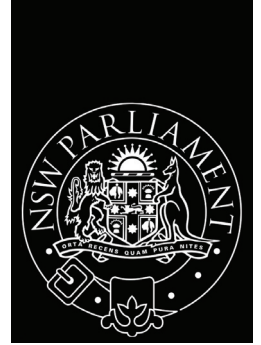


PARLIAMENT OF NEW SOUTH WALES



Committee on the Independent Commission Against Corruption

Review of the 2005-2006 Annual Report of the Independent
Commission Against Corruption

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Terms of Reference

The Committee on the Independent Commission Against Corruption is required under section 64(1)(c) of the *Independent Commission Against Corruption Act 1988* to examine each annual and other report of the Commission and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.

Chair's Foreword

In its first report to Parliament, the Committee on the Independent Commission Against Corruption focussed on the post-investigation stage of an ICAC inquiry, that is, the process by which ICAC assembles evidence obtained during its investigations, which may be admissible in the prosecution of a criminal offence, and furnishes this evidence to the Director of Public Prosecutions. This is one of the principal functions conferred on the ICAC and holds significant public interest implications in respect of the efficient prosecution of criminal offences arising from ICAC investigations.

Prosecutions arising from particular ICAC investigations and general issues surrounding ICAC's function of assembling possible admissible evidence have been raised by successive parliamentary committees over several years. For instance, in 1999 and 2001 the then Committee questioned Commissioner O'Keefe on the lack of prosecutions stemming from the ICAC's investigation into the conduct of certain individuals employed by Manly Ferries. Relevant issues on which the ICAC has been examined include: problems with delays between the ICAC's recommendation that consideration be given to prosecution and receipt of the DPP's final advice; the length of time taken to initiate criminal proceedings; and the rate of successful prosecutions.

During the 2005 review of the ICAC Act, Mr Bruce McClintock SC recommended that if administrative measures were not effective in reducing delay in the initiation of criminal proceedings then consideration should be given to legislative amendments to permit ICAC to commence criminal proceedings, without first seeking the advice of the DPP, where ICAC is satisfied that the prospects of conviction are reasonable. Mr McClintock suggested that twelve months would be an appropriate period for ICAC and the DPP to address and resolve the matter.

In the time that has elapsed since the McClintock report in January 2005 some improvements appear to have been made. In October 2005 a new memorandum of understanding, which formalises the relationship between the ICAC and the Office of the DPP, was signed. Consideration was being given to closer liaison between the DPP's office and the ICAC during the course of an ICAC investigation. ICAC also was considering changes to its procedures regarding the preparation of briefs: more formal statements of evidence were to be taken during an ICAC investigation, rather than after the completion of an inquiry and, as far as practicable, the preparation of ICAC briefs and briefs for criminal proceedings were to be prepared in tandem.¹

In 2006 ICAC reported a reduction of about 25% in terms of the time taken to finalise decisions on ICAC's recommendations to the DPP. Also, the current level of acquittals in relation to criminal offences arising from ICAC investigations appears quite low - only one acquittal occurred in 2005-06. However, acquittals since 2002-03 have resulted from various factors and cannot be solely attributed to improvements in the preparation of ICAC briefs of evidence.

However, despite these developments, it was apparent to this Committee that any general improvement in the timeframes relating to the referral of matters to the DPP and the receipt

¹ Committee on the ICAC, *Report on the Examination of the 2004-05 Annual Report of the ICAC*, Tabled 11/06 pp 18-29

Chair's Foreword

of the DPP's advice, remains overshadowed by particular instances of unacceptable delay, which are noted by the Committee in this report and were acknowledged by the Commissioner in his evidence. Individuals who are the subject of a corrupt conduct finding by the ICAC should not have to wait over four years from the time of the ICAC report until the DPP's decision on possible charges. It also appears that the closer liaison with the DPP anticipated by the ICAC in 2005 did not fully eventuate.

The Committee remains concerned with the lack of progress made towards eliminating significant delays. It remains hopeful that a new memorandum between the ICAC and the DPP will overcome the difficulties identified in this report. However, failing any improvement, the Committee will consider conducting a full inquiry into the performance of this function and the ICAC's relationship with the DPP. As a first step, the Committee has resolved to review in six months time the progress made in reaching a new administrative agreement between the two bodies. This will be an opportunity for the Director of Public Prosecutions to advise the Committee of his Office's perspective on the issue and the negotiations to date, in order that the Committee is in a better position to fully appreciate the problems that occur and the possible solutions available to address them.

In the meantime, the Committee considers public reporting on the turnaround times for each stage of the referral process is an important accountability measure. ICAC presently includes some information about prosecution proceedings in its annual reports but the Committee recommends the ICAC report in more detail on: the length of time between a recommendation to the DPP made in an ICAC report, the provision of a brief by ICAC to the DPP, and the receipt of the DPP's final advice. It is the Committee's view that such reporting should occur on a regular basis, either by the inclusion of relevant statistics in the ICAC's annual report, or through review by the Committee at the public hearings conducted to examine each ICAC annual report. Such an approach will ensure greater accountability for ICAC's performance of this function and the extent of the delays experienced. In turn, the Committee anticipates that reporting on the timeframes involved will lead to a more accurate picture of the causes for delays generally in addition to particular cases.

I would like to take this opportunity to thank the Commissioner and members of the ICAC executive for their contribution to proceedings and for the briefing they provided to committee members following the appointment of the new committee. I also am grateful to the members of the committee for their participation in the examination of the ICAC and for their deliberations on the report. The staff of the Secretariat, particularly Ms Carly Sheen, provided valuable support to the Committee during the inquiry and reporting process.

Frank Terenzini MP
Chair

Chapter One - Commentary

INTRODUCTION

- 1.1 One of the functions of the Committee on the Independent Commission Against Corruption (the Committee) is to examine each annual report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.² Following its appointment after the commencement of the 54th Parliament, the current Committee resolved to examine the Independent Commission Against Corruption's (ICAC's) Annual Report for 2005-2006.³
- 1.2 As part of this examination the Committee provided ICAC with a series of questions on notice and conducted a public hearing on 11 September 2007, at which the ICAC Commissioner and ICAC Executive gave evidence. The full text of these questions on notice and ICAC's answers to them, as well as the transcript of the public hearing are reproduced at Chapters 2 and 3 of this report.
- 1.3 The main issues arising from the Committee's examination of the ICAC Annual Report for 2005-2006 concern the role of ICAC in relation to the prosecution of offences that arise out of its investigations, and the distinction between a finding of corrupt conduct and a finding of criminal guilt.
- 1.4 With respect to prosecutions arising from an ICAC investigation, the Committee has focussed particular attention on two areas:
 - a. problems of delay between the referral of evidence from the ICAC to the DPP for consideration and the receipt of the DPP's final advice on a matter; and
 - b. the extent to which the ICAC, in response to requisitions from the DPP, undertakes further investigation after it has effectively concluded its inquiry into the matter.
- 1.5 In the view of the Committee, the first area warrants resolution as a matter of priority. The second area, which was identified by the Commissioner during the course of his evidence, raises significant issues that are canvassed in the commentary and are matters to be monitored by the Committee.

PROSECUTIONS ARISING FROM ICAC INVESTIGATIONS

Legislative framework

- 1.6 The Committee's comments on the extent of ICAC's responsibilities in relation to the prosecution of offences arising from investigations of corrupt conduct reflect the legislative framework within which ICAC operates. In particular, the *Independent Commission Against Corruption Act 1988* (the ICAC Act) confers limited powers on

² Section 64(1)(c), *Independent Commission Against Corruption Act 1988*

³ The Annual Report was tabled in Parliament on 31 October 2006.

ICAC with respect to criminal proceedings, with the specific intention of separating the function of investigation from that of prosecution.

- 1.7 The second reading speech on the ICAC Act clearly delineates between findings of corrupt conduct and prosecutions:

The proposed Independent Commission Against Corruption will not have power to conduct prosecutions for criminal offences or disciplinary offences, or to take action to dismiss public officials. Where the commission reaches the conclusion that corrupt conduct has occurred, it will forward its conclusion and evidence to the Director of Public Prosecutions, department head, a Minister or whoever is the appropriate person to consider action ... It is important to note that the independent commission will not be engaging in the prosecutorial role. The Director of Public Prosecutions will retain his independence in deciding whether a prosecution should be instituted.⁴

- 1.8 Amendments to the ICAC Act in 1990 further clarified ICAC's role in the conduct of prosecutions. Sections 74A⁵ and 74B⁶ were introduced to provide that ICAC does not have the power to make a finding of guilt in relation to a disciplinary or criminal offence or to recommend prosecution but that it can state its opinion as to whether or not consideration should be given to prosecution for a criminal or disciplinary offence. The Director of Public Prosecutions (DPP) considers the admissible evidence assembled by ICAC and determines whether the admissible evidence is sufficient to establish all elements of an offence.

- 1.9 Sections 74A and 74B were the result of the High Court decision in *Balog v Independent Commission Against Corruption* (1990). In this case, the High Court held that statutory power to inquire and report is not, in the absence of clear words, to be read as extending the power to make a finding of criminal guilt or other improper conduct. This point was reiterated in the second reading speech to the ICAC (Amendment) Bill 1990:

It is not for the commission to determine criminality. Nor is it the commission's role to conduct prosecutions for criminal or disciplinary offences. The Director of Public

⁴ The Hon Nick Greiner, Second Reading Speech, Independent Commission Against Corruption Bill 1988, *Legislative Assembly Hansard*, 26 May 1988, p 678

⁵ 74A Contents of reports to Parliament

(1) The Commission is authorised to include in a report under section 74:

- (a) statements as to any of its findings, opinions and recommendations, and
- (b) statements as to the Commission's reasons for any of its findings, opinions and recommendations.

Section 74A(2) of the ICAC Act provides that ICAC investigation reports must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- (a) obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,
- (b) the taking of action against the person for a specified disciplinary offence,
- (c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

⁶ Section 74B(1) of the ICAC Act provides that ICAC is prohibited from including in an investigation report:

- (a) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence), or
- (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence).

Prosecutions and other authorities are charged with that responsibility and the commission should not be able to pre-empt the decisions of those authorities to prosecute or not to prosecute.⁷

- 1.10 The rationale behind section 74A and 74B was clarified by the then Attorney General who went on to say:

The Commission has a charter to investigate corruption. It was not set up to investigate crime generally. Obviously, however, there will be cases where the corrupt conduct concerns criminal activity. In the area where corrupt conduct overlaps with criminal activity, the Commission will only be able to reach conclusions regarding the corrupt aspect of the person's behaviour. It is not for the Commission to determine criminality.⁸

- 1.11 While the ICAC does not have a role in determining guilt or in prosecuting, the Act states that a secondary function for ICAC is to assemble admissible evidence in the prosecution of corruption offences and provide this evidence to the DPP.⁹ However, the Act makes it clear that this is not a principal function of ICAC. Those functions are to investigate corruption, and engage in corruption prevention and education measures.¹⁰

- 1.12 Difficulties may arise in ICAC fulfilling this secondary function, in that a civil standard of proof and less stringent rules of evidence apply to its investigations into corrupt conduct, as distinct from a criminal investigation. As stated by Peter Hall, QC:

ICAC investigations, including hearings, are not criminal in nature and its hearings are neither trials nor committal proceedings... The ICAC is a statutory investigative body in the nature of a standing royal commission and its investigations and hearings have most of the characteristics associated with such commissions. Because a hearing is in aid of an investigation, no question of onus of proof arise. The standard of proof that applies to commissions of inquiry ... is the civil standard, namely the reasonable satisfaction on the balance of probabilities, as opposed to the criminal standard which is satisfaction beyond a reasonable doubt.¹¹

- 1.13 The Act provides ICAC with coercive powers that allow it to procure evidence for the purposes of an investigation that would be inadmissible in a criminal prosecution, including the power to:

- override claims of privilege by public officials in obtaining documents and information;¹²
- hold public inquiries and compulsory examinations, without the rules of evidence applying;¹³ and

⁷ The Hon John Dowd, Second Reading Speech, Independent Commission Against Corruption (Amendment) Bill 1990, *Legislative Assembly Hansard*, 21 November 1990, p 10201

⁸ *ibid*, pp 10200-10201

⁹ Section 14(1), ICAC Act

¹⁰ Section 13, ICAC Act

¹¹ Peter M Hall QC, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures*, Lawbook Co, 2004, p 169

¹² Section 24, ICAC Act

¹³ Sections 30 and 31, ICAC Act

Commentary

- require a witness to answer any question, regardless of the possibility of self-incrimination.¹⁴

1.14 Evidence assembled to fulfill ICAC's primary function of determining whether corrupt conduct has occurred will not necessarily be admissible or sufficient to establish guilt to a criminal standard, that is, beyond a reasonable doubt.

Relationship between the Independent Commission Against Corruption and the Director of Public Prosecutions

1.15 As stated above, ICAC does not conduct prosecutions or disciplinary proceedings arising from any of its investigations. It does, however, have an indirect role in prosecutions, in that it assembles admissible evidence for prosecutions where its investigations reveal criminal conduct and refers briefs of evidence to the DPP for consideration of prosecution.

1.16 The Committee considers that it is essential that the relationship between ICAC and the DPP is effective, efficient, and co-operative in order to ensure a timely and successful prosecution.

1.17 The Committee's understanding of the current relationship and apportionment of responsibilities between ICAC and the DPP in relation to prosecutions is:

- ICAC is responsible for assembling admissible evidence as a part of its investigations into corrupt conduct;¹⁵
- at the end of an investigation, ICAC includes in its investigation report a statement on whether consideration should be given to obtaining advice from the DPP in relation to the prosecution of an 'affected' person for a specified offence;¹⁶
- the DPP determines whether there is sufficient admissible evidence to prosecute an affected person and where a brief of evidence is considered insufficient, request(s) are sent to ICAC for more information;¹⁷
- if the DPP determines that there is sufficient admissible evidence and that charges should be laid, ICAC commences the prosecution;¹⁸
- on the return date at court the DPP arrives and replaces its name for the Commission's name and takes the proceedings forward.¹⁹

1.18 The DPP, Mr Nicholas Cowdery AM QC has described his role in relation to ICAC in the following terms:

The Office of the DPP provides advice on the appropriate charges to lay and whether a prosecution has reasonable prospects. It conducts the prosecution. However, it does

¹⁴ Section 37, ICAC Act

¹⁵ Section 14(1), ICAC Act

¹⁶ Section 74A(1), ICAC Act

¹⁷ Bruce McClintock SC, Independent Review of the *Independent Commission Against Corruption Act 1988*, Final Report, January 2005, at 3.4.6

¹⁸ Transcript of proceedings, 11 September 2007, p 3

¹⁹ *ibid*, p 3

not lay charges. It is ICAC's decision to lay charges or not. The Office of the DPP does not investigate any matters. Where the brief of evidence is considered deficient, requisitions are sent to ICAC for more information.²⁰

- 1.19 The relationship between the DPP and ICAC is guided by a Memorandum of Understanding (MoU) agreed to in 2005. The MoU includes timeframes for the provision of information by ICAC and the provision of advice by the DPP. A copy of the MOU can be found at Appendix 1 of this report.
- 1.20 The Committee has repeatedly expressed concern about the functioning and effectiveness of the relationship between ICAC and the DPP, particularly in regard to issues of delay in the prosecution of offences arising from ICAC investigations.

Delay in commencing prosecutions

- 1.21 In its examination of the ICAC Annual Report for 2005-2006, as well as previous annual reports spanning the past several years, the Committee has questioned the lengthy delay in some cases between a finding of corrupt conduct being made by the ICAC and the prosecution of a person for criminal offences arising out of that same conduct.²¹
- 1.22 A table detailing the number of days between the submission of a brief to the DPP and final advice from the DPP on whether there is sufficient admissible evidence to prosecute a person was provided to the Committee by ICAC for the public hearing and is reproduced in chapter 3 of this report. The table includes current matters and matters completed between 1 July 2006 and 30 June 2007. Figures given on current matters for the number of days between the submission of a brief to the DPP and final advice from the DPP range from a minimum of 11 to a maximum of 1508. A number of matters submitted in 2005 and 2006 were still awaiting advice.
- 1.23 The following case studies taken from the 2005-2006 Annual Report illustrate the specific concerns of the Committee:

Operation Muffat

ICAC investigated Greyhound Racing Authority officials' dealings with racing greyhound owners and trainers. ICAC's report, which was tabled in August 2000, found 6 people had engaged in corrupt conduct and recommended that the Director of Public Prosecutions (DPP) consider prosecutions for criminal charges including bribery and corrupt commissions offences and for offences under the ICAC Act.

ICAC recommended that the DPP consider charging Raymond King with aiding and abetting corrupt rewards under the Crimes Act for his part in the corrupt doping of racing dogs. A brief of evidence was sent to the DPP in August 2001. The DPP made

²⁰ McClintock, op cit, 3.4.6 and 3.4.8. ICAC employees are currently prescribed by regulation as "public officers" for the purposes of the *Criminal Procedure Act 1986*, which enables them to issue court attendance notices to commence proceedings for summary and indictable offences in the same manner as police officers.

²¹ See *General Meeting with the Commissioner of ICAC*, Tabled 21/11/01, pp 21-22; *Report on Examination of the 2001 – 2002 Annual Report of the ICAC*, Tabled 09/04; *Report on Examination of the 2003 – 2004 Annual Report of the ICAC*, Tabled 12/05, pp 39-42; *Report on Examination of the 2004 – 2005 Annual Report of the ICAC*, Tabled 11/06, pp 18-19; ICAC, answers to questions on notice, 3 September 2007, pp 11-12; transcript of proceedings, 11 September 2007, p 8, 10-11.

eight requisitions to ICAC between 2002 and 2005, which required ICAC to obtain further statements from potential witnesses. In September 2005 the DPP advised that there was insufficient admissible evidence to proceed with the charges against Mr King.²²

In relation to the prosecution of Kenneth Howe, Ronald Gill and Andrea Sarcasmo for corrupt rewards offences under the Crimes Act and offences under the ICAC Act, a total of 1508 days passed from the date that ICAC's initial brief was sent to the DPP and the receipt of final advice from the DPP.²³

Operation Agnelli

The investigation centred on the conduct of officers of the New South Wales Grain Board, which was put into administration after collapsing financially in late 2000. ICAC tabled its report in August 2003, finding that members of the Board's senior management had engaged in corrupt conduct and recommending that the DPP consider prosecuting 4 people for several offences under the ICAC and Crimes Acts, including larceny by an employee and publishing fraudulent statements.

ICAC sent briefs of evidence to the DPP in March 2004. The DPP made requisitions to the ICAC in August 2006 and February 2007 regarding the briefs compiled in relation to John Fitzgerald and Graham Lawrence. ICAC is currently working on its response to the requisitions.

The DPP advised ICAC in August 2006 that there was insufficient admissible evidence to prosecute Darren Bizzell.²⁴ 907 days passed between the date ICAC's brief was sent to the DPP and the DPP's advice that it would not proceed with the prosecution.²⁵

McClintock Report

- 1.24 The issues of extensive delay between the commission of a criminal offence and its prosecution was examined by Bruce McClintock SC in a judicial review of the ICAC Act in 2005. He considered the issue of delay as a "significant problem" in that "[c]onvictions may be more difficult to obtain as witnesses disappear and memories fade. The affected person's reputation, employment, and family suffer while awaiting the exercise of prosecutorial discretion".²⁶ Following the review, McClintock reported:

I am satisfied that there has been a pattern of unacceptable delay between ICAC making a recommendation that consideration be given to prosecution and the initiation of criminal proceedings, and that ICAC and the DPP have each, in varying but unidentified degrees, contributed to this delay.²⁷

- 1.25 McClintock found that delay in the context of ICAC investigations may arise due to:

- delay in ICAC forwarding a brief of evidence to the DPP following the release of its investigation report;

²² ICAC, *Annual report 2005-2006*, Appendix 3, p 97 and answers to questions on notice, 3 September 2007, question 13, p 11. Three people who were charged with various offences as a result of operation Muffat were awaiting sentencing in the District Court at the time ICAC's annual report was published.

²³ ICAC, answers to questions on notice, 3 September 2007, Attachment C, p 1

²⁴ ICAC, *Annual report 2005-2006*, Appendix 3, p 98 and answers to questions on notice, 3 September 2007, question 11(b), p 10

²⁵ ICAC, answers to questions on notice, 3 September 2007, Attachment C, p 1

²⁶ McClintock, *op cit*, 3.4.35

²⁷ *ibid*, 3.4.48

- delay in the provision of advice by the DPP following receipt of the brief from ICAC; and
- delay in ICAC responding to requests from the DPP for further information.²⁸

1.26 He also concluded that the “timeframes for the provision of information by ICAC and advice by the DPP [in the MOU] ... do not seem to be observed.”²⁹

1.27 In determining the reasons for unacceptable delays in commencing prosecutions, McClintock stated:

Delay is (at least in part) a consequence of separating the investigation function from that of prosecution. The lack of clarity as to who is ultimately responsible for initiating criminal proceedings has contributed to a culture where neither agency accepts that it is their primary responsibility to initiate and conduct timely and effective criminal prosecutions arising out of ICAC investigations.³⁰

1.28 A similar sentiment was expressed by Commissioner Cripps at the hearing with the Committee on the ICAC Annual Report for 2005-2006. He stated:

There is a self-evident problem associated with two agencies doing things towards a common end and neither agency is responsible to the other.³¹

Efforts to reduce delay

1.29 There have been numerous attempts to reduce the delay in commencing prosecution following an ICAC investigation. These initiatives have been aimed at improving the quality and timeliness of the assembling of admissible evidence, and negotiating an MOU with the DPP to try and delineate the responsibilities of each agency and provide a timeframe by which ICAC should provide information and the DPP should provide advice.

(i) Improving quality and timeliness of assembling admissible evidence

1.30 Several years ago, ICAC indicated to the Committee that a shift had occurred towards assembling admissible evidence *during* the investigation process, rather than compiling a brief and assembling admissible evidence *at the conclusion* of an investigation. It was felt that this change would lead to a more timely handover of the brief to the DPP.³²

1.31 In the Committee’s General Meeting with ICAC in 2001, the then Commissioner, Irene Moss, provided the following detail on this shift in emphasis:

Many of the investigative tools available to the Commission allow for the collection of evidence and other information, which can be used as part of the ICAC investigation

²⁸ *ibid*, 3.4.36

²⁹ *ibid*, 3.4.42

³⁰ *ibid*, 3.4.49

³¹ Transcript of proceedings, 11 September 2007, p 8

³² Committee on the ICAC, *General Meeting with the Commissioner of the ICAC*, March 2002, Report 7/52, p 10-11

process in a way that meets the evidentiary standards for prosecutions. These tools, which may be used individually or in concert with one another, include:

- telephone interceptions,
- listening devices,
- search warrants,
- financial investigators,
- analysts,
- controlled operations,
- surveillance, and
- forensic software for investigating computers

Many of the investigatory powers available to the Commission such as telephone intercepts, listening devices and search warrants allow for the collection of evidence and other information that can be used as part of an investigation as well as being gathered in such a fashion that permits its use as evidence in any later prosecution proceedings.³³

- 1.32 Commissioner Moss indicated that there would be a greater emphasis on alternatives to hearings as a way of assembling evidence, as evidence obtained at hearings was often given under objection and, consequently, was not admissible in later criminal proceedings. She also explained the increasing role of Commission lawyers to “provide advice on what evidence will be needed to establish possible offences that may be identified for the consideration of the Director of Public Prosecutions.”³⁴

(ii) Improving the relationship with the DPP

- 1.33 In giving evidence at a hearing into the examination of the ICAC Annual Report for 2003-2004, ICAC indicated that it was in discussions with the DPP regarding the possibility of engaging the DPP in the process of assembling admissible evidence. Mr Pritchard, then Deputy Commissioner, indicated that one option was to have a dedicated DPP lawyer attached to ICAC matters:

... to liaise with and raise issues with along the way, so we [ICAC and DPP] are heading in the same direction before we simply lob a brief of evidence on them. We raised ideas about having a Office of the Director of Public Prosecutions lawyer at the Commission once a month, something like that.³⁵

- 1.34 In 2005 ICAC and the DPP entered into a new MoU. At a subsequent Committee hearing into the examination of the ICAC Annual Report for 2004-2005 the Commissioner was asked whether the MoU had been effective in reducing delay:

The Hon. KIM YEADON (CHAIRMAN): In response to question on notice 23 you advise that the Independent Commission Against Corruption and the Office of the Director of Public Prosecutions signed a new memorandum of understanding on 24 October 2005. Has this reduced delays in finalising decisions on the action to be taken on recommendations of the Commission?

³³ *ibid*, p 21

³⁴ *ibid*, p 21

³⁵ Transcript of proceedings, 6 April 2005, p 7

....

Mr SMALL: Yes, there was a new memorandum of understanding put in place. About 18 months ago we also started to change the way we conducted investigations. That is, from the outset we started to take more formal statements rather than taking a statement for Independent Commission Against Corruption purposes and going back, and it would appear at this stage that there has been a significant reduction in the time taken from the conclusion of a Commission inquiry to the referral of a brief of evidence to the Office of the Director of Public Prosecutions for consideration. With these things they take a long time to get a trend, but over the past 12 to 18 months I would suggest there has been a reduction in the order of about 25 per cent in terms of time.³⁶

1.35 The effective operation of the MoU was again raised at the hearing into the ICAC Annual Report for 2005-2006:

Mr FRANK TERENZINI MP (CHAIR): In regard to the Office of the Director of Public Prosecutions and your relationship with that office and the memorandum of understanding, I think it was the case that the last examination under the previous committee, I think Mr Small at that time indicated to the Committee that what was happening in the Commission was that whilst investigations were proceeding, along the way statements in admissible form were being prepared and there was an initiative to get the DPP involved earlier in the investigation proceedings. Back then it was too early to tell how that was going; I think the process had been going for about 12 months. Has that been happening? Before we get into the issues you raised with the DPP, did that proceed?

Mr CRIPPS: Not satisfactorily, I do not think. It is because of that that I have had this meeting with the present Director of Public Prosecutions ... One thing is, for example, that officers from the DPP can be kept au fait with what is happening from the word go. The tendency was for us to investigate. But you have to remember that the stuff we investigate is often very complex. Then we present a report, then if you are not careful the people think they have to move on to the next examination, then they start talking about what they are going to do to the last one, and the delay means that you have to do twice the work eventually. The best way of doing it is to do it while it is going on. I understand that there was general agreement in principle that something like that would happen, but I do not think it did happen, and that is really why we raise the matter again.

Mr FRANK TERENZINI MP (CHAIR): What you are saying is that, although the Commission was doing that, it did not work satisfactorily.

Mr CRIPPS: I do not think so, no.

Mr FRANK TERENZINI MP (CHAIR): And the Director of Public Prosecutions [DPP] did not wish to get involved in it.

Mr CRIPPS: I do not want it to be thought that I am trying to bucket the Director of Public Prosecutions over this. There is a self-evident problem associated with two agencies doing things towards a common end and neither agency is responsible to the other.

Mr FRANK TERENZINI MP (CHAIR): Can I say that I think those initiatives that you have spoken about are admirable, and that would be a commonsense way to go about it, but I know that the Director of Public Prosecutions holds very tightly onto this rule that they are prosecutors, not investigators. They are reluctant to do that.³⁷

³⁶ Transcript of proceedings, 4 August 2006, p 5

³⁷ Transcript of proceedings, 11 September 2007, pp 8-9

(iii) Commencement of proceedings by the ICAC

1.36 A potential solution to the problem of the significant delay in commencement of proceedings in relation to some matters was considered by Bruce McClintock SC in the 2005 review of the ICAC Act. While recognising the efforts of ICAC to address significant delays in commencing proceedings in some matters,³⁸ he found that:

... administrative processes will not eliminate delay so long as ICAC is required to seek the advice of the DPP before initiating proceedings. This requirement means that ICAC and the DPP do not have the externally imposed discipline of the timetables and other time constraints which Courts require once a matter is commenced in Court.

Once proceedings are initiated, the Court imposes a degree of supervision over the parties. The Court sets the time in which the brief of evidence must be assembled and provided to the defendant. It sets the time at which the proceedings will be heard. The DPP (and other agencies, such as those responsible for the transcription of evidence) will of necessity prioritise those matters for which a Court timetable has been set.

...

I am of the view that delays are unlikely to be substantially addressed in the longer term unless ICAC is given specific authority to initiate criminal proceedings arising from its investigations, without first seeking the advice of the DPP, thus bringing the proceedings more quickly under the supervision of the Court.³⁹

1.37 McClintock recognised that this proposal “would represent a significant policy shift in the Act” as “separation of the function of investigation to that of prosecution was an important consideration to the then Government when establishing the ICAC.”⁴⁰

1.38 In forming a view on this issues, he weighed up the “harm caused by lengthy delay in the initiation of criminal proceedings against any harm that may be occasioned by ICAC initiating criminal prosecutions without first seeking the advice of the DPP.”⁴¹ McClintock commented:

On balance, ... I would urge that consideration be given to permitting ICAC to [initiate criminal prosecutions without first seeking the DPP’s advice], particularly in relation to offences under its own Act or under Part 4A of the *Crimes Act 1900* (corruptly receiving commissions and other corrupt practices).⁴²

1.39 He outlined the following areas in which ICAC could have greater autonomy in initiating proceedings:

1. Routine or uncomplicated matters. However, ICAC could retain discretion to seek DPP advice where independent legal advice as to the sufficiency of the evidence or appropriateness of the charges was an issue.⁴³

³⁸ McClintock, op cit, 3.4.43. ‘ICAC acknowledges that it needs to consider prosecution issues at the time of investigation, not after publication of the investigation report when resources are diverted, investigators leave, and witnesses disappear. ICAC advises that in the last five years it has changed its practices in this regard.’

³⁹ *ibid*, 3.4.44-3.4.58

⁴⁰ *ibid*, 3.4.51

⁴¹ *ibid*, 3.4.51

⁴² *ibid*, 3.4.59

⁴³ *ibid*, 3.4.52

2. Matters where ICAC has clear evidence of the commission of a corruption offence in contravention of the criminal offences in Part 4A of the Crimes Act 1900 (corruptly receiving commissions and other corrupt practices).⁴⁴
3. Prosecution of offences under the ICAC Act, for example, the breach of a non-publication order under section 112. He pointed out that "ICAC may be best placed to judge whether these proceedings should be instituted" and that "most agencies are permitted to take legal proceedings for an offence against the Act that they administer ..."⁴⁵

1.40 If the ICAC Act was amended to allow ICAC to institute proceedings without seeking the advice of the DPP, McClintock identified the following "check[s] on the exercise of prosecutorial discretion by ICAC":

- the continued responsibility of the DPP to conduct the prosecution of offences arising from ICAC investigations and, if necessary, the exercise of the DPP's power to discontinue proceedings;⁴⁶ and
- the role of the Court to determine guilt, in that ICAC would continue to have no role in determining criminality.⁴⁷

1.41 McClintock's final recommendation was:

That, if administrative measures do not prove effective in reducing delay in the initiation of criminal proceedings, consideration be given to whether ICAC should be permitted to commence criminal proceedings, without first seeking the advice of the DPP, where ICAC is satisfied that there are reasonable prospects of conviction of a person for offences under its own Act or under Part 4A of the *Crimes Act 1900* (corruptly receiving commissions and other corrupt practices). Parliament might well regard twelve months as an appropriate period for ICAC and the DPP to address and resolve the issues in question.⁴⁸

1.42 At the time, both the ICAC and the DPP were strongly opposed to this proposal, although McClintock believed that "both bodies have overstated the difficulties involved."⁴⁹ ICAC advised that "as the DPP would eventually take over the prosecution of criminal proceedings, ICAC would be *'very reluctant to commence proceedings without advice from the DPP that there was sufficient evidence to justify those proceedings.'*"⁵⁰ According to McClintock, this did not pose a significant problem in that:

...the vast majority of criminal prosecutions are instituted by police officers, without seeking legal advice. It is difficult to see why ICAC would be any less able than police officers to determine whether an offence has been committed and whether there is

⁴⁴ *ibid.*, 3.4.53. 'For example, ICAC may receive intelligence that a public official is about to accept a bribe, and ICAC officers (through covert surveillance or a controlled operation) may observe the actual commission of the offence.'

⁴⁵ *ibid.*, 3.4.54

⁴⁶ *ibid.*, 3.4.56

⁴⁷ *ibid.*, 3.4.57

⁴⁸ *ibid.*, Recommendation 3.4, p 45

⁴⁹ *ibid.*, 3.4.60

⁵⁰ *ibid.*, 3.4.60

sufficient evidence of that offence to warrant prosecution. Moreover in cases where real difficulty is involved, it would always be open to ICAC to seek the advice of the DPP.⁵¹

- 1.43 In his recent evidence to the Committee, the Commissioner opposed the McClintock proposal. Commissioner Cripps indicated that during his time as Commissioner he had formed the opinion that it is inappropriate for ICAC to initiate prosecutions, in light of the fact that ICAC is not a law enforcement agency, and has no legislated role in the criminal prosecution process beyond the assembling of admissible evidence and a recommendation that a matter be referred to the DPP to consider whether prosecution is appropriate.
- 1.44 He argued that while the initiation of proceedings by the Police Force is an appropriate process between the Police and DPP, as the Police Force is a criminal law agency, "... one can see good reasons that it is not an appropriate course to follow in the case of a commission which is not a criminal law enforcement agency and which should not give the public the appearance that it is."⁵² Commissioner Cripps was clear on this point:

When one looks in the newspapers or the court lists ones sees reference to the ICAC against Cripps. When the DPP comes down on the first return day to take over the matter it becomes the DPP against Cripps. In my opinion that is what it should always be. The DPP should always do it because it is given the advice and it will carry the prosecution through to conviction or acquittal. ICAC should not be seen as having any part in the criminal process.⁵³

- 1.45 In practice, however, the Commissioner has been confronted with a situation where police disinterest in the matters investigated by ICAC, and the ODPP's position that it does not investigate, has left the ICAC with little alternative to adopting a policy in which it pursues criminal prosecutions.⁵⁴

Assembling admissible evidence where investigation has finished

- 1.46 Commissioner Cripps explained to the Committee that there were problems associated with assembling admissible evidence in relation to a prosecution after an ICAC investigation into corrupt conduct has been finalised, for example, in response to a requisition from the DPP:

...

Plainly, in accordance with the legislation, if in the course of the investigation legally admissible material—and by that I mean material that is admissible in a criminal prosecution—becomes known to the Commission, that information would be furnished to the DPP as mandated by section 14. But what of the case where the Commission is requested by the ODPP to provide further evidence by interviewing people, which is what he has done now, when the allegation of corruption is no longer being investigated? In these circumstances, I think a number of issues arise, some ethical, some discretionary, some legal and, of course, some practical, namely the budget

⁵¹ *ibid*, 3.4.60

⁵² Transcript of proceedings, 11 September 2007, p 3

⁵³ *ibid*

⁵⁴ *ibid*

constraints that are imposed upon us when we have to discharge our two main functions and what budgetary allowance we have to discharge with the secondary one. For example, the Commission cannot use its powers under sections 21, 22 and 23—that is to compel information, when people no longer have these rights that I referred to—to get information, because those powers allow the Commission to get material and deny people the privileges to which I just referred [that is, common law privileges such as the right of silence, the privilege against self-incrimination and legal professional privilege]. This cannot be exercised unless the Commission is actually investigating a matter before it. If an investigation has been completed, the Commission, in my opinion, has no power to coercively require information to be produced to it; nor in my opinion would that evidence obtained as a result of the exercise wrongly of that power be admitted into evidence in a criminal court.⁵⁵

- 1.47 Having identified the difficulties associated with requisitions from the DPP, Commissioner Cripps explained the necessity for the current practice, in which ICAC continued to assemble admissible evidence once an investigation had been completed:

...

As matters presently stand it is my understanding that the ODPP will not as a matter of policy undertake its own interviews or its own investigations.

...

It has been brought to my attention that the police remain relatively uninterested in matters the commission is investigating—which, in fairness, are often very complicated—and the reference of matters to the police has the practical consequence that nothing happens. As I have said, the ODPP would not himself investigate. This has left the commission with adopting a policy—which I do not wholly favour but which I think I must bow to for now—of accepting that if it does not continue the criminal enforcement proceedings no-one else will. People are getting off scot free who we know from answers they have given have committed criminal offences but that evidence cannot be used in a criminal prosecution. As a result, the commission has taken upon itself to adopt this role. A misgiving has developed in the two years I have been with the commission about whether an institution which is not designed to be a criminal law enforcement agency and which denies people a number of their traditional liberties and privileges gives the appearance that it is a law enforcement agency by pursuing prosecutions.

As far as the commission is concerned, once it has information based upon which it can confidently say there has been corrupt conduct—and that is often obtained using its coercive powers, which cannot be used in a criminal trial—it has largely discharged the obligation that the Parliament has imposed on it. The question is how much further it goes and whether it should be involved after it has stopped investigating by assisting the office of the DPP when it takes over the prosecution effectively to prosecute the case. ... I want members to understand that it is not merely a budgetary constraint that holds me back from the sort of role that the commission is asked to perform. The issue is that the commission is asked to perform it when it appears to me that the Parliament has endeavoured to ensure that the commission is not a crime authority.⁵⁶

- 1.48 This issue was again discussed later at the hearing:

⁵⁵ *ibid*, p 2

⁵⁶ *ibid*, p 3

CHAIR: Turning to a question that was asked from a few quarters today—the Hon. John Ajaka raised it, for example—do you consider that once you have put in a report and put in your brief to the DPP that if they raise a requisition it is not your place to conduct further investigations? Do I understand that correctly?

Mr CRIPPS: That is what I think.

CHAIR: That has been happening for some time.

Mr CRIPPS: I have to say in fairness to people who have been doing it against the background if it was not done nothing would happen.

CHAIR: I think that is being done because you are apprised of all the facts and background connections having done the investigation and it is considered you are best placed to carry out those further investigations. Did you say that the commission has no power under the Act to carry on and answer those requisitions?

Mr CRIPPS: No, I do not say that. Let me say this: They cannot use those coercive powers under sections 20, 21 and 22 unless they are investigating because they are preceded by "In the course of an investigation, you may do this." So if we are not investigating we cannot do it. The question that I find more difficult to resolve is: What happens when you stop investigating but the DPP says, "I want you to go out and get statements that will make this a more successful prosecution"—and we are not investigating corrupt conduct, incidentally? So my way of thinking is that, although the Legislature says that we can do it, issues such as discretion, fairness and the like have to start being operative as to what we really do—particularly the budget. That is a matter that has to be sorted out once and for all. Having said that, the view I have about this is not the view everybody has.

CHAIR: Your view, then, would be that the police should become involved?

Mr CRIPPS: Yes, I think so, if the DPP cannot. And I cannot buy into that, whether it is principle or money. I never quite understood why. Major firms, when they conduct litigation on behalf of private people, they investigate it. Just because you go to court does not mean you cannot investigate. In any event, I do not want to buy into that ...⁵⁷

Office of the Director of Public Prosecutions requesting full briefs of evidence where person has indicated that they will plead guilty

- 1.49 Another issue raised by Commissioner Cripps concerning the relationship between ICAC and the DPP was a recent incident where ICAC had conducted an investigation that revealed a serious fraud offence. The Commissioner explained:

The person wanted to plead guilty to an offence on legal advice. The matter went to the DPP and we were told that the office would not open a file unless it received all the evidence that would be necessary if the person pleaded not guilty. That was the DPP's policy and its interpretation of the memorandum of understanding. I cannot say that that interpretation was entirely wrong.

However, this person's desire to plead guilty to a quite serious fraud offence was not entertained by the DPP because it did not get the full brief it believed was necessary. ... The result was that we had to prepare a document comprising 23 folios and 92 witness statements before a file could be opened relating to whether someone was going to plead guilty on legal advice to the charge we discussed in the report. For self-evident reasons we must come up with a better solution than that.⁵⁸

⁵⁷ *ibid*, p 20

⁵⁸ *ibid*, p 2

- 1.50 Commissioner Cripps later gave the following evidence on the reasoning offered to him by the ODP and the DPP for requiring a full brief of evidence:

Mr CRIPPS: ... The ... [reason] from the officer of the Director of Public Prosecutions was that there was a fear that someone wanted to plead guilty to an offence that they in fact could not be convicted of on the evidence. I have to say that my professional life has not been riddled with people pleading guilty to offences that they should never have pleaded guilty to.

... That was one reason, and the other reason that the Director of Public Prosecutions himself gave me, and I can see some substance in this, was—well we want to make sure that the offence for which the person is going to plead guilty is the offence for which they should plead guilty and we want to eliminate the fact that they should be facing a far more serious charge. He said that he wanted to have that information so that they could make an assessment of that.

Mr FRANK TEREZINI MP (CHAIR): Can you indicate to the Committee what your attitude is toward that reason?

Mr CRIPPS: Generally speaking, my attitude is that the cheaper and quickest way we can get over this problem, the better. I do not claim to have expertise about the risks associated with somebody pleading guilty to a minor offence when they should plead guilty to the more serious offence, but I know, just from my experience, that plea bargaining is not something that everyone runs away from in New South Wales.

Mr FRANK TEREZINI MP (CHAIR): I anticipate the fear would be that the facts would disclose an offence higher than the charge.

Mr CRIPPS: That is what the Director of Public Prosecutions said. He wanted to be sure that they did not accept the plea to what might be even a lesser offence that police had begun in the full knowledge of what could be the subject of any charge.

CHAIR: I assume that negotiation [of a new MoU] will involve this topic as well.

Mr CRIPPS: Yes.⁵⁹

Comparative jurisdictions - The Queensland experience

- 1.51 Similar debate around the issue of responsibility for prosecution action following on from investigations by commissions, such as ICAC, can be found in comparable jurisdictions within Australia. In Queensland, for example, the Parliamentary Crime and Misconduct Committee, which oversees the Crime and Misconduct Commission (CMC),⁶⁰ has considered the issue of the respective roles of the CMC and the Office of the Director of Public Prosecutions as part of its three-yearly strategic reviews of the CMC.
- 1.52 The *Crime and Misconduct Act 2001* (CM Act) distinguishes between the CMC's major crime and misconduct functions. The CMC investigates major crime as referred to it by a reference committee and, in the course of performing this function, gathers evidence for the prosecution of offences and the recovery of the proceeds of

⁵⁹ *ibid*, p 9

⁶⁰ The formation of the Crime and Misconduct Commission in 2002 followed the merger of the Queensland Crime Commission (QCC) and the Criminal Justice Commission (CJC) and resulted in both corruption investigation and law enforcement functions residing in the one body.

major crime.⁶¹ It performs its misconduct functions⁶² by, amongst other things, assembling evidence for the consideration of the DPP with respect to prosecution of offences or disciplinary proceedings against individuals (s 49 of the CM Act).

- 1.53 In 2004, as part of an inquiry, the Parliamentary Crime and Misconduct Committee considered the issue of whether the CMC should lay criminal charges *without* seeking prior advice from the DPP and/or undertake the prosecution of misconduct matters.⁶³ The Queensland Department of Justice and Attorney General proposed that the CM Act be amended to enable the CMC to make its own decisions about prosecutions, that is, whether or not criminal charges should be laid. The Department's submission cited the current CMC practice of seeking advice from the DPP before charging a person as having had significant resource implications for the DPP's office and also caused delays.⁶⁴ It was the view of the Commissioner of the CMC that the issue was a matter of principle in separating out the discretion to prosecute from the investigative function; a separation important to the CMC's accountability.
- 1.54 At the time of the inquiry, the CMC and DPP had been discussing a number of measures to improve the situation, including referring more straightforward matters to the Queensland Police Service and possibly obtaining advice from the DPP on the basis of a summary of evidence rather than a full brief. Having examined the issue in detail and following evidence from other key witnesses, the Parliamentary Committee was not satisfied that administrative solutions would address the problems. It recommended amendments to the CM Act so that where the CMC decides that prosecution proceedings should be considered, police officers seconded to the CMC would be responsible for deciding whether to lay charges and, where appropriate, would lay charges with certain exceptions. The exceptions included matters relating to a CMC officer or matters of a class that, because of their nature and seriousness and/or the public office held by the individual concerned, would require referral to the DPP. The matter would then be forwarded to the DPP or Queensland Police

⁶¹ *Crime and Misconduct Act 2001*

s 25 Commission's major crime function

The commission has a function (its crime function) to investigate major crime referred to it by the reference committee.

s 26 How commission performs its crime function

Without limiting the ways the commission may perform its crime function, the commission performs its crime function by--

(a) investigating major crime referred to it by the reference committee; and

(b) when conducting investigations under paragraph (a), gathering evidence for--

(i) the prosecution of persons for offences; and

(ii) the recovery of the proceeds of major crime; and

(c) liaising with, providing information to, and receiving information from, other law enforcement agencies and prosecuting authorities, including agencies and authorities outside the State or Australia, about major crime.

⁶² *Crime and Misconduct Act 2001*

s 33 Commission's misconduct functions

The commission has the following functions for misconduct (its misconduct functions)--

(a) to raise standards of integrity and conduct in units of public administration;

(b) to ensure a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way, having regard to the principles set out in section 34.

⁶³ Parliament of Queensland, Parliamentary Crime and Misconduct Committee, *Three Year Review of the Crime and Misconduct Commission*, Report 64, 15 March 2004, p 37

⁶⁴ *ibid*

Service for prosecution. The operation of the exemption category would be a matter for further monitoring by the Committee.⁶⁵

- 1.55 In its next three-yearly strategic review of the CMC, the Parliamentary Committee reported that the Government had not been persuaded that a legislative amendment was necessary to address the issues canvassed in the Committee's previous inquiry. The CMC's position on the matter had changed and it now held the view that the issue of the matters to be referred to the DPP could be dealt with on an administrative basis by way of a protocol. An amendment to enable police officers seconded to the CMC to lay charges in appropriate cases was considered unnecessary⁶⁶ as an amendment to s.255 of the CM Act, in connection with cross-border legislative changes, had put beyond doubt that police officers seconded to the CMC retain all of their powers as individual police officers.⁶⁷ The Parliamentary Committee concluded that the matters raised in its previous inquiry could be governed by administrative arrangements, the operation of which it would closely monitor.⁶⁸
- 1.56 It is important to bear in mind when drawing comparisons between the ICAC and CMC situations that there are significant differences between them. For instance, unlike the CMC, the ICAC does not perform major crime functions associated with crime commissions. For this reason, direct parallels may be inappropriate. Whether or not there would be any merit in considering the potential use of a summary of evidence, or enabling NSW police officers seconded to the ICAC to exercise a discretion in relation to laying charges for certain criminal offences arising from ICAC investigations, would seem to be matters needing closer examination and advice from the DPP and ICAC as part of a full Committee inquiry, failing an administrative resolution of the issues by the ICAC and the DPP.⁶⁹

⁶⁵ *ibid*, pp 42-43

⁶⁶ Parliament of Queensland, Parliamentary Crime and Misconduct Committee, *Three Year Review of the Crime and Misconduct Commission*, Report 71, 9 October 2006, p 55

⁶⁷ Section 255(5) of the CM Act states:

Without limiting section 174(2), a police officer seconded to the commission under this section continues to be a police officer for all purposes and to have the functions and powers of a police officer without being limited to the performance of the commission's functions.

Example for subsection (5)—

A police officer seconded to the commission may exercise the powers of a police officer under the *Police Powers and Responsibilities Act 2000* for an investigation of alleged misconduct involving a relevant offence as defined in section 323 of that Act.

⁶⁸ Parliamentary Crime and Misconduct Committee, Report 71, p 56

⁶⁹ The following section of the ICAC Act appears to mirror that found in the Queensland legislation concerning the powers of seconded police officers with the CMC:

s.101B Commission investigator who is seconded police officer to have all powers of NSW police officer

- (1) A Commission investigator who is a seconded police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Service Act 1990* has and may exercise under any law of the State (including the common law and this Act).

Conclusion

Delay in commencing prosecutions

- 1.57 The evidence given by ICAC at the hearing into the ICAC Annual Report for 2005-2006, along with the previous examples given of excessive delay as detailed in the annual report and the findings of the McClintock report, has led the Committee to conclude that current initiatives to address issues of delay have not been wholly successful.
- 1.58 Problems with the assembling of admissible evidence seem to be a substantial factor contributing to the delay in commencing proceedings. While recent initiatives⁷⁰ seem to have improved the assembling of admissible evidence⁷¹, there is room for significant improvement in reducing delay in prosecutions and improving co-operation between ICAC and the DPP.
- 1.59 It is clear from the evidence presented to the Committee that there are numerous practical, jurisdictional and philosophical issues to be resolved between the ICAC and the DPP in order for the two agencies to work together in a timely and effective way.
- 1.60 The Committee understands that ICAC is not satisfied with the terms of its current MoU with the ODPP, and that the Commissioner has recently met with the DPP to discuss ways in which the MoU might be improved. These discussions included:
- whether a full brief of evidence needs to be prepared by the Commission in cases where an indication has been given that the subject person wants to plead guilty;
 - whether it would expedite consideration of ICAC briefs for early consultation to take place between ICAC officers and DPP officers about what charges might result from an investigation and the material needed to base a prosecution; and
 - whether it would be more appropriate for charges to be commenced at first instance in the name of the DPP, rather than in ICAC's name.⁷²
- 1.61 The ICAC has indicated that the DPP has agreed that it is timely to review the MoU, and that a senior DPP officer has been appointed to meet with the ICAC's Deputy Commissioner to discuss how the MoU can best be amended.⁷³ While recognising the significant problems with the current arrangements between the ICAC and DPP, Commissioner Cripps indicated that he would like time to try and sort out problems concerning the MoU with the DPP before calling on the Committee's assistance.⁷⁴

⁷⁰ Including: collection of admissible evidence as part of the investigation process; placing more emphasis on assembling evidence that meets the evidentiary standards for prosecution; increasing the role of ICAC lawyers in the investigation process to advise on what evidence will be needed to prosecute; and liaising 'along the way' with the DPP to prepare satisfactory brief of evidence.

⁷¹ For example, there seems to have been a significant drop over time in the DPP indicating insufficient evidence to prosecute. In the 2001-2002 Annual Report, there were 16 matters where the DPP indicated that there was insufficient evidence to prosecute, in the 2003-2004 Annual Report there were 6 matters, whereas in the 2005-2006 Annual Report, there were two instances.

⁷² ICAC, answers to questions on notice, 3 September 2007, question 12, p 10

⁷³ *ibid*, question 12, p 10

⁷⁴ Transcript of proceedings, 11 September 2007, p 13

- 1.62 In the course of the hearing, the ICAC also indicated that they would, after consultation with the DPP, consider putting more information in future annual reports on the delay between the date when an investigation report is finalised, when the brief is sent to the DPP, and when final advice is received from the DPP as to whether or not there is sufficient evidence to prosecute. The following exchange took place on the practicalities of including this information:

...

Mr WALDON: ... I mean, sometimes they obviously send us requisitions and sometimes it takes us time to respond to those requisitions, so it is not just always a case of the brief going to the Director of Public Prosecutions and then at some later stage proceedings being commenced. There is a toing and froing between both organisations with requisitions coming, us answering requisitions, and maybe further requisitions coming. So maybe a table that is just too simple that just looks at when the brief went to the Director of Public Prosecutions and when prosecutions commence might be a little bit too simplistic. It does not give the overall picture of what has gone on in between. Some of the delay may be due to the Director of Public Prosecutions, but some of it may well be due to us because we have not been able to resource the requisitions as appropriately as we would like.

CHAIR: Would you consider putting in the delay from the Director of Public Prosecutions and also the delay in chasing up the requisitions?

Mr WALDON: I think we could take that into consideration. I think it might turn out to be a complicated table.

Mr CRIPPS: I would ask that the Committee bear in mind that this is one of the main things we are trying to avoid for the future with this meeting that the deputy will have with the nominee of the Director of Public Prosecutions.⁷⁵

- 1.63 The Committee is of the view that that placing such information in the public domain is an appropriate way to facilitate formal, ongoing scrutiny of this aspect of ICAC's operations and its interactions with the DPP.
- 1.64 The Committee recognises that ICAC has a limited role in relation to the subsequent criminal or disciplinary proceedings arising from its investigations, with the assembling of admissible evidence for prosecution playing a secondary role to its primary function of investigating and preventing corruption. ICAC sits outside the traditional mold of a crime investigation agency. ICAC is not a law enforcement agency and this can present particular problems when it conducts investigations that reveal criminal conduct.
- 1.65 An inherent tension exists between the ICAC's primary function of investigating corrupt conduct and its function of assembling admissible evidence. Many issues raised by the ICAC at the public hearing with the Committee reflect this tension. The Committee believes that it is in the public interest to ensure that the ICAC assembles admissible evidence, and where criminal conduct is identified, appropriate action is taken and individuals prosecuted. Whilst the Committee understands that it is not the role of ICAC to prosecute, and it is not the role of the DPP to investigate, effective and efficient co-operation between the ICAC and the DPP is essential so that appropriate prosecutorial action can be taken with minimal delay. Prosecution action

⁷⁵ *ibid*, pp 10-11

should be instituted as quickly and effectively as possible. The Committee strongly encourages ICAC and the ODPP to work together to create a more efficient system within the existing limitations.

Memorandum of Understanding

- 1.66 The Committee intends to monitor the outcome of the discussions to be held between the Office of the DPP and the Deputy Commissioner of the ICAC concerning the Memorandum of Understanding between the DPP and ICAC. The protracted history of previous efforts to resolve the issues outlined in this report in relation to prosecution action following an ICAC investigation makes a timely resolution of the issues raised by the Commissioner to be a matter of priority.
- 1.67 The Committee intends to review the progress made in arriving at a new MoU six months from the publication of this report. At that stage, the Committee will request an update from the Commissioner on the progress made in respect of negotiations between the ICAC and the Office of the DPP on the operation of the MoU.
- 1.68 To date, the Committee has heard evidence on the issues from the Commissioner of the ICAC in the course of exercising its monitoring and review role in respect of the Commission. Obviously, the Committee would be keen to consult with the Director of Public Prosecutions to hear that Office's perspective on the operation of the MoU and related issues, and to obtain advice on the current situation regarding prosecution action arising from ICAC investigations.
- 1.69 Failing a new MoU being negotiated between the ICAC and the DPP, the Committee will consider conducting a full inquiry to resolve the issues, commencing with a discussion of the legislative options presented thus far. The Committee would consider taking evidence from the DPP's office, the NSW Police Force, ICAC and representatives of Department of Premier and Cabinet as key policy stakeholders. Other interest groups that may be called to give evidence include the Bar Association, Law Society and Council for Civil Liberties. Part of such an inquiry could involve research into comparable jurisdictions to identify other possible remedies to the problems identified. Following the inquiry, the Committee would report to Parliament recommending any legislative amendments it considers necessary to resolve these issues.

Accountability measures

- 1.70 The Committee's report notes the initiatives that have been taken previously to improve the quality and timeliness of admissible evidence assembled by the ICAC. The Committee is particularly concerned to ensure that its monitoring and review of this facet of ICAC's operations is conducted as transparently as possible and that the ICAC gives as full a public account as is possible of the outcomes arising from its investigations and its interactions with the DPP's office in relation to prosecution action.
- 1.71 On the question of delays between the submission of a brief of evidence by the ICAC to the ODPP and the DPP's decision in a matter, the Committee notes that in some instances the delays involved have been considerable. In the case of Operation Muffat the ICAC indicated that the delays were regrettable: a brief of evidence had

been sent to the DPP in August 2001; several requisitions from the DPP were received during the period from 2002 until 2005; and the DPP's final advice was received by ICAC in September 2005. More than four years had elapsed from the date that ICAC's initial brief had been sent to the DPP on 9 August 2001 until the DPP's final advice.⁷⁶

- 1.72 The Committee proposed to the Commissioner that it would be desirable for there to be a public account of this aspect of the ICAC's operations, for example, by placing such information in the ICAC Annual Report. The Commissioner has indicated that this is a matter on which he will consult with the DPP. The Committee wishes to be advised by the ICAC of any impediments to the inclusion of such information in its annual report. At a minimum, the Committee is desirous of receiving statistical information regarding delays, and any associated explanatory material, on an annual basis as part of its examination of the Commissioner in relation to each ICAC Annual Report.

Assembling of additional information required by the DPP following an ICAC investigation

- 1.73 As noted earlier, the ICAC Commissioner identified the assembling of additional information requested by the DPP after the conclusion of an ICAC investigation as an area that creates some difficulties for the Commission. The Committee hopes that the operation of a new MoU may reduce the extent to which it is necessary for the ICAC to conduct further investigations after the conclusion of an inquiry, for the purpose of meeting requisitions by the DPP. Better liaison between these two bodies throughout the course of an ICAC investigation may lead to improvements in the preparation of briefs by the ICAC, thereby minimising the extent to which further investigation may be required.
- 1.74 In the event that a new MoU does not reduce the extent and number of requisitions from the DPP, the Committee will consider whether legislative amendments are necessary. In doing so, the Committee would endeavour to clarify the exact nature of the requisitions to ICAC for additional information from the DPP. For example, straightforward, limited requests from the DPP, such as revisiting the statement of a witness or clarifying evidence already obtained, would be more acceptable and in keeping with ICAC's functions than requests that involve ICAC opening up completely new lines of investigation.
- 1.75 The Committee has identified provisions found in similar statutes in other jurisdictions that deal with this issue. However, reliance on such provisions by the ICAC would be a significant step that the Committee hopes may not be necessary if improvements are made to the operation of the MoU between the ICAC and DPP.

⁷⁶ ICAC, answers to questions on notice, 3 September 2007, questions 13(a) & (b); also see attachment C.

REVIEW OF A MATTER WHERE A PERSON HAS BEEN ACQUITTED

- 1.76 The ICAC Act makes no provision for a merits appeal against ICAC's administrative determination that a person has engaged in corrupt conduct. However, under section 74 of the ICAC Act the Commission has the authority to review its findings in regard to a previous matter.⁷⁷ ICAC currently publishes whether a prosecution has resulted in an acquittal in its Annual Report, as part of the table for detailing progress on prosecutions.⁷⁸
- 1.77 During the course of the hearing, the Committee discussed with the Commissioner the issue of the ICAC reviewing findings of corrupt conduct where new evidence comes to light after the finding has been made, or a person is acquitted of the offence in a subsequent prosecution.
- 1.78 ICAC has been asked by the Committee about this issue on a number of previous occasions. The previous Committee asked the ICAC about this issue in its examination of the ICAC Annual Report for 2002-2003. The then Commissioner [Ms Moss] stated:

It [a formal review of a finding of corrupt conduct in light of an acquittal] has never been done to my knowledge. I do not see it being reviewed unless ... there is clearly fresh evidence ... I do not know that we would have the resources or whether in fact it would be best use of our resources to review every single Local Court decision that has not upheld the prosecutions ..., if there was actually fresh evidence that would be a different issue ... [I]n our complaint handling and assessments and investigations we do have people come back to us who say that they think they have new evidence. We look at it. Sometimes we think it is and other times they are just putting forward exactly the same information in a different vein. It is very much dealt with on a case-by-case basis but I am not aware of any commissioner overturning a matter we thought appropriate to go to the DPP.⁷⁹

- 1.79 Commissioner Cripps also was asked about this issue by the previous Committee in its examination of the ICAC Annual Review for 2004-2005:

Commissioner CRIPPS: [There is a] ... difference between our function and the criminal justice function and the admissibility of what evidence is there, the onus of proof, and the fact that it [the collection of admissible evidence] is secondary function in any event.

... I made it clear at the conference last year ... where something like this was raised, that ... I was fairly confident that if someone wanted to come back to the Independent Commission Against Corruption and say, "Look, these events have happened. I want you now to reassess whether you are going to maintain that finding", I would deal with it on whatever application came forward ...

...

⁷⁷ Section 74, ICAC Act

⁷⁸ The table appears in the Appendix of the ICAC Annual Report, see Table 19, pp 97-102.

⁷⁹ Transcript of proceedings, 23 February 2004, pp 37-38

The Hon. KIM YEADON (CHAIRMAN): ... I wonder how widely it is known so that generally people understand they are able to do that.

Commissioner CRIPPS: The short answer is I do not know. I would not have a problem including such a thing in an annual report if this Committee thought that were appropriate to be done... I would, I suppose, make it clear that because people survive a criminal charge, the gravamen of which was a finding of corrupt conduct, it would not follow that the Commission would change its view about the finding it had made ...⁸⁰

- 1.80 During the hearing, the Chair questioned the Commissioner on whether he had given any further thought to this matter. He replied:

Mr CRIPPS: No, I do not think I have changed my mind from what I said on that last occasion, but this ties in with what I have talked about, the public perception of what our role is. For example, I do not think anybody suggests that if a doctor is struck off the role or a lawyer is struck off the role for improper conduct and then he is charged and found not guilty, that the disciplinary body should not reverse the decision, because it is viewed plainly as an administrative act in the interest of the public. It is not meant to punish him. If you strike people off it is not to punish them, it is to protect the public. In a sense, that is what we are doing with corruption. So, it is in that context that I think it largely should remain the same. Other people may have a different view.

I have also expressed this view, that although I have seen statements along these lines, "Well, there was a stinging finding of corrupt conduct by the commission and there was an acquittal of a person who was later charged, why is the commission leaving it that way?" We have the jurisdiction, in my opinion, to revisit any decision we have made. If it turns out in the future that we become aware of reliable and relevant information that demonstrates we have made a mistake, I hope we would rectify that mistake. To date, although people have complained about the probability, no-one has asked us to reverse that decision.

CHAIR: I hear what you say, Commissioner, but it is not solely a mistake on your part, but other information that may come to you.

Mr CRIPPS: No, that is right. Something may happen that we did not know and had we known we might not have come to that conclusion, but nobody has done it yet.

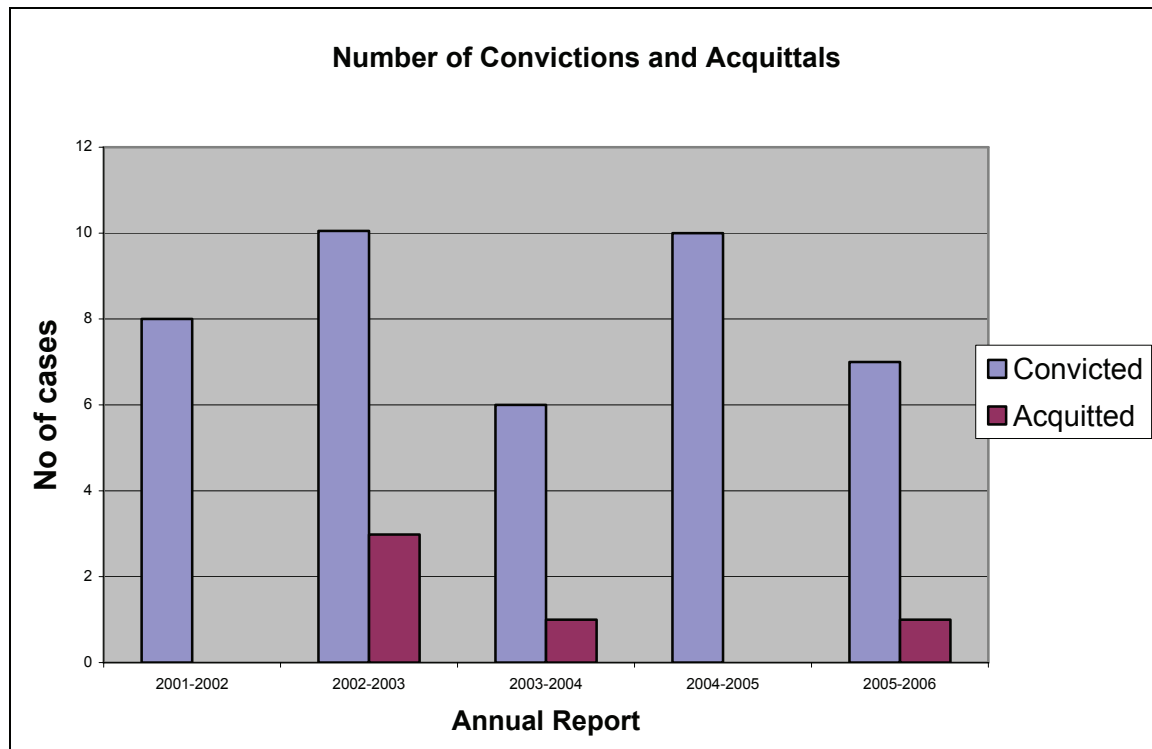
CHAIR: Do you think you would be amenable to having something like that kind of information included for the public somewhere?

Mr CRIPPS: I suppose they ought to know it. I do not know that I want to encourage everyone to keep asking us every year to revise our earlier decision. I think they know it. They elect not to advance it because they can become potential victims without having to do anything to redress the issue. Whereas, I think people would know if something turned up that was a mistake, they could come back to us.⁸¹

- 1.81 In order to inform itself on this issue, the Committee has examined the levels of acquittals as opposed to convictions over the past five ICAC Annual Reports in order to determine whether there have been a high number of acquittals (see chart below). The Committee found that the level of acquittals seems to be quite low.

⁸⁰ Transcript of proceedings, 4 August 2006, pp 24-25

⁸¹ Transcript of proceedings, 11 September 2007, pp 21-22



In interpreting this chart the following notes are provided by way of explanation:

Convictions

1. The number of convictions include two instances (one in 2001-02 financial year, and one in the 2004-05 financial year), where matters were successfully prosecuted that did not arise from formal investigations.

Acquittals

1. The information provided in the ICAC annual report for 2002-2003 indicated that three acquittals in the 2002-2003 financial year were a result of:
 - a. magistrate exercising discretion under s.90 Evidence Act⁸² to exclude evidence and case was dismissed;
 - b. the case was dismissed.
 - c. the offences were proven, but no conviction was recorded (conviction discharged pursuant to section 10 of the Crimes (Sentencing and Procedure) Act)⁸³.

⁸² Section 90 'Discretion to Exclude Admission' of the *Evidence Act 1995* provides:

In a criminal proceeding, the court may refuse to admit evidence of an admission, or refuse to admit the evidence to prove a particular fact, if:

- (a) the evidence is adduced by the prosecution, and
- (b) having regard to the circumstances in which the admission was made, it would be unfair to a defendant to use the evidence.

⁸³ Section 10 of the *Crimes (Sentencing Procedure) Act 1999* provides:

- (1) Without proceeding to conviction, a court that finds a person guilty of an offence may make any one of the following orders:
 - (a) an order directing that the relevant charge be dismissed,
 - (b) an order discharging the person on condition that the person enter into a good behaviour bond for a term not exceeding 2 years,
 - (c) an order discharging the person on condition that the person enter into an agreement to participate in an intervention program and to comply with any intervention plan arising out of the program.
- (2) An order referred to in subsection (1) (b) may be made if the court is satisfied:
 - (a) that it is inexpedient to inflict any punishment (other than nominal punishment) on the person, or
 - (b) that it is expedient to release the person on a good behaviour bond.
- (3) In deciding whether to make an order referred to in subsection (1), the court is to have regard to the following factors:
 - (a) the person's character, antecedents, age, health and mental condition,

2. The ICAC Annual Report for 2003-2004 indicates that the acquittal in that year was a result of the case being dismissed, and the DPP withdrawing from one of the charges. This case resulted from an investigation completed in August 2000.
3. The recent acquittal in the 2005-2006 financial year was a result of a not-guilty finding. This case resulted from an investigation completed in December 2001.

Committee's consideration of the issue

- 1.82 The Committee recognises that findings of corrupt conduct do not have legal ramifications, and are not criminal findings of guilt. However, the Committee is of the view that a finding of corrupt conduct against an individual is a serious matter. As the ICAC has noted previously,

It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there is no right of appeal against findings of fact made by the ICAC nor, excluding error of law relating to jurisdiction or procedural fairness, is there any appeal against a determination that a person has engaged in corrupt conduct. This situation highlights the need to exercise care in making findings of corrupt conduct.⁸⁴

- 1.83 Where new evidence comes to light after an investigation has been completed that would have affected a finding of criminal conduct, the Committee believes there is a strong natural justice imperative that the ICAC revisit its finding of corrupt conduct.
- 1.84 The Committee supports the ICAC's willingness, where appropriate, to review a finding of corrupt conduct if a person were to apply to the Commission to have the finding re-assessed in light of new evidence. The Committee notes the previously quoted comments of the Commissioner on this issue:

Mr CRIPPS: No, I do not think I have changed my mind from what I said on that last occasion, but this ties in with what I have talked about, the public perception of what our role is. For example, I do not think anybody suggests that if a doctor is struck off the role or a lawyer is struck off the role for improper conduct and then he is charged and found not guilty, that the disciplinary body should not reverse the decision, because it is viewed plainly as an administrative act in the interest of the public. It is not meant to punish him. If you strike people off it is not to punish them, it is to protect the public. In a sense, that is what we are doing with corruption. So, it is in that context that I think it largely should remain the same. Other people may have a different view.

I have also expressed this view, that although I have seen statements along these lines, "Well, there was a stinging finding of corrupt conduct by the commission and there was an acquittal of a person who was later charged, why is the commission leaving it that way?" We have the jurisdiction, in my opinion, to revisit any decision we have made. If it turns out in the future that we become aware of reliable and relevant information that demonstrates we have made a mistake, I hope we would rectify that mistake. To date, although people have complained about the probability, no-one has asked us to reverse that decision.

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- (b) the trivial nature of the offence,
 - (c) the extenuating circumstances in which the offence was committed,
 - (d) any other matter that the court thinks proper to consider.

⁸⁴ ICAC, *Investigation into Sydney Ferries*, October 1999, http://www.icac.nsw.gov.au/files/html/pub2_64i.htm

CHAIR: I hear what you say, Commissioner, but it is not solely a mistake on your part, but other information that may come to you.

Mr CRIPPS: No, that is right. Something may happen that we did not know and had we known we might not have come to that conclusion, but nobody has done it yet.

CHAIR: Do you think you would be amenable to having something like that kind of information included for the public somewhere?

Mr CRIPPS: I suppose they ought to know it. I do not know that I want to encourage everyone to keep asking us every year to revise our earlier decision. I think they know it. They elect not to advance it because they can become potential victims without having to do anything to redress the issue. Whereas, I think people would know if something turned up that was a mistake, they could come back to us.⁸⁵

Conclusion

- 1.85 The Committee has reached the view that this area is an important one for ongoing discussion and monitoring. The Committee's report notes the potential for an individual to be acquitted for a criminal offence arising from an ICAC investigation but for the ICAC's finding regarding their corrupt conduct to remain. Preliminary research suggests that the incidence of such acquittals has declined significantly in recent years. However, the Committee will maintain a watching brief on the rate of acquittals, the reasons behind each acquittal and the systemic response made by ICAC to such cases.

⁸⁵ Transcript of proceedings, 11 September 2007, pp 21-22

Chapter Two - Questions on notice

EXAMINATION OF THE ICAC ANNUAL REPORT 2005-06 QUESTIONS ON NOTICE

Complaint handling and case management
Question
<p>1. The Annual Report at p.67 indicates that key information technology initiatives during 2005-06 included improvements in the complaint handling and case management system, and planning for a replacement system.</p>
<p>(a) What improvements will be achieved with the new system?</p> <p>Answer</p> <p>The ICAC's current complaint handling and case management system (ICS) was developed in-house and has been used since 1992-93. ICS has been through three major upgrades with the most recent implemented in 2004. The system is written in Powerbuilder 6.5.1, which is now an outdated technology and, as a result, the system has become increasingly complex to modify to meet operational demands of the ICAC.</p> <p>The Commission undertook a feasibility analysis of replacing ICS with a new and more efficient complaint handling and case management system. A business case was developed that proposes the following improvements:</p> <ul style="list-style-type: none"> ▪ enhanced and configurable security features to remediate security and audit trail concerns ▪ consolidated and centralised data repository to minimise data inaccuracies and multiple entries in different sources and assist in streamlining processes, such as the preparation of briefs of evidence for submission of case files to the Director of Public Prosecutions ▪ robust and integrated case management processes, including the integration of risk management tools into the system ▪ increased intelligence and investigative analytics capabilities, e.g. linking common or related data/information to improve investigation capacity and reporting of more complex cases ▪ increased flexibility to configure user-driven, legislation-driven or process changes.
<p>(b) What level of funding is anticipated as being necessary to support the new system?</p> <p>The Commission's budget submission to NSW Treasury, supported by a detailed business case, sought total capital funding of \$927,000 for the new system. The Government allocated this additional funding to the Commission for the 2007-08 financial year. Once implemented, the annual system software maintenance costs are estimated at \$120,000 per year.</p>

(c) What consultation, if any, occurred with the Office of the Inspector about these changes and the proposed new system?

The Commission did not consult with the Inspector of the ICAC on the development of its budget submission to Government. The Inspector will be briefed on the new system features and requirements as the system implementation project progresses through 2007-08.

Investigations and outcomes

Question

2. The Annual Report highlights ICAC's investigations into corrupt activity within regulatory and licensing systems, and its corruption prevention work in developing guidelines for managing risk in occupation licensing and accreditation processes. To what extent will this area remain a focus for the ICAC in the coming year?

Answer

In December 2005 the ICAC published two investigation reports into regulatory and licensing systems: *Report on investigation into schemes to fraudulently obtain building licences (Operation Ambrosia)* and the *Report on investigation into safety certification and the operation of the WorkCover NSW Licensing Unit (Operation Cassowary)*. In both reports the Commission recommended significant reforms to the licensing system.

The Guidelines for managing risk in occupational licensing and accreditation processes, referred to in the ICAC Annual Report 2005-2006 on p. 53, were developed partly as a response to these investigations and to make the corruption prevention messages contained in the reports available to a wider audience. The Guidelines were published in December 2006.

The ICAC recognises that regulatory and licensing systems are highly vulnerable to corruption and the Commission will continue to utilise opportunities arising in its investigative work to help agencies address these risks. In 2006/2007 the Commission investigated two matters (Operation Pelion and Operation Sirona) involving corruption in licensing or regulatory functions. The report on Operation Pelion has since been released and contains 13 corruption prevention recommendations. A report on Operation Sirona is now being finalised.

Question

3. The ICAC has 3 levels of investigations - preliminary, category 2 and category 1. Could you provide details as to the internal guidelines or criteria used by the ICAC to assist in the categorisation of investigations?

The Committee understands that the categorisation is based upon the level of seriousness and the systemic nature of the corrupt conduct under investigation, and the extent of ICAC's

powers and resources involved.**Answer**

The ICAC committee that provides strategic direction on investigations, the Strategic Investigation Group (SIG) has established criteria for categorisation and escalation of matters.

During 2006-07, the Investigation Management Group, as SIG was then known, reviewed the three categories of investigations – Category 1, Category 2 and Preliminary Investigations. As a result of that review, the Group agreed to revise the categorisation of matters from three categories to two. Since then, investigations have been classified as either preliminary investigations or investigations.

The ICAC Assessment Panel may categorise a matter as a "preliminary investigation" where the ICAC's formal powers will be used or other investigative inquiries will be undertaken that justify classification of the matter as a preliminary investigation.

To escalate a matter to the status of "investigation", the matter must disclose sufficient evidence or reliable information to suggest the occurrence of corrupt conduct justifying further investigation. Additionally, one or more of the following factors must be present:

- the alleged corrupt conduct is serious
- evidence of bribery or some other serious criminal offence
- the systemic nature of the established conduct and/or evidence which suggests the possibility of a corrupt network
- the matter involves/will involve significant cross-divisional use of ICAC resources
- compulsory examinations or a public inquiry are likely to be held
- the complexity of the matter, including complex financial and interconnected transactions
- the need to use covert methodologies, requiring exercise of the ICAC's formal powers.

The change of name for the oversight group for ICAC investigations (referred to above) was a result of consideration of the group's role at the ICAC's recent Executive Planning Days. The new name, Strategic Investigation Group, reflects a more strategic approach to the oversight of corruption investigation, prevention and education.

Question

- 4. The Committee notes from the 2001-02 Annual Report, that there are a number of implications for the management of investigations depending on their categorisation. For example, staff of both the Legal Division and the Corruption Prevention, Education and Research Division are formally involved in all Category 1 investigations. Also, investigation plans are required at the commencement of all Category 1 and Category 2 investigations to establish clear objectives and timeframes, identify risks and risk treatments.**

Are the investigation management practices currently employed by the ICAC the same as those noted in 2001-02?

Answer:

As noted above, investigations are no longer divided into category 1 and 2 investigations, the categories now being investigations and preliminary investigations. However, the practice of close cooperation between divisions that commenced in 2001-02 is still an important part of the Commission's work. The investigation management practices remain basically as they were in 2001-02, although there has been some modification of the lines of command and administrative structure within the Investigation Division.

A lawyer from the Legal Division is assigned to each investigation and preliminary investigation. Officers from the Corruption Prevention, Education and Research Division are also assigned to each investigation and are assigned where appropriate to a preliminary investigation. These officers work in a multi-disciplinary team environment with ID officers, including investigators, financial and intelligence analysts, surveillance and technical officers and support staff.

All investigations are conducted in accordance with an investigation plan submitted to the Strategic Investigation Group for approval. This plan provides:

- a description of the investigation, including principal persons/organisations of interest
- the allegation(s) of corrupt conduct
- details of the affected persons/organisation
- related intelligence/information
- the scope and purpose of the investigation
- the strategies/planned activities
- a risk assessment.

Question

5. Does the Commissioner anticipate that the reviews undertaken in relation to ICAC's surveillance and intelligence capacity will lead to significant changes in the use of covert investigative techniques by the ICAC?

Answer

The Commission did not significantly change the use of covert investigative techniques as a result of two reviews into its surveillance and intelligence capacity.

The reviews were undertaken to ensure that the best surveillance industry and law enforcement standards were in place and that the Commission was:

- resourced sufficiently in terms of both staffing and equipment
- providing adequate training in physical and technical surveillance.

As a result of the reviews, recommendations were made about:

- staffing numbers
- storage and continuity of surveillance product (evidence)
- standard operating procedures
- liaison with Commission investigators
- equipment acquisitions
- workplace location
- training.

The reviews highlighted the desirability of increased self-sufficiency in technical surveillance and limited reliance on other agencies for equipment and/or staffing. This is being addressed through the purchase of equipment and better use of resources.

Question

6. Table 22 provides a progress report on the implementation of recommendations for reform arising from ICAC investigations (p.103). The table indicates that the Department of Housing had addressed 11 of the 16 recommendations (i.e. 69%) arising from the Commission's report on its investigation into the handling of applications for public housing (May-03). Are there any particular recommendations that have yet to be implemented by the Department and, if so, why is this the case?

Answer

Since the 2005-06 Annual Report, the Department of Housing has provided the ICAC with a further progress report on the implementation of recommendations from this investigation. In October 2006, the Department reported that all the recommendations had been fully or partially implemented. In some cases full implementation depended on broader, long-term initiatives across the Department about the assessment and allocation of housing, such as the Reshaping Public Housing Initiative. The progress report can be found in Attachment A.

Attachment A:

Progress report submitted by Department of Housing in October 2006 on implementation of recommendations from *Investigation into the handling of applications for public housing by an officer of the Department of Housing in May 2003*. Source: www.icac.nsw.gov.au

Question
<p>7. What is the recommendation that has yet to be addressed by the Rail Infrastructure Corporation in respect of the investigation into matters relating to Menangle Bridge (p.103)?</p>
<p>Answer</p> <p>The recommendation relating to the Rail Infrastructure Corporate (RIC) was "that the RIC review its policies and procedures on briefing the Minister to ensure that there is a clear understanding of what matters the Minister should be informed [about] and to ensure the accuracy of any information so provided". In May 2006, the RIC advised that "they maintain an issues register to manage communication with the Minister's Office and that they intend to review their policy and procedure for informing the Minister's Office following an accreditation process in 2006-07". See progress report in Attachment B. The Commission has not subsequently received any further updates on implementation. It should be noted that the RIC has now been amalgamated with State Rail to form Railcorp.</p> <p><i>Attachment B:</i></p> <p>Progress report submitted by the Rail Infrastructure Corporation in May 2006 on implementation of recommendations from <i>Investigation into the conduct of the Rail Infrastructure Corporation and others in relation to Menangle Bridge</i> in September 2003. Source: www.icac.nsw.gov.au</p>

Funding and resources
<p>Question</p>
<p>8. In the Commissioner's Foreword to the 2005-06 Annual Report the comment is made that ICAC must have the resources needed to conduct its functions efficiently.</p>
<p>(a) Was Government funding adequate for the year under review?</p> <p>Funding resources for the Commission were considered adequate for 2005-06. While the Commission was required to meet savings targets similar to those imposed on other Government agencies, it has been able to introduce efficiency measures to support its funding requirements. It has entered into shared corporate services arrangements with the Health Care Complaints Commission and all public inquiries and compulsory examinations in 2005-06 were presided over by the Commissioner or Deputy Commissioner, rather than engaging external Assistant Commissioners. In-house lawyers are also now being appointed to act as counsel assisting in some compulsory examinations or public inquiries, saving the cost of engaging private counsel.</p>

(b) Were there any significant programs or initiatives that did not commence due to inadequate resources?

No significant programs or initiatives were deferred due to limited funding resources. However, priority is given to investigation work over other activities to ensure the Commission is delivering a rigorous program of investigating and exposing corruption.

Prosecutions arising from ICAC investigations (pp.97-103)**Question****9. What is the status of the matters before the courts in respect of individuals prosecuted as a result of information obtained from ICAC's Operation Cassandra (Jun-04)?****Answer**

All these matters have now been completed. The outcomes are:

- Alan Fizelle – convicted in October 2006 of offences under section 178BB *Crimes Act 1900* (obtain money by false or misleading statement) and placed on good behaviour bond
- John Webb – convicted in September 2006 of offences under section 178BB *Crimes Act 1900* (obtain money by false or misleading statement) and placed on good behaviour bond
- Alexander Dougall – convicted in October 2006 of offences under section 178BB *Crimes Act 1900* (obtain money by false or misleading statement) and section 87 *ICAC Act 1988* (false evidence) and sentenced to six months imprisonment, suspended
- Andrew Williams – convicted in November 2006 for offence under section 178BB *Crimes Act 1900* (obtain money by false or misleading statement) and fined \$1,000
- Raymond Anthony – convicted in April 2007 for offence under section 87 *ICAC Act 1988* (false evidence) and sentenced to seven months imprisonment, suspended
- Terry Whyte – acquitted in February 2007 of offence under section 87 *ICAC Act 1988* (false evidence)
- Armando Fassone – prosecuted for offences under section 178BB *Crimes Act 1900* (obtain money by false or misleading statement), in October 2006. Mr Fassone made a successful application for a stay of proceedings on the basis that WorkCover had proceeded against him in the Industrial Relations Commission for similar offences under the Occupational Health and Safety Regulation.

Question
<p>10. Status of briefs:</p>
<p>(a) Has the ICAC finalised briefs of evidence in respect of 18 individuals on matters arising from Operation Cassowary (Dec-05) and, if so, what is the status of these matters?</p> <p>Answer</p> <p>Briefs of evidence on all of the Cassowary matters are currently being finalised and will be forwarded to the Director of Public Prosecutions (DPP) as soon as possible. Due to the complexity of this matter, completion of the briefs involves a substantial work commitment.</p>
<p>(b) What is the status of the briefs of evidence provided by ICAC to the DPP in respect of recommendations arising from Operation Unicorn (Apr-05)?</p> <p>Answer</p> <p>Briefs of evidence for all of these matters were forwarded to the DPP on 3 November 2005. On 29 August 2006 the DPP requested additional material including a number of statements. This has required the potential witnesses nominated by the DPP to be contacted to ascertain whether they were prepared to cooperate and, if so, to interview them, prepare draft statements, arrange for them to approve the drafts or make amendments and to get the statements signed. Some statements have been obtained. Work is proceeding on obtaining the remaining statements.</p>
<p>(c) The Annual Report indicates that briefs of evidence in relation to 35 persons arising out of Operation Ambrosia are being prepared. What is the status of those briefs and any prosecutions relating to the investigation, in addition to that of Mr Khalifeh?</p> <p>Answer</p> <p>This investigation involved a relatively large number of people and complex issues requiring the compilation of substantial briefs of evidence. While a number of Commission officers have been involved in compiling and reviewing the briefs, other work commitments have meant that there have been delays in completing all the briefs.</p> <p>A brief of evidence for Faraj Harb was sent to the DPP in April 2005. Briefs of evidence for Raymond Khalifeh were sent to the DPP on 22 November 2005. Briefs of evidence for three other people were sent to the DPP in May 2006. Briefs on 18 persons were forwarded to the DPP on 16 March 2007. A brief of evidence on one other individual was sent to the DPP in July 2007. The 13 remaining briefs are currently being completed and will be sent to the DPP shortly.</p> <p>So far, Mr Khalifeh is the only person against whom prosecution proceedings have commenced. Mr Khalifeh pleaded guilty to three offences under section 178BA of the <i>Crimes Act 1900</i> (obtain benefit by deception) and five offences under section 87 of the <i>ICAC Act 1988</i> (false evidence). On 27 July</p>

2006, Mr Khalifeh was sentenced to 12 months imprisonment with a non-parole period of nine months (all suspended) for each of the section 87 offences and 300 hours of community service orders for the section 178BA offences.

On 11 December 2006 the ICAC received written advice from the DPP that due to the recent death of a witness, Pierre Boutayeh, there was insufficient evidence to proceed with the prosecution of Mr Harb.

Question

11. Has the ICAC received further advice from the DPP in relation to:

(a) Recommendations for considering prosecution of two individuals arising from briefs of evidence prepared following Operation Hunter (Feb-06) (p.102)

Answer

Advice was received from the DPP on 29 March 2006 that there was sufficient evidence to prosecute Joseph Ghanem for an offence under section 112 of the *ICAC Act 1988* (restriction on publication of evidence) and section 90 of the *ICAC Act 1988* (bribery of a witness) and section 178BA of the *Crimes Act 1900* (obtain benefit by deception).

Court Attendance Notices for these offences were served on 30 March 2006.

Mr Ghanem pleaded guilty to all offences and was sentenced on 14 September 2006 to six months' imprisonment for the offence under section 112 of the *ICAC Act*, 12 months imprisonment for the offence under section 90 of the *ICAC Act*, and six months imprisonment for the offence under section 178BA of the *Crimes Act*.

Mr Ghanem appealed the sentences and on 17 January 2007 his convictions were confirmed but sentences varied so that they were suspended upon him entering into a good behaviour bond. On 11 December 2006 the ICAC received advice from the DPP that there was sufficient admissible evidence to prosecute Mr Harb with two offences under section 178BA of the *Crimes Act 1900* and one offence under section 178BB of the *Crimes Act 1900* (obtain money by false or misleading statement).

Court Attendance Notices for these offences were served on 12 December 2006.

On 12 July 2007, Mr Harb pleaded guilty to the two offences under section 178BA of the *Crimes Act*. The DPP withdrew the offence under section 178BB of the *Crimes Act*.

On 30 July 2007 Mr Harb was sentenced to 104 hours of community service for each offence, to be served concurrently.

(b) Recommendations arising from Operation Agnelli (Aug-03), in which case the ICAC appears to have answered the DPP's requisitions in February 2006

Answer

On 25 August 2006 the DPP advised that, given the refusal of Brett Carsburg to provide a statement, there was insufficient available admissible evidence upon which to prosecute Darren Bizzell.

Further requisitions were received from the DPP in August 2006 and February 2007 in relation to Graham Lawrence and John Fitzgerald. These matters are being attended to by the Commission.

Question

12. Is the Commissioner satisfied with the operation of the Memorandum of Understanding (MOU) between the ICAC and the DPP, particularly in relation to the provision of advice by the DPP on criminal charges?

Answer

The ICAC is not satisfied with the terms of the current MOU between the ICAC and the DPP, and the Commissioner recently met with the Director of Public Prosecutions to discuss ways in which the MOU might be improved. Issues discussed included:

- Whether a full brief of evidence needs to be prepared by the Commission in cases where an indication has been given that the subject person wants to plead guilty;
- Whether it would expedite consideration of ICAC briefs for early consultation to take place between ICAC officers and DPP officers about what charges might result from an investigation and the material needed to base a prosecution;
- Whether it would be more appropriate for charges to be commenced at first instance in the name of the DPP, rather than in ICAC's name.

The DPP agreed that it was timely to review the MOU, and has appointed a senior DPP officer to meet with the ICAC's Deputy Commissioner to discuss how the MOU can best be amended.

Question

13. The Annual Report for 2005-06 indicates that in relation to prosecutions arising out of the Aug-2000 report on Operation Muffat (re aspects of the greyhound racing industry), it was found that there was insufficient admissible evidence to proceed against Mr Raymond King.

(a) Does the ICAC know why it took this period of time for a decision to be made on the recommendations made to the DPP re Mr King?

Answer

A brief of evidence was sent to the DPP in August 2001. The ICAC received initial requisitions from the DPP on 21 February 2002 which were answered by the ICAC. Subsequent requisitions were received on 16 October 2002, 16 January 2003, 10 February 2003, 8 April 2003, 21 August 2003, 17 June 2004 and 10 May 2005. These requisitions were also answered by the ICAC. The requisitions required the obtaining of additional statements and enquiries with various potential witnesses. Final advice was received from the DPP in September 2005.

(b) Does the ICAC consider that this is a reasonable period of time for the parties to have waited for a decision on this matter?

Answer

While the Commission accepts that what is considered a reasonable time to obtain a decision from the DPP will vary from case to case depending on a number of factors, the delay in this matter is regrettable. The ICAC has made ongoing attempts to reduce the period of time between submissions of a brief to the DPP and a decision being obtained. It hopes that the recent discussions between the Commissioner and the DPP referred to in the answer to question 12 will help address this issue.

Question

14. Is the ICAC in a position to provide information to the Committee, in similar form to Table 18c on p.96, as to the period of time between the referral of matters by ICAC to the DPP and the DPP's decision on each matter?

Answer

Attachment C contains information on matters current in the 2006-07 period.

Question
<p>15. (a) What is the average period of time taken by the DPP to determine whether or not there is sufficient admissible evidence to proceed with the prosecution of matters arising from ICAC investigations?</p>
<p>Answer</p> <p>The time taken by the DPP to consider each matter varies, depending on the complexity of the matter. The ICAC has not calculated the average time taken by the DPP to provide final advice, although the table in attachment C shows that the time taken in the matters listed ranged from 48 days to 1508 days, depending on the size and complexity of the matters involved.</p>
<p>(b) Is the ICAC aware of how this timeframe compares with decisions by the DPP generally?</p>
<p>Answer</p> <p>The ICAC is not aware of how the time taken by the DPP to provide final advice on ICAC matters compares with time taken for decisions by the DPP generally.</p>
<p>(c) How does this average period compare with the performance statistic in which ICAC completes 82% of its investigations within 12 months?</p>
<p>Answer</p> <p>See answer to 15(a) above. The ICAC does not consider that it is useful to compare the time taken to complete ICAC investigations and the time taken by the DPP to provide final advice on prosecution matters. The ICAC does not consider that the two statistics can be usefully compared.</p>

Role of the ICAC Inspector
Question
<p>16. (a) What has been the overall impact on the Commission's operations and procedures of the legislative amendments made to the ICAC Act in 2005, arising from the review conducted by Mr McClintock?</p>
<p>Answer</p> <p>The review resulted in a number of amendments to the <i>ICAC Act</i>. These included renaming public hearings 'public inquiries' and private hearings 'compulsory examinations', providing additional information about investigations and the time taken to complete them in the annual report, specifying the objectives of the <i>ICAC Act</i>, and confirming the ICAC's independence and accountability.</p>

There has been no major impact on the Commission's operations and procedures as a result of these amendments.

The ICAC reviewed its Operations Manual to ensure that any necessary changes to the Commission's procedures arising from the amendments were identified and incorporated into the ICAC's procedures for the exercise of its statutory powers.

(b) In particular, to what extent has the Commission's practices and procedures changed as a result of the recommendations of the Inspector of the ICAC?

Answer

The Inspector has made recommendations on specific investigation matters, which seem to come within the scope of s.64(2) of the Act as matters the Committee is not authorised to investigate or reconsider. Apart from these, the recommendations by the Inspector have largely arisen from the audits he has conducted in relation to ICAC's compliance with section 12A of the Act and with sections 21, 22, 23, 35 and 54 of the Act. The results of these audits are dealt with in items 17 and 18.

Question

17. The Inspector has advised the Parliamentary Committee that he has concluded it would be more profitable and effective for the Inspectorate to focus on the systemic issues affecting the Commission rather than dealing reactively with complaints.

What response has the ICAC made to the Inspector's report on the audit of ICAC's compliance with s.12A of the ICAC Act 1988?

Answer

Since September 2006, the ICAC has progressively reviewed and revised its mechanisms for approving recommendations by ICAC officers to investigate or discontinue an investigation of a complaint, in order to ensure that complaints that involve serious or systemic corrupt conduct are assessed appropriately. This process has taken into account issues raised by the Inspector in his report on an audit of ICAC's compliance with section 12A of the Act.

A summary of the current review mechanisms (which were in the main drafted or revised by a senior Assessments Section officer working off-line between July-September 2006) is provided below:

Complaint Assessment Checklist

This document was created in October 2006 to assist assessment officers to focus on relevant issues and to ensure a systematic, consistent approach when assessing complaints. A checklist is completed on each new complaint and kept on file.

Assessment Panel Report Template

This document was introduced in October 2006. The purpose of this template is to ensure that assessment officers provide adequate reasons for their recommended course of action in relation to complaints or information received, as well as an analysis of whether a matter is potentially serious or systemic.

Assessment Panel Charter

A revised charter for the Assessment Panel came into effect in June 2006. It sets out the panel's objectives and functions. The panel, which consists of the Deputy Commissioner, three Executive Directors and the Manager, Assessments, convenes twice weekly (through electronic exchange of information). It assesses all recommendations made by assessment officers about how complaints or information received should be handled, except for enquiry matters.

The panel members can endorse the recommendation made by the assessment officer, or recommend an alternative course of action. To achieve a quorum, any recommendation made by an assessment officer must be endorsed by at least two panel members. Any disagreement will be resolved by convening a meeting of the assessment panel. If consensus cannot be reached through such a meeting, the matter is referred to the Commissioner for his consideration and decision.

The decisions of the assessment panel and any comments are recorded in the ICAC's complaints database using decision codes. The Manager, Assessments, conveys the assessment panel's decisions and any comments to assessment officers, who are required to retain a copy on each file.

Assessment Panel Codes

These codes were introduced in September 2006. Use of the codes ensures that the ICAC's database contains a decision and reason code for each complaint, once it has been dealt with by the assessment panel.

Procedure for Handling Sections 53/54 Referrals

A detailed procedure for handling referrals pursuant to sections 53 and 54 of the Act was drafted in July 2006. It sets out relevant criteria for assessing whether a matter should be referred to another agency for investigation and report, as well as providing guidance about reviewing reports received and taking follow-up action after that review.

ICAC Classification of Matters

ICAC's policy for the classification of matters by the Assessments Section was revised in July 2006. It is available to all assessment staff on the intranet, and provides detailed guidance about how complaints should be classified, dealing with protected disclosures, what constitutes an "enquiry", intelligence reports and dissemination matters. It assists assessment officers to properly classify information received by ICAC and to prepare appropriate assessment panel reports.

All of the above mechanisms have been in place for some time now, and are well understood by the staff of the Assessments Section. They will be consolidated in due course into the revised policies and procedures manual for the Assessments Section.

Strategic Investigations Group (SIG)

Another important mechanism for reviewing decision by ICAC officers about investigations is the Strategic Investigations Group (SIG). This group convenes twice monthly and consists of the Commissioner, the Deputy Commissioner, the Executive Directors (except the Executive Director, Corporate Services) and the Manager, Assessments. As well as overseeing investigations being conducted by the Investigation Division, the group monitors assessment matters where a referral under sections 53 and 54 of the Act has been made to an agency. In respect of these matters, an assessment officer updates a schedule prior to the meeting and any recommendations are either endorsed or varied by the SIG.

Any decision to discontinue an investigation that has been referred to ID or to an agency to investigate under sections 53/54 must be made by the SIG.

The ICAC considers that these new processes will address concerns raised by the Inspector that some matters were not being assessed appropriately as serious or systemic corrupt conduct.

Question

18. Has the ICAC responded to the Inspector's recent report on the audit of ICAC's compliance with sections 21, 22, 23, 35 and 54 of the ICAC Act 1988?

Answer

The audit found that some minutes in support of the notices and summonses issued by the ICAC could not be located on relevant files.

In December 2006, prior to finalisation of the Inspector's report, the Executive Director, Legal issued a practice note to all ICAC lawyers requiring filing with the ICAC's Property Section of minutes and

other documentation submitted to the issuing Commissioner/Assistant Commissioner in support of notices or summonses. The aim is to retain these documents with a hard copy of the relevant notice or summons.

This procedure has now been included in the Commission's Operations Manual. This will ensure a hard copy of all these records is readily accessible.

Litigation

Question

19. In February 2006, the Medical Tribunal determined that a record of interview taken by an ICAC officer should be produced (ICAC had received a summons to produce the record in 2005 and had sought to be excused from doing so on the grounds of public interest immunity) (p.104).

What are the implications of this decision for the future operation of the Commission?

Answer

The ICAC does not consider this decision will have any adverse consequence for the future operations of the ICAC.

As a general rule, the ICAC is not required to produce documents in response to a subpoena. Section 111(3) of the *ICAC Act* provides that Commission officers are not required to provide in any court any document or other thing that has come into that officer's possession by reason of or in the course of the exercise of that officer's functions under the *ICAC Act*. An exception is when the document or other thing is required for a prosecution or disciplinary proceeding instituted as a result of an investigation conducted by the Commission.

This matter came within the exception. The record of interview was sought by the defendant in disciplinary proceedings in the Medical Tribunal brought by the Health Care Complaints Commission (HCCC), arising from the ICAC's investigation into various allegations relating to the former South Western Sydney Area Health Service (report published September 2005). The allegation was that a locum doctor at Camden Hospital had falsified patient notes by falsely recording he had examined patients.

The doctor sought access to the record of interview in defending the HCCC proceedings.

The ICAC provided the doctor with a number of pages from the record of interview which the ICAC believed were relevant to the matter. The ICAC was concerned that providing the full record of interview would identify the complainant as an informer, and also took into account the complainant's concerns that if their identity became known they might be victimised. The ICAC was concerned that release of the full record of interview and the potential for such

reprisals might deter individuals from informing on the corrupt conduct of others in the future. In these circumstances, the ICAC sought to resist production on the basis of public interest.

The matter came before his Honour Judge Blanch in the NSW Medical Tribunal on 9 February 2006. His Honour recognised that there were competing public interests, namely the public interest in the administration of justice, protection of the complainant's identity as an informant, and the extent to which she provided information to the ICAC. However, his Honour believed that the credibility of the complainant was likely to be a central issue during the hearing of the substantive matter and the material in the record of interview was of such relevance to the complainant's credibility that to deny the doctor access to the record of interview would deny him a fair hearing.

In terms of the competing public interest in maintaining the confidentiality of informers, his Honour accepted the ICAC's submission that there was a relevant public interest in this case, despite the fact that the complainant was known to the respondent to be an informer in respect of particular matters. However, his Honour was of the view that the public interest in the administration of justice outweighed the public interest in protecting the confidentiality of information provided by an informer. His Honour thus dismissed the public interest immunity claim. At the same time, his Honour indicated that the confidentiality of the complainant and the allegations could be protected to a significant extent by making orders to protect the complainant's identity and preventing publication of any of the complainant's evidence.

The ICAC considered the decision and decided not to appeal. The decision was based on the facts of the particular case and the balancing of competing public interest factors by the presiding officer. The ICAC does not believe any amendments are required to the *ICAC Act* as a result of this decision.

Risk management

Question

20. During 2005-06 approximately 39 risk assessments were conducted in relation to proceedings conducted by the ICAC, i.e. public inquiries and compulsory examinations.

What was the nature of the risks identified in seven of the Commission's proceedings (p.66)?

Answer

The risks identified in the seven proceedings were as follows:

Proceedings 1 and 2 – Operation Hunter

This public Inquiry involved a NSW Local Court staff member on 29 August 2005 and 31 August 2005.

The risk assessment identified that:

- the witnesses had a criminal history and the potential to be violent
- due to the above, a witness who was summonsed could have been a target of violence.

Controls implemented were:

- assigning additional staff with special powers of enforcement to the public inquiry at all times,
- assigned staff included a uniformed Special Constable and the case officer, who was a NSW Police Officer secondee.

Proceedings 3 – Operation Inca

This public inquiry involved officers of the Department of Corrective Services on 25 January 2006.

The risk assessment identified that:

- a witness was under supervision of the Drug Court (not in custody)

Controls implemented were:

- The Commission arranging for the transport of the witness from home to the public inquiry
- Commission officers closely monitoring the witness during the public inquiry.

Proceedings 4 – Operation Cadmus

This compulsory examination involved the management of community service orders on 21 March 2006.

The risk assessment identified that:

- the witnesses had criminal histories, with one witness having the propensity for violence, a lack of respect for authority and, according to intelligence reports, possessed weapons
- the other witness, in addition to having a criminal history and a tendency to become aggressive, had received warnings for intimidation of police and lying to police. The witness was from a family well known to the police and, according to intelligence reports, possessed a firearm, although none was registered under his name.

Controls implemented were:

- fully briefing the Special Constables responsible for security on the associated risks
- keeping photographs of relevant persons at the Security Control Room for means of identification

- using overall coordination of security by Special Constables, together with the case officer and Chief Investigator
- thoroughly screening witnesses on arrival
- equipping a uniformed Special Constable with a duress alarm to summon assistance from the security desk outside the Hearing Room
- security monitoring the witnesses' movements
- monitoring proceedings in the Hearing Room via technical equipment by the Security Officer outside the Hearing Room
- fully securing the hearing room when not in use.

Proceedings 5, 6 and 7 – Operation Cadmus

This public inquiry proceeding was in relation to Operation Cadmus on 10, 11 and 12 April 2006.

The risk assessment identified that:

- the custodial witness appeared before the Hearing with Department of Corrective Services officers
- previously, the witness had created a minor disturbance when the person unexpectedly attended the Commission
- a relative of the witness has a significant history of violent behaviour, although it was considered unlikely that the person in question would attend the inquiry.

Controls implemented were:

- the Commission ensuring the appropriate transfer of the prisoner between the Department of Corrective Services and the Commission
- the Commission security (Special Constables) facilitating and assisting with prisoner escort on arrival at ICAC premises
- providing a secure holding area for the prisoner
- deploying two uniformed Special Constables on duty in the Hearing Room at all times
- ensuring a Commission officer who was a seconded NSW Police Officer was in the vicinity of the prisoner during the Inquiry
- that in preparation of a contingency, all officers were briefed on their role and action required should an incident occur
- a Chief Investigator was present during all proceedings.

Question
<p>21. Table 13 (p.66) in the Annual Report states that during 2005-06 seven hazard reports were lodged. In the case of six of the hazards the risks were controlled and for one hazard the risk was being mitigated to an acceptable level.</p> <p>(a) What is the nature of each hazard and the associated risks requiring control?</p> <p>(b) What measures were taken to control the risks?</p> <p>(c) What is the likelihood of each risk occurring and what is the potential impact each would they have on the operations of the ICAC?</p>
<p>Answer:</p> <p>The hazards identified were occupational health and safety risks relating to the Commission's office environment.</p> <p><u>1. Sliding gate in the basement</u></p> <p>Nature of the hazard:</p> <ul style="list-style-type: none">▪ sliding gate in the basement is a potential safety hazard if its path is obstructed when the gate is in operation. Its mechanism and rail protrude slightly from the floor and are a potential trip hazard. <p>Control(s) implemented:</p> <ul style="list-style-type: none">▪ erecting safety signs alerting personnel to the existence of the sliding gate and the need not to obstruct its path and be aware of its mechanism in the area. Basement is a secure area that is used only as a storage facility and a Commission car park. <p>Likelihood and impact on the Commission's operations:</p> <ul style="list-style-type: none">▪ rare and insignificant. <p><u>2 and 3. Unevenness of carpet</u></p> <p>Nature of the hazard:</p> <ul style="list-style-type: none">▪ carpet was uneven, causing protrusions and creating a potential trip hazard. <p>Control(s) implemented:</p> <ul style="list-style-type: none">▪ area affected was taped down as a short-term measure, followed by replacing the

Control(s) implemented:

- handles replaced.

Likelihood and impact on the Commission's operations:

- rare and insignificant.

7. Men's toilet

Nature of the hazard:

- leak in the men's toilet causing a trip hazard.

Control(s) implemented:

- safety sign placed as a short-term measure, followed by fixing the leak.

Likelihood and impact on the Commission's operations:

- unlikely and insignificant, subject to personal injury occurring.

Question

22. The annual report indicates that risk identification, assessment and control is integrated into all work activity.

(a) How does the Commission monitor the effectiveness of its risk management strategy?

As set out in the 2005-06 Annual Report, the Commission introduced a range of new risk related policies, procedures and guidelines to enhance its ability to effectively manage risks associated with operational and corporate activities. Risk management is an integral part of how the Commission manages its operations. Commencing with its business planning processes at a corporate and divisional level, an annual assessment is carried out of the key risks and control treatments that may impact on achieving corporate goals and objectives, efficiently and effectively delivering services, and successfully undertaking projects. These risks are monitored through the course of the year by the relevant managers and Executive Directors.

All major projects and operational plans include a section on the key risks associated with the successful achievement of project objectives and their mitigating control strategies. Project managers and internal committees monitor the risks through the life of the project or operation.

Also, there are risk management processes for controlled operations and significant events, such as public inquiries and compulsory examinations, where the risks surrounding the conduct of the proceeding are assessed and controls implemented to mitigate these. Debriefing occurs after these events to assess results.

The Commission also monitors the effectiveness of its risk management strategies through its internal governance committee structure that oversees major operations, programs and projects to ensure that the Commission's objectives and goals are being effectively and efficiently achieved, risks and opportunities are managed, and services and activities are delivered in accordance with business and project plans. The internal committees with risk management responsibilities include:

- Executive Management Group
- Strategic Investigations Group
- Prevention Management Group
- Audit Committee - the internal audit program is based on an assessment of business risks and audit projects consider the effectiveness of the Commission's risk management and control practices
- Information Management and Technology Steering Committee - monitors implementation of IM&T projects
- Occupational Health and Safety Committee.

Information on the activities of these committees is contained in the Annual Report.

(b) At what level is responsibility assumed for risk management?

Answer

Risk management for projects and activities is the responsibility of the Project Manager, Chief Investigator, Business Unit Manager or Executive Director, depending on the nature of the area or activity being managed.

Question

23. The Annual Report notes that one of the audit projects reviewed by the Audit Committee in 2005-06 focused on the management of risks associated with investigations, resulting in the development of a framework and documentation tools to guide investigation risk assessments (p.66).

Could you provide further information to the Committee on the framework that was developed?

Answer

During 2005-06, the ICAC's independent internal auditors, Deloitte Touche Tohmatsu, undertook an audit of the management of risks associated with ICAC investigations.

The audit report recommended changes to the ICAC's risk assessment procedures and training, and the consistency of the application of document naming conventions. The recommendations were accepted and steps to implement those recommendations were taken in 2006-07.

These improvements included revisions to the Operations Manual and training for staff in risk assessment and management.

ICAC staff also worked closely with the Auditor to develop a risk program to standardise the documentation of risks associated with undertaking controlled operations, the execution of search warrants, and the conduct of physical surveillance.

A risk assessment is an integral part of the investigation process.

Code of conduct**Question**

24. Appendix 30 gives some details on the progress being made in relation to the review of the code of conduct applicable to ICAC officers.

(a) Has that review been completed?

Answer

The review was completed in 2006 by a working party comprised of staff from across the Commission and a new code of conduct was developed. All staff employed by the Commission received a copy of the new code and training sessions were conducted. The Commission's corporate induction program was also updated to include information on the new code to ensure new staff are aware of the principles of the code and what is expected of them as an ICAC employee. A copy of the revised code is attached (Attachment D)

(b) If so, were any major changes made to the code and were the views of the ICAC Inspector sought?

Answer

The new code has a different format and design, in booklet style and includes message boxes to highlight significant points each section addresses. The intention of the new format is to make it a more easy-to-read and memorable document.

Topic areas have also been condensed to five, plus an introduction from the Commissioner, as well as a section that refers to Commission policies and relevant legislation. The Commissioner's introduction refers to the principles that constitute the new code, rather than a separate section on this. The Commission's corporate values have also been included in the new code of conduct.

The new code's five major sections are:

- our conduct as Commission officers
- our workplace
- our obligations regarding Commission information
- unacceptable conduct
- accountability and reporting.

The section titled 'Our workplace' is new and includes sub-sections that refer to 'a workplace free of discrimination, harassment and bullying' and 'a workplace that is safe and secure'. The latter is broken up into occupational health and safety information and a separate security requirements section.

The views of the ICAC Inspector were not sought on the revisions to the code of conduct.

Attachment A
Investigation into the handling of applications for public housing
Corruption Prevention Recommendations
Final progress report

NOTE: The Department of Housing is implementing a number of major initiatives which will have a significant impact on the way in which applications and assessments for public housing, including priority housing, are handled (the Reshaping Public Housing initiative). At the same time the Department is in the process of upgrading its IT systems, which are likely to provide enhanced capacities for automating decision-making processes, and for recording and storing information. There are interdependencies between many of these changes, which inter alia mean that the timeframe for full implementation is likely to be several years. Hence, while a number of the recommendations below have been implemented within the context of past or existing structures, policies and procedures, the achievement of the major initiatives mentioned above is likely to provide new opportunities for corruption prevention strategies and controls.

RECOMMENDATION	STATUS (implemented, not implemented)	VARIATION/COMMENT (include reference documents if appropriate)
1. The Department should develop a standard format for priority housing approval submissions from CSOs to team leaders.	Implemented	The Department has developed a Priority Housing Assessment Checklist (PHAC) which serves as a standard form for staff assessing applications for priority housing.
2. The Department should provide guidelines for team leaders in reviewing and assessing submissions for priority housing approvals.	Implemented	The Department's intranet site contains clear statements of policies, procedures and business rules for all of the Department's services. These provide guidelines for decision-making at all stages of the assessment and allocation process, for both wait turn and priority housing.
3. The Department should provide a structure for interviews with applicants about priority housing.	Implemented	The Priority Housing Assessment form, which must be completed by staff for all Priority Housing applications, does provide a structure for interviews. Note however that the interview format and process needs to have the flexibility to take into account the widely varying circumstances of individual applicants.
4. The Department should require that notes from interviews	Implemented	Department procedures require that interview notes are maintained on

RECOMMENDATION	STATUS (implemented, not implemented)	VARIATION/COMMENT (include reference documents if appropriate)
<p>with applicants for priority housing are included on the applicant's file.</p>		<p>The Reshaping Public Housing initiative and proposed IT changes are likely to lead to a higher degree of automation of processes, and it is envisaged that notes and other records will be recorded and stored electronically.</p>
<p>5. The Department should introduce a requirement for CSOs assessing applications for priority housing to certify that their assessment is true and accurate to the best of their knowledge and belief, and that they have not participated in any fraud in preparing it.</p>	<p>Partially implemented</p>	<p>Client Service Officers (CSOs) are required to certify their assessments as true and accurate. However the Department has not mandated the requirement for a formal declaration in relation to fraud. The Department uses a variety of means to raise and maintain staff awareness of fraud and the consequences for staff found to have engaged in fraudulent activity (see also point 15 below).</p>
<p>6. The Department should ensure that on client service teams one person is not solely responsible for processing all priority housing applications on an ongoing basis.</p>	<p>Partially implemented</p>	<p>In most of the Department's Housing Services Areas, the allocation and assessment functions are now separated, with dedicated staff processing priority housing applications, and in most cases, several officers would share that responsibility. The Department recognizes however that this provides only limited protection against an officer engaging in fraudulent behaviour, hence the improved processes implemented in response to the above recommendations, and the requirement for review and approval by the Team Leader as an extra level of control. In some of the Department's smaller offices, there are insufficient staffing resources to implement this recommendation.</p>
<p>7. The Department should consider the feasibility of rotating client service staff within regions, or across regions where feasible.</p>	<p>Implemented</p>	<p>The implementation of the Reshaping Public Housing reforms is likely to provide further opportunities for refining this function and strengthening controls. With the functional split into assessment and allocation roles, there has been and continues to be opportunities for staff to rotate between functions as well as Areas. The Department does as far as possible offer opportunities for staff secondment to or acting in other roles and regions. However the number of locations from which the Department operates across NSW imposes some limits on the feasibility of a structured scheme of rotation.</p>

RECOMMENDATION	STATUS (implemented, not implemented)	VARIATION/COMMENT (include reference documents if appropriate)
8. Client service teams should conduct a regular audit of their allocation decisions about priority housing which includes an independent review.	Partially implemented	<p>The Housing Services Divisions currently conduct random reviews of Priority Application Assessments. The Divisions Business Performance Units (which are independent of the assessments and allocations teams) randomly select application assessments to review.</p> <p>The aims of these reviews are to confirm proper application of Departmental policy, and correct assessment of the application in light of supporting documentation.</p>
9. The Department should provide appropriate resources to support teams to conduct such audits.	Partially implemented	<p>See point 8 above. These reviews are not high volume or performed consistently across the Divisions. They are dependent on the resources available within the Business Performance Units and other workload, and the primacy of priority assessment in the Division's radar.</p>
10. Business Assurance should include a regular review of allocation decisions for priority housing in its audit program.	Implemented	<p>The Department's internal audit program, managed by Business Assurance, has included compliance audits on client assessment procedures in 2004 and again in 2005. Compliance audits on the range of client service activities are regularly included in the internal audit program.</p>
11. The Department of Housing should consider a legislative amendment to give it the means to verify information about assets and income provided by applicants prior to their applications being approved.	Implemented	<p>The Department is considering expanded options to address tenant fraud, which would cover this recommendation. However legislative change would require Government approval. It is important to note that the Department currently has the use of the Income Confirmation Scheme (ICS) with Centrelink which allows income verification for the vast majority of our clients who are in receipt of Centrelink payments.</p>
12. The Department should develop a process to audit successful applications for public housing to ensure that the information provided about income and assets is correct.	Partially implemented	<p>See 11 above. In addition, the Department requires verification of non-statutory income (eg wage statements, bank account details). Currently the Department has limited statutory powers to verify the information that applicants supply.</p>

RECOMMENDATION	STATUS (implemented, not implemented)	VARIATION/COMMENT (include reference documents if appropriate)
<p>13. Team leaders should be required to regularly review and sign off on audit reports that are relevant to decisions about allocating priority housing and other housing products.</p>	<p>Partially implemented</p>	<p>Management sign off of audit reports is required for all internal audits and includes the provision of management responses to recommendations made as a result of the audits, although this does not generally extend down to Team Leader level. The Department's Risk Management and Audit Committee and/or the Executive Board monitors the implementation of management commitments made in these responses.</p>
<p>14. The Department's gifts and benefits policy should include examples of expected behaviour in situations where gifts are offered.</p>	<p>Implemented</p>	<p>The policy is posted on the Department's Intranet suit and accessible through several "gateways". It includes examples to assist staff in dealing with offers of gifts.</p>
<p>15. Training and regular reminders about the gifts and benefits policy and the gifts register should be provided to staff.</p>	<p>Implemented</p>	<p>Training in the Code of Conduct and Ethics, which includes considerable discussion of gifts and benefits, is mandatory for all staff. As of mid 2006, the Department conducts monthly induction training programs for all new staff, which includes the Code of Conduct module. In the last two years, the Director-General has issued reminders about the Department's Gifts and Benefits policy through the staff newsletter.</p>
<p>16. The Department should further promote its values and the responsibilities of its staff to clients and applicants.</p>	<p>Implemented</p>	<p>All application forms and client Fact Sheets carry appropriate statements of the Department's commitment to ethical values, and the policy in relation to corrupt behaviour and the soliciting or accepting of bribes. The Department's Commitment to Service and Code of Conduct is posted on the Department's website. The Department takes all opportunities possible through meetings and forums with clients to reiterate its commitment to ethical values.</p>

Attachment B
Investigation into the conduct of the Rail Infrastructure Corporation and others in relation to
Menangle Bridge
Corruption Prevention Recommendations
12-month progress report

Please update this schedule with information about the status of each item as at 25 May, 2006. Include details of the latest action/update in respect of each initiative, dates where relevant and attach copies of any documents referred to, where possible, in support of implementation of particular initiatives. Should committees/positions/processes no longer exist because of restructuring or other event, please indicate how these functions are currently being performed. Give us the name of a contact person in your agency from whom we can seek more detail if needed.

RECOMMENDATION	STATUS (implemented, not implemented)	VARIATION/COMMENT [reference documents]
<p>Recommendation 1 That the RIC review its policies and procedures on briefing the Minister to ensure that there is a clear understanding on what matters the Minister should be informed and to ensure the accuracy of any information so provided.</p>	<p>Not Implemented</p>	<p>RIC currently maintains an issues register to manage communications with the Minister's Office. RIC intends to review its policy and procedure for informing the Minister following finalisation of its accreditation status with ITSSRR during 06/07.</p>
<p>Recommendation 2 That the RIC, in consultation with the Ministry of Transport's Transport Safety Bureau, review its infrastructure management system and where necessary develop new procedures and policies to ensure its system appropriately addresses the requirements for: (a) regular detailed inspection undertaken by appropriately qualified persons</p>	<p>Implemented</p>	<p>Following the Menangle inquiry (Old) RIC developed several new procedures for inspection of bridges, these new procedures / standards addressed the recommendations in the Menangle inquiry. Following the break up of RIC into RailCorp, RIC and ARTC the management of rail bridge inspections and maintenance on the Country Regional Network (CRN) has been carried out by ARTC on behalf of RIC through the Country Regional Network Management Agreement (CRNMA). ARTC inspect and maintain rail bridges in accordance with the new RIC Engineering Standards mentioned above.</p>
<p>(b) timely, accurate and comprehensive communication of inspection outcomes</p>	<p>Implemented</p>	<p>This recommendation has been addressed through ARTC utilising the updated RIC Engineering Standards.</p>
<p>(c) timely evaluation of information</p>	<p>Working towards implementation</p>	<p>ARTC believe the evaluation of bridge defect information will continue to improve with the further development of its Bridge Management System.</p>

RECOMMENDATION	STATUS (implemented, not implemented)	VARIATION/COMMENT [reference documents]
(d) timely undertaking of necessary maintenance and repairs; and	Implemented	ARTC's Bridge Management System will take approximately four years to be completely implemented. Once the Bridge Management System is implemented, the inquiry recommendation regarding timely evaluation of information will be completely implemented. ARTC manage the inspection and repair of rail bridges on the CRN in accordance with the updated RIC Engineering Standards, these standards were specifically updated to incorporate recommendations coming out of the Menangle inquiry.
(e) maintaining comprehensive and accessible records	Implemented	ARTC maintain bridge inspection and repair records in hard copy and electronically.
Recommendation 3 That as part of this process the RIC should, in consultation with the Ministry of Transport's Transport Safety Bureau, continue its implementation of a comprehensive, integrated, computerised bridge management system to capture and maintain and make accessible relevant information about bridge inspections, defects, maintenance, repairs etc. The system should also ensure that required actions are undertaken in a timely manner by electronically notifying those responsible and requiring electronic sign-off by the responsible manager.	Working towards implementation.	RIC does not have a Bridge Management System (BMS) of its own, but rather manages bridges through its contractor ARTC, under the CRNMA. ARTC utilise an integrated electronic defect management system (Ellipse) to track and sign off all infrastructure defects on the Country Regional Network including bridges. ARTC is continuing to enhance the existing systems to produce a robust comprehensive BMS. This improvement process is anticipated to take up to four years to complete.
Recommendation 4 That the Ministry of Transport and the RIC work together to determine: (a) what matters additional to those covered by the current definition of notifiable occurrence should be reported to the Director-General, and	Implemented	No additional notifiable occurrences are suggested, however matters which may lead to a major service disruption are now reported to MOT not only infrastructure failures. For example notifying MOT of expected line closures on the CRN should the required funding to meet minimum infrastructure standards not be available. Although RIC is reporting a wider range of issues to the Ministry of Transport, the formal protocol regarding which issues should be reported is still the list of notifiable occurrences.
(b) how reporting of such matters should best be made mandatory.	Implemented	Issues are reported to the Ministry of Transport via ministerial briefing notes, copies of all briefing notes are logged and filed by RIC. Reporting of these matters is part of RIC's general business practices.

ATTACHMENT C – DPP ADVICE TIMESCALES FOR CURRENT MATTERS AND MATTERS COMPLETED 1 JULY 2006 TO 30 JUNE 2007

REPORT	DATE OF REPORT	DATE BRIEF TO DPP	DATE OF FINAL DPP ADVICE	DAYS BETWEEN SUBMISSION OF BRIEF AND FINAL DPP ADVICE
MUFFAT	Howe 1/8/00	9/8/01	26/9/05	1508
	Gill 1/8/00	9/8/01	26/9/05	1508
	Sarcasmo 1/8/00	9/8/01	26/9/05	1508
TROPHY	McCormick 9/7/02	16/12/03	7/04 & 3/11/04	229, 324
AGNELLI	Lawrence 28/8/03	1/3/04		
	Fitzgerald 28/8/03	1/3/04		
	Bizzell 28/8/03	1/3/04	25/8/06	907
SQUIRREL	Sassine 6/11/03	24/11/03	11/3/05	472
	Khalifeh 6/11/03	24/11/03	11/3/05	472
CASSANDRA	Fassone 30/6/04	11/1/05	5/1/06	358
	Fizelle 30/6/04	11/1/05	5/1/06	358
	Webb 30/6/04	11/1/05	5/1/06	358
	Dougall 30/6/04	11/1/05	5/1/06	358
	Williams 30/6/04	11/1/05	5/1/06	358
	Hill 30/6/04	11/1/05	5/1/06	358
	Anthony 30/6/04	29/6/05	5/1/06	190
	Whyte 30/6/04	29/6/05	5/1/06	190
HUNTER	Ghanem 29/7/04	9/2/06	29/3/06	48
	Harb 29/7/04	11/4/06	11/12/06	244
UNICORN	Smith 1/4/05	3/11/05	Awaiting advice	
	Perkins 1/4/05	3/11/05	-	
	Scott 1/4/05	3/11/05	-	

REPORT	DATE OF REPORT	DATE BRIEF TO DPP	DATE OF FINAL DPP ADVICE	DAYS BETWEEN SUBMISSION OF BRIEF AND FINAL DPP ADVICE
AMBROSIA (cont'd)				
Constantin	21/12/05	-		
Nehme, J	21/12/05	24/5/06		
Massoud	21/12/05	-		
Boutayeh	21/12/05	24/5/06		
Zaiter	21/12/05	24/5/06		
Barrakat	21/12/05	-		
Harb, F	21/12/05	20/4/05	11/12/06	610
Sabra	21/12/05	-		
Nguyen	21/12/05	-		
Boumelhem	21/12/05	-		
Nehme, N	21/12/05	-		
Nakhoul	21/12/05	-		
Daoud	21/12/05	-		
Haidar	21/12/05	-		
Mouwad	21/12/05	-		
ARGUS *				
El Zahab, A	26/3/06	26/3/06	Awaiting advice	
El Zahab, J	26/3/06	26/3/06		
Daher	26/3/06	26/3/06		
CADMUS				
Ishac	20/9/06	22/8/06		
Tourni	20/9/06	18/7/07		
Khoury	20/9/06	18/7/07		
Khouzame	20/9/06	18/7/07		
Hilal	20/9/06	18/7/07		
Bullen	20/9/06	18/7/07		
Barhy	20/9/06	18/7/07		
AZTEC				
Wade	24/10/06	10/8/07		
Williams	24/10/06	10/8/07		
Ashe	24/10/06	10/8/07		

* No report. Date taken from date brief sent to DPP.

Chapter Three - Questions without notice

This chapter contains a transcript of evidence taken at a public hearing held by the Committee on Tuesday 11 September 2007. Page references cited in the commentary relate to the numbering of the original transcript, as found on the Committee's website.

JERROLD SYDNEY CRIPPS, Commissioner, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, sworn and examined:

THERESA JUNE HAMILTON, Deputy Commissioner, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, sworn and examined:

MICHAEL DOUGLAS SYMONS, Executive Director, Investigation Division, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, sworn and examined:

ROY ALFRED WALDON, Executive Director, Legal Division, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, sworn and examined:

LINDA MICHELLE WAUGH, Executive Director, Corruption Prevention, Education and Research, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, affirmed and examined:

LANCE COREY FAVELLE, Executive Director, Corporate Services, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, affirmed and examined:

CHAIR: It is the function of the Committee on the Independent Commission Against Corruption to examine each annual report of the commission and to report to Parliament on that examination. In accordance with section 64 (1) (c) of the Independent Commission Against Corruption Act, the ICAC committee welcomes the commissioner and senior officers of the ICAC to the table for the purpose of giving evidence in matters relating to the 2005-2006 annual report of the Independent Commission Against Corruption. I convey the thanks of the Committee to all of you for appearing today.

First of all, the Committee has received a detailed submission from the Independent Commission Against Corruption in response to a number of questions on notice relating to the 2005-2006 annual report. Commissioner, do you wish this document to form part of your evidence here today?

Mr CRIPPS: Yes, I do, thank you.

CHAIR: Do you also wish to have this document made public?

Mr CRIPPS: Yes.

CHAIR: I direct that the material attached to that document, being a 25-page document with attachments A, B and C, and also an attachment, the Code of Conduct, be made public. Also, with the concurrence of the Committee I authorise that that be made public and be made part of that evidence. Would you like to make an opening statement?

Mr CRIPPS: Yes, I think I would. I will not be very long. Thank you for giving me the opportunity to put matters to you before you ask questions. I think there are only two members of this Committee here who were formerly members of the Committee. What I am about to say may be superfluous information to people who have already been here but I think it may be of some value to those who are newly members.

It is apparent from the questions asked that the Committee has some concern about the relationship between the commission and the Office of the Director of Public Prosecutions. In particular, question 12 asked by this Committee raises the question whether the commission is satisfied with the operation of the present memorandum of understanding between the commission and the ODPP, particularly in relation to the provision of advice given by the ODPP on criminal charges. As you have been told, I am sure, before, the commission is not entirely satisfied, as appears from the question's answer, with the present memorandum of understanding, or at least the interpretation put on it by the DPP. Hence, I have had a meeting with the DPP himself and he has agreed to have the memorandum reconsidered after consultation between the Deputy Commissioner, Theresa Hamilton, who is here today, and an officer of his nomination. He has made that nomination and I understand Theresa Hamilton has arranged to meet that officer to rediscuss the memorandum of understanding.

In these circumstances I think it is necessary to explain to the Committee my view at least of the role and function of this commission with respect to the prosecution of criminal offences or disciplinary offences. The stated principal functions of this commission are to investigate and publicly expose criminal conduct and to undertake work to prevent corruption occurring, that work being by form of research and education, and relying upon the investigations we have conducted. The commission is given a secondary function, namely to assemble legally admissible evidence and to provide it to the ODPP for the purpose of getting advice as to whether specified criminal charges should be laid. It is in this context that the High Court made it clear that the commission should not be regarded as a criminal law enforcement body. Its activities are directed to the conduct of public servants and the legislation expressly prohibits the commission from finding a person has been guilty of a criminal charge or even recommending that a person should be charged with a criminal offence.

The commission has wide powers of investigation, many of which are enjoyed by the police—for example, we can tap telephones, install listening devices, undertake controlled operations and the like—but the commission has coercive powers that are not available to the police. These powers preclude people from relying on what I call their common-law privileges and liberties such as the right of silence, the privilege against self-incrimination and legal professional privilege. These are doctrines—as those of you who are lawyers will know—that have developed for 3½ centuries in western democracies and are regarded as extremely important and only to be overridden by legislation in cases where it is deemed necessary, as it has been here. These liberties and privileges are protected zealously by the courts and they must be observed by the police. However, as I have said, Parliament has decreed that the importance of corruption is such that, for the purpose of discharging the functions of this legislation, these rights and liberties have to stand aside.

The commission can conduct compulsory examinations and compulsory inquiries and it can require a person to furnish information to it. People may object to doing so, but they are subject to penalties if they refuse to talk. Hence, they have lost the right to silence. The

legislation also provides that where a person has objected on the ground of one of these traditional privileges or liberties, that objection can have the consequence that the answers and documents and things cannot be used in criminal proceedings against that person at all. So, it is in this context that one has to consider the role of the commission in its secondary function, to provide admissible evidence to be ODPP for the purpose of advice with respect to possible criminal charges and what has become the practice of the ICAC to commence those proceedings on its own—and that is what we do. We start the proceedings after we get the advice, which I do not think we should be doing.

Plainly, in accordance with the legislation, if in the course of the investigation legally admissible material—and by that I mean material that is admissible in a criminal prosecution—becomes known to the commission, that information would be furnished to the DPP as mandated by section 14. But what of the case where the commission is requested by the ODPP to provide further evidence by interviewing people, which is what he has done now, when the allegation of corruption is no longer being investigated? In these circumstances, I think a number of issues arise, some ethical, some discretionary, some legal and, of course, some practical, namely the budget constraints that are imposed upon us when we have to discharge our two main functions and what budgetary allowance we have to discharge with the secondary one.

For example, the commission cannot use its powers under sections 21, 22 and 23—that is to compel information, when people no longer have these rights that I referred to—to get information, because those powers allow the commission to get material and deny people the privileges to which I just referred. This cannot be exercised unless the commission is actually investigating a matter before it. If an investigation has been completed, the commission, in my opinion, has no power to coercively require information to be produced to it; nor in my opinion would that evidence obtained as a result of the exercise wrongly of that power be admitted into evidence in a criminal court.

As matters presently stand it is my understanding that the ODPP will not as a matter of policy undertake its own interviews or its own investigations. I am not quite clear why that is so. It may be a doctrinaire view it has, it may be a budgetary view but it will not investigate. It requires the bodies associated with it to do the same. This plainly works in the place of police, because they are a criminal law enforcement agency. The question is should the same approach be taken by this commission? What happens at the present time is that we send material to the Office of the Director of Public Prosecutions, and advice is given, say, as to whether consideration should be given to prosecution. Yes, it should. We, the commission, then start the prosecution. On the return date at the court the DPP arrives and replaces its name for the commission's name—it often does not, but it should—and then goes on and takes the proceedings much further forward. That that occurs in the case of police matters is plainly appropriate because the Police Force is a criminal law enforcement agency and that is obviously a way to deal with criminal cases. However, as I have said, one can see good reasons that it is not an appropriate course to follow in the case of a commission which is not a criminal law enforcement agency and which should not give the public the appearance that it is.

It has been brought to my attention that the police remain relatively uninterested in matters the commission is investigating—which, in fairness, are often very complicated—and the reference of matters to the police has the practical consequence that nothing happens. As I have said, the ODPP would not himself investigate. This has left the commission with adopting a policy—which I do not wholly favour but which I think I must

bow to for now—of accepting that if it does not continue the criminal enforcement proceedings no-one else will. People are getting off scot free who we know from answers they have given have committed criminal offences but that evidence cannot be used in a criminal prosecution. As a result, the commission has taken upon itself to adopt this role. A misgiving has developed in the two years I have been with the commission about whether an institution which is not designed to be a criminal law enforcement agency and which denies people a number of their traditional liberties and privileges gives the appearance that it is a law enforcement agency by pursuing prosecutions.

As far as the commission is concerned, once it has information based upon which it can confidently say there has been corrupt conduct—and that is often obtained using its coercive powers, which cannot be used in a criminal trial—it has largely discharged the obligation that the Parliament has imposed on it. The question is how much further it goes and whether it should be involved after it has stopped investigating by assisting the office of the DPP when takes over the prosecution effectively to prosecute the case. As I said, there is an issue about this because I am told that the police and the DPP will not do it. Therefore, if the commission does not do it, no-one does. We have tried to accommodate that in the way we deal with matters. I want members to understand that it is not merely a budgetary constraint that holds me back from the sort of role that the commission is asked to perform. The issue is that the commission is asked to perform it when it appears to me that the Parliament has endeavoured to ensure that the commission is not a crime authority.

However that may be—and that may be a broader view—two other smaller issues arise that Ms Hamilton will talk about with the DPP. Of course, the first issue is how the DPP treats the material the commission hands over and what we should do about it. A matter that I will not go into in detail has recently come to my attention. A person wanted to plead guilty to an offence on legal advice. The matter went to the DPP and we were told that the office would not open a file unless it received all the evidence that would be necessary if the person pleaded not guilty. That was the DPP's policy and its interpretation of the memorandum of understanding. I cannot say that that interpretation was entirely wrong.

However, this person's desire to plead guilty to a quite serious fraud offence was not entertained by the DPP because it did not get the full brief it believed was necessary. I will come to the reasons that the DPP thinks it is necessary to do this. I am not arguing with that; I am simply saying that it is a problem that must be solved. The result was that we had to prepare a document comprising 23 folios and 92 witness statements before a file could be opened relating to whether someone was going to plead guilty on legal advice to the charge we discussed in the report. For self-evident reasons we must come up with a better solution than that.

The second matter that concerns me is the practice of the commission starting the proceedings. When one looks in the newspapers or the court lists ones sees reference to the ICAC against Cripps. When the DPP comes down on the first return day to take over the matter it becomes the DPP against Cripps. In my opinion that is what it should always be. The DPP should always do it because it is given the advice and it will carry the prosecution through to conviction or acquittal. ICAC should not be seen as having any part in the criminal process.

I am drawing these matters to the committee's attention because not infrequently I have discovered since I have been in this job the commission is judged by the number of criminal convictions that arise as a result of its investigations. We have made consideration

to be given to certain things and people ask how many resulted in conviction. In my opinion it is wholly wrong to evaluate our performance by reference to criminal scalps. The fact that someone is not prosecuted may be due to many reasons. It may be due to the fact that the commission has some reluctance to pursue a criminal prosecution after it has discharged its main function, it may be for budgetary reasons or it may be that the commission lost total control of the case once it went to the DPP. We do not know how it is prosecuted in proceedings and we do not know whether the jury involved is as good as juries are reported always to be. We should not be judged by reference to that feature. We should be judged by reference to our effectiveness in the discharge of our two principal functions; that is, to expose corrupt conduct and to promote and put to the various bodies concerned those policies and the like that we hope will have the effect of inhibiting corrupt conduct—of course, it will never be eliminated.

I have now been the commissioner for a little more than two years and I have presided over almost every public inquiry and most compulsory examinations. For what it is worth, I point out to the committee that during that entire period there has been no reference to the Supreme Court that the commission has in any way abused its powers. I cannot recall an occasion when someone has made even a suggestion or submission to me that the commission had strayed beyond the bounds of propriety in the course of its hearings.

CHAIR: Many and varied legislative changes have been made since the McClintock report was presented. For example, section 20E allows for the commission to report back to a complainant and give reasons that a matter was or was not investigated. Has that caused any additional work for the commission and has there been a resultant decrease in the number of dissatisfied complainants who have taken matters further?

Mr CRIPPS: No, but I will ask my colleagues who are better qualified to answer that because they see this on the ground. I do not think it has added too much to our problem. As members know, I was very enthusiastic about the creation of the inspectorate because I felt that the ICAC should be accountable to some person and this committee cannot view our investigations. I do not have any problem doing it. Sometimes I think there is a tendency for people to think that the commission could be a bit more courteous. Courtesy is desirable as an aim, but I do not believe that a little bit of discourtesy affects our work—although it is not wholly acceptable—and it has not.

CHAIR: Appropriate firmness?

Mr CRIPPS: Yes, that is a better way to put it.

Ms HAMILTON: Obviously we have a pro forma response letter for complainants, and that is used in most cases because it generally covers why we have decided not to investigate a matter. We have discretion as to what matters we investigate. Even if something may appear to be corrupt conduct, if we do not believe it involves serious or systemic corruption, we do not investigate. I do not believe that that has added considerably to the work of the assessment section.

CHAIR: Are you able to discern any decrease in the number of complainants who take matters further or who tell the inspector that the ICAC should have investigated a complaint and it has not and has not provided reasons?

Questions without notice

Ms HAMILTON: I do not have any figures. I think it would because most people just want an explanation of why their matter is not being dealt with. In general, some complainants seem very difficult to satisfy in any circumstances. It is mainly that category of complainants that takes matters further and goes to the inspector. Those complainants have complained to many bodies, not only the ICAC, and are not satisfied in any circumstances with the responses they receive.

CHAIR: Division 4A allows the commission to deal with disposal of property. Have you had any cause to make application to dispose of property?

Mr CRIPPS: No.

CHAIR: Past reports have referred to activity-based costings. Has a model been developed for that?

Mr FAVELLE: We have developed a model over a couple of years to apply to major investigations. That model picks up costs across the organisation, because most investigations involve multidisciplinary teams. We can then determine the cost of a major investigation.

CHAIR: Will that enable you to assess the costs of major investigations and complaints handling?

Mr FAVELLE: It tends to look at one-off situations. Investigations do not tend to be homogeneous; they are not the same every time. One investigation could involve many resources over a long time whereas another might involve few resources and be completed quickly. It does not provide any trend analysis in terms of investigation work.

CHAIR: I refer to the performance targets the commission has set for 2006-07. Table 2 of the report details corruption prevention recommendations implemented by government departments. In 2003-04 there was 90 per cent implementation; in 2004-05, the figure was 95 per cent, in 2005-06, the figure was 85 per cent, and the target for 2006-07 is 80 per cent. Did any factors determine that figure?

Ms WAUGH: One must keep in mind that we cannot enforce corruption prevention recommendations, we can only make them. We then rely on the agency to determine whether to take them up, and we know that a number are not taken up. That might be because the agency has decided against it or that there is a better way to address the risk we are addressing in our recommendation. I wanted to ensure that the report contained a figure that allowed for a performance measure we cannot control.

CHAIR: A benchmark?

Ms WAUGH: Yes.

CHAIR: Is that followed through with government departments?

Ms WAUGH: When we release an investigation report we write to the departmental head or the responsible person and say that in three months we will ask for an implementation plan. We then follow up for another two years. The documents they give us

are loaded onto the website so the public can see how well they have implemented the recommendations and, if not, why not.

CHAIR: I note that in 2004-05 there were 45 training sessions and in 2005-06 there were 61. Was that increase in training sessions a conscious decision by the commission or was it the result of the work that it is doing?

Ms WAUGH: One of the challenges we deal with is conveying messages to departments and organisations that fall within our jurisdiction across the State. Over the past few years we have been working on a training strategy. We had a part-time trainer but we now have 1.5 trainers. We focus on delivering training to the training sections of large departments, which can then roll out our messages across the State. We now have a suite of ten training modules. It is something we have been doing consciously. We do have criteria for doing presentations, but again it is focusing on those individuals who have jobs which can help us in rolling out the training modules.

CHAIR: I notice at table one of your report regarding the investigations—I might be wrong about this, but in past reports I think there was "percentage of investigations completed within six months". You now have, "percentage of investigations completed within 12 months". If that is the case, why has there been a change from six to 12 months? Although, I notice you have "investigations finalised within six months" and "no targets set".

Ms WAUGH: I think that is in response to the amendments to the Act. I think section 76 added in a few performance measures that we must report against.

CHAIR: That 12 months figure reflects that change in the legislation, does it?

Ms WAUGH: I think so, yes.

CHAIR: I notice you have a 90 per cent target that you have set for 2006-07, coming from 82 per cent. You have set yourself a 90 per cent target for matters investigated to completion within 12 months. Is that target as a result of any changes you have made, or is that something you consider achievable?

Mr SYMONS: It depends. One of the biggest problems with investigations is that it depends on the complexity of the investigation. One would hope to complete investigations within that time frame, and hence the 90 per cent ruling. But we are at the whim of the complexity of the investigation. Some of them drag on much longer, depending upon their nature. But we have set 90 per cent and we believe we can achieve that. We have adopted a different method of pooling investigators in this financial year, which gives us an ability to allocate resources and a more rapid response, and hence the ability to focus a lot more on getting jobs done.

CHAIR: In table one we have investigation reports completed within three months of completion of public inquiry. We had a 30 per cent completion rate as at 2005-06. You set yourself 80 per cent in 2006-07. Is that percentage reflective of any changes you have made?

Mr WALDON: No. It has always been a percentage, I think.

Questions without notice

CHAIR: The figure jumped from 30 to 80?

Mr WALDON: No, the target is 80 per cent. As I understand it, the target has always been 80 per cent.

CHAIR: The actual amount achieved is 30 per cent?

Mr WALDON: Yes. Once again, as with investigations, that would depend on the complexity of the investigation and the complexity of the report. You will have seen our report. Some of them are fairly short; others are lengthy. Operation Ambrosia, for example, was a very lengthy report involving close to 40 individuals, which had to be looked at in some detail. Once again, the time taken to produce the report will depend on the complexity of the investigation we are reporting on.

CHAIR: The figure of 80 per cent is something we are striving towards?

Mr WALDON: It is an aspirational target, yes.

CHAIR: With regard to surveillance, in answer to question 5 of the questions on notice you indicated a desirability of increased self-sufficiencies in your technical surveillance and limited reliance on other agencies. Firstly, did the ICAC have adequate funds to purchase the surveillance equipment that you required?

Mr FAVELLE: Yes, I think we do. On a regular basis we update our surveillance equipment, so I do not see that as a major issue.

CHAIR: How does your surveillance intelligence capacity compare with other investigatory commissions, and how much do you rely on other agencies to do that for you?

Mr SYMONS: I have only recently come on board; I have had my own agency prior to this. We have investigation capabilities in line with most policing agencies and other commissions within Australia. It is extremely rare that we would have to go outside. We do offer the service to other agencies on major operations that may be involved, on an agreed basis. If it were a requirement of a particular job to go outside of our resources, we would do so, but to my knowledge that has not occurred for some years now. We do have sufficient resources and extremely good equipment. As Mr Favelle said, one of the dramas with funding is that we do have enough, but you never know what is being developed behind a closed door. We are always assessing new equipment in determining whether or not that equipment would meet our needs, and obviously looking at budget ramifications of that.

CHAIR: It is the exception rather than the rule?

Mr SYMONS: It would be the exception, yes. But there is always something better, and regrettably they come with a price budget. But I am satisfied with the equipment we have. We do have the ability to upgrade as required, and have done so.

CHAIR: With regard to accountability for assumed identities, in your audit under section 11 of the Act you reported that there was one minor irregularity. Is the commission able to tell the Committee about the nature of that irregularity?

Mr CRIPPS: I think the simple answer is that we would not be able to at this stage; we would have to take the question on notice. We will take the question on notice and notify you what that is and what we did about it.

CHAIR: There was discussion under a previous committee examination about your auditing under section 11 of the Law Enforcement and National Security (Assumed Identities) Act, that perhaps you may give the job to the inspector. Has the commission given any further thought to that?

Mr CRIPPS: No, I do not think I have. It has not been raised in the discussions I have had with the inspector. You said it was raised as to whether it should be done by the inspector?

CHAIR: Whether you had given any thought to that.

Mr CRIPPS: I will if you wish, and let you know what we will do about it. I am told that if we do it, we will have to amend the Act. However, I would give some thought to it and let you know what we think is the most efficient way of handling it.

CHAIR: I thought the Act referred to someone appointed by the commissioner.

Ms HAMILTON: Yes, that could be right. You will have to forgive me; I have only been here since January. Under the Queensland Act, the Act specifies the people who may undertake the audit.

CHAIR: With regard to the transcripts that you have produced as a result of your investigations, it has been the case in the past that the commission has made public transcripts of what we now call compulsory examinations. Are you able to tell the Committee generally, without pointing to any specific case, what factors you take into account when deciding to publish the transcripts of a compulsory examination?

Mr CRIPPS: I do not know that we have done it, in respect of a matter where we have not had a public inquiry. But mostly it comes out as a result of the public inquiry. The compulsory examination that is going to be used in that public inquiry has to be made public, so the public know why it is we have reached the decisions we have reached. But I am told that before I came here the Menangle Bridge—

Ms WAUGH: I believe that the commissioner at that time, who was Irene Moss, conducted it in compulsory examination and made a public report. I think it was partly not to use the resources to run a public inquiry to repeat exactly what was heard in compulsory examinations. All the transcripts were made public. I think she thought it was in the public interest to make them public, rather than run it all again in a public inquiry.

Mr CRIPPS: As you can see when you have compulsory examinations and then it moves to a public inquiry, in the compulsory examination with people hurling insults and accusations towards each other, you have to put it all out in public so they can be given the opportunity to answer each of the other's allegations.

CHAIR: In the past, before your time I think, they were published. You have just quoted one factor that Commissioner Moss used.

Mr WALDON: There has been the Menangle Bridge, which Linda cited. More recently, I think a couple of years ago, we also did an investigation into the alleged leaking of a draft Cabinet minute, and that was also about whether it should be compulsory examinations or private hearings. In both cases, the factors which were taken into account were basically the same, and I think they were spelled out in public reports at the time. That was that, having heard the evidence in private, there was no need to have a public inquiry because we were in a position of being able to establish the facts, based on the evidence that had been given in the compulsory examinations. I think it was also taken into account that to have then held a public inquiry would simply be to rehash all the evidence which had been given in the compulsory examinations and that to go through that process would then delay making public our findings and making a public report.

In each case, the parties who had given evidence in private were provided with a copy of their transcripts and a copy of any transcripts of other witnesses which might affect their evidence, and given an opportunity before we drew up the report to make any submissions as to whether they wished to give any additional evidence, whether they wished any additional witnesses to be called, or whether they wished to cross-examine any of the witnesses who had already given evidence. The main considerations were basically public interest considerations of the delay in reporting the investigation situation where we thought we had sufficient evidence to make that determination.

CHAIR: When you conduct a compulsory examination and you interview someone, are they told that the evidence may be made public?

Mr CRIPPS: Not necessarily, no—at least not at the compulsory examination. But if it were to be made public, those people would be told, and I suppose representations they might make as to their not been made public would be considered.

CHAIR: In regard to the Office of the Director of Public Prosecutions and your relationship with that office and the memorandum of understanding, I think it was the case that the last examination under the previous committee, I think Mr Small at that time indicated to the Committee that what was happening in the commission was that whilst investigations were proceeding, along the way statements in admissible form were being prepared and there was an initiative to get the DPP involved earlier in the investigation proceedings. Back then it was too early to tell how that was going; I think the process had been going for about 12 months. Has that been happening? Before we get into the issues you raised with the commissioner, did that proceed?

Mr CRIPPS: Not satisfactorily, I do not think. It is because of that that I have had this meeting with the present Director of Public Prosecutions. I have not got into what we can do or cannot do but other people will do, and Therese may have some views about this. One thing is, for example, that officers from the DPP can be kept au fait with what is happening from the word go. The tendency was for us to investigate. But you have to remember that the stuff we investigate is often very complex. Then we present a report, then if you are not careful the people think they have to move on to the next examination, then they start talking about what they are going to do to the last one, and the delay means that you have to do twice the work eventually. The best way of doing it is to do it while it is going on. I understand that there was general agreement in principle that something like that would happen, but I do not think it did happen, and that is really why we raise the matter again.

CHAIR: What you are saying is that, although the Commission was doing that, it did not work satisfactorily.

Mr CRIPPS: I do not think so, no.

CHAIR: And the Director of Public Prosecutions [DPP] did not wish to get involved in it.

Mr CRIPPS: I do not want it to be thought that I am trying to bucket the Director of Public Prosecutions over this. There is a self-evident problem associated with two agencies doing things towards a common end and neither agency is responsible to the other.

CHAIR: Can I say that I think those initiatives that you have spoken about are admirable, and that would be a commonsense way to go about it, but I know that the Director of Public Prosecutions holds very tightly onto this rule that they are prosecutors, not investigators. They are reluctant to do that.

Mr CRIPPS: I should not ask you the question, I appreciate, Mr Chairman. But bearing in mind your background, is that because of the money or because of principle?

CHAIR: I suppose there are many ways that could be taken. I am aware of that. That is why I wanted to ask whether that was happening or what the cooperation was that you are getting from the Director of Public Prosecutions. I know that one of the matters you wish to raise in your negotiation with them is to do that.

Mr CRIPPS: Yes.

CHAIR: I ask that the Commission keep the Committee informed.

Mr CRIPPS: And the Director of Public Prosecutions has told me that he will cooperate in that. He has already nominated some person that Theresa will speak to, this being one of the issues they will discuss.

Ms HAMILTON: I think the commissioner said I had arranged to meet with that person. I just want to clarify that I have not yet arranged to meet with the person nominated by the Director of Public Prosecutions because I have not been able to contact her, but will be doing so this week. I just wanted to set the record straight on that.

Mr CRIPPS: It shows how I have my finger on the pulse.

CHAIR: All right.

Ms HAMILTON: Certainly I think that one very important issue we will be discussing is involving a prosecutor early in the piece, not as an investigator, but to keep that person informed as the investigation is progressing so that, at the end of the day when the brief arrives, it is not a total surprise that the person knows what is being investigated and what possible charges were being considered. I do think that would be very useful in speeding up the process.

Questions without notice

CHAIR: It is also something that will reduce the number of requisitions that you get from the Director of Public Prosecutions.

Mr CRIPPS: It should.

Ms HAMILTON: That is exactly right.

Mr CRIPPS: We hope it will exactly do that, yes.

CHAIR: Another area that you mentioned was a sentence proceeding where there had been an indication of a plea of guilty. You mentioned in your opening the particular reasons why the Director of Public Prosecutions will not, for example, accept a statement of fact.

Mr CRIPPS: I can only mention the reasons that the Director of Public Prosecutions has given me—one given by the Director of Public Prosecutions himself, and another given by an officer of the Director of Public Prosecutions. The one from the officer of the Director of Public Prosecutions was that there was a fear that someone wanted to plead guilty to an offence that they in fact could not be convicted of on the evidence. I have to say that my professional life has not been riddled with people pleading guilty to offences that they should never have pleaded guilty to.

But the second thing is that the fact that they want to plead guilty, even if the evidence is not good enough. If they want to plead guilty, they can plead guilty. I mean, the plea of guilty means—you prove it. That was one reason, and the other reason that the Director of Public Prosecutions himself gave me, and I can see some substance in this, was—well we want to make sure that the offence for which the person is going to plead guilty is the offence for which they should plead guilty and we want to eliminate the fact that they should be facing a far more serious charge. He said that he wanted to have that information so that they could make an assessment of that.

CHAIR: Can you indicate to the Committee what your attitude is toward that reason?

Mr CRIPPS: Generally speaking, my attitude is that the cheaper and quickest way we can get over this problem, the better. I do not claim to have expertise about the risks associated with somebody pleading guilty to a minor offence when they should plead guilty to the more serious offence, but I know, just from my experience, that plea bargaining is not something that everyone runs away from in New South Wales.

CHAIR: I anticipate the fear would be that the facts would disclose an offence higher than the charge.

Mr CRIPPS: That is what the Director of Public Prosecutions said. He wanted to be sure that they did not accept the plea to what might be even a lesser offence that police had begun in the full knowledge of what could be the subject of any charge.

CHAIR: I assume that negotiation will involve this topic as well.

Mr CRIPPS: Yes.

Ms HAMILTON: Yes.

CHAIR: I must say, Commissioner, as far as instituting proceedings is concerned, I must concur with what you said. It is my personal opinion that if the Director of Public Prosecutions takes over or wants to prosecute, it could.

Mr CRIPPS: They do that anyway.

CHAIR: I do feel as though it is a hangover from what the police do and police practice.

Mr CRIPPS: I think that is what has happened.

CHAIR: I think that is what is happening, so I imagine that they also would be part of that.

Mr CRIPPS: I think I can say, without disclosing any confidence, that when I had the meeting I had with the Director of Public Prosecutions, although I am not committing him to any particular view at the end, he was very much of the view that you have just expressed. He thought there was a great deal in it, but he naturally wanted to think about it more.

CHAIR: Because the police usually institute proceedings. From time immemorial, the culture of thinking has been probably along those lines, and this is a bit outside the square.

Ms HAMILTON: Yes.

Mr CRIPPS: Yes, and there is a bit of a philosophical reason, as I have put to you—because we are seen as prosecuting, when we are not allowed to.

CHAIR: There was talk before also, again with the Director of Public Prosecutions, about putting in your annual report information about the delay between the submission of the evidence and also the decision by the Director of Public Prosecutions to come up with a decision themselves or advice. I know in the case of Mr King and Operation Muffat it was four years, and then there were seven separate requests for requisitions. Would the Commission be willing to put the information in the report?

Mr CRIPPS: Yes, I think so, but subject to this: I think I would like the opportunity, before I just put those raw figures in the report, to consult with the Director of Public Prosecutions to make sure that he did not have some legitimate reason why that happened. I do not want to be—

CHAIR: You put it in an attachment C in your reply.

Mr CRIPPS: Yes.

CHAIR: We would leave it to you, of course.

Mr CRIPPS: Yes. We will consider that. Do you have anything to say to that, Roy?

Questions without notice

Mr WALDON: No, although once again, we do not want to be making the Director of Public Prosecutions look worse than they are. I mean, sometimes they obviously send us requisitions and sometimes it takes us time to respond to those requisitions, so it is not just always a case of the brief going to the Director of Public Prosecutions and then at some later stage proceedings being commenced. There is a toing and froing between both organisations with requisitions coming, us answering requisitions, and maybe further requisitions coming. So maybe a table that is just too simple that just looks at when the brief went to the Director of Public Prosecutions and when prosecutions commence might be a little bit too simplistic. It does not give the overall picture of what has gone on in between. Some of the delay may be due to the Director of Public Prosecutions, but some of it may well be due to us because we have not been able to resource the requisitions as appropriately as we would like.

CHAIR: Would you consider putting in the delay from the Director of Public Prosecutions and also the delay in chasing up the requisitions?

Mr WALDON: I think we could take that into consideration. I think it might turn out to be a complicated table.

Mr CRIPPS: I would ask that the Committee bear in mind that this is one of the main things we are trying to avoid for the future with this meeting that the deputy will have with the nominee of the Director of Public Prosecutions.

CHAIR: At the previous meeting with Inspector Kelly, the Committee asked the inspector to monitor this issue with the Commission and the Director of Public Prosecutions. Would you consider that monitoring role helpful?

Mr CRIPPS: I would consider helpful any discussions I had with the inspector which advance the efficiency of the Commission and its ultimate objective. Yes, I would be quite happy to do that.

CHAIR: They are all the questions I have.

Mr DAVID HARRIS: In question 23 on management of risk, your answer indicated that when it came to control operations, execution of search warrants and conduct of physical surveillance, the Independent Commission Against Corruption [ICAC] worked very closely with the auditor to standardise documentation of these risks.

Mr CRIPPS: Yes.

Mr DAVID HARRIS: Are you able to let us know how the levels of risk are calculated, what sort of training and risk assessment is provided to staff, and what are some of the ways in which the Independent Commission Against Corruption endeavours to minimise the impact of the risks associated with these activities?

Mr SYMONS: I appreciate the opportunity of your asking this question because I have just gone through the process of a magnificent spreadsheet that was developed at great cost and which does the Australian Standard risk assessment. It was developed in consultation with the auditors. The training is there. All our chief investigators are aware of

the assessment of risks, both through experience as well as being exposed to training and looking at the standard. It is an ongoing factor now with that matrix that comes up.

We have a spreadsheet, as I said. I am in the process of reviewing that at the present moment. We look at all the aspects of all the operations. In fact, let me quite candidly say that the risk assessment within the Independent Commission Against Corruption puts South Australian police to shame in the sense that we do not, as a matter of course in that State, conduct the same intense assessment of risks that is done here in operations with the Independent Commission Against Corruption, and I am extremely impressed with the professionalism that I have seen and that has been displayed in recent weeks.

In short, to answer your question, yes, we are on top of it. We are looking at it. We are using a spreadsheet. To use the vernacular, I am playing around with a spreadsheet that we have got because we have identified, in putting it to use in recent days, that there is a need to adapt some of that spreadsheet. Without getting into too much detail, it is a locked-in matrix in the sense that you identify risk. You understand the concept of a matrix?

Mr DAVID HARRIS: Yes.

Mr SYMONS: You put in the two indicators and it automatically tops up what it is. For example, it might be extreme risk. Because we identify, we take action to reduce that but there is no indicator within that table that recognises that what we have done reduces it. As such, I have now played with this magnificent product that we got from the auditor in setting some different spreadsheet calculations in it as a test trial at the present moment, which will then allow us to accurately assess, after we have taken our preventative measures for the controls.

Mr DAVID HARRIS: Thank you. In question 24 on the code of conduct, your answer indicated that the views of the Independent Commission Against Corruption's inspector were not sought in regard to the revision of the code of conduct. Would it be useful in your opinion to get the inspector's views on the revised code and to make this a practice in future revisions?

Mr CRIPPS: Linda may have more to say to that than I have, but can I say that the inspector has available to him the code of conduct. If he wants to make any representations that we should improve it, alter it, or change it, I would certainly be happy to consider what he says about the matter.

Mr FAVELLE: We did go through an extensive process internally with a lot of people and we do have people with marketing skills. We produced a book that we may have sent to you which to my mind simplifies the document that we previously had and puts through messages that we have reinforced the whole principle of having a code. We use it very intensively during the induction process so that people are aware when they come to the organisation what is expected of them because we are the sort of organisation we are. We could take on any views that the inspector would like to put to us—that would be fine—but in the normal course of events I would not have thought that this would be necessary for this particular code.

Mr DAVID HARRIS: You would not necessarily offer that advice when he sees the draft?

Questions without notice

Mr FAVELLE: He could well do and he often would express that to the commissioner because he has regular meetings with the inspector. That may be the vehicle to do it.

Mr CRIPPS: Also we have made available to the inspector all the documents within the Commission that he ever wants to look at, with unrestricted access except, and he agrees, we have a very careful system about the higher security documents: that they cannot leave the Commission and how they will be dealt with. But this does not come within that, of course. He would have access to this.

Ms WAUGH: I should also add that my officers provide advice to other agencies on the codes of conduct. Those officers were used as part of the team to review our own as well.

Reverend the Hon. FRED NILE: Ms Hamilton, in regard to this memorandum of understanding, I understand that the one you are looking at updating is 2005.

Mr CRIPPS: Yes.

Reverend the Hon. FRED NILE: If there is some disagreement between the Director of Public Prosecutions and the Independent Commission Against Corruption, our role is to assist the Independent Commission Against Corruption. Do you feel it would help you if you gave a copy to the members of the Committee? You indicated that there was some problem.

Mr CRIPPS: I have no problem with members of the Committee seeing that memorandum of understanding at all. As I say, perhaps I would prefer to see if I can solve it with the Director of Public Prosecutions before calling in the big guns. I think it could all be seen as far as I am concerned, but could I just say that I would just like to clear this with the Director of Public Prosecutions. After all, they are the other signatory to this memorandum. But as far as I am concerned, it is fine.

Reverend the Hon. FRED NILE: It would only be necessary if you felt that you needed the Committee's assistance.

Mr CRIPPS: Yes, and I would avail myself of it, if I thought I needed it.

Mr JOHN TURNER: Just two points that arose out of the Chair's questions: one was the section 20 reporting back to the complainant in relation to why their complaint did not go forward, and there is no problem there. I wrote to you as a private member of Parliament, not a member of this Committee, expressing some concern in relation to where a highly publicised complaint has gone to you, where people have been named in public disclosures and public places as to be investigated by ICAC, and in this case the Tweed inquiry. In your case I understand a letter went back to the complainant who was the investigator—and I do not know the contents of that letter because that was the subject of my inquiry to you and subsequently to the inspector. But it has left those people that were publicly named out there. They do not have any explanation as to why you did not proceed; the complainant has but those people have not and those people in this case have been named publicly.

I just think in fairness and equity that there should be some arrangement for those people where you have not proceeded but they have been publicly named, to have some

statement to clear the air in that regard. You will probably say it is up to the Parliament to enact legislation similar to section 20 but you did say that I was not entitled to an answer on the basis that I could not inquire into your section 64 ongoing inquiries, which I accept. I just ask that question of you: is there not some process particularly where publicly stated people have been left high and dry to be able to—

Mr CRIPPS: I just want to get the question clear in my own mind because you know this Committee is precluded at law from asking questions in respect of any investigation and it does seem to me on the face of it that—I am not refusing to answer this question but I want to be clear that in answering it I am not breaching any legislative provision.

Mr JOHN TURNER: In fairness, you did write to me and say those very words.

Mr CRIPPS: Did I? There we go.

Mr JOHN TURNER: That is the reason you did not wish to answer it then and then when I went to the inspector you added in that I was a member of this Committee and I was not entitled to an answer.

Mr CRIPPS: Are you asking me whether the legislation should be amended?

Mr JOHN TURNER: It is two-pronged, I suppose. Is there any way where people have been aggrieved or seen to be held out to be getting sent to ICAC, as in the usual thing before a council election or a State Government election—which was not that bad this time—then there is another case to answer where a complainant has got a letter saying, "We did not proceed for this reason" and that he or she will be happy or unhappy, but at least they have got a bit of paper, whereas Bill Smith has been named in the paper and it is assumed because you have got your name in the paper then you must have done the wrong thing.

Mr CRIPPS: I think on occasions people have been told that, but I will have a look at this one you are talking about. We do not have a golden rule about this for obvious reasons, that we cannot be put in the position where our response from confidential information is going to be dictated by somebody getting up and saying something publicly and then saying, "Well, I have opened it up, now you have got to come good". On the other hand, we are, I hope, motivated by the circumstance that we want to be fair to people. We have had occasions, as you are probably aware, particularly in the run-up to elections and local government elections, where allegations are made of corruption publicly when they have not even been made. So we have often on occasions said we have never received a complaint.

Mr JOHN TURNER: It could be as simple as, "Dear Mr Smith, a complaint was received and the ICAC resolved not to proceed with it."

Ms WAUGH: In the past we have handled these sorts of situations on a case-by-case basis. I think back in 2002 local government elections were in a particular area and one candidate was making allegations against the other candidate and the candidate wrote to us and said, "This has been printed in the press. Apparently it has come to you", and that was a matter where we wrote back to him and told him what had happened so that he could do whatever he had to do.

Questions without notice

Mr JOHN TURNER: I agree you should not disclose to anyone your investigations or anything like that. There was only one other very minor matter of interpretation. You mentioned under the disposal of property provisions that are now in the Act and you have not used that provision. I just had a quick look at the Act. It appears on the face of it that more funds go back into consolidated revenue. Is there any provision for you then to ask for an implementation for your budget from the funds seized?

Mr CRIPPS: I do not know. I have never thought about it.

Mr JOHN TURNER: I think there is some provision for the police where they can get some percentage back.

Mr SYMONS: Yes, some of the agencies can sometimes get back some of the seized money.

Mr CRIPPS: Sort of an annuity or something.

Mr JOHN TURNER: I do not know how it works exactly but I know in my local command they seized \$800,000 recently and got X amount back because of the extra cost involved in the investigation to seize those funds.

Mr SYMONS: I think what they are talking about in that area is the confiscation of assets legislation. In this situation here my reading of the section is that—it is hard to give an example—we may seize a vehicle or something like that that we believe is relevant to an investigation. It lies dormant and we could put it up for auction but it is not in the case you are talking about. I should stress and point out that if we in the course of an investigation identify matters that may come within the confiscation of assets procedures then we do liaise with the Crime Commission. They take the action and they get the money back.

So, that is what we do. We do address that. We do have an ongoing liaison there and if we identify it then we raise it with them and would assist them within the boundaries of how we can assist them.

Mr JOHN TURNER: Just one other technical question. You say that you take the prosecutions right down to the court. At that time it is Cripps v X and the Director of Public Prosecutions then takes it over as you are walking through the front door. What is the status if the Director of Public Prosecutions is held up in the traffic?

Mr CRIPPS: I suppose it gets struck out.

Mr JOHN TURNER: That is what I thought.

The Hon. JOHN AJAKA: You mentioned earlier on, and I think basically your quote was unless the commissioner continues with the criminal enforcement no-one else will and it puts you in that terrible dilemma. The concern I have is that does it not also then create a serious problem or conflict with the intent and spirit of the Act, that you are never really to be seen in any form of being a prosecutor or involved in prosecutions but purely being an investigator?

Mr CRIPPS: Being an exposure of corruption?

The Hon. JOHN AJAKA: Yes.

Mr CRIPPS: I do not see the conflict.

The Hon. JOHN AJAKA: You do not see a conflict that once you are seen as having to, in a sense, be compelled, if I can use that word, to proceed with prosecutions because the Director of Public Prosecutions or the Office of the Director of Public Prosecutions is not, that there is some dilemma there?

Mr CRIPPS: No. I have just simply adopted what appears to me to be a self-evident interpretation of the legislation, and that is why the Parliament did it; why the Parliament said, "You confine yourself to declaring whether people have engaged in corrupt conduct". That has legally no legal consequence at all. It is not like a conviction, which does have legal consequences, that is all it has. "We want you to steer clear of saying people have committed crimes or they should be prosecuted for committing crimes because you are going to get information in the course of this that no police system in Australia would ever get".

As I understand it the argument you are putting would need to be taken out with the Parliament. Is that what the Parliament wants? Does the Parliament want us to go further and say once we get it in this capacity we will have sort of a compartmentalised role? There could be debate about this. I am not saying they should not at all, all I am saying is my interpretation of the meaning of the legislation at the present time is that we should distance ourselves from criminal prosecutions. You may be right in saying that it is not effective. It depends how far you want to go in reducing these common law privileges and liberties, I think.

The Hon. JOHN AJAKA: The second part of that is if you start bringing in Director of Public Prosecutions officers to observe do you not then in a sense create that synergy—

Mr CRIPPS: I suppose you do in the way it is at the present time. I suppose one does that. But the legislation actually says we have got to assemble admissible evidence and the question from our point of view is twofold: What is the most efficient way of doing it and the second one is even if that is the most efficient way is it the fairest way of doing it? We think that having somebody there at the beginning who is not, as Theresa said, part of the investigation but is just saying, "It looks to me as though this is heading for prosecution under section 178B of the Crimes Act", or something, "and this is the sort of evidence we should be looking at", and then we say we have got the function of doing it. We do have the function of doing it to that extent.

My problem is what happens when we stop investigating? Are we still seen in the public as really being another arm of the Police Force? That is my problem.

The Hon. JOHN AJAKA: Talking about equipment, and it was lovely to hear that you were not seeking more money for more equipment—

Mr CRIPPS: I did not necessarily say that.

Questions without notice

The Hon. JOHN AJAKA: Is there a procedure for you or the availability for you to access other government departments? Would there be a scenario where, for example, you may need additional equipment for six months only and the last thing you want to do is go spend the money buying it only to find you will not need it again for a couple of years and it becomes obsolete, that you can, via the police department, Director of Public Prosecutions or any other investigative agency, have a synergy where you can use their equipment?

Mr SYMONS: One of the greatest advantages of our units is they seem to have their own network and the answer to your question is yes, it would be looked at. Obviously there would have to be an acknowledgement through the corporate area of ramifications.

Mr CRIPPS: But we do get cooperation from the New South Wales Police Commission on telephone intercepts and the like.

Mr ROBERT COOMBS: Commissioner, I have just got a question in relation to scope when an issue is reported to you. Can you enact investigations yourself?

Mr CRIPPS: Yes.

Mr ROBERT COOMBS: That leads to the second question that if through your investigation of an issue or of a report to you and that then unfolds and leads into a whole range of other issues that could be at the end of the day deemed to be corrupt, you can investigate those too?

Mr CRIPPS: Yes.

Mr ROBERT COOMBS: In relation to issues or reports that are investigated against total complaints it seems that there are a large number of complaints that are not, and I think it would be pretty fair to say that a number of those complaints and that sort of thing are frivolous or vexatious. Has there been any consideration given to how we might cut back on those frivolous incidents that you are asked to investigate? It would seem to me that it would take up a lot of your work and if we could cut back on that it might indeed free you up in other areas so you could make more investigations.

Mr CRIPPS: That is true. Everything you say is quite true, but the legislature enacted that people were to be encouraged to make complaints to ICAC. So, chief executive officers of organisations are bound to report things, members of the public are encouraged to complain. We tell people when we go on these visits around the country, "Look, if you are in any doubt, we know it is more work for us but we prefer you to complain to us because we prefer to be the person that has to decide whether this should go further". We get 2,500 complaints or something and we end up investigating hardly any of them. Some of them, particularly in local government, involve someone who is just dissatisfied with a decision; other times people will say the Taxation Department has behaved badly.

But we do like to do it because it also helps us in our corruption prevention work because we get all these complaints and although one cannot say 100 times nought equals anything but 100, at least if people are always complaining about things that you think are really minor and we should not be dealing with them—and we often do that—if you keep getting it from areas, you might after a while think it is systemic so you should go further. On balance, what we do is encourage people to report and we just hope, but not always with

any degree of success, that people will just report and accept the decision. But, of course, once we get what we call the frequent flyers, once they start they never stop.

Mr ROB STOKES: Commissioner, my question relates to page 17 of the annual report, and it follows on from the previous question relating to the number of complaints. I just noticed since 2003-04 there has been a fairly significant decline in the number of overall complaints. I was wondering if you had a view as to why. Are people getting better? Why is that happening?

Mr CRIPPS: I do not know. Other people who claim to be able to divine the public purposes—Linda may know.

Ms WAUGH: It is always a problem when you get statistics like this because you cannot tell whether it is because there is less corruption. Maybe it is because people are becoming less aware of reporting. It is very hard to interpret the up and down of complaints figures.

Mr JOHN TURNER: Of course, they are right in the middle of the local government, State Government cycle.

Mr CRIPPS: Look at the Strathfield case—I think it was in 2005. If you do a big, sensational case—remember, this was the one where the mayor was caught taking money—that tends to inspire everybody to start making complaints. I have been unable to draw any reasonable inferences as to what the cause of this is. I just do not know.

Ms LYLEA McMAHON: My question is in relation to figures 3, 4, 6, 7, 9 and 10. I will summarise it. When I came in this afternoon I noticed that you have this position paper around what appears to be your most frequent type of complaint, which is regarding building and development applications.

Mr CRIPPS: Yes.

Ms LYLEA McMAHON: Your second-largest category appears to be employment practices and then that reappears in terms of protected disclosures and section 11 reports as well as breaches of policy and procedure. Is that an area where you have any further analysis or details in relation to what the key issues are?

Mr CRIPPS: No. That is a good question. I look at this and I think, "What's collusion; what are you colluding about?" We know in the local government one that it is almost exclusively—perhaps not exclusively but mostly—due to people being dissatisfied with councils deciding development applications. That is fair enough. But when we get to employment practices, I am not sure what—

Ms WAUGH: It is things like recruitment and selection—someone was promoted unfairly or they did not follow the correct procedure. In answer to your question, in my area in particular we will do further breakdowns of this sort of information and maybe slice it up a little differently. But we use this information to inform us in planning our work priorities for corruption prevention, education and research. But like Jerrold was saying before, you do have to be careful and you do need to look more deeply into these because, for example, a lot of ones around local government are because people do not understand the processes.

Questions without notice

So we would not necessarily launch into a major CP project stating there were corruption risks when we thought it might be misunderstanding. Does that answer your question?

Ms LYLEA McMAHON: So if you are getting a large number of complaints in that area it is either an issue of fact or an issue of perception.

Ms WAUGH: Yes.

Ms LYLEA McMAHON: So I suppose in terms of the prevention aspect you would be either looking to clarify people's expectations and understanding or, alternatively, provide some best practice guidelines for agencies.

Ms WAUGH: Yes, that is correct.

Ms LYLEA McMAHON: My next question is: Is that on the agenda?

Mr CRIPPS: As far as I am concerned it is. I have discussed this with people. I think perhaps we can in the next report give a little explanation as to what is inherent in all these bar graphs—what we are talking about—so that people can look at it as well as us and find out what it is we are talking about.

Ms LYLEA McMAHON: What little bits add up.

Mr CRIPPS: Yes. There is a limit to it—otherwise you would be like the New York telephone book and just stop.

Ms HAMILTON: I think it is true, in particular with complaints about employment practices—you are right—it almost always is a question of perception. When you look at it you almost always find that there was not nepotism or a conflict of interest but because it involves people's livelihoods and promotions they are always very suspicious when somebody else gets a job. So it is up to the agencies to be more transparent in the way they do it. So I think there is a lot of scope for corruption prevention and education work in making sure that people understand why certain employment decisions have been taken and then they will not complain to us that it was done for corrupt motives.

Ms LYLEA McMAHON: I look forward to seeing next year's annual report.

The Hon. GREG DONNELLY: Commissioner, I refer you to the bottom of page 6 of the answers to our questions, specifically question No. 8. The last sentence says that in-house lawyers are also now being appointed to act as counsel assisting in some compulsory examinations or public inquiries, saving the cost of engaging a private counsel. Can you give the Committee some approximate percentage of how much work is done by in-house solicitors or lawyers?

Mr CRIPPS: I do not know that I can do that off the top of my head. Since I became commissioner I have adopted a policy of as far as possible either me or the deputy commissioner doing the public inquiries and compulsory examinations. So they are, as it were, kept in house. There may be occasions when that does not happen. For example, if allegations are made against ICAC I have to be careful that whoever was conducting those inquiries should be independent. I have also had a policy of encouraging people who are the

lawyers in the commission to take part in these compulsory examinations—indeed, one of them I have had running a public inquiry—because I think that although there are occasions when you need someone from the independent bar, and that often happens, there are occasions when you do not and it seems to me that it is good for the career progress of people who are employed in the commission.

ICAC is not big and people's career prospects are not that good if they stay in the commission. There are only a few big jobs available. So it is good to have people being able to have a lot of experience. Although I always speak of these compulsory examinations and public inquiries, correctly, as being administrative structures—which they are; not judicial ones—nonetheless they behave a bit like judicial ones and it gives these people that experience. That is why I encourage that to happen. But as to how often it has happened, I think I can say that so far as compulsory examinations are concerned it is nowadays just about always done by an in-house lawyer. So far as the public inquiries are concerned, I have only done one where I have taken an in-house lawyer to do it but I am hoping that there will be more in the future.

The Hon. GREG DONNELLY: I have another question about matters or complaints that are made to the commission pertaining to issues that go beyond the borders of New South Wales. Do those complaints come before you? If the answer is yes, how are they handled?

Mr CRIPPS: Do you mean complaints from Victoria, for example?

The Hon. GREG DONNELLY: It could be a complaint in New South Wales, for example, that involves public servants in another State or Territory.

Mr CRIPPS: We do not have jurisdiction over them.

The Hon. GREG DONNELLY: I appreciate that, but is there a process of responding to those types of complaints?

Mr CRIPPS: Yes, we can respond to other agencies that are responsible for the same sort of work or police work we do. The legislation makes provision for us to do that.

Reverend the Hon. FRED NILE: In regard to the recommendations, you have outlined the follow-up procedure. If there are 500 recommendations, for example, can you give us a rough estimate of how many are implemented? Are the majority implemented?

Ms WAUGH: The majority of recommendations are implemented in almost every case.

Reverend the Hon. FRED NILE: So it would be like 90 per cent or 100 per cent.

Ms WAUGH: Yes, it would be. In fact, the report with the lowest implementation rate was one to Parliament. Generally the uptake is good. My officers have quite a lot of dealings with departmental staff. They need to get information from them so they have a good sense of what will work in that department. We try to make recommendations that are practical and that can be implemented. So the uptake is quite good.

Questions without notice

Reverend the Hon. FRED NILE: So they are taking them seriously.

Ms WAUGH: Yes.

Reverend the Hon. FRED NILE: That is good.

CHAIR: Commissioner, I refer to your answer to a question on notice regarding a medical tribunal case where documents were summonsed. In that case this came within a clear statutory exemption to what would otherwise be no obligation on your part to produce these documents. You answered that it was a case decided on particular facts—I think the credibility of the complainant and the balancing by His Honour Judge Blanch—

Mr CRIPPS: Of which was the more important of the two.

CHAIR: Yes. That was a public interest immunity claim. I take it from your decision not to appeal that you considered the discretion by His Honour within the law and unappealable. Is that correct?

Mr CRIPPS: Yes, I do. We have not taken the view that the judge got it wrong. We have taken the view that his was a reasonable approach to this—and I suppose in one sense it could be said that we have probably taken the view that we took the wrong approach originally. But our approach was to protect—we hoped—people who complain to ICAC and how that might be damaged. I think if you read it you will see that Judge Blanch did not say that did not happen; he just said that was not as important as a person's right to a fair trial.

CHAIR: It is a balancing exercise.

Mr CRIPPS: So we took the view that it was a reasonable judgment and there was no point in taking it further.

CHAIR: There was a decision made that to some extent protected the identity in any case.

Mr CRIPPS: Yes, I suppose so. He indicated that that could happen—and I suppose it did happen.

CHAIR: One thing I have noticed in the report—I should have brought this up before—is that there are many more compulsory examinations than public inquiries. Is that comparison reflective of a particular way in which you now approach these matters? Earlier in the piece there was a presumption that investigations would be public. That has turned around over the years—more so in the past few years. Is that a change in policy?

Mr CRIPPS: As you point out, when the legislation was first introduced there was a presumption that all investigations were to be held in public. This, as you probably know, led to certain people having their reputations shattered when we could have done it differently. I am making no criticisms of people who did this because the legislation said they had to—they did not have to but the presumption was that they should. Since then, we have been told to take account of the fact that people can have their reputations unjustifiably vilified and all those things. So we take that into account. I think I can tell you this: Generally speaking,

it is not true to say that we have a public inquiry simply when we know beyond doubt what the truth of the matter is. But you can assume that we are fairly confident that what the public inquiry is directed to will turn out to be made out. But it is not always—as you know, in cases such as Orange Grove it was not. But we tend to do that and we are conscious of people's reputations. I suppose I cannot really say because this has been the law since I became the commissioner—it has either been private hearings or compulsory examinations. But I tend to take the view that you do not expose people to this type of publicity unless you are fairly sure it is in the public interest to do so.

CHAIR: When you became commissioner was section 31 already in place?

Mr CRIPPS: Yes.

CHAIR: Turning to a question that was asked from a few quarters today—the Hon. John Ajaka raised it, for example—do you consider that once you have put in a report and put in your brief to the DPP that if they raise a requisition it is not your place to conduct further investigations? Do I understand that correctly?

Mr CRIPPS: That is what I think.

CHAIR: That has been happening for some time.

Mr CRIPPS: I have to say in fairness to people who have been doing it against the background if it was not done nothing would happen.

CHAIR: I think that is being done because you are apprised of all the facts and background connections having done the investigation and it is considered you are best placed to carry out those further investigations. Did you say that the commission has no power under the Act to carry on and answer those requisitions?

Mr CRIPPS: No, I do not say that. Let me say this: They cannot use those coercive powers under sections 20, 21 and 22 unless they are investigating because they are preceded by "In the course of an investigation, you may do this." So if we are not investigating we cannot do it. The question that I find more difficult to resolve is: What happens when you stop investigating but the DPP says, "I want you to go out and get statements that will make this a more successful prosecution"—and we are not investigating corrupt conduct, incidentally? So my way of thinking is that, although the Legislature says that we can do it, issues such as discretion, fairness and the like have to start being operative as to what we really do—particularly the budget. That is a matter that has to be sorted out once and for all. Having said that, the view I have about this is not the view everybody has.

CHAIR: Your view, then, would be that the police should become involved?

Mr CRIPPS: Yes, I think so, if the DPP cannot. And I cannot buy into that, whether it is principle or money. I never quite understood why. Major firms, when they conduct litigation on behalf of private people, they investigate it. Just because you go to court does not mean you cannot investigate. In any event, I do not want to buy into that. You come from the DPP so you probably have a good grasp on that.

Questions without notice

CHAIR: With protected disclosures, an inquiry was done not long ago by the Committee on the Protected Disclosures Act. One of the issues that came up was the definition of a protected disclosure and who would be protected. The concern of the Committee was someone may be told they are protected or may proceed on the basis they are protected and later they cannot be. Have you had any of those cases at the commission where you have had to re-evaluate or reassess the protection? I am trying to monitor how that is going. One of the concerns of the Committee was whether that cropped up as an issue in practice.

Mr CRIPPS: We tell people, when they make protected disclosures, that we will do our best to honour it, but we cannot guarantee it. If someone comes in and makes a protected disclosure about a murder, say, and it turns out that unless people know who is making the disclosure it cannot be solved, the protected disclosure probably goes out the door.

CHAIR: We are aware of that.

Mr CRIPPS: We do our best. I do not know an occasion when we have not taken steps to protect the identity of a protected disclosure or, on the other side of the coin, where someone's identity was made public in circumstances where we would have preferred it not to but had to do it. Can you think of any?

Ms HAMILTON: There has been a case recently where the Ombudsman, the DPP and our office took a different view as to whether a matter was a protected disclosure, because of what was raised in that report. The definition seems to turn on whether the matter bears fruit, and it turns out there are allegations of corruption there. That is fairly undesirable. I note the report suggested following something similar to the Queensland Public Interest Act, where the definition turns on whether the person who made the disclosure had a reasonable belief that what they were disclosing was a protected disclosure. Personally, I think that would be better. At least there is a test there that you can use: Did this person have a reasonable belief that this was a public interest disclosure? Different bodies, as in the case referred to, can have different views as to whether something is a protected disclosure.

CHAIR: Would you consider the use of a checklist or something? The concern was, it was thought by the Committee that the Court of Criminal Appeal said these matters are to be determined by a court, and it makes it very difficult. That is why I am asking, have you had any occasion to go back to a complainant?

Mr CRIPPS: That is what I am not sure about, as I said earlier. People here have been here longer than me.

Mr WALDON: We have had occasions where people have made complaints to us where they thought they were protected disclosures but on reflection and further consideration we have determined that they were not. But they are generally not matters we have taken any further.

Mr CRIPPS: We had a case where we believed they were protected disclosures but we had to disclose their identity in the public interest, but it has not happened since I have been here.

CHAIR: One further matter I wish to raise, Commissioner, and it may not be one you wish to talk about, but we have talked before about a merit review.

Mr CRIPPS: Of an ICAC outcome.

CHAIR: A situation where a case has gone to prosecution, there has been an acquittal and the corruption is still there. In the past report it was asked of you whether you would make that known in public that the ICAC can do that. I know the logistical issues it raises and I noted what you told the Committee on the last occasion about the difference in the role and the standard of proof and all those issues. Have you given any further thought to that?

Mr CRIPPS: No, I do not think I have changed my mind from what I said on that last occasion, but this ties in with what I have talked about, the public perception of what our role is. For example, I do not think anybody suggests that if a doctor is struck off the role or a lawyer is struck off the role for improper conduct and then he is charged and found not guilty, that the disciplinary body should not reverse the decision, because it is viewed plainly as an administrative act in the interest of the public. It is not meant to punish him. If you strike people off it is not to punish them, it is to protect the public. In a sense, that is what we are doing with corruption. So, it is in that context that I think it largely should remain the same. Other people may have a different view.

I have also expressed this view, that although I have seen statements along these lines, "Well, there was a stinging finding of corrupt conduct by the commission and there was an acquittal of a person who was later charged, why is the commission leaving it that way?" We have the jurisdiction, in my opinion, to revisit any decision we have made. If it turns out in the future that we become aware of reliable and relevant information that demonstrates we have made a mistake, I hope we would rectify that mistake. To date, although people have complained about the probability, no-one has asked us to reverse that decision.

CHAIR: I hear what you say, Commissioner, but it is not solely a mistake on your part, but other information that may come to you.

Mr CRIPPS: No, that is right. Something may happen that we did not know and had we known we might not have come to that conclusion, but nobody has done it yet.

CHAIR: Do you think you would be amenable to having something like that kind of information included for the public somewhere?

Mr CRIPPS: I suppose they ought to know it. I do not know that I want to encourage everyone to keep asking us every year to revise our earlier decision. I think they know it. They elect not to advance it because they can become potential victims without having to do anything to redress the issue. Whereas, I think people would know if something turned up that was a mistake, they could come back to us.

(The witnesses withdrew.)

(The Committee adjourned at 3.37 p.m.)

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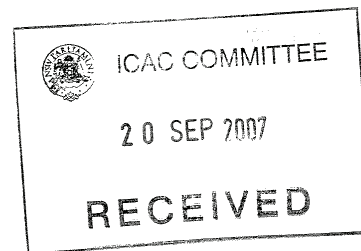
Appendix 1 – Questions taken on notice at public hearing and memorandum of understanding



INDEPENDENT COMMISSION AGAINST CORRUPTION

18 September 2007

Mr Frank Terenzini MP
Chair
Parliamentary Joint Committee on the ICAC
Parliament House
Macquarie Street SYDNEY NSW



Dear Sir,

RE: ICAC COMMITTEE HEARING

I am writing in response to three questions raised at the recent Committee meeting.

The first question concerned the reference to the assumed identities audit at p.59 of the 2006-06 Annual Report. The entry referred to a "minor exception" to compliance with the legislation. You requested details of the exception. The exception was that a period of more than 12 months had elapsed between audits. The *Law Enforcement and National Security (Assumed Identities) Act 1998* (Section 11) requires an audit to be conducted at least once every twelve months. The 2005/06 audit was conducted in January 2006. The previous audit was conducted in September 2004. The problem was addressed by the Commission instituting a special diary entry to ensure future audits are conducted within the required period.

The second question was whether consideration had been given to the ICAC Inspector doing the assumed identities audit. An issue was raised as to whether the legislation would allow this. Section 11 of the *Law Enforcement and National Security (Assumed Identities) Act 1998* provides that the audit is to be conducted "by a person appointed by the chief executive officer (the ICAC Commissioner) and that the person appointed need not be an officer of the agency. Subject to the ICAC Inspector's consent it would be open to me to appoint the ICAC Inspector to conduct the next audit, which is due in November. I will raise this issue in my next discussions with the ICAC Inspector.

ALL CORRESPONDENCE TO GPO BOX 500 SYDNEY NSW 2001
TELEPHONE (02) 8281 5999 FACSIMILE (02) 9264 5364
TOLL FREE 1800 463 909
www.icac.nsw.gov.au

The final issue concerned providing the Committee with a copy of the memorandum of understanding between the ICAC and the DPP. A copy is enclosed.

Yours faithfully



The Hon. Jerrold Cripps QC
Commissioner

MEMORANDUM OF UNDERSTANDING

1. This memorandum of Understanding (“MOU”) is made on the 24th day of October 2005 between the Independent Commission Against Corruption (“the ICAC”) and the Office of the Director of Public Prosecutions (“ODPP”).

PURPOSE

2. The purpose of this MOU is to set out in general terms the responsibilities of each of the ICAC and ODPP in relation to:
- (a) matters involving the furnishing of evidence by the ICAC to the ODPP, such evidence having been obtained as the result of investigations conducted by the ICAC in pursuance of its functions under the Independent Commission Against Corruption Act; and
 - (b) liaison arrangements and other related matters.

FURNISHING OF EVIDENCE

3. The ICAC will provide copies of transcript, statements, exhibits and any other relevant material, including its investigation report, to the ODPP, together with a covering letter outlining what charges have been identified by the ICAC as being open on the evidence. Generally, these will reflect the statements made pursuant to s.74A(2) of the *Independent Commission Against Corruption Act 1988*. In the covering letter the ICAC will also:
- identify any known or expected difficulties of proof;
 - identify which witnesses have indicated that they are willing to give evidence, and particulars of the manner in which this willingness was conveyed to the ICAC;
 - identify which witnesses have indicated that they are not willing to give evidence and particulars of the manner in which this unwillingness was conveyed to the ICAC;
 - indicate the witnesses in respect of whom undertakings or indemnities should be sought, having regard to Guideline 17 of the ODPP Prosecution Guidelines;
 - identify and explain the significance of the documents included in the brief (preferably in the form of a table attached to the covering letter);
 - advise if there is any particular urgency, and, in the case of matters in which summary charges are considered appropriate, advise of the last date on which proceedings can be instituted.
4. Upon receipt of the documentation referred to in paragraph 3. the ODPP will assign the matter to an ODPP lawyer. The ODPP will advise the ICAC of the name of the lawyer to whom the matter has been referred and his/her telephone number and other contact details.

5. In matters in which the ICAC indicates in its covering letter that the only available charges are for summary offences, within six weeks of the ODPP receiving the material referred to in paragraph 3, the ODPP will advise the ICAC if criminal charges are available or will provide a progress report. Where charges are available, the ODPP will identify them and provide the appropriate wording for the CANs and a statement of facts.
6. Where the potential offences are time limited summary offences, the ICAC will ensure that the documentation referred to in paragraph 3 is provided to the ODPP as soon as practicable and the ODPP will ensure that the advice as to whether any criminal charges are available is rendered in a timely manner, allowing the ICAC sufficient time to commence prosecutions in accordance with the advice.
7. The DPP Lawyer with carriage of the matter will within two weeks of receipt of the matter make contact with the allocated ICAC lawyer to discuss any issues arising from the Brief and agree upon a timetable for the issuing of requisitions, the answering of requisitions and the furnishing of advice by the ODPP as to whether criminal charges are available.
8. The timetable agreed will be confirmed in writing by the DPP Lawyer to the ICAC case lawyer
9. Any variation to this timetable, including any requests for further requisitions, may be raised by either party by way of initial discussion and then confirmed in writing.
10. Where the ODPP advises that criminal charges are available, the ODPP will identify them and provide the appropriate wording for the CANs and the statement of facts.

REQUISITIONS

11. Upon receipt of the material referred to in paragraph 3 above, the ODPP may raise requisitions, in writing, identifying any additional evidence or other material required to be obtained by the ICAC.
12. The ICAC will obtain additional evidence as advised by the ODPP. If any questions of law arise, advice will be sought from the ODPP. It is recognised that the ODPP will not become involved in the investigation, but will, where appropriate, identify the general areas to be covered by each witness.
13. Where a prospective witness has refused to sign a statement in admissible form, the ICAC will provide:
 - a copy of the transcript of that witness' evidence before the ICAC;
 - a statement from the ICAC officer who attempted to obtain the statement.
14. Where the ODPP after receiving a response to requisitions, has raised additional requisitions necessary to complete the brief of evidence, the ODPP will provide

advice as to the charges to be laid, as a general rule, within six weeks of receiving the additional material, or will provide a progress report prior to the expiration of the six weeks, indicating the date by which it is expected the advice will be provided.

INSTITUTING A PROSECUTION

15. If, after consideration of the advice of the ODPP, the ICAC is of the view that other charges (based on the same evidence) are preferable to those advised by the ODPP, the ICAC will consult with the ODPP regarding the laying of those CANs.
16. Upon receipt of appropriate wording for the CANS and a statement of facts and a decision by the ICAC to proceed, an ICAC case officer will prepare CANS and then proceed to issue the CANS, obtain a date and serve the CANS upon the defendant. If for any reason CANS are not served within four weeks of receipt of the ODPP's advice to prosecute (or such shorter period as is appropriate where statutory time limits apply), the ICAC will advise the ODPP in writing of its intended action.
17. The ICAC will file the affidavit of service and court copy of the CAN with the registry of the relevant court and advise the ODPP when this has been done.
18. The ICAC case officer will provide a copy of the CANS and the affidavit of service to the ODPP officer within three days of service.
19. The ODPP will specify in writing to the ICAC the documents required to be included in the brief of evidence to be served upon the defendant.
20. The ICAC case officer will prepare the s75(4) notice and serve it and a copy of the brief of evidence in accordance with the orders made by the Court. A copy of the s75 notice as served on the defendant will be provided by the ICAC officer to the ODPP lawyer with carriage of the matter within three working days of service upon the defendant.
21. The s75 notice will specify the documents and other contents of the brief of evidence by way of precise description.
22. The ODPP will file in Court at the appropriate time a notice advising that the ODPP has taken over the prosecution.

COSTS

23. The ICAC is responsible for meeting the expenses of security arrangements for ICAC witnesses who are the subject of witness security arrangements.
24. The ODPP is responsible for meeting the cost of witness expenses for those witnesses who are not the subject of witness security arrangements. These expenses include travel costs in all prosecutions conducted by the ODPP and any order for costs to be paid to the defendant if the prosecution fails.

To the ODPP:

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

ATTENTION: The Managing Lawyer, Group

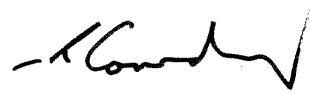
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GENERAL MATTERS

35. In circumstances where the ICAC considers it appropriate to place before a sentencing judge information relating to the significance and usefulness of an offender's assistance to the ICAC (i.e. Crimes (Sentencing Procedure) Act 1999 s.23), the ICAC will make the information known to the Crown and the Defence as soon as practicable prior to the day of the hearing. Access to the information prior to or on the day of the hearing will only be given in the presence of an ICAC officer and, subject to contrary arrangements in particular cases, will be given on ODPP premises.
36. The ODPP will notify the ICAC of all proceedings brought under the Confiscation of Proceeds of Crime Act 1989 where such proceedings relate to a prosecution instituted as the result of an investigation conducted by the ICAC in the exercise of its functions.



The Hon Jerrald Cripps QC
Commissioner



N R Cowdery AM QC
**Director of Public
Prosecutions**

Appendix 2 – Minutes

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

Tuesday, 11 September 2007 at 2.00pm
Room 814/815, Parliament House

1. Members present

Mr Terenzini (Chair), Mr Coombs, Mr Harris, Ms McKay, Ms McMahon, Mr O’Dea, Mr Stokes, Mr Turner, Mr Ajaka, Mr Donnelly, Revd Nile

In attendance: Helen Minnican, Carly Sheen, Dora Oravec and Jim Jefferis

2. Witnesses present

Commissioner Cripps, Deputy Commissioner Hamilton, Mr Symons, Mr Waldon, Ms Waugh and Mr Favelle

3. Review of the Independent Commission Against Corruption’s Annual Report for 2005-2006 – public hearing

The Hon Jerrold Sydney Cripps QC - Commissioner of the ICAC, Theresa June Hamilton - Deputy Commissioner of the ICAC, Mr Michael Douglas Symons - Executive Director, of the Investigation Division, and Mr Roy Alfred Waldon - Executive Director of Legal Division, were sworn.

Ms Linda Michelle Waugh, - Executive Director of Corruption Prevention, Education and Research, and Lance Corey Favelle - Executive Director of Corporate Services, were affirmed.

The ICAC’s submission to the inquiry was tabled and included in the evidence. The Committee authorised the publication of the ICAC’s submission as part of its evidence.

Commissioner Cripps made an opening statement.

The Chair questioned the witnesses, followed by other members of the Committee.

Questioning concluded, the Chair thanked the witnesses and the witnesses withdrew.

The hearing concluded at 3.37pm.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 3)

Thursday, 18 October 2007 at 9.33am
Room 814/815, Parliament House

1. Members present

Mr Terenzini (Chair), Mr Coombs, Mr Harris, Ms McKay, Ms McMahon, Mr O’Dea, Mr Stokes, Mr Turner, Mr Ajaka, Mr Donnelly, Revd Nile

In attendance: Helen Minnican, Dora Oravecz and Millie Yeoh

2. Minutes

Resolved, on the motion of Mr Donnelly, seconded by Mr Ajaka, to confirm the minutes of meeting no 1 of 26 June 2007 and meeting no 2 of 11 September 2007.

3. ***

4. Chair's draft report: 'Review of the 2005-2006 annual report of the Independent Commission Against Corruption'

The Chair presented his draft report and addressed the Committee on the main issues and proposed course outlined in the report. The Committee agreed to consider the draft report at a meeting to be held on 25 October.

5. General business

Resolved, on the motion of Revd Nile, seconded by Mr Donnelly, to authorise the publication of the transcript of proceedings for the hearing held 11 September 2007.

The Committee discussed arrangements for the forthcoming hearing with the Inspector of the ICAC and the publication of his Annual report.

The meeting concluded at 9.55am.

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

Thursday, 25 October 2007 at 9.32am

Room 814/815, Parliament House

1. Members Present

Mr Terenzini (Chair), Mr Coombs, Mr Harris, Ms McKay, Ms McMahon, Mr Turner, Mr Ajaka, Mr Donnelly, Revd Nile

2. Apologies

Mr O'Dea, Mr Stokes

In attendance: Helen Minnican, Dora Oravecz and Millie Yeoh

3. Minutes

Resolved, on the motion of Mr Donnelly, seconded by Mr Coombs, to confirm the minutes of meeting no 3 of 18 October 2007.

4. Correspondence received

- 20 September, from Commissioner Cripps, providing answers to questions taken on notice at 11 September public hearing (including memorandum of understanding with DPP)

The Chair noted the Committee's receipt of the correspondence from the Commissioner. Resolved, on the motion of Revd Nile, seconded by Mr Coombs, to incorporate the ICAC's answers to questions taken on notice, and the memorandum of understanding, into the Chair's draft report as Appendix 1.

5. Consideration of Chair's draft report: 'Review of the 2005-2006 annual report of the Independent Commission Against Corruption'

The Committee considered the Chair's draft report, previously circulated and taken as read. Discussion ensued.

Chapter 1 – Mr Donnelly moved that the last sentence of para 1.84 be deleted and that the Committee insert instead the Commissioner's quote from p 21 of the transcript of evidence as follows:

Mr CRIPPS: No, I do not think I have changed my mind from what I said on that last occasion, but this ties in with what I have talked about, the public perception of what our role is

Discussion ensued. Mr Terenzini moved that the insert be extended to include the following quote from the same section of the transcript:

Mr CRIPPS: I suppose they ought to know it. I do not know that I want to encourage everyone to keep asking us every year to revise our earlier decision. I think they know it. They elect not to advance it because they can become potential victims without having to do anything to redress the issue. Whereas, I think people would know if something turned up that was a mistake, they could come back to us.

Discussion ensued. Mr Ajaka then moved to insert the entire quote from the section referred to by Mr Donnelly, to the end of the section referred to by Mr Terenzini.

Resolved, on the motion of Mr Donnelly, seconded by Mr Ajaka, that paragraph 1.84 be amended to insert the following:

'The Committee notes the comments of the Commissioner regarding this issue:

Mr CRIPPS: No, I do not think I have changed my mind from what I said on that last occasion, but this ties in with what I have talked about, the public perception of what our role is. For example, I do not think anybody suggests that if a doctor is struck off the role or a lawyer is struck off the role for improper conduct and then he is charged and found not guilty, that the disciplinary body should not reverse the decision, because it is viewed plainly as an administrative act in the interest of the public. It is not meant to punish him. If you strike people off it is not to punish them, it is to protect the public. In a sense, that is what we are doing with corruption. So, it is in that context that I think it largely should remain the same. Other people may have a different view.

I have also expressed this view, that although I have seen statements along these lines, "Well, there was a stinging finding of corrupt conduct by the commission and there was an acquittal of a person who was later charged, why is the commission leaving it that way?" We have the jurisdiction, in my opinion, to revisit any decision we have made. If it turns out in the future that we become aware of reliable and relevant information that demonstrates we have made a mistake, I hope we would rectify that mistake. To date, although people have complained about the probability, no-one has asked us to reverse that decision.

CHAIR: I hear what you say, Commissioner, but it is not solely a mistake on your part, but other information that may come to you.

Appendix 2 – Minutes

Mr CRIPPS: No, that is right. Something may happen that we did not know and had we known we might not have come to that conclusion, but nobody has done it yet.

CHAIR: Do you think you would be amenable to having something like that kind of information included for the public somewhere?

Mr CRIPPS: I suppose they ought to know it. I do not know that I want to encourage everyone to keep asking us every year to revise our earlier decision. I think they know it. They elect not to advance it because they can become potential victims without having to do anything to redress the issue. Whereas, I think people would know if something turned up that was a mistake, they could come back to us.

Chapter 1 – Resolved, on the motion of Mr Donnelly, seconded by Revd Nile, that the following clarifying amendments be made to Chapter 1, moved in globo:

- Footnote 20 - insert the following explanation from paragraph 3.4.8, page 37 of the McClintock report: 'ICAC employees are currently prescribed by regulation as "public officers" for the purposes of the Criminal Procedure Act 1986, which enables them to issue court attendance notices to commence proceedings for summary and indictable offences in the same manner as police officers'.
- Paragraph 1.65 – delete 'secondary' from the second line
- Paragraph 1.75:
 - delete 'possible model legislation' and insert instead 'provisions'
 - delete 'the application of' and insert 'reliance on'
 - delete 'provisions to' and insert instead 'provisions by'
- Paragraph 1.85 – insert ', the reasons behind each acquittal' after the word 'acquittals' in the final sentence.

Adoption of report

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

Further resolved on the motion of Mr Harris, seconded Mr Turner, that the Chair, the Committee Manager and the Senior Committee Officer be permitted to correct stylistic, typographical and grammatical errors.

6. General business

The Committee discussed arrangements for the forthcoming hearing with the Inspector of the ICAC and the tabling of the Committee's report.

The meeting concluded at 9.49am.