



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

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**COLLATION OF EVIDENCE**

**OF THE COMMISSIONER OF THE ICAC  
THE HON. B S J O'KEEFE AM QC**

**ON GENERAL ASPECTS  
OF THE COMMISSION'S OPERATIONS**

*Friday, 28 November 1997  
Parliament House, Sydney*

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MINUTES

ANSWERS TO QUESTIONS ON NOTICE TAKEN  
DURING THE HEARING

1996 COMMUNITY ATTITUDE SURVEY

**COMMITTEE MEMBERSHIP**

**Legislative Assembly**

- Mr P R Nagle MP (Chairman)
- Ms M T Andrews MP
- Mr D F Beck MP
- Mr P G Lynch MP
- Dr P A C Macdonald MP
- Ms R P Meagher MP
- Mr B R O'Farrell MP
- Mr J A Watkins MP



**Legislative Council**

- The Hon. D J Gay MLC
- The Hon. I M Macdonald MLC (Vice-Chairman)
- The Hon. B H Vaughan MLC



**Secretariat**

- Ms R Miller - Clerk to the Committee
- Ms H Minnican - Director
- Ms T van den Bosch - Research Officer
- Ms S Hesford - Research Officer
- Ms K Haines - Assistant Committee Officer



Committee on the Independent Commission Against Corruption (left to right):  
Mr Peter Nagle MP (Chairman), Ms Marie Andrews MP, Mr Don Beck MP, Mr Paul Lynch MP, Dr Peter Macdonald MP, Ms Reba Meagher MP, Mr Barry O'Farrell MP, Mr John Watkins MP, The Hon. Duncan Gay MLC, The Hon. Ian Macdonald MLC, The Hon. Bryan Vaughan MLC.

## COMMITTEE FUNCTIONS

### *Independent Commission Against Corruption Act 1988*

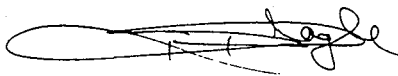
- “64 (1) The functions of the Joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise 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 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;
  - (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.”

## CHAIRMAN'S FOREWORD

The Committee on the ICAC was established under the Independent Commission Against Corruption Act 1988 with the role of monitoring the Commission's discharge of its functions. As part of this responsibility, the Committee holds regular general meetings with the Commissioner. The 16th and most recent general meeting was held on 28 November 1997; the proceedings of the meeting are contained in this report.

Once again the Committee's General Meeting with the Commissioner canvassed a wide range of subjects. The topics of discussion included investigations, the Operations Review Committee, budget matters, corruption prevention and protected disclosures.

As always, I am grateful to the Commissioner and his staff for the valuable information they have provided to the Committee. My thanks, also, to my colleagues on the Committee for their participation, and to the Committee Secretariat for its assistance in organising the meeting.



Peter Nagle MP  
**Chairman**

## **1. GENERAL**

### **Staffing and Resources**

**1.1 What is the current level of staffing? What has been the trend in staff turnover over the past 12 months?**

Average staffing number for 1997/98 is 132.2 (Equivalent Full Time). As at 30 October, 1997 the staff number was 128.6.

The turnover rate of permanent ICAC staff for 1996/97 was 11%.

**1.2 How has the Commission accommodated the reduction in funding for 1997/98?**

Firstly, by reducing the average number of staff from 134.8 to 132.2.

Secondly, by decreasing the amount allocated to external counsel for hearings. If all matters which proceed to hearing are lengthy and/or complex we will not be able to remain within budget on this item, or we will have to eliminate some of the hearings into matters in which it is appropriate there be a hearing.

Thirdly, by rearranging funding between functions and postponing some corruption prevention and education projects. This is a measure which it is possible to apply for one year only.

**1.3 How many matters have been received by the Commission?**

The 1996/97 Annual Report records that 6643 matters (including s.11 schedule matters) were received by the Commission for the reporting period.

In the period 1 July to 31 October 1997, 582 section 10 and section 11 matters have been received (excluding matters reported by schedule). This can be compared with 609 matters for the equivalent three month period in 1996.

**1.4 What category of matters have been received?**

<i>Category</i>	<i>1996/97†</i>	<i>July-Oct. 1997</i>
Complaints (s.10)	979	361
Protected disclosures	201**	94**
Reports (s.11)*	431	149
Information	135	36
Inquiry	32	11
Dissemination	6	4
Referral from Parl.	Nil	Nil
Outside jurisdiction	76	21
<b>Total</b>	<b>1659</b>	<b>582</b>

† From 1996/97 Annual Report

\* Excludes s.11 reports by schedule.

\*\* Included in preceding figure.

**1.5 Which public authorities are the subject of the highest number of complaints?**

<i>Public Authority</i>	<i>1996/97</i>	<i>July-Oct 1997</i>
Local government*	35.5%	33.3%
Police†	8.1%	N/A
Corrective Services	7.3%	19.1%
Aboriginal Land Councils‡	6.9%	3.7%
Dept. Community Services	3.2%	6.4%
Members of Parliament	2.2%	3.4%
All others	36.8%	34.1%

\* "Local government" comprises 177 councils throughout NSW.

† Police corruption ceased to be within the jurisdiction of ICAC from 1 January 1997.

‡ Includes 118 Local Aboriginal Land Councils.

**1.6 Have there been any significant changes in the number, type or subject of complaints since the last public hearing with the Committee in July?**

There have been quite significant increases in complaints about Corrective Services and the Department of Community Services, even adjusting for the exclusion of complaints about police.



In relation to Corrective Services the Commission has publicly invited information as part of the current investigation into that Department.

**1.7 Has there been any change in the number of protected disclosures received?**

Yes, there has been an increase in the number and percentage of protected disclosures being made to the Commission, as the following figures disclose:

<i>Period</i>	<i>Total for period</i>	<i>Average per month</i>
1994/95 (4 months)	47	11.75
1995/96 (12 months)	196	16.33
1996/97 (12 months)	201	16.75
1997/98 (4 months)	94	23.5

Public authorities subject of protected disclosures

<i>Authority</i>	<i>1996/97</i>	<i>July-Oct 1997</i>
Local government	27.9%	21.3%
Corrective Services	12.9%	20.2%
Health/Area Health Services	11.4%	6.4%
State Rail*	6.5%	9.6%
Dept. School Education	6.5%	4.2%
Dept. Community Services	1.5%	6.4%
Aboriginal Land Councils	2.5%	7.4%
All others	30.8%	24.5%

\* Comprises State Rail Authority, Rail Access Corporation, Freight Corp. and Railway Services Authority.

## **2. INVESTIGATIONS AND LEGAL SERVICES**

### **2.1 How many inquiries have involved public hearings, private hearings or a combination since our last meeting in July 1997?**

In the period 1 July 1997 to 3 November 1997 hearings have been conducted in relation to Operations Cadix (Department of Corrective Services), Coruna (TransGrid), and Zack (Aboriginal Land Councils).

In Operation Cadix private hearings have been held on 10 days and public hearings on 8 days.

In Operation Coruna, a one day public hearing has been held.

In Operation Zack private hearings have been held on two days and public hearings on 18 days.

### **2.2 How many investigations have involved public hearings since July 1997 and what has been the duration of public hearings conducted?**

Refer to paragraph 2.1 above.

### **2.3 In those investigations which involved public hearings, did the Commission take closing submissions in private?**

In the relevant period submissions have only been taken in hearings in the Sua segment of Operation Cadix. This was on 23 October 1997. Given the nature of the evidence in which Mr Sua, a former prison officer, had admitted to various corrupt acts, submissions were taken in public.

### **2.4 How often has the Commission made use of temporary suppression orders, and under what circumstances have they been used?**

All suppression orders are made in the context of s.112(1A) of the ICAC Act which provides that before suppression orders are made the Commission must first be satisfied that such an order is necessary or desirable in the public interest.

Suppression orders which are "temporary" in the sense that their duration is limited to a short period of time at the time at which they are made are not commonly made by the Commission.

It is usual practice for suppression orders to be made initially without any limit as to duration. Subsequently, during the course of an investigation some suppression orders may be lifted. Ultimately at the end of an investigation all suppression orders are reviewed to determine whether they should be lifted, varied or remain in force. All such decisions are made on the basis of public interest.

Suppression orders are typically made in relation to private hearings where it may be prejudicial to the investigation to divulge publicly the fact that the Commission is conducting an investigation, to identify the witnesses or make known the extent of evidence obtained. These are often subsequently lifted if, and at an appropriate time after, the investigation or evidence available has been made public.

In addition, suppression orders may be made in relation to particular evidence or names in order to protect reputations from anticipated, but as yet untested or unverified evidence. Once the evidence has been sufficiently tested or verified the suppression order is usually lifted.

Suppression orders may also be made to satisfy the requirements of s.18(2) of the ICAC Act which requires that where there are proceedings for an indictable offence conducted by or on behalf of the Crown, in order to ensure that the accused's right to a fair trial is not prejudiced the Commission must, to the extent it thinks necessary, ensure that, as far as practicable any hearing is conducted in private during the currency of the proceedings. Once those proceedings have been completed the suppression order will be reviewed to determine if it should be lifted.

In relation to those orders which it is determined should remain in force, the duration of each order is limited in accordance with the following Commission protocol:

Informants	-	100 years
Life and Limb	-	90 years
Sensitive Material (eg, medical reports)	-	90 years
Natural Justice	-	90 years
Defamation	-	90 years
Commercial Secrets	-	30 years
Miscellaneous	-	On advice

**2.5 Has the Commission had occasion to use its contempt powers since the last meeting in July 1997?**

No.

**2.6 How many listening device warrants and search warrants have been obtained and executed? Has there been any change in the level of use of those powers?**

**DISPOSITION OF LD's AND TI's ON A FINANCIAL YEAR BASIS**

<i>Annual</i>	<i>LD's</i>	<i>Search Warrants</i>
1989	0	37
1990	1	44
1991	1	42
1992	20	18
1993	20	30
1994	2	36
1995	17	32
1996	43	20
1997	46	26

**2.7 What use has the Commission made of its powers under sections 21 (obtaining information), 22 (obtaining documents or other things) and 23 (entering premises) of the Act?**

The following table sets out the number of Notices issued by the Commission pursuant to ss.21, 22 and 23 of the ICAC Act from 1989 to 3 November 1997.

	<b>S.21</b>	<b>S.22</b>	<b>S.23</b>
1989	1	143	5
1990	25	102	11
1991	43	190	20
1992	38	229	9
1993	22	341	10
1994	10	239	2

1995	18	116	1
1996	29	223	4
1997 (to 3/11)	12	189	9

**2.8 Have any prosecutions or convictions occurred since July 1997 as a result of the Commission investigations?**

No new prosecutions arising out of Commission investigations have been commenced between 1 July 1997 and 31 October 1997.

Three prosecutions arising out of the Commission's Milloo investigation (1993) have been completed.

On 7 September 1994 two Informations were laid against Grahame Bowen for offences under s.87 of the ICAC Act. On the same date, four Informations were laid against former NSW Police Superintendent Brian Harding for similar offences.

On 30 September 1997 a District Court jury returned verdicts of not guilty in relation to each defendant.

On 31 October 1997 Ronald Daly was convicted in the Sydney District Court of two offences under s.87 of the ICAC Act. He was sentenced on each count to six months imprisonment commencing on 31 October 1997. The sentences are to be served concurrently. A further two offences under s.87 of the ICAC Act were taken into account in sentencing.

Arising out of the Commission's Tamba investigation (1992), former police Inspector James Waddell was prosecuted for an offence under s.87 of the ICAC Act and two offences under s.309 of the Crimes Act (unlawful access to computer data). The Informations for the offences were laid in July 1994. The trial was held in the Supreme Court in October 1997. On 29 October the jury returned a verdict of not guilty to all three offences.

Also arising out of the Commission's Tamba investigation (1992), Informations were laid against Kerry Chad on 8 July 1994 for two offences under s.87 of the ICAC Act and four charges under s.88 of the ICAC Act. The jury returned a verdict of not guilty to all offences on 12 November 1997.

Also arising out of the Tamba investigation (1992) former NSW Police Officer Steven Webster pleaded guilty on 19 August 1997 to three offences of bribery contrary to

s.249B(1) of the Crimes Act, with an additional 23 such offences to be taken into account in sentencing, and 10 offences under s.309 of the Crimes Act, with a further 102 such offences to be taken into account in sentencing. The sentence hearing was adjourned part heard to 27 November 1997.

Former Detective Sergeant Gregory Leonard Freeman was prosecuted following the Commission's Operation Proton. The prosecution was for two common law offences of accepting a bribe and a common law offence of attempted bribery.

The first trial resulted in a hung jury on 10 December 1996.

The retrial commenced on 13 October 1997 before Wall DCJ. The jury acquitted Freeman on all three charges on 27 October 1997.

## **2.9 What matters have been reported since July 1997?**

No investigations have been the subject of a report to Parliament between 1 July 1997 and 31 October 1997. A number are at the stage of advanced draft or in course of the publication process.

## **2.10 How many recommendations for action by public authorities have been contained in the Commission's reports? How many of these recommendations have been implemented? Is the Commission satisfied with the take-up rate of its recommendations?**

The ICAC Response to the PJC Issues Paper contains a section on the outcomes of reports. The main points of it are:

*It has always been the Commission's practice to use its investigative powers to expose corrupt conduct with a view to securing improvements in legislation, policies and practices throughout state and local government. Similarly, a range of corruption prevention reports has been published with the same objectives and, on a daily basis, advice is given to public officials about ways to prevent corruption.*

*The Commission is very mindful of the need to assess the effectiveness of its corruption prevention work and the degree of implementation of the recommendations made in its investigation and corruption prevention reports. Monitoring is undertaken with a view not only to measuring the degree of implementation, but also to making an assessment of the effectiveness of the ICAC's recommendations.*

*In relation to the recommendations made in investigation reports, a major project reviewing the implementation of these recommendations was concluded in February 1995. The purpose of the project was to identify and document the nature, scope and*

*extent of changes in the public sector and elsewhere which have resulted from formal investigation report recommendations of a legislative or systemic nature.*

*Over half (60%) of the Commission's recommendations in its first 29 published investigation reports were implemented. In total, the ICAC made 97 recommendations, 35 of which were for legislative change and 62 for systemic change. Of the legislative change, 40% have been implemented, while 71% of systemic recommendations have been adopted.*

A current example of the role played by the ICAC in the implementation of our recommendations is the work done following the release of the *Report on the Public Employment Office Evaluation of the Position of Director-General of the Department of Community Services*. The ICAC and the Public Sector Management Office (Premier's Department) established an Ethics Working Party to identify ways in which ethics can be structured into the public sector policy framework. This has led to the implementation of all of the ICAC's recommendations and other initiatives to promote ethical conduct.

In 1998 the ICAC will examine the implementation of recommendations made in investigation reports published in the last three years.

The ICAC submission to the Review continues as follows:

*In relation to corruption prevention reports, the approach taken has been to monitor the effectiveness of individual reports. The monitoring reports produced to date are as follows:*

- *Implementation of Recommendations from the ICAC Investigation into the Relationship Between Police and Criminals , February 1997*
- *And Now a Word from Our Sponsor - a Review of the ICAC Sponsorship Principles, September 1995*
- *Corruption Prevention and Plant Hire - An Evaluation, October 1994*
- *Monitoring Cash Handling in Public Hospitals, August 1994*
- *Department of Housing Maintenance Contracts - Monitoring Report, April 1993*
- *Local Government Speaks! - Monitoring Report on the Purchase and Sale of Local Government Vehicles, March 1993*

The take-up rate of ICAC recommendations for systemic change is generally satisfactory, especially where the ICAC is involved in the implementation process.

**2.11 When do you anticipate publication of the report of the Investigation into the Department of Corrective Services?**

The current investigation into the Department of Corrective Services (Operation Cadix) has been divided into a number of segments. Public hearings in relation to the first segment involving allegations of corrupt conduct in relation to a former Prison Officer, Mr Sua, have been concluded. A report is being prepared in relation to that matter. It is anticipated the report will be available not later than early 1998.

It is intended that public hearings in relation to a second segment will commence in November. A separate report will be prepared in relation to that segment.

Subsequently, as other segments are dealt with in public hearings, further reports will be prepared.

Current intentions are to produce a final report at the conclusion of the overall investigation. This report will draw together the issues examined in the earlier reports, deal with systems issues and chart the progress of the Department of Corrective Services in implementing any recommendations made in the earlier reports.

**2.12 Are there any other major investigations on which you can give a status report to the Committee?**

No. There are a number of such investigations in course, but it would not be appropriate to reveal what they are or their status at this time. To do so would be to reveal operational matters and could prejudice the investigations or endanger informants.

**3. RESEARCH SECTION**

**3.1 What activities have the Research Section undertaken since our last meeting?**

Between July and November 1997 the Research Section has focused its efforts in the following areas:

**3.1.1 Informing Investigations**

- i One member of the Research Section is working full-time with the Investigations Unit to provide research assistance on identifying specific areas of higher potential need for investigation within the public sector.



- ii One member of the Research Section is working 70% of her workload with the Director of Legal Services to enhance the strategic intelligence function of the ICAC.
- iii The Research Section has developed an internal project based on "ICAC complaints database analysis: Classifying corrupt conduct" which focuses on how the ICAC categorises the complaints it receives each year. The project was developed to gain more sophisticated information about the types of corrupt conduct contained in complaints received from the general public (Section 10 complaints), CEOs of public sector organisations (Section 11 complaints), and employees within the NSW public sector (Protected disclosures).

### **3.1.2 Setting directions for future Corruption Prevention and Education work.**

- i The Research Section is conducting a series of focus groups in Sydney and selected country locations to identify how the ICAC can best assist public officials in their efforts to reduce corruption. The focus groups will consist of public sector officials who work in the areas of corruption and fraud prevention, auditing and general middle management.
- ii A research project is being developed on the importance of shared corporate values and ethical leadership in promoting ethical change in the workplace. This research will explore the relationship between the tendency to behave corruptly in an organisation and the perceptions about organisational leadership and values.

### **3.1.3 Disseminating information**

- i The evaluation of the Business Studies Kit, "Ethics and Enterprise: A life cycle of a business" produced by the ICAC Education Section has been summarised and distributed to members of the PJC, education authorities, and participating schools and curriculum specialists.
- ii There has been an ongoing demand for copies of the 1996 Community Attitudes Survey.
- iii The final reports of the review of the Protected Disclosures Act will be released in November and December 1997.
- iv Three papers were presented at the 12th Annual conference of the Australian and New Zealand Society of Criminology at Griffith University in July: "Beyond rhetoric: Minimising corruption in NSW Aboriginal Land Councils", "Why people don't report corruption: Barriers to the success of the NSW Protected

Disclosures Act" and "Applying crime prevention concepts to the problem of minimising corruption".

**3.2 What is the status of the Commission's survey on Protected Disclosures? When is it anticipated that the report of Phase 4 will be released? Are there any preliminary findings arising from the survey?**

The research into the implementation of the Protected Disclosures Act is complete. The final report containing the outcomes of each of the four phases of the research project will probably be available for release in late November and all members will receive copies. The detailed report on Phases 3 & 4 should be available in the second week of December.

#### **4. CORRUPTION PREVENTION AND EDUCATION**

**4.1 What activities have been undertaken by the corruption prevention unit since the last meeting? How will the projects be evaluated?**

*Ongoing Projects*

Since the Committee's July hearings, work has continued on projects on Recruitment and Selection, and Government Inspectors.

**Recruitment and Selection**

This project is designed to identify the corruption prevention issues in the recruitment and selection process. The objectives of the project are to raise awareness of probity issues in public sector recruitment, and identify the principles of probity to be satisfied in recruitment processes. The long-term aim is to improve ethical standards in public sector recruitment and reduce the number of complaints about these issues received by the Commission.

A recent central agency initiative has somewhat modified the scope of the project. In August, as part of the Government's Public Sector Reform Strategy, a review of the merit selection processes operating in the NSW public sector was commenced. The Premier's Department, in partnership with the Director of Equal Opportunity in Public Employment, is reviewing merit selection policy and supporting processes. Two Principal Corruption Prevention Officers have been working closely with the review's working party to ensure that probity issues are central to any recommendations for change which may be made.

Planned products from the working party will be a set of principles and minimum standards for recruitment, and a guide to recruitment for public sector managers.

Complementing these, the Commission intends to publish a set of case studies to highlight the probity issues. Publication is intended in the first half of 1998.

### **Government Inspectors**

Following hearings earlier this year into the operation of local government inspectorial functions, a project is underway to determine the extent of opportunities for government inspectors to act corruptly. A set of guidelines for councils has been developed and will be reviewed by a number of councils before release in the new year.

These projects will be evaluated through monitoring of the usage of project reports.

### *New Corruption Prevention Projects*

#### **Organisational Change - upgrading skills and tools**

Corruption prevention work - whether it be assisting with an investigation, advising public sector agencies on how to train staff on conflicts of interest, advising a corporatised public organisation on best practice corruption prevention strategies, or providing advice about joint venture infrastructure projects - relates to change management. This project is designed to upgrade the skills of Corruption Prevention and Education staff in advising organisations on planned change management.

The development of tools for diagnosing the ethical health of organisations is a complementary part of this project. Further details on the project are provided in the answer to question 4.8.

### *Advice and Corruption Minimisation Work*

Examples of major pieces of advice work by the section include advice on a tendering issue for the Department of Land and Water Conservation, Landcom's development of its Zetland site, general ongoing corruption prevention advice for SOCOG, the privatisation of the TAB, development of a new container terminal at Port Botany, the Very Fast Train project, the 4th generation train project for the SRA, a proposal at Port Stephens for the Department of Fisheries, and major sewerage projects including the Northside tunnel for Sydney Water.

Corruption prevention staff have conducted presentations for a variety of organisations during the last four months. They include:

- sessions in a leadership training course for senior TransGrid managers,
- a session for the Australian Institute of Police Management management development course,

- a presentation on tendering for the Inner Metropolitan Regional Organisation of Councils,
- presentations on managing conflicts of interest for four metropolitan and rural councils,
- a presentation on tendering and competition policy for the Department of Land and Water Conservation,
- a presentation to the NSW Institute of Planners on integrated development assessment and government inspectors,
- a session on protected disclosures for the Corruption Prevention Forum,
- a session on preventing corruption for the National Centre for Development Studies, ANU, and
- presentations on the ICAC to the Police Solicitors Office, GIO Financial Fund Managers, and a UNSW professional development course.

The Commissioner also addressed:

- executive staff at the Rail Access Corporation, FreightCorp and the Railway Services Authority,
- the NSW Public Sector CEOs Conference,
- the Police Executive Leadership Programme participants,
- members of Shoroc,
- the National Public Sector Accountants Conference,
- the Economics and Business Educators Forum,
- the HSC Legal Studies Students Conference,
- the IACC Conference,
- the IACOLE Conference,
- the CACOLE Conference,
- the Legal Conference, as well as a number of small groups.

*Commission Investigations*

Corruption Prevention staff have contributed to reports in course of preparation for Operations Aroo (SRA), Visual (Department of Racing and Gaming), Sublime (City Morgue), Cal (local government inspectors), and Zack (Aboriginal Land Councils).

**4.2 What were your impressions at the anti-corruption conference in Peru concerning the international status of the Commission?**

The Peru Conference further confirmed my view, strengthened after attending the Beijing Conference, that the ICAC is recognised as one of the leading corruption prevention agencies in the world. Whilst in the public sector worldwide there are many initiatives focussing on ethics in government and corruption prevention, the ICAC model combining independence, Royal Commission-type powers and a focus on corruption prevention in and education for the public sector makes it unique.

The ICAC received requests for assistance from a wide range of participants at the conference. Those from developed countries tended to want access to the ICAC's corruption prevention and education materials, whereas participants from developing countries sought assistance with investigation techniques and training.

The format of the Peru Conference worked reasonably well as an ideas forum, however many participants expressed a degree of frustration that they were not able to get assistance with practical issues in the formal sessions.

It became clear at this conference that the needs of many participants for advice and guidance in relation to corruption investigations were not met. Consequently the investigation agencies attending the conference have had discussions with a view to planning a day of investigation workshops for the next conference, which is scheduled for South Africa. These workshops would, to the extent possible, be scenario-based and give the participants an opportunity to be involved in problem-solving and to ask questions.

**4.3 Was the conference useful in providing ideas for strategies for corruption prevention?**

The conference provided a very good opportunity to see how other people are dealing with the challenges they are confronted with. While some particular strategies adopted by participating countries were of interest, the level of corruption prevention activity was generally not of the same sophistication or success as the approach taken in New South Wales. This was not surprising as the ICAC maintains an interest in worldwide developments in the corruption prevention field and regularly responds to requests for assistance in this area from those who attend the international conference.

**4.4 Is the Commission satisfied with the outcomes arising from its publication *Under Careful Consideration: Key Issues for Local Government*? How many local councils have developed a policy for interaction between Councillors and Staff along the lines of the model policy?**

The ICAC has received positive feedback from many councils which are implementing the recommendations in this report. We have not yet conducted a formal survey to be able to quantify the take-up rate but plan to do so with the Department of Local Government in 1998.

**4.5 What has been the level of demand for the Commission's publication on *Direct Negotiations in Procurement and Disposals*? Has there been a decline in requests for advice on that subject since the publication of this document?**

*Direct Negotiations in Procurement and Disposals* was published in June 1997. In four months since then around 3,600 copies of the publication have been distributed. Demand for the document is still steady. It has not been possible to make a judgment on any changes in frequency of requests for advice on this topic in that short period.

**4.6 What degree of interest did public sector organisations show in the discussion paper on *Managing Post Separation Employment*? Have any further initiatives been taken since the publication of this paper?**

Around 20 formal submissions or responses to the discussion paper have been received to this date. All have been from public sector organisations mainly from within New South Wales, but also there has been interest from the Commonwealth and New Zealand. One NSW Government agency has advised the ICAC that it is drafting a policy on post separation employment in response to a perceived risk to the organisation from changes to the Environmental Planning and Assessment Act currently before the House. The agency employs inspectors that it expects may choose to become private accredited certifiers under that legislation.

No further initiatives have been taken at this time for reasons of competing work priorities and limitation of resources. However the ICAC contributed an expanded reference on the topic to the revised Model Code of Conduct that the NSW Premier's Department released in 1997. The ICAC expects to complete a summary of the responses and to discuss the issue with the Premier's Department in early 1998 with a view to preparing guidelines or principles.

**4.7 What activities have been undertaken by the Education section since our last meeting? How have the projects been evaluated for effectiveness?**

The work of the Education Section continues to address public sector and community audiences. Since the last meeting the work has continued to be strategically planned and conforms to the activities specified in the strategic plan. A summary of activities undertaken, including information on significant developments and evaluation is outlined below.

**1. Public Sector Education**

**(a) Working with key central and regulatory agencies to help influence the public sector on a whole of government scale**

*Protected Disclosures Steering Committee*

A report to the Premier detailing initiatives and achievements of the Committee for the 1996/97 reporting year was presented on 25 September 1997. The Steering Committee instituted or supported the following initiatives:

conduct of Protected Disclosures workshops for Local Government (see below)

commenting on the second edition of the NSW Ombudsman's Office Protected Disclosures Guidelines

participation of steering committee members in Corruption Prevention Forums.

creation of a database of Protected Disclosures Co-ordinators with state authorities and councils for the purpose of disseminating matters of interest and information

articles and information concerning the Protected Disclosures Act 1994 and Internal Reporting Systems placed in ICAC's *Corruption Matters* Newspaper.

conducting a review of the Internal Reporting Systems that have been established by NSW public sector authorities.

the production of ICAC Internal Investigation guidelines and handbook.

The committee has identified significant need for public sector agencies and councils to be provided information and advice on the management of staff, information and systems in relation to disclosures. To date the ICAC, NSW Ombudsman and Department of Local Government with assistance from a professional facilitator, Julie McCrossen, have conducted 5 workshops for Local Government participants regarding Better Management of Protected Disclosures. The ICAC's commitment in this regard has been for the Education Section to organise the workshops which include segments by the Manager, Assessments and an ICAC Investigator.

85 participants from local councils have attended workshops in:

Sydney, 24 September 1997  
Wagga Wagga, 8 October 1997  
Parramatta, 13 October 1997  
Maitland, 15 October 1997  
Tamworth, 3 November 1997

Further workshops are scheduled for:

Coffs Harbour, 3 December 1997  
Dubbo, 5 December 1997  
Broken Hill, 8 December 1997  
Bathurst, 10 December 1997  
Queanbeyan, 11 December 1997  
Bateman's Bay, 12 December 1997

Evaluation of the workshops is being undertaken and a consolidated report will be available after Tamworth figures are included

*Public Sector Ethics initiative - Joint work with PSMO on Ethics Working Party*

This joint initiative is identifying and implementing ways in which ethics can be structured into the policy framework. Since the last meeting the following have been undertaken

*All CEO Planning Day.* At the request of the Premier's Department the Commissioner addressed the group and sought feedback on services by way of a follow-up survey.

*CEO survey.* The questionnaire prepared by Education staff sought to assess whether advice and products met needs. The results of the survey will be available before the next meeting of the PJC.

*Conduct Becoming workshops* An agreed activity that the ICAC Education Section leads was the implementation of a YALTA recommendation concerning ethics education. This is outlined in more detail below.

**(b) Provision of resources to enable others to work as an extension of the ICAC in helping shape organisational attitudes, values and culture**

*Corruption Matters Newspaper* - The November issue focusses on the new Public Sector Ethics Framework. The next issue will contain a reader survey assessing the



newspapers effectiveness and seeking suggestions for improvement. Feedback from individuals in state agencies who act as group distributors will be sought in the December quarter.

*Conduct Becoming* is a resource to be used by trainers, managers, or individual learners to raise awareness of how ethics and public duty apply in public sector jobs which directly assists agencies to meet the requirements of the memo from the Director General of the Premier's Department requiring there to be ethics training for inductees.

Workshops on the kit have been conducted and 86 participants from state agencies and local government (primarily training deliverers) attended 5 workshops (held between August and October) organised by the ICAC in partnership with IPAA. The one day workshops aimed to:

- discuss the principles of public duty
- demonstrate use of the resource
- explore opportunities to introduce the material effectively into existing training programs
- examine and advise ways of customising the kit - introduce council or agency codes of conduct, policies, procedures and internal reporting systems to training sessions
- heighten awareness of probity issues, knowledge of the operations of the ICAC

Participants have been surveyed (with responses from 77 of the 85 participants) with the following results:

95% found the session useful with 46% finding it very useful. 30 respondents said that the workshops heightened awareness / knowledge of issues, 21 said that they gave good background to and overview of issues.

The main messages of the session perceived by participants were:

identification of the issues/awareness of public duty/personal responsibility (32)  
corruption, public duty and the role of ICAC and the objectives of ICAC (17)  
ethics, value judgments and individual interpretation/perception (16)  
the importance of using the package and how to use it effectively (8)

The presentation of the kit itself was found useful by 96% of participants with the majority attributing this to the effective application of the video and the ease of transfer back into the workplace

The case studies were assessed as effective by 79% with 38 saying that they expanded presentation ideas and learn from others, and 14 that they were a good means to stimulate discussion/debate/ interaction

The Commission is currently negotiating with IMM (Institute of Municipal Management) to conduct a range of workshops in regional NSW for both state and local

government agencies in April and May 1998. These sessions too will be evaluated. It is also hoped to contact participants later to assess whether the sessions resulted in implementation of training and use of the resource.

## 2. Community Education

The public education initiatives are contained in Program 2 of the Commission's Strategic Plan.

### (a) *Strategies to shape attitude and behaviour through formal and professional education*

*Talk of Toppsville* - Primary School Science & Technology resource. This kit was disseminated and promoted in the first quarter of this financial year. Of the 2000 kits produced, 1900 kits have been requested by schools and despatched. The resource was entered in the Public Relations Institute Awards and won 'Commended' in the Community Relations section (third place).

The Talk of Toppsville evaluation strategy has been completed and will be implemented in 1998 after the CD-ROM has been used in the classroom for a period no less than six months.

*Valuing our Work* - High school resource for years 7-10 Design and Technology syllabus. The promotion and distribution was finalised. It is currently intended that the ICAC Research Section will evaluate the kit as it has other education resources. The Commission sponsored an Ethics Award in the Ministers Young Designers Award to promote the kit and the consideration of ethical issues in the design process. The Commissioner participated in the judging of the awards on 30 October, and the winners were announced at the awards presentation on 24 November.

*Ethics in Design & Technology* - High school resource for HSC Design and Technology. The promotion and distribution was finalised. It is currently intended that the ICAC Research Section will evaluate the kit as it has other education resources.

### (b) *Strategies to inform about the ICAC and how to take responsible action against corruption*

*Community Advisers Project* - Distribution of Phase I which focuses on MPs, Chamber Magistrates and councillors continues, with only Community Legal Centres to be finalised. Further implementation work, including feedback on the effectiveness of the information in the guide, will be undertaken with MPs and their staffs in the December quarter.

*NESB Project* responds to the needs of those with low English literacy. Action to translate and print the brochures focussing on bribery is underway. Promotion and distribution will be undertaken once recruitment action to fill vacancies has been completed.

*Internet project* the new ICAC internet site is being constructed and will be tested in the December quarter. An interim site is located on <http://www.icac.nsw.gov.au>.

*Regional Poster Exhibition & Transit Advertisements.* The poster Exhibition was taken to additional venues in New England, Tweed and Penrith and will close on 23 November. A visitor survey of the exhibition has been carried out in all of the exhibition venues. These will be collated when the Penrith responses are in and a consolidated evaluation should be available at the end of the December quarter.

The Transit advertising was externally evaluated by AGB McNair with the following results:

12% (an estimated 375,000 Sydney-siders) recalled the advertisement (average recall rate for bus advertising that is run jointly with other media advertisements is 10%-15%)

Of these 59% were prompted by the ads to think about corruption

c) *Provide corporate relations services*

Presentations were organised for the following visitors.

Melville High School (presentation evaluated)

Vietnamese Jurists on a UNDP course

AFP Agents on pre embarkation briefings

Louise Forget, Legal Adviser in Institutional Affairs, World Bank

PNG Officials, Peter Donigi, Lawyer and Sir Barry Holloway,  
Former MP- on fact finding visit re creation of PNG anti corruption body

Pasuk Phongpaichit, Professor Economics, Chulalongkorn University, Bangkok preparing report for Counter Corruption Committee of Thailand

Mosese Sikivou, Deputy Secretary Public Service Commission

Chinese jurists (senior legal and academic officials) on study tour

Twenty-one speaking engagements were undertaken by the Commissioner or Commission staff.

The following materials were printed:

Internal Investigations Handbook and Practical Guide insert  
Annual Report  
Business Studies Evaluation  
Annotated Bibliography  
Newspaper

**4.8 Has work commenced on the project to develop a corruption prevention diagnostic model?**

Yes. This project has been given priority for the 1997/98 financial year. The work of the Corruption Prevention and Education Unit and of the Commission generally is becoming more complex. Greater emphasis is being placed on working in partnership with agencies to achieve best practice corruption prevention strategies and high ethical standards. The Commission has recognised the need for a more holistic approach to this work in order to stress the need for and truly influence organisational and cultural change. In this context, the development of models or tools for diagnosing the ethical health of organisations is now part of a larger project, the aim of which is to enable CP&E to:

- effectively examine and assess individual organisations,
- encourage and assist organisations to undertake self-assessment,
- identify public sector ethical/corruption prevention trends and weaknesses,
- advise on organisational effectiveness,
- influence and assist with organisational and cultural change management.

The project has two components - enhancement of skills and development of specific diagnostic tools and change management strategies.

The skills component aims to enhance staff understanding of how organisations operate, how people behave in an organisational context and how change programs can work; and to enhance their abilities to influence attitudes and shared values and to develop appropriate diagnostic tools and use them effectively.

It is envisaged that the skills component will be completed by mid-financial year and the diagnostic tools and products (that will become the organisational change package) will be developed and piloted by the end of the financial year. Publication of products will be budgeted for early in the 1998/99 financial year.

## 5. OPERATIONS REVIEW COMMITTEE

### 5.1 Have there been any changes to the ORC's membership or functions?

There have not been changes in membership since the last meeting in July 1997. The Commissioner has asked the ORC for advice on a project.

### 5.2 Is it still the practice for the ORC to meet monthly (excepting January)? On average, how many matters are considered at each meeting?

Yes.

During the current year, as at 31 October 1997, the Committee met 7 times and considered 698 reports. On average, therefore, the Committee considers approximately 100 reports at each meeting. The reports are distributed as follows:

<b>Progress Reports on Investigation</b>	5%
<b>Further Report Concerning Non Commencement of Preliminary Investigation</b>	2%
<b>Report on Assessment Concerning Non Commencement of Investigation</b>	7%
<b>Schedule of Matters considered by the Assessment Panel Concerning Non Commencement of Investigation</b>	67%
<b>Report on Preliminary Enquiry Concerning Non Commencement of Investigation</b>	15%
<b>Status Reports Concerning Section 10 Complaints</b>	4%

### 5.3 Has the Commission had any external audits of ORC reports since the previous audit undertaken by the Audit Office in July 1996?

Yes, in July 1997 the Commission engaged the services of an auditor from The Audit Office of New South Wales to conduct an audit of the Commission's enquiry files. The scope of the audit required a review and appraisal of the adequacy and effectiveness of the Commission's procedures and controls to ensure that all complaints received by the Commission were promptly and properly recorded and were classified and reported to the ORC in compliance with statutory and operational requirements.

The audit found that the Commission had in overall complied with its statutory requirements in relation to the reporting requirements to the ORC.

**5.4 The Commission indicated at our meeting in July 1997 that the last audit had identified areas in need of improvement in operational procedures and requirements. Have these areas been addressed?**

Yes. In each case the Commission has addressed the issue appropriately.

**6. OTHER**

**6.1 Has the Commission engaged in any joint projects with government departments and policy agencies?**

Yes. The Commission's approach, particularly in relation to corruption prevention work, is to work with government departments and agencies wherever possible. Our experience is that the early involvement of government departments and central agencies ensures their support for the recommendations made by the ICAC and usually leads to more effective implementation.

Current examples of this work are:

- Two principal corruption prevention officers are working closely with the Director of Equal Opportunity in Public Employment to ensure the ICAC's views about probity in recruitment and selection procedures are central to the current review of merit selection policy across the NSW Public Sector.
- The ICAC has been involved in a working party with the Premier's Department to examine the recommendations made in the report into the investigation of the evaluation of the position of Director-General of the Department of Community Services (the Semple report). This work is leading to a number of very positive reforms in recruitment and other aspects of public sector processes.
- The ICAC Chairs the Protected Disclosures Steering Committee which is made up of relevant government departments to look at the implementation of the Protected Disclosures Act.
- The ICAC continues to work closely with the Department of Aboriginal Affairs and the NSW Aboriginal Land Council in the completion of Operation Zack.
- RAC, FreightCorp, RSA, SRA.

- Re Legislation:
  - covert operations legislation,
  - Local Government inspectors amendments to the Local Government Act, 1993.

## **ADDITIONAL QUESTIONS ON NOTICE**

### **1 What corruption prevention activities has the ICAC undertaken in the lead up to the 2000 Olympic Games? How successful have they been?**

The Corruption Prevention and Education Unit has maintained an ongoing liaison with the main Olympic organisations, the Olympic Coordination Authority (OCA) and the Sydney Organising Committee for the Olympics Games (SOCOG). The Commission has assisted these organisations on an ongoing basis with general corruption prevention strategies such as Codes of Conduct for staff, as well as providing advice on a number of specific issues. OCA has briefed the Commission and asked for advice on many of the major construction projects.

Recently the Olympic Roads and Transport Authority (ORTA) approached the Commission for advice on the tendering process for regional bus routes for the Easter Show 1998.

The Commission has been very pleased by the seriousness with which the Olympic organisations have approached corruption risks and strategies for minimising them. There have been very few complaints about matters associated with the Olympics, within the ambit of the ICAC's involvement.

### **2 Discussion Paper (April 1997), Managing Post Separation Employment**

#### **2.1 Do you believe that Members of Parliament's superannuation scheme is sufficient to deter people from taking jobs outside of the public service on their retirement?**

No, since a number of former members take up positions after retirement.

#### **2.2 Did you take into account the wage structure of Members of Parliament compared to the Senior Executive Service?**

It was not relevant to do so for the purposes of the discussion paper. The ICAC expects that the quantum of a pension entitlement would be one factor a former politician would take into account when considering resuming a former career or seeking a new one.



**2.3 Should backbenchers have their employment restricted when they resign or lose their seats?**

As mentioned on page 32 of the post separation employment discussion paper, the idea of independent scrutiny of post parliamentary employment is not new. The NSW Premier's Department proposed an external committee of review to the ICAC in its submission in relation to the ICAC's Metherell Inquiry. It recommended that the committee scrutinise any selection process that led to the recommendation of any former politician for appointment to any publicly funded position in the State public sector.

In its 1993 report, *Integrity in Public Sector Recruitment* the ICAC recommended that a committee be formed and that selections be vetted where an applicant had been a Member of Parliament in the preceding two years. The recommendation has not been implemented, although the ICAC stands by it.

The ICAC is not advocating restricting individual public officials' post separation employment in either the public or private sectors, where there is no risk to the public interest being involved. It would depend on whether the individual backbencher's circumstances warranted restrictions. This is why sanctioning bodies such as the UK Civil Service's Business Appointment Rules Committee, are structured so as to examine each case of post separation employment on its merits.

**3. Why were only 40 people interviewed in the *Taken for Granted? - Better Management of Government Grants* project, and for the *Managing Post Separation Employment Discussion Paper, April 1997*?**

In planning corruption prevention projects, arbitrary decisions are not made about the number of people to be interviewed. The approach varies according to the nature of each project. Each is assessed individually.

The methodology adopted for the project entitled *Taken for Granted? - Better Management of Government Grants* was a case study approach examining three funding bodies and funding programs. Data collection involved interviews with managers and other administrative officers from the three funding bodies, examination of documents, review of project files and interviews with representatives of funded organisations. That is how the number of people interviewed emerged.

As far as the *Managing Post Separation Employment Discussion Paper* is concerned, the paper was based on an analysis of ICAC complaints files, a survey of post separation employment problems experienced by all NSW public sector organisations, and a focus group with NSW senior executives who either dealt with the problem of

post separation employment in the course of their work, or had identified the issue as a problem for their organisation. The purpose of the discussion paper was to raise public sector awareness of the issue of post separation employment and to invite any comment on the need for further measures. Interviews were not a part of this process.

**4. What impact do you consider the operation of the Corruption Prevention Unit to have had on public sector agencies in NSW and in particular on the internal decision-making processes of agencies?**

The work of the ICAC has had a significant and beneficial impact on public sector agencies and their internal decision making processes. This flows from our investigations and more directly from the work of the corruption prevention unit.

The publications of the Unit, dealing with matters such as Direct Negotiations, Managing Post Separation Employment and conflicts of interest in local government (Under Careful Consideration), are widely used to assist decision making.

The advice function provided by the Corruption Prevention Unit is particularly important in this regard. Consultation with the ICAC and its publications is now an increasingly important facet of the planning and decision-making processes in many agencies. In some cases consultation is done as a matter of course; in others, it is done on a needs basis.

There is no doubt that questions of ethics and probity have a much higher profile throughout public sector agencies and are much more prominent in decision making processes as a direct result of the ICAC's work, as well as in the recruitment process.

**5. The Committee has heard that a technique frequently used by Counsel in the ICAC is; that the witness is taken into an in camera hearing, asked many question and some time later asked the same questions in public hearings. With this technique inconsistencies in the statements given could occur and the conclusion reached may be that the witness is lying. Is this a technique that is useful in an investigation?**

This question seems to be based on incorrect information or a misunderstanding of the nature and role of private hearings conducted by the Commission. Private hearings are held as an aid to the Commission's investigation. They are not held for the purpose of attempting to "trap" a witness into giving false evidence.

In deciding whether to take evidence in a private hearing, the following considerations are taken into account:

- (a) the integrity of the investigation (it may be prejudicial to the investigation to publicly divulge the fact the Commission is conducting an investigation, to identify the witnesses or make known the extent of evidence obtained);
- (b) protection of reputation from anticipated but untested or unverified evidence;
- (c) whether information is being sought at a preliminary stage for the purposes of determining whether further investigative effort is required. In this regard if it is ultimately decided not to proceed further there is no requirement for the Commission to prepare a report in relation to the matter;
- (d) the need to protect the identity of a witness or an informant;
- (e) the requirements of s.18(2) of the ICAC Act which requires that where there are proceedings for an indictable offence conducted by or on behalf of the Crown, in order to ensure that the accused's right to a fair trial is not prejudiced the Commission must, to the extent it thinks necessary, ensure that, as far as practicable, any hearing is conducted in private during the currency of the proceedings; and
- (f) any application made by, or on behalf of, those appearing before the Commission that the hearing be conducted in private.

In cases where investigations subsequently proceed to public hearings it is not unusual for witnesses who have given evidence in private hearings to be recalled to give evidence in public hearings. This usually includes the tender of evidence given in a private hearing. Then any additional material can be put to the witnesses. This provides an opportunity for those adversely mentioned by the witness or otherwise affected by the witness's evidence to cross-examine that witness.

Sometimes the evidence given by a witness in private hearing may vary from that subsequently given in public hearing. Minor variations may be of little account. However, such variations may ultimately be matters to be considered in relation to the credit of a particular witness.

In other cases however there can be major discrepancies between the evidence given by a witness in an earlier private hearing and evidence subsequently given in a public hearing. Typically this will arise where a witness sought in a private hearing to deny involvement in corrupt conduct or limit their involvement. Subsequently, evidence given by other witnesses, or other evidence such as listening device or telephone intercept material, indicates to them that they cannot maintain their original position, often leading to a change in their evidence. If the witness gives evidence inconsistent

with that previously given (whether in public or private hearing), it is necessary to explore the basis for that inconsistency and to ascertain whether the witness has lied, or been influenced by some person or circumstance.

## **6. What is the status of Operation Zack?**

Public hearings into specific allegations of corrupt conduct have been completed. That process was successful in demonstrating a number of the kinds of corrupt conduct which affect Aboriginal land councils. Submissions from Counsel Assisting the Commission and from interested parties are to be received and considered in the course of preparing my report to the Parliament.

A separate report on the systemic corruption prevention recommendations has already been prepared in draft following consultation with the Office of the Minister for Aboriginal Affairs, the Department of Aboriginal Affairs and the NSW Aboriginal Land Council. That report is in the course of refinement and should be published early in the new year. However, a final draft of the material may be made available to Government and to the NSW Aboriginal Land Council so that the process of amending the Aboriginal Land Rights Act 1983 can go ahead as early as possible with the benefit of the Commission's work.

Corruption prevention is not a "set and forget" operation, but rather one where ongoing support is required. Consequently, the most important recommendation relates to a project which aims to assist local Aboriginal land councils amend their model rules. The Aboriginal Land Rights Act enables local Aboriginal land councils to seek amendments to the basic set of statutory rules which govern their operation. History has shown that relatively few amendments have in fact been made, thus weakening a very valuable feature of land rights legislation in this State: the ability for Aboriginal people to decide on the best way in which to manage their own local affairs.

Our work indicates that for corruption prevention measures to be effective they must be implemented in a system which faithfully reflects the diversity of contemporary Aboriginal culture, and the ways in which Aboriginal people wish to govern their organisations. The 'model rules project' as it has become known, will see the ICAC work with local communities, the NSW Aboriginal Land Council, and other stakeholders, to lend support to local Aboriginal land councils who wish to tailor their rules to best suit their circumstances. An important part of the process will involve helping to build corruption prevention systems into the organisational models chosen by Aboriginal people.

To that end the Commission is recruiting an Aboriginal person to lead this particular project and to facilitate the wider process of implementing the Commission's other

recommendations. I have also agreed to the secondment of a Commission officer to the Department of Aboriginal Affairs who will continue to work with Aboriginal land councils on the reform process.

### **EVALUATION OF OPERATION ZACK**

A research report on the evaluation of the process used in Operation Zack has also been prepared which outlines how the ICAC project was received by the Aboriginal communities in NSW. The research indicates that not only must the corruption prevention measures be implemented in a system which reflects the diversity of contemporary Aboriginal culture, but that the process used must be acceptable to Aboriginal people. The evaluation of Operation Zack found that the use of Aboriginal Liaison Officers was an essential part of the process, and using a culturally aware team of people who have a respectful approach to working with people in Aboriginal communities was an imperative element in the project being accepted within the community.

The research study interviewed Aboriginal community members who had previous contact with the ICAC team. Those interviewed unanimously rated the ICAC team as having been respectful to them and their culture.

**7. Do you consider that there are any measures which could be taken to assist the ORC in the performance of its functions.**

The ORC is performing well, as contemplated by the Act, and no additional assistance is called for at this time.

**8. On page 38 of the 18 July hearing report, you spoke about the protocol used in ICAC surveys. Could you provide that protocol?**

Page 38 of the 18 July hearing report refers to the methodology used in the 1996 ICAC Community Attitude Survey. The research report, *Community Attitudes to Corruption and the ICAC 1996*, which was distributed to committee members on 15 July 1997, outlines the methodology used.

This telephone survey was conducted between 15 and 30 October 1996, with a representative sample of the NSW adult population (aged 18 years and over). A total of 511 people were interviewed. While the interview schedule was designed by the ICAC Research Section, a commercial research company was engaged to pilot and conduct the survey on behalf of the ICAC. The results were analysed and the report was prepared by the ICAC Research Section. The interview schedule used by the commercial research company is attached as Appendix 1.

9. **In your letter of 28 August you offered further details of the Workcover issue relating to an ICAC premises. Could you provide those details? (In camera, if necessary).**

This matter should be dealt with in camera.

10. **Have there been changes in vetting procedures for potential ICAC staff since the Police Royal Commission? Should there be a review of current ICAC staffing based on lessons learned?**

10.1.1 ICAC vetting procedures have been progressively reviewed and refined over the last 18 months as part of an ongoing work improvement process. This review process has been necessary to enable the Security Section to meet its internal "Guarantee of Service" obligations of fifty percent of vettings to be completed within 15 working days and all vettings to be completed within 20 working days.

10.1.2 ICAC staff "personal vetting files" are now reviewed annually. Staff also have an ongoing responsibility, under the Commission's Code of Conduct, to report changes of circumstance and any possible conflicts of interest.

10.1.3 During the past 18 months the Commission has provided advice on personnel vetting procedures to:

Parliamentary Joint Committee on the ICAC (Chairman);  
NSW Police Service (Commissioner's Office & Assistant Commissioner Human Resources);  
Victorian Police (Ethical Standards Department);  
National Exchange of Police Information (NEPI Support Unit);  
Sydney Organising Committee for the Olympic Games (Accreditation Manager);  
WorkCover Authority (Fraud Investigation);  
Community Services Commission (Employee Relations Branch);  
West Australian Anti-Corruption Commission and;  
Australian Securities Commission (Office of the Chairman).

11. **On page 9 of the 18 July hearing report you answered questions relating to allegations concerning a Mayor of a local council. What is the status of that Inquiry?**

In relation to this matter, Mr Watkins undertook to provide additional details. That material was provided to the Commission by letter of 29 July 1997.

The matter has been the subject of further enquiry by the Commission. A number of persons have been interviewed, and a report has been prepared. However, as the matter is operational in nature, the Commission believes it would not be appropriate to provide further details.

**12. Why does ICAC require Councils to investigate allegations of corruption within their organisation before it will act?**

The underlying assumption is incorrect, as the Commission does not require all Councils to investigate allegations of corruption themselves. For example, Randwick Council (Operation Dusk), Byron (Operation Yabbie), Fairfield (Operation Sturt), Lane Cove (Operation Ward) and a number of others are all investigations into councils commenced by the Commission, and not first investigated by the councils concerned.

However the Commission's resources are limited and therefore it is not able to investigate every allegation of corrupt conduct made, whether in respect of a local government council or other agency. It is forced to decline numerous matters. One option available to the Commission is to refer certain types of allegations to other organisations for examination. That is contemplated by sections 53 and 54 of the ICAC Act. Referrals are made to other investigative agencies such as the Department of Local Government, and NSW Ombudsman. Matters of a one off criminal nature are often referred to the NSW Police Service.

Other allegations of a less serious nature are often referred to the council which is the subject of the complaint. In most cases such referral results from the fact that the allegations relate to management issues which should be the responsibility of the organisation itself to deal with.

**13. What is the status of an investigation into the approval of claim benefits under the BSC Comprehensive Insurance Scheme for Ms Vanessa Lovett?**

It has been completed, a report prepared and submitted to the ORC. On the advice of the ORC both the complainant and the subject have been advised of the decision.

**REPORT OF PROCEEDINGS BEFORE**

**JOINT COMMITTEE ON  
THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

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**At Sydney on Friday, 28 November 1997**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

**Mr P. R. Nagle (Chairman)**

**Legislative Council**

**The Hon. D.J. Gay  
The Hon. I.M. Macdonald  
The Hon. B.H. Vaughan**

**Legislative Assembly**

**Ms M.T. Andrews  
Mr P.G. Lynch  
Dr P.A.C. Macdonald  
Mr J.A. Watkins**



**CHAIRMAN:** I declare this meeting of the Joint Parliamentary Committee on the Independent Commission Against Corruption open. This is the second this year of a twice-year meeting with Commissioner O'Keefe.

**BARRY STANLEY JOHN O'KEEFE,** Commissioner of the Independent Commission Against Corruption, on former oath:

**CHAIRMAN:** Commissioner O'Keefe, you have a summons issued under my hand served upon you to give evidence here today?

**Commissioner O'KEEFE:** I do. I appear pursuant to that summons, under your hand, bearing today's date, requiring me to attend before this Committee today.

**CHAIRMAN:** Commissioner O'Keefe, would you like to make an opening statement?

**Commissioner O'KEEFE:** I would, please, Chairman.

**CHAIRMAN:** Proceed.

**Commissioner O'KEEFE:** There are five areas that I would like to touch on in this opening. I will do so partly I have recently completed the third year of my five-year term, so that I am 60 per cent through that term. The five areas relate to: (1) protected disclosures research; (2) the code of conduct for parliamentarians; (3) the ICAC's report into Operation Cal, which was released yesterday; (4) a number of matters relating to Corrective Services and the ICAC inquiry into that department, that inquiry being known as Operation Cadix; and (5) an overview.

Chairman, lady and gentlemen. The ICAC has undertaken a significant research study into the impact of the Protected Disclosures Act upon the public sector in New South Wales. In the first year of the life of the Act, the ICAC conducted a survey of chief executive officers which explored the response of the New South Wales public sector managers to the introduction of the legislation. The findings were grim.

Only 42 per cent of the organisations to which the Act applied had actually implemented internal reporting systems to allow their staff to make protected disclosures, and 65 per cent had not even bothered to inform their staff about the Act. The figures were far worse for local councils, with only 36 per cent of them having implemented internal reporting systems, compared with 53 per cent for government agencies, and in councils 75 per cent of them had not informed their staffs about the Act, and that compares with 50 per cent in the general public sector.

By comparison, the general public sector was good. But better was not good. Better was quite terrible. So neither of the sets of figures was good, and local government was, and continues to be, a very real worry. When we asked management why they had not done anything in response to the Parliament's command in the legislation over three-quarters of the organisations told us they were not convinced that the Act was going to have a positive impact on their organisation. That simply means

they were not applying the law because they did not think it was worthwhile. Their judgment was being substituted for that of the Parliament of the State. We would describe that as a real arrogance. Here are some of the reasons that they gave us:

1. *The Act is irrelevant, particularly to country organisations, because country organisations are under constant scrutiny by the community, making corruption impossible in those organisations. Our next inquiry into local government will dispel that in spades.*
2. *The Act is just another one of those well-meaning accountability mechanisms of no real consequence. We will see about that.*
3. *Their organisation was unlikely to need anything that the Act had to offer because wrongdoing does not go on in that organisation. The report that we released today into Operation Cal, involving three separate councils, is a clear testament that that is not so.*
4. *They were doubtful that the Act would do anything to change their staff's attitudes to reporting wrongdoing.*
5. *Australians perceive "dobbing" to be unAustralian and it will never be an acceptable thing to do in our society. That runs totally counter to the researches that we have done.*
6. *Organisations can never really protect people from the subtle reprisals that they may encounter within the organisation or within a close-knit community, particularly a country community.*

So there are a range of attitudes and a mix of attitudes from management, ranging from the eternal optimists who do not believe wrongdoing is an issue in their organisation, to the die-hard pessimists who do not believe there is anything you can do about it, and perhaps also the realists who see the difficulties in expecting an Act of Parliament to substantially alleviate people's fears to the point that they will be encouraged to make reports. Yet this, in our view, is a very important Act of the New South Wales Parliament - very important for ensuring that the public sector of this State reaches the high status of corruption-freeness that the public expects. Their overwhelming message, from our research, was that management were not convinced that the Act was going to be a useful tool for their organisation, and as a consequence they had not made use of the Act.

It is of serious concern to the Independent Commission Against Corruption - and it should be to the Parliament of New South Wales - that very few organisations then seemed to accept that it is not the Act itself which will create the attitudinal change in their staff but management's ability to create an organisational structure conducive to the staff speaking out.

Our research then proceeded. One year after the CEO survey, that is, almost two years after the introduction of the legislation, we went to New South Wales public sector employees and asked them - that is, not the bosses, but the employees - about

their knowledge of the Protected Disclosures Act and their attitudes to reporting workplace wrongdoing. Again the survey generated some disturbing findings:

- More than half of all respondents said that they did not know of any procedures in their workplace for reporting corruption.
- Sixty per cent of the staff from country organisations did not know of reporting channels, compared with 40 per cent of staff of city organisations.
- Sixty per cent of local council staff did not know of internal reporting, which compares with 48 per cent of staff of other government agencies.
- More than half of respondents did not know that they could go outside their organisation to report corruption.
- Staff from country councils were even less likely to know of available external channels than were staff from city organisations.

The above findings are very worrying, given that the research found a clear link between a lack of information about mechanisms for reporting corruption and negative attitudes towards reporting corruption. Lack of knowledge of the Protected Disclosures Act, the making aware of which resides with each council and each agency and each department, was even more startling:

- Two thirds of public sector employees did not even know about the Act.
- Seventy per cent of local council staff had not heard about the Act.

These statistics are of particular concern, given that three-quarters of respondents said that they would be unlikely to, or would definitely not, make a report without legal protection. It is encouraging to note, however, that while 30 per cent of respondents do not believe in the power of any legislation to protect them, 70 per cent were nonetheless willing to wait to see what it has to offer. So the opportunity to gain the trust of public sector employees in the legislation is still high. And directives from the Premier's Office in relation to the implementation of the Act have very much assisted in this respect.

In the first instance, however, the success of the Act depends upon public sector managers providing safe environments for their employees to come forward.

We also sought the perspective of public sector employees who had actually made a protected disclosure. How had the Act worked? Due to the sensitive nature of this research phase, we conducted confidential telephone interviews with 30 people. We had first to get the consent of people as to whether they would participate, then we had to get consent of people would they be interviewed. We got a representative sample, and 30 gave us a sufficient number to get a reliable response, but I think it cannot be made general because there are other areas of concern to explore. These 30 people who had made a protected disclosure to the ICAC and who had consented to

take part in the research had their experiences explored in relation to the making of their disclosure in their own organisation.

The findings are of great concern to the Independent Commission Against Corruption. Almost two-thirds of those 30 people reported some detrimental impact from having reported workplace wrongdoing within their organisations. Twenty-four of the 30 said that they had reported the matter internally before they came to the ICAC. All but one expressed dissatisfaction in the way in which their own organisations had handled their reports. Now, that is a very serious outcome. And, if it can be extrapolated generally, it gives rise to an alarming situation. We have to determine yet, by further research, whether that can be so extrapolated. There are indications, however, that it is not a bad indicator of what might be happening.

Most respondents described ineffective systems under which they believed nothing was done in relation to their reports. Others described internal investigations which they perceived were token only, or biased towards protecting and covering up for the person accused. Some described punitive responses in which the energy of the organisation and its resources were focused on punishing the person for making the report, rather than on dealing with the issue that had been reported. You shoot the messenger; you do not deal with the data. The overall picture was one of inaction or contempt by organisations for employees making reports.

These findings highlight the real dangers in promoting the Protected Disclosures Act as a protective mechanism to encourage public sector employees when organisations may not yet be willing or able to properly handle protected disclosure, or to deal with the employees who make them, in a proper manner. Doing so could result in the Act backfiring by highlighting the difficulties involved in protecting those who make the disclosures.

So what has been done and what will be done as a result of this research is perhaps even more important, since our work is research driven and directed.

We then, in response to the phase 1 findings, consulted with the Premier, and he approved the formation of an interdepartmental steering committee, whose role it is to facilitate a positive response to the legislation by encouraging and assisting organisations to implement internal reporting systems and educate their staff about making protected disclosures. The ICAC chairs that committee. In addition, as a result of this initiative the Premier has issued a directive to all New South Wales public sector agencies that they must implement internal reporting systems.

Phases 3 and 4 of our research findings strongly suggest that New South Wales public sector managers need to take steps to create organisational cultures in which employees have faith in their managers to respond to reports of corruption appropriately and to inculcate a belief that their managers will do their best to protect them from any reprisals, rather than being the source of reprisals.

Secondly, the ICAC is responding to the clear need for organisational change in the public sector by initiating an organisational change program which will be the priority for the corruption prevention section of the Commission in this financial year.

Thirdly, the Protected Disclosures Implementation Steering Committee will be conducting focus groups with public sector employees and managers to explore solutions to the issues identified in the phase 3 and phase 4 research. These will be conducted in 1998, although some of that work has already begun in terms of organising the focus groups.

Fourthly, the ICAC has produced a handbook on conducting internal investigations, and it has been distributed recently to all agencies and local councils.

Fifthly, protected disclosure workshops are already being conducted with local councils throughout the State which aim to inform managers about their responsibilities regarding the Act and how they can effectively implement internal reporting systems. Five of those have already been held in diverse country centres - and the details of those can be seen on page 16 in the answers which have been submitted to the Committee - and a further six have been arranged to be held before the end of the calendar year. Committee members will find those details at the following page. ICAC staff from different units are participating in those workshops, which included sessions about how to conduct effective internal investigations. In 1998 those workshops will be expanded to include entities other than local government. The second area of concern is the code of conduct for parliamentarians.

**Mr WATKINS:** Mr Chairman, if I could interrupt for a moment. We have been going for more than 10 minutes. Normal past practice has been for there to be a brief opening statement by the Commissioner about matters that are before us, and then to throw the meeting open to questions. We have been through one of the four areas ----

**Commissioner O'KEEFE:** Five.

**Mr WATKINS:** --- five areas that the Commissioner hopes to explore. I would suggest that this is an inappropriate way of beginning, especially if each of the five matters takes 10 minutes.

**Commissioner O'KEEFE:** They do not.

**Mr WATKINS:** I would suggest that some of what we have been told in the last few minutes we have already been told in the past, but other parts of it are new. I wonder why it was not reported in writing to the Committee so that we could then question the Commissioner on the material that he is now putting before us. He has outlined that the other matters he will deal with - the code of conduct, one of the ICAC operations, and Corrective Services - as far as I recall, are not explored in the written material before us.

It is very difficult for this Committee to do its job if members are given fresh material from the dais and that is not given to us in an agreed time beforehand so that we can ask intelligent questions. So could I suggest that the Commissioner finish his opening statement there, and that we move on to question him about those matters that he has put before us. These other matters that he will go on to report about may come up in general questioning at the end; or, if not, they could be reported to the Committee through the normal practice, in written form, before our next hearing.

**Commissioner O'KEEFE:** Chairman, I have gone to a lot of trouble to prepare matters to inform this Committee. This Committee will be sitting all day today, according to the schedule that I was given. I will take no more than half an hour. That, with respect, would seem to me to be a very small proportion of the time allotted for this Committee's deliberations. The matters that I would seek to deal with are important matters for this State and for this Committee. It would be very unfortunate if the impression of being muzzled were to be given by this Committee. That is not the function, I would have thought, of this forum.

**Mr WATKINS:** Mr Chairman, I object to this Committee being muzzled - and it has happened in the past - by not being given this important information in sufficient detail and in time for us to digest it and then ask intelligent questions.

**Mr O'FARRELL:** Mr Chairman, I do not think Mr Watkins can have it both ways. He cannot say it has not been given in sufficient detail if he then complains about the time that the Commissioner is taking to deliver that detail. But I would have to say that I do not feel constrained about not asking the Commissioner questions about the issues he is raising. Some of them relate to a recent report of the ICAC which we have all received, and which the Commissioner has referred to, relating to the operation of the Protected Disclosures Act. That is certainly important to me, and it is certainly a matter I intend to raise in general questioning. I see no problem with the Commissioner's opening statement, and I do not think the Commissioner ought to be muzzled in this forum, which is an opportunity for all members of Parliament to hold the Commissioner and the ICAC accountable.

**Dr MACDONALD:** Mr Chairman, I object to both the Commissioner's use and Mr O'Farrell's use of the term muzzled, because that introduced an aspect to these deliberations that is quite unnecessary. I think we need some direction from you as to what the purpose of these sessions are. As I understand it, the matters that are to be considered have been the subject of various questions from the Secretary of the Committee and members of the Committee to the Commissioner, with corresponding responses. We are then in a position, as Mr Watkins says, to question the Commissioner in detail.

My question to you would simply be this. In relation to the material that is now being provided, why was it not provided beforehand? Is it of such recent urgency or occurrence that it has come up? Maybe you could direct a question to the Commissioner as to why this information could not have been provided 24 hours ago or a week ago. The Committee is put in a stronger position to ask questions if it has this information in advance. That cannot be disputed, surely. I have no objection to the Commissioner being allowed to continue on with his opening address. I think we should get on with it.

**CHAIRMAN:** Commissioner O'Keefe, it seems to be the general view of the majority of the Committee that you continue with your opening remarks. But the point has been raised that if you intend to present something new we should have the opportunity to have that in advance so that we can look at it and think about it. So, would you proceed and complete your opening statement, and we will see where we go from there.

**Mr WATKINS:** There was the question that Dr Macdonald wished to have put.

**CHAIRMAN:** Perhaps you should turn your mind to that question, Commissioner.

**Commissioner O'KEEFE:** I shall attend to that.

**CHAIRMAN:** Thank you.

**Commissioner O'KEEFE:** Chairman, I note the release on 17 October 1997 of the parliamentary Committee's report in relation to codes of conduct for parliamentarians. I welcome its publication. Given that the genesis of the legislation in relation to the codes of conduct was the decision in the Court of Appeal in Greiner's case in 1992 and the subsequent amendments to the Independent Commission Against Corruption Act which required draft codes of conduct to be presented not later than January 1996, it is disappointing that the process has been so drawn out, and the long delay makes it even more imperative that priority be given to ensuring that the codes of conduct for members of Parliament are adopted by both Houses of Parliament, and adopted soon. I will advert to that a little later.

It is perhaps a little lighter to note that the period of gestation of this report has been about 1.6 times the period of gestation of an elephant, which is the longest period of gestation of any mammal.

**The Hon. B. H. VAUGHAN:** Some of us, of course, Commissioner, did not think there ought to be a code of conduct.

**Mr O'FARRELL:** Or an ICAC.

**The Hon. B. H. VAUGHAN:** Yes, I do go back that far.

**Commissioner O'KEEFE:** Might I come to that, Mr Vaughan, because I do deal with that. Though some of us may have thought that, there was ----

**The Hon. B. H. VAUGHAN:** Is that my opposition to ICAC, or my opposition to the code?

**Commissioner O'KEEFE:** Both. That is all I wish to say about the codes. But it is very important for the public confidence in the Legislature and the behaviour of legislators that they be seen to be pushing forward a code and to have it adopted.

The third item that I wish to deal with is the Independent Commission Against Corruption's Cal report, which was issued today. That concerns three councils - Lane Cove, Holroyd and Fairfield. The report examines the relationship between council officers, councillors and developers in those three councils. There are findings that four individuals acted corruptly, and recommendations that the Director of Public Prosecutions examine laying criminal charges against some of them.

The report should be read against the background that 35 per cent of the complaints from the public that the Independent Commission Against Corruption gets

are about local government. They are our biggest customer. And they are also the worst performers in relation to protected disclosures. So the picture that is created is far from comforting.

In the report we look at attempted bribery and non-declaration of gifts - a serious matter - which highlight opportunities for corruption in important local government functions, notably the management and behaviour of health and building inspectors and the decision-making function of elected representatives.

Every council in New South Wales should in fact be examining its procedures regulating how its staff and councillors and developers inter-react. Our recent product in relation to this, *Under careful consideration: Issues for Local Government*, highlights this.

Can I say that the work that was done by the investigation section in this inquiry was of the highest order, with excellent electronic surveillance giving rise to one of the persons now serving a term of 18 months imprisonment. That was clearly as a result of irrefutable evidence obtained through electronic means.

A very serious area of concern related to elected representatives at Holroyd Council. Offers of gifts or actual gifts to seven members of the council were made by a Mr Bechara. Some were offered money. In fairness to them, I should say they immediately reported that. Some were offered chocolates and flowers and holidays. They did not report that. Another was offered, and took, a case of champagne and other alcohol - and did not report that. These gifts were given, and the situation developed, largely because no-one performed their duty of bringing to attention the fact that there was a developer in the area going around sprinkling goodies at a time that he had a development application before the council. Now, it might have been from the goodness of his heart, but that is not the finding in this report. The finding is one of corrupt conduct. It is very important that persons who are in positions of power and of official function in local communities should be absolutely scrupulous:

1. Not to accept these gifts.
2. If they do, to declare them, and abstain from being involved in the debate and voting in relation to those matters.

There seems to be a very poor understanding of the provisions of section 449 of the Local Government Act and of the problems of being compromised that failure to adhere to that section can give rise to. Cal stresses that. One message I would bring to the Committee's attention is that one person who admitted bribing a council officer for \$2,000, and was given six months by the magistrate, was given a bond on appeal. When the courts treat the serious offence of bribery, which has a penalty that this Legislature has recently extended to seven years, with a bond, one must question that situation. Bribery of public officials is a serious matter, and it should be treated seriously by all of us. We treat it seriously, and the court should too.

The next matters that I wish to address are matters relating to the Department of Corrective Services. As can be seen from the statistics provided in the Commission's answers to questions on notice, there has been a significant increase in



complaints in relation to Corrective Services. From constituting 7.3 per cent of the complaints received from the public in the past, they currently constitute 19.1 per cent - second only to local government.

Whilst some of this may perhaps be expected as a result of the Commission conducting a public inquiry into the department, I am not convinced that that is the sole explanation. Many Corrective Services officers and employees have come forward. That trend is increasing. But, because of concerns about reprisals, adverse affects on their careers, being given what has been described to us in the jargon as the "highway treatment", that is, being sent to some remote posting where your career will languish, not surprisingly many of the officers and employees who have come forward wish to remain anonymous. Some make anonymous complaints. Others seek agreements as to their anonymity.

Mr Chairman, lady and gentlemen, people who are in prison are vulnerable. They are deprived of their liberty by society and are subject to a regime which is far from pleasant but which should nonetheless be humane. They should not be exposed to physical violence and threat of death by prison officers or fellow prisoners, or to rape, or to drugs, or to other unauthorised treatment. Our investigations reveal each of those things to be occurring.

The Independent Commission Against Corruption's current inquiry is concerned to expose these abuses in the prison system and then, by so doing, assist in bringing about corrections in those abuses. It is vitally important to this inquiry that people who have information about corruption within prisons come forward with it and assist the Commission. There are real practical difficulties in conducting inquiries based on information the source of which is anonymous and which must be treated as such, however serious that information may appear when received.

As I have said, many of those who come forward with this information do so anonymously or seek our agreement or promise that they will remain anonymous, because they are fearful that their careers may be affected. Some of them are even fearful for their lives and safety. I wish to assure this Committee and all those persons who have information which might assist the Commission that the Commission will do everything in its power to protect those who assist it. In this regard, I wish to acknowledge the assistance which the Commission has received from the Corrective Services Commissioner, Mr Leo Keliher, when earlier this year he issued a very clear notice to staff advising them that they should feel free to report matters to the Independent Commission Against Corruption.

Nevertheless, there are many who remain concerned about actions or possible actions by those lower down in the Corrective Services hierarchy, and I wish to take this opportunity before this Committee to encourage people to come forward, to discourage those who might be inclined to take action against those who come forward, and to assure those who do come forward that their information will be treated confidentially and that we will protect those who assist the Commission.

Those are the four matters, other than overview.

The overview is really concerned to see what it is that the Commission has been doing, in terms of the relevant section of the Independent Commission Against Corruption Act, which you will recall we had some discussion about in another context at the last meeting, and those are the provisions in section 64 which set out the functions of the Committee, one of which is to review the exercise by the Commission of its functions.

One of the matters that has been asked of me quite frequently in the past has been: Is this State getting value for money? Is the ICAC being effective? I want to address that, if I may, please, having come now to the end of the third year of my terms as Commissioner and having had an opportunity to assess what it is that has been achieved in that time, building on what went before.

**Mr WATKINS:** Mr Chairman, could I interrupt. It is almost 15 minutes since my last interruption, when the Commissioner said he would be 10 minutes more.

**Mr GAY:** The Commissioner would have been finished if you did not interrupt.

**Mr WATKINS:** What the Commissioner is now proposing to move into is an overview of his time at the Independent Commission Against Corruption, where it has gone, and how effective it has been. That is something that this Committee should consider, but I suggest that its place should be in our review of the Act. The Commissioner already has given evidence at a previous time about our review of the Act. May I suggest that his comments that he is about to move to should properly be made in that forum and not here today.

**Mr O'FARRELL:** Mr Chairman, I again say that the Commissioner has just pointed out to us the purpose of these hearings. The last three years he has been Commissioner of the ICAC, and clearly in exercising the functions of the Commission his role is important. I feel that Mr Watkins is endeavouring to constrain me and others from hearing the Commissioner and then questioning the Commissioner about the exercise of his functions over the past six months.

**Mr GAY:** Mr Chairman, further to that. The three-year overview is important to put into perspective what has happened over the last six to 12 months in ICAC. As I said earlier, if we did not have these continual interruptions, the Commissioner would have finished his opening address by now and we could have been asking questions. Let us get on with it.

**CHAIRMAN:** I will allow Commissioner O'Keefe to continue.

**Commissioner O'KEEFE:** We began, as you know, Chairman and ladies and gentlemen, in March 1989. The creation of the ICAC was a reaction to the perception by the community and by its representatives in Parliament that the public sector in New South Wales was not what it should be, not what the public expected, and that it had in it a lot of corruption, some of that corruption ingrained. The community made clear that it was not prepared to accept this. It demanded change, and the ICAC was brought into being as an agent for that change.

The way in which that change was to be brought about was by exposure through investigation, corruption prevention activities which were intended to make probity, honesty and transparency cardinal considerations for public authorities, and the way in which they conducted their business, and education - the third prong - was aimed at bringing about a change in culture over time.

Investigations and exposure through public hearings looked at what has happened already. They are historical, but they have a two-fold purpose: first, to provide a disincentive to those who might be tempted to act corruptly; and, secondly, to draw attention to the need for constant vigilance and reform in order to avoid, or at least minimise, the opportunities for corrupt conduct in the agency in question or in those which have like function. That is a futuristic matter.

The second reading speech in relation to the Independent Commission Against Corruption Bill - and I stress, for the Hon. Brian Vaughan, that this is in the lower House - saw the then Premier, Mr Nick Greiner, and the then Leader of the Opposition (now the Premier), Mr Bob Carr, united in their support for the creation of the Commission. The Commission has now been in existence for eight-and-a-half years, and it is appropriate to shortly assess what the Commission has done in that time and what effect the Commission's work has had.

The mere determination by a government to set up bodies such as an ICAC, if it is sincere, and if it is supported by proper funding, itself conveys to the community a value that government places upon integrity and that the Parliament, as the representative of the people, places on integrity. Fear of being caught is a relevant consideration as to whether some will or will not engage in inappropriate conduct, be it corrupt or not. It is relevant, but not determinative. So it is a signal, and it is a deterrent.

One must define success in terms of the objectives that are to be achieved. First, people must be aware that ethics, probity and integrity in public life are important. Secondly, the systems must reflect that. This will only happen if those at the top believe in it, and implement it. Thirdly, it must be hammered home constantly that our society will not accept aberrant behaviour - "corrupt conduct", as it is described in the Independent Commission Against Corruption Act.

So I would postulate these matters of testing:

- (i) *Has the existence of the body and its operations brought about (as an agent for change should do) a change in:*
- *the rules as to public sector behaviour*
  - *the expectations by those who deal with government*
  - *the attitude of the public sector to corruption and ethical behaviour*
  - *the public response to observed or suspected instances of public sector corruption, and*
  - *the public sector awareness and behaviour, both at a political and at a bureaucratic level?*

(ii) *What is the public response? Is it positive? Is it supportive?*

The latter certainly can be measured. It has been measured in our public attitude surveys from 1993 to 1996 inclusive. Each was quite a long survey. I think Mr Watkins, or it might have been Dr Macdonald, asked for a copy of the protocol that we used in relation to our public awareness surveys. I am being informed that it has been circulated. If I remember correctly, it has 34 primary questions and quite a number of subsidiary questions, and it is a very extensive document.

Each of these public attitude surveys was done applying the best methodology, and the numbers which were used were such as to make the surveys statistically reliable. There is a statistically significant sample taken, and follow-up on it would make most researchers feel that they were getting the best - a Rolls-Royce. In measuring whether or not one has need for such a body, whether it is a good thing for New South Wales in exposing corruption, the respondent percentages varied (but only marginally) between 80 per cent in 1993 and 82 per cent of respondents in 1996. That is for exposure.

The overwhelming number therefore think that it is important to have such a body and that it is doing a good job in exposing corruption. On its effectiveness in reducing corruption, the figures are not as good, although they have improved. The percentage of respondents who thought in 1993 that it has been successful in reducing corruption is 53 per cent, and it is 54 per cent for 1996, if I remember correctly. The important thing is that the percentage who think that the body has been unsuccessful has fallen.

The surveys are a good indicator of what the community expects and what the people think their body ought to be achieving. I have dealt with the negatives. If one looks at the "don't knows", many of those say "I don't know, because I don't know what the level of corruption was before, so how can I compare?" This is, of course, a matter of perception. Perception is, really, as much as one can measure as far as public response is concerned.

But another measure of whether or not there is public confidence is to determine whether or not the public approach the ICAC to make complaints. In the years between 1991-92 and 1995-96 there was a more than 100 per cent increase in the number of people approaching the ICAC. There were 504 individual complaints in 1990-91. That number had risen to 1,093 in 1995-96, and that includes complaints against police corruption, which complaints were deleted as at 1 January 1997. In 1996-97 the number, excluding police, was 979. So it is rising.

What those figures indicate is that people are more aware of corruption, and that they are more prepared to come forward. The figures clearly suggest that people are not prepared to tolerate corrupt conduct and that they will come to the body constituted for the purpose of exposing it and eliminating it. We would suggest that a more than 100 per cent increase in that period of the people coming forward is a fairly good indicator of confidence and positive response under this relevant indicator.

- (iii) *The most common threat made to any public official in New South Wales is: "If you do that, that is wrong and I will take you to the ICAC."*

And people do. And the effect of that has been a clear modification of public official behaviour.

Those are three ways of measuring whether or not we have been successful in raising awareness and stimulating the confidence of the public.

We then looked at young people, and we ran that poster competition. We have not got the final figures yet but, excluding the last venue, which was at Nepean, in that lovely old Lewers house near the banks of the river, our country attendances exceeded 65,000, and our response surveys indicate a very positive response amongst those who viewed the exhibition. We then extended that by putting two of the selected posters on the back of buses. Our survey there, conducted externally, indicated that some 375,000 people recall seeing the posters and 59 per cent of those were prompted to think about corruption.

If I could now look at the public sector. First, let me deal with politicians. As I said earlier, codes of conduct are in the course of being adopted. Things have moved slowly - many would say too slowly - but the codes were to come. They may not go as far as some would want, but they are a start, and they are a direct response to the Greiner-Metherell report of 1991. In addition, we find that as a consequence of that report Ministers frequently ring to check as to whether a particular action or proposal is or is not in accordance with the standards that the ICAC applies. That is certainly a modification of behaviour. They are changes of the kind that we are an agent to produce.

If I could now look at bureaucrats. As at the year before last there was only one government body in New South Wales that had not adopted a code of conduct as a result of our pressing. That body was a recently-formed body. It now has a code of conduct. All of them have. There is a clear political will, as the Premier has constantly stated, to see that our recommendations in this regard are adopted.

If one then looks at a series of reports - Semple is one - the net result of that was, with great assistance from the Premier and his department and their embracing of the recommendations and giving of directives, that now all CEO and SES positions are advertised on the basis of an ethical component, and a performance indicator is included in that respect in their contracts.

In respect of the Milloo report, 16 major areas of activity in the Police Service have been the subject of change as a result of those recommendations. In harness racing, there has been a stronger code of conduct. In the revenue field, tighter rules and procedures for inspections have resulted from Operation Visual, which relates to liquor and gambling licensing inspectors.

We know from people who speak to us, including consultants from around Australia and from several speeches by the Premier, that there is now a different way of doing business in New South Wales. Why? People prefer to come here and do their

business because, they say, you have got a set of rules that we believe will be applied because there is a body there to make sure that they are applied. People believe that they will get a fair go in New South Wales. They expect openness, and they expect not to have to go to litigation.

If you look at some of the big projects - the Showground, Walsh Bay, the Olympics, the Eastern Distributor - in each of which we were involved in an advisory capacity, either at the outset or early in the process, there have been no suggestions of corruption. There are billions of dollars involved in those contracts, but we have not had any litigation to upset any of those contracts. People have looked at them, found the process as we said it should be, and gone away. Yet, in other places in Australia, we find that litigation in relation to like contracts is quite common. People constantly say these days, "New South Wales is a good place to invest because we will get a fair go, and if we think we are not getting a fair go there is the ICAC to go to.

If one then looks at the public sector, and measures the willingness of CEOs in the public sector agencies to report improper conduct - as you will find in page 1 of the figures that I have given to the Committee, at paragraph 1.4, individual reports under section 11 - they have increased by 60 per cent over the years between 1991 and 1996. If one extrapolates the figures for the first four months, there is a further increase. So there is, clearly, a serious political commitment at the top, from the Premier down, to integrity, honesty and openness in the public sector, and an acceptance of that in the bureaucracy.

An excellent example has been the railways. You will remember that I described it as a "bottomless pit of corruption" here on one of my early visits. The then head of that organisation said that was ridiculous, that there was no corruption. We held an inquiry, and of course there was. And it went on and on. Each of the four agencies into which it has been split have been assiduous in their systems and in the instilling of their staff of the importance of probity in the way in which they act. Why? Because we pressed for that, and we convinced the Minister that that should occur, and the Minister directed his CEOs and boards that that should happen.

Another significant indicator is, perhaps, whether there is constant bickering of a destructive kind between the ICAC and the Government. There is not. And that is in stark contrast to what is occurring with the Queensland CJC, which for the last 18 months has probably spent most of its time and budget in defending itself, rather than doing its work. You will see in our annual report the extent of the work that the Independent Commission Against Corruption has done.

So the situation is that there is a proper tension based on a healthy respect of one for the other and for their respective fields and powers. The question that is asked is: Is it effective? The Government seems to think so. Is it effective? What is happening tells me that it is. Is it effective? The public seems to think so. Is it effective? The public sector response strongly supports an affirmative answer.

So, with respect, Chairman, we would submit that the review of the ICAC over a period of time - and not just the last three years, because before I came to this Commission a lot had been done, and it was a question of building on what had been

done and focusing attention in particular ways - gives cause for confidence for the future.

There will be matters about which minds differ. I understand that. But this Committee can be assured that the staff is dedicated, the staff is hard-working, and I am single-minded in ensuring that I fulfil my duties to the best of my ability.

**Mr WATKINS:** Could I suggest that you request that in future opening comments be limited to 10 minutes and that detail such as the Commissioner has just given to us today be provided in writing say four days or a week before the inquiry? We have been listening to the Commissioner for just on 40 minutes.

**CHAIRMAN:** We will deal with that matter, Mr Watkins. Commissioner O'Keefe, could you table your speech? Or do you have notes?

**Commissioner O'KEEFE:** I will have it typed. I have handwritten additions to it. But I will have that typed and circulated.

**CHAIRMAN:** So that it can form part of the record.

**Commissioner O'KEEFE:** Yes.

**CHAIRMAN:** Also, could you officially table your answers to the questions?

**Commissioner O'KEEFE:** Yes, I do that, Chairman.

**Mr O'FARRELL:** Chairman, can I seek a ruling before we start today? In the Parliament this week, by release of the Commission, we are aware that the ICAC is now investigating some, maybe all, members of Parliament in relation to travel entitlements.

**Commissioner O'KEEFE:** No. Expenses.

**Mr O'FARRELL:** Yes, expenses. Given that there may be questions relating to that matter, or specific to that matter, at today's hearing, I am concerned that the cloud over all of us suggests that if we question the Commissioner about that matter we may in fact be placing ourselves in a position of conflict of interest. I would ask through you, Chairman, whether the Commissioner could indicate whether any of us around this table are the subject of those inquiries?

**CHAIRMAN:** You can ask the Commissioner when it comes your turn to ask questions.

**Mr O'FARRELL:** Mr Chairman, we have now tabled a code of ethics in the Parliament, and we are about to embark on a conflict of interest if one of us round this table embarks on robust questioning as we have seen of the Commissioner in recent public hearings. I do not care about Brian Langton's reputation, but I care about the effectiveness and the reputation of parliamentarians. Mr Chairman, can I have a ruling?

**CHAIRMAN:** The ruling is to wait until the question is asked and then deal with the issue. I think that the Commissioner would agree with me that operational matters are not an area in which the Committee can be involved, and that any inquiry of any member of Parliament about any travel expenses or whatever is an operational matter that is in due process and therefore is not a matter that this Committee can do anything about.

**Mr O'FARRELL:** Mr Chairman, what you are telling me is that if Brian Langton were a member of this Committee he would be able to question the Commissioner about these matters? Is that what you are saying?

**CHAIRMAN:** No, I do not think I said that.

**Dr MACDONALD:** Mr Chairman, could I direct a question to the Commissioner? Is the member for Northcott being investigated for rorting his travel expenses?

**Mr O'FARRELL:** Commissioner, I would like to know the answer to that question. I would like to know whether Peter Macdonald, Ian Macdonald, Bryan Vaughan, John Watkins, Paul Lynch, Marie Andrews and Duncan Gay are subject to investigation because, Commissioner, without knowing that information, any questions that we ask today can be portrayed in a negative light. Surely we need to have this conflict of interest matter cleared up, Mr Chairman.

**The Hon. B. H. VAUGHAN:** Mr Chairman, would it not be more concise if the Commissioner were able to tell us if there are any members of Parliament who are not being investigated?

**Mr LYNCH:** Mr Chairman, can I make a point to perhaps stop this rather childish grandstanding by the member for Northcott. I would have thought, if he had the slightest understanding of the Independent Commission Against Corruption Act - and I had credited him previously with having done enough research in this Committee to have read the Act that governs our behaviour - he would have found out that none of those matters can be dealt with by this Committee. They are clearly prevented by the Act from being inquired into by us because they relate to individual cases. Whilst I understand his attempts at political grandstanding, it is a disgrace that he does not follow the Act and does not know what it says.

**Mr O'FARRELL:** Mr Chairman, on that point ----

**CHAIRMAN:** I think it flies in the face of what Commissioner O'Keefe was saying earlier.

**Mr O'FARRELL:** Mr Chairman, on that point specifically. I would have thought that the fact that the press gallery have known for a couple of weeks that ICAC was investigating Brian Langton would have been of interest, at least, to the Labor members of this Committee, because what it says goes to the heart of ICAC's operation.

**CHAIRMAN:** Order!



**Mr LYNCH:** I think the behaviour of the member for Northcott is bringing this Parliament into disrepute. If he wishes to keep flouting the ICAC Act in this Committee, then it seems to me that this Committee will have to make some recommendations to the Parliament about his breaches of what would be appropriate standards.

**Mr O'FARRELL:** Clearly, we have no standards here today.

**CHAIRMAN:** My understanding of the situation is that nothing has been confirmed or denied in regard to any inquiry about the Minister for Transport or any other member of Parliament, except for what Commissioner O'Keefe said in his press release.

*[Interruption]*

**CHAIRMAN:** Order. Mr O'Farrell, you know full well that you are putting Commissioner O'Keefe into a very awkward situation in regard to that, and that we do not have the power under the Act to be inquiring in any way into operational matters. If you are being investigated, that is an operational matter. I think Commissioner O'Keefe made it quite clear, and at some length, on the last occasion he was here that these are operational matters and that he will deal with them, together with the operational review committee, and that this Committee has no power to deal with those matters. So I will wait until any question is asked, and if a question is asked on an operational matter I will rule it out of order.

**Dr MACDONALD:** Mr Chairman, I would not like to see this particular hearing dominated by this issue, and I would like it cleared up right now. I would like you to put a question, or I will put it through you, to the Commissioner as to his response to this matter that has been raised in Parliament. I was actually going to ask the Commissioner a different question, and that is has he considered this issue in the sense that under the current provisions of the ICAC Act a question such as was asked in Parliament can in fact damage somebody's reputation when in fact there may be absolutely no substance to it? This has happened previously. I could flagrantly allege that any member of Parliament is being investigated by ICAC, and his reputation would be smeared and possibly damaged forever. It was on that particular aspect that I wanted to seek a response from the Commissioner.

**CHAIRMAN:** That question, in that form, would be allowed. The question of whether or not a particular person is being investigated is an operational matter.

**Dr MACDONALD:** I put it to you that there are some very important issues that we need to raise this morning. I do not want it dominated by this. I am very unhappy with the fact that the member for Northcott has sought to politicise this area.

**CHAIRMAN:** So am I.

**Dr MACDONALD:** Could I seek a response at the right moment from the Commissioner?

**CHAIRMAN:** Yes.

**The Hon. I. M. MACDONALD:** I was going to reiterate what Dr Macdonald said. A few months back Alby Schultz, the member for Burrinjuck, sent in a document allegedly relating to one of the councils in his area and then, having sent it in, made it headline news. There was no subsequent investigation that I know of. There was no commitment of people under any forms of the Act. Yet that had been made public to damage those particular officials in one of the councils. I would hope that the Commissioner would make a rather strong statement on this, to stop the sort of scumbag activity that Mr O'Farrell has engaged in this morning.

**Mr O'FARRELL:** Mr Chairman, just to add to that point, and to raise a second point, I have been concerned since 1990, when Bob Carr made allegations in the House about Walsh Bay, which proved after an ICAC inquiry to be false, but which ensured that that project did not commence at that stage because the investors fled. But, Mr Chairman, I go back to your ruling that operational matters are outside the leave of this Committee. That is something that I agree with. But surely, Mr Chairman, it is of concern to you, both as Chairman of this Committee and also a member of the Labor Party, that the press gallery has known about this inquiry for two weeks and we have not. Now, I do not regard that as an operational issue. I regard that as the exercise of functions ----

**CHAIRMAN:** That is a different proposition to the one that you put a few moments ago.

**Mr O'FARRELL:** Mr Chairman, it was the second point I raised. In fact, I inquired why Labor members were not prepared to defend Brian Langton.

**The Hon. D. J. GAY:** Mr Chairman, would you take control of this meeting and bring it back to what its role should be?

**CHAIRMAN:** Commissioner O'Keefe, you have heard the interesting debate on the matter. There are two issues. The first is: do you want to comment on any inquiry in regard to any member of Parliament which is an operational matter? And, secondly, what do you say in regard to people who act irresponsibly and mention the names of people who, it is alleged, are under inquiry by the ICAC?

**Mr O'FARRELL:** Like the Premier.

**CHAIRMAN:** Or like the member for Northcott, Mr O'Farrell?

**Commissioner O'KEEFE:** As to the first, Chairman, the Act is quite clear. Operational matters do not fall within the purview of this Committee. Secondly, section 111 imposes a duty upon me and other persons who work at the Independent Commission Against Corruption to maintain confidentiality, secrecy, in relation to matters that come before us. Thirdly, it is our general practice never to comment upon whether or not we have received a complaint or not, subject to certain exceptions like where the complainant himself or herself makes that known and then seeks to use it for some collateral advantage to him or to her, or adverse to some other person.

Secondly, where the person complained against makes that known, then we look at each case on its merits as to what we might say. Otherwise, we only ever deal with matters in generalities, and we never reveal whether any particular individual is or is not the subject of any investigation.

You will see in yesterday's *Herald* a report saying I had issued a statement in three paragraphs - it happened to be two, so there seems to be some numeracy problems there - but it did not mention, and we would never mention, any particular person.

What we did say - in order, we hope, to ensure that the matter proceeded as we would want it to, without being politicised - we indicated, as is the fact, that a number of members are the subject of having their expenses claims looked at. And more than that I do not say, and cannot say.

**CHAIRMAN:** Commissioner O'Keefe, in regard to that matter, I was very disappointed that you even mentioned that, because it does put a cloud over every member of Parliament. I appreciate the circumstances that you were in. A journalist said to me they had no story until they received your press release.

**Commissioner O'KEEFE:** That is not right. We happen to know, Chairman, that the story was to go to press two days before. It did not go to press for reasons that were related to the space available. It was to go to press the day before, and something happened in the House that took attention from that. There is no question but that the story was going to press. I will say no more on that.

The second matter that you raised was the question of externalising, making public and seeking to use the fact of a complaint to the ICAC. I have spoken about that before, and there is a matter on today's paper that, at least obliquely, addresses that. The undesirability of that has been made the subject of a number of public statements and letters by me to council, members of Parliament and candidates that are known for various elections, because these things tend to well up at that time. It is a difficult area. And it should always be remembered that an allegation is no more than that. It does not make it a fact. But the fact of allegation and making it public can be damaging to individuals, or to a particular individual who is named.

**CHAIRMAN:** Commissioner O'Keefe, I appreciate that. It has been a matter of concern. For 40 minutes you took us through some very interesting items, and at the end you did an overview of the three years. It is a shame that such a good record of the ICAC in regard to a lot of investigations is marred by people making complaints to the ICAC and then going out. For example, the Property Council of Australia, in relation to a very important bill going through this Parliament, put out a press release saying they had referred the Minister to the ICAC for investigation of corruption.

That type of behaviour is just not acceptable. No such inquiry took place. Nothing happened in regard to the matter. The Hon. Duncan Gay raised the matter in the upper House. Those types of sad events tend, inadvertently, to bring the ICAC into disrepute, even though it is not your fault but results from what other people do. I do think, Commissioner O'Keefe, we should look at strengthening the provisions about

vexatious and malicious complaints and whether or not some people who do this should suffer the penalty of being prosecuted by the ICAC.

**Commissioner O'KEEFE:** Not by us, but by the DPP.

**CHAIRMAN:** Exactly right.

**The Hon. D. J. GAY:** Mr Chairman, could I set the record straight. I did not do any announcing.

**CHAIRMAN:** Yes, I appreciate that. I did not say you did.

**The Hon. D. J. GAY:** The inference from what you said was that I did that. What I highlighted was a concern I had with a bill in connection with the Independent Commission Against Corruption Act and that that may have created a climate conducive to corruption. I ask you to clarify that I was not indulging in those activities that we all find distasteful.

**CHAIRMAN:** I did not say you were indulging in them, but the Property Council of Australia did make a press release. But, be that as it may, Dr Macdonald wished to ask a question.

**Dr MACDONALD:** Before we leave this matter, what sanctions are available to ICAC in the event of vexatious or malicious reporting or allegations on matters such as this? We have seen an example of it today by the member for Northcott. What sanctions are available to you, or is it merely public rebuke?

**Commissioner O'KEEFE:** There are two questions inherent in that. The first is about sanctions that are generally available. You will find those in section 81 of the Act: a person shall not, in making a complaint, wilfully make any false statement to, or mislead, or attempt to mislead, the Commissioner or any officer of the Commission. The penalty is 20 penalty units, and I think they are worth just over \$100 each. They were initially \$100, and they have been indexed. So there is a fine of a couple of thousand dollars, or imprisonment for six months, or both.

Can I say that the difficulty in establishing such an offence is the insertion of the word "wilfully". Wilful is sort of intentional - in other words, you know that it is wrong - but it is more directed than just intentional. It has got to be deliberate and ---

**Mr LYNCH:** Malicious.

**Commissioner O'KEEFE:** Well, not quite malicious, but you are getting into that field. Proving that is often difficult.

If you then look at the question of what occurs in the House, then you get a second layer of rules that apply. The view that I take is that what is done in the House is a matter for the House to control. For instance, it is inadmissible in a court of law to produce a *Hansard* or somebody who was present and heard a member speak. One cannot even adduce that evidence. So it cannot be proved what the member actually said in the House. There is a rule of public policy that excludes that. So one would

need a very significant change to the law of longstanding in order to bring even a clear case of wilful false statement within the purview of the section.

Secondly, what is said in Parliament is not said to the Independent Commission Against Corruption. It is not something that is sent to us. It is said to the public at large, of whom we may be part. And I do not think section 81 would strike at that.

**Dr MACDONALD:** Do you regard the behaviour of the member for Northcott who at this hearing sought to damage the reputation of a Minister of this Government---

**Mr O'FARRELL:** I sought to clear the Minister's reputation. I sought to clear all of our reputations.

**Dr MACDONALD:** --- as being vexatious?

**Commissioner O'KEEFE:** That is not a matter for me to pass judgment on.

**The Hon. B. H. VAUGHAN:** I almost hesitate to raise this matter, but I attend this building five days a week, all year round, in the main, and I knew nothing about those rumours that Barry has referred to, until my attention was brought to the issue by the Commissioner's media release. I would be more comforted if the Commissioner would use more circumspection in a matter such as that.

**Commissioner O'KEEFE:** With great respect, Mr Vaughan, you must have missed the day before's paper, because there was a question asked ----

**The Hon. B. H. VAUGHAN:** I did not say I read the papers. I said I come to this building every day, and I did not hear the rumour.

**Commissioner O'KEEFE:** But there was a question asked in the House by Mr Photios the day before. That is what started the hares running.

**The Hon. B. H. VAUGHAN:** You could have said, "No comment", Commissioner.

**The Hon. I. M. MACDONALD:** This concerns me a bit, in that, given the sort of the heat that can be generated by some of these issues for all sorts of reasons, would it not have been better for you to have perhaps said, "No comment, it's an operational matter" and left it at that?

**Commissioner O'KEEFE:** That is a judgment that one makes. That is not the judgment I made. Very often, if a particular person like that is named in such high profile circumstances, a mere "No comment" or "We do not confirm or deny" without any addition, can be used by the media adversely to the person the subject of the question.

**Mr O'FARRELL:** Mr Chairman, I am happy to resolve it. I am happy to try to finalise this issue. On Tuesday, in question time, a Minister of the Crown, in answering a question from Mr Photios, indicated that he knew that rumours had been around for a couple of weeks in the gallery about this matter. The Commissioner, in

his statement a moment ago, said that the Commission had had notice for a number of days of media interest in this story. My question to the Commissioner, through you, Mr Chairman, is: What inquiries or what steps has the Commission taken to investigate that leak, presumably, of a highly confidential inquiry?

**Commissioner O'KEEFE:** That is an operational matter. I do not intend to go into that.

**Mr WATKINS:** Can I ask the Commissioner why he compromised the investigation into claims for expenses by members of Parliament by actually flagging to us that such an investigation was going forward? So that we all now know that the ICAC is investigating parliamentarians.

**Mr O'FARRELL:** All of us.

**Mr WATKINS:** So that means, presumably, that those who may be guilty of corrupting the system will try to hide. Does that not go against the procedures that the ICAC normally follows when it is undertaking an investigation?

**Commissioner O'KEEFE:** I think there are four questions there. The answer to the first question is: I do not accept the premise. The answer to the second question is: No, it does not prejudice the investigation. The third question was: Will it lead to people covering up? We do not believe so. We would hope that the level of public-spiritedness would not call for that. Is it likely that some of those who have some sense of inappropriateness of behaviour might come forward to us? We would hope that might be so.

**Mr WATKINS:** That is certainly not a principle that you apply when you investigate other organisations. This is absolutely outrageous. And that second paragraph should never have been written or issued.

**Dr MACDONALD:** What document are you referring to?

**Mr WATKINS:** The ICAC press release.

**CHAIRMAN:** Commissioner O'Keefe, in regard to the code of conduct, you do know, of course, that independent community members sit on the Legislative Assembly's Ethics Committee, and they have not expressed the fears or views that you have expressed. You might like to know that yesterday it was put on the business paper for debate, to be adopted by the Legislative Assembly. As to what is happening in the Legislative Council, I am not sure. But there have been negotiations between the Hon. Meredith Burgmann and her committee and the Assembly committee about having a similar code, and agreement has been reached. So the matter will go to the House for debate in the very near future.

**Commissioner O'KEEFE:** Thank you, Mr Chairman. There is a matter of correction that needs to be made in appendix 3. On the second page of the appendix there is an error.

**CHAIRMAN:** Which document is this?

**Commissioner O'KEEFE:** The report on the draft code of conduct. There is a correction that I will give to your staff so that they will make the correction.

**Dr MACDONALD:** Could I ask the Commissioner a question on that issue?

**CHAIRMAN:** Yes.

**Dr MACDONALD:** Commissioner, do you believe that delay in the adoption of the code of conduct by both Houses of Parliament in any way impacted on the Parliament's ability to deal with the Arena affair, in the sense that there was no code of conduct against which to measure her behaviour and no system whereby the matter could be more formally dealt with by an ethics commissioner or joint ethics committee? Do you wish to make any comment on that?

**Commissioner O'KEEFE:** Could I take that question on notice? I think it is a very complex question, and I would need to consider it in relation to the drafts that have been prepared.

**Dr MACDONALD:** An addendum to that, Mr Chairman, is that the code of conduct does not specifically address the issue of abuse of parliamentary privilege. That was the will of the majority of the committee, but it was not my view. In your response, could you make some comment as to whether the lessons that arise out of the Arena matter should more specifically be addressed within a joint code?

**Commissioner O'KEEFE:** I would need to go back also to the evidence that I gave in March 1996, where I think some question along those lines was addressed to me. I would need to relate that to your question as well.

**Mr LYNCH:** Mr Chairman, just to follow that up: when you are giving that consideration, Commissioner, could you also consider whether the provision of the codes that prohibit bringing the Parliament into disrepute would in fact cover the sort of situation that Dr Macdonald is talking about?

**CHAIRMAN:** Paragraph 1 of the code.

**Commissioner O'KEEFE:** That is of which code?

**CHAIRMAN:** The Legislative Assembly code. It will be a joint code.

**Mr WATKINS:** Mr Chairman, lest the community take the wrong impression from the Commissioner's criticism of the slowness of coming to this code of conduct, could you briefly indicate why it has taken so long and the level of detail that has gone into it?

**CHAIRMAN:** The committee thought it would be far better if both Houses had one code of conduct, and negotiations have taken place over a period of time with the upper House committee and delegates from the lower House committee. Finally, I

think about six weeks ago, we came to agreement to formalise and finish the code, and as a consequence the report was tabled and it has now been listed for debate in the House.

**Mr WATKINS:** It has also been helped, in a very valuable way, by members of the community who have taken part in the process.

**CHAIRMAN:** Yes, absolutely.

**Mr WATKINS:** And given advice throughout.

**CHAIRMAN:** And who still remain part of the process through membership of the Legislative Assembly Ethics Committee. I might say, Commissioner O'Keefe, that when it was first suggested that we have community members on the parliamentary committee, I cringed a little bit. But, since those community members have worked over the last two years with our committee, I think it is an invaluable tool, and I have become a supporter of having those three community members on what is an important parliamentary committee. They have done a lot of good work and kept us on line and on track on many occasions. So I am indebted to Leonie Tye, Stan Hedges and Kim Wilson for the good work that they have done. It was an excellent idea to put three community members on the Legislative Assembly Ethics Committee.

We might now proceed to the questions in general.

**Mr WATKINS:** Are we to be allowed to ask questions on the Commissioner's opening statement?

**CHAIRMAN:** If the Committee is happy to do that. Commissioner O'Keefe, you will take questions on your opening statement?

**Commissioner O'KEEFE:** Yes, of course.

**Mr WATKINS:** You outlined Operation Cal and talked about gifts being given by developers and so on. You mentioned wine, chocolates and things were given or offered. Were those gifts being given or offered to councillors?

**Commissioner O'KEEFE:** All of those gifts were to councillors. In the case of Lane Cove, it was the soliciting of a bribe by an employee, and in the Fairfield case it was an offering by an individual of a bribe to a public official, an employee, who declined it. But, in the Holroyd case, the gifts were offered to, and in some cases accepted by, elected representatives.

**Mr WATKINS:** Was this so as to allow something to happen, such as a DA, or was it just a gift?

**Commissioner O'KEEFE:** The report segregates the gifts into two categories. There were some given which were said to be associated with the events in the families of the elected representatives, or in the public life of the elected representatives. In one, it was said that the developer had been rude to the wife of one elected



representative, and he gave a gift. Another one was said to be related to the birth of a child in that family. And the third was said to be a present congratulating the councillor on that councillor's re-election to the council.

The others were just *pour boire*. Five hundred dollars in an envelope left at the councillors' houses, or handed to them. Those two councillors immediately reported the matter and handed in the money; or, in one case, I think returned the envelope to the person who had given it to them. But there was no issue in the end that it contained \$500 in notes. The report gives the benefit of the external circumstance to two of those relatively small gifts, flowers.

I am sorry, there was another one. That is the offer of a holiday for a councillor and the councillor's wife at Port Macquarie. It is a little obscure whether it included fares there and back, or not, but probably did. That was refused, but not reported.

What seems to have happened is - and this is the seriousness of it - what may have started out as perhaps innocent and small, escalated, but nothing was report, and so it was permitted to escalate. So, finally, you got to the sort of very crass giving of money.

Now, the report differentiates between some, but the serious thing is that you had seven councillors, on a council that is generally well regarded in local government circles, only two of whom reported these events. And that is not good, either for the standing of local government or ensuring that these sorts of things are nipped in the bud.

**Mr WATKINS:** There is a code of conduct that applies to councillors.

**Commissioner O'KEEFE:** There is.

**Mr WATKINS:** Does that have in suggestions about how to deal with gifts and so on?

**Commissioner O'KEEFE:** The code does tell them about that, and section 449 of the Local Government Act, which requires codes to be brought in, also requires that if gifts are given they must be declared in a schedule. None of those gifts were declared in a schedule.

**Mr WATKINS:** It is obviously very common that the mayor gets a couple of bottles of wine from someone, and so on.

**Commissioner O'KEEFE:** Well, the mayor in this case who was in fact offered a bottle of whisky immediately said no, and then brought the developer into the office and, in the presence of one of the senior staff, gave the developer a dressing down in relation to the matter. That mayor was not offered anything again. It really does give you the clue that if it is stopped immediately, then the story goes out "This is not a council, and these are not councillors, who are in that category, so don't do it."

**Mr WATKINS:** Do we need something as strict as that an offer by a constituent to a mayor of a bottle of wine at Christmas is to be refused, or declared, or what?

**Commissioner O'KEEFE:** That will be an individual code. What they must do is declare it.

**Mr WATKINS:** So, a bottle of wine ---

**Commissioner O'KEEFE:** Anything. The Act says anything. And even if you exclude *de minimis* - that trifles don't matter - you can hardly put in that category a case of champagne and a case of beer. The councillor in question said that he was unable to remember whether it was French or other champagne because he was not a great lover of champagne, and that could not be resolved. But, either way, that is not something that you would regard as a trifle. It is not like giving someone a pencil.

**Mr WATKINS:** How effective has the Independent Commission Against Corruption been in changing the culture in local government, with councillors becoming that strict with regard to gifts that they are given?

**Commissioner O'KEEFE:** I think it varies. In some places it has been very effective. What tends to happen is - and I think this highlights a need - you have a turnover or rollover in councils and you have new people coming in. What that highlights is that we have just got to ensure that the councils have days, perhaps a weekend, in which all these things are gone through and the obligations of the public officials are brought home to them fairly forcefully.

It is the obligation of the council to do it. We have looked at the codes. We have ensured that the provisions are in the Act. And then we see whether they are being adhered to or not. There are some councils that apparently do not do that as well as others, just as there are some who do not adhere to their obligations in relation to protected disclosures.

**Mr WATKINS:** When you consider that local government has been the highest subject of complaint with the ICAC, and it is still running at 30 per cent of the ICAC's business, that indicates that there is still a lot of work to be done.

**Commissioner O'KEEFE:** There is. I think, though, in fairness, some of those are cases in which the complainant is really trying to use the ICAC as an alternative appellate mechanism.

**Mr WATKINS:** Some?

**Commissioner O'KEEFE:** Well, I have not got the figures in my head. But there are some of those who are at a dissatisfaction level, where those people have development next to them in respect of which they have no avenue of appeal, and then say, "Because this is so terrible, it must have been corrupt." They constitute quite a number. But they are not questions of corrupt conduct. They really are questions about how the administration of the council runs.

**Mr WATKINS:** When you were exploring that you talked about courts needing to treat bribery of public officials more seriously.

**Commissioner O'KEEFE:** Yes. The Fasan incident.

**Mr WATKINS:** There was an implied criticism of the judiciary there - a criticism that the judiciary cops from a wide range of people in the community. How do you propose to convince the judiciary? I mean, some of those are your brother judges.

**Commissioner O'KEEFE:** Well, I think they are probably cousins at the moment.

**Mr WATKINS:** Certainly, as Commissioner, you have a role in educating the judiciary about this. What do you propose to do?

**Commissioner O'KEEFE:** Well, there is a thing called the Judicial Commission, whose real role it is to educate the judiciary. What I propose to do is to try to ensure that the seriousness of this offence, and the fact that it is now a seven-year offence, is brought to the attention of judges as part of that process. I daresay that if it had been a case in which somebody had offered \$2,000 to a judge, there would not have been any question of a bond. But does not a public official such as a health and building surveyor, himself or herself, have a very public duty to perform? It may be safety. It may be health. I think there was a tendency, when one reads the judgment in that case, to look at the individual offender and forget the seriousness of the offence. And the magistrate did not look at the seriousness of the offence.

**Mr WATKINS:** I encourage you in your task.

**Commissioner O'KEEFE:** It is something that I intend to do. Mr Schmatt is the Executive Director of the Judicial Commission, and we have got something ready to send to him.

**The Hon. D. J. GAY:** Commissioner, do I understand from your opening comments that there is a full-scale local government inquiry continuing? You used the words "Our next inquiry will dispense that feeling in spades".

**Commissioner O'KEEFE:** Mr Gay, if you look at the report into Cal, you will find that we say the same in that. Just because we have finished this does not mean that we let local government go. Mr Watkins has pointed out, and correctly, that local government continues to be the greatest single source of complaints from the public to the ICAC. Therefore, local government is an area to which we will continue to apply some resources, to try to gather together some illustrations of either particular individual cases or combinations of matters that relate to councils.

As you see from our research, country councils - which claim to be without sin or stain, but do not come up that way in relation to protected disclosures - will be included in this, because they must be shaken out of that attitude that all is well. It is not well. And so we will continue to do that.

**The Hon. D. J. GAY:** Can we expect further recommendations on prevention of and ways to address these matters?

**Commissioner O'KEEFE:** Arising out of Cal, we have a team of corruption prevention officers, two at the moment, working on those aspects. I anticipate having hearings in relation to certain other councils in the new year, probably in February. And there will be aspects that will relate both to protected disclosures and other matters that will be highlighted, and we will have the same procedure there. Then we will have a revisit after a given time, to see what has happened in those places.

**Mr O'FARRELL:** Commissioner, in her annual report this year Irene Moss described certain local councils as "pockets of resistance" to watchdog bodies like hers, and she also said that local government had a greater tendency than State government agencies to shoot the messenger, rather than deal with the message. Is that your experience of local government?

**Commissioner O'KEEFE:** It is not merely my experience; it is borne out very much by the research that I referred to earlier today. The figures that come up for local government in relation to resistance of protected disclosures is about 50 per cent worse than the general public sector.

Secondly, as you will see from the answers that we have supplied, one of the publications that we put out in July 1997 was about two things: the relationship between elected representatives and staff, and conflicts of interests. Taking the former, there is a much greater tendency in country councils for elected representatives to take the view that they can actually order staff what to do and how they should do their job.

One of the matters that we will be looking at in the new year will highlight that, because that then leads to cronyism and favouritism and to councillors not have done to them things that other people would have done to them, or the enemies of the councillors having things done to them that ordinary people would not have done, and so on. It illustrates all those problems that are involved in partial decisions, and country councils certainly seem to come up worse, on our research there.

**Mr O'FARRELL:** Commissioner, given your experience and that of the Ombudsman, are there any joint initiatives by both of you to try to improve the situation in local government?

**Commissioner O'KEEFE:** Yes. The Ombudsman and the Department of Local Government and the Independent Commission Against Corruption have been organising a series of seminars in relation to public duty, and we have been concentrating on the country. I think we involved the Auditor-General in some of the earlier series of seminars. I am subject to correction there, but I have got a feeling that, in relation to protected disclosures, the Auditor-General also was there because his office is one of the reporting channels.

Yes, there are, and in the last series of seminars that we did we got 85 principal officers and high-ranking officials from, I think, about 15 or so councils who attended

those seminars. We will then do a follow-up. It is a process that will have to take place over time because of availability of resources.

**Mr O'FARRELL:** Has the Independent Commission Against Corruption looked at the public disclosure provisions of the Local Government Act in relation to donations to councillors' re-election campaigns?

**Commissioner O'KEEFE:** Yes. But there is a specific body to deal with that.

**Mr O'FARRELL:** I was going to get to that. Are you aware, for instance, that if one tries to make a complaint to the Local Government Pecuniary Interests Tribunal, half the time one will actually get a recorded message saying, "Leave your name and details, and we will call you back."

**Commissioner O'KEEFE:** Well, that is because it is a part-time body, I think.

**Mr O'FARRELL:** Yes. But I am still waiting on a phone call back from last year. Are you satisfied that the public disclosure provisions relating to local government are effective and are being enforced?

**Commissioner O'KEEFE:** Could I, in so far as that relates to that tribunal, take that on notice? Certainly, as far as the other disclosure matters are concerned, our report in Cal highlights that, and we propose to have a project that deals with that in the new year. The investigative work in relation to those conflicts of interest and disclosure is in fact done by the Department of Local Government, which then reports to this body, which then makes a determination.

**Mr O'FARRELL:** Commissioner, earlier you referred to local government and protected disclosure. The position of local government councillors under the Protected Disclosures Act, is that clear in your mind, as to how it applies?

**Commissioner O'KEEFE:** I am not with you on the question.

**Mr O'FARRELL:** Can a local government councillor make a protected disclosure?

**Commissioner O'KEEFE:** Oh, yes. We certainly so treat them, and we do get a number of them.

**Mr O'FARRELL:** As far as you are concerned, do they gain the full benefit of that Act?

**Commissioner O'KEEFE:** Yes. I might say that there is, however, in that field a tendency in some councillors to want to have their cake and eat it too. They want, at the one time, to have a protected disclosure status which we accord to them, and then some of them want also to have the benefit of leaking to the newspaper. They do not generally say in those circumstances "I have reported"; they say, "I understand it has been reported to...", putting it into the passive. So they want to have the best of both worlds, and that poses a very difficult situation for us.

**Mr O'FARRELL:** If a local government councillor had made a protected disclosure to you, and there was an inquiry out of which there had been adverse findings, would you in the report on that inquiry have named the local government councillor?

**Commissioner O'KEEFE:** I may. It depends. Generally ---

**Mr O'FARRELL:** Would you have sought his permission beforehand?

**Commissioner O'KEEFE:** Yes.

**Mr O'FARRELL:** Would you be surprised if a body such as your own had named that person without seeking his or her permission?

**Commissioner O'KEEFE:** I would be. And, if you have such an instance, I would like to see it, and I would certainly follow it up.

**Ms ANDREWS:** Commissioner, as you are aware, the largest proportion of protected disclosures concern local government. Could you tell us what was the source of the complaints? For instance, was it local government employees, general managers, councillors themselves, or contractors?

**Commissioner O'KEEFE:** Could I take that on notice? I can only give you an impression. We have some figures that we can give you. Most of the complaints against local government come from members of the public, so that they will not be protected disclosures. I cannot tell you the percentage of protected disclosures that come from local government. But, normally, if a report comes to us from a principal officer, as defined in the Act (that is, the general manager) a section 11 may in fact be a protected disclosure. Generally, it is not. Generally, the general manager makes it clear that he is reporting, not matters that he knows personally but matters that have been reported to him. Beyond that, most of our protected disclosures in relation to local government come from employees, but I cannot tell you a percentage or a figure.

If you go to page 3 of the written responses to answers, you will see under the heading "Public authorities subject to protected disclosures" that 21.3 per cent of our protected disclosures come from local government. That does not tell you the category of person who makes the complaints. There are some elected representatives who make them. My impression is that it is mainly from employees.

**Ms ANDREWS:** Would your records give a break-down of the categories of complainants?

**Commissioner O'KEEFE:** Yes. The extent to which the staff, particularly the research staff, have gone through the protected disclosures material to try to find out what we can recommend, both administratively and in terms of strengthening the Act, has been quite extensive. There is one of our employees I should name, Lisa Zipparo, who has done a magnificent job in this respect. She has dedicated most of her time to this, and the quality of her work has been extremely high.

**Ms ANDREWS:** Regarding education and prevention, does ICAC prepare a book of guidelines on the Act that can be used by government departments or local government?

**Commissioner O'KEEFE:** We have done so, yes.

**Ms ANDREWS:** Has that been issued for quite some time?

**Commissioner O'KEEFE:** Yes.

**Ms ANDREWS:** Even so, in some cases, it does not seem to have been effective?

**Commissioner O'KEEFE:** We have done it more than once. We did it before the Act came into effect, in conjunction with the Ombudsman and the Auditor-General, and we have done it since. But a question was asked by, I think, Mr O'Farrell, and I repeat my response that there are some councils that are quite resistant, as they were to conflict of interest. There was one passed a resolution which really had the effect of throwing it out the window. It is a country council. It has all the indicia that our research tell us we should be looking at, and we are looking at it.

**Ms ANDREWS:** On that same line of questioning, you spoke about seminars and things like that to educate councils. What staff are informed on the Act? Where is the cut-off point? Are all employees informed, or is it administrative staff, or outside staff, particularly in relation to local government?

**Commissioner O'KEEFE:** Can I deal first with non local government and other?

**Ms ANDREWS:** Yes.

**Commissioner O'KEEFE:** And local government. First, our resources do not enable us to talk to every local government employee, or to every State employee. Our policy is to teach the teachers. But we start at a higher level. The first part of the policy is to convince the chief executives and the senior management people that the policy in relation to protected disclosure, and probity in action, are the law and they are good government and good business.

To that end, I actually give quite a lot of talks. As you will see, there were 21 in the last three months. A lot of those have been directed towards a group of maybe 10 or 20 of the senior executives of a large department or agency. If you can win the hearts and minds of the bosses, you have a chance. Then we provide to them generic material which they can then disseminate, having modified it if they wish, to their other employees.

If you come to local government, we have done much the same, except that I have not been involved with the mayors and the general managers, except at major conferences. Then we send our officers out to do regional sessions, again to teach the teachers. But the extent to which you can make a horse drink is very limited. You can give them all the material and you can attempt to motivate them, and they can have

directions from the Minister, but it is clear that some are not doing it. And how you get through that, I think, is a question of time and working on it.

**Ms ANDREWS:** Commissioner, to what level do you think the CEOs or whoever pass down that information?

**Commissioner O'KEEFE:** Everybody should get it. If you just take local government councillors, we sent to each council enough copies of our conflicts document for each councillor to get one, and we know that there are a large number of councillors who never got them. They, apparently, are still sitting in the general manager's office.

**Dr MACDONALD:** Commissioner, currently before the Parliament is the Environmental Planning and Assessment Amendment Bill, which provides for a new category of development known as complying development. It is intended that it should allow for streamlining of the approval process. Under the bill, such development will be privately certified by private assessors or inspectors. In view of your express concern about bribery amongst local government officials, I have two questions. Do you believe that that provision will lead to increased opportunities for corruption? Secondly, how do you intend to monitor this new regime?

**Commissioner O'KEEFE:** Can I go back a step before that? The bill that is at present before the House is a modification of the original proposals. I am sorry?

**CHAIRMAN:** Continue with your answer to the question. The Hon. Duncan Gay is a bit upset.

**Dr MACDONALD:** Are you unhappy?

**The Hon. D. J. GAY:** I was pointing out that the question that you quite properly ask is exactly the same as the question that I raised in Parliament that the Chairman maligned me about earlier. I am sorry to interrupt you, Commissioner.

**CHAIRMAN:** If you believe I maligned you, you must be very sensitive about being maligned. Continue on, Commissioner.

**Commissioner O'KEEFE:** There were earlier proposals which we learned about and asked to get, and we did get, and we had some input in relation to strengthening those provisions. The present bill represents a modification of the earlier proposal, and is better disposed to limiting corruption opportunities but it does not incorporate all the submissions that we made, as I recall.

The second question was: Does it provide opportunities? The answer is yes, but there are opportunities provided in the other system as well. The question is: Are they higher degrees of opportunities? That is going to depend upon there being, for instance, codes of conduct in relation to the persons who are the private certifiers. I think the present bill provides, where the other one did not, that we have jurisdiction in relation to those persons who would not otherwise be public officials, so that they



now become public officials as a result of acceptance of a suggested amendment by the Government.

Thirdly, yes, we will be looking at that and monitoring it quite closely.

**Dr MACDONALD:** Incidentally, the bill has gone through the lower House with the support of every member of Parliament but two members of the crossbenches, but it is yet to be dealt with by the upper House. But, certainly, this new category of complying development essentially locks out the elected persons in the approvals process. It is essentially privatised, and there are concerns about that, such as notification and also questions of appeal. In other words, I do not believe that objectors can appeal on matters to the Land and Environment Court but only to the professional body. I wanted to raise this issue public before you because I see as one of the possible disadvantages of this piece of legislation that it may provide for more secrecy and then opportunities for corruption within the approvals process.

**Commissioner O'KEEFE:** It is a matter that we are cognisant of and will be looking at. We would need a period of time over which to see it working, and then sample instances as we go. I do not think a plan has been drawn up in relation to that. We are awaiting the legislation, I think.

**Dr MACDONALD:** When a piece of legislation like this is being contemplated by the Parliament, do you as the Commissioner of the Independent Commission Against Corruption have opportunity to make comments on it? I understand from what you have said that you do. Do you believe that your role goes as far as advising government or legislators against certain pieces of legislation because you feel it may be conducive to corruption?

**Commissioner O'KEEFE:** The answer to the first part of the question is: Sometimes we do, and sometimes we do not. And sometimes we do only right at the last minute, which is less than satisfactory. But, in relation to matters that we think may have an impact on matters within our jurisdiction, we try to have some input. How much notice is taken of that is variable.

The second thing is that I think advising on the pitfalls or possible pitfalls as we envisage them is a role that we adopt. We have not, I think, at any time suggested that legislation should not be passed. I really think that is a matter for the Parliament to determine.

**Dr MACDONALD:** In relation to your experience on corruption in local government, can you comment on whether it is more likely to occur in what I guess are now three situations. One is that we are seeing the possibility of a privatised approvals process, the second is delegated authority to the council officers, and the third is where the elected representatives are involved in the approvals process. Is it more or less likely that corruption will occur in any one of those levels given the experience of ICAC with local government?

**Commissioner O'KEEFE:** Could I take that question on notice? I do not carry in my head any figures. But can I say that in most councils the overwhelming

percentage - generally more than 90 per cent of development approval matters - are dealt with under delegated authority. That delegation to a council officer is one of the problems that arose in the Bertencello matter.

If you look at the Fairfield council matter involving Fasan and Cavallaro, they were seeking to influence a council officer who had a power to recommend to another officer who had a delegated authority. So you will always have that. In relation to the elected representatives, the problems that can arise are highlighted in the Holroyd case. I cannot tell you percentages in relation to that.

The question that then arises is: Is the privatisation of part of the health and building surveyor's functions going to lead to additional opportunities? We think they might, and we have made some suggestions about how that might be dealt with in the Act. I cannot say I carry that detail in my head now. It is going to be fairly important to ensure, if you have a privatised system, that the professional bodies are serious about ensuring that the highest of standards are applied by them to their own members, because this bill does contemplate not only our jurisdiction but a jurisdiction by the relevant professional bodies, and they will have to be serious about their function, not treating departures as a slap on the wrist with a feather, but as very serious matters in the public interest.

**Dr MACDONALD:** I think it goes to the heart of a number of issues, including the climate for opportunity for corruption at different levels, and also the ability to scrutinise the process and determine whether it is essentially more open when it is being dealt with at a council meeting by councillors, or the opposite. You have highlighted three matters that you have investigated in some detail in this report, which I have not read.

**Commissioner O'KEEFE:** It is hot off the press yesterday. It was only boxed to here yesterday.

**Dr MACDONALD:** I presume that there are dozens of instances of possible corruption in local government that you are asked to investigate. I think this Committee would find it interesting to do an evaluation of where the climate of opportunity for corruption is most likely to dwell.

**Commissioner O'KEEFE:** Can I say, Dr Macdonald, that it is not just in local government. The whole trend towards outsourcing and corporatisation or privatisation of functions is something on which I have reported on a number of occasions as something that we are looking at, but it is very resource-intensive, and we need to get some additional expertise in that respect. And buying in that expertise is expensive.

(Short adjournment)

**Mr WATKINS:** Commissioner, in your opening comments you spoke about your inquiry into Corrective Services. You spoke of the terrible reality of prisons - the violence, the drug abuse and such things. I was interested in the way you spoke about that. Is your investigation strictly limited to corruption and corruption prevention, or do you take a wider overview with this report in talking about the state of our prisons? From the language you used in speaking about it, it was more like one would expect

form a royal commissioner looking at the state of our prisons, rather than a specific investigator.

**Commissioner O'KEEFE:** We have not got the resources to do the equivalent of a police royal commission. There is no question of that. What we have done is taken examples of events and, as typical of a number of matters that have taken the first segment, the Sua segment. The Sua part of the report should be out fairly soon. I want each of the reports to be done segmentally and then bring them together with a final segment.

The Sua segment was concerned with a prison officer actually inflicting serious harm on a prisoner at the behest of a commercial competitor in the drug trade. So that what you had was the physical safety of prisoners being put at risk in the prison by those who wanted to take over their empire, and prison officers facilitating this. Sua is the lead example, not a sole example.

The second segment, which is in course at the moment, is concerned with health workers - drug counsellors, nurses, psychiatric counsellors, et cetera - and their relationship with prisoners and whether or not they are a source of drugs and other matters either coming into the gaol or going out of the gaol. So we seek to highlight a problem and why it is that that has not been dealt with, and then how it might be dealt with. That latter part is the broader issue to which you were adverting.

Then we have broken that into a number of segments. Then also we will be looking at the administrative make-up of the department and of the Service, because it is a very old Service that has grown up, and a lot of things are very old and unsuitable. I mentioned today the "highway treatment", which is one mechanism for control of officers, and a very unsatisfactory one. We would hope that these matters, which fit within section 13 of our Act, will lead not just to a concentration on the instant cases but, using those as examples - which we will back up by other material - to the need for significant reorganisation and reform. Hopefully, in that last segment, where we will have assistance from those external to the system as well as internal to the system who are conversant with best practice, managerial practice in relation to such places, we will try to assist the Department of Corrective Services to come up with such a model and implement it. So it is a bit of a mid-way course, really.

**Mr WATKINS:** Have there been improvements in the culture of the department over the last decade?

**Commissioner O'KEEFE:** Yes, there have been. If you go back to the report of Mr Justice Nagle in the 1970s, there was no doubt that there were following that inquiry improvements that followed in relation to the treatment of prisoners. What has happened is that one set of problems has been addressed, and another set of problems which were covered by that or which has grown up since now presents. How do you deal with that? I have not any doubt that the Minister and Commissioner Keliher are determined to do something about it. Our investigation is really in aid, to strengthen them in their endeavours.

**Mr WATKINS:** So you believe that if the recommendations are put into place there will be a reduction in violence in prisons?

**Commissioner O'KEEFE:** I hope so.

**Mr WATKINS:** And in drug usage?

**Commissioner O'KEEFE:** Yes, and in drug use. I mean, drug use in prisons is a very serious matter. What it produces by way of aberrant behaviour, which itself then produces further violence in the prisons, is a very serious matter. We were quite concerned when we found that health professionals were one source. You would hope that that would not be so, but it is so unfortunately.

**Mr LYNCH:** Commissioner, I would like to turn to one matter that has been touched on in passing today, and that is the issue of the attitude of the Property Council to some amendments to the City of Sydney Act. You sent to the Minister for Local Government a letter which was in response to his complaint to you about the former Property Council. One of the comments you made in that letter was to say to the Minister, "The matters raised by you are cognate to a number of concerns which have been expressed in other areas and may be material when considering possible amendments to the ICAC Act." I wonder what other concerns there were, without necessarily itemising each and every one, but generally what other sorts of concerns were there and what sorts of amendments were contemplated?

**Commissioner O'KEEFE:** The instant case was one in which the Minister was concerned that there was improper pressure brought to bear upon the Parliament or the parliamentarians by this organisation, under the guise of having referred something to the ICAC. That is something to which the Chairman of this Committee has adverted on a number of occasions, and is a matter to which Dr Macdonald has referred.

There is a balance between preventing people from complaining and lobbying on the one hand, and the deliberately false statement. Now, there is no question that this matter had been referred to us. I mean, the complainant stated it, and the subject of the complaint stated it, and it was dealt with very, very quickly. It was not a matter in respect of which we had any interest. It was a parliamentary matter and a constituency matter, and that was an end to it.

But the Minister's concern was that the tactic that was used was one that might have delayed the passage of the bill. Now, I am not sure how you deal with that. But, whilst ever section 81 remains as it is, you have got that "wilful" word. The question that arises, really, is: Do you have a series of gradating offences ranging from false, that is, not true? And that has the problem that the person may actually believe it, and quite a bit of stuff that we get is hearsay, so you treat it as intelligence, not as a fact, but it gives you a lead as to investigative matters.

We did, in our written submissions about the Act, have something to say about this, as I recall, and I do not carry that precisely in my head. If there is more that you need, could I take that on notice and deal with it?

**Mr LYNCH:** One other part that is of interest to me - and I suspect you will not carry this in your head either - but I would be interested to know whether the concern

was first expressed to you directly by the Property Council or through their media release, and whether their media release actually pre-dated the complaint?

**Commissioner O'KEEFE:** I do not recall that. My impression is that they were much of a muchness, but I do not recall. I will check on that and let you know.

**Mr O'FARRELL:** Commissioner, towards the end of your opening statement you referred to the current climate in New South Wales in relation to a number of projects and you lauded the fact that no suggestion had been made about corruption being involved in those projects.

**Commissioner O'KEEFE:** Had been made or sustained, yes.

**Mr O'FARRELL:** I want to refer to Walsh Bay, which I referred to at the last meeting, and in which a number of news outlets continue to take an interest. Do you accept that the casual observer finds it hard to understand how a public tender process for one project is called, and when it is finally awarded the actual ambit of the project has changed significantly?

**Commissioner O'KEEFE:** Well, if that were the case, I could understand the dubiety of the casual observer. I do not believe it to be the case, to start with. But, coming back to the casual observer, the difficulty is that this is a matter that depends upon the precise terms of a very long and complex contract. When we analysed that contract very carefully, taking advice in relation to it, and not just forming our own views, the view that was taken was that you could not say that that which was the end product fell outside the ambit of the contract.

**Mr O'FARRELL:** In analysing the contract, Commissioner, do you take account of public statements made by Ministers, Premiers and others at the time? Because certainly the briefings, media releases and the like issued at the time of the original calling of tender indicated that all the wharves would be preserved or conserved, and we now have a scheme under which one of the wharves is to be demolished. So, do you go just to the legals, or do you also look at what Ministers, Premiers and those announcing projects say that this project represents?

**Commissioner O'KEEFE:** You start off with looking at everything, and then you focus on the essentials. In order for there to be corrupt conduct there must both be a matter that falls within section 8 and a matter that falls within section 9, and the determination of that is a strictly legal matter. You have to find some facts, and know what those facts are. But you also have, particularly in this sort of sphere, when you are looking at section 9, and to an extent section 8, to determine what the contract means. And what somebody else says about the contract and its meaning does not govern its interpretation.

If one then looks at the principal protagonists and tenders in relation to this, they had the opportunity - and I am sure would have exercised it - to have had the very best of legal brains look at the contracts and know what their scopes were. I would doubt that their interpretation differed from ours. If it did, we were not able to

ascertain that. I feel comfortable about the outcome that on two occasions when we looked at it we were quite satisfied with the process.

**Mr O'FARRELL:** Commissioner, in relation to Walsh Bay or indeed any other project that the Commission may have provided advice on, is there an ideal length of time in which someone should be bestowed preferred tenderer status? In other words, should it be a finite period, or could it in fact be as open-ended as the Walsh Bay process?

**Commissioner O'KEEFE:** It is not a matter on which I have a view, and I do not think it is a matter on which we would have a view, unless it could be said that in some way that length was itself corrupt in being worked out.

**Mr O'FARRELL:** What about the argument, Commissioner, that by continuing in relation to Walsh Bay the preferred tenderer status on one consortia for so long, the public may well have missed out on certain benefits that might have accrued if other short-listed tenderers had been given an opportunity?

**Commissioner O'KEEFE:** We come back to the legal obligations imposed by the contract, and that is what we looked at. Those other considerations were both commercial and political, and I do not think they fell within our purview. It is not our function to second-guess the commercial realities or the political realities.

**Mr O'FARRELL:** I suppose my concern, Commissioner, is that whilst the other projects that you listed you can certainly take heart from, I think there are still concerns out there about Walsh Bay, and they will persist.

**Commissioner O'KEEFE:** Well, if I can say this without naming anybody, there is one person with whom they will persist.

**CHAIRMAN:** Is that you, Barry?

**Mr O'FARRELL:** No.

**Mr LYNCH:** Then there are two people in that case.

**Mr O'FARRELL:** Two people being the editorial writers for the *Financial Review* and the *Herald*.

**Ms ANDREWS:** Commissioner, on page 11, under the heading of "Recruitment and Selection", you mentioned that "*The Premier's Department, in partnership with the Director of Equal Opportunity Public Employment, is reviewing merit selection policy and supporting processes.*" With merit selection as against what used to happen in the public sector are, that is seniority and suitability, now it has gone to merit selection. Looking at State Rail and the infamous case of the contracting out of the cleaning services, in your opinion - if you would not mind giving us your opinion - are some of the things that have been happening in latter years, do you think that by going from the old system to the new system we are creating more work for ICAC, that we are making the system more prone to corruption?

**Commissioner O'KEEFE:** As I said to Dr Macdonald at the adjournment, every change brings about different opportunities. One lot may be closed off, and a different lot may be opened up. It depends. With the old system, whatever it may be, you have had some experience of it and you know where to look. With the new system you have got to be very vigilant to see what are going to be the areas, and have we missed any? So it does make it more difficult.

If you look at the question of recruitment and selection, Mr Baueris, who is acting director at the moment of corruption prevention/education, and some of his officers are working with the central agency on this. We recently had a visit from two of the officers on one aspect of it that I sat in on, and they are proceeding. Our concern is to ensure that, whatever the process you have, it applies the same to everybody and it is fairly applied.

**Ms ANDREWS:** That is a pretty difficult task, is it not?

**Commissioner O'KEEFE:** It is. And I think this review will not be a very short one. It will occupy a good deal of next year probably. Mr Baueris prompts me that it will go into next year.

**Ms ANDREWS:** That is the first review, is it not, that has been held into merit selection?

**Commissioner O'KEEFE:** Yes. There is a wider question as well, and that is the contracting question, which we have raised. Are you getting best value for money that way? That, I am sure, will ultimately form part of it.

**Dr MACDONALD:** Mr Chairman, I want to follow up on the issue of the Protected Disclosures Act. We have just received a copy of the document that you were speaking to in your introduction. The outcomes, as I understand, are summarised to some extent on page 5, where the report talks about serious deficiencies in the response of the public sector to the Act and also talks about serious problems that public sector employees perceive to exist in management attitudes to employees reporting corruption.

**Commissioner O'KEEFE:** Yes. That is what I referred to as shooting the messenger.

**Dr MACDONALD:** I want to take you back to the Ombudsman's report of September 1996. In that report there was a recommendation, set out at page 40 of the report, that a protected disclosures unit should be established, with a number of monitoring and advisory functions, many of which, had they been fulfilled, would perhaps have seen a better application of the Act.

I asked you a question I think at the December 17 hearing of last year: Do you recommend the establishment of a protected disclosures unit? There had been some discussion or interchange on the Committee about that subject. Do you still stand by your answer to that question, which is that you do not support the establishment of a protected disclosures unit? And, if so, why? Could I put it to you that had there been

a protected disclosures unit established twelve months ago you may not have come up with the sorts of failures that you have identified in the document that you have submitted to us today?

**Commissioner O'KEEFE:** I do adhere to what I said, partly for the reasons that I gave then and additional reasons, which I may return to. Secondly, I do not think that the establishment of that unit would have had any effect other than to dilute the attention that has been able to be given to the problem by spreading it among a number of agencies.

The additional reasons that I have are reasons that emerge from the research that we have done, that is, the attitudinal matters that exist, particularly in the following: firstly, geographic areas, the country that is; secondly, the organisation of a given size - organisations of a size of less than 100, I think, being less likely to have complied with the Act; thirdly, the disinclination of chief executives in smaller organisations, and country organisations in particular, to disseminate material, however much you give them to disseminate. So that you then need some program, as our research shows, of a kind that we have implemented.

Now, in order to determine where the areas of major need are, you do need not just anecdotal matter, but a proper research, and that is very expensive. I think we have been able to carry it out, and I am not sure that we would have got the same thing in that time from such an agency.

**Dr MACDONALD:** I am not sure I am convinced by that. It seems to me that almost 15 months ago the Ombudsman was saying that the Protected Disclosures Act is not working. As I understand from this document, the Independent Commission Against Corruption is now of the view that the Protected Disclosures Act is not working. Is it not because there is a division of responsibilities among various agencies? I note that, with the Premier's consent, you have established an interdepartmental steering committee. In fact, you report on that at page 16 in your answers to the questions.

I need convincing that your plan is going to work and that we are going to have a Protected Disclosures Act that does work. What assurances can you give? And what sort of process of evaluation are you able to provide to us, so that in six months time, when you come back, you can give us an indication that your plans for trying to make the Protected Disclosures Act work better will produce some outcomes?

**Commissioner O'KEEFE:** It is a fairly complex question. Could I take that on notice and answer each of the parts of it? Can I go back to one section of it? I think, with great respect - and I hope you did not mean this - that report that you have in front of you does more than say that the Protected Disclosures Act is not working. It tells you why, and it tells you where, and it tells you the factors that go to it, and that has never been done before.

This is frontier research of a kind needed in order to define what it is we should be directing our researches to. I will certainly answer the question in detail. I hope I will be able to convince you. But I will certainly set out the material.



**CHAIRMAN:** We will now go to the questions on notice and go through them item by item. Item 1 is "Staffing and Resources".

**Mr WATKINS:** On staff turnover, I note that there was an 11 per cent turnover of permanent staff of the Independent Commission Against Corruption. Do you have any idea how that compares with turnovers of recent years?

**Commissioner O'KEEFE:** It is better than the norm in the public sector, which I think was 15 to 16 per cent. And within the organisation itself it is reducing.

**Mr WATKINS:** So the public sector turnover is 15 per cent?

**Commissioner O'KEEFE:** Fifteen or 16 per cent. That is my recollection. That is for permanent employees.

**Mr WATKINS:** Is there a break-up at all between senior staff, junior staff, and so on?

**Commissioner O'KEEFE:** I cannot tell you that.

**Mr WATKINS:** Is it across the board?

**Commissioner O'KEEFE:** Can I say this? One of the things that I have experienced since I have been there is that you will get an officer who will get to a given level, and the nature of the organisation and the limitation in numbers that we have means that that officer who is very competent cannot go any further in the organisation, so that officer will look for something outside. But I cannot give you a break-up.

**Mr WATKINS:** If that is a problem ----

**Commissioner O'KEEFE:** It is not a problem.

**Mr WATKINS:** Is it not a problem if you have got talented, well-trained staff who leave the organisation?

**Commissioner O'KEEFE:** No. It depends on how you view an organisation. One way in which you view an organisation is to say: Here is a small organisation that is a dynamo. People can come in and they can assist the charging of it. They will give a lot, they will get something, they will move on. And new people of like kind, with new ideas and new charges, will come in. We have not found it to be a problem.

The only area that I think is a problem is making sure you get enough notice that the people are going to leave, so that you can replace them in time. But there are plenty of organisations like that. At Mosman Council, where I was, we had the same thing. We would get very good, keen, young officers. They would give us three or four years, and then they would move on. Sometimes they would come back in a higher position later on. I do not see it as a problem, in other words.

**Mr WATKINS:** Yet it is interesting. I know it is a reality, and that it happens in organisations, but I would have thought the loss of talented, dynamic staff is a problem for a lot of organisations, and a very costly matter. I was going to ask whether there would be some way of overcoming the problem. I know you have secondments from the New South Wales Police Service, and other services presumably. I wonder whether there is any way to enable career opportunities to develop in the ICAC with other like bodies.

**Commissioner O'KEEFE:** We have arrangements with the Australian Federal Police. We have arrangements with the Attorney General's. We have officers in the Department of Aboriginal Affairs. We seconded two officers to the Western Australian equivalent, at their request; they wanted help to set up. Those are some examples. But what often happens is that the seconded officer goes to that place, they get a lot out of that, and they come back and add to what we have as a bank of expertise. But then the size of the organisation is such that they cannot go anywhere in the organisation. There are just so many jobs at a given level within our structure and budget, so they are going to go somewhere else. So the question then is getting the right replacement and keeping the people who are the dynamos for as long as you can.

**Mr LYNCH:** Of your staff number of 128.6, how many were members of the New South Wales Police Service?

**Commissioner O'KEEFE:** Two.

**Mr LYNCH:** What about New South Wales police on secondment?

**Commissioner O'KEEFE:** I am sorry, there are two on secondment. As to ex New South Wales police officers, I do not think we have any at the moment. I am prompted that we do. We will take that on notice. They would be people who have long since left the Police Service and have been with us for some time. As you may recall, I reported to this Committee that I impose a ceiling on seconding, and we have two, and that is as many as we are likely to have. That is from New South Wales Police.

**Mr LYNCH:** That is what I am interested in. When they are on secondment, they are totally dedicated to doing ICAC work? They are not still doing police work at the same time?

**Commissioner O'KEEFE:** No. There is none of that. If they come to work for the ICAC, they work for the ICAC.

**Mr LYNCH:** When seconded police are carrying out their duties, do they identify themselves as employees of the ICAC or as police officers?

**Commissioner O'KEEFE:** ICAC.

**Mr LYNCH:** So, if they were going to interview someone, they would not say, "I am a police officer"?

**Commissioner O'KEEFE:** No. Those are the instructions, and I understand them to be obeyed. I have not had any complaint to the contrary. If you have an instance

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**Mr LYNCH:** Something has been said to me. I have not fully followed it up.

**Commissioner O'KEEFE:** If you would let me know, then I would be happy to go and look at it.

**Mr LYNCH:** I am not ready to give it to you yet, because I have not interviewed the original complainant.

**Mr O'FARRELL:** Commissioner, question 1.5 asks "Which public authorities are the highest subject of complaints?" and you list the authorities in your answer. Am I right in assuming that Corrective Services is higher at the moment because there has been some publicity with people coming forward and because you have an inquiry under way?

**Commissioner O'KEEFE:** In part. I think there is another factor, and this is impressionistic; I cannot put this on the basis of any study. There is, I think, a belief amongst many in that Service that if they come to us we will do something about the matter they complain of, so that there is a generation of confidence. Although a number of them come anonymously, and a number of them ask for anonymity, there are others who come forward and are not so constrained. I expect that figure to fall after we have finished our inquiry, but I do not expect it to go back to the 7.3 per cent.

**Mr O'FARRELL:** The same would be true with the Department of Community Services? It has been prominent in the media.

**Commissioner O'KEEFE:** Prominence in the media often of itself produces a greater level. However, if I remember correctly, regarding that 6.4 per cent, if you go over to the next page you will find there is a substantial increase in the percentage of protected disclosures. So that suggests that it is not just the public, as a result of things in the media, but persons within the department who are coming forward as well. They may be emboldened by our present climate. I do not know. We have done research on it.

**Mr O'FARRELL:** Can you explain why the percentage for members of Parliament seems to have leapt this financial year?

**Commissioner O'KEEFE:** I cannot.

**Mr O'FARRELL:** I put aside the issue we discussed earlier, which I do not want to re-raise. There is no pattern to those statistics? They do not relate to holding us to a draft code of ethics or anything?

**Commissioner O'KEEFE:** I do not think so, but I have not analysed those. When one looks at members of Parliament and looks at the percentage of complaints, except for some specifics, it does not seem to warrant the application of a lot of resources.

And, by the time I have done my 15 hours or whatever it is, parliamentarians tend to be well down the list and not get reached.

**Ms ANDREWS:** At 1.6 the question is asked, "Have there been any significant changes in the number, type or subject of complaints since the last public hearing with the Committee in July?" You answered that there have been quite significant increases in complaints about Corrective Services and the Department of Community Services. Could you give an explanation as to why you feel that there has been such an increase in both those organisations?

**Commissioner O'KEEFE:** With Corrective Services, partly our inquiry, which gives prominence to problems in the gaol. I think also the fact that a number of specific instances have been investigated in detail. There are few places in which rumours spread more quickly than in gaols. It is said that in the Parliament they do. But in gaols rumours spread very quickly. And then, once it is known that we have looked at a particular complaint, others say, "Well, here's a chance for us to have our complaint dealt with", and they come forward.

**Ms ANDREWS:** What do you feel is the explanation for the increase in Community Services complaints?

**Commissioner O'KEEFE:** I think very largely the general climate of exposure, and there is a high level of attention being given to it in the Parliament, and that carries through into the media, and I think that causes people to come forward. We have to look - we are looking now - at where we are to apply our resources in the coming year, whether that is one area to which resources should be applied, and the best way of doing that.

**Ms ANDREWS:** Do you think that there might be something wrong with the systems in both those departments that has caused an increase in complaints being made about them?

**Commissioner O'KEEFE:** I do not know enough about those to be able to comment on that. I am sorry. We have looked at some specifics, but I cannot say that we have looked at the structures that have produced those specifics. But one can say that, if you look at the complaints, they tend to relate to disabled persons, the mentally handicapped, physically handicapped, the young, the old and like people at risk. Those are the areas. And they commonly occur in an area that is an interface between the Department of Health and the Department of Community Services. And there is a question that arises as to whether the medical model or the social services model is the appropriate one to apply. That far we have got.

**CHAIRMAN:** We will now move on to item 2, Investigations and Legal Services.

**Mr WATKINS:** I have a question about 2.8, but I will wait until the Hon. Bryan Vaughan has dealt with his question.

**Mr LYNCH:** I was going to ask about 2.4, but I too will wait to hear what the Hon. Bryan Vaughan says.

**Ms ANDREWS:** Commissioner, in relation to 2.6, the number of listening devices being used has increased significantly over search warrants. Could you explain why the trend is that way?

**Commissioner O'KEEFE:** First, the legislation was amended so as to provide a seven-year penalty for the offence of bribery, which meant that as from 1 January 1996 - and I have dealt with telephone interceptions as well because they are both included in those figures - there was a wider range of matters that we could use telephone intercepts on. Those figures of 43 and 46 include listening devices and telephone intercept warrants.

You will see that the heading in the question relates to "LD's and TI's", so that is one factor. The second factor is that search warrants often come at a stage of the investigation that is removed in time, down the track, from the data and the intelligence that you get from your listening devices and telephone intercepts. That is one possibility.

The third thing is the nature of the investigations. If the investigation is one involving a public authority, then we can use our powers under sections 21, 22 and 23, instead of having to use a search warrant. Now, search warrants generally involve persons external to the public sector.

I think those three things, in combination, say why. I think it is likely that a bit down the track the search warrants may increase a bit. I expect that the listening devices and telephone interceptions will remain fairly static.

**Ms ANDREWS:** Arising from the increased use of listening devices, do you feel they have been effective in the ICAC's inquiries? And do you feel therefore their increased use is warranted?

**Commissioner O'KEEFE:** Yes. Yes. In fact, we have found that the confrontation of a person with what he or she has said on such an intercept, compared with what they tell us when they first come to the Commission, is quite dramatic - absolutely dramatic! Without them, the effectiveness of many investigations would be very poor.

People do have a tendency not to be entirely truthful and frank when they come and give evidence at the ICAC. But, if you have got something of their own to confront them with, then it breaks the ice and they tend to come clean.

**The Hon. B. H. VAUGHAN:** I will stay with item 2.6 and then go back to item 2.4. On the question of search warrants, in view of the Court of Appeal judgment yesterday upholding Mr Acting Justice Temby's judgment in relation to certain search warrants arising out of the royal commission, are you confident about the validity of your average search warrant? And what sort of advice have you obtained on the couching of the terms of those search warrants?

**Commissioner O'KEEFE:** The answer is yes, we are. The provisions of our Act in relation to the object of search warrants is wider than in the royal commission, to

start with. The rules that apply legislatively are broader. Thirdly, the drawing of our search warrants has been tailored to the Act. Fourthly, following Mr Acting Justice Temby's decision, we had that reviewed and took advice in relation to it, and we are satisfied that we did not run into the same problems.

**The Hon. B. H. VAUGHAN:** You should be more than satisfied now, after yesterday's Court of Appeal decision.

**Commissioner O'KEEFE:** I have not read it. I must say priority number one was today's meeting.

**The Hon. B. H. VAUGHAN:** There was a breath-taking moment or two when the question was asked of the Attorney in the upper House yesterday at question time. Of course, there will probably be an attempt to seek leave to appeal to the High Court. I am really fascinated by something that appears in the ICAC document, and that is on page 5, which deals with item 2.4, the suppression orders. I was just thinking, for example, that Queen Victoria has not yet been dead a hundred years, and if she had been an informer ----

**Commissioner O'KEEFE:** She would be safe, absolutely safe.

**The Hon. B. H. VAUGHAN:** Who dreamt up these years for which suppression orders should remain in force? For informants it is 100 years; for "Miscellaneous", it is "On advice"; Commercial secrets are only 30 years; and yet for informants it is 100 years. Did you take longevity scales into account, or have you not?

**Commissioner O'KEEFE:** I suppose, in regard to "Life and Limb", most people are going to be dead within 90 years, or they will be so old that nobody is going to worry about their life and limb. These are *damnosa hereditas*; they were worked out before I came. I saw no reason to change them. But it was done in consultation with the Archives Office, so that there must be some archival significance to it. But I cannot help you otherwise than that.

**The Hon. B. H. VAUGHAN:** Even the British Foreign Office only releases documents after about 30 years.

**Commissioner O'KEEFE:** But they are only political matters! No, she was the Sovereign, and one would not perhaps want private letters released.

**The Hon. B. H. VAUGHAN:** I would not want you to digress for one moment. Thank you.

**Dr MACDONALD:** Commissioner, are prosecutions or convictions a useful yardstick of success of the Independent Commission Against Corruption?

**Commissioner O'KEEFE:** No. We do not have control of any of those things. Our function specifically is to expose and eliminate, and specifically we have been denied the prosecutorial function.

**Dr MACDONALD:** I am aware of that, but I wanted to see if I could invite you to pursue that response a little more, in that clearly it can be argued that at least successful prosecutions and convictions in fact are a measure of efficient exposure on the part of ICAC - in other words, using the various devices and sting operations and surveillance and so on, so that the evidence that accumulates is so powerful that it is likely that prosecutions and convictions will follow. I just want you to respond to that.

**Commissioner O'KEEFE:** If you look at the ones that are mentioned on pages 6 and following, all of those relate to a period before we could have listening devices and telephone intercepts in the broad range of cases that we can have them now. And telephone intercepts, by and large, were very difficult to get. So the nature of the evidence that one was able to assemble for presentation may have been sufficient to cause the target, the subject, to admit the wrongdoing, so that you had the very best of evidence, namely, an admission, but the Act then precludes that evidence being used if the witness has taken the objection under section 38.

So you have a very good case, you know there is good evidence there, but the law, as a question of balance, excludes that from the trial. As a consequence of that, there will be a number of matters that the DPP decides not to pursue. The DPP makes a judgment as to whether there is enough evidence. Sometimes there is, sometimes there is not, sometimes you get a hung jury. And also you have this other problem, in some of the cases, that the witness you have will be a prisoner or a co-conspirator, and there are provisions of the law that give rise to directions that downgrade the value of their evidence. The DPP takes that into account, and the results are as set out in 2.8. I still do not think it is a good indicator.

**Mr WATKINS:** Just on that. It was not really a very successful period, was it? There were no new prosecutions, and the success rate of prosecutions that had been launched was very low. Daly, who was ---

**Commissioner O'KEEFE:** Could I answer that, please? That four-month period has nothing to do with anything that took place in the last three years. They all had to do with events that took place four and five years ago.

**Mr WATKINS:** Which is probably the reason we are talking about it today, because we or our successors do not want to be here in four or five years time and asking the then commissioner exactly the same question in 2002 as to why were there not successful prosecutions in this four-month period. So this is the only indicator that we have about perhaps the quality of the investigations, or certainly the quality of prosecutions. That is why we are asking the question, and it is important that we do. But on page 6 you mention that Daly was prosecuted arising from Milloo and convicted on 31 October 1997. Did Daly plead guilty, do you know?

**Commissioner O'KEEFE:** I think he did, but I am not sure.

**Mr WATKINS:** Of the other six people referred to who were the subject of prosecutions on a range of matters, four were found not guilty, one was found guilty after pleading guilty (Webster), and Daly we are not sure about, but Daly may in fact have pleaded guilty to the charges. It is not a good success rate arising from three

important ICAC investigations, I would not have thought. Would you agree? Were there other prosecutions arising from those three inquiries?

**Commissioner O'KEEFE:** Yes, there were. They are in fact in the schedule that was supplied to this Committee, and they are in the annual report that was distributed.

**Mr WATKINS:** Are you happy with - and I know the answer to this, but I would prefer you answered this part of it ----

**Commissioner O'KEEFE:** Can you tell me the answer, and I will give you the question?

**Mr WATKINS:** Are you happy with the ----

**Commissioner O'KEEFE:** No. I am not happy with the outcome.

**Mr WATKINS:** But you are obviously happy with the investigation and the quality of the evidence-gathering that was undertaken by the ICAC in these matters, are you?

**Commissioner O'KEEFE:** All I can say is - and I have not reviewed it personally - that the evidence that was gathered by the ICAC was submitted to the Director of Public Prosecutions, and a professional judgment was made by the Director of Public Prosecutions that in each case there was adequate evidence to go to a jury. So that means that there was the gathering of evidence sufficient to put somebody upon their trial, which suggests that the investigative function had been properly carried out.

**Mr WATKINS:** But you are not aware - and it is before your time - as to the adequacy of that evidence?

**Commissioner O'KEEFE:** I cannot tell you.

**Mr WATKINS:** Are you happy with the work of the Director of Public Prosecutions in these matters?

**Commissioner O'KEEFE:** I have no way of judging that. I mean, we submit matters, and the Director of Public Prosecutions says yes to some and not to others. I have no reason to believe that the judgments that are applied to that are other than appropriate.

**Mr O'FARRELL:** Commissioner, just on that point, over your three years as Commissioner has the Director of Public Prosecutions raised with you any concerns about these issues or any concerns about the way evidence is treated in your Act?

**Commissioner O'KEEFE:** No. Do you mean as to whether we should present it differently, or get more, or whatever?

**Mr O'FARRELL:** Yes.

**Commissioner O'KEEFE:** No.



**Mr LYNCH:** In relation to these matters, these are all prosecutions under section 87.

**Commissioner O'KEEFE:** There is one under section 88, I think, somewhere there.

**Mr LYNCH:** These, in effect, are all prosecutions for giving false evidence.

**Commissioner O'KEEFE:** Yes.

**Mr LYNCH:** They are not directly arising out of the investigative procedures of ICAC?

**Commissioner O'KEEFE:** No.

**Mr LYNCH:** They are about whether or not someone has told a fib on the stand, which puts a slightly different gloss on the questions that we have been asking.

**Commissioner O'KEEFE:** Mr Feneley reminds me that there is one thing that we have discussed. It was not something that he raised with us, but that we raised with him. Getting the ICAC transcripts into evidence under the existing legislation is extremely difficult. Often, what we have got to do is, when the report has been done and the findings have been made, we have got to then go back to people and say to them, "Will you give us a statement?" - they having been the subject of a finding that they were engaged in corrupt conduct. You can imagine what their response is. They do not co-operate.

If we could use the transcripts, it would be a different matter. We would then have their evidence as they gave it. And, if they wanted to recant that evidence, they would have a difficulty. But we raised that with the Director of Public Prosecutions and with the Attorney General's Department, but I do not know where that is at the moment. I do not carry that in my head.

**Mr O'FARRELL:** That relates to your Act, does it - the operation of the Independent Commission Against Corruption Act?

**Commissioner O'KEEFE:** No. It relates to the Acts that deal with the procedure for prosecuting matters - Summary Offences, et cetera.

**Mr O'FARRELL:** Is that an issue that we can have a look at in our review?

**CHAIRMAN:** We already have.

**Mr WATKINS:** After these matters are dealt with, do you discuss the outcome with the Director of Public Prosecutions?

**Commissioner O'KEEFE:** Yes.

**Mr WATKINS:** And what went wrong?

**Commissioner O'KEEFE:** I am sorry, after the ----

**Mr WATKINS:** After the court has made its decision, do you meet with the Director of Public Prosecutions?

**Commissioner O'KEEFE:** I do not, but somebody in the legal section normally does discuss it. The other thing is this: when we make a finding in the reports, as you will see, there is a section in the one that you have just received, chapter 3, page 7, which sets out the standard of proof. The lawyers would remember *Briginshaw v Briginshaw*. That is, it is a civil standard, but, when you have got to make a finding in relation to a serious matter, you must be really well satisfied. It is not the criminal standard, but you need more convincing about something like that than you may for a mere mistake. But, when you get up to the prosecution, it has got to be beyond reasonable doubt, and that is a much higher onus. However, the DPP reviews all these, and makes a decision as to whether they should proceed. That is his or her professional judgment.

**Mr WATKINS:** They have obviously made decisions that these six deserve to be proceeded with.

**Commissioner O'KEEFE:** Yes.

**Mr WATKINS:** But the success rate is not high. So there are others with which they decide they will not proceed. And it is important for the success of the ICAC to ensure that it does achieve successful prosecutions.

**Commissioner O'KEEFE:** I do not agree with that, as I have answered to Dr Macdonald. But, if we have them, I would like them to succeed.

**Mr WATKINS:** Yes. You have denied in the past that it is an indicator of success.

**Commissioner O'KEEFE:** Yes.

**Mr WATKINS:** But my view is, and the public view is, that in fact it does help if the ICAC can say, yes, we launched this inquiry and we got these characters in the end, they have been successfully prosecuted. That certainly assists the status of the ICAC in the community's view, I would have thought.

**Commissioner O'KEEFE:** I think, more important than the message to the community, is really the message to those in the organisations. Take Bertoncello for instance. If the message goes out to health and building inspectors "If you are on the take, and you get caught, then you are likely to go to gaol" then the message to those targets is more important than the message to the community.

**Mr WATKINS:** I accept that. That means we need to get as many successful prosecutions as possible. I am wondering what this says to us about that. And maybe it is outside your hands, but why is it not coming to fruition?

**Commissioner O'KEEFE:** If you look at the preceding three months we did have prosecutions and we did have success there. This four-month period is a period in which the things of the past came up. I actually think that the quality of the evidence that we are getting in most of our investigations will, where there is a prosecution, be very difficult for a number of defendants to avoid. I do think that, particularly with surveillance, electronic and otherwise, the focus on making sure you have got not only evidence of corrupt conduct, but evidence of corrupt conduct that will stand up in court, has increased. Hopefully, that will show.

But, as you see from these, it takes an extraordinary amount of time for things to move from a report and recommendation to an actual trial. Look at Harding. Harding had his case adjourned about seven times. Then, whether he finally got a judge that was suitable, or what, I do not know, but he got a circumstance that resulted in an acquittal.

If you then go back to Freeman, on page 7, arising out of Operation Proton, you first had a hung jury, and then it took ten months for the retrial to come up. The system is very slow.

**CHAIRMAN:** Commissioner O'Keefe, we might now go to items 3, 4 and 5 en bloc. They are item 3, Informing Investigations; item 4, Corruption Prevention and Education; and 5, Operations Review Committee.

**Mr WATKINS:** Is there any requirement for Mr Feneley to take the oath? I know in the past it has been the Commissioner who has given all the evidence, but in the past the executive officer or the solicitor of the Commission may also have given evidence.

**CHAIRMAN:** On occasions Mr Feneley has been assisting the Commissioner on calculations and figures and material like that. I do not think there is a necessity to swear Mr Feneley, unless Mr Feneley was to be questioned by Committee members. I would have to give that a lot of thought. At this point, unless he were more deeply involved, I would not ask Mr Feneley to take an oath.

**Mr LYNCH:** Not unless Mr Feneley is actually giving the answer himself.

**Mr WATKINS:** With the operations of the Operations Review Committee, page 21 gives some details about the number of reports, and you respond that on average the Operations Review Committee considers approximately 100 reports at each meeting. I know that we are going to have more details given to us at some stage. How much discussion is there, on average, on each report? Obviously, four, five or six must go through very quickly, and then there is discussion on one of them, or what is the situation?

**Commissioner O'KEEFE:** It actually depends on the nature of the matter. It often depends also on the length of the report. Sometimes, if the report is shorter, there are many more questions about it than there are about a longer report. The longer reports tend to cover most of the material. Most matters are the subject of some discussion - not all, but most. Some are pretty obvious. Most, having been the subject of that, there are occasions when a matter might be discussed for 20 minutes or more, and often

that gives rise to a situation in which the committee wants some more information. It is a bit hard to generalise. You will get some matters that are just so clearly not within jurisdiction, or not involving corruption, that they do not warrant any discussions.

**Mr WATKINS:** There is a level of concern that has been expressed by different parties, including myself but also by others, about the operations of the Operations Review Committee and how it carries out its work. I know your view, because you have made it very clear. But it is likely that it will come up in our review of the Act. What is your view on separating the Operations Review Committee at arm's length from the Independent Commission Against Corruption and perhaps giving it an independent chair?

**Commissioner O'KEEFE:** In what way? Firstly, could I say that I would resist, to the last bone and drop of blood in my body, the inclusion of any parliamentarian on it.

**Mr WATKINS:** I did not suggest that.

**Commissioner O'KEEFE:** I am not suggesting that you did.

**Mr WATKINS:** I think I would too.

**Commissioner O'KEEFE:** We agree!

**Mr WATKINS:** I am talking about perhaps an independent chair of the committee.

**Commissioner O'KEEFE:** Can I take that on notice?

**Mr WATKINS:** Yes.

**Commissioner O'KEEFE:** Thank you.

**Mr WATKINS:** Those questions are probably better explored in another forum.

**Ms ANDREWS:** Going to 4.1, and then to page 13, where the Commissioner sets out a number of conferences that he has addressed, do any of those conferences relate to local government?

**Commissioner O'KEEFE:** Yes. Shoroc does. If you look at the local groups on page 14, some of those are local government groups.

**Ms ANDREWS:** One further question. Do you offer yourself to speak at these conferences, or do you wait for an invitation?

**Commissioner O'KEEFE:** I wait for an invitation, and then I really do have to determine whether I will do that or not. I think there were 21 in the last four months, but there could have been 30 if I had allowed that to be. But I have so many other duties that I must perform, and I want to make sure that the message that is got through is relevant to the group that I address and is tailored to that group. And that requires

quite a bit of work. I have people who will help me with a draft, but, as they would tell you if you asked them, there is never a draft that ever gets through that does not have major surgery to it, because it has got to be me that is talking.

**CHAIRMAN:** You did attend a conference in Peru.

**Commissioner O'KEEFE:** I did.

**CHAIRMAN:** Do you wish to express any view on that conference?

**Commissioner O'KEEFE:** Firstly, I would like to pay tribute to the paper that Mr Feneley produced on witness protection. Secondly, I would like to say that after the first day, which had a lot of motherhood statements, it settled down a bit to some practicalities. Thirdly, it was a marvellous forum for displaying what New South Wales as a State is doing and what our organisation, the ICAC, is doing, and to get the feedback that we are accepted as the world leaders in the field of corruption prevention and education.

The final thing is that the networking abilities that happen in those conferences are as important, more important in some ways, than the formal sessions. The ability to be able to call on somebody in the FBI or this agency or that agency and pick their brains about a matter, or have them refer matters to you, when they ring you or write to you, is a very important and I think very beneficial thing.

I am hoping that the 1999 conference in South Africa will have, in accordance with some suggestions we have made to the international committee, some very specific practitioner sessions to assist particularly developing countries which are just floundering because they do not have the resources or the experience to carry their agencies forward.

**CHAIRMAN:** Are there any other questions arising out of the items 3, 4 and 5? There being none, we will move on to item 6, Other.

**Mr WATKINS:** On page 29 you talk about dealing with, in camera, the WorkCover issue relating to ICAC premises.

**Commissioner O'KEEFE:** I am sorry, I should have adverted to that.

**Mr WATKINS:** So we will do that at the end, if that is convenient.

**Commissioner O'KEEFE:** That is relatively short, as far as I am concerned. There may be questions arising out of it.

**Mr WATKINS:** Item 11 on page 30 relates to a matter I brought up last time.

**Commissioner O'KEEFE:** Yes, and you provided us with some additional material, and we looked at that, and I have put an answer there. I do not think I can go beyond that.

**Mr WATKINS:** The only question that I would ask is: do you know when it will be resolved?

**Commissioner O'KEEFE:** I cannot tell you that, no.

**Mr WATKINS:** You cannot?

**Commissioner O'KEEFE:** I do not know the answer. It is not a question of I won't tell you. I just do not know.

**Mr WATKINS:** Obviously, I would like to be kept informed on that. I put question 12 on the paper, and it was brought up previously, but I am in receipt of correspondence from the mayor of a municipality in Sydney where a complaint was made to the ICAC about an employee, I understand. The ICAC basically wrote back to the council and said it was up to the council to do the early investigation on this matter, and that when that was done the ICAC would then consider what its position would be.

**Commissioner O'KEEFE:** If you can let me have the details of that, I would be grateful.

**Mr WATKINS:** I think you actually have the details?

**Commissioner O'KEEFE:** Do I?

**Mr WATKINS:** It has gone from the Committee.

**Commissioner O'KEEFE:** I am not aware of it, I must say.

**Mr WATKINS:** There are two other matters I want to deal with. At the last couple of meetings we have talked about Whistleblowers Australia, and at the last meeting you asked whether contact had been initiated, and you suggested that you were awaiting advice from the staff. Has some contact been made by the organisation Whistleblowers Australia?

**Commissioner O'KEEFE:** Yes.

**Mr WATKINS:** To any beneficial outcome?

**Commissioner O'KEEFE:** Yes. Ms Kardell, who I think is the current president, has been into the Commission on one occasion. We have been in touch with Mr Taylor, I think it is. We have assisted in the organisation of a forum by the Whistleblowers, which was scheduled for a date, I think, in October. But something happened with their organisation and it had to be postponed, and it is now to be on 9 December. Again, we have done two things: we have helped in the organisation of that, we have done the post-outs for it of the fliers et cetera, and we have provided personnel to take part in the formal sessions and prepare papers and submit those. I actually think that the relationship between the Commission and that organisation has taken a bit of an upturn.

**Mr WATKINS:** That is good news. Question 13 is specifically about a BSC matter involving Vanessa Lovett, which was the subject of questions in Parliament last year.

**Commissioner O'KEEFE:** It was the subject of questions in the Parliament. I cannot remember when. But they are on our file.

**Mr WATKINS:** What was the final decision in that?

**Commissioner O'KEEFE:** I think you will have to ask Ms Lovett. It is an operational matter, and she has been advised of that. I do not feel it is appropriate that I should discuss that.

**Mr WATKINS:** I have a series of other questions, and you can answer them or not. How did the complaint come to the attention of the ICAC?

**Commissioner O'KEEFE:** That is an operational matter.

**Mr WATKINS:** Was the decision to investigate due to the fact that it involved a Minister of the Crown?

**Commissioner O'KEEFE:** I can say no to that. Most certainly not.

**Mr WATKINS:** Who would have made the final decision? The decision-making process is that it comes to the ICAC, it goes to an officer who determines whether or not it should proceed ---

**Commissioner O'KEEFE:** Makes a recommendation.

**Mr WATKINS:** He or she makes a recommendation and that then goes to the Operations Review Committee?

**Commissioner O'KEEFE:** No. It only goes to the Operations Review Committee if the recommendation is not to proceed. It goes to the departmental head, who then may make a recommendation that it proceed to a formal investigation. If it proceeds to a formal investigation, it goes to legal. Legal then will consider that matter, and if appropriate draw a scope and purpose document, which is then submitted to me for signature.

**Mr WATKINS:** Would that have happened with this case?

**Commissioner O'KEEFE:** This case would have been the same procedure as was appropriate to any such matter. I do not recall whether it was the subject of a formal investigation, scope and purpose. I do not recall that.

**Mr WATKINS:** So it could have been knocked out before that stage?

**Commissioner O'KEEFE:** Yes, it could have.

**Mr WATKINS:** Then the director may have decided not to proceed, and then it would have gone to the Operations Review Committee?

**Commissioner O'KEEFE:** Yes.

**Mr WATKINS:** But you cannot explain ---

**Commissioner O'KEEFE:** But, in any case, when it is not proceeding, even if it has gone to an investigation, it has gone to the stage of a formal investigation, if the upshot of that is not to proceed further, it has to be submitted to the ORC, either way.

**Mr WATKINS:** But you cannot explain to the Committee with this particular case what procedures were followed?

**Commissioner O'KEEFE:** I cannot tell you. I cannot recall that detail.

**Mr WATKINS:** I do not mean that you cannot recall, but is it because it is an operational matter that you are unable to explore that further, or what?

**Commissioner O'KEEFE:** Well, I think it is. It is a particular case you are asking about, and I do not think it is appropriate that I should deal with a particular case. If you want to know what our general procedures are, I can tell you that, and then bifurcated according to whether or not it is formal or not. But I think it is inappropriate for a particular case.

**Mr WATKINS:** Because I have had detailed representation made to me about this matter, obviously, and that representation from Ms Lovett raises - actually, not specifically from Ms Lovett but from someone working on her behalf - raises really worrying questions about why the matter was first raised with the ICAC, and it raises questions of an aggrieved party using the ICAC to punish a client, and it also raises questions of political interference in the process as well.

**Commissioner O'KEEFE:** There was no political interference in the process.

**Mr WATKINS:** Not in the process, but raised in the complaint arriving at the desk of the ICAC. I just wonder how we as members of the Committee can raise those issues with you and have them investigated or looked at.

**Commissioner O'KEEFE:** If you refer that to me specifically, one way of dealing with that would be to have the ORC further look at it, so that you have got an outside body. That is one possibility. But, if you refer that to me, I will consider how that might be done. I do not have any concerns about that matter. It was without doubt regularly dealt with.

**Mr WATKINS:** Leaving the detail of it behind, the process certainly caused Ms Lovett emotional and financial cost. What responsibility does the ICAC bear in dealing with emotional and legal costs? I suppose I am thinking more about the emotional costs to parties who may be innocent in an alleged corruption matter if they are brought before the ICAC.



**Commissioner O'KEEFE:** She was never brought before me.

**Mr WATKINS:** No, I mean when their particular case is brought before the ICAC and they are required to do things by the ICAC in furthering investigation, and so on. How does the ICAC deal with the emotional cost that that causes - not just in this case, but I am sure it happens elsewhere?

**Commissioner O'KEEFE:** There is an emotional cost for the complainant as well as for the person complained about, and generally the complainant has a much higher emotional cost than the person being complained against, because frequently the person complained against is unaware that the complaint has been made and that investigations are proceeding.

Where the person who is the subject of a complaint may be aware that it is proceeding, then undoubtedly there is an emotional cost, just as there is when somebody may be charged with an offence, or when somebody's name may be mentioned in the Parliament. It is part of the process. We do not provide a counselling service. We do not provide a psychological service for the people who may be complained against or complained.

It is part of the system, and the individual response of persons is something over which we have no control. We deal with things regularly. We deal with things as sensitively as we can. And we deal with things as confidentially as is possible. And I think more than that I cannot say.

**Mr WATKINS:** The legal system has always been used in a small number of cases vindictively by more powerful parties against weaker, perhaps innocent, parties, and that is a problem we have. Normally, *The Age* cartoons tell us all about that. But I do not know that that was so in this case.

**Mr WATKINS:** Perhaps, moving beyond this case, it is likely that the ICAC could also be used in that manner.

**Commissioner O'KEEFE:** That is true. And one of the things that I need to look at as Commissioner is whether or not I believe, in concert with the officers who are handling it, that that is a factor. Now, even quite maliciously motivated complaints may still be right. But, when you get to a particular point at which you have to make a judgment about what you do, the fact that it may be weak, the fact that it is malicious, those sorts of factors will enter into the judgement that you make whether to proceed or not.

Those are difficult matters. And trying to protect the reputations of people that may well be innocent of any wrongdoing is a pretty important part of my function, and it is one that I regard as very serious. I mean, I did not spend all those years at the Bar defending people to forget it in a short time in this job.

The emotional part is harder to deal with. But take the whistleblowers. Some of them become incredibly emotional about their complaints, and they are the complainants. Again, it is very hard to deal with.

**Mr WATKINS:** Have you considered something along the lines of this citizen's right of reply, which seems to be being adopted in a lot of Parliaments - I think we have actually adopted it - where someone who is aggrieved by an outrageous, unsupported statement by a parliamentarian under privilege can have a right of reply? Could you look at that in that, if the party is found to be innocent of wrongdoing or corruption by the ICAC, and it is finished with, that it may in fact be helpful in some closure that that person has some right of statement that they have been found to be not guilty of corruption?

**Commissioner O'KEEFE:** I will take it on notice and think about it, but you have got to have a forum. Often, in councils where that happens, the councillor will stand up and say, "I've been vindicated" we still have it investigated. There still may be something in it.

**Mr WATKINS:** If the matter is dealt with and somebody innocent is dragged through the system, at great pain to himself or herself in defending it, the cloud remains.

**Commissioner O'KEEFE:** That can happen. I understand that. Can I give some thought as to how it may be dealt with?

**Mr WATKINS:** I would like you to do that.

**Commissioner O'KEEFE:** It ties in with the Chairman's question about malicious. It is not the same, but it is related.

**CHAIRMAN:** Commissioner O'Keefe, do you want to go into closed session at this stage?

**Commissioner O'KEEFE:** Yes, Chairman.

(Evidence continued, and concluded, in camera)

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# APPENDICES

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PARLIAMENT OF NEW SOUTH WALES  
MINUTES OF PROCEEDINGS  
OF THE COMMITTEE ON THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION

Friday 28 November 1997 at 10:00am  
Parliament House, Sydney

Members Present

Mr P Nagle (Chairman)

Legislative Assembly

Ms M Andrews  
Mr P Lynch  
Mr B O'Farrell  
Mr J Watkins  
Dr P Macdonald

Legislative Council

The Hon. D Gay MLC  
The Hon. I Macdonald MLC  
The Hon. B Vaughan MLC

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In Attendance: Helen Minnican (Director); Ms Tanya van den Bosch (Research Officer); Ms Stephanie Hesford (Research Officer) and Ms Kylie Haines (Assistant Committee Officer).

Apologies were received from Mr D Beck and Ms R Meagher.

The Chairman opened the meeting and welcomed the Commissioner and Mr Feneley, Solicitor to the Commission.

The Commissioner addressed the Committee and tabled his answers to the Committee's questions on notice.

The Chairman and members questioned the Commissioner.

At 1:28pm, the Committee went in-camera. At the conclusion of questioning, the Commissioner and Mr Feneley withdrew.

The Committee adjourned at 1:33pm, sine die.



## INDEPENDENT COMMISSION AGAINST CORRUPTION

19 March, 1998

Mr. Peter Nagle MP  
Chairman, Committee on the ICAC  
Room 813  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**ATTENTION:** Helen Minnican - Director

Dear Mr. Nagle,

The purpose of this letter is to provide you with answers to questions by Committee members taken on notice at the Committee's hearing on 28 November 1997.

### **Dr. McDonald**

At page 25 the Commissioner took on notice a question from Dr McDonald as to whether having a Code of Conduct adopted by both Houses of Parliament would have had any impact on the Parliament's ability to deal with the Arena matter. On reflection, the Commission considers that this is really a question that only the Parliament can answer. In a particular case however the Commission considers that to the extent that any Parliamentarian's conduct is called into question it will be easier for that to be done by the Parliament or any other body if there is an applicable Code of Conduct against which the conduct can be judged.

### **Mr O'Farrell**

At page 32 the Commissioner took on notice a question by Mr O'Farrell as to whether the Commission was satisfied that the public disclosure provisions relating to local government are effective. The question was taken on notice as far as it related to the Pecuniary Interest Tribunal.

The Commission considers that this question goes to the administration of that tribunal and its effectiveness. Given this the Commission considers that the questions should be addressed to the relevant Minister.

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**Ms. Andrews**

At page 33 of the transcript the Commissioner took on notice Ms. Andrews' question about the break up of Protected Disclosure complaints received from local government, that is, whether the complaints were from employees, managers, councillors or contractors. In response I advise that the break up of the total number of council related protected disclosure matters received to 15 January 1998 was as follows:-

General Manager –	5
Employees (including Senior Managers) –	38
Councillors –	102
Contractors/Consultants -	2
Other (1 by Police Officer: 1 by Teacher) –	2
<b>Total</b>	<b>149</b>

**Dr. McDonald**

At page 36 of the transcript there was discussion about the Environmental Planning and Assessment Amendment Bill and the Commissioner took on notice Dr. McDonald's question as to whether corruption is more likely in one of three situations: namely, in a privatised approval process, approval by delegated authority, or where elected representatives are involved in the process. Any response to that question at this stage would involve speculation. However, the Commission will reconsider this question when reviewing the impact of the legislation. I would expect that this would be done after the legislation has been in operation for a period of at least 12 months.

**Mr. Lynch**

At page 40 of the transcript Mr.Lynch asked whether the complaint by the Property Council was predated by the Council's media release. The Commission can only advise that the complaint and media release are both dated 18 June 1997.

At page 45 Mr. Lynch asked how many members of Commission staff were members of the NSW Police on secondment to the Commission. I advise as follows:

No. of Seconded NSW Police Officers

**1994 1995 1996 1997**

12 8 7 4

No. of Commission staff whose previous employment was in the NSW Police Service and/or other Police agencies

**1994 1995 1996 1997**

21 22 23 25

**Mr. Watkins**

At page 56 the Commission took on notice a question as to whether there should be an independent Chair of the Operations Review Committee.

The ICAC Act provides for the Commissioner to be the Chair of the Operations Review Committee. There is some convenience in this being the case in that the ICAC prepares the paper work and provides the support for the Committee and, of all the Committee members the Commissioner has the most in depth knowledge about the Commission's activities. However, the Committee ultimately provides advice to the Commissioner on what action he should take and given that, the Commission has no objection in principle to one of the other members of the Committee chairing the meetings. This would be subject to the proviso that the Committee itself would need to determine who the appropriate Chair should be.

At page 62 the Commissioner took on notice a question by Mr Watkins as to whether a citizen wrongly accused of corruption can be given some right of reply.

The Committee will recall that this question was considered by the Committee on the ICAC in its report 'Inquiry into Commission Procedures and the Rights of Witnesses – First Report'. (Chapter 8 page 38) The question was considered there in the context of Commission hearings where allegations are made against individuals. At the time the Committee commended the ICAC upon the provision of a right of reply and the fact that this practice was referred to in the Commissions 'Procedures at Public Hearings' documents.

A right of reply is not so easy to provide in circumstances where the ICAC has investigated a matter and does not propose to hold public hearing and yet the underlying allegation is a matter of public knowledge. In such cases there may not be a forum in which any right of reply can be provided. In practice however it seems from the Commission's experience that these situations most often arise in the political context either at the State or Local Government level. In such cases the correct forum would be Parliament or the relevant local council. The availability of a right of reply would be a matter for the relevant forum.

Yours faithfully



John Feneley  
**Solicitor to the Commission**



1996 Community Attitude Survey

Good (morning/afternoon) My name is ..... fromTaverner Research Company. Today we are conducting a survey of people's views about the NSW public sector and issues that might affect people in NSW. Responses to the survey are, of course, anonymous and confidential. I was wondering if I could speak to the person in the household who is over 18 who had the most recent birthday?  
 ...

1. When I talk about "the NSW public sector" I mean state government departments and authorities, local councils, as well as members of the parliament, judges and magistrates. So firstly, do you consider that corruption in the NSW public sector is: a major problem, a minor problem, or not a problem for the community?

- Major problem
- Minor problem
- Not a problem
- Don't know/not sure

2. Imagine that a NSW public sector employee is offered \$100 by a member of the community to move his name to the top of a waiting list, and the public sector employee accepts the money. Who, if anyone, has done anything wrong? *(Pause) (If respondent asks "What kind of a waiting list?", say, "For example, a waiting list for housing or a hospital bed.")*

I'd like to find out more about what sorts of things you think are corrupt. I'm going to read out a series of statements, and for each of them I would like you to tell me whether you *strongly agree... agree ... disagree ... or ... strongly disagree* with each statement.

3. You can't call something corrupt if everybody does it.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know/not sure

4. Something is corrupt *only if those involved personally benefit from it.*

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know/not sure

5. What is seen as "corruption" in the public sector, is seen as smart business in the private sector.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know/not sure

Next I'd like to find out whether you think there are any differences in the types of behaviour that you would consider corrupt in the public sector as opposed to those that you would consider corrupt in private business.

6a. Firstly, are there any workplace behaviours that you see as being corrupt in the public sector that you would consider not corrupt in private business?

- Yes
- No
- Don't know/not sure

6b. Why do you say that? (*probe fully*)

6c. If yes in Q6a. What types of behaviour are you thinking of? Can you think of any examples?

6d. Now turning that around, are there any workplace behaviours that you see as being corrupt in the private sector that you would consider not corrupt in the public sector?

6e. Why do you say that? (*probe fully*)

6f. If yes in Q6d. What types of behaviour are you thinking of? Can you think of any examples?

Now I'd like you to think about how people behave at work, and what you consider to be acceptable workplace practice. I'm going to read a number of statements to you about situations that might occur at work. (*if respondent says, 'It depends', ask "What does it depend on?"*)

7a. A *government employee* accepts a free holiday to Bali in exchange for selecting a computer company for a job. Do you think that this is acceptable or unacceptable behaviour?

- Acceptable
- Unacceptable
- Don't know/not sure
- It depends - "What does it depend on"?

7b. Do you think that it is corrupt or not corrupt?

- Corrupt
- Not corrupt
- Don't know/not sure
- It depends - "What does it depend on"?

7c. What if a person working in a *private* company accepted the holiday from the computer company? Would that be acceptable or unacceptable?

- Acceptable
- Unacceptable
- Don't know/not sure
- It depends - "What does it depend on"?

7d. Would that be corrupt or not corrupt?

- Corrupt
- Not corrupt
- Don't know/not sure
- It depends - "What does it depend on"?

8a. In order to speed up the process of filling a job vacancy, a person working in a *private* company appoints someone they know to a vacant position without advertising the position. Do you think that this is acceptable or unacceptable?

- Acceptable
- Unacceptable
- Don't know/not sure
- It depends - "What does it depend on"?

8b. Do you think that it is corrupt or not corrupt?

- Corrupt
- Not corrupt
- Don't know/not sure
- It depends - "What does it depend on"?

8c. What if a *government employee* appointed someone they know without advertising the position, to hasten the process? Would that be acceptable or unacceptable?

- Acceptable
- Unacceptable
- Don't know/not sure
- It depends - "What does it depend on"?

8d. Would that be corrupt or not corrupt?

- Corrupt
- Not corrupt
- Don't know/not sure
- It depends - "What does it depend on?"

9a. A *government* employee gives confidential information about department clients to a friend who works in a private company. Is that situation acceptable or unacceptable?

- Acceptable
- Unacceptable
- Don't know/not sure
- It depends - "What does it depend on?"

9b. Do you think that situation is corrupt or not corrupt?

- Corrupt
- Not corrupt
- Don't know/not sure
- It depends - "What does it depend on?"

9c. What if a person working in a *private* company<sup>3</sup> gives the information to a friend? Would that be acceptable or unacceptable?

- Acceptable
- Unacceptable
- Don't know/not sure
- It depends - "What does it depend on?"

9d. Would that situation be corrupt or not corrupt?

- Corrupt
- Not corrupt
- Don't know/not sure
- It depends - "What does it depend on?"

10a. We are interested in ways that different people feel that corruption in the *NSW public sector* affects them *personally* ... (pause). Thinking specifically about you and your family, do you feel that corruption in the NSW public sector affects *you or your family*, in any way?

- Yes  (go to 10b.)
- No
- Don't know/not sure

10b. In what way does it affect *you or your family*? (If respondent answers "It costs" or something similar, *probe* with: What exactly do you mean by that? Can you provide an example?) (*probe fully*) How else does corruption in the NSW public sector affect you or your family?

I'm now going to read some more statements to you. Please tell me what effects, if any, these situations might have on you or your family?

11. A person fails their driving test. The driving examiner accepts \$100 to say they have passed. What effects, if any, do you think this might have on you or your family?

- Some effects  (specify) (*probe*) \_\_\_\_\_  
No effect   
Don't know/not sure

12. A health inspector visits a take-away food shop and finds some food that is clearly passed the use-by date. The health inspector takes \$100 from the owner of the shop to ignore the use-by date. What effects, if any, do you think this might have on you or your family?

- Some effects  (specify) (*probe*) \_\_\_\_\_  
No effect   
Don't know/not sure

13. A government employee regularly spends part of the day using office facilities to organise their private catering business. What effects do you think this might have on you or your family?

- Some effects  (specify) (*probe*) \_\_\_\_\_  
No effect   
Don't know/not sure

For the following statements<sup>1</sup>, please tell me whether you ... *strongly agree* ... *agree* ... *disagree* ... or ... *strongly disagree* with each of them.

14. People who report corruption are likely to suffer for it.

- Strongly agree  (*NOTE that the agree/disagree scale is to be read out at the beginning of each statement for Qs.15-21*).  
Agree   
Disagree   
Strongly disagree   
Don't know/not sure

15. It's **not** my responsibility to report corruption.

- Strongly agree   
Agree   
Disagree   
Strongly disagree   
Don't know/not sure

16. I'm not sure how serious corruption needs to be before I should report it.

- Strongly agree   
Agree

---

<sup>1</sup> Randomise the order of statements.

- Disagree
- Strongly disagree
- Don't know/not sure

17. The chances of getting caught doing something corrupt at work are slim.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know/not sure

18. I would report corruption only if I had enough evidence to prove it.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know/not sure

19. There is no point in reporting corruption in the *NSW public sector* because nothing useful *will* be done about it.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know/not sure

20. There is nothing that I personally can do about corruption in the NSW public sector.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know/not sure

21a. Several years ago, the government set up a body to deal with corruption in the NSW public sector. Can you tell me what it is called?

- Independent Commission Against Corruption/ICAC/I-cac  (go to 23)
- Other (specify) \_\_\_\_\_  (go to 22b.)
- Don't know/not sure  (go to 22b.)

21b. Have you heard of the Independent Commission Against Corruption, the I.C.A.C. or I-cac?

- Yes
- No  (go to D1 demographics)
- Don't know/not sure  (go to D1 demographics)

22. Do you think the ICAC has been successful or unsuccessful in *exposing some* of the corruption in NSW?

- Successful
- Unsuccessful
- Don't know/not sure

23a. Do you think the ICAC has been successful or unsuccessful in *reducing* the level of the corruption in NSW?

- Successful
- Unsuccessful  (*go to 24b.*)
- Don't know/not sure  (*go to 24b.*)

23b. Why do you say that? (*probe fully*)

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24a. Do you think that having the ICAC is a good thing for the people of NSW?

- Yes
- No
- Don't know/not sure

24b. Why do you say that? (*probe fully*)

---



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The following statements are about the role of the ICAC. Please tell me whether you think each of the statements is true or false ...

- 25. The ICAC can investigate allegations of corruption in the NSW public sector. True  False  Don't know
- 26. The ICAC can investigate allegations of corruption in the private sector even when the corruption has nothing to do with the public sector. True  False  Don't know
- 27. The ICAC is the anti-corruption body for the whole of Australia. True  False  Don't know
- 28. The ICAC can investigate allegations of corruption in NSW local government. True  False  Don't know
- 29. The ICAC can investigate allegations of corruption against NSW politicians. True  False  Don't know
- 30. The ICAC can investigate allegations of corruption against NSW judges and magistrates. True  False  Don't know
- 31. The ICAC has the power to prosecute people. True  False  Don't know
- 32. ICAC activities are sometimes reported on TV, radio and in newspapers. Can you tell me what

any of the stories have been about? (*Probe fully*) Any others? Any others? (*If Glebe Morgue is mentioned, go to 34*)

No/Don't know

33a. Have you heard or read anything about the Glebe Morgue investigation?

Yes

No/Don't know

33b. The Glebe Morgue was an ICAC investigation. Were you aware of that?

Yes  (*go to 35*)

No/Don't know  (*go to D1 Demographics*)

34. Thinking about all the reports about the ICAC on television, radio and in the newspapers, what impressions do you get about the ICAC from these reports?

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D1. Record gender. Male  Female

D2. What is your age?

18-19 years

20-24 years

25-29 years

30-34 years

35-39 years

40-44 years

45-49 years

50-54 years

55-59 years

60-64 years

65+ years

(Refused)

D3. Are you currently in paid employment? Yes  No

D4. In the public sector  private sector

D5. (if public sector, *ask*) is that the NSW public sector  or the Commonwealth public sector

D6. Do you live in Sydney  Newcastle  Wollongong  Country NSW

**THANK YOU FOR YOUR TIME AND CO-OPERATION**