people of New South Wales are entitled to expect a high degree of openness in the decision-making process. Experience in other jurisdictions suggests that greater transparency can be achieved without dismantling established conventions of Cabinet confidentiality.
- 3.97** There are a number of glaring problems with the current arrangements for funding of the agencies examined in this chapter:

²²⁰ Submission 8, NSW Ombudsman, p 35.

- The oversight agencies have only an initial input into the funding bid put forward for the Premier and Cabinet cluster as a whole. Any assistance that DPC is able to provide the oversight bodies will inevitably be constrained by the fact that the budget-setting process occurs within the context of outcomes and priorities which are within the Government's exclusive control.
- Subsequent deliberations on the funding of the oversight bodies is conducted solely within the Government behind closed doors, without further reference to the agencies. The evidence indicates that key Government decision-makers have access to Treasury's advice on budget bids but are not required to have regard to the supporting submissions prepared by the agencies themselves. At the end of the process, there is often no information given as to the reasons for final funding decisions.
- The process for allocating efficiency dividends also potentially allows the Government to use money saved through efficiencies imposed on independent bodies to fund Government programs.
- The availability of supplementary funding to the oversight bodies, which in the case of bodies such as ICAC can be very important to their operation, is also determined through a process which lacks transparency and is inconsistent with the independence of those bodies. Its continuation is questioned even by the Government.

3.98 These arrangements are quite simply not consistent with transparent and accountable government in New South Wales.

3.99 The committee notes the views of the independent oversight bodies on their preferred models for reform of the budget process. Each of these models has its strengths, which reflect the needs and unique characteristics of each body. Common themes which emerged from their respective proposals included the need for much greater transparency in the process for determining the funding for each body, supplemented by more consultation with the independent bodies as part of that process. The bodies also underscored the need for supplementary funding to meet unforeseen matters, and detailed the significant and increasing impact of ongoing efficiency savings on their core work. The positioning of these bodies within the government's cluster framework was also a pressing concern.

3.100 The committee sees merit in a single process to apply across all the independent oversight bodies to address these issues. The committee is confident that its proposed process will achieve a more open and transparent budget process, ultimately leading to more equitable budget outcomes for the independent oversight bodies and at a broader level, the protection of the public interest.

3.101 The committee therefore recommends that the relevant parliamentary oversight committee established for each body should be allowed to review the budget submission from each agency. It seems likely that this should also be extended to the Audit Office, although the Audit Office was not examined during this inquiry. This review process should be transparent: the committee should consult with relevant stakeholders including Treasury and the Department of Premier and Cabinet on the bodies' budget submissions, with the consultation process to include inviting submissions and holding public hearings. Each parliamentary oversight committee would table

a report in both Houses recommending the annual appropriation for the body. If the Government did not support the body's budget submission in full, the report would include the Government's reasons as outlined during the consultation process. If the Government did not support the committee's recommendation, it would table a statement of reasons in the Parliament.

Recommendation 1

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

- 3.102** The committee also accepts the argument that ad hoc supplementary funding requests by oversight agencies is an inadequate way to address the unpredictable resource requirements of the ICAC, the LECC, the Ombudsman and the Electoral Commission. To address this these oversight bodies should have access to a contingency fund with access to such funds being limited to prescribed circumstances. Any such access would require approval of the relevant parliamentary oversight committee following, if necessary, a confidential hearing of the committee. Clearly there may be circumstances where the political implications of any such funding request may require a large degree of discretion in the disclosure of the need for the supplementary funding. The committee accepts that each agency has the capacity to walk this delicate line of disclosure and discretion when making such funding requests.
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Recommendation 2

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

- 3.103** The committee acknowledges the compelling evidence from the oversight bodies about the significant and increasing pressure on their budgets due to the imposition of ongoing efficiency dividends. The committee once again acknowledges the vital role that these bodies play in the administration of the State, and therefore is of the view that these bodies, as small agencies with limited staffing and resources, should be exempt from such measures in the future.

- 3.104** Each of these bodies should be directly allocated their annual funding through the Appropriation legislation, rather than the funding being allocated to the relevant Minister as the case is at present, so they are not subject to reductions in funding during the financial year.

Recommendation 3

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

- 3.105** The positioning of the oversight bodies as part of the Premier and Cabinet cluster comprises their independence, creates the appearance that they are subordinate to the executive government, and makes it challenging for these bodies to compete against government priorities to receive the funding they require. To address these concerns, the committee recommends that the oversight bodies no longer sit under the Premier and Cabinet cluster. They do not belong there. This would also likely apply to the Audit Office.

Recommendation 4

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

- 3.106** This inquiry has shone light, perhaps for the first time, on the apparent significant underfunding of the key integrity institutions of this State. The funding of these agencies deserves greater regard. The people of New South Wales have the right to know if these agencies are not being funded to the appropriate level. Accordingly, the committee urges the executive government to work with the Parliament in reforming the funding arrangements of these agencies, as has been done in many other jurisdictions, in the interests of good government in this State.

Chapter 4 The budget process for the Parliament of New South Wales

This chapter turns from the budget process for the independent oversight bodies to examine the funding arrangements for the Parliament of New South Wales (the Department of the Legislative Council and the Department of Parliamentary Services only)²²¹. The chapter considers the role of the Parliament, its constitutional independence and its relationship with the executive government and the adequacy of the Parliament's budget. The remainder of the chapter outlines the funding arrangements adopted in other Westminster-style parliaments and options for reform of the funding arrangements of the Parliament of New South Wales.

Overview of the Parliament's role

- 4.1** The Parliament of New South Wales is a bicameral Parliament consisting of two Houses: the Legislative Assembly and the Legislative Council. The two houses are supported by the Department of Parliamentary Services, which supports the operation of the Parliament by providing logistical support and advice to members of Parliament and the two House departments.
- 4.2** The Parliament has the power 'to make laws for the peace, welfare and good government of New South Wales'. In addition, as noted in the submission made on behalf of the Parliament of New South Wales (the Department of the Legislative Council and the Department of Parliamentary Services) by the Clerk of the Parliaments, Mr David Blunt, and the Chief Executive, Department of Parliamentary Services, Mr Mark Webb, the Parliament acts as a check and balance on executive government:

The capacity of both Houses of Parliament, including the House less likely to be 'controlled' by the government, to scrutinise the workings of the executive government, by asking questions and demanding the production of State papers, is an important aspect of modern parliamentary democracy. It provides an essential safeguard against abuse of executive power.²²²

The constitutional independence of the Parliament and the executive

- 4.3** The submission by the Clerk and the Chief Executive highlighted the constitutional independence of the Parliament from the executive government. In summary:
- While the *Constitution Act 1902* does not include in its structure or wording any formal separation of powers, nevertheless the doctrine of the separation of powers is central to an understanding of the system of government in New South Wales. The separation

²²¹ As a matter of comity between the Houses, the terms of reference specifically restrict the committee from considering the funding arrangements for the Department of the Legislative Assembly.

²²² Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 7, quoting Gleeson CJ in *Egan v Willis and Cabill* (1996) 40 NSWLR 650 at 667.

between the Legislature and the executive government is defined according to the Westminster system of parliamentary democracy.

- The Westminster system of parliamentary democracy in New South Wales defines the relationship between the Parliament and the executive government according to the principles of responsible government. Responsible government embodies the understanding that the executive government, including the Cabinet, is responsible to Parliament, and through Parliament to the people. Responsible government was established in New South Wales by the *Constitution Act 1855* and continued in the *Constitution Act 1902*. It has been judicially recognised in numerous significant court decisions, including in 1998 by the High Court in *Egan v Willis*.²²³
- Central to and underpinning the separation of powers between the Parliament and the executive government is parliamentary privilege. Privilege prevents the other branches of government – the executive and the judiciary – from inquiring into, calling into question or otherwise interfering with the proceedings of the Parliament.
- As noted previously in Chapter 2, it is a fundamental principle of public law that no tax may be levied or appropriation granted by the executive government without the authority of Parliament by duly passed legislation. This principle dates back to the English *Bill of Rights 1689*.²²⁴

4.4 The submission by the Clerk and the Chief Executive also highlighted the *Latimer House Principles*, adopted in 2003 by the Commonwealth Heads of Government, which define the relationship between the three branches of government and provide guidance on the separation of powers. Principle 1 of the *Latimer House Principles* is:

Each Commonwealth country's Parliament, Executive and Judiciary are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.²²⁵

4.5 In order to satisfy the Latimer House Principles, a follow-up review in 2008 known as the *Edinburgh Plan of Action*, advocated as follows:

- Remuneration packages for parliamentarians should be determined by an independent process.
- Parliamentarians should have equitable access to resources commensurate with their responsibilities.

²²³ (1998) 195 CLR 424.

²²⁴ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), pp 3-7.

²²⁵ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 8, quoting Commonwealth Parliamentary Association, Commonwealth (Latimer House) Principles on the Three Branches of Government, 2009, p 10.

- Parliaments should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances.²²⁶

4.6 Mr David Blunt, Clerk of the Parliaments, also cited the *Latimer House Principles* and *Edinburgh Plan of Action* to the committee in evidence, together with the first of the Egan decisions²²⁷ in relation to the accountability of the executive government to the Parliament. He also noted that the Commonwealth Parliamentary Association and World Bank Institute have observed that parliamentary budget independence should be seen as a 'necessary prerequisite to good parliamentary governance'.²²⁸

Current arrangements for determining the funding of the Parliament

4.7 The current arrangements for determining the Parliament's annual appropriations are essentially the same as for the oversight agencies, as outlined in Chapter 2. In summary, around the second quarter of each financial year the Parliament enters the State budget process for the next financial year, with funding of the Parliament ultimately determined by Treasury and the Expenditure Review Committee (ERC). If the Parliament seeks an increase in its funding, it must submit funding proposals in accordance with the timeframes set by Treasury.

4.8 Within this process, the Parliament is required to fit into the executive government's outcome budgeting framework for government departments and agencies, as outlined previously in Chapter 2.

4.9 While the Parliament essentially goes through the same process as executive government departments and agencies in relation to its funding each financial year, it was suggested in the submission made on behalf of the Parliament by the Clerk and Chief Executive that the Parliament is in a weaker position than government departments and agencies in seeking to influence the quantum of Treasury funding that it receives. This is because:

- there is no guarantee of a hearing for the Presiding Officers before the ERC
- it is not possible or appropriate for the Parliament to formulate its budget submission in terms of government or Premier's priorities. The Parliament's priorities are not executive government priorities, and are likely a low priority for the government.²²⁹

4.10 Mr Mark Webb, Chief Executive of the Department of Parliamentary Services, reiterated this second point in evidence:

... ultimately the Parliament's priorities for investments need to be set by the Parliament. At the moment, the way in which submissions that go up for funding are

²²⁶ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 8, quoting Commonwealth Parliamentary Association, Commonwealth (Latimer House) Principles on the Three Branches of Government, 2009, p 42.

²²⁷ The decision of the New South Wales Court of Appeal in *Egan v Willis and Cahill* (1996) 40 NSWLR 650.

²²⁸ Evidence, Mr David Blunt, Clerk of the Parliaments, 12 December 2019, p 46.

²²⁹ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 9.

assessed is based around a concept of importance which prioritises the Premier's Priorities, government announcements and commitments that have been made. I think it is fairly self-evident but I will say it anyway: It would be highly inappropriate if our priorities were being set within that framework. As a result, it is very easy to put our submissions aside because we do not meet a category of what "important" actually means.²³⁰

- 4.11** Following the process outlined above, the appropriations for the Parliament each financial year are contained in the annual Appropriation (Parliament) Bill. This bill provides separate appropriations for the 'recurrent services' and the 'capital works and services' of the Parliament.
- 4.12** Since 1995, with the exception of 2011,²³¹ the annual Appropriation (Parliament) Bill has been passed as a separate cognate bill to the annual Appropriation Bill. The introduction in 1995 of a separate appropriation bill for the Parliament was in response to a requirement in the memorandum of understanding, commonly known as the Charter of Reform, which was signed on 31 October 1991 by Premier Greiner and three non-aligned independents in the Legislative Assembly.²³² The Charter of Reform included a commitment to make the annual appropriation for the Legislature a separate Bill.²³³
- 4.13** The submission made on behalf of the NSW Government suggested that the separate Appropriation (Parliament) Bill is to ensure that if the main Appropriation Bill does not pass before the commencement of the financial year, the Appropriation (Parliament) Bill may be separately passed to ensure the continuity of Parliament.²³⁴ In evidence, the Clerk pointed to the Charter of Reform as the actual reason for the separate annual Appropriation (Parliament) Bill.²³⁵

The Parliament's budget

- 4.14** The *Appropriation (Parliament) Act 2019* appropriated \$164.242 million to the Parliament for the financial year 2019-2020. This figure represented 0.19 per cent of the State's budget. Of this, \$146.421 million was appropriated for recurrent funding and \$17.821 million for capital works.²³⁶

²³⁰ Evidence, Mr Mark Webb, Chief Executive, Department of Parliamentary Services, 12 December 2019, p 47.

²³¹ The Appropriation (Parliament) Bill was not introduced in 2011, but was reinstated in 2012 following representations to the executive government by the Presiding Officers.

²³² 'Memorandum of Understanding between the Hon Nick Greiner MP, Premier, For and on behalf of the Liberal/National Party Government and Mr John Hatton MP, Ms Clover Moore MP, and Dr Peter Macdonald MP', 1991. A copy of the Memorandum is at *Hansard*, NSW Legislative Assembly, 31 October 1991, pp 4004-4033. Under the memorandum, in return for implementation of the Charter of Reform, the independents would support the government on motions regarding supply and confidence.

²³³ See also Evidence, Mr David Blunt, 12 December 2019, p 48.

²³⁴ Submission 57, DPC and NSW Treasury, p 6.

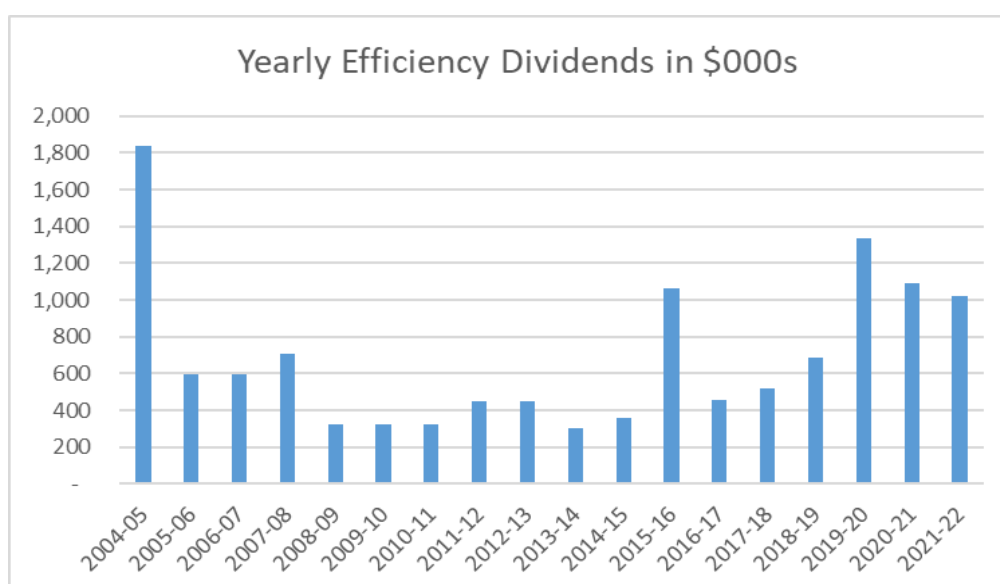
²³⁵ Evidence, Mr David Blunt, 12 December 2019, p 48.

²³⁶ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 10.

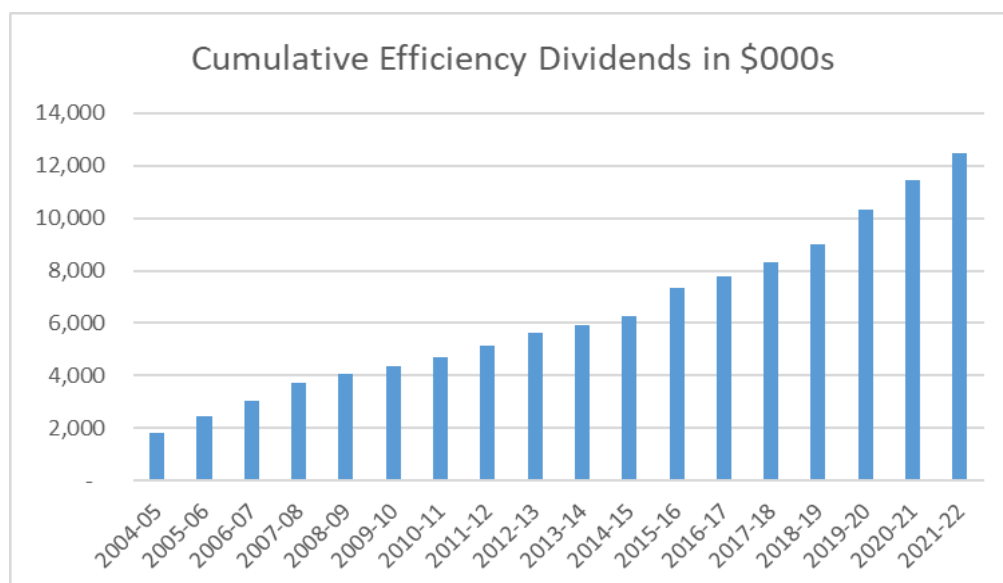
Parliament's recurrent budget

- 4.15** Of the Parliament's total recurrent funding of \$146.421 million in 2019-2020, \$114.208 million (approximately 78 per cent) was allocated to fund the salaries and allowances of members, including ministers, as determined by the Parliamentary Remuneration Tribunal. The remaining \$32.213 million (approximately 22 per cent) was appropriated to fund all functions of Parliament and services provided to members by the two House Departments and the Department of Parliamentary Services. This latter portion, representing 0.04 per cent of the State's budget, is subject to efficiency dividends. This smaller sum (\$32.213 million in 2019/20) is the only portion of the Parliament's budget from which the efficiency dividend can be deducted. There is no capacity to achieve a reduction in the non-discretionary payment of members' or ministers' salaries or allowances.
- 4.16** Efficiency dividends have been applied to the Parliament's recurrent budget since 2004-2005, ranging from 1 to 4 per cent each financial year. Cumulatively, the total amount of efficiency dividends applied to the Parliament from 2004-2005 to 2021-2022 is \$12.448 million. This represents a real reduction in the Parliament's budget from which savings can technically be made of over 25 per cent. As a result, the submission by the Clerk and the Executive Manager estimated that the Parliament's recurrent budget is approximately 20 per cent less than it would have been if the efficiency dividends had not been applied over this period. In addition, program savings of \$553,000 were applied across 2012-2013 and 2014-2015 and a labour cap saving of \$1.438 million was applied from 2012-2013 to 2015-2016.²³⁷
- 4.17** The annual efficiency dividends and cumulative efficiency dividends applied to the Parliament since 2004-2005 are shown in Figures 4.1 and 4.2 below.

Figure 4.1: Annual efficiency dividends applied to the Parliament since 2004-2005



²³⁷ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 10.

Figure 4.2: Cumulative efficiency dividends applied to the Parliament since 2004-2005

- 4.18** The submission made on behalf of the Parliament by the Clerk and the Chief Executive advised that the Parliament had reached the limits of its ability to absorb budget savings, and if efficiency dividends continued to be applied in future, it would necessitate a reduction in Parliament's core functions:

The Department of the Legislative Council and the Department of the Parliamentary Services are committed to the efficient use of the funds appropriated, and as the figures above indicate we have found ways to implement efficiency measures for well over a decade. However, the cumulative impact of all these savings measures has now got to the point where core functions of the Parliament will have to be curtailed, services provided to Members cut and a greater degree of risk taken on.²³⁸

- 4.19** In evidence, Mr Webb reiterated that the Parliament has met efficiency dividends over a long period of time, as a result of which the budget of the Parliament is substantially lower than it would have been otherwise. However, he argued that in a small organisation such as the Parliament, the capacity to continue to absorb such efficiency dividends is severely limited.²³⁹

- 4.20** The submission by the Clerk and the Chief Executive also highlighted two critical risks to the Parliament's recurrent budget:

- In 2009, on the recommendation of ASIO, the Parliament signed a memorandum of understanding with the NSW Police for special constables to provide security at Parliament. In 2014, the terror threat level at Parliament House was raised to probable, requiring an upgrade to security services at the Parliament, at significant additional cost. In order to fund this cost, the Parliament has sought additional funding from the Treasury in each budget through a Parameter and Technical Adjustment. To date that request has been approved. However, in the 2019-2020 Budget, the funding request for \$2.234 million to meet the cost of the special constables was not approved. Notwithstanding, the

²³⁸ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 10.

²³⁹ Evidence, Mr Mark Webb, 12 December 2019, p 47.

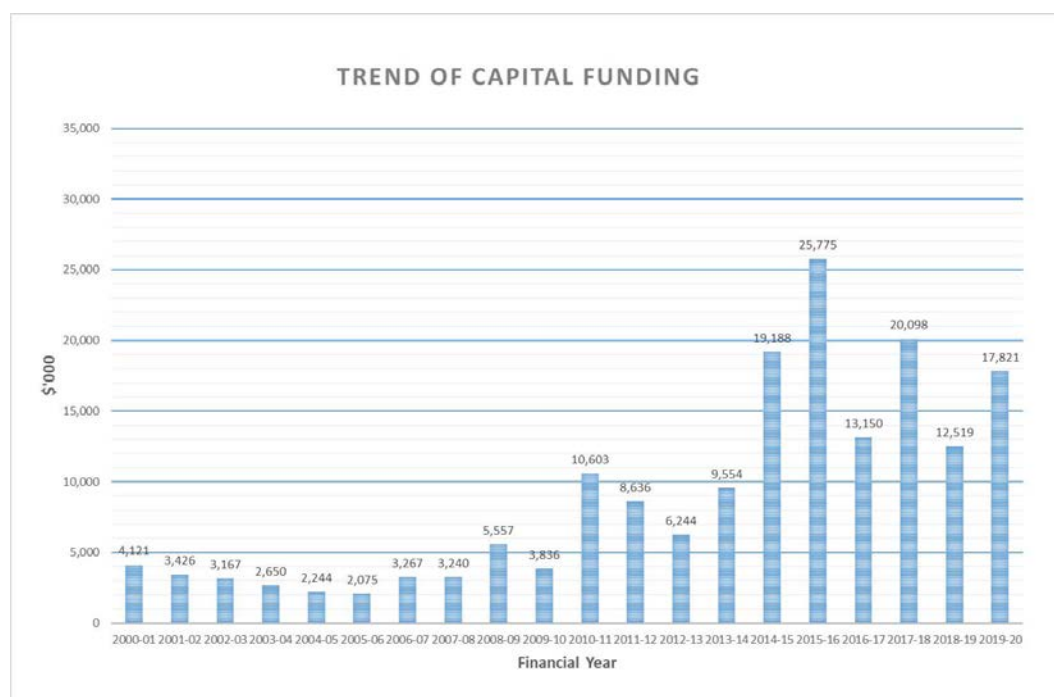
Presiding Officers and Chief Executive have chosen to maintain security levels at Parliament House despite the absence of funding for the special constables.²⁴⁰

- The Parliament has not been fully funded to cover additional entitlements for members, as determined by the Parliamentary Remuneration Tribunal. The Parliament has no control over the spending by members of their entitlements. If all members fully spent their additional entitlements in 2019-2020, the funding gap would have been \$3.349 million. A proposal from the Parliament to remedy this situation by the establishment of a Protected Item in the budget for members' additional entitlements was not supported by Treasury over the last two budget cycles.²⁴¹

Parliament's capital budget and supplementary funding

- 4.21** In 2019-2020, the Parliament received \$17.821 million in capital funding. Of this, \$2.947 million was ongoing minor capital works funding. The rest was comprised of major capital works-in-progress funding of \$10.886 million initiated in previous budget years and \$3.008 million of new major capital works funding.
- 4.22** The following Figure 4.3 taken from the submission by the Clerk and Chief Executive shows the trend of capital funding (including supplementary budget adjustment) for the Parliament from 2000-2001 to 2019-2020.

Figure 4.3: Capital works funding for the Parliament since 2000-2001



²⁴⁰ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 12. See also Evidence, Mr Mark Webb, 12 December 2019, p 54.

²⁴¹ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 12.

- 4.23** While Table 4.3 shows an increase in capital funding for the Parliament in recent years, over the full 20 year period, the submission of the Clerk and the Chief Executive argued that there has been significant underinvestment in the Parliament. At June 2019, the gross value of the Parliament's property, plant and equipment was estimated at \$526.614 million, comprising an estimated land value of \$64.340 million and \$462.274 million for the buildings, plant and equipment (including the electorate offices of members of the Legislative Assembly). Based on this, depreciation expenses were estimated at \$13.757 million in 2019-2020 alone. The submission highlighted that this figure is not met by the recurrent ongoing minor capital works funding for the Parliament of \$2.947 million each year. Nor has it been consistently met for the last 20 years, as per Figure 4.3 above. The Parliament's 10-year Capital Investment Plan indicates that investment of \$447.971 million is required over the next 10 years to address the Parliament's backlog in asset replacement and to modernise the Parliament's infrastructure. This evidence was reiterated by Mr Webb during the hearing on 12 December 2019.²⁴²
- 4.24** The capital costs incurred in maintaining a heritage building like the NSW Parliament only add to the costs.

The funding arrangements of other Westminster Parliaments

- 4.25** The submission made on behalf of the Parliament by the Clerk and the Chief Executive cited the funding models in a number of other Westminster-style Parliaments in Australia and worldwide. This is discussed further below.

The Australian Senate

- 4.26** Since 1981, the Australian Senate has appointed an Appropriation, Staffing and Security Committee, chaired by the President of the Senate, and including the Leaders of the Government and the Opposition. Under Senate standing order 19, the role of the committee includes proposing the amounts for inclusion in the parliamentary appropriation bill each year. This amount is submitted by the President to the Minister for Finance for inclusion in the parliamentary appropriation bill. While the final allocation of funding to the Senate is a matter for the Minister for Finance, the process involves the key senior leadership of the Senate in bipartisan assessment of the needs of the House. Commenting on the model, the submission observed:

The Senate Committee is not a model in which the Parliament sets its budget autonomously, with the final level of appropriation being determined by the Minister for Finance. However it is a considerable advance from that currently in place in New South Wales. The Committee involves the key senior leadership of the Senate in a bipartisan assessment of the funding needs of the House, and publicly reports this prior to receiving the appropriations bill from the House of Representatives. It is transparent, and allows all Senators an opportunity to participate in identifying variations in funding needs.²⁴³

²⁴² Evidence, Mr Mark Webb, 12 December 2019, p 49.

²⁴³ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 27.

The ACT Legislative Assembly

- 4.27** Section 20 of the *Financial Management Act 1996* (ACT) provides that before the beginning of a financial year, the Speaker of the ACT Legislative Assembly, after consultation with an appropriate committee of the Legislative Assembly,²⁴⁴ must advise the ACT Treasurer of the appropriation that the Speaker considers should be made for the Office of the Legislative Assembly for the financial year. The Speaker must also give the Treasurer a draft budget for the Office of the Legislative Assembly for the financial year. By section 20AA of the *Financial Management Act 1996* (ACT), if the Treasurer presents an appropriation bill for the Office of the Legislative Assembly for the financial year and the proposed appropriation is less than the recommended appropriation, immediately after presenting the bill, the Treasurer must present to the Legislative Assembly a statement of reasons for departing from the recommended appropriation.²⁴⁵
- 4.28** The ACT Legislative Assembly and executive government have also adopted a 'Budget Protocols Agreement for the Office of the Legislative Assembly and Officers of the Legislative Assembly'. Paragraphs 5.1 and 5.4 of the Agreement provide:

The parties [the ACT Legislature and the ACT Executive] commit to advance the 'separation of powers doctrine' as it relates to the mutually independent status of the legislative and executive branches of government in the ACT's form of parliamentary democracy. The parties recognise that each branch has distinct roles and responsibilities that will not be encroached by one another.

...

The parties acknowledge that, while the executive government is entitled to frame a budget appropriation bill as it sees fit, the *recommended appropriation* for the Office of the Legislative Assembly and/or Officers of the Legislative Assembly will, as a matter of fundamental principle, be regarded as a statement of the Legislature's resource requirements and priorities. The Office of the Legislative Assembly and Officers of the Legislative Assembly will be guided by the budget process, particularly when it relates to acquiring additional funds.

The UK House of Commons

- 4.29** The *House of Commons (Administration) Act 1978* (UK) establishes a House of Commons Commission which comprises the Speaker of the UK House of Commons, six other members, two officials and two independent members. Each financial year, the Commission presents to the House for its approval the 'Estimate for House of Commons: Administration', recommending the amount to be incorporated in the annual appropriation bill for the administration and management of the House of Commons, without further involvement by

²⁴⁴ Currently the Standing Committee on Administration and Procedure.

²⁴⁵ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), p 28. See also Submission 3, Office of the Legislative Assembly for the Australian Capital Territory, p 3.

the UK Treasury or government. This arrangement provides the UK House of Commons with almost complete financial autonomy.²⁴⁶

The Canadian House of Commons

- 4.30** The *Parliament of Canada Act 1985* establishes the Canadian House of Commons Board of Internal Economy, which comprises the Speaker, two members of the Privy Council (appointed to the Board by the Government), the Leader of the Opposition or his or her representative, and additional members appointed in numbers so that there are an equal number of government and opposition representatives on the Board (apart from the Speaker). The Clerk of the House of Commons, who reports to the Speaker, serves as Secretary to the Board. Section 52.4 of the *Parliament of Canada Act 1985* further provides:

Estimate to be prepared

52.4 (1) Prior to each fiscal year the Board shall cause to be prepared an estimate of the sums that will be required to be provided by Parliament for the payment of the charges and expenses of the House of Commons and of the members thereof during the fiscal year.

Estimate to be included in government estimates and tabled

(2) The estimate referred to in subsection (1) shall be transmitted by the Speaker to the President of the Treasury Board who shall lay it before the House of Commons with the estimates of the government for the fiscal year.

- 4.31** As with the arrangement for the UK House of Commons, this arrangement provides almost complete financial autonomy to the Canadian House of Commons.

The Ontario Legislative Assembly

- 4.32** The Ontario Legislative Assembly has a Board of Internal Economy, comprising the Speaker, a minister, a representative from each recognised party in the House and government representatives. Sections 79 and 81 of the *Legislative Assembly Act 1990* (Ontario) in turn provide:

Estimates, submission to Board,

79 (1) The Speaker shall present the estimates of the sums of money that will be required to be provided by the Legislature for the purposes of this Act to the Board of Internal Economy who shall review such estimates and make such alterations as it considers proper, and shall thereafter concur in such estimates. R.S.O. 1990, c. L.10, s. 79 (1).

laid before Assembly

(2) The Speaker shall cause the estimates to be laid before the Assembly.

...

²⁴⁶ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), pp 20-21.

Money paid into Fund

81 The money required from time to time for the purposes of this Act shall be paid out of money appropriated by the Assembly for the purposes of this Act and shall be paid into the Legislative Assembly Fund by the Minister of Finance upon the requisition, from time to time, of the Speaker.²⁴⁷

4.33 This arrangement is similar to that in the Canadian House of Commons in giving almost complete financial autonomy to the Ontario Legislative Assembly.

A new funding model for the Parliament

4.34 The submission made on behalf of the Parliament by the Clerk and the Chief Executive recommended adoption of the following criteria for determining how the Parliament should be funded, drawing on the models from other Westminster parliaments cited above:

1. Establishment of an agreed institutional mechanism to ensure a greater level of independence of the Parliament in determining the quantum of funding to be included in the annual Appropriation (Parliament) Bill.
2. The quantum of funding for the Parliament in each year's Appropriation (Parliament) Bill to be set in advance of the Government's budget setting process for executive government agencies, so that the Treasury and ERC know the remaining funding envelope available for determination by the executive government.
3. Treasury to have the capacity to provide input on the proposed funding of the Parliament as part of the institutional mechanism established in point 1, for example in relation to prevailing economic and fiscal conditions that must be taken into account in determining the quantum of funding. It should be presumed that any such advice will be provided openly and transparently.
4. The Parliament to be exempt from the Government's efficiency dividend, or alternatively the amounts saved through the efficiency dividend to be retained by the Parliament for redeployment to parliamentary priorities, rather than being allocated to Government priorities.
5. The Department of the Legislative Council and the Department of Parliamentary Services to be held to account for their financial management and performance and to be subject to a rigorous and transparent budget process by the institutional mechanism established in point 1.
6. The Parliament not to be part of any government 'cluster' or 'cluster arrangements'.²⁴⁸

4.35 The submission noted that a parliamentary corporate body may be a way to implement an independent and robust mechanism for establishing the Parliament's budget. Such a model was

²⁴⁷ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), pp 22-23. See also Evidence, Mr Mark Webb, 12 December 2019, p 49.

²⁴⁸ Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), pp 14-15. See also Evidence, Mr David Blunt, 12 December 2019, pp 46-47.

recommended in a 1992 Government discussion paper, *Managing the Parliament*, which arose from the Charter of Reform, cited earlier. In the event, the proposal was not progressed, due to ongoing concerns about various issues, including the impact of the proposal on the independence of the Legislative Council and the Presiding Officers.²⁴⁹

4.36 The submission also proposed that certain steps could be taken immediately to enhance the process for determining the quantum for funding for the Parliament, provided that such steps could be extended to the Parliament as a whole and not only to the Department of the Legislative Council and the Department of Parliamentary Services. In relation to the Legislative Council and the Department of Parliamentary Services, the submission proposed:

1. The establishment of a committee of the Legislative Council to review the Department of the Legislative Council's annual budget submission. Alternatively, the function could be undertaken by an existing committee of the Legislative Council, such as the Public Accountability Committee or Portfolio Committee No. 1. An example is the Senate Appropriation, Staffing and Security Committee, cited earlier.
2. The establishment of a joint committee of both Houses to review the annual budget submission of the Department of Parliamentary Services.
3. The establishment of a 'Budget Protocol' with the executive government setting out the annual budget process, similar to that in place in the ACT.

4.37 Mr Blunt further commented in evidence on how the proposals reflect the mechanisms adopted in other jurisdictions:

We believe that they are measured proposals. The recommended mechanisms already exist in other parliaments within Australia. For instance, the Australian Senate has had an appropriations and staffing committee review and report upon the budget needs of the Department of the Senate since 1982. The House of Representatives has had a similar committee since 2010. It is my understanding from consultations with senior officers in the Senate that whilst this mechanism is certainly not a fully independent model for the establishment of the Australian Parliament's budget—as we see, for instance, in Canadian jurisdictions—nevertheless that committee has played a useful role.

Similarly, in terms of recommendation 3 for a budget protocol, the Australian Capital Territory Legislative Assembly has had such a budget protocol with the Australian Capital Territory Government since 2014. I am informed that discussions are ongoing and it could be expected in the near future that budget protocol will cover not only the Office of the Legislative Assembly, but also the Auditor-General; the Electoral Commission; the integrity commission, which is their version of ICAC; and the ombudsman.²⁵⁰

4.38 Mr Blunt subsequently indicated that implementation of recommendation 1 is a matter for the Legislative Council. Implementation of recommendation 2 would require the involvement of

²⁴⁹ For further information, see Submission 55, Parliament of New South Wales (Department of the Legislative Council and Department of Parliamentary Services), pp 23-24.

²⁵⁰ Evidence, Mr David Blunt, 12 December 2019, pp 47-48.

the Legislative Assembly, and implementation of recommendation 3 the involvement of the executive government.²⁵¹

- 4.39** The committee also notes the submission made on behalf of the NSW Government in which it is stated that the 'Legislative Assembly must remain publicly and electorally accountable for the financial management of the State'. The submission continued:

Although this principle is usually raised in the context of the powers of the Legislative Council with respect to Money Bills, it is also relevant when considering funding models that would directly or indirectly limit the financial prerogative of the Legislative Assembly.²⁵²

- 4.40** In response to this submission, Mr Blunt made the following observation in evidence:

... there seems to be a suggestion that what is at stake here in relation to the budget-setting mechanism for the independent oversight agencies and, by implication, for the Parliament is the financial prerogatives of the Legislative Assembly. All I would say in that regard is that enhanced opportunities for parliamentary scrutiny of financial proposals, which could well be enhanced opportunities for scrutiny by both Houses of relevant budget proposals, surely enhances the parliamentary institution as a whole and enhances responsible Government, which is what we are all here for.²⁵³

- 4.41** Finally, the committee also notes the submission of the Hon Walt Secord that the Parliamentary Budget Office should be funded on a permanent on-going basis.²⁵⁴

Committee comment

- 4.42** In addressing the issues raised in this chapter, the committee starts from the position that the Parliament is a separate and sovereign arm of the State, independent of the executive government and the judiciary. The relationship between the Parliament and the executive government is defined according to the Westminster system and the system of responsible government, as judicially recognised on numerous occasions. The committee fully endorses principle 1 of the *Latimer House Principles* as applicable to the role of the Parliament within the constitutional settlement in New South Wales.

- 4.43** From this basis, the committee accepts that it is not appropriate for the Parliament to be funded as if it is simply an executive government department or agency under the Government's outcome budgeting framework. The priorities of the Parliament are not those of the Government of the day. Rather they should be determined by the Parliament and its members following consultation through an appropriate mechanism. This was recognised by the Greiner Government in the 1991 Charter of Reform between Premier Greiner and three non-aligned independents in the Legislative Assembly. The Charter stated:

²⁵¹ Evidence, Mr David Blunt, 12 December 2019, p 48.

²⁵² Submission 56, DPC and NSW Treasury, p 7.

²⁵³ Evidence, Mr David Blunt, 12 December 2019, p 48.

²⁵⁴ Submission 7, the Hon Walt Secord.

The Government does not believe that the Executive Government should seek to set expenditure priorities for the Parliament and this view is shared by the Independent Members.²⁵⁵

- 4.44** The 1991 Charter of Reform was the impetus for the introduction of a separate Appropriation (Parliament) Bill in New South Wales, in recognition of the separation of powers between the Parliament and the executive government. This was a positive but largely symbolic reform. Unfortunately, since then, further reform in this area has stalled. The 1992 proposal for a parliamentary corporate body was not progressed, although possibly for good reason. As a result, the funding of the Parliament has remained entirely at the discretion of the executive government, subject to representations by the Presiding Officers.
- 4.45** Possibly as a result of this, the evidence before the committee presented during this inquiry is that the recurrent budget of the Parliament is under significant pressure and has been for some time. Partly this is due to the imposition of efficiency dividends over many years, but it is also due to factors outside of the control of the Parliament, such as determinations of members' entitlements by the Parliamentary Remuneration Tribunal and decisions in relation to the necessary security arrangements at the Parliament. These costs which Parliament are in some cases legally required to meet have not been fully funded by Treasury.
- 4.46** The evidence before the committee also suggests that there is now a need for significant capital investment in the Parliament to catch-up on long-term under-investment. Parliament House itself is of exceptional social and historical significance to the people of New South Wales as the seat of the State's legislature since 1829. As such, it needs significant investment just to preserve it, much more than a comparable modern building. However, it must also be a modern Parliament which supports its members in the performance of their constitutional role as representative of the people and guardians of the system of responsible government and ultimately parliamentary democracy in New South Wales. Members cannot perform their roles effectively if the Parliament is chronically underfunded. The committee notes for example evidence given separately by the President before this year's estimates hearings concerning the piecemeal funding of information technology and broadcasting infrastructure at Parliament over many years.²⁵⁶
- 4.47** To address these issues, the committee agrees that an institutional mechanism must be established that ensures a greater level of independence of the Parliament in determining the quantum of funding to be included in the annual Appropriation (Parliament) Bill. A committee of the Council or a joint committee of the Parliament should play a role in consulting with members in relation to the Parliament's funding priorities and direction. Such a committee could, for example, consider further the issue of the operation of the Parliamentary Budget Office, raised during this inquiry. At the same time, such a mechanism must include arrangements which ensure that due regard is given to the State's financial position. Parliament must operate within the envelope of funding available in the Consolidated Revenue Account.

²⁵⁵ 'Memorandum of Understanding between the Hon Nick Greiner MP, Premier, For and on behalf of the Liberal/National Party Government and Mr John Hatton MP, Ms Clover Moore MP, and Dr Peter Macdonald MP', 1991, p 6.

²⁵⁶ Evidence, the Hon John Ajaka, Portfolio Committee No 1, Inquiry into the Budget Estimates 2019-2020, 10 September 2019, pp 45, 65.

4.48 The committee notes the range of different funding models for Westminster-style parliaments around the world:

- At one end of the spectrum is the Parliament of New South Wales, which has virtually no control or say in the development of its budget.
- Further along the spectrum is the Australian Senate, the funding of which remains at the discretion of the Commonwealth Treasurer, but following representations from the President and the Senate Appropriation, Staffing and Security Committee on which key leaders of the Senate sit.
- Further again along the spectrum is the ACT Legislative Assembly, where the discretion remains with the Treasurer to set the funding of the Parliament upon receipt of a funding request from the Speaker, following consultation with the relevant committee. However, this discretion is subject to explanation by the Treasurer if the funding sought by the Parliament is not accepted.
- At the other end of the spectrum are the UK House of Commons, Canadian House of Commons and Ontario Legislative Assembly which have almost complete financial autonomy in their funding models.

4.49 The committee believes that the model adopted in the UK is the appropriate model for the New South Wales Parliament and the executive government to adopt. It strikes the appropriate balance between providing the Parliament with a degree of autonomy in the setting of its budget informed by the Parliament's own priorities, while still allowing appropriate regard to be had to the financial position of the State. One of the models operating in Canada would also achieve the same outcome and be as suitable for the Parliament of New South Wales.

Recommendation 5

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

4.50 If the NSW Government does not accept the above recommendation, or until it does, the committee is of the view that the Parliament itself should begin to make changes in how its funding is determined.

4.51 As a first step, the committee agrees with the proposal of the Clerk of the Parliaments that the Legislative Council establish a committee to review the Department of the Legislative Council's annual budget submission and give directions as to the funding priorities of the Legislative Council, or alternatively that the Council designate one of its existing committees for this purpose, similar to the arrangement in the Australian Senate.

- 4.52** The committee therefore recommends that this committee, the Public Accountability Committee, be designated by the Legislative Council as the committee responsible for reviewing the annual budget submissions of the Legislative Council and the Department of Parliamentary Services, as well as any requests for supplementary funding. This review process should be transparent, including seeking submissions and holding public hearings on both departments' budget submissions, culminating in a report to the House, similar to arrangements in the Senate.
-

Recommendation 6

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

Recommendation 7

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

- 4.53** The committee acknowledges the significant pressure on Parliament's budget due to the imposition of budget savings or efficiency dividends over many years. The committee is strongly of the view that both departments should be exempt from such measures in future.
- 4.54** Subsequently, the committee believes that the budget process for the Parliament should be the subject of further consultation by the President with the Speaker and the Premier. Thereafter, the committee believes that the Legislative Council should seek the concurrence of the Legislative Assembly in the appointment either of a joint committee or alternatively of two separate committees of the two Houses meeting together for the further consideration of an appropriate funding model for the Parliament of New South Wales as a whole, based on one of the models in place in either the UK or Canada.
-

Recommendation 8

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

Chapter 5 Workers Compensation Independent Review Office

This chapter addresses issues raised in a submission from the Workers Compensation Independent Review Officer concerning the impact of Government budgetary and administrative requirements on the Workers Compensation Independent Review Office (WIRO).

Overview of WIRO

5.1 The office of the Workers Compensation Independent Review Officer was established in 2012 as a part of major government reforms to the workers compensation system.²⁵⁷ The functions of the Officer include:

- to deal with complaints about insurers under Part 3 Division 2 of the *Workplace Injury Management and Workers Compensation Act 1998*
- to inquire into and report to the Minister on such matters arising in connection with the operation of the Workers Compensation Acts as the Officer considers appropriate or as may be referred to the Officer by the Minister
- to manage the Independent Legal Assistance and Review Service which provides funding to enable workers to obtain legal advice in relation the workers compensation legislation and representation where necessary to pursue a claim or dispute with the insurer.²⁵⁸

5.2 The Workers Compensation Independent Review Officer is appointed by the Governor²⁵⁹ and is not subject to direction from the minister.²⁶⁰ The Officer is supported in the performance of his or her functions by the staff of WIRO, who are employed in the Public Service by the Department of Customer Service.²⁶¹

The impact of the budget process on WIRO's independence

5.3 In his submission to this inquiry the former Workers Compensation Independent Review Officer, Mr Kim Garling, stated that WIRO requires independence when exercising its functions and in particular when making reports concerning the manner in which the Government discharges its obligations to injured workers and other stakeholders²⁶² Mr Garling also submitted that there is a link between WIRO's independence and public trust in the workers compensation system.²⁶³

²⁵⁷ Submission 51, Mr Kim Garling, Workers Compensation Independent Review Officer, p 2.

²⁵⁸ Submission 51, Mr Garling, p 3.

²⁵⁹ Submission 51, Mr Garling, p 6.

²⁶⁰ Submission 51, Mr Garling, p 4.

²⁶¹ Submission 51, Mr Garling, p 6

²⁶² Submission 51, Mr Garling, p 1.

²⁶³ Submission 51, Mr Garling, p 3.

- 5.4 However, Mr Garling submitted that WIRO's independence is undermined by the extent of the control which is exercised over WIRO's operations by the insurance regulator of the workers compensation scheme and the Department of Customer Services. Mr Garling's concerns in relation to these issues are summarised below.

Control by the regulator

- 5.5 WIRO is funded from the Workers Compensation Operational Fund.²⁶⁴ The Fund is established and maintained by the State Insurance Regulatory Authority (SIRA),²⁶⁵ a government agency constituted under the *State Insurance and Care Governance Act 2015*.²⁶⁶ When established in 2015 SIRA took over aspects of the responsibilities formerly performed by WorkCover.²⁶⁷
- 5.6 Mr Garling submitted that control of the Fund from which WIRO's expenditure is drawn enabled WorkCover and now SIRA to exercise control over WIRO's staffing and expenditure:

From the inception of WIRO in 2012 WorkCover (now SIRA) controlled the staffing and general expenditure of WIRO because it controlled the Workers Compensation Operational Fund. Subsequently the Workers Compensation Operational Fund was transferred to the control of SIRA through the implementation of the State Insurance and Care Governance Act 2015.²⁶⁸

- 5.7 As an example of expenditure control Mr Garling submitted that a proposed audit of expenditure outflow from the Fund for WIRO which is to be overseen by the SIRA Risk and Audit Committee 'imposes a fetter on [WIRO's] statutory independence and a level of control not contemplated by the 1998 Act'.²⁶⁹
- 5.8 Mr Garling also argued that given the degree of SIRA's control over WIRO's expenditure there is the potential for a conflict to arise in the event that WIRO is required to inquire into the functioning of SIRA. In that regard Mr Garling stated:

Pursuant to its statutory inquiry function it is conceivable that the WIRO may consider it necessary, or be directed by the Minister, to inquire into the functioning of SIRA in connection with the operation of the legislation. There may be perceptions of conflict and questions as to transparency and accountability where SIRA controls WIRO's funding.²⁷⁰

²⁶⁴ Submission 51, Mr Garling, pp 1-5.

²⁶⁵ *Workplace Injury Management and Workers Compensation Act 1998*, sections 34 and 38.

²⁶⁶ *State Insurance and Care Governance Act 2015*, section 17.

²⁶⁷ SIRA, *State Insurance Regulatory Authority Annual Report 2015/16*, p 5.

²⁶⁸ Submission 51, Mr Garling, p 5.

²⁶⁹ Submission 51, Mr Garling, p 6.

²⁷⁰ Submission 51, Mr Garling, p 6.

Control by the Department

- 5.9** Mr Garling advised that WIRO's budget process is managed by the Department of Customer Service²⁷¹ and that he does not exercise any control or approval functions over expenditure, procurement, recruitment, contracting or any other financial or fiscal function.²⁷²
- 5.10** Mr Garling also detailed the effects on WIRO's work of various administrative requirements imposed by the Department.²⁷³ For example, Mr Garling stated that while WIRO requires specialist skilled staff who cannot easily be recruited or replaced the Department's contracts of employment refer to the Department's ability to apply its staffing policies and to move the employee to any other function of the Department.
- 5.11** Mr Garling also argued that WIRO's independence has been hampered by the imposition of departmental efficiencies such as reductions in Senior Executives, high graded employees and contractors, and requirements to provide a business case for any recruitment process.²⁷⁴

Cessation of funding for inquiries

- 5.12** Mr Garling advised that WIRO has not embarked on any further inquiries pursuant to its statutory inquiry function following the cessation of funding for two important inquiries: the Parkes Project, which concerned issues relating to the regulation of the workers compensation scheme; and the Effeney Hearing Loss Project, which considered innovations in the method of measuring and compensating workers with industrial deafness. Mr Garling submitted that the cessation of funding for these two inquiries demonstrates the impact of WIRO's lack of financial independence.²⁷⁵

Oversight of the workers compensation scheme

- 5.13** Mr Garling noted that potential impediments to WIRO's independence have been considered in reviews of the workers compensation scheme by the parliamentary oversight committee for the scheme, the Legislative Council Standing Committee on Law and Justice.²⁷⁶
- 5.14** In 2014 the oversight committee recommended that WIRO should be designated as a separate public sector agency under the *Government Sector Employment Act 2013*.²⁷⁷ However, Mr Garling's submission made it clear that this has not occurred as staff are still employed by the Department of Customer Service.

²⁷¹ Submission 51, Mr Garling, p 6.

²⁷² Submission 51, Mr Garling, p 4.

²⁷³ Submission 51, Mr Garling, pp 6-7.

²⁷⁴ Submission 51, Mr Garling, p 7.

²⁷⁵ Submission 51, Mr Garling, pp 7-8.

²⁷⁶ Submission 51, Mr Garling, pp 10-11.

²⁷⁷ Submission 51, Mr Garling, p 11; Legislative Council Standing Committee on Law and Justice, *Review of the exercise of the function of the WorkCover Authority*, Report 54, September 2014, Recommendation 4. The committee also stated that the WIRO should receive funding for its operations accordingly. p 38, paragraph 3.82

- 5.15** In 2017 the committee recommended that the Government consider the need for WIRO to complete the Parkes review.²⁷⁸ However, Mr Garling advised that this recommendation has not been implemented.²⁷⁹
- 5.16** Mr Garling also noted that in 2019 the committee recommended that WIRO's services be expanded to encompass the CTP (Compulsory Third Party) scheme.²⁸⁰ Mr Garling stated that the issues raised in his submission to this inquiry will become more pronounced if WIRO is given an expanded role in the motor accident scheme.²⁸¹

Committee comment

- 5.17** The committee is concerned by suggestions that aspects of the budget process have the potential to undermine WIRO's independence and capacity to pursue its statutory role and that recommendations which have been made to address this issue have not been implemented. The committee notes, however, that workers compensation is a complex area and that the committee has not heard from other participants in the scheme. The committee also notes that the Legislative Council has designated the Standing Committee on Law and Justice as the oversight body for that scheme.
- 5.18** The committee notes the previous clear recommendation of the Standing Committee on Law and Justice that WIRO be established as a separate agency and acknowledges the careful consideration that led to that recommendation. If implemented it would go a significant way to addressing the concerns raised.
- 5.19** The committee has focussed its attention on the oversight bodies listed in the terms of reference for this inquiry and believes that the matters which have been raised in WIRO's submission should be considered by the oversight committee in the context of its next review of the scheme. The committee has therefore resolved to refer WIRO's submission to the Standing Committee on Law and Justice for consideration in that review. However, the committee has dedicated this final chapter to documenting these concerns to demonstrate how the Government's budget process has the potential to constrain the work of a much broader range of independent agencies and officers than those named in its terms of reference.

²⁷⁸ Submission 51, Mr Garling, p 11; Legislative Council Standing Committee on Law and Justice, *First review of the workers compensation scheme*, Report 60, March 2017, p 34, Recommendation 4.

²⁷⁹ Submission 51, Mr Garling, p 11.

²⁸⁰ Submission 51, Mr Garling, p 11; Legislative Council Standing Committee on Law and Justice, *2018 review of the Workers Compensation scheme*, Report 67, February 2019, p 20.

²⁸¹ Submission 51, Mr Garling, p 11.

Appendix 1 Submissions

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

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

Appendix 2 Witnesses at hearings

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

Date	Name	Position and Organisation
	Mr Simon Thompson	A/Manager, Finance and Chief Financial Officer, NSW Electoral Commission.
	Mr Michael Barnes	NSW Ombudsman
	Mr Paul Miller	Deputy Ombudsman (Reviews, Investigations and Community Services), NSW Ombudsman
	Ms Ainslee Scott	Director (Corporate), NSW Ombudsman
	Mr David Blunt	Clerk of the Legislative Council and Clerk of the Parliaments, Parliament of New South Wales
	Mr Mark Webb	Chief Executive, Department of Parliamentary Services, Parliament of New South Wales
	Mr John Gregor	Director, Financial Services, Department of Parliamentary Services, Parliament of New South Wales
Friday 13 December 2019 Macquarie Room, Parliament House, Sydney	Mr Tim Reardon	Secretary, Department of Premier and Cabinet
	Mr Mike Pratt AM	Secretary, NSW Treasury

Appendix 3 Minutes

Minutes no. 7

Monday 14 October 2019

Public Accountability Committee

Room 1136, Parliament House, Sydney, 2.09 pm

1. Members present

Mr Shoebridge, *Chair*

Mr Banasiak (*substituting for Mr Borsak*)

Mr Farlow

Mr Graham

Mrs Houssos

Mr Khan

Mr Mason-Cox

2. Previous minutes

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

3. Correspondence

The committee noted the following items of correspondence:

Received:

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

Sent:

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

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

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

4. Consideration of terms of reference

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

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

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

Resolved, on the motion of Mr Graham:

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

5. Conduct of the inquiry into the budget process for independent oversight bodies and the Parliament of New South Wales**5.1 Proposed timeline**

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

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

5.2 Stakeholder list

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

5.3 Advertising

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

6. Inquiry into the regulation of building standards, building quality and building disputes**6.1 Public submissions**

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

6.2 Partially confidential submissions

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

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

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

6.3 Confidential submission

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

6.4 Answers to questions on notice and supplementary questions

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

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

6.5 Transcript clarification

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

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

6.6 Interim report

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

Mrs Houssos moved: That the:

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

Question put.

The committee divided.

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

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

Question resolved in the affirmative.

6.7 Hearing on the draft bill - Stakeholder list

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

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

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

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

6.8 Hearing on the draft bill – questions on notice

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

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

6.9 Further inquiry activity

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

- public hearing on flammable cladding – one day hearing in the week of 9 December 2019

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

6.10 Final report tabling

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

6.11 Request for document

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

Mr Graham moved:

That the committee notes that:

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

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

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

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

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

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

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

Question put.

The committee divided.

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

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

Question resolved in the affirmative.

7. **Adjournment**

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

Sarah Dunn

Clerk to the Committee

Minutes no. 10

Thursday 21 November 2019

Public Accountability Committee

Members' Lounge, Parliament House, Sydney at 1.33 pm

1. **Members present**

Mr Shoebridge, *Chair*

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

Mr Farlow

Mr Graham

Mrs Houssos

Mr Khan

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

2. **Draft minutes**

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

3. Correspondence

The committee noted the following items of correspondence:

Received:

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

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

4.1 Hearing on Flammable Cladding – Witness list

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

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

4.2 Newcastle hearing

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

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

5.1 Correspondence from the Auditor-General

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

5.2 December public hearings

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

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

6. Adjournment

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

Sarah Dunn
Committee Clerk

Minutes no. 11

Wednesday, 11 December 2019

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 9.18 am

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

Mr Graham

Mrs Houssos

Mr Khan

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

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

4. Correspondence

The committee noted the following items of correspondence:

Received

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

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

Sent

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

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

5.1 Partially confidential submission

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

5.2 Public submission

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

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

5.3 Requests to appear as a witness

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

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

5.4 Due dates for answers to questions on notice

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

5.5 Allocation of questions

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

5.6 Playing video footage during the hearing

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

5.7 Participating members

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

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

6.1 NSW Government submission

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

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

7.1 *In camera* hearing

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

The committee proceeded to take *in camera* evidence.

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

The following witness was sworn and examined:

- Witness A.

Witness A tabled a number of documents.

The evidence concluded and the witness withdrew.

7.2 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

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

The following witnesses were sworn and examined:

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

Mr Rumore tabled the following documents:

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

Mr Mawjee tabled the following document:

- Document containing key messages to convey to the committee.

Mr Mason-Cox joined the meeting at 10.40 am.

The evidence concluded and the witnesses withdrew.

7.3 Election of Deputy Chair

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

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

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

7.4 Request to take photos

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

7.5 Public hearing

The public hearing resumed.

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

- Cr Linda Scott, President, Local Government NSW.

The witness was examined by the committee.

Cr Scott tabled the following document:

- Motions from the Local Government NSW 2019 Annual Conference.

The evidence concluded and the witness withdrew.

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

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

The witness was examined by the committee.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

The media and the public withdrew for the lunch break.

Mr Farlow arrived at 1.30 pm.

7.6 Newcastle hearing

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

The committee noted the proposed itinerary for the Newcastle visit:

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

7.7 Newcastle hearing – Witness list

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

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

7.8 *In camera* hearing – Witness list

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

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

7.9 Reporting timeline

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

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

7.10 Partially confidential submission 159

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

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

7.11 Public hearing

The public hearing resumed.

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

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

The following witnesses were sworn:

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

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

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

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

The following witnesses were sworn:

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

The witnesses were examined by the committee.

The evidence concluded and the witnesses withdrew.

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

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

The following witness was sworn:

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

The witnesses were examined by the committee.

Mr Davies tabled the following document:

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

The evidence concluded and the witnesses withdrew.

The media and the public withdrew.

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

8.1 NSW Government invitation to attend the hearing

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

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

Question put.

The committee divided.

Ayes: Mr Graham, Mrs Houssos, Mr Shoebridge.

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

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

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

9.1 Public hearing

The public hearing resumed.

The following witnesses were sworn and examined:

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

Mr Whybro tabled the following documents:

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

The evidence concluded and the witnesses withdrew.

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

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

The witnesses were examined by the committee.

Mr Shoebridge departed at 5.18 pm.

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

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.30 pm.

The media and the public withdrew.

9.2 Tendered documents

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

- A number of documents, tabled by Witness A.

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

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

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

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

10. Adjournment

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

Sarah Dunn

Clerk to the Committee

Minutes no. 12

Thursday, 12 December 2019

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 8.57 am

1. Members present

Mr Shoebridge, *Chair*

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

Mr Farlow (from 9.00 am)

Mr Graham

Mr Khan

Mr Mason-Cox (from 9.06 am)

Mr Primrose

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

2. Apologies

Mr Borsak

3. Correspondence

The Committee noted the following items of correspondence:

Received

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

Sent

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

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

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

4.1 Public submissions

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

4.2 Partially confidential submission

Resolved, on the motion of Mr Khan:

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

4.3 Confidential submissions

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

4.4 Return of answers to questions on notice

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

4.5 Report deliberative

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

4.6 Allocation of questions

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

4.7 Election of Deputy Chair

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

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

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

4.8 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

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

The following witnesses were sworn and examined:

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

The Hon Peter Hall QC tabled the following document:

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

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Barnes, NSW Ombudsman
- Mr Paul Miller, Deputy Ombudsman (Reviews, Investigations and Community Services), NSW Ombudsman
- Ms Ainslee Scott, Director (Corporate), NSW Ombudsman.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.30 pm.

The media and the public withdrew.

4.9 Tendered documents

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

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

5. Adjournment

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

Madeleine Foley
Committee Clerk

Minutes no. 13

Friday, 13 December 2019

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 12.45 pm

1. Members present

Mr Shoebridge, *Chair*
Mr Farlow
Mr Graham
Mr Khan
Mr Mason-Cox
Mr Primrose

2. Apologies

Mr Borsak

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

3.1 Public hearing

The committee proceeded to take evidence in public.

Witnesses, the public and the media were admitted.

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

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.00 pm.

The media and the public withdrew.

4. Adjournment

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

Madeleine Foley
Committee Clerk

Draft minutes no. 17

Friday 20 March 2020

Public Accountability Committee

Preston Stanley Room, Parliament House, 10.06 am

1. Members present

Mr Shoebridge, *Chair*
Mr Donnelly (substituting for Mr Graham, until 10.30 am)
Mr Franklin (substituting for Mr Mason-Cox)
Mr Khan
Mr Primrose
Mr Searle (substituting for Mr Graham, from 10.30 am)
Mrs Ward

2. Apologies

Mr Borsak

3. Previous minutes

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

4. Correspondence

The committee noted the following items of correspondence:

Received

- 2 December 2019 – Letter from Ms Tracy Dunford, Special Counsel and Ms Colleen Palmkvist, Partner, Lander & Rogers Lawyers, to Chair, providing comment on the *Design and Building Practitioners Bill 2019* in light of proceedings of owners of a residential apartment block in Lidcombe with damage

- 24 December 2019 – Email from Mr Philip Reed, CEO, NSW Independent Commission against Corruption, to the secretariat, forwarding copy of NSW Treasury advice to agencies about the 2020-21 budget process provided to agencies dated 16 December 2019
- 29 January 2020 – Letter from Mr David Blunt, Clerk of the Parliaments, to the committee, forwarding the final draft of Chapter 17 Financial Legislation from the forthcoming edition of *New South Wales Legislative Council Practice*
- 21 February 2020 – Email from Ms Maria Barreto-Tilman, Group Marketing Manager, Dincel Construction System, to the secretariat, providing links to videos of various building product fire tests
- 2 March 2020 – Email from Dr Laura Crommelin, Research Lecturer, City Futures Research Centre, UNSW, to secretariat, regarding the informal meeting held with some committee members and attaching a draft conference paper on building defects
- 4 March 2020 – Email from Dr Laura Crommelin, Research Lecturer, City Futures Research Centre, UNSW, to secretariat, following up on a query and attaching a link to an article in The Conversation on building defects
- 6 March 2020 – Email from Mr Eric Aubert, Media Manager – Policy and Regulation, Department of Customer Service, to secretariat, requesting a copy of a document tendered at the building standards hearing on 24 February 2020.

Sent:

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

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

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

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

5.1 Supplementary submission 127a

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

5.2 Report deliberative date

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

5.3 Minister's request relating to the Government response

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

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

- inform the Minister of the likely tabling date for the final report.

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

6.1 Answers to questions on notice and supplementary questions

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

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

6.2 Correspondence to Auditor-General

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

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

6.3 Consideration of Chair's draft report

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

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

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

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

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

Question put.

The committee divided.

Ayes: Mr Franklin, Mr Khan, Mrs Ward

Noes: Mr Primrose, Mr Searle, Mr Shoebridge

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

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

- omitting 'The committee therefore recommends that a joint committee with a non-government majority be established to review the annual budget submissions of the ICAC, the LECC, the Ombudsman and the Electoral Commission, and any requests for supplementary funding.' and inserting instead 'The committee therefore recommends that each relevant parliamentary oversight committee established for each body should be allowed to review the budget submission from each agency'
- omitting 'The joint' before 'committee would table a report in both Houses' and inserting instead 'Each Parliamentary oversight'.

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

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

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

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

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

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

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

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

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

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

- Paragraph 4.49
- Paragraph 4.50
- Paragraph 4.51
- Paragraph 4.52

- Recommendation 5
- Recommendation 6
- Paragraph 4.53
- Recommendation 7
- Paragraph 4.54
- Recommendation 8.

Question put.

The committee divided.

Ayes: Mr Franklin, Mr Khan, Mrs Ward

Noes: Mr Primrose, Mr Searle, Mr Shoebridge

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

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

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

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

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

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

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

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

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

Resolved, on the motion of Mr Searle: That:

- (a) The draft report as amended be the report of the committee and that the committee present the report to the House;
- (b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry be tabled in the House with the report;
- (c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- (d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

- (e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- (f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- (g) Dissenting statements be provided to the secretariat by 3 pm Friday 20 March 2020;
- (h) That the report be tabled on Tuesday 24 March 2020;
- (i) That the Chair inform the committee if he intends to hold a press conference.

7. Adjournment

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

Madeleine Foley
Committee Clerk

