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Committee on the Independent Commission Against Corruption

REPORT 1/55 – JUNE 2012

REVIEW OF THE 2009–2010 AND 2010–2011 ANNUAL REPORTS OF THE
INDEPENDENT COMMISSION AGAINST CORRUPTION



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

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Membership

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Functions of the Committee

INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988

Section 64 Functions

- (1) The functions of the Joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions,
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
 - (c) to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
 - (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector,
 - (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee:
- (a) to investigate a matter relating to particular conduct, or
 - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or
 - (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

Chair's Foreword

This is the Committee's first annual report review with the ICAC for this Parliament. As part of the review of the ICAC's 2009–10 and 2010–11 Annual Reports, we examined: operational matters, the ICAC's development of policies and procedures for referrals to agencies under sections 53 and 54 of the Independent Commission Against Corruption Act 1988, the ICAC's corruption investigation practices, and corruption prevention projects and investigations targeting high risk areas.

With regard to operational matters the Committee was pleased to hear that the approval of additional funding has assisted the ICAC to increase its efficiency and effectiveness in the performance of its functions, through recruiting additional staff. The Committee has noted that the ICAC may require additional resourcing for its planned Information Communication Technology (ICT) upgrade, and an upgrade of telephone interception infrastructure.

The Committee also reviewed the ICAC's development of policies and procedures for referrals to agencies under sections 53 and 54 of the ICAC Act. The ICAC has made ongoing efforts to implement comprehensive processes, procedures and communication tools for effective oversight of section 53/54 referrals to agencies.

The cooperation of the ICAC and the Director of Public Prosecutions (DPP) has seen improvements to the timeliness of prosecutions arising out of ICAC investigations. The ICAC's and the DPP's ongoing efforts to improve cooperation is vital in preventing delays, which have been of concern in the past. In this context, the Committee also noted that section 14 of the ICAC Act was amended in September 2011 to clarify the ICAC's powers to gather admissible evidence for the prosecution of a person for a criminal offence, after the discontinuance or completion of its investigations.

The ICAC's Corruption Prevention Division has targeted the high risk areas of lobbying, planning and procurement, resulting in three major corruption prevention projects: investigation into the regulation of lobbying in NSW; anti-corruption safeguards and the NSW planning system; and addressing corruption risks in NSW government procurement.

The Committee has noted developments in relation to these high risk areas, such as the recent introduction of legislative changes, which address the ICAC's concerns in terms of corruption in the NSW planning system. The Committee also notes that the ICAC is currently conducting an investigation into local government procurement affecting 100 local councils. The Committee will examine the results of this investigation once the ICAC has published its investigation report.

The Committee has been greatly assisted in its work by the co-operation and assistance shown by Commissioner Ipp and his staff, both throughout the review and the current Parliament. I thank my fellow Committee members for their work on the Committee, and wish to thank the Committee staff for their work and support.



Mark Speakman SC MP
Chair

Commentary

INTRODUCTION

1. The functions of the Committee on the Independent Commission Against Corruption (the “Committee”) include examining each annual report and other report of the Independent Commission Against Corruption (the the “ICAC”) and reporting to both Houses of Parliament on any matter appearing in, or arising out of, such reports.
2. As part of the current review, the Committee held a public hearing on 17 February 2012 with the ICAC. Prior to the hearing, the ICAC was provided with questions on notice on matters arising out of the ICAC's Annual Reports for 2009–2010 and 2010–2011. The full text of answers to questions on notice and the transcript of evidence from the public hearing are reproduced as Appendices to this report.
3. The Committee's review has focused on the following issues:
 - (1) Operational matters, including the ICAC’s request for additional recurrent funding, the employee vetting process and reporting requirements.
 - (2) The ICAC's development of policies and procedures for referrals to agencies under sections 53 and 54 of the *Independent Commission Against Corruption Act 1988* (the “ICAC Act”).
 - (3) The ICAC's corruption investigation practices, including cooperation between the ICAC and the DPP to enhance prosecution arising out of investigations, a new strategy for the preparation of briefs of evidence for the DPP and legislative changes to section 14 of the ICAC Act.
 - (4) Corruption prevention projects and investigations targeting high risk areas, including the lobbying of public officials, anti-corruption safeguards and the NSW planning system, addressing corruption risks in NSW government procurement, addressing governance structures in local government to prevent corruption and non government organisations (“NGO”) and corruption prevention.

OPERATIONAL MATTERS

ICAC's request for additional recurrent funding

4. During the Committee's review of the ICAC's 2007–2008 Annual Report, the then Commissioner tabled a request for additional recurrent funding. The request stated that the ICAC's Investigation Division required an increase of at least eight full-time equivalent positions to enable it to function adequately and effectively. The ICAC estimated that additional recurrent funding of \$850,000 would be required to enable extra investigators to be recruited.¹ The Committee supported the request and wrote to the then Premier to advise of its support for the requested \$850,000 supplementation to the ICAC's budget.² In answers to questions on notice in 2009, the ICAC advised that its request for additional funding had been granted on a recurrent basis, allowing for the recruitment of additional staff to its Investigation Division.³
5. During the 2008–2009 Annual Report review, the ICAC indicated that notwithstanding the additional funding being granted, funding levels remained inadequate to meet an increase in its workload, which was reflected in a higher number of important matters being investigated and resultant increased duration and complexity; an increased number of public hearings; an increased number of referrals to agencies under ss 53/54; and an increased number of matters not being investigated (due to lack of resources).⁴
6. In October 2010, the Commissioner wrote to the Committee seeking its support for a request, submitted to NSW Treasury, for a \$2.3 million recurrent funding supplementation and \$3.858 million in additional capital funding.⁵ Following the examination of the main points raised in the ICAC's request in the last review, the Committee expressed its support for a funding level that enables the ICAC to effectively investigate, expose and prevent corruption and wrote to the Premier and Treasurer to indicate this.⁶
7. At the public hearing on 17 February 2012 held as part of the Committee's current annual report review, the Commissioner, the Hon David Ipp AO QC, updated the Committee on the status of the ICAC's funding request. He outlined that the ICAC had received approval for a one-off supplement of \$1.2 million for the 2011 financial year, shortly before the 2011 election.⁷

¹ Committee on the ICAC, *Review of the 2007-2008 Annual Report of the Independent Commission Against Corruption*, report 9/54, May 2010, p. 2.

² Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 12/54, November 2010, p. 1.

³ ICAC, *Answers to questions on notice*, question 6, p. 3. in Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 12/54, November 2010.

⁴ Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 12/54, November 2010, p. 2.

⁵ ICAC, *Requests for additional recurrent and capital funding*, 13 October 2010.

⁶ Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 12/54, November 2010, p. 9.

⁷ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 1.

8. The Commissioner then explained that, given the timing of the receipt of the initial additional \$1.2 million in late 2010, it could only be used for part of the year and for contract and not permanent staff. Even so, the Commissioner stressed that the additional funding was of substantial assistance for ICAC to manage the sharp increase in investigatory work the ICAC was undertaking as it allowed the ICAC to:
- (1) employ six additional temporary officers;
 - (2) finance \$500,000 extra legal costs incurred by significant increases in public inquiries and compulsory examinations that occurred in 2010; and
 - (3) designate additional staff to clear a backlog of matters under preliminary investigation, resulting in the decrease of matters subject to preliminary investigation from 138 in 2010 to 66 in 2011.⁸
9. The Commissioner added that the \$1.2 million was also used for other projects, including:
- improvements of payroll and financial systems;
 - improvements of electronic document and records management system;
 - obsolete surveillance equipment; and
 - the implementation of a timekeeper module that records time spent on projects and investigations.⁹
10. The ICAC obtained approval on a recurrent basis for additional annual funding of \$2.2 million, which, as the Commissioner stated, applied from 2011. This enabled the ICAC to increase its staffing by 11 officers and to meet the increased recurring external legal fees caused by the increase in the ICAC's public inquiries.
11. The balance of the funding was used for associated operating expenditure, including:
- (1) upgrading of the ICAC's surveillance equipment base,
 - (2) enhancing information technology capabilities and support, and
 - (3) additional office space for extra staff.¹⁰
12. The Commissioner told the Committee that the funding received had significantly improved the ICAC's situation:
- ... On the last occasion that I addressed this Committee I said that the work of the Commission had increased to the extent that we were not investigating matters to which we would have directed attention had we had greater resources. I am pleased to report today that that situation has changed fundamentally... We have been fortunate in being able to attract skilled, experienced and committed persons who have added to the professionalism and efficacy of the agency. The present position is that we are coping with the material that should be investigated and no matter that should be investigated is being ignored because of lack of resources. The backlog of matters subject to preliminary investigation has been cleared. Full-scale investigations are being treated with the care that they need. Targets are generally being met without the constant need for overtime work. ...The overall satisfactory

⁸ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 1.

⁹ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 1.

¹⁰ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 1.

situation in which the Commission finds itself is basically the result of the additional funding we have received...¹¹

13. During previous annual report reviews, the Committee heard evidence of the ICAC's increased investigative workload and that limited resourcing was impacting on the timely conduct of investigations. The Committee was therefore pleased to hear evidence during the current review that the approval of additional funding, in response to a request from the ICAC, has assisted the ICAC to clear its previously existing backlog, to employ additional staff to prevent further delays in the future and to ensure that the workload for its employees is more sustainable. It has also enabled the ICAC to improve its systems, increasing its efficiency and effectiveness in the performance of its functions.

ICAC's future funding requirements

14. At the public hearing held on 17 February 2012, the Commissioner stated that the ICAC has applied for a special grant for the current financial year in order to be able to perform special and significant investigations that entail a high degree of professional specialisation, requiring some outside assistance. The Commissioner highlighted that if the grant is awarded in the coming year, the ICAC will focus the majority of its resources on those investigations.¹²

15. The Commissioner also pointed out two other resourcing matters. First, the Commissioner outlined that the ICAC's planned Information Communication Technology ("ICT") upgrade may require additional funding. Secondly, the Commissioner indicated that the ICAC's telephone interception infrastructure may also require replacement.

16. As to funding for the ICT upgrade, the Commissioner told the Committee that updated estimated costs of new ICT equipment contained in a detailed design specification are considerably higher than the previous estimates which the ICAC's consultants had nominated in their earlier review. The initial cost estimates had formed the basis of the ICAC's request for capital funding from the Treasury. The Commissioner noted that:

... This increase in the estimated costs has caused the Commission to investigate whether its core ICT strategy can be implemented in a less expensive way. It may be, however, that the Commission will have to seek additional funding to update its ICT infrastructure.¹³

17. The Commissioner also observed that the New South Wales Crime Commission had previously supplied telecommunications interception ("TI") facilities to the ICAC at virtually no cost, but will not be able to do so in the future. As a result, the ICAC has started a review of its TI infrastructure options:

This review indicates that it will cost the ICAC between a few hundred thousand to \$1 million to replace these facilities. The options are still being investigated.¹⁴

¹¹ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, pp. 1-2.

¹² The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 2.

¹³ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 2.

¹⁴ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 2.

18. The Committee notes the ICAC's reliance on up-to-date ICT infrastructure to perform its functions effectively and welcomes the ICAC's efforts to investigate whether its core ICT strategy can be implemented in a less expensive way. However, the Committee notes that the Commissioner indicated that it may be necessary for the ICAC to seek additional funding to cover the cost of upgrades to ICT infrastructure.
19. The Committee also notes that the ICAC is no longer able to use the NSW Crime Commission's TI facilities, which had previously been provided at minimal cost to the ICAC. The Committee highlights the importance of cooperation and resources sharing among law enforcement agencies, where possible, to achieve the best value for money for the people of NSW. The Committee hopes that the review currently underway will identify a cost-effective solution that meets the ICAC's TI requirements.

Employee vetting process

20. In its response to questions on notice in 2012, the ICAC raised the restrictions on using the NSW Police Computerised Operational Policing System ("COPS") database, which holds information on criminal convictions, court appearances, use of aliases and relevant background intelligence.
21. The ICAC has an agreement with the NSW Police Force which allows it to access the COPS database in conducting its investigations.
22. The ICAC stated that the COPS database contains information that would be a useful tool to assess the suitability of applicants for employment by the ICAC:

...Whether an applicant has a criminal history, the nature of any criminal history, and background criminal intelligence are important elements in determining the applicant's suitability for employment by the Commission.¹⁵
23. But the ICAC is currently unable to use the database for vetting prospective employees. This is because the NSW Police Force has obtained legal advice which indicates that using the COPS database for this purpose may be in breach of some of the information protection principles in the *Privacy and Personal Information Protection Act 1998* and has requested that the ICAC not use the database for vetting applicants for employment.¹⁶
24. The ICAC outlined that it understands that the NSW Police Force and other agencies such as the Police Integrity Commission and the NSW Crime Commission are also unable to use the COPS database for this purpose.¹⁷
25. The ICAC argued that its inability to use the COPS database for the purpose of vetting employees poses a significant security risk and is delaying security vetting.¹⁸

¹⁵ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 7, p. 6.

¹⁶ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 7, p. 5.

¹⁷ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 7, p. 5.

¹⁸ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 7, p. 6.

26. Given the importance the ICAC places on its ability to access the COPS database to perform its functions, the ICAC stated that it has written to the Premier to request an amendment to the relevant legislation:
- The Commission has previously written to the Premier about this matter and understands that the Attorney General's Department is currently considering the matter with a view to determining whether any legislative changes should be sought.¹⁹
27. During the public hearing held on 17 February 2012, the Commissioner observed that a number of agencies are in a position similar to the ICAC in their inability to access the COPS database for the purpose of vetting employees.²⁰
28. The Committee recognises the ICAC's need to vet its employees appropriately. The Committee notes that this is particularly important given the nature of the work being undertaken by the ICAC's staff and the significant powers they exercise under the ICAC Act and other Acts. However, the Committee also wishes to note that the ICAC's requirements in this regard must be balanced with the rights of individuals, including those outlined in the Privacy and Personal Information Protection Act.
29. The Committee intends to monitor the outcome of the Attorney General's examination of potential legislative changes in this area.

Reporting requirements

30. At the public hearing held on 17 February 2012, the reporting in the ICAC's Annual Reports of overseas trips paid by hosts or by the ICAC was raised:
- Mr RICHARD AMERY:** To help me understand how the reports are written, in relation to page 131 of the 2010–11 report, which was overseas travel, I notice in 2009–10 you all stayed home. In relation to table 50, overseas travel appendix 7, it talks about Mr Symons went to Japan and it was \$1,381, and then there is three particular trips involving Hong Kong, Thailand and Macau where there is no amount of money in the column. There is obviously an explanation for that; either that, or, I want the name of your travel agent. Why is there nil?
- Mr IPP:** Either they paid themselves or they were paid by the host.
- Mr RICHARD AMERY:** We do not write down if the Hong Kong Independent Commission Against Corruption is the funding source for the trip?
- Mr IPP:** Not in the report. We only write down when we spend our own money. Where it is nil at least all or part of the fares are paid by the host but we do not pay. We do not pay where we say we do not pay, where it is nil.²¹
31. NSW annual reporting legislation requires all statutory bodies and departments to prepare and present to Parliament an annual report containing both financial and non-financial information on their operational activities.²² Schedule 3 to the

¹⁹ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 7, p. 6.

²⁰ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 12.

²¹ ICAC, *Transcript of evidence*, 17 February 2012, p. 6.

²² NSW Treasury: http://www.treasury.nsw.gov.au/Annual_Reporting/Annual_Reports_Legislation

Public Finance and Audit Act 1983 defines the ICAC as a “Department”. The ICAC is therefore subject to the provisions of the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Departments) Regulation 2010*, which apply to “Departments”.

32. Clause 9 of, and schedule 1 to, the Regulation prescribe that the report of operations in departmental annual reports include particulars of:
- 'Overseas visits undertaken by officers and employees with the main purposes highlighted'.
33. Furthermore, section 76 of the ICAC Act states what the ICAC's annual report must also include. Section 76 makes no express reference to reporting of overseas trips.
34. The Committee notes that in its reporting of overseas visits, the ICAC complies with current reporting requirements outlined in the NSW annual reporting legislation, as well as those outlined in the ICAC Act. However, the Committee considers that travel expenses for ICAC officers travelling overseas paid for by other organisations, and any ICAC expenditure on conferences in Australia including any money paid for overseas attendees, should be included in the annual report.

ASSESSING MATTERS: THE ICAC'S POLICIES AND PROCEDURES FOR REFERRALS TO AGENCIES

35. Sections 53 and 54 of the ICAC Act enable the ICAC to refer matters involving suspected corrupt conduct to an agency for investigation and to request the agency to report back to the ICAC. In its last report, the Committee noted that the ICAC has developed a protocol to provide guidance to staff on matters that are appropriate for referral to agencies and the subsequent oversight of referred matters.²³
36. In 2010–2011, the Manager of the ICAC's Assessments Section completed a review of the way referred investigations were being conducted by agencies. This led to a number of new procedures, including:
- (1) a protocol to clarify the types of matters where the ICAC ought to consider a section 53 or section 54 referral and to set out the factors required in analysing an agency's investigation and report;
 - (2) the need to provide training for staff on what constitutes effective investigation oversight; and
 - (3) development of improved communication channels between the ICAC and the agencies conducting referred investigations whereby, in order to monitor progress more actively, the ICAC now requests investigation plans and progress reports on investigations.²⁴

²³ Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 9/54, May 2010, p. 9.

²⁴ ICAC, *Annual Report 2010–2011*, October 2011, p. 17.

37. In its response to questions on notice, the ICAC provided the protocol for referred investigations; updated the Committee on the training conducted and planned for 2012; and highlighted that it is generally satisfied with the reports from agencies.²⁵
38. During the public hearing held on 17 February 2012 the Committee inquired about the process for assessing agencies' ability to undertake investigations under sections 53 and 54:
- The Hon. NIALL BLAIR:** I read the protocol that was provided with the answers to the questions on notice. Is there any systematic process for assessing the capacity of agencies to receive a referral?
- Ms FREDMAN:** We consult with the agency before we propose to send the referral, and if there are any concerns raised at that stage then those concerns can be taken on board in the decision-making processes as to actually make the referral to them. There are certainly agencies, say smaller councils, for example, who will contract out the investigation to a specialist body.²⁶
39. The Committee notes the increased number of section 53/54 referrals to agencies, which increased from 27 in 2008–2009 to 39 in 2009–2010 (i.e. by over 40 percent) and 36 in 2010–2011.²⁷
40. The Committee recognises the ICAC's ongoing efforts to implement comprehensive processes, procedures and communication tools for effective oversight of section 53/54 referrals to agencies. The Committee notes that this is particularly important in the context of the rise in the number of referrals to agencies since 2008-2009.

INVESTIGATING CORRUPTION: CHANGES TO THE ICAC'S INVESTIGATIVE PRACTICES

Cooperation of the ICAC and the DPP on prosecutions arising out of investigations

41. In conducting its investigations and other work, the ICAC maintains ongoing liaison with other agencies and may enter into a memorandum of understanding ("MOU") to facilitate the sharing of information and resources. Among others, the ICAC has an MOU with the Office of the Director of Public Prosecutions ("DPP").
42. In its review of the ICAC 2008-2009 Annual Report, the Committee noted the ICAC's efforts to improve liaison with the DPP, to avoid delays that have previously affected prosecutions arising from ICAC's investigations. These include:

²⁵ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 1, p. 1.

²⁶ Ms Jacqueline Fredman, Manager, Assessments Section, ICAC, *Transcript of evidence*, 17 February 2012, p. 10.

²⁷ ICAC, *Annual Report 2009-2010*, p. 21 and *ICAC Annual Report 2010-2011*, p. 17.

- (1) improving the time taken to submit briefs of evidence to the DPP following the tabling of an investigation report;
 - (2) arranging the secondment of a DPP lawyer to the ICAC to assist and to oversee the preparation of criminal briefs of evidence for submission to the DPP; and
 - (3) planning to be more selective in determining whether to refer matters to the DPP, with the ICAC focussing on referring more serious matters to the DPP that are more likely to result in convictions.²⁸
43. As a result, in that review, the Committee concluded that the problem of delays in the prosecution of matters arising out of ICAC investigations, which was a concern in previous years, appears to have been overcome. The Committee commended the ICAC for its strategies to minimise prosecution delays.²⁹
44. In recent years, the effects of these initiatives have become evident. For instance, during the 2010–2011 reporting year, 16 matters were referred to the DPP for consideration of prosecution action, compared with 24 in the previous year.³⁰ Furthermore, in its response to questions on notice during the current review, the ICAC highlighted that it had entered into a new MOU with the DPP and outlined the terms of the MOU with respect to timetabling. The MOU:
- (1) clarifies the evidence to be provided to the DPP,
 - (2) ensures only relevant material is provided to the DPP, and
 - (3) sets out a timetable for the ICAC and the DPP in their respective handling of briefs of evidence for the prosecution of matters arising out of ICAC investigations.³¹
45. The timetables, which are set out in the MOU, outline that:
- the ICAC shall provide briefs of evidence to the DPP (generally within four months of the receipt of final submissions from all legal representatives at a public inquiry or, if there is no public inquiry, within four months of the end of the investigation), and
 - the DPP should advise of the DPP lawyer assigned to the matter (within two weeks of the receipt of the brief), arrange a conference with relevant ICAC officers (within three months of receipt of the documentation), and provide advice on what charges are available (six months for standard matters and 12 months for complex matters).³²
46. According to the ICAC, both organisations are working towards achieving these times and have largely met the deadlines. In cases where this was not the case, the ICAC highlighted that it is because of competing priorities. The ICAC also

²⁸ Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 9/54, May 2010, p. 11.

²⁹ Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 9/54, May 2010, pp. 9-12.

³⁰ ICAC, *Annual Report 2010-2011*, p. 9 and *ICAC Annual Report 2009-2010*, p. 34.

³¹ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 7, pp. 5-6.

³² ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 7, pp. 5-6.

emphasised that the ICAC is actively monitoring both its own compliance with these times and that of the DPP.³³

47. At the public hearing held on 17 February 2012, the Commissioner reiterated ongoing efforts by the ICAC to enhance its cooperation with the DPP and comply with the terms of the MOU:

...The Commission is focusing on preparing as far as possible a brief to the DPP at the same time as preparing a public inquiry. This approach is paying dividends. Generally, however, more needs to be done by the Commission in order for it to comply with the MOU. We are trying our best.³⁴

A new strategy for the preparation of briefs of evidence for the DPP

48. In order to improve the preparation of briefs of evidence for the DPP, in 2009–2010 the ICAC implemented a new strategy for the preparation of briefs, giving one ICAC investigator full responsibility for brief preparation. In its response to questions on notice, the ICAC outlined the impact of this strategy on the timeliness and quality of briefs. The immediate impact of the strategy was the clearance of the brief preparation backlog:

In 2008, the Commission engaged a former chief inspector with the NSW Police Force to address a significant brief preparation backlog which had developed. The officer concerned had been a police prosecutor for in excess of 20 years. At the time, brief preparation was largely undertaken at the conclusion of an investigation. This work competed directly with other ongoing investigations being conducted by the officers concerned. Over the ensuing 12 months, the officer managed to clear the brief preparation backlog.³⁵

49. In order to ensure that a backlog did not reoccur, the ICAC implemented a new procedure in 2009–2010. The new procedure meant that the investigation case officer was largely withdrawn from other investigation duties in cases where an investigation revealed sufficient evidence to base a referral of a brief of evidence to the DPP, so that the officer could work on preparing the brief. According to the ICAC, the implementation of this strategy has ensured that no significant delays have occurred in the provision of briefs of evidence to the Legal Division:

The fact that the case officer, rather than a person not acquainted with the investigation, prepares the brief has improved both quality and timeliness.³⁶

50. According to the ICAC, the revised MOU and enhanced brief handling processes have led to an improvement in the timeliness of briefs.³⁷

51. Furthermore, in order to assist with and to oversee the preparation of briefs of evidence, in 2010 the ICAC requested additional recurrent funding for an additional lawyer. In its response to questions on notice, the ICAC advised the Committee that it was successful with its request and that a new full-time position of Principal Lawyer (Prosecutions) had been created. A candidate was

³³ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 7, pp. 5-6.

³⁴ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 3.

³⁵ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 21, p. 12.

³⁶ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 21, p. 12.

³⁷ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 21, p. 12.

recruited to the position and commenced working for the ICAC in December 2011.³⁸

52. The Committee recognises the ICAC's and the DPP's ongoing efforts to improve mutual cooperation, including through their revision of the MOU, the ICAC's selective approach in determining matters for referral to the DPP and the ICAC's new strategy for the preparation of briefs of evidence for the DPP, including giving one investigator full responsibility for brief preparation and employment of a Principal Lawyer (Prosecutions). The Committee notes that these improvements are vital in preventing delays, which have been of concern in the past, and have allowed the ICAC to perform its functions in a timely and effective manner.

Amendment of section 14 of the ICAC Act

53. The Committee notes that section 14 of the ICAC Act was amended in September 2011 to clarify the ICAC's powers to gather and assemble admissible evidence for the prosecution of a person for a criminal offence, after the discontinuance or completion of its investigations.³⁹
54. In its response to questions on notice during the current review, the ICAC highlighted that the amendment had removed any doubt in regard to its evidence gathering post investigation:

The purpose of the amendment was to remove any doubt that the Commission could continue to gather evidence for the DPP once it had discontinued or completed its investigation. The Commission often continues to gather admissible evidence for the DPP once an investigation has been completed. This is sometimes done on the Commission's initiative while it is assembling a brief of evidence for the DPP and sometimes in response to requisitions issued by the DPP.⁴⁰

PREVENTING CORRUPTION: PROJECTS AND INVESTIGATIONS TARGETING HIGH RISK AREAS

55. Over the last two financial years, the ICAC's Corruption Prevention Division has targeted the high risk areas of lobbying, planning and procurement, resulting in three major corruption prevention projects: 1) investigation into the regulation of lobbying in NSW; 2) anti-corruption safeguards and the NSW planning system; and 3) addressing corruption risks in NSW government procurement. The ICAC's Corruption Prevention Division also started a corruption prevention project in relation to the Non Government Organisations (NGO) sector in 2010–2011.

Investigation into the regulation of lobbying of public officials

56. In its last report, the Committee noted that the ICAC had begun holding public inquiries to examine systemic issues. In August 2010, the ICAC held a public inquiry as part of its investigation into the lobbying of public officials, which examined the corruption risks associated with lobbying, with a view to

³⁸ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 22, p. 13.

³⁹ *ICAC Amendment Act 2011 No 36* (Schedule 1).

⁴⁰ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 18, p. 11.

determining what changes should be made to the NSW regulatory system to address those risks and to improve transparency and integrity.⁴¹

57. In its 2010–2011 Annual Report, the ICAC outlined the outcomes of the inquiry, highlighting that:

- (1) lobbying attracts a widespread community perception of corruption and involves a number of corruption risks;
- (2) professional lobbyists, in general, do act ethically; and
- (3) provided that it is executed appropriately, lobbying can improve good decision-making by public officials.⁴²

58. In order to address the corruption risks and public distrust associated with lobbying of public officials, the ICAC made 17 recommendations, aiming to reform the lobbying system in NSW. Key recommendations included:

- reform of the regulatory system governing lobbying;
- a ban on success fees for lobbying; and
- the introduction of a cooling-off period for ministers, parliamentary secretaries, their staff and senior government officers to be involved in lobbying activities.⁴³

59. In its response to questions on notice, the ICAC provided an update on the status of the corruption prevention recommendations arising from the lobbying inquiry, outlining that two of its recommendations were implemented. These recommendations were that ministers and parliamentary secretaries not engage in lobbying relating to matters they had dealings with during their last 18 months of office, for a period of 18 months after leaving office, and a ban on success fees for lobbying. The ICAC also outlined that the government has not indicated if it will implement any of the other 15 recommendations.⁴⁴

60. At the public hearing held on 17 February 2012, the ICAC Commissioner commented that the implementation of two recommendations by the Government did not amount to the substantial reform of the entire lobbying system that the ICAC had recommended:

The Lobbying of Government Officials Act recently introduced gives substantial effect to two of the Commission's key recommendations, namely, the abolition of success fees and the introduction of the cooling-off period for ex-Ministers and Parliamentary Secretaries before they can lobby a government official. These two reforms, however, while not unimportant, do not go anywhere near establishing a complete lobbying scheme of the kind the Commission recommended and do not remove the perceptions of corruption that presently attend lobbying practices. The Commission remains hopeful that its other recommendations will be reflected in legislation in due course.⁴⁵

⁴¹ ICAC, *Annual Report 2009-2010*, p. 5.

⁴² ICAC, *Annual Report 2010-2011*, p. 44.

⁴³ ICAC, *Annual Report 2010-2011*, p. 44.

⁴⁴ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 23, p. 14.

⁴⁵ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 3.

61. The Committee is pleased that two of the recommendations arising out of the ICAC's lobbying inquiry have been addressed.
62. The Committee notes the ICAC Commissioner's emphasis on the importance of introducing systematic and broad reforms to address the corruption risks and perceptions of corruption associated with lobbying practices.
63. The Committee considers perceptions of corruption and undue influence associated with lobbying practices to be of concern, as they may undermine public trust in government. However the Committee has not examined in detail those ICAC recommendations which have not been implemented by the Government.

Anti-corruption safeguards and the NSW planning system

64. In its 2010–2011 Annual Report, the ICAC reported that the NSW Department of Planning and it had established a joint task force to examine corruption risks attached to Part 3A of the *Environmental Planning and Assessment Act 1979* and to develop measures to address any of the identified risks. According to the ICAC:

The Part 3A system was characterised by considerable discretion and a lack of published, objective criteria. Notwithstanding safeguards in the process, the existence of a wide discretion to approve projects that were contrary to local plans, and did not necessarily conform to state strategic plans, created a corruption risk and a community perception that there was a lack of appropriate boundaries.⁴⁶

65. In December 2010, the ICAC announced 20 recommendations to alleviate potential corruption risks underlying the assessment and determination of major projects. The ICAC's key recommendation was to limit the application of Part 3A to those projects that are permissible under existing planning instruments:

As the Planning Minister was not bound by the provisions of local environmental plans in determining major projects, Part 3A had a tendency to attract highly speculative developments that proposed unreasonable, prohibited uses. The Commission's recommendation addressed this concern.⁴⁷

66. In June 2011, the Parliament revoked Part 3A in favour of a different method of assessment for projects of state significance. Under the new system, the Planning and Assessment Commission (the "PAC") must consider changes to local environmental plans for a state significant development that is wholly prohibited. The related development can then be decided only by the PAC.⁴⁸

67. Furthermore, in December 2010 the ICAC also proposed an enhanced role for the PAC and a review of its governance arrangements, noting that:

The operation of the PAC was seen as a crucial safeguard in the determination of state significant development because of its independence.⁴⁹

⁴⁶ ICAC, *Annual Report 2010-2011*, p. 44.

⁴⁷ ICAC, *Annual Report 2010-2011*, p. 44.

⁴⁸ ICAC, *Annual Report 2010-2011*, pp. 44-45.

⁴⁹ ICAC, *Annual Report 2010-2011*, p. 44.

68. The ICAC 2010-2011 Annual Report highlighted that the NSW government had announced changes to the PAC that would strengthen its role, consistent with the ICAC's recommendation.⁵⁰ At the public hearing, the Commissioner also noted that, since the ICAC published its report on Part 3A of the Environmental Planning and Assessment Act, planning legislation has been introduced which meets many of the ICAC's concerns.⁵¹
69. The Committee notes that the recent introduction of legislative changes addresses the ICAC's concerns in terms of corruption in the NSW planning system.

Addressing corruption risks in NSW government procurement

70. In its 2010–2011 Annual Report, the ICAC highlighted that it examined corruption risks in government procurement in NSW because corrupt and inappropriate conduct in the course of procurement seemed to be over-represented in the ICAC's investigations and advisory work:
- In 2009–10, 15% of allegations of corruption made to the Commission involved procurement transactions and, between 1989 and 2010, the Commission held 26 public inquiries that found corrupt conduct had occurred in procurement processes.⁵²
71. As part of its procurement project the ICAC published a consultation paper examining key risk areas and proposing changes. In addition, the ICAC conducted a web-based survey of suppliers to government, which found that:
- ... 41% of 1,500 suppliers to government in NSW think corruption is a moderate or major problem when doing business with government, while 32% said they did not bid on a contract because of corruption concerns. The project revealed a fragmented system that is difficult for both procurement staff and suppliers to penetrate and found that these features may have contributed to suppliers' perceptions.⁵³
72. Since the publication of its 2010-2011 Annual Report, the ICAC has published its final report as part of the project, making seven recommendations for reform to the NSW Government. During the public hearing held on 17 February 2012, the ICAC Commissioner told the Committee that the Government has advised of its general intent to adopt the ICAC's recommendations.⁵⁴
73. The Committee notes that the Department of Finance and Services recently called for submissions in response to its *Discussion paper 'Review of NSW Government Procurement'*. The paper sets out proposals to rework four of the building blocks underpinning the procurement system, which are 1) a new government procurement framework; 2) mechanisms for sourcing government goods and services; 3) government procurement opportunities for small and medium enterprises; and 4) innovation and procurement. The Committee notes that the proposal to rebuild these components of the procurement system is the

⁵⁰ ICAC, *Annual Report 2010-2011*, p. 44.

⁵¹ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 3.

⁵² ICAC, *Annual Report 2010-2011*, p. 45.

⁵³ ICAC, *Annual Report 2010-2011*, p. 45.

⁵⁴ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 3.

first step of a broader reform process, which also includes reforms in the following procurement areas: procurement capability and data; review of legislation, and review of NSW Government Procurement Policy.⁵⁵

74. The Committee is interested in the outcome of the Government's reforms of the public sector procurement system and the extent to which the reforms will address the ICAC's concerns about corruption risks in the current procurement system.

Addressing governance structures in local government to prevent corruption

75. In its 2009–2010 Annual Report, the ICAC stated that the results of its *Profiling the NSW public sector – Report 3: Differences between local and state government*, had indicated that local councils face a wider range of corruption risks than state government agencies, while having weaker corporate governance structures and controls.⁵⁶
76. The ICAC's public inquiry in 2010 into allegations of corrupt conduct involving the then General Manager and other staff of Burwood Council (Operation Magnus) examined weaknesses associated with governance structures in local government. In its report, the ICAC made 31 corruption prevention recommendations to Burwood Council and the NSW Government.⁵⁷ The ICAC's answers to questions on notice outlined the key recommendations:
- Amendments to legislation enabling the Division of Local Government ("DLG") to require councils to adopt important policies and practices, in the same way as Department of Premier and Cabinet circulars are binding on the state public sector. The DLG would review all Department of Premier and Cabinet circulars for relevant matters and issue guidelines to councils.
 - Amending the Local Government Act to establish internal audit for local authorities as a statutory function, with the functioning of internal audit to include the removal of the right of the general manager to attend all audit committee meetings.
 - Amending the Model Code of Conduct for Local Councils to improve guidance to mayors in managing complaints about general managers, and amending the standard contract for general managers so that councils can suspend general managers if there is reasonable suspicion that they have engaged in improper conduct.
 - The DLG to consider accrediting training packages for councillors to ensure they have the knowledge to perform their roles and oversight functions, with all NSW councillors undertaking such accredited training at least once per term.⁵⁸

⁵⁵ NSW Department of Finance and Services, *NSW Government Procurement Discussion Paper*, January 2012, p. 29.

⁵⁶ ICAC, *Annual Report 2009-2010*, p. 59.

⁵⁷ ICAC, *Investigation into alleged corrupt conduct involving Burwood Council's General Manager and Other*, April 2011: <http://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/165>

⁵⁸ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 27, p. 18.

77. The DLG's implementation plan in response to the ICAC's recommendations expresses in principle support for some of the recommendations and states that the DLG has "commenced a process by which all the recommendations of the report are being reviewed prior to any implementation."⁵⁹

78. At the public hearing held on 17 February 2012, the Commissioner also noted that procurement at the local government level is a high risk area, which the ICAC is currently investigating:

The area of corrupt conduct that has received perhaps the greatest focus by the Commission in the past year has been procurement. We have been involved with Operation Jarek, which involved investigating more than 100 local authorities. We have not yet provided our report, so it is premature to express any final conclusions. But I think it is apparent to anybody who has read the evidence in that case and seen the admissions made by so many people that there is a serious issue at least at the local government level with procurement, which is basically, I think, a lack of understanding of the obligations of persons who buy goods and services for local authorities.⁶⁰

79. The Committee sought further detail on corruption risks and corruption prevention initiatives in relation to the local government level. One of the key matters raised by the head of the ICAC's Corruption Prevention Division, Dr Robert Waldersee, was tailored anti-corruption training for local council staff and how it is delivered to rural councils:

Mr ANDREW GEE: You mentioned the issue of procurement and training for managers, and also how it related to local government. The report says that 40 per cent of the section 10 complaints related to local councils. Does the Commission conduct specific anti-corruption training for local council staff?

Mr IPP: It does. I think Dr Waldersee will be able to give you the detail on that. I think there is one particular area that is a problem and that is country councils in outlying areas. It really is quite difficult for the Commission to conduct training sessions in these outlying country areas, which can be so far away and might involve a whole week away from the office, as it were. But we do our best. Perhaps Dr Waldersee can expand on that.

Mr WALDERSEE: Are you referring to procurement in particular or councils' skills in general?

Mr ANDREW GEE: Council skills in general, but they would include procurement, given the recent investigations.

Mr WALDERSEE: Yes. The training we carry out is tailored when it is delivered. When we go to councils, it is council cases they work on, it is council examples, et cetera. In terms of reaching the councils, we are increasingly working with the ROCs of the

⁵⁹ The implementation plan stated that some recommendations had already been implemented through the council development strategy, see NSW Division of Local Government Plan for Implementation of recommendations, http://www.icac.nsw.gov.au/images/investigations/implementation_plans/magnus/nsw_dlg_implementation_plan.pdf

⁶⁰ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 4.

local areas to try to get them to organise a number of councils to come together in one place. That makes it easier to reach multiple councils in rather remote areas...⁶¹

80. Another matter the Commissioner raised during the hearing was the lack of understanding by persons who supply goods and services to local government. The Commissioner stressed the importance of councils adopting measures to address this issue:

We have recommended to councils that they provide their suppliers with, as it were, a code of conduct because this involves not only educating the councils but also educating the suppliers. In that inquiry many suppliers indicated their surprise at being told that what they were doing was improper. They accepted that it was improper but said that that is something that has happened for a very long time. Some of the suppliers were multinational companies. They were actually introducing in Australia marketing practices that they had employed all over the world. It really does require education not only of councils but the suppliers. We have no reach to the suppliers ourselves. We can only get to them by trying to persuade councils to inform the suppliers of what is expected of them.⁶²

81. The Committee also heard that management of procurement, including staff supervision at the local government level, is important in terms of managing corruption risks in local government:

We have put together a publication, which seems to be filtering around quite significantly, about looking at how you manage procurement. It goes to the issue of the staff have to know, so training has to be appropriate, but the management has to follow it, the system design has to be right, the motivation of the staff has to be right, and the structural arrangements by which they are supervised have to be right. Rather than putting out prescriptive recommendations, given that everyone is different, we have tried to raise the issues and give options to managers. There is a paper called "The Management Challenge", which came out in December 2011. It is widely read, as far as we can tell, already. I think it has been distributed very widely around the country, it seems.⁶³

82. The Committee notes the ICAC's work relating to corruption prevention for the local government sector, in particular governance structures and procurement systems. The Committee is interested in the outcome of the DLG's review of the ICAC's relevant corruption prevention recommendations made as part of its investigation into alleged corrupt conduct at Burwood Council. The Committee notes that the ICAC is also currently conducting an investigation into local government procurement affecting 100 local councils. The Committee will examine the results of this investigation once the ICAC has published its investigation report.

Non Government Organisations (NGOs) and corruption prevention

83. In its 2009–2010 Annual Report, the ICAC stated that in 2010–2011, the Corruption Prevention Division would focus on two high risk areas: governance structures in local government and service delivery through non-government

⁶¹ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 4.

⁶² The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 5.

⁶³ Dr Robert Waldersee, Executive Director, Corruption Prevention, ICAC, *Transcript of evidence*, 17 February 2012, p. 5.

organisations. The ICAC commented on the corruption risks associated with the delivery of government-funded services by NGOs:

A large number of government services are now delivered through non-governmental organisations (NGOs). This transfer of assets and funding from the state to many small groups creates a range of potentially serious corruption risks. These include the conflict between NGO goals and government goals, the difficulty in measuring outcomes (and therefore determining the appropriate use of funds), and the potential low-level professional management competence of the smaller NGOs.⁶⁴

84. In its response to questions on notice, the ICAC provided an update on the progress of the corruption prevention project in the NGO sector. The completed steps included:

- (1) Meetings held with funding and oversight agencies, NGOs, peak bodies and academic and industry experts.
- (2) Examination of relevant policy frameworks, legislation and regulatory codes and cross-jurisdictional comparisons undertaken.
- (3) Reviewing ICAC holdings and relevant non-ICAC investigation and policy reports.
- (4) Analysing funding agencies' reports of funds granted to NGOs.
- (5) Raising corruption risks in NGOs during regional visits and agency liaison meetings.⁶⁵

85. The ICAC advised that the report on the NGO project is to be expected within the next 18 months.⁶⁶

86. At the public hearing held on 17 February 2012, the Committee inquired further about the progress made in relation to the anti-corruption project in the NGO sector. The Commissioner highlighted that although NGOs are taxpayer funded, oversight bodies frequently do not have any jurisdiction over NGOs' operations:

...But the basic problem with non-government organisations [NGOs] is that they operate with taxpayers' money, but without the controls. The Ombudsman, the Auditor-General and ourselves very often do not have jurisdiction over them. While they are funded by government money, they are very jealous of their own rights, and we do not have any access to them.⁶⁷

87. The Commissioner noted that although legislation may be the only way to address this issue, due to the diversity of funding and other arrangements in the NGO sector it may be complex to legislate:

... There is only one way to deal with that and that is through legislation, but it is a very complex problem because every non-government organisation is different. Some non-government organisations may be susceptible to our jurisdiction; others may not. What is really needed is some kind of umbrella legislation that puts all non-government organisations under the jurisdiction of those agencies.⁶⁸

⁶⁴ ICAC, *Annual Report 2009-2010*, p. 5.

⁶⁵ ICAC, *Answers to questions on notice 2012*, 25 January 2012, question 27, p. 18.

⁶⁶ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, pp. 13-14.

⁶⁷ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 12.

⁶⁸ The Hon David Ipp AO QC, Commissioner of the ICAC, *Transcript of evidence*, 17 February 2012, p. 12.

88. The Committee notes the progress the ICAC has made in relation to its corruption prevention project in relation to the NGO sector. The ICAC has noted that the non-government sector is an area that attracts taxpayer funding without any of the normal controls that agencies operate under. The Committee is interested in and will monitor the outcome of the ICAC's NGO project.
89. The Committee's functions include examining trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct and reporting to Parliament on any changes it considers desirable to the ICAC's functions, structures and procedures. Given this, the Committee will be interested as to the extent to which the outcome of the ICAC's NGO project may necessitate examination by the Committee of possible amendments to the ICAC's jurisdiction.

Appendix One – Answers to questions on notice

Assessing matters

1. The number of section 53/54 referrals to agencies increased by over 40% in 2009-10, from 27 to 39, and there were 36 such referrals in 2010-11. The Committee notes that, as part of a review of the conduct of referred investigations completed in 2010-11, the Manager of the Section developed a protocol for referred investigations, to clarify which matters were suitable for referral to agencies and outline factors required in analysing an agency investigation and report. The review also identified the need to train ICAC staff on effective investigation oversight (p 17).

a. Please provide the Committee with a copy of the protocol.

A copy of the protocol is attached (Attachment 1).

b. Please provide details on the conduct of staff training that was identified as part of the review.

The Manager Assessments had identified that staff would benefit from training on how to assess whether:

- the investigating body had properly identified the core factual issues for determination from the outset
- the investigation itself was sound, in that appropriate evidence was gathered, key witnesses interviewed and relevant documents obtained and analysed
- any findings were based upon the evidence; and any recommendations made were reasonable and appropriate to the circumstances.

A half-day session was conducted in November 2010 with all Assessments staff, run by the then Deputy Manager Assessments, formerly an Inspector with the NSW Police Force. This training covered investigation principles and best practice, and the points identified above. A refresher session is planned in the first half of 2012 to be conducted by the current Deputy Manager Assessments.

c. The Commission states that it now requests investigation plans and progress reports from agencies as part of a section 53/54 referral (p 17). Is the Commission satisfied with the agency response to these new requirements?

In the main, yes. Some agencies have submitted insufficient detail in investigation plans or progress reports, but the Commission has liaised successfully with these agencies to obtain the level of detail required for the Commission to make a meaningful appraisal of the adequacy of these interim reports.

2. In 2010-11 the Manager of the Assessments Section led a review of the Commission's management of protected disclosures, which resulted in recommendations including the establishment of an internal Committee to provide guidance to whistleblowers and assistance to staff handling protected disclosures, and to advise the Commissioner in his

capacity as a member of the Steering Committee on the Public Interest Disclosures Act (p 22). Please provide the Committee with details on the other outcomes and recommendations of the review.

The recommendations were made at a time when the *Protected Disclosures Amendment (Public Interest Disclosures) Bill 2010* had been proclaimed but had not commenced. The other recommendations and outcomes were:

- that staff training take place about the forthcoming amendments and the operation of the legislation generally and that refresher training occur annually. In the second half of 2011, the Deputy Commissioner conducted training on the new public interest disclosure legislation for staff in the Assessments and Investigation Divisions.
- that appropriate fact sheets and website content be compiled, aimed at actual and potential whistleblowers. The Manager Assessments has completed this.
- that staff be reminded to ensure that matters which had commenced within an agency as an internal public interest disclosure, and were then reported to the Commission by principal officers under section 11 of the ICAC Act, were recorded in the Commission's database as public interest disclosures where appropriate. This reminder has been issued. As a corollary to that, Assessments now seeks, as a matter of course, clarification from agencies as to whether the agency is treating a matter reported under section 11 as a public interest disclosure. In some instances, where the agency has advised that it is not doing so, the Commission has provided advice to agencies about apparent misconceptions concerning the PID Act's applicability.
- that where a matter was being closed after progressing to a preliminary investigation or further, and the matter had commenced as a public interest disclosure, consideration be given to forwarding a letter to the discloser from the Deputy Commissioner. The purpose of the letter would be to inform the discloser about the outcome of the matter and to thank them for taking a stance on ethical issues. Investigation staff have been instructed to have regard to whether the forwarding of such a letter ought to occur upon completion of appropriate matters.

3. As to the new internal Public Interest Disclosures Committee (referred to at p 22 of the 2010-11 Annual Report):

a. How is it constituted?

A copy of the charter is attached (Attachment 2). The Committee comprises senior staff from all operational areas of the Commission and is convened by the Manager Assessments.

b. Could you please particularise its workload since 1 July 2011?

The Committee members communicate regularly on an informal basis to discuss whistleblower matters. It meets formally each quarter. Its members have provided informal advice to Commission staff about the operation of the PID Act and about management of whistleblower relationships generally and in specific circumstances.

Committee members have discussed general welfare concerns with whistleblowers who have contacted the Commission. Its convenor monitors legislative developments and liaises with the Deputy Commissioner and the Solicitor to the Commission about legislative and policy issues as they apply to the Commission, both in the Commission's capacity as an investigative agency, and in its capacity as an employer and potential recipient of staff disclosures.

4. In 2009-10 (p 30), 133 matters were referred to the Investigation Division for preliminary investigation, compared with 62 in 2010-11 (p 25). What factors led to the reduction in matters referred for preliminary investigation?

During 2009-10, the Commission was considering conducting public inquiries into two large public authorities, in order to examine systemic deficiencies, given the large number of complaints and reports received about those two agencies. A number of closed files were reviewed by both Investigation Division staff and by the Manager Assessments in relation to those two agencies.

In the result, numerous files were reactivated and referred as preliminary investigations to the Investigation Division to be considered with preliminary investigations that were already underway. In the event, public inquiries did not proceed into those two agencies as a result of these preliminary investigations.

However, in one instance, the agency was provided with a report prepared by the Commission under section 14 (2) of the ICAC Act, which highlighted systemic deficiencies the Commission believed required addressing. This section 14 report was based largely, but not solely, upon the Commission's examination of numerous files which had been the subject of preliminary investigations. The process of re-activating numerous files as part of this investigation was largely responsible for the increased number of matters referred for preliminary investigation in 2009-10.

Investigating corruption

5. As noted above, referrals of investigations to other agencies under sections 53 and 54 of the ICAC Act increased from 27 the previous financial year to 39 in 2009-10 and 36 in 2010-11. The Commission indicated during the Committee's last Annual Report review that the rise in referrals was largely due to ICAC having insufficient resources to investigate matters and also the rigorous approach taken to selecting matters for investigation.¹ Does the Commission have any comment on the factors that impacted on section 53/54 referrals in 2010-11?

The number of referrals in the 2010-11 year was similar to that in 2009-10. It is anticipated that the number of referrals in 2011-12 will not vary greatly, and the Commission continues to work with agencies, as discussed in Answer 1c, to ensure that they can adequately deal with sections 53/54 referrals. Referrals under sections 53/54 remain a valuable tool for the Commission to ensure that matters that require investigation, but that cannot be dealt with directly by the Commission because of competing priorities, are still investigated by the responsible agencies.

¹ Committee on the ICAC, Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption, report 12/54, November 2010, p. 6.

6. In 2010-11 the Commission conducted 130 compulsory examinations (p 37), compared with 124 for 2009-10 and 33 for 2008-09 (p 34). What factors have led to this increase?

Compulsory examinations are conducted to assist with the gathering of evidence for investigations conducted by the Commission. The number of compulsory examinations depends on a number of factors. These include the number of investigations being conducted by the Commission, the number of people involved in each investigation from whom evidence is required, whether the evidence is required under oath or can be obtained in some other way (for example, by interview) and whether the witness has declined to be interviewed (in which case a compulsory examination may be necessary).

Since 2008-09 the number of matters investigated by the Commission has increased. This has led to an increased need for compulsory examinations. The Commission commenced 138 preliminary investigations in 2009-10 compared to 58 in 2008-09. Over the same period there was also a 186% increase in the number of full investigations undertaken (up from seven in 2008-09 to 20 in 2009-10). This high workload was sustained in 2010-11 with 66 preliminary investigations commenced (in addition to the 74 preliminary investigations carried over from the previous year) and 15 full investigations commenced (in addition to nine investigations carried over from the previous year).

7. Does the Commission have any difficulties with any of the memoranda of understanding referred to at p 35 of the 2010-11 Annual Report?

The Commission has memoranda of understanding (MOUs) with the Australian Transaction Reports and Analysis Centre (AusTrac), the NSW Police Force, the Australian Taxation Office, the Police Integrity Commission, and the Director of Public Prosecutions.

The MOUs with AusTrac and the NSW Police Force are in the process of being renewed.

The Commission considers the various MOUs generally meet its operational needs.

The Commission entered into the current MOU with the DPP on 17 May 2011. This MOU clarifies the evidence to be provided to the DPP and assists in ensuring only relevant material is provided to the DPP. It also sets out a timetable for the Commission to provide briefs of evidence to the DPP (generally within four months of the receipt of final submissions from all legal representatives at a public inquiry or, if there is no public inquiry, within four months of the end of the investigation).

The MOU sets out timetables for the DPP to advise the name of the DPP lawyer assigned to the matter (within two weeks of the receipt of the brief), to arrange a conference with relevant Commission officers (within three months of receipt of the documentation) and for the provision of advice from the DPP on what charges are available (six months for standard matters and 12 months for complex matters). Both organisations are working towards achieving these times. So far the timetables have substantially been met. There are, however, instances where either the Commission or the DPP or both have not complied with the timetables. Generally this has occurred because of competing priorities. The Commission is actively monitoring both its own compliance with these times and that of the DPP.

COPS Issue

The Commission has a separate agreement with the NSW Police Force to enable the Commission to access the NSW Police Computerised Operational Policing System (COPS) database for purposes of investigations being conducted by the Commission.

The COPS database contains information on criminal convictions, court appearances, use of aliases, and relevant background intelligence. It is a vital tool for obtaining information on persons of interest in an investigation. The information contained in the COPS database is also highly relevant to assessing the suitability of applicants for employment by the Commission.

At present the Commission is unable to use the COPS database for the purpose of vetting prospective employees.

The NSW Police Force has obtained legal advice that using the COPS database for this purpose may be in breach of some of the information protection principles in the *Privacy and Personal Information Protection Act 1998* and has asked the Commission not to use the COPS database for vetting applicants for employment. The Commission understands that the NSW Police Force and other integrity agencies such as the Police Integrity Commission and the NSW Crime Commission are also unable to use the COPS database for this purpose.

The Commission needs to use the COPS database for employment vetting in relation to three categories of person.

The first category is prospective employees, contractors and consultants. The second category is associates nominated by prospective employees, contractors and consultants in their probity assessment disclosure statements. In some cases, depending on the nature of the disclosure, it may be necessary to make further enquiries about particular associates. The third category is associates of the prospective employee who are identified in the course of the vetting process.

These are associates who are not nominated in the probity assessment disclosure statement but whose relationship with the applicant may give rise to security concerns or involve a conflict of interest.

Given the nature of the Commission's work, it is vital for the Commission to establish whether prospective employees are of suitable character and background to be employed by the Commission. Whether an applicant has a criminal history, the nature of any criminal history, and background criminal intelligence are important elements in determining the applicant's suitability for employment by the Commission. In undertaking such assessments, it is also vital that the Commission be able to check on those persons the applicant nominates as associates and any additional persons the Commission identifies as associates during the course of its assessment process. The current inability to use the COPS database for this purpose poses a significant security risk to the Commission.

The inability to use the COPS system for this purpose is also causing delays in undertaking security vetting. This has an adverse impact on the Commission's ability to recruit new staff in a timely manner.

Both Houses of the NSW Parliament recently referred to the Commission for investigation and report matters concerning the application for and allocation of an exploration licence to Doyles Creek Mining Pty Ltd. In order for the Commission to undertake this investigation in a timely manner it needs to engage additional staff. The Commission has been granted additional funding for this purpose but the inability to use the COPS database for employment vetting purposes means that there will be delays in engaging all the necessary additional staff. This in turn will result in delays to the investigation.

The Commission has previously written to the Premier about this matter and understands that the Attorney General's Department is currently considering the matter with a view to determining whether any legislative changes should be sought.

8. In 2010-11 the Commission began requesting agencies to advise of disciplinary outcomes for agency employees to better track previous adverse findings against public officials (p 26). Is the Commission satisfied with agency responses to these requests? How does the Commission use these reports?

Yes, by and large agencies have been very responsive in advising the Commission upon the conclusion of a disciplinary process as to what the outcome of that process has been. Usually this is in the form of a letter, not a report as such. The Commission records the outcome of disciplinary investigations in its database, MOCCA, against the agency and the individual concerned. This information can be referred to by the Commission if it is subsequently made aware of further allegations relating to that individual.

9. The Commission met its performance target of completing preliminary investigations within 120 days for 41% of matters in 2009-10 and 2010-11. In its 2010 request for additional recurrent funding, the ICAC stated that it expected the impact of increased funding to be most significant in terms of preliminary investigations, with important matters requiring full investigation being identified in a timely and effective way, and the decision to upgrade or close matters being made more quickly.² Has the establishment of a preliminary investigation team in August 2010 impacted on the conduct of preliminary investigations in general, and on the Commission's ability to met internal targets?

When established, the preliminary investigation team consisted of two investigators overseen by the Chief Investigator (Operations Adviser). The establishment of the team meant that the majority of new preliminary investigations could be referred to this team as opposed to being distributed throughout the division, as had previously been the case. Matters which related directly to ongoing investigations naturally were referred to the team handling those matters rather than the preliminary investigation team.

Initially, the preliminary investigation team had to deal with a backlog of matters that had accrued due to the increased number of matters referred (74 outstanding matters as at 1 July 2010). This decreased to 59, 27 and 31 at the beginning of the subsequent three quarters.

² Committee on the ICAC, Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption, report 12/54, November 2010, p. 8.

The preliminary investigation team has since been supplemented by the addition of a further investigator, a financial investigator, an analyst and a support officer. This has allowed the team to be largely self-sufficient rather than relying on specialist financial, analytical and support services from elsewhere within the division. Timeframes have now improved markedly, with the percentage of matters now being completed within the performance target rising from 41% for the 2010-2011 year to around 80% presently. Further, matters warranting full investigation are being identified and upgraded to full investigation earlier.

10. The 2009-10 and 2010-11 Annual Reports identify the increasing complexity of investigations as a challenge for the ICAC, in particular the tracking of financial transactions. The 2009-10 Report stated that the supply of information from various financial institutions is an ongoing issue that is being monitored by the Commission to ensure a more rapid response to requests (p 37). What strategies have been identified to monitor this aspect of the Division's work, and to improve the timeliness of responses from financial institutions?

Generally, financial institutions are given two weeks to produce records under formal notice from the Commission. The service of these notices and the due dates are recorded and monitored via the Commission's MOCCA case management system. Any anticipated delay from the institutions is discussed with the institution and recorded. In the past, there have been delays in the provision of material by some of the larger financial institutions. The Commission has now introduced a system where, following the issue of notices to produce to financial institutions, telephone calls are made to liaison officers within the institutions to discuss timelines and any potential delays in the provision of information.

As a result, the Commission has generally not experienced unacceptable delays from any financial institutions in the 2010-2011 financial year. The issue continues to be monitored with communication between the Commission and financial institutions occurring on an ongoing basis.

11. According to the 2010-11 Annual Report, the Commission recently instituted a new reporting tool to assist with identifying the breakdown of activities undertaken within the Investigation Division and the amount of time spent on each of these activities (p 31). Please provide a breakdown of work within the Investigation Division for 2010-11, similar to that contained in the 2009-10 Annual Report (p 37).

In January 2011 the Commission moved to a new 'Timekeeper' reporting tool. This tool changed the categories of work activities undertaken by staff against which they record their hours worked. Obtaining data for the first half of that year would require an exhaustive manual analysis and count of all hours worked by staff against different categories and then recategorising that information into the existing criteria. The alternative would be to do the same in reverse and work off the old criteria.

For the purpose of responding to the Committee's present question, the figures from January to June have been extrapolated to determine the percentage breakdown of activities throughout the entire year.

Those figures are:

- Operations 69%
- Preliminary investigations 11%
- Administration 14%
- Brief preparation 3%
- Training 3%.

12. The 2009-10 Annual Report identified the lack of relevant training opportunities for specialist investigators as a challenge for the Commission (p 37). The Report stated that discussions with the PIC had resulted in the development of a new training course for senior investigators on managing an investigation using coercive powers, expected to commence in 2010-11. Please provide an update on current training opportunities for Commission investigators.

The Police Integrity Commission facilitated a course (in conjunction with the Charles Sturt University) entitled, "Investigations Interviewing Management". Two senior and one chief investigator from the ICAC attended the course in November 2010.

Staff of the Investigation Division have also attended training in the better use of the Internet in the conduct of investigations. Various staff have undertaken training in the use of Nux 3 software for the forensic interrogation of computer data. All operational staff have attended training in the amendments to the Public Interest Disclosures Act. New investigation staff have accessed webcast training sessions on the ICAC Act, public interest disclosures, obtaining and executing search warrants, preparing briefs for the DPP and obtaining and executing telecommunications interception and surveillance device warrants.

Two staff members are presently undertaking the Diploma of Government (Management). All Commission analysts have successfully completed the National Strategic Intelligence Course run by the Australian Federal Police. Surveillance staff undertake periodic refresher driver training and rural surveillance training. One chief investigator has attended Merit Selection Training.

Enquiries are being made with the AFP for details of its Financial Investigator training course and the Investigations Management Course. Enquiries have also been made with Charles Sturt University for details of the Commercial Crime Course. We are currently seeking quotes for contemporary interview training for investigators.

Various investigative staff attended the bi-annual Australian Public Sector Anti-Corruption Conference and we presently provide study leave for two staff to undertake external study (for a Master of Commerce degree and a Bachelor of Science (Health and Safety) degree).

13. The 2010-11 Annual Report identified improvements to the Management of Cases, Complaints and Assessments System (MOCCA) as a strategy to enable greater oversight and management of investigations (p 34). Please provide details of the improvements.

During the first six months of MOCCA going live (from November 2009), a number of deficiencies and short comings were identified by users. Most of these, in order of importance, were revised and changed to improve and simplify MOCCA so that creation and access to information became more manageable, user-friendly and efficient.

The improvements that the Commission received from these enhancements are:

1. Increased productivity and efficiency for conducting day to day activities with faster turnaround times to create matters and link entities.
2. Improved intelligence building and information gathering by allowing multiple links to activities, listing a broader set of associated links, capturing better briefs of evidence, reporting and printing of valuable information for both statistical and assessment purposes, all of which leads to more accurate decision making.
3. Better capture and control of information resulting in a more robust database with fewer duplicated or unlinked records being created.
4. Better quality checks of information being entered to ensure that all required information is registered and aligned with operational business processes.
5. Facilitation of the processing of property items handled by Records & Property.
6. Improved capacity to automatically generate tasks and email messages to increase processing time and output of tasks.
7. Reducing some of the restrictions within MOCCA by allowing case officers and matter managers to perform some work (for example, entering location of file volumes) normally undertaken by Records staff.
8. Better and more effective searching and displaying of information.

14. Could you please particularise the MOCCA system referred to at p 12 of the 2010-11 Annual Report?

The following system enhancements have been completed during the year:-

1. New functionality to link identities and organisations with roles to a matter.
2. Additional requirements and improvements to matters, activities, identities and organisations in general: improved list of associated links, TRIM integration, additional lookup search for fields linking to related identities, organisations and addresses, and ability for matter managers and case officers to change the location of file volumes and parts which is normally a Records & Property function.
3. New functionality to link other entities (identities, organisations, matters, vehicles, addresses and activities) to an activity.
4. New facility to quickly search for one or more activities.
5. Addition of a new type and classification of matter for feedback.
6. Additional business rules to enforce some validity checks before allowing a matter to be closed. For example, a user cannot now close a matter without a subject and originator.
7. Modification to existing reports such as property listing and property receipt, and existing information sheets for printing such as Assessment Panel decisions and activities.
8. New functionality to generate a profile of an identity.
9. Improvements to brief of evidence, activity group and prosecution entities to allow better measurement of key performance statistics and more accurate data capture.
10. Improvements to workflows for auto-generation of activities/tasks.
11. Improvement to the operational performance of MOCCA in terms of speed and usability through the identification of issues adversely affecting system speed, revising the maintenance plan and carrying out performance tuning.

15. According to the 2010-11 Annual Report, the Commission entered into a new memorandum of understanding with the Office of the Director of Public Prosecutions during the reporting year (p 34). Please provide the Committee with a copy of the MoU. A copy of the new MOU is attached (Attachment 3).

16. During 2008-09 the ICAC referred four matters to the NSW Crime Commission for consideration of assets restraint or forfeiture, for amounts totalling \$2.634 million. The Committee notes that in 2010-11 the ICAC referred a matter arising from its investigation into corrupt conduct at Canada Bay City Council to the Crime Commission for potential proceeds of crime action (p 35).

a. What is the status of this referral?

The NSW Supreme Court issued a monetary order against M. Hedley Peter Higgs, Manager City Services, City of Canada Bay Council, in the amount of \$100,000. This amount has been paid by Mr Higgs.

b. How many matters were referred to the NSW Crime Commission during 2009-10 and 2010-11 and what is their current status?

In the 2009-2010 year, one matter was referred. It concerned Mr Ahmed Moosani, the Principal of Roger Training Academy. Mr Moosani's conduct had featured in the Commission's investigation into Corruption in the Provision and Certification of Security Industry Training (Operation Columba). The Supreme Court issued a monetary order against M. Moosani in the amount of \$425,000. This amount has been paid in full by Mr Moosani.

The matter of Mr Peter Hedley Higgs of the City of Canada Bay Council was the only matter the Commission referred during the 2010-2011 year. The result of that matter is referred to in answer 16a above. While the Commission always monitors matters under investigation to identify appropriate cases for referral for confiscation action, not all corrupt conduct matters are suitable for referral.

In order to make confiscation action worthwhile, the corrupt conduct in question must have generated substantial funds or assets, and those funds or assets must still be identifiable and available for confiscation. In the 2010-11 year, only one such matter was identified.

17. During the Committee's previous Annual Report review, the Commission indicated that it was planning to be more selective in determining whether to refer matters to the DPP, and would refer more serious matters that are more likely to result in convictions.³ During the 2010-11 reporting year 16 matters were referred to the DPP for consideration of prosecution action, compared with 24 for the previous year. What factors does the Commission take into account in considering whether to refer a matter to the DPP?

In considering what statement to make under section 74A(2)(a) of the ICAC Act, the Commission first takes into account the availability of relevant admissible evidence. The

³ Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 12/54, November 2010, p. 11.

Commission will seek the advice of the DPP only where the Commission considers there is sufficient admissible evidence for a successful prosecution.

Once the Commission is satisfied there is sufficient admissible evidence, the Commission then considers whether there are any factors militating against referral. Such factors may include whether the matter is sufficiently serious to warrant referral, the degree to which the relevant person cooperated with the Commission's investigation (for example, the Commission may decide not to seek the advice of the DPP with respect to a prosecution under section 87 of the ICAC Act for giving false evidence where the witness has immediately corrected his or her evidence and subsequently fully cooperated with the Commission), and whether any prosecution is required as a deterrent (for example, in the Commission's November 2011 report on its investigation into the misuse of access rights to a Land and Property Management Authority database, the Commission decided not to refer Ms Kim Hildebrand to the DPP for consideration of prosecution because her loss of accreditation as a valuer and the findings of corrupt conduct against her would have a detrimental effect on her future employment, and the Commission was satisfied that these circumstances would deter her from engaging in similar conduct in the future).

18. A recent amendment to the ICAC's other functions under s 14 of the ICAC Act enables the Commission to gather and assemble evidence during or after the discontinuance or completion of its investigations and furnish it to the DPP. What effect has the amendment had on the ICAC's investigative practices and brief preparation processes, including the timeliness of provision of briefs to the DPP?

The amendment has not affected the Commission's investigative practices or brief preparation procedures or the timeliness of provision of briefs to the DPP.

The purpose of the amendment was to remove any doubt that the Commission could continue to gather evidence for the DPP once it had discontinued or completed its investigation. The Commission often continues to gather admissible evidence for the DPP once an investigation has been completed. This is sometimes done on the Commission's initiative while it is assembling a brief of evidence for the DPP and sometimes in response to requisitions issued by the DPP.

19. What is the current status of disciplinary action against Anthony Paul, which was referred to the Legal Services Commissioner during 2009-10 (p 136)?

The Commission has been advised that a formal determination was made by the NSW Law Society Council on 18 August 2011 to refer this matter to the Administrative Decisions Tribunal to commence disciplinary proceedings. Proceedings are required to be commenced within six months of the determination.

Brief preparation

20. Please provide a table, similar to that provided to the Committee during its previous reviews, detailing the period of time that has elapsed between ICAC's provision of briefs of evidence to the Office of the DPP and the Office's decision on each matter, for matters current during the 2010-11 reporting period to date. Please include the date of all requisitions received from the Office of the DPP for each matter.

The table is attached (Attachment 4). For the sake of completeness it covers the period 1 July 2010 to 31 December 2011.

There are a number of old matters for which the Commission is still awaiting advice from the DPP. These are operations Ambrosia, Mirna, Monto A, Monto GH/Minerva and Columba. The Commissioner wrote to the Director of Public Prosecutions, Mr Lloyd Babb SC, in early December 2011 expressing concern about the delays in receiving advice on these matters. Mr Babb has responded, advising that he anticipates being able to make a determination in most of these matters by the end of February 2012.

21. The Commission implemented a new strategy for the preparation of briefs of evidence for the DPP in 2009-10, giving one investigator full responsibility for brief preparation and excluding other duties, where possible.

a. What impact has this strategy had on the timeliness and quality of briefs?

In 2008, the Commission engaged a former chief inspector with the NSW Police Force to address a significant brief preparation backlog which had developed. The officer concerned had been a police prosecutor for in excess of 20 years.

At the time, brief preparation was largely undertaken at the conclusion of an investigation. This work competed directly with other ongoing investigations being conducted by the officers concerned. Over the ensuing 12 months, the officer managed to clear the brief preparation backlog. The officer was subsequently moved to other duties within the Investigation Division.

In the 2009-2010 year, a change of procedure was introduced in order to ensure that a backlog did not reoccur. Where an investigation disclosed sufficient evidence to base a referral of a brief of evidence to the DPP, the investigation case officer was largely withdrawn from conventional investigation duties so that priority could be given to preparation of the necessary brief of evidence.

Implementation of this strategy has ensured that no significant delays have occurred in the provision of briefs of evidence to the Legal Division. The fact that the case officer, rather than a person not acquainted with the investigation, prepares the brief has improved both quality and timeliness. Together with a revised MOU and improved brief handling processes between the Commission and the DPP, there has been an improvement in the current timeliness of briefs.

b. What other brief preparation processes and practices did the Commission review and amend during 2010-11 (p 34)?

Improvements were made to the brief module within the Commission's MOCCA case management system. The improvements allow for the registration of all briefs of evidence within the module. Improvements also include the identification of a series of commonly prosecuted offences, legal codes and case law and the inclusion of specific date fields.

This has allowed an improved ability to select appropriate offences, identify evidentiary requirements and to monitor brief preparation commencement and completion dates as well as ongoing progress.

22. The Commission's request for additional recurrent funding in 2010 proposed the recruitment of an additional lawyer to assist with and oversee the preparation of briefs of evidence.⁴ Has the lawyer been recruited?

In 2010, the Commission successfully requested supplementary funding for the 2010-11 period to retain the services of a lawyer seconded from the DPP who undertook the role of Principal Lawyer (Prosecutions).

In 2010, also, the Commission successfully requested recurrent funding for 2011-12 onwards to retain the position of Principal Lawyer (Prosecutions).

As a result, a new full-time permanent position of Principal Lawyer (Prosecutions) was created and recruitment for the position was commenced in August 2011. After completing a merit selection process a new person was selected for the position. The person commenced work for the Commission in December 2011.

The Principal Lawyer (Prosecutions) undertakes the usual duties of a Commission principal lawyer but also has additional duties involving identifying improvements to Commission brief preparation procedures and identifying the need for, and undertaking training of, Commission officers to ensure those responsible for the preparation of briefs of evidence understand and meet relevant DPP, Commission and evidentiary requirements.

Preventing corruption

23. In its 2010-11 Annual Report, the Commission stated that two key reforms relating to success fees for lobbyists and a cooling-off period for former Ministers and Parliamentary Secretaries were implemented in March 2011 (p 44).

a. What is the status of the remaining corruption prevention recommendations arising from the lobbying inquiry?

The Commission's investigation into corruption risks involved in lobbying found that the NSW lobbying regulatory regime is a major corruption risk and contributes significantly to public perceptions of corruption.

The Commission's November 2010 report on its investigation contained 17 recommendations to reform lobbying in NSW. The recommendations were designed to bring about a new lobbying regulatory regime which would improve transparency and address identified corruption risks in a practical manner but would not unduly interfere with legitimate access to government decision makers.

To date, only two of the recommendations have been addressed. The *Lobbying of Government Officials Act 2011* provides that ministers and parliamentary secretaries must not engage in lobbying relating to matters they had dealings with during the last 18 months of office for a period of 18 months after leaving office (recommendation 11) and bans success fees for lobbying (recommendation 12).

⁴ Committee on the ICAC, *Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption*, report 12/54, November 2010, p.11.

The government has not given any indication whether any of the remaining recommendations will be adopted.

b. How does the Commission monitor and report on the implementation of recommendations arising out of its corruption-prevention based investigations into systemic issues?

Some recommendations arising out of corruption prevention-based investigations propose specific changes to internal policies, procedures or work practices of particular agencies, and the implementation of these recommendations can be monitored by the Commission in the usual way, in accordance with the provisions of sections 13(3)(b) and 111E of the ICAC Act.

Other recommendations, however, relate to broad-ranging government policy issues. These include recommendations that the government give consideration to amending legislation or public sector-wide policies. In matters relating to government policy, there are many factors to be considered apart from the ICAC's recommendations. In such cases, the Commission does not consider that it would be appropriate for it to insist on the implementation of its recommended policy and legislative changes, as these issues are ultimately a matter for the elected government.

In such cases, the Commission uses, as appropriate, the following methods to encourage consideration and implementation of its corruption prevention recommendations:

- Public release of the reports, where appropriate, to inform the government, public service and the public of the issues identified by the ICAC.
- Distribution of reports to relevant government ministers and CEOs.
- Where practicable, meetings with, and presentations to, audiences relevant to the implementation of the recommendations.

24. The 2009-10 Annual Report addressed the issue of public officials who have engaged in misconduct being re-employed elsewhere in the public sector, due to poor employment screening practices and agencies discontinuing internal investigations upon an employee's resignation, therefore resulting in no recorded finding of misconduct. The Committee notes that during 2009-10 the ICAC made corruption prevention recommendations aimed at poor employment screening practices, as well as producing a Tip Sheet for agencies, which addressed employment screening and pre-emptive resignations to avoid internal investigations.⁵ In the Commission's view, are state and local government recruitment practices and guidelines adequate to prevent or minimise such cases?

Undertaking a formal analysis of recruitment practices in the NSW public sector would require a detailed review of the policies and procedures of all departments, agencies and local authorities. While such a review may have merit, it would be beyond the resources of the Commission and only marginally related to our core role of corruption prevention. While practices that allow the resignation and reemployment of a corrupt person are a risk of concern to the Commission, the risk exists only as one part of a broader set of issues

⁵ ICAC, *Recruitment: the background check risk, Tip Sheet for NSW public officials*, August 2010.

relating to recruitment, performance management and dismissal practices in the public sector. These practices are generally outside the jurisdiction of the Commission, in the absence of specific evidence of corrupt conduct or systems conducive to corrupt conduct.

From the Commission's discussions with public sector managers, it appears that factors limiting the effectiveness of recruitment, performance management and dismissal practices in the public sector include inadequate guidelines and practices, mistaken beliefs and risk aversion. In particular, managers commonly raise the following perceived problems:

- the system of background checking allows only nominated referees to be contacted and they are selected by the applicant to be biased
- saying something negative about an applicant can lead to legal risks for a referee
- completing an investigation is not realistic if a problem person has offered to resign. The effects on morale and the risk of an appeal overturning the investigation are often considered too great, and the benefit too small
- dismissing staff from the public service is almost impossible, not only because of the rules but also because of the attitude of senior management
- the use of private employment screening companies is considered to be very expensive.

The Commission has addressed some of these concerns in its tipsheet and through recommendations about these issues in its public reports.

25. In the 2009-10 Annual Report, the Commission stated that its public inquiry into an official's conduct in concealing his employment history demonstrated the importance of agencies reporting instances of resume falsification to the Commission (p 56).

a. What strategies has the Commission used to convey the need for public sector agencies to notify it of such instances?

The report into Operation Avoca (Investigation into attempted corrupt payment and submission of false resumes to public authorities) states:

"The Commission will write to the principal officers to remind them of their obligations under section 11 of the ICAC Act and discuss a range of conduct that may constitute corrupt conduct, including résumé falsification."

In August 2010, the Commission wrote to all principal officers reinforcing the need to report résumé falsification. A section of the letter entitled "Résumé falsification is corrupt conduct that should be reported to the Commission" addressed the reporting matter. The letter laid out the key risks, danger signs and suggested actions, including:

- Conducting employment screening checks on preferred applicants. The frequency of résumé falsification (approximately 25%) was stressed, including the risk of false references, false claims of work experience and omissions of jobs that had negative outcomes. It was recommended that the Australian Standard on Employment Screening be adopted and consent be obtained for the conducting of screening checks. Where this presented difficulty it was recommended that the services of an employment screening company be used.

- Avoiding uninformed reliance on professional body membership. Different professional bodies have different standards of verification of qualifications. It was recommended that agencies should be satisfied with the rigour of checking conducted by professional bodies before accepting the membership as evidence of a candidate's skills.
- The risk to rural councils. Operation Avoca showed that rural councils were targeted because they had difficulty recruiting staff. It was recommended that vigilance be sustained for any position that is difficult to fill.

Included with the letter was a tipsheet that dealt with employment screening as well as the Commission's position on pre-emptive resignations designed to avoid an investigation. The tipsheet provides advice on the risks of not completing the investigation, and about ensuring procedural fairness for the affected person.

The tipsheet states that "if a matter concerns a reasonable suspicion of corrupt conduct it should be reported to the Commission as required under Section 11 of the *Independent Commission Against Corruption Act 1988*".

The tipsheet was distributed to over 390 principal officers and is available on the Commission's website.

b. Is the Commission satisfied that public sector agencies' awareness of the importance of reporting such incidents has improved?

The Commission is satisfied that agencies' awareness has been improved, as it has written to every principal officer and has placed the relevant publication on its website. Its letter to all principal officers on this topic (see answer 25a above) refers the reader to the "reporting corruption" section of the ICAC website that provides information on how and what to report, as well as to the publication, *Section 11 Report Guidelines for Principal Officers*, also available from the website. In the coming year, the Commission intends to issue a reminder to all principal officers of their obligation to report such conduct to the Commission.

26. According to the 2010-11 Annual Report, the number of telephone and email inquiries for corruption prevention advice was 97, compared with 155 for the previous year. The Commission states that this may be due to the release of the online corruption prevention toolkit on best practice (p 10). Does the Commission measure website hits to assess the number of downloads of its online corruption prevention material?

The Commission does not monitor the downloading of corruption prevention material from the website. Interpreting trends from the numbers of website visitors and downloads is difficult. External factors such as the media coverage of an individual inquiry appear to greatly influence the number of visits.

In these circumstances, identifying the number of visits to new material on the website may have minimal significance. As an example, six visits by agencies that adopt changes as a result of what they download may be more significant than a thousand visits by web surfers interested in the latest inquiry.

Rather, the Commission monitors communication to known audiences by monitoring the following:

- training sessions and audience numbers
- advice provided by phone and email
- presentations.

The 2010-2011 Annual Report indicated the drop in advice requests may have been due to the availability of web-based corruption prevention material. It is equally plausible that increased communication through the other channels listed above contributed to the reduced need for advice.

Some part of the changes in advice request numbers from 2009-2011 may be random fluctuations in demand. Comparing the period from July to December 2011 with the corresponding periods from the two previous years, the number of requests for advice was 69, 52 and 89 respectively. In effect, 50% of the drop from 2009-2010 to 2010-2011 has been recovered during the current financial year to date.

Finally, there are changing concerns of agencies and responsibilities within oversight agencies that affect the overall demand for advice. The consolidation of public interest disclosure (PID) responsibility within the office of the Ombudsman has led to a sharp decline in PID related advice requests to the Commission, from 19 in 2009-2010, to seven in 2010-2011 and zero in the current year to date.

Comparing year-to-date figures for the financial years beginning 2009, 2010 and 2011, there has also been a drop in requests for general information about the ICAC, employment practices and conflicts of interest.

During the same period there has been a notable increase in requests for advice around the management of gifts and benefits, the public private interface, regulatory functions including planning, codes of conduct and prevention planning.

27. The 2009-10 Annual Report stated that in 2010-11 the Corruption Prevention Division would focus on two high risk areas: governance structures in local government and service delivery through non-government organisations (p 59). What corruption prevention activities did the Division undertake in relation to these areas during 2010-11?

At the time the 2009-2010 Annual Report was produced, it was intended that the Corruption Prevention Division would produce a report to government on governance structures in local government independent of the inquiry into the Burwood Council (Operation Magnus).

It transpired that the Burwood inquiry became considerably broader than anticipated, and examined the governance issues of concern to the Division. The corruption prevention chapter of the Commission's report (*Investigation into alleged corrupt conduct involving Burwood Council's General Manager and Others*, April 2011) made significant recommendations for change. A second freestanding report on this topic was considered unnecessary.

The Operation Magnus corruption prevention chapter made 31 recommendations for change to address the power and oversight of general managers, the use of internal audit in local government, management of gaps in the knowledge necessary for councillors to exercise their oversight roles and changes in complaint handling.

The essence of the key recommendations to the government and the Division of Local Government (DLG) is:

- Legislative changes to give authority to the DLG to require councils to adopt important policies and practices in much the same way as Department of Premier and Cabinet circulars are binding on the state public sector. It was further recommended that the DLG review all circulars by the Department of Premier and Cabinet for issues of relevance and issue guidelines to councils accordingly.
- Legislative amendment to the *Local Government Act 1993* should be made to establish internal audit for local authorities as a statutory function. The report also makes several recommendations on the functioning of internal audit including the removal of the right of the general manager to attend all audit committee meetings.
- It was recommended that Part 3 of the Model Code of Conduct for local Councils in NSW be amended to improve guidance to mayors in their management of complaints about general managers, and that the DLG amended the standard contract for the employment of general managers to allow councils to suspend a general manager from duty on reasonable suspicion that he or she has engaged in improper conduct.
- The DLG was asked to consider providing accreditation for training packages for councillors to ensure that they have the knowledge to discharge their roles and their oversight functions, and it was recommended that all NSW councillors undertake such accredited training at least once per term.

Progress has been made on the Non Government Organisations (NGO) project in 2010-2011 with over 40 meetings held with funding and oversight agencies, NGOs, peak bodies, and academic and industry experts. Relevant policy frameworks, legislation and regulatory codes have been examined and cross-jurisdictional comparisons have been made.

Commission holdings and more than a dozen non-ICAC investigation and policy reports have been reviewed, along with the report of the parliamentary inquiry into Ageing Disability and

Home Care services: Legislative Council Standing Committee on Social Issues *Report 44: Services provided or funded by the Department of Ageing, Disability and Home Care* (November 2010).

Funding agencies' reports of funds granted to NGOs have been analysed. In addition to these project-specific activities, the topic of corruption risks in NGOs has been raised in forums such as regional visits and agency liaison meetings.

The period 2010-2011 saw a significant expansion in the scope of the Division's procurement project, with three final reports being released rather than a single report as initially planned. This impacted on the resources available for the NGO project, however, a report is anticipated this financial year.

Compliance and accountability

28. The 2009-10 (p 69) and 2010-11 (p 56) Annual Reports both state that an assumed identity audit conducted by the Executive Director, Legal identified that records of financial transactions and use of the assumed identity in relation to one authorisation were not completed for a two month period. The Committee notes that the audits found that all other aspects of the legislation relating to assumed identities were complied with. Has the Commission made any changes to record keeping procedures or any other processes as a result of the audits?

The Commission officer responsible for collecting records of financial transactions and details of the use of assumed identities regularly reviews returns submitted by Commission officers to ensure they are up-to-date. The Solicitor to the Commission conducted an audit in November 2011. All records were up-to date.

29. Please update the Committee on the progress of the litigation, commenced in April 2011, arising from the Commission's findings of corrupt conduct against Angela D'Amore MP (p 59).

On 29 April 2011, Ms D'Amore's solicitors filed a summons in the NSW Supreme Court seeking a declaration that the Commission had exceeded its powers under the ICAC Act in making its report concerning Ms D'Amore's conduct. It was claimed that the findings that Ms D'Amore had engaged in corrupt conduct required evidence that she knew that the prescriptive conditions of the sitting day relief entitlement had been contravened, and that there was no such evidence before the Commission.

The Commission instructed the Crown Solicitor to act on its behalf. Mr Justin Gleeson SC and Ms Anna Mitchelmore have been briefed as counsel for the Commission.

The plaintiff's points of claim were filed on 7 June 2011 and the defendant's points of defence were filed on 24 June.

On 23 August orders were made by Registrar Bradford that:

1. The matter be listed for a two day hearing to commence on 2 April 2012.
2. Plaintiff's submissions to be served by 26 October 2011.
3. Defendant's submissions to be served by 7 December 2011.
4. Liberty to apply for further mention on three days' notice.

The plaintiff did not serve submissions by the due date and sought an extension of time.

On 8 December orders were made by Registrar Bradford that:

1. The plaintiff file and serve her submissions by 30 January 2012.
2. The defendant file and serve its submissions by 16 March 2012.
3. The plaintiff file and serve any reply by 23 March 2012.

The matter remains listed for a two day hearing to commence on 2 April 2012.

Our organisation

30. A review of the ICAC's information, communications and technology infrastructure is noted as a major challenge for the Corporate Services Division in 2010-11. A business

case was prepared and submitted to NSW Treasury for funding of an upgrade of the Commission's information, communications and technology equipment and software (p66). What is the status of the proposed upgrade?'

The Commission was formally advised of its capital allocation on 15 July 2011. A request for quotation (RFQ) proposal was sought from tenderers to develop detailed design specifications for the equipment upgrade. The contract was signed on 5 October 2011. On 15 December 2011, the contractor produced a detailed architecture design covering all aspects of information, communication and technology (ICT) infrastructure. It is proposed to divide the design document as follows:

- **First part:** involves the construction of the communications room to house infrastructure-related equipment, installation of air-conditioning, uninterrupted power supply, gas fire suppression system, raised flooring, server racks, et cetera. A request for tender/quotation will be issued for this phase and it is envisaged that work on this phase will commence in March 2012 and be completed by May 2012.
- **Second part:** consists of supply, configuration and commissioning of new equipment and migration of all services from the existing servers to the new servers. This will also include the supply, configuration and commissioning of all equipment for the real-time backup disaster recovery site. A request for tender for this phase is expected to be issued in the last week of January. Work is expected to commence in April 2012 and to be completed by November/ December 2012.

31. Please update the Committee on the Commission's business case for relocating from its current premises to a lower level floor during 2010-11 (p 66). Is the relocation expected to result in savings for the Commission?

The proposal to relocate to lower floors will not now be proceeding, as the lessor has entered into an agreement with a private organisation to lease the floors in question. The proposed relocation was expected to result in significant capital fit-out cost savings for the Commission through a substantial relocation incentive contribution that had been offered during negotiations with the lessor.

The Commission will now seek relocation capital funding during the 2012/13 budget process, as its current lease expires on 14 October 2014 and it is likely that it will have to move premises at that time. At this stage, no alternative accommodation has been sourced, but work will continue to identify suitable premises.

32. The Commission received a \$1.2 million budget supplementation from NSW Treasury during 2010-11, allowing it to meet increased legal costs and fund four full-time equivalent positions (p. 67).

- a. Is the budget supplementation being provided on a recurrent basis?**
NSW Treasury has provided funding (\$2.2M) on a recurrent basis.
- b. Has the Commission recruited staff to fill the additional positions funded through the budget supplementation? If so, which Division have the additional staff been allocated to?**

As a result of the initial budget supplementation, additional temporary staff were allocated to the Investigation Division (three) and the Legal Division (one). The recurrent budget supplementation has allowed the following permanent staff to be employed in the Investigation Division:

- Support officer
- Chief investigator
- 3 x Investigators
- Senior financial investigator
- Financial investigator

It has also allowed the following permanent staff to be employed in other areas of the Commission:

- Administration officer (Assessments)
- Corruption prevention officer
- Records and property officer
- Principal lawyer (prosecutions)

33. During the Committee's previous review, a key challenge identified by the ICAC over the next five years was the development and retention of high-performing staff, by providing opportunities for their progression within the organisation. The Commission stated that 'we need to better utilise our internal trainers to develop our own staff and make a commitment to staff development through collaborative means across Divisions; for example, mentoring arrangements across Divisions.'⁶What strategies does the ICAC use to develop and retain staff on an ongoing basis?

The ICAC's performance management system identifies individual staff training and development needs. In addition, opportunities through higher duties or temporary appointments for staff to act in supervisory or management positions are frequently used. We are active in promoting external development opportunities for staff secondments to other NSW and Commonwealth public sector agencies like Ombudsman's offices, the Health Care Complaints Commission, the Australian Tax Office and state-based crime commissions.

We also provide study assistance to employees to assist in their career development. The ICAC has very flexible work arrangement policies to allow for transition from full- to part-time work or to work around tertiary studies. We have flexible working hours and allow staff to accrue flextime which enables to take time out when they need it for family or other reasons. We foster career development across divisions, with recent placements including one officer who works in Assessments and also as a research officer in the Corruption Prevention Division. One officer who works in the Communications and Media Section is also gaining experience as an analyst within the Investigation Division. In recent times two female staff members progressed from analyst and assessment positions to investigator positions following successful accreditation training in investigations.

34. The Committee notes that there were 345 attendances at staff training sessions during 2010-11, compared with 572 attendances for the previous financial year (p 68). The

⁶ Committee on the ICAC, *Review of the 2008-2009 Annual report of the Independent Commission Against Corruption*, report 12/54, November 2010, p 73.

2010- 11 Annual Report states that during 2011-12 the ICAC will continue to provide staff with suitable training and development opportunities. What opportunities has the Commission identified for staff training and development during the current reporting year to date?

The significant variation in training sessions can be attributed to the implementation in late 2009 of MOCCA and the training of all ICAC staff using the case management system which was substantial in terms of training hours. There was also extensive Microsoft Office training (upgrade from Windows XP to Windows Vista operating system). Neither of these forms of training was conducted during the 2010-2011 reporting period. Furthermore, 2010-11 has been a very busy year for the Commission in terms of public inquiries and associated work, which has impacted on opportunities for staff to attend training.

For the current reporting year the following training is planned: additional Microsoft Office training, EEO/diversity training, OHS refresher information sessions for managers and merit selection training for recruitment panels. Divisional training includes interview techniques for investigations and public interest disclosures training.

35. Could you please particularise the “ICT Infrastructure Upgrade Project” referred to at p 12 of the 2010-11 Annual Report?

Particulars of the ICT Infrastructure upgrade project include:

- Construction of a new server room with adequate back-up air-conditioning and power supply.
- Commissioning of new servers in a virtualised environment which will provide scalable and seamless fault tolerance.
- Commissioning of SAN data storage which will provide scalable and seamless fault tolerance.
- New Voice Over IP (VoIP) telephone system (PABX) which will have call logging and on demand call recording capabilities.
- Real-time backup disaster site where data will be replicated. This will also reduce the return to operation (RTO) time for key systems from two weeks to two hours and for nonkey systems from six weeks to two days in case of a full disaster.
- Fully networked multifunction devices for printing, scanning and copying.
- Reliable and improved remote access facility for staff working in the field.
- Upgraded server operating systems and databases to the latest versions.
- Unified messaging services covering both digital and voice messaging.
- Commissioning of gigabit network equipment for improved speed within the local area network (LAN).

ATTACHMENT 1

PROTOCOL DOCUMENT FOR THE USE OF SECTIONS 53, 54 OF THE ICAC ACT TO REFER A MATTER FOR INVESTIGATION TO A RELEVANT AUTHORITY

i. When should referral pursuant to ss. 53, 54 be considered

To recommend that the ICAC refer a matter to another agency for investigation and report back, one or more of the following factors must apply:

- a. The matter has some degree of seriousness and may involve systemic issues
- b. The matter is symptomatic of prior incidences of similar conduct

- c. The matter relates to a serious single or confined incident of suspected corrupt conduct, or involves multiple instances of ongoing conduct.
- d. The ICAC has a specific interest in the agency/sector involved
- e. The allegation does not appear to have been investigated previously (by ICAC or others) or previous investigations were unsatisfactory
- f. The allegations are unambiguous and there appears to be a series of enquiries/searches/research/interviews that could be conducted to investigate the matter
- g. The matter is not so old that witnesses/evidence are unlikely to be available
- h. Where the complainant's identity is unknown/not to be disclosed, other lines of enquiry exist
- i. The allegations are amendable to being properly dealt with as an internal or disciplinary investigation.
- j. ICAC coercive powers are not needed (e.g. no need to obtain records such as subject's financial records which only obtainable via use of coercive powers)
- k. The information necessary to resolve matter would be within the agency's possession
- l. The matter can be investigated without reliance on the co-operation of outside parties. (Note that computer forensic auditors, private investigators/surveillance operatives and investigators can be contracted from the private sector if there is no in-house capacity)
- m. The agency possesses resources to obtain external assistance in undertaking the type of investigation required
- n. There do not appear to be any conflicts of interest that are likely to seriously jeopardise the integrity of the investigation
- o. The Commission has no concerns that the investigation is likely to be compromised by the agency it is to be referred to (including where an agency is to investigate matters within its own responsibility)

Where the CEO or some other senior officer may be the subject of the allegations being referred (or is somehow implicated in them), the following apply:

- If the matter relates to a CEO (or other very senior official), consider referring the matter to the Director General of the Department of Premier and Cabinet
- If the matter relates to the General Manager/Administrator of a local council, consider referring the matter to the Mayor. It may also be appropriate to consider referring the matter to the Deputy Director General, Division of Local Government within the Department of Premier and Cabinet.

In other circumstances, include a strong recommendation that an external investigator is Appointed.⁷

ii. At what point should consultation occur with the relevant authority

Consultation with the relevant authority is required under the ICAC Act. It can occur as soon as practicable after the Assessment Panel has determined that the matter be made the subject of a referral. Consultation will be between the Assessment Officer with carriage of the matter and the relevant contact officer for the authority (in the case of a local council, its General Manager; for a larger, state authority, with its Head of Audit or Internal Governance).

⁷ We do not have the power under the ICAC Act to direct an agency to appoint an external investigator.

iii. Which ICAC officers should have carriage of ss. 53, 54 matters

Unless there are compelling reasons to the contrary⁸, and within the discretion of the Manager Assessments, ss. 53, 54 matters should be handled by Senior Assessment Officers.

iv. Who has ultimate oversight of ss. 53, 54 matters

The Strategic Investigations Group will consider the progress of all matters on a monthly basis.

v. What type of recommendations ought to be given to the relevant authority regarding the scope of the investigation and/or who should conduct it

This will depend to some extent on the nature of the allegations made. As far as is practicable, the scope of the investigation should be clearly defined as to

- who is involved
- the time period in question;
- and the nature of the conduct alleged.

Where it has been recommended to the agency that it appoints an external investigator, request that the agency contacts the Commission to advise whom it proposes to appoint and why (relevant qualifications, experience, e.g. for an individual). The Assessment Officer with carriage is to discuss with the Manager Assessments whom the agency proposes to contract to carry out the investigation. If there is doubt as to the suitability of the proposed investigator, the Manager Assessments will discuss this with the Deputy Commissioner.

vi. What time frame should be given to the relevant authority for completion of the investigation and report

This will depend upon such issues as the complexity of the matter (such as where a large amount of data or documentation needs to be analysed or there are in excess of 20 interviewees) and whether the agency can investigate itself or is to appoint an external investigator. As a general rule, 8-12 weeks ought to be sufficient time in which to conduct an investigation and to report back. However, for more complex matters, up to 16 weeks may be warranted.

vii. What should be requested of the agency from the outset, during the course of an investigation and upon its completion

From the outset

The Commission cannot compel an investigating agency to provide one, but it is good practice to make a request for the agency to provide **an investigation plan**. This will enable Assessments to determine whether the plan appears methodical and appropriate; any concerns as to the manner in which the investigation is proposed to occur can be raised from the outset.

The areas a good investigation plan will cover include:

- An overview, including why the investigation is being conducted

⁸ For example, an experienced Assessment Officer wishes to gain further experience in order to assist in an application to be re-graded as a Senior Assessment Officer.

- Scope and purpose, being the rationale for the investigation or what it is trying to achieve (e.g. a list of issues to resolve such as to determine whether the contract between the agency and XYZ Pty Ltd should be terminated)
- Resources, being what is required to carry it out, such as people and technical facilities required
- Timeframe, being how long it is envisaged to take
- Who are the affected persons
- What appear to be the core factual issues
- Risk assessment, being what risks have been identified, an analysis thereof, and how the risks will be treated
- How information is to be gathered relevant to the core factual issues, namely what documents are likely to assist and how will these be obtained and what witnesses are relevant to which issues

An investigation plan is therefore to be requested at the time a due date has been agreed upon and giving the agency 14 days in which to provide it. Appropriate follow up should occur. Assessment Officers are to provide their supervisor with an assessment of the adequacy of the investigation plan.

During

During the course of the investigation, at least one **progress report** should be sought, around the half way mark of an investigation. That is, if the agency has been given 10 weeks to complete its investigation, request a progress report in writing, allowing 7 days for compliance, at the 5 week mark. Any concerns must be brought to the attention of the Assessment Officer's supervisor.

Upon completion

Agencies are to be required to advise, when providing the section 54 report, what steps are proposed to be taken in light of the investigation's findings, e.g. disciplinary action, revision of processes or policies.

viii. What factors should be considered in a request for an extension of time

All requests for an extension of the agreed due date are to be made in writing and submitted by the relevant authority for the attention of the Deputy Commissioner, setting out the reason(s) for the requested extension. The Senior Assessment Officer with carriage of the matter will provide the Deputy Commissioner with a minute including a recommendation as to whether the request is reasonable, with a consideration of factors such as what issues have arisen since the investigation's commencement, so as to make completion within the time frame initially agreed upon unfeasible; the length of the extension sought; and whether it is the first request for an extension.

ix. Upon receipt of the section 54 investigation report, what factors or criteria should be considered by Assessments staff in determining whether the investigation and report are satisfactory

Matters to be satisfied of include:

- a. The investigator has addressed all aspects or allegations set out in the referral documentation
- b. Relevant core factual issues have been identified
- c. There is no sense that the investigator has prejudged the issues
- d. The language used is clear and unambiguous; there is no sense of fudging any issues

- e. There is no mitigating commentary or opinion, e.g. the subject of the allegations is generally well-regarded in the workplace
- f. It is apparent what documents, policies and/or procedures have been examined (and what versions), and that this is the relevant documentation pertaining to the allegations made
- g. The source of the allegations has been interviewed, where possible
- h. Appropriate questions have been asked of the source, such as how s/he became aware of the allegations; complete details as to what occurred and how, who was involved, what functions and policies of the organisation were affected; are there others who may have information or evidence on point; has the matter been reported elsewhere and with what outcome; what documents or other evidence exist that may corroborate the allegations
- i. Relevant witnesses have been interviewed or attempts made to do so
- j. The subject of the allegations was interviewed and afforded natural justice
- k. The subject's version of events has been tested, where possible
- l. The subject was not given too much information by way of a preamble so as to enable him/her to assess the strength of available evidence
- m. There is no undue delay between interviewing witnesses which could have led to collusion
- n. Non-leading questioning of all interviewees has been used, that is question were not asked in such a way as to provoke an exculpatory response as regards the subject in particular
- o. All possible explanations for the allegations have been considered
- p. There is a valid assessment of the reliability of the evidence gathered including conclusions as to witness accounts and document relevance and reliability
- q. Findings of fact directly relate to the evidence collected

x. How should enquiries be dealt with in relation to what information can or cannot be disclosed

If the Commission communicates information under a s. 53 referral on the basis that the information is confidential, then section 111 of the ICAC Act (the secrecy provisions) applies to that information.⁹ The application of s. 111 should be made clear in any dissemination. In such cases, an agency cannot disclose publicly the contents of the referral documentation we send them. However, this does not apply to them affording procedural fairness to the subject(s) of the allegations in accordance with normal investigative practice.

However, the s. 54 report produced by a referral authority (or its contracted external investigator) is a report of that authority and not a report of the ICAC. Commission staff are to deal with enquiries in this way:

From the relevant authority, whether its s. 54 report can be used for disciplinary purposes

Yes

From the relevant authority whether it can respond to media enquiries about its s. 54 investigation and report

⁹ See section 111(1)(d) of the ICAC Act

This is a matter for the authority. Note: No Commission staff are to advise agencies as to how to deal with media enquiries they receive, nor are staff to refer agencies in that respect to the Commission's Manager Communications and Media.

From the relevant authority, whether it can discuss with the subject of the allegations and/or the source of the allegations the outcome of the investigation and s. 54 report

This is a matter for the authority

From the subject of allegations canvassed in a s. 54 investigation report, whether the ICAC can advise them of the outcome

They should contact the relevant authority

From the media, whether we can confirm or deny details of a ss. 53, 54 investigation and report (i.e. it's apparent the media is aware that an investigation took place)

Refer the enquirer to the Manager Communications and Media on 0417 467 801.

xi. What time frame applies to Assessments for consideration of a section 54 report and subsequent re-reporting of the matter to the Assessment Panel

Under Assessments' internal turnaround times, 28 calendar days from the date of receipt of the section 54 report is the target for re-reporting a ss. 53, 54 matter to the Assessment Panel.

ATTACHMENT 2

INDEPENDENT COMMISSION AGAINST CORRUPTION

Public Interest Disclosures Committee Charter

Purpose

The Commission recognises the importance to its functions of receiving information about potential corrupt conduct from current public officials, which includes some individuals who are contracted to public agencies, who 'blow the whistle' on wrongdoing involving the NSW public sector.

In order to continue to encourage public officials and individual contractors ("whistleblowers") to bring information to the Commission, the Public Interest Disclosures Committee ("the committee") has been established to:

1. offer guidance and assistance to whistleblowers
2. act as an advisory body to the Commissioner (or his delegate) in his capacity as a member of the Steering Committee on the *Public Interest Disclosures Act 1994* ("the PID Act")
3. mentor Commission staff and ensure that they receive appropriate training and support
4. work with the Solicitor to the Commission to ensure the Commission complies with its obligations under the PID Act.

Committee responsibilities

The committee members' responsibilities require them to have a sound understanding of the PID Act and to possess high level communication and interpersonal skills.

In their role of providing guidance and assistance to whistleblowers, committee members are required to explain the protections and limitations under the PID Act and Commission processes generally; to make whistleblowers aware of support mechanisms that exist in their own workplace and elsewhere; and to discuss workplace and general wellbeing issues that are outside of the scope of the complaint submitted to the Commission. Committee members will not only respond to contact initiated by whistleblowers but will actively identify matters where a whistleblower would benefit from contact and liaison with a committee member.

In their role of providing advice to the Commissioner or his delegate, committee members are required to keep abreast of developments in the area of whistleblower rights and the committee chair will liaise regularly with the PID unit of the NSW Ombudsman's Office.

In their role of acting as mentors of and advisors to Commission staff, committee members will respond to queries from staff and will actively monitor training and support provided to staff who deal with whistleblower matters to ensure it is appropriate.

In working with the Solicitor to the Commission, committee members will ensure the Commission meets its reporting and other obligations under the PID Act and will ensure that staff are properly recording matters in the Commission's database, MOCCA.

Principles of operation

Committee members will generally not discuss operational matters with a whistleblower and will ensure that whistleblowers understand the purpose of the committee, which is to guide and assist.

There is no limit on the number of discussions or contacts that may be had with a whistleblower and contact can continue even after the Commission has advised the whistleblower that it is taking no action or has referred their information to another agency.

Committee members will record any conversations or contact with whistleblowers in TRIM and save the notes of any discussions into a designated Z file. Any factual matters that are volunteered by the whistleblower should be recorded against the relevant E file in MOCCA and drawn to the attention of the matter owner.

Committee members will be rostered on for a week at a time, with one back-up member in the event of illness or unavailability during that week of the primary contact person. Contact will occur as a result of a Commission staff member passing on details to a committee member of a whistleblower who wishes to discuss their concerns, or suggesting that the whistleblower contacts the committee him or herself; via email contact initiated by the whistleblower; or via a committee member making contact with a whistleblower after having been made aware that some form of advice and guidance to that person is warranted.

Membership

Membership of the committee will comprise at least one representative from:

1. Assessments Section
2. Corruption Prevention Division
3. Investigation Division
4. Legal Division

The committee's chair is the Manager Assessments.

Meetings

The committee will meet on a quarterly basis to debrief on matters dealt with in the previous quarter and to discuss any matters that require action through being raised with the Commissioner or otherwise. Minutes will not be recorded on the intranet, given the potential for confidential matters to be raised. Minutes will be recorded in the Z file referred to above.

Related committees

The Steering Committee for the *Public Interest Disclosures Act 1994*; the ICAC's OH&S committee

ATTACHMENT 3

MEMORANDUM OF UNDERSTANDING

1. This Memorandum of Understanding ("MOU") is made on the 17th day of May between the Independent Commission Against Corruption ("ICAC") and the Office of the Director of Public Prosecutions ("ODPP").

PURPOSE

2. The purpose of this MOU is to enable charges arising out of ICAC investigations to be laid, whenever appropriate, and prosecuted promptly, and to set out in general terms the responsibilities of the ICAC and ODPP in relation to:
 - a. the furnishing by the ICAC to the ODPP of admissible evidence obtained as the result of ICAC investigations, pursuant to its function *under section 14(1)(a) of the Independent Commission Against Corruption Act 1988* ("the ICAC Act"); and
 - b. liaison arrangements between the ICAC and ODPP to ensure that:
 - i. any evidence furnished by the ICAC to ODPP is provided in a timely manner and presented in an orderly, comprehensive and accurate form;
 - ii. the ODPP assigns an appropriately senior officer to consider such evidence in a timely and efficient manner;
 - iii. the ODPP provides advice in a timely manner to the ICAC about whether or not a prosecution should be commenced.

FURNISHING OF EVIDENCE

3. The ICAC will, within 4 months of the receipt of final submissions from all legal representatives at a public inquiry (or if there is no public inquiry, within 4 months of the end of an investigation) provide copies of statements, exhibits annexed to relevant statements and any other relevant admissible material to the ODPP, together with a covering letter outlining what charges have been identified by the ICAC as being open on the evidence. The letter will outline the evidence obtained during the ICAC investigation and any relevant legal and evidentiary issues.
4. The letter should:
 - identify each of the proof elements for the identified charge(s);
 - identify any known or expected difficulties of proof;

- identify which witnesses have indicated that they are willing to give evidence, and particulars of the manner in which this willingness was conveyed to the ICAC;
 - identify which witnesses have indicated that they are not willing to give evidence and particulars of the manner in which this unwillingness was conveyed to the ICAC;
 - identify and explain the significance of the documents included in the brief (preferably in the form of a table attached to the letter);
 - advise if there is any particular urgency, and, in the case of matters in which summary charges are considered appropriate, advise of the last date on which proceedings can be instituted.
5. Admissible material involves the following:
- a. signed witness statements including a jurat;
 - b. banker's affidavits, producing banking records;
 - c. transcript not subject to objection under s38 of the JCAC Act (unless such transcript relates to an offence under the ICAC Act);
 - d. exhibits, annexed to the relevant statements not to a general statement by an ICAC investigator.
6. Admissible material does not include, and the ICAC will not furnish unless and until requested by the ODPP:
- a. transcripts of evidence given on objection, except in relation to an offence under the ICAC Act where the same are probative;
 - b. subject to the same exception, exhibits produced under objection;
 - c. the ICAC public investigation report.
- In cases where a significant witness refuses to provide a statement, transcripts of relevant portions of that witness's evidence given under objection may be provided with the brief in order that the ODPP may consider whether such witness should be called without a statement having been provided. However, the transcript of evidence of such a witness will be provided with the brief only if the prior approval of the Managing Lawyer for ODPP Group 6 has been obtained.
7. The ODPP will not furnish preliminary advice on an incomplete brief, except in special extenuating circumstances as agreed between the persons stipulated in paragraph 37 below.
8. Where potential offences are summary offences, the ICAC will ensure that the documentation referred to in paragraph 3 is provided to the ODPP as soon as practicable and the ODPP will ensure that the advice as to whether any criminal charges are available is rendered in a timely manner, allowing the ICAC sufficient time for an ICAC officer to take out a CAN in accordance with the advice.
9. In matters in which any charges identified by the ICAC are time-limited summary offences, the ICAC brief will be provided as early as is practicable, and in any event not later than three months before the time will expire. Within eight weeks of the ODPP receiving the material referred to in paragraph 3, the ODPP will advise the ICAC if criminal charges are available or will provide a progress report. Where charges are available, the ODPP will identify them and provide the appropriate wording for the CANs and a statement of facts.

INDICTABLE OFFENCES

10. Upon receipt of the documentation referred to in paragraph 3, the ODPP will assign the matter to an appropriately senior ODPP lawyer. The ODPP will advise the ICAC of the name of the lawyer to whom the matter has been referred, his/her telephone number and other contact details within two weeks of the receipt of the documentation. The assigned lawyer will arrange a conference with relevant ICAC officers within three months of receipt of the documentation.
11. At the conference, a timetable for the answering of requisitions and the furnishing of advice by the ODPP as to whether criminal charges are available will be agreed, and confirmed in writing by the ODPP.
12. Any variation to this timetable, including any requests for further requisitions, should be raised by the ODPP lawyer by way of initial discussion and then confirmed in writing.
13. The ODPP will aim to provide advice to the ICAC as to whether criminal charges are available as quickly as practicable after receipt of the brief, and at least within 6 months, for standard matters and within 12 months for complex matters, subject to the ICAC providing responses to any requisitions issued within the agreed timeframes. The Managing Lawyer for ODPP Group 6 will nominate whether a matter is standard or complex when allocating the matter to an ODPP lawyer.

INDICATION OF EARLY GUILTY PLEA

14. In cases where ICAC officers have been advised that a person who has been the subject of an investigation by the ICAC wants to plead guilty, a brief of evidence may be provided that is streamlined but contains the evidentiary material capable of supporting the elements of the charge.
15. In cases where there are co-offenders, and a plea of guilty is being offered on the basis that evidence will be given against other offenders and recognition sought for such cooperation on sentence, ICAC officers will also provide the evidence then available in respect of the co-offenders, a detailed summary of that evidence, and an indication of how the cooperation offered would assist in the prosecution of such co-offenders, but will not be required to provide full briefs of evidence in respect of all such possible co-offenders at the time of the consideration by the ODPP of the proposed guilty plea.

REQUISITIONS

16. Upon receipt of the material referred to in paragraph 3, and before or at the conference referred to in paragraph 10, the ODPP may raise requisitions, in writing, identifying any additional evidence or other material required to be obtained by the ICAC.
17. The ICAC will obtain additional evidence as requested by the ODPP. If any questions of law arise, clarification and advice will be sought from the ODPP, preferably through another conference.
18. Where the ODPP, after receiving a response to requisitions, raises additional requisitions necessary to complete the brief of evidence, the ODPP advice as to the charges to be laid will be provided within six weeks of receiving the additional material, or the ODPP will

provide a progress report prior to the expiration of the six weeks indicating the date by which it is expected the advice will be provided.

INSTITUTING A PROSECUTION

19. If, after consideration of the advice of the ODPP, the ICAC is of the view that other charges (based on the same evidence) are preferable to those advised by the ODPP, the ICAC will consult with the ODPP regarding the laying of those CANs.
20. Upon receipt of appropriate wording for the CANS and statement of facts and a decision by the ICAC to proceed, an ICAC case officer will prepare CANS and then proceed to issue the CANS, obtain a date and serve the CANS upon the Defendant. Prior to obtaining a date for the CANS, the ICAC case officer will consult with the ODPP about a suitable return date. If for any reason CANS are not served within four weeks of receipt of the ODPP's advice to prosecute (or such shorter period as is appropriate where statutory time limits apply), the ICAC will advise the ODPP in writing of its intended action.
21. The ICAC will file the affidavit of service and court copy of the CANS with the registry of the relevant court and advise the ODPP when this has been done.
22. The ICAC case officer will provide a copy of the CANS and the affidavit of service to the ODPP lawyer within three working days of service.
23. The ODPP will appear on the return date of the CANS and will take over the *prosecution at that time* under s.9 of the *Director of Public Prosecutions Act 1986*.
24. In respect of indictable offences, the ICAC will serve a disclosure certificate on the ODPP prior to the brief of evidence being served on the accused. The disclosure certificate will be in the same form as Schedule 1 to the *Director of Public Prosecutions Regulation 2010* relating to the duty of disclosure upon police officers.
25. The ODPP will specify in writing to the ICAC the documents required to be included in the brief of evidence to be served upon the defendant.
26. The ICAC case officer will prepare the s75(a) notice and serve it and a copy of the brief of evidence in accordance with the relevant practice note of the Local Court. A copy of the s75 notice as served on the defendant will be provided by the ICAC officer to the ODPP lawyer with carriage of the matter within three working days of service upon the defendant.
27. The disclosure certificate and s75 notice will specify the documents and other contents of the brief of evidence through a detailed description.

COSTS

28. The ICAC is responsible for meeting the expenses of security arrangements for ICAC witnesses who are the subject of witness security arrangements.
29. The QDPP is responsible for meeting the cost of witness expenses for those witnesses who are not the subject of witness security arrangements. These expenses include travel costs

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION
ANSWERS TO QUESTIONS ON NOTICE

in all prosecutions conducted by the ODPP and any order for costs to be paid to the defendant if the prosecution fails.

30. The ICAC will bear the costs relating to the investigation of the charge and the obtaining of evidence.
31. The ODPP and the ICAC may make arrangements for the sharing of costs associated with the preparation of evidence for trial.
32. The ICAC will be responsible for arranging for the attendance of witnesses at the hearings. The ODPP will provide the ICAC with information, updated as necessary explaining payment of costs and related matters. The ICAC will forward relevant aspects of this information to witnesses.

SUMMARY HEARINGS, COMMITTAL AND TRIAL

33. The ODPP will provide subpoenas to the ICAC within an adequate time to permit the ICAC to attend to service.
34. The ODPP lawyer with the carriage of a prosecution will liaise with relevant ICAC officers in relation to witnesses and exhibits that will be required at hearings.
35. The ICAC is generally responsible for the storing and transporting of ICAC exhibits and original documentation. The ICAC will arrange for attendance by appropriate ICAC officer(s) at hearings.

DECISION NOT TO PROCEED

36. The ODPP will convey to the ICAC, in writing when requested, short reasons why prosecutions are not commenced or continued. In particular, it will advise if it be the case that a prosecution cannot be continued because a witness has become unavailable or has declined to provide evidence.

POINTS OF CONTACT

37. The official points of contact, and the points of contact for all matters of a serious or sensitive nature, will be the Deputy Commissioner of the ICAC and the Managing Lawyer for ODPP Group
38. As well as liaising in respect of specific issues that might arise, these officers will meet at least once every two months to discuss the progress of preparation of advice by ODPP lawyers and the progress of responses to requisitions by ICAC officers.
39. The usual points of contact for each prosecution will be between the relevant ODPP lawyer and the ICAC case lawyer.
40. When the ICAC works jointly on investigations with another investigative body or bodies, an officer from the ICAC will be nominated to be the contact officer in relation to the answering of requisitions and the collation of the brief of evidence.

41. The address for all correspondence between the ICAC and the ODPP is:

To the ICAC:
The Solicitor to the Commission
Independent Commission Against Corruption
DX 557 SYDNEY
ATTENTION:(name of ICAC case lawyer)

To the ODPP:
Solicitor for Public Prosecutions
Office of the Director of Public Prosecutions
DX 11525 SYDNEY DOWNTOWN



The Hon David Ipp AO QC

Commissioner ICAC



Ian Temby AO QC

A/Director of Public Prosecutions

ATTACHMENT 4:

**PROSECUTION TIMESCALES
FOR
MATTERS CURRENT
FROM
1 JULY 2010 TO 19 JANUARY 2012**

REPORT	DATE OF REPORT	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF DPP REQUISITIONS	DATE OF RESPONSE TO DPP REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE
CASSOWARY							
Whitcher	14/12/05	14/12/07	730	4/8/09 & 13/8/09	13/9/09 & 11/9/09		
Whaanga	14/12/05	14/12/07	730				
Fraser	14/12/05	14/12/07	730				
Ratkovic	14/12/05	14/12/07	730				
Browning	14/12/05	14/12/07	730	Preliminary advice received	Statements being obtained.		
Gomez	14/12/05	14/12/07	730				
Mohammad	14/12/05	14/12/07	730				
Abboud	14/12/05	14/12/07	730	8/9/11 but subject to obtaining further statements from WorkCover.			
Leon	14/12/05	14/12/07	730				
Noel	14/12/05	14/12/07	730				
Ritchie	14/12/05	14/12/07	730				
Kalland	14/12/05	14/12/07	730				
Burton	14/12/05	14/12/07	730				
Bacon	14/12/05	14/12/07	730				
Bishop	14/12/05	14/12/07	730				
McAndrew	14/12/05	14/12/07	730				
Atkins	14/12/05	14/12/07	730				
McMaster	14/12/05	14/12/07	730				
Moya	14/12/05	14/12/07	730				
Senior	14/12/05	14/12/07	730				

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REPORT	DATE OF REPORT	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF DPP REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO DPP REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE
AMBROSIA							
Williams	21/12/05	16/3/07	450			3/3/11*	*Awaiting details from DPP
More	21/12/05	16/3/07	450			3/3/11*	*Awaiting details from DPP
Younis	21/12/05	16/3/07	450				
Kayrouz	21/12/05	16/3/07	450				
Aboulhosn	21/12/05	16/3/07	450			3/3/11*	*Awaiting details from DPP
Sleiman	21/12/05	16/3/07	450			3/3/11*	*Awaiting details from DPP
Karam	21/12/05	16/3/07	450				
Bazouni	21/12/05	16/3/07	450			4/11/11	1694
Tannous	21/12/05	16/3/07	450			15/6/11	1552
Makdessi	21/12/05	16/3/07	450			15/6/11	1552
Nader	21/12/05	16/3/07	450			15/6/11	1552
Ben	21/12/05	16/3/07	450			21/6/11	1558
Dib	21/12/05	16/3/07	450			23/6/11	1560
Punz	21/12/05	16/3/07	450				
Borovina	21/12/05	16/3/07	450			4/11/11	1694
Akiki	21/12/05	16/3/07	450			4/11/11	1694
Ayoub	21/12/05	16/3/07	450			3/3/11*	*Awaiting details from DPP
Harb, B	21/12/05	16/3/07	450			16/6/11	1553
Allem	21/12/05	18/9/07	636				
Megas	21/12/05	22/4/08	853				
Constantin	21/12/05	18/9/07	636				
Barrakat	21/12/05	17/3/08	817				

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GREENWAY							
Murray	31/1/08	30/9/08	243	6/2/09	29/06/09	6/12/10	797
MONTO F							
Blackstock	13/8/08	14/10/08	62	12/03/09	21/10/09	12/1/11	820
Madrajat	13/8/08	14/10/08	62	12/03/09	22/7/09	12/1/11	820
Ward	13/8/08	14/10/08	62	12/03/09	12/10/09	11/1/11	819
Chambers	13/8/08	14/10/08	62	Nil	N/A	4/11/10	751
Clarke	13/8/08	14/10/08	62	Nil	N/A	17/9/10	703
MONTO C							
Hughes	13/8/08	31/10/08	79	28/5/09	16/06/09	3/9/10	672
Kuipers, W	13/8/08	31/10/08	79	28/5/09	16/06/09	9/3/11	859
Kuipers, K	13/8/08	31/10/08	79	28/5/09	16/06/09	9/3/11	859
MONTO B							
Walker	8/9/08	22/04/09	226	Nil	N/A	1/2/11	650
Azzopardi	8/9/08	22/04/09	226	Nil	N/A	1/2/11	650
Kuipers, W	8/9/08	22/04/09	226	Nil	N/A	1/2/11	650
Napier, Michael	8/9/08	22/04/09	226	Nil	N/A	1/2/11	650
Napier, Matt	8/9/08	22/04/09	226	Nil	N/A	1/2/11	650
Dulhunty	8/9/08	22/04/09	226	Nil	N/A	1/2/11	650
MONTO D							
Stanic	8/9/08	7/7/09	302	Nil	N/A	20/9/11	805
Szoboszlaj	8/9/08	7/7/09	302	Nil	N/A	20/9/11	805
Kouraos	8/9/08	7/7/09	302	Nil	N/A	20/9/11	805
Palombo	8/9/08	7/7/09	302	Nil	N/A	20/9/11	805

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MONTO A							
Hetman	25/9/08	14/10/09	384				
Murdocca, D	25/9/08	14/10/09	384				
Murdocca, S	25/9/08	14/10/09	384				
Murdocca, P	25/9/08	14/10/09	384				
MONTO E							
Akkawi	25/9/08	23/04/09	210	N/A	N/A	13/9/10	508
ATLAS							
Morgan (Ch 5)	8/10/08	17/7/09	282	20/5/11			
Morgan (Ch 3 & 4)	8/10/08	17/7/09	282	N/A	N/A	28/9/10	438
Morgan (Ch 11)	8/10/08	13/7/09	278	N/A	N/A	28/9/10	442
Vellar (Ch 5)	8/10/08	17/7/09	282				
Vellar (Ch 9)	8/10/08	6/7/09	271	20/5/11			
Vellar (Ch 9)	8/10/08	13/7/09	278	N/A	N/A	28/9/10	442
Zanotto (Ch 9)	8/10/08	6/7/09	271				
Zanotto (Ch 11)	8/10/08	13/7/09	278	N/A	N/A	6/5/11	662
Younan (Ch 11)	8/10/08	13/7/09	278	N/A	N/A	6/5/11	662
Younan (s.87)	8/10/08	13/7/09	278				
Carroll (Ch 11)	8/10/08	13/7/09	278	N/A	N/A	6/5/11	662
Carroll (s.87)	8/10/08	13/7/09	278				
Tasich (Ch 11)	8/10/08	13/7/09	278	N/A	N/A	6/5/11	662
Scimone (Ch 11)	8/10/08	13/7/09	278	N/A	N/A	28/9/10	442
Gigliotti (Ch 11)	8/10/08	13/7/09	278	N/A	N/A	28/9/10	442
Tabak (Ch 3)	8/10/08	17/7/09	282	N/A	N/A	20/5/11	672

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MONTO GHJ&MINERVA Laidlaw Kotevski Hansen Araldi Hili Schliebs Severino Petrovski Affleck Penny Skinner Dulhunty	19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/08 19/11/09	25/11/09 25/11/09 25/11/09 25/11/09 25/11/09 25/11/09 25/11/09 25/11/09 25/11/09 25/11/09 25/11/09 25/11/09 25/11/09	371 371 371 371 371 371 371 371 371 371 371 371 371				
MIRNA Sanhueza C. Taylor A Taylor Xuereb	18/12/08 18/12/08 18/12/08 18/12/08	8/1/09 8/1/09 8/1/09 8/1/09	21 21 21 21				
TAMBO Pevec. G Murdocca Pevec. L	9/9/09 9/9/09 9/9/09	8/2/10 11/2/10 11/2/10	152 155 155	Nil	N/A	23/9/11	592
CHAUCER Khan. W Ali Khan. T	23/9/09 23/9/09 23/9/09	29/9/09 29/9/09 29/9/09	6 6 6	Nil Nil Nil	N/A N/A N/A	4/4/11 28/2/11 28/2/11	552 517 517

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ARGYLE							
Smith	4/11/09	12/10/10	342	12/1/11	5/9/11	5/10/11	358
Rossello	4/11/09	14/9/10	314	12/4/11	19/5/11	12/4/11	210
COLUMBA							
Merchant	9/12/09	24/5/10	166	Nil	N/A	19/1/12	605
Hyland	9/12/09	24/5/10	166	"	"	"	605
Moosani	9/12/09	24/5/10	166	"	"	"	605
Camilleri	9/12/09	24/5/10	166	"	"	"	605
Alqudsi	9/12/09	24/5/10	166	"	"	"	605
Raghavan	9/12/09	24/5/10	166	"	"	"	605
Brandusoiu	9/12/09	24/5/10	166	"	"	"	605
Wheeler	9/12/09	24/5/10	166	"	"	"	605
SEGOMO*							
Hart	15/3/10	7/9/10	176	11/3/11 &	17/5/11		
Paul	15/3/10	7/9/10	176	11/10/11	(working on		
Kelly	15/3/10	7/9/10	176	"	11/10/11 reqs)		
Trinder	15/3/10	7/9/10	176	"			
Nankivell	15/3/10	7/9/10	176	"			
(*With Crown Solicitor)							
CENTURION							
Pyo	13/5/10	13/5/10	0	Nil	N/A	19/8/11	463
CORAL							
Garzaniti	2/6/10	18/6/10	16	Nil	N/A	24/9/10	463
CORSAIR							
Cooper	10/6/10	26/5/10	(-15)	Nil	N/A	6/5/11	345

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CORINTH Paluzzano	13/7/10	19/7/10	6	24/2/11 & 1/5/11	3/3/11 & 8/7/11	21/9/11	429
CICERO Wade	27/7/10	9/9/10	44	Nil	N/A	11/11/10	63
AVOCA Gamage	12/8/10	27/7/10	(-16)	Nil	N/A	20/1/11	177
VARGAS Kelly Dacombe	1/9/10 1/9/10	19/11/10 19/11/10	79 79	10/2/11	13/9/11	2/8/11	256
SYRACUSE D'Amore	7/12/10	10/3/11	93	29/4/11 & 21/9/11	8/7/11 Being done		
CHALLENGER Higgs Turner	21/12/10 21/12/10	21/12/10 21/12/10	0 0	8 & 20/9/11	27/9 to 17/10	18/7/11 18/7/11	209 209
SIREN Buckley Funovski Kane Harvey Makucha	22/3/11 22/3/11 22/3/11 22/32/11 22/3/11	1/4/11 1/4/11 1/4/11 1/4/11 1/4/11	10 10 10 10 10	2/5/11 & 10/11/11			
MAGNUS Romano (PD) Romano	20/4/11 20/4/11	15/3/11 12/9/11	(-35) 145	Nil 14/10/11	N/A	16/3/11	0
DANBY Chau	12/5/11	12/7/11	61				
CHURCHILL Karkowski	22/6/11	8/7/11	16				

Appendix Two – Answers to questions without notice (transcript of evidence)

This appendix contains a transcript of evidence taken at a public hearing held by the Committee on 17 February 2012. Page references cited in the commentary relate to the numbering of the original transcript, as found on the Committee's website.

CHAIR: The Committee on the Independent Commission Against Corruption welcomes the Commissioner of the Independent Commission Against Corruption and other members of the Independent Commission Against Corruption executive for the purpose of giving evidence on matters relating to the Commission's annual reports for 2009–10 and 2010–11. I convey the thanks of the Committee for your appearance today. As part of the formalities I will ask each of you to either take an oath or make an affirmation. We will commence with Commissioner Ipp.

DAVID ANDREW IPP, Commissioner, Independent Commission Against Corruption,

ROBERT WILLIAM WALDERSEE, Executive Director, Corruption Prevention, Independent Commission Against Corruption,

JACQUELINE LOUISE FREDMAN, Manager, Assessments Section, Independent Commission Against Corruption, and

SHARON LEE LODER, Director, Investigation Division, Independent Commission Against Corruption, affirmed and examined:

THERESA JUNE HAMILTON, Deputy Commissioner, Independent Commission Against Corruption,

ROY ALFRED WALDON, Solicitor to the Independent Commission Against Corruption,

STEPHEN ANDREW OSBORNE, Deputy Director, Investigation Division, Independent Commission Against Corruption, and

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

CHAIR: Commissioner, would you like to make an opening statement before we commence with questions?

Mr IPP: Yes, thank you for that opportunity. On the last occasion that I addressed this Committee I said that the work of the Commission had increased to the extent that we were not investigating matters to which we would have directed attention had we had greater resources. I am pleased to report today that that situation has changed fundamentally. While we are extremely busy we have been given the additional funds we have requested. In key areas we have increased the members of our staff and have made other staff changes. We have been fortunate in being able to attract skilled, experienced and committed persons who have added

to the professionalism and efficacy of the agency. The present position is that we are coping with the material that should be investigated and no matter that should be investigated is being ignored because of lack of resources. The backlog of matters subject to preliminary investigation has been cleared. Full-scale investigations are being treated with the care that they need. Targets are generally being met without the constant need for overtime work. As the additional resources we have been given have made such an important difference I shall summarise what we have done with the money we have received.

Initially the Commission requested recurrent supplementation funding of \$2.3 million for 2011 to meet its additional workload. As the request was made shortly before the 2011 election the New South Wales Treasury approved only a one-off supplement of \$1.2 million for the 2011 financial year. Since then approval has been given on a recurring basis for additional annual funding of \$2.2 million. The initial additional \$1.2 million was received late in 2010. Accordingly it could only be used for part of the year and for contract and not permanent staff. Nevertheless, it was of considerable assistance in coping with the sharp increase in investigatory work the Commission was undertaking. It enabled the Commission to employ six additional temporary officers and to finance \$500,000 extra legal costs incurred by reason of significant increases in public inquiries and compulsory examinations that occurred in 2010.

At the beginning of 2010 the Commission had a lengthy backlog of matters subject to preliminary investigation. In that year the extra staff assisted in clearing the backlog. The matters subject to preliminary investigation were reduced from 138 in 2010 to 66 in 2011. The number of preliminary investigations has thus been reduced to appropriate bounds, which are within the Commission's capacity. I should add that the \$1.2 million was also used for other projects. Amongst these were improvement of our payroll and financial systems, our electronic document and records management system, obsolete surveillance equipment and the implementation of a timekeeper module that records time spent on projects and investigations.

The recurring annual funding increase of \$2.2 million applied as from 2011. This sum enabled the Commission to increase its permanent staffing by 11 officers and to meet the increased recurring external legal fees caused by the increase in the Commission's public inquiries. The balance was used for associated operating expenditure, including the upgrade of the Commission's surveillance equipment base, enhanced information technology capabilities and support, as well as additional office space for the additional staff. I should mention that the Commission has applied for a special grant for this financial year to enable it to conduct certain important investigations that require a high degree of professional specialisation for which some outside assistance will be needed. Should this grant be forthcoming the Commission in the coming year will focus much of its resources on these investigations. The overall satisfactory situation in which the Commission finds itself is basically the result of the additional funding we have received. I should say publicly that I am grateful both to the previous Government and this Government for acceding to our requests in the prompt and helpful manner they have and for the support and cooperation that has been provided to us.

While on the topic of resources, I need to give an update to question 30 of the questions on notice. After the answer had been given the Commission was provided with a detailed design specification by consultants who had earlier undertaken a review of the Commission's information communications and technology strategy. The estimated costs of new ICT equipment, according to the detailed design specification, were considerably higher than those the consultants had nominated in their earlier review. Unfortunately, the initial estimate had formed the basis of the Commission's earlier funding request and subsequent NSW Treasury

approval. This increase in the estimated costs has caused the Commission to investigate whether its core ICT strategy can be implemented in a less expensive way. It may be, however, that the Commission will have to seek additional funding to update its ICT infrastructure.

There is an additional matter in this respect as well. Since the early 1990s the New South Wales Crime Commission has supplied telecommunications interception, known as TI, facilities to the ICAC. These include infrastructure software and technical assistance. These facilities were supplied at virtually no cost. Towards the end of last year, however, due to changes in the NSWCC system architecture it became apparent that the NSWCC will be unable to continue to provide this service to the ICAC at the level required. Consequently, the ICAC has commenced a review of its TI infrastructure options. This review indicates that it will cost the ICAC between a few hundred thousand to \$1 million to replace these facilities. The options are still being investigated.

Coming now to the investigation and exposure of corruption, the increased extent of the Commission's activities in this regard is probably the most significant aspect of the achievements highlighted in our annual reports for 2010 and 2011. These activities are illustrated by the following. In 2009 the Commission undertook seven public inquiries and 33 compulsory examinations. In 2010, however, the Commission undertook 138 preliminary investigations; four full-scale investigations were carried over from 2009, and 20 full-scale investigations were commenced. These 24 full-scale investigations resulted in 12 public inquiries and corrupt conduct findings against 28 persons.

In 2011 the Commission undertook 66 preliminary investigations, continued to investigate nine investigations carried over from 2010 and initiated a further 15 full-scale investigations. Thus the Commission again undertook 24 full-scale investigations in this year. These resulted in nine public inquiries, which led to corrupt conduct findings against 26 persons. In the same period the Commission undertook 124 compulsory examinations, up from 33 in 2009. Commission lawyers acted as counsel in 118 of these. Public inquiry days in 2011 amounted to 70, compared to 28 in 2009. In 2011 Commission lawyers issued 101 section 21 notices, up from 13, and 651 section 22 notices, up from 329.

These statistics do not give the complete picture of the commission's activities. At times, after significant resources have been devoted to particular investigations, it is discovered that what originally were thought to be suspicious circumstances were not brought about by corrupt conduct and such investigations are terminated without public inquiry. Also, while some investigations are simple and can be completed rapidly, others might be highly complex, taking many months of concentrated investigation to achieve an outcome. Factors of this kind cannot be reflected in the bare statistics the Commission publishes. All in all, I think it fair to say that the number of the Commission's investigations, public inquiries, consequential results of these activities and the concomitant degree of corruption that is exposed, place it well ahead of similar agencies in Australia. The Commission, however, is acutely conscious of the need to maintain and improve its results and standards.

The escalating complexity of investigations the Commission undertakes, both contextually and technologically, is a problem unlikely to diminish. The facts we investigate are increasingly complex, involving inter-related activities by multiple parties in highly specialised fields. Additionally, the explosion of digital communications continues to test the Commission's investigative capability, that is, to find relevant evidence, and to maintain the skills, knowledge and technological facility to capture and interpret it. The Commission needs to ensure that its

management systems and processes, including forward planning, continuously improve. Awareness of this need is very much part of the Commission's ethos.

The DPP and the Commission have signed a new MOU that is designed to avoid the serious delays that have previously affected and prejudiced prosecutions of ICAC offences. The Commission is focusing on preparing as far as possible a brief to the DPP at the same time as preparing a public inquiry. This approach is paying dividends. Generally, however, more needs to be done by the Commission in order for it to comply with the MOU. We are trying our best.

A principal function of the Commission is to investigate and expose corruption. A secondary function is to assemble evidence for the prosecution of criminal offences. Two matters of the utmost significance arise from this dichotomy. Firstly, the evidence available to the Commission for the purposes of making corrupt conduct findings invariably differs significantly from the evidence which is admissible in criminal proceedings. Very often evidence admissible in a public inquiry is not admissible in a prosecution. Also, it is not unusual for crucial witnesses who are compelled to appear in the public inquiry to refuse to cooperate in a prosecution. This means that a finding of corrupt conduct does not necessarily carry with it the likelihood of a criminal conviction or even a prosecution. That is why the ICAC Act prescribes the investigation and exposure of corrupt conduct as a principal function, unlike the gathering of evidence for a criminal prosecution. Secondly, the Commission may decide to pursue a public inquiry because the alleged corrupt conduct is so serious that its exposure is in the public interest even though there may be little or no likelihood of a criminal conviction. It is therefore entirely inappropriate to measure the Commission's performance by reference to the number of offences proved in the criminal courts.

Having expressed this caveat, I will now give you the relevant statistics for criminal prosecutions over the years 2010 and 2011. In 2010, 16 persons were prosecuted for criminal offences and 14 prosecutions were completed. Of the 14, eight were convicted of all or some of the charges and six were found not guilty. In 2011, 18 persons were prosecuted for criminal offences and 14 prosecutions were completed. Of the 14, 12 were convicted of all or some of the charges and two were found not guilty.

I turn now to corruption prevention, an equally important aspect of the Commission's functions. Over the last two financial years the corruption prevention division has targeted the high-risk areas of lobbying, planning and procurement, while also increasing the training and educational output.

The first of three major corruption prevention projects was the investigation into the regulation of lobbying in New South Wales. The investigation reviewed relevant Australian and international literature and regulatory systems and prepared an issues paper for comment. This attracted more than 60 submissions. In August 2010, 48 witnesses gave evidence at an 11-day public inquiry held as part of the investigation. The investigation revealed that lobbying attracted widespread perceptions of corruption and involved a number of corruption risks. The Commission's report, released in November 2010, made 17 recommendations for change. These recommendations were designed to create a new regulatory scheme that was accountable and transparent while at the same time was practical and simple.

The Lobbying of Government Officials Act recently introduced gives substantial effect to two of the Commission's key recommendations, namely, the abolition of success fees and the introduction of the cooling-off period for ex-Ministers and Parliamentary Secretaries before

they can lobby a government official. These two reforms, however, while not unimportant, do not go anywhere near establishing a complete lobbying scheme of the kind the Commission recommended and do not remove the perceptions of corruption that presently attend lobbying practises. The Commission remains hopeful that its other recommendations will be reflected in legislation in due course.

The second major corruption prevention project undertaken in 2011 related to part 3A of the Environmental Planning and Assessment Act under which developments declared to be major projects were determined by the Minister. Since the Commission published its report on this project, legislation has been introduced which meets many of the Commission's concerns.

A third major corruption prevention project addressed systemic weakness in the State's control of procurement. This project led to the Commission making seven recommendations. The New South Wales Government has advised recently of its general intention to adopt the Commission's recommendations.

Through nearly 140 training and speaking events in 2010–11, the Corruption Prevention Division of the Commission has directly reached some 3,700 people thereby increasing their awareness and skills in preventing corruption.

To further strengthen New South Wales procurement, the Commission has introduced training for managers in procurement probity, and it is now one of our most requested training workshops. A significant aspect of the Commission's work was the furnishing of corruption prevention advice to public officials and members of the public. During the two years 2009 and 2010 the Corruption Prevention Division responded to more than 250 requests for such advice.

In conclusion, as the questions on notice are penetrating and wide ranging, I hope that the answers give you a full picture of the Commission's operations. We are happy to expand on any that need clarification.

CHAIR: The functions of this joint Committee include not only reviewing your annual and other reports, but also examining trends and changes in corrupt conduct. I will commence by asking this very open-ended question. In your opening statement you spoke about the increasing complexity in managing to investigate the digital revolution and its effect on your work load and the way you do things. What trends or changes in corrupt conduct, if any, have you observed that you think may need to lead to an amendment of your functions or powers?

Mr IPP: The area of corrupt conduct that has received perhaps the greatest focus by the Commission in the past year has been procurement. We have been involved with Operation Jarek, which involved investigating more than 100 local authorities. We have not yet provided our report, so it is premature to express any final conclusions. But I think it is apparent to anybody who has read the evidence in that case and seen the admissions made by so many people that there is a serious issue at least at the local government level with procurement, which is basically, I think, a lack of understanding of the obligations of persons who buy goods and services for local authorities. We are hoping that with that inquiry and the increased level of interest by local authorities in this area that the issues will improve. In other areas it is difficult to detect any different particular concerns. I have to say that my general impression is that, contrary to what I sometimes read and hear, the level of corruption in New South Wales is not particularly high.

CHAIR: Are there any trends that might require your functions or powers to be enhanced or finetuned in any way?

Mr IPP: We have no requests at the moment.

Mr ANDREW GEE: You mentioned the issue of procurement and training for managers, and also how it related to local government. The report says that 40 per cent of the section 10 complaints related to local councils. Does the Commission conduct specific anti-corruption training for local council staff?

Mr IPP: It does. I think Dr Waldersee will be able to give you the detail on that. I think there is one particular area that is a problem and that is country councils in outlying areas. It really is quite difficult for the Commission to conduct training sessions in these outlying country areas, which can be so far away and might involve a whole week away from the office, as it were. But we do our best. Perhaps Dr Waldersee can expand on that.

Mr WALDERSEE: Are you referring to procurement in particular or councils' skills in general?

Mr ANDREW GEE: Council skills in general, but they would include procurement, given the recent investigations.

Mr WALDERSEE: Yes. The training we carry out is tailored when it is delivered. When we go to councils, it is council cases they work on, it is council examples, et cetera. In terms of reaching the councils, we are increasingly working with the ROCs of the local areas to try to get them to organise a number of councils to come together in one place. That makes it easier to reach multiple councils in rather remote areas. Even though this inquiry is about previous annual reports, we also now are looking at going out in conjunction with the Local Government Management Association. That makes it easier: they do a lot of the organising and make the contacts and we come along and deliver what we can in behind. Maybe that is not quite what you are getting at.

Mr ANDREW GEE: No, that is helpful. Following on from what the Commissioner said about the difficulties in contacting or involving regional areas, I notice in the report that you made two regional visits over the past year. Is there any scope to increase those numbers of visits? During those visits do you conduct training with local council staff?

Mr WALDERSEE: Okay. Each year we carry out two regional visits. Those visits are quite large and they rotate around the State so that all areas are covered in a rotating way. I think we cover all of the State every five years, which does not sound much. But they are quite large so they have community breakfasts to talk about what ICAC does in reporting to community leaders, training for the local councils and government agency regional offices plus visits to the local agencies to discuss the issues that they might be facing. But that is not all the regional and rural outreach or training that we do. They are the two big programs. In addition to that we are travelling around the State as I described earlier. But, essentially, it is to provide training. Sometimes it is to provide advice when they request. In terms of the scope to increase the major outreach, I think we would struggle with our current demands to have a third. But, as I said, we are moving towards the ROC-based training where we can go to one place and reach multiple councils in one go as a more efficient way.

Ms TANIA MIHAILUK: Commissioner, you commented earlier about procurement concerning not just staff. I understood that you implied also a lack of understanding by the persons who supply the goods and services to local government?

Mr IPP: Absolutely.

Ms TANIA MIHAILUK: What are your suggestions to the Parliament in general? Is it training or is it possibly outside the scope of ICAC in relation to the private sector? What can we do to better understand the challenges?

Mr IPP: We have recommended to councils that they provide their suppliers with, as it were, a code of conduct because this involves not only educating the councils but also educating the suppliers. In that inquiry many suppliers indicated their surprise at being told that what they were doing was improper. They accepted that it was improper but said that that is something that has happened for a very long time. Some of the suppliers were multinational companies. They were actually introducing in Australia marketing practices that they had employed all over the world. It really does require education not only of councils but the suppliers. We have no reach to the suppliers ourselves. We can only get to them by trying to persuade councils to inform the suppliers of what is expected of them.

Ms TANIA MIHAILUK: Another question for Dr Waldersee. In relation to the training that you do undertake of staff my question relates to a possible concern not only with the training that staff may have or may not have undertaken in relation to procurement and their role in procurement but supervision that may or may not be taking place at some levels of local government. I appreciate that in some areas councils differ in the way they supervise staff in this area: Do you see a difference depending on whether it is regional, rural or city in the way that staff are supported?

Mr IPP: We have made recommendations to councils relating to supervision of staff. The detail I will leave to Dr Waldersee to comment on.

Mr WALDERSEE: The issue you touch on is one that concerns us. I will refer to what we have started to do about it. If people know they should not take a gift there is no point training them that they should not be taking a gift. The question is: Are they supervised? Are the systems within which they work correct? Is the overall approach of the council correct? We have put together a publication, which seems to be filtering around quite significantly, about looking at how you manage procurement. It goes to the issue of the staff have to know, so training has to be appropriate, but the management has to follow it, the system design has to be right, the motivation of the staff has to be right, and the structural arrangements by which they are supervised have to be right. Rather than putting out prescriptive recommendations, given that everyone is different, we have tried to raise the issues and give options to managers. There is a paper called "The Management Challenge", which came out in December 2011. It is widely read, as far as we can tell, already. I think it has been distributed very widely around the country, it seems.

Mr THOMAS GEORGE: Through the Commissioner to Dr Waldersee: Have the regional organisation of councils been supportive in their encouragement of councils coming to these training or information days.

Mr WALDERSEE: The ROCs vary from ROC to ROC. They are more notable in their variation than their similarity. The average may not be a meaningful answer. To give an average overall—they are very helpful. Some of them do not want us there. Generally speaking they are very helpful.

Mr THOMAS GEORGE: That is disappointing to hear.

Mr RICHARD AMERY: That they are helpful.

Mr THOMAS GEORGE: Some of them have not been helpful.

Mr WALDERSEE: To be fair, it is a burden.

Mr THOMAS GEORGE: Have you also raised the issue with the Shires Association of New South Wales?

Mr WALDERSEE: I would have to take that on notice. We try and talk to the various peak bodies and to local representatives. My guess is probably, yes, but I would have to take that on notice.

Mr RICHARD AMERY: My question relates to your comments today, and in the forward, in relation to the number of prosecutions as a result of investigations and the interesting statistics in relation to the two reports. For example, I notice going back to 08-09; 21 of 52 prosecutions; then 16 out of 28; 18 out of 26; and this year it has gone up. The percentage of prosecutions out of these findings is increasing which highlights the result of employing a lawyer to improve the briefs of evidence to the Office of the Director of Public Prosecutions [ODPP]. Based on the statistics in 2010–11, there were 26 persons subject to a corrupt finding of which there were 18 persons prosecuted arising from those investigations. What I am trying to find out, to break down those numbers, is of the 18 people prosecuted how many of those were prosecuted for the primary complaint? If they were complaining about the local government issue of taking a gift, were they prosecuted for that or is that 18 made up of making a false statement or statutory declaration or something that arose out of the investigation? How many of those complaints result in a prosecution for the primary allegation?

Mr IPP: I will ask Mr Waldon to reply to the detail of that. As far as I can recall there are none that were prosecuted other than for the primary complaint. It is our general policy not to prosecute people if we cannot prosecute them for the primary complaint. Mr Waldon may correct me.

Mr WALDON: I cannot give you details of precise numbers but the appendices in each annual report sets out the offences for which people are prosecuted and details of those offences. In most cases they have been prosecuted for the primary offence. I understand the "primary offence" to be the offence for which we started the investigation of corrupt conduct. There may be subsidiary offences for the people who were involved in the main offence where they have given false evidence to the Commission, but generally those offences are in addition to the primary offences.

Mr IPP: You will understand that sometimes they are prosecuted for the main offence but they are found not guilty on the main offence but found guilty of lying.

Mr RICHARD AMERY: To help me understand how the reports are written, in relation to page 131 of the 2010–11 report, which was overseas travel, I notice in 2009–10 you all stayed home. In relation to table 50, overseas travel appendix 7, it talks about Mr Symons went to Japan and it was \$1,381, and then there is three particular trips involving Hong Kong, Thailand and Macau where there is no amount of money in the column. There is obviously an explanation for that; either that, or, I want the name of your travel agent. Why is there nil?

Mr IPP: Either they paid themselves or they were paid by the host.

Mr RICHARD AMERY: We do not write down if the Hong Kong Independent Commission Against Corruption is the funding source for the trip?

Mr IPP: Not in the report. We only write down when we spend our own money. Where it is nil at least all or part of the fares are paid by the host but we do not pay. We do not pay where we say we do not pay, where it is nil.

Reverend the Hon. FRED NILE: Your staff have been invited?

Mr IPP: That is right.

Reverend the Hon. FRED NILE: I note that you said that you are happy you are getting increased resources. Page 18 of the report lists the matters investigated by the Commission. In 2009–10, under the heading "Own Initiative", there were 24 cases, but in 2010–11 there were only three.

Mr IPP: Are you referring to table nine on page 18?

Reverend the Hon. FRED NILE: Yes. I assume "Own Initiative" means that you initiated those inquiries.

Mr IPP: That is correct.

Reverend the Hon. FRED NILE: Is that because you were concerned about available resources to conduct further inquiries?

Mr IPP: It is just circumstances. Sometimes we initiate our inquiries because of information that is received. But largely we act on complaints.

Reverend the Hon. FRED NILE: I know.

Mr IPP: There is no connection between acting on our own initiative and our resources, although there was a time when we did not have money and we were reducing the number of investigations. We would be very hesitant about acting on our own initiative at that time.

Reverend the Hon. FRED NILE: I think it is a good thing that you do conduct some inquiries on your own initiative in response to information you have received. I think that keeps everybody on their toes. Who within the Commission initiates those inquiries? Would a director make a recommendation to you?

Mr IPP: Generally it is one of the directors or me. We might notice something in a newspaper.

Reverend the Hon. FRED NILE: In your opening remarks you said that there may be a need for more resources because in some investigations you need to use outside resources. You have a large staff and equipment. Are those resources for some technology?

Mr IPP: It is for specialised skills. We might need people with specialised knowledge that we do not have.

Reverend the Hon. FRED NILE: What knowledge would that be?

Mr IPP: Without any disrespect, I would not like to disclose that because there are current operations. As soon as I tell you what they are and that becomes public, the people will know what we are investigating.

Reverend the Hon. FRED NILE: I do not want the detail, but I understand that it is an area of technology or something like that.

Mr IPP: Yes.

Reverend the Hon. FRED NILE: I am pleased that through the different inquiries we have this improved relationship with the Director of Public Prosecutions. Are they now happy with the briefs you are preparing? You indicated that it seems to be working now.

Mr IPP: We have had marriage counselling and we are getting on better. We are trying to understand each other.

Mr THOMAS GEORGE: What is the name of the counsellor?

Reverend the Hon. FRED NILE: There has been an improvement, but there is still room for improvement.

Mr IPP: You are right on every count.

The Hon. LYNDA VOLTZ: You referred to the procurement survey. You had 3,200 suppliers on the list and you received responses from 1,515, which is 43 per cent. Is there some indication as to why 57 per cent did not respond?

Mr WALDERSEE: We did not follow up or hunt down a sample of non-respondents, which is one of the ways you can work out the difference. We were actually surprised at how big the response rate was. In this sort of research a response rate of about 20 per cent to 25 per cent is the norm. We considered it very high for the supplier survey.

The Hon. LYNDA VOLTZ: That is nice, but why do people not respond to surveys normally?

Mr WALDERSEE: It could be a bunch of reasons including that they cannot be bothered, it is time consuming or they are worried that we might somehow be working out who they are.

The Hon. LYNDA VOLTZ: They may not think it is an important issue.

Mr WALDERSEE: They may not; that is possible, too. It is very speculative.

The Hon. LYNDA VOLTZ: They are all speculative without any data to back them up. I refer to the survey you sent out to public authorities. You said that you sent them out in hardcopy. You have not identified how you contacted suppliers. Was that done using hardcopy or email?

Mr WALDERSEE: That was email using DSTA. Essentially, it was the Department of Commerce's database. That was a database of all suppliers to the New South Wales Government that were known to the Department of Commerce. They were linked to an electronic survey system.

The Hon. LYNDA VOLTZ: They could click on it?

Mr WALDERSEE: Yes.

The Hon. LYNDA VOLTZ: I asked the Commission to provide me with a copy of the surveys linked to these reports. I have been provided with the supplier survey but not the one that went to public authorities. Is there some reason for that?

Mr WALDERSEE: Only that I was told you wanted only the supplier survey. I am more than happy to provide the public authority survey.

The Hon. LYNDA VOLTZ: I would appreciate that. I note that 12 per cent of the responses were from government departments, which is 18 government departments. How does that measure up against the number of government departments that were captured as part of that mail out? It is 12 per cent of the responses, but is that 50 per cent of government departments or 70 per cent? How many government departments did not respond?

Mr WALDERSEE: I will take that question on notice and work out the details.

The Hon. LYNDA VOLTZ: I would appreciate that. I would also like you to compare that with the number of local councils that responded and how many surveys were sent out.

Mr WALDERSEE: Yes.

The Hon. LYNDA VOLTZ: Is there a reason that the responses to the question "Has a public official ever asked you to give him or her a gift, cash or benefit" were not included in the report?

Mr WALDERSEE: Again, I would have to look at the analysis. There is nothing that I can remember that made that outstanding. It is not in there because it was not a perception question. The publication eventually became an issue of perception. This was an actual experience question and the answer was somewhat concerning—about 7 per cent to 10 per cent said that they had personally been asked for some sort of gift by a public official. That was concerning, but it was not a perception.

The Hon. LYNDA VOLTZ: Let us go to that perception as opposed to the actual experience question. I have a copy of newspaper report that I can only assume refers to a press release. It states:

Granting gifts or benefits worth more than \$20 during the process was also rife, 48 per cent of respondents reported, with 36 per cent saying those items were accepted by government employees.

The reality is that 36 per cent had a perception or thought they were accepted.

Mr WALDERSEE: Yes.

The Hon. LYNDA VOLTZ: The next question—the one that has not been reported—deals with the fact that they were or were not because it was an actual question, not a perception. Is that not correct?

Mr WALDERSEE: The next question being—

The Hon. LYNDA VOLTZ: Yes, the one asking whether a public official has ever done that.

Mr WALDERSEE: I think they are going to two things. One is the perception that it is common that gifts are accepted. The other one asked whether they had experienced being asked for a gift. That is quite a different issue.

The Hon. LYNDA VOLTZ: Yes, but in your press release you did not define that this was a perception and that you had an actual response about whether people said they had an actual experience. The press release implied that this was an actual response from the suppliers as opposed to a perception and there was indeed another question that outlined whether they had direct experience of that.

Mr IPP: Are you asking a question?

The Hon. LYNDA VOLTZ: Yes, I am.

Mr IPP: What is the question?

The Hon. LYNDA VOLTZ: Why did it have 36 per cent said that those items were accepted when, in fact, the next question is the actual question about whether suppliers were saying they were accepted?

Mr WALDERSEE: Sorry. The next question was solicited.

The Hon. LYNDA VOLTZ: That is right. Has a public official ever asked you to give him or her a gift of cash or benefit?

Mr WALDERSEE: The question that was a perception is: Is it your perception that it is common that people offer gifts to government? The other question was the soliciting of gifts by government from a supplier which is quite a different thing. One is an unsolicited gift being sent by a supplier—six steak knives with your purchase. It is quite different for a public official to come along and say, "If you want this job you had better give me a gift." It is mixing a perception of an offer of how common it is for suppliers to offer gifts in the procurement process with a personal experience of having a gift solicited from you in return for a government contract purchase. I think they are quite different.

The Hon. LYNDA VOLTZ: The question is: How typical do you think it is for the public sector officials to accept gifts or benefits? The next question is: Has a public official ever asked you to give him or her a gift? What is disclosed in the press release is that 36 per cent were saying those items were accepted by government employees. Should the impression given to the media have been that 36 per cent thought there was a perception?

Mr WALDERSEE: I do not have before me the press release but the issue is that it was perception. I did a number of interviews on this and made it clear it was perceptions. We had no intention of creating the impression it was other than perception. The paper itself is full of suppliers' perceptions. The issue is a perceptions matter because they are the reality of those people. If that is different from some objective reality then it indicates the suppliers need to know differently. If suppliers believe the situation to be corrupt it will impact on their likelihood to bid for government work, it is also likely to impact their perception on whether they should offer a gift to just stay in the game.

The perceptions are very important. The paper said perceptions. All my interviews said perception. I am not sure exactly what was said in that press release but it was never meant to imply that it was anything other than perception.

The Hon. LYNDA VOLTZ: Have the results of the answers to that actual question about whether a public official ever asked you to give him or her a gift of cash or benefit ever been released to the public?

Mr WALDERSEE: I cannot remember it.

The Hon. LYNDA VOLTZ: Will you check that and get back to the Committee?

Mr WALDERSEE: I can.

The Hon. NIAL BLAIR: Commissioner, I refer to your opening statement which has led us into the procurement area about trends and current changes in corrupt areas. I want to look at the impact that technology has had on those trends and also on the way that you actually carry out investigations. Would you comment on the impact of the technology and whether that is leading towards these trends in procurement or any other areas of corrupt conduct?

Mr IPP: Is your question whether technology assists—

The Hon. NIAL BLAIR: in creating those trends. What impact does technology have on you having to investigate these matters?

Mr IPP: I can only speak from my experience. My experience has involved sitting as presiding Commissioner in all but two or three inquiries over the past two years. I am not sure whether any procurement matters were in those two or three. I do not think that technology has been an issue in any of those. Technology is certainly an issue in the investigation because people try to conceal what they are doing. There is a continual use, of course, of computers and deletion of material from computers. A major question for us is the collection of material that has been on computers, finding and tracing it because sometimes we have got hundreds of thousands of pages that have to be gone through and, there again, we just cannot read every one so we have got to use some kind of technological aids to dredge through and find what we are looking for.

There we use our forensic team and sometimes have to get outside help for that but that is very much a technological issue. Technology is terribly important in the detecting area, in the investigation area, but we have yet to experience technology being used in a very sophisticated way to commit procurement frauds although I expect that that is something that will happen.

CHAIR: I want to ask about section 53. Have there been cases when you have exercised your powers under section 55 to take further action because you have not been satisfied that the relevant authority has properly handled a section 53 referral?

Mr IPP: I cannot recall. I know we have considered it.

Ms FREDMAN: I have been at the Commission for almost five years now and we have not exercised our powers in that time. Anecdotally, I think we may have some time ago in the past five to 10 years, but certainly not in the past few years.

The Hon. NIALL BLAIR: Is there a pattern in terms of the agencies that get referrals under section 53, and those that do not?

Ms FREDMAN: No, I would not think so, not to my observation.

The Hon. NIALL BLAIR: I read the protocol that was provided with the answers to the questions on notice. Is there any systematic process for accessing the capacity of agencies to receive a referral?

Ms FREDMAN: We consult with the agency before we propose to send the referral, and if there are any concerns raised at that stage then those concerns can be taken on board in the decision-making processes as to actually make the referral to them. There are certainly agencies, say smaller councils, for example, who will contract out the investigation to a specialist body.

Mr IPP: We are very sensitive about those. We are sensitive in one respect particular and that is where the complaint is against an executive of the council, because sending it back to the council to investigate an executive of the council is not a good idea generally. We try to avoid that.

Mr ANDREW GEE: Commissioner, the report states that on 1 July 2011 the Public Interest Disclosures Committee came into existence. Is the operation of that Committee to date living up to the expectations of the Commission?

Mr IPP: The Deputy Commissioner deals with that and I will ask her to answer that question.

Ms HAMILTON: The Committee has only met a couple of times to date. I think it has the potential to be very useful. It is a very high-level committee, as you will have noted from the membership. They are all chief executive officers, the Police Commissioner et cetera. We have already identified a couple of the matters where we think the Act could be amended. We do not think a couple of the amendments that have been made as a result of recommendations from this Committee's predecessor have achieved quite what they were intended to, so we will be going back to the Government to seek clarifying legislation. But, in general terms, I

think that the Committee has the potential to be a very useful tool for getting improvements into the way in which whistleblowers are dealt with in this State.

Mr ANDREW GEE: How often does the Committee meet?

Ms HAMILTON: It meets about once every two months.

Mr RICHARD AMERY: In relation to the statistics about the increase in public hearings and the like, and bearing in mind that they are used as a reason for submissions to improve the budget and so on, what would be the cost? Is there an average cost of public hearings, or a daily cost of a public hearing, as part of a pie chart of your budget?

Mr IPP: I am not understanding you.

Mr RICHARD AMERY: I understand that some types of hearings might go for many more days than others, but how much would it cost, in general terms?

Mr IPP: The cost will involve the cost of counsel and the cost of the transcription service. The cost of counsel depends upon whether there is a senior counsel or not. It would be \$4,000 a day.

Mr WALDON: \$3,000 for junior counsel and \$1,800 for junior counsel.

Mr IPP: And the transcription costs?

Mr WALDON: That would be \$1,200.

Mr RICHARD AMERY: So we are talking around about between \$7,000 and \$8,000 a day as the average price of running a public hearing?

Mr IPP: No, no. We do not have two counsel. We have \$3,000 a day plus \$1,200, which is \$4,200 a day, at most.

Mr RICHARD AMERY: And that is a pretty good ballpark figure?

Mr IPP: Yes.

Reverend the Hon. FRED NILE: In response to question on notice No. 7, you highlighted that the Commission is unable to access the New South Wales Police computerised operational policing system, that you want to vet your own prospective employees, and that this has caused delays. Do you have any plans on how you either get access to that, or do we need to change the legislation to allow you to do that?

Mr IPP: We have asked for a change in the legislation because that is the only way we can deal with it.

Reverend the Hon. FRED NILE: You have already asked the Premier?

Mr IPP: The Premier's Department, yes.

Reverend the Hon. FRED NILE: Is there anything that this Committee can do to assist you?

Mr IPP: Your support would be very much appreciated.

Reverend the Hon. FRED NILE: Have you had any other matters that you have referred to the Government for possible amendments to the Act to assist your Commission's activities?

Mr IPP: No. I am sorry to say this, but we are content.

Reverend the Hon. FRED NILE: Good. That is very pleasing.

CHAIR: Have you formulated the amendments you would like in relation to the computerised operational policing system [COPS]?

Mr IPP: If you are asking me whether we have drafted it, the answer is no. There are apparently a number of agencies which have a similar complaint, and they have complained as well. The drafting will have to cater for everyone, and so this is a matter for the parliamentary draughtsman.

Reverend the Hon. FRED NILE: We have spoken about local government. Obviously in your activities, there is a reference concerning non-government organisations.

Mr IPP: Yes.

Reverend the Hon. FRED NILE: Do you have any particular concerns there?

Mr IPP: Oh yes.

Reverend the Hon. FRED NILE: Can you update us on what progress you are making?

Mr IPP: Yes. We have got concerns, and it is currently a project of corruption prevention that will take time because it is complex. But the basic problem with non-government organisations [NGOs] is that they operate with taxpayers' money, but without the controls. The Ombudsman, the Auditor-General and ourselves very often do not have jurisdiction over them. While they are funded by government money, they are very jealous of their own rights, and we do not have any access to them.

That becomes an issue when non-government organisations are doing work that is inherently of a governmental nature. There is only one way to deal with that and that is through legislation, but it is a very complex problem because every non-government organisation is different. Some non-government organisations may be susceptible to our jurisdiction; others may not. What is really needed is some kind of umbrella legislation that puts all non-government organisations under the jurisdiction of those agencies. But that, I think, will cause a tremendous scream of protest from the non-government organisations.

Reverend the Hon. FRED NILE: Would it be possible, though, as you said earlier, just to focus on those non-government organisations that are receiving government funding?

Mr IPP: I think all of them are.

The Hon. LYNDA VOLTZ: Mainly the church organisations.

Mr IPP: That is how they are financed.

Reverend the Hon. FRED NILE: You were saying that that would require further legislation. Are you recommending that, or is that a matter you are still considering?

Mr IPP: We have a project going on in which we are investigating this. As I said, it is a complex matter because some non-government organisations need it more than others. You will just have to read the Auditor-General's report because he has dealt with this. Some, I think, are more likely to fall under our jurisdiction than others on the present state of the law. But there is generally a state of uncertainty about it.

Reverend the Hon. FRED NILE: Have you had many complaints about corruption in non-government organisations directed to the Independent Commission Against Corruption [ICAC]?

Mr IPP: We have had some complaints, but we do not investigate those because we do not think that we have jurisdiction.

Reverend the Hon. FRED NILE: We will wait for you to further develop those amendments.

Mr IPP: Yes. We hope that by the time of our next meeting we will have produced something on it, but I am not sure. Certainly within the next 18 months, we should.

The Hon. LYNDA VOLTZ: Just going back to the question of lobbying of government officials, how precisely are "government officials" defined? For example, would a person who is paid a retainer by the government to sit on a board that directly advises the government on capital works expenditure be covered by that?

Mr IPP: The answer is that I cannot remember the definition. We have moved on from there. Our recommendations contained a complete scheme, including a definition, and it was all explained in the report. You will find it there.

The Hon. LYNDA VOLTZ: So would a person who sat on a government advisory board that reports directly to government on capital expenditure be captured by that?

Mr IPP: I do not think so.

The Hon. LYNDA VOLTZ: You do not think so?

Mr IPP: No.

The Hon. LYNDA VOLTZ: And there would be no requirement for them to keep a lobbying register?

Mr IPP: No.

The Hon. LYNDA VOLTZ: And there would be no requirement for them to stand aside or notify anyone if, for example, the company they were involved in—

Mr IPP: I do not think so, Ms Voltz. As I say, I cannot remember the precise wording of the definition that we recommended, but it was certainly never our intention to capture people like that. But you will find it all there. It is all argued, and reasons are given for the proposal in the report.

The Hon. LYNDA VOLTZ: Why was it never your intention to capture people like that?

Mr IPP: Look, I cannot remember and, quite frankly, I do not think it is appropriate for this Committee to deal with detailed questions of that kind. That is not what the function of this Committee is for, and I am not ready for that.

The Hon. LYNDA VOLTZ: I am sorry. I am only responding to an issue you raised in your opening statement about the lobbying of governing officials.

Mr IPP: You are asking a question about a detailed definition of lobbyists, and I do not recall the definition that we recommended, so I am unable to answer the question, save to tell you that you will find the answer when you read the report.

The Hon. LYNDA VOLTZ: All right, okay. Thank you for that. Let us go back to the survey of government suppliers. Perhaps Mr Waldersee could respond?

CHAIR: Just interposing, Ms Voltz, as I understand the procedure, questions are directed to the Commissioner, who will decide whether he or one of his staff members responds.

The Hon. LYNDA VOLTZ: In regard to the way the survey in supplies was done, it is probably a very simple question, but in the ranking of "how vulnerable to corruption you consider each of the following public sector methods" on the buttons that they could respond were "most vulnerable" to "least vulnerable", which were all negatives; there was no option there for "not vulnerable", which would replicate other questions where you had "not typical". I am wondering why the question was framed that way.

Mr WALDERSEE: Sorry, the lowest ranking button was—

The Hon. LYNDA VOLTZ: They were all levels of vulnerability but there was no option for the other kind of response that they did not believe it was vulnerable and that a "not vulnerable" response could be elicited from the suppliers.

Mr WALDERSEE: But surely low vulnerability is effectively "not vulnerable"; it is a degree of not vulnerable. I am sorry; I do not have the answer options in front of me.

The Hon. LYNDA VOLTZ: It is because the impression you get from the report, in figure 7 in the report the rankings of corruption vulnerability come out with "most vulnerable" and "second most vulnerable". There is nothing in there that gives you the grab that says which systems are not vulnerable, and to my mind I would have thought panels were a much more transparent process of doing supplies as opposed to tendering or whatever. But there was nothing in the report that kind of grabbed you that way because the way it came out is as "most" and "second most vulnerable" in the report.

CHAIR: Would you like to formulate a question?

The Hon. LYNDA VOLTZ: I am asking why there was a "not vulnerable" response in there. The way the report is it comes to showing that things are vulnerable but what it does not tell me is what suppliers actually think is best practice.

Mr WALDERSEE: It was the suppliers' perception of risk that was the purpose of the survey. But in terms of whether "not vulnerable at all" had been a button would not have changed what we have answered in this figure 7. What we have shown is 5 per cent—which is what you just said—only 5 per cent believe that panel contracts have a high level of vulnerability relative to direct negotiations that 30 per cent see. To me it is showing what you said you thought it would show, and it does, which is: panels are less vulnerable; they are not seen as a very vulnerable method relative to a direct negotiation. I do not quite see what the issue is.

The Hon. LYNDA VOLTZ: I know you read it that way but I am not sure that I necessarily read it that way. What that figure tells me is the one they had the most concern about; it does not necessarily tell me the one they had the least concern about because it goes on the two top rankings of "most" and "second most". What it does not tell me is the one that they find best practice.

Mr WALDERSEE: It is what is known as an ipsative scale. If it is not the top two it is the bottom three. If the top two take us to 20 per cent then we know 80 per cent have a rank that is less.

The Hon. LYNDA VOLTZ: I am not sure that I know that, but I will not get into a lot of detail about it other than I do not know that people did not rank all four of them as vulnerable; I do not know if some people in certain areas ranked all three; and I do not know that because I do not know which one people would have said these are not vulnerable at all because that is not reflected.

Mr IPP: You are obviously very interested in that report, so if you provide a list of any questions you wish answered we will do our best to answer all of them. It might be useful, if you wish, for you and Dr Waldersee to meet and he can answer all of the questions that you have when he has got all of the documents in front of him. We would be happy to provide you with any information you want.

The Hon. LYNDA VOLTZ: Thank you.

CHAIR: Mr Blair?

The Hon. NIALL BLAIR: Mr Chair, I apologise to the Committee that I had to step out of the room. I will forfeit my turn because I am fearful of asking questions that have already been asked.

CHAIR: Would anyone else on the Committee like to ask questions?

Ms TANIA MIHAILUK: Commissioner, just on what Reverend the Hon. Fred Nile raised in relation to non-government organisations, I understand you are preparing a paper that will look at extending the Commission's jurisdiction in relation to non-government organisations, which I think is quite worthy. Will you be looking at assessing non-government organisations? Perhaps it is premature to ask this; perhaps it is best left until next hearing? I appreciate that some rely on various different levels of funding and not just on State funding; there are, of

course, a large number of non-government organisations that have their own means of seeking donations and so forth, but at the same time they from time to time, rather than regularly, seek certain grants. I wonder how you would keep a register of that; for example, for those who may occasionally seek a local government grant as part of the community grants annual. Perhaps it is premature to ask that but I think it is a good step forward for the Commission to have a register.

Mr IPP: If I may so, that is a very good question, and these are the matters that we have got to look at. This is why it makes it so complex, and, of course, each non-government organisation is different—differently financed, different duties, different make-up. I think there are hundreds of them.

Mr WALDERSEE: There are thousands and at least 7,000 or more just in human services in actual contracts and grants. I do not know if you are getting at the issue of the departmental management of the funding arrangements as a primary control. Is that what you are talking about, or a register?

Ms TANIA MIHAILUK: I wonder how you would extend your jurisdiction, because some may only occasionally enter into an arrangement of seeking a grant. There are a large number, for example—and I think of local government—that may never seek a grant from the State but rather seek small grants occasionally from their respective local government and could they potentially fall out of the scope?

Mr IPP: Those difficulties may make it impossible to recommend legislation. The number involved and the differences and complicity make it really difficult. One possibility is to provide for jurisdiction by reference to the kind of services, so that if the non-government organisations deliver services which are inherently the function of government then you might provide jurisdiction. That does pose really difficult questions of definition, but it is one possible way to go because, as you point out, to go simply by way of finance might be inappropriate. It is just a very difficult question. But the problem is that there is no doubt that some non-government organisations do work that used to be done by government, over which there is no public control.

Mr RICHARD AMERY: In relation to page 59 regarding litigation in relation to the Angela D'Amore case, I understand it is before the Supreme Court at the moment so you cannot say too much about it, but I would like to ask one question. In relation to that investigation, how many members of Parliament were investigated as a result of that particular inquiry?

Mr IPP: Under the Act, as you well know, this Committee has no jurisdiction over individual operations.

Mr RICHARD AMERY: So you cannot answer that question?

Mr IPP: There was one operation, which I publicly stated, called Operation Syracuse where we investigated many members of Parliament and we reported to the Speaker. The Speaker has been given a confidential report on the full investigation. We acted strictly in accordance with the Act in that regard and I am sure that the members of Parliament involved, who I may say are on every side of the political spectrum, would be very unhappy if I were to say anything about it today.

Reverend the Hon. FRED NILE: With regard to anonymous complaints, you give a case study where you conducted an investigation and there was no improper activity, but you could not report on that because you did not know who made the complaint. Could there not be some general procedure—

Mr IPP: I am sorry, Reverend Nile, do you mind repeating that? I am not sure if I understood you.

Reverend the Hon. FRED NILE: You had an anonymous complaint, which you then investigated, regarding some improper activity within a council.

Mr IPP: Yes.

Reverend the Hon. FRED NILE: You found that there was no improper activity, but you could not report that.

Mr IPP: Correct.

Reverend the Hon. FRED NILE: You cannot report back to an anonymous person.

Mr IPP: Yes.

Reverend the Hon. FRED NILE: Is there not some way that it could be reported in general terms, that the Commission has inquired into improper activities in a particular council and found no improper activities? I am thinking that if there are rumours in the town that this is happening and you have proved that it is not—

Ms FREDMAN: If I may answer that, Reverend Nile, you might be referring to one of the case studies where it was under assessment, so it has not actually been investigated.

Reverend the Hon. FRED NILE: I am referring to case study no. 1 on page 19. You conducted an inquiry.

Ms FREDMAN: Yes, it is a matter that did not proceed to investigation, it remained in the assessments area, so it would not be accurate for us to put out a public statement to say that we found no corrupt conduct. It is a matter where it remained in assessments, it did not proceed beyond assessment, so there was no actual investigation.

Reverend the Hon. FRED NILE: There was no investigation?

Ms FREDMAN: That is right, so there were inquiries made within assessments and the determination was that it did not proceed any further, so it would not be appropriate on our part to say that we had conducted an investigation and found no corrupt conduct. The decision was that we did not pursue the matter beyond assessments.

Reverend the Hon. FRED NILE: So there could be corruption?

Ms FREDMAN: That is right, we cannot state with certainty one way or the other.

Reverend the Hon. FRED NILE: I thought you had come to the conclusion that there was no corruption.

Ms FREDMAN: No.

CHAIR: Commissioner, is there anything you would like to say in closing?

Mr IPP: No. Thank you for the hearing.

CHAIR: On behalf of the Committee, I thank the Commissioner and his team for appearing this morning. I close the public hearing and the Committee will commence a short deliberative meeting in private.

Appendix Three – Extracts from Minutes

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (No. 2)

9.35pm, Wednesday, 10 August 2011
Room 1254, Parliament House

Members Present

Mr Amery, Mr Blair, Mr Coure, Mr Gee, Mr George, Mr Owen, Mr Rees, Mr Speakman and Ms Voltz

1. Apologies

Ms Mihailuk, Revd Nile

2. Confirmation of minutes

Resolved, on the motion of Mr Coure, seconded by Mr Owen, that the minutes of the deliberative meeting of 23 June 2011 be confirmed.

3. ***

4. ***

5. ***

6. Forward planning - reviews of the ICAC's and ICAC Inspector's annual and other reports

The Committee discussed its work program for the year.

Mr Gee moved that the Committee examine the ICAC's 2009–2010 and 2010–2011 annual reports, and other reports tabled since December 2010 concurrently (excluding the two reports on procurement which have been tabled by the ICAC since 2010), following the publication of the ICAC's Annual Report for 2010–2011. Discussion ensued.

Question put that the motion be agreed to.

The Committee divided.

Ayes [7]: Mr Amery, Mr Blair, Mr Coure, Mr Gee, Mr George, Mr Owen, Mr Speakman

Noes [1]: Ms Voltz

Question passed.

Resolved, on the motion of Mr Gee, seconded Mr Blair, that the Committee examine the ICAC's reports on corruption risks in government procurement concurrently.

Discussion ensued.

7. General business

Forward planning

Resolved, on the motion of Mr Rees, seconded Mr Gee, that the Committee examine the ICAC Inspector's 2009–2010 and 2010–2011 annual reports, and other reports tabled since December 2010 concurrently, following the publication of the Inspector's Annual Report for 2010–2011.

The committee adjourned at 10.15am until 9.30am on 10 November 2011.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 4)

9.39am, Thursday, 10 November 2011
Room 1254, Parliament House

Members Present

Mr Blair, Mr Coure, Mr Gee, Ms Mihailuk, Revd Nile, Mr Speakman and Ms Voltz

Apologies

Mr Amery, Mr George, Mr Owen and Mr Rees

1. Confirmation of minutes

Resolved, on the motion of Mr Coure, seconded by Mr Blair, that the minutes of the deliberative meetings of 10 August 2011 and 15 September 2011 be confirmed.

2. ***

3. Forward planning - reviews of the ICAC's and ICAC Inspector's annual and other reports

The Chair noted the indicative timetable and draft questions on notice prepared by committee staff for the Committee's reviews of the ICAC's and ICAC Inspector's annual and other reports.

The Committee agreed that members would submit any additional questions on notice they wished to ask in relation to the Inspector's and the ICAC's annual and other reports to committee staff by Thursday November 17 and that a consolidated list of questions would be circulated to members and considered by the Committee at its next meeting.

The Chair noted that members would also have the opportunity to ask questions without notice during public hearings with the ICAC and the Inspector, and to ask supplementary questions arising out of the hearings.

The Chair proposed holding public hearings with the Commissioner and Inspector on a day during the week preceding the first sitting week in February 2012, subject to members' availability and approval. Discussion ensued.

The Chair noted that answers to questions on notice would be requested from the ICAC and the Inspector by the end of January and provided to members in advance of the hearings.

The Committee agreed that Committee staff would determine members' availability for public hearings on Friday 17 February and Friday 24 February 2012.

Resolved, on the motion of Mr Blair, seconded Mr Coure, to adopt the indicative timetable for the Committee's reviews of the ICAC's and ICAC Inspector's annual and other reports.

The Chair advised the Committee that the ICAC had indicated that its third report on government procurement was expected to be tabled by the end of the year. The Chair proposed that the timing of the Committee's examination of the ICAC's procurement reports not be determined at this stage.

4. ***

The committee adjourned at 9.49am until 10.00am on 24 November 2011.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 5)

10.01am, Thursday, 24 November 2011
Room 1254, Parliament House

Members Present

Mr Speakman, Mr Coure, Mr Owen, Mr Amery, Ms Mihailuk, Ms Voltz

Apologies

Mr Gee, Mr Blair, Revd Nile, Mr George, Mr Rees

1. Confirmation of minutes

Resolved, on the motion of Mr Coure, that the minutes of the deliberative meeting of 10 November 2011 be confirmed.

2. Forward planning - reviews of the ICAC's and ICAC Inspector's annual and other reports

Resolved, on the motion of Mr Coure, that the Committee's questions on notice arising from the ICAC's and ICAC Inspector's 2009–10 and 2010–11 Annual Reports be forwarded to the ICAC Commissioner and Inspector this week, with a request that they respond by 31 January 2012.

Discussion ensued.

Resolved, on the motion of Ms Mihailuk, that the public hearing with the ICAC Commissioner and Inspector be held on Friday 17 February 2012.

The Chair proposed that the Committee meet on Thursday 16 February 2012 at 10.00am to discuss arrangements for the public hearing and the timing of the Committee's examination of the ICAC's procurement reports. Resolved, on the motion of Mr Owen, that the Committee meet on Thursday 16 February 2012.

Discussion ensued.

The committee adjourned at 10.05am until 10.00am on 16 February 2012.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 6)

9:45 am, Friday, 17 February 2012
Macquarie Room, Parliament House

Members Present

Mr Speakman (Chair), Mr Gee (Deputy Chair), Mr Coure, Mr George, Mr Amery, Ms Mihailuk, Ms Voltz, Mr Blair, Revd Nile, Mr Owen (from 11:58 am)

Apologies

Mr Rees

1. Public hearing: Review of the 2009–2010 and 2010–2011 Annual Reports of the Inspector of the ICAC; Review of the 2009–2010 and 2010–2011 Annual Reports of the ICAC

The press and the public were admitted. The Chair opened the public hearing and, after welcoming the witnesses, gave a short opening address.

Mr Harvey Leslie Cooper, Inspector, Office of the Independent Commission Against Corruption (ICAC) sworn and examined. Ms Seema Srivastava, Executive Officer of the Inspector of the ICAC affirmed and examined. Also in attendance, Ms Felicity Cannon, Office Manager/ Executive Assistant to the Inspector of the Independent Commission Against Corruption.

The Inspector made a brief opening statement.

The Chair commenced questioning of the witness followed by other members of the Committee. Questioning concluded, the Chair thanked the witness and the witness withdrew.

The Committee took a short adjournment at 10:20am and resumed the public hearing at 10:30am.

The Hon David Andrew Ipp AO QC, Commissioner of the ICAC, Mr Robert William Waldersee, Executive Director of Corruption Prevention, Ms Jacqueline Fredman, Manager of the Assessments Section, and Ms Sharon Loder, Executive Director, Investigation Division affirmed and examined.

Ms Theresa June Hamilton, Deputy Commissioner of the ICAC, Mr Steven Osborne, Deputy Director Investigation Division, and Mr Roy Alfred Waldon, Solicitor to the Commission, and Mr Andrew Kyriacou Koureas, Executive Director of Corporate Services, all sworn and examined.

The Commissioner made an opening statement.

The Chair commenced questioning the witnesses, followed by other members of the Committee. Evidence concluded, the Chair thanked the witnesses for their attendance. The witnesses withdrew.

The public hearing concluded at 11:54 am.

2. Deliberative meeting (11:58pm)

Mr Owen participated via teleconference, pursuant to Standing Order 295.

a) Minutes

Resolved, on the motion of Mr Blair, seconded by Ms Voltz, that the minutes the deliberative meeting of 24 November 2011 be confirmed.

b) Publication orders

Resolved, on the motion of Mr George, seconded by Mr Blair, that the corrected transcript of evidence given today (and any tabled documents, which are not confidential) be authorised for publication and uploaded on the Committee's website.

Resolved, on the motion of Ms Mihailuk, seconded by Mr Blair, that the answers to questions on notice from the Inspector of the ICAC, received 12 January 2012, be authorised for publication and be uploaded on the Committee's website.

Resolved, on the motion of Ms Mihailuk, seconded by Ms Voltz, that the answers to questions on notice from the ICAC, received 25 January 2012, be authorised for publication and uploaded on the Committee's website.

c) Time and date for the next deliberative meeting

The deliberations concluded at 12:07pm and the Committee adjourned until Thursday, 15 March 2012 at 1pm.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 7)

1:07pm, Thursday, 15 March 2012
Room 1153, Parliament House

Members Present

Mr Speakman (Chair), Mr Gee (Deputy Chair), Mr Coure, Mr George, Mr Amery, Ms Mihailuk, Ms Voltz, Mr Blair, Mr Rees

Apologies

Mr Owen, Revd Nile

1. Confirmation of minutes

Resolved, on the motion of Mr Coure, that the minutes of the deliberative meeting of 17 February 2012 be confirmed.

2. Review of the ICAC's and the ICAC Inspector's annual reports

The Committee noted the questions on notice, resulting from the hearing with the ICAC on 17 February, sent to ICAC and the indicative timetable for the review of ICAC's and the ICAC Inspector's annual reports. Committee staff undertook to follow up the responses to the questions on notice to ensure that they are received and distributed within 21 days of the meeting.

3. ***

4. ***

5. ***

6. ***

7. **Time and date for the next deliberative meeting**

The Committee agreed to meet on Thursday 31 May at 1:05pm. The deliberations concluded at 1:37pm and the Committee adjourned until Thursday 31 May 2012 at 1:05pm.

Minutes of proceedings of the Committee on the Independent Commission Against Corruption (no. 8)

1.12pm, Thursday, 31 May 2012
Room 1153, Parliament House

Members present

Mr Speakman, Mr Coure, Mr Owen, Mr Amery, Ms Mihailuk, Ms Voltz, Mr Rees, Mr Gee, Mr Blair, Revd Nile

Apologies

Mr George

Staff in attendance: Carly Maxwell, Dora Oravec, Vedrana Trisic, Meike Bowyer

1. Confirmation of minutes

Resolved, on the motion of Mr Rees, seconded Mr Coure, that the minutes of the deliberative meeting of 15 March 2012 be confirmed.

2. ***

3. ***

4. Consideration of Chair's draft report on the review of the ICAC's 2009–2010 and 2010–2011 annual reports

The Chair spoke to the draft report, previously circulated. Discussion ensued.

Resolved on the motion of Mr Amery, that the second sentence of paragraph 34 be omitted and the following sentence inserted instead:

'However, the Committee considers that travel expenses for ICAC officers travelling overseas paid for by other organisations, and any ICAC expenditure on conferences in Australia including any money paid for overseas attendees, should be included in the annual report.'

Discussion ensued.

Resolved on the motion of Mr Rees, seconded Mr Amery, that the second sentence of paragraph 61 be omitted.

Resolved, on the motion of Revd Nile, that the draft report, as amended, be the report of the Committee and that it be signed by the Chair and presented to the House.

Resolved on the motion of Mr Blair, that the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.

Resolved on the motion of Mr Coure, that, once tabled, the report be placed on the Committee's website.

5. ***

6. ***

7. General business

The Committee discussed tabling arrangements. The Chair advised that the reports would be tabled in both Houses on the last sitting week in June.

The Committee agreed that committee staff would contact their offices regarding arrangements for the Committee's next meeting.

The committee adjourned at 1.30pm until a date to be determined.