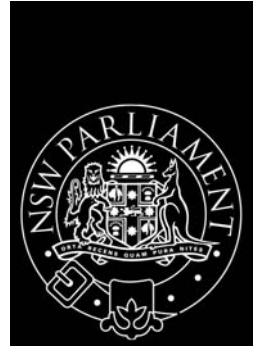


PARLIAMENT OF NEW SOUTH WALES



# Committee on the Independent Commission Against Corruption

EXAMINATION OF THE 2002 - 2003 ANNUAL REPORT OF  
THE INDEPENDENT COMMISSION AGAINST CORRUPTION

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## Table of Contents

Membership & Staff.....	iii
Terms of Reference.....	v
Chairman’s Foreword .....	vii
List of Recommendations .....	xi
<b>CHAPTER ONE - INTRODUCTORY REMARKS .....</b>	<b>1</b>
<b>CHAPTER TWO – GENERAL MEETING WITH THE COMMISSIONER TO EXAMINE THE 2002-2003 ANNUAL REPORT .....</b>	<b>3</b>
Question 1: Positive events 2002-2003 .....	3
Question 2: Low points 2002-2003 .....	7
Question 3: Major political, research and social issues debated in the public sector 2002-2003.....	9
Question 4: Research projects 2002-2003 .....	16
Question 5. ICAC publications 2002-2003 .....	21
Question 6: ICAC presentations 2002-2003 .....	22
Question 7: Corruption awareness activities 2002-2003 .....	23
Question 8: Provision of formal legislative advice 2002-2003.....	28
Question 9: Submissions to public and Parliamentary inquiries 2002-2003.....	29
Question 10: Operating budget 2002-2003 .....	29
Question 11: Advertising, publicity and community relations budget 2002-2003 .....	30
Question 12: Annual Report case studies 2002-2003.....	30
Question 13: Personal information in reported investigations .....	31
Question 14: Progress of pilot of activity based costing .....	31
Question 15: Cost of public hearing day versus private hearing day .....	32
Question 16: Review of corporate planning documents.....	32
Question 17: Further significant matters of relevance to corruption in the NSW public sector .....	33
Question 18: Whether ICAC should reconsider a finding of corrupt conduct in the case of an acquittal.....	33
Question 19: The ICAC of the Republic Of Mauritius.....	38
Question 20: Campaign in ethnic media to raise awareness of corruption issues .....	39
Question 21: Complaints concerning members of Parliament, Parliamentary Secretaries, MP’s Code of Conduct and Pecuniary interests register.....	39
Question 22: Postgraduate course in anti-corruption measures.....	48

Question 23: Duty to notify Commission of Corrupt conduct .....	48
Question 24 - Consequences of a finding of corrupt conduct where no prosecution or disciplinary action is taken.....	49
Question 25: Assessment Panel decisions.....	50
Question 26: Advisory services by consultants.....	51
Question 27: How corrupt conduct is investigated .....	52
Question 28: Implementation of organisational change .....	54
Question 29: Monitoring trends in corruption .....	55
Question 30: Protected Disclosures.....	57
Question 31: Corruption risks in the health sector.....	58
Question 32: Conflicts of interest.....	59
Question 33: Draft performance measures .....	60
Question 34: Reduction in Wages Bill .....	61
Question 35: Bron McKillop investigation .....	62
<b>CHAPTER THREE - ANSWERS OF COMMISSIONER TO QUESTIONS TAKEN ON NOTICE .....</b>	<b>65</b>
Question 36: Survey of MP's.....	65
Question 37: Review of Agencies .....	65
Question 38: Publication of Codes of Conduct.....	66
Question 39: Responsibility for administering Ministerial Code of Conduct....	66
Question 40: Adoption of Ministerial Code of Conduct.....	69
Question 41: Review of Ministerial Code of Conduct .....	69
Question 42: Business Ethics Codes.....	69
Question 43: International Anti-Corruption Conference Seoul 2003.....	70
Question 44: Number of requests for ICAC advice from Parliament Staff.....	71
Question 45: Parliamentary Ethics Commissioner .....	71
Question 46: Requests for corruption prevention advice from MP's.....	72
Question 47: Complaints to ICAC concerning MP's .....	72
Question 48: Number of Complaints.....	72
Question 49: Complaints concerning MP's Code of Conduct or Pecuniary Interests register .....	72
Question 50: Review of MP's Code of Conduct .....	73
Question 51: Post Parliamentary employment .....	73
Question 52: Survey of community attitudes .....	73
Question 53: Protected Disclosures.....	80
Question 54: Staff numbers.....	82
Question 55: Bron McKillop Report.....	82

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\* The Hon. Fred Nile MLC participated in the examination of officers of ICAC on 18 September 2003 but resigned from Parliament prior to the tabling of this report.



## 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 any 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.





## Chairman's Foreword

This report documents an examination of the annual report of the Independent Commission Against Corruption for 2002-2003 that took place at Parliament House on 23 February 2004. The approach adopted by the Committee was to review the annual report and forward a series of questions on notice to the Commission. After receiving written replies from the Commission to these questions on notice, the Committee then conducted a public examination of Commissioner Moss and her senior staff regarding matters appearing in the annual report.

Commissioner Moss spoke of the work of the Commission over the period 2002- 2003 as one of consolidation and productivity during which the Commission received benefits from its previous organisational review and restructure. There was an increase of 25 percent in the number of matters assessed. The Commission conducted 340 preliminary inquiries during that period and 38 investigations, which incorporated 18 days of public hearings.

The Commissioner reported an increased emphasis in investigations on the collection of evidence that would be admissible in any subsequent court proceedings. The Committee welcomes this particular advice as it has been concerned in the past over the number of matters that the DPP has not acted upon through lack of admissible evidence.

Commissioner Moss also reported that the continued development of strategic partnerships with other investigative agencies during 2002-2003 allowed the deployment of sophisticated techniques to expose the smuggling of contraband into prisons.

Over several years the Commission has been working with particular sectors to develop specific corruption prevention solutions for those sectors. The Commissioner gave examples of this work, which are detailed in the annual report. They include collaboration with the Department of Corrective Services to address corruption risks and further reforms in local government to minimise opportunities for corrupt conduct associated with development proposals.

The Commissioner said in her evidence that over the last 2 years complaints had gone up approximately 50 percent and the Commission has been obliged to employ additional assessment officers to cope with the increase. The Commissioner said the number of protected disclosures had also increased. Neither the Commissioner nor Deputy Commissioner were able to specify the reasons for the dramatic increase in complaints. The Committee recommends that the Commission examine the reasons for the increase and any action that might be justified in response to it.

In the course of the public examination the Committee questioned ICAC officers on the timeframe between briefs to the DPP, originating from inquiries and the decision by the DPP on whether to initiate court proceedings. Mention was made that some of the originating inquiries went back to 1997 and 1998. The Committee's concern is that such inordinate delays are not fair to the parties involved. When Commissioner Moss was asked what the Commission and the DPP were doing to improve the situation she replied:

**Commissioner Moss:** We do meet with them on this issue.

The Committee recommends that the Commission hold discussions with the DPP to examine practical steps to remedy the situation.

During the review period the Commission finalised research that had been commenced in September 2001 to profile the corruption risks that public sector organisations believed they currently faced. The research also identified the prevention strategies that these organisations had in place. The objectives of this research are fully set out at question 4 of this report. The Commission's report was very favourably received by all the organisations.

During this period the ICAC also undertook a strategic assessment of the waste management industry in NSW to identify corruption risks and solutions. Guidelines on managing corruption risks in the waste sector were published in November 2002.

The committee notes the statement in the annual report that the Commission's Corporate Strategic Direction document has been replaced with a new strategic plan covering the period 2003-2007. The Commission has also changed from a 3-year operation plan to a one year plan. The reasons for the change are detailed at question 16. The Commission states it was timely to review the strategic direction document to ensure that it still provided a clear statement of the long-term direction of the Commission.

During the Committee's examination of ICAC officials Commissioner Moss was asked to advise on the status of two unpublished chapters of a draft report of Mr Bron McKillop on Inquisitorial Systems of July 1994. This question was taken on notice by the Commissioner. In her subsequent reply the Commissioner said the report was commissioned in response to a request by the Parliamentary Joint Committee for the ICAC to look into and report on whether the application of the inquisitorial system of justice is appropriate to the ICAC's inquiries. A few remarks here would be useful to clarify the situation.

The two chapters dealt with "Features of 'inquisitorial' systems of particular relevance to the ICAC" and "The applicability of the processes of inquisitorial systems to the ICAC's inquiries". These chapters were omitted from the ICAC's published report of November 1994, entitled *Inquisitorial Systems of Criminal Justice and the ICAC: A Comparison*. In September 1995, the Committee sought a copy of Mr McKillop's final report of July 1994 but was only provided with a copy of the initial report of November 1991 which did not include the two extra chapters.

In May 2000, the Committee received correspondence from a journalist, Mr Evan Whitton, alleging that the final report had been deliberately withheld from the Committee. The Committee then conducted an inquiry and published a report on the matter in September 2001 entitled *Report on Alleged Contempt in relation to the draft Report of Bron McKillop on Inquisitorial Systems*. In that report the Committee did not find ICAC in contempt of Parliament but expressed its concern at ICAC's handling of the request for information.

The Committee subsequently used the information contained in Mr McKillop's final report for the purpose of its further examination of inquisitorial judicial systems which culminated in the Committee's report entitled "*Review of the ICAC Stage 111- the Conduct of ICAC Hearings*" published in June 2002.

A further matter raised in the Committee's examination concerned the review of findings of corrupt conduct. The Commissioner was asked whether a finding by the Commission of corrupt conduct against a person is reviewed under section 74(1) of the Independent Commission Against Corruption Act in the event of that person's subsequent acquittal in court proceedings. One such acquittal was listed in the annual report. Commissioner Moss said it had never been done to her knowledge and that she did not see a finding being reviewed unless there was fresh evidence. Mr. Pritchard, the Solicitor for the Commission, said that a person dissatisfied with a finding could challenge it.

**Mr. PRITCHARD:** ... Bear in mind too that if a person is dissatisfied with a finding it is always open to them to challenge the finding.

This view is in conflict with the views expressed in *Greiner v ICAC*.

Chief Justice Gleeson in his judgment in *Greiner v ICAC* (Court of Appeal 1992) spoke of the many persons whose position in office would be untenable following a public and official finding of corruption yet there was no right of appeal or procedure for review of the merits of the Commission's findings. He said that a finding of corrupt conduct might be based on the commission of an alleged crime, and might be followed by a trial and an acquittal. Yet the finding of corrupt conduct would stand. He said:

*"The ICAC Act provides no appeal against a determination that a person has engaged in corrupt conduct. The Commission is not a court, but an administrative body that performs investigative functions and, in the circumstances, makes reports. Clearly its determinations can have devastating consequences for individuals. The public officials whose conduct may fall within the purview of the ICAC Act range from the highest to the lowest in the State; from the Governor down. Many are persons whose position in office would be untenable following a public and official finding of corruption. Yet there is no appeal against, or procedure for any general review of the merits of, such a finding. Indeed a determination of corrupt conduct might be based on the commission of an alleged crime, and might be followed by a trial of the individual concerned, and an acquittal. This could happen for any number of reasons. It could simply be because a jury believed a witness whom the Commission disbelieved, or vice-versa. Even so, the finding of corruption would stand."*

The Chief Justice said that it was important that the proceedings in the court of Appeal should not give rise to a misunderstanding. They were not in the nature of an appeal against the facts found by the Commissioner. The Court had no jurisdiction either to endorse or to reject those findings of fact. The plaintiff's had invoked the narrower inherent jurisdiction of the Supreme Court to supervise the functioning of administrative tribunals to ensure they carry out their functions according to law. Because of their public importance and the urgency attached to them, the proceedings were, with the consent of all parties, removed into the Court of Appeal.

The evidence given by ICAC officials to the Committee indicate that there has never been an instance in the 16 year life of the Commission where it has felt the need to review a finding of corrupt conduct relating to a possible criminal offence even where a person has

subsequently been acquitted by the courts. The Committee does not have details of the number of instances where an acquittal has followed a finding of corrupt conduct by the Commission. However the strength of the views expressed by the Chief Justice on the lack of any merits appeal point to the need, perhaps belatedly, for the Commission to give more searching attention to this aspect in future.

**The Hon. Kim Yeadon MP**  
**Chair**  
**Committee on the Independent Commission Against Corruption**

## List of Recommendations

### **RECOMMENDATION NO 1:**

The Committee recommends that the Cabinet Office give attention to finalising the revised Ministerial Code of Conduct. In the course of the public examination of ICAC officials on 23 February 2004 it was reported that the Ministerial code of conduct had not yet been prescribed or adopted for the purpose of the Independent Commission Against Corruption Act. At Question 38 of this report Commissioner Moss states that finalising the review of the Ministerial Code has a bearing on the Commission's capacity to make findings of corrupt conduct having reference to s.9 of the Independent Commission Against Corruption Act. The Committee also recommends to the Cabinet Office that the Ministerial Code of Conduct be published in an appropriate form so that its contents are known and available.

### **RECOMMENDATION NO 2**

The Committee recommends that the Commission examine and report back to the Committee on the reasons for the dramatic increase in the number of complaints over the last two years and any action that might be justified in response to it.

### **RECOMMENDATION NO 3**

The Committee recommends that the Commission hold discussions with the DPP to examine practical steps to remedy inordinate delays between the date briefs are received and the date a decision is made on whether or not to initiate proceedings.



## **CHAPTER ONE - INTRODUCTORY REMARKS**

- 1.1 It is a function of the Joint Parliamentary Committee on the Independent Commission Against Corruption (the ICAC Committee) to carry out an examination of each annual report of the Independent Commission Against Corruption and report to Parliament upon it in accordance with section 64(1)(c) of the Independent Commission Against Corruption Act.
- 1.2 This report provides a record of the examination of the annual report of the Independent Commission Against Corruption for the 2002-2003 financial year.
- 1.3 The ICAC Committee had the benefit of a detailed and careful submission from the ICAC in response to a number of questions on notice relating to the 2002-2003 annual report. Many of these written responses were the subject of further questioning by Committee members in the course of the Committee's public examination of the annual report, or in a series of supplementary questions forwarded to the Independent Commission Against Corruption for further comment and advice.
- 1.4 This report comprises an edited record of the written documentation forwarded by the Independent Commission Against Corruption and the examination of witnesses representing the Commission at a public hearing on Monday 23 February 2004.





## **CHAPTER TWO – GENERAL MEETING WITH THE COMMISSIONER TO EXAMINE THE 2002-2003 ANNUAL REPORT**

*(This chapter contains relevant edited transcript of the general meeting with the Commissioner and the text of replies to 'Questions on Notice').*

### ***Question 1: Positive events 2002-2003***

What were the positive events – perhaps better described as the memorable events – of 2002-2003 regarding corrupt activity and corruption prevention in New South Wales?

As highlighted in the Annual Report there were a number of positive events insofar as the ICAC is concerned regarding corruption investigation and prevention in New South Wales in 2002-2003.

The 2002-2003 year was one of consolidation and productivity for the ICAC. In previous years the ICAC had been undergoing a major organisational review and restructure and this year the ICAC began harvesting the first fruits of that major change process. In 2002-2003 the ICAC assessed 1882 matters (an increase of 25 percent on the previous year) and conducted 340 preliminary inquiries. Thirty-eight investigations were conducted, incorporating 18 days of public hearings. The ICAC responded to 306 requests for advice as well as providing a range of training and information sessions for public sector agencies and the wider community.

In 2002-2003 the ICAC was able to track complex and often deliberately confusing asset and money trails, to chart corruption risks across the NSW public sector and to provide expert advice and guidance to specific sectors, such as universities and the Department of Corrective Services. The ICAC helped these sectors develop corruption resistance policies and procedures appropriate to their particular needs. In 2002-2003 the ICAC commenced an extensive campaign through the ethnic media to promote greater awareness of corruption issues and the role of the ICAC among communities of non-English speaking backgrounds.

### **Investigations/hearings**

During the year 18 public hearing days were held in relation to four investigations. Public hearings are only held where it is in the public interest to do so. In 2002-2003 public hearings were held as part of the following investigations:

Operation Agnelli: This matter concerned allegations of corrupt conduct involving officers of the NSW Grains Board. During 2002-2003 financial investigators played a key role in finalising the highly complex investigation into corrupt manipulation of the NSW Grains Board's financial affairs.

**Operation Hotspur:** This matter concerned allegations that a Client Service Officer of the Department of Housing had solicited a bribe from an applicant for public housing. This investigation was a good example of how the ICAC is able to integrate both reactive and proactive approaches to its investigations.

**Operation Athens:** This matter concerned allegations that a member of the NSW Legislative Assembly had misused his parliamentary entitlements. A range of investigative techniques were employed and recommendations were made to the Legislative Council and the Director of Public Prosecutions (DPP) arising from the evidence collected by the ICAC.

**Operation Hydra:** This matter concerned allegations that a NSW Government Minister had attempted to solicit a payment in return for promising NSW Government support for a commercial development project. The investigation also sought to ascertain whether any local council officers or any other person had acted corruptly in respect of the commercial development project (the Oasis project at Liverpool). The ICAC found no evidence of corrupt conduct and the investigation helped resolve intense public and political debate about the matter.

Although there is increased emphasis in investigations on the collection of evidence that will be admissible in any subsequent court proceedings, public hearings still play an important role in exposing corruption. Public hearings also help raise public awareness of corruption issues and can help ‘clear the air’ in respect of individuals or organisations against whom unfounded allegations have been made. Of the four investigations outlined above, three resulted in findings of corrupt conduct and recommendations that the DPP consider charges against individuals involved.

Away from the spotlight of public hearings, the ICAC also conducts investigations into a variety of matters. In the 2002-2003 Annual Report, we highlighted some of those and the following are two examples:

The ICAC conducted an investigation into an alleged offer of a bribe to an officer of the Centennial Park and Moore Park Trust. The subsequent investigation found evidence of the bribe offer and the matter has been referred by the ICAC to the DPP for consideration of prosecution action (p. 34).

The ICAC investigated an allegation that a real estate agent responsible for appraising and marketing properties on behalf of the Public Trustee purchased three properties through a third party without disclosing that he was the actual buyer. It was alleged he made a substantial profit from the resale. Private hearings were held which did not identify any evidence to indicate any Public Trustee officers had acted corruptly. A report under section 14(2) of the ICAC Act was made to the Public Trustee and relevant information was also disseminated to the Department of Fair Trading which is considering action against the agent concerned (p. 38).

During 2002-2003 the continued development of strategic partnerships with other investigative agencies allowed the deployment of sophisticated techniques to expose the smuggling of contraband into prisons. As outlined in the case study (p. 40) the Department of Corrective Services (DCS) kept ICAC staff apprised of information and intelligence that assisted in each stage of planning and executing investigative phases. The DCS officer who

was the target of this operation admitted before the ICAC his involvement in the matter and a brief of evidence has been sent to the DPP for consideration.

### **Corruption prevention**

In 2002-2003 the ICAC continued to work with particular sectors to develop corruption prevention solutions that are appropriate to their particular needs and circumstances. For example, the ICAC has been monitoring the implementation of specific recommendations made in a number of investigation reports dealing with matters involving the DCS. In March 2003 the DCS reported that almost all of the recommendations have been implemented. The ICAC's Corruption Prevention staff are working to assist DCS implement all recommendations and in particular to enhance corruption resistance around the significant problem of trafficking of contraband into prisons.

During 2002-2003 Corruption Prevention officers finalised 151 matters referred for prevention assessment and advice. ICAC officers also responded to 242 telephone requests and 64 written requests for corruption prevention advice. Approximately 30 specific recommendations to improve corruption resistance were made in ICAC investigation reports. Also during the year, six Corruption Resistance Reviews were completed which resulted in 167 recommendations for improving corruption resistance.

In 2002-2003 the ICAC continued its successful Rural and Regional Outreach Strategy, with two education, training and information-exchange programs conducted in non-metropolitan areas of New South Wales. The ICAC also conducted a project to promote awareness of corruption issues and the role of the ICAC to non-English speaking background communities. Initial evaluation of this project has been very positive and it is intended to further build on this work in 2003-2004.

***During the public hearing on 23 February 2004 this matter was examined further as follows.***

**HON. KIM YEADON (CHAIRMAN):** In your response to Question Upon Notice No. 1 relating to positive events over the review, you reported that the Department of Corrective Services had implemented all of the commission's recommendations relating to the problem of trafficking of contraband into prisons. Has it been possible at this time to measure the impact of the implementation of those recommendations?

**Mr PEHM:** We just did a review of the implementation, which we concluded two months ago and we have sent that to the department. As is often the case, there are some areas of concern with implementation on the ground in particular units and prisons. On the issue of trafficking of contraband into prisons, we made recommendations that the department consider obvious measures such as searching prison officers and tighter screening. There have been some industrial issues involved in the department's actual practical implementation of those issues, so in that respect we would say that there was still some considerable opportunity for corruption there.

We held a public hearing, I think during this last financial year, into one case of a prison officer trafficking in mobile phones and other contraband. I understand as a result of that, and the publicity given to that, that the industrial situation has become more accommodating to implementation of that recommendation, although I am not sure of the exact stage of the

implementation of that. With a big department like Corrective Services, with so many areas and opportunities for corruption to occur, there is always going to be patchiness in the implementation of recommendations and it is something we keep an eye on. As you see from the annual report, we are also targeting, through our investigations, that particular area.

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** You mentioned at the outset that complaints have risen dramatically. Can you give us an outline of why that might be so and are there any particular types of complaints that are rising more dramatically than others?

**Commissioner MOSS:** As my deputy mentioned, it has gone up, combined for the last two years, about 50-odd per cent and we have subsequently put on additional assessment officers to cope with the increase. The numbers of protected disclosures have also gone up accordingly and likewise, the numbers of section 11 reporting, that is CEOs reporting corrupt conduct issues. Partly we think that is because we have been working harder with agencies so that they do actually understand what is proper reporting of section 11 to ICAC.

There has also been an increase in the number of outside-jurisdiction matters. It is quite possible that with some high-profile cases that the media have reported that there has been a response just generally — people lodge complaints, so there has been an increase in the outside-jurisdiction. There is an increase also in matters that we refer to other agencies. I am just not too sure that we categorise the various areas of increase. If you wish information on that, I am happy to take it on notice unless one of my colleagues can answer that.

**Mr PEHM:** You will see that next year we will be reporting substantive complaints, complaints under section 10 and section 11 and protected disclosures. There has been a big increase in outside jurisdiction matters. I just did a search before we came, and the increase in substantive complaints was about 23.8 per cent in the year we are looking at and this year it is running at 25 per cent. So, it is a big increase. The reasons for that are anybody's guess. I think profiling, increased confidence in the commission, would be my guess, but that is probably a bit self-serving.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Commissioner, you report trends in corruption advice requested and other areas in which corruption has been detected or reported by area—conflict of interest, cash handling, gifts and benefits, and the like. Does the commission collect that information or collate that information somewhere on an agency basis? Seventy per cent of your complaints are about State Rail and the Department of Health but that is not clear in the way the information is recorded.

**Mr PEHM:** That would be possible. It has not been reported that way in the past. We are upgrading our information technology systems. It would be possible to run those searches now.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Would that not be both a useful measure of how successful your programs in relation to what is now called RailCorp have been, so you can see a reduction in the number coming in from RailCorp, and a useful tool to pick up year to year whether there is a spike in complaints in local government, in fishing or whatever?

**Mr PEHM:** It would. We looked at that last year and because of the number of agencies, when thinking about reporting it, the list ran on for three full pages, with most agencies getting very minor numbers that were really not statistically significant.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I suppose we are all interested in the ones at the top of the league.

**Mr PEHM:** Exactly. We could maybe cut it off at the end. To be fair, we would have to report that over a period. But we could look at something like that. Our information is getting better all the time but we can always do better.

**Commissioner MOSS:** One thing we have been trying to do is improve our data collection system and the use of our ICS, which requires better education of our staff on how they input that information when they are doing it. That has been a bit of a problem in the past. That was one of the things that was part of our recommendations about improvement, that we should improve our information-gathering system.

### ***Question 2: Low points 2002-2003***

#### **What were the low points during 2002-2003 regarding corrupt activity and corruption prevention in New South Wales?**

During 2002-2003 there were no significant low points regarding corrupt activity and corruption prevention in New South Wales. However, investigations conducted during 2002-2003 showed that corrupt conduct and system deficiencies continue to be issues requiring address by the ICAC and the relevant public sector organisations.

***At the public examination on 23 February 2004 questions were asked relating to problems of admissibility of evidence and delays in acting on Commission recommendations. Lack of successful follow on prosecutions had been seen by the Committee as a low point in regard to the previous annual report of the Commission.***

**Reverend the Hon. FRED NILE (ICAC COMMITTEE):** There has been a question previously about the commission's problem in gaining admissible evidence in prosecutions. Apparently, in the media this week there has been another increase in expensive cars being car-jacked and so on. There was a joint investigation with the New South Wales Police strike force into car rebirthing—Operation Jommelli—and the annual report shows that the Director of Public Prosecutions [DPP] declined to proceed because of insufficient evidence with nine of the 10 possible prosecutions. The only one that did proceed was against the former Roads and Traffic Authority manager in which New South Wales Police had prepared the criminal brief of evidence. Its collection of evidence was satisfactory and the commission had some weakness. Is this not a major problem in corruption prevention?

**Commissioner MOSS:** It would be a worry for us, and that is why we have tried to work harder in our investigations to try to gather better admissible evidence, should that matter go to criminal proceedings. It is something we have been trying to work at, but I guess in these cases—

**Mr PEHM:** The fact that the police ended up laying charges should not be read as a deficiency with us. Quite commonly we are in joint operations with the police and we provide police with statements we have taken, so they simply lay the information and run the charge. It does not necessarily mean they run good prosecutions and we do not. Perhaps John Pritchard can talk about that particular case, Jommelli, and why the prosecutions went the way they did.

**Commissioner MOSS:** I released the report very early on, when I became commissioner. It had been an ongoing, major investigation for several years before that, but on the whole we feel that Jommelli was a success because we exposed the very manner of the scam.

**Mr PRITCHARD:** I am not completely familiar with the Jommelli prosecutions but I understand that there were problems in the briefs in that some of the prosecutions relied on the willingness or availability of those implicated in it to assist against others, and that was not forthcoming in the sense of providing statements as part of the brief. We received a number of requests from the DPP to check whether certain people were prepared to make a statement about what they knew about it, and they were approached and indicated they were not.

**Reverend the Hon. FRED NILE (ICAC COMMITTEE):** They changed their positions?

**Mr PRITCHARD:** It is not so much they changed their positions—

**Mr PEHM:** When we are holding hearings we can compel you to answer questions, but the protection for them is that the answer cannot be used against them. We can get their evidence under that compulsion but when we send it to the DPP, the DPP says “No, we want a statement in admissible form”. We go back to that witness and say, “Will you give us a statement in admissible form?” They say no and there is nothing we can do to compel them.

**Reverend The Hon. FRED NILE (ICAC COMMITTEE):** There was no intimidation of the witnesses by other bodies?

**Mr PRITCHARD:** We had no indication of that.

**Mr PEHM:** They are involved in criminal enterprises themselves. Often complicated negotiations go on between them and the DPP in that one might be charged.

**Reverend the Hon. FRED NILE (ICAC COMMITTEE):** Do they need an immunity guarantee then?

**Mr PEHM:** That is one way of dealing with it. The other way is perhaps they will agree to plead to lesser charges and give evidence against their co-conspirators. But when people are jointly involved in a criminal enterprise it is very difficult to get them to testify against one another.

...

**Mr. BARRY O'FARRELL (ICAC COMMITTEE):** On Appendix 3, does the timeframe between inquiries, briefs to the DPP and court action concern you? I notice that some of these inquiries went back to 1997 and 1998 and they are still awaiting action. I thought that good

justice was not quick but timely at the very least. What are you doing to try to improve the situation?

**Commissioner MOSS:** We do meet with them on this issue.

**Mr. PRITCHARD:** Obviously we would like it to be quicker than what it is but at the end of the day the director has a monopoly on what he does and we have to deal with him. We have continual meetings with the DPP about the progress of matters. We do our best to make sure that whatever they need in terms of further evidence material that they think they need we get to them as quickly as possible. I cannot think it is only us as an agency that refers matters to them where they have to wait for advice. I think the PIC might be in a similar position. We certainly do our best to try to ensure that there is no undue delay that can be attributed to us and we give them everything that they need.

**Mr. BARRY O'FARRELL (ICAC COMMITTEE):** Is there any progress in relation to the Rockdale inquiry where six individuals had 18 charges against them?

**Mr. PRITCHARD:** Yes. We received advice from the DPP last week in relation to all persons that had been referred for recommendation of prosecution action. I do not really want to say any more about that. It is better that those persons subject to those recommendations know of that matter in the normal course rather than through the media.

**Mr. BARRY O'FARRELL (ICAC COMMITTEE):** But we can expect movement?

**Mr. PRITCHARD:** Yes, soon.

**Mr. BARRY O'FARRELL (ICAC COMMITTEE):** Before the elections.

**HON. KIM YEADON (CHAIRMAN):** That is very soon.

***Question 3: Major political, research and social issues debated in the public sector 2002-2003***

**Based on monitoring of literature and policy development activities in Australia and overseas, could the Independent Commission Against Corruption indicate what were the major political, research, and social issues concerning corrupt activity and corruption prevention involving the public sector that were debated during 2002-2003?**

The main issues concerning or relating to public sector corruption activity and corruption prevention debated during 2002-2003 were similar to those in the previous year although several new projects were initiated or finalised.

An acknowledgement of the importance of public trust in government continued to be the basis for:

- policy initiatives affecting relationships between the private and public sectors;
- improving the accountability of public officials;
- creating tools to measure policy effectiveness; and
- instruments for internationalising anti-corruption standards and processes.

### **Public sector/private sector relationships**

The quality of corporate governance continued as a theme in the relationships between the public and private sectors.

During the year the OECD *Guidelines for Multinational Enterprises* were promoted as one of the world's foremost corporate responsibility instruments reflecting the commitment of 37 adhering governments on ethical business conduct. Their usefulness as an anti-corruption tool was discussed in a paper at the 11<sup>th</sup> International Anti-Corruption Conference in Seoul in May 2003. Together with the OECD *Principles of Corporate Governance* they were used in several international roundtable meetings hosted by the OECD to enhance the role of business in preventing corruption.

One of the strategies for preventing corruption in relations between the sectors has been the promulgation of business ethics codes and statements particularly for businesses that work with, or in, the public sector. Interest in this approach has increased in the 2002-03 year and this approach is included in the new United Nations Convention Against Corruption as a recommended corruption prevention mechanism. The Commission has advocated the development and use of such statements by public sector agencies in a number of its corruption prevention publications and in the first half of 2004 the Commission will publish guidelines for public sector agencies on the development of a Statement of Business Ethics.

### **Improving accountability of public officials**

Improving the quality of information to guide public officials in their roles was a theme in this area.

The OECD Governance program has been coordinating a multi-country project on conflicts of interest that includes Australia. The project is based on the idea that the concept of conflict of interest is fundamental to corruption prevention. It is intended to produce tools to help officials of all kinds understand the potential relationship between conflicts of interest and corrupt conduct.

In an effort to provide more practical guidance for agencies in promoting ethical conduct the Australian Public Service Commission revised its *APS Values and Code of Conduct in Practice: A guide to official conduct for APS employees and Agency Heads* and published *Embedding the APS Values*.

This was also the goal of the South Australian Local Government Association *Council Members Guide 2003* which outlines, in context, the roles, functions and responsibilities of Councils and Council Members. Similar work has been produced in Western Australia.

In the UK the Committee on Standards in Public Life (Wicks Committee) recommended supporting the Ministerial Code by creating an independent adviser on Ministerial interests to advise Ministers on conflicts of interest and an independent process for investigating alleged breaches of the Ministerial Code.



The Committee's 9<sup>th</sup> report *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service* in April 2003 also dealt comprehensively with the proper role and accountability of ministers' advisers.

The issue of the accountability of ministerial staff was also raised in the Australian *Senate Select Committee Inquiry into a Certain Maritime Incident in October 2002*. It was the subject of academic analysis in seminars run by the Australian National University, the Australian Association for Public and Applied Ethics, the Institute for Public Administration Australia and a book by Professor Patrick Weller of Griffith University.

Accountability and corporate governance in indigenous community groups has been an important topic at the federal and state levels in Australia. The Queensland Crime and Misconduct Commission published *Making a difference: Governance and accountability of Indigenous councils* and a series of advisory papers.

### **Measurement**

Apart from these substantive issues, the need to measure the effectiveness of prevention methodology was discussed in seminar papers at the International Institute for Public Ethics Conference in October 2002 and the International Anti-Corruption Conference in May 2003.

With this goal in mind, Transparency International has now run National Integrity System (NIS) assessments in 18 countries. The NIS has the objective of promoting good government and it is seen as the basis for anti-corruption reform programmes.

Transparency International conducts regular assessments about perceptions of corruption in various countries and the willingness of citizens from specific countries to offer or pay bribes. Australia rates highly in terms of freedom from corruption on both surveys and was rated as the eighth least corrupt country out of 130 countries included in the Corruption Perceptions Index 2003.

The World Bank Institute has been developing indicators that can be used to measure and monitor institutional performance and governance reforms. They are based on research undertaken since 1996 and were released in a World Bank Working Paper in May 2003 (*Governance Matters III: Governance Indicators for 1996-2002*).

The OECD Governance Division also initiated a project on this subject to be pursued in the coming year.

### **Internationalisation**

The development of the United Nations Convention Against Corruption has been the dominant driver of attempts to internationalise anti-corruption activity in 2003. The Convention has now been finalised and was opened for signature by member states on 9 December 2003 (Australia signed the Convention on 10 December 2003). The Convention's purpose is to promote anti-corruption measures, integrity and accountability in public management, as well as international cooperation and technical assistance.

The prevention measures are wide ranging and include mechanisms for public and private sector governance, judicial and prosecutorial independence, preventative anti-corruption bodies, transparent and accountable public finances, anti-money laundering policies, and opportunities for public participation in government.

The Australian Commonwealth conducted consultative meetings for 18 months with the States and the private sector during the development of the Convention, and regards the prevention of corruption as important to security, trade and development in the Asia-Pacific region.

Other topical dimensions of internationalisation have included attempts to standardise ideas about ethical public sector practice and deal with cultural differences in ethical conduct. These issues were discussed in several fora during 2002-03 including the International Institute for Public Ethics Conference in October 2002 and the International Anti-Corruption Conference in May 2003.

Strategies for dealing with transnational corruption continued to be discussed, particularly in the context of terrorism and organised crime. Debate has continued about mechanisms for international enforcement and cooperation have continued particularly in the context of the United Nations Convention.

### **Development programs, good governance and anti-corruption measures**

Increasingly, governments, non-government organisations (NGOs) and development assistance agencies have recognised that sound public sector governance and corruption resistance are critical to successful development. Strengthening public institutions that contribute to proper accountability such as legal and courts systems as well as watchdog bodies is also seen as playing a major role in improving governance and corruption resistance. These factors have led to a high level of international demand for the ICAC's advice and expertise. In response, the ICAC hosted numerous visits from overseas delegations during the year and provided advice and expert assistance about building corruption resistance.

***The Committee examined these matters in further detail during its proceedings on 23 February 2004 as follows.***

**Mr. JOHN PRICE (ICAC COMMITTEE):** I have just two questions on a response to question on notice No. 3. In the first instance the answer says that businesses that work with or in the private sector are being encouraged to develop their own business or ethics codes. Do you find the codes useful? The International Anti-Corruption Conference in Seoul last year examined some of these things. Do you think that the evidence that was produced there reflects on the usefulness of the codes as they apply in New South Wales?

**Commissioner MOSS:** I will have to take that on notice.

**Mr. PEHM:** I am not sure what the evidence at the Seoul conference was.

**Mr. JOHN PRICE (ICAC COMMITTEE):** The International Anti-Corruption Conference is a conference that is held every three years.

**Mr. PEHM:** How useful they are remains to be seen. We have had a number of investigations where private businesses or contractors that deal with public sector agencies can say, "I did not know what the procedure was. When I was told by that officer that I was to give a cheque to the social club with him as secretary who am I to question it? I just did what I was told." These codes are given to businesses or contractors when they enter into arrangements with public sector agencies so that at least it should be clear to them what the proper method of dealing with a public sector agency is. As to how that works out in practice, you will still get people who do the wrong thing but at least it will cut off possibly some avenue of excuse.

**Mr. JOHN PRICE (ICAC COMMITTEE):** The commission has put some reliance and emphasis on ethics and codes of conduct. I wondered whether there was a reflection in any of these reports that have come through from international bodies. I understand that there is some activity with the United Nations Convention Against Corruption, inquiries and investigations. I wondered whether ICAC had been asked to contribute to that particular organisation's inquiries.

**Mr. PEHM:** I do not think so. This was largely a project of the former director of corruption prevention. He could probably answer it in detail but perhaps we will have to take it on notice.

**Commissioner MOSS:** Our former director was involved with overseas organisations on co-operative anticorruption work. At the moment we are working on what is called a "statement of business ethics" with public sector agencies. We are trying to finalise and formalise that statement. In doing so, we tend to take into account local conditions more than taking guidance from international statements and documents. We find that the international community approaches us for advice about how to do things. We entertain quite a lot of international delegations about the work of ICAC. In dealing with public-private interface, for example, we are trying to develop this statement of business ethics, code—or whatever you want to call it—and we have been liaising and consulting with various agencies as to what they feel about the issues as to the practicality of our documents. We hope that something like that will raise the bar regarding how State agencies organise business with private sector people, how they do their tenders and so on. That should be coming out fairly shortly.

**Mr JOHN PRICE (ICAC COMMITTEE):** Given our close liaison with English-speaking countries, such as the United States and Britain, where quite a number of these public-private operations take place, have you been able to get any satisfactory information in relation to any code that they may have and ethical conduct between the government and private sectors?

**Commissioner MOSS:** Only with respect to our work on MPs; we have looked at some international codes in that area. Broadly speaking, I do not think we have got a lot of assistance from looking at international countries. For example, we look very closely and with interest at how the Hong Kong ICAC is going and what particular developments it makes. But it is a different organisation again: it is much bigger and its jurisdiction is broader than ours. We might consider some innovative ideas but I find that we generally develop quite a lot of our work ourselves and we trial it with the local community.

**Mr JOHN PRICE (ICAC COMMITTEE):** To date, ICAC seems to have emphasised the need for individuals to conduct themselves in an ethical manner and to have that codified. In terms of levels of corruption, I would have thought the opportunity for significant corruption existed far more openly in the public sector—and to a lesser degree in government departments. Why is the emphasis on the individual and not so much on the corporate side?

**Commissioner MOSS:** I think we try to emphasise it with both equally. My view would be that systemic issues are just as important, if not more important, than emphasising individual ethics. Of course individual ethics are very important. Leadership and tone at the top, for example, are very important to any public sector organisation. But our view has always been that if you put good systems in place that will establish a checking or vetting mechanism no matter who you have there. No matter what you put in place systemically—for example, regular audit checks or gift registers that require staff to register—if they are good systems it makes it much more difficult for an individual, no matter who or with whatever intent, to carry out his or her corrupt intent. I have always thought that ICAC, as have my predecessors, has taken very seriously the systems issue and more or less as an adjunct to that we then say, "Let's also look at the individual ethical component of how you do business as well."

**Ms WAUGH:** May I add to that in respect of the private-public interface? That goes back to this profiling research and to some of the recommendations we have made in there. All of this governance practice is happening in the private sector, which is of course of interest to us. But we clearly do not have jurisdiction over those private sector companies that the public sector in New South Wales may be dealing with. To address that issue, in our recommendations on contracting and procurement we have suggested that when you contract somebody you make sure that they are aware of your statement of business ethics, your code of conduct and the rules that apply to public sector employees. We even go so far as to suggest that there are clauses in the contract that allow that contract to be terminated should the conduct of anyone on the part of the private company deviate from or contradict what is expected of a public sector employee. From that perspective, we are trying to deal with the private-public sector interface.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Returning to the Commissioner's comments about systems enabling you to focus on individuals no matter who they are, I am still unclear as to what system applies with regard to the ministerial code of conduct and ensures that individuals, no matter who they are—whether they are the Premier or Ministers—are affected. Search of the *Hansard* reveals no ministerial code of conduct and search of the Government web site reveals no published ministerial code of conduct. Is the publication of codes of conduct important in terms of people's behaviour so that people can observe whether their colleagues are behaving ethically? Does it assist with the regular audits that you have talked about? In terms of your activities, who was responsible for administering the so-called ministerial code of conduct?

**Commissioner MOSS:** I think it is obviously a good thing for it to be published, open and understood. As for administration, it would obviously be up to the leader of the organisation to ensure that the contents are known and implemented.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** The political leader or the administrative leader? We have a very public code of conduct that applies to all members of Parliament. Mr Price chairs the committee that is charged with reviewing it but the Clerk of the Legislative Assembly also has responsibilities in relation to me and to the other members of the Legislative Assembly around this table. I am genuinely unclear as to who runs the ministerial code of conduct. I have no doubt that the Premier has an interest in it, but it is not published in the Cabinet Office annual report or in the Premier's Department annual report and it is not referred to in either of those annual reports. What is the value of a code of conduct that is not published and that no one takes responsibility for administering?

**Commissioner MOSS:** I cannot give you the details of that. I am happy to take that question on notice.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I am sure that the issue will not go away.

**Commissioner MOSS:** We thought we saw it in *Hansard*.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I had it checked after the last reference, for my own sake.

**Ms WAUGH:** In the course of preparing another report for the commission I certainly obtained access to the ministerial code of conduct. I do not suggest that I necessarily found it easily but I have definitely looked at it and I did not get it through an office.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** And the Deputy Commissioner has a copy?

**Mr PEHM:** It exists.

**Ms WAUGH:** It has not been promulgated for the purposes of our ICAC Act. Is that correct?

**Mr PEHM:** Under our section 9 serious breach of a ministerial code constitutes misconduct.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** None of us in this room has any doubt that if we breach the members of Parliament code of conduct we may find a recommendation, a finding or an opinion expressed about us. That has occurred. If the ministerial code of conduct is not publicly available or published does it have an impact upon ICAC making a recommendation in relation to it?

**Mr PEHM:** It depends. Section 9(3), which covers both the members and the ministerial codes, says if the ministerial code prescribed or adopted for the purposes of this section by the regulations—

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** That has not been done since 1995. Is that correct?

**Mr PEHM:** I think the current one is quite old.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Is it prescribed or adopted by the regulations?

**Mr PEHM:** I assume that—

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I will put that question on notice.

**Mr PEHM:** We will take it on notice.

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** You might be interested to know that in 1999 I asked the Leader of the Government in the Legislative Council about the ministerial code of conduct and had quite a bit of difficulty getting any information about it. Mr Egan did say at the time that the ministerial code of conduct was being revised. It would be interesting to know whether there were any significant revisions and whether there have been any since then.

**Commissioner MOSS:** We will take that question on notice.

***Question 4: Research projects 2002-2003***

What were the research projects commenced, completed or otherwise in progress in 2002-2003 commissioned by or involving the Independent Commission Against Corruption which concerned issues of corrupt conduct or which had major implications for corruption investigation or corruption prevention, organised under subcategories of

- the terms of reference of the research project;
- brief background notes to inform the ICAC Committee of the information or events which led to the research project;
- a status report of the current position and any proposed actions so that the ICAC Committee is aware of the intended direction of the research project;
- the resources required for the research project
- the project manager, and consultant (if any).

Terms of reference	Rationale	Status report	Resources required	Project manager
<b>Profiling the NSW Public Sector: Functions, Risks and Corruption Resistance Strategies</b>				
<p>The objectives of the research project were to:</p> <ul style="list-style-type: none"> <li>• gather information about the work functions undertaken by public sector organisations in NSW</li> <li>• have public sector organisations indicate what corruption risks they believe they face and detail the prevention strategies they have in place</li> <li>• measure staff awareness of relevant policies and practices</li> <li>• identify differences among public sector organisations in respect of the risks they believe they face and the prevention strategies they have in place</li> <li>• assist the ICAC in developing sector-specific advice for dealing with corruption risks</li> <li>• promote discussion of the corruption risks facing NSW public sector organisations</li> <li>• provide information to public sector organisations to assist them in targeting areas where the development of further prevention strategies is warranted.</li> </ul>	<ul style="list-style-type: none"> <li>• Much of previous efforts of the ICAC were reactive: responding to complaints, impressions or anecdotal suggestions about where to intervene.</li> <li>• The research project aimed to provide reliable information on which to take a proactive approach to building corruption resistance.</li> <li>• In 2000-2001 the ICAC conducted research to identify corruption risks and corruption resistance strategies in local government.</li> <li>• This research project aimed to build on this local government research to identify corruption risks and prevention strategies in state agencies.</li> <li>• This was the first research of its type in Australia.</li> </ul>	<ul style="list-style-type: none"> <li>• The research commenced in September 2001.</li> <li>• Data collection was finalised in February 2002.</li> <li>• The data was analysed in 2002.</li> <li>• The final report of the project was released in January 2003.</li> <li>• The data from this research project is now being used to inform current corruption prevention and strategic risk assessment activities within the Commission.</li> </ul> <p>Current examples include the use of this data to:</p> <ul style="list-style-type: none"> <li>- provide a benchmark to measure progress by agencies in implementing protected disclosure provisions, codes of conduct, risk management strategies, internal audit procedures, gifts and benefits policies and internal investigation procedures</li> <li>- develop a profile of area health services for use in CPE&amp;R health project.</li> </ul>	<ul style="list-style-type: none"> <li>• The ICAC project manager and a research officer worked on this project.</li> <li>• In 2002-2003 the ICAC spent \$10,862 on this research.</li> </ul>	<p>The project manager was the ICAC Research Manager.</p> <p>Taverner Research Company was engaged to collect survey responses in 2001-2002.</p>

<b>Community attitudes to corruption and the ICAC</b>				
<p>This project was a survey of a sample of the NSW community to ascertain:</p> <ul style="list-style-type: none"> <li>• perceptions of corruption and its effects</li> <li>• attitudes to reporting corruption</li> <li>• awareness of the ICAC</li> <li>• perceptions of the ICAC.</li> </ul>	<p>This survey has been conducted periodically since 1993. A core set of questions is asked each time the survey is conducted. Repeating the same questions allows monitoring of trends in attitudes to corruption and the ICAC.</p> <ul style="list-style-type: none"> <li>• Consistent with previous surveys, of the respondents surveyed, most (83 percent) perceived corruption to be a problem in NSW and roughly half (48 percent) believed that they or their families were affected by corruption in some way.</li> <li>• There was substantial support for reporting corruption, with most people believing it appropriate and acceptable to report corruption (97 percent) and that individuals have a responsibility to report corruption (89 percent).</li> <li>• Public cynicism about the outcomes of reporting corruption was stable from 1993 to 1996, rose in 1999 (to 39 percent), but dropped significantly in 2003 (to 29 percent).</li> <li>• Attitudes toward the ICAC were generally positive with most respondents (94 percent) stating that they believe that the ICAC is “a good thing” for the people of NSW and has been successful in exposing (74 percent) and reducing (55 percent) corruption in the NSW public sector.</li> </ul>	<ul style="list-style-type: none"> <li>• The survey was conducted in April 2003. 500 NSW residents were interviewed by telephone.</li> <li>• The final report was published in December 2003.</li> </ul>	<ul style="list-style-type: none"> <li>• In 2002-2003 the ICAC spent \$18,000 on this research.</li> </ul>	<p>The Executive Director, Corruption Prevention Education &amp; Research, managed the project.</p>



<b>Waste management in NSW: A Strategic Assessment</b>				
<p>The ICAC undertook a strategic assessment of the waste management industry in NSW to identify:</p> <ul style="list-style-type: none"> <li>the key public and private stakeholders in the industry</li> <li>the major corruption risks these stakeholders perceive that they face in the industry</li> <li>possible solutions to these corruption risks.</li> </ul>	<p>Evidence from other agencies identified a number of problems in the waste industry that suggested higher risks of corruption, including:</p> <ul style="list-style-type: none"> <li>the industry is disaggregated and ad hoc in focus and management</li> <li>a lack of transparency in processes and decision making</li> <li>that it is a lucrative and competitive industry.</li> </ul>	<ul style="list-style-type: none"> <li>The project commenced in May 2001.</li> <li>Based on the results of this research a discussion paper was prepared in April 2002.</li> <li>The discussion paper identified a number of factors generating risk in the waste sector.</li> <li>Based on feedback from stakeholders guidelines on managing corruption risks in the waste sector were published in November 2002.</li> </ul>	<p>Three ICAC staff from Research, Corruption Prevention and Education worked on the original research project. Two ICAC staff from Corruption Prevention developed the discussion paper and guidelines. In 2002-2003 the ICAC spent \$5,865 on the project.</p>	<p>The ICAC Research Manager managed the research project. The development of the discussion paper and guidelines was managed a Corruption Prevention Manager.</p>

<b>Degrees of Risk: A Corruption Risk Profile of the NSW University Sector</b>				
<p>The aim of this project was to identify corruption risks in the university sector and develop strategies to foster corruption resistance.</p>	<p>Concerns about the accountability of universities arose in the course of the investigation into the conduct of staff and students at the University of Technology, Sydney.</p>	<ul style="list-style-type: none"> <li>The project commenced in October 2001.</li> <li>In August 2002 the findings of the project were published and a forum was held with universities to discuss the results.</li> </ul>	<ul style="list-style-type: none"> <li>A Research Officer worked on this project.</li> <li>In 2002-2003 the ICAC spent \$11,630 on the project.</li> </ul>	<ul style="list-style-type: none"> <li>The project was conducted by an ICAC staff member from Corruption Prevention Education and Research</li> </ul>

<b>Development of a practical guide to conflicts of interest</b>				
<p>The aim of this project is to develop a better practice guide focusing on strategies and options for managing conflicts of interest. The project is being conducted with the Crime and Misconduct Commission in Queensland. The guidelines for conflicts of interest are being developed to be consistent with some conflict of interest guidelines published by the OECD. The aim is that this better practice guide could become the basis of a nationally agreed standard that other watchdog agencies could endorse in subsequent versions.</p>	<ul style="list-style-type: none"> <li>• Conflict of interest is at the heart of much of the work of the ICAC. They affect all jurisdictions and all levels and types of staff.</li> <li>• The work of the ICAC indicates that conflicts of interest are difficult to recognise and manage effectively.</li> <li>• The ICAC has done some work on conflicts of interest, but there are gaps in terms of providing practical advice about how to manage them.</li> <li>• The OECD released international guidelines about the management of conflicts of interest in the public sector in June.</li> <li>• To coincide with the release of the OECD guidelines, the ICAC convened a workshop with senior practitioners in the area from Queensland, Western Australia, Victoria and New Zealand.</li> <li>• The project will be one of the first to develop a practical guide based on these international guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>• The project commenced in June 2003.</li> <li>• The planned date for completion is May 2004.</li> </ul>	<ul style="list-style-type: none"> <li>• A Research Officer and a Senior Corruption Prevention Officer are working on this project.</li> <li>• In 2002-2003 the ICAC spent \$17,687 on the project.</li> </ul>	<ul style="list-style-type: none"> <li>• The project is being conducted by two staff members from Corruption Prevention Education and Research.</li> </ul>

**Question 5. ICAC publications 2002-2003**

**Please provide the bibliographic details of monographs, reports, chapters, journal articles, or pamphlets on corrupt conduct, or which had major implications for corruption investigation or corruption prevention, that were written by officers of the Independent Commission Against Corruption or consultants contracted to the Independent Commission Against Corruption that were published in 2002-2003.**

**Investigation reports**

9 July 2002	Report into corrupt conduct associated with development proposals at Rockdale City Council (TROPHY)
6 August 2002	Investigation into conduct of officers and students at University of Technology, Sydney (TUDOR)
27 February 2003	Report on investigation into conduct concerning the Woodward Park project (HYDRA)
15 May 2003	Investigation into handling of applications for public housing by an officer of the Department of Housing (HOTSPUR)
29 May 2003	Investigation into dealings between Thambialiah Jeevarajah, an engineer employed by the Department of Housing, and the construction company Australian Colour Enterprises Pty Ltd (BROWNING)

**Investigation issues**

9 July 2002	Investigation Issues: Report into corrupt conduct associated with development proposals at Rockdale City Council (TROPHY)
6 August 2002	Investigation Issues: Investigation into conduct of officers and students at University of Technology, Sydney (TUDOR)
27 February 2003	Investigation Issues: Report on investigation into conduct concerning the Woodward Park project (HYDRA)
15 May 2003	Investigation Issues: Investigation into handling of applications for public housing by an officer of the Department of Housing (HOTSPUR)
29 May 2003	Investigation Issues: Investigation into dealings between Thambialiah Jeevarajah, an engineer employed by the Department of Housing, and the construction company Australian Colour Enterprises Pty Ltd (BROWNING)

**Corruption prevention and research publications**

August 2002	Degrees of Risk – Reprint
August 2002	Managing an organisation through an ICAC investigation – Reprint
November 2002	Taking the whiff out of waste
November 2002	Taking the whiff out of waste: A snapshot guide
November 2002	No excuse for misuse
November 2002	No excuse for misuse: A snapshot guide
November 2002	DIY CRR – Reprint

General Meeting with the Commissioner to examine the 2002– 2003 Annual Report

November 2002	Fighting Fraud
November 2002	Fighting Fraud Checklist
November 2002	The first four steps (building organisational integrity) – Reprint
December 2002	Taking the devil out of development: Position paper
January 2003	Profiling the NSW public sector. Functions, risks and corruption resistance strategies
March 2003	Scholarship brochure

### **Corporate documents**

October 2002	Annual Report 2001-2002
October 2002	Annual Report 2001-2002 Summary
June 2003	ICAC Strategic Plan 2003 – 2007

### **Multi lingual and community resources**

March 2003	Bribery = Crime brochures 12 Languages – Reprint
April 2003	Bribery = Crime postcards 12
April 2003	Bribery = Crime posters
May 2003	Providing advice on corruption issues: A guide for community leaders
June 2003	Bribery = Crime New languages 13
June 2003	Information folders

### **Corruption Matters newspaper**

September 2002	Corruption Matters No 21
May 2003	Corruption Matters No 22

### ***Question 6: ICAC presentations 2002-2003***

**From the list of presentations in Appendix 13 of the Annual Report please provide a copy of following speeches:**

- **speech on 17 July 2002 entitled “ICAC and conflicts of interest”;**
- **speech on 30 August 2002 entitled “ Making corruption research relevant”;**
- **speech on 10 September 2002 entitled “Ethical issues for government lawyers giving advice within government”;**
- **speech on 12 September 2002 entitled “ICAC and plain English”;**
- **speech on 18 September 2002 entitled “Roles, functions, ethics and politics of ICAC”;**
- **and speech on 16 October 2002 entitled “Staff rotation as a corruption prevention tool”.**

The speeches for 17 July, 30 August, 18 September and 16 October 2003 are in PowerPoint format and have been provided to the Committee Manager for distribution.

On 10 September 2002 Grant Poulton was a panel member for an ethics panel at the Annual Government Lawyers CLE Convention. The title of the panel was *Ethical issues for government lawyers giving advice within government*. There was no speech prepared for this panel.

On 12 September 2002 Dominic Riordan discussed the work the ICAC had been doing internally on promoting plain English. This was an informal presentation and no speech/PowerPoint presentation was prepared.

### ***Question 7: Corruption awareness activities 2002-2003***

**Please provide a general summary of corruption awareness activities undertaken by officers employed by the Independent Commission Against Corruption, or consultants contracted to the Independent Commission Against Corruption, during 2002-2003.**

There are number of ways that the ICAC undertakes its role to raise awareness of corruption and corruption prevention. These awareness-raising activities cover a range of topics, locations and target audiences. The activities undertaken in 2002-2003 are listed below.

#### **1. Rural and Regional Outreach Strategy (RAROS)**

The RAROS program is an important corruption awareness activity that involves events targeted at the community, public and private sectors. It is aligned with other key ICAC programs such as corruption resistance reviews and the local government strategy.

Two RAROS programs were conducted in 2002-2003: Riverina (program based in Wagga Wagga) in November 2002 and Central West (program based in Orange) in May 2003. Specific components of these RAROS programs included:

- training workshops for public officials
- the launch of products developed as part of the local government strategy and a guide to the ICAC for community leaders
- meetings and discussions with regional managers/directors and general managers of councils
- visits to agencies to discuss corruption resistance reviews
- schools visits and community meetings
- radio, television and print interviews and stories.

As part of our program in the Central West the ICAC worked in partnership with NSW Agriculture. This involved providing training sessions on corruption risk management to their staff and executive. NSW Agriculture also participated in a Corruption Resistance Review. Feedback from the evaluation of the RAROS programs indicates that the training workshops were seen as useful and relevant to the needs of participants. Sixty four public officials participated in the workshops held as part of the Riverina RAROS and 113 participated in Central West RAROS workshops.

## 2. Non-English Speaking Background (NESB) project

The ICAC has an ongoing project to raise awareness and improve reporting of corrupt conduct in NESB communities. In 2002-2003 the NESB project evolved into a multi-faceted communications strategy. Building on prior research and feedback from community consultations, a strategic approach to reaching NESB communities was implemented. The objectives of the campaign were to encourage people from these communities to report corruption and to raise their awareness of public sector corruption and the ICAC's role. The campaign's key messages – that bribery and fraud are illegal in NSW – were delivered through a range of media to ensure effective communication with target audiences.

The campaign involved the following components:

- **postcard and poster display:** new multilingual resources for public sector agencies with a high NESB clientele were piloted in 35 agencies. These agencies included local councils, hospitals, libraries, migrant resource centres, remand centres and a wide range of NSW public service offices. The resources included a poster and a series of postcards in 12 community languages. They were designed to be displayed at shopfronts or in reception areas. Each participating office was also provided with support material and the option of a corruption prevention information session for staff.
- **Commissioner's meeting with the ethnic media:** a briefing and morning tea was held in June 2003 at the ICAC's offices for editors and journalists from NESB print media, television and radio programs. The Commissioner and other staff briefed journalists and editors that attended and encouraged them to inform their audiences about public sector corruption and the role of the ICAC. Each guest received an information kit and press releases. The event consolidated good relations and ongoing communication with some major ethnic media outlets, in particular the ethnic print media. The event also resulted in a number of reports in Spanish, Thai, Korean and Chinese community newspapers, including a feature story in the *Australian Chinese Daily's* weekly magazine supplement.
- **radio campaign:** Throughout June 2003, 25 community language radio stations aired the campaign's radio component – a series of radio mini-dramas illustrating common corruption issues and 'infomercials' promoting awareness of the ICAC in 25 community languages. One hundred scripts were professionally produced and tested with focus groups representing six NESB communities.
- **Bribery = Crime brochure:** These popular print brochures were reviewed, redesigned and translated into a further 13 languages to cover the 25 languages through which the radio campaign was delivered. The 25 language versions have also been designed for the Internet and are currently available on the ICAC website.
- **State-wide dissemination of Corruption is wrong poster:** A copy of the poster *Corruption is wrong* was mailed out to all State agencies, Members of Parliament, local councils and police stations across NSW in June 2003 – a total of 3,222 agencies and offices. The distribution of posters prompted a number of enquiries concerning the communication campaign and/or requests for further copies of the poster.

### **3. Advice meetings**

Organisations often contact the Commission seeking corruption prevention advice about specific issues. In some cases the Commission responds in writing to the request, and in some cases meetings are held to discuss the issues involved. These advice meetings provide a good opportunity to raise awareness about corruption and corruption prevention strategies. In 2002-2003 records indicate that 53 advice meetings were held with agencies such as local councils, government departments, statutory authorities and area health services.

### **4. Corruption Matters**

*Corruption Matters*, the ICAC's newspaper is distributed to approximately 12,000 readers across the NSW public sector. Two editions were published in 2002-2003. Following a review in August 2001 of the publication's reach and effectiveness (reported on in the 2001–2002 Annual Report), a number of enhancements have been made in 2002–2003.

The distribution database for the publication has been extensively reviewed and updated to ensure comprehensive coverage of the NSW public sector; and agencies have been encouraged to use *Corruption Matters* content in public sector journals and in-house publications. The content and format of the publication has been improved, with greater use of illustrations, newspaper layout conventions and more diverse and topical content. Further enhancements to layout are planned for issues published in 2003–2004.

A sample of *Corruption Matters* readers will be surveyed by means of a simple questionnaire to evaluate changes made in 2002-2003 and to inform further enhancements to the publication in 2003-2004.

### **5. Government News**

The Commissioner provides a column for the *Government News* magazine, which is a nationally distributed magazine focusing on issues of relevance for all three levels of government. The magazine, which is published 11 times a year, is a very useful vehicle for the Commission to emphasise its corruption prevention messages to a sector that generates a quarter of the complaints to the Commission. Commissioner's columns have covered topics that include:

- a) Identity fraud
- b) Protecting government information
- c) Gifts and benefits, and
- d) Fraud

### **6. ANU/ICAC Corruption and Anti Corruption Course**

For the past six years, the ICAC has worked in partnership with the Australian National University (ANU) to deliver a post-graduate course unit in Corruption and Anti Corruption. This successful and internationally recognised course is designed for middle and senior managers from public sector agencies around the world. It aims to help participants to devise strategies to make organisations and countries more resistant to corruption. A key element of the ICAC approach is to assist the senior management of public sector organisations to

understand the causes of corruption and the measures that they can adopt to prevent it. From our perspective, its value is its practical focus and the participation of NSW public sector managers who, upon completion of the course, can incorporate these insights into their day-to-day work. The unit can also count towards a Masters Degree at the ANU's Asia Pacific School of Economics and Management.

The 2002 course was held in August/September 2002 at the ANU campus in Canberra and at a venue in Sydney.

The ICAC offers scholarships to NSW public officials to attend the course, and receives a large number of applications each year. This year ten scholarships were offered for the 2003 course. Priority was given to senior employees of NSW state and local government sectors. Four of the ten scholarships were targeted at employees from rural and regional NSW. The aim of the scholarships is to help build capacity within the NSW public sector.

## **7. Fact-Finder workshops**

The ICAC conducts one-day Fact-Finder workshops focusing on the investigative process. These workshops are intended to equip non-investigators with the skills and principles to conduct fair and effective internal investigations. The ICAC has produced a written resource, *Fact-Finder: A 20-step guide to conducting an inquiry in your organisation*, to complement the workshops.

The workshops are offered in-house to requesting organisations, and also offered to a general audience through a strategic alliance with the Institute of Public Administration of Australia (IPAA). Fact-Finder workshops are also conducted as part of the regional education and training programs held under the Rural and Regional Outreach Strategy (RAROS).

Five Fact-Finder workshops were held in 2002– 2003. Evaluations of these workshops – and of the *Fact-Finder* publication distributed to all participants – are consistently positive with participants finding them useful and informative. The supporting guidelines are also in high demand and a revised and updated set of guidelines is to be published in November 2003 to reflect on-going refinements in the material.

## **8. National investigations symposium**

In November 2002, the ICAC together with the NSW Ombudsman and the Institute of Public Administration Australia (IPAA) held the 4<sup>th</sup> National Investigation Symposium. Over 190 delegates from NSW public sector agencies and local councils, interstate and Commonwealth and international public authorities attended.

The symposium aims to build the professional capacity of public officials who routinely undertake audit, regulatory or administrative investigations. The 2002 symposium, titled *Sherlock or Sheer Luck?* included streams for practical investigation techniques, planning and management of investigations, legal frameworks and topical issues.

The symposium is organised on a cost recovery/profit share basis and returned a slight profit to the organising partners. Evaluations again indicated that attendee objectives were met.



Based on this positive feedback the ICAC, the NSW Ombudsman and IPAA will begin planning a fifth symposium for 2004.

## **9. IT security awareness education resources**

In 2002–2003 the ICAC worked with the Office of Information Technology (OIT) on the development of IT security awareness education resources. In particular, a video was developed and released in May 2003 (titled *I wish it wasn't me*) that promoted IT security awareness in the context of eCorruption risk management.

This staff training and refresher video covers a range of information security risk areas and provides practical tips for managing these risks.

Copies of this video were sent to the CEOs of all NSW public sector agencies and to their respective IT sections. Resources to support the video are currently being developed in partnership with OIT and will be released in 2003–2004.

## **10. Training video for local government councillors**

Local government councillors are a key audience for the ICAC's prevention work. In order to constructively engage councillors, the ICAC has developed a strategy to deliver key messages affecting councillors – most of which centre on conflicts of interest. The medium chosen to communicate these messages and to engage the target audience was a video drama, structured around a fictitious Regional Organisation of Councils meeting. The plot presents a number of realistic conflict of interest issues that present challenges and dilemmas for the main characters. A facilitator's guide and background materials support the video. It was felt that a dramatisation of the relevant issues would better engage councillors than traditional training techniques. The use of a video also supports delivery of consistent messages and advice, whether delivered by ICAC personnel or other facilitators.

To develop the content of the video we convened an Advisory Committee to review and advise on the script. The Advisory Committee included representatives from the NSW Ombudsman, the Department of Local Government, and the Local Government Association of NSW and the Shires Association of NSW. A wider reference group including a number of council general managers and ex-councillors was used to verify the characterisation and storyline.

The video is intended to become the key tool for conflict of interest training for councillors. It will be most useful to new councillors but is also highly relevant to more experienced councillors and council staff. The video and accompanying resources were launched in November 2003 and will be distributed, together with a facilitator's guide and other support materials, to all local government councils in March 2004.

## **11. Increasing awareness of corruption through the media**

Awareness of corruption is also increased when information about the ICAC and its work is reported in the media. The ICAC receives substantial media coverage of public hearings and when public reports are released. In 2002-2003 media attention of investigations was mainly focussed on the hearings and reports about the:

- Woodward Park development in Liverpool
- use of parliamentary entitlements by the Hon Malcolm Jones MLC
- solicitation of bribes by an employee of the Department of Housing
- thefts of artefacts from the Australian Museum
- release of the report about councillors at Rockdale Council accepting bribes.

The media also promotes other corruption awareness-raising activities. The RAROS visits consistently receive excellent media coverage in the regions. This coverage usually involves television, radio and print media. The NESB *Corruption is wrong* campaign has also received a good response from ethnic media outlets.

***Question 8: Provision of formal legislative advice 2002-2003***

**Please provide general summary details of the circumstances where officers of the Independent Commission Against Corruption have provided formal advice on proposed legislation (including regulations), discussion papers, etc, during 2002-2003.**

The ICAC provided advice to the Joint Standing Committee on the Anti-Corruption Commission, Parliament of Western Australia on jurisdiction over prison officers. A copy of the advice is provided in Appendix A.

Also in 2002-2003 the ICAC provided advice on the *University Legislation Amendment Legislation (Financial and Other Powers) Act 2001*. Part of the recent *University Legislation Amendment Legislation (Financial and Other Powers) Act 2001* concerns guidelines for universities' commercial activities. The Act states that universities could submit for approval, proposals for guidelines for commercial activities.

The ICAC reviewed the legislation and concluded that there were a number of issues fundamental to good corruption risk management that were not addressed. These included:

- the guidelines for commercial activities made no mention of the need to:
  - a) adhere to university policies and procedures, including the reporting of suspected corrupt conduct
  - b) require corruption risk assessment and management to be undertaken along with other risk assessment and management
  - c) require staff working in a commercial activity to adhere to university policies and procedures, including those relating to declaring and managing conflicts of interest.
- the amendment does not include reference to the ICAC or its Act, but does include reference to the Audit Office and the Ombudsman and their respective Acts.

The ICAC recommended changes to the legislation that the ICAC considers are fundamental to the appropriate operation of university commercial activities.

These suggestions have been included in the guidelines for universities. The Minister is currently considering these points in terms of making changes to the legislation.

**Question 9: Submissions to public and Parliamentary inquiries 2002-2003**

**Can the Independent Commission Against Corruption provide, where publicly available, copies of submissions made by the Commission to public and Parliamentary inquiries – excluding the ICAC Committee – during 2002-2003?**

The ICAC did not make any submissions to public and Parliamentary inquiries during 2002-2003.

**Question 10: Operating budget 2002-2003**

**What was the Independent Commission Against Corruption's 2002-2003 operating budget, organised in terms of investigation and corruption prevention functions?**

The operating budget of the ICAC is structured on the basis of a business unit's direct financial management responsibilities. The budget model also includes the grouping of Commission-wide costs under a separate business cost centre that comprised salary on-costs such as superannuation, long service leave and workers compensation and indirect expenses that supported all organisation activities such as office and equipment rental, computer leases and maintenance, audit fees, training costs, postage & freight, insurances, general stores, contract security, etc.

The following operating budget for 2002-03 for investigations related to the direct costs controlled by that function and comprised the three business unit cost centres of Strategic Operations, Complaint Handling and Assessments and Legal Services.

	<b>Salaries</b>	<b>Operating</b>	<b>Total</b>
	<b>\$</b>	<b>\$</b>	<b>.. \$</b>
<b>Strategic Operations</b>	3,626,046	379,368	4,005,414
<b>Complaint Handling &amp; Assessments</b>	730,633	16,452	747,085
<b>Legal Services</b>	<u>966,285</u>	<u>714,520</u>	<u>1,680,805</u>
	5,322,964	1,110,340	6,433,304

Corruption prevention functions covers the advisory, education, research and corruption prevention initiatives and strategies delivered by the Commission. Similar to Investigations, the Corruption Prevention budget only comprises the direct costs controlled by that function.

	<b>Salaries</b>	<b>Operating</b>	<b>Total</b>
	<b>....\$....</b>	<b>.....\$....</b>	<b>....\$...</b>
<b>Corruption Prevention</b>	1,954,725	460,480	2,415,205

***Question 11: Advertising, publicity and community relations budget 2002-2003***

**What was the Independent Commission Against Corruption's 2002-2003 budget for advertising, publicity and community relations activities?**

The 2002-2003 budgets for advertising, publicity and community relations activities were as follows:

Advertising and Publicity	\$90,000
Community Relations Activities	\$52,800

***Question 12: Annual Report case studies 2002-2003***

**The Committee notes the inclusion of information related to unreported investigations as case studies in the 2002-2003 annual report. Does the Commission compile and publish a full record of its unreported investigations, and if not, why not?**

The ICAC does not compile and publish a full record of its unreported investigations. The purpose of providing these types of case studies in the Annual Report is to provide the reader with examples of the type of work undertaken away from the spotlight of public hearings and public reports. To provide these examples, a summary of the case is prepared usually without names and other identifying information to protect the anonymity of the parties involved – the extent to which this is done depends on the particulars of each matter.

The ICAC does not intend to publish a full record of its unreported investigations (and it is assumed that the question extends to preliminary inquiries) for a number of reasons:

- Such an exercise would create a significant administrative burden in summarising each matter, editing and then obtaining legal confirmation for each matter that procedural fairness has been preserved for the parties involved.
- The publication of personal details, other identifying details and/or factors surrounding allegations may unreasonably and unnecessarily compromise the privacy of the individuals concerned.
- The decision to publish all investigative work of the ICAC may deter individuals from making complaints to the ICAC.
- In many cases the inquiry or investigation finds no evidence of corrupt conduct although the public disclosure that such allegations have been made against a person or a person representing a particular public sector organisation can be damaging to their reputation – this is one of the reasons why the public interest is paramount in the ICAC deciding to conduct a public hearing. It would not be in keeping with the spirit of the legislation to adopt a practice of publishing what has previously been an unreported investigation.
- This is not industry practice - the Queensland Crime and Misconduct Commission, the Western Australia Anti-Corruption Commission has not adopted this practice. Nor is it the practice of any Ombudsman Office within Australia.

Each year in the Annual Report the ICAC publishes summary tables concerning the nature and number of complaints received. The ICAC is of the view that such information is sufficiently informative to allow the public to ascertain the general nature of complaints received by the ICAC.

In terms of accountability, the ICAC does report individual unreported matters to the Operations Review Committee for advice. The ICAC is of the view that this ensures an appropriate accountability mechanism for matters that are not dealt with through public hearing and/or public report.

***Question 13: Personal information in reported investigations***

**The Committee notes the inclusion of specific personal information related to reported investigations in some, but not all, case studies in the 2002-2003 annual report. Why are names included in some of the case study descriptions and omitted in others?**

For case studies used in the Annual Report, the ICAC may include an individual's name when it has become publicly known through public hearing and providing that the name is not subject of a suppression order. In relation to investigations involving only private hearings or no hearings, the ICAC will generally not include a person's name in a published case study. Where the identity of a public authority is clear from the nature of the matter reported such as in the case of the Department of Corrective Services, the public authority will be identified. These are the general considerations when incorporating case studies into the Annual Report, however the particular details of each matter are also considered on a case-by-case basis.

***Question 14: Progress of pilot of activity based costing***

**Would you please advise the Committee on the progress you have made towards activity-based costings. Have you commenced the pilot program you previously foreshadowed?**

The ICAC is developing its activity-costing model and in October 2003 commenced an activity costing pilot study in the Strategic Operations Division using the investigation and surveillance areas. The pilot program will be used to analyse and develop the business rules and processes for activity cost allocations to ensure consistent and meaningful results will be produced from the costing model without creating a complex processing environment.

It is proposed to run the pilot for an initial period of three months and then evaluate the results, impacts and benefits for the ICAC.

***Question 15: Cost of public hearing day versus private hearing day***

**What was the approximate cost per day incurred by the Independent Commission Against Corruption of a public hearing as against a private hearing over the period 2002-2003?**

The ICAC does not routinely maintain daily records of costs and expenses for public and private hearings. However, a description of the direct operating expenses per day as they apply to private and/or public hearings shown below indicates that public hearings are generally more expensive on a daily basis than private hearings.

**External legal fees:** External legal fees for Counsel Assisting briefed by the ICAC during 2002-2003 ranged from \$1500 to \$2000 per day (plus GST). Total fees paid to external Counsel Assisting also include preparation for the hearings and preparation of any final submissions. For private hearings ICAC lawyers generally appear as Counsel Assisting. For public hearings the ICAC generally engages external Counsel therefore increasing the cost of these hearings.

Where an external Assistant Commissioner is appointed to conduct hearings, sitting fees are paid according to set rates that currently are equivalent to the daily rate for an acting Supreme Court Judge which was approximately currently \$1,230 during 2002-2003.

**Transcript fees:** Transcript fees for a full day of hearing, regardless of whether the hearing is held in private or public costs approximately \$1000 per day (plus GST). This figure is based on a cost of \$12.50 per transcript page.

**Witness expenses:** Witness expenses may be incurred for both private and public hearings and vary considerably.

**Hearing notices:** Generally a hearing notice (which is only required for public hearings costs) is approximately \$1100 per notice per paper (usually for Saturday papers). management and additional security.

Public hearings may also have additional indirect costs, for example costs associated with media

***Question 16: Review of corporate planning documents***

**The annual report states the Commission's Corporate Strategic Direction document has been replaced with a new strategic plan covering the period 2003-2007. You have also changed from a 3-year operational plan to a one-year plan. Please detail the reasons for the changes and the expected benefits from them.**

The ICAC has moved to an integrated strategic business planning and budget model that links the ICAC's Strategic Plan 2003-2007 with the annual corporate business plan and budget flowing down to the individual annual business unit plans and budgets. The performance targets from these business plans are then reflected in individual staff performance agreements.

In relation to the Corporate Strategic Direction document, it was timely to review this document that was first prepared in 2001 to ensure that it still provided a clear statement of the long term direction of the Commission. The ICAC Executive held an Executive planning day in February 2003 and agreed that certain changes were required, both to fit in with the integrated strategic business planning and budget model and to ensure that the strategic plan provided the overarching strategic approach that the ICAC intends to follow in coming years. The result was the current Strategic Plan 2003-2007.

The annual corporate business plan sets out the details of the services and initiatives to be delivered during the year and the expected results to be achieved. It is considered that an annual business plan that focuses the attention of the organisation on the specific targets and goals to be achieved during the year is a more effective approach for managing business operations than a broader based 3-year operational plan. The Corporate Business Plan is derived from the ICAC Strategic Plan 2003-2007 and is designed around the delivery of the services and activities that support the corporate objectives and key result areas. It addresses critical planning considerations in terms of the key business challenges, planning assumptions, major business risks, corporate objectives (as specified in the Strategic Plan), service strategies, performance targets, key performance measures and the resources required by the Commission (budget) and their deployment.

This same planning approach is applied to divisional business planning and to the development of individual staff performance agreements ensuring that there are appropriate levels of accountability and ownership of the Commission's objectives and performance targets.

***Question 17: Further significant matters of relevance to corruption in the NSW public sector***

The issues relating to corruption and the NSW public sector for the reporting period 2002-2003 have been adequately covered in the above questions and in the ICAC's Annual Report. The ICAC has nothing further to add.

***The following further questions were asked by Committee members In the course of the hearing on 23 February 2004***

***Question 18: Whether ICAC should reconsider a finding of corrupt conduct in the case of an acquittal***

**CHAIR:** I would like to ask a question about Operation Obrech, which is referred to in appendix 3 at page 106 of the annual report. That operation dealt with corrupt commissions and concerned the Hastings Shire Council. In that matter the DPP concluded that there was sufficient evidence to prosecute a Mr Terry Schmitzer for a breach of section 249B of the Crimes Act, which relates to corrupt commissions. At the hearing the defendant pleaded not guilty and the magistrate dismissed the information. My question is, does your finding of corrupt conduct remain or would you reconsider the finding in the face of the defendant's acquittal? As I understand it, you have the power to review a finding under section 74 (1),

which provides that the commission may prepare reports in relation to any matter which has been or is the subject of investigation. I suppose I am drawing the contrast between the previous case where you indicated evidence that may have been anticipated did not arrive, but in this case the DPP concluded there was sufficient evidence and you still go on to a situation of no conviction. What occurs in that regard, in that in your initial report Mr Schmitzer is deemed to be corrupt?

**Mr PEHM:** I would have to look at a particular case.

**CHAIR:** That is a particular case.

**Mr PEHM:** I would have to look at a particular one I am familiar with, but it may well be that evidence given under compulsion that could not be used in a prosecution was given to the commission.

**CHAIR:** I suppose that is why I put an emphasis on the fact that the DPP was of the view that there was sufficient evidence. So, one would think if that evidence was inadmissible, the DPP would not have proceeded in the first instance.

**Mr PEHM:** There may well have been other evidence that was not admissible that came before the commission on which the commission made its finding.

**CHAIR:** Let us move away from that specific case and go to the general, if you like. Say the accumulated evidence is admissible and you go to court and no conviction is recorded. Will the commission anticipate putting something out under section 74 (1) in relation to its previous finding, given that there has been no conclusion of a conviction?

**Mr PEHM:** I think that is unlikely. Just coming back to the Schmitzer case, as you indicated there, that information was dismissed but only after the defendant had given evidence. So, it was not like it was dismissed at the end of the prosecution case. The magistrate found there was a case to answer after hearing the prosecution's evidence and called on the defendant, and it was only after that stage that the information was dismissed.

**CHAIR:** The defendant pleaded not guilty. If there was a case to answer and he pleaded not guilty, why did the case not proceed?

**Mr PRITCHARD:** No, it did proceed. The defendant pleaded not guilty and the prosecution presented its evidence. The magistrate was satisfied there was a case to answer at the hearing. That is a lesser standard of proof, at the close of the prosecution case. He was satisfied that the defendant had a case to answer, the defendant gave evidence and then you move to a higher standard of proof—beyond reasonable doubt—at that stage. So, to that extent there is a difference between at what stage the information might be dismissed. Some informations are dismissed at the end of the prosecution case without the need to even call on the defendant, because that is part of our system, that he who asserts must prove, so the prosecution brings the charge—

**CHAIR:** So you are really talking about a pre-trial in that sense, to see whether or not there is a case to answer, is that right? But you do not get to the next stage of actually recording a conviction, do you?



**Mr PRITCHARD:** No, this would have proceeded as a summary hearing, so it would have been determined in front of the magistrate without the need to go any further. What I am saying is, the magistrate must have been satisfied that on the prosecution evidence there was a case to answer. Sometimes the magistrate can hear the prosecution evidence and then say it is not enough, he does not want to hear from the defendant and dismisses that. It is important to bear in mind that the DPP's own prosecution policy guidelines do not even require, in order for proceedings to commence, that the director be satisfied that this is evidence of proof beyond reasonable doubt. He only needs to be satisfied that there are reasonable prospects of conviction. I am not intimate with the details of what Mr Schmitzer's defence may have been, but even the DPP does not commence proceedings unless he—he does not have to be satisfied that there is proof beyond reasonable doubt. It is a prediction, a forecast, based on the evidence that you have. The defendant is not obliged to disclose his case, so you have to do the best you can on the evidence you have.

**CHAIR:** So you still see no overall problem in that on various occasions people are found to be corrupt within an ICAC report subsequent to an investigation and there is still a large gap between that and successful prosecutions in the court?

**Mr PRITCHARD:** As a matter of general principle, no.

**CHAIR:** No problem for you?

**Mr PRITCHARD:** I am not saying it would not be a problem in some cases, but as a general principle, no. One, we have a different standard. Corrupt conduct is balance of probabilities—sorry, Briginshaw's case, reasonable satisfaction.

**Ms MOSS:** Which is quite a high standard.

**Mr PRITCHARD:** It is a high standard but it is not the same as proof beyond reasonable doubt. Not much of a difference, but not the same.

**CHAIR:** If it is not much of a difference why do we have such a gap between the two levels? You are almost saying this gap is almost irrelevant. It is almost irrelevant, you just say it is an evidentiary thing in the way you have received that evidence?

**Mr PEHM:** I think the commissioners concede that we have had problems with prosecutions partly because of the quality that has been gathered in the past. Investigations have been geared towards ICAC hearings rather than towards prosecutions. Now as we go we are trying to gather admissible evidence for prosecutions, and hopefully we will be more successful with prosecutions.

**CHAIR:** Perhaps I can put the question in another way. Say, for example, you get evidence that is admissible and it goes to court—this is just hypothetical—and the court records an acquittal. What do you think the situation is then? Are you still comfortable on that lower test and the evidence you have that the person still stands with a corrupt finding against them, despite the fact that they have gone to the court with all the evidence, no evidence has been made inadmissible, it is all been put before the court, but the court says they are not guilty?

**Mr PRITCHARD:** Yes. The other thing is there are different rules of admissibility under our Act. We are not bound by the rules of evidence. A court has completely different rules of evidence. There are good policy reasons for that.

**CHAIR:** For the courts having the rule of evidence?

**Mr. PRITCHARD:** Yes.

**CHAIR:** Would those same good reasons not apply to the conduct of ICAC?

**Mr. BARRY O'FARRELL:** We asked that last year.

**CHAIR:** Yes, I know. I will keep asking it because it is a big issue for me.

**Mr. PRITCHARD:** The sanctions that flow from a conviction in a court include the deprivation of liberty. I am not suggesting for a moment that a finding of corrupt conduct is to be treated lightly.

**CHAIR:** It is no tea party.

**Mr. PRITCHARD:** It carries an enormous stain, as it were, but a conviction in a court also carries the prospect of a custodial sentence. The ICAC cannot do that sort of thing.

**CHAIR:** You could be convicted in court and have a custodial sentence of six months. You could be found to be corrupt, which could ruin your financial career for the next 30 years. I would take the six months instead of the 30 years of financial deprivation. It is a sensible way of looking at it.

**Mr. PRITCHARD:** Yes, and to that extent the Briginshaw standard takes into account the seriousness of the matter that you are dealing with. It is a flexible test, as it were, depending on the circumstances, the serious nature of the finding that you are making and the gravity of what may flow. That can determine whether it is something you arrive at lightly or something that you arrive at a bit more seriously, or falling short of proof beyond reasonable doubt.

**CHAIR:** To bring it down to its essence, in your view there would never be a situation in which ICAC would review its initial finding of corruption? In other words, once you have put out a report finding someone corrupt it stands forever and a day? There would be no circumstances under which you would go back and revise that?

**Mr. PRITCHARD:** I am a lawyer. I do not deal in absolutes. I would always leave open the prospect.

**Mr. PEHM:** If new evidence became available—

**CHAIR:** But you have been in existence for, what, 10 or 15 years? It has never occurred that you have gone back and—

**Mr. PEHM:** I have never heard of anyone asking for it to be done.

**Mr. BARRY O'FARRELL:** It has certainly gone the other way: an inquiry has been closed and then you have reopened it because of extra evidence. We might get to that a little later.

**Mr. PRITCHARD:** Sure. Bear in mind too that if a person is dissatisfied with a finding it is always open to them to challenge the finding.

**CHAIR:** Through what mechanism?

**Mr PRITCHARD:** We are always open to challenge findings.

**Mr. PEHM:** Which happened in the Greiner-Metherell case.

**CHAIR:** That is the point, is it not? Mr. Greiner stands labeled as being corrupt out of a report even though he has gone to the judiciary and got an opposite indication. That is not a good example: you did not change.

**Mr. PEHM:** As a matter of law the Court of Appeal quashed the ICAC findings. As a matter of law there is no corruption finding by ICAC. As a matter of politics and how that played out—

**CHAIR:** But ICAC never withdrew its finding. The court made its finding and ICAC continued on as usual.

**Mr. PRITCHARD:** There would be little point for ICAC to do that. The Court of Appeal has already told it that it got it wrong. There is no point for the commission to go back and tell itself that it got it wrong.

**CHAIR:** I am not too sure about that. There is quite a mixed body of opinion out there, depending on whom you talk to. One group says that he is corrupt and another group, probably more familiar with legal circles and the legal regime in this State, think that he is not. The important thing is educating on both sides of the coin. Many average punters out there would still be very much of the view that Greiner et al remain corrupt. I do not agree that he is either but a lot of people out there still do.

**Mr. BARRY O'FARRELL:** I think Nick has done very well out of it. I wish I suffered so financially badly.

**CHAIR:** He got offered a tobacco board position.

**Mr. BARRY O'FARRELL:** One of 30.

**Ms MOSS:** It has never been done to my knowledge. I do not see it being reviewed unless, as my deputy says, there is clearly fresh evidence. If you go back into the history of the prosecutions the Schmitzer matter may not be the only one where that has occurred. 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. As my deputy said, if there was actually fresh evidence that would be a different issue. I am aware that there has been a matter where fresh evidence has arisen to the point where an existing commissioner has decided to review it. But in 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.

**CHAIR:** I hear what you are saying in that regard. On the negative side of finding more evidence to open or reopen a case and convict someone, that can occur because there is a large organisation called ICAC out there that is continuing to look for corruption. It may not specifically have somebody on the radar but as a result of its wider activities picks up further evidence to move on to a corrupt finding. The individual does not have the resources of a large organisation. It is not their business to be looking for evidence or whatever else, which is probably why they keep reiterating the same evidence that they have. They do not have a big ability to get further. I just point out that sort of organisational inequity, if you like. That is why I see these as very difficult issues.

***Question 19: The ICAC of the Republic Of Mauritius***

**Mr. ANTHONY ROBERTS:** I understand that the Chairman and one other member of this Committee met with a representative from ICAC of the Republic of Mauritius, which I understand is very much based on the New South Wales model with the exception that the commission makes recommendations rather than findings. The commissioner from Mauritius said that this had the advantage of leaving reputations intact if court or disciplinary proceedings did not eventuate or were not successful. What is your view on this?

**Ms MOSS:** In essence, the effect of our findings is not that different. At the end of the day I suppose the word "findings" is an issue of dispute. It has gone before parliamentary committees as to whether a body such as ICAC should be able to make findings but at the end of the day our findings do not have the same effect as a finding of a court in any event. I would say that their recommendations possibly have no different effect to our findings but I think that the word "finding" probably has a stronger connotation. It might have been more advantageous for Mauritius to say that they would be able to make findings rather than recommendations. As to whether the findings have the same sort of effect, that depends on their statute. For them to be able to make findings that have a compulsive effect on any particular agencies is quite a powerful tool. It all depends on what is the effect further to the recommendation. At the end of the day whatever findings I make are still only recommendatory. Quite obviously they are very strong recommendations. A finding of corrupt conduct, as the Chairman says, does have quite a dreadful effect or a stain on whoever sustains it.

**Mr. PEHM:** The last time this Committee went into this issue at quite a bit of length and did a report on it and compared it with the Police Integrity Commission. It does not make findings; it has statements of opinion. But when the media report it they say that the commission has found someone corrupt. Pool safety inspectors can make findings when they do reports. In one sense not a lot turns on whether you call it a finding or a statement of opinion or a recommendation.

**Ms MOSS:** It depends on what effect the commissioner's recommendations have. Does an agency have to take regard and act or can they disappear into the ether with no effect?

**Mr. PEHM:** Under the Act the commissioner can make a special report to Parliament at any time to reconsider a finding. It can be made on any matter, on any administrative or general policy matter. So it is open to them.

***Question 20: Campaign in ethnic media to raise awareness of corruption issues***

**Ms KRISTINA KENEALLY:** My electorate comprises about 40 per cent people from non-English speaking backgrounds [NESB]. I am curious about your campaign in 2002-03 in the ethnic media to raise awareness of corruption issues and the role of ICAC among NESB people. What were the effects of that campaign? Did you identify any specific issues in dealing with people from such backgrounds?

**Ms WAUGH:** That project is ongoing so you will get an indication from the annual report that at that stage we were piloting it. It is a communications campaign at this stage as opposed to a campaign designed to obtain information. It involves putting information out there that is available in councils, departments and whatever front offices people may go into. There is also a radio campaign to provide them with information. At this stage I do not think we can say, "Yes, we have been dealing specifically, one on one, to get an idea of those issues." But one thing we have learnt during this exercise is that there is an enormous amount of interest in this project. Public sector organisations seem to think this is an important initiative. We are coming towards the end of our trial and we are about to evaluate the radio campaign. We have written to the public sector and asked, "What resources would you like?" To date, we have had 50 requests for 22,000 resources. So the public sector certainly recognises the need to put information out there for the NESB populations that it is dealing with either in the course of its work or because of agencies' geographical locations.

***Question 21: Complaints concerning members of Parliament, Parliamentary Secretaries, MP's Code of Conduct and Pecuniary interests register***

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** How many complaints concerning members of Parliament did you receive during the year? That information should be readily available to be categorised by an agency. How many complaints concerning Ministers and Parliamentary Secretaries were received during the year? Were any complaints or queries received in relation to the MPs code of conduct or the pecuniary interests register? If so, how many were received during the year? Did ICAC have any occasion during the year to review the effectiveness or appropriateness of either the members' code of conduct or the pecuniary interests register?

**Mr PEHM:** We did do a review of the code of conduct. Linda will be able to answer that question.

**Ms WAUGH:** Mr O'Farrell, are you aware of the report that we did as a consequence of the resolution of the Parliament?<sup>1</sup> It was released in September 2003 but the review of the adequacy of the systems in comparison with those systems in other jurisdictions was under way during that financial year.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Last year I made the point—for which I received some criticism and which I think you resisted—that rather than being proactive with the Parliament on these issues you have been reactive. In light of the numerous inquiries that you have had to deal with in the past 18 months, have you had occasion to review whether you ought to be more proactive in future?

**Commissioner MOSS:** I would like to examine that statement. I think that we have been trying to be proactive. If you look at, for example, the work in the corruption prevention area we have been proactive and very much so. We have very much approached agencies about how we could assist them.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Does that include the Parliament? My focus is on the Parliament.

**Commissioner MOSS:** As I said before, I have taken on board your comment, and at our planning meetings we are going to explore the development of the project in that area.

**Mr PEHM:** During the financial year prior to the election in March 2003, we also consulted with the Clerks and reviewed the education and the materials that are handed out. We did that in a proactive manner.

**Commissioner MOSS:** I think we have been quite proactive in how we have developed the area of investigations, strategic risk assessment unit, which Michael Outram can describe in greater detail, where we are trying to be more clever and technical in how we collect information and use information accordingly. As I said, it might involve a much more active watching brief, so to speak, on certain organisations or individuals. Obviously, I would not announce that to the public because it would then be absolutely useless to look at such persons. But we are now getting things in our investigations operations management such as bimonthly intelligence bulletins, where the head of the intelligence group has tried actively to look at certain information more actively. I think that how we are recording information and how we are trying to be more intelligent in getting our staff to be more properly process oriented in recording that information allows us to, perhaps, look better at our intelligence store. But just taking your point, as I said, we are planning to start some liaison with Parliament to see how we can better handle that, in view of some of the high public profile matters that we have dealt with in the past year or so.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** But the approach is still characterised by: unless a problem arises you do not come calling. The code of conduct that was adopted in 1998 was not reviewed. Last year I asked questions about whether any advice was sought about deficiencies in relation to it until the inquiry occurred.

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<sup>1</sup> Independent Commission Against Corruption 2003, *Regulation of secondary employment for Members of the NSW Legislative Assembly*, report to Speaker of the Legislative Assembly, September 2003.

**Commissioner MOSS:** No, I disagree with that. I think we have been quite proactive.

**Mr OUTRAM:** The approach is different. We are changing the approach but not, in particular, in relation to the Parliament. As I said earlier, we are trying to draw together all our information and knowledge and our intelligence section is trying to prioritise areas for work proactively, so that if there is a particular high risk in the public sector somewhere that we can identify, we can proactively go out to see whether there is a problem and we can go through corruption prevention and what have you. Corruption prevention and intelligence are working together. Even from the “umbrella” report<sup>2</sup> there is information that is of use focusing on investigation resources well. But insofar as the Parliament itself, there is nothing to suggest it is a particular risk.

**Mr PEHM:** It is a risk assessment issue for us.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Can I give you the risk assessment version? Last year I asked whether ICAC had initiated any contact with members of Parliament during the year in pursuit of its anticorruption role in relation to accountability and transparency generally and, if so, on how many occasions. The answer was "no". But as every lower House member sitting around this table would know, in the past three years there has been significant change in relation to our allowances and the way we have to account for them. Every time we sign off on one of our Logistics Support Allowance [LSA] forms we know that we may put ourselves in breach of your code of conduct, potentially we may, God forbid, end up in front of the commissioner.

**Mr JOHN PRICE (ICAC COMMITTEE):** It is our code of conduct. You cannot sheet that off to the Commissioner.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** But at the end of the day they can hold that against us. Ask Mr Jones. The point I make is that that has been a significant change, which I thought might have elicited some proactive response by ICAC on the basis of risk assessment. The way in which allowances are dealt with has changed. The allowances in essence have increased, although that is not quite true, but we now have a lump of capital that we apply in a different way and on a day-to-day basis dealing with supplies directly for the first time in two or three years, presumably the risk is much greater.

**Mr PEHM:** Those changes resulted from an investigation we did. We worked with the Parliamentary Clerks to implement those changes.

**Mr JOHN TURNER (ICAC COMMITTEE):** We might say that you should have worked with us rather than the Parliamentary Clerks, because that is one of the reasons it is a mess. There was not enough discussion with members of Parliament. I worked very closely in this particular area, and I can agree with what Mr O'Farrell is saying. It is a nightmare out there. I will not allow my staff to fill in those forms because I am quite sure that there will be any number of cases coming up before you because of the inability of members to fill out the form because it is almost an impossibility to do so. When those forms were devised they were not done with us, they were done, as I now find out, between yourselves and the Clerks.

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<sup>2</sup> Independent Commission Against Corruption 2003, *Profiling the NSW Public Sector: functions, risks and corruption resistance strategies*

**Mr PEHM:** And the Auditor-General and other people.

**Mr JOHN TURNER (ICAC COMMITTEE):** I sat in on the meeting between the Auditor-General, you, the Clerks and when the parliamentarians got wind of it they got invited. I think Mr Price was there. They could not even get an agreement as to what was required between the Auditor-General and yourselves. Then we had the Clerks fighting another pincer movement on us.

**Mr JOHN PRICE:** There is a difference of opinion between the two Chambers as well and their administration.

**Mr JOHN TURNER (ICAC COMMITTEE):** That is another discussion for another time.

**Ms WAUGH:** Just dealing with your issue about risk assessment and staff, that type of work really comes from this division. It is not an enormous division so it has to prioritise its work. You think about the functions of the division. It provides a corruption prevention and advisory service, it does complaint file works so it works on individual files to provide prevention advice, it does the project work which is probably falling into the circumstances you are talking of, it does ICAC investigation work on major investigations, it prepares those chapters on corruption prevention and it provides training and education and general communication. In terms of prioritising where will we direct our project work, there is a process of prioritisation that it is important to do, but in the work that we have been doing in the past couple of years, yes, the resolution did come along, but we have been focusing on Health, Corrections and DCS.

**Mr PEHM:** Complaints are some sort of guide. We got 15 or 20 complaints concerning members of Parliament, or whatever the figure was that we reported to last year. We get 30 per cent of our complaints against local government. Do you want to say that we should pour resources into Parliament?

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** No.

**Mr PEHM:** We discuss that with the Clerks.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** You discussed that with the Clerks?

**Mr PEHM:** We will discuss further corruption prevention strategies with the Clerks, and we did arising out of the travel allowance and the LSA investigation. On the one hand that has created a lot of confusion. You say that we are not proactive, but we have caused all this concern and confusion. This is the first I am hearing about the confusion amongst parliamentarians with the LSA and if that is right then you should get together to express it coherently and ask us for some assistance. You say that we should be proactive, but how do we find our way through this? Obviously, it is a complex issue with a whole lot of different opinions even at this table.

**HON. KIM YEADON (CHAIRMAN):** I would have thought that if you were looking for someone to talk to then the Clerks would be your natural port of call. From our members on this side it is the Presiding Officers, over which is the Speaker and the President in each



Chamber. If you are not going to speak to the Clerks or the Presiding Officers then you basically have more than 100 members to speak to individually.

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** No. Each House has its Ethics Committee, and I think that the members on the Ethics Committee would be very interested to meet with ICAC on this issue.

**Commissioner MOSS:** We are open to those suggestions.

**HON. KIM YEADON (CHAIRMAN):** The Presiding Officers should direct ICAC to those people.

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** But they have not, have they?

**HON. KIM YEADON (CHAIRMAN):** But that is not the fault of ICAC.

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** No, it is not ICAC's problem.

**HON. KIM YEADON (CHAIRMAN):** What I am trying to point out is that it is the operation from our end rather than their end, from what I am hearing.

**Ms MOSS:** We are open to suggestion, so if you do want to talk to us about it, even individually, we are more than happy to talk to members. Everyone has a point of view that is trying to prioritise and work out which is the overwhelming, overall feelings about a particular issue. It is not easy.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** To generalise it and if transparency and accountability are key objectives when it comes to corruption resistance and corruption education, how can you justify, in a way that you did in response to my question last year, the exemption of the Parliament from the freedom of information legislation? Every other agency is covered by FOI, but your response simply said that it is a matter for the Parliament. With all due respect, in the past that has been a recipe for no reform. Decades ago got governments into strife because they were not prepared to be more sensible about those issues. It is that sort of response that worries me about the reactivity rather than the proactivity of the commission.

**Commissioner MOSS:** There is a whole range of issues that makes freedom of information laws not as simplistic in terms of our approach. You do have, for example, parliamentary privilege. In many respects Parliament really regulates itself on those issues. It Parliament wishes to make itself totally exempt or totally open or transparent with freedom of information laws quite obviously we would accede to whatever statutory amendments you might wish to enact. I would have to say at the moment I am not too sure what exemptions to apply with respect to, for example, freedom of information laws as they apply to the New South Wales Parliament.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** But should not ICAC generally be an agitator for greater transparency and accountability? Should you not be one of those forces seeking to knock down these sorts of doors?

**Commissioner MOSS:** We would agitate for what we are statutorily mandated to do, and that would be to promote corruption resistance. If it were an issue of corruption resistance it would go without saying that that would be the appropriate step for Parliament to take. But on the whole, for example, on freedom of information laws I am not too sure that it would be for us to dictate to Parliament specifically how it should organise its FOI laws so that it applies to ICAC.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** As you do with other agencies, it might be within your role to identify deficiencies in those agencies achieving the sort of accountability and transparency that you set as objectives.

**Commissioner MOSS:** We have, as evidenced by our “umbrella” report. I do not think that even in that particular report, public profiling, we have commented on, for example, freedom of information.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** But we are not sure that the Parliament has been covered by that report, but we will check it.

**Commissioner MOSS:** But FOI was not a particular topic of discussion, either, in the profiling report, to my recollection.

**Mr JOHN PRICE (ICAC COMMITTEE):** Then again, that is a parliamentary issue.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I understand the privilege issue, but there is a whole series of things that go through this place that are not privileged. That has been made clear in recent times through ICAC's visit to an upper House member's office. There is a whole lot of administrative material in this place that in any other public agency would be FOI- able, but it is not here.

**Commissioner MOSS:** But if you did think upon legislation along those lines you would have to think about it carefully any way. If you are going to have amendments to FOI laws that affect parliamentarians, how would it affect, for example, whistleblowers when they talk to parliamentarians? Would you like to see those subject to fairly open FOI laws?

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** As I understand it, you can seize my whistleblower files.

**Mr JOHN TURNER (ICAC COMMITTEE):** We do not have protection if we speak to the whistleblower.

**HON. KIM YEADON (CHAIRMAN):** Not every Joe Blow comes in under FOI. That is a very different proposition. Do you want to open it up to everybody?

**Mr BARRY O'FARRELL:** But there is no protection for whistleblowers under the current system, as I discovered after Mr Breen's episode.

**Mr JOHN PRICE:** But at the moment our correspondence with constituents has no cover either. It is a matter that is being addressed, or has been addressed, in part by the Federal Parliament and it is something that we should see as a reference for our committee.

**Mr PEHM:** If the Ethics Committee is looking at that whole issue—

**Mr JOHN PRICE (ICAC COMMITTEE):** We have not yet, but I have suggested in correspondence to the Premier—

**Mr PEHM:** I thought it was arising out of the other matter.

**Mr JOHN PRICE (ICAC COMMITTEE):** I do not think the letter has been delivered yet.

**Mr PEHM:** It is not so simple as to say that the State public sector or local government has it. Parliament is different. Parliament can ask questions and require answers and the upper House can require production of documents. There are a whole lot of accountability measures that are part of the parliamentary process that are not part of the State public sector or local government.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** But equally there is half of the Parliament, which is the parliamentary departments, which are no different to Cabinet Office, or the corporate affairs section of the Department of Transport.

**Mr PEHM:** You could investigate all of those things yourself.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** The Speaker has not appeared before an estimates committee for nine years.

**Mr PEHM:** Can terms of reference be framed by Committee?

**Mr JOHN PRICE (ICAC COMMITTEE):** That is a problem for the Parliament, not ICAC.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** It might be an ICAC problem. We have certainly had issues at ICAC before in relation to our accounts department.

**Commissioner MOSS:** It is a tad unfair to lay it all on ICAC.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** My point is that you say, "If the statutes are changed we will do our job." I am saying do not expect the inmates to reform the prison. Is it not your job to proactively seek reforms?

**Commissioner MOSS:** It is our job to carry out our legislative mandate to the best of our ability. I am not too sure that it is our job to lobby for an endless variety of reforms. If it were our job to do that there would be a whole host of other areas that would require attention. I reiterate that we have appropriately given what we believe prioritise resources to members of Parliament generally. By sheer weight of, I guess, numbers of other agencies and populations we have to give our resources to that.

**Ms WAUGH:** In respect of corruption prevention, the times that we work with agencies who perhaps may not be receptive to what we are doing, but become receptive, is because of being subject of investigation and there is pressure on them to do that. The remainder of our work for the most part is voluntary. It is something we do in collaboration. It is something that that organisation is willing to do or it has recognised that itself and is seeking our

assistance. It is very unusual for us to just go into an agency with nothing and then demand that it implements reform. We do not have the statutory basis to make that demand.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Does the CJC or anyone else in other States operate differently in relation to that?

**Ms WAUGH:** In relation to corruption prevention?

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Are they more proactive in relation to their Parliament?

**Ms WAUGH:** I do not think there is any difference. I worked for the CJC for seven years and I do not see any real difference.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** What about the Western Australian commission?

**Ms WAUGH:** No, I have not worked in that one.

**Mr PEHM:** The ACC did everything in secret so nobody knows.

**HON. KIM YEADON (CHAIRMAN):** For my part I cannot follow whether Mr O'Farrell is trying to have the administration of the Parliament scrutinised through the presiding officers and their staff or whether he is after individual members. Those two seem to be interplayed.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I regard transparency and accountability as the key, The Commissioner made a speech last year along those lines, and I will pursue it to its end.

**HON. KIM YEADON (CHAIRMAN):** Absolutely, but at the end of the day I would not want it if people can just walk in and start going through computers and files of any member at any time in the Parliament without due cause.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** It happened a couple of months ago in relation to a member of the upper House.

**Mr JOHN PRICE (ICAC COMMITTEE):** I, and a lot of other members, do not consider myself under threat having to fill in the forms. I will tell you that it takes 2½ hours a month. Five different agencies can look at those forms. How much regulation do we need? We have the remuneration tribunal that determines and gives recommendations on how we spend. The Financial Controller has a view. The Clerks have a view. The Auditor-General has a view and finally the Australian Tax Office has a view and that is my concern. We are elected to try to make the laws of this place. We have to try to respond to our constituents. We are so busy demonstrating to the world that we are honest that the work that we are elected to do sometimes can suffer, and that is the problem.

If you are going to devise these mechanisms for us to comply with: I will comply with anything but at the end of the day I have a job to do. We—not just the Clerks—need some liaison between yourselves when these things are being devised. The paper pushers are the

same all over the world. I used to be one, but when you have five different agencies being able to interpose themselves on any document we produce, I really think that is the dizzy limit. We came from nothing except our own basic honesty and instincts to this mechanism that is huge and must cost a fortune to administer. What are we saving? Was there a problem before? If there was I had never heard of it.

**Mr PEHM:** Ultimately that is in the hands of the Parliament.

**Mr JOHN TURNER (ICAC COMMITTEE):** With respect, I have complained continually. I am legendary in this place concerning the Financial Controller and our correspondence. Every time something comes back it says "This is an ICAC requirement". "We have had ICAC in here and this is what it requires."

**Mr PEHM:** People often use us as a stick and it may not necessarily be correct.

**Mr JOHN TURNER (ICAC COMMITTEE):** Please do not dismiss it. I have had many meetings with the Financial Controller and many times he has said "John, I am sorry. It is a requirement of ICAC." Or "We have had ICAC in here and this is what it requires." It is not once or twice. It is not a throwaway line. I practiced as a solicitor and I think he knows that I would not be put off by a line.

**Commissioner MOSS:** I am a bit worried that our name might be used in vain.

**Mr JOHN PRICE (ICAC COMMITTEE):** It is all over the place. Ask for the Sport and Recreation recommendations. It is over the fence.

**Mr PEHM:** Part of the problem with administrative requirements is you do have all these different allowances. The Commonwealth had this problem in the public sector with a whole lot of different allowances, depending on which city you went to. They rolled it all into one allowance. You did not need the length of accountability measures then but there are other issues with that.

**Mr JOHN PRICE (ICAC COMMITTEE):** This is just, in the main, to recover legitimate expenses to be a member of Parliament. In principle you have imposed on us something over and above, for whatever gain I find difficult to determine.

**Commissioner MOSS:** I feel that our name has been somewhat used in vain.

**Mr JOHN PRICE (ICAC COMMITTEE):** Continually. You should talk to legal officers in most departments.

**Commissioner MOSS:** I do not know what role we can actually play to streamline and simplify it. All I can say is that if you want us to be involved in consultation or liaison to make it less difficult in the way you have described, we would be more than happy to participate. I think on many occasions it is very convenient to say that it is this complicated because ICAC says that you have got to do it that way.

**Mr JOHN TURNER (ICAC COMMITTEE):** You supposedly designed the forms. I am only repeating what I was told.

**Mr PEHM:** No, we consulted with the Clerks and it was produced to us and we—

**Mr JOHN TURNER (ICAC COMMITTEE):** You signed off on it?

**Mr PEHM:** We were consulted about it.

**Mr JOHN TURNER (ICAC COMMITTEE):** Each party—and I presume the Independents are included—has members who look at that area. We would like the opportunity at some stage, rather than talking to the Clerks or even the presiding officers, to talk with you because we are at the coalface.

**HON. KIM YEADON (CHAIRMAN):** That is probably more an issue at our end. We should make it clear to ICAC who they should come and see but probably at the moment it is the logical port of call. I think it is incumbent upon us to indicate to our presiding officers the types of arrangements we want in relation to further discussions with ICAC.

***Question 22: Postgraduate course in anti-corruption measures***

**Mr JOHN MILLS (ICAC COMMITTEE):** I understand that for the past six years ICAC and the Australian National University have delivered a postgraduate course in anticorruption measures for middle and senior managers. Has there been good representation from senior managers from New South Wales?

**Mr PEHM:** Yes, I think there are about 10 or 12 scholarships.

**Ms WAUGH:** Yes, at least 10.

**Mr PEHM:** Part of the deal with the ANU is that we provide a week of course content and as a result there are at least, maybe 12, scholarships provided to New South Wales public sector managers to attend the course.

**Mr JOHN MILLS (ICAC COMMITTEE):** I wonder if they would attend if the incentive was not there?

**Mr PEHM:** I will read that on the record. They are very keen. We get many applications every year.

***Question 23: Duty to notify Commission of Corrupt conduct***

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I refer to section 11 of the Act in relation to the duty to notify the commission of possible corrupt conduct. I had always believed that I, as a Member of Parliament, was covered by that. I had occasion earlier this year to discover that ministers and members of Parliament are not. Should they be covered?

**Commissioner MOSS:** It is up to the Parliament but I would say they should have a kind of personal ethical obligation to do so anyway. It just happens to be not specifically

legislatively covered under section 11. I get a few calls from members of Parliament about various issues.

**Mr PEHM:** Some issues were based on privilege in that if members of Parliament are obliged to report corruption from, say, constituents that they would rather deal with them in Parliament as a matter of privilege. There may be issues there.

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** Am I correct in saying that there is a protocol in place so that if a matter came before a member of the ORC which affected the organisation with which they were associated that they would stand aside?

**Commissioner MOSS:** Yes. There would be conflict of interest and usually they are at the very beginning when people make their declarations. Certainly if they have a conflict they should step aside.

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** I note that Gabrielle Kibble is now on the ORC, so presumably in relation to the allegations of conflict of interest—

**Mr PEHM:** The particular matter to which you are probably referring has not been reported to the ORC. But when it is we will ensure that—

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** That is Mr Robinson's position?

**Mr PEHM:** Yes.

**The Hon. JENNIFER GARDINER (ICAC COMMITTEE):** So it has not been reported yet?

**Mr PEHM:** No, the protocol of the ORC is that we report to them the progress of investigations three months after receipt.

**Commissioner MOSS:** That is not legislative but we do anyway. Yes, there are conflict of interest procedures where they would say "I am associated with that department. Therefore I should not be involved in any information or discussion."

***Question 24 - Consequences of a finding of corrupt conduct where no prosecution or disciplinary action is taken***

**HON. KIM YEADON (CHAIRMAN):** If ICAC finds a public sector employee to be corrupt and it does not go to prosecution and there is no disciplinary action taken within the department against that employee, for whatever reasons, what other sanctions or consequences can flow from a finding of corrupt conduct by ICAC if those two sanctions do not occur?

**Commissioner MOSS:** Almost anything.

**HON. KIM YEADON (CHAIRMAN):** Would you recommend to the department disciplinary action and if it did not occur you would simply leave it at that?

**Commissioner MOSS:** We have only got power to basically do that anyway. At the end of the day our powers are basically recommendatory in nature. The recommendations, of course, range from, as you know, the most serious which is that the Director of Public Prosecutions look at prosecution to dismissal or whatever else is available to treat that particular matter.

**Mr PEHM:** We follow up implementation of recommendations and if they are not implemented it is open for us to make a report to Parliament so that would be the only sanction, if you like, if we were unhappy that no charges were laid.

***Question 25: Assessment Panel decisions***

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I refer to table two on page 28, assessment panel decisions 2002-03, the first line is immediate referral or no action taken by ICAC. How many were referred? I take it there are two issues: one, you immediately refer to an agency and secondly, you receive it but no action is taken by ICAC?

**Mr PEHM:** Yes.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Do you have those figures broken down? How do you therefore check up with the agency to whom you have referred it? If 50 per cent have gone to agencies, what is your mechanism for checking that the agency has dealt with it appropriately?

**Mr PEHM:** If it is just an information referral we do not follow it up. There is another provision in the Act—in sections 53 and 54—that enables us to send it to a manager of a department. That manager then has to report back. That is a different thing. If it is an immediate referral we just give it to a department for information or for whatever action that department deems appropriate. I think we might have to do a manual count. It would be a huge job to differentiate between them.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** This represents roughly three-quarters of the total number of matters that come to you. Presumably on each occasion it would be nice to know how many issues were dismissed and how many were referred. I am not saying that that is what has to be done for this exercise. I would have thought that, theoretically, or in principle, that would have been a useful tool.

**Mr PEHM:** Yes. It probably could start being done. I would have to check to establish whether we have that in a searchable or electronic form. But, yes, it would be useful to know. We will look at that for the next annual report to see whether it can be easily disaggregated.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** On that same page—referrals to public sector agencies, sections 53 to 54—you mention that there have been 27 referred matters. Are those the ones on which they have to come back to you and report on progress?

**Mr PEHM:** Yes.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** So they are monitored?



**Commissioner MOSS:** Yes.

***Question 26: Advisory services by consultants***

**Mr JOHN PRICE (ICAC COMMITTEE):** In 2002-03 ICAC engaged consultants to provide advisory services in relation to site-specific accessibility for persons with disabilities. What improvements were you able to make as a result of that consultancy?

**Mr FAVELLE:** Quite a number of recommendations came out in relation to about 100 specific items. We did not have any real need to address some of those issues at that point because they had to do with staff with wheelchair access requirements and we do not have any. A number of them had to do with access to toilets, further disabled access requirements, which we have addressed with the building management people. There were also a number of issues to do with an internal staircase and how that should be treated to ensure that it was safer, including putting on handrails and treating the steps.

There were a number of recommendations relating to lighting. We have addressed most of those issues. I do not think that we have covered every one of those matters. Some of them had to do with public access into our foyer areas and into the reception area. Telephones were required to be placed at certain heights so that disabled people or people in wheelchairs, et cetera, could do that without having to stretch. I do not have all the details with me but we have addressed quite a number of those sorts of things. The report itself went to the commission's occupational health and safety committee. That committee looks at ensuring that those aspects are dealt with.

As I have already mentioned, quite a number of them had to be referred to the building people because they had to do with areas that were not under our control—they were public-related areas. We had to refer them to other people rather than just discuss what impact they would have on us. As I said earlier, there were about 100 and quite a number of them have been addressed. There are still a few that we are dealing with which might take time to address.

**Mr JOHN PRICE (ICAC COMMITTEE):** Are you satisfied that you got value for money from those consultants?

**Mr FAVELLE:** Yes. They were very comprehensive. I think one person was from one of the most recognised groups that deal with these sorts of reviews. So we thought it to be appropriate advice. As I said earlier, we got a comprehensive report with about 100 recommendations, which we have progressively tried to implement. Some of those recommendations might turn out to be impractical but they will at least be addressed and dealt with. We believed that the occupational health and safety committee was the most appropriate vehicle to do that. Because of the legislative requirements it looks at both staff requirements and contractors. So it covers all the people who would be affected by this report.

***Question 27: How corrupt conduct is investigated***

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** In your foreword to the report in the results for the year and in the investigating corruption section of the report, the impression is gained that significant progress was made during the year in terms of investigating and assessing matters of corrupt conduct. Does it therefore come as an embarrassment or a failure to you that during the reporting period you had to at least reopen one inquiry because of a failure to investigate all of a certain individual's staff in relation to allegations made against him and that on 28 March you actually issued a letter clearing him of corrupt conduct?

**Commissioner MOSS:** I think that borders on operational. We had pretty much completed the hearings on the matter and my understanding—and I did not sit on it—is that a report should be forthcoming. Let me add that whatever letters I do write to people, it does not exonerate them as such. It is not like, "Dear Joe Bloggs, you are hereby exonerated from corrupt conduct." Mostly, generally speaking, any letters would be, "From the information we have received to date there has been no evidence of such that has come to us of corrupt conduct." With the one that you have got in mind, I think the report probably will tell all and it would probably be inappropriate for me to even hazard a guess as to what those issues were preceding.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** To generalise it, depersonalise it and not infringe the Act—and this is mentioned on a number of occasions in here, including page 32—how are investigations and assessments undertaken because, without again infringing the Act, it appears prima facie that there seemed to be a major failure in that episode.

**Commissioner MOSS:** I do not want to go into it.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Perhaps you could tell me—

**Commissioner MOSS:** I would actually just broadly refute that broad generalisation. It is very process-oriented how we deal with matters. All matters that fall within our legislation as a complaint or a matter are dealt with appropriately and perhaps I could leave it to Michael, who is head of our investigations group, to actually go through the details of how we would approach such matters.

**Mr OUTRAM:** Every matter that is reported to the commission is looked at first of all by the assessment officers in the assessment section and they assess them in terms of the reliability of the information we have got, the accuracy, the fullness of it, obvious information gaps, seriousness and lines of inquiry and they would make a recommendation based on their assessment to the assessment panel, which is chaired by Mr Pehm, myself, Mr Pritchard and Linda Waugh.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** That is before anything else is done?

**Mr OUTRAM:** Yes.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Before any contact with anyone outside the organisation is made?

**Mr OUTRAM:** No, there may well be follow-up enquiries, preliminary enquiries.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Before that point. You sit as the operations group?

**Commissioner MOSS:** First of all, there is an assessment panel.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Which just considers the complaint you have received?

**Mr OUTRAM:** No, we consider the recommendation made by the assessment officer.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** And the assessment officer may have taken some—

**Mr OUTRAM:** They may have made phone calls, they may try and access information from other open sources, whether it be telephone directories or what have you. They will get as much information as they can from open sources and information that is readily available.

**Commissioner MOSS:** And sometimes in some matters a legal officer will say, "We need to check with such and such an organisation", be it ASIC, Fair Trading, or whatever. Depending on what the matter touches upon, there would be various avenues of checking a matter out.

**Mr OUTRAM:** That is exactly right. For example, somebody alleges that somebody has done a particular thing. If they can easily check that by checking a public database or with another public agency, then they would do that. That is done. Then all that information is written in a fairly detailed assessment, with recommendations as to what the assessment officer thinks we should do with it. We then, as a panel, will consider the options and recommendations, based on the same sort of issues and factors, seriousness, is it systemic, is it ongoing, are there opportunities for investigation, is it a current, particular problem? There is a whole range of factors we might consider to determine whether or not it should be investigated by my division. My division is relatively small in terms of the number of matters that are reported, so we are fairly selective over the matters that are referred for a formal investigation by my division.

Of course, I do have an intelligence section, which has some capacity for doing more preliminary and detailed enquiries, digging a bit deeper under the surface. Once a matter comes into my division, there is an ongoing review process. We then have an investigation management group. Again, it has an executive director, chaired by Mr Pehm, and every two weeks the investigators or analysts will compile a report on the progress and the direction they are making within that investigation, after having a plan approved. We will oversight any critical decisions and the direction that investigations take every two weeks and obviously recommendations for closure and what have you.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** Given that we cannot take it any further because of an impending report, Commissioner, can I ask whether during the reporting period and in the light of statements made by the Premier during the election campaign, the

Premier's Department, the Cabinet Office or the Premier himself contacted you in relation to a cooling-off period for Ministers retiring from Parliament?

**Commissioner MOSS:** I do not recall such.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** So that would cover those two; whether it came from the bureaucracy or whether it came from the Premier direct?

**Commissioner MOSS:** On what?

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** A cooling-off period for Ministers and post-parliamentary employment? I understand that it may have arisen as a result of your investigations?

**Ms WAUGH:** I think we might need to take that on notice.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** I am expressly asking in relation to an approach from the Premier or his advisers in relation to changing ministerial codes to provide a cooling-off period for post-parliamentary employment?

**Commissioner MOSS:** You mean post-separation issues?

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** For the reporting period, yes.

**Commissioner MOSS:** Certainly not with respect to telling me what to do.

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** No, seeking advice.

**Commissioner MOSS:** Seeking advice—

**Mr PEHM:** We have had some contact with the Cabinet Office on the issues surrounding the particular investigation you—

**Mr BARRY O'FARRELL (ICAC COMMITTEE):** If I could get some advice whether during the reporting period you had any approach from those agencies; I do not need to know what the advice was.

**Mr PEHM:** I would have to take that on notice.

### ***Question 28: Implementation of organisational change***

**Mr JOHN PRICE:** In the past the commission has mentioned some staff problems in connection with the implementation of organisational change. Has the commission's consultative group, which includes five staff representatives, the deputy commissioner and the executive directors, endorsed the new revised policies and procedures, and are things proceeding smoothly?

**Ms MOSS:** I think the restructure issues have settled greatly and we have been able to employ people to the requisite numbers that we had hoped. So I think things are proceeding as planned.

***Question 29: Monitoring trends in corruption***

**Mr JOHN TURNER:** Community attitude surveys have been undertaken by the commission since 1993. In your questions on notice you said these surveys had a core set of questions asked each time a survey was conducted. Does the commission conduct some ongoing study of those answers each year or is there a cumulative effect that you do a study on at a later time of those core questions?

**Mr PEHM:** It is ongoing. We compare the results of each survey against previous surveys. So we look for trends.

**Mr JOHN TURNER:** Are there noticeable trends?

**Mr PEHM:** The most pleasing trend from our point of view was that people are more confident about reporting corruption and believe to a greater degree that something would be done about it. But again, I think the figure went down from about 70 per cent who would not report down to about 65 per cent or so. It is not huge. Here it is, down from 75 per cent in 1993—that is people who were not confident about reporting corruption—down to 60 per cent in 2003. It is an appreciable difference over 10 years.

**Mr BARRY O'FARRELL:** Do we have a margin of error on that poll? Is it plus or minus 2 per cent, 3 per cent?

**Ms WAUGH:** No, I do not think so. I do not think a margin for error is reported.

**CHAIR:** It is an interesting survey and I note you have been conducting it since about 1993, a decade of data. Do you collect annually or every two years, or three years?

**Ms WAUGH:** I think it is every three years. But just going back to Mr O'Farrell's question, we do report on statistically significant differences, which accounts for the error rate he is looking for.

**Ms MOSS:** With these sorts of surveys, a lot depends on when you do that. When there have been high-profile cases, everybody feels great confidence. When there has been a lull, they feel a bit more hesitant. A lot depends on circumstances at the time. Generally speaking, I guess, we think that the report is a positive. We think at least we can draw the conclusion that, broadly speaking, the perception with respect to ICAC is pretty positive. Having said that, you will see some ups and downs in figures and a lot of that depends of when you take those polls.

**CHAIR:** That is one of the interesting things, it has been going now for nearly a decade. That is quite a qualitative period of time, which would help you level out those sorts of aberrations, if you like.

**Ms MOSS:** Yes. And we would say that, broadly speaking, it has been looking quite good for the public's confidence in ICAC.

**CHAIR:** I appreciate it is community attitudes, so it probably comes down to perception, but one of this Committee's briefs is to monitor trends and changes in corruption over time. I wonder if I can ask you if you can provide us with a written background of what trends or changes can be ascertained from that data? I think it would be worthwhile.

**Ms WAUGH:** Yes, we can do that. Just another comment on community attitude surveys: They are invariably coloured by what is in the press at the time. We do these at the time they need to be done, so you have to be cautious of that. If there is a lot in the media, that will be reflected in your findings. By that, I mean it could be favourable or unfavourable. It is something to be mindful of.

**CHAIR:** I appreciate that, and that is why I put a bit of emphasis on the time span. I would think in your written response to us on those trends and changes that you would clearly point out if there is a spike or whatever that might be the result of you doing the survey in the environment of a particular issue getting coverage in the media and that you could glean that that could be feeding into the results. If you could indicate that in the material you send to us?

**Ms WAUGH:** Yes.

**Mr BARRY O'FARRELL:** But going back to Ms Waugh's and the commissioner's comments, would it not also be true, just in defence of the figures you get, if ICAC is in the news for busting open Rockdale council development applications, you would expect to see a higher rate of response to the question that there is no point in reporting corruption because nothing will be done about it, yet what we have seen, regrettably, is a 10-point drop in that over the past four years. I would have to say you would expect it to almost even out. There is never a great time to take political opinion polls. I accept your argument but I think there is another argument that says if ICAC is out there and seen to be aggressive, it should instil a bit more confidence in the public that there is a corruption watchdog.

**Ms MOSS:** And if there is a lull, the results go the other way.

**Ms WAUGH:** Yes, exactly.

**CHAIR:** That is why I think it would be very interesting to look at an analysis you might do, and I assume you will provide us with the raw data and at least some percentages on who said what and when?

**Ms WAUGH:** Yes.

**Question 30: Protected Disclosures**

**Mr BARRY O'FARRELL:** On page 25, which is where community perceptions are mentioned, there is also protected disclosures. Is it possible to have the same breakdown of protected disclosures by department or agency, as we were talking about in regard to previous complaints? Again, as the shadow Minister for Health I would be fascinated to know how many protected disclosures there have been in relation to the Department of Health area and health services, and the like.

**Mr PEHM:** Yes, it is possible, but a caution there too. What is covered as a protected disclosure under the Act may not necessarily come out in these figures in Health, for instance. There are patient support issues that would not be covered as protected disclosures. Are you asking us to take that on notice and provide you with that?

**Mr BARRY O'FARRELL:** If that is possible, yes.

**Mr PEHM:** Yes, okay.

**Mr JOHN PRICE:** Mr Pehm, you mentioned whistleblower difficulties in the past, and that was certainly reported on in the report. Can you elaborate on the previous statement about that, how you overcame the problem, what the relationship is now and whether it can be improved at all?

**Mr PEHM:** Yes. I am not sure what gave rise to it, I was not here at the time. My guess is that the commission's practice of referring complaints to departments and public sector authorities for information was a big part of the problem. We would get things from protected disclosures and simply refer it to the department without following up or governing it or supervising it, and the perception of whistleblowers seemed to be that they suffered repercussions when that happened. How we addressed that is that we consulted much more closely with people making protected disclosures, and it went on a series of criteria that Michael went through before in relation to what we do with complaints.

If we decide it is not of such a nature that we will investigate it or deal with it under section 53 or section 54, if we think it is appropriate to refer to the public authority, we will consult with the person making the disclosure very heavily in that case. If they have any concerns about how they will be treated as a result, we can refer things anonymously, so we have to make judgments about whether simple disclosure of information, without disclosing the identity of the complainant, might still be enough to identify them. So, we consult with them about that. If they think they will suffer prejudice as a result of a referral of information, we tend not to do it unless there is some overriding public interest reason why we should.

**Mr JOHN PRICE:** Do you from time to time refer items of lesser importance, but still significant, to the Ombudsman?

**Mr PEHM:** Yes, the Ombudsman is a possible port of call as well.

**Mr JOHN PRICE:** Would that be a frequently-used mechanism or do you stick to the departments?

**Mr PEHM:** It happens reasonably frequently. The other referral point in local government is the Department of Local Government, which has inspectors, and so on, so quite a few get referred over there. Then there are different considerations because with a watchdog like the Ombudsman or the Department of Local Government there is less likelihood of repercussions and they may have an obligation to consult with the person making the disclosure as well.

**CHAIR:** In relation to protected disclosures I note that the Protected Disclosures Act Implementation Steering Committee did not compile an annual report for the 2000-01 or the 2001-02 periods. As I understand it, their response was that that was due to an oversight. Does it cause you any concerns that there is that gap there for a couple of years?

**Mr PEHM:** I think it is a matter of concern. We have been focusing on our internal procedures for quite some time but we are now looking to be more active on that committee. The Deputy Ombudsman, Chris Wheeler, has recently produced a survey of the New South Wales legislation compared to national, and I think New Zealand might be covered as well. There is an obligation to review protected disclosure legislation every two years. The oversight parliamentary committee for the Ombudsman and the Police Integrity Commission has that responsibility.

**Ms WAUGH:** The last one on was 2000?

**Mr PEHM:** It has not been reviewed for some time. It certainly has not been reviewed every two years, as it should be. We will be meeting with that committee again and I think a review is planned.

***Question 31: Corruption risks in the health sector***

**Mr BARRY O'FARRELL:** The annual report makes reference on page 51 to a project involving the health sector and corruption risks. Is that progressing?

**Ms MOSS:** Yes. We have a meeting this week with major representatives of the area health services to try to develop the direction of the project.

**Mr BARRY O'FARRELL:** So that progress will be the subject of next year's annual report? Or will we see individual reports produced?

**Ms MOSS:** It is going to be quite a long-term project. Events at hand and so forth all have to be taken into account in this report. I think it probably will not be finalised until after my departure.

**Ms WAUGH:** Just to add to the commissioner's answer, I think you will find it will probably be both. It will be reported in the annual report and there will be some outcome at the end of the project but we do not know what that will be yet.

**Ms MOSS:** There will be progress reports but I do not think it will be finished until after I am gone.



**Question 32: Conflicts of interest**

**Mr BARRY O'FARRELL:** I notice on table 4 on page 58 the biggest increase in trends in corruption advice requests relates to conflicts of interest?

**Ms MOSS:** Yes.

**Mr BARRY O'FARRELL:** Has the commission ever faced a situation where, despite a conflict of interest appearing or being declared later, whatever, a public agency has refused to take any action, and would that be appropriate?

**Ms MOSS:** I cannot answer off hand, because there may very well be where a person, despite it being pointed out, still proceeds. That information might be quite hard to get.

**Mr BARRY O'FARRELL:** Your argument in the report is not so much the conflict of interest that is the problem but how the conflict of interest is handled?

**Ms MOSS:** Quite.

**Mr BARRY O'FARRELL:** Are you satisfied that public agencies understand that and are acting accordingly?

**Ms MOSS:** It is an issue of concern to us and that is why we are embarking on a major project to assist public servants to identify what is a conflict of interest. At this point I would not have statistics about how that issue is handled. My suspicion is, from looking at matters that have come before us, yes, it is something the public sector in New South Wales needs better education on.

**Mr BARRY O'FARRELL:** Will that include, given members of Parliament codes of conduct, better assisting members of Parliament with understanding what conflicts of interest are?

**Ms MOSS:** I would say so. I would say that our conflict of interest project would certainly assist people generally and members of Parliament and public servants. That is certainly our aim.

**Mr JOHN PRICE:** That is an area that very seriously compromises local government on many occasions, and where we need some clarification and definition.

**Ms MOSS:** That is right, because local government councillors also have that peculiar role of being able to make determinations on development applications, which is a big thing.

**Mr BARRY O'FARRELL:** I think we need to get our own house in order as well.

**Mr JOHN PRICE:** I am not suggesting we should not; I am saying as well as.

**The Hon. JENNIFER GARDINER:** On the conflicts of interest projects, on page 63 of the report it mentions the Lord Howe Island matter and the report that was done. ICAC decided

not to do a full-blown inquiry so to speak; rather to educate a small community. That was in 2001. In the couple of weeks there has been national press coverage of some of the issues that led to that inquiry in the first place. So it still seems to be something that is hanging around. Is it a case in which ICAC would say that maybe it needs to go back again and review that?

**Ms MOSS:** It might be. From my recollection of that matter I do not think we were able to get specific corrupt conduct evidence for any particular individual. The issues surrounding that whole area have been looked at by not only ICAC but also the Ombudsman for quite a number of years. So I thought it would be advantageous to come up with basically a corruption prevention report, despite the fact that none of the specific issues that we looked at could turn into a full-blown investigation. There was just no evidence that allowed us to go down that path. If evidence was forthcoming that was more specific we would look at it and certainly treat it as a matter that was worth pursuing if information did come to hand.

***Question 33: Draft performance measures***

**Mr BARRY O'FARRELL:** On page 72 the commission indicates progress with the draft performance measures. Are you able to provide any further information to the Committee on this age-old issue?

**Ms MOSS:** Yes. We are working hard at that. We are trying to refine what we did with the initial group. Some time ago we at ICAC worked with members of Parliament, representatives of this group. It was good because at least it started the process of saying that we do need to try to get some indicators in place. Before that I think there was a general feeling that it was too hard to create indicators in this area. Indeed, it is even very difficult to compare our State with Queensland or Western Australia. At the moment it is almost like comparing peaches and pears, peaches and oranges or whatever.

We are moving to refine what we originally did and we are coming up with quite detailed divisional plans that I think come close to meeting what we are trying to do in developing performance indicators. I do not know whether we can next year. We are still moving in that direction. But I would say that certainly within the next two years we will have much better performance indicators for annual reports than we have at the moment. We are sort of moving in that direction, if I can say so. Just giving you an example, if you are looking at the investigations area we are actually talking about timelines. A matter comes in, how long has it taken? What are the—

**Mr OUTRAM:** We are looking to establish measures in terms of not just quantity but time and quality. Obviously, there are the activity-based costing pilots going on at the moment. We are looking at compiling a whole range of measures, seeing how useful they are. We are looking behind the data sources, how accurate they are, whether we can improve them, whether they are telling us what we want them to tell us. That is the way we are moving with all those things.

**Mr BARRY O'FARRELL:** Presumably it would include things such as preparation of briefs for the DPP, which would then perhaps allow the DPP's blame to be identified in relation to slowness to prosecute.

**Mr PEHM:** That is one aspect. As you would expect, in areas such as assessments were you have a higher volume and turnover it is quite easy to devise performance measures and assessments. That is really bedded down now. The area that we are having difficulty with is investigations and corruption prevention. It is a much lower number of matters and you have to get into quality-type issues that are much more difficult to assess, but all the aspects of the investigation. We are looking at timelines but we set some, I guess, arbitrary timelines, things that we thought should be achievable. The nature of every investigation is different. Not that many go to that area. We are still having issues working those out.

**Mr BARRY O'FARRELL:** Mr Chairman, I think that is one of the areas the Committee needs to continue to pursue. On page 78 the commission provides, I think for the first time, average full-time equivalent staff numbers by division. Is it possible on notice to get the figure for the previous year, 2001-02?

**Mr. FAVELLE:** Yes. I could do it now but it is just a matter of picking up my little notes here to find it, but certainly we do have that information.

**Mr. BARRY O'FARRELL:** On notice will be fine.

***Question 34: Reduction in Wages Bill***

**Mr. BARRY O'FARRELL:** My final two questions relate to the financials. How did you manage to reduce your wages bill by one and a quarter million dollars?

**Mr. FAVELLE:** You might recall that the restructure had its main effect in 2001-02. Associated with that restructure were a number of voluntary redundancies. The cost of them was in the order of \$1.1 million or so. That is the major cost factor of that year. We had a few redundancies that lapped over into this year, involving about \$300,000-odd. That factor was not in this year's because those costs were much lower. As part of the restructure we needed to build up staff numbers. We were looking at different types of positions and recruiting positions. We have brought staff roughly up to where they need to be. They are probably the two main factors that influenced that fall.

**Mr. BARRY O'FARRELL:** Does the reduction in operating leases of \$300,000 reflect the change in premises?

**Mr. FAVELLE:** The 2001-02 year was affected mainly by provision for Redfern being negatively subleased. In accordance with the audit standards we needed to recognise the fact that there was going to be a shortfall in rental returns. So provision was made in that year. Provision was also made this year, but obviously not of the same magnitude. So there is that reduction between the two periods.

**Mr. BARRY O'FARRELL:** What accounts for the \$300,000 reduction in external legal fees? Is Mr. Prichard working harder?

**Mr. FAVELLE:** We are all working harder, yes.

**Mr. PRITCHARD:** No, we pay counsel much less.

**Mr. BARRY O'FARRELL:** That relates to the employment of barristers?

**Mr. FAVELLE:** Yes.

**Mr. PRITCHARD:** Lawyers do their own private hearings generally, unless we think the matter is going to go public, in which case we will get counsel assisting. We bring them in early. Otherwise we tend to do the private hearings ourselves. We are just not paying as much as we did.

**Mr. BARRY O'FARRELL:** Without holding you to it, presumably we can assume, given the current year we are in, that the figures might come up again?

**Mr. FAVELLE:** I think there were fewer public hearing days in the last year as well. I am not sure what the number is this year.

**Mr. PRITCHARD:** I think we are on target to do the same. I think we only did 18 public hearing days in this financial year and 25 year before. But we get counsel at a premium. They are keen to do our work and we take full advantage of that. That helps to explain some of it.

**Mr. BARRY O'FARRELL:** What is covered in fees for services, which have jumped by \$250,000?

**Mr. FAVELLE:** A whole range of aspects come under fees for services. For example, we talked earlier about the non-English-speaking background program, which we extended last year, and covering radio broadcasts and things like that. That would come under a fee-for-service component. The program alone was about \$105,000. We also did, I think in conjunction with local government and the Shires Association, a video with the assistance of experts in those areas. Again, that was in the order of about \$100,000. Those things would come under fees for service.

### ***Question 35: Bron McKillop investigation***

**Mr. BARRY O'FARRELL:** My final question goes to one of the inquiries in 2000-01 in relation to the Bron McKillop report into investigative practices of ICAC. Given that the report indicates that improvements have been made in the investigation division—and I think you have indicated previously that you are not averse to publishing the two suppressed chapters of the McKillop report—are you prepared to publishing Bron McKillop's chapters that have never seen the light of day?

**Ms MOSS:** I have no problems with doing that. I do recall the debate—

**Mr. BARRY O'FARRELL:** Mr. Richardson was pursuing the case, I think.

**Ms MOSS:** I had no particular problems with it in the first place. I cannot recall exactly—

**Mr. BARRY O'FARRELL:** Could the Committee be provided with the two chapters or are they able to be publicly released? There is a degree of interest in the historical footnote in an earlier report that said that ICAC's investigative procedures were crap.

**Ms MOSS:** On my recollection of it I do not feel—

**Mr. BARRY O'FARRELL:** As defensive of it?

**Ms MOSS:** I do not defend it and I do not support it. It is not something I would make a special report to Parliament but if you wanted to be provided with it I—

**Mr. BARRY O'FARRELL:** It is now a dozen years old or something.

**Mr. PEHM:** I do not know the reasons why those chapters were suppressed. We should have a look at that. The commissioner has indicated—

**Mr. BARRY O'FARRELL:** Could you take as a question on notice, perhaps, the status and whether you would consider releasing it?

**Mr. PEHM:** I cannot imagine why it was suppressed at the time.

**Ms MOSS:** I think I remember but I would have to say that it has been such a long time ago I do not quite recall the issues. I think it was something about investigating various methods of handling investigations.

**Mr. BARRY O'FARRELL:** He is alleged to have made some strident criticisms of how the ICAC had been operating which might have embarrassed a then departing commissioner. It seems to have fallen between the cracks with an acting commissioner and then a new commissioner coming in. In the meantime those chapters of the report that were not published remain suppressed, which presumably is—

**Ms MOSS:** I do recall that when the issue was raised initially here I had some problems trying to find it, to be quite frank. It has got to be somewhere.

**Mr. JOHN TURNER:** I notice that Mr. Poulton went to South Korea to the Korean Independent Commission Against Corruption conference, I assume, and he paid for his own flights. Other things were paid for. Is that some form of policy?

**Ms MOSS:** No, not at all. I think that they offered to pay. They were very interested in the work that ICAC was doing.

**Mr. JOHN TURNER:** It seems that they paid his other expenses but he paid for the flight. I wondered whether it was some sort of internal policy.

**Mr. PEHM:** It is not a policy. He volunteered to do that. I am not sure at the moment of the reasons. I think that when it was first put to us we were under the impression that they

were going to pay for the whole thing and then it turned out that they were not and he felt that he should make the difference. But, no, it is not a general policy.

## Chapter Three - Answers of Commissioner to Questions taken on Notice

### ***Question 36: Survey of MP's***

**Question:** Were MPs and the Parliamentary administration surveyed as part of the research conducted for Profiling the NSW Public Sector report?

**Response:** The purpose of the research published as *Profiling the NSW public sector* was to examine functions, risks and corruption resistance strategies in those organisations that constitute the NSW public sector. As there is no single definitive list of NSW government organisations, the ICAC developed a list of appropriate agencies to approach to participate in the project. This was done using a set of existing lists, including Schedules 1 and 3 of the *Public Sector Management Act 1988*, Schedule 3 of the *Public Finance and Audit Act 1983* and the other sources listed on pages 71-72 of the *Profiling the NSW Public Sector report*. The parliamentary administrative bodies listed in these sources, namely the Cabinet Office and the Parliamentary Counsel's Office, were included in the survey.

The Departments of Parliament are not established under statute and are not listed in the sources used to compile the survey list and were therefore not included in the survey.

A randomly selected group of 594 public sector employees (drawn from 20 organisations randomly selected from the organisations included in the survey) was also surveyed in order to obtain information on staff perceptions of corruption risks and awareness of corruption strategies. Apart from this survey group of employees, individuals (including Members of Parliament and Clerks of the Parliament, as well as for example local government councillors) were not surveyed as part of this research.

### ***Question 37: Review of Agencies***

**Question:** What agency or agencies were reviewed or surveyed in relation to ministerial gifts and ministerial codes of conduct and were their responses satisfactory?

**Response:** The purpose of the research published as *Profiling the NSW Public Sector* was to obtain a comprehensive profile of the functions, corruption risks and prevention strategies in place across the NSW public sector. As such, the survey questions were necessarily broad, and sought information on types of functions, risks and prevention strategies, including codes of conduct and gifts and benefits policies, applicable to organisations.

Organisations were asked five generic questions on gifts and benefits policies and procedures and four generic questions on codes of conduct as they applied to the organisation. Organisations were not asked questions about how their codes and policies apply to individual positions or office-holders (e.g. senior executive staff or Ministers), but rather how they apply to all positions and office-holders.

To ensure full and frank responses, the ICAC gave a firm undertaking that the responses of individual organisations and staff would not be made public. This confidentiality undertaking precludes the ICAC from providing specific details or a qualitative assessment of any responses received from the Parliamentary Counsel's Office, the Cabinet Office or any other individual respondent organisation.

***Question 38: Publication of Codes of Conduct***

**Question:** Does the ICAC consider the publication of codes of conduct important in terms of people's behaviour so that people can observe whether their colleagues are behaving ethically? Does it assist with the regular audits that you have talked about?

**Response:** The ICAC advocates the introduction and implementation of codes of conduct to help build and strengthen organisational integrity and corruption resistance.

In March 2002, the ICAC published *Codes of conduct: the next stage* which emphasises the need for organisations to ensure that existing codes are effective and relevant. The publication recommends that organisations review existing codes for currency, relevance and accessibility and that they ensure that codes are implemented effectively, particularly through incorporation into induction and ongoing training programs.

While *Codes of conduct: the next stage* does not focus on publication as a discrete issue, the ICAC regards it as important that both those whose conduct such a code seeks to regulate and the wider community are made aware of the code and are able to access it easily. Online and/or print publication of codes would assist in promoting awareness of such codes, provided steps are taken to ensure that the published code is promoted and is easily accessible.

In response to the second part of this question, the ICAC undertakes Corruption Resistance Reviews to assess the strength of agencies' key corruption resistance measures and to suggest ways to fill gaps or improve performance. Corruption Resistance Reviews can be conducted at the instigation of the ICAC or at the request of an agency, and include a series of 11 specific questions on codes of conduct. Agencies which do not have their own code of conduct are asked to specify what alternative means they use to provide staff with advice on how to conduct themselves in carrying out their duties.

***Question 39: Responsibility for administering Ministerial Code of Conduct***

**Question:** Who has responsibility for administering the Ministerial Code of Conduct?

**Response:** The responsibility for administering a public sector code of conduct rests with the organisation concerned. In the case of the ministerial code, this responsibility therefore rests with executive government.

The role of the ICAC in relation to such codes of conduct is to ensure that they are adequate in terms of corruption prevention – that is, that they address ethical issues and behaviours



that relate to actual or potential corrupt conduct. To this end, the ICAC has published guidelines to assist public sector organisations to develop, implement, review and maintain an effective code of conduct.<sup>3</sup> The ICAC also provides advice, both proactively and upon request, to agencies regarding the efficacy and adequacy of their codes of conduct in terms of corruption prevention.

In relation to the ministerial code of conduct, in December 1998 the ICAC published the second in a series of three reports on its investigation into parliamentary and electorate travel. This report analysed relevant administrative systems and made a number of specific recommendations for reform, including a specific recommendation that, as a priority, a new Ministerial Code of Conduct should be implemented:<sup>4</sup>

### ***Ministerial Code of Conduct***

**Rec 58. As a priority, a new Ministerial Code of Conduct should be implemented. This code should reflect the greater responsibilities and duties of Ministers compared to other Members.<sup>5</sup>**

The Legislative Assembly responded on behalf of the Parliament to each of the ICAC's recommendations. The Parliament's "Current update on implementation of recommendations made on 2<sup>nd</sup> ICAC report on parliamentary travel as at 23 September 1999" stated that, in relation to Recommendation 58:

***This is a matter for the Executive Government, as the Parliament has no jurisdiction over the Ministerial Code of Conduct.***

In the ICAC's third report on its investigation into parliamentary and electorate travel, published in November 1999, the Commission commented on the Parliament's response as follows:

### ***Commission comment***

*There has been some confusion in government about the status of the Ministerial Code of Conduct. Initial advice provided by the Premier's Department at the time of the release of the second report was that the Ministerial Code of Conduct ceased to have effect from the time the Member's Code of Conduct was promulgated. This prompted the Commission to make the*

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<sup>3</sup> ICAC 2002, *Codes of conduct: The next stage*.

<sup>4</sup> Prior to the development and adoption of the Members' Code of Conduct by both Houses in May 1998, a separate code of conduct applied to Ministers. Subsequently the ICAC was advised that, in accordance with a previous determination of the Premier, the Ministerial Code of Conduct had been subsumed by the Members' Code of Conduct "for the time being" and that a new Ministerial Code of Conduct was being developed by the Premier's Department.

<sup>5</sup> ICAC 1998, *Investigation into Parliamentary and Electorate Travel: Second Report: Analysis of administrative systems and recommendations for reform*, pp. 49-50.

*above recommendation. Recent advice from the Premier and The Cabinet Office is that the Ministerial Code of Conduct is still applicable.*

Despite this misunderstanding, it is still important that the revised Ministerial Code, which has been reviewed having regard to the Member's Code, be promulgated expeditiously so there can be no uncertainty or ambiguity about the guidelines that apply to Ministers and the standards of behaviour expected of them by the Premier.

*It is understood that the Ministerial Code of Conduct has been reviewed by officers in the Premier's Department and the Cabinet Office and is ready for consideration by Cabinet. The recommendation suggested that some priority be given to issuing a new Ministerial Code. It would now appear to be a matter for Cabinet to give the issue of the Ministerial Code some priority in Cabinet deliberations.<sup>6</sup>*

In February 2002 the Commissioner wrote to the Director General of the Premier's Department seeking advice on the implementation of the three recommendations which the Parliament had indicated were the responsibility of the Executive. These related to the composition of the Parliamentary Remuneration Tribunal, the form of the Oath of Allegiance taken by Members of Parliament and the Ministerial Code of Conduct.

In her letter, Commissioner Moss emphasised that "While the priority given to the implementation of recommendations is ultimately a matter for the agency concerned, I would point out in this instance that the recommendation concerning the Ministerial Code of Conduct does bear upon the Commission's capacity to make findings of corrupt conduct, having reference to s.9 of the Independent Commission Against Corruption Act."

The Director General of the Premier's Department replied on 18 June 2002, informing the Commissioner that the Ministerial Code of Conduct was discussed with the Cabinet Office and that "there has been no change in the relevant arrangements in the past year."

The ICAC initially expressed concern in 1998 that Ministers were not at that time covered by a Ministerial Code of Conduct and that "the adoption of a code of conduct by all Members should not result in a diminution in the standards of behaviour expected of Ministers, whose duties are more extensive than those of other Members, and whose access to and control of public funds is far greater than is the case for those Members".<sup>7</sup> The ICAC has subsequently reiterated these concerns.

While the adoption of a Ministerial Code of Conduct is ultimately a matter for executive government, the ICAC reiterates its view that a Ministerial code which provides greater assistance to Ministers in dealing with conflicts of interest, including requiring a higher level of disclosure of such conflicts and a higher threshold of responsibility, would

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<sup>6</sup> ICAC 1999, *Investigation into Parliamentary and Electorate Travel: Third Report: Monitoring report on the implementation of recommendations relating to the administrative systems operating within the NSW Parliament*, pp. 37-38.

<sup>7</sup> ICAC 1998, *Investigation into Parliamentary and Electorate Travel: Second Report: Analysis of administrative systems and recommendations for reform*, pp. 49-50.

constitute an important corruption prevention measure and would assist in the implementation of the ICAC Act.

***Question 40: Adoption of Ministerial Code of Conduct***

**Question:** Has the ministerial code of conduct been prescribed or adopted by the regulations and if so, when?

**Response:** No such prescription or adoption has been effected. Therefore, only the Members' Code is currently an applicable code for the purposes of the *Independent Commission Against Corruption Act 1988*. Section 9 of the ICAC Act stipulates that a ministerial code must be prescribed or adopted by regulation in order to be regarded as an applicable code for the purposes of the Act.

***Question 41: Review of Ministerial Code of Conduct***

**Question:** In 1999, the Leader of the Government in the Legislative Council said that the ministerial code of conduct was being revised. Were there any significant revisions then and have there been any since that time?

**Response:** In its second report on parliamentary travel, published in December 1998, the ICAC reprinted as an appendix the text of the Ministerial Code of Conduct as at July 1995 and emphasised, in support of its recommendation that a new Ministerial Code of Conduct be implemented, that the Members' Code of Conduct adopted in 1998 was not an adequate replacement for the Ministerial Code.

While not providing specific advice on revisions to the Ministerial Code, the ICAC pointed out that the provisions of the recently-adopted Members' Code were not adequate in relation to Ministers, as the Members' Code permits a lower level of disclosure of conflicts of interests and a lower threshold of responsibility than the much more prescriptive Ministerial Code of 1995. The ICAC expressed concern that Ministers were not currently governed by a Ministerial Code, given their more extensive duties and greater access to and control of public funds.

The ICAC has been told on several occasions since 1998 that the Ministerial Code is under review, but has not been given details on the status of this review process nor of any specific revisions recommended by the Premier's Department or other parties.

***Question 42: Business Ethics Codes***

**Question:** The ICAC's response to Question 3 of Questions on Notice concerning the ICAC Annual Report 2002-03 refers to the development of business ethics codes and statements for businesses that work in or with the public sector. Does the ICAC find such codes useful?

**Response:** The concept of developing and using a statement of business ethics to guide business relations between public sector organisations and the private sector is a relatively

new one, but one which is gaining increasing currency and acceptance both in Australia and overseas.

The ICAC's assessment is that such codes are likely to become increasingly important and useful as public sector organisations develop a range of business relationships with private sector organisations which may necessarily have a good understanding of public sector ethical standards, governance frameworks and tendering procedures, for example.

Based on this assessment, in March 2004 the ICAC finalised its own *Independent Commission Against Corruption statement of business ethics* for use in the ICAC's business dealings with private sector contractors and goods and service suppliers.

The ICAC is currently also finalising the text of a resource publication, *Developing a statement of business ethics*. This publication advocates the importance of statements of business ethics in establishing and maintaining ethical business relationships between NSW public sector organisation and the private sector. The publication provides advice for public sector organisations on developing their own statements of business ethics and a list of relevant resources, including sample statements of business ethics adopted by several NSW public sector organisations (ICAC, Roads and Traffic Authority and State Rail Authority). The *Developing a statement of business ethics* publication will be published and distributed to NSW public sector organisations in 2004.

***Question 43: International Anti-Corruption Conference Seoul 2003***

**Question:** Does the ICAC think that the examination of these issues at the International Anti-Corruption Conference in Seoul in 2003 reflects on the usefulness of such codes as they apply in New South Wales?

**Response:** Considerable attention has been given to business ethics issues and the development of codes to promote ethical business relationships between the public and private sectors in recent international forums such as the 11<sup>th</sup> International Anti-Corruption Conference in Seoul.

The high level of international recognition that such codes are a useful corruption prevention tool is reflected in Article 12 of the United Nations Convention Against Corruption, which was signed by Australia on 10 December 2003. Under Article 12, signatory nations are required to take measures to prevent corruption involving the private sector. One of the specific measures identified in Article 12 for consideration by signatory nations is the development of:

***codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State (Article 12(2)(e))***

Given the extensive international consultation involved in the drafting of the new Convention, it is clear that such codes are now an internationally-accepted corruption prevention tool,

which should enhance awareness and acceptance of such codes by private and public sector organisations at both the local and transnational level.

The ICAC has incorporated reference to Article 12 of the UN Convention in its forthcoming *Developing a statement of business ethics* publication, in order to emphasise the level of international recognition and acceptance of such codes.

It is important to note that the UN Convention requires each signatory country to take measures to prevent corruption involving the private sector, but that the development of codes of conduct to regulate public-private sector contractual relationships is just one of the measures recommended, rather than required, under the terms of the Convention. The Convention will enter into force after being ratified by 30 signatory countries.

***Question 44: Number of requests for ICAC advice from Parliament Staff***

**Question:** How many requests from Presiding Officers, Clerks or other parliamentary staff seeking ICAC advice did the ICAC receive in 2002-03?

**Response:** Requests for corruption prevention advice are recorded on a centralised ICAC information database and for the 2002-03 year two such requests are recorded from Presiding Officers, Clerks or parliamentary staff who identified themselves and were recorded as such<sup>8</sup>.

It should be also noted that in the normal course of the ICAC's work there is regular contact between senior officers of the ICAC and the Presiding Officers and Clerks, as there is with senior officers of public sector organisations, and such contacts may involve informal discussion on a range of issues.

***Question 45: Parliamentary Ethics Commissioner***

**Question:** Did the Parliamentary Ethics Commissioner seek advice during the year and, if so, on how many occasions?

**Response:** No requests for advice from the Parliamentary Ethics Adviser are recorded on the ICAC's information management databases for 2002-03.

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<sup>8</sup> Note that the ICAC receives some telephone requests for corruption prevention advice from individuals who prefer to remain anonymous or who provide minimal personal details.

***Question 46: Requests for corruption prevention advice from MP's***

**Question:** Did members of Parliament seek corruption prevention advice of the ICAC during the year, and, if so, how many members sought advice?

**Response:** As outlined in the response to Question 43 above, requests for corruption prevention advice are recorded on a centralised ICAC information database and for the 2002-03 year two such requests are recorded from Members of Parliament.<sup>9</sup>

It should also be noted that on a number of occasions during 2002-03 Members of Parliament contacted Commission officers for general information on such matters as procedures for reporting suspected corrupt conduct to the ICAC.

***Question 47: Complaints to ICAC concerning MP's***

**Question:** How many complaints concerning members of Parliament did the ICAC receive during the year?

**Response:** A total of 42 complaints received by the ICAC in 2002-2003 concerned, in whole or in part, members of Parliament.

This figure includes complaints alleging corrupt conduct by a public sector organisation where the complainant also asserted that not enough was being done by government (including the portfolio Minister/s) to address the issue.

***Question 48: Number of Complaints***

**Question:** How many complaints concerning Ministers and Parliamentary Secretaries did the ICAC receive during the year?

**Response:** 27 of the 42 complaints referred to above concerned Ministers. No complaints relating to Parliamentary Secretaries were received in 2002-03.

***Question 49: Complaints concerning MP's Code of Conduct or Pecuniary Interests register***

**Question:** Were any complaints or queries received in relation to the MPs' Code of Conduct or the Pecuniary Interests Register? If so, how many were received during the year?

**Response:** In 2002-03 the ICAC received two complaints that related to the MPs' code of conduct and pecuniary interests register.

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<sup>9</sup> See footnote 1 above.

***Question 50: Review of MP's Code of Conduct***

**Question:** Did the ICAC have any occasion during the year to review the effectiveness or appropriateness of either the members' code of conduct or the pecuniary interests register?

**Response:** In late 2002 the ICAC undertook an analysis of the Code of Conduct for members of the Upper House as it relates to regulation of secondary employment. This analysis formed part of a comprehensive report to the Speaker of the Legislative Assembly on *Regulation of secondary employment for Members of the NSW Legislative Assembly*. This report was prepared by the ICAC in response to a resolution of the Assembly on 21 November 2002 requesting the ICAC to look into and report on what measures might be taken in respect of regulating or limiting the employment of members of Parliament to provide advice on public affairs. The report was completed and tabled in Parliament in September 2003.

In 2002-03 the ICAC did not have any other occasion to review the members' code of conduct or the pecuniary interests register.

***Question 51: Post Parliamentary employment***

**Question:** Did the Premier's Department, the Cabinet Office or the Premier himself contact the ICAC in relation to a cooling-off period in relation to post-parliamentary employment for Ministers retiring from Parliament?

**Response:** The Cabinet Office contacted the Commissioner in February 2003, shortly after the referral of matters involving the Hon. Richard Face MP to the ICAC was made public, to inform her that the Office intended to undertake research on the subject of post-parliamentary employment of Ministers. Subsequently (in December 2003) the ICAC received a letter from the Cabinet Office providing details of that Office's research on this subject.

***Question 52: Survey of community attitudes***

**Question:** Can the ICAC provide a written background of what trends or changes can be ascertained from the data contained in the ICAC's survey of community attitudes to the ICAC and corruption? *(Please indicate in the response if media coverage of particular issues may have influenced particular results).*

**Response:** The ICAC has conducted a total of six community attitude surveys between 1993 and 2003, as a means of gathering information on public attitudes and as a tool to help refine the organisation's proactive communications work.

Report date	Survey date	Sample size	Research company
1993	November 1993	502	Roy Morgan Research Centre
1994	November, 1994	402	RAMIS Corp
1995	October, 1995	515	Taverner Research
1996	October 1996	511	Taverner Research
1999	February, 1999	514 <sup>10</sup>	Taverner Research
2003	April, 2003	500	AMR Interactive

The community attitude surveys are intended to be an indicative, rather than a definitive, measure of public attitudes that will help inform the ICAC's work. Accordingly, the sample size for each survey has been relatively small and there has been some variation in the survey methods used (including the time interval between surveys and the research company used to conduct the survey).

Some caution should therefore be exercised in using the findings from these various community attitudes surveys to identify significant trends over time.

While there have been some variations in the format of the survey, a number of core questions have been asked each time. In order to provide the Committee with information on significant changes and trends that can be ascertained from the survey data, the following analysis focuses on responses to these core questions.

Responses to these core questions have generally been fairly consistent across the six surveys conducted:

- Most respondents perceive corruption to be a problem in NSW.
- Most respondents support reporting of corruption.
- Most respondents believe that ICAC is "a good thing" for the people of NSW.

### **A. Concern about corruption in the public sector**

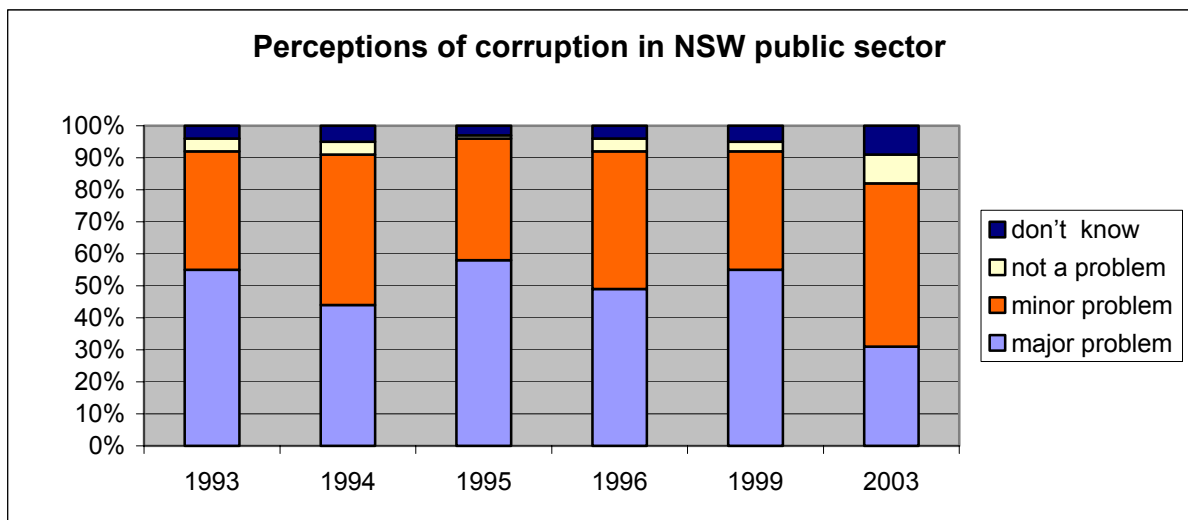
A consistent finding of the community attitude surveys has been that the large majority perceive corruption to be a problem in the NSW public sector. However, there has been some fluctuation in the proportion perceiving corruption to be a major problem, as opposed to a minor problem. The proportion perceiving a major problem was lowest in the most recent survey (2003). This finding may indicate community perception that anti-corruption measures are having some effect, but the available data does not permit any definite conclusions to be made about precisely when this change in perception began and whether it is in fact a trend or simply a fluctuation in responses.

<sup>10</sup> Additional survey of 100 journalists in 1999 had no effect on the size of the community survey, nor on the responses.



**Perceptions of corruption as a problem in NSW public sector**

	<b>major problem</b>	<b>minor problem</b>	<b>not a problem</b>	<b>don't know</b>	<b>N</b>
<b>1993</b>	55%	37%	4%	4%	502
<b>1994</b>	44%	47%	4%	5%	402
<b>1995</b>	58%	38%	1%	3%	515
<b>1996</b>	49%	43%	4%	4%	511
<b>1999</b>	55%	37%	3%	5%	514
<b>2003</b>	31%	51%	9%	9%	500



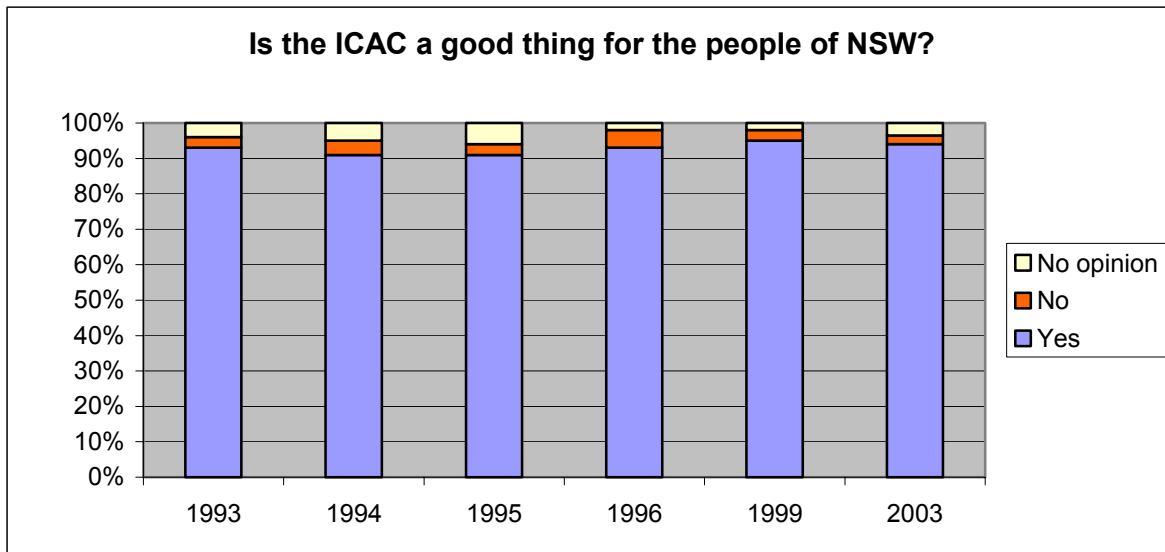
**B. Attitudes to the ICAC**

The proportion of respondents perceiving ICAC to be “a good thing” for the people of NSW has been consistently very high (91-95%) across all surveys and the majority have consistently perceived ICAC to be successful in exposing corruption (74-84%).

It is important to note that the apparent slight dip in 2003 in the proportion of respondents perceiving ICAC to be a “good thing” for the people of NSW is due to a larger proportion (17%) expressing no opinion on this issue, not to an increase in those perceiving ICAC to be unsuccessful in exposing corruption.

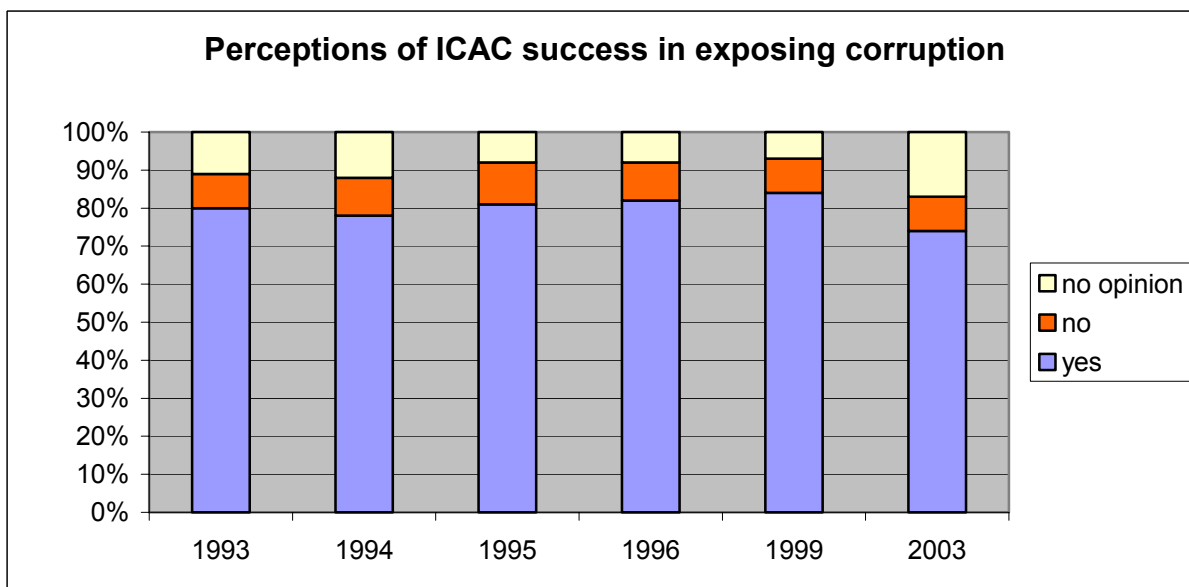
**Proportion who believe that the ICAC is a good thing for the people of NSW**

<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1999</b>	<b>2003</b>
93%	91%	91%	93%	95%	94%



### Has the ICAC succeeded in exposing corruption in NSW?

	yes	no	no opinion
<b>1993</b>	80%	9%	11%
<b>1994</b>	78%	10%	12%
<b>1995</b>	81%	11%	8%
<b>1996</b>	82%	10%	8%
<b>1999</b>	84%	9%	7%
<b>2003</b>	74%	9%	17%

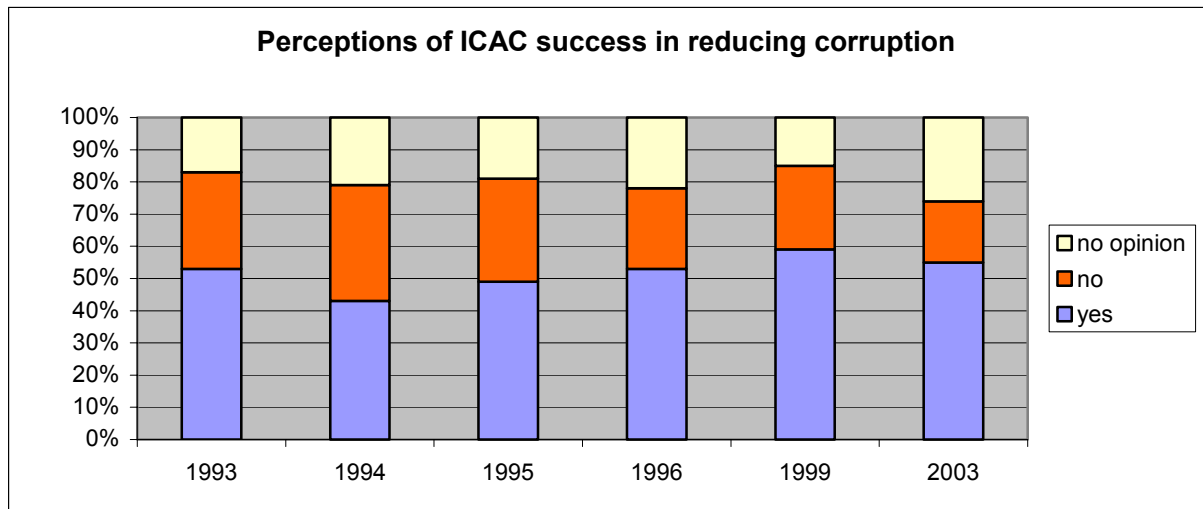


Perceptions of ICAC's success in reducing corruption have been generally lower and more variable, dipping from 53% in 1993 to 43% in 1994 and then gradually increasing to 59% in 1999. Again, the apparent dip to 55% in 2003 is due to a larger proportion (26%) expressing no opinion, a result which may be attributable to telephone survey methods or to

other factors. The proportion believing that the ICAC was not successful in reducing corruption also dipped in 2003, in fact to the lowest level recorded for this variable.

**Has the ICAC succeeded in reducing corruption in NSW?**

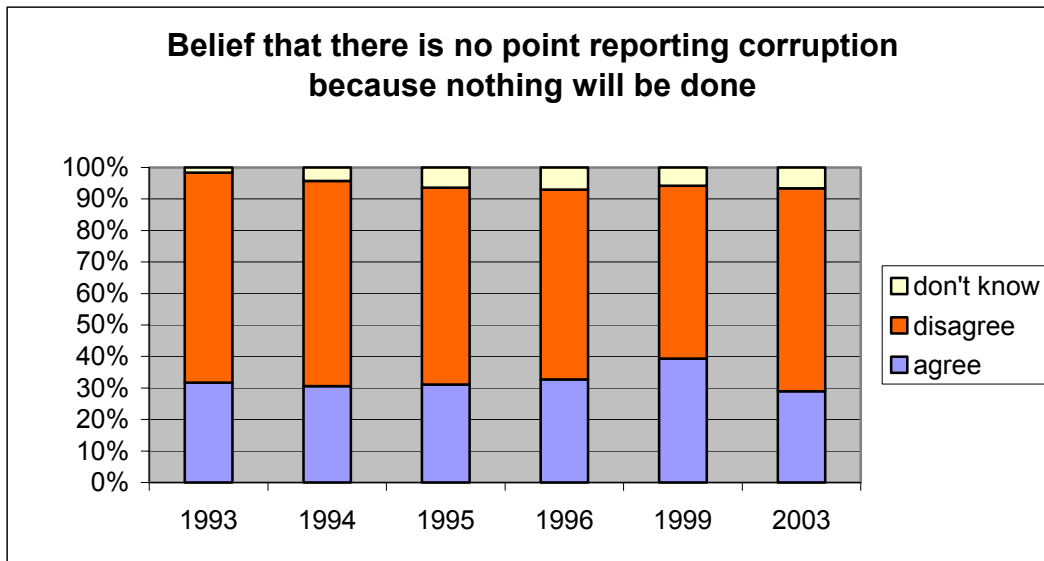
	<b>yes</b>	<b>no</b>	<b>no opinion</b>
<b>1993</b>	53%	30%	17%
<b>1994</b>	43%	36%	21%
<b>1995</b>	49%	32%	19%
<b>1996</b>	53%	25%	22%
<b>1999</b>	59%	26%	15%
<b>2003</b>	55%	19%	26%



**C. Attitudes on the outcomes of reporting corruption**

**Perception that there is no point in reporting corruption**

	<b>agree</b>	<b>disagree</b>	<b>don't know</b>
<b>1993</b>	32%	67%	1%
<b>1994</b>	31%	65%	4%
<b>1995</b>	31%	63%	6%
<b>1996</b>	33%	60%	7%
<b>1999</b>	39%	55%	6%
<b>2003</b>	29%	64%	7%



The proportion of respondents who believed “there is no point in reporting corruption, because nothing will be done about it” fluctuated between 31% and 33% from 1993 to 1996, rose in 1999 (to 39%) and then returned to slightly below the 1993-1996 level in 2003. The 1999 peak may be due to specific events and/or media coverage in the period immediately preceding the survey (which was conducted a month prior to the 1999 State election) or may be an indication of a trend, but it is difficult to reach definite conclusions without data for the intervening years

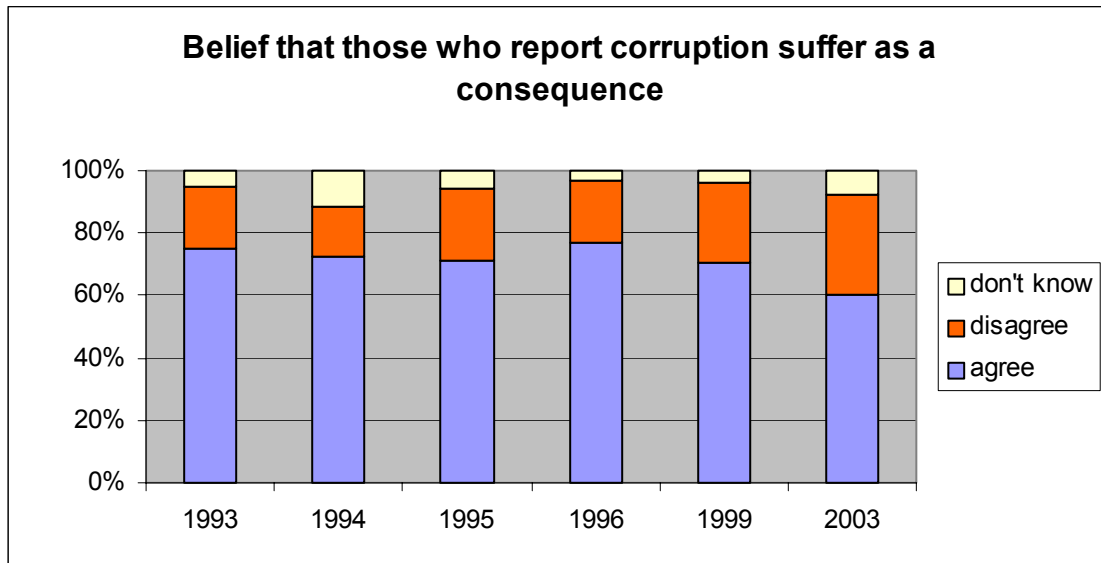
The community attitude surveys have also recorded a fluctuating, but consistently high level of concern that people who report corruption suffer negative consequences as a result.

**Belief that those who report corruption suffer as a consequence**

	agree	disagree	don't know
<b>1993</b>	75%	20%	5%
<b>1994</b>	73%	16%	11%
<b>1995</b>	71%	23%	6%
<b>1996<sup>11</sup></b>	76%	20%	3%
<b>1999</b>	70%	26%	4%
<b>2003<sup>12</sup></b>	60%	32%	7%

<sup>11</sup> Percentages for 1996 add up to 99% rather than 100% due to rounding up/down of percentages.

<sup>12</sup> Percentages for 2003 add up to 99% rather than 100% due to rounding up/down of percentages.



The fall in the latest survey in the proportion of respondents who believe those who report corruption suffer negative consequences is very positive, but unfortunately the available data does not provide any further information on the cause—or causes—of this fall. It may indicate a trend (rising community confidence in reporting corruption) or it may be the result of specific factors influencing the 2003 result. There was a modest amount of positive media coverage relating to whistleblowers in the two months leading up to the 2003 survey.<sup>13</sup> However, given the question asked it is more likely that the *lack* of stories in this period about any negative consequences for whistleblowers is the more significant factor.<sup>14</sup>

Another factor contributing to the decline in the proportion of respondents believing those who report corruption will suffer negative consequences may be growing public awareness of the Protected Disclosures Act and the degree of protection it affords to public sector whistleblowers. Since its advent in July 1996 the Protected Disclosures Act Implementation Steering Committee (PDAISC), of which the ICAC is a member, has been working to educate and inform public sector organisations and employees about the Act, the protections it affords and the internal reporting systems and training needed to ensure that the provisions of the Act are effectively implemented.

The Committee has focused on ensuring organisations have internal reporting systems in place and that organisations take steps to inform staff about these systems. The Committee has also sought to change attitudes amongst public sector managers so that they come to see protected disclosures as a potentially valuable source of information about corruption, waste and maladministration. The Committee has run a significant number of workshops over the last seven years to equip managers with the skills necessary to manage the investigation of a protected disclosure.

<sup>13</sup> For example, coverage of Index on Censorship Whistleblower of the Year award to former diplomat Tony Kevin for his research and disclosures in relation to the sinking of SIEV-X; obituaries and retrospectives on thalidomide whistleblower Dr William McBride).

<sup>14</sup> Note that the survey was conducted in April 2003, two months before massive media coverage of whistleblower issues in relation to the death of British defence scientist Dr David Kelly.

**Question 53: Protected Disclosures**

**Question:** Can the ICAC provide a breakdown by department or agency of protected disclosures received in 2002-03?

**Response:** In order to protect the integrity of protected disclosures procedures and the confidentiality of those making such disclosures, the ICAC is not in a position to provide detailed information on protected disclosures received as they relate to individual agencies or departments. In most cases, the number of protected disclosures relating to individual agencies or departments is very small, and disclosing details would compromise the confidentiality of the protected disclosure and may by default serve to identify the identity of the person making the disclosure.

Accordingly, the information provided has been aggregated by organisational type rather than by individual agency.

Agencies have only been individually identified where the number of protected disclosures received is five or more.

<b>Aboriginal land councils</b>	8 PDs relating to 7 Councils
<b>Local government councils</b>	64 PDs re 44 Councils
<b>County councils</b>	2 PDs re 2 County Councils
<b>“Government of NSW”</b>	6 PDs
<b>Government departments<sup>15</sup></b>	77 PDs re 23 Departments
including	14 PDs relating to Department of Corrective Services 14 PDs relating to Department of Education and Training 7 PDs relating to Department of Health 5 PDs relating to Fire Brigades, NSW 5 PDs relating to Department of Ageing, Disability and Home Care
<b>Area health services</b>	22 PDs re 9 Area Health Services
including	8 PDs relating to Mid North Coast AHS

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<sup>15</sup> As listed in Schedule 1 of the *Public Sector Management Act 1988* and/or Schedule 3 of the *Public Finance and Audit Act 1983*.

<b>Statutory health corporations</b> <sup>16</sup>	1 PD re 1 statutory health corporation
<b>Correctional centres</b>	3 PDs re 3 Correctional Centres
<b>Universities</b>	14 PDs re 6 universities
<b>TAFE colleges</b>	6 PDs re 6 TAFE colleges
<b>Schools</b>	1 PD re 1 school
<b>Hospitals</b>	5 PDs re 4 hospitals
<b>State owned corporations</b> <sup>17</sup>	11 PDs re 5 SOCs
including	5 PDs relating to Sydney Water Corporation
<b>Declared authorities</b> <sup>18</sup>	21 PDs re 8 declared authorities
including	8 PDs relating to State Rail Authority of NSW 5 PDs relating to Roads and Traffic Authority
<b>Statutory bodies</b> <sup>19</sup> (inc boards and committees)	3 PDs re 2 statutory bodies
<b>Other agencies</b> <sup>20</sup>	9 PDs re 5 other agencies
<b>Total 252</b> <sup>21</sup>	

<sup>16</sup> As listed in Schedule 2 of the *Health Services Act 1997*.

<sup>17</sup> As listed in Schedule 5 of the *State Owned Corporations Act 1989*.

<sup>18</sup> As listed in Schedule 3 of the *Public Sector Management Act 1988*.

<sup>19</sup> As listed in Schedule 2 of the *Public Finance and Audit Act 1983*.

<sup>20</sup> Those agencies not listed in the schedules attached to the Public Sector Management Act, Health Services Act or State Owned Corporations Act. They include a range of tribunals, trusts and public trading enterprises.

<sup>21</sup> The ICAC received 213 protected disclosures in 2002-03, but some of these related to more than one public sector entity. In such cases each disclosure in relation to a specific organisation is treated as a separate disclosure for the purposes of this listing. For example, a protected disclosure that specifically related to both conduct of the Department of Corrective Services and conduct by staff of a particular correctional centre would be the subject of two entries under appropriate headings in the above list. A protected disclosure that referred solely to the conduct of staff at a particular school and not to conduct of the Department of Education would be listed in the Schools category only.

**Question 54: Staff numbers**

**Question:** Can the ICAC provide figures on full-time equivalent staff numbers, by division, for the 2001-02 year, for the purposes of comparison with the 2002-03 numbers provided in the Annual Report?

**Response:**

**Average FTE staff numbers by Division**

Unit / Division	2001-02	2002-03
Executive	5.0	5.1
Corporate Services	22.3	18.8
Corruption Prevention, Education & Research	20.4	19.0
Legal	10.4	9.5
Strategic Operations	44.3	39.2
Assessments	9.7	9.6

Please note that, as requested, these figures are for full-time equivalent staffing by Division for the respective financial year. This means that a full-time staff member who commenced work three months before the end of the financial year would be counted as .25 FTE in the above table. The ICAC's restructure in 2001-02 is reflected in these figures, as new units and positions created as an outcome of the restructure were filled during the 2002-03 financial year. For February 2004, the staffing level at the ICAC was 115.3 EFT positions, comprised as follows:

Unit / Division	FTE staffing position for February 2004
Executive	5.0
Corporate Services	21.7
Corruption Prevention, Education & Research	21.7
Legal	11.0
Strategic Operations	42.3
Assessments	13.6

**Question 55: Bron McKillop Report**

**Question:** What is the status of the two unpublished chapters of the Bron McKillop report on inquisitorial systems of criminal justice and the ICAC?

**Response:** The two chapters referred to form part of a draft report prepared by Bron McKillop, Senior Lecturer in the Faculty of Law, University of Sydney for the ICAC in July 1994. The report was commissioned in response to a request by the Parliamentary Joint Committee for the ICAC to look into and report on whether the application of the inquisitorial system of justice is appropriate to the ICAC's inquiries.



The two chapters dealt with “Features of ‘inquisitorial’ systems of particular relevance to the ICAC” and “The applicability of the processes of inquisitorial systems to the ICAC’s inquiries” respectively. These chapters were omitted in from the ICAC’s published report of November 1994, entitled *Inquisitorial Systems of Criminal Justice and the ICAC: A Comparison*. The draft report was provided to the PJC in September 1995 and is attached for the information of current Committee members. The published report is publicly available on the ICAC website: [www.icac.nsw.gov.au/go/resources/publications/other-icac-publications](http://www.icac.nsw.gov.au/go/resources/publications/other-icac-publications).