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1996–97

Second Session

REPORT

OF THE

COMMITTEE ON THE INDEPENDENT
COMMISSION AGAINST CORRUPTION

ENTITLED

“COLLATION OF EVIDENCE OF THE
COMMISSIONER OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION,
THE HON. B. S. J. O’KEEFE, A.M., Q.C., ON
GENERAL ASPECTS OF THE COMMISSION’S
OPERATIONS, OCTOBER/DECEMBER 1996”

Ordered to be printed 18 June 1997



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

COLLATION OF EVIDENCE

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

*ON GENERAL ASPECTS
OF THE COMMISSION'S OPERATIONS*

October/December 1996

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- Ms R P Meagher MP
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Dr Peter Macdonald MP, Ms Reba Meagher MP, Mr Barry O'Farrell MP, Mr John Watkins MP,
The Hon. Duncan Gay MLC, The Hon. Ian Macdonald MLC, The Hon. Bryan Vaughan MLC.

COMMITTEE FUNCTIONS

Independent Commission Against Corruption Act 1988

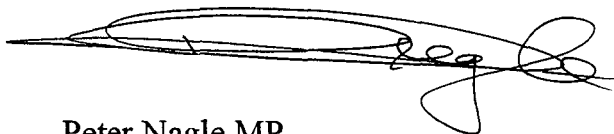
- “64 (1) The functions of the Joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise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

CHAIRMAN'S FOREWORD

This Report is the result of the Committee's continuing work to monitor and review the operations of the Independent Commission Against Corruption. It could not be stated otherwise than to say that the ICAC is held to a high standard of accountability by the Committee, as is evidenced by this Collation.

The Report contains written answers to questions put to the Commission by the Committee and the evidence of Commissioner O'Keefe at public hearings with the Committee on Friday, 25 October 1996 and Tuesday, 17 December 1996.

This Report is the record of the 12th and 13th meetings between the Committee and the ICAC Commissioner since the ICAC's inception in 1989. It will, along with previous reports released by the Committee, form the basis for the Committee's forthcoming full review of the ICAC's operations.

A handwritten signature in black ink, appearing to read 'Peter Nagle', with a large, stylized flourish extending to the right.

Peter Nagle MP
Chairman

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COMMISSIONER'S OPENING STATEMENT

Mr Chairman, members, I would like to deal with the matter raised by the questions in overview first, to look at various aspects of the matters raised by those questions and to deal with the positives. First, complaints received by the Independent Commission Against Corruption are up by 42 per cent on last year, and that trend is continuing. Second, the exercise of powers, that is under sections 21, 22 and 23, together with search warrants, is more than twice what had been the situation in the preceding year. That trend continues.

Third, listening devices. I could use a figure of 3,200 per cent, but having regard to the base, that would not be a meaningful figure; 47 compared with two in the preceding year, a very big increase and that trend again continues. Hearing days, 135 hearing days compared with 29 and 90 respectively in the two preceding years. Operations review committee activity up by some 55 per cent, considering during the course of 11 meetings held over the year 1,505 reports. That is an indication of activity.

If one looks internally at staff, the turnover of staff is down to 8 per cent for the last six months, 17 per cent for the financial year ending 30 June 1996. That compares with a high of 35 per cent in 1990-1991 and 28 per cent in the year preceding that I came to the commission, that is in the year 1993, 1994. Morale is high and the dedication of staff excellent. An empirical measure of the dedication of staff, and one only for there are many of them, is to be found in the fact that more than 40 per cent of the staff have not taken all the flex leave that they are entitled to. They have worked through to get the work done, because they are very dedicated.

If you look at the responses of agencies who we have dealt during the year, a number of directors general and CEOs have either telephoned or written to me or the staff with thanks and gratitude for steering them in the right direction, that is, out of possible corruption either in fact or allegation of corruption before that situation arose. If you look at corruption prevention and education, you will see at pages 8 to 11 the extensive nature and wide ranging ambit of the work which has been undertaken and the response by those at whom particular publications have been directed has been very good, very positive.

In the legal field, pages 21 and 30 to 31, the staff has been involved in a good deal of contact with both the Parliament and departments concerned with the promulgation of legislation. It covers a wide area. It is not just restricted to the ICAC Act but includes privacy legislation and, as you, Chairman, would know from another hat which you wear, it includes the codes of conduct of the two Houses of the Parliament.

One disappointment in the light of the discussion that we engaged in on the last occasion that I was here is the situation revealed at page 48 of the material that I have provided to the Committee. First, what I will describe as a disappointing response rate from members of Parliament to our endeavour to put into practice what was discussed here on the last occasion, but the positive is to be found in the centre of the page where there is a number of suggestions to be found as to how we might take steps effectively to inform parliamentarians about the work that is being undertaken and provide assistance, through them, to the constituents who, our research reveals, tend to look upon their members of Parliament as the first place of resort in the event of a problem with the administration. They are the positives.

Can I say that the year that has just passed has been the busiest year that the commission has had in its history. The unit productivity of individuals in the commission has been higher than at any previous time, this notwithstanding that the budget is lower and that the number of employees is lower than at the peak of employees.

There are some negatives. The negatives may indicate that we have not been sufficiently effective in conveying our message as to the nature of the organisation, its scope, purpose and what its functions are. Could I refer in particular to an editorial in today's Daily Telegraph. That editorial is a little like the curate's egg. Part of it is right and good and part of it is very bad and quite wrong, wholly wrong, badly wrong and one wonders how anybody could get it so wrong.

Let me take some of the statements which are made. "The ICAC findings have resulted in few prosecutions and even fewer criminal convictions". First, may I say that the statute provides that we are an investigative corruption and educative body, not a prosecuting body. Indeed, the Act provides we cannot even recommend prosecution. That is what section 74B (1)(b) provides.

The Commission may, however, recommend that consideration be given to prosecution by the Director of Public Prosecutions. We have done so in respect of 228 individuals. That figure appears at page 15 of the written answers that I have provided. Of those, 125 prosecutions, that is fifty-five percent, have been recommended by the Director of Public Prosecutions, the appropriate authority. There is a limitation on the evidence that can be used because of section 38 of our Act, namely, if somebody takes an objection, the evidence given by that person at a hearing cannot be used against them in any criminal, civil or disciplinary proceedings. Of those 125 persons prosecuted a substantial number are still pending, as you will see, for example, from annexure 1 to the documents that I have provided. Some of these are police officers or ex-police officers. Of the remainder there have been seventy-three people convicted - not a few, seventy-three - and fifteen of those have been imprisoned.

So the fact that is stated there is just wrong.

Secondly, it says:

Early last year, under Commissioner O'Keefe, the ICAC report on the tax affairs of Phillip

Smiles led to prosecution and the State Liberal MP was forced to resign upon his conviction.

Wrong, wrong, wrong. Three wrongs. We did not investigate Mr Smiles' tax affairs; the report did not lead to his prosecution and the report did not lead to him having to resign.

What are the facts? Mr Smiles resigned on 21 December 1993. He got his pension in January 1994. It was commuted in April 1994 as to the percentage allowed under the relevant legislation. The investigation commenced in December 1994 and the report was made in February 1995, more than a year after the date on which Mr Smiles had resigned.

Mr O'FARRELL: Close.

Well, what is close for Parliament is not close enough for me, Mr O'Farrell. That is hopelessly wrong; it is wrong from a newspaper that reported the proceedings and it is hard to understand how a responsible paper could get it so wrong genuinely.

It is said:

In August, NSW Auditor-General Tony Harris warned that ICAC was in danger of becoming merely another element of the executive arm of government.

You will see at page 42 of these papers and annexure 3 how he was misrepresented and, if one looks at sections 13(1)(e), (f), (g) and (h) of the Act under which the ICAC is constituted, we are required to advise departments and public officials who seek advice, so one is criticised wrongly, inaccurately, in this editorial for doing the very thing that the Auditor-General did not criticise us for and which the statute requires us to do.

Let me go to the fourth matter, and that is the reference to Mr Greiner. Now that occurred under my predecessor, but the ICAC has a continuing life, a corporate life. It is said there that, as a result of Mr Greiner being cleared, the ICAC legislation itself came under scrutiny for its potential to cause unwarranted harm. It came under scrutiny, but what happened was that the Court of Appeal decision in Greiner threw up that there was a very big loophole in the legislation and so the legislation came under parliamentary scrutiny in order to fill that loophole and the result of that was an amendment to section 11 and the insertion of Part 7A, sections 72(a) to 72(k), pursuant to which provisions the codes of conduct which have been in the news recently were formulated.

Finally it is said that Mr Smiles, not unreasonably, harbours a feeling of resentment. Might I say that no complaint has been received by Mr Smiles, no suggestion made by him as to any feeling of resentment, and when one analyses the two reports that dealt with the matters arising out of the grant of a parliamentary pension one would find it difficult to understand why he could rationally or reasonably hold any such view.

There is a second thing that I would like to deal with and that is a news report on this morning's radio. A Dr Jean Lennane of the Whistleblowers Australia Inc was on the radio this morning and there were four things, quite wrong, which she said about the ICAC. First, it did not spend some \$5 million of last year's budget, that is nonsense, just nonsense, absolute nonsense in fact. Last year we had an overspend of \$364,000, a little under two percent of our total budget, within the permitted amount, and we have never, in the life of the Commission, had an underspend of that order.

Secondly, she said that the ICAC had the carriage of the Protected Disclosures Act and, of course, as you would know, being authors of that legislation, that is not so. There are three primary authorities to which complaint may be made: Ombudsman, Auditor-General, ICAC. Thereafter, if unsatisfied, they may go to a Member of Parliament or to the press. Is it to be said that a Member of Parliament or the press, who are recipients or can be recipients of complaints, have the carriage of the protected disclosures legislation, for they are in no different position ultimately from the ICAC. It is just not right.

The third thing, and this is really quite a serious matter, was a suggestion that the ICAC had revealed the names of persons who had made protected disclosures and had led to their dismissal. I have, in the time since I have been Commissioner, written time and time and time again to get details of such allegations. I am still waiting in fact on a reply to a letter I wrote in February 1995 seeking such information. However, we have been given three names until an event was referred to on today's radio. Each of those three names was something which occurred before the protected disclosures legislation, and in each case the person who had made the complaint had himself or herself before coming to the ICAC revealed his or her name to his or her employing authority. So that assertion is not right. The fourth one which was raised today is much, much more serious because it was said that we, the ICAC, had written disclosing the fact that the employee in question had made a protected disclosure and three days later that employee was dismissed, the causal connection assertion being quite clear.

May I tell you, without revealing anything that is improper to reveal under that Act, the following: First, the matter is essentially an industrial dispute between an ex-employee and the employing department. Second, the employee in question was dissatisfied with, unhappy with the process whereby a person superior to the employee was appointed. Advertisements for the relevant position were inserted in the newspapers in October 1994. The appointment was made in December 1994. The allegation made was that the process used was inappropriate.

On 24 March, 1995, that is nearly four months after the appointment had been made, the employee in question was interviewed in respect of an allegation that that employee had been seeking to white ant, by various means, the person who had been appointed to the superior position. On 25 March, 1995, the employee in question made response to that claim. On that same day the internal audit unit of the employer reported that the employee in question had employed an unqualified person to undertake procedures which I do not want to go into since they may reveal something about the identity of the complainant, but which can involve risk to the health of persons.

So we now have an appointment in December 1994 and a procedure that is going on inside the employer relating to the activities and actions said to be wrongful of the employee in question. The employee in question came to the ICAC personally three days before a further disciplinary interview was scheduled. There was a disciplinary interview scheduled for 22 June 1995. The employee came to the commission on 19 June 1995.

Subsequently a claim was made that there had been a defacto dismissal on 11 August, 1995, when the employee in question was sent on extended but paid leave, and it was said an announcement had been made at a staff meeting that the employee had been terminated. That was not the fact about termination but it was said to be defacto. The employee was dismissed on 17 October, 1995 in fact and the ICAC wrote to the employer for the first time on 20 October, 1995, three days after the dismissal, not three days before. What a difference six days makes. It ruins the story, but it happens to be the fact.

How could Dr Lennane get it so wrong genuinely because she knows the facts. She has written to me about them. That story is just not right. The matter has been in the Industrial Court, one would think an appropriate tribunal for a reinstatement application, for 39 days and the decision has been made at the ICAC that, whilst the merits of the matter are being tested, it would be inappropriate for us to interfere and intervene and expend resources which are pretty scarce, anyway. They are the facts.

So on each of those matters which capture a headline and may well account for the great attention that my appearance here today is being given by the media, both television and radio, captures that but it is wrong. From the perspective of the protected disclosures legislation is very important, important that it work, because if you have in departments and agencies people who feel free to come forward and tell us about acts of corruption or suspected corruption, we have a vast number of people out there actually helping us with our work, so we have a vested interest in it succeeding.

As you know, we have recently done, as our answers indicate, considerable, indeed, the only in the world research in relation to whistleblowers. As persons I feel for them - we feel for them. There is unfortunately a coterie in Whistleblowers Australia Inc., many of whom are pushing their own personal barrows and I do not think it would matter what we did, we would never satisfy them. When you have criticisms such as that which is wrong and unfair, it can have a detrimental effect upon the organisation, and unfairly so. They are the positives and the negatives.

In relation to whistleblowers, I have ensured that we have applied not inconsiderable resources, about a quarter of our research budget has been applied to determining needs, approaches, whether or not strengthening of the Act is required, et cetera. That is pretty substantial as a commitment to something which Whistleblowers Australia Inc. says we are not interested in. The year has been positive.

Dealing with the negatives takes time and distraction from what I would hope would be our positive work, but it is an important part of our work and I hope that over time the accurate message of what we do and how we do it will get through. As you will see, we have given attention to the spread of that message by our publications and by strategies that we are devising. In addition to that, you have the quite extensive answers to the particular questions that have been directed, but that is the overview that I would like to put before the Committee, Mr Chairman, and ladies and gentlemen.

1. GENERAL UPDATES/BRIEFINGS

1.1 What is the status of current investigations which have been the subject of public hearings and recent or forthcoming reports?

The following investigations have been the subject of public hearings and will be the subject of a report:

- Operation Sturt is concerned with the conduct of a former alderman of Fairfield City Council. The taking of evidence and submissions in relation to one segment of that investigation had concluded prior to the Committee's last public hearing. Evidence and submissions in respect of the second segment concluded on 27 September 1996. A report will be provided to Parliament.
- Operation Talisman was an investigation into the circumstances surrounding payments made to Pamlan Pty Ltd for cleaning services provided to the State Rail Authority of New South Wales during the years 1990-1993, and also the conduct of a former State Rail Authority of New South Wales public official, Mr Damon Schrieber. Evidence was heard initially in private on seven days in December 1995. Evidence was continued in public and private in January and February 1996. Counsel Assisting's submissions and submissions from affected persons were made and received in February. At the Committee's last public hearings the Commission reported that some further financial investigation was continuing and that a report was being prepared. The Commission is now taking into consideration a number of other matters concerning the State Rail Authority for inclusion in its final report.
- Operation Yabbie concerned Byron Bay Council. At the time of the last public hearings the report was then in draft form and work has continued on that report. Unfortunately it has been delayed by other priorities and illness. However, at the conclusion of the hearings submissions made by Counsel Assisting, which I accepted, made it clear that it was not suggested that any findings of corrupt conduct should be made against any public official who had been the subject of allegations during the investigation.
- Operation Weave concerned the Police Air Wing. It is expected that this report will be made public before the end of October 1996.
- Operation Yalta was concerned the investigation into the re-evaluation of the position of Director General of the Department of Community Services. This report, prepared by Assistant Commissioner Peter Hall QC, will be made public by the first week in November 1996.
- Operation Sublime. This involved an investigation into the Glebe Morgue. Assistant Commissioner Ruth McColl SC is currently preparing a report on that matter.

- Operation Quantum in which the Commission conducted an investigation into the conduct of a certain public official associated with or connected to harness racing in New South Wales.
- Operation Visual. The Commission conducted an investigation into the conduct of Gregory John Sealby, an officer of the Department of Gaming and Racing. Public and private hearings were held. A report will be provided to Parliament.

1.2 What is the status of works in progress?

The question is covered in the answers to other questions.

1.3 What is the status of the public education work of the Commission?

Formal and Professional Education

Young people are a target audience of the Commission because they are the citizens, decision makers and public servants of the future. Because schools and educational institutions are involved in equipping students for life and employment in professions or industry, the Commission works with them so that anti-corruption material by way of teacher resources is included in the teaching of curricula wherever appropriate.

In the development of these resources, the Commission engages the expertise of stakeholders by forming advisory committees. This ensures the ICAC products are relevant to teachers, students, disciplines and professions.

Recent analysis of community attitude surveys has suggested that young people (aged 18 - 24) compared to those older who were surveyed, are more likely to think that there was little that they could personally do about corruption, and less likely to believe that public sector corruption would affect them or their families. This information supports the targeting of young people by the Commission.

School and Formal Education

The Commission continues to work collaboratively with the Office of the Board of Studies, New South Wales Department of School Education, Catholic Education Commission, TAFE Commission of New South Wales and representatives from various schools, tertiary institutions and industry. The aim is to identify syllabi with attitude and value outcomes and objectives that require teaching resources; and then to produce effective resources for primary, secondary and tertiary students and teachers.

The following resources are currently being developed and/or promoted by the Commission:

- For the Design and Technology syllabus for years 7-10 the Commission contracted Australian Council for Educational Research (ACER) to produce a demonstration video, teachers' manual and student activities for ethics, values and attitudes education. It is currently being printed and will be launched in November 1996.
- For the HSC Design and Technology syllabus the Commission contracted Show-Ads Interactive to produce an interactive multi media CD ROM, teacher notes and student activities for ethics, values and attitudes education. It is currently being printed and will be launched in November 1996.
- The ICAC has undertaken the production of a K-6 Science and Technology CD-ROM kit targeting New South Wales primary schools. The CD-ROM will be cross platform and interactive. It will be designed to improve the teaching of ethical behaviours and attitudes in line with the stated attitudes and value objectives of the syllabus. The kit aims to enhance students' abilities for responsible participation within the community and develop an enriched view of themselves, society, the environment and the future. It has linkages to other syllabi including Civics.
- The kit is scheduled to be completed in May 1997 and will be promoted to primary schools. The kit will be available by request only. A total of 2500 units will be produced. The project is progressing to schedule.

Tertiary and Professional Education

The following projects are currently being advanced by the Commission:

- As reported in the previous evidence, a poster competition for TAFE students was conducted from February until May 1996. That competition was finalised with the presentation of awards by His Excellency the Governor at Parliament House in July. The finalist's entries have since formed a travelling exhibition to promote the Commission's anti-corruption message to the public. It is covered in more detail in the section dealing with the Community.
- Discussions continue with peak bodies in the private sector, other tertiary bodies and peak organisations for the Commission to find opportunities to contribute in educative programs.
- A training resource *Conduct Becoming... the personal responsibility of public duty* was produced and released in September 1996. The interactive kit consists of an 18 minute video, facilitator's guide, participant worksheets, a guide for self-paced learning, case studies, and a PC formatted computer disc of case studies for agency customising (see detailed response in response to Question 14).

- Management modules regarding public duty are in development; but unable to progress pending the appointment of the Education Officer, Training. The recruitment process is underway.

The Community

The Commission seeks to gather information on public perceptions about attitudes to public sector corruption and whether the public is motivated to take action, and also about the public's understanding of and support for the ICAC's work. Campaigns are aimed at the broad community, as well as at young people and special needs groups.

The following projects are currently being developed and/or promoted by the Commission:

- The poster competition, exhibition and associated educational materials are taking the anti-corruption message to all major centres in the State.
At the time of the last Committee hearing, the Commission was preparing for the official judging of the TAFE poster competition. The judging of the Corruption Matters Student Perspective took place in May 1996. A panel of five judges viewed over 500 entries from 15 TAFE institutions throughout New South Wales:
 - Jane Diplock, Managing Director TAFE NSW
 - Janie Raffin, General Manager, Regional Galleries Association NSW
 - Lisa Naar, Director Studio Naar
 - Malcolm Campbell, Freelance Graphic Designer
 - B S J O'Keefe AM QC, Commissioner

Judges selected 45 finalists and five entries for highly commended awards. Awards were presented to students by The Hon Gordon Samuels, AC, Governor of the State of New South Wales at an awards evening held at Parliament House on 22 July 1996.

The 45 finalists have their work represented in an exhibition that is scheduled to travel to ten metropolitan and regional galleries throughout New South Wales as outlined below. The exhibition is accompanied by a comprehensive Education Kit which will be used by schools visiting the exhibition.

The exhibition will travel to the following venues:

Casula Powerhouse - 28 August to 29 September 1996
Parliament House - 9 October to 25 October 1996
Newcastle Regional Museum - 6 November 1996 to 26 January 1997
Wollongong City Gallery - 7 February to 2 March 1997
Albury Regional Art Centre - 14 March to 6 April 1997
Orange Regional Gallery - 18 April to 25 May 1997
Manning Regional Art Gallery - 4 June to 29 June 1997

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New England Regional Art Museum - 18 July to 31 August 1997

Tweed River Regional Art Gallery - 3 September to 5 October 1997

Lewers Bequest & Penrith Regional Art Gallery - 10 October to 23 November 1997

The exhibition at Casula Powerhouse saw over 2200 visitors, 700 more than the average monthly visits to the gallery.

A comprehensive evaluation of the exhibition is underway. This includes an evaluation sheet for completion by community members visiting the exhibition, attendance numbers provided by the galleries, and a reply paid evaluation card accompanying the Education Kit.

- The July issue of *Corruption Matters* included a profile of the Aboriginal Land Councils investigation, news about other Commission activities and resources and articles about the Commission's collaboration with the Department of Public Works and Services on their Infrastructure Partnerships Guidelines and anti-corruption group, Transparency International. The November issue will feature articles on setting up and managing internal investigation functions in public sector agencies, aspects of contractor selection and the latest ICAC research and resources.

The newspaper distribution continues to expand with more and more agencies and individuals requesting copies. Several agencies have also reproduced articles from the newspaper in their own internal publications, spreading the anti-corruption message more widely.

- Education Officers form part of the team engaged in a review of the New South Wales Aboriginal Land Council system (Operation Zack). An education strategy is being developed to assist with the efficient management of land councils, to facilitate the introduction of reforms as necessary and to ensure that the community, especially the aboriginal community, is aware of the functions and responsibilities of the various land councils in New South Wales.
- The Non-English Speaking Background Community Research Project, which commenced in March 1996, established education needs of the non-English speaking community in relation to the public sector and what constitute appropriate procedures, communication, service and conduct. The research was conducted by Cultural Perspectives Pty Ltd by way of interviews with key government and community agencies and focus group discussions with key language groups (Arabic, Chinese, Spanish, Vietnamese). A team has been established to review the report, plan and implement various recommendations. Consultation with key agencies and relevant NESB groups will be a substantial component of the project.
- The Community Advisers Community Research Project, which commenced in March 1996, was conducted by Keys Young Pty Ltd. Through interviews and a survey, the project informed the ICAC of the best ways to inform community advisers about the ICAC and how

to deal with corruption related enquiries. In line with the research recommendations and findings, specific communication strategies are being implemented to meet the needs of various groups. Members of Parliament were sent material (the six corporate brochures and Operation Hubcap) in July 1996.

The Media

The Commission seeks to provide accurate information to the media promptly in order to promote awareness about the ICAC and related matters. It also seeks to ensure a responsive and proactive approach to the media in order to inform the public, where appropriate, about ICAC issues and activities. The Commission believes that more needs to be done with the media to ensure it understands the Commission's role, responsibilities and achievements.

To facilitate the above, and in particular to help promote the corruption prevention and educative functions of the Commission through the media, a contract has been let to develop an appropriate strategy. That contract was let to Network Communication in August 1996. The contract deliverables include initial research and reports, the provision of a 12 month relations program, and a media database to measure ICAC performance.

The contract cost is \$15,000 and it is due for completion in December 1996.

Visitors

The Commission is recognised around the world as a leader in the field of minimising corruption and enhancing integrity in the public sector. Because of this the Commission receives many requests to visit the Commission from agencies and organisations interested in its work.

The Commission received visitors from the following agencies and organisations since May 1996:

- | | |
|--------|---|
| August | Mr Zbigniew Wesolowski, Vice President Supreme Chamber of Control, Poland |
| | Professor Brian Grainger, Chairman, International Ethics in the Public Sector, Canada |
| | Inspector Dirk Scholten, Netherlands Police Force, The Netherlands |
| | Dr Leo Huberts, Vrije University, The Netherlands |
| | Mr Howard Wilson, Office of the Ethics Counsellor, Canada |

Committee on the ICAC

- August Dr Ugur Pekdemir, City of Tilburg
 Ms Majola Boogmans, Deputy Secretary, Dutch Advisory Council for
 Public Administration
- September A group of Hong Kong Legislators led by Emily Lau, Legislative
 Councillor, New Territory's East
- October Representatives from the Chinese Ministry of Internal Trade

Displays

New panels were designed and produced for the Commission's portable display system. This formed a backdrop for the following displays which the Education Section coordinated to inform the public and private sectors of current ICAC publications and projects:

- August 5-9 Ethics in the Public Sector International Conference, Brisbane Display
- August 31 Shaping the Future - K-12 Technology Education Symposium Display
- October 1 Public Sector Corruption Prevention Forum Display
- October 3-6 Australian Association for Professional and Applied Ethics Conference
 Display
- October 1-28 Government Information Service Bookshop, Chifley Square Feature
 Display of Commission information

Publications

With a view to streamlining production times for reports, a 12 month contract has been let for the production of Commission's investigation reports. The contract was let to McMillan Printing Group Rydalmere on 14 October 1996.

Materials published since evidence was last given are listed below:

Research Publications

- Corruption and Related Issues: An Annotated Bibliography - May 1996
- Monitoring the Impact of the Protected Disclosures Act 1994. Phase 2: Interviews with New South Wales Public Sector Agencies and Local Councils. Interim Report Summary - June 1996

Investigation Reports

- Report on Investigation Concerning the Chairman of the Stewards of the Harness Racing Authority of New South Wales - August 1996.

Community Education Publications

- Corruption Matters Student Perspective Exhibition Catalogue - July 1996
- Corruption Matters Student Perspective Postcards - July 1996
- Corruption Matters Student Perspective Posters to promote exhibition - July 1996
- Corruption Matters Student Perspective - Education Kit - August 1996
- ICAC Corporate Brochures - June 1996:
 - Serving the New South Wales Community
 - Making a Protected Disclosure to the ICAC
 - ICAC Function
 - What is Corruption
 - Guarantee of Service
 - Making a Complaint about Corrupt Conduct

Professional/Public Sector Education Publications

- How the ICAC works - Operation Hubcap (A Case Study) - June 1996

- Conduct Becoming - video resource kit - September 1996
- Conduct Becoming - posters and flier - September 1996
- Quarterly Newspaper - June edition - June 1996

1.4 What is the status of the work of the Corruption Prevention Unit?

The corruption prevention function is a statutory component of the Commission's three pronged attack on corruption in the New South Wales public sector. The aims of the Corruption Prevention Unit are realised by involvement in a number of activities and in particular by maintaining regular communications with New South Wales public sector agencies.

Work with the New South Wales Police Service

Corruption Prevention staff are working with the New South Wales Police Service on a number of projects including:

- Continuing monitoring of the implementation of the recommendations which emerged from the Milloo Investigation. A progress report is to be published later this year.
- Participating in a Ministerial working party in relation to the Police Academy. It is concerned with integrity and accountability training within the Service.
- Participating in a working group to implement recommendations on access to confidential information. (That group is currently reviewing a police training video "No Harm Done" in order that it may become the basis of a Service wide training initiative.)
- In July the Commission made a submission to the Police Royal Commission on corruption prevention measures in the Police Service (this was copied to members of the Parliamentary Committee).
- Consulting with the Police Royal Commission Implementation Unit and the Professional Responsibility Command on corruption prevention issues.
- A report by the Principal Corruption Prevention Officer who recently visited the New York Police Department to examine corruption prevention and training issues.
- Membership of the Police Commissioner's Accountability Panel, designed to improve the accountability of the Police Service in the area of corruption prevention.

- Commission officers also provided input to the drafting of the Police Service's new Internal Witness Support Policy which was launched by Minister Whelan in September.

Work with Other Agencies

Commission officers have increased the emphasis placed on direct, face to face, contact with public sector agencies. These contacts are intended to reinforce the sector's understanding that the ICAC is a body with considerable expertise which can assist agencies in the planning and continuing management of their activities focussed on corruption and fraud prevention. See response to Question 14.

Advice

A major opportunity to take early steps for the prevention of corruption is presented by the Commission's advice giving function. The ICAC encourages public and private sector agencies and individuals to seek its advice concerning their activities at the stage when a public sector related activity is proposed or being considered (also see response to Question 15).

Consistent with the Commission's increasing emphasis on face to face contact with the public sector, the wide categories of advice matters continues. The demand for advice remains strong, and agencies and government appear to be seeking help earlier.

Advice has been provided in relation to various Olympic issues as well as in relation to diverse matters involving the restructure of the State Rail, planning the eastern distributor and other tollways, public sector procurement, codes of conduct and other ethical issues affecting public sector agencies and individuals.

Local government is a major source of requests for advice. The most common issues raised still relate to tendering and purchasing, sponsorship and conflicts of interest for staff and councillors.

Projects in Progress

A number of the Commission's major projects are the subject of specific questions answered later in this document. These include Recruitment Practices, Aboriginal Land Councils, Olympic Games, the use of Probity Auditors, the Practical Guide to Corruption Prevention, work with central agencies and Protected Disclosures Act work.

In addition to those activities the Commission is pursuing a number of other projects with public sector agencies or within specific government sectors or areas of activity.

Towards the end of 1996 the Commission will release two publications concerning practical guidelines for local councils in dealing with conflicts of interest and improving understanding

of the differing roles and responsibilities of councillors and staff. The guidelines have been developed as a joint project with the Department of Local Government.

Most public sector agencies have occasion to conduct internal or external investigations in a variety of circumstances. The Commission is about to release an additional module for the *Practical Guide to Corruption Prevention*, along with a best practice handbook, which is intended to improve the quality and efficiency of investigations which are conducted by public sector agencies.

Involvement in Investigations

Corruption prevention staff have increased involvement in multi-disciplinary teams which are established to bring the full range of the Commission's skills and resources to bear on more complex investigations. In addition to corruption prevention personnel those teams include investigators, lawyers, education officers, researchers and analysts.

Multi-disciplinary teams have been active in a number of areas including those related to computer technology, public sector administration, local government and other areas of public concern.

Corruption Prevention Seminars

Each year the ICAC conducts a number of seminars on corruption prevention related issues. These seminars have been conducted at locations throughout the state and held with diverse groups of public sector employees. Apart from seminars for mixed agency groups, held particularly in country areas, they have also been conducted for the Child Protection Enforcement Agency, Parklea and Silverwater Correctional Facilities, the New South Wales Aboriginal Land Council and Special Constables employed by the New South Wales Police Service.

The seminar program for 1997 is currently in course of preparation and it is anticipated that the seminars will be directed at staff of agencies or sectors which have recently been the subject of the attention of the Commission. That attention might have been by way of investigations, enquiries, advice sought, or by the requesting of the provision of a seminar to a particular group.

Corruption prevention staff are active in the Corruption Prevention Forum which is a network of individuals, many from the public sector, who are interested in furthering the interests of corruption and fraud prevention. The forum conducts regular seminars and workshops in which the Commission's staff are frequently involved as presenters.

Conferences and Presentations

See answer to Question 12.

1.5 What is the status of the work of the Commission's Research unit?

The Research Section seeks to better inform the Commission's efforts to reduce corruption in the New South Wales Public Sector. To this end, the Research Section has undertaken the following work since 27 May 1996:

Monitoring The Impact of The Protected Disclosures Act 1994

The Independent Commission Against Corruption (ICAC) is currently conducting a four-phase study to explore the impact of the *Protected Disclosures Act 1994* upon the New South Wales public sector. Phases 1 and 2 were completed in April and June of 1996. The first two phases focussed upon the experiences of organisations with the Protected Disclosures Act. Phases 3 and 4 are currently being conducted and focus upon the experiences and concerns of public sector employees. This project is discussed in detail in response to Question 17.

Community Attitude Survey

The ICAC conducts annual community attitude surveys to inform its education and corruption prevention work. Information is collected through a telephone survey with members of the public. This year a sample of 500 adults across New South Wales is being surveyed. Telephone interviews for the 1996 survey are being conducted over a period of approximately two weeks, commencing 15 October.

In addition to information sought in previous years the survey will explore awareness of media reports about ICAC and whether or how community attitudes and understanding are affected by these reports.

As with previous community attitude surveys, the results will be publicly available in a published ICAC report. This will be available early in 1997.

Review of ICAC Business Studies curriculum kit - *Ethics & Enterprise: A life cycle of a business*

In 1995 the Education Section of the ICAC developed a set of curriculum support materials for use with the HSC Business Studies course in New South Wales High Schools. The kit was distributed to all high schools in February 1996. The Research Section is undertaking a review of the kit.

The aim of the review is to provide the Education Section of the ICAC with information about the number of schools and year levels where the kit has been used, and to explore teacher, student, and curriculum specialist views about the usefulness of the kit for teaching and learning the "Attitudes and Values" outcomes and objectives of the HSC Business

Studies Syllabus. Results from the review will be used to inform the development of other resources for schools.

The data collection for the review will commence early in 1997 and is comprised of four parts.

- Part 1 is a telephone survey of a random sample of 265 high schools teaching Business Studies (approximately 50%).
- Part 2 is a series of interviews with 30 teachers who have used the kit.
- Part 3 is a series of eight student focus groups from classes where the kit has been used.
- Part 4 is a small number of telephone interviews with selected curriculum specialists from each of the peak school bodies and the Board of Studies.

Operation Zack Evaluation

The Research Section is conducting an internal evaluation of the ICAC operation into New South Wales Aboriginal Land Councils (Operation Zack).

The evaluation is designed to identify aspects of the operation that have been successful or may have hindered the process. In particular, the evaluation has the following aims:

- to identify and measure the success of the process used in conducting this operation;
- to identify general implications regarding ICAC work with Aboriginal communities;
- to evaluate the organisational experiences of the ICAC multi-disciplinary team;
- to identify and evaluate the corruption prevention strategies employed.

This research is important as it will provide information about the processes used by the ICAC. Once identified, the processes and strategies which were found most effective can be promoted both internally and externally to other public sector organisations working in similar contexts.

Selected members from five of the 16 Aboriginal Land Councils visited by the Zack team will be interviewed (to be conducted in November-December 1996). The Aboriginal Land Council members will be asked about their perceptions of the ICAC, particularly in regard to Operation Zack, and their interaction with the Zack team members. ICAC team members' responses to working with Aboriginal people and Aboriginal Land Councils in particular were also sought in the evaluation.

The final phase of the research will evaluate the success of the corruption prevention strategies recommended as a result of the Commission's work with Aboriginal Land Councils' and which have been implemented by the Aboriginal Land Councils.

Analysis of the Complaints Database

The Research Section is working on two separate internal projects which analyse the types of complaints received by the ICAC. Project 1 involves refining codes for the types of allegations of corrupt conduct received by the ICAC. This will give a more detailed picture of the nature of the complaints which we receive. Project 2 involves an analysis of s11 reports in order to gain a broader understanding of the types of suspected corruption that are reported by CEOs.

ICAC travelling poster exhibition - *Corruption Matters: Students' Perspectives* - Survey of attendees' impressions

Between August 1996 and December 1997 the winning posters from the ICAC poster competition are being exhibited in Regional Art Galleries across New South Wales. The aim of the travelling exhibition is to teach students and other attendees about the detrimental effects of corruption and the benefits of preventing corruption. Accordingly, a short survey of gallery attendees is being undertaken in order to explore the impressions they have gained from the posters, and hence the impact that the exhibition has on their awareness and understanding of corruption. Survey forms are provided for attendees to complete at each of the galleries visited by the exhibition. Results from the survey will be used to inform future education strategies. The survey explores:

- the anti-corruption themes and messages that people receive from the posters;
- which posters best provide the following messages:
 - reporting and taking action against corruption is a good thing
 - it is best not to participate in corruption in the first place
 - the ethical values of anti-corruption
- other messages or themes gained from the posters.

Different Rules For Different Players

This research intends to explore some of the social rules concerning what types of behaviours are considered to be acceptable in private and public sector workplaces. From the previous literature we know that individual views about acceptable workplace behaviour can either minimise or perpetuate corrupt practices.

The specific questions to be addressed by this research include:

- whether individuals have different rules which govern what is acceptable behaviour depending on whether they are in the public or private sectors;
- whether the rules depend upon who is making the judgements;
- how other aspects of a situation (eg nature of the benefit, frequency, mitigating circumstances) interact to result in the behaviour either being considered acceptable or unacceptable.

The planning for this project will occur in 1996-97. The project itself will commence in 1997-98 and should inform the Commission in relation to its work in the public/private sector interface.

Other Ongoing Work

Sydney Olympics

The Research Section is maintaining a database on interest groups and issues associated with the Sydney Olympics.

Annotated Bibliography

The Research Section is maintaining a database on literature and research in the field of corruption. This document is distributed widely on an annual basis and is intended as a resource to identify the most recent developments in corruption research.

1.6 What is the status of any prosecutions or convictions arising from Commission investigations since the Commission last met with the PJC in May 1996?

The usual table is attached at Annexure 1. However, on the last occasion members of the Committee expressed interest in the breakdown of offences to distinguish the number of Crimes Act offences from offences under the ICAC Act. What follows is a summary of the numbers of offences in each category both in terms of recommendations made by the ICAC that consideration be given to prosecutions and actual prosecutions commenced.

Recommendations

Since it commenced operations the Commission has recommended that consideration be given to the prosecution of a total of 228 individuals.

Of these individuals 103 attracted recommendations relating to Crimes Act offences, 48 relating to ICAC Act offences and 29 relating to both Crimes Act and ICAC Act offences. The remaining 48 individuals involved recommendations relating to other statutory offences and common law offences.

Prosecutions

The DPP recommended that prosecutions be commenced against 125 of the above individuals. Of these, 51 were prosecuted for Crimes Act offences, 42 for ICAC Act offences and 14 for both Crimes Act and ICAC Act offences. The remaining 18 individuals were prosecuted for other statutory offences and common law offences.

1.7 What is the current budget and staffing status of the Commission, including any overspending or postponement of work due to expenditure containment and staff turnover respectively?

Total number of equivalent full time staff on duty as at 25 October 1996 is 137.2. It is anticipated that due to the re-allocation of funding in the budget, the average staff number for 1996-7 will be 133.25.

The turnover of permanent staff over the past six months is 8%. The turnover figures since the Commission commenced operation in 1989 are shown in the following table:

Period	Average turnover of permanent staff
1989/90	32%*
1990/1	35%*
1991/2	30%*
1992/3	24%
1993/4	28%
1994/5	26%
1995/6	17%

* may include temporary staff

For the 1996-97 financial year the Commission's budget allocation is \$13,071,000 in recurrent expenditure and \$240,000 in capital expenditure. The Commission's projections indicate that the total funding will be utilised during the financial year.

The Commission's funding decreased in real terms in 1996-97 as a result an agreement with the Director General of the Premier's Department in August 1995. This has meant that the Commission's staffing level in 1996-97 will drop by 6.5% from 1995-96. This decrease has been apportioned across major functions and the services that support them to enable the Commission to be within budget. This has meant that the work pressures on staff have increased. Further decreases in real funding would mean the Commission would be unable to function as effectively as it does at its current level.

1.8 What is the status of the work of the Operations Review Committee?

The Operations Review Committee (ORC) was established by the Independent Commission

Against Corruption Act (ICAC Act). The statutory basis for the Committee is found in Part 6 of the ICAC Act which outlines the functions, membership and procedure of the Committee.

Role and Function

The ORC is one of the Commission's most important accountability mechanisms. The Committee operates under the following terms of reference agreed to by the Commissioner and the other members of the Committee:

- advise the Commissioner whether the ICAC should discontinue or not commence investigation of a complaint;
- advise the Commissioner at least every three months whether the ICAC should continue an investigation;
- advise the Commissioner whether the ICAC should discontinue an investigation conducted on its own initiative or as a result of a report made to it;
- receive from the Commissioner a report relating to the completion of an investigation;
- advise the Commissioner on any matters referred to it by him or her and;
- bring to the Commissioner's attention any matters relating to the operation of the ICAC which the Committee considers important.

Membership

As at the end of the reporting year ORC membership was as follows:

- Commissioner B S J O'Keefe AM QC;
- An Assistant Commissioner
- Mr Laurie Glanfield, Director General, Attorney General's Department;
- Mr Peter Ryan QPM, Police Commissioner;
- Reverend Harry Herbert, General Secretary of the Board for Social Responsibility in the Synod of New South Wales of the Uniting Church in Australia;
- Ms Carmel Niland AM, company principal;
- Mr John Kennedy, solicitor in private practice, and
- Ms Yvonne Grant, lecturer.

The last four members on the ORC are appointed to represent community views. Each is appointed by the Governor on the recommendation of the Premier. The Commissioner of the ICAC must concur with the appointments before they can proceed.

The Workload of the ORC

The ORC generally meets on the first Friday of every month, excluding January. The meetings are held at Commission premises and are chaired by the Commissioner or Assistant Commissioner. A quorum is comprised of five members, one of whom must be the Commissioner or an Assistant Commissioner.

Information is presented to the ORC by Commission officers by way of written reports. Those reports outline the nature of the allegations, the extent of the enquiries undertaken by Commission officers, and provide a recommendation regarding future action. Committee members are provided with the reports a week prior to each meeting so as to allow them sufficient time in which to consider all the reports.

During the meetings, the ORC may reject, accept or modify recommendations made by Commission officers and/or request that further investigation be undertaken in relation to any matter reported to it. In 1995-96 the Committee met a total of 11 times and considered reports on 1505 matters. This was 511 more than in the previous reporting year. Of the 1505 matters:

- The ORC accepted the recommendation made in 1256 of the matters, without any alteration or comment.
- The ORC made specific comment or alteration to the recommendation before accepting the report in relation to 195 matters.
- The ORC did not accept the recommendation made, but rather sought further information and required further reports to be prepared, in relation to 54 matters.

Of the 1505 matters considered by the ORC, 555 recommended, and the ORC accepted, referral to another agency for its consideration.

A total of 176 matters were reported to the ORC, by way of a Status Report, during the reporting period. Status Reports are required when a matter has not been closed and is older than six months. Status reporting is an accountability mechanism to ensure that Commission officers handle matters in a timely fashion and do not keep them active for longer than is necessary. Status Reports must outline to the Committee what future action is proposed.

Attached at Annexure 2 is a table setting out matters considered by the Committee over the life of the Commission. The table has been updated to incorporate those matters considered since the last public hearing of the PJC.

An increased number of matters being received by the Commission has meant a consequent increase in the workload of the Operations Review Committee.

Nevertheless, the ORC continues to meet its responsibilities and deals with matters in a timely manner, and the members' commitment to the work of the Commission is greatly appreciated.

Auditing ORC Reports and the Associated File(s)

The Commission has for the past three years arranged to have an external audit conducted of ORC Reports. This has been an important means of checking the integrity and quality of reports to the ORC. In early 1994 the Commission introduced a further quality control mechanism

involving internal audits of ORC reports. Each of these is dealt with below.

Internal Audit

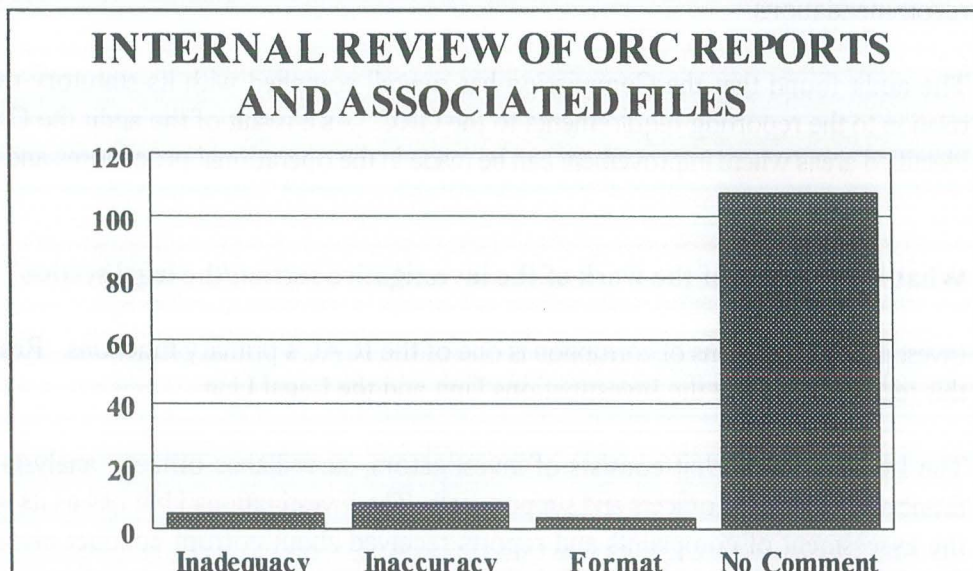
The Project Officer is responsible for randomly selecting reports submitted to the ORC at the monthly meetings and strictly evaluating the reports against the contents of the associated file(s). The audit examines reports for possible inaccuracies or inadequacies, and determines whether the report is in the correct format, as specified by the Commission's internal policies and procedures.

Where the Project Officer is dissatisfied with the report submitted a further report is requested correcting any deficiencies picked up in the audit. A total of 115 files were audited during the reporting year. The criteria used when auditing files is as follows:

Inadequacy - The adequacy of the information provided in the report is evaluated against the contents of the file. Issues taken into consideration in the course of the audit include instances such as vague and/or generalised reporting of the allegations made by the complainant. The full and specific details of the allegation(s) made should be included in the ORC Report.

Inaccuracy - The accuracy of the information provided in the report is evaluated. Instances such as misquoting a person's title or recording dates incorrectly would be included in this category.

Format - The format of the report is evaluated to ensure it complies with the Commission procedure. In some instances reports may attract more than one comment. The table below represents the findings of the audit of the 115 files conducted at the end of the last financial year (1995-96).



External Audit

In July 1996 the Commission engaged the services of an external auditor from the Audit Office of New South Wales to conduct an audit of the Commission's enquiry files. The scope of the audit required a review and appraisal of the adequacy and effectiveness of the Commission's procedures and controls to ensure that all complaints received by the Commission were promptly and properly recorded and were classified and reported to the ORC in compliance with statutory and operational requirements.

The audit randomly selected 100 enquiry files from a population of 1781. The specific objectives of the audit were to:

- determine whether the enquiry classification system had been appropriately applied; and
- from an examination of the complaint files included in the sample, determine whether:
 - a matter classified as a complaint was reported to the ORC for advice prior to closure;
 - in the event that the ORC called for a further report, one was presented in the specific time frame;
 - the requirement for reporting on the status of a matter was complied with;
 - where a complaint became, or was incorporated into a formal investigation, it was included in the final report to the ORC recommending discontinuance;
 - that the graphical representations provided to the ORC concerning the number of complaints received and finalised each month are accurate and adequate;
 - that where the minutes recorded of each meeting specify some action to be undertaken by the Commission, that the request is complied with.

In addition to reporting on specific objectives, the task included the requirement to report any matters considered as warranting management attention, together with any appropriate recommendations.

The audit found that the Commission has overall complied with its statutory requirements in relation to the reporting requirements to the ORC. As a result of the audit the Commission has identified areas where improvement can be made in the operational procedures and requirements.

1.9 What is the status of the work of the investigative section/the legal section?

Investigating allegations of corruption is one of the ICAC's primary functions. Responsibility for this rests mainly with the Investigations Unit and the Legal Unit.

The Investigations Unit consists of investigators, surveillance officers, analysts (criminal and financial), assessment officers and support staff. The Investigations Unit has as its main priorities, the assessment of complaints and reports received about corrupt conduct involving the New South Wales public sector, a proactive and reactive approach in targeting areas of possible corrupt activity and a strategic analytical role in identifying matters which have significance across

the public sector.

The Legal Unit consists of lawyers, a project officer and a property officer and support staff. The Commission's lawyers are concerned primarily with the Commission's investigative function. In particular, the lawyers are concerned to ensure that the Commission's work is performed lawfully and fairly. The lawyers also participate in the work of and at times lead multi-disciplinary investigation teams. They manage the Commission's hearings and at times act as counsel assisting in private hearings. At the conclusion of investigations, lawyers work closely with the presiding commissioner in the preparation of the investigation report.

Members of the Investigations and Legal Units work closely with other areas of the Commission and in particular the Corruption Prevention and Education Unit.

Overview

The number of formal investigations undertaken by the Commission increased during 1995-96. Seventeen formal investigations were approved by the Commissioner in 1995-96, compared with nine such investigations in the previous year. Formal investigations involve use of the Commission's powers, for example hearings, use of search warrants, listening devices, etc, and/or involve considerable resources. Two Assistant Commissioners were appointed during the financial year to preside over Commission hearings.

In preparing the answers I have provided statistics for the last financial year which will be contained in the forthcoming Annual Report together with updated statistics to 30 September 1996.

The increased use of the Commission's formal powers is seen in the following chart:

Powers	1995-96	1994-95
Section 21	39	17
Section 22	243	114
Section 23	12	0
Search Warrant	37	28

As can be seen from this table a total of 331 formal powers were exercised in 1995-96. From 1 July to 30 September 1996, 106 have been exercised.

More significant in terms of covert investigations are the following figures in respect of listening device warrants which reflect steps taken by the Commission to enhance its technical surveillance capacity in the past 12 months:

Committee on the ICAC

Period	Number of Warrants
1995-96	47
1994-95	2

Since 1 July to 10 October 1996 ten listening device warrants have been obtained.

Complaints and Reports

The total number of matters received by the Commission increased during the past financial year, as the following material demonstrates.

The number of classification of individual matters received in 1995-96 are shown below:

Classification	Number of Matters	Percentage
Complaints (s10)	896	52.9%
Protected Disclosures*	196	11.6%
Reports (s11) **	387	22.9%
Outside jurisdiction	76	4.5%
Information	94	5.5%
Inquiry	35	2.0%
Dissemination	6	} 0.6%
Own Initiative (s20)	4	
Referral from Parliament	0	
Total	1694	100%

Note: * It should be noted that protected disclosures are but one form of s10 complaint

** Excludes s11 matters reported by schedule

Complaints from the Public

Complaints from the public rose by 42%, to 1092 in comparison with the previous financial year.

Mode of Complaints

Complaints are received by letter, telephone or personal visit. The breakdown for the financial year for other than protected disclosures is as follows:

Letter	412	46.0%
Telephone	398	44.4%
Visit	85	9.5%
Country visit§	1	0.1%

(Note: § Complaints taken by Commission officers in country locations)

Public Authorities Subject to Complaints

Those public authorities subject to complaints from the public under s10 in the last financial year were:

Local Government	34.0%
Police	24.8%
Health/Area Health Services	3.6%
Corrective Services	2.8%
Roads & Traffic Authority	2.7%
Courts and Justice	2.3%
Aboriginal Land Councils	2.2%
Department of Community Services	2.0%
State Rail Authority	1.8%
Members of Parliament	1.3%
All others	22.5%

Complaints received 1 July to 30 September 1996

The following table provides a breakdown of matters received for the period 1 July to 30 September 1996 and includes a projection to the end of the financial year if the current trend is maintained.

Classification	Number	% of total	Projection to end of 96-97
Complaints (s10)	225	47.6%	900
Protected Disc	53	11.2%	212
Reports (s11)*	129	27.3%	516
Information	41	8.7%	164
Inquiry	10	2.1%	40
Outside juris	13	2.7%	52
Dissemination	2	0.4%	8
Own initiative	-	-	-
Parliament ref	-	-	-
Total	473	100%	1892

* Excludes s11 matters reported by schedule

Using the projection for the 1996-97 financial year, I would anticipate an overall increase in reporting to the Commission in the order of 11.7% over the 1995-96 financial year.

The principal increase for 1996-97 appears to result from improved s11 reporting by public authorities, which is consistent with our experience to date. The Assessments Section has been working with the particular agencies (such as the Department of Community Services, the State Emergency Services and the New South Wales Fire Brigade) in an effort to improve reporting.

Reports from New South Wales Government Authorities

Improving liaison and strengthening working relationships with the public sector is a key aim of the ICAC, and this continued throughout 1995-96. Such work succeeded in increasing the number of matters reported individually and by schedule. Compared with 1994-95 there was a minor (1%) rise in individually reported matters (383 to 387) and a 37.3% increase in scheduled matters (6742 to 9256).

Commission officers are nominated to liaise with various agencies to ensure ongoing contact to assist with reporting and general enquiries.

The Ombudsman's office is a significant source of reports. Reports from most public authorities relate to possible corrupt conduct within the reporting authority. Many complaints about public authorities

are, however, received by the Ombudsman. When these appear to relate to corrupt conduct, the Ombudsman refers them to the Commission. The large number of such reports from the Ombudsman is shown on the following table for 1995-96, which also indicates other agencies reporting significant numbers of matters.

Police	6745	70.0%
Ombudsman	1742	18.0%
Dept of Local Government	284	3.0%
Corrective Services	177	1.81%
Dept Community Services	166	1.7%
Roads & Traffic Authority	89	0.92%
State Rail Authority	70	0.73%
All others	370	3.84%
Total	9643	100%

The Assessment Process

Each matter received is assessed according to criteria developed to ensure that the ICAC Act, the Commission's Corporate Plan and operational strategy are taken into account. A brochure describing the Commission's decision making process is made available to complainants.

A three-member Assessment Panel meets four times a week to assist with the initial determination of which matters will be pursued. The Panel, which is assisted by the Assessments Manager, consists of the Director of Investigations, the Solicitor to the Commission and the Director of Corruption Prevention & Education or their nominees.

Applying the criteria referred to above, the Panel decides which matters should be investigated, referred to other agencies for investigation, or not pursued further. The Panel's decisions about individual (s10) complaints must be referred to the ORC.

Matters regarded as having potential for investigation are passed to the Assessments Section for initial enquiries and further research. Such matters are then re-assessed and may be sent for investigation or may be not pursued further.

Some matters from the outset, however, require immediate action and are referred by the Panel directly to the Investigation Unit.

Formal Investigations

To ensure that its considerable powers are used only when appropriate, the Commission has developed an internal procedure for approval of their use within an investigation. Initially, scope and purpose documents are drafted to establish the parameters of an investigation. These are signed by the Commissioner at the start of each investigation in which coercive powers are to be used. Such operations are referred to as formal investigations and usually involve the commitment of significant resources.

Powers

The exercise of formal powers is set out above. In addition to those powers, telephone calls may be intercepted and recorded by the Commission under the Telecommunications (Interceptions) Act 1979 provided a warrant is obtained from a Federal Court judge. The warrant must satisfy strict requirements under the Act and relate to classes of offences set out in the Act. Until this year, however, (see *Legal Changes Affecting the Commission*) those offences did not include corruption as a separate category. Three warrants were obtained in 1995-96.

To ensure compliance with statutory requirements, the New South Wales Ombudsman inspected the ICAC's records in relation to telephone interception activities on 8 February 1996 and 18 June 1996. Inspection reports have been satisfactory and the Commission is looking to upgrade its system of recordkeeping to accommodate the expected increase in activity in this area consequent upon the amendments to the legislation.

Hearings

The purpose of hearings is to facilitate an investigation. A person can be summonsed by the Commission to give evidence and produce documents (s35 ICAC Act). Two-hundred and twenty-eight such summonses were issued during the reporting period. The Commission can also direct that prisoners appear before it, although no such orders were made to the Department of Corrective Services in 1995-96.

Hearings are conducted by the Commissioner or an Assistant Commissioner; they can be held in public, private or a combination of both. When considering whether to hold hearings in public or private, the Commission must take into account any matter related to the public interest.

The Commission may give directions as to the persons who may be present during a private hearing. The publication of evidence may also be prohibited by the Commission. Any witness at a hearing is generally permitted legal representation, while any person or group with a substantial and direct interest in the same matter may also be allowed representation.

A document which outlines hearing procedures and matters considered when deciding if proceedings should be public or private has been published by the Commission; copies are available on request.

Committee on the ICAC

When a public hearing occurs or an investigation originates from a Parliamentary reference, the Commission must provide a report to Parliament. Reports may also be prepared about any other ICAC investigation.

Hearings were held into 11 matters in 1995-96.

Matter	Public Hearing Days	Private Hearing Days	Both
An Arbitration (No 96)	-	1.5	-
Southern Mitchell Electricity (No 88)	24	-	-
Conduct of a harness racing official (No 88)	-	1	-
Conduct of Guiseppe Morizzi (No 76)	18.5	5	5
Conduct of Glebe Morgue (No 98)	9	8	1
Conduct of Damon Schreiber (No 69)	2.5	5.5	2
A Public Authority (No 91)	-	1.5	-
Conduct of Gregory John Sealby (No 92)	6	4	3
Police Air Wing (No 79)	9.5	-	4
Byron Bay Council (No 80)	5.5	-	1
Public Employment Office (No 100)	27	5	8
Total	102	31.5	24

The period 1 July to 30 September 1996:

Matter	Public Hearing Days	Private Hearing Days	Both
(No 102)	-	1	-
Conduct of a harness racing official (No 88)	-	1	-
Conduct of Guiseppe Morizzi (No 76)	10	1	-
Conduct of Glebe Morgue (No 98)	-	3	-
(No 104)	-	5	-
Conduct of Gregory John Sealby (No 92)	6	1	1
Public Employment Office (No 100)	3	5	3
Total	19	17	4

Investigation Reports to Parliament since May 1996

Allegations that an official of the Harness Racing Authority had engaged in corrupt conduct by exercising partiality in the performance of his official functions relating to race enquiries and had engaged in betting on harness racing events in contravention of the code of conduct for the industry. A report has been provided to Parliament.

Continuing Formal Investigations

There are 12 significant formal investigations. Seven were referred to in answer to Question 1. Operation Zack is referred to below. The other matters involved the examining of events associated with the tendering processes of various authorities, allegations of theft, bribery and the improper conduct of employees within various Government institutions.

Investigation 81 into Aboriginal Land Councils

Since the ICAC commenced in 1989, many Aboriginal people have lodged complaints alleging fraud and other corrupt conduct in the land councils system. The nature and quantity of material being received by the Commission clearly indicated the need for an inquiry.

On 9 May 1995 Commissioner Barry O'Keefe, approved the commencement of an investigation relating to Aboriginal Land Councils in New South Wales. The investigation includes an examination of the practices and procedures of Aboriginal Land Councils with a view to discovering corrupt conduct and securing the revision of methods or procedures which may be conducive to corrupt conduct.

Liaison with Law Enforcement Agencies

To facilitate its work, the ICAC liaises with State and Commonwealth law enforcement agencies, which provide information and assistance. Commission information is also exchanged with these agencies where appropriate.

During 1995-96, information and data were exchanged with the Australian Federal Police, the Australian Bureau of Criminal Intelligence, the National Crime Authority, the Australian Customs Service, the New South Wales Police Service, Victorian Police Service, Western Australian Police Service, the Royal Commission into the New South Wales Police Service and the State Crime Commission. Liaison with the Royal Commission has been extensive and continuous since its establishment in late 1994.

Important communication channels are created for the ICAC and those agencies concerned. The ICAC's extensive intelligence holdings contribute significantly in forging such links.

Legal Changes Affecting the Commission

There were two significant legal changes affecting the Commission in the reporting period. The first concerns the establishment of the Police Integrity Commission (PIC) and consequent amendments to the ICAC Act. The second concerns the ICAC's telephone intercept powers.

ICAC Act

The Police Integrity Commission Bill and the Cognate Bill were assented to on 21 June 1996. The PIC Act establishes the Commission, which will have responsibility for investigating serious complaints against police. The ICAC will no longer have jurisdiction to investigate police matters although it retains its roles in relation to the Police Service in the areas of corruption prevention and education.

The PIC Act contains many provisions taken directly from the ICAC Act, and the ICAC is pleased that many of the submissions it made for amendments to the PIC Bill and for consequential amendments to the ICAC Act have been adopted in the legislation.

Many of the amendments will ensure that the PIC and the ICAC have complimentary powers. Of particular significance to the ICAC are the following amendments to its legislation:

- A provision which will give ICAC officers, who are seconded police officers from outside New South Wales, the powers of a New South Wales police officer. This will give the ICAC greater

flexibility in recruiting investigators by relieving it of the necessity to rely on secondments of New South Wales police officers to ensure that the ICAC has the necessary police powers to assist investigations.

- A provision which will enable a designated senior ICAC investigator to conduct searches of persons in certain circumstances during the execution of search warrants. Currently, this power is available only to police officers. This provision will again reduce the need for the ICAC to be reliant on New South Wales police officers.
- Sections 93 and 94 of the ICAC Act as previously drafted created offences against individuals or employers where they cause violence, punishment, damage, loss, disadvantage or prejudice in employment to a person because they have been a witness before the Commission or have complied with the notice provisions under s21 or s22 of the Act. The ICAC sought an amendment to extend the offence provisions beyond witnesses and those who comply with notices to persons who assist the Commission during its investigations. This now means that if a person has lodged a complaint or is providing the Commission with information it will be an offence to take action against that person on account of their having assisted the Commission.
- Section 50 of the ICAC Act dealt with protection of witnesses. It has been replaced with a new and more useful provision which gives the Commissioner the power to direct the Commissioner of Police or a prescribed public authority or prescribed public official to provide protection or assist in the provision of that protection.

Recommended Legal Changes

In the past financial year in this area the Commission was concerned mainly with preparing submissions firstly to the Royal Commission into the New South Wales Police Service, and secondly in relation to the Police Integrity Commission Act 1996 and the consequential amendments to the ICAC Act discussed above. The Commission was an active member of the Royal Commission Implementation Task Force which prepared drafting instructions for the legislation.

The Commission has also worked with other agencies including the New South Wales Police Royal Commission, the State Crime Commission, the New South Wales Police Service and the Attorney General's Department on a proposal for legislation to deal with aspects of covert operations. The Committee examined similar legislation introduced by the Commonwealth and South Australia following the decision by the High Court in *Ridgeway v Ridgeway* 1995 129 ALR 41.

In August the Commission received a copy of the Privacy and Personal Information Protection Bill. Since then the Commission has been engaged in discussions with the Attorney General's Department and other affected agencies regarding the need for the Bill to take into account the legitimate interests and requirements of investigative agencies. The Commission's particular concern is that the provisions of the Bill should not act as an impediment to the Commission's proper exercise of its functions under the ICAC Act.

1.10 What is the current status of workloads of other sections?

The Commission is divided into four Units being Investigation, Legal, Corruption Prevention & Education, and Corporate Services & Research. The work of all Units except for Corporate Services & Research Unit has been covered in the preceding questions as has the work of the Research Section. I will now address the work of Corporate Services and other corporate activities not addressed elsewhere.

Commission Consultative Group

A strong consultative culture between management and staff has developed at the ICAC since an Enterprise Agreement was adopted in late 1994. The formal mechanism for this is the Commission Consultative Group (CCG), which has management and staff representatives.

Improved communication between staff and management and consultation on matters of policy and procedure are the CCG's main roles, with the desired outcome being improved performance through better informed decision making.

The CCG meets monthly. Currently most of the work of the CCG is concentrated on negotiations for the Commission's next Enterprise Agreement. The negotiating group is meeting weekly and expects to have a draft agreement ready for consideration by all staff before Christmas.

Equal Employment Opportunity Committee

The Commission has an EEO Committee of staff representatives elected annually and a representative of senior management. Although it is not covered by the NSW Government's equal employment opportunity (EEO) legislation under Part IXA of the Anti-Discrimination Act, the ICAC has developed an EEO program which recognises the significance of EEO in the workplace.

The Committee is presently developing a comprehensive harassment policy and exploring ways to ensure women are appropriately represented in all functional areas of the Commission. Since I last appeared before you they have completed a review of staff needs arising from staff child care responsibilities.

Occupational Health & Safety Committee

In accordance with State legislation the Commission has an Occupational Health and Safety Committee which meets regularly. A recent inspection of the Building by Committee members found only minor problems. The Committee is planning a review of sick leave Commission wide.

The Commission's Personnel Manager is the Executive Officer for these three important committees.

Statutory appointments

The ICAC Act permits the Governor to appoint Assistant Commissioners, with the Commissioner's concurrence, to assist the ICAC as the Commissioner requires.

Since I last reported to you, Mr Peter Hall QC, was appointed Assistant Commissioner from April to July and conducted hearings into the removal of a senior public servant and Ms Ruth McColl, SC, was appointed Assistant Commissioner initially from May to July. She conducted hearings into corrupt practices at a Sydney morgue.

Senior Management

Senior Management meets weekly to assist the Commissioner's administration of the organisation and to discuss strategic, operational and policy matters. Last week I appointed Guy Slater as the Commission's Director of Investigations. He is a former Detective Superintendent of the Australian Federal Police. After spending four years in his country's navy, Canadian-born Mr Slater emigrated to Australia in 1971 and joined the Commonwealth Police in 1972. During 24 years as a police officer, Mr Slater gained extensive experience in investigating organised crime, especially that involved with serious fraud and illicit drugs. He was chosen after a large and international group of candidates had been considered.

Staff Numbers

The Commission's staffing numbers are monitored on a monthly basis. At the beginning of the 1995-96 financial year the Commission employed a total of 129 people, with an authorised establishment of 145. By 30 June 1996 the number was 142, with an average figure of 146 for the year. This financial year I have been forced by a reduction in real terms in our funding to reduce staff numbers to an average of 134. This will have an inevitable consequence in terms of the amount of work the ICAC is able to do.

Delegations

Over recent months I have widened the financial and personnel delegations to the Directors of all Units. Each Director is now responsible for seeking appropriate funds to perform the functions they are responsible for and for managing their expenditure against their allocated funds. This has improved accountability and has resulted in a better utilisation of the Commission's financial resources. I have also made Directors responsible for some personnel functions such as recruitment, thus moving the Commission from an organisation where control was centralised to one where control, and therefore accountability, is more decentralised.

These changes led to a major review of Corporate Services functions and staffing. This has resulted in a decrease in Corporate Services staffing from 39 to 33 with 3 of these positions being transferred to other Units. Workload in some Corporate Services sections, especially those intimately involved with investigations, has increased in conjunction with our operational activity. I expect this trend to

continue.

Information Technology

The Information Technology Section is responsible for providing a functional and reliable computer service to the Commission. The network is based on client-server architecture and comprises three UNIX-based mini computers, 140 personal computers, a database management system, image processing equipment, and specialised equipment for desktop publishing.

With the assistance of external consultants, a five-year Information Technology and Telecommunications Strategic Plan has been formulated. Implementation of this plan begins in 1996-97. Although the Commission's computer system is outdated and needs replacement our network availability exceeded 99% and unplanned downtime was less than five hours during the past year.

Information Services

A range of library and data services including reference and research utilising on-line computer systems is provided by the Information Services Section.

An Internet service, which provides staff with access to numerous worldwide web sites has been established over the past few months. This service has been particularly useful in providing lawyers with interstate and overseas legislation. It has also been of considerable assistance to corruption prevention work associated with the Commission's investigation into Aboriginal Land Councils, as staff were able to communicate with and download documents from various indigenous peoples' groups.

Security Services

The Commission's Security Section ensures that Commission staff, property, information, operations and witnesses are protected. It is also responsible for the security vetting of all staff, consultants and contractors. The Commission contracts the NSW Police Service Security Management Branch to provide special constables on a 24 hour roster to assist in this function.

Changes to the Commission's powers regarding witness protection have increased the workload of the Security Section and the Security Manager is a member of the NSW Interdepartmental Committee on Custodial Witness protection. With increasing amounts of information being created, stored and communicated electronically, security of electronic data is a major area in which constant vigilance is required. The Commission is presently conducting a major review of its security requirements in this regard and is a member of the NSW Intra-governmental Electronic Messaging System (IGEMS) Security Focus Group.

Records Management

The ICAC's records are managed in accordance with principles established by the NSW Records Management Office for use by public sector agencies. Major projects underway in this area include

a review of all ICAC holdings with the intention of achieving greater integration of our information holdings and a move to providing real time transcript for Commission hearings.

Technical Services

The Technical Services Section performs a number of specialist functions including technical advice, analysis of seized and surrendered computer discs, and the installation and maintenance of equipment needed to support Commission investigations. Changes to federal legislation widening the bases on which warrants to intercept telephones may be sought has increased the need for the Commission to improve its capacity in this regard. This will increase the workload of this Section.

In summary, the Commission's Corporate Services have seen significant changes over the past six months to the type of work they are performing and the ways they are performing it. This has been accompanied by appropriate decreases in their staff; staff which was able to be reallocated to operational duties elsewhere in the Commission.

1.11 What is the status of work relating to conferences or seminars?

Displays undertaken at conferences are specified in answer three Public Education Status Report.

An Investigation Techniques Conference convened by the Institute of Public Administration and sponsored by the New South Wales Ombudsman's Office and the ICAC was held on 25 and 26 June. Over 280 people took part in the two day conference which covered subjects such as computer technology for investigations, procedural fairness and interviewing techniques. The Commissioner and three Commission officers participated in the conference by chairing sessions and delivering papers.

In August, three staff members in addition to the Commissioner presented papers at the Ethics in the Public Sector International Conference in Brisbane.

A staff member presented a paper on the Commission's education role at the "Shaping the Future - K-12 Technology Education" Symposium, and others took an active part in the October Public Sector Corruption Prevention Committee Forum on investigating fraud.

Presentations about the work of the Commission and corruption prevention strategies were given to a wide range of organisations. These included the Australasian Law Students Association Annual Conference, the Local Government and Shires Association, the Western Australian Local Government Week convention, Parklea Correctional Centre Staff and a Centre for Continuing Education Course at Sydney University. These were in addition to quite frequent presentations by me to various groups.

In the past six months the Corruption Prevention Unit has provided speakers at 13 seminars with a range of organisations including Workcover, North Sydney Council, Police Service (including Child Protection Enforcement Agency), Department of Corrective Services, Australian Institute of Public Administration, Department of Health, New South Wales Fire Brigades, Institute of Municipal

Management and Department of Land and Water Conservation.

In addition to these presentations, a strategic approach is being developed for corruption prevention seminars. The Regional Organisations of Councils are being invited to sponsor seminars, tailored to their member councils' needs, on the Commission's work on handling conflicts of interest and managing councillor/staff relationships. These seminars will be targeted to both staff and Councillors.

The Corruption Prevention & Education Unit is also approaching a number of state government agencies which are known to have specific corruption prevention training needs. The Unit will be designing specific seminar programs for each of these agencies.

The Corruption Prevention & Education Unit has held discussions with the Australian Institute of Public Administration, who have an extensive seminar program aimed at both state and local government, about opportunities for the Commission to participate as presenters or panel members in various programs. The Institute is targeting local government officers in particular. In addition I will be presenting two talks to public sector members being organised by RIPAA in October/November.

1.12 What is the status of the Commission's work on contracts relating to the Olympic Games?

The Corruption Prevention & Education Unit has provided advice to the Olympic Co-ordination Authority (OCA) on a number of issues relating to preparations for the development of the Stadium, the Athletes Village, the Equestrian Centre and aspects of the Homebush Bay and other sites. A particular focus of this advice has been the development of evaluation methodologies and protocols to assess private sector proposals for Olympics infrastructure.

Mr David Richmond, Director General of OCA has expressed his thanks to the Commission for the promptness and thoroughness of the response to OCA's requests for assistance. The Commission has developed an on-going consultative relationship with the OCA and has been invited to become involved in relevant staff training on probity issues in the future.

1.13 What is the status of the Commission's work in relation to Central Policy Agencies, training in public duty and ethical issues, the use of probity auditors, and the promotion of best practice?

The Commission has continued to consult and liaise with a wide range of central policy agencies to ensure that probity issues are a fundamental consideration in the development of State and Agency-wide policies.

The Corruption Prevention Unit is intending to commence a project to develop a corruption prevention diagnostic model which the Commission and agencies can use to determine where problem areas are in an organisation.

Work undertaken by the Commission with relevant agencies in the last six months includes:

Police Integrity Commission/Royal Commission

- ICAC was represented on the Royal Commission Implementation Task Force which included representatives from The Cabinet Office, Premier's Department, Public Employment Office, Police Ministry, Police Service, Royal Commission, Ombudsman's Office and the ICAC.

Police Service

- Evaluated and provided comments on the Police Service Corruption Prevention Planning Manual.
- ICAC representative on the Police Accountability Panel.
- ICAC representatives on the Education and Training Command Personal Accountability Implementation Committee.
- ICAC representative on the Internal Witness Support Council.
- ICAC represented on Ministerial Committee of Advice on the Police Academy.

Legislative Council and Legislative Assembly

- The ICAC has been active in assisting the Houses of New South Wales Parliament to develop and implement Codes of Conduct which is intended to offer assistance and guidance to members in their duties as representatives of the community.

Protected Disclosures

- ICAC chairs the Protected Disclosures Steering Committee which includes representatives from The Cabinet Office, New South Wales Ombudsman, Audit Office, Department of Local Government and Public Employment Office. The aims of the committee are to increase the awareness and implementation of the Protected Disclosures legislation by coordinating each agency's efforts in relation to education and information provision.

Premier's Department/Public Employment Office (PEO)

- Commission staff have also been working with the Premier's Department on ethical, administration, policy and practice issues arising out of the investigations into matters raised with the Commission by the former Director General of Community Services.
- The Commission continues to work co-operatively with central policy and accountability agencies on projects to develop and implement best practice guidelines to minimise the incidence of corrupt conduct. A revised public sector model code of conduct and a review of existing public

sector codes, on which the Commission has worked jointly with the Premier's Department, is to be published in December 1996.

- Input was provided on the review being conducted by the PEO into the policies, legislation and current practices which guide recruitment in the New South Wales public sector. This review also has implications for the Commission's corruption prevention project on the ethical issues which emerge in recruitment and selection.

Department of Public Works and Services

- Represented on the working party to develop a public sector wide Code of Practice for Procurement and Disposal which will also affect the further development of best practice guidelines in this area. The Code is intended for both private and public sectors and clearly states the responsibilities and expectations of all parties.
- Liaison and assistance in drafting the Code of Practice and Best Practice Guidelines for Information Technology and Telecommunications functions.
- Reviewed and provided comments on the Infrastructure Partnership Implementation Guidelines which were released mid year.
- Reviewed the Capital Projects Procurement Manual.
- Consulted with DPWS units on other issues arising from the private/public sector interface.

Commission staff are members of the following:

- New South Wales Government Electronic Network Security Focus Group.
- New South Wales Intra-Governmental Electronic Messaging (IGEMS) Security Focus Group.
- GSAS: Information Management Systems Applications Review Committee:
 - Library Management Systems
 - Financial Management Systems

Department of Health

- The ICAC will be participating in a review of the Department's code of conduct.

Department of State and Regional Development

- Consulted with the Department on issues arising from the private/public sector interface, such as the disposal of land.

SRA and successor organisations (Rail Access Corporation, Freight Rail, Railway Services Authority, StateRail)

- Provided advice to the Rail Access Corporation on the negotiations being undertaken to determine access to the rail network.
- Provided advice to Chairpersons/CEOs and Minister on corruption prevention, corporate governance and accountability (jointly with Auditor General and Ombudsman).

Treasury

- Consulted with the Department on issues arising from the private/public sector interface.

Audit Office

- Consulted with the Office on issues arising from the private/public sector interface.
- Consulted on the Office's work on corporate governance issues in relation to government boards.

Department of Local Government

- Undertook a joint project with the Department on the management of conflicts of interest in local government and the managing the interaction between staff and councillors. The draft guidelines are due for release in December 1996.

Public Duty, Ethical Issues and Probity Auditors

- The resource *Conduct Becoming... the personal responsibility of public duty* was produced and released in September 1996 as scheduled. The interactive kit consists of an 18 minute video, facilitator's guide, participant worksheets, a guide for self-paced learning, case studies, and a PC formatted computer disc of case studies for agency customising.

The release was supported by an extensive statewide marketing campaign comprising direct mail, press advertising in industry journals, posters and seminars.

The resource had its origin last year. The Commission conducted need analyses sessions with 22 public sector trainers, human resource managers and industrial relations practitioners to determine how the Commission could best respond to needs associated with addressing public duty and ethical issues in the workplace.

The development and production was guided by an Advisory Committee consisting of representatives from the Audit Office, the Public Employment Office, the New South Wales Public Sector Association, the Institute of Public Administration of Australia New South Wales Branch, the Ombudsman's Office and the Environment Protection Authority. The Advisory

Committee met on regular occasions to review material and provide expert, professional and industry specific advice on the most appropriate information required by the audience.

A competitive tender process was undertaken by the Commission to secure the services of a professional educational resource production company. The contract was awarded to the Open Training and Education Network (OTEN).

Of the 1500 kits produced over 700 have now been distributed on request to the following organisations:

State Public sector agencies	- 76
Local Councils	- 177 (not on request)
Members of Parliament	- 19
Interstate agencies	- 15
Overseas agencies	- 8

A four-phase evaluation proposal has been developed to measure the effectiveness of the resource in meeting the needs of the target audience.

- As reported in May 1996 The Practical Guide to Corruption Prevention has been a most significant corruption prevention product of the Commission. The Guide continues to be in demand from a number of sources, local, interstate and overseas and is of value in the corruption prevention work of the public sector.

The Guide is also of great assistance to the ICAC corruption prevention function by providing a readily available and affordable resource which can be used for advice and authority in the Commission's advising role.

- It is anticipated that a project report on the use of probity auditors will be released before the end of 1996. The draft document has undergone a review process which involved consulting with agencies that have used probity auditors, central policy making agencies and individuals who are providing probity auditing services. The comments received were quite diverse in nature and have been taken into consideration. Further close consultation has also been undertaken with the Department of Public Works and Services Infrastructure Partnerships Services Unit which have also undertaken work on the issue of probity auditing. The expected release date for the report is November 1996.
- Corruption prevention staff have also worked with the Glebe Institute of Forensic Medicine and the Central Sydney Area Health Service to improve systems and procedures as a result of a recent investigation into the Glebe Morgue.
- The Commission is a member of the Information Security Committee of the Research Foundation for Information Technology. This Committee is comprised mainly of academics and representatives from major IT users such as banks. It meets monthly to discuss IT security

standards and developments.

Questions Without Notice: Opening Comments

BARRY STANLEY JOHN O'KEEFE

Commissioner of the Independent Commission Against Corruption, sworn and examined:

CHAIRMAN:

Q: You have received a summons under my hand. Is that correct?

A: Yes, I appear before this Parliamentary Committee today pursuant to a summons issued under your hand and duly served upon me.

CHAIRMAN:

Q: You received a series of questions from our Committee. Is that correct?

A: I did.

CHAIRMAN:

Q: Only at a recent time did you receive those questions. Is that correct?

A: Yes, they came in stages, but they were all received over recent times, yes.

CHAIRMAN:

The Committee is desirous that at some stage we sit down with your staff and yourself and talk about a better system of having the questions and answers at an earlier stage. It was partly our fault, so we take responsibility for that.

Mr WATKINS:

Before taking any responsibility for that delay, I would like to know a bit more about it. I think it is outrageous that we only got the responses to these questions yesterday.

CHAIRMAN:

Can we deal with this at a later stage?

Mr WATKINS:

No, I think we should deal with it now because we only got these responses yesterday, during a very busy parliamentary week, and we are expected to respond intelligently today and question the Commissioner after only having them overnight. It is very difficult.

Mr O'FARRELL:

Could I ask when the questions were submitted to the ICAC?

CHAIRMAN:

Q: Mr O'Keefe, when did you receive those questions?

A: They came serially and we were asked to try and respond by 23 October. After that request came there were some further questions which also came and it was just not possible to do that. They were responded to yesterday. It was the function of the time at which we got them, in essence. It was certainly no lack of diligence on my or my staff's part in responding to them and we have tried to do so as fully as was appropriate.

CHAIRMAN:

We might deal with that at a later stage.

Mr WATKINS:

The point has to be said again. We have seventy-five pages of answers and thirty-five pages of annexures.

CHAIRMAN:

There is an agreement between the Commissioner and myself that we discuss this at a later stage when the cameras are not on.

Mr WATKINS:

I cannot see how that would change the import of the discussion.

Dr MACDONALD:

I would like to add my support to the member for Gladesville and in fact I raised this matter with the project officer last night and indicated that I thought it was a hard task for members to get their mind around the answers to seventy-two important questions between 2 o'clock yesterday and 10 o'clock this morning, so I wish to register my support at this point.

CHAIRMAN:

Q: Mr O'Keefe, I discussed this matter with you last night and the fact is that you are happy to come back again at a later stage to talk about any questions or problems that the members have. Is that correct?

A: Perfectly, and I do not wish to assign criticism, but we can only respond to what we get and the questions came over a period of time in separate bundles and some of them interrelate to matters asked in earlier questions but are not quite the same and it was necessary to integrate all those answers. I actually think that, as far as the Commission is concerned, we have responded quite promptly in relation to the time frame that was assigned to us.

CHAIRMAN:

Q: You would be happy to come back if the Committee members decided to take it further at another time?

A: Absolutely, yes.

Mr WATKINS:

Q: Can the Committee get something for the future, the next time this happens? I would think a three day notice with answers is what the Committee deserves or the Parliament deserves.

A: You mean three days between the receipt of answers and the sitting of the Committee?

Mr WATKINS:

Three days prior to you coming here.

Mr O'KEEFE:

That is what I mean, three days between the receipt by the Parliament of the answers and the sitting of the Committee.

Mr WATKINS:

That is right.

Mr O'FARRELL:

Which was not asked for this time.

Mr WATKINS:

I would have thought that it was a matter of course, quite reasonable.

CHAIRMAN:

Q: We did ask you to respond to questions by 23 October, but if the Committee members have problems at a later stage reading this and wish you to come back, you would be happy to come back?

A: Absolutely.

CHAIRMAN:

I now invite you to make an opening statement.

Mr WATKINS:

Q: But why do you treat us with such disregard and not give us the proper notice in giving us the information? It is outrageous that we only got this yesterday afternoon.

A: Mr Watkins, that is not correct. We were asked on a date I now do not recall to have answers to the original questions by 23 October. Subsequent to that we received two further lots - it may have been three further lots - of questions and they were dealt with as well. We were, I think, thirteen hours later than the stipulated time, a time that had been stipulated well before we got the additional questions. I do not accept that there is any criticism that can be directed at the ICAC. I think that the officers and I have done a very good job to get all of this together in the very limited time.

CHAIRMAN:

Subject to what my colleagues on the Committee say, Mr O'Keefe, we will go as far as we possibly can today and then adjourn to come back and deal with the other issues arising, if that is the general view of the Committee.

Mr WATKINS:

I stayed up late, as some others did, to read these in detail last night and I am happy to proceed today.

CHAIRMAN:

We can adjourn and come back at another time if people want to read more material. I am quite happy to proceed to the extent that we can and, if we reach the stage where there needs to be

more work done by members of the Committee, then we will adjourn and come back at another time on another day.

Mr O'KEEFE:

That would have this additional advantage, that if members had supplementary questions arising out of the questions that are asked, but only related to that, then I would be happy to deal with those and we could deal with those in writing.

CHAIRMAN:

What is the status of the work of the investigation section at this stage?

CHAIRMAN:

I will ask you these questions and then--

Mr WATKINS:

Mr O'Farrell asked a general question of the Commissioner in relation to his introductory remarks. I have a general question in relation to the Commissioner's introductory remarks which is not specific to questions in here. I thought it may be the time to ask it.

Mr O'KEEFE:

That is not the agreement.

CHAIRMAN:

Q: What is the status of the work of the investigation section, Mr O'Keefe?

A: The investigation section has now been built up to 54 persons. That is an increase on what it was when I came to the commission. That consists of - -

Mr WATKINS:

Could I interrupt for a moment. These agreements between the Commissioner and you, Mr Chairman--

CHAIRMAN:

The Committee will proceed in camera.

Mr WATKINS:

There is no need for that. If my asking questions causes the room to be cleared I will not ask them. It is important that the press be here for this.

Dr MACDONALD:

I think it is in the public interest to know what the agreement was that was forged between the Commissioner and the Chairman.

Mr O'KEEFE:

The agreement was that, in return for the electronic media being permitted to be in the room, the Chairman would make an opening statement, as would I, and there would be then at the Chairman's choice two questions asked and thereafter the electronic media would leave and we would continue with the matter being recorded by the oral media. That is all it was.

Dr MACDONALD:

Why did you have concern at more extensive access by the media?

CHAIRMAN:

Will not allow those questions.

Mr O'KEEFE:

My response to that, Dr Macdonald is very similar to the response which I made as a member of the court in relation to television cameras in courts. I think they have, firstly, a disruptive influence; just look at this. Second, I think there is a tendency in some or there may be a tendency in some to respond to the presence by acting up and causing a headline situation which does not occur, in not a dissimilar way from the way which can occur comparing what happens in the House and what happens in Committee. That is my firm view and I adhere to that. It is something I have thought through. I think it is rationally based. I can understand how some may disagree with it, but it is my view.

Dr MACDONALD:

But nobody is on trial here. Secondly, I believe you stated before that you are a believer in open government, and I would have thought that there are no questions likely to be asked by this Committee that would necessarily embarrass you or not be in the public interest.

Mr O'KEEFE:

But what is closed about having all these recording devices - 11 recording devices? I do not think there is any suggestion that that can result in the Committee being closed. What I am concerned about is the tendency for the three-second grab on television. I am very concerned about that since it may distort, in the interests of newsworthiness, what occurs.

Dr MACDONALD:

We are at the mercy of the media whatever, whether we have it closed or not.

CHAIRMAN:

I ask the electronic media to cease recording and the Committee will proceed in camera.

Dr MACDONALD:

I would like to move a motion that in fact --

CHAIRMAN:

I have asked the electronic media to leave the meeting.

(Short adjournment)

CHAIRMAN:

The filming of this Committee is based upon the standing orders of this Parliament that also relate to the filming of the Chamber itself. The general policy and principle of this Parliament is that witnesses have a right to say whether or not they shall be filmed whilst giving their evidence. I raised that matter with Mr O'Keefe. Mr O'Keefe agreed to have television filming of my opening statement to him, his opening statement and then some questions that I would ask him. There would then be some non-recording footage and the electronic media would retire. I discussed that with electronic media yesterday; they were given a note in regard to the matter and they understood the ground rules in relation to the matter. This is not something that is new, it has been done on other occasions with Mr Temby as well as with Mr O'Keefe, so it is not something that is new. At this time electronic media and radio shall be able to record as of right. It is also as of right that any television journalist is permitted to sit through this hearing, take notes and write a story on it like any other journalist is permitted to do.

The Committee is now going to proceed with questions directed to Mr O'Keefe and then, subject to the Committee's determination, we may adjourn so that members can read more fully the very extensive information that Mr O'Keefe and his staff put together for the assistance of this Committee.

Just so that I can get the views of the Committee members, do you wish to proceed through each chapter of Mr O'Keefe's answers to the questions or do you wish to ask other questions of Mr O'Keefe? Which way would the Committee like to do it? Are you happy to go through each question and answer as a method of dealing with the issue?

Ms MEAGHER: Yes.

Mr BECK: Yes.

Mr O'FARRELL: Yes.

Mr LYNCH: Yes.

Mr ANDREWS: Yes.

The Hon. B. H. VAUGHAN:

I just wanted to say that the Commissioner cited the Telegraph editorial this morning, and we now each have one, and he refuted, quite comprehensively, most of the matters or positions put by the Telegraph this morning, but he did not mention the rail authority matter and I would like to know how far your enquiries proceed in relation to the State Rail Authority.

CHAIRMAN:

You have asked that question, but I might just go to Mr Watkins.

Mr WATKINS:

The majority view.

Dr MACDONALD:

I do not agree.

CHAIRMAN:

Well, the majority view is that we go that way, but you can ask other questions that you wish to ask, so you are not going to be inhibited in asking questions.

Dr MACDONALD:

Do you intend to go from question 1 to question 72?

CHAIRMAN:

Well, as far as we can go until people say that they need more time to look at the questions.

Dr MACDONALD:

Well, I just wish to speak to that in the sense that there have been some very serious issues raised, particularly regarding the relationship between Whistleblowers and the ICAC. I have a number of documents that have been placed on my desk and through my fax machine in the last few days and it seems to me that it might be wise to deal with that matter in view of the public interest that has been created. I do not know when we first come to that issue in the questions, I have not gone through it in a great deal of detail, but I do not think that by doing it seriatim we are necessarily going to come to that in the time that is before us.

CHAIRMAN:

If you wish, we can delete those areas and come back to them when Mr O'Keefe comes back before the Committee.

Dr MACDONALD:

Q: I would merely ask that when my time for questions comes, I be permitted to ask whichever question I wish. Would you be prepared to answer questions not on notice?

A: Of course, and I will do the best that I can. I may need to take them on notice, depending upon the content of them, but I will do what I can.

CHAIRMAN:

Q: I might just say that, even if Mr O'Keefe answers questions in regard to each question we ask him, the situation will be that members who then, after reading it, wish to ask further questions when he comes back, are invited to do so.

For the record, do you tender the questions and answers as served upon the Parliament?

A: I do.

CHAIRMAN:

The questions and answers provided by the Commissioner will be tabled and released.

Questions Without Notice: General Updates/Briefings

CHAIRMAN:

Q: Taking note of what my colleagues have had to say with regard to the issue of the details, because I have had an opportunity to read a lot of the material, I think the way in which I will approach it is that I will ask you the questions I would like to ask you and then I will leave it open to the members to ask questions that they want to ask relating to the report or not to the report. I have not fully read the report, and it is one of the most extensive replies to answers ever given to this Committee in all the time I have been on this Committee.

A: Chairman, can I say that I regard the existence and operation of this Committee as very important in the democratic process. The ICAC is given very great powers and I, as Commissioner, am responsible for their proper exercise, having regard to the objective that the organisation must fulfil under the statute and the rights that citizens of this State have - civil liberties - and the marrying of those two is very important and it is not easy. This Committee is an important - for me, very important - accountability mechanism, an accountability mechanism which does not find its equivalent in other like organisations in this country and in respect of which it is important I think for the ICAC and for me to be able to say before we do anything: Can we, within our statute, justify that to the Parliamentary Committee which oversees our activities? You may be assured that, Chairman and ladies and gentlemen, I think that. That is my mode of approach: What is my statutory obligation and how do I fulfil it concomitantly with the rights and obligations of citizens in this State? I wanted these to be full so that you would know how we operate.

Mr LYNCH:

Q: Just a couple of minor issues. The answer to question 4 on page 6 refers generally to media and the relationship of the ICAC with the media. What sort of resources do you put into that? How many people have you got working at the ICAC whose job is solely to deal with contact with the media?

A: We have one media officer, but he does things other than contact with the media. His designation is media manager, but he in fact assists with some aspects of our publications as well, so he is not full-time on that. Each day there is a press clipping service so that we know what is current in relation to matters that we might be interested in, that raise the ICAC or deal with cognate bodies. I also get the Supreme Court press clippings, which I got when I was a member of that Court and continue now to get, and if there is need to make contact with the media it is generally through the media officer. I would guess that about 80 per cent of his time is involved in media contact and media related matters.

Mr LYNCH:

Q: The answer to question 5 deals with the community attitude survey. What, in ball park figures,

is the cost?

A: The external costs I think were \$15,000.

Ms ANDREWS:

Q: Going to question 1, operations, and the case involving State Rail and cleaning, I note you said earlier that part of the ICAC is to be educative. Do you find that the way a lot of the State Rail Authority is set up the contracting out of work lends itself to corruption, and if so, has advice been given by the ICAC as to how that corruption can be avoided in the future?

A: The answer to both those questions is yes. In relation to the first part of the question, however, one must compare the opportunities for corruption in a contracted out situation compared with a day labour situation. The nature of the corruption in each case may be different, but the opportunities for it still exists in each way of doing work.

In relation to contracts, we have specific guidelines for contracting out of work and services, that is construction and services. We have a section in our recently produced manual, the 16 module manual referred to in the answers, to deal with that. Officers of the ICAC and I have met with each of the CEOs and or chairman of the boards where constituted of the four new entities into which State Rail and its functions were split. We have been assisting in the formulation of guidelines and codes which will be adopted by the board. Then our recommendation is that they be inserted in each of the CEOs contracts as one of the measures of performance and so on down to a given level, and that the codes of conduct for each of the persons not working under contract include specific probity and integrity provisions.

We believe that as a result of the initiatives there is or has been expressed a determination in each of the four entities to take the matter quite seriously. A deadline has been set. I think it is 30 November for these entities to formulate their plans, may be 31 December but I think it is 30 November. The process is then an intricate process and we will be engaged in reviewing those, making suggestions, et cetera. So we are looking ahead.

In addition we have produced, as you will see from this document, a training video called "Conduct Becoming" which is generic and it is adaptable to various employment situations. One at least of the four entities in the railway split has indicated it is proposing to use that and adapt it to its own use. So that is an expansion of the answer to the second part of your question.

Whilst I am on it, can I take Mr Vaughan's question. The Talisman inquiry has concluded and a draft report has been prepared. I have not, I must say, had an opportunity to come back to that draft at this stage. I am completing Yabbie at the moment, which has priority. I think Talisman comes next on the list. There are a number of other matters at which we are looking but they are operational and I do not want to go into them so as to alert target, but there are a number of matters we are looking at.

Ms ANDREWS:

Q: Following on from that, referring to Pamlam Pty Limited, I believe corruption arose out of the person Damon Schreiber's wife owning the company and the contract work being awarded to that company. You are talking about the measures that have been taken to prevent similar incidents in the future, but does it also cover the interests of the wives of the people or the partners of these people in these high positions?

A: I am somewhat constrained by the reference to the specific which is in draft report form. The allegation, however, that was examined was that three railway employees had their wives as directors of a company to which a very profitable cleaning contract was let by one or more of those officers, in effect. So that they had an immediate although not direct interest in that contract. The allegation made and examined was that very substantial six-figure sums were siphoned off to that company. I might say there were some admissions made by some of the people. Mr Schreiber made no admissions and the findings will depend upon an analysis of the evidence.

But the codes of conduct that we postulate do involve that sort of thing not happening and will require people to reveal if they or their spouse with whom they live, I assume, are involved in any contractual relationships with the employer. The rule is clear and if observed prevents corruption. Some will just break the rule and then we have a monitoring process that we use in organisations that we have looked at which, given adequate resources, say 12 months after the event we will go back and have a look, something like that, to see if there are any grounds of suspecting that there has been an occurrence.

In the end, that is a management matter. Once you have formulated the rules, the management then has the obligation to ensure that the rules are observed. That is what we are doing and we are working in conjunction with the four entities into which the railways have been split.

CHAIRMAN:

We will now deal with questions 5 through to 15. I might just take you to page 18. You did say in your opening statement that the workload had increased by about 40 per cent this year.

Mr O'KEEFE:

Fifty-five per cent.

CHAIRMAN:

Q: Do you see a need to increase the number of community representatives on the ORC to help with the workload?

A: If that meant a splitting of the committee into two divisions I would not favour that. At the

present time having the one body concentrate on the subject-matter they become conversant with it, they understand the procedures, they become very astute in picking up things and you get a consistency in decision that you may not get - it is a bit like having two divisions of a court situation. You can get splits in decisions. If it involved further members to represent the community I see no harm in that, but the existing community members are very vigilant about the things that you would expect community members to be vigilant on and the balance in the composition of the committee of three is quite good actually.

CHAIRMAN:

Q: Is it correct to say that the ORC exists in the ICAC as a consequence of the enormous powers that the ICAC has to deal with corruption in the State of New South Wales and keep another accountability mechanism to ensure that the ICAC is accountable to another group as well as accountable to this Committee and other bodies? Is that a correct assessment of the ORC?

A: Yes. There is not any equivalent of the ORC in any of the other bodies, NCA, New South Wales Crimes Commission or CJC. There is not any equivalent of the ORC. What it does is ensure as well that we do not just brush aside matters and do not investigate them without good reason.

CHAIRMAN:

Q: Well, by virtue of the Ombudsman's Act, they have or they purport to have draconian powers as a result of what is called the whistleblowers legislation and other investigative powers and you recall that I did talk about that on the last occasion. Do you think that if people are given those type of powers there really should be an oversighting by community members to ensure those powers are not abused?

A: There is no policy of the ICAC on that. My own personal view would be that the existence of an ORC is a valuable internal check on the exercise or non-exercise of powers. One must remember, however, that the role of the Ombudsman's Office is fundamentally different from the role of the ICAC. We are not a complaint handling body. Essentially the Ombudsman's Office is and whether that then would be appropriate to have an ORC equivalent is something I would like to think through much more.

Ms ANDREWS:

I think it was mentioned that you had 139 cases, which was an increase on the previous two years.

Mr O'KEEFE:

For?

Ms ANDREWS:

You handled 139 cases that were put before the ICAC.

Mr O'KEEFE:

Q: Whistleblowers you mean?

Ms ANDREWS:

A: No, just in general, the number of matters.

Mr O'KEEFE:

No, it was 1,092 section 10 complaints, I thought.

Ms ANDREWS:

139 must relate to something else.

Mr O'KEEFE:

Page 23 will give you the list. It is 1,694 specific matters. Those first two matters in the table at the top of the page, complaints under section 10 and protected disclosures, are the matters that come to us from the public, 1,092, and that is an increase of 42 percent on the preceding year.

Mr WATKINS:

At page 15 - you have spoken about this earlier today - you speak about prosecution of individuals since the ICAC was established.

Mr O'KEEFE:

Yes.

Mr WATKINS:

228 is the figure given on page 15 and earlier today, 228 recommended; 125 prosecutions begun, which is 55 percent; 73 have been convicted.

Mr O'KEEFE:

To date, yes.

Mr WATKINS:

Q: Do you think that this should be a performance indicator that is relevant to the ICAC?

A: No, I do not.

Mr WATKINS:

Q: Why not?

A: Because we are not a prosecution body. One of our functions is to gather evidence, but the decision to prosecute or not to prosecute is somebody else's. The decision as to what is called is somebody else's. They are not matters under our control. I do not really think, any more than the Royal Commission asserts that it is a relevant indicator, it is one for us either. I mean I can see arguments that might go against that, but that is the view that I hold. However, it is a statistic that one can use to show that there are these people who committed offences within their public office that would not otherwise have been brought to book.

Mr WATKINS:

Again, spending \$100 million to convict 73 people --

Mr O'KEEFE:

No, but that, Mr Watkins, with great respect, is not just what we did. That was one part of our activity.

CHAIRMAN:

Q: You do not have prosecutorial powers for prosecuting. Would it be better to relinquish public enquiry powers per se, that is to still retain them on matters where you felt there should be a public enquiry, use your investigative powers and use the resources to become the prosecuting power? Would you want to become the prosecuting power?

A: I think that actually may introduce the sort of problem that the CJC has run into in Queensland where you become a second and under-resourced police force. Secondly, the public hearings of the ICAC have a very beneficial effect. A person may come before a public hearing and admit the wrongdoing. It is then known publicly that that has happened and other people who may be tempted to engage in that conduct know or fear that, if they do, they may be so publicly exposed. You cannot then use that evidence in a prosecution against the person, so there may be a situation - and not uncommonly is - in which you cannot then even recommend a prosecution because the only evidence that you really have is the admission by the person and then perhaps some circumstantial things that would not of themselves be enough to get a conviction. I think that the public hearing process is very important and very beneficial and

that coincides with what this Committee, in various manifestations over the life of the ICAC, has concluded as well.

Mr WATKINS:

Q: It strikes me, though, when you sit back and think about it, eight or nine years work, \$100 million, when you think the amount of corruption that is about in the public area in New South Wales and we end up with 73 convictions?

A: I understand that comment, but can I say \$100 million, two and a half years, and where is there a conviction from the royal commission?

Mr WATKINS:

That process has not finished yet.

Mr O'KEEFE:

Neither has ours.

CHAIRMAN:

Q: On page 15, at point 4, the Sydney Olympics, in regard to interest groups and issues associated, interest groups being people, sporting bodies or what do you mean?

A: There are a number of bodies, corporations which directly or by subcontract are involved in the production of material and services for the Olympics. They are the primary ones that are on our data base. Then there are individuals who are part and parcel of committees which are concerned with the development of the games. It is necessary then to know what, if any, their interrelation with the various companies, contractors, subcontractors, suppliers, et cetera, may be in order to ensure whether there is any covert conflict of interest and we monitor that.

CHAIRMAN:

Q: At the Atlanta games, because of the huge amounts of moneys spent, and likewise the huge amount of money being spent in New South Wales, they appointed inspectors general to oversight those types of activities to ensure that people were not touching the till. Do you think there is a benefit in appointing inspectors general, sponsored by the Government and paid for by the contractor to ensure the contractor does not rip off the taxpayers?

A: They do not have any ICAC in Atlanta. The function we are performing is not dissimilar, although not identical with that. The combination of that and use of probity orders gives rise to a situation where an inspector general would only impose another layer and it is not something that I would recommend.

Mr WATKINS:

Q: Moving to pages 24 and 26, public authorities subject to complaints, it says that about 25 per cent of the complaints in the public relate to the police; is that right?

A: Yes.

Mr WATKINS:

Q: Over on page 26, 70 per cent of referrals --

Mr O'KEEFE:

On schedule.

Mr WATKINS:

Q: -- are regarding the police so therefore a large percentage of the work of the ICAC is to deal with police?

A: No.

Mr WATKINS:

Q: Would you explain?

A: That is what we receive. I have made a determination since the setting up of the royal commission and more particularly since the determination to form the PIC that we will expend no resources in respect of complaints against police or scheduled matters that come to us in relation to police. They all go to the royal commission. So the extent to which it involves us in the allocation of resources is virtually nil.

Mr WATKINS:

But until the establishment of the royal commission or the PIC, certainly the ICAC was involved in investigating and dealing with those matters.

Mr O'KEEFE:

If you look at the 70 per cent on page 26, those scheduled matters almost invariably involve things like - well the main area was highway patrol, actually, "highway patrol officer was rude", "highway patrol officer was unnecessarily forceful in stating what the speed was", not a complaint that that was not the speed but the way in which it was dealt with or complaints against officers at the station counter when people go in. They took virtually no work at all.

They were complaint matters that went to the Ombudsman if they went anywhere.

In respect of police, in fact I think you will find that the number of people coming to us since the royal commission has probably increased a bit but we have not been expending resources on those. In the time prior to the setting up of the royal commission which really is prior to my time, I cannot give you off the top of my head a figure, but we did work out over a period of time that - I think the figure is about 11 per cent. There was about \$500,000 if I remember correctly that might have been able to be attributable to police matters but that includes the high watermark expenditure in relation to Milloo. I have got those figures but I have not boned up on them for this hearing.

Mr WATKINS:

Q: Given that, on page 33 where you talk about staff numbers, you relate the reduction in staff from 145 to this year a staff average of 134 and you suggest that this will have an inevitable consequence on the amount of work that the ICAC is able to do and thereby presumably suggest that you would like to have the establishment of 145. Is it in a sense that amount of police work that is now not being investigated by the ICAC which at one stage was about 11 per cent of your work, does that not therefore mean that could deal quite adequately with fewer staff? If you are not doing the business why have the people?

A: It is a question that we have thought about and I have thought about. Can I answer it in this way: The budget for the Police Integrity Commission will be \$15 million. That is greater than our budget. They will deal with 13,500 sworn officers for \$15 million per annum and that is considered what is necessary to do that work just for the police. If you then translate that back to the 386,500 public service officials, less 13,500 police officers, the budget allocation of just over \$13 million is not great.

Secondly, the extent of the work which we are doing, that is the number of complaints relating to other than police, has expanded quite considerably as the figures reveal.

Thirdly, the extent to which advice and corruption prevention and education matters are being dealt with has also increased.

There is no officer in the ICAC that is under-utilised and I cannot see how, without sacrificing some of the work that we are presently doing, which does not involve police, we can sustain further budget cuts.

The answer to your question really is to be found in this: It involves an assumption that there would be a static amount, even if the police were there. The truth of the matter is that, since it is a field which is more and more in the public gaze, it was likely that more and more allocations would need to be made. If you take the retention of police, the argument can be turned on its head and it would be, instead of \$13 million, we should get \$28 million, that is thirteen plus fifteen, to deal with all those things.

Mr WATKINS:

Q: So you have expanded your business into other areas?

A: That is right, and areas which, in my view, are likely to have long-term benefits, and it is not just my view, that is the view that is expressed in almost every forum that I have been to in this country and in a number of other countries where this matter is under consideration. Exposure is important; investigation is important, but the long-term is to be found in corruption prevention systems and changing the culture through education.

Mr WATKINS:

You have used many times here and elsewhere, as justification for the budget for the ICAC, that equation which you have repeated, \$13 million into 380,000 equals such and such.

Mr O'KEEFE:

\$35 per head for us compared with \$2,300 per head for the Royal Commission.

Mr WATKINS:

Q: In a sense, would it not be a truer test to say \$13 million into those areas of the public service that you have investigated, which is far less than 380,000, and that would give us an equation which would be far more realistic and perhaps true when comparing the money that is spent investigating the police service?

A: No.

Mr WATKINS:

I find that equation that you have used quite simplistic and inaccurate.

Mr O'KEEFE:

On its face it may be, but take the 1,505 matters that went to the ORC last year. In a quite high percentage of those - it exceeds twenty-five percent - not merely were initial enquiries made, but more than initial enquiries were made, so although it is not called a formal investigation - Mr Chairman, I do not think that is proper, particularly from Mr Regan.

CHAIRMAN:

Yes.

Mr O'KEEFE:

Q: Could I have a break for a moment? I would like to consider that situation.

CHAIRMAN:

A: Yes.

CHAIRMAN:

I might just say that I spoke with Mr Regan yesterday and I did ask Mr Regan not to interfere in the conduct of the Committee. He gave me his undertaking he would not. I was not pleased with the passing of the message. I understand he wants to speak to Dr McDonald about these matters and Dr McDonald and myself and other Committee members are always available to talk to people about matters, but I think it is inappropriate for notes to be passed, but Dr McDonald is at liberty to use the note if he wishes, as a member of this Committee, but I would just ask people who are here as public spectators to please sit and remain quiet whilst the Committee conducts its business.

Dr MACDONALD:

Mr Jim Regan wishes to offer his apologies.

CHAIRMAN:

He did apologise to me for that.

Mr O'KEEFE:

I think it was Mr Watkin's question, not Senator Vaughan's question about the number of areas that we cover. If you go to page 24, you will see that there are a series of departments and agencies expressly referred to, but under the heading, "All Other", 22.5, the spread of those is very wide. The number of departments and agencies that fall within that 22.5 has a very wide spread and our oversight extends to a high proportion of that \$386,500. I mean, there are times that people complain about Treasury. There are times when people complain about various organisations. We might not get many but they are quite complex and involve quite a number of people, so I do not think that the equation is simplistic when you have regard to that.

Ms ANDREWS:

Q: I was interested in the mode of complaints made and I was looking at country visits. Only one arose as a result, page 23. I imagine that most people in the city have more accessibility to ICAC. Could you tell me, do you have a hot line number for the country?

A: We do. It is an 1800 number.

CHAIRMAN:

Q: That is well publicised?

A: Yes, it is.

Ms ANDREWS:

Q: How did that country visit arise, and do you do a wandering tour around the State?

A: There are three ways we go to the country. One is for hearings. We had a hearing at Ballina in respect of operation Yabbie. I have resolved this year that, unless something extraordinary happens, it is unlikely that we will have any hearing in the country. It is expensive and within our budget we are not going to be able to afford it. I regret that, because I think it is important if we can go to the country to be seen as a presence in the country. We are a New South Wales body, not a Sydney body.

The second way is, in the course of operation Zack we have been to many, many country centres. They have generated a number of complaints, only one of which is in this schedule, but they are in antecedent schedules. The fact that we are there generates complaints. Sometimes we go to the country on seminars as part of our educative and corruption prevention programs. Not infrequently is the fact that we are there is publicised, we do get some complaints.

The other thing we will be doing this year is travelling that exhibition that is on display at the moment, the posters exhibition which has been very successful and I suspect that we will get some country complaints out of that plus the fact that we have done a great deal with Newcastle for a really cheap price. We are getting 60 exposures of, I think it is half a minute, and they are doing the production and everything. Those sort of things do bring complaints to us. I would like to go to the country much more and fly the flag but it is expensive and we have just got to watch our money.

Mr O'FARRELL:

Q: I am interested in page 24 your statistics which refer to public authorities with complaints and it has members of Parliament down for 1.3 per cent. Could you give the Committee some insight as to the range of issues that are covered, and secondly whether, in your valiant attempts to get members of Parliament to make themselves more familiar with the ICAC procedures for handling complaints this might in fact be an angle in fact to get people interested?

A: The answer to the second question is, I think it might be.

Mr BECK:

I am not sure members of Parliament are aware. 1.3 per cent is not a large per cent.

Mr O'KEEFE:

That is a percentage that rises when you have got an election and we do not have an election in the period covered by these statistics. In fact, the graph for complaints against members of Parliament and members of councils rises dramatically in the three to six months before the election. It may tell you something about the quality of the complaints, but nonetheless they have got to be looked at because you are dealing with high profile people in important positions.

The range of complaints is pretty wide. Not uncommonly it is said that influence was used to get somebody something or to prevent somebody getting something. That would probably be the most common complaint.

Mr O'FARRELL:

Q: Does it specifically relate to all members of Parliament or primarily to Ministers?

A: No. I do not think Ministers are in there. If the Ministers are in that the answer is it relates more to Ministers than to other members but that is, of course, of the essence of being a Minister you exercise a power and function.

CHAIRMAN:

Q: It is an allegation that has been made to the ICAC or is it a complaint?

A: Yes. I am making no comment about the accuracy of it. In fact I do not think that there is any matter other than the Smiles matter which related to a whole range of parliamentarians who sat as trustees for the superannuation fund and some members of the then Cabinet. We have not had a formal inquiry in relation to a Minister although we have had many further inquiries.

The Hon. B. H. VAUGHAN:

Remaining on page 24, the most significant number of complaints are, of course, in local government.

Mr O'KEEFE:

The highest number is.

The Hon. B. H. VAUGHAN:

Q: Yes. In your international travels that you referred to and having a look at corruption world wide, is local government just as significant in other places as it is here in matters of corruption or alleged corruption?

A: Yes, I can tell you it is certainly so in Israel where I found some statistics. It is of not dissimilar order in Canada. The United States is so fragmented in that regard that it was not possible for me to get any figures on it. But they are two areas and since the nature of the complaints that often come forward are dissatisfaction with an outcome and the rhyme of reasoning runs, "This was proposed, I opposed it, my reasons were good, it was allowed, therefore it must have been corrupt". That is a very common line of reasoning and I suspect that would be universal.

The Hon. B. H. VAUGHAN:

Q: Does your educational arm reach out to local government?

A: Yes, indeed. Quite a few of our resources go there and we are just in the course of issuing some guidelines in respect of various matters, interest and the like, in respect of local government people and our book--

The Hon. B. H. VAUGHAN:

Q: That 34 per cent is for last financial year. Do your advisers know whether it is increasing?

A: The answer to that is I cannot tell you. I would have to take that on notice.

Mr BECK:

Q: My question is on local government also. You have been specific when you say 1.3 per cent. Is it the elected representative or is it the salaried staff or what is the break up of the work?

A: It is both, and I cannot tell you the split. I guess that it is - it is not a guess, it is a matter of impression that it relates more to non-elected officials than to elected officials because they are the ones who in the vast majority of councils by delegated authority exercise the function, but there are a number against elected councillors.

Mr BECK:

That is the reason I am asking the question because there is more and more in local government of delegated authority coming about and it appears that those things are the ones that are slipping through and the ones that are put in front of a council are the ones who are not creating the problems.

Mr O'KEEFE:

Well, you have a bit of a bind there. First, the 1993 Act reposed a real power in the general manager. That is the effect of executive power. So you would expect a shift in complaints that way. Second, the matters that are referred to the council are likely to be the hot potato matters anyway because there is objection already or there is a dissension in the community in some form, so they may themselves, though not great in number, be productive of more complaints than you would expect from an ordinary run of the mill matter and that tends to happen, but still my impression is much more are the non-elected officials the subject of complaint than the elected ones.

Mr BECK:

Q: You made a reference there to senior officers from general manager down. What about out in the field staff of councils, workers in the field coming in with complaints?

A: Yes, that does happen and it generally relates to wrongful use of council property and sometimes the turning of a blind eye by somebody above, as a supervisor, to what is going on.

Mr BECK:

Q: I have had a concern that some of those complaints have been addressed by the general manager and that the general manager's ruling then is accepted. It seems to be an internal arbitration; it does not fit into my thinking very well.

Mr O'KEEFE:

In a number of cases where you are dealing with promotions and processes for promotion, that internal process works reasonably well. Where you are dealing with wrongful use or, worse still, sale - stealing and sale of council assets - unless it is associated with some dismissal, it is not going to be very effective, but it often does, I might say. You find you will provide the information for council. That requires a report back under section 54 and you will find that there have been dismissals and even prosecutions.

Mr WATKINS:

Q: At page 42 there is the account of the criticism from the Auditor-General about the ICAC moving into advice. Does the letter from the Auditor-General not suggest that in fact the ICAC basically has to do this because it is requested and you do not turn down a request?

A: Not if it is a serious one, a genuine one.

Mr WATKINS:

But the advice from the Auditor-General is that in fact there is a real danger in giving anticipatory advice about a matter because it may place the Auditor-General in a position of conflict of interest at some stage.

Mr O'KEEFE:

I have discussed his letter with him. I think the point that he is really making is this, not a conflict of interest question, but whether or not, you having advised on a given set of facts and the facts are proved to be different, you may then appear to put yourself in a situation of having said okay to something that really is not okay.

My response to that is as per my paper here: The facts that we are given constitute the premise on which the advice is given. If you change the facts, the advice may change. Secondly, where this arises, I say and the officers say to the people who are giving us the facts: Listen, you have to be right about these facts because, if you are not, you are personally involved in putting forward the facts, so your involvement is high. My experience then is that the CEO or the DG or the Minister really sought out those facts; that you have them doing the work about getting the facts right and having an incentive to get them right. Even then the advice that you give may be wrong. You always take that chance, but that is a chance I am prepared to take.

Mr WATKINS:

I suppose it comes to what you want the ICAC to be.

Mr O'KEEFE:

Well, it is not really what I want it to be, it is what the Parliament tells us we must be.

Mr WATKINS:

And what government pushes it into by making requests of you. If the government did not make those requests you would not do it.

Mr O'KEEFE:

It would not arise, but sometimes a government department will come and they will want advice on something. Our primary response is to say: Well, look, the principles are set out in these documents, publications that we have got, go and have a look at those. If you cannot deal with it still, come back to us, so that you make them make their own decisions first if they can and so you only get the marginal case, the difficult case, the very complex case that comes to us. It evens itself out. We are not swamped by it, in other words. Can I say I do not think that there is any attempt, which is obvious to me certainly, to swamp us or snow us or anything

like that, nor do I think it has brought us too close. It is very much an arm's length professional thing.

CHAIRMAN:

Q: At the third dot point you state:

“Sections 93 and 94 of the ICAC Act as previously drafted created offences against individuals or employers where they cause violence, punishment, damage, loss, disadvantage or prejudice in employment to a person because they have been a witness before the Commission or have complied with the notice provisions under s21 or s22 of the Act. The ICAC sought an amendment to extend the offence provisions beyond witnesses and those who comply with notices to persons who assist the Commission during its investigations. This now means that if a person has lodged a complaint or is providing the Commission with information it will be an offence to take action against that person on account of their having assisted the Commission”.

Is that the way the law stands at the moment under the ICAC Act?

A: The Act was amended and, as a result of our representations, a like amendment was sought in respect of the Police Integrity Commission. That commission now has the same provision in respect of it.

CHAIRMAN:

Q: And that has been proclaimed into law?

A: I think it has been proclaimed, yes. I cannot tell you a date, though.

2. SEMPLE INVESTIGATION

2.1 What is the cost of the Semple investigation?

To date the cost of the Semple investigation to the ICAC has been \$470,000. This includes internal salary costs, transcript fees, legal fees, witness expenses and other minor expenses. As the report has not been finalised this amount does not include any report costs. Of the total sum, counsel expenses amounted to \$270,000.

2.2 What is the cost effectiveness of this investigation?

The answer depends on the value to be put on probity in the public sector. It would be inappropriate prior to the publication of the report for me to discuss the subject matter of the investigation at any length, however, the investigation hearings were held in public and therefore the evidence is a matter of public record. The investigation clearly dealt with issues of utmost significance to all public servants in New South Wales as the investigation was concerned with the integrity of the system assessing the value of the most senior public sector positions by a body which should give leadership to the public sector in relation to probity, transparency and adherence to proper process. The system under scrutiny is used for all SES positions.

2.3 How did the Semple matter come to the attention of the ICAC?

The "Semple" matter came to the attention of the Commission by way of a report pursuant to s11 of the ICAC Act.

2.4 Is the Semple investigation a sign of the ICAC moving from being a major corruption investigation body to a political watchdog?

No. The Commission has a broad jurisdiction to investigate matters which in its opinion may involve corrupt conduct. From time to time it is likely that such investigations will touch on the political process.

2.5 What are the negatives for the ICAC in undertaking an investigation such as the Semple matter?

The Semple matter is a good example of an investigation which arises at short notice and requires the allocation of substantial resources. Such matters are hard to predict in any strategic planning process and therefore can place strains on resources depending on what time in the financial

year they arise. However, the Commission's capacity to respond to such matters at such short notice is an essential part of the Commission's role.

There is always the danger with matters such as Semple, which touch the political process, that the issues will be politicised although if this happened at all in the Semple matter it was not to the detriment of the investigation. Where matters are politicised there is the prospect emotions will be aroused and partisanship promoted. This might have some affect on the Commission's standing in the eyes of some politicians, however, as far as the community is concerned I do not believe it adversely affects the Commission. Indeed as the Premier remarked after having given evidence in the matter, the ICAC is an important accountability mechanism for the State of New South Wales. In any event, the Commission must accept that in making decisions in the public interest about which matters to investigate it may upset some people.

Questions Without Notice

Mr O'FARRELL:

Q: Could I take you to question 32 on page 57. Would you provide the committee with an update as to the cost of the report on the Public Employment Office?

A: Yes, \$485,000.

Mr O'FARRELL:

Q: In regard to these reports. What advance briefing or knowledge does government, or do government officers outside the Independent Commission Against Corruption, have about final recommendations?

A: Zero.

Mr O'FARRELL:

Q: Do you find it curious, if that is the case, that Mr Semple was appropriately removed from his position prior to your report being produced which criticises his original removal?

A: I do not fully understand the question, I am sorry.

Mr O'FARRELL:

Q: Mr Semple was finally removed from the Department of Community Services I think in August of this year. It seemed to some of us that the Government was clearing the decks for a negative report or adverse report by the ICAC, which in fact followed last month. Did the ICAC find that of interest, of curiosity or of the remotest incident in its affairs?

A: Well, I noted it when it happened. I must say I had some thoughts about why it might have been done, but it was certainly not done with any pre-knowledge of what was going to be in the report. Indeed, attempts by Ministers and officials to get any preview of our reports, as not infrequently is sought, have been universally and firmly rebuffed. They get the report at the same time as everybody else.

Mr O'FARRELL:

Q: Does the ICAC have a view on ministerial responsibility under the Westminster system—that is, that if a public servant or public servants or a policy under your area of responsibility fails that the responsibility ultimately rests with the Minister, and that, traditionally, that has meant the resignation or the removal of the Minister or the Premier?

A: I do not have any view on that and I find it difficult to fit within the framework of sections 8 and 9 in our corruption function. We are not looking at moral questions; we are looking at questions of statutory definition of corrupt conduct and beyond that we ought not to become involved.

Mr O'FARRELL:

Q: But you are not averse, as we have seen in our other work in relation to the parliamentary ethics committee, to giving other organisations advice about these issues. For instance, I understand that the Carr Government's ministerial handbook is currently being reviewed. Have you, as a body, been asked to provide some input into that review?

A: Not as far as I am aware. Our work with the ethics committee was done at the request of the chairman. I took the view that it was appropriate, in the same way as one might give advice to a department, to give advice to the representative of the Parliament and that whatever help we could give we should give. If the advice was accepted, well and good; if it was not, it was not, but we had done our job.

The Hon. B. H. VAUGHAN:

Q: On page 57 there is also reference to the Semple inquiry. Considering the critical importance of that inquiry I was surprised that you did not chair it. Did you choose not to chair it or did you have other arrangements?

A: I had other arrangements at the time that precluded me from so doing. I may have dealt with this on a previous occasion. This arose in March and I took the view that it should be dealt with expeditiously. It was not possible, because of my commitments, so to do, and an assistant commissioner was appointed.

Mr O'FARRELL:

Q: I want to take you to question 65 and ask a simple question: When is the Semple Inquiry likely

to report?

A: Next Friday. I have signed the letter. We are waiting for our appointment with the principal officer of the Parliament.

3. OPERATION ZACK

3.1 At what stage is Operation Zack?

As previously mentioned Operation Zack was a result of a high incidence of complaints received alleging fraud and other corrupt conduct in the Aboriginal Land Council system. The operation's objectives are to identify and expose corrupt practices and system inadequacies that could allow, cause or encourage corrupt conduct in Aboriginal Land Councils at State, regional and local levels and having done so, recommend practical changes that meet the needs of Aborigines and appropriate regulatory agencies as well as accountability requirements.

After extensive consultations with Aboriginal people and other interested government and non-government organisations, the Operation Zack team and a reference group of Aboriginal people are now in the process of finalising a comprehensive discussion paper on issues of corruption in the Aboriginal land council system.

Next February, coinciding with the release of the discussion paper, Commission officers will be visiting every Aboriginal land council region in New South Wales and convening conferences. The purpose of these conferences will be for Aboriginal people to workshop strategies for protecting their land council system from corruption. The outcomes of these conferences will largely inform and drive the reform agenda which will be recommended and/or undertaken by the Councils with the support of the ICAC.

We are involved in a joint exercise with the New South Wales Aboriginal Land Council and the New South Wales Police Service to develop a package of training materials for council members and staff. The objective is to empower Aboriginal people within the land council system to protect the system from fraud and corruption.

A number of specific incidents of suspected corruption are currently the subject of private hearings at which I am presiding. When those matters have been explored fully, I will give consideration as to whether any matters should be the subject of public hearings or referred to other authorities for action.

3.2 What is the budget for the operation? How much of that has been expended?

A project plan was developed which divided the operation into five stages and identified the need for a multi-disciplined team combining the use of the Commission's investigative, legal, corruption prevention, education, research and technical resources over a twenty month period throughout the various stages of the operation. The initial costing of these combined resources was estimated at approximately \$2.1 million dollars. The Commission has spent \$812,000 on Operation Zack to 30 September 1996 which is in line with the initial budget estimates.

3.3 Have ICAC staff resigned over the manner in which Operation Zack has been carried out?

Four members of staff who were on the Zack matter left the Commission. One expressly left on the basis that he disagreed with certain aspects of the plan for the operation. Another left to take up a position in Canberra. A third officer came to the end of the period of secondment, extended it for a period and then returned to the seconding agency for professional and family reasons. The fourth returned to the seconding agency to a position of higher duties.

I was actively and personally involved in considering suggestions made about improving some aspects of the approach to the project. Some of these suggestions were already being considered. Some were adopted. The morale of the team involved on Operation Zack is excellent and work is proceeding well.

3.4 Is it fair to say that the ICAC has lost confidence of those parties who sought the intervention of the ICAC in investigating Land Councils?

No it is not. The ICAC commenced this exercise on its own initiative after strategic consideration of the complaints it received since commencing operations in 1989. Considerable resources have been directed to consulting with Aboriginal people about this exercise, more, I might say, than any previous attempt to deal with land council matters. Commission officers and I have visited some 20 Aboriginal communities in New South Wales and support for the work of the ICAC is almost universal.

Since commencing Operation Zack, complaints about the Aboriginal Land Council have doubled (about 90 to 180 complaints at the start of the project to about 180 now). This would indicate Aboriginal people continue to want this Commission to be involved.

The ICAC and the New South Wales Aboriginal Land Council have a very close and harmonious working relationship. In fact an employee of the New South Wales Aboriginal Land Council has been seconded to the ICAC to work on the Project. The Reference Group I mentioned earlier has been assisting with the development of the discussion paper, and has amongst its members the most senior officers of the New South Wales Aboriginal Land Council and the Department of Aboriginal Affairs. What's more, the Department of Aboriginal Affairs is considering using the ICAC's approach to consulting with Aboriginal people as a model for its review of the Aboriginal Land Rights Act.

I think members of all Aboriginal Land Councils can have complete confidence in the ICAC when their own people are involved at the most fundamental levels of project planning, execution and review. My own experience when visiting the various Aboriginal communities is of positive response, good rapport and a desire to assist.

There is a real sense among Operation Zack team members (both Aboriginal and non-Aboriginal) that what they are doing will have long term benefits for Aboriginal people. My aim is to equip the ICAC in such a fashion that it can provide a useful corruption prevention service to Aboriginal people, and has involved Aboriginal people giving us a great deal of assistance. The willingness of Aboriginal people to provide the ICAC with that assistance is a strong indication of their confidence in the organisation and the process.

3.5 Is the investigation in danger of falling apart?

No. See above. The exercise is proceeding to plan and within budget.

3.6 Considering the sensitivity of this subject have you considered how to lessen the impact of any negative finding from Operation Zack in providing the Federal Government with justification for their attacks on ATSIC, Land Councils and the Aboriginal people of Australia?

My answer to Question 37 indicates the positive approach which the Commission has taken to Operation Zack. While the Commission will identify corrupt practices where they have occurred, the principal aim of the project is to recommend practical change that meet the needs of Aboriginal people and the requirements of the law for appropriate accountability as outlined in the Aboriginal Land Rights Act 1983. The consultation process with Aboriginal people has been extensive and is aimed at informing and therefore building their support for the recommendations to be made in the final ICAC report.

While the ICAC timetable cannot be dictated by events in Canberra or elsewhere, the Commission is mindful of ensuring that the discussion over reform to systems here in NSW is not clouded or misinterpreted by other events in the Commonwealth arena and the timetable has regard to this.

The timing of the release of the discussion paper and the consultation process to follow will be planned with the aim of maximising its effectiveness and ensuring a positive reaction in Aboriginal communities.

Questions Without Notice

Mr WATKINS:

The last relates to issues that you were asked about in the questions upon notice, and in particular Operation Zack—Operation Zack being the investigation into land councils in New South Wales.

Mr O'KEEFE:

Yes.

Mr WATKINS:

I am becoming increasingly worried about what the outcome of Zack is going to be—not the findings of the ICAC, because I totally accept that that will be done above board and according to correct—

Mr O'KEEFE:

It certainly will be. We have a very big investment in that inquiry.

Mr WATKINS:

I am particularly concerned about something that you probably will have little control over, which will be the media and community coverage of it when it comes out, because, as you would know, we are in a difficult time in relation to Aboriginal organisations and the attack on them by the Federal Government. I just wonder whether you have looked for advice from some of the Aboriginal groups, for example, the Federal Council for Aboriginal Reconciliation or the New South Wales Council for Aboriginal Reconciliation, about the way in which the release of the report should be managed in a way that would minimise the attacks of bigots and racists and those on their coat-tails.

Mr O'KEEFE:

First, I was conscious of and have been conscious of the sensitive nature of the issues dealt with; secondly, the potential for material being used by a group or an individual, or groups and or individuals, for purposes of their own rather than for the good of the Aboriginal communities. Thirdly, I was conscious of the fact that if the release of any report or even perhaps our discussion paper were to coincide with an event like the ATSIC elections, or the release of a Federal Auditor-General's report in relation to the operation of ATSIC, the discussion paper could get caught up in that, and its effectiveness and the cooperation of the Aboriginal communities in discussing the matters and the options raised would be lessened.

As a consequence, the time frame for the discussion paper and its issue was pushed out, so as to avoid both those things. That led us into a situation in which by the time, as far as you could make a judgment, the immediate controversy about ATSIC had died down, we would be into the Christmas period, and if you issued a discussion paper then it would just get into a pigeonhole and you would not have any contemporaneity about the discussion. So we decided to issue the discussion paper early next year. February is the month chosen. As far as I am aware and our inquiries reveal, there is no scheduled event with which that might be associated. I have already written to each of the chairs of the 117, I think it is, land councils in New South Wales advising

them how we are proceeding, where we are at, when the discussion paper will be out, and seeking their and their communities' cooperation.

I go back to something else you raised. In determining that timing, advice has been sought from various stakeholders, principally Aboriginal individuals and groups, as to the appropriateness of the timing. And, perhaps even more importantly as these papers reveal, we have had a reference group of Aboriginal people assisting in relation to the preparation of the discussion paper with the options in it. We do have a plan to deal with problems that might arise. And, when you are going through scenarios, they change as events occur in the community.

But we are conscious of the problem and we have got some plans to deal with that. I cannot really go beyond that. Things may change between now and February. So the way in which we deal with it may have to change according to that. But we are taking advice from peak groups in relation to that. In the end, there is no point in having a discussion paper that raises possibilities that are not culturally sensitive and practical for implementation and acceptable across the board, that is, in the general sense, to the Aboriginal communities that are going to implement them. That is the philosophy underlying it, and we have taken steps to ensure that that should be so.

Mr WATKINS:

I am not as concerned about the impact in the Aboriginal communities because I think they will approach it openly. It is the wildfire racist campaign that will be run by certain members of Federal Parliament.

Mr O'KEEFE:

So far we have had great cooperation from Aboriginal communities generally. The New South Wales Aboriginal Land Council has been extremely helpful. On my visits to the country, and I have made many of them, to meet with the people that either are complainants, or in some areas that are running land councils that are quite functional, to find out why they are functional—and it often centres around a person or small group of people who are determined to make them functional—I have had personally great cooperation and support. There was one aberrance down at Dareton. It did not last long and it did not involve more than a very few people. The difficulty is that the dissident tends to get a lot more publicity than the cooperators. Cooperators do not make a noise.

But even that I think has now been dealt with appropriately. We went back to the place for a second visit. I went down there and tried to find out what had caused it. I think I isolated it, and it had come to an end. The officers who are working on the project are very committed to it, and we have a number of Aboriginal officers who are dedicated to that work. So that we have got in-house advice, but, better still, in-house ability for people to go into the communities. They go in a bit early and they find out what the problems are—in layman's language as opposed to the language of a complaint—to find out who the people we should be speaking to are before the group goes in and before I go in and speak to people. It has worked pretty well.

4. MORGUE INVESTIGATION

4.1 Why was the investigation in Sydney Morgue commenced?

Because the Commission determined that it was in the public interest to do so after conducting preliminary inquiries.

4.2 Why only Sydney Morgue and not other Morgues in NSW?

As the report in this matter has not yet been made public it would not be appropriate to answer this question in any detail. However, I can outline the Commission's general approach.

The Commission's aim is to improve the probity and integrity of the public sector. To achieve this it is not necessary or indeed possible to expose all corruption wherever it may be occurring. Rather, the Commission seeks by exposing particular corrupt conduct to alert people to its existence in the agency under scrutiny and to the prospect of like conduct in like agencies or situations. This should then be a step in stopping it occurring and ensuring that systems and methods of work are changed in order to prevent it occurring in the future. Having identified a particular systems weakness it is then for the public sector organisation to address that problem. In this way the Commission can spread its limited investigative resources more broadly across the public sector and get maximum from its limited budget.

The Commission's Corruption Prevention staff have been and will continue to work in cooperation with the Sydney Morgue and Central Sydney Area Health Service (which incorporates Sydney Morgue) to provide input and assistance into the review of the systems, policies and practices at Sydney Morgue and to educate staff on the ethical standards expected of them as public officials. There will also be further liaison between the Commission and the central policy unit of the Department of Health to ensure that the corruption prevention work undertaken with the Sydney Morgue will be considered in relation to morgues across New South Wales.

4.3 Why were there covert techniques used in this investigation?

Because the Commission considered it appropriate to do so in the circumstances of this investigation. It is often the case that targets will not make admissions unless confronted with evidence of wrongdoing and this was demonstrated in this investigation.

However, covert techniques were not the only investigative methods used. A range of investigative techniques was used.

4.4 What was the cost of the investigation?

To date the cost of the Morgue investigation to the ICAC has been \$306,000. This includes internal salary costs, transcript fees, legal fees, witness expenses and other minor expenses. As the report has not been finalised this amount does not include any report costs. The Legal counsel expenses amounted to \$123,000.

4.5 What is the cost effectiveness of the investigation?

Ultimately that is a matter to be judged by Parliament when it has the opportunity to consider the report.

No direct savings were made for the government, but this is not the point. First, almost all of the staff were interfering with bodies and property that, in some cases, could have been vital coronial evidence.

Secondly, the conduct was systematic and part of a culture that went back for many decades. It was of considerable concern to honest members of the staff who were reluctant to report the behaviour because of the prevailing culture.

Thirdly, kick-back to undertakers etc are a continuing source of complaint. Such enquiries are difficult to substantiate. In this matter, both the police and the Ombudsman's office had investigated similar allegations at this mortuary without success. The "roll-over" of the staff member to a Commission investigator provided an opportunity that would have been foolish to ignore.

Finally, and very importantly, the people of New South Wales regard interfering with, in a sense desecrating the dead as seriously wrong. Steps taken to discourage it are therefore appropriate.

As stated above, while the monetary values involved were not necessarily high, the corrupt conduct extended back many years to the extent that it had become part of the culture amongst the mortuary attendants. Tampering with potential coronial evidence was also of concern.

4.6 What level and value of corruption was discovered?

In the Commission's opinion it is not appropriate to talk about corruption in terms of "level and value". Rather the Commission looks at whether corruption is significant or not. For example, if one public servant breaches his duty of honesty and fidelity to his employer by stealing a large sum of cash, say \$200,000, from a public sector agency then this might popularly be considered to be corruption of a high "level and value". Nevertheless, it may be of little significance to the public sector at large. That is, it may not involve any failing in the systems but rather a single

dishonest act by one individual which could not have been prevented whatever the system in place. On the other hand, widespread corruption within a public agency involving many of its officers, albeit involving small sums of money, is a significant matter. It undermines public confidence in the system and is destructive of the pride and morale of honest public officials.

4.7 What other means could have been employed?

Presumably this question is directed at what other investigative means could have been employed. The Commission employed a range of investigative techniques in this matter and believes that they were appropriate and effective.

4.8 Is the Morgue investigation a valid example of the criticism of the ICAC that its focus in seeking out corruption has moved from the "Mega to the Mundane"?

No. It would have been unacceptable for the Commission to ignore such widespread corrupt practices. Furthermore the conduct examined at the Morgue demonstrates how corruption can pervade all sectors of public administration.

Expressions such as "Mega to the Mundane" may be appropriate to a headline, since the media like catchy provocative phrases, but they are unhelpful in the area of assessing the public interest.

5. THE EFFECTIVENESS OF THE ICAC

5.1 What progress, if any, has been achieved in relation to the development of criteria for the analysis of the effectiveness of the ICAC's operations, both in a financial and practical sense, which might assist this Committee in its role of reporting to the parliament on the oversight of the activities of the ICAC?

Since the last hearing before the Committee in May the Commission has sought to develop an approach to measurement of its performance which would enable the Commission's major stakeholders, including this Committee, to be confident that the Commission is working effectively. Below I outline two significant initiatives which should make it possible to achieve this result. However, I should first say something about the work already done in this area by the Commission.

Over the past two years the Commission has prepared the groundwork which should make organisational performance measurement possible. These steps include:

- The Completion of the Commission's Corporate Plan for a three year period which is publicly available and has a built-in review mechanism to ensure that the plan remains relevant for the three year term.
- Internal documents which set out strategic plans for the Commission's four Units and which are reviewed on a quarterly basis.
- Unit programmes, each of which has performance measures against which evaluation can be made.
- A performance management program which involves each staff entering into a 12 month performance management agreement with their supervisors. In this area the Commission is one of the few public sector agencies which has put in place such a system.
- The Commission is currently negotiating its second Enterprise Bargain Agreement with staff. The fundamental purpose of entering into such agreements is to improve performance of the organisation.
- Guarantees of Service for each area of the Commission.
- An evaluation culture which sees all significant projects evaluated objectively, by engaging the expertise of the Research Section.
- Monitoring of the outcome of investigation reports and corruption prevention projects to follow up on the implementation of recommendations.

- An extensive audit program conducted by the Auditor General including not only financial management but also adherence to other policies and procedures including the Commission's reporting to its Operation Review Committee. This is in addition to a range of internal checks/audits completed by staff.
- The involvement of stakeholders in the formulation and development of Commission projects. For example Operation Zack, education curriculum materials and corruption prevention guidelines.

The measures outlined above create a framework in which data is available to measure performance. However, before that can be done it is essential that the Commission reach an understanding with its major stakeholders about the outcomes the Commission's work should achieve. The importance of a focus on outcomes is that it leads to a measurement of achievements against expectation rather than merely a measurement of the level of activity within the organisation. In recent times it has been necessary for me to refer to statistics which really demonstrate how busy the Commission has been in certain areas, for example, in the use of its powers. I have done this to rebut suggestions that the Commission's investigative activity has declined or that it is disinclined to use such powers. However, such statistics ought not be of themselves to be regarded as a measure of effectiveness.

The first of the initiatives I referred to above is to undertake a consultative process to develop performance indicators. It is generally accepted that there are two preliminary steps involved in developing successful performance indicators. First, it is necessary to focus on outcomes in order to reach agreement as to what the outcomes of the organisation's activity should be. Once this has been agreed the second step is to define what success would involve in achieving each of those agreed outcomes. Having defined success it should then be a relatively easy step to develop performance indicators to measure the level of success. It is essential that major stakeholders such as this Committee participate in the process of agreeing on outcomes and defining success. I invite the Committee to consider nominating two or three of its members to participate with a group of the Commission's Senior Management and staff in the development of performance indicators.

At Annexure 4 I have attached for the Committee's information a possible list of outcomes of the Commission's Corruption Prevention & Education program, merely as an example. The list needs to be read from the bottom to the top with the idea that the outcomes progress logically to what is hoped to be the ultimate program outcome.

One of the essential features of taking this approach to the development of indicators is that it should be possible for stakeholders to clearly understand those things which can or should be achieved by the Commission and those things which can only be achieved by public sector agencies, the Government, Parliament and/or the Community.

The second initiative relates to the provision of statements of financial performance to this Committee. Committee members may be aware that Treasury has introduced arrangements

whereby Statements of Financial Performance (SFPs) will be implemented for Budget Sector Agencies during 1996-97. The requirement to develop these documents is contained in the Government's June 1995 financial statement, which noted that"

"A Statement of Financial Performance will be signed between each portfolio Minister and the Treasurer. It will set out each Budget Sector Agencies mission, strategic direction, project outputs and outcomes, resources and service quality and performance standards."

It is intended that agencies would provide such statements in the first instance to Treasury. However, ultimately they will be provided to the Treasurer and relevant portfolio Minister for endorsement prior to the commencement of the 1997-98 financial year. As Mr Michael Lamberts Secretary of the Treasury noted in his letter of 24 July 1996 to the Commission it is proposed that the SFPs will "... represent a further significant step in developing a more results focussed approach to budgeting and I look forward to your Agency's involvement in the exercise."

I consider that it would not be appropriate for the Commission as an agency independent of Government to comply with this requirement. However, I believe that the objective is sound, provided the reporting is to the Committee, and may add significantly to the Commission's accountability without compromising its independence. I propose that the Commission would provide an SFP to the Committee, in accordance with the proforma document prepared by Treasury, in April 1997 for the 1997-98 financial year based on the allocation letter received by the Commission in March 1997 advising the results of the Budget Committee's consideration of the 1997-98 budget. A copy of the proforma SFP document is attached at Annexure 5.

5.2 How do you counter the Auditor General's criticism that the ICAC's move into vetting State Government decisions before they are formally made decreases the effectiveness of the ICAC?

There are two points to be made in response to this question. The first is that the alleged criticism referred to was contained in a 3 August 1996 article in the Sydney Morning Herald. With the Auditor General's permission I have attached a copy of his letter of 8 August 1996 (Annexure 3) to me which explains that his position was not accurately conveyed in the Herald article. In particular you will note that he states that "It is not usually appropriate to reject invitations to provide the Government with anticipatory advice, especially where that advice could avoid an error which would be the subject of subsequent criticism."

To address the Committee's question, irrespective of whether it is actually a criticism made by the Auditor General, "that the ICAC's move into vetting State Government decisions before they are formally made decreases the effectiveness of the ICAC" one must have regard to the ICAC Act itself. The Act includes a specific provision in s13(1)(e) that one of the principal functions of the Commission is to advise and assist any public authority or public official, on the request of the authority or official.

This does not mean that the Commission is prepared to allow public officials to avoid their responsibility for decision making by coming to the Commission. Rather the Commission requires those who seek its advice to have first thought through the problem and to have attempted to apply the relevant principles to its solution. Often times this will lead to the agency or official not further requiring the Commission's assistance, however, at times the relevant principles will not immediately provide a solution either because of the complexity of the matter or because of its novelty. In such cases the Commission does not shirk from providing assistance by way of advice. There is always the risk of course that the Commission could get it wrong. However, fear of error should not prevent the Commission from exercising its statutory functions. In addition any advice tendered is based on the facts and circumstances as revealed to the Commission. They are the premise. If they are not correct, then that may change the outcome.

The Commission's message to public sector managers is that they should be good risk managers. Every decision involves the risk that the manager may get it wrong, however, provided public sector managers apply the relevant principles it is unlikely that the probity and integrity of their decision making will be challenged.

5.3 How do you counter recent commentary that the ICAC has lost its focus and has moved into "softer" areas of education, corruption prevention and advice giving to the detriment of corruption investigation, its primary focus?

The ICAC has continued to pursue its investigative focus with vigour, and several projects are presently under way. However, the ICAC Act requires the Commission to focus also on corruption prevention and education, and indeed, in my view, the exposure and minimisation of corruption can only be effectively pursued when all three are used in combination.

The Commission recognises that one of its challenges is to help its stakeholders understand its principal functions as set out in s13 of the Act. Those functions broadly include exposure and prevention of corrupt conduct. The Act does not provide that the primary focus should be investigation. In fact, ss1 of s13 sets out the principal functions in paragraphs (a) through to (k). Paragraphs (a) through to (c) could be said to be primarily concerned with investigative activity. However paragraphs (d) through to (k), whilst having some investigative elements, are primarily concerned with corruption prevention and education. The emphasis in those sub-sections is clearly on advising and assisting public authorities in a co-operative way and disseminating information to and enlisting support from the public on matters concerning corruption.

A singular focus on investigation might well uncover more current problems, but "exposure" by itself is no guarantee that future corruption will be prevented. Minimising corruption requires dealing with the future, improving systems and changing cultures. That is why I believe Parliament established the three-pronged focus of the ICAC, with investigation, prevention and education as equal responsibilities. Its role is for the longer term and whilst corruption prevention and education work is not as interesting for the media as public hearings, it is what is recognised world-wide as the most beneficial for the long term. Investigation can inform as well as expose

and the ICAC uses its investigative capacities in both ways. Any suggestion of "loss of focus" or "having gone soft" is without foundation, is inconsistent with our current level of investigative activity and could be harmful to the work of the Commission, if persisted in.

5.4 Considering the ICAC's failure in its attempt to investigate and remedy corruption in the NSW Police Service how would you say the ICAC has fulfilled the purposes for which it was established?

The exposure of corruption within the Police Service by the Royal Commission into the New South Wales Police Service has been very dramatic in some instances. The level of investigative activity and the duration of the hearings has required the establishment of an organisation substantially larger than the ICAC with an annual budget which is more than twice that which the ICAC has had per year to apply to the entire public service. At the close of the Royal Commission it will have operated for close to three years. Despite the extent of its operations and undoubted success in the areas closely examined, the Royal Commission has recommended and the Government has accepted that it is necessary to establish a permanent body, called the Police Integrity Commission, to continue the work of the Royal Commission. Despite the Royal Commission's work the new body is to have a budget for police matters in excess of the ICAC's entire budget. If comparisons are to be made between the ICAC and the Royal Commission and the ongoing work of the PIC then one thing is clear, the ICAC has never been funded to do the type and extent of work which was expected of the Royal Commission and maybe expected of the PIC. The ICAC with its limited budget cannot approach corruption within the public sector with a view to turning over every stone. It must be selective and approach the problem of corruption with a mixture of exposure and prevention strategies.

With respect to the Commission's investigation into the Police Service, Operation Milloo, the Commission accepts that by comparison with the Royal Commission that investigation was not as dramatic as the Royal Commission. The fact is, however, they are not like operations. The Commission never proposed to conduct a Royal Commission type investigation into the Police Service and was not funded to do so nor was it directed by Parliament to do so. Instead the Commission hoped to achieve long term change in the Police Service by combining extensive corruption prevention work in parallel with its investigation which was primarily into the allegations by Arthur Stanley Smith. Within the confines of what was expected from that investigation it was successful. As the Committee is aware, the investigation led to the closure of the Police Gaming Squad and to the exposure of other corrupt activity. It led directly to extensive systems reform within the Police Service particularly in the area of recordkeeping and the review of the Police Service's management of major investigations. The Commission continues to review the implementation of the recommendations made in the Milloo report and will in the near future produce a report on the status of the implementation of those recommendations, some of which have already been adopted by the Royal Commission.

The ICAC's work to "remedy corruption in the NSW Police Service" has not been limited to Operation Milloo. In 1992 the Commission produced a Corruption Prevention Report on the

secondary employment of NSW Police officers which led to the adoption and implementation of a new policy throughout the Service. A number of investigations into the Police Service have been conducted outside of Operation Milloo. Their titles are listed in the Commission's publication list. In my answer to Question 4 I have listed a range of current activities being undertaken with the NSW Police Service. Our Corruption Prevention staff continue to be in demand for police induction training and executive training at the Australian Institute of Police Management. The Commission will continue to use its corruption prevention and education expertise to assist the NSW Police Service in its reforms following the Royal Commission.

To address the question more completely, however, it is necessary to consider the purposes for which the Commission was established. The Commission was not established solely to address corruption within the Police Service or even primarily for that purpose. As the Parliamentary debates at the time demonstrate the Commission was established because of wide spread concern about corruption in the public sector. That concern extended to the political process, the judiciary and public sector agencies including the Police Service. The fact that the Police Service had no special place or priority is clear in the legislation itself which gives it no such special status and from the absence of any referral by Parliament to the Commission for any special priority to be given to work in this area.

As can be seen from the Commission's publication list, a copy of which is attached at Annexure 7, the Commission has striven to spread its resources across the public sector. Its objective is to do work which has relevance to the public sector as a whole.

To date, the investigative work of the Commission has produced some outstanding results, and I am confident that such success will continue. However, it must be borne in mind that Parliament provides finite resources to the Commission each year with which to undertake its work. Accordingly, priorities must be set in order to utilise those scarce resources effectively. Making such choices means that not every area of potential corruption can be investigated at the same time or in any one year.

5.5 Considering the proliferation of corruption investigation and prevention bodies and public accountability bodies in the past decade what is the proposed life span for the ICAC as a separate independent body? Is there an argument to suggest it should be merged with the Ombudsman's Office?

To properly answer this question it is necessary to understand the fundamental difference between the role of the ICAC and the role of other bodies such as the Ombudsman's Office. There may be some merit in terms of budget and scale in combining like bodies. In this respect the Commission and the PIC could be said to be like bodies. Both have Royal Commission type functions directed to investigating serious matters involving criminality or corruption. This role must affect the relationship such bodies have with those who deal with them. They are not concerned with the resolution of disputes or the satisfaction of individual grievances. They must keep complainants at arm's length in order to maintain their capacity to satisfy their fact finding

role in an objective way. Where matters upon initial investigation appear to be less serious such matters are generally referred to other agencies to deal with.

The Ombudsman's Office on the other hand could be said to deal with a different tier of problem. The role is primarily focussed on the resolution of difficulties raised by individuals. Its relationship with complainants can be much closer and because of the nature of the matters it deals with it can take a more individual approach to the needs of particular complainants who by and large have concerns which, whilst significant to them, would be classified as less serious than the investigative matters which attract the attention of the ICAC and PIC.

A merger with the Office of the Ombudsman would be inappropriate, given the quite different objectives for each under the respective Acts. A merger would mean the loss of focus on corruption in the public sector the very thing the ICAC was established for. Further, more and more overseas and interstate visitors to the ICAC are looking at the ICAC as a possible model for adoption elsewhere. Recently the United Nations has been examining our work with a view to adopting it for another country.

5.6 What have been the main problems caused to the ICAC by the establishment of PIC? What budgetary impact will this have on the ICAC?

Whilst the ICAC recommended that the function of investigating serious complaints about corruption in the New South Wales Police Service, in an enhanced form, be retained by the ICAC it has never been adamantly opposed to the establishment of a separate body. The Commission recommended in its Milloo report in 1994 that it would be preferable to set up a separate body in order that the Commission's other functions were not swamped. Therefore the Commission itself has no "problem" with the existence of the PIC, however, it accepts that it has suffered in recent times from the perception in the media in particular that the establishment of the PIC was a slight against the ICAC. I have not regarded it as such.

The ICAC's position is that the ICAC properly funded would be able to undertake the new role proposed for the PIC. What needs to be made clear is that prior to the establishment of the PIC no agency in New South Wales had the special funding or particular statutory responsibility to undertake the work proposed for it.

As to budgetary impact, the Commission's expectation is that the existence of the PIC will have no budgetary impact on its operations. That is borne out by the experience of the year 1995-96.

The Police Royal Commission and the new PIC clearly demonstrate the level of funding required to conduct such intensive investigative activity and as such any reduction in the ICAC budget would be inappropriate and counterproductive. If the Commission is to conduct investigative work in respect of the public sector its budget will need to be increased over time.

5.7 Do you consider that your public criticism of Mr David Landa and Mr Justice Wood damages the credibility of the ICAC?

I am unaware of having done so and therefore I am not clear what the question is referring to. Any comments I have made about Mr Landa or Commissioner Justice Wood have been generally in response to reported comments by them. In one case, in the context of an investigation the Commission expressed its critical view on a report prepared by Mr Landa. That view was not expressed to the media or in any public forum. The views expressed were well founded and were part and parcel of the performance by the ICAC of its proper functions. As such I can not see how such comments could be said to damage the credibility of the ICAC.

Regrettably, Mr Landa sought to attribute other motives to these views. He was incorrect and I do not consider that his response damaged the credibility of the Commission.

5.8 What is your response to the recent meeting of State and Territory leaders which resolved to review the operations of State bodies such as ICAC and the CJC, and the NCA at the national level?

The Commission understands that there was no formal resolution at that meeting to take any specific action by way of reviewing the operation of State bodies. The Commission is aware that concern was expressed by certain Premiers at the meeting of State and Territory leaders about the role of investigative bodies.

The Commission also notes that following the press reports about the meeting of State and Territory leaders the Premier of New South Wales made the following comment on ABC Radio (2BL) on 30 September 1996:

"There was concern among the Premiers at a tendency to use these powerful standing Royal Commissions and I think in New South Wales we can allay those concerns by using the Parliamentary Committee to oversight ICAC's operations."

Questions Without Notice

Mr O'FARRELL:

Q: I just wonder whether, given the Chairman's opening remarks and his addendum a moment ago, before we delve into specifics of the Commission's work, we may not cover the broad scope of the Commission, and that goes to its future and whether the Commissioner has had any discussions with the Premier following the Melbourne decision of State Premiers to review bodies like the NCA, the CJC and the ICAC. I, for one, Commissioner, do not know why the ICAC was lumbered with those two other bodies, but I wonder whether there has been any discussion

from Government to you about your continued operation or whether you have raised the matter with Government?

A: Well, can I say first that there is not any resolution of the Premiers to review at all. What happened was that, in the course of discussion, Premier Kennett raised the matter that got publicity and Premier Borbidge came in on the coat tail, as it were. The comment by our Premier was that the ICAC was different; that there was already an accountability mechanism in place.

The answer to your question specifically is yes, I have had such discussions; yes, I did raise that question. I do not feel it appropriate to go into the details of the response. Suffice it to say that the recognition by the Premier that the ICAC is, remains and will remain as an important accountability mechanism for Members of Parliament and members in the public sector is there and I have no doubts about that as a result of my discussions.

CHAIRMAN:

Q: And the Premier gave you the directive that there would be no problem with the ICAC?

A: I would prefer, Chairman, not to go into the precise words. I had a discussion with the Premier and some of his remarks are referred to in our annual report which will be tabled on Tuesday. I put a couple of specific matters that I did feel that I was able to say in that and you will see from that and something that was said also in the House by the Treasurer that I have no doubts about either the continued existence of the ICAC or the view which the Government takes of its importance in this State in ensuring, first, a perception that the State Government is concerned to ensure that we have a corruption free public sector in New South Wales; second, to convey to the community so that they can have the confidence that that is so and, third, to convey to potential investors in this State that, when they bring their money to this State, they will not be played fast and loose with, but the government processes will be honestly and impartially applied. I can understand why that might be so and hence why there is strong commitment, I believe, to the continuance of the ICAC.

The Hon. B. H. VAUGHAN:

Q: Just to return to the Telegraph editorial once again, what is your response to Auditor-General Harris' warning that the ICAC is in danger of becoming merely another element of the executive arm of government?

A: Well, as you will see from page 42 and annexure 3, I think it is, that is not what he actually said and when you read his letter what he is suggesting is not that we should not be giving advice, his suggestion is that one should remain at arm's length, and I embrace that. You may advise somebody, as any professional may, without becoming close to them. It is done both at officer and at Commissioner level and it does not seem to me that the performance of a function required by the Act has that consequence at all and that is certainly not what he said.

Mr WATKINS:

Q: Arising out of the question regarding the Telegraph's criticism and also out of your comments earlier about Whistleblowers and your criticism of both those organisations, the Telegraph and Whistleblowers, they are not alone, are they? In recent months there have been several well-respected and quite high profile anti-corruption campaigners who have criticised the direction, effectiveness and competency of the ICAC?

A: Could you be specific?

Mr WATKINS:

Q: Yes. Royal Commissioner James Wood, I think it was reported in the press in a speech overseas, suggested that the ICAC was skewed away from investigating corruption and placed too much emphasis on education and corruption prevention. In a Lateline programme on channel 2, Mr Gary Sturgess, who is one of the architects of the ICAC, suggested that it was no longer providing value for money. Mr John Hatton has been reported in the press as saying that there is something fundamentally wrong with the organisation. The Auditor-General, despite your qualifications today, certainly has warned the ICAC that it is moving into dangerous areas in giving advice and the conflict of interest that that could create. Mr O'Gorman, from the Council of Civil Liberties in Queensland, included the ICAC in his description that corruption prevention bodies were moving from the mega to the mundane. The ex New South Wales Ombudsman, Mr David Landa, has been a constant critic of the ICAC and its direction and its methods and, on top of that, we have Whistleblowers and other individuals.

Now is there not growing evidence that is widely accepted in the community that the ICAC is in fact an expensive failure; that it has drifted away from its prime focus and that it is floundering and without direction, and what responsibility do you take for that and what are you going to do to rescue the organisation?

A: One, I would say that nobody has used those words.

Mr WATKINS:

Someone just has.

A: I am sorry, until you used them, so they are your gloss on a number of matters.

Mr WATKINS:

It was a question.

A: I understand, but I have to respond to it. They are your gloss on a number of matters. I have dealt with the Auditor-General. It is inaccurate.

I have read Mr Justice Wood's speech.

Mr WATKINS:

Q: Can we come back to the Auditor-General?

A: Please let me answer the question, if you would. I have read Mr Justice Wood's speech. He does not say what you said. What he does say is that the spread of activities may have had a tendency to distract attention from pure investigation. One other thing he said, not in his prepared speech but in answer to one of the questions of which I have a tape, was that the ICAC is reticent to use its investigative powers. I have gainsaid that by the material I have put before the Committee. I have written to Mr Justice Wood about that; I have not had a reply.

Mr Landa's language was that the ICAC was the rump on the arse of an elephant. That was his language. It is immoderate and it is inaccurate and it may well be a response by somebody who had been investigated by my predecessor, but he gave no detail about that.

I am not conversant with Mr O'Gorman's matter. I did see him on one television show which Mr Sturgess was also on - the most recent one - and Mr O'Gorman made no adverse criticism of the ICAC on that and I thought, I must say, that Mr Sturgess had toned down very considerably in that interview compared with what he first said when, in February 1995, I announced that we would be giving additional emphasis to corruption prevention and education.

Mr Hatton, I concede, has said as you have said and I think will continue to say so and I just accept that we disagree.

Secondly, that, I do not think, is any consequence of or contemporaneous with my advent. If you go back to the time that Mr Temby was Commissioner and the time of the interregnum between Mr Temby and my appointment in November 1994, there were criticisms of the ICAC, not that it had lost direction but that it was not doing anything. That has now been rectified and rectified in spades, as the figures I have given you today indicate.

The answer then is that I do not accept the premise to the question. I take responsibility for what I think has been a major turnaround in the effectiveness and operative activity of the ICAC and I think, as the Premier has suggested, it continues to have an important role in the process in New South Wales and I believe it is performing that task well.

It is unfortunate that there are some uninformed criticisms. Take Mr Sturgess' earlier statements that we had gone soft and did not use our investigative powers. That is, as I have said, gainsaid again by the figures that I have included, the 331 instances of use of those powers in the past twelve months, the fairly high incidence of use of listening devices and use of other electronic surveillance as well as physical surveillance, so I do not accept the proposition and I think that is as much as I can say in answer to your question.

Mr WATKINS:

Q: Just following from that, it seems from what you are saying that all is sweet, there is nothing wrong and these people are uninformed, that their criticism is totally unreasonable. I find that very difficult to accept when there is such a weight of criticism from respected people in the New South Wales community. It is considered, careful criticism of the ICAC. To go through and excuse each one, I mean, I have found some other parts of this report very strong on excuses and we have been through this before with the Milloo inquiry, where On page 53 there is further criticism from Mr Justice Wood.

There has been in the past and there has been at this Committee questioning of the success of the ICAC regarding the Milloo inquiry into police station corruption and the abject failure of the Independent Commission Against Corruption in that area. Again, what we get is this unedifying, embarrassing list of excuses as to why the ICAC failed. I think we have four excuses.

Mr O'KEEFE:

Q: Where are they?

Mr WATKINS:

Q: Page 53, last paragraph, about the fifth line down. "The Commission never proposed to conduct a Royal Commission type investigation into the Police Service and it was not funded to do so nor was it directed by Parliament to do so. Instead the Commission hoped to achieve long term change in the Police Service by combining extensive corruption prevention work in parallel with its investigation which was primarily into the allegations of Arthur Stanley Smith. Within the confines of what was expected from that investigation it was successful".

To say that anything that inquired into police corruption was successful after we have had this revolting, terrible list of crimes before the police royal commission is a farce. The ICAC was an abject failure with Milloo and the sooner the ICAC leadership accepts that, acknowledges the problems, it can move on.

On top of that, in recent months we have had this continuing litany of complaints from well-respected corruption fighters in New South Wales. I think we are getting in to the hub of where is the ICAC going and is it effective.

Mr O'KEEFE:

Q: Is that your question?

Mr WATKINS:

A: That is my question.

Mr O'KEEFE:

Let us take the considered, careful criticism, which was your phrase. I will come back to some of the introductory remarks, which again was your paraphrase of what somebody else said, and demonstrate an attitude by you rather than the staters. I cannot believe that describing something as a flea on the arse of an elephant is considered or careful or that really it is criticism.

Secondly, Mr Justice Wood's statements all relate to matters that occurred prior to September 1994. He has had no material nor sought any material as to what we are doing, what we have done, the extent or use of our powers or anything like that since that date. So what he is talking about is historical, not my administration.

Thirdly, if you look at what has been said by what you described as well-respected authorities, certainly Mr Sturgess has said that we have failed to use our investigative powers. Again, he is dealing with history; he is not dealing with the current. Could I come to Milloo. Milloo cost, I think about \$7 million. The royal commission has cost about \$100 million.

Mr WATKINS:

Q: Is it \$100 million?

A: I think you will find that is so. Milloo resulted in some major changes in the Police Service and has brought about a number of dismissals and charges against a number of police, some of whom were convicted and some of whom are awaiting trial. Milloo gave rise to a series of recommendations. A senior office of the commission is presently examining the implementation rate of those recommendations as part of the process of monitoring. One of the recommendations, for instance, was, made in 1993, that police prosecutors should not prosecute matters in the Local Court but that that should be done by the Director of Public Prosecutions. The royal commissioner has recommended the same thing and adopted the recommendations made in Milloo.

There are a whole series of matters, and unfortunately I have not had the benefit of the final report from that officer which I do not anticipate being ready until November, but the strike rate, the success rate at the systems level in relation to police has been quite high arising out of Milloo. Certainly, it did not have the ambit that the royal commission has had. I accept that. That was a decision made long before my time. What am I doing about it? I am doing what I can and I think successfully doing that to ensure that when we do investigate something it is investigated thoroughly, using all the modern and effective methods that are lawful and necessary for the investigation. I cannot say more than that.

Mr WATKINS:

Q: In question 1 you refer to Operation Weave concerning police air wing and you say that the report is expected by the end of October. That will come next week, will it?

A: It is scheduled for Tuesday. It would have been this week if we could have made an appointment with the principal officer of the Parliament.

Mr WATKINS:

Q: Page 6 refers to the media changes at the ICAC. It is a very perceptive sentence actually at the end of the first paragraph, especially considering what happened this morning. It says:

The Commission believes that more needs to be done with the media to ensure it understands the Commission's role, responsibilities and achievements.

Perhaps so, but one of your ways of dealing with this is to contract out, is it, a \$15,000 media contract?

A: No.

Mr WATKINS:

Q: Could you just explain that?

A: The \$15,000 contract was to people who could advise us as to the way in which we may modify, expand, et cetera, our procedures for dealing with the media and how we may, through the media, seek to get our message through to the community as well. That is what that contract is concerned with.

Mr WATKINS:

Q: And that will come to a close in December and it is not going to be renewed?

A: No, it is a finite brief to develop this document on which we will then, having adopted it or modified it, act. It is not an ongoing thing, it is a contract for a specific project.

The Hon. B. H. VAUGHAN:

Q: Mr Commissioner, you mentioned a moment ago that you have recommended to your staff certain handling measures, or procedures I think is how you describe it, in relation to protected disclosures. I am not visiting the vices or virtues of your predecessors upon you, but I have been intrigued to read in the newspapers recently—and I am sure I had not read it prior to this—that certain activities of the late former Judge Yeldham had been referred to ICAC. I do not recall anything happening about that. Perhaps, like most members of society, I did not know that any report had been made about him. I was wondering—choosing him at random, let us say—whether or not some sort of protective procedure might well have been adopted by your predecessor at that time. And could it happen in your time?

A: I have reviewed that file, and I think that is not so. I am satisfied that it is not so. The matter was in fact reported to an Operations Review Committee and dealt with in the ordinary course.

The Hon. B. H. VAUGHAN:

Q: What is in the ordinary course? Is it some rumour, or do officers get together and discuss these matters?

A: There is an assessment process carried out, a report is prepared, considered and submitted whether or not the matter warrants further investigation. This matter was handled in precisely that way.

The Hon. B. H. VAUGHAN:

Q: You have reviewed the file?

A: I have reviewed the file. In fact, that matter and some other matters not germane to that were drawn to my attention shortly after I was appointed as Commissioner, and I reviewed those files specifically.

Mr O'FARRELL:

Q: I have a related question. I am concerned that within the State there is some sort of campaign against the ICAC and you personally. I think we have seen an element of that here this morning. To what extent are you confident that there are no more Yeldham-style reports floating around the ICAC that predate you and that will come out and bite you and affect the credibility of the commission in future? Have you taken any steps to review past investigations or past complaints?

A: When a new person is appointed to the role of commissioner, as with a new Parliament or a new council, there is a tendency for people who made a complaint in the past and not had their complaints dealt with in the way that they would want to renew their complaints, to seek to have you review a number of files. That occurred when I was appointed as commissioner. I looked at those files. There were a couple that I obtained additional information in relation to, needing to have that background information because I did not think the files sufficiently demonstrated that material.

They would be the areas that I would expect to give rise to possible problems. I did not see any as emerging from those. I have not reviewed all the files, naturally, that have been closed in the five years before I went to the ICAC. It is my belief that there are no such files of the kind that you say. That is my belief based upon my own knowledge of the place. But who knows what may be turned into something that may bite you? I am not aware of anything, and I do not think there is anything there, but I cannot tell you categorically that that is not so.

The Hon. B. H. VAUGHAN:

Q: Would you have any complaints about the special branch at all?

A: I do not want to go into complaints about operational matters.

CHAIRMAN:

Q: Maybe the proper word was comment, not complaints. Do you have any comments about the special branch?

A: No.

Mr O'FARRELL:

Q: Commissioner, it is easy in politics. If a government stuffs up, you blame the government. If the government changes, you blame the government whether it has stuffed up or not. It seems to me, though, that the commission does attract media publicity because of past failings of commissioners. Is there a way in which the commission can address that? You are getting a degree of adverse publicity relating to previous investigations, for instance, of the New South Wales police force. You have the case that Mr Vaughan has referred to which was raised in the royal commission. How do you insulate the commission from the actions of your predecessors in these areas?

A: I think, Mr O'Farrell, the only way you can do it is by doing your job well and trying to get the positives. Our past annual report, for instance, provoked amongst sections of the media that had been quite adverse quite positive responses: "We didn't know you were doing these things." Now, that might mean that we need to be more proactive between annual reports in relation to what we are actually doing, not in the public hearing field but in other fields as well. The public hearing fields tend to publicise themselves, although it depends upon what the time of year is and what the competition is at a given time.

Mr O'Farrell, can I say the last matter that was published that was said to be critical of the ICAC was material in the press attributed to the royal commission and in particular to Ms Bergin and in particular in relation to the Yeldham file. In the transcript that Mr Justice Wood sent to me he corrects that. Perhaps first I should read something that was said in the Daily Telegraph:

... yesterday counsel assisting, Paddy Bergin, revealed that the ICAC had failed to fully investigate a claim that Justice Yeldham was allowed to "walk" when he was caught with another man in a cubicle at Central Station in 1988.

Justice Wood said:

Now, so far as that might suggest that Ms Bergin made any such claim, then that really doesn't

accord with the facts. I have looked at the transcript, and she made no comment at all of a judgmental kind relating to the ICAC.

That correction did not get any publicity, but the wrong story, like the wrong editorial, stands. The Telegraph published my letter in refutation of the editorial, but I might say they changed it without my consent. So it is very hard to win when the media cheat.

The Hon. D. J. GAY:

Q: Commissioner, you mentioned that you undertook a review of the Yeldham file and that the ORC looked at it and it was happy. What prompted the review? Was that done as a result of comments in Parliament? Was it done at a direction from the royal commission? Or was that some action from information? What was the timetable of the review? When did it happen?

A: There were a number of files that I reviewed shortly after I went to the ICAC, files that might be regarded as matters that were sensitive.

The Hon. D. J. GAY:

Q: So you reviewed this before the—

A: Long before.

The Hon. B. H. VAUGHAN:

Q: Why would you have looked at his file or other files like his?

A: Mr Vaughan, I was a judge, he was a judge—

The Hon. B. H. VAUGHAN:

Q: But how did you know the file was there?

A: My staff told me. My staff drew it to my attention. I did not know it was there until that was done.

The Hon. B. H. VAUGHAN:

They would have said, "We've got a judge back in one of the cupboards here, a file on a judge."

CHAIRMAN:

That is not a proper question. I rule that out of order.

Mr O'KEEFE:

Well, they said they had a file on a number of things, judges and various other people—or a judge and various other people—in relation to complaints or non-complaints that had been made.

Dr MACDONALD:

Q: You say, "I was a judge, he was a judge." What were your instructions to staff in terms of the sorts of files that you wanted to have on your desk and to review?

A: There were none. There were some that were drawn to my attention because it was said that I should know about them.

Mr O'FARRELL:

Q: Which suggests, does it not, Commissioner, that there was some degree of unease within the ICAC over those particular files?

A: No, I do not think so.

Mr O'FARRELL:

If the matter had gone up to the Operations Review Committee—and I do not want to go into details—and it had been considered not worthy of investigation, surely it would simply be rotting in the archives and not brought to the attention of a new commissioner.

Mr O'KEEFE:

No. That is not the way it worked.

Mr O'FARRELL:

I look forward to a politician being appointed commissioner so we can look up all the politicians' files.

Mr O'KEEFE:

That is the very thing that you do not want to do when you have a changeover. You do not want to go back and pull particular files. You rely upon advice that is given to you.

Mr O'FARRELL:

That is my point. It was not done because of your personal interest because of the fact that you were a former judge.

Mr O'KEEFE:

No.

Mr O'FARRELL:

But it was clearly done because someone in the ICAC thought that there was some sensitivity about it, and sensitivity normally relates to the potential for it to blow up in future.

Mr O'KEEFE:

No. I think the sensitivity was that I, having been a judge, should know what was in the record about a former judge.

Dr MACDONALD:

Q: Who would make that sort of decision? That seems a strange way of dealing with files that might require review, if in fact it was on the basis that somebody in the commission thought that because you were a former judge you would have some particular interest in other judges. I mean, why would you not have an interest in previous mayors, as you have been, or in politicians?

A: You make an assumption that there were no such people in the files that I looked at, Dr Macdonald. I cannot confirm or deny that, but that is not an assumption that I think you are entitled to make.

Dr MACDONALD:

Q: It was your comment, Mr O'Keefe, "I was a judge, he was a judge". What do you mean by that statement?

A: Well, just what I said. That was the basis of thinking of the people who referred the files to me. It was not my thinking; it was somebody else's thinking. Whether I agree with it or not does not matter. The files were presented to me—a whole pile of files about various things.

The Hon. B. H. VAUGHAN:

Most of them would be mayors.

CHAIRMAN:

You do not have to comment on that, Mr O'Keefe.

Mr WATKINS:

Q: I notice you wrote to Dr Peter Macdonald—and kindly sent all members of the Committee a copy—about files. You may recall that this came up at our last meeting?

A: Yes.

Mr WATKINS:

The scary and disturbing comment—

Mr O'KEEFE:

That did not come up at the meeting. That was said subsequent to the meeting. I do not know that it was said; it was reported subsequent to the meeting.

Mr WATKINS:

Q: We can trust the newspapers to report things?

A: I do not necessarily agree with you about that.

Mr WATKINS:

Q: What sorts of files do you keep?

A: How do you mean?

Mr WATKINS:

Q: You keep some that are active—related to the complaints that are made?

A: Yes.

Mr WATKINS:

Q: What other sorts of files do you keep?

Mr O'KEEFE:

We keep files that relate to matters that have been completed, that is, a file that has been closed, so that if something arises in respect of a particular matter, we know what the course of the matter was, how it arose, what the investigation or inquiry was, how it was finalised and what the correspondence in relation to it had been. We keep other files that relate to strategic data, crime

statistics, that sort of thing, and current complaint files or section 11 reports that are not schedule reports but are the subject of a particular section 11 report, that is, differentiating a particular matter.

Mr WATKINS:

Q: You would have correspondence files? You would have one with Dr Peter Macdonald?

A: No, that goes into a general correspondence file: correspondence received and correspondence out. There may be a copy of the correspondence that I had with Dr Macdonald and with you on a PJC file, for instance, so that if one needs to look at what the correspondence with PJC members has been, it is there, but that is about all.

Mr WATKINS:

Q: Do you have officers of the commission who are investigating issues or individuals that do not come to you by way of complaint of their own initiative?

A: Yes. We have a pro-active function as well that in part arises because of an analysis of a number of complaints—and this is one example. We get a number of complaints, not one of which will be of significance standing alone but when you put them all together they may indicate a problem with or a trend in a particular agency or across a number of agencies. Then we may start a pro-active investigation in respect of the matters of which the complaints themselves may form a part, but part only. They provide data, they tell you some of the people to interview and they give you some idea of the dissatisfactions and the claims about corrupt conduct. But that might expand. One example of that which is quite public is the inquiry into the Aboriginal land councils when we had 84 or so complaints. Any one taken alone might not be of sufficient import to expend resources on it. Put them together and you find across a range of land councils throughout New South Wales there are similar complaints that are coming forward. That then generated quite major investigation in relation to land councils.

Mr WATKINS:

Q: I was asking more about areas that have not come to you. You decided to initiate a formal investigation into land councils. Are there other matters that do not come to you in a formal sense in which you will initiate a complaint?

A: There can be.

Mr WATKINS:

There are people who say, "We will push the investigation down that track. That person looks a bit shady. We will investigate that person."

Mr O'KEEFE:

It is rare that it is a person. That sort of work tends to be more concerned with systems.

Mr WATKINS:

Q: But it does happen with individuals? The ICAC does initiate confidential—it is always confidential—investigations into individual parties unrelated to a complaint?

A: It has not happened while I have been there. I am not saying it could not happen, but it has not happened while I have been there. In the allocation of resources we are really trying to find generic things, things that can be of value across the board so that we get better value for money. One person, even a high official, may not produce a worthwhile result even though it might be spectacular, but in terms of correcting abuse within systems, it is not of significance. It would be rare that we would do that; I do not say never. It has not happened in my time.

The Hon. D. J. GAY:

Q: Commissioner Temby, during his time, had a philosophy that the commission would jump from one public sector to another and never indicate where it was going to do a pro-active search. Are you still operating under that philosophy; that you might be doing local government this week and ports and water next year?

A: Next year or next week?

The Hon. D. J. GAY:

Yes.

Mr O'KEEFE:

Yes, and it might not just be one. It depends upon the availability of resources.

The Hon. D. J. GAY:

Q: Do you act on information or do you just act randomly so that the public sector does not know where you are going to go next?

A: We do act on information but our other activities are not random; they are directed by our analysis of information, analysis of possibilities, and then we do an assessment of the potential value of expending particular resources on that entity. So it is not random; it is informed rather than random.

The Hon. D. J. GAY:

Q: It has changed slightly from Commissioner Temby?

A: I do not know that Commissioner Temby was ever just random, saying, "I will come in on a Monday morning and pull out a particular department and have a look at that."

The Hon. D. J. GAY:

That was certainly the impression Mr Temby gave us.

Mr O'KEEFE:

If that was so, it is not that way now. I cannot comment whether that was so; I just do not know.

The Hon. B. H. VAUGHAN:

Q: Are most complaints signed or unsigned?

A: We get complaints by telephone, by a personal call and by correspondence. The percentage of anonymous complaints is under 50 per cent; it is 35 per cent.

The Hon. B. H. VAUGHAN:

Q: If they are anonymous are they evaluated equally, as long as they are not sheer ratbaggery? Someone has to decide whether it is sheer ratbaggery, whether you know the complainant or not?

A: Yes. There is this problem. Firstly, they are not rejected because they are anonymous. The source of the complaint may in some cases be material to the evaluation. Mostly you have to determine the quality of the material that you are given and the probability of it being correct. Then you have to determine whether you follow up to see whether it is correct. Where you have an anonymous complaint it is difficult, not always impossible, because you sometimes get an anonymous complaint where the complainant will contact you again and cease to be anonymous. But as long as anonymity is maintained you cannot get additional information from that source, so you are a bit restricted in follow-up, particularly if the complaint is very general.

The Hon. B. H. VAUGHAN:

Q: Say a complaint was about a Cabinet Minister or an archbishop. Would that be put immediately on your desk by somebody and then you would decide whether or not to progress?

A: No. If ICAC receives correspondence from a Minister, a member of Parliament, a departmental head or an agency head, that comes to me so I know that it has come in.

The Hon. B. H. VAUGHAN:

Q: That is if it is from one of those persons. But what if it is about one of those persons?

A: If it is about one of those it is normally dealt with in the usual course. I do not see those until some question arises as to whether or not an exercise of formal powers should be authorised. When the exercise of formal powers is sought not only do I see that material but I see follow-up material. In initial inquiries I see an analysis of the situation, I see what is likely to be involved in the investigation and I have a recommendation which generally comes from the legal branch, from the solicitor for the commission. A number of people have viewed it and there are recommendations that I then consider. But in the main that would be when I would first learn about it, unless somebody rang in and said something was very urgent. Then it might come to me.

The Hon. B. H. VAUGHAN:

Q: Anonymous or otherwise?

A: Anonymous or otherwise would not determine the course of it in relation to it being brought to my attention.

Dr MACDONALD:

Q: As I understand it, the ICAC in a sense is a standing royal commission?

A: Yes.

Dr MACDONALD:

Q: In answer to the question from Mr Watkins you seemed to indicate that most of your investigations would be in response to a complaint. How much do you act on this information that you may glean through sting operations or through pro-active measures whereby you can go out and actually ferret around and seek out corruption rather than wait for a complaint? You stand in the shadows, to some extent, of the royal commission in some of its activities. Perhaps it has some advantages over ICAC that you would like to talk about. Are there some lessons from the royal commission that you would like to adopt in ICAC so that you can be more pro-active and go and seek out corruption?

A: But we are doing that, Dr Macdonald.

Dr MACDONALD:

Q: Can you tell me about it?

A: No, I cannot.

Dr MACDONALD:

Q: Or is this confidential?

A: If I allocate \$1 million to a particular investigation and make it public before the television, before the press, et cetera, I have wasted \$1 million.

Dr MACDONALD:

Q: I am not requesting that information; I am merely asking in a more general sense whether you would like to talk about some of those activities that are not in response to a specific complaint where you are undertaking more systemic investigation—perhaps even using surveillance or under-cover activity. Is this something you are doing and are you in a position to talk about it to the Committee?

A: We are doing it and I really do not think it would be appropriate to go into the detail of it. Suffice it to say, surveillance, under-cover activity, including electronic surveillance, are in use and on a pro-active basis. Unless we have some reason for doing it, we do not just do it on a random basis. It is very expensive to mount those operations—extremely expensive. If you are going to mount surveillance you need at least two teams, probably three, which means that we have to buy in a team from the Australian Federal Police or somebody like that to augment our existing two teams. That gives you around-the-clock surveillance.

To do electronic surveillance, once you have got your warrants from a Federal judge or a State judge, depending on whether it is under the Telecommunications Interception Act, which is a Federal Act, or the Listening Devices Act, which is a State Act, then you have to have people who are monitoring those and again it is a pretty labour-intensive activity and so very expensive. Before we go into that, I require that the officers who want to engage in this submit to me a plan of the investigation, what the resources involved will be, how many people, how long, and how much money. This did not happen before I came, but it happens now. I then have to say, "If that is going to cost, say, \$1 million, do I spend that \$1 million on one thing, or do I spend four lots of \$250,000 perhaps on other things? Or is there some readjustment where they can all be done, is that to be done at the expense of public hearings, and they are delayed until the results of those matters are known?" Those are the management judgments that have to be made.

Dr MACDONALD:

Q: In response, are you indicating to the Committee that you lack resources at ICAC? Secondly, are you possibly missing out on significant areas of corruption because you cannot undertake these trawling expeditions that might be expensive and may not always bring rewards? I would be concerned at you having to set such tight priorities that you may be unable to go out on those broader expeditions to try to find if there is corruption where you may not know it exists.

A: Well, it is right to say that the more you have the more you can do. But, you must be careful that you are not just throwing buckets of money at something that might not work. There is a discipline that is imposed by a tight budget, and that has advantages; it makes you think what you really want to do and what your priorities should be. There are times when it would be terrific to have that spare million dollars, but if it is not there and we are to fit within a budgetary framework in the State, then provided we know ahead what we are doing and what we have got, we can cut our cloth accordingly. There may well be things that we cannot do that might be successful if we had more money to do it; I cannot tell you that though. In the allocation of priorities a great deal of soul searching goes on. That probably refines both the investigative method and our procedures within the commission.

CHAIRMAN:

Mr O'Keefe, if you had \$100 million, as the royal commission has, maybe you could move big mountains.

Mr O'KEEFE:

I hope I would not get it all at once, Chairman; it would be an embarrassment of riches. I do not want to appear as if I am putting a pitch for even more money, because that is not my function here today. But, it is right to say that the more you have the more you can do and you can do it without waste provided you organise well. The reorganisation that has been undertaken since I went there, I think pretty much ensures that we do not waste money. Money is really carefully counted there.

The Hon. D. J. GAY:

Q: Commissioner, referring to budget constraints you said, "It did not happen before I came, but it happens now." Can you elaborate on that?

A: If you look at budgets in the past, in dollar terms of that time one was looking at \$15 million and the like. We are now looking at \$13 million—I know that is a \$2 million difference—which, in effect, because of the time frame is probably closer to \$3.5 million difference. You can judge that by reference to staff numbers. We have at the present time 134.8 people on our staff—our ceiling is 140—which is our average for the year. My determination is that we cannot afford to have 140 on the money that we have. If you go back the ceiling was 156, and that is nearly 20 people more. If they are used to advantage then they can do a lot more. Compare that with the royal commission—200 focused on one agency.

However, since March-April 1995 when the reorganisation was biting, we are undoubtedly producing more for each officer. The level of work output for each officer has risen significantly, which could give rise to a long-term problem about burn-out, but that is not a problem at the moment. You have to have a bit of light and shade in people's lives so that they are not on the flat-out all the time. I think we are probably producing more than \$13 million worth, if you were

to go back four years with a different organisation. Remember that Mr Temby had to set up and then he had the luxury of being able to add segments as he wanted. I do not have that, and I think that can also lead to inefficiencies. I have tried to eliminate that in the organisation of the place. Does that deal with your question?

The Hon. D. J. GAY:

Yes.

Mr WATKINS:

Referring to that, surely the ICAC should consider things other than looking at its budget. First is the increased efficiency that has come to all bodies in that time; and second is the loss—eventually if it has not happened already—of about 11 per cent of your work related to police, which was referred to last time, going to the PIC. Over the past decade there has been an expansion of watchdog committees. A range of committees has been set up, which may suggest that the ICAC need not have a continuing expanding budget. I liked what you said earlier: that if you have a limited budget you can work efficiently within it.

Mr O'KEEFE:

There is a limit, a level, which if you go beyond it you impair that efficiency; but assume you have a threshold that you can maintain. In relation to other watchdog bodies, the Police Integrity Commission, which will be up and running on 1 January 1997, will take some of the work that we did before. The 11 per cent is numerically correct, but in terms of actual effort I do not think it is a fair representation. I will not get into that, we have talked about it before. Also it has an interactive effect. We will need to service, in a number of respects, material that comes through the PIC, particularly corruption prevention, for which it is not geared and its statute does not contemplate that it will be geared.

Secondly, the cross-fertilisation of intelligence, that is, material that involves police but that involves other public officials as well, is not an everyday occurrence. It occurs reasonably regularly, comes to us and requires some liaison. If you look at the net and at the way in which we have kept a tight budget and expended our money in the financial year just finished, I do not think one can draw the inference that the existence of the other bodies, including the PIC, should lead to any downturn in our budget.

Mr WATKINS:

I do not think it should emanate from this meeting that you are arguing for an increase in your budget, or that the Committee would consider supporting such a request.

The Hon. D. J. GAY:

Q: Why not put out a press release?

Mr O'FARRELL:

I certainly would not.

CHAIRMAN:

You have already said that that is not what you are aiming at; you are aiming at telling us how you work officially within your budget.

Mr O'KEEFE:

Yes.

Mr WATKINS:

Earlier you were talking about investigation.

Mr O'KEEFE:

Yes.

Mr WATKINS:

Q: On 13 November you came as a guest speaker to one of the men's support groups of Reverend the Hon. F. J. Nile?

A: Yes.

Mr WATKINS:

Q: The Sydney Morning Herald reported that you launched a scathing attack on critics of the ICAC, especially those who were suggesting that the ICAC had gone soft on investigation. I was relieved to receive your letter, the same day, saying that you were not talking about me. How does your assertion that the ICAC has not gone soft on investigation stand against evidence you gave last time in which you said that exposure is important, investigation is important, but the long-term importance is to be found in corruption prevention systems and a change in culture through education? Are you not moving into a position where you are stressing education and corruption prevention over the requirement for corruption investigation?

A: No.

Mr WATKINS:

Q: The hard-nosed corruption prevention?

A: No, is the answer to that question. We have just as many investigators now as we had during Mr Temby's time. What we have done is take up the \$3 million that was unspent in the year that I went there, and used that in the corruption prevention and education section. We are not down on investigators; indeed we are now using methods of investigation, particularly electronic surveillance, that was not well regarded by my predecessor and in respect of which there was a tendency not to use it.

Mr WATKINS:

There is a higher percentage—

Mr O'KEEFE:

We are doing more investigations now than at any time during the course of the commission's history.

Mr WATKINS:

Q: Has less money been set aside for them?

A: No, that is not right.

Mr WATKINS:

Q: Has the unexpended \$3 million been pushed into education and prevention rather than investigation?

A: Yes, but it was not expended on investigations, that is my point.

Mr WATKINS:

Q: Should it have been?

A: I was not there, I do not know. There were 52 investigators then and there are 54 now.

Mr WATKINS:

Q: You and others say that the ICAC could do more with more money; presumably investigate corruption. Surely you are pointing the commission in a different direction, away from that, by having that pot of money and spending it on education rather than investigation. Earlier I debated

with you the prime function of the ICAC. I see it quite clearly as investigating corruption; you see it on par with education and corruption prevention. I suppose that debate could go on. If resources were available surely the sharp end of the investigation would be where it needs to be spent?

- A:** The sharp end of investigation is to be seen in the revelation of the royal commission. Yet, what is now being done is that there are being put in place—and we are assisting to put in place with the royal commission, and will do it with the PIC—systems of corruption prevention and educative systems that will take over from that sharp end. You cannot maintain that level of expenditure on investigation indefinitely. There is a level at which you fix from your budget. I have regarded the statute as saying that I, or the commission, must do three things: investigate, prevent corruption, and educate. I have allocated resources amongst those.

The comparison is that there are 54 in the investigation unit, and 29 in the corruption prevention and education unit. That balance, when you have regard to the fact that investigation itself informs you as to some of the corruption prevention matters that you should be looking at, seems to me to be an appropriate one. It is a judgment I have made, and I know you do not agree. I go by the statute. On previous occasions we went through sections 13(1)(a) to (c) and then (d) to (k) of the Independent Commission Against Corruption Act. I dealt with that in some answers I gave to you and I adhere to what I said then.

CHAIRMAN:

- Q:** You see the education and corruption prevention component as a change in culture about corruption—to get better systems where corruption can be detected within government agencies—and not just about educating kids in schools. It is broader?

- A:** I do, Chairman. What is more, the view that we have taken, and which has been pressed since I became commissioner, is one that is accepted throughout the world. They come here to learn from us because they recognise that that is the long term.

Mr O'FARRELL:

- Q:** Nevertheless, Commissioner, when the Government is demanding of you greater efficiencies and smaller budgets, when the Audit Office of New South Wales and the Office of the Ombudsman is increasing in budget, there must be a tendency amongst your officers to opt for the work that is more efficient, more effective and less costly. Earlier you said that surveillance operations are time consuming and costly and you have to bind resources from the Federal police and others. I accept that you weigh the responsibilities given to you by the Independent Commission Against Corruption Act equally, but there must be people in your organisation who, when they are drafting budgets and proposals, put to you suggestions that involve less expenditure?

- A:** You have not been to our budget meetings. The fight that goes on in estimates committees is mirrored in what happens in our budget discussions, number one. Number two, there is no

question but that investigators see themselves as the creme de la creme and as the people who get the most publicity and the most exciting work. They get the most publicity—whether it is the most exciting I do not know. Sitting in a car all night watching nothing happen, as you may do on a number of nights, is not very exciting. But you may find, for instance, in our education section—which happens presently to be wholly female—those officers there are absolutely enthralled by the work that they are doing, and it is jolly good work. I do not think anybody says, "We will opt for what is easy." Officers in the commission do not decide what they will do. That is a decision that is made by senior management—ultimately by me—as to the allocation of resources. People do not say, "I think I will not do an investigation; I will do a corruption prevention today." That is not the way it works.

The Hon. D. J. GAY:

Q: Have Professor Bob Walker and his team on the Council on the Cost of Government investigated the Independent Commission Against Corruption?

Mr O'FARRELL:

Q: If so, when are you closing?

A: If he has been down, I did not meet him. My only meeting with Professor Walker was at a meeting of CEOs and DGs at Level 41 of the Governor Macquarie Tower last week. But it is right to say that if you close down all government it is much cheaper.

The Hon. D. J. GAY:

Q: Has the Council on the Cost of Government reviewed your operations?

A: No. And I think one of the reasons might be that if you look at us we are such a small budget item that we would be fairly low down on anybody's list.

Mr WATKINS:

I wish to ask some questions about pecuniary interest and code of conduct.

Mr O'KEEFE:

I have just been told by Ms Brodie—and I had forgotten about this—that we are affected by some of the recommendations, like the nature of the computer systems that the public sector can utilise. It so happens, however, that before Professor Walker's recommendation came out we had in fact chosen one of the systems that he was recommending. We had come to that conclusion ourselves, for our own use.

CHAIRMAN:

At page 50 of your report you invite the Committee to consider nominating two or three of its members to participate, with the approval of the commission's senior management staff, in the development of performance indicators. This Committee proposes that next year, commencing in March, it will carry out a general inquiry into the ICAC Act to cover the 10 years that the ICAC has been in existence and to report back to the Parliament in accordance with the Act. The Committee would like to take you up on that offer and to appoint those people some time next year.

Mr O'KEEFE:

We are having our meetings in January, towards the end of January, and I think it will be necessary to set aside two days for that purpose. I can let you have actual dates; I do not carry them in my head.

CHAIRMAN:

I will ask one of your staff to contact the project officer to advise the Committee of the dates.

Mr O'KEEFE:

The theory is that there is no point in our determining a series of criteria for judgment unless the stakeholders accept those. And having got what the criteria for judgment are, we can quickly assess whether we have achieved in accordance with that. If we do not agree at least we will define what the basis of the disagreement is.

CHAIRMAN:

The Committee would also be looking forward to your staff working with it during that period so that a constructive report can be delivered to the Parliament.

Mr O'KEEFE:

I have asked as many staff as possible to take their leave during January so that we have a period when most of Government is closed down, when we have people on leave, so that they are not utilising time ineffectively. So we will need to liaise about that.

CHAIRMAN:

We would be looking to do it in about March, April or May.

Mr O'KEEFE:

March, April or May is not a problem. No-one has holidays for that long.

Mr WATKINS:

Q: You are meeting to discuss those issues in January?

A: Yes.

Mr WATKINS:

Q: Would it not be better to have the parliamentary representatives selected today?

A: Yes, if we could, so that we can then actually arrange dates that are mutually convenient. There is some flexibility about those dates.

CHAIRMAN:

The Committee will advise your office this afternoon as to which two or three members of the Committee—

Mr O'KEEFE:

I would prefer three. And I hope that you might be one of them.

CHAIRMAN:

It is a matter for my colleagues.

Mr WATKINS:

Q: Going back to the Yeldham matter, after receiving the Yeldham file and reviewing it, what did you do about the Yeldham file? What decision did you make about what you should do?

A: I decided, on the material in the file, that the process that had been engaged in was an appropriate process and that the file should remain closed as the Operations Review Committee had resolved.

Mr WATKINS:

Q: So you decided not to do anything?

A: Not to do anything further, not to reopen it or further investigate it. There was no indication for that on the file.

Mr WATKINS:

Q: Are you sorry now that you did not take it further?

A: The problem with that question is this: hindsight has 20/20 vision. I, looking prospectively, can only make judgments on the material available. The material available indicated that the judgment that had been made by my predecessor and the Operations Review Committee was well justified by the material in the file. Indeed, it was hard to come to another conclusion. If I made a different decision in respect of that, I am not sure what would have happened. As a matter of policy it is undesirable, unless there are very special factors, to reactivate files that have been dealt with properly and closed. The answer is: I think due process was applied by my predecessor. I reviewed that, was satisfied that there was due process, and that is the end of it.

Mr WATKINS:

And that those special factors were not—

Mr O'KEEFE:

There was no indication of any special factors then.

Mr WATKINS:

Q: Did you believe there was potential for corruption or blackmail in the Yeldham case?

A: No. He was no longer a judge.

Mr WATKINS:

His no longer being a judge does not preclude blackmail or corruption.

Mr O'KEEFE:

He was not a public official. He was a private individual by that time. I am not concerned about the sexual habits of private individuals. Nor am I concerned about the sexual habits of public individuals except to the extent that they may adversely impact on their performance of public duties.

Mr WATKINS:

Q: So you decided there was not a potential for corruption or blackmail?

A: I did. I am sorry, I decided that the decision which had been made was a correct decision on the material available and that nothing further should be done.

Mr WATKINS:

Earlier you spoke about him being a brother judge. Did that—

Mr O'KEEFE:

He was not a judge at the time that I was but he had been a judge and I had been a judge.

Mr WATKINS:

Q: But you said earlier today "both being judges". Did that impact on your decision?

A: No.

Mr WATKINS:

Q: Why did you say it?

A: Because it was thought by my staff that I should know that. It was their consideration, not mine.

Mr WATKINS:

Q: Which staff member made that decision?

A: I am not going to say that. That is an operational matter and I do not reveal individual members of the commission or who makes representations to me.

Mr WATKINS:

Q: How would that be an operational matter?

A: It was in the operation of the commission. I really do not propose to reveal individuals. You will be asking me next which investigators we have on particular investigations.

The Hon. B. H. VAUGHAN:

Q: Have you had a look at that file again in recent times?

A: No.

The Hon. B. H. VAUGHAN:

Q: Would that file have indicated to you whether the complaint—presumably there was a complaint—was a written one? Was it a signed one or was it an oral one?

A: Quite frankly, I cannot remember whether it was written or by phone. I really cannot actually remember whether it was a complaint or whether it was information. There are various categories. I have not looked at that file since—

Mr WATKINS:

Q: That amazes me. Did you not think to have another look at that file after Mr Justice Yeldham's suicide?

A: Indeed not. The file was sent to the royal commission months and months—probably more than a year ago.

Mr WATKINS:

Q: So you no longer have the file at the ICAC?

A: We have only a photocopy of the file, but the matter was then a matter for the royal commission.

Mr WATKINS:

So you have a photocopy of the file at the ICAC. You did not look at the photocopy of the file—

Mr O'KEEFE:

I certainly did not.

CHAIRMAN:

Mr O'Keefe, I refer you to page 31 of the responses to questions on notice.

Mr O'KEEFE:

I thought we had passed that on the last occasion.

The Hon. I. M. MACDONALD:

Q: I want to go back to the Yeldham matter. I have listened to your responses to questions by Mr Watkins and Mr Vaughan. I would just like to ask you three or four questions which, if you are unable to answer at this point, perhaps you could reply in writing to the Committee at some point. I would like to know, going back to one of the questions asked earlier, whether the complaint was written or not. Did the commission interview the complainant at the time? Did it interview Justice Yeldham? Did it contact police, special branch, in relation to the matters that had been raised with it? Did it speak, if it was necessary, to transit police? Was any investigation done whatsoever beyond it being a paper shuffle in the ORC? To your knowledge have there

been other similar complaints brought before the ICAC dealing with other matters and other individuals?

A: I am sorry, that last question I would need to have specified: other individuals and other matters. We get hundreds of them.

The Hon. I. M. MACDONALD:

Q: They relate to the issue of paedophilia?

A: Of Justice Yeldham?

The Hon. I. M. MACDONALD:

They relate to the issue of paedophilia.

Mr O'KEEFE:

But in relation to Justice Yeldham?

The Hon. I. M. MACDONALD:

Q: No, any other individuals of a similar nature who had been dealt with by the commission when complaints had been received?

A: I think I follow that.

The Hon. I. M. MACDONALD:

Q: What sort of investigation has the commission done of those sorts of matters? What I am getting at is: what was the nature of the actual investigation—from the files of course—that was done at the time and was there any real endeavour to find out about the matters that have been raised with the commission?

A: I will take that on notice, but I am reminded that the file relating to the particular matter has been tendered to the royal commission. It is a public document now, so that is readily available and, to that extent, its contents.

The Hon. I. M. MACDONALD:

Q: If it is readily available could you photocopy it and send Committee members a copy?

A: I will get hold of the actual exhibit, get a copy and send it to you, if you like, or send it to Mr Emery and he can distribute it.

The Hon. I. M. MACDONALD:

Q: Does that file cover the issues I am speaking about?

A: It may not cover the last matters, the more general matters that you asked about.

The Hon. I. M. MACDONALD:

Q: But it would note whether there was an actual interview process put in motion?

A: Yes, it should. I cannot recall the detail but it should do so. I am told by Mr Feneley that it does indicate that.

Mr WATKINS:

Q: What sort of issues do you give advice on?

A: I have actually answered this in response to the written questions. I think it is on page 42. At tab 3 there is a copy of the Auditor-General's letter to me. The sort of things we advise on are various—the process whereby contracts for various Olympic projects are let, what the procedures should be, and then checking that that is what they have been. The construction of the eastern freeway under Taylor Square was one that I can recall. There was a matter concerning the extension of the underground railway to Bondi. There are many matters that come from local government, particularly in the country, where there are a limited number of potential tenderers in an expression of interest or tendering process. Let me think of another one.

Mr WATKINS:

Q: That might do. Who makes these references to you? Let us talk about State Government agencies. Is it the director-general of the department or is it the Minister?

A: It may be the Minister; it may be the director-general; it may be an officer who is in charge of contracts. It varies according to the nature of the matter.

Mr WATKINS:

Q: So sometimes at a relatively junior level—an officer involved in contracts? So it may not come from the director-general or the Minister.

A: That is right; it may not. But if it is a very big contract, a matter of some magnitude, it will generally be somebody fairly senior, not necessarily the director-general, but it may be the director-general.

Mr WATKINS:

Q: And it is more common in certain departments than in others?

A: Yes, it is.

Mr WATKINS:

Q: How long does it take to turn the advice around?

A: It depends. It can be within of a couple of days if the matter is very urgent. It may be two or three weeks but it is generally in the lower order of that time.

Mr WATKINS:

Q: In that 3 August article, which may or may not be accurate, you are quoted as saying, "Temby didn't agree with advisory work but I do." Why do you think Mr Temby did not want to take the ICAC down that path and why are you willing to?

A: I have no idea about Mr Temby; I have not asked him about that. Why do I? I do it because that is what the Act says—section 13(1)(f).

Mr O'FARRELL:

Q: It is true though that the commission under Temby gave advice on things such as the airport rail link and the Woolloomooloo Bay redevelopment. I think it got itself involved in the Walsh Bay redevelopment. So there really is not much of a difference between the role of the commission—

A: I think it is a question of degree.

Mr WATKINS:

Q: Your willingness to do the work could not be described as a wish to simply expand the ICAC's activity into new and creative areas? We talked last time about the ICAC expanding its work into new areas.

A: We talked about it expanding its work. I am not sure about new areas, this is an area that has always been there. I think there is more of it and I think, that is partly a function of the changed way in which governments are doing things today. They are using the BOOT, build-own-operate-transfer and that type of arrangement much more than was so even 10 years ago and probably even five years ago. Because of that you have the potential for problems if you do not get the process right from the very beginning.

Mr WATKINS:

It is reported that the Auditor-General makes the criticism that this development does risk turning the ICAC into part of the Executive. In his letter of 8 August he stands by this comment.

Mr O'KEEFE:

No. I have his speech. He does not mention the ICAC and he does not mention this. In his letter of 8 August he said, "It is not usually appropriate to reject invitations to provide government with anticipatory advice especially when that advice could avoid an error which would be the subject of subsequent criticism. This office could inadvertently provide erroneous anticipatory advice but the office could also just as easily erroneously approve an action after the event."

Mr WATKINS:

That is where the Auditor-General talks about the problem of conflict of interest, giving advice that may turn out later to be poor advice, but in the last paragraph of his letter he said, "The rest of the views ascribed to me in the story"—that is the Sydney Morning Herald of 3 August—"are consistent with my views." One of the views presented in the story is that there is criticism that the ICAC, by going down that path, is becoming part of the Executive, too close to the Executive. Other than conflict, that is the other part of his criticism which he stands by.

Mr O'KEEFE:

I must say I did not read the second paragraph that way, but I will accept it for the purposes of the question.

Mr WATKINS:

Q: Is that not a legitimate concern that government should be aware of or very concerned about, and certainly that we, as the parliamentary committee, should be concerned about?

A: It is certainly something that we, as the Independent Commission Against Corruption, should be aware of and, being aware of it, should guard against. But, since the Parliament has said, as it has in section 13(1)(f), that we should give this advice, then in appropriate cases we should do so. The question is to make sure that you do not get too close, that you stay at arms-length even though giving advice. And you can do that professionally.

Mr WATKINS:

Q: You feel as though you can do that?

A: I think so. I spent 36 years at the bar and you spend your time advising people, including in long cases. But the essence of successful professionalism is to remain sufficiently remote from the

client not to allow the client to overbear you.

Mr WATKINS:

Q: It does have other throw-offs, though. It would tend to slow decision making, and does it not interfere with the legitimate and necessary principle of ministerial independence and ministerial responsibility by having this organisation out there that will vet its decisions? Is that not bad for government?

A: No. Indeed, far from slowing down government, it should, if done in a timely manner, speed things up so that you do not get to the end of the process and then somebody calls foul and everything is on hold while there is a big inquiry about it. That is the first part of the question. The second part of the question is that ministerial responsibility includes responsibility to get it right and, if you have got the principles right from the outset, you have got a greater hope of getting it right. That is the view I have taken.

Mr WATKINS:

I disagree with you.

Mr O'KEEFE:

You may, but my responsibility is under the Act and I see it that way. If the Parliament does not want advice to be given then section 13(1)(f) can be taken out of the Act. Let me go back. That means that if you take that section out you do not give them any advice. You sit back like a funnel web spider and wait until they have done something and then you say "gotcha" and you jump out and bite them. It does not seem to me a sensible way of using resources.

Mr WATKINS:

Q: In the Ombudsman's annual report Irene Moss makes reference to the proliferation of watchdogs in her introductory comments. She gives a fascinating table of about 11 or 15 different watchdog bodies that have been constituted since the 1970s. She said, "A major difficulty with the further proliferation of watchdog accountability bodies arises out of the fact that jurisdictions are seldom clear cut and discrete. The overlapping jurisdiction that results can lead to the problem of duplication, conflict and matters falling between the cracks, not to mention overcomplexity and confusion to the public." Later she said, "Additional benefits of empowering, refocusing or restructuring existing bodies over the establishment of new bodies include reduced establishment costs through use of existing infrastructure, and reduced operating costs due to economies of scale and maximising use of existing corporate service resources. Do you agree with her concerns about the proliferation of watchdog bodies?"

A: I think there can be too many watchdog bodies that fragment functions. In so far as the principal bodies are concerned—the ICAC, the Ombudsman and the Auditor-General—our administrative

arrangements ensure that we do not have duplication. Most of the others, as I recall them from the table, do not impact upon the sort of work that we do. They may impact upon the sort of work that the Ombudsman does in its complaint-handling function. Medical complaints and things like that are an example. I am trying to envisage the table. I think that is about all I can say.

Mr WATKINS:

Q: This Committee is going to look at the Independent Commission Against Corruption Act next year. It is coming towards its eighth or ninth year of operation. Is it the right time to consider the future existence of the ICAC?

A: This is its seventh year of operation.

Mr WATKINS:

Q: Would New South Wales taxpayers and citizens be better served by the ICAC merging with the Ombudsman?

A: I have dealt with that at page 54 and 55, question 27. I assumed it was your question, but I may be wrong.

Mr WATKINS:

You see the continuing role of two separate organisations.

Mr O'KEEFE:

As far as the Ombudsman and the ICAC is concerned, yes I do. I do not think the Ombudsman is saying to the contrary of that in what she said.

6. CODE OF CONDUCT AND COMMISSIONER'S PECUNIARY INTERESTS

6.1 Could the Commission provide the Code of Conduct that applies to Commission employees? To whom does it apply?

A copy of the current code of conduct is attached at Annexure 6. See also Appendix 13 to 1994/95 Report.

6.2 Will the Commissioner provide a copy of his pecuniary interests register to the Committee?

The Commission maintains a gift register under which staff are required to declare any gift they receive in the course of their duties. I referred to that when I last gave evidence before the Committee. A copy of the gifts register will be made available for inspection by Committee members at the hearing.

I do not maintain a pecuniary interest register at the Commission. Like all Commission staff, however, if a potential conflict of interest arises in respect of any matter I am to deal with in the course of my duties as Commissioner of the ICAC I declare that potential conflict, discuss the situation with Senior Management and act appropriately.

Questions Without Notice

Dr MACDONALD:

Q: I do not feel under any obligation, except to ask a follow-up question. Do you have an association with any of the politicians or political figures who were involved in some of the allegations relating to the St Ives Bus Services Pty Ltd issue?

A: No, not that I am aware of. There may have been some members on the council that I knew as councillors. When I was president of the Local Government Association I knew most councillors in New South Wales but had no association of friendship or anything like that.

Mr WATKINS:

Q: Or association through other groups of which you and they may have been members?

Mr O'FARRELL:

Q: How many members are there of the National Trust of Australia?

A: It was the National Trust that made me think about that. We have 25,000 members in New South Wales, but I do not know them all.

Mr WATKINS:

Q: Do you have an association through one of the religious groups of which you are a member?

A: With about three million Catholics in this State?

Mr WATKINS:

I would not call the Catholic Church a group.

Mr O'KEEFE:

I would, and I revealed that at the last meeting in answer to a question from you, Mr Watkins, on a schedule.

Mr WATKINS:

Q: You are involved in specific religious organisations?

A: Am I?

Mr WATKINS:

Q: Are you a member of a specific religious organisation?

A: I am; and the answer to that question is that I do not have any conflict of interest. There is nobody who is a particular friend or associate of mine in any sense that I believe to have been involved in that matter at all.

Mr WATKINS:

Q: Would membership of one of those organisations, if it were shared by one of those other parties, put you in a position of conflict?

A: No.

Mr WATKINS:

Q: Would that put you in a position of conflict?

A: I do not think so. It is actually known that in political parties, which might be regarded as a group, you may hate the guts of somebody in the same party. So, I do not think that the membership of a group makes it a fact that you are a friend of somebody and are going to do them a favour or disfavour.

Mr WATKINS:

Q: The serious part of my question is—and I am not alleging this—does it put you in a position of conflict of interest?

A: No. I am absolutely unaware of any such conflict and it has never been put to me until Dr Macdonald sidled up to it.

Mr WATKINS:

Q: If you were a member of the Labor Party and allegations about senior members of the Labor Party came to you through the ICAC, would you be in a position where you would have to preclude yourself from dealing with them?

A: It may depend on the issue, I cannot answer that. It would depend entirely on the issue.

CHAIRMAN:

Q: Would it not depend on how direct the issue was?

A: The other problem is that if you are a member of a party—say the Labor Party—and a non-Labor person, or a coalition member, is the subject of a complaint, should you disqualify yourself on the grounds that you might be biased against that person? Temby did not do that in respect of the Greiner matter and no-one raised that question.

Mr WATKINS:

He was no longer a member of Parliament.

Mr O'KEEFE:

He had been. It is a mere formality, to use your words; you cease to be a member on day one and may hear something on day two.

Mr WATKINS:

Q: The issue of political allegiance or membership of employees of the commission was raised in these papers. A body like the commission has to consider that issue very carefully, does it not?

A: It does.

Mr WATKINS:

Q: Are you happy with the rules that apply to political membership?

A: Yes, I am.

Mr WATKINS:

Q: Could you outline that?

Mr O'FARRELL:

Q: It is the Temby doctrine, is it not? It is the doctrine that Mr Temby put to this Committee every time he appeared. The doctrine was that people's political affiliation should not preclude them from certain activities.

CHAIRMAN:

Mr Temby did put that doctrine, but not every time he appeared.

Mr O'KEEFE:

I did not know that it was a Temby doctrine; I thought it was a doctrine of good sense.

Mr O'FARRELL:

Q: Even though it was called the Temby doctrine. Earlier this year the Bulletin ran a number of articles written by Graham Richardson which go to the heart of this issue. On 18 June the commission's solicitor responded, in part. The articles went to the heart of whether your organisation allows its members to be members of political parties; I suppose, whether they are eligible to be members of political parties. I would like to know your response to that point. Did you see Mr Richardson's article on 2 July in which he purports to respond to Mr Feneley's letter of 18 June?

A: I did.

Mr O'FARRELL:

Q: Do you agree with his conclusions?

A: I cannot remember his conclusions.

Mr O'FARRELL:

Q: I am happy to give the document to you. Does the letter that the assessment manager signed on 28 March 1996 actually support former Senator Richardson's conclusions? Could you provide a copy of that letter, which is purported to be reproduced in his article?

A: Dealing with that letter, there is something strange about it. We have searched our database and no letter in that reproduced form can be found.

Mr O'FARRELL:

Q: No letter of 28 March 1996?

A: There is a letter of 28 March, but not in that form. Firstly, that was very interesting; secondly, the assessment process involves a multidisciplinary committee for the initial assessment. The manager, assessments, Mr Hummerston, the officer talked about—

Mr O'FARRELL:

I did not use his name.

Mr O'KEEFE:

I know, but it is not a protected disclosure and he is not in surveillance. He normally chairs that meeting. When a matter arises that he may have some interest in, like any other officer in that committee he declares an interest and does not take any part in the discussion or decision-making process. Whether he does or does not, it is his function to implement, by formal correspondence, the outcome of that decision. And that is what happened in this case.

Mr O'FARRELL:

Q: Is it the case that he actually declared his interest, a decision was made by the committee, and he ended up signing the letter anyway?

A: Yes, he is here with me and I hope I did not trespass on his privacy. Mr Hummerston came to me before he nominated for that position and asked me if I had any fundamental objection to his so doing. I applied the ordinary rule about people's activities and said to him that it would be undesirable that he take any other than a formal part in the operations of the commission, pending

the determination as to whether he got a preselection; and that is what happened. There were some formal things like signing off correspondence, but no formal activities were undertaken by him in a period of three weeks. During that time he was awaiting the outcome of that preselection process. As I recall, something happened to the preselection process. Somebody was chosen, and it fell over I think.

Mr O'FARRELL:

Yes.

Mr LYNCH:

It was pushed over.

Mr O'KEEFE:

Something happened and it was like a second draw of the lottery.

Mr O'FARRELL:

Not quite, it was a bit more scientific than that.

Mr O'KEEFE:

The same rule applied during that time. I think it was only a fairly short time, maybe a week or a few days, but the same rule applied. He was up front about it from the beginning. I was aware of the situation. He was not involved in decision making, but merely in ministerial acts. I had taken the view, and I believe it was the view of my predecessor, that we were not there to exclude people on the grounds of race, religion or politics provided that they do not interfere with the proper functioning of the officer.

Mr O'FARRELL:

Q: Commissioner, has any inquiry been made of Mr Richardson or the Bulletin about the publication of what purports to be a letter of 28 March?

A: Yes.

Mr O'FARRELL:

Q: Are you able to advise the Committee of the outcome?

A: Yes. I prefer not to go into details, but yes, there was an outcome.

Mr WATKINS:

Q: As you are talking about such matters, can we move on to pecuniary interest?

CHAIRMAN:

Before you do that I would like to ask a question. Commissioner O'Keefe, I raised a matter about people's political affiliations with former Commissioner Temby. His response was that they live in a community and are part of the community, so they are involved in politics. I have delivered a paper on this subject; the ICAC came about because of perception of corruption in this State and some elements of real corruption. Is it not the perception that the people who watch over members of Parliament and State Government infrastructure should be absolutely beyond reproach?

Mr O'KEEFE:

Q: Why is being a member of a political party a reproach?

CHAIRMAN:

The people working in the ICAC may be beyond reproach and therefore the perception is that when a decision is made and an officer making that decision has a Labor, Liberal, National or Democrat affiliation, the judgment is clouded or biased. Even if that is not true, the people who received the complaint and who were finally rapped over the knuckles about it are the people who now say that it would not have come about if it was politically motivated. Some members of this Committee see as a problem people with political affiliations being employed by the ICAC.

Mr O'KEEFE:

I must say that I think it would be a retrograde step if we were to exclude people who are otherwise well-qualified and the best people in the field from employment because they belonged to a political party.

Mr WATKINS:

Q: You may recall that at the hearing on 27 May I asked you some questions about conflict of interest and so on?

A: Yes.

Mr WATKINS:

Q: I also asked you about a pecuniary interest register. At page 95 I asked you the question, "So you follow the same rules regarding a pecuniary interests register as all your employees?" You

answered, "I do." I asked, "So that is lodged and your security people have access to that and so on?" You answered, "Yes. I think, actually, with mine, I may send a copy either to Mr Findlay or Ms Brodie, or both. But that is the way it is dealt with. It is a file note that goes into a register"?

A: Yes.

Mr WATKINS:

At page 56 of the questions upon notice for the 25 October hearing you were asked, "Will the Commissioner provide a copy of his pecuniary interests register to the Committee?" You made some preliminary comments, and then said, "I do not maintain a pecuniary interest register at the Commission."

Mr O'KEEFE:

I do not maintain it, somebody else maintains it. Are we talking about gifts, or what?

Mr WATKINS:

Q: No. A pecuniary interest register. Do you maintain a pecuniary interest register at the commission?

A: No. At the commission we do not have a list of the shares that people have, houses that they own, and things like that.

Mr WATKINS:

Q: When you say "people", which people are you referring to?

A: Employees. Anybody.

Mr WATKINS:

Q: So the commission does not have a pecuniary interest register for any employees?

A: That is correct. They have to declare matters that may involve a conflict of interest, if and when that situation arises.

Mr WATKINS:

Q: So it is up to them to make a declaration?

A: Yes, it is. The onus is on them.

Mr WATKINS:

As it is with you.

Mr O'KEEFE:

Yes.

Mr WATKINS:

Q: Is that required under the code of conduct?

A: I think it is, yes.

Mr WATKINS:

Q: But the code of conduct does not apply to you?

A: No, it does not. But I have, by analogy, acted in accordance with it generally, yes.

Mr WATKINS:

Q: So there is a code of conduct that applies to employees but does not apply to you? A requirement of that code is that employees should provide details of pecuniary interest when it causes a conflict of interest?

A: If a conflict of interest situation arises, they are then required to declare it, yes.

Mr WATKINS:

That is a lot clearer than the contradictory evidence from those two—

Mr O'KEEFE:

I do not think they are contradictory, but it is clear now.

Mr WATKINS:

Q: That means that you do put issues on file when you feel there is a potential conflict of interest with you?

A: If that arises, that is the case.

Mr WATKINS:

Q: Has it arisen?

A: No.

Mr WATKINS:

Q: So no-one at the commission in fact knows what your pecuniary interests are?

A: If you mean what shareholding I have and the like, no, that is right. I do not mind revealing to this Committee what it is, in camera, in the same way as I did regarding the organisations I belong to. It is very benign, you may be assured.

Mr WATKINS:

Q: So that no-one can in fact check whether there is a conflict of interest; it is up to you?

A: That is right.

Mr WATKINS:

Q: Given your recent advice to the Standing Committee on Parliamentary Privilege and Ethics regarding code of conduct, when you argued for the strongest level of disclosure and declaration for parliamentarians, why do you not seek to put in place that same level of disclosure in your position?

A: I think I probably apply a higher degree of disclosure than the current proposed code for the lower House requires.

Mr WATKINS:

Q: But anyone here can go to the library to find out my pecuniary interests?

A: Yes.

Mr WATKINS:

Q: No-one can do that in relation to you?

A: They could, actually. They could go to Mosman Council and find out because it has not changed since then.

Dr MACDONALD:

But they are not to know that.

Mr WATKINS:

We are not to know that.

Mr O'KEEFE:

You know it now.

Mr WATKINS:

Q: Surely that is not the point, is it?

A: I am sorry, is that a question? Is it rhetorical or—

Mr WATKINS:

No.

Mr O'KEEFE:

I do not think it is the point. What matters is that when a potential conflict of interest arises the person should declare it. That requires a high degree of conscientiousness and honesty, on the part of the employee and on the part of the commissioner.

Mr WATKINS:

But it is a far lower level than that that applies to us.

Mr O'KEEFE:

I do not think it is, actually.

Mr WATKINS:

Q: Every year we have to update the pecuniary interest register and you do not have to do that at all? How is it that is not a lower level of requirement?

A: How is it? It is because there is either the legislation or a requirement here and there is not one for me. Secondly, it is much more likely that it could arise on a broad scale with parliamentarians than with me. We have a much narrower focus when we come to particular items. Take the

operations review committee. I declare when I know somebody—whether I know them favourably, unfavourably, remotely or well—and refrain from voting. It is the same with a possibility of a pecuniary interest. Just to give an example, I have some BHP shares. We have never had to deal with BHP.

Mr WATKINS:

Q: But considering the sensitivity of your role within the commission and the fact that it is out there in the marketplace of politics and in very sensitive areas, do you think that it would be better if a pecuniary interest register was lodged with the commission, with your senior staff, that that would allay concerns?

A: Whose concerns, Mr Watkins?

Mr WATKINS:

The concerns of the community.

Mr O'KEEFE:

I must say, with great respect, except for you I have not had that concern—

Mr WATKINS:

One of my jobs is to raise those concerns.

Mr O'KEEFE:

I understand that. I am not being critical of you. All I am saying is that I have not had that concern and a situation of conflict has not arisen.

CHAIRMAN:

Q: Because of the nature of the work that you and your senior people do you rely upon their integrity very substantially to disclose a matter on which there is a conflict of interest. You have said you disclose that you know people favourably and unfavourably, but would it not be better to have a confidential register under the control of a senior officer listing all the shareholdings and assets of each person employed at a senior level so that if a conflict did arise and that was not disclosed someone would be able to pick that conflict up?

A: That is a requirement that is adopted for local government, I think—

CHAIRMAN:

And for us in Parliament.

Mr O'KEEFE:

I cannot talk about the extent of that in Parliament. I must say that it did not in my experience prevent those who might have had an interest from ever acting without formally declaring it, even though they had lodged with the register. I think that the conscience of the individual, if properly formed, is more effective than any pieces of paper. However, I take your point.

Mr O'FARRELL:

Q: Mr Commissioner, should I gather from your answer on page 56 that, unlike with the New South Wales Parliament, all gifts given to any staff member have to be declared, which is different from our situation in that we give ourselves a \$500 limit before we have to declare a gift? So in your case any gift you receive has to be declared?

A: Absolutely.

Mr O'FARRELL:

Q: That applies to you and the person who sits at your reception desk?

A: Absolutely.

Mr O'FARRELL:

Q: Have there been instances in which people have not declared conflicts of interest and have subsequently been discovered, either at commissioner level or down the tree?

A: I am not aware of any.

Mr O'FARRELL:

Q: What would be the likely consequences of someone not declaring an interest or a conflict of interest?

A: You would have to look at the circumstances. I would regard it as serious. But you would have to look at the circumstances to decide how serious.

Mr O'FARRELL:

Mr Chairman, I suggest that if you do follow the path pursued by Mr Watkins you adopt a far

tougher pecuniary interest register than the one employed here. There is no requirement on me to declare my shares, my loans, my credit cards or gifts under \$500 unless I hold an executive position or they are of sufficient size to influence the outcome of the company.

CHAIRMAN:

That is different from what you said yesterday.

Mr O'FARRELL:

No, it is not. My return is nil.

Mr WATKINS:

Q: The code of conduct that applies to the commission officers which does not apply to you says that you must not use your work time or the commissioner's staff resources for private purposes. It gives some exceptions. In recent advice to the parliamentary ethics committee you suggested that members of Parliament should be limited to use of resources solely for legislative or electorate purposes—again, quite strict. Would it be a conflict of interest for you to use ICAC resources in carrying out duties you have in one of the other community organisations that you are a member of?

A: If I did not reimburse, yes it would be.

Mr WATKINS:

Q: Do you use ICAC resources to carry out duties in those other organisations?

A: Occasionally I do.

Mr WATKINS:

Q: Could you give us some examples?

A: Yes. There will be occasions when my secretary will type a private letter. There will be occasions when my secretary will type a letter to the National Trust. There will be occasions when my secretary will make a phone call to my wife about some domestic arrangement. That is the sort of thing.

Mr WATKINS:

In fact personal phone calls are exempt under the code of conduct.

Mr O'KEEFE:

They may not be if somebody else makes them on your behalf. That is the point I am making.

Mr WATKINS:

Q: How often would you have your secretary type National Trust letters, press releases?

A: Not press releases. I think we did a survey of this. I cannot remember the time but some average time was worked out, and I reimburse the commission for that.

Mr WATKINS:

Q: How often do you reimburse the commission?

A: Quarterly.

Mr WATKINS:

Q: What is the figure?

A: I could provide it but it is about \$800 a quarter—in the vicinity of \$850.

Mr WATKINS:

Q: Is there any particular reason why you do not do press releases?

A: Press releases for the National Trust are drafted by the National Trust press officer. They are brought through to me and I approve them.

Mr WATKINS:

Q: And then they may be faxed out from the ICAC office?

A: No, they are faxed out from the National Trust.

Mr WATKINS:

I do have a press release that says "Newcastle ICAC".

Mr O'KEEFE:

We do not have a Newcastle ICAC.

Mr WATKINS:

Why it has that on the top is interesting. I will provide that to you later.

Mr O'KEEFE:

It is interesting. I was down in Melbourne recently to see someone there on ICAC business. In front of me was a silver Audi which had the number plate ICAC. I wondered whether somebody was trying to establish a branch down there because of our good work up here.

Mr WATKINS:

Q: Has your view changed about the ICAC code of conduct applying to you?

A: No, I act by an analogy in accordance with it but my view has not changed.

Mr WATKINS:

Q: We would require legislative change to bring that about?

A: Yes.

Mr WATKINS:

Q: Mr Chairman, could we ensure that that is a matter for discussion in our review next year? At our last meeting we discussed anticipatory advice: government agencies, Ministers or whatever coming to the ICAC for advice. In the Sydney Morning Herald on 3 August it was reported that 20 per cent—I do not know whether this was accurate—of the corruption prevention unit's time went into vetting Government decisions before they were made. As far as you know, is it accurate that 20 per cent of that unit's time is involved in vetting?

A: I cannot tell you off the top of my head. I do not know, but there is a percentage.

7. PROTECTED DISCLOSURES

7.1 What is the status of the Commission's project monitoring the implementation and impact of the Protected Disclosures Act 1994 within agencies and local councils?

The ICAC is currently conducting a four-phase study to explore the impact of the Protected Disclosures Act, 1994 upon the New South Wales public sector.

Phases 1 and 2

Phase 1 involved a survey of CEOs and General Managers of all New South Wales public sector agencies and local councils. The aim of this phase was to find the number of organisations which had implemented reporting systems in response to the Act and those which had informed their staff about the Act. Phase 2 involved in-depth interviews with a relevant person from each of 15 organisations exploring their attitudes to and difficulties with the Act. In order to meet the objectives of the Act, respondents in Phases 1 and 2 said they require ongoing practical guidance and information about:

- conducting investigations;
- implementing internal reporting systems;
- protecting staff;
- legal interpretations and definitions; and
- changing their organisational culture.

Organisations also identified education requirements such as training and awareness materials to promote the Act and materials to train staff who are going to be receiving and acting upon protected disclosures.

Phase 1 and 2 were completed in the 1994-95 financial year and reports were distributed to all Parliamentarians, New South Wales public sector agencies, local councils, libraries and selected researchers (both nationally and internationally). In addition, a number of requests for reports have been received from international agencies. Requests for additional copies of reports from a number of New South Wales public sector organisations indicate that the research is being utilised by organisations. The results of Phases 1 and 2 were the subject of a media release in September 1996 which was intended to raise awareness of the Act and of the ICAC work.

Phase 1 and 2 findings were also part of the ICAC submission to the Parliamentary Committee on the Office of the Ombudsman which conducted the review of the Act.

The Phase 1 and 2 research resulted in the ICAC recommending to the Premier the formation of an inter-departmental Steering Committee. The Premier endorsed the formation of this Committee which has representatives from the Auditor General, The Public Employment Office, the Department of Local Government, the New South Wales Ombudsman and the ICAC. The aim of this committee is to

implement practical strategies in response to the needs identified in the research. Activities undertaken by the Committee so far include a workshop for local councils which addressed many of the questions raised by organisations through the research.

Ongoing Research

Two further phases of the research are currently being undertaken. While Phases 1 and 2 focussed on the experiences and needs of organisations with regard to the Act, the next two phases focus upon the experiences and concerns of employees.

Phase 3

The aim of Phase 3 is to explore employee attitudes to making reports about corruption. We plan to survey approximately 1200 New South Wales public sector employees about:

- their knowledge of the existence of the Protected Disclosures Act;
- the barriers that would stop them from reporting corruption;
- possible strategies that might help to alleviate some of their concerns.

The aim of this Phase is to derive practical strategies for organisations to implement and which may begin to create organisational cultures conducive to staff being able to speak out about corruption. It was widely recognised by organisations who responded to the Phase 1 and 2 surveys that what is required for the Protected Disclosures Act to work is a change in organisational culture. The first step in initiating this change is to find out where the major problems lie within organisations and what staff perceive may help them to feel safer in making reports within their organisations.

The survey is an anonymous written questionnaire. The distribution of the survey is being undertaken throughout October in both metropolitan and regional areas of New South Wales.

Phase 4

The data collection for Phase 4 was completed on 5 October 1996. Phase 4 involved telephone interviews with 30 people selected at random from amongst those who had made protected disclosures to the ICAC in the period up to the end of May 1996.

The 30 people were chosen at random from a larger group who responded to our written invitation to participate in the study.

The interviews involved one hour telephone interviews conducted by the research officer responsible for the protected disclosures project. The data which have been collected are qualitative and highlight experiences and opinions specific to those people involved in the interviews. While the interviewees do not represent a sample from which generalisations about all people who make protected disclosures can, or will, be made, it does allow us to consider pertinent issues with regard to the experiences of people who make protected disclosures. A report is currently being written.

Questions Without Notice

Dr MACDONALD:

Q: It seems to me that the effective workings of an anti-corruption body are very dependent upon protecting those who disclose information and, secondly, the ICAC did provide three reports on the workings of the Protected Disclosures Act, I think dating from April this year.

A: Three to date, there are some more to come.

Dr MACDONALD:

Q: Three to date, and in those reports there was a fair bit of criticism of the application of the Act by public agencies. On the matter of protected disclosures, do you enjoy the trust of whistleblowers? If not, why not? Also, have you been requested to protect any whistleblowers from reprisals? I just want to get a response about this.

A: It depends on the sense in which you use "whistleblowers", if you mean individual people or the organisation. If you are talking about the organisation, the answer is no, we do not and I do not think we ever will and I do not think it matters what we do, we will not, and I do not want to go into that because it involves a number of personalities and private information that I have in relation to people.

Dealing with whistleblowers as people rather than an organisation, we recently, as part of our work, undertook an examination of, I think, 241 people who had made protected disclosures to the ICAC. Letters were sent out to them requesting information, a questionnaire and a request would they participate in further interviews. I am trying to remember the figures, but the response rate was about fifty-plus percent, lower than sixty but more than fifty and I cannot tell you an exact figure, I am speaking from recollection. That was more than we had thought would be probable and it is a good statistical sample for our research people to work on.

We had originally had, as part of the protocol of that study, a plan to interview by telephone twenty people. Because of the high response rate we increased that to thirty and then I wrote to each of the people who had responded saying: Would you take part in a telephone interview? A number said no, they would not, they did not want to be further involved. The thirty have, I think, all been interviewed now. It is only very recently that that has been completed. I checked yesterday. It is fair to say that none of those thirty who were chosen at random from the sample had been sacked in consequence of making a protected disclosure and none of them asserted that their confidentiality had been breached by the ICAC. The further research in relation to that is under way and I just cannot tell you the outcome of it because it is still being analysed.

How do you test confidence? One way perhaps of testing it is: Do people who make protected disclosures continue to come to us? The answer to that is yes. In the first financial year in which

protected disclosures legislation was in force, forty-seven people came to us. Now that was only four months. However, there was said to be a pent-up demand for such a channel and that might represent more than a third of a year, but, if it does represent more than a third of a year and you still extend it by multiplying by three, the number of protected disclosures we have had in the year just finished rose to 196, so we have had an increase.

The second thing is that if you compare the protected disclosures made to the three organisations or agencies to which they can be made - Ombudsman, Auditor-General, ICAC - my recollection is that to 30 September from 1 March 1995, when the Act came into force, the Auditor-General had had about ten; we had had 241 and the Ombudsman had had I think thirty-nine (I rely on my recollection). If you look at the relative reporting rates, we have had a fairly high reporting rate. That may be one measure. I do not suggest that it is the only measure, but it is the only one I really have at the moment that I could confidently assert.

Dr MACDONALD:

Q: How many complaints have you had from those hundreds of people who have reported matters under the Act? How many complaints have you subsequently had from them that in fact they have suffered reprisals or were in some way disadvantaged?

A: I know that the answer to that is seven. Some seven people claim that they were either given a job that they thought was unsuitable, whether it was side way movement or not I cannot tell you that detail but I know seven had or at a later time retired on health or like grounds. Whether that involved stress I cannot tell you that detail, but the answer is seven.

Dr MACDONALD:

Q: You responded to my question about Whistleblowers Australia, the group, that you did not particularly wish to go into any detail because you had some private information about people. What was that?

A: People who make disclosures to us or write to the commission in respect of matters that they have brought to the commission's attention are entitled to privacy in respect of that and I do not want to breach that privacy. It is fair to say that a significant number of them have personal and either professional or monetary considerations that they are involved in. I do not think, doctor, in fairness to those persons I can go beyond that.

Mr WATKINS:

Q: What does that mean? Would you explain it?

A: Take one case. There is one case of a person who has written to me several times complaining, who occupied a position, and an allegation was made against that person that that person had misrepresented that that person was an officer of the ICAC when that person was not so, and was

then the subject of an investigation and report. Now that person, of course, has a very special interest in (a) self-justification and (b) denigrating the information in respect of which that person said that there was a relationship of officer which did not exist. Now that is an example.

The Hon. B. H. VAUGHAN:

Misrepresented himself.

Mr O'KEEFE:

Him or herself, yes.

Dr MACDONALD:

Q: There has been a suggestion from the whistleblowers group that there should be established a protected disclosures unit. What is your response to that, particularly in view of the fact that you have been critical of the Act in some of your reports? Do you see a unit such as that operating either within the Ombudsman's office, Attorney General's office, Premier's Office or whatever having a useful role to play?

A: You would first have to define the role that it had to play. One of the suggestions involves such an organisation having entree to confidential files in other organisations. I certainly would not agree with that. The view that the ICAC has taken is that that is not warranted or justified, that there are some amendments to the Act that would assist in making it work and protecting people in a way that the Act presently does not protect them. One of those ways might be a reversal of onus if a person is terminated after protected disclosure has been made, so that then the employer has to justify that the termination was not in consequence of the protected disclosure. A number of things have been made - I think we have put that submission and that mirrors a protection provision in the ICAC Act in respect of people who assist us in our work. That is one thing that I remember.

Dr MACDONALD:

Q: Do you recommend the establishment of a protected disclosures unit?

A: I do not.

Mr WATKINS:

Q: Whistleblowers Australia has today called on you to resign and it cites growing dissatisfaction with the performance of the ICAC and a vote of no confidence in your lack of leadership. They allege that the ICAC does not protect citizens who report corruption and claim that over 50 whistleblowers have suffered as a result of making public interest disclosures to the ICAC. How do you respond to their call for your resignation?

A: It is very interesting. Let me deal first with the 50. A publication came out yesterday in which the estimate was 20 to 30. It has now grown to 50 I see. And that was an estimate yesterday, now it is a fact. Secondly, I have written today in response to that to find out who the 50 are. I have been asking for information about such people since February of last year and I am still waiting, so I cannot comment on that. I think, though, that there may well be some licence in the figure.

The second thing is my resignation. In the recording of Dr Lennane's interview on this morning's radio she was asked that very question by Clive Robertson and she said that she did not think it would make any difference. It was bad before and when he goes it will be bad again, so it will make no difference. So that is hardly a justification for my resignation. Can I say I do not intend to resign.

Mr WATKINS:

I just thought I would put it to you.

Mr O'KEEFE:

I understand but Mr Watkins, with great respect to Dr Lennane and whoever drafted that, it is about as lacking in substance as the matters I dealt with earlier today.

Dr MACDONALD:

Q: While we are on that subject, I have a couple of more generic questions that follow on from that. Putting aside the issue of the commissioner's actions and the question of any possible defamation, it seems to me unfortunate that the relationship has deteriorated between the ICAC commissioner and whistleblowers, who I see as an important body that functions and really should be in a position to assist the commissioner. Are there no other means by which you could have settled this matter rather than going to the courts on a possible defamation issue? How do you see this relationship with whistleblowers? Can we look at ways by which we can mend some of these fences?

A: First, might I say in preamble to your question, we have not gone into the courts, number one. Number two, there is a long period from about February 1995 until the last hearing when I have in fact tried to do just that. But rapprochement takes two people or two organisations and it is no good one just continually trying and the other continuing in the same nonsense and untruths that it has continued in before. When you get somebody who leaves this room while I am still here and goes outside and says what Dr Lennane says, and does so in an official capacity, it is very difficult, very difficult indeed, to put any credence either in that person or in the organisation.

I had hoped that we would be able to overcome that. To date we have not been able to overcome it, notwithstanding all the work that the ICAC has done in relation to research on whistleblowers. We have done more than anybody else and devoted a lot of resources to it and I regard the

process of protected disclosures being made as being important for our work. I mean, it gives an extension into organisations of people who are prepared to make protected disclosures. Every time I have sought details as to what is the complaint, I have either been met with a generality and three, perhaps now four cases, when I have looked at them just do not bear out the criticisms that have been made. When you point that out, all that it has led to in the past is further generality and people going on radio and television from the organisation saying things that just are not right. I am sure I would like to explore it, but how do you explore it with people that you cannot have confidence in?

Dr MACDONALD:

Q: Is any of the fault on your side?

A: It is hard to say that. I have tried, from the time that I went to the commission or shortly after—say, February 1995 was I think my first contact—I have tried and my instructions to staff are that matters involving protected disclosures are to be given quite particular handling methods. They do not get priority, but that is in fact the way it works out in the end. They are not instructed to be given priority and are to be dealt with strictly in accordance with the provisions of the Act. I hope there is no fault, but who knows.

Dr MACDONALD:

Q: What specific actions have you taken to build a relationship with whistleblowers since February 1995?

A: I have had quite extensive correspondence. I have actually spoken with a number of the people involved in the organisation. I have been in touch, through the commission, with every person who has made a protected disclosure to the commission, trying to service them and find out their responses. The difficulty is—and I do not want to get into personalities—unfortunately, what tends to happen is that the major office-bearers have tended to be people who had a personal axe to grind and used the organisation for that purpose. Now that is natural enough, but it makes it much more difficult to establish a relationship of confidence in which you can deal with the organisation. We have not had the same problem in dealing with individuals outside that organisation. Can I round off by saying that I have tried, and I am prepared to continue trying, but it is a very difficult circumstance.

Dr MACDONALD:

Commissioner, I would like you to exercise your mind, between now and the next time we have a hearing, as to how you can build confidence with whistleblowers, rather than just through some correspondence. It may be you need to set up some sort of mechanism within ICAC so that you have one or two personnel who are skilled in dealing with Whistleblowers Australia. I do not think it is the sort of thing that you can assume you would be able to resolve through correspondence. I have met members of Whistleblowers Australia, and they strike me as being

intense and very committed people who do have concerns. I do not think you will get a resolution through correspondence. I think you are going to have to deal with this through some other mechanisms. I would be interested to know what those are. I would ask that you consider that before our next hearing.

Mr O'KEEFE:

Are we looking at whistleblowers as a category or the organisation?

Dr MACDONALD:

I am inundated with correspondence from Whistleblowers Australia that says ICAC is not functioning properly, there are a hundred complaints that are unresolved, and there are now personal disputes going on between possibly ICAC and certain individuals. I do not think that is a situation with which this Committee can be happy. I would be asking that you bring back to the Committee at some stage some strategy as to how we can overcome this and build the bridges that we would like to see.

Mr O'KEEFE:

I must say I am not aware of 100 complaints unresolved. That is the first I have ever heard of that.

Dr MACDONALD:

If I used the word "hundreds", I meant—

Mr O'KEEFE:

I thought you said "a hundred".

Dr MACDONALD:

No. Multiple complaints, shall we say, that have been listed and incidents where they feel that the whistleblower has not been properly protected, et cetera.

Mr O'KEEFE:

Dr Macdonald, with great respect, our function is not to protect. That is not what the Act provides at all. You are imposing upon the ICAC a function which the Act does not contemplate. The Act contemplates that once a disclosure is made we have a duty, or to whomever it is made has a duty, of keeping it in accordance with the régime provided in the Act, and not to reveal the name of the complainant unnecessarily. And we do so only with the consent of the person who has complained. But, if detrimental action is taken against any person, it is not for us to prevent

that. The mechanism in the Act is a very cumbersome one. It is a prosecution by the person against whom the detrimental action is taken. What you are saying is a common belief, but it is not what the Act provides.

CHAIRMAN:

Q: The Committee has received a number of newspaper articles as well as information in regard to an employee of the ICAC in your surveillance division called Mr Chris Pittaway, who alleges that the ICAC has punished him because he blew the whistle on some officers in the ICAC in regard to corrupt conduct. Do you wish to say anything about that?

A: I think you will find that he does not actually make that allegation. However, the matter is before the Industrial Relations Commission of New South Wales and is in the course of conciliation and, as it is sub judice, I would prefer not to discuss the matter.

CHAIRMAN:

Q: Two other people have complained to this Committee. One is a Mr Elms and the other is a Mr Fusca. They allege that they supplied the commission with information in regard to alleged corrupt conduct of two officers of the ICAC and because of that information being given they were eventually forced to leave the ICAC and return to the police force. Do you wish to comment on that?

A: That is not correct. Mr Elms was a police officer who was on secondment and returned to a special position in the Police Service. Mr Fusca in fact joined the Police Service at his own desire, he having indicated previously that he wished to do so. He in fact left and went into the Police Service. He spoke to me on the last day that he was at the commission and what he said to me is inconsistent with what has just been said.

Mr WATKINS:

I am aware of the details of the cases. These people say quite clearly that they left the ICAC because they were sent to Coventry, because of bastardisation, because their complaints were given short shrift and were not investigated properly, and then they were put back into the same place in the commission acting under the people who the complaints were made against, and their life was made a misery because of that. It drove two of them out and the third to seek a transfer out of that unit to another unit.

Mr O'KEEFE:

I will take that on notice.

Mr WATKINS:

Q: Does that mean you will not answer it?

A: No, it means that I will answer it on notice.

Mr WATKINS:

Q: When?

A: As soon as is possible.

The Hon. B. H. VAUGHAN:

Q: What is the name of the senior surveillance officer as at, say, May 1996?

A: That is an operational matter. I do not propose to reveal that.

The Hon. B. H. VAUGHAN:

Q: Could you tell me, do you have a senior surveillance officer, or is that operational as well?

A: We do have one, yes.

The Hon. B. H. VAUGHAN:

Q: Well that is something. And it is operational to tell us the name?

A: Yes.

Dr MACDONALD:

Q: Mr Commissioner, the allegations that were raised by those particular individuals relate to corrupt interview and selection processes, forging time sheets, illegal use of commission property, and harassment of complainants and other officers. These are fairly serious issues. Presumably there would have been an internal investigation following these allegations. Are you in a position to tell the Committee that you are comfortable about the administration and practices within the commission and that there is absolutely no foundation for these sorts of concerns?

A: When the matter was first raised a very senior investigator, I think a chief investigator, was assigned to investigate the complaints. That officer prepared a report which went to the head of the unit—that is, the investigations unit—and a recommendation was made to me. My recollection is that I required further information about two matters in particular and it was sent back for that purpose, because I thought that information was necessary before I could make a

properly informed decision. It went back and a further inquiry was made in relation to those matters, and the report was supplemented. A recommendation was then made to me in respect of the matters. I was satisfied that the investigation had been carried out properly and very thoroughly. It revealed some matters that I thought needed attention in relation to management and they have been attended to.

There was a complaint by, I think it was one of the officers, that the order of interview of witnesses should have been different. I think that was the complaint. I looked at that again, because it was an internal matter and a matter that I thought we might learn something from. It was a judgment that was made, and properly made I thought, within the parameters of an appropriate decision by the investigator who investigated it. The matter was reported to the Operations Review Committee with a fairly full report. I did monitor the matter reasonably carefully, because it was the first time that I had had a complaint by staff about such matters since I had gone to the ICAC and I regard those matters as serious—that is, serious to be investigated—and I was satisfied that a proper process and adequate investigation was conducted.

Dr MACDONALD:

Q: Are you happy that the Independent Commission Against Corruption complies with the Protected Disclosures Act, and are you happy at the manner in which this was dealt with and the necessary protection for those whistleblowers?

A: I am. I think there is always this problem that arises in relation to small groups of people working together. When there are personality differences it does not matter what the legislation says about non-discriminatory action. You may enforce that but you cannot make people like one another and you cannot make people socialise with one another outside work time.

Mr WATKINS:

Surely that is a simplification. What happened here was that an allegation—

Mr O'KEEFE:

No, please, I am answering Dr Macdonald's question and I have not quite completed the answer. The situation then is that during work time I was satisfied that there was no adverse action taken against any officer, on the reports that I had. That, as I understood it, was not the complaint that was made by the officers; it related to social matters: whether they were invited to this, whether they were invited to that, whether people would have a drink with them after work.

Mr WATKINS:

Q: Is it not true that one of the allegations was fraudulent filling out of time sheets?

A: One of the allegations was that—yes, by all of the officers including the complainant.

Mr WATKINS:

Q: And that the problem between these parties occurred after that allegation had been made and investigated, and that any social difficulties that arose in the team occurred later?

A: That is not so. That is not so at all. That may be what you have been told, but that is not what my officers reveal and that is not what has actually been said to me by a number of people.

Mr WATKINS:

Q: Would these officers that have told you that the two officers were in fact accused of fraud?

A: There were not two officers; there was a whole host of officers. It was said that in respect of a number of them they filled out, on one or two days, time sheets for an afternoon when they were not working. Might I say that before any of this complaint, the whole group went through a mediation process which happened not to work.

Mr WATKINS:

You spoke about the way the investigation was carried out. Is it true that one of the accused was—

Mr O'KEEFE:

No-one was accused, Mr Watkins.

Mr WATKINS:

Well, certain people made accusations. After the allegations were made, one of the parties was asked questions about what had happened, about the accusation, and the other party to the accusation was not followed up for a week. Accusations were put to the party involved in the fraud, allegedly involved in the fraud, today and the other party involved in it was not even questioned about it for a full week.

Mr O'KEEFE:

I do not carry that in my head. I would have to inquire about that.

Mr WATKINS:

I understand that is so, and—

Mr O'KEEFE:

You may understand that is so, but your understanding and mine of a number of situations is not always ad idem.

Mr WATKINS:

Excuse me, you have interrupted my flow at the moment. If that occurred, that would not be a proper manner of carrying out an investigation surely.

Mr O'KEEFE:

I do not agree with that; that is a judgment to be made at the time by the person investigating. I am not an investigator. I, with respect, think that you are not, either, and the best mode of investigation is surely that which the experts have.

Mr WATKINS:

Use a bit of commonsense, Mr Commissioner. Two people working together are accused of fraudulent activity. You will go and ask questions of one today but you will not ask questions of the other party, the coaccused, for a whole week. You think that may be a legitimate form of asking questions. That is not the way the ICAC operates out in the wider community.

Mr O'KEEFE:

May it not depend upon the circumstances? I do not know who was on leave; I do not know on what day of the week one was asked; I do not know the flex-time arrangements; I do not know any of those things. Until I know those I cannot answer your question.

CHAIRMAN:

Q: Was the issue of the time sheets evolving around the surveillance of officers who were supposed to be investigating the killing of John Newman?

A: I must say I do not recall that and I would think that if it were so I would recall it. I cannot recall that, I am sorry. I have not looked at this file for the purpose of today and so I really have to ascertain that from looking at the file.

CHAIRMAN:

Q: Would you take that question on notice?

A: I will, yes.

Dr MACDONALD:

Q: I think we should not be looking at some of the details as to who was questioned when. I do not think that is the purpose of the line of questioning, but it raises a concern that there have been some allegations of internal dispute within the Independent Commission Against Corruption, one involving a number of people who have blown the whistle on what were certain allegations. My concerns are: were they given the necessary protection and, indeed, is this an argument for the establishment of a protected disclosures unit, because it would take the issue outside the ICAC as an employer organisation? I know that you did not support that previously but you are telling the Committee that those who made the allegations were not discriminated against or harassed and we are meant to take your word for that. Is this not indeed an example where, if you had an independent protected disclosures unit, it would be able to act as an independent body?

A: I have not changed my view on that and I do not think, even if what you said is right, that one swallow makes a summer. In this case you look at the history of the ICAC and you look at the very low incidence of industrial dispute and the like. This is one case in all that time and I think the outcomes in relation to two of the officers—one who went back to a better position and one who went to the Police Service—and the other one who is still with us is in fact now an assistant investigator. He had sought to be an investigator long before any of this arose, so, I mean, he has gone into a job that he was seeking in any event. That is my understanding of the situation. I can check the file on that to make sure I have got my date sequences right, but I think I have.

Mr WATKINS:

Q: Was he not an investigator when this alleged fraud took place?

A: No, he was a surveillance officer which is a different category.

Mr WATKINS:

Q: Now he is an assistant investigator?

A: Yes.

Mr WATKINS:

Q: Are there any other assistant investigators in the organisation?

A: No, we only had one. That was a female officer who was promoted to the position of investigator and this officer filled that position.

Mr WATKINS:

Q: Is he financially worse off in that position?

A: He has not been to date. There is a procedure before the Industrial Relations Commission at the moment to determine the length of time that allowances should continue, but they have continued to date. He is not out of pocket.

Mr WATKINS:

Q: If another protected disclosure came forward internally, would you handle it in the same way as you did this one?

A: Well, am I to assume it is the same sort of protected disclosure? They may take a variety of guises, in which case you may apply a different method to them, but if this same thing arose, yes I think I would.

Mr WATKINS:

Q: Have you reminded managers recently about the need to ensure that the Protected Disclosures Act is complied with?

A: Yes. You may not recall, because you probably do not get them, parliamentarians may not get them, but following a speech that I made to the Royal Institute of Public Administration of Australia, RIPAA, there was a two-event series arranged. The Premier put out a circular requiring all agencies to have in place proper reporting procedures and systems by, I think it is, 31 January 1997. That prompted me to remind all unit directors and managers of the work that we had done in training our staff. I wanted them to ensure that our systems were being complied with—did they need any updating—and to ensure that the procedures were on our I drive, which is our electronic recording system.

Mr WATKINS:

So the Premier's RIPAA—

Mr O'KEEFE:

No, it was my speech.

Mr WATKINS:

Q: The Premier's directive related to reporting protected disclosures within an organisation?

A: Yes, our research at the ICAC had revealed a very low incidence of implementation of systems in both departments and agencies on the one hand, and even worse in local government on the other. As a result of that the Premier sent out this circular, that prompted me to make sure that everything that we had done, the systems we had in place, should be looked at and that there be electronic recording of our procedures on our database.

Mr WATKINS:

The end result of that would be a change in the way that—

Mr O'KEEFE:

No.

Mr WATKINS:

—this investigation was handled.

Mr O'KEEFE:

No.

Mr WATKINS:

Q: This investigation would be handled in exactly the same way?

A: The way that this investigation was handled fitted in with our procedures that were set down. When the Act came into force, in fact it might have been just before the Act came into force, we had a staff training and a manual and the like for these things. All I was doing was making sure that managers made sure that everybody was au fait with that and to look at the procedures to see if they required any updating. I have not had any report back that they do, to date.

Mr WATKINS:

Q: Did this issue have an impact on morale in the Independent Commission Against Corruption?

Mr O'KEEFE:

I do not believe so. I think morale is very high.

Mr WATKINS:

It has been suggested to me that you called the staff together, about the time that this Industrial Commission hearing issue hit the papers, and basically gave them a rev up about things, that things were not all rosy in the organisation.

Mr O'KEEFE:

No, that is not right. Perhaps what you are confusing it with is this: every Friday morning at 9 o'clock we have a staff meeting and I inform the staff of things that have occurred or are going

to occur in the commission, matters that it is appropriate for staff to know, so that there is a flow of information to staff.

Mr WATKINS:

Q: And you spoke to them about it?

A: I spoke to them. I told them that day that there would be a matter in the Industrial Commission involving a commission employee and that it might receive some publicity. But there was nothing exceptional about it. I did it to ensure that the first time that the staff heard about it was not in the newspapers, but that they knew their commissioner was communicating with them.

Mr WATKINS:

There are a lot of other detailed questions about this matter. I know the Commissioner said he will take questions on notice.

Mr O'KEEFE:

But I need to know what the questions are today so that I can take them on notice.

Mr WATKINS:

I will give them to you today.

Mr O'KEEFE:

Can I have them now then, please?

Mr WATKINS:

Not now.

Mr O'KEEFE:

Have they been formulated?

Mr WATKINS:

In my mind.

Mr O'KEEFE:

I will perhaps take them now.

Mr WATKINS:

No. I will give them to you later this afternoon.

CHAIRMAN:

Q: Were the three gentlemen who were involved in this matter told the results of the investigation into their complaints?

A: Yes.

CHAIRMAN:

Q: They were all told what the results of the investigations were?

A: Yes, in the presence of their unit director and the solicitor for the commission, and in detail.

CHAIRMAN:

Q: Did one of the complaints revolve around the fact that in the interviewing process the senior officer of the surveillance section handed to officers that he wanted in the surveillance section the questions of the interview? Was that one of the allegations?

Mr O'KEEFE:

I cannot recall that.

CHAIRMAN:

Q: Can you take on notice to have a look at that as well? What he did: he had the questions he was going to ask each interviewee, and to the ones he wanted in he would hand the questions, and the ones he did not want in did not get the questions. That is the allegation.

A: I do not carry that detail.

CHAIRMAN:

You can take that on board as well. The other one is that one of the officers who did get appointed was the best man at the senior officer's wedding, but he failed to tell the interview panel that he was very closely connected to the person who was being interviewed.

Mr O'KEEFE:

I do not know the answer to that, and I do not know whether the senior officer whose wedding

the person is supposed to have been best man at was part of a selection panel either. I just do not know.

CHAIRMAN:

Q: You might take that on board as well. Are there any other questions?

Mr O'FARRELL:

Q: Commissioner, can I ask you a question arising from the papers that we have on this matter?

A: On which matter?

Mr O'FARRELL:

Q: The matter we have been discussing. One of the officers, when he departed, indicated in a memo to his superior that he had returned a driver's licence, and he gave the number of the licence. Does this suggest that a certain category of ICAC officers have licences made out in other than their own names? If so, how many? And what category of employee are entitled to such licences?

A: Some surveillance officers do. That is why we suggested to the Attorney General, after I came to the ICAC, that there should be legislation in relation to that. I think it involves the Commonwealth as well. No, just the State. There is a committee involving the Attorney General's Department and a number of agencies to deal with that, because I was concerned about that situation and others that might arise—for instance, surveillance officers in pursuit of a target who may infringe some traffic law and whether or not you should have a regularisation of this. My view is that you should have and that there should be operations that are within that legislation that make it not an offence to have driving licences, for instance, in another name, or to commit certain offences like traffic offences in the pursuit of somebody. That is still progressing. It has not come to fruition yet.

Mr WATKINS:

Q: If there is doubt over whether this investigation was carried out or managed properly—and certainly the information that we have suggests so—does that not bring the commission into a difficult position where they are expected to receive protected disclosures and act accordingly but they cannot handle one within their own ranks?

A: I do not think so, and I do not think the premise on which that question is built is correct.

Mr WATKINS:

Q: Don't you?

A: No.

Mr WATKINS:

Q: Are the supervisors that you have there in the investigative unit mainly from the Federal Police, seconded from the Federal Police?

A: No.

Mr WATKINS:

Q: Where are they from? They work in teams, do they not?

A: Yes, they do. I am just trying to remember whether there are one or two former AFP officers. But they come from various sources.

Mr WATKINS:

Q: Is the director of investigations a former AFP?

A: Yes. But he was not at that time. He is now. The one that is in the position now is a former AFP officer. The one that was the director of the unit at the time was in fact a serving AFP officer on secondment.

Mr WATKINS:

Q: Is the supervisor the next one down?

A: From unit director you go to chief investigator.

Mr WATKINS:

Q: Are any of those AFP, seconded or ex?

A: One was a Federal Police officer many, many years ago. But it is a long time since he has been. The other two are not.

Mr WATKINS:

Q: You see what I am suggesting—well, I am asking?

A: I do not know what you are suggesting.

Mr WATKINS:

Q: I am asking. Is there a group of former or seconded AFP officers that are in controlling positions within your investigative branch?

A: No. The director is a former AFP officer. I know one of the persons who made a complaint had what I regarded as really something verging on paranoia that there was some AFP-New South Wales police gang-up. There was no evidence to support that whatsoever. Indeed, you have this problem: where do you get investigators from? It is a very limited pool that you draw from. I am not very anxious, in view of the climate that exists at the present time, to get New South Wales police officers in great number, or even former New South Wales police officers, although many of them are very good investigators. The climate is a bit adverse to that. So where do you go for them? The AFP has been a very good source, but I do not think we have anybody on secondment from the AFP at the moment. I am told we have one on secondment from the AFP. We have some people who have been Australian police force officers in the past, but some of them in the very distant past—although the unit director is not so distant; I think he only resigned the first half of last year.

The Hon. I. M. MACDONALD:

Q: Commissioner, I have been reading these documents that we have relating to this matter with some attention to detail, and there are some quite disturbing elements in the documents. For instance, there is an allegation of missing files. Was that the case? And what has been done about that?

A: The answer is, I do not know. I would need to take that on notice. I do not think there were any missing files, quite frankly. But I would need to check that.

The Hon. I. M. MACDONALD:

Q: Also, there is mention of people monitoring other people's paging systems. Are you aware of that?

A: I was aware of the allegation.

The Hon. I. M. MACDONALD:

Q: Can you confirm that that was the case, or not?

A: I cannot recall that. I would need to go to the report that was made in respect of it. There was quite a lengthy report done.

The Hon. I. M. MACDONALD:

Q: And checking people's phone bills for whatever phone calls they have made?

A: I think that is done from time to time on a spot basis in the commission, to make sure that the commission—

The Hon. I. M. MACDONALD:

Q: And ringing 0055 numbers and referring to that?

A: I cannot recall that detail. But I do not know why an officer would, as part of his or her duties, be ringing a 0055 number. I thought they were mainly sporting information and things like that.

Mr O'FARRELL:

In the broad definition.

Mr O'KEEFE:

Well, there are many forms of sport. I must say immediately that I am not conversant with those numbers, never having rung one.

The Hon. I. M. MACDONALD:

Commissioner, I am interested in this monitoring of staff and their paging system.

Mr O'KEEFE:

What do you mean by monitoring?

The Hon. I. M. MACDONALD:

Q: Shall I quote the paragraph? Perhaps that might throw some light on the issue.

A: What is this from?

The Hon. I. M. MACDONALD:

It is a record of interview.

CHAIRMAN:

Q: With whom? Not the person who is asking the questions but the person who is answering them.

Mr O'KEEFE:

Mr Chairman, is this going to reveal the name of some of our covert operators? And, if it is, then I would ask that it be done in camera, because—

The Hon. I. M. MACDONALD:

Maybe I will leave the names out.

Mr O'KEEFE:

Yes, thank you.

The Hon. I. M. MACDONALD:

"X told me that a girl whose name I can't recall was paging Y frequently and she called him Little Bear. At the time there were several notices in the greeting column of the Daily Telegraph newspaper also mentioning Little Bear. He also mentioned about phone bill—"

CHAIRMAN:

No, you cannot quote names.

The Hon. I. M. MACDONALD:

I'm sorry. "He said someone had phoned—"

Mr O'KEEFE:

Mr Chairman, really, that has now revealed an officer's name in that section.

The Hon. I. M. MACDONALD:

It was accidental. I'm sorry.

Mr O'KEEFE:

Well, it may be accidental, but it would be accidental that this person now is of less value to us as a surveillance person.

CHAIRMAN:

Can you just cross the names out? I am sorry.

The Hon. I. M. MACDONALD:

"Someone phoned some 0055 numbers" and mentioned various things about it. Now, what is concerning me about this is the—

Mr O'KEEFE:

Who is saying this, I am sorry? Is the complainant saying it or is the interviewer saying it?

The Hon. I. M. MACDONALD:

The complainant. What is concerning me is this monitoring that is going on of staff.

Mr O'KEEFE:

I must say I do not know anything about that. I did not go into that sort of detail. You have investigators to investigate, and they make a report, and I look at the report. If there are any holes in the report, I then ask for additional information.

The Hon. I. M. MACDONALD:

It is also mentioned in terms of missing files, missing surveillance logs, and so on and so forth.

Mr O'KEEFE:

I do not know the answer. Surveillance logs and files are different things. But I would need to take that on notice.

Mr O'FARRELL:

Commissioner, I assume, though, that the ICAC would follow normal Premier's Department guidelines that when phone bills are submitted for reimbursement some check is made, in whatever form, as to whether those phone calls are worth reimbursing. As you said earlier, 0055 numbers by no stretch of the imagination, either in this place, in government departments, are able to be reimbursed.

Mr O'KEEFE:

It is correct. And indeed I think the phones in the commission itself are barred to certain numbers, like overseas, interstate and certain information numbers. But that is not true of mobiles. I do not know whether that is because it is not possible to do that or for other reasons. But certainly a check is made that it is appropriate to reimburse calls, and in that sense that is a monitoring.

Mr WATKINS:

Q: No. Could I raise a matter that came up on the last occasion—I am not asking you to look at something afresh—which relates to the reference to whistleblowers. You answered questions last time on page 25 from Dr Macdonald about Whistleblowers Australia. In particular you made reference to allegations made against a person—that that person had misrepresented that he or she was an officer of the ICAC. I think you were referring to Mr Jim Regan who has written to the commission over some time and has had dealings with the commission. Are you aware of that case?

A: I am aware of the matter that I spoke of. I would prefer not to use the names.

Mr WATKINS:

No, but he has come forward quite publicly to members of the Committee.

Mr O'KEEFE:

That may be and you may use his name but I prefer not to use his name. I do not want later to be accused of having blown somebody's cover.

Mr WATKINS:

You certainly made reference to that to discount the efforts or the behaviour of Whistleblowers Australia. You followed on to suggest that it had an interest in protecting itself and of course we come out with allegations about the ICAC that were questionable.

Mr O'KEEFE:

I gave some instances, yes.

Mr WATKINS:

Q: In fact is there any evidence that Mr Regan did in fact misrepresent himself as an officer of the ICAC?

A: There is.

Mr WATKINS:

Q: There is?

A: Yes, and substantial evidence.

Mr WATKINS:

Q: Has it ever been substantiated?

A: If you mean by that has there been a formal finding, the answer is no. But I have seen the evidence and I find the evidence quite convincing.

Mr WATKINS:

Q: You have read the evidence and you find it convincing?

A: I do.

Mr WATKINS:

Q: Is that not something that in fact has been challenged by Mr Regan from day one?

A: It has. I am sorry, I cannot say from day one; it has been challenged by him.

Mr WATKINS:

Q: How fully has the ICAC investigated the Regan matter?

A: It was referred to the Ombudsman's office to investigate—I am sorry. the police investigated it and it was sustained, so I am told.

Mr WATKINS:

Q: But the ICAC has not investigated it?

A: No. We referred it out to another agency to do because it involved ourselves. At that stage it was thought to be a fairly serious matter so that if we made an adverse finding against Mr Regan it might be challenged on the basis that we had a personal interest in sustaining it.

Mr WATKINS:

Q: So has an official finding against Mr Regan occurred? I mean, have the police found him guilty of these allegations?

A: It depends what you mean by a "finding". The investigation showed that the allegation had been sustained.

Mr WATKINS:

But it is quite serious to misrepresent yourself as an officer of the ICAC.

Mr O'KEEFE:

I believe so.

Mr WATKINS:

Q: That would be a crime, would it not?

A: But by that time he had left State Transit.

Mr WATKINS:

Q: Is it a crime to misrepresent yourself as a member of the ICAC?

A: I think it is under our Act. Yes, I think it is.

Mr WATKINS:

Q: But no criminal action has been taken against him for that?

A: No. But, remember, when you have a criminal action you have to establish things beyond a reasonable doubt, which may up the ante as to whether or not you are going to get a conviction. That is a matter for the Director of Public Prosecutions ultimately to determine.

Mr WATKINS:

So he is innocent, is what you are saying.

Mr O'KEEFE:

No, I am not. I am saying he has not been found guilty but—

Mr WATKINS:

So he is innocent. There is still a presumption of innocence in New South Wales.

Mr O'KEEFE:

You mean of any crime? Yes, he has not been convicted of any crime, I grant that.

Mr WATKINS:

So he is innocent. I find it upsetting, on his behalf, and rather strange that you would make such allegations about Mr Regan in your evidence to discredit whistleblowers.

Mr O'KEEFE:

I did not do that. What I did was say what I know to be the evidence and what I believed to be the truth. That is what I have said.

Mr WATKINS:

Q: You would not want to say that outside, would you?

A: I do not propose to answer that question, Mr Nagle. That is really either rhetorical or an improper question.

Mr WATKINS:

That one is rhetorical.

Mr O'KEEFE:

The function of the Committee, with respect, Mr Watkins, is to ask questions, not to ask rhetorical questions.

Mr WATKINS:

Q: Well, sometimes I have been guilty of such things. Mr Regan and others in Whistleblowers were particularly upset by that interchange last time, and they felt the abuse of your position in trying to discredit that group and using evidence that has not gone before any criminal court, and where Mr Regan has not been found guilty. Would you propose to apologise for that?

Mr O'KEEFE:

No.

Mr WATKINS:

Would you repeat it? I mean, that is not the sort of—

Mr O'KEEFE:

I decline to answer that question. That is not a proper question.

Mr WATKINS:

Q: You decline to answer that question?

Mr O'KEEFE:

Really, that is designed to embarrass me, and that is not the function of this Committee.

Mr WATKINS:

No, it is not.

Mr O'KEEFE:

Well, it has that effect, Mr Watkins.

Mr WATKINS:

Well, I am sorry about that, but it is also your responsibility—

Mr O'KEEFE:

It did appear to have that intent.

Mr WATKINS:

You make misjudgments about my questions. You have made several misjudgments about my questions today. Could we move on to Operation Zack? I think the Regan matter should be taken further. I think that is something that the Committee at its next hearing could discuss. Could I ask that that be put on the notice paper for our next hearing? Perhaps the Commissioner could give some more detailed response.

CHAIRMAN:

Q: Correct me, Commissioner O'Keefe, if I am wrong. Did you actually say on the last occasion when the matter was raised—and I may be incorrect about this—that he gave an undertaking that he would not impersonate an ICAC officer in the future? Or am I wrong about that?

A: I do not recall that.

CHAIRMAN:

I am sorry about that. I do not know whether that was said or not.

Mr O'KEEFE:

I do not recall that having been said here or said by him.

CHAIRMAN:

I am sorry about that. I was not sure.

8. COMMISSION STAFF

8.1 What is the policy of the Commission regarding the appointment of people to the Commission who have current political affiliations?

The policy of the Commission is to select the best available people to fill positions. People who have current political affiliations may be employed by the Commission, as they may by the public sector generally. The pre-employment vetting process identifies such affiliations. Once employed, the ICAC Code of Conduct places an obligation upon Commission officers to disclose potential conflicts of interest, so that an informed decision can be made about what action, if any, needs to be taken. If a political affiliation were to create such a conflict it would be dealt with in accordance with the protocols of the Commission.

8.2 Do you consider it appropriate that Assessment Officers who belong to political parties or have stood for preselection for State Parliament, Federal Parliament or for Local Council be appointed Assessment officers?

I do not understand why the emphasis in the question is given only to Assessment Officers. The role of Assessment Officer is no more or less significant than the role of other officers within the Commission and therefore it is no more or less appropriate for them to belong to political parties or to stand for pre-selection for public office. As noted above the Commission requires of its staff that they disclose potential conflicts of interest.

One officer of the Commission was formerly a member of the Premier's staff, when the Premier was Leader of the Opposition. Another officer has served on the staff of a Minister. Yet another officer of the Commission did stand unsuccessfully for preselection. I have the strongest confidence in the integrity of each of those officers.

8.3 Do employees who have political affiliations disclose those political affiliations to the ICAC and if so, what is the method of disclosure and what record is kept of those political affiliations?

As indicated in an earlier answer, political affiliations are usually established during the pre-employment vetting process. Employees are asked to identify political or community involvement at that time, and a record is kept by the Commission's Security Section.

Under the Code of Conduct, Commission officers must disclose any potential conflicts of interest that arise. See above.

Questions Without Notice

Mr WATKINS:

Q: This goes to the issue of a happy workplace, whether the ICAC is a comfortable place in which to work, and impacts on occupational health and safety. I understand that it is a requirement of the regulations that occupational health and safety committees are to meet at least once every three months. Do you know whether that is so?

A: I do not know. I cannot tell you about that.

Mr WATKINS:

In the annual report it says that the occupational health and safety committee of the ICAC has met only twice in the past year. So it seems that perhaps—

Mr O'KEEFE:

If your premise is right, they should have met more often. I do not think the premise is right. I know that they have met a couple of times since then.

Mr WATKINS:

I understand the Occupational Health and Safety (Committees and Workplaces) Regulation 1984 requires a meeting once every three months.

Mr O'KEEFE:

Well, I do not know that.

Mr WATKINS:

And the ICAC has not fulfilled that requirement.

CHAIRMAN:

By virtue of the report?

Mr WATKINS:

Q: By virtue of the report. If it is correct that it has to meet every three months, does not that indicate there is a lack of care for the employees at the commission?

A: No, far from it.

Mr WATKINS:

Q: That is a statutory duty and you are not fulfilling it?

A: That does not say anything about care for the employees. There may be no cause for it; there may be nothing that needs attention.

Mr WATKINS:

Q: That is not the basis on which a direction should come?

A: But it is, if what you are talking about is care for the employees. One is a formal requirement and the other is an attitude of mind. The formal requirement may be no indication of the attitude of mind at all, so I do not agree with your proposition.

Mr WATKINS:

Q: Surely the commission should fulfil its statutory duties?

A: It should.

Mr WATKINS:

Q: And it has not?

A: Well, I do not know that but I shall check on that.

Mr WATKINS:

Q: What will you do?

A: Ensure that it does if it has not.

Mr WATKINS:

Q: And require whoever is responsible to explain why they have not been fulfilling their statutory duties. Who is responsible for this?

A: That would be the director of corporate services and research, I would say.

Mr WATKINS:

I would have thought it would be critical at this time when employees have come forward and suggested that it is not—

Mr O'KEEFE:

But it is interesting that the employees you are talking about are not at our main premises; they are at other premise entirely, so it has got nothing to do with our main premises at all.

Mr WATKINS:

Q: Your occupational health and safety committee only covers certain workers?

A: No. All I am saying is that the premises in which the surveillance people were then housed and are now housed were separate from the main place.

Mr WATKINS:

Q: How is that relevant?

A: I thought you were trying to tell me that the fact that there were only two meetings meant that we did not care about our employees. What I am saying is—

Mr WATKINS:

Q: I am saying that it is a statutory requirement to meet. One of the reasons you have committees like this is to ensure that if problems come up in the workplace they are dealt with?

A: Yes.

Mr WATKINS:

Q: It seems that there are problems in the workplace otherwise we would not have three employees coming to us and talking about the virulent nature of the workplace?

A: They do not talk about the virulent nature of the workplace.

Mr WATKINS:

They have to us.

Mr O'KEEFE:

With great respect, that is nonsense.

Mr WATKINS:

No, it is not nonsense.

Mr O'KEEFE:

It is not what anybody has ever said to me. It is not a word that has ever been used and I would be very surprised—

Mr WATKINS:

I am telling you now that this is what they have told some of us.

Mr O'KEEFE:

They have used the word virulent, have they?

Mr WATKINS:

Q: A virulent workplace has been discussed. Do not bandy about individual words. They have come to the Committee and they have certainly come to me saying that the atmosphere was poisonous and it drove two of them out of the commission and a third to say that he could no longer serve in that surveillance unit and he requested to come over to the main building as the assistant investigator. The committee is surely there to look at problems like that?

A: No, it is not. That is not an occupational health and safety committee function at all. That would be one of our other committees. That would be our CCG.

Mr WATKINS:

Q: What is that?

A: The commission consultative group, which meets every fortnight.

Mr WATKINS:

Q: I would have thought that it might very easily go across into the committee dealing with occupational health and safety?

A: That is your view.

Mr WATKINS:

A view shared by a few other people, I would suggest.

Mr O'KEEFE:

That may be, but that does not make it right.

Mr WATKINS:

Q: Could you please ensure that your committee does meet according to its statutory requirements?

A: I will, and I must say that I thought it had. But if it has not, I will ensure that it does. By the way, the use of that person's name has not been from me. That was a protected disclosure and I have not used the name.

CHAIRMAN:

That is right.

Mr O'KEEFE:

The name has come from members of this Committee, so I have not revealed any employee's name.

Mr WATKINS:

Just to finish the occupational health and safety issue, some other people do agree with me because section 5(1)(c) of the Occupational Health and Safety Act states that the purpose of the Act is "to promote an occupational environment for persons at work which is adapted to their physiological or psychological needs" and that, therefore, committees would have that with them.

Mr O'KEEFE:

Q: I take your point. Can I say that you are correct and I am wrong?

Mr WATKINS:

There is no need.

Mr O'KEEFE:

Why not? If you are wrong one should admit it and be big enough to do it. But it is two-way traffic.

9. LISTENING AND OTHER COVERT DEVICES

9.1 What were the number of warrants issued for listening devices in 1992, 1993, 1994, 1995 and 1996?

On a calender year basis the following number of warrants were issued:

1992	20
1993	20
1994	2
1995	17
1996 (to date)	40

9.2 Has there been an increase in warrants issued for permission to use listening device, and if so, why?

As the table above shows with the exception of 1994 the use of listening devices was relatively constant during the period 1992 to 1995. There has been a significant increase in the use of listening devices this year. Whilst to some extent the opportunity to use listening devices is dependent upon the nature of the matters being investigated, the increase in use of such devices is consistent with and a consequence largely of my determination to use whatever available investigative methods are lawful and necessary to expose corruption.

9.3 What are the methods used to issue such warrants?

A warrant authorising the use of a listening device is granted pursuant to the provisions of the Listening Devices Act 1984. This Act provides that such a warrant can only be granted by the Supreme Court of New South Wales.

Section 19(2) of the ICAC Act provides that an officer of the Commission may seek the issue of a warrant under the Listening Devices Act. As the Listening Devices Act relates directly to the right to privacy of the individual, the highest standards of confidentiality and accountability are maintained by the Commission. Accordingly, ICAC staff, in making an application for a warrant, are guided by an internal policy and procedure document, which requires all applications prepared by the Investigation Team to be settled by the Team Lawyer and to be approved by the Solicitor to the Commission or, in his absence, by a Principal Lawyer.

It is an offence under the Listening Devices Act to use a listening device to record or listen to a private conversation otherwise than as authorised by that Act. Section 5 of the Listening Devices Act generally prohibits the use of a listening device except, amongst other things, in circumstances where a warrant has been granted to a person under the provisions of Part 4 of that Act.

Under Part 4 of the Listening Devices Act there are two methods by which the grant of a warrant may be sought:

- (i) upon application to the Supreme Court in person pursuant to section 16 of the Listening Devices Act, and which in practice requires the applicant to put evidence in support of the application before a Supreme Court judge in affidavit form. A warrant granted by this method can be in force for a statutory maximum period of 21 days. Further, prior to the grant of a warrant under section 16, the applicant is obliged, pursuant to section 17 of the Listening Devices Act, to serve on the Attorney General certain particulars relating to the proposed application, and the Attorney General has, under the Act, an opportunity to be heard in relation to the granting of the warrant.
- (ii) in urgent circumstances, upon application to the Supreme Court by telephone pursuant to section 18 of the Listening Devices Act. The Act imposes no obligation to notify the Attorney General of a proposed application of this type, however a warrant granted by this method can be in force only for a statutory maximum period of 24 hours.

In relation to warrants granted by either of the methods referred to above, section 19 of the Listening Devices Act requires the Court to specify in the warrant, a time within which the person to whom the warrant is granted must report to the Court and to the Attorney General as to whether or not the listening device was used pursuant to the warrant. This is an important accountability mechanism in the Act, and, if the listening device was so used, the report must state:

- (i) the name, if known, of any person whose private conversation was recorded or listened to by the use of the device;
- (ii) the period during which the device was used;
- (iii) particulars of any premises on which the device was installed or any place at which the device was used;
- (iv) particulars of the general use made or to be made of any evidence or information obtained by the use of the device; and
- (v) particulars of any previous use of a listening device in connection with the prescribed offence in respect of which the warrant was granted.

9.4 Who supplies the listening devices and what types are these?

This is an operational matter, and I do not wish to forewarn those who might be involved in corrupt activities the nature of the resources the Commission has at its disposal.

9.5 What is the evidence required to substantiate a prima facie case of the need for a listening device?

Pursuant to s16(1) of the Listening Devices Act, the applicant must satisfy the Court that they have reasonable grounds for suspecting or believing that:

- (a) a prescribed offence has been, is about to be, or is likely to be committed; (a prescribed offence includes an indictable offence, or an offence of a class or description prescribed for the purpose of part 4 of the Act); and
- (b) for the purpose of an investigation into that offence or of enabling evidence to be obtained of the commission of the offence or the identity of the offender, the use of a listening device is necessary.

Section 16(2) of the Listening Devices Act 1984 provides certain considerations for the court in making its decision:

- (a) the nature of the prescribed offence;
- (b) the extent to which the privacy of any person is likely to be affected;
- (c) alternative means of obtaining the evidence or information sought to be obtained;
- (d) the evidentiary value of any evidence sought to be obtained; and
- (e) any previous warrant sought or granted under the Act in connection with the same prescribed offence.

Section 21(1) of the Listening Devices Act provides that proceedings are heard in the absence of the public. In practice this means that they are conducted in chambers. The Team Lawyer and the officer who swore the affidavit may be present during this hearing. The Attorney General is notified of all applications and may also elect to be heard in relation to the granting of the warrant.

9.6 If information gathered is not used, is the surveillance information destroyed, or does it go into the archives to be used for other inquiries?

Section 22(2) of the Listening Devices Act applies to the destruction of irrelevant records made by the use of a listening device:

"A person shall, as soon as practicable after it has been made, cause to be destroyed so much of any record, whether in writing or otherwise, of any evidence or information obtained by the person by the use of a listening device to which this section applies as does not relate directly or indirectly to the commission of a prescribed offence within the meaning of Part 4".

The ICAC policy reiterates this section of the Act. That policy is adhered to.

Questions Without Notice

Dr MACDONALD:

Q: What have you learned from the methodology of the royal commission that could be applied to the activities of the ICAC? Do you feel that there may have been some systemic problems previously, in the earlier days of ICAC, when it did not handle things as you would have wished, or in the way you would have done, or was it merely a matter of the royal commission having the resources and the power and leaving the ICAC in its wake? Would you like to tell the Committee your feelings on that?

A: It is a pretty broad question. Well, resources are undoubtedly a factor. The single focus is a factor, which really multiplies the effect of the resources committee because you are spreading them over fewer people. Thirdly, the royal commission did have a lot of assistance by way of material already gathered by a number of agencies. I understand that there will be some acknowledgment of that in the final report. Fourthly, I think that there was a disinclination at a period of time in the ICAC's history before I went there to use certain forms—investigative methods. I do not think that was based on budgetary considerations; it was based on philosophical considerations.

Dr MACDONALD:

Q: Can you expand on that?

A: Yes. I think that there was a period in which the use of powers, particularly in relation to electronic surveillance, was downgraded, perhaps almost excluded, because of considerable pressure that came from this Committee in relation to not having proper regard to civil liberties. And it is a difficult balance. My predecessor spent a lot of time actually under attack for using these things. You have got to look at the climate at a given time, and the climate at that time was

much more averse to the use of electronic surveillance than would now be the case.

Dr MACDONALD:

Q: Why?

A: I cannot tell you why; I do not know. But there is a time when certain things will be accepted and another time when they will not. I cannot tell you the reasons for that.

CHAIRMAN:

However, this Committee has not said to you that you should not use surveillance.

Mr O'KEEFE:

No, it has never said that. But if you go back into some of the earlier Committee meetings—

CHAIRMAN:

Q: In the very early days, in 1990-91?

A: Yes. There was a great preoccupation with civil liberties. Some statements that I had made when I was President of the Bar Council were in fact used in that regard. But there is a question of balance that I believe has to be considered: the balance, on the one hand, of looking at individuals' rights and, on the other hand, the need, where it is necessary and lawful, to use sophisticated investigative methods. My experience has been that when confronted with electronic material, video or sound, a number of people who have told untruths, just blatant lies, will come clean—not all of them. Another factor, I think—and I do not wish to overstate this—is that probably the royal commission gave more attention to media hand-outs and arrangement of procedures so that they captured media attention. They are some factors that occur to me; there may be others. I am sorry, there may be one more. I cannot say that this is so. When the ICAC started off, almost the whole of its investigative force consisted of seconded New South Wales police officers. That may have been a factor; I cannot tell you that that is so. It has been said by some outside the commission to be so. I cannot say it is, but it might have been. Now, of course, they are virtually non-existent in the ICAC; I think we have two at the moment.

The Hon. B. H. VAUGHAN:

Q: For how long do they stay?

A: Two years, or until they get a promotion of some kind, which may take them beyond the range that they are at the commission on and takes them back to the service.

The Hon. B. H. VAUGHAN:

Q: In your tenure have there ever been any bribery attempts that have come to your knowledge?

A: In the commission?

The Hon. B. H. VAUGHAN:

Yes.

Mr O'KEEFE:

A: No. Even influences—that is, not monetary bribes but an attempt to influence somebody—no. There was one that I was perhaps concerned about. I had it looked at, but there was nothing in it.

The Hon. B. H. VAUGHAN:

I recall that in the early days of the Hong Kong ICAC it became quite a minor industry to bribe investigators.

Mr O'KEEFE:

The deputy was in fact moved out because—

The Hon. B. H. VAUGHAN:

Q: He went to Spain?

A: No. That was a prosecutor.

The Hon. B. H. VAUGHAN:

Q: Who went to Spain?

A: The senior crown prosecutor went to Spain. I do not think he went to Majorca, but he went elsewhere. The deputy commissioner was removed from office, or resigned, because of his association with a person in Hong Kong who was either a criminal or of bad repute or something like that. And it was said that he, the deputy, might have been influenced by that association. We have not had anything like that.

Dr MACDONALD:

Q: You indicated when referring to electronic surveillance that the previous Committee influenced

ICAC activities to the point that it discouraged the previous commissioner from using electronic surveillance. You could argue that that Committee has been proved wrong. Do you think it is proper that the parliamentary ICAC Committee should have that sort of influence?

- A: If something is the subject of a formal report I think we ought to have regard to that and respect it. It is not mandatory, but when it is the considered view of the whole Committee I think it has force. When you are looking at perhaps the view of an individual member, it is not so forceful; you have to look at what the consensus view ultimately is. But even then you will have regard undoubtedly to what might even be a dissentient view because it might contain something in it that is worthwhile considering. I am not saying that Mr Temby was influenced by that. My belief is that he may have been. It occurred and this is what occurred. That is, there was this criticism and fairly strenuous questioning and there was then a lessening of the use of that. So I may unfairly draw the inference but I think it is available. The second thing is: if the Committee as a whole forms a view then I think as part of our accountability we should listen to what the representatives of the people say—as a body rather than as an individual. So I do not see anything improper in that. Times will change. You say "now judged to be wrong" but you have a moving set of values. So you judge something in accordance with whatever the values were at a given time. If those values change then you make a different decision and I think "right" and "wrong" are not really appropriate words for that.

Dr MACDONALD:

It could be political interference.

Mr O'KEEFE:

That is something that I think one must be cautious of, as one must be cautious of individual members of a committee using the committee itself and its proceedings for personal political purposes.

10. PUBLIC INQUIRIES

10.1 Do you believe that the adversarial system in public inquiries is an essential part of the weaponry of the ICAC? If so, why and if not, why not?

The Commission does not have an adversarial system in its public inquiries. Hearings are held for the purpose of the Commission's investigations and whilst people may, as contemplated by the ICAC Act, be given leave to be represented during the course of a hearing they are not parties in the sense of adversarial litigation. Individuals who are given leave to appear and be represented have limited rights to cross-examine witnesses and at times such cross-examination will advance the investigation by revealing matters not previously known to the Commission. The time at which such cross-examination is permitted is controlled by the presiding Commissioner.

Therefore, whilst the ICAC does not operate under an adversarial system, witnesses will from time to time experience what might be called "adversarial treatment". The Committee on the ICAC noted in its February 1991 Second Report on its Inquiry Into Commission Procedures and the Rights of Witnesses that:

"... the ICAC must ensure that all evidence it receives is carefully tested and witnesses at hearings will therefore sometimes be subject to rigorous cross-examination. Furthermore, the issues at stake are such that adversarial positions and tactics are almost inevitable. For these reasons "adversarial treatment" is likely to be something to which witnesses will from time to time be subjected at ICAC hearings."

10.2 Is the Public Inquiry system the most appropriate way of getting at the truth?

The public hearing system has many advantages and some disadvantages. In terms of the Commission's principal functions it assists the Commission to expose corrupt conduct and it also has an educative role. When hearings are held in public the level of information reported to the Commission often increases. This is because people who have information touching on the investigation, or on other matters, are often prompted by the public hearings to report matters to the Commission.

The public hearing process can also have the beneficial effect of increasing the public's confidence in the integrity of the investigation and its outcome.

It is well recognised that the public hearing process can have detrimental effects on reputations. Steps can be and are taken to try and minimise unnecessary or unwarranted detrimental effects, however, the risk remains.

As the Committee on the ICAC noted in its November 1990 First Report on its Inquiry into Commission Procedures and the Rights of Witnesses:

"The arguments in favour of public hearings are formidable. Exposure is a key weapon in the fight against the secret crime and corruption. Furthermore, public hearings ensure the ICAC is publicly accountable - the way it exercises its special powers is open to public scrutiny and the public can inform itself of the Commission's activities. This public has a right to know what the Commission, which was established to protect the public interest, is doing."

10.3 It is the understanding of Committee Members that after evidence is given in-camera to the ICAC, the same questions are asked again during the public hearing. Is this technique necessary and fair to the witness, and what is the value of repeating questions in public hearings?

and

Is this technique used to discredit the evidence given in-camera, or to check prior inconsistent statements?

The questions asked in private hearing will not necessarily be asked again during public hearing, indeed this is not the usual course currently adopted. The approach taken will depend on the needs of the investigation. For example if a person has given evidence in private hearing in the absence of any other witnesses the Commission may proceed by making the private hearing transcript available to persons who have been given leave to appear at the Commission in order for them to be able to cross-examine the witness who has previously given evidence in private hearing. This can lead to some questions being repeated, more often in cross-examination.

Ordinarily the Commission will not ask the same questions again in public hearing unless operational considerations, such as witness protection, demand that the fact of the earlier private hearing remain confidential for some period of time. For example if a person has been assisting the Commission by giving evidence in private hearing that person may be at risk if that fact becomes known. In such cases it may be wise to proceed in public hearing as if the person is giving evidence for the first time. In such cases it could not be said that the procedure was unnecessary or unfair to the witness.

In the case first outlined, where a witness is simply being cross-examined in public hearing on evidence given in private hearing, it will be a matter for the presiding Commissioner to determine whether such questioning would be unnecessary or unfair to the witness. However, such an approach is commonly used in criminal trials in respect of questions previously asked during committal hearings and can be a very effective way of testing the honesty and/or the memory of the witness. It is not uncommon that a witness will give conflicting answers on different occasions to the same question. Such responses can substantially advance the Commission's goal of getting to the truth and assessing credibility.

10.4 What is the average length of a public inquiry?

The Commission has had 36 public hearings involving 816 hearing days to 22 October 1996. Therefore the average length of the Commission's public hearings is 22.7 days.

10.5 Why did the Metherell Inquiry only take 11 days and the Semple Inquiry 46 days?

The Metherell inquiry involved six witnesses over 11 days and the Semple inquiry involved 29 witnesses of 46 days. One was longer than the other because they were very different investigations involving different considerations and different witnesses.

The report on the Semple matter will address specific issues which relate to the length of the investigation.

10.6 It is the Committee's understanding that the process used by the ICAC is as follows:-

- (a) the witness is interviewed
- (b) evidence is given in-camera
- (c) a public hearing is then conducted

If this is the system the ICAC uses, do you believe it is fair that you should have three levels of interrogation of witnesses?

The Commission's investigative process does not necessarily or usually involve the three steps outlined in the question. At times witnesses will be brought directly into a hearing whether public or private, depending on the needs of the investigation. Where possible the Commission prefers to interview witnesses prior to bringing them into hearings. This is not always possible. People who are targets of investigations, not surprisingly, sometimes are unwilling to be interviewed.

Whether a witness has been interviewed or not the Commission prefers to conduct its early investigative work in private. This helps to protect the integrity of the investigation, can avoid unnecessarily damaging reputations when allegations prove to be unfounded and assists the Commission to determine whether costly public hearings are warranted. The Commission certainly believes that this approach is in the public interest.

To the extent that the approach could be considered fair or unfair the Commission considers that in most cases it will operate to the advantage of those who assist the Commission and give truthful evidence. There is no doubt that should a person be prepared to lie to the Commission then a two, or in some cases three, step approach can be more likely to expose the fact that that person has lied. Identifying such lies is critical to the investigative process and furthers the public interest in exposing corrupt conduct. The decision as to the appropriate course to take involves

an exercise of judgment in the light of all the circumstances.

10.7 Why is there a need for a Counsel Assisting, when the Commissioner asks many questions during inquiries? Do you believe it is fair or necessary that the Commissioner and the Counsel Assisting both have the right to ask questions in addition to other Counsel or Solicitors?

The function of Counsel Assisting is to assist the Commissioner during the inquiry. It is his or her function first to call and then examine the witnesses before the Commissioner. Counsel Assisting has the responsibility of discovering, assembling and presenting the evidence to the Commissioner. It is Counsel Assisting's task via his or her questioning to ensure that the investigation elicits the relevant facts.

The Commissioner has the responsibility to ultimately make a determination on the facts and make findings on the evidence before him. In order to fulfil his duty the Commissioner may ask questions which elicit facts which have not been elicited by Counsel Assisting. It is fair and necessary that the Commissioner and Counsel Assisting both have the right to ask questions of a witness in order to elicit all relevant facts in order to thoroughly investigate the matter. The ultimate goal is uncovering the truth.

Counsel and Solicitors appearing before the Commissioner do so with the Commissioner's leave and they have the right to ask certain questions subject to the leave of the Commissioner. The Commissioner can withdraw that leave should he consider questions asked by Counsel or Solicitors to be inappropriate.

11. INTERNATIONAL ANTI-CORRUPTION CONFERENCES

11.1 What is the value to the Commission in attending International Anti-Corruption Conferences?

There is a value to the ICAC, to the State of New South Wales and to other agencies in other Countries. In October 1995, the Commissioner and two staff attended the 7th International Anti-Corruption Conference held in Beijing, along with approximately 650 other delegates, representing 77 countries. The Conference is held every two years and is the major international conference on corruption. The New South Wales ICAC is recognised internationally as a leading organisation in investigating and preventing corruption. In recognition, the Commissioner and a staff representative were selected to present papers at the conference which provided an opportunity for the Commission to inform the international community about its work. The standing of the Commission was undoubtedly enhanced and the determination of our State to eliminate corruption was made clear. This is advantageous for those who may be considering investment in New South Wales.

The New South Wales ICAC representatives were highly sought after by delegates from other countries due to their expertise in this area and strong interest was shown in the corruption prevention and research publications of the New South Wales ICAC. Several delegates contacted the staff representatives on their return to Australia to request copies of various publications.

The conference also provided an opportunity for the New South Wales ICAC to establish and develop networks with other international organisations with a view to exchanging and accessing resources and ideas. Networking proved to be particularly useful with delegates from other countries who are dealing with corruption issues similar to those in Australia, including Canada, United States, Hong Kong, New Zealand, Britain and other European countries.

Enroute to the Conference in Beijing, the Commissioner presented the keynote address to IACOLE in Vancouver and the staff representatives took the opportunity to visit the Hong Kong ICAC as did I, in the course of my return journey. The visit provided an opportunity for an extensive exchange of information, ideas and resources. It also provided a comparison between the Hong Kong and New South Wales ICAC's on how the two organisations operate and the different approaches and methods used. On return to New South Wales, staff prepared reports detailing their observations and recommending strategies used by the Hong Kong ICAC which could be adapted and implemented by the New South Wales ICAC.

11.2 The Chinese Attorney General representative, Mr Lin, has approached the Chairman of this Committee with a request to join an Asian-Australasian South Pacific Rim Anti-Corruption group which is proposing to meet every two years. Do you think there will be value in bi-annual Anti Corruption Conferences in this geographical area?

and

Do you think it is of value to have an Australasian, Australian and New Zealand Conference of Law Enforcement Agencies, Anti Corruption bodies and other interested persons, on an annual basis?

I am aware of initiatives to establish regional anti-corruption groups. The Hong Kong ICAC is currently seeking opinions on a proposal to establish a Regional Anti-Corruption Secretariat.

This Commission's experience in international and regional activities and with international visitors suggests that the NSW ICAC can contribute significantly to efforts in other countries to establish or improve investigation, prevention and education activities related to corruption. The costs of such contributions must be weighed carefully against the diminishing resources available to this Commission. On present resource levels I have reservations as to the extent to which the Commission would be able to shoulder additional burdens arising from regional activities.

12. NATIONAL PARKS AND WILDLIFE SERVICE

12.1 A Mr Raymond Hoser has recently released a book containing serious allegations of corrupt conduct within the New South Wales NPWS. Have these allegations been brought to your attention, and does the Commission intend to investigate?

Mr Hoser's allegations were brought to the attention of the Commission, principally in 1992 and 1993.

The decision whether to investigate such allegations is an operational matter, and accordingly is not one I propose to discuss.

13. LOCAL GOVERNMENT

13.1 Some Local Councils are using outside contract Town Planners who are not employees of the council to deal with the overload of work by the council. The method is that the developer pays the council a contract fee. The council Town Planner and General Manager select an individual outside the Town Planning Department to do a particular assessment on a Development and Building Application. Some Local Councils and Town Planners are saying this is corrupt conduct and the ICAC have said should not be done. Does the ICAC see any problem with the Local Council employing an individual contract Town Planner to assess a particular Development and Building Application. If so, why?

The Commission does not object to councils employing outside contractors to assess Building and Development Applications. Specific advice has been provided advising organisations how to develop policies in this area to ensure corruption does not occur in the process. The Commission recommends that:

- All matters must be assessed impartially against consistent criteria. There cannot be, or be seen to be, any unfair advantage in having applications assessed by a contract Town Planner.
- All personal interests related to the matter being assessed must be declared. Where conflicts of interest exist, the matter cannot be handled by the person with the interest.
- Contract Planners should not assess Applications from developers for whom they have worked in the recent past. Two or three years is recommended as a reasonable time.
- Contract Planners should be excluded from performing work for a developer on any project in which they have performed an assessment. Consideration should also be given to excluding contract Planners from working for a contractor, for whom an assessment has been performed, for a specified period.
- Matters not assessed by contract Planners must continue to be performed within a reasonable time.

14. MISCELLANEOUS

14.1 What is the status of the uptake and implementation of the Practical Guide within agencies seeking advice from the Commission?

Almost one thousand hard copies of the Practical Guide have now been distributed. In addition 260 have been supplied in computer disc form to interstate agencies and private sector inquirers. The demand for additional copies from agencies continues as awareness spreads of the Guide's usefulness. The impact of this publication on the Commission's advice work has not yet been formally measured. However, the impression of Corruption Prevention Officers receiving requests for advice is that awareness of this resource is pleasingly high and that inquirers have often consulted it before calling or writing.

A letter is currently being sent to all copy holders calling again for feedback on the Guide's usefulness and notifying them of the forthcoming module on Internal Investigations. The contents will be reviewed in the first half of 1997 to identify modules which require updating and additional modules to be included.

14.2 Has the Commission conducted any further Community Attitude Surveys, and if so, what are the results?

The 1996 community attitude survey is currently being conducted. This year a sample of 500 adults across New South Wales will be telephoned and surveyed. These telephone interviews are currently being conducted over a period of approximately two weeks, commencing 15 October. Information on the topics similar to previous years is being sought. During the year since the last survey the ICAC has been mentioned in the media both in relation to its own work, and to the Royal Commission. The 1996 survey will explore awareness of media reports about ICAC activities and perceptions of the ICAC as a result of media reports.

As with previous community attitude surveys, the results will be publicly available in a published ICAC report. This will be available early in 1997.

1995 Community attitude survey: Analysis of the views of those aged 18-24 years old

At the request of the Education Section, the data from the 1993, 1994 and 1995 community attitude surveys were reanalysed to determine whether there were any differences in the attitudes and perceptions of young adults (those aged 18 to 24 years) and those who are older. Results of the analyses revealed few trends over time or statistically significant differences between the two groups.

In each of the three surveys, over half of the younger group considered that corruption in the New South Wales public sector was a major problem. However, those aged 18 to 24 years were also more likely to think that there was little they could do personally about corruption. In the 1994 survey when asked about the effects of public sector corruption in New South Wales on them or their family, almost one-third of the younger group responded that such corruption was not likely to affect them or their family in any way, whereas nearly half of those aged 25 or over thought that it would. Over the three years, both age groups have consistently expressed a very high level of support for the ICAC. Both groups have averaged over 90% support for the statement "the ICAC is a good thing for the people of New South Wales".

14.3 What has the Commission learned, and what initiatives have been undertaken, in the area of public and private sector interface and the potential risks involved in dealing with non-government entities which breach ethical standards of acceptable standards of public probity?

In recognition of the assistance that the Commission can provide in relation to the interface between the public and private sectors involved with major projects, and in response to the Premier's Memorandum 93-34 which requests agencies to contact the Commission before commencing a major project, many agencies approach the Commission for advice before undertaking a major project which may involve interfacing with the private sector. For example RTA Eastern Distributor, Luna Park and Olympics.

In response to this demand, the Commission's Corruption Prevention & Education Unit has been undertaking a project to examine the current issues arising from the public/private sector interface and to determine the implications for the work of the ICAC and other central policy making bodies. The project covers a wide variety of complex issues, some of which have only emerged during the consultation phase of the project. This has necessitated the extension of the project's completion date to the end of October.

The project has identified several changes in policy and guidelines including the National Competition Policy, privatisation and commercial initiatives by Government, which have dramatically increased the extent to which the private sector is involved in the provision of public services and infrastructure. Greater involvement of the private sector with the public sector can bring economic benefits but also opportunities for corruption. Such corruption clearly undermines the objectives of delivering best value to the community. Contracting out can increase the risk of corruption as there are fewer direct controls, and it may lead to less accountability, and loss of openness and transparency with the attendant risk of the business sector bringing undue influence on government decisions and policy processes. Some agencies may not adequately monitor and measure the performance of contractors and are therefore not able to assess whether best value for the public dollar has been achieved.

Another issue to emerge is the private sector approaching government to sell what it sees as a good idea. This can create the situation where the project becomes "deal-driven" rather than

"needs-driven". This can increase the risk of corruption because of the temptation to make the needs analysis fit the idea. The government agency then takes on a project which may not have been identified as a priority or meet any of its previously identified needs.

Concerns have also been raised that contracting out is not always cost-effective for government and can have negative impacts such as decreased standards of services and facilities, as well as economic, environmental and social costs. This highlights the need for transparency and accountability in the contracting out processes and in monitoring the performance of contractors.

The project has identified several issues for further attention including direct negotiations, commercial confidentiality clauses in contracts, in-house bids, intellectual property, post tendering negotiations, and the impact of government probity standards on the relationship between the public and private sectors.

Work has already commenced to develop criteria that should be considered when in-house bids are to be made when government services and assets are being contracted out, leased or sold and what must be considered when an agency intends to undertake direct negotiations with private sector proponents.

The Commission has been consulting with the Department of Public Works and Services in the development of a Code of Practice for Procurement and Disposal that applies to the public sector as well as those in the private sector who wish to do business the government. The Draft Code states that organisations who breach the Code may lose their contract for non-compliance.

The private sector is becoming more aware of probity requirements, particularly when doing business with the public sector. This is reflected in the 19 recorded requests for telephone advice taken by the CP Unit from private organisations and in the fact that copies of the Commission's Practical Guide to Corruption Prevention have been requested by 25 private sector organisations including some major law and accounting firms.

14.4 What progress has been made in relation to the education of members of parliament, and their staff, in the functions and practical application of the services of the ICAC in parliamentary duties, encompassed within your educative role?

The findings of the 1996 Community Attitude survey prompted the Commission to announce to the PJC in its May 1996 evidence, its intension to run a series of presentations to Parliamentarians and their staff within the Prevention services Program.

Before substantial action was taken in this regard, the results of research into the needs of community advisers, commissioned in February 1996 and completed in June 1996 within the Community Relations Program, became available. That research had identified Members of Parliament as key community advisers. A total of 92 State Members were sent the questionnaire and 61 (66%) completed and returned it. The research was to determine the information needs

of community advisers in relation to the ICAC and how to deal with corruption-related inquiries.

Members of Parliament agreed that they had a significant role to play in helping the public with matters relating to corruption and the majority received corruption related enquiries or requests for assistance. They had a medium to high level of knowledge about the ICAC and were interested in receiving more information about the ICAC predominantly in the form of pamphlets or information kits.

The survey results showed that for MLAs and MLCs ICAC-run seminars were not rated highly with only 10% of MLAs surveyed and no MLCs expressing the view that they would be useful. The methods considered most useful were pamphlets (MLAs 62%, MLCs 32%), information kits (MLAs 55%, MLCs 42%), regular newsletter (MLAs 36%, MLCs 26%) and direct contact number at ICAC (MLAs 62%, MLCs 47%).

In response to this need Parliamentarians were in July sent a letter from the Commissioner, together with a set of the six new corporate brochures and a copy of Operation Hubcap. Further exploration of the best way to meet the needs of Parliamentarians is underway.

The Corruption Matters poster exhibition is presently hanging at Parliament House, an initiative that will also help raise awareness of the ICAC and its educative work with Parliamentarians as well as the broader community.

Further development of the Community Advisers Communication Strategy is underway: specific timeframes have yet to be set. For more detail about this project refer to A3 Public Education Status report.

14.5 What, progress, if any, has been achieved in relation to the discussion at our last meeting concerning the protection of individuals subject to vexatious complaints made concurrently to the ICAC and the media?

No specific additional steps have been taken in relation to vexatious complaints and/or complaints made concurrently to the ICAC and the media. However, the Commission remains vigilant about such matters and believes that in relation to vexatious complaints s81 of ICAC Act provides sufficient sanction. I note, however, that the previous Committee made recommendations about s81 and a possible role for the Operations Review Committee to advise the ICAC if it felt that action should be taken in relation to a false complaint. I do not believe that such an amendment would be necessary as the ORC can provide advice on such matters and in any event the ICAC would act if it had reason to believe that a false complaint had been made.

14.6 What are the major areas of systemic corruption that the ICAC is planning to move in to?

The Commission would not like to expose its intention in relation to operational matters. Having said that the Commission is aware of this Committee's function under s64(d) of the ICAC Act to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct. The Commission considers that long term challenges for the public sector and for it in dealing with corruption within the public sector will lie in the area of contracting out of core government functions and deregulation. The dual challenge in this area will be identify corruption risks within the new arrangements and to make recommendations where appropriate to Parliament for changes in laws or systems of work to meet corruption risks. This may include changes to the ICAC Act to accommodate jurisdictional and other questions which might arise as a result of changes in the public sector.

Questions Without Notice

The Hon. I. M. MACDONALD:

Q: Have you received any complaints from individuals concerning the branch-stacking of parties by various individuals? Recast another way, is there a potential difficulty if, say, members of Parliament, who are public officials under the Act, use resources, time and endeavour to recruit on a grand scale members of communities into branches of a political party—any political party?

A: I would only be concerned if it involved corrupt conduct within the meaning of our Act, which then would—

The Hon. I. M. MACDONALD:

Q: Can you see any points of reference where it could be corrupt activity within the meaning of the Act?

A: Yes, I think so. I think it could fall within section 8, which is the first section of the definition of "corrupt conduct", and it could fall within section 9, which is the section that requires it to be a criminal offence, a disciplinary offence, a ground for dismissing or terminating the services of, or in breach of a code that the Parliament may adopt or have adopted. It could fall within an improper use of public resources, or when adopted it might fall within the ambit of the prohibitions in the codes of conduct. So it could conceivably fall within our definition.

The Hon. I. M. MACDONALD:

Q: Have you received any complaints of this nature in the past?

A: Yes.

The Hon. I. M. MACDONALD:

Q: You have received complaints?

A: Yes.

The Hon. I. M. MACDONALD:

Q: Could you provide the Committee with any further details?

A: No.

The Hon. I. M. MACDONALD:

Q: In general terms?

A: No. Because it would be likely then to lead to a process of elimination that would identify the complainant and the complaint, and I do not think that is appropriate.

The Hon. I. M. MACDONALD:

Q: The complaints could have been around the possibility of, say, public officials using their resources, for example phones and offices, for the purposes of putting people into branches or something of that nature, or joining particular parties?

A: No, I do not think it is in that detail.

The Hon. I. M. MACDONALD:

Q: Are you talking about broader sorts of complaints? Could you give the Committee some idea of the thrust of the complaints?

A: There has been complaint about improperly obtaining numbers in given branches that would affect preselections. I cannot remember the details. There are a number of these things, and they come from time to time, and sometimes they come in batches. They are not infrequently associated with the run-up to an election, but not exclusively so. Often the problem about whether or not it falls within jurisdiction is to know whether, from the material we are given and are able to glean, there is any wrongful use of public resources. Because there is a fairly wide ambit of discretion as to the way certain office and like expenses can be applied by a member. You would need to go into a lot of detail about that, and I do not carry that in my head. We get a number of complaints. I do not really treat these as very different from other complaints about other public officials. I do not think parliamentarians should be singled out above others who are said to be doing similar things. I do not carry the detail in my head. But there have been a number of complaints over the time I have been there.

The Hon. I. M. MACDONALD:

Q: And there have been a number of investigations of those complaints?

A: I cannot remember a formal investigation. We have a tiered system. We have made further inquiries in respect of some matters—that is a preliminary step—and some matters have been referred to other agencies, like the Electoral Commission and things like that. But in my time we have not had a formal investigation into that sort of activity or that sort of complaint.

Mr WATKINS:

There are three other matters. According to what the Commissioner has said earlier, I presume he is precluded from answering today because they were not on notice. That applies to the Sergeant Bill Pinkerton matter, the matter regarding Bob Kemnitz and "The Everglades" in Leura, and there is another matter from the Building Action Review Group, or BARG as it is called, regarding an ICAC investigation.

Mr O'KEEFE:

The BARG matter has been referred by Mr Emery to us. What was the first one?

Mr WATKINS:

The first one was the Sergeant Bill Pinkerton matter.

Mr O'KEEFE:

I do not recall whether that has been referred formally to us.

Mr WATKINS:

Well, I will not ask you about that.

Mr O'KEEFE:

I think it may have been— There were three matters referred on the one day. I was able to deal with one of them and not the other two, and I cannot remember what one of them was. It was Pinkerton, was it? Thank you, Mr Emery. So the responses to those will be forthcoming.

Mr WATKINS:

Q: For those three?

A: Yes.

Mr WATKINS:

Q: I know there are members of BARG here today who are particularly concerned about the ICAC's actions in relations to their allegations about the BSC. You would not like to explore that issue at all today?

A: No.

Mr WATKINS:

Do you want me to keep going, Mr Chairman? I have probably got only one more thing to do.

CHAIRMAN:

If you have only one more major matter to deal with, continue.

CHAIRMAN:

Mr O'Keefe, could I say that the ICAC's high school poster competition that was exhibited here in Parliament House was for the ICAC a huge success. The compliments passed to the Speaker and officers of the Parliament about the great work done by those students on the posters should be acknowledged both publicly and to the ICAC. It was quite a good exhibition.

Mr O'KEEFE:

Thank you, Mr Chairman. One of our officers in that section, which is part of the Corruption Prevention and Education Unit, came up with the idea of a desk calendar, which has in fact been produced. It is terrific. I have one here if you would like one as Chairman of the Committee.

CHAIRMAN:

I will declare it in my pecuniary interests register.

Mr O'KEEFE:

It has no commercial value. In a hundred years time they may be collectors items worth \$500, but at this stage you would be pretty safe on that side of it.

15. MATTERS ARISING OUT OF PUBLIC HEARING OF 25 OCTOBER 1996

Questions Without Notice

Mr WATKINS:

Q: I would like to refer to some matters that have come up since our last meeting. You were very busy after 25 October in writing letters to different parties relating to issues that were discussed that day, in particular regarding legal action against different parties. Are you exploring legal action against any party subsequent to our last meeting?

A: I do not regard that as a proper question, Mr Chairman, as going to the fiat of this Committee. I decline to answer.

Mr WATKINS:

Perhaps you would comment on some matters—we will see. I have before me some correspondence under your name, the first dated 29 October to Whistleblowers Australia, which takes issue with things that were reported in the Manly Daily "relating to me personally". It later says, "The statements published in the Manly Daily cast serious aspersions upon my professionalism and my integrity". Later it says—

The Hon. D. J. GAY:

Mr Chairman, could I have a clarification? Is that Mr O'Keefe personally or the member personally?

Mr WATKINS:

This is a letter signed by Mr O'Keefe so it is referring to "me", Mr Barry O'Keefe.

CHAIRMAN:

Q: What does it relate to, some article in the paper?

Mr WATKINS:

An article in the Manly Daily published on 26 October with a statement attributed to Whistleblowers Australia and relating to "me personally", something that arose from the last meeting. I remind the Committee that at the last meeting certain comments were made about

whistleblowers. Whistleblowers Australia responded. One of the officers of Whistleblowers Australia, Jean Lennane, made a comment about the Committee's hearings and about the commissioner outside after the Committee had concluded, I understand. That was reported quite widely in the press. In particular it related to issues of whether ICAC had allowed or whether the commissioner had in fact allowed the names of whistleblowers to be revealed. This then had widespread media coverage.

CHAIRMAN:

It is a public letter that you wrote, Mr O'Keefe, to the paper—

Mr O'KEEFE:

It is not a public letter, Mr Chairman. It was not a letter to the paper at all.

CHAIRMAN:

It is private correspondence.

Mr WATKINS:

I understand that other members of the Committee may have received copies of the correspondence. It later says, "The statements have caused me considerable concern and have the potential for undermining public confidence in me as a public official and in the ICAC". On the same day you wrote to Jean Lennane, the vice president, saying—

CHAIRMAN:

Q: Could we deal with one letter at a time?

Mr WATKINS:

I was just trying to give an overview of what happened and then—

CHAIRMAN:

Okay.

The Hon. D. J. GAY:

Q: Is this a speech or is it coming to a point?

Mr WATKINS:

A: It is very difficult to ask the questions. If the commissioner is not going to respond to the question that is asked, surely I have to indicate the detail that is here. I would be happy if the commissioner would respond. It is out there in the public domain. He was questioned about it on 2BL quite openly.

CHAIRMAN:

Keep reading the letter and then the commissioner can decide what he wants to do.

Mr WATKINS:

On 29 October to Dr Jean Lennane he wrote, "Dear Dr Lennane, On Friday, 25 October you gave a number of press and television interviews in which you made statements about the ICAC as an organisation and about me as an individual and the following day a copy of these comments were published in the Manly Daily." He later says, "I request the publication of an immediate retraction and the tender of an apology in respect of the statement." On 30 October he wrote again to Whistleblowers Australia in much the same words. On 30 October, interestingly, the commissioner wrote to the manager of radio 2GB and said, "In an item broadcast by your station in the program 'Newshour' on Friday, 25 October, you made the following statement, 'She'—referring to Dr Jean Lennane—'also accused Mr O'Keefe of disclosing the names of 50 people who blew the whistle on corruption in the work place. She says this disclosure led to their dismissal'." Mr O'Keefe goes on, "Would you please confirm that Dr Lennane said what was attributed to her since the information is not true." Later he says, "The statements broadcast by your station have cast a serious slur on my professionalism and integrity and upon the adherence by me to the provisions of section 111 of the Independent Commission—"

CHAIRMAN:

Q: I might stop you at that stage. Mr O'Keefe, as a citizen as well as the commissioner you have certain rights. Do you wish publicly to discuss those letters or do you wish that the questions be put on notice to you?

A: Mr Chairman, I would like to know what the question is. Might I say that even a public official has rights when people tell lies about him, and what was said, namely, that I had revealed the names of 50 people and that they had been dismissed, is a lie.

Mr O'FARRELL:

And what is more, Mr Chairman, it does not reflect the transcript of the hearing of that day.

Mr WATKINS:

The commissioner is now answering the question.

CHAIRMAN:

Ask the question.

Mr WATKINS:

It goes on, 30 October, another letter to Dr Jean Lennane, "Please advise if you are prepared to give an undertaking not to repeat these allegations. If I do not hear from you before the close of business on Monday, 4 November 1996, I will assume that you are not prepared to give such an undertaking." He finishes that letter with, "Again I must insist that you withdraw those statements in the same forum in which you made them and apologise for your seriously wrong statements." It goes on and I will not go into the detail but on 4 November there is another letter to the general manager of station 2GB with much the same point except that here he says—I understand that the commissioner asked the news organisations to agree that Dr Jean Lennane did in fact say these words—"Whether as you claim Dr Lennane said that I had disclosed the names of 50 people who blew the whistle on corruption is not the central point. The central point is what was published by your station and it was untrue. The station has thus published a serious untruth about me and, as I indicated in my earlier correspondence, I ask for a retraction of the statement and an apology. A clarification does not fit this description and though it may be more palatable for 2GB, it is less satisfactory for me, the subject of the defamation."

CHAIRMAN:

I think the commissioner understands the background, can you ask the question?

Mr WATKINS:

Q: Those letters go on into November. That is why I ask the question: are you exploring legal action—indeed defamation action—against parties arising from our last hearing?

A: I decline to answer that question. It is a private matter. It is not a matter that goes to the administration of the commission. The commission is not contemplating any action against any of those persons.

Mr WATKINS:

Q: Well then why are these letters on ICAC letterhead? If this is a private matter between you and other parties, why is it on ICAC letterhead?

CHAIRMAN:

Q: Mr O'Keefe just said that the ICAC is not going to take any action. Is that correct Mr O'Keefe?

A: That is the present intention, Mr Chairman. That matter has been explored and it has been explored in consequence of that correspondence by the ICAC.

Mr WATKINS:

Q: Why is a personal matter between you and an individual person about a personal defamation problem—why is that correspondence being issued on ICAC letterhead?

A: The answer to that is that it may impact upon the effectiveness of the ICAC.

CHAIRMAN:

Q: It is also a criminal offence, is it not, under the Independent Commission Against Corruption Act to defame the Independent Commission Against Corruption?

A: It is.

CHAIRMAN:

Q: And also to make false allegations against officers of the ICAC?

A: It is.

Mr WATKINS:

Q: But you have already agreed that this matter no longer relates to the ICAC, that the ICAC is not going to take any action, yet you are pursuing personal defamation against individuals, and that is being done with the resources of the ICAC. Let alone the problems that that causes for the ICAC, how do you justify use of ICAC resources?

A: That is not true, Mr Watkins, and that is my answer to your question.

CHAIRMAN:

Q: Just to clarify this, it is the proper situation that those letters were used in regard to an inquiry by the ICAC into what was said, is that correct?

A: Yes.

CHAIRMAN:

Not in relation to you personally.

Mr O'KEEFE:

No.

Dr MACDONALD:

I wonder how it is possible for you to separate those two roles—one as an individual and one as the commissioner—in a situation like this? I would like you to assure me that in fact it is possible to separate them. You are saying that we should consider them separate and, in the same breath, you are saying that this sort of activity by Dr Lennane can impact on the activities of the Independent Commission Against Corruption. Assure the Committee that these are two separate issues.

Mr O'KEEFE:

I think it can. First, an attack upon the commissioner as such, and an untrue attack, can have an adverse effect on the person in his capacity as commissioner and hence upon the leadership of the ICAC, and hence the ICAC. That is one thing and that is one set of rights. That organisation may have rights in respect of it. It is quite a different thing when persons are named individually and a lie is told about them. That is quite serious and inures far beyond the commission. Those private rights—in the same way as a Prime Minister may, and has, or a Premier may, or has, sued in respect of matters pertaining to them personally—are quite separate from their office, but are associated with their office. First one must ascertain what the facts are, the extent to which they may impact upon the organisation and the extent to which they may impact upon the individual. The course of correspondence was designed to determine that.

Dr MACDONALD:

Q: If you were to pursue this matter would it be as Barry O'Keefe, private citizen, and not on ICAC letterhead?

A: If I were to proceed with the matter it would be as a private citizen and I would bear the cost of that.

Mr WATKINS:

Q: Why were you willing to answer questions about this on radio, on 2BL, when questioned about it, but you are not willing to answer questions in the Committee?

A: Because I submitted voluntarily to the interview and understood that that would be asked. I come

by compulsion before this committee. I come here knowing, Mr Watkins, that you have been very adverse to me personally and to the commission and I therefore seek to maintain the rights that the commission has and that I have under the statute which brings me here.

Mr WATKINS:

Q: So these are not legitimate questions for a parliamentary representative on the Committee to be asking the commissioner?

A: That is my view.

Mr WATKINS:

When you write, on ICAC letterhead, to private citizens about something that came up at our last hearing—

Mr O'KEEFE:

No, I did not. What I am writing about—

Mr WATKINS:

This matter was explored—

Mr O'KEEFE:

What I am writing about, Mr Watkins, is what occurred outside this chamber, not in this chamber at all.

Mr WATKINS:

Q: You really are splitting legal hairs here, are you not?

A: That is your comment and I do not agree with it.

Mr WATKINS:

Q: Did you indicate to media outlets that you were not in fact after them; that it was Dr Lennane that you wanted; and that you would cease any action against them if they signed documents indicating Dr Lennane was the person who made these supposedly defamatory comments?

A: In my interview, no.

Mr WATKINS:

Q: I am not talking about your interview now. Did you at any stage over the last month since our last hearing indicate to those media outlets—

A: Which media outlets?

Mr WATKINS:

We are talking about the Manly Daily and radio 2GB.

Mr O'KEEFE:

A: The answer to your question is no.

Mr WATKINS:

Q: Did you make that comment to any other media outlets?

A: Not that I recall, no.

Mr WATKINS:

Q: So you did not make those comments to media outlets? You did not indicate to media outlets or their employees that you were not after them, that you were after Dr Lennane, and that if they made certain statements indicating her guilt in the defamation you would leave them alone?

A: The answer to that is no.

CHAIRMAN:

Q: Anyone who made that statement would be lying about you?

A: I do not want to go into that, Mr Chairman.

Mr WATKINS:

Q: Did you discuss this matter with senior ICAC officers, other ICAC officers?

Mr O'FARRELL:

The commissioner has already said at the outset, twice, that he declines to answer questions about this. I am not quite sure why he is being subjected to this sort of questioning.

Mr WATKINS:

The commissioner is well able to defend himself. He does not need a coterie of other people to do his work for him.

Mr O'KEEFE:

I hope that I do not.

CHAIRMAN:

Members of the Committee, Mr Watkins, do not have to insult it.

Mr O'KEEFE:

I must say I hope I do not come here as a defendant. That may be the role that Mr Watkins seeks to cast me in. I come here to assist the Committee and to answer legitimate questions. I am not defending anything or myself.

Mr WATKINS:

You are receiving legitimate questions from parliamentary representatives and I wish you would stop indicating otherwise.

The Hon. D. J. GAY:

Mr Chairman, I ask you to draw the honourable member, who sees himself as a latter-day Perry Mason, back to the business before the Committee.

Mr LYNCH:

I suggest, Mr Chairman, that those sorts of offensive comments by Mr Gay are unnecessary.

CHAIRMAN:

Q: Mr Watkins, can you just ask questions straight out.

Mr WATKINS:

A: It raises some other issues.

CHAIRMAN:

Just ask your question straight out. Mr O'Keefe can either say yes or no or decline to answer.

Long-winded stories and preamble do not help. Please ask the question so that we can move on.

Mr WATKINS:

Q: What is the justification for expenditure of ICAC resources to follow up personal matters?

A: It depends on the nature of the matters and their relationship to the commission.

Mr WATKINS:

Q: Is any other non-ICAC business run from your office, that you were involved in wearing your other hat?

A: You mean at ICAC expense?

Mr WATKINS:

Yes.

Mr O'KEEFE:

No.

Mr WATKINS:

Q: This broadens a bit, should the chief of a commission—any commission but in particular the ICAC, which depends so much on or supports the actions of whistleblowers—be using legal processes to silence criticism of an organisation which has been set up to support the work of or to support whistleblowers?

A: I think it is appropriate for an organisation and its head to ensure that, whatever the function of the organisation, it adheres to the truth.

CHAIRMAN:

Q: Any citizen has a right to take action if that citizen claims to have been defamed?

A: Yes.

Mr WATKINS:

Q: Is not the ICAC in danger of committing, in a sense, the same injustices and the same abuse against people that it is meant to protect?

A: No.

Mr WATKINS:

Q: Would you like to expand on that?

A: No.

Mr WATKINS:

Q: Further, is your oversensitive action not endangering your status?

CHAIRMAN:

I will not allow that question. You have not proved that there has been an oversensitive reaction.

Mr WATKINS:

Q: Is your action not endangering your status and, much more importantly, the status of the ICAC more so than some ill-chosen, or perhaps untrue, statements by an individual about one minor matter?

A: The matter was not minor. It is not perhaps untrue; it is a deliberate lie and known to the person who said it to be a lie. In those circumstances not to do anything gives currency to the lie.

Mr WATKINS:

Q: The ICAC has taken on some consultants' advice about how to handle the media. Do you think it is wise to attack the media in the way that you have done in recent months?

A: I think that there are rights that people and organisations have, and that the legitimate pursuit of those in one way or another can be effective. For instance, if one takes the editorial in the Daily Telegraph to which I drew attention, the result of that has been a retraction by the Daily Telegraph and further correspondence which may lead to yet another retraction. I think the effect has been beneficial and leads to mutual respect.

Mr WATKINS:

In conclusion, it is unfortunate that you take my legitimate questions in such a personal way. It is my duty to speak for the people of New South Wales and to ask legitimate questions of the commissioner about the way the commissioner and the Independent Commission Against Corruption behave. That is what I am doing and what I will continue to do. If it causes you embarrassment, that is unfortunate.

CHAIRMAN:

That is a statement, Mr Watkins.

Dr MACDONALD:

I raise some generic issues that may be taken on notice. I give you some background of some information I received from the St Ives progress association.

Mr O'KEEFE:

About the bus depot?

Dr MACDONALD:

Yes. It put a submission to the ICAC on 5 October 1995 about the disposal of Crown land at the head waters of Middle Harbour to a private bus company, St Ives Bus Services. It alleges this disposition was the result of intense political pressure applied to the officers of CALM and other departments, that there was maladministration allowing obvious conflict of interest to go unchecked; that there was collusion between certain politicians, certain departmental officers, certain present or past elected members of the Ku-ring-gai council and certain officers of Ku-ring-gai council. That was their submission. They have approached me and a number of members of the Committee probably on two issues; first, that the matter has not been dealt with and that there has been no apparent action from ICAC; and they have followed up with ICAC and had no response. That was as at 1 November 1996. However, more disturbing is that the contents of that submission made to ICAC on 5 October last year was leaked to St Ives Bus Services with the result that the company has threatened legal action against the progress association.

Mr O'KEEFE:

You are not suggesting that it was leaked by the ICAC?

Dr MACDONALD:

Yes.

Mr O'KEEFE:

Is it suggesting that?

Dr MACDONALD:

I have a letter from a firm of solicitors acting on behalf of the bus company that states that they are instructed that Mr John Watts, vice-president of the association, lodged a complaint with

ICAC alleging certain matters. They end up by saying that they are instructed to advise that their client is considering making a claim against the association and certain of its officers for damages. This is a situation where a local community group has raised matters with the ICAC. First, they are unhappy with the way it has been dealt with and the delays and, second, they are unhappy that that information has been leaked out of ICAC. That seems to be what is alleged.

Mr O'FARRELL:

It is not actually suggested. How widely was the complaint circulated to members of the association? Have you asked that?

Dr MACDONALD:

I am asking a question of the commissioner that there may be an allegation.

Mr O'KEEFE:

I think you will find that that document went to a number of agencies. It was a complaint that came to us and was copied to a whole lot of people. The only reason that it stands in my mind is that I just seem to remember reading a report about the matter.

Dr MACDONALD:

Q: Let me retract the statement that there is a specific allegation that it was leaked by ICAC. On the other hand, I put it to you that we have an unhappy situation where a progress association makes a complaint and then it receives, in effect, a defamation threat from the bus company. Would you like to comment on the events surrounding this, either generally or in any detail? I believe there are some disturbing facts here.

A: I would like to take it on notice so that I can give a detailed response. However, my recollection is that the matter went to the last meeting of the Operations Review Committee and that was on Friday, 6 December. I would have expected the post-Operations Review Committee correspondence to have gone out by now, but I have not looked at that file. That is number one. Number two is that this matter was sent to a lot of people and was in some of the local press. Beyond that I cannot go, except that it did involve allegations against a very large number of organisations and entities and that when you have got that, it takes time to go through those.

Dr MACDONALD:

Would it disturb you that that whistleblower in a sense—

Mr O'KEEFE:

They are not whistleblowers; I reject that description.

Dr MACDONALD:

Q: Would it disturb you that a progress association that has made a formal complaint through ICAC then received threats of defamation from the organisation against which it is making allegations?

A: If the only document came to us and not otherwise, I would want to know more about it. I do not believe that to be the case. If I remember it correctly, there were some pretty florid allegations against actual individuals, including the bus company, and I am not surprised if they got hold of that document from somebody—a councillor, a member of the association or somebody else to whom it would be sent—that it would provoke a response from the bus company. I would not be concerned if it came to us and us alone, and no-one else had a copy of it. If a third party got a copy—I do not think that is the case—that would concern me, yes.

CHAIRMAN:

The thing that concerns me is the defamation part of it—to try to put pressure on people who are making complaints to the ICAC not to make those complaints by threat of defamation. The solicitors would know full well that the information conveyed to the ICAC attached absolute privilege.

Mr O'KEEFE:

Of course it does, if it only comes to us. But if they give it to X, Y and Z and say, as you asked at the last meeting, "I have said to ICAC this and this," as commonly happens for political purposes, then those disseminations are not protected in relation to defamations. You really have to know how it came about, if the bus company got it.

Dr MACDONALD:

Q: Were you personally involved in considering this matter?

A: Only as one of the matters that goes to the Operations Review Committee.

Dr MACDONALD:

Q: Do you have a conflict of interest in this issue?

A: No.

Mr O'FARRELL:

Q: Have you ever caught a bus?

A: I do not think I have caught one of their buses, I do not live in St Ives, and I do not have any

shares in bus companies. What is your suggestion? Is there a conflict of interest?

Dr MACDONALD:

No. I will leave that line of questioning.

Mr O'KEEFE:

Seriously, Dr Macdonald, is there a suggestion? If there is, you have raised the matter. As a matter of natural fairness surely I am entitled to deal with it, if you or somebody makes that claim.

Dr MACDONALD:

I will consider my question and follow it up.

Mr O'KEEFE:

No, the media is here as a result of a determination of this Committee. As a matter of fairness, if that slur is to be made, surely I should have an opportunity to deal with it.

Mr WATKINS:

The media are not here because of a determination of the Committee, the media are always permitted to attend.

Mr O'KEEFE:

No, the media is here because of a decision of this Committee to allow it. That is what the Chairman informed me in correspondence.

Mr WATKINS:

The media are here because this is an open meeting; the media should be here.

CHAIRMAN:

If the meeting were in camera the media and everyone in the gallery, except you and your adviser, would have to leave.

Mr O'KEEFE:

Can I raise another matter that is of even greater concern to me? There is a protocol that has been agreed upon between this Committee and its predecessor committees as to the way in which complaints forwarded to members of the Committee, or the Committee, about the ICAC should

be dealt with. The first step is that the ICAC be forwarded the complaint and be advised of it so that a written response can be made, rather than the matter being dealt with in the way in which matters have been dealt with today. That was something I was advised of when I became the commissioner and that has been the standard procedure. It stops an ambush and stops things that have no substance, except as an allegation, coming forward.

CHAIRMAN:

I agree that that has been the protocol of this Committee since its inception, but that does not exclude members from asking questions of you. You have the right to give evidence in camera or to say that you will take a question on board.

Mr O'KEEFE:

The last time that that happened, Mr Chairman, the Committee broke up.

CHAIRMAN:

Dr Macdonald, I think that Commissioner O'Keefe is right. You have put that proposition to him; it is a matter for you.

APPENDIX I

UPDATE OF PROSECUTIONS SINCE MAY 1996

NOVEMBER 1996 PJC HEARINGUPDATE OF PROSECUTIONS SINCE MAY 1996OPERATION 2 (BARRACUDA)
REPORT ON NORTH COAST LAND DEVELOPMENT

Name	Nature of Offences Recommended	Date of Action	Result
Cassell, Barry John	s.87 ICAC Act (false or misleading evidence)	24/07/96	Stated case was forwarded to the Court of Criminal Appeal which decided that Downes DCJ, who was hearing an all grounds appeal, erred in finding the informations defective. The matter is to be relisted in the District Court
Hogan, Thomas Edward Paul	bribery and conspiracy to bribe	11/09/96	In relation to the conspiracy to bribe offence - found not guilty by the jury.
		9/10/96	In relation to the three bribery offences - stood over to set trial date on 12/12/96.
Munro, Roger Gareth	bribery	9/10/96	In relation to the bribery offences - stood over to set trial date on 12/12/96.

OPERATION 20 (TAMBA)
REPORT ON UNAUTHORISED RELEASE OF CONFIDENTIAL
INFORMATION

Name	Nature of Offences Recommended	Date of Action	Result
Bracey, John Everett	conspiracy to bribe	04/0/96	Matter dismissed.
De Zilwa, Alston	conspiracy to bribe	13/06/96	Placed on s.558A recognisance in the sum of \$10,000 to be of good behaviour for a period of 5 years. Fined \$20,000.
Devine, Janet Edith	s.87 ICAC Act (false or misleading evidence)	16/05/96	Committal part heard. Hearing set down for 18/09/96.

Name	Nature of Offences Recommended	Date of Action	Result
Devine, Paul (Francis)	s.87 ICAC Act (false or misleading evidence) and conspiracy to bribe	16/05/96	Committal part heard. Hearing set down for 11/09/96.
Elliot, Phillip Michael	s.249B Crimes Act (conspiracy - corrupt commissions)	27/09/96	Sentenced to 100 hours community service and fined \$200. Ordered to pay \$1,900, being confiscation of proceeds of crime.
Frankland, Stephen	s.249B Crimes Act (conspiracy -corrupt commissions)	13/05/96	Committed to 3 years periodic detention on each of the 47 counts, to be served concurrently. Fined \$7,610.
Mailey, Richard	s.87 ICAC Act (false or misleading evidence) and conspiracy to bribe	17/10/96	Found not guilty.
O'Connell, Michael	s.87 ICAC Act (false and misleading evidence) and conspiracy to bribe	29/08/96	Sentenced to 6 months imprisonment on each of the seven s.87 offences, to be served concurrently. In relation to the 2 conspiracy offences the defendant was sentenced to a total of two years, with a minimum term of imprisonment to be served of 9 months, to be served concurrently. A pecuniary penalty order in the sum of \$12,655 was made pursuant to the confiscation of proceeds of Crime Act 1989.
Scott, John	s.87 ICAC Act (false or misleading evidence)	29/08/96	Sentenced and placed on a recognisance in the sum of \$5,000 to be of good behaviour for a period of 3 years and given 400 hours community service.
Waddell, James McBeth	s.309 Crimes Act (unlawful access to data in computer) and s.87 ICAC Act (false or misleading evidence)	04/04/96	Set down for trial on 28/10/96.
Wilson, Eric Sydney	s.87 ICAC Act (false or misleading evidence) and conspiracy to bribe.	11/09/96	Hearing part heard.

OPERATION 39 (MILLOO)
REPORT ON RELATIONSHIP BETWEEN POLICE AND CRIMINALS

Name	Nature of Offences Recommended	Date of Action	Result
Bowen, Grahame Peter	s.87 ICAC Act (false or misleading evidence)	3/10/96	Listed for trial on 8 September 1997.
Daly, Ronald	s.393 Crimes Act (conspiracy - to pervert the course of justice) and s.87 ICAC Act (false or misleading statements)	11/04/96	Listed for trial on 25 August 1997.
Harding, Brian Robert	s.87 ICAC Act (false or misleading evidence) and s.330 Crimes Act (false swearing) in the alternative	3/10/96	Listed for trial on 8 September 1997.

OPERATION 45 (BANKSIA)
REPORT ON CONDUCT OF SRA OFFICERS IN GRAFTON AREA

Name	Nature of Offences Recommended	Date of Action	Result
Bell, David Brian	s.178BB Crimes Act (obtaining money etc by false or misleading statements)	19/06/96	Listed for callover on 12/12/96.
Child, Ronald Thomas	s.249B Crimes Act (corrupt commissions)	16/05/96	Listed for trial on 10/02/97.
Davies, Phillip George	s.178BB Crimes Act (obtaining money etc by false or misleading statements)	19/06/96	Listed for callover on 12/12/96.
Gillart, Michael Christopher	s.178BB Crimes Act (obtaining money etc by false or misleading statements) and s.249B(2)(b) Crimes Act (corrupt commissions or rewards)	16/05/96	Listed for trial on 10/02/97.

Name	Nature of Offences Recommended	Date of Action	Result
Hay, William Ross	s.249B Crimes Act (aid and abet - corrupt commissions or rewards)	16/05/96	Listed for trial on 24/02/97.
Hay, June Margaret	s.249B(1)(b) Crimes Act (aid and abet - corrupt commissions or rewards)	16/05/96	Listed for trial on 24/02/97.

**PROTON (OPERATION 67)
REPORT ON INVESTIGATION INTO MATTERS RELATING TO POLICE AND
CONFIDENTIAL INFORMATION**

Name	Nature of Offences Recommended	Date of Action	Result
Freeman, Gregory	Accept bribe in order to act in a manner contrary to duty and attempt bribe of Police Officer to act in a manner contrary to duty.	23/05/96	Listed for trial on 02/12/96.

**RINGER (OPERATION 75)
REPORT ON INVESTIGATION INTO THE RTA AND PROPERTY DISPOSAL**

Name	Nature of Offences Recommended	Date of Action	Result
Samuel, Peter	s.249B(1)(b) Crimes Act (corruptly receiving bribes)	05/07/96	Informations dismissed.

**STURT (OPERATION 76)
INVESTIGATION INTO FORMER ALDERMAN OF FAIRFIELD CITY COUNCIL
GIUSEPPE MORIZZI**

Name	Nature of Offences Recommended	Date of Action	Result
Martin, Alexander Richard	offence in contravention of s.112 of the ICAC Act (suppression order)	27/05/96	Information dismissed. Case to be stated at the Supreme Court.

OTHER PROSECUTIONS

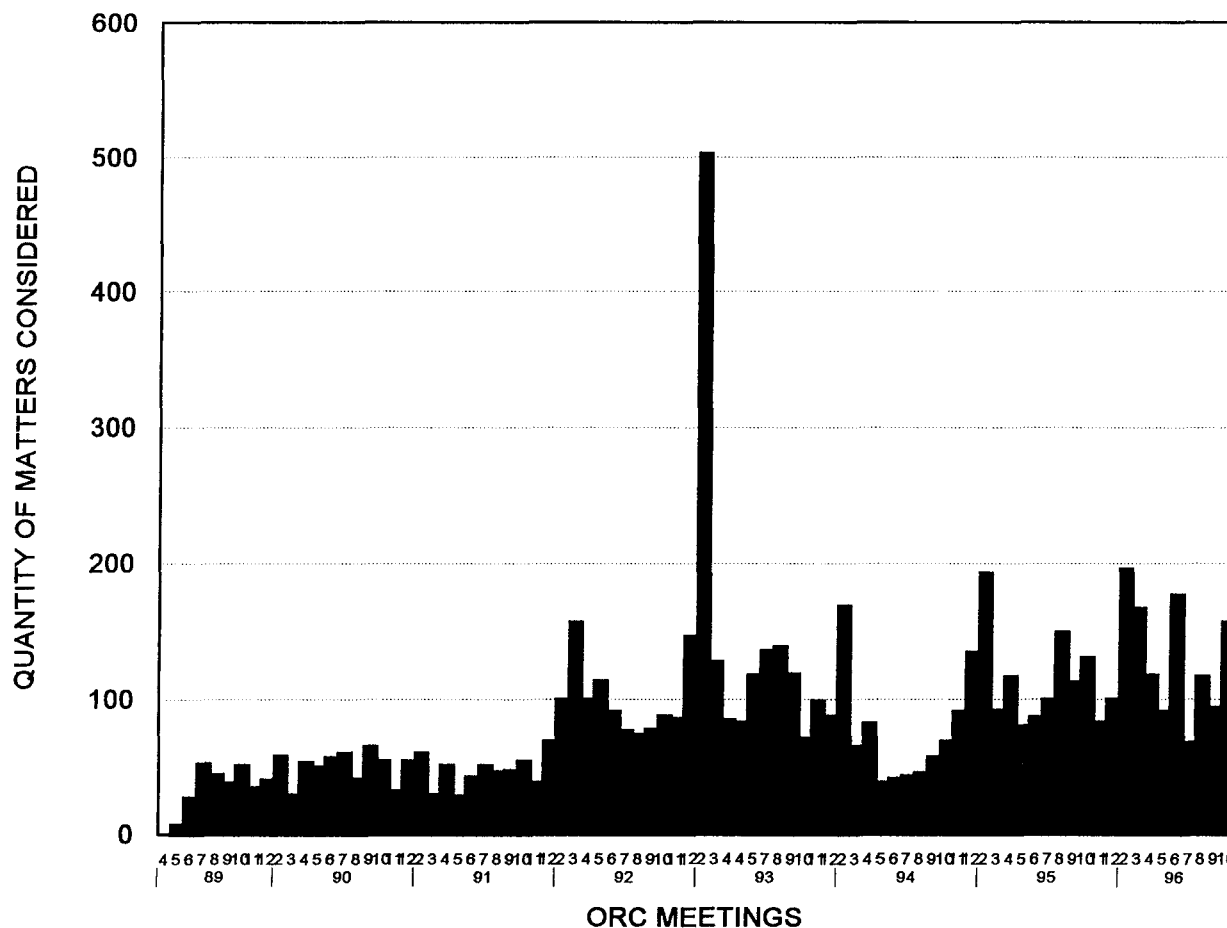
Name	Nature of Offences Recommended	Date of Action	Result
Cavallaro, Tony	s.249B Crimes Act 1990 (corrupt commissions or rewards given or offered by a person - bribery).	22/07/96	Hearing adjourned to 03/02/97.
Fasan, Vittorio	s249B(2) Crimes Act (corrupt commission or rewards given or offered by a person - bribery).	24/05/96	All ground appeals listed for 25/11/96.

APPENDIX 2

MATTERS CONSIDERED BY THE OPERATIONS REVIEW COMMITTEE

MATTERS CONSIDERED BY THE OPERATIONS REVIEW COMMITTEE

84 MEETINGS INVOLVING 7225 MATTERS



The Operations Review Committee (ORC) has met a total of 84 times. The graph represents the quantity of matters considered by the ORC at each of the meetings. The same matter may be reported to the ORC on numerous occasions, so that the figures include repeated matters.

The matters reported to the ORC are essentially comprised of complaints received pursuant to s.10 of the ICAC Act, however they may also include s.11 reports where they are linked to a s.10 complaint or formal investigation.

The matters are reported by way of either:

- (a) a Report on Investigation;
- (b) a Further Report concerning non-commencement of Investigation;
- (c) a Report on Assessment concerning non-commencement of Investigation;
- (d) a Report on Preliminary Enquiry concerning non-commencement of Investigation; and
- (e) a Status Report.

■ MATTERS CONSIDERED PER MEETING

APPENDIX 3

CORRESPONDENCE FROM AUDITOR-GENERAL



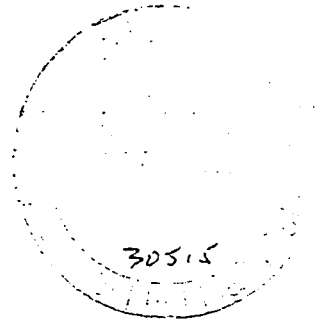
CONTACT NAME

PHONE
285.0101

OUR REFERENCE
A829

YOUR REFERENCE

The Hon B S J O'Keefe QC
Commissioner
ICAC
GPO Box 500
SYDNEY 2001



8 August 1996

Dear Commissioner

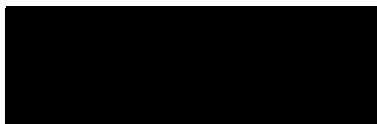
My expressed views on the question of anticipatory advice were rather more complex and understanding of your position than conveyed by Saturday's (3 August 1996) Sydney Morning Herald.

It is not usually appropriate to reject invitations to provide the Government with anticipatory advice, especially where that advice could avoid an error which would be the subject of subsequent criticism. This Office could inadvertently provide erroneous anticipatory advice, but the Office could also just as easily erroneously "approve" an action after the event.

This Office faces the same problems as others in reviewing advice it has previously offered. A conflict of interest is present - which might be alarming to some - but the Office has to try to be objective.

The rest of the views ascribed to me in the story are consistent with my views.

Yours sincerely



A C HARRIS
AUDITOR-GENERAL

TELEPHONE (02) 285 0155

LEVEL 11, 234 SUSSEX STREET

SYDNEY NSW 2000

POSTAL: GPO BOX 12

SYDNEY NSW 2001

FAX (02) 285 0100

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APPENDIX 4

CORRUPTION PREVENTION AND EDUCATION OUTCOMES

Corruption Prevention & Education Outcomes
Reduction in corruption and affecting public sector in New South Wales
Public sector organisations implement corruption prevention strategies. Stakeholders will not tolerate corruption and expect the public sector to pursue corruption prevention strategies
Stakeholders have increased knowledge about corruption and its prevention and the ICAC's work
Stakeholders receive useful, credible, advice and assistance
Stakeholders aware of ICAC products and availability of advice
Appropriate information on Corruption Prevention & Education and Investigations gathered and developed and organised into accessible form (eg Practical Guide to Corruption Prevention)
Programs are appropriate to community/client needs and ICAC objectives as set out in s12 and s13 of the ICAC Act

This document should be read from the bottom of the page to the top.

APPENDIX 5

NSW GOVERNMENT STATEMENT OF FINANCIAL PERFORMANCE FOR BUDGET SECTOR AGENCIES

NSW GOVERNMENT
STATEMENT OF FINANCIAL PERFORMANCE
FOR BUDGET SECTOR AGENCIES

Name of Agency

Period: Year ending 30 June 1997

**THIS STATEMENT OF FINANCIAL PERFORMANCE HAS BEEN AGREED
BETWEEN:**

.....
CEO for

M Lambert
Secretary, NSW Treasury

Dated

CONTENTS

A. GENERAL

1. Explanatory Note
2. Mission, Objectives and Key Strategies

B. FUNDING AND FINANCIAL PARAMETERS

3. Funding and Financial Parameters

C. PURCHASER REQUIREMENTS

4. Outcome, Output and Input Measures
5. Service Quality Standards

D. OWNERSHIP REQUIREMENTS

6. Reporting and Monitoring Requirements
7. Efficiency Measures (including Data Envelopment Analysis and Service Competition Policy)
8. Risk Management Identification and Strategy
9. Review
10. Accounting Policies

ATTACHMENTS:

- A1 Analysis of outcomes and outputs
 - A2 Projected Financial Statements
 - A3 Corporate Plan
 - A4 Capital Strategy Plan
 - A5 Asset Management Plan
 - A6 Internal Audit Plan
 - A7 Contracted Services (Value of agency services contracted out for 1994-95)
-

1. EXPLANATORY NOTE

The Statement of Financial Performance establishes the framework between each Budget Sector agency, the relevant portfolio Minister and Treasury and the Treasurer.

The Statement is divided into four broad parts.

Part A: General

This part sets out the role and strategic direction of the agency.

Part B: Funding and Financial Parameters

This part sets out the level of funding provided for the agency over the three year period for recurrent operations, the capital allocation for the Budget year and for the carry forward commitments for the two years beyond and the other financial parameters for the three year period (ie. the limit on the level of commitments).

Part C: Purchaser Requirement

There are two broad relationships between the Government and each agency. One is the purchaser role and the other is the ownership role. The purchaser role reflects the requirement for the agency to deliver a certain volume of outputs, achieve targeted outcomes and deliver the services to a specified quality standard.

Part D: Ownership Requirement

In contrast to the purchaser role, the ownership role is focused on financial performance, efficiency and effectiveness performance and the management of risk.

Part D is divided into a number of sections:

1. reporting and monitoring requirements, acknowledging the form of information required by OFM on a regular basis;
2. efficiency measures, setting out organisational efficiency measures (on a program basis where available);
3. outline of risk management strategy, identifying key issues of risk and the strategy to deal with each;
4. planned reviews directed at improving the efficiency and effectiveness of the agency.
5. documents broadly (a page at the most) the accounting policies employed.

Although the Statement is executed on an annual basis, it has a three year planning horizon.

In addition, various standard documents and sets of information are required to be attached, namely an analysis of outputs and outcomes (optional), projected financial statements (ie. projected statement of financial position, operating statement and cash flow statement for the Budget year), Corporate Plan covering the Budget year and beyond, Capital Strategy Plan for the next 5 to 10 years, Asset Management Plan, Internal Audit Plan, and a summary of progress achieved in implementing Service Competition Policy.

The Statement should not be seen as imposing significant additional work on agencies as it should be fully integrated into the agency's strategic and corporate planning process.

2. MISSION, OBJECTIVES AND KEY STRATEGIES

Mission

Summary statement setting out the core rationale for the agency. This should be consistent with the agency's Corporate Plan. Some supporting information may be useful or necessary to briefly describe broadly how the mission is pursued.

Objectives and Strategies

Listing of the main corporate objectives of the agency, with any necessary supporting information. The objectives should line up with those contained in the Corporate Plan.

The strategies in turn set out the way in which the objectives will be pursued.

This section should be kept brief (2 pages maximum) as it is intended only to highlight the key elements of the Corporate Plan which should be attached.

3. FUNDING STATEMENT AND FINANCIAL PARAMETERS

This section sets out the level of funding approved by the Treasurer or Parliament and the level of financial parameters.

Parliament appropriates for the Budget year the level of Consolidated Fund support for both recurrent and capital purposes and the Budget Papers also provide forward estimates for the two forward years of the level of Consolidated Fund support for recurrent purposes.

In addition to these funding approvals, the Budget process sets limits on two items:

- the net cost of services, which is total expenses less agency revenue;
- capital authorisation limits, which is the sum of the cash payment for authorised new work, works in progress and minor works.

	1996-97	1997-98	1998-99
FUNDING	\$'000	\$'000	\$'000
Consolidated Fund recurrent allocation			
Consolidated Fund capital allocation			
FINANCIAL PARAMETERS			
• net cost of services			
• capital authorisation limit			

4. OUTCOME, OUTPUT AND INPUT MEASURES

This section provides information for each program on clients, objectives, outcomes, outputs and inputs.

The information should be provided as a projection for the Budget year and for the three prior years as set out in the following pro forma.

Agency:

Program or Sub Program:

Clients:

Objective(s):

	Units	1993-94	1994-95	1995-96	1996-97 (f)
OUTCOMES					
OUTPUTS					
INPUTS					
• Net Cost of Services	\$'000				
• Total Current Payments	\$'000				
• Acquisition of property, plant and equipment	\$'000				
• Capital grants and advances	\$'000				
• Total Capital Program	\$'000				
• Average Staffing	EFT				

The projected achievements for outcomes and outputs must be consistent with the approved level of resources.

In effect, the Budget is a purchase contract between the Government and the agency for the provision or funding of a range of services at a specified level and of a specified standard of quality at an agreed price.

At the end of each Budget year it would be intended to review performance for the Budget year against the projections and assess any reason for variation in performance.

5. SERVICE QUALITY STANDARDS

This section should set out the service quality standards which the agency has committed to in its Guarantee of Service document.

While ideally these quality standards should line up with the outputs set out in section 4, this is generally not the case as the service standards tend to apply across program areas.

Where possible service quality information should be presented as follows:

Service Quality Measure	1993-94	1994-95	1995-96	1996-97
e.g. Customer satisfaction				
Unplanned hospital readmission rates				

6. REPORTING AND MONITORING REQUIREMENTS

The format for financial reporting by Budget Sector agencies is set out in the Budget Procedures Manual.

This section will cross reference this requirement and, in addition, tailor make the reporting requirements for the specifics of each agency in the following ways:

- set out the periodicity of reporting. Not all agencies will report monthly. Depending on an assessment of materiality and risk, certain agencies may report less frequently;
- within year non financial reporting, providing information that provides a broad indication of how the agency is performing. This could include output information, efficiency and effectiveness performance indicators and general workload indicators.

The Government is also expected to issue *Guidelines for funding Non-Government Organisations* (NGOs) later this year that are designed to place agency procedures for funding NGOs on a consistent basis and to assist agencies to improve the efficiency, effectiveness and accountability of funding arrangements.

Agencies that are responsible for significant payments to NGOs should, from 1997-98 onwards, attach a brief report to the Statement of Financial Performance covering a description of the payments in question, the monitoring process which has been established in accordance with the NGO guidelines, the performance measures which have been adopted and any significant issues which need to be drawn to the Treasurer's attention.

7. EFFICIENCY MEASURES (INCLUDING DATA ENVELOPMENT ANALYSIS AND SERVICE COMPETITION POLICY)

Much of the information required by Government in its roles as agency owner and purchaser of agency services is provided in other sections of this statement, in particular:

- Section 4 provides information on overall agency effectiveness, i.e. outcome measurement, as well as the range and volume of services produced within each agency program and the aggregate cost of those services.
- Section 5 contains further information on agency effectiveness in terms of the quality of the services provided.
- Section 6 specifies the reporting and monitoring arrangements that are designed to satisfy the Government's interest in sound financial and resource management.

However, measures are also required which indicate the extent to which the agency is efficiently using the inputs provided to produce its outputs.

As part of the Commonwealth State Review of Service Provision, efficiency indicators have been developed or are in the process of being developed for police, courts, prisons, schools, hospitals, vocational training and community services. These provide a useful illustration of the type of measures sought.

DATA ENVELOPMENT ANALYSIS

A working group (convened by NSW Treasury) has been established under the auspices of the Review of Service Provision to explore the use of a technique known as Data Envelopment Analysis to measure efficiency. DEA is a linear programming technique that operates to identify best performers in terms of input use and output production. Other service providers are allocated a single efficiency score based on their performance relative to these best performers.

Within NSW, Treasury in conjunction with relevant line agencies has applied DEA to assess the technical efficiency of police patrols, minimum security correctional centres and motor registries. Studies have commenced to determine the technical efficiency of NSW local courts, TAFE colleges and non-teaching hospitals and further opportunities are being examined to apply the technique to other service providers.

Where DEA is considered to provide a useful tool for assessing the relative efficiency of an agency's service delivery units, this section of the SFP will contain a commitment to the use of the technique and an outline as to how it will be applied to improve service delivery efficiency. Where DEA studies have been completed the results should be summarised within this section.

SERVICE COMPETITION POLICY

As outlined in the June 1995 Financial Statement, the Government's Service Competition Policy requires all government agencies/departments to incorporate market-testing and contracting reviews as part of their formal business planning.

Since 1993 annual surveys have been undertaken of contracting for services in the NSW public sector, involving all Budget Sector agencies and some of the largest Government Trading Enterprises. The 1995 survey results, which were released in May 1996, again demonstrate that contracting is a valuable tool for agencies in achieving improvements in both operational efficiency and effectiveness.

The annual survey reports show aggregate contract value information by agency and by service category. Agencies should attach to their SFP (Attachment A7) a table showing the value of services contracted out by service category for 1994-95. The information in the table should be consistent with the aggregate results provided for the Annual Contracting Survey. An indication of areas where service competition policy will be progressed during the Budget year should also be provided.

8. RISK MANAGEMENT IDENTIFICATION AND STRATEGY

This section covers the identification by the agency of areas and activities of significant risk and of the strategy to address these.

This section should provide (in no more than 2 pages) an outline of the **Internal Audit function** and approach and of the planned work program and how that work program relates to the risk management strategy of the agency.

9. REVIEW

This section identifies planned reviews to be undertaken of the agency to improve efficiency and effectiveness with the section providing information under the following groupings:

- reviews to be undertaken in line with government policy initiative. For example, reviews being conducted under the auspices of the Council on the Cost of Government
- planned internal program reviews. Agencies are required to undertake regular reviews of programs and functions. These should be identified.
- agreed joint agency-OFM review. OFM and the agency may identify areas which would benefit from a collaborative joint review with the aim of improving financial management and planning.

The section should be limited to 1-2 pages.

10. ACCOUNTING POLICIES

Accounting policies should be consistent with generally accepted accounting standards (as specified in Treasury Circulars and Treasury Technical Papers) with a brief description (1-2 pages) of how the accounting policies have been applied by the agency in respect of key areas such as:

- depreciation; and
- asset valuation.

Attachment A1

Analysis of Outputs and Outcomes

The SFP is primarily designed to provide key information on an agency's operations for CEOs and Ministers within a concise format. However, it is recognised that some agencies will wish to provide a more comprehensive picture of their outputs and outcomes and that CEOs and Ministers may on occasion also require access to more detail. Accordingly, this attachment, which would be cross-referenced to the outputs and outcomes section, allows those agencies which **choose to do so** to provide some descriptive context for their outputs and outcomes.

It is suggested that the attachment cover:

1. a full description of any outputs and outcomes which are not considered to be self-explanatory;
 2. analysis of any significant trends in an agency's outputs and outcomes; and
 3. any other issues in relation to outputs and outcomes which an agency considers should be clarified for SFP readers.
-

APPENDIX 6

PERFORMANCE INDICATORS GLOSSARY

Performance Indicators Glossary

This glossary is intended to assist preparers of Budget Sector Statements of Financial Performance (SFPs) in distinguishing between outputs, outcomes, service quality standards and efficiency indicators.

Ongoing development and refinement of the performance measures contained in SFPs will involve:

- discussions between agencies and Treasury;
- the adoption of measures developed through other exercises such as the Commonwealth/State Service Provision Review and the NSW's Council on the Cost of Government's Service Efforts and Accomplishments (SEAs) project.

Outputs

Outputs are the goods and services produced by an agency for outside users such as the Government, the community and other agencies. The following table provides some examples of outputs for various areas of Government activity:

Area	Output
Health	Children immunised
	Occasions of service
Police	Arrests
	Investigations
	Traffic infringement notices
	Random breath tests
Corrective Services	Annual receptions
	Unsentenced and appellants in custody
	Inmate employment positions available
Agriculture	Noxious weed inspections
	Animal health investigations
	Biological control agents released
Consumer Affairs	Premises inspected
	Complaints investigated
Art Gallery	Items accessioned
	Items conserved
	Exhibitions
Courts	Disputes resolved

The following questions may assist in specifying agency outputs:

- Are the outputs actual goods and services provided to external parties?
- Do the outputs influence specified outcome measures?
- Do the outputs represent the majority of goods and services provided by the agency to external parties?

Outcomes

Outcomes are the results for the community which the Government aims to achieve through implementation of its policies. Typical high level outcomes which Governments seek to influence are the standard of health and education, the level of crime and the quality of the environment. Examples of specific outcome measures for various policy areas include:

Area	Outcome
Health	Mortality rates.
	Annual rate of hospitalisation due to poisoning and injury per 100,000.
	Percentage of adults who are smokers.
	Average waiting time for overnight elective surgery.
Police	Assault victims.
	Motor vehicle thefts.
	Speed and alcohol related collisions.
Corrective Services	Escapes
	Recidivism
	Deaths in custody
Environment	Air pollution levels (greenhouse gases, lead etc)
	Water pollution levels (e.g. levels of pesticides, salinity etc in rivers, estuaries, lakes and wetlands)
Education	Basic skill levels
	Participation rates
	Employer satisfaction

It may be useful to distinguish between *intermediate* outcomes and high level policy or *end* outcomes¹, particularly where it may not be possible to determine final outcomes for some years into the future or where an individual agency's outputs are only one factor influencing the final outcome. In this context *end* outcomes are the ultimate results that are hoped to be achieved by agency/program activities e.g. a reduction in the overall level of crime, improvements in air and water quality, a reduction in mortality rates.

¹ The discussion on end and intermediate outcomes is based on the US Department of Justice's '*Manager's Handbook on developing useful performance indicators*', April 1995.

Intermediate outcomes are expected to lead to the ends desired but are not themselves ends. In many programs, a progression or sequence of outcomes usually occurs. *Intermediate* outcomes have several advantages for program managers. These outcomes often occur earlier in time than *end* outcomes and, thus, may provide more timely feedback. Using *intermediate* outcome measures can ensure that agencies receive acknowledgment for early events especially if it takes a long time before the end outcomes of program activities can be measured. *End* outcomes, however, should not be neglected.

Intermediate outcomes are also more likely to be influenced by individual agencies/programs than are *end* outcomes. *End* outcomes are likely to be influenced by more events that are outside agency/program control. Agency/Program managers should therefore aim to identify the sequence of outcomes sought, perhaps using a flow chart to depict the hoped for chain of events.

For example in the environmental area, where outputs might include specification of industry standards and monitoring and enforcing compliance with those standards, an *intermediate* outcome might be the number of companies complying with standards, leading to a reduction in certain emissions, leading to the final outcome of better air quality.

Where agencies consider it useful they may wish to show two categories of outcomes in their SFPs i.e. *end* (or high level policy) and *intermediate*.

The following list of questions may also assist in testing existing and proposed outcome measures:

- Are the measures consistent with stated policy objectives?
- Are the measures comprehensive in terms of the Government's objectives for the agency or program?
- Are the measures influenced by goods or services provided by the agency or program in question?
- Are the measures readily quantifiable?
- Do the measures reflect real impacts on the community?

If it proves impractical to derive useful outcome measures from the stated objective then it may be necessary to review the objective itself. Relevant questions in this regard would include whether the objective is too vague or ambiguous.

Service Quality Standards

Service quality standards relate to the quality of an agency's goods and services. For instance the time taken to process a licence application. As such they are generally a means towards achievement of policy outcomes rather than being outcomes in themselves. However, some quality measures, such as hospital waiting times, that have significant community impacts may be included in an SFP as an *intermediate* or lower level outcome.

Efficiency Indicators²

The term efficiency is generally used to describe how well organisations use their resources in the production of goods and services. Examples of efficiency measures include:

- Cost of treatment per outpatient.
- Average expenditure per student.
- Student/staff ratios.
- Cost per curriculum hour.
- Average cost per offender.
- Prisoner to staff ratios.
- Cost per care day.
- Average total vehicle cost per kilometre travelled.

As illustrated by the above examples, efficiency can be measured in terms of quantity (i.e. quantity of inputs related to quantity of outputs) or in terms of cost (i.e. cost per unit of output).

More sophisticated efficiency measurement tools such as Data Envelopment Analysis (DEA) are able to show the relationship between multiple inputs and outputs. In short, DEA is a linear program technique that operates to identify best performers in terms of input use and output production. Other service providers are allocated a single efficiency score based on their performance relative to these best performers. DEA is generally applied to agencies that are responsible for a large number of service delivery units (e.g. hospitals, courts, police and schools).

² The discussion on efficiency indicators is based on Chapter 2 of the First Report of the Review of Commonwealth/State Service Provision, Industry Commission 1995.

APPENDIX 7

ICAC CODE OF CONDUCT

INDEPENDENT COMMISSION AGAINST CORRUPTION

Subject: CODE OF CONDUCT
No: 9
Issued: 1992
Revised: August 1995
Maintained by: Personnel Unit
Directory: i:\icac_crp\pol_proc\policy\pol.009

CODE OF CONDUCT

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1. Introduction

The Independent Commission Against Corruption is constituted under the Independent Commission Against Corruption Act 1988 (ICAC Act). Accountable to the public of New South Wales, through the Parliament, it stands independent of the government of the day.

The Commission has three principal functions under the Act - investigation, corruption prevention and public education. In carrying out their duties, individuals employed as officers of the Commission are obliged to:

"...regard the protection of the public interest and the prevention of breaches of public trust as (their) paramount concerns." (s.12 ICAC Act)

The legislation confers extraordinary powers on the Commission. Because of this, Commission staff must seek actively to achieve and retain public trust, if they are to deserve the responsibilities entrusted to them.

The work of the Commission could be seriously undermined if any of its officers was seen to be acting in a way which the Commission itself, or right-thinking members of the community, would find reprehensible in any public organisation.

This Code sets out the principles officers are expected to uphold, and prescribes specific conduct in areas considered central to the exercise of the Commission's functions. It will be reviewed regularly, and updated and expanded to reflect changes both within and outside the Commission.

The Code is not intended to be read as a set of rules, where each word is scrutinised for its legal meaning. It is intended to convey in plain words the obligations placed on, and the behaviour expected of, all officers of the Commission.

This Code applies to every individual engaged as an officer of the Commission, whether by way of employment contract, term employment (appointment or secondment), temporary arrangement or on a fee for service basis.

2. Principles

Officers of the Commission must carry out their duties impartially, with integrity and in the best interests of the Commission.

The name and powers of the Commission must be used with restraint and with an awareness of their potential effect on the lives of individuals. They should never be used to gain personal advantage.

The standards of ethical behaviour and accountability which the Commission promotes in its dealings with other government organisations must be met by its own officers. Officers of the Commission should establish and maintain effective relations with individuals and

organisations outside the Commission, recognising their rights as citizens. Discrimination and partiality, either within the Commission or in dealings with people and organisations outside the Commission, are unacceptable.

The work of the Commission must not be compromised or affected by any personal interest.

Public resources must be used efficiently and effectively.

The security of information and the protection of persons working with or dealing with the Commission must be assured.

The following parts of the Code provide detailed guidance on how you are expected to apply these principles in practice.

3. Employment

The ICAC Act places all officers under the control of the Commission. Appointment is not under the Public Sector Management Act but is within the terms of S.104 of the Independent Commission Against Corruption Act 1988 and the ICAC Enterprise Agreement. Conditions of employment with the Commission are similar to those within the NSW State Public Service relating to particular conditions of employment such as allowances and leave.

You should be familiar, and act in accordance with, the provisions of the ICAC Act and Regulations and the Commission's policies as set out in staff circulars and the Commission's operational manuals. Commission policies are available in the library, on the Commission's computerised network or from the Personnel Unit. All requirements concerning secrecy, personal and financial disclosures, security and media contact, must be strictly followed. If you perceive conflict between legislative and policy requirements and the Code, you must consult your supervisor.

Officers transferred from the NSW Police Service for a temporary period of employment, who continue to act as constables, are also required to know and abide by the Police Service Act and Regulations and the New South Wales Police Service *Rules and Regulations* manual. If you perceive any conflict between the legislative or policy requirements of the Commission and the Police Service, you must consult the Director of Investigations.

At induction to the Commission, staff are provided with details of the Commission's Individual Performance Management Programme (IPMP). Appraisal takes place six months after commencement and then on an annual basis. For further information on IPMP consult the Personnel Unit. As an employee of the Commission, you have undertaken:

- . not to engage in personal or professional conduct which may bring the Commission into disrepute,
- . to abide by the strict secrecy provisions of the ICAC Act,
- . to make full and open disclosures of your financial interests and personal particulars to the Commission. Significant changes to financial or personal status should be disclosed, when they occur, to a supervisor, a member of

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Senior Management or a member of the Security Unit.

To maintain credibility the Commission must make all efforts to ensure employees have no association with corruption. For this reason, failure to disclose personal or financial particulars may bring serious consequences for both the Commission and individual staff.

4. Personal and Professional Conduct

You should carry out your duties with honesty, commitment and diligence, working to the best of your ability. Where a decision or action is based on a statutory power, you must ensure that:

- . the legislation under which the decision or action is taken authorises the taking of that decision or action,
- . you have the authority or delegation to take that decision or action, or that authority has been given,
- . any procedures required by law have been observed,
- . all relevant Commission policies and directions are followed,
- . the decision or action and the reasons for taking it are properly documented.

You have a responsibility to ensure fairness in carrying out the work of the Commission. This means that you should:

- . take all reasonable steps to ensure that the information upon which decisions or actions are based, is factually correct, and that you have obtained all the relevant information,
- . deal with like situations in a like manner, i.e. be consistent,
- . take all relevant information into consideration,
- . not take any irrelevant information or opinions into consideration.

You should not act in any way which is discriminatory, and you should take care that your actions could not reasonably be regarded as discriminatory, bearing in mind that people may be aggrieved if a decision is not to their liking.

You must not harass or discriminate in your work practices on the grounds of sex, marital status, pregnancy, age, race, colour, nationality, ethnic or national origin, physical or intellectual impairment, sexual preference or religious or political conviction when dealing with your colleagues and members of the public.

You should record, immediately and accurately, verbal communications on sensitive matters, and inform your supervisor if you have any special concerns.

You should not delay unnecessarily or unduly in making decisions or taking action.

You should be honest, but prudent, in your official and other dealings with colleagues and the public.

You should seek and/or offer supervision appropriate to your position and duties.

You must obey any lawful instruction by an officer of the Commission empowered to make such instruction.

The Commission's work involves close cooperation between people from different disciplines. You should make special efforts in your communication with colleagues, providing assistance and offering explanations for your requests and advice.

Loyalty to the Commission and its effectiveness as an organisation should take precedence over loyalty to colleagues.

You should keep up with changes within the Commission particularly as they relate to your duties, and with relevant changes outside the Commission.

5. Accountability

You are responsible for your own acts and omissions and will be held to account for them. If you are a supervisor or manager at any level, you are responsible also for the work-related acts and omissions of the staff you supervise.

This does not mean that you will be held responsible for every minor fault of your staff.

It means that you will be called to account for unsatisfactory acts or omissions by your staff if they are so **serious, repeated or widespread** that you should know of them and correct them, if you are exercising the level of leadership, management and supervision appropriate to your position.

Therefore it is your responsibility to make sure, in regard to the staff under your leadership, that they understand:

- . what their job entails and what their duties are,
- . how they are expected to do their job,
- . what results are expected,
- . that their performance will be periodically and formally appraised.

6. Use of Information

Commission work involves access to sensitive and confidential information which may be the subject of inquiry, investigation or consultation. Section 111 of the ICAC Act prohibits disclosure of this information, except in the exercise of the Commission's functions. Any breach of the requirements could result in your being charged with an offence against the Act.

If you believe that disclosure of information is justified, you must document the details of the information and the reasons you are seeking disclosure. These should be submitted through a Senior Manager to the Commissioner and approval obtained before any disclosure

is made.

You must exercise caution and sound judgement in discussing sensitive information with other Commission officers. It should normally be confined to those who require access to that information in order to conduct their duties, or those who can, by reason of their experience, provide useful assistance.

The Commission is entrusted by other agencies with information to assist in analytical work, inquiries, investigations or consultation. You must not access this information or use it for any purpose other than Commission work.

You must not use information gained in the course of your duties:

- . in ways which are inconsistent with your obligation to act impartially,
- . to cause harm or detriment to any person, body or the Commission,
- . to gain improper advantage for yourself or for any other person or body.

Examples of the use of information for improper advantage could include:

- . speculation in property or shares based on information about Government decisions or the affairs of a company,
- . swapping confidential information with officers of other organisations,
- . taking advantage for personal reasons of another person on the basis of information about that person held by the Commission,
- . providing information from official records to any person outside the Commission for reasons not directly related to the work of the Commission.

7. Public Comment

You must not make official comment on matters relating to the Commission unless you are authorised to do so by the Commissioner. The Commission's Media Policy requires that you refer all media inquiries to the Media Manager who is the official spokesperson of the Commission.

Except when making authorised comment, discussions about the Commission's work should be confined to material which is in the public domain. You should ensure that others are aware that you are discussing only material in the public domain.

This applies to published reports and discussion papers, annual reports, public relations material, transcripts of public hearings, media releases, and public addresses. No comment should be made about any other material relating to the work of the Commission unless permission has been given by the Commissioner or the Media Manager. If you are uncertain as to whether information is in the public domain you must consult the Media Manager.

You should ensure that your personal views are not presented or interpreted as official comment. Expressing personal views about the Commission's work which might adversely affect its reputation or the exercise of its functions may lead to disciplinary action.

If you are aware that comments you have made socially or inadvertently may be used to undermine or damage the Commission's work, you should notify your supervisor or the Media Manager immediately.

8. Financial and Other Private Interests - Disclosure and Conflicts

To ensure that the Commission's work is impartial and is seen to be so, there must be no opportunity for your personal interests, associations and activities (financial or otherwise) to conflict with the proper exercise of your duties.

All members of staff have made a disclosure of personal particulars prior to commencing duties. The Commissioner, in accordance with the ICAC Regulations, may also, at any time, ask you to disclose your financial interests and those of your partner, dependent children and other persons with whom you are closely associated.

You must submit in writing the details of any changes in your personal particulars and (if you have made a financial disclosure) the financial interests of yourself, your partner, a dependent child or close associate. You should consult the Personnel or the Security Manager if you are unsure of what matters you should disclose.

If, in the course of your duties, you encounter information which involves people, organisations or activities that you have or had a personal interest in or association with, you must make a written disclosure to a member of Senior Management. A decision will be made whether the matter represents a conflict of interest and whether your involvement with it should cease.

If you are in doubt whether to disclose a change in financial or personal circumstances or a potential conflict of interest, you should consult a member of Senior Management. As a general rule, disclosure is always preferable. It is confidential and can do no harm, whereas a great deal of damage may be done if you have not made disclosure of an interest, association or activity which may embarrass the Commission.

There are many possible circumstances where a conflict of interest could arise. You have the responsibility to be aware of possible conflicts and bring them to the Commission's attention so that an informed decision can be made about what action to take. Some examples are given below, but you should not regard this as an exhaustive list:

- . an inquiry or investigation involves a close relative or work colleague, or a company in which you recently had an interest,
- . you are involved in calling tenders or organising the purchase of supplies, and you find that a close friend or relative is one of the tenderers,
- . you are asked to provide corruption prevention advice to a government department where you were recently employed,
- . an inquiry/investigation relates to a political figure or party and you are a member of the party or an opposing political party.

9. Public Resources

Public resources include financial, material and human resources. All should be used effectively, without waste and for the work of the Commission.

The financial resources of the Commission are allocated under the Public Finance and Audit Act 1983 and officers are bound by the Treasurer's Directions issued under that Act. Procedures for the purchase of stores and equipment are conducted according to Commission policy.

You must be authorised to incur expenditure on behalf of the Commission and you must adhere to the above regulations and policy.

You must not obtain or use any stores items (for example stationery, furniture) for a purpose which is unrelated to the work of the Commission.

You must not use your work time, or the Commission's staff resources, for private purposes. However, there are some reasonable exceptions to this rule. For example:

- . you may use the phone for private calls, if they are short, infrequent and do not interfere with work,
- . you may send or receive facsimile messages providing they are infrequent and do not interfere with work,
- . you may, with a supervisor's permission, use Commission resources (such as computer equipment) for approved personal purposes,
- . you may add your mail to the Commission's for posting, but you must not ask anyone to make a special trip for you. You must provide the stamp.

You should exercise care when using equipment, and follow the service requirements, to ensure good condition is maintained.

Some equipment is shared by a number of staff. You should be aware of competing priorities and ensure that your use of the equipment does not needlessly limit access by others. You should not assume that your work has priority simply because you are in a hurry.

Commission vehicles should only be used for official business unless approval has been given for private use. Official use may include overnight garaging at your home. Members of your family and friends should not drive a Commission vehicle unless your terms and conditions of employment permit its private use.

You must seek prior approval from your supervisor if you want to use the Commission's equipment for private purposes, for example using a Commission laptop computer for writing an essay for university studies. When using Commission equipment for authorised private purposes, you must ensure:

- . you use it only in your own time,
- . the equipment is secure and properly cared for,

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- . your use does not prevent colleagues from doing their work,
- . you provide consumables, for example, paper.

10. Security

Security of information and premises is vital to the Commission's effectiveness and to the personal safety of staff.

You should ensure that you are familiar with and follow security procedures for handling and disposing of information and for access of officers and visitors to Commission premises. These and other security procedures are contained in the Commission's Protective Security Program available from Unit and Section Heads or from the Security Manager. If you are unsure of procedures on any occasion, consult the Security Manager.

The removal of confidential documents and information, including Commission files, from the Commission's premises is permitted only in accordance with the Protective Security Program. Where it is not possible to seek permission from a member of Senior Management to remove confidential documents or information, security staff should be notified of materials removed.

11. Bribes, Gifts, Benefits, Travel and Hospitality

Offences under the ICAC Act include the acceptance by officers of bribes, and the offering of bribes to officers. If you believe yourself or a colleague to have been offered a bribe you must provide a detailed written report to the Commissioner immediately that you become aware of this.

You **must never solicit** any money gift or benefit, travel or hospitality and you must never accept any offer of money. Accepting gifts or benefits could seriously damage the Commission's position. It is vital that:

- . the impartial exercise of the Commission's functions not be influenced in any way, and
- . the appearance not be created that any person or body is securing or attempting to secure the influence or favour of the Commission or any of its officers.

As a general rule, you should decline offers of gifts, benefits, travel or hospitality (accommodation, meals or entertainment). Officers who agree to speak officially at functions should, where possible, notify their hosts that it is inappropriate to offer gifts or rewards. There may be rare occasions when refusing a gift would be perceived as rude or offensive and these occasions require that you exercise sound judgment. For example:

- . you must decline any offer from an individual or organisation you know to be the subject of an investigation by the Commission, or the subject or originator of a complaint or report to the Commission,
- . you must decline any offer which is individually targeted and not available to

colleagues or associates who share a common task and purpose. For example, you may accept a modest lunch which is offered to a working group, but should pay for your own when you are the only person to whom an offer is made,

- . you may accept an item which relates to the work of the Commission, such as a book on a relevant topic, but you must refuse items which are unrelated to your work, for example travel or sporting goods,
- . you may accept a gift, benefit, travel or hospitality only if it is of a token kind, and when to refuse would be unnecessarily rude.

Do not destroy evidence of unsolicited gift-giving. The evidence may be important.

You should ensure that your partner, dependent children and other close personal associates understand these requirements and are aware that the requirements apply to them also.

If you have been offered or have received a gift, benefit, travel or hospitality you should inform your supervisor as soon as possible. Supervisors should then ensure that Senior Management is in a position to refer to the Commissioner any offers which are substantial, financially or materially, or which may be seen to compromise impartiality.

12. Outside Employment

If you are employed or are considering employment outside the Commission on any basis - full-time, part-time or casual - you must seek the approval of the Commissioner, or delegate, as outlined in the Commission's Private Employment Policy.

Approval will be withheld where the outside employment could compromise your position or your work at the Commission.

Police officers temporarily transferred to the Commission, who are required to attend court hearings concerning matters initiated prior to transfer, must register court commitments in writing immediately following notification. Officers who, in the role of constable, respond to an incident which results in the commencement of police work unrelated to Commission duties, must inform the Director of Investigations in writing promptly after the incident.

13. Notification of Corrupt Conduct and Complaints against Staff

You must report to the Solicitor to the Commission any instance of suspected corrupt conduct:

- . revealed in the course of investigation work, even if unrelated to that investigation,
- . revealed in the course of corruption prevention or education work,
- . in the course of duties generally.

You must also disclose any instance of suspected corrupt conduct, maladministration or serious and substantial waste occurring within the Commission to your supervisor, the

Commission's General Counsel (in the case where the Commission does not have a General Counsel, the Solicitor to the Commission), or the Commissioner. Any such disclosure will be a 'protected disclosure' provided it conforms with the requirements of the 'Protected Disclosure Act, 1995'.

Cases of suspected corruption or maladministration may also be reported direct to the NSW Ombudsman and cases of serious and substantial waste may also be reported to the NSW Auditor-General.

The Protected Disclosures Act, as far as it is relevant to staff at the Commission, makes it an offence to take "detrimental action" against another person in reprisal for making a protected disclosure.

All 'protected disclosures' will be handled in accordance with the Commission's 'Protected Disclosure Reporting Policy'. The Commission is committed to ensuring that there will be no recriminations against those who report suspected corrupt conduct, maladministration and serious and substantial waste. In the case of a 'protected disclosure' recriminations are unlawful. If you feel that you are the subject of recriminations, you should report it directly to the Commissioner.

You must notify the Solicitor to the Commission of any complaint made against a Commission officer by a person not working for the Commission.

Under the Commission's policy on complaints against staff, the Solicitor to the Commission is generally responsible and will report to the Commissioner in respect of each matter. Any matter requiring investigation will be allocated to an appropriate member of Senior Management, and what is proposed after investigation will be reviewed and approved or otherwise by the Commissioner personally.

In respect of any more serious or difficult complaints against a staff member, a person from outside the Commission may be engaged to assist.

If, in the course of your private life, you become aware of any instance of suspected corrupt conduct, you are strongly advised to report it to the Manager, Assessments or to the Solicitor to the Commission.

14. Sanctions

Sanctions may be applied if you are involved in:

- . unacceptable behaviour, either in the course of your duties or in your private life,
- . unsatisfactory performance of duties,
- . breaches of the code of conduct,
- . actions which can be prosecuted as breaches of the ICAC Act.

The sanction/s to be applied will depend on how serious and/or repeated breaches are

considered to be. They may include:

- . counselling by your supervisor, a member of Senior Management, or in extreme cases by the Commissioner,
- . a record of behaviour being documented and placed on your file,
- . not being recommended for further term of employment,
- . dismissal,
- . prosecution.

For example, an officer may be counselled by a supervisor for inadvertently giving confidential information to the media. An officer may be dismissed for knowingly leaking confidential information to the media.

Clause 13 of the Commission's Enterprise Agreement relating to resignations and terminations states employees resigning from employment must provide a minimum of four weeks notice, in writing, to the Commission unless the Commission agrees to a lesser period. Should a decision be made to terminate employment, four weeks notice or payment in lieu will be provided. The Commission will not necessarily give a reason for terminating employment. This provision will not be taken lightly by the Commission, and is likely to be used only for serious cases of gross inefficiency, for misconduct or where a substantial security risk is evident.

In cases where no reason has been given for dismissing an officer of the Commission, you should discount any rumours you may hear, and positively discourage their circulation within or outside the Commission.

15. Responsibilities of Officers who have left the Commission

In accordance with the general terms and conditions of your employment, you must not without the permission of the Commission:

- . make public or otherwise use any confidential knowledge or information gained as a consequence of your employment with the Commission, or
- . distribute, publish, mail or otherwise permit to go out of your possession any confidential information gained as a direct or indirect result of your employment with the Commission.

At the end of your employment with the Commission, you must return any documents or items which relate to the Commission's work and which are not otherwise publicly available.

APPENDIX 8

ICAC PUBLICATION LIST

Investigation Reports

- | | | |
|---|---|---|
| <p><input type="checkbox"/> August 1996
Harness Racing Authority
Report on Investigation Concerning the Chairman of Stewards of the Harness Racing Authority of New South Wales</p> <p><input type="checkbox"/> April 1996
Mr P M Smiles
Investigation into Circumstances Surrounding the Payment of a Parliamentary Pension to Mr P M Smiles— Second Report</p> <p><input type="checkbox"/> January 1996
Southern Mitchell Electricity
Purported Termination of Employment of Jeffrey Horner & Edwin Chenery by Southern Mitchell Electricity</p> <p><input type="checkbox"/> February 1995
Mr P M Smiles
Investigation into Circumstances Surrounding the Payment of a Parliamentary Pension to Mr P M Smiles</p> <p><input type="checkbox"/> February 1995
Randwick Council
Investigation into Randwick City Council</p> <p><input type="checkbox"/> February 1995
RTA and Property
Investigation into the RTA and Property Disposal</p> <p><input type="checkbox"/> September 1994
Police and Paedophiles
Interim Report on Investigation into Alleged Police Protection of Paedophiles</p> <p><input type="checkbox"/> June 1994
Police and Confidential Information
Investigation into Matters Relating to Police and Confidential Information</p> <p><input type="checkbox"/> April 1994
Police and Criminals
Investigation into the Relationship between Police and Criminals – Second Report</p> | <p><input type="checkbox"/> February 1994
Police and Criminals
Investigation into the Relationship between Police and Criminals – First Report</p> <p><input type="checkbox"/> January 1994
Collins
Investigation into Collins v Ryan</p> <p><input type="checkbox"/> November 1993
Zouch
Investigation into the Conduct of Brian Zouch</p> <p><input type="checkbox"/> June 1993
Landa
Investigation into the Office of the Ombudsman</p> <p><input type="checkbox"/> March 1993
Metherell 3
Integrity in Public Sector Recruitment</p> <p><input type="checkbox"/> March 1993
SRA Northern Region
Investigation into the State Rail Authority –Northern Region</p> <p><input type="checkbox"/> January 1993
Use of Informers
Investigation into the Use of Informers—Volumes 1 & 2</p> <p><input type="checkbox"/> September 1992
SRA Trackfast
Investigation into the State Rail Authority - Trackfast Division</p> <p><input type="checkbox"/> September 1992
Metherell 2
Second Report on Investigation into the Metherell Resignation and Appointment</p> <p><input type="checkbox"/> August 1992
Release of Govt Information
Investigation into the Unauthorised Release of Government Information. Vol 1, 2 & 3. <i>Volumes 2 & 3 only available through public libraries</i></p> | <p><input type="checkbox"/> July 1992
Blackmore
Investigation into the Conduct of Peter Blackmore</p> <p><input type="checkbox"/> June 1992
Metherell 1
Investigation into the Metherell Resignation and Appointment</p> <p><input type="checkbox"/> May 1992
Sydney Water Board
Investigation into the Sydney Water Board and Sludge Tendering</p> <p><input type="checkbox"/> March 1992
Conflicts of Interest
Investigation into Local Government, Public Duties and Conflicting Interest</p> <p><input type="checkbox"/> March 1992
Film Corporation
Investigation into the New South Wales Film Corporation and Pepper Distribution</p> <p><input type="checkbox"/> January 1992
Kyogle
Investigation into Road Works in the Shire of Kyogle</p> <p><input type="checkbox"/> December 1991
South Sydney
Investigation into the Planning and Building Department of South Sydney Council</p> <p><input type="checkbox"/> July 1991
Helicopter
Investigation into the Maritime Services Board and Helicopter Services</p> <p><input type="checkbox"/> July 1991
Vinyl
Investigation into Tendering for Vinyl Floor Products</p> <p><input type="checkbox"/> May 1991
Tow Truck Repairs
Investigation into Police and Truck Repairers</p> |
|---|---|---|

- April 1991
Neal and Mochalski
Investigation concerning Neal and Mochalski
- February 1991
Sutherland
Investigation into Sutherland Licensing Police
- January 1991
Waverley
Investigation relating to Stait Dainford and Waverley Council
- December 1990
Azzopardi
Investigation into Harassing Telephone call made to Edgar Azzopardi
- December 1990
RTA
Investigation into Drivers Licensing, Volumes 1 & 2
- October 1990
Walsh Bay
Investigation into the Walsh Bay Redevelopment Project
- September 1990
Housing
Investigation into Dealings between Homfray Carpets and the Department of Housing
- August 1990
TAFE
Investigation into the Randwick College of TAFE
- July 1990
Land Titles
Investigation into Registration of DP787 368 at the Land Titles Office
- July 1990
North Coast
Investigation into North Coast Land Development. *Available through public libraries only.*
- February 1990
Silverwater
Investigation into the Silverwater Filling Operation

- December 1989
Hakim
Investigation Relating to the Raid on Frank Hakim's Office
- October 1989
Park Plaza
Investigation Relating to the Park Plaza Site

Corruption Prevention Projects

- September 1995
And Now a Word from our Sponsor
- July 1995
Contracting for Services: Probity Checklist Brochure
- May 1995
Contracting for Services: the Probity Perspective
- February 1995
Internal Reporting Systems
- October 1994
Corruption Prevention and Plant Hire – An Evaluation
- August 1994
Monitoring Cash Handling in Public Hospitals
- July 1994
Taken for Granted? – Better Management of Government Grants Brochure
- March 1994
Taken for Granted? – Better Management of Government Grants
- February 1994
Trips and Traps – Travel in the NSW Public Sector
- October 1993
A High Risk Area – The Management of Criminal Investigations – A Discussion Paper
- August 1993
Sponsorship Principles – A Discussion Paper

- July 1993
Pitfalls or Probity – Tendering and Purchasing Case Studies
- May 1993
Review of ICAC Code of Conduct. *Available through public libraries only.*
- April 1993
Department of Housing Maintenance Contracts – Monitoring Report
- March 1993
Local Government Speaks! *Available through public libraries only.*
- February 1993
Just Trade? Proceedings of Seminar on the ICAC Report on the Unauthorised Release of Government Information
- December 1992
Plant Hire (Heavy Machinery)
- August 1992
Secondary Employment of NSW Police Officers
- July 1992
Department of Health – Cash Handling in Public Hospitals
- March 1992
Allocation of Boat Moorings by the NSW Waterways Authority
- December 1991
Purchase and Sale of Local Government Vehicles
- April 1991
Roads and Traffic Authority – Driver Licensing (Executive Summary, Findings and Recommendations)
- February 1991
Department of Housing – Maintenance Contracts (Executive Summary, Findings and Recommendations)

Annual Reports

- Annual Reports
- Year 19..
1989–1995
(Annual Report Summary 1994–5 available)

Discussion Papers

- May 1993**
Informants Paper
Police Informants. On the Nature and the Management of the Relationship between Police and their Informants
- October 1992**
Metherell 3
Recruitment of Former Members of Parliament to the Public Service & Related Issues
- July 19**
Conflicts of Interest
Conflicts of Interest and Local Government

Research Publications

- June 1996**
Monitoring the Impact of the Protected Disclosures Act, 1994. Phase 2: Interviews with NSW Public Sector Agencies and Local Councils. Interim Report Summary.
- May 1996**
Corruption and Related Issues: An Annotated Bibliography.
- April 1996**
Monitoring the Impact of the Protected Disclosures Act, 1994. Phase 1: Survey of NSW Public Sector Agencies and Local Councils. Interim Report.
- March 1996**
Community Attitudes to Corruption and the ICAC 1995.

- May 1995**
Community Attitudes to Corruption and the ICAC 1994.
- April 1994**
Unravelling Corruption: A Public Sector Perspective. Survey of NSW Public Sector Employees' Understanding of Corruption and Their Willingness to Take Action. Research Report.
- March 1994**
Unravelling Corruption: A Public Sector Perspective. Survey of NSW Public Sector Employees' Understanding of Corruption and Their Willingness to Take Action. Summary Report.
- March 1994**
Community Attitudes to Corruption and the ICAC: ICAC Public Attitude Survey.

Other Publications

- ICAC Corporate Brochures June 1996**
 - Serving the NSW Community
 - Making a Protected Disclosure to the ICAC
 - ICAC Functions
 - What is Corruption?
 - Guarantee of Service
 - Making a Complaint About Corrupt Conduct

- Corporate Plan 1995-98
- Code of Conduct
- Information for Witnesses
- The Operations Review Committee
- How the ICAC Works-Operation Hubcap (A Case Study) June 1996
- November 1994**
Inquisitorial Systems of Criminal Justice and the ICAC: A Comparison
- August 1994**
Inquiry into the Treatment of Staff Complaints in a Minister's Office
- March 1992**
In Whose Interest-18 Issues to Consider
- March 1991**
19 Key Issues-The First Two Years
- Corruption Matters**
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INDEPENDENT COMMISSION AGAINST CORRUPTION
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SYDNEY 2001
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APPENDIX 9

MATTERS TAKEN ON NOTICE



FAXED
23.12.96

INDEPENDENT COMMISSION AGAINST CORRUPTION

23 December 1996

Mr Peter Nagle MP
Chairman
Parliamentary Committee on the ICAC
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Chairman

You will recall that at the adjourned hearing of the Committee held on Tuesday, 17 December 1996 several matters were taken on notice, some from the Member for Gladesville, Mr John Watkins, and some from the Hon Ian Macdonald MLC. Mr Watkins advised that his questions would be made available to me on the afternoon of the committee meeting. They did not arrive. However they were received on 19 December 1996. They fall into four groups; three of which were incorporated in his letter of 19 December 1996 and the other, consisting of twenty-seven questions was set out in an attachment to that letter.

I enclose a copy of Mr Watkins' letter and the attachment, together with the answers to those questions.

Would you please incorporate Mr Watkins' letter and attachment and my replies into the Parliamentary record, together with:

- a) my letter to the Member for Gladesville, Mr John Watkins of 8 November 1996 together with annexures (copy enclosed);
- b) my letter to the Member for Gladesville of 14 November 1996 (copy enclosed); and
- c) my letter to the Member for Manly, Dr Peter Macdonald of 29 October 1996 (copy enclosed).

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The answers to the questions raised by the Hon. Ian Macdonald MLC will be forwarded as soon as I have had an opportunity to review the transcript of 17 December, 1996.

Yours sincerely,

A black rectangular redaction box covering the signature of the sender.

The Hon/B S J O'Keefe AM QC
Commissioner



JOHN WATKINS M.P.
Member for Gladesville

19 December 1996

Mr Barry O'Keefe
ICAC Commissioner
191 Cleveland Street
REDFERN NSW 2016



Dear Mr O'Keefe,

In the hearing on December 17 at Parliament House several matters were referred to that you indicated you would like to take on notice.

Please find enclosed questions relating to the Protected Disclosure of employees of the ICAC that you requested be sent to you.

I also referred to three other matters on Tuesday that you indicated you would like to take on notice.

The first relates to the Building Action Review Group (BARG) and their questions over the ICAC's decision not to act on information. The ICAC Parliamentary Committee has recently referred the matter to you.

The second was the Ex Police Sergeant Bill Pinkerton matter. Mr Pinkerton was charged with bribery after an ICAC investigation but the charges were later dropped. A report on this matter would be appreciated especially in relation to the investigation and decision to proceed with prosecution in the light of the final outcome.

Finally, I mentioned a matter raised with me by Mr Kemnitz regarding the Everglades Gardens in Leura NSW and his dealings with the National Trust under your leadership whilst you were the nominee for the position of ICAC Commissioner. Mr Kemnitz questions dealings undertaken by the Trust in relation to the property, in particular negotiations leading to a lease. Would you care to comment on your role in this matter?

Yours sincerely,

A handwritten signature in cursive script that reads 'John Watkins'.

JOHN WATKINS MP

QUESTIONS TO ICAC COMMISSIONER, MR O'KEEFE, ARISING FROM HEARING OF DECEMBER 17 RELATING TO PROTECTED DISCLOSURE OF EMPLOYEES OF ICAC

- Is it true that initially three employees made allegations of corruption internally and that of these three, two are no longer employed by the ICAC and the remaining one is now fighting an action in the Industrial Relations Commission?
- Why did the two individuals leave the employment of the ICAC?
- Is it true that the person or persons against whom the allegations were made have suffered no loss in position, pay or entitlement?
- Does Mr O'Keefe consider that the ICAC is the appropriate body to investigate allegations of corruption within its own ranks? If so, why?
- Could Mr O'Keefe provide the PJC with the ICAC's report on the investigation into these allegations?
- Is Mr O'Keefe satisfied that these allegations have been competently dealt with and if so why, given that apparently the employee/s who made the allegations concerned dispute this?
- Is it true that these allegations were referred to the Office of the NSW Ombudsman and that the ICAC did not cooperate with this Office's attempt to pursue the matter?
- The Ombudsman has the power to investigate allegations of corruption within the ICAC. Does Mr O'Keefe consider that in the circumstances it would be appropriate for the ICAC to facilitate the Ombudsman's immediate investigation of these matters? If not, why not?
- Does Mr O'Keefe not agree that quite apart from any other considerations such a move would effectively counter any perception of possible and perceived bias on the part of the ICAC's management and that the ICAC would thereby 'be seen to do the right thing'?
- I understand that an employee of the ICAC claims to have suffered detriment as a result of making a Protected Disclosure and in order to seek redress he is now taking

legal action. What has Mr O'Keefe done to protect this employee after they made a Protected Disclosure?

- Why did that employee feel forced to seek a transfer?
- Why didn't Mr O'Keefe indicate to the employee that there was no need for him to transfer as Mr O'Keefe would address any problems of harassment or victimisation (ie the reason why the transfer was being sought)?
- What action did Mr O'Keefe take to stop this harassment?
- What action did Mr O'Keefe take against the person who it has been claimed has been doing the harassing?
- Why does Mr O'Keefe consider it reasonable that the perpetrator of the alleged harassment was not transferred instead of the person who made the disclosure?
- If in the future another ICAC employee were to make a Protected Disclosure internally, would he handle the situation differently?
- Did Mr O'Keefe issue an internal memo to all Managers at the end of November 1996 instructing them to ensure that the Protected Disclosure Act is complied with if any employee makes a Protected Disclosure in the future? Why?
- Why was this memo issued if he is satisfied with the handling of the current situation?
- Why were such instructions not issued in March 1995 when the Act came into force?
- Surely the ICAC of all organisations should have ensured not only that its own managers complied with this Act but that they would also be seen to comply with the Act?
- Is Mr O'Keefe ensuring that this situation is being included as an example of the ICAC's current research into 'whistleblowers' and the survey which is being conducted of those who have made Protected Disclosures to the ICAC? If not, why not?
- Does Mr O'Keefe not consider that the ICAC is now sufficiently compromised to make the creation of a separate

Protected Disclosures Unit a matter of urgency?

- Assuming that PSA's concerns are well founded, have Mr O'Keefe's remarks to the PJC about morale been less than candid? If not, why not?
- What action has Mr O'Keefe taken to address the concerns of staff?
- What actions has Mr O'Keefe taken to encourage employees to make internal disclosures?
- Would Mr O'Keefe be willing to let ICAC employees, selected at random, appear before the PJC to speak for themselves about morale in the ICAC?
- Would Mr O'Keefe be willing to allow an independent assessment of complaints handling within the ICAC?

**ANSWERS TO QUESTIONS FORWARDED BY
MR JOHN WATKINS MP**

A. Re: Building Action Review Group questions.

These have already been forwarded to the ICAC by the Project Officer and will be answered appropriately in due course.

B. Re: Sergeant Bill Pinkerton.

The original decision to proceed with the prosecution was taken by the Director of Public Prosecutions as was the decision not to proceed further with the matter. Since the question relates to particular conduct, it does not fall within the Parliamentary Joint Committee's proper ambit of inquiry.

C. Re: Kemnitz.

No. This matter does not concern the ICAC and is not a proper question.

D. Re: Questions in attachment to letter of 19 December 1996:

1. Three employees from one section of the Commission made allegations concerning their fellow employees in that section. Two are no longer employed at the ICAC and the other is currently engaged in a conciliation process before the New South Wales Industrial Relations Commission concerning the period during which he should continue to receive the allowances payable as compensation for the special situation of Surveillance officers whilst in his new position as an Acting Investigator.
2. I do not know their actual/true reasons. One returned to the New South Wales Police Service from which he had been seconded. The other re-joined the Police Service.
3. It is true to say that the persons against whom the allegations were made suffered no loss in position, pay or entitlement as a direct consequence of the allegations made by the other employees.
4. Yes. The ICAC is the only investigative agency with an accountability mechanism in the form of the Operations Review Committee. This, combined with the fact that the ICAC has jurisdiction to investigate all other public sector agencies, with the only exception being the recently established PIC, renders it inappropriate for other agencies to exercise investigative jurisdiction over the ICAC in such a case.
5. No. The PJC has no role to review an investigation relating to particular conduct. See section 64(2) of the ICAC Act.

6. Yes. I am satisfied the allegations have been competently dealt with. The matter was reported to the Operations Review Committee constituted under the Act, and that Committee advised that the matter should not be further investigated. The Commission knows from its experience that it is not uncommon for complainants to be dissatisfied with the outcome of an investigation where their expectations (even unfounded) have not been met. The actual/true reasons of the employee/s in question are best known to them.
7. No it is not true. The ICAC co-operated by providing the Ombudsman with information in response to its request for information and the Ombudsman determined that it would not conduct a formal investigation of or into the matter.
8. The Ombudsman has a limited power to conduct investigations where it receives a protected disclosure concerning the ICAC. The Ombudsman has already determined that it would not conduct an investigation of or into this matter. It would also not be appropriate for the Ombudsman to go over the same ground again. The matter has been thoroughly investigated by the Commission, reported to the Operations Review Committee and has already been considered by the Office of the Ombudsman.
9. I am unaware of any perception of bias on the part of ICAC management and no perception of bias should reasonably arise. It would actually defeat the intent of the protected disclosures legislation if complaints made internally were initially to be investigated by another agency. The legislation was designed to encourage the investigation by employer agencies of complaints made by employees to their public sector employers.
10. I do not know on what your understanding is based. However, I assume that you have spoken to the individual concerned. The facts are these. The members of the Surveillance Section (which is relatively small) had experienced difficulties working together. Because of this a Commission staff member, who was trained as a mediator, conducted a mediation session with the surveillance officers. Whilst the officers found the mediation useful it did not resolve the conflicts within the section and subsequent to this, three of the surveillance officers made a number of complaints about the management of the Surveillance Section and some of the other surveillance officers. Those complaints were thoroughly investigated. At the time of the complaints, the surveillance officer who is now in the New South Wales Industrial Commission, was working at the ICAC as an Acting Investigator because he had expressed the desire to move from surveillance to investigations. To assist him in achieving this ambition the Commission, prior to any complaint being made, had sent this officer on an expensive Investigations Training Course.

At the conclusion of the investigation the complainant officers were asked to return to the Surveillance Section as the Commission's operational needs required a full complement in that Section. Throughout this period the Director of Investigations closely monitored the day to day work of the Section. Ultimately the officer who subsequently commenced the industrial proceedings expressed the belief that he felt unable to continue working within the Section and arrangements were made for him

to take up a position as an Assistant Investigator. Such a move would have taken place in any event had the officer wished to pursue his ambition of moving to Investigations.

Your question assumes that the employee felt forced to seek a transfer. No doubt you have spoken to him about his reasons. He expressed the view that he was not able to get on with the other officers, particularly after the other two officers had left the ICAC. In the previous question you have asked why the employee felt forced to seek a transfer and in this question you now state that the reason for the transfer was because of harassment or victimisation. I reject that there was harassment or victimisation. If there had been, those responsible would have been dealt with. As I said in my evidence before the Committee on the last occasion an employer can seek to deal with harassment and victimisation, however, disharmony and personality conflicts are not necessarily able to be remedied nor does the Act contemplate or provide a mechanism for fellow employees being forced to socialise outside working hours or to like one another. In any event the complainant must be willing to do so and I believe that he was not so willing. To the extent that personality conflicts and disharmony exist between individuals, the protected disclosures legislation does not seek to solve them.

11. I have already rejected that there was harassment. The employee had sought to become an investigator well before any complaint was made and undertaken a significant course to assist him in achieving that ambition.
- 12/13 To the extent that this question is dependent on the claim that there was harassment I have already rejected that harassment occurred. In terms of what other action has happened then all complainants are aware that the management of the Section has been subject to special, close supervision in the period since the investigation was undertaken and management practices have been revised and management skills improved.
- 14/15 See answers 11, 12 and 13. It would have been unreasonable to transfer the manager or any other person the subject of complaint. It is naive to suggest that merely because someone is the subject of a complaint there should be any assumption of guilt. The three complainants expressed at the outset that the only result that they considered would be appropriate to satisfy them, would have been the removal of the manager. They all seemed to have set their minds of driving him from that position. Given this approach it is not surprising that they were disappointed by the outcome. Those who are subject to complaints have rights, as do all employees, and it would be mischievous if it became acceptable to transfer or otherwise penalise an individual simply because he/she was the subject of a complaint.

It is essential for organisations to draw on and learn from experiences in dealing with internal complaints. That is so whether or not the complaint could properly be classified as a protected disclosure. In the present case it has become clear that the officers who complained had hoped that their complaints would lead to the removal of their manager. That was not an appropriate outcome. It is possible that this

expectation may have arisen in part because of the protected disclosures legislation. Experience in dealing with protected disclosures made by public servants from other agencies suggests that the legislation may have given rise to some unrealistic expectations. The Commission in dealing with complaints, including those categorised as protected disclosures, needs to pay close attention to managing the expectations of complainants and where appropriate, improving management skills and techniques. Those things have been done.

16. I answered this question at the hearing.

17. I answered this question at the hearing.

18/19 These questions assume that because I issued a memorandum in November 1996 concerning protected disclosures the Commission had taken no steps concerning staff instruction about protected disclosures prior thereto and in particular in March 1995. With respect, the basis of this assumption is hard to fathom. The assumption is not well founded. When the protected disclosures legislation was introduced the Commission developed its own procedures and provided training to staff on that issue. The fact is that every organisation, including the ICAC, should remind staff about the requirements of the protected disclosures legislation in dealing with protected disclosures and the Commission employee's rights in respect of that legislation. The memorandum of November 1996 followed a circular from the Premier which was itself, I believe, prompted by action taken by the ICAC to improve the implementation of the Protected Disclosures Act.

20. The ICAC and its managers have complied with the legislation and to any fair observer would have been seen to comply with it. The question appears to have built into it an assumption of some failure on the part of the ICAC merely because an employee or ex-employees has/have expressed dissatisfaction about the outcome of a particular complaint/s. Such an assumption is neither fair nor well founded.

21. What the ICAC does in terms of its research and examples are matters for it and its professional staff.

22. No.

23. I find it odd that after 22 questions the PSA is referred to for the first time and in a way which suggests questions or material antecedent to question 23. I reject any suggestion that I have been less than candid to the Committee. This is an offensive question.

24. The question is impossible to answer in the form posed.

25. This question has been answered above.

26. No. I will not subject staff to a situation such as that with which I was confronted on the last occasion before the Committee. Staff are subject to the Secrecy Provisions under s111 of the Act and I do not consider that it would be in the public interest for such an exercise to be undertaken in the adversarial, aggressive, confrontational and unpleasant atmosphere which pervaded the last meeting of the Committee. Responses from staff to the attacks perceived by them to have been made on me at the meeting have been very supportive of me and betoken excellent staff morale.
27. The question refers to "Complaints Handling". To the extent that the question relates specifically to the management of internal complaints then I reject that there is any need for any such independent assessment, and given the dearth of empirical evidence, it would be difficult to assert reasonably that such a need has been demonstrated.