



PARLIAMENT OF NEW SOUTH WALES

Committee on the Independent Commission Against Corruption

REPORT 5/55 – SEPTEMBER 2014

REVIEW OF THE 2012-2013 ANNUAL REPORTS OF
THE INDEPENDENT COMMISSION AGAINST CORRUPTION AND
THE INSPECTOR OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION



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

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Membership

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Committee's functions

Under section 64 of the *Independent Commission Against Corruption Act 1988*, the functions of the Committee are to:

- monitor and review the exercise by the ICAC and the Inspector of the ICAC of their functions
- report to Parliament, with such comments as it thinks fit, on any matter appertaining to the ICAC or the Inspector or connected with the exercise of its functions to which, in the Committee's opinion, the attention of Parliament should be directed
- examine each annual and other report of the ICAC and the Inspector and report to Parliament on any matter appearing in, or arising out of, any such report
- examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to Parliament any change which the Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector
- 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.

Nothing in the ICAC Act authorises the Committee to:

- investigate a matter relating to particular conduct
- reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint
- reconsider the findings, recommendations, determinations or other decisions of the ICAC in relation to a particular investigation or complaint.

Chair's foreword

This year, the Committee has for the first time examined the ICAC and ICAC Inspector's annual reports in one report. As part of this annual report review, the Committee examined a number of issues, including: the appointment of a new Commissioner and Inspector; prosecutions arising from ICAC investigations; the impact of the McClelland review of police critical incidents on the ICAC; and ICAC's role in bringing about cultural change within the public sector.

This year saw a change in both the office of ICAC Commissioner and ICAC Inspector. The Hon Megan Latham commenced in the role of Commissioner, while the Hon David Levine AO RFD took up the position of ICAC Inspector. Mr Levine became the first person to hold both the offices of Inspector of the Police Integrity Commission and Inspector of the ICAC. During 2013, legislation was passed enabling one person to perform both these roles. The Committee considers this change to be an efficient and cost-effective reform which will enable administrative processes to be streamlined. While there may be an increase in Mr Levine's workload, the ICAC Act enables the appointment of an Assistant Inspector should it be required.

The issue of prosecutions arising from ICAC investigations has been examined by the Committee on a number of occasions. Both the DPP and the ICAC have introduced a number of measures to reduce delays in prosecutions, which have succeeded in reducing the time taken to commence prosecutions after an ICAC investigation is completed. In light of public concern and comment about the outcomes of ICAC investigations, the Committee has commenced an inquiry into prosecutions arising from ICAC investigations.

In a recently completed review of police critical incidents, Mr Robert McClelland made a recommendation that the ICAC and the Police Integrity Commission examine the feasibility of sharing staff, resources, expertise and capabilities. In making the recommendation, Mr McClelland raised the possibility of merging the ICAC and PIC. Both the ICAC and ICAC Inspector expressed concern about the proposal, commenting that it would not result in cost savings, and could present difficulties in terms of confidentiality and the integrity of investigations into police and public sector corruption. The Committee shares these concerns, and has recommended that the current integrity framework in relation to public sector and police corruption be maintained.

Finally the Committee has examined the ICAC's work in effecting cultural change in the public sector. While the Commission's investigations and public inquiries are highly effective in detecting and exposing corruption, it is equally important to acknowledge the Commission's assessments and corruption prevention work.

The Committee has been assisted in its work by the co-operation of the Inspector, the ICAC Commissioner and their staff. I thank my fellow Committee members for their work on the Committee, and I wish to acknowledge the contribution of the former Chair, Mr Dominic Perrottet. I also thank Committee staff for their work and support.

Greg Smith SC MP
Chair

List of recommendations

RECOMMENDATION 1 _____ 9

The Committee recommends that the NSW Government maintain the existing integrity framework in relation to public sector and police corruption, with the Independent Commission Against Corruption and the Police Integrity Commission as discrete agencies continuing to perform their current functions.

Key themes

INTRODUCTION

- 1.1 The Committee's functions include examining each annual report and other report of the Independent Commission Against Corruption (the ICAC) and the Inspector of the Independent Commission Against Corruption (the Inspector) and reporting to Parliament on any matter appearing in or arising out of these reports.
- 1.2 The ICAC investigates, exposes and prevents public sector corruption and educates the community and the public sector about corruption. The ICAC's functions include investigating complaints of corrupt conduct; examining laws, practices and procedures to detect corrupt conduct and to secure changes in work methods or procedures that may be conducive to corrupt conduct; advising and instructing public authorities and officials about changes in practices and procedures to reduce the likelihood of corrupt conduct; and educating the public and providing information about the detrimental effects of corrupt conduct and the importance of maintaining integrity in public administration.¹
- 1.3 The Inspector oversees the ICAC's work by undertaking functions including auditing the ICAC's operations to monitor compliance with the law of the State; dealing with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct by the ICAC or its officers; dealing with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the ICAC or its officers; and assessing the effectiveness and appropriateness of the ICAC's procedures relating to the legality or propriety of its activities.²
- 1.4 As part of this review, the Committee provided the ICAC with questions on notice on matters arising from its annual report, and held public hearings with the ICAC and the Inspector on 28 March 2014. The ICAC's answers to questions on notice and the transcript from the public hearings are reproduced as Appendices to this report.
- 1.5 The Committee's review has focused on the following areas:
 - (a) Appointment of new Commissioner and Inspector
 - (b) Prosecutions arising from ICAC investigations
 - (c) The McClelland report and its impact on the ICAC
 - (d) ICAC's role in effecting cultural change.

¹ *Independent Commission Against Corruption Act 1988* s 13

² *Independent Commission Against Corruption Act 1988* s 57B

APPOINTMENT OF NEW OFFICEHOLDERS

- 1.6 The Hon David Ipp AO QC retired as Commissioner of the ICAC in January 2014. The Committee wishes to place on the public record its thanks to Mr Ipp for his strong and effective leadership of the Commission during a period of intense investigative activity. Mr Harvey Cooper AM concluded his second and final term as ICAC Inspector on 30 September 2013, having served as Inspector since October 2008. The Committee also wishes to thank Mr Cooper for his service as Inspector, in particular for the thorough and compassionate way he carried out his duties. The Committee extends its best wishes to Mr Ipp and Mr Cooper in their future endeavours.
- 1.7 The Hon Megan Latham commenced her five year term as Commissioner in January 2014, while the Hon David Levine AO RFD QC commenced as Inspector of the ICAC in February 2014, with his term due to expire on 31 January 2017.

One person performing the roles of PIC and ICAC Inspector

- 1.8 In 2013 legislation was introduced to enable one person to occupy the positions of both Inspector of the ICAC and Inspector of the Police Integrity Commission (PIC). The Hon David Levine is the first person to undertake both roles, having been appointed PIC Inspector in February 2012.
- 1.9 The Inspector has retained administrative support staff from the PIC Inspectorate for his new role as ICAC Inspector, and estimates that it will take approximately six months for he and his staff to settle in and establish routines and processes.³ The Committee heard that the Inspector had begun implementing new procedures to reorganise the complaint handling process, including streamlining 'the analysis and discrimination of complaints as they come in'.⁴
- 1.10 The Committee enquired whether the Inspector foresaw any issues in balancing the dual roles of Inspector of the ICAC and Inspector of the PIC. The Inspector responded that his experience as Inspector of the PIC, the number of matters requiring his attention at the PIC and the number of outstanding ICAC complaints waiting for his attention, led him to believe that he would be able to complete both roles satisfactorily. The Inspector noted that the legislation allowed for the appointment of an Assistant Inspector if required.⁵
- 1.11 The Commissioner did not have any concerns in relation to the Inspector holding the positions of both Inspector of the ICAC and Inspector of the PIC. The Commissioner commented that the Inspector has already been in communication in relation to a number of complainants and a productive working relationship had been established.⁶

³ The Hon David Levine AO RFD QC, Inspector of the ICAC, transcript of evidence, 28 March 2014, p 1

⁴ The Hon David Levine AO RFD QC, Inspector of the ICAC, transcript of evidence, 28 March 2014, p 2

⁵ The Hon David Levine AO RFD QC, Inspector of the ICAC, transcript of evidence, 28 March 2014, p 1

⁶ The Hon Megan Latham, Commissioner of the ICAC, transcript of evidence, 28 March 2014, p 15

Liaison between the Commissioner and the Inspector

- 1.12 In the 2011-2012 annual report review, the Committee was concerned that the increased investigative workload of the ICAC had impacted on liaison between the ICAC and the Inspector. The Committee observed that:
- ... the issue of regular liaison is particularly important given that the current Inspector's term ended on 30 September 2013, and there will be a strong need to establish regular liaison between the new Inspector and Commissioner.⁷
- 1.13 At the recent public hearing the Committee heard that although Inspector Levine and Commissioner Latham had only recently commenced their terms, regular liaison had been established. The Inspector noted that while he had been unable to meet formally with the Commissioner, arrangements had been made for liaison with another senior ICAC representative. Additionally, the Inspector had been given remote access to ICAC files:
- Thus far the Independent Commission Against Corruption has been very busy. I have had no formal contact with the Hon. Megan Latham, the new Commissioner, who has been occupied in matters apparently of great moment. Nonetheless, a regime has already been put in place where I can have contact with an Assistant Commissioner of the Independent Commission Against Corruption and I have remote access to ICAC's records, which is a matter of the utmost efficiency and value.⁸
- 1.14 The Commissioner described the relationship with the Inspector as 'open and frank', stating that a good working relationship had been established:
- ... I do not envisage there being any problems at all in our relationship, it has been very open and frank. He has already written to me on a number of occasions just to tell me what the outcome was in relation to a couple of complainants who had been dissatisfied with being told that their complaint could not be investigated because it did not come within the ambit of the Act, or for some other purpose, and who then took their complaint to the Inspector. We have, I think, a very productive working relationship.⁹

Committee comment

- 1.15 2014 marks a year of transition for both the ICAC and the Inspectorate, with the commencement of a new Commissioner and new Inspector. There has been a significant change in responsibilities for the Inspector, whose duties have expanded to include oversight of both the PIC and the ICAC.
- 1.16 In terms of the introduction of legislation to enable one person to perform both the ICAC and PIC Inspector roles, the Committee considers that it is an efficient use of financial resources to have one officeholder serving in both roles. These roles have previously been performed on a part-time basis by separate officeholders. Implementation of new, consistent administrative processes will ensure resources are used effectively.

⁷ Committee on the ICAC, *Review of the 2011-2012 Annual Report of the Inspector of the ICAC*, report 3/55, Parliament of New South Wales, October 2013, p 5

⁸ The Hon David Levine AO RFD QC, Inspector of the ICAC, transcript of evidence, 28 March 2014, p 1

⁹ The Hon Megan Latham, Commissioner of the ICAC, transcript of evidence, 28 March 2014, p 15

- 1.17 The Committee welcomes the establishment of new arrangements for regular liaison between the Inspector and the ICAC and that both parties are satisfied that an effective working relationship can develop. Liaison between the Commission and Inspectorate is particularly important given the recent change in officeholders and the large investigative workload for the ICAC and increase in responsibilities for the Inspector.

PROSECUTIONS ARISING FROM ICAC INVESTIGATIONS

- 1.18 The working relationship between the ICAC and the Director of Public Prosecutions (DPP) and delays in prosecuting matters arising out of ICAC investigations has been a matter of interest for the Committee for several years. During its previous annual report review the Committee heard of a revision of the memorandum of understanding (MOU) between the ICAC and DPP and changes in the ICAC's processes for preparation of briefs of evidence.¹⁰
- 1.19 The ICAC and DPP have both adopted a number of strategies to improve the prosecution process and reduce delays, including:
- Improved co-ordination and planning by the ICAC to ensure the timely preparation of briefs of evidence during investigations, rather than after an investigation has concluded. The ICAC sought to balance brief preparation with investigative work by making the investigation case officer responsible for preparing material for the DPP, and removing them from other investigation duties. More recently, the Deputy Director of the Investigation Division has taken on primary responsibility for brief preparation.
 - Amendments to the MOU to clarify the evidence to be provided to the DPP and ensure that only relevant material is provided to the DPP, and to set out a timetable for the ICAC and the DPP in their respective handling of briefs of evidence.
 - Improved liaison with the DPP - more interaction between DPP lawyers and lawyers at the ICAC to resolve issues about briefs, and regular two monthly meetings between the Deputy Commissioner and the Managing Lawyer of the DPP group that is responsible for ICAC prosecutions. The ICAC now briefs the DPP's office on new matters before they are referred, to assist the DPP with advance planning.
 - Improvements in the quality of briefs - the ICAC employed a former police officer to assemble briefs and assist investigators and lawyers in ensuring that briefs are better organised and comply with DPP requirements. A DPP lawyer was seconded to the ICAC to oversee the preparation of criminal briefs of evidence, review brief preparation processes and train ICAC officers on evidentiary requirements for briefs.
- 1.20 Additional funding has also enabled the ICAC to recruit extra staff, including investigators and a principal lawyer, prosecutions. The DPP has also received additional funding to assist with undertaking prosecutions referred by the ICAC.

¹⁰ Committee on the Independent Commission Against Corruption, *Review of the 2011-2012 Annual Report of the ICAC*, report 4/55, Parliament of New South Wales, October 2013, pp 8-9

- 1.21 In terms of recent refinements to the process of brief preparation, the Commissioner informed the Committee of a proposal to work more closely with the DPP to effect further improvements:

I am having a meeting with the Director of Public Prosecutions where I propose to talk to him about further improving the process whereby one of the solicitors from what is called the Special Crimes Unit, which does all the advising work when we send a recommendation to prosecute, comes to the Independent Commission Against Corruption at the end of the inquiry to assist in the preparation of the brief.¹¹

Committee comment

- 1.22 While the Committee recognises the ongoing efforts of the ICAC and the DPP to work together to refine processes, the Committee has observed the recent public concern regarding prosecutions arising from ICAC findings of corruption. Although some public concern may be based on a misunderstanding of the Commission's role, the Committee considers that further consideration of prosecution processes is timely. The Committee has therefore resolved to conduct an inquiry into prosecutions arising from ICAC investigations.
- 1.23 The Committee notes that strategies adopted by the ICAC and DPP have reduced delays in commencing prosecutions. While significant progress has been made, there is scope for further improvement. Through the inquiry the Committee will seek to assist the ICAC and DPP with their work in gathering evidence both during and after an ICAC investigation, by identifying issues and consulting on reforms to current processes.
- 1.24 The Committee's inquiry will examine issues including: whether gathering and assembling evidence that may be admissible in the prosecution of person for a criminal offence should be a principal function of the ICAC; the effectiveness of ICAC and DPP processes; adequacy of resourcing; whether there is a need to create new criminal offences that capture corrupt conduct; and arrangements for the prosecution of corrupt conduct in other jurisdictions.

THE MCCLELLAND REPORT AND ITS IMPACT ON THE ICAC

- 1.25 In September 2013 the Premier announced an independent review of the investigation and oversight of police critical incidents to be conducted by the Hon Robert McClelland.¹² The report of the review was released in January 2014.
- 1.26 Agencies with responsibilities in relation to critical incidents include the NSW Police Force, the NSW Ombudsman, the PIC, WorkCover and, in the case of death, the State Coroner. While the ICAC has no responsibilities in this area, the review made two recommendations that referred to the ICAC.¹³

¹¹ The Hon Megan Latham, Commissioner of the ICAC, transcript of evidence, 28 March 2014, p 7

¹² Critical incidents involve the death or serious injury of a police officer or a civilian, arising from a police operation. The NSW Police Force can also declare other matters to be 'critical incidents' if they are considered to have sufficient public interest.

¹³ The Hon Robert McClelland, *Oversight of police critical incidents: Report to the Hon Barry O'Farrell Premier of NSW*, November 2013.

- 1.27 Recommendation 8 of the McClelland Report was that the PIC and the ICAC examine the feasibility of sharing staff, resources, expertise and capabilities and that a memorandum of understanding be entered into to facilitate this. The text preceding the recommendation suggested that in the longer term it would be desirable for the PIC and the ICAC to merge, and that the memorandum of understanding would be an initial step towards an eventual merger of the two bodies.¹⁴

The ICAC and ICAC Inspector's views

- 1.28 The ICAC and ICAC Inspector both expressed concern in relation to the proposal for a merger of the ICAC and PIC, noting that a merger would provide limited benefit in terms of cost savings; there would be issues around protecting the confidentiality and integrity of investigations; and a potential loss of the specialist knowledge required for investigating police misconduct.

- 1.29 Speaking at the public hearing with the Committee on 28 March 2014, the Commissioner stated that a merger of the two bodies would have little benefit in terms of cost savings if the same focus on public sector corruption and police misconduct were to be maintained. The Commissioner observed that a merged body would effectively need to double in size:

I do not think there would be any cost savings at all if you were to, in effect, make it one body, the Police Integrity Commission and the Independent Commission Against Corruption, because in order to maintain a proper focus on police corruption you would have to maintain the same level of resources as the Police Integrity Commission currently has. You would, in effect, be doubling the size of the agency; you would not be making any relevant savings. There would be some consequential savings in things like administration but it would be a drop in the bucket.¹⁵

- 1.30 The Committee heard that a merger of the ICAC and PIC would raise issues around the way in which separate investigations into police and public sector corruption were managed. The Inspector observed that it would be necessary to establish a number of separate zones to protect the integrity and confidentiality of investigations:

... the police are part of the administration of justice: to prevent crime, to solve crime and to initiate, where appropriate, through the Directors of Prosecutions, criminal proceedings in the courts of justice. I am, I suppose, a bit of a traditionalist but I think it is very important to view the police as part of the administration of justice and thus not easily capable of being merged into the executive branch, which I think the ICAC represents. Let us hypothesise that it happened. You would have to set up so many sterile zones to keep the executive away from the police as part of the administration of justice that you would reach the point of saying, "Well, why did you bring them in in the first place?"¹⁶

- 1.31 The Commissioner echoed the observations of the Inspector, noting the difficulty of maintaining separate zones to protect the integrity of investigations:

¹⁴ The review also recommended that the *Police Integrity Commission Act 1996* be amended to ensure that the PIC has the same obligations as the ICAC in respect of avoiding interference with court proceedings: see pp xi, xiv

¹⁵ The Hon Megan Latham, Commissioner of the ICAC, transcript of evidence, 28 March 2014, p 12

¹⁶ The Hon David Levine AO RFD QC, Inspector of the ICAC, transcript of evidence, 28 March 2014, p 3

... it would be very difficult to maintain Chinese walls within an organisation where there would be personnel working on police corruption matters and personnel working on other corruption matters. It would be very difficult to maintain the confidentiality that we maintain in respect of our investigations and vice versa. That would have very deleterious effects in terms of the integrity of our investigations.¹⁷

- 1.32 In the years since its establishment, the PIC has developed specialist expertise to investigate police misconduct. The Inspector expressed concern that if the ICAC and PIC were to merge, expertise developed by the PIC could be lost, and investigations into police misconduct could suffer from lack of resources:

... the ICAC resources, without the experience that is exclusive to the investigation of PIC matters, would impinge upon the efficiency of the PIC component of the ICAC. That is the fear I have. The PIC has developed its expertise, culture and the like and it should be maintained independently.¹⁸

- 1.33 The Commissioner concurred with the Inspector's views, commenting that the specialist skills required to investigate police corruption demand a stand-alone body if police corruption is to be investigated thoroughly:

I think police corruption is a world unto itself. You have to have people who understand the way police work, who understand the hierarchy and the level at which commands operate.

There are enormously technical rules around police operations. It is a technically difficult area and unless you have a body that is devoted entirely to that it is going to fall through the cracks.¹⁹

The PIC's view

- 1.34 In its response to the McClelland report, the PIC argued that the suggestion of merging the two bodies was outside the review's terms of reference to examine the oversight of critical incidents. The PIC also observed that neither the PIC nor the ICAC had been given an opportunity to comment on the proposal.

- 1.35 Speaking at a public hearing with the Committee on the Ombudsman, Police Integrity Commission and Crime Commission, the PIC Commissioner, Mr Bruce James, commented on the lack of consultation regarding the proposal to merge the bodies, which was not included in the review's terms of reference. He also stated that the suggestion to merge the ICAC and PIC was based solely on the Police Association's submission to the review:

... the proposal that the PIC be merged with ICAC plainly concerns ICAC as well as the PIC. It is apparent from Mr McClelland's report that no submissions were sought or received from ICAC. ...

Where did Mr McClelland get these ideas from? ... Mr McClelland,... in the absence of any submissions from any other party, adopted parts of the submissions which,

¹⁷ The Hon Megan Latham, Commissioner of the ICAC, transcript of evidence, 28 March 2014, p 12

¹⁸ The Hon David Levine AO RFD QC, Inspector of the ICAC, transcript of evidence, 28 March 2014, p 4

¹⁹ The Hon Megan Latham, Commissioner of the ICAC, transcript of evidence, 28 March 2014, p 12

without regard to the inquiry's terms of reference, had been made to him by the Police Association ...²⁰

- 1.36 The PIC also noted that a 2011 ministerial review of the PIC Act had concluded that the policy objectives of the Act remained valid; and that for the foreseeable future those objectives were best performed by maintaining the ICAC and the PIC as separate bodies.²¹
- 1.37 In response to Mr McClelland's favourable comments regarding Victoria's Independent Broad-based Anti-corruption Commission (IBAC), which combines the functions of the PIC and ICAC, the PIC observed that the IBAC had only been in existence for a year and therefore 'can hardly be viewed as a proven model for the consolidation of anti-corruption functions into one agency.'²²
- 1.38 The PIC argued that the ICAC and PIC already share resources as far as possible without compromising their respective functions, noting that there is a memorandum of understanding between the agencies which provides for joint investigations; liaison between the Commissions; the provision of information and property from one Commission to the other; and the provision of personnel, technical equipment or expertise on request and subject to availability.²³

Rationale for establishing the PIC

- 1.39 In 1996, when examining the extent of police corruption in New South Wales, the Wood Royal Commission found that the existing external oversight agency framework was inadequate for investigating police misconduct and a 'focused, sophisticated and aggressive approach'²⁴ was necessary to combat widespread and entrenched police misconduct and corruption. At that time oversight agencies with responsibilities for investigating police misconduct were the Ombudsman and the ICAC.
- 1.40 Consideration was given by the Wood Royal Commission to the establishment of a dedicated division within the ICAC to investigate police misconduct, however this proposal was rejected for a number of reasons, including:
- The difficulty of maintaining the confidentiality, independence and security of investigations into police misconduct.
 - A risk that due to the other, competing functions of the ICAC, resources could be drawn away from investigating police misconduct.
 - Competition between investigative divisions for central resources such as administrative support or technical services and surveillance.²⁵

²⁰ Mr Bruce James, Commissioner, Police Integrity Commission, transcript of evidence, 17 February 2014, p 17

²¹ Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, p 18

²² Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, p 18

²³ Mr Bruce James, Commissioner, Police Integrity Commission, transcript of evidence, 17 February 2014, pp 16-17

²⁴ The Hon Justice JRT Wood, Royal Commission into the New South Wales Police Service, *Interim Report*, February 1996, p 88

²⁵ Royal Commission into the New South Wales Police Service, *Interim Report*, February 1996, pp 91-92

- 1.41 The Wood Royal Commission concluded that the serious nature of police misconduct was such that a new agency dedicated to the investigation of police misconduct was required, and in response to this recommendation the Police Integrity Commission was established in 1996.

Committee comment

- 1.42 The Committee supports the existing integrity framework in New South Wales and considers that the ICAC performs its oversight role of investigating, exposing and preventing public sector corruption with efficiency and effectiveness. The Committee considers that the reasons given by the Wood Royal Commission for the rejection of a dedicated division within ICAC to investigate police misconduct are relevant today. The Committee notes that many of the Royal Commission's original reasons for recommending the establishment of the PIC were echoed by the ICAC Commissioner and ICAC Inspector in evidence to the Committee.
- 1.43 Merging the PIC and ICAC would be a major change to the current oversight system in New South Wales. The Committee supports the current framework with discrete agencies performing complementary but distinct roles. The Committee does not consider that merging these bodies would improve the state's current anti-corruption framework.
- 1.44 The Committee agrees with the comments of the Commissioner that the creation of a single body to perform the existing oversight roles of the ICAC and the PIC would not bring administrative or financial efficiency. The Committee considers that the creation of a single body could cause complex problems that would compromise the investigation of corruption in the public sector and corruption in the NSW Police Force. These issues include the loss of specialist skills to investigate police misconduct; the difficulty of maintaining separate zones to protect the integrity of separate investigations; competition between investigative divisions for resources to conduct investigations; and competing priorities when determining how to prioritise investigations.
- 1.45 The Committee also notes the PIC's comments that wider consideration of the state's oversight framework was not encompassed by the McClelland review's terms of reference, and proper consultation on the issue was not undertaken. Key agencies affected by the recommendation – the ICAC, the PIC and the ICAC/PIC Inspector - have indicated that they do not support the proposal to merge the two bodies.

RECOMMENDATION 1

The Committee recommends that the NSW Government maintain the existing integrity framework in relation to public sector and police corruption, with the Independent Commission Against Corruption and the Police Integrity Commission as discrete agencies continuing to perform their current functions.

EFFECTING CULTURAL CHANGE

- 1.46 One important aspect of the role of the ICAC is to advise and instruct public authorities and officials on how to report corrupt conduct, and making changes in

practices and procedures to reduce the likelihood of corrupt conduct. The Committee examines the ICAC's performance of these functions in this section.

Promoting agency reporting of corrupt conduct

- 1.47 Under the ICAC Act, principal officers of public sector agencies are required to report any matter where there is a reasonable suspicion that corrupt conduct has occurred or may occur.²⁶ These reports, known as section 11 reports, are made to the ICAC's Assessments Section. The Commission's annual report noted a marked increase in section 11 reports received from the 'transport, ports and waterways' sector in the 2012-2013 reporting period, and attributed this increase to 'the ongoing liaison between the Assessments Section and that particular sector'.²⁷
- 1.48 The Committee enquired whether the Assessments Section undertakes liaison on section 11 reporting with other public sector agencies. The ICAC informed the Committee that the Assessments Section consistently monitors section 11 reporting and will initiate liaison with principal officers to promote section 11 reporting where an agency appears to be under-reporting.²⁸
- 1.49 The ICAC noted that following a meeting of the Assessments Section with the Department of Education in January 2013, there was an increase in section 11 reporting by the Department:
- In addition to increases in reporting from the "transport, ports and waterway" sector, there was a modest (2%) increase in reporting by the "education (except universities)" sector. In January 2013, Assessments met with the Department of Education to discuss, amongst other things, its internal restructure and continuity of section 11 reporting practices.²⁹
- 1.50 The Assessments Section is proactive in approaching those agencies undergoing significant change, such as restructuring, and working to ensure that changes in agency structure do not lead to discontinuity in section 11 reporting:
- ... we do identify where agencies are not reporting to us on a regular basis and we also do identify where agencies might be undergoing a significant amount of change, and that change might result in new structures that might have an impact one way or another on their section 11 reporting.³⁰

Targeted training and advice

- 1.51 In 2012-2013, the Corruption Prevention Division responded to 97 requests for advice on ways in which corrupt conduct 'can be prevented, detected or reduced in its frequency and effects'.³¹ The Committee notes that requests for corruption prevention advice were down on previous years. Dr Robert Waldersee, Executive Director of the Corruption Prevention Division, commented that two main factors

²⁶ ICAC, *Annual Report 2012-2013*, p 21

²⁷ ICAC, *Annual Report 2012-2013*, p 21

²⁸ ICAC, *Answers to questions on notice 2014*, question 2, p 1

²⁹ ICAC, *Answers to questions on notice 2014*, question 2, p 1

³⁰ Mr Trent White, Manager, Assessments Section, ICAC, transcript of evidence, 28 March 2014, p 17

³¹ ICAC, *Annual Report 2012-2013*, p 40

contributed to the reduction in requests for advice - the use of in-house advice and agencies obtaining advice from consulting firms. He noted that the Division had refocused its work in light of this trend:

One is that government agencies themselves increasingly have internal expertise. A lot of ex-corruption prevention people are now working in Transport or Family and Community Services or somewhere and they do not need to come to us as much. The other thing that has changed quite significantly is the growth in the private sector advice market. A lot of public service agencies would rather go to a major consulting firm; it keeps it all manageable. It is something we have noticed for a long time, and that is one of the reasons we are refocusing away from a capability around advice and more to a capability around analysis of State systems and larger organisations.³²

1.52 The Committee enquired on the role that ICAC plays in promoting cultural change. Commissioner Latham commented on the role that the Corruption Prevention Division has in effecting cultural change in organisations, giving the example of the recent ICAC inquiry into RailCorp, Operation Spector.

1.53 The Commissioner told the Committee that while public inquiries were valuable in terms of exposing corruption, inquiries alone did not bring about cultural change, as could be seen in the numerous RailCorp inquiries over the years:

I think public inquiries have the capacity to shame and expose particular individuals, but I do not think that that is enough to make a cultural change; in fact, I know it is not because there were several, as you say, inquiries into RailCorp. Just in February this year we had yet another one where it was patently obvious that nobody had really given any thought to what constitutes a conflict of interest under the code of conduct. Yet you would have thought from previous inquiries that some shift would have occurred. The fact that it has not really occurred to a significant extent I think is a reflection of the culture within the organisation.³³

1.54 The Commissioner noted that the Corruption Prevention Division works in tandem with the inquiry process to devise appropriate advice and training for those organisations affected by corruption:

Dr Waldersee does a lot of work in that area. But I think what is important is that the work that Dr Waldersee does kind of leverages off the public inquiries. I think the two work in tandem and it is an important process. Much of what he does is built upon the results of the public inquiry.³⁴

1.55 Recent examples of this work have included training for senior executives at Roads and Maritime Services and RailCorp, following on from ICAC investigations that exposed corrupt conduct within these agencies:

... we have also put together a very senior executive-level training. The entire top of Roads and Maritime Services recently we went through, including the CEO, and we will offer this to RailCorp—or Sydney Trains now—as well ... it is quite common that

³² Dr Robert Waldersee, Executive Director, Corruption Prevention Division, ICAC, transcript of evidence, 28 March 2014, p 12

³³ The Hon Megan Latham, Commissioner of the ICAC, transcript of evidence, 28 March 2014, pp 16-17

³⁴ The Hon Megan Latham, Commissioner of the ICAC, transcript of evidence, 28 March 2014, p 17

following an investigation we will go in and we will conduct training for the organisation and look at what went wrong and talk to the senior management ...³⁵

Committee comment

- 1.56 The approach of the ICAC's Assessments Section to foster reporting of corrupt conduct ensures that principal officers of agencies are aware of what constitutes corrupt behaviour and their reporting obligations. This approach also facilitates continuity of reporting in those agencies experiencing change. The Committee considers that the ICAC is undertaking its role of informing agencies of their reporting obligations in a proactive and effective way. This work is important in terms of building awareness of corruption within agencies and fostering a culture that does not tolerate corruption.
- 1.57 The work of the Corruption Prevention Division to institute training for senior management of agencies affected by corruption also seeks to bring about cultural change. This is an important aspect of the ICAC's functions to prevent corruption through the provision of advice and training to public sector agencies. These measures are important in terms of targeting cultural impediments within problem agencies and a lack of awareness of common corruption risks.
- 1.58 While the ICAC's high profile public inquiries play an important part in exposing corruption, the work of the Corruption Prevention Division and Assessments Section are also critical in terms of effecting deeper cultural change and raising awareness of corruption in the public sector. The Committee commends the ICAC for its strategic and effective approach to this important aspect of its role.

³⁵ Dr Robert Waldersee, Executive Director, Corruption Prevention Division, ICAC, transcript of evidence, 28 March 2014, p 17

Appendix One – Answers to questions on notice

Answers provided by the ICAC in response to questions on notice on matters arising from the 2012-2013 annual report are provided below. This year the Inspector of the ICAC was not provided with questions on notice on matters relating to the Inspector's annual report as the Inspector did not take up his role until February 2014.

Question 1

Table 6 on page 14 of the Annual Report shows a reduction in turnaround times at all stages of the complaint assessment process, in comparison to figures given on page 17 of the 2011-12 Annual Report. What strategies were employed to bring about this improvement?

The downward trend in the handling of complaints received by the Assessments Section has been continuing for some time. The performance achieved in 2012-13 is attributed to staff experience and familiarisation with assessment procedures. During this period, there were very few staffing and procedural changes and this stability had a positive impact on performance.

Question 2

Page 21 of the Annual Report notes the marked increase in section 11 reports received from the 'transport, ports and waterways' sector, attributed to 'the ongoing liaison between the Assessments Section and that particular sector'. Does the Assessments Section undertake this sort of liaison with other sectors?

Assessments routinely monitors the frequency of section 11 reporting across all government agencies, particularly larger public authorities where changes in structure and/or key personnel may have an adverse impact on section 11 compliance. On occasion, where a particular agency seems to be under-reporting, the Commission will proactively initiate a liaison visit with either the principal officer or a suitable representative to promote section 11 reporting.

In addition to increases in the reporting from the "transport, ports and waterways" sector, there was a modest (2%) increase in reporting by the "education (except universities)" sector. In January 2013, Assessments met with the Department of Education to discuss, amongst other things, its internal restructure and continuity of section 11 reporting practices.

Question 3

The 2011/12 Annual Report stated on page 31 that in the year ahead the Assessments Section would conduct another survey of complainants and those who made public interest disclosures. Was the Assessments Section able to conduct this survey in the 2012-13 reporting period?

Assessments conducted a second complainant survey with an initial mail-out in January and February 2013. The return rate, however, was poor (8%), and deemed statistically insignificant for trend analysis.

A number of the survey respondents expressed frustration with the Commission for not fully investigating their complaints. This is unsurprising as, for the reasons noted in the annual

report, the Commission investigates fully only about 3% of all complaints received. The survey aimed to elicit complainants' levels of satisfaction with the range of material on the ICAC website about reporting corruption and communication with the Assessments Division. Many respondents found it difficult to separate how they felt about the processes for receiving, assessing and responding to their complaints from their disappointment that the Commission was not going to pursue their complaint further. The value of undertaking another survey is currently under review.

Question 4

The 2011/12 Annual Report also stated that in 2012-13 the Commission would seek to 'develop (and build on existing) liaison relationships with similar integrity and oversight agencies both within NSW and in other jurisdictions, including international agencies' (page 31). Please outline how the Commission has built relationships with other integrity bodies, particularly new integrity bodies recently established in other Australian jurisdictions?

Assessments, with input from the Corruption Prevention and Investigation divisions and the Communications and Media Section, hosted the Serbian Anti-Corruption Agency delegates for a week-long visit to the Commission, at the request of UN officials based in Serbia, and the Australian Ambassador to Serbia and Montenegro. The UN considers the Commission a "world leader in dealing with public sector whistleblowers" and was keen for the visit to assist Serbia to formulate an anti-corruption action plan as part of its drive for EU membership.

In November 2012, the Manager Assessments presented a paper on whistleblowing and protection laws in Australia at a conference on integrity and governance in Taiwan.

The Commission, including Assessments, also engaged with Australia's newer anti-corruption agencies, including the South Australia Independent Commissioner Against Corruption and Victoria's Independent Broad-Based Anti-Corruption Commission (IBAC), through the provision of materials to support the development of assessment and operational policies and procedures.

Locally, Assessments continues to have good working relationships with agencies including the NSW Ombudsman, NSW Audit Office and the Division of Local Government. Each of these agencies also participates in a quarterly Public Interest Disclosures (PID) Investigating Authorities meeting where PID management practices and issues are discussed.

Question 5

How is the Investigation Division working to keep the skills and knowledge of its staff up to date in a rapidly changing technical and digital environment?

This is a challenging area for the Investigation Division. Our approach to this issue involves the following:

- a) practical training and development opportunities for staff to ensure they are getting the most out of, and are competent in, the use of specialist technology available to the division and that they remain aware of latest trends and issues in the technical and digital environment
- b) ready access by staff to current technical and related information resources via the Commission's intranet
- c) review of operational processes to ensure the division is able to efficiently deal with large volumes of digital information, access and analyse data effectively

d) liaison with specialist and technical service areas in other enforcement and anti-corruption agencies to exchange new ideas and information and trouble shoot problem areas.

A list of relevant training and development opportunities undertaken is attached as **annexure A**.

Question 6

Please provide a table, similar to that provided during previous Annual Report reviews, outlining the time that elapsed between the Commission's provision of briefs of evidence to the DPP and the DPP's decision on the matter, for matters current during the 2012-2013 reporting period to date. Please include the date of all requisitions received from the DPP for each matter, and a summary of outstanding prosecutions.

The table is attached as **annexure B**. For completeness, it covers the period 1 July 2012 to 31 December 2013. It includes a column setting out the current status of each matter which identifies outstanding prosecutions.

Question 7

The Annual Report states that in 2012-2013 the Commission referred two matters to the NSW Crime Commission for consideration of asset confiscation action (page 31). What is the current status of these referrals?

These matters, which arose out of Operations Jasper and Acacia, are still under consideration by the NSW Crime Commission. The Commission is continuing to liaise with the NSW Crime Commission with respect to those matters and is providing the NSW Crime Commission with information and assistance as and when required.

Question 8

Pages 32-33 of the Annual Report list the Commission's strategic alliances with other agencies. Please inform the Committee of any changes in systems or processes made as a result of meetings with the committees and forums listed?

In the reporting period, Commission officers attended meetings of the following groups:

- *Australian Surveillance Group*: there were no specific changes in the Commission's systems or processes made as a result of the meeting on 23/24 October 2013.
- *Interagency Technical Group and Special Networks Committee*: in the latter half of 2013, these groups merged into one group. In the reporting period, one agency involved in the group, NiTAC (National Interception Technical Assistance Centre), provided members with a number of resources on the design and interception capabilities of various products. This information has been made available to Commission investigators through the Commission's intranet, in accordance with the Commission's approach identified in paragraph b) of the response to Question 5 above.
- *Interception Consultative Committee*: there were no specific changes to the Commission's policies and procedures as a result of attendance at meetings of this Committee, however, the committee contributed to the NSW government submission to the Commonwealth Parliamentary Joint Committee on Intelligence and Security (PJCIS).
- *Joint User Group*: as a result of these meetings, the telecommunications system supplier attended to various modifications of the system to account for technological changes,

issues in delivery systems and records archiving and improvements in system mapping. Also, the Commission and the Police Integrity Commission (PIC) used information obtained from the meetings to inform a thorough risk assessment and cost benefit analysis to determine the appropriate level of service and support agreement required to maintain our interdependent systems.

- *NSW Police Technical Partnership Panel*: the Commission has used some information from and networks established with members of this panel to inform the development of the Commission's Surveillance Technology Upgrade Project approved for 2013/2014, which is now underway and on target for completion by 30 June 2014.

Question 9

Page 63 of the 2011-2012 Annual Report noted that in 2012-2013 the Commission would "undertake to improve the time taken to finalise and publish investigation reports".

a) How did the Commission seek to improve the time taken to finalise and publish investigation reports during 2012-2013?

b) Is the Commission satisfied with the time taken to furnish investigation reports in the 2012-2013 reporting period?

9a. In 2011-2012, the Commission furnished six investigation reports, only one of which was furnished within the Commission's target times (see page 62 of the *2011-2012 Annual Report*). In 2012-2013, the Commission also furnished six investigation reports. Three of these were within the Commission's target times (see page 50 of the *2012-2013 Annual Report*).

The executive directors of Legal and Corruption Prevention actively monitor progress with the preparation of the corruption exposure and corruption prevention chapters of investigation reports to ensure both timeliness and quality of draft reports. Progress is also reported to and monitored by the Commission's Strategic Investigation Group, which receives monthly publication progress reports for each investigation report.

When recruiting new lawyers, the Executive Director Legal requires applicants who have passed a first interview stage to complete a written exercise, designed to test the applicant's writing and analytical skills. These skills are essential to producing a quality draft report and will help to ensure that minimal changes are required to draft reports and that reports are produced within the Commission's target times.

9b. The Commission's goal is to furnish 80% of its investigation reports within its target times. In

2012-2013, the Commission furnished 50% of its investigation reports within the target times. Given that operational requirements delayed completion of one report (Operation Petrie) and the relative complexity of another report (Operation Jarek), the Commission considers that the times taken to furnish investigation reports in 2012-2013 were generally acceptable.

Question 10

Could you inform the Committee of the reasons for the long period between the end of the public inquiries and furnishing of investigation reports for operations Petrie and Stark (table 22, page 50)?

Operation Petrie was concerned with allegations that certain officers of the Wagonga Local Aboriginal Land Council (WLALC) had received financial benefits from Fortunato (Lucky) Gattellari, acting on behalf of Ron Medich, in return for the WLALC officers facilitating negotiations between WLALC and a Medich company.

Given that the public inquiry was conducted over four days, the Commission's target was to furnish the investigation report within 60 days of the receipt of the last submissions. As the last submissions were received on 20 April 2012, the goal was to furnish the report by 19 June 2012. The report was actually furnished on 27 September 2012, being 160 days from the receipt of final submissions.

The principal cause of the delay was that the lawyer responsible for drafting the corruption exposure chapters of the report was also the case lawyer for Operation Indus (investigation into the conduct of Moses Obeid, Eric Roozendaal and others) and the requirements of that investigation were given priority over completion of the Operation Petrie investigation report.

As a general rule, lawyers working on investigation reports are, as far as possible, quarantined from other work. The Commission's operational workload at the time involved a number of significant investigations, including the mining matters. In these circumstances, there was no other lawyer available to assign to Operation Indus.

Operation Stark concerned allegations that a manager at the University of Technology, Sydney (UTS) solicited and accepted financial and other benefits from UTS contractors.

Given that the public inquiry was conducted over four days, the Commission's target was to furnish the investigation report within 60 days of the receipt of the last submissions. As the last submissions were received on 7 November 2012, the goal would normally have been to furnish the report by 6

January 2013, however the Christmas/New Year holidays would have necessarily delayed completion to a later date. The report was actually furnished on 27 March 2013, being 140 days from the receipt of final submissions. Even allowing for the Christmas/New Year holidays, it took longer to complete the report than would normally be the case for a report of this nature. The primary reason for the delay in finalising the report was the need to revise and redraft initial chapters to ensure they were of a satisfactory standard.

Question 11

What is the current status of the recommendation for disciplinary action made as a result of Operation Stark referred to in the case study on page 32 of the 2012-2013 Annual Report.

Mr Faysal was dismissed by the University of Technology Sydney (UTS) on 3 April 2012. He then commenced proceedings in Fair Work Australia contesting his dismissal. In its investigation report, the Commission stated that, in the event that Mr Faysal succeeded in being reinstated to the service of UTS, the Commission was of the opinion that UTS should give consideration to taking action with a view to dismissing, dispensing with the services of or otherwise terminating the services of Mr Faysal.

The Commission has been advised by UTS that the Fair Work Australia proceedings were settled but that the settlement did not result in the reinstatement of Mr Faysal. It was therefore not necessary for UTS to take further action.

Question 12

Please update the Committee on the implementation of the new information analysis and reporting software discussed on page 57 of the 2012-2013 Annual Report?

As part of the telecommunications integration project, the Commission purchased software with a view to developing a database capable of maintaining information accessed under Chapter 4 of the *Telecommunications (Interception and Access Act) 1979* ("Chapter 4 data"). An IBM software product, iBase, was selected as a suitable platform as it is capable of being customised to achieve this purpose and, in future, to accept many other data types and documents for ready analysis and comparison. The software platform also integrates with the Commission's event and link charting software and, in future, can be customised for integration with the Commission's case management system.

At this stage, the project to customise iBase has been focused on the original objective to accept and produce reports on Chapter 4 data. To ensure that the development of the system is planned, logically progressive and delivers discrete outcomes that can be tested and embedded at each completion, the project was partitioned into four distinct phases:

- Phase 1 of the project involved customising the system to accept and produce reports on Chapter 4 data. This phase also involved the in-house development of data standardisation software which formats and verifies data prior to import into iBase. This phase is now complete.
- Phases 2 to 4 of the project involve customising the system to accept different types of entity identification data and the ability to link that information to the Chapter 4 data. Phase 2 is scheduled for implementation in early March 2014. Phase 3 is expected to be completed by 30 June 2014 and Phase 4 will proceed thereafter.

To reduce cost and improve responsiveness to the Commission's specific requirements, three Commission staff (an intelligence specialist, a forensic technician and a specialist software programmer) were trained by IBM to deliver the software customisation. The delivery of each phase also includes the production of an additional chapter of the Commission's iBase user manual dealing with each new functionality of the system. The manual and updated user training are also authored and delivered by members of the Commission's iBase project team.

Question 13

Could you update the Committee on the progress of the review of the Operations Manual?

The Operations Manual Review Project was approved by the Commission's Executive Management Group (EMG) in March 2012. On 2 July 2012, the EMG approved the proposed structure and table of contents for the manual and an implementation plan. This also included a content conversion guide for comparison between the existing manual and the proposed new manual.

The new manual is divided into two parts: Part 1 dealing with investigation management (IM) and Part 2 dealing with investigation practices (IP). Part 1 has five policy and procedures documents and Part 2 has 17, each covering discrete subject matter. Rather than complete each policy and procedure in the sequence in which they appear in the table of contents, each is completed in the order of priority that it has in terms of operational need.

On the 24 October 2012 and 11 December 2012, the new policy and procedure for investigation management (IM01) and disseminations, requests and requirements to produce information (IM05) were completed and approved by the EMG for immediate implementation. Nine new or revised forms were also approved under these policies.

Work then progressed to drafting the Commission's telecommunications interception and access policy and procedure (IP15). This procedure incorporated new work processes resulting from the completion of the Telecommunications Integration Project and substantive amendments to Commonwealth legislation that occurred in October 2012. New draft forms arising from those amendments required review by the Commonwealth Attorney-General's Department prior to finalisation.

In early 2013, it became clear that the project had expanded from being simply a review of the existing manual to a substantive review of work processes and the way operational resources were applied to those subject areas. Consequently, in March 2013, the EMG expanded the time frame for completion of the project to 30 June 2014.

On 19 March 2013, the EMG approved the Telecommunications Interception and Access policy and procedure with a commencement date of 5 April 2013, to allow adequate training of staff. Fifty-one new or revised forms and six separate work instructions have also now been approved in connection with the procedure.

Work next commenced on the policy and procedure for confidential human information sources (IPO5) and property and exhibit procedures (IP12) and, on 16 July 2013, the EMG approved the former procedure (IPO5).

As a result of the review work being undertaken on the property and exhibit policy and procedure, the EMG approved an organisational restructure in July 2013. The Property Services Section was moved from the Corporate Services Division to the Investigation Division, with the senior property officer now reporting directly to the Executive Director of ID.

The property and procedures review has proven time-consuming and complex due to the number of changes required and their relationship with other operational procedures. Many of these changes involve improving efficiencies to deal with increasingly large volumes of electronic and paper documents received by the Commission and, most importantly, supporting a more timely and higher quality analysis of that material. The property procedure review is continuing and on track for full implementation commencing 1 July 2014.

In the meantime, provisional draft policies have been prepared for controlled operations (IP16) and electronic evidence (IP10). These are awaiting review by the Executive Director. By the end of 2013, it was apparent that the manual review project would not be completed by 30 June 2014. In early February 2013, the EMG noted that the completion date for the project would be extended to 30 June 2015.

Question 14

The Annual Report notes that in 2012-2013, the Commission made corrupt conduct findings against 56 persons and sought the DPP's advice regarding prosecution action in relation to 18 persons, compared with 14 persons being the subject of corrupt conduct findings and recommendations to the DPP for prosecution action for 9 persons in 2011-2012. What factors led to the relative reduction in the proportion of recommendations to seek the DPP's advice for prosecution action during 2012-2013?

To answer this question it is necessary to consider the approach the Commission takes to making statements under section 74A(2)(a) of the ICAC Act.

In each case, the Commission first considers whether there is any evidence of a criminal offence. If there is insufficient evidence capable of constituting a criminal offence, it follows that the Commission will not be of the opinion that consideration should be given to obtaining the advice of the DPP. If there is evidence capable of constituting a criminal offence, the Commission assesses whether there is, or is likely to be, sufficient admissible evidence to warrant the commencement of a prosecution. In undertaking this assessment, the Commission takes into account declarations that witnesses may have sought under section 38 of the ICAC Act. Evidence given subject to such a declaration cannot be used in evidence against the witness in any criminal proceedings unless those proceedings are for an offence under the ICAC Act. It is therefore necessary to consider whether there is admissible evidence available sufficient to form the opinion that consideration should be given to obtaining the advice of the DPP. If the Commission considers there is insufficient admissible evidence for a prosecution, then the Commission will not make a recommendation that consideration be given to obtaining the advice of the DPP.

The effect of this approach is demonstrated by the Commission's October 2012 Operation Jarek report (*Investigation into allegations that staff from a number of local councils and other public authorities accepted secret benefits from suppliers and that staff from two local councils facilitated payment of false invoices from suppliers*). In that report, the Commission made corrupt conduct findings against 41 individuals but recommended the advice of the DPP be sought only with respect to eight individuals. The reason for the lower number of recommendations for prosecution was that the Commission considered that there was insufficient admissible evidence available to make recommendations in every case where a corrupt conduct finding was made.

Corruption Prevention

Question 15 The Annual Report notes that information gathered during the assessment stage and investigation stage is forwarded to the Corruption Prevention Division. How did the information gathered in the 2012-2013 reporting period inform the work of the Corruption Prevention Division?

The Executive Director of the Corruption Prevention Division is a member of the Commission's Assessment Panel which meets electronically twice a week and is responsible for determining what action, if any, should be taken on every matter received. The Executive Director Corruption Prevention also considers which matters may be of assistance to the work of the Corruption Prevention Division and can request that a matter be forwarded to the division for analysis or action. The Assessments Section also refers matters it believes may be relevant to the work of the Corruption Prevention Division.

Information gathered during the assessment stage that is forwarded to the Corruption Prevention Division generally informs the policy project work undertaken by the division. This information can assist the division to identify corruption risks of statewide significance or public concern that may warrant further in-depth analysis and/or recommendations in a report to government. In 2012-13, information from the assessment stage informed the Commission's non-government organisations project and the subsequent publication of a position paper in December 2012.

Corruption prevention officers are attached to all investigation teams. In the course of an investigation they conduct a comprehensive analysis to understand the systemic weaknesses that have allowed corrupt conduct to occur. Information gathered during this investigation stage contributes to the development of corruption prevention recommendations to the subject agency. Corruption prevention recommendations were made in all six investigation reports finalised in 2012- 13.

Information gathered during both the assessment and investigation stages informs the division of gaps in the knowledge of the public sector that can be addressed through the development of new training, speaking or website material.

Question 16

Aside from workshop evaluations, what other feedback does the Commission receive regarding the impact of training on corruption prevention within public sector agencies?

The feedback from training workshop evaluations is the only formal assessment of the Commission's training. The evaluations focus on the usefulness of the training and the understanding of corruption prevention that participants have gained following attendance at the course.

Whether workshop participants change their behaviour and systems as a result of training is virtually impossible to assess, although occasional anecdotal information provided by participants who are encountered again in different situations indicates that it does happen. Whether such changes then prevent corruption is even more difficult to assess. The level of corruption generally is unknown and the effect of training is therefore difficult to quantify.

The Commission has regard to informal indicators of effectiveness including:

- questions and comments made during workshops
- written comments made at the end of workshops
- informal feedback at conferences and meetings with public officials
- formal discussions with agencies in the context of the development of corruption prevention recommendations arising from investigations.

To date, such informal feedback is consistent with the formal evaluations, that is, that the training is well received and seen as practical and useful.

Question 17

Has the Commission observed any trends in the reduction of corrupt behaviour or changes in work methods in those agencies that have received corruption prevention training?

Training is the key method by which the Commission delivers corruption prevention messages to NSW public sector managers and staff. It should be noted, however, that training is not a panacea through which all corrupt behaviour will be removed. The Commission has a suite of prevention approaches, as outlined in the annual report, and training is just one component of this global approach.

Equally, agencies that request the Commission to provide training also have a range of approaches to preventing corruption and may provide their own training. Such a situation

makes it difficult to ascertain the impact of a small number of training sessions in isolation from other prevention activities occurring within individual agencies.

Where training is provided to a subject agency, after an investigation, it is generally conducted as part of broader changes that are being implemented following the investigation. In these agencies there may be significant changes in work methods and the behaviour of staff, however, this may be as a result of the investigation itself rather than specifically the post-investigation corruption prevention training.

While the Commission retains data in relation to the agencies that have received training, establishing the actual incidence of corrupt conduct (as opposed to the reported or proven incidence) is a difficult exercise. Establishing a causal relationship between the two in any particular agency with a reasonable degree of confidence is virtually impossible.

The secret nature of corruption makes estimation of its incidence difficult. Surveys of perceptions of corrupt conduct do not necessarily indicate actual corrupt conduct and for the same reason the number of reports of suspected corrupt behaviour is not a reliable guide to its actual incidence. Increased numbers may reflect better understanding of how to report and a greater willingness to do so in one agency rather than another, the degree to which the activities of an agency are visible and impact on individuals, or the influence of the exposure of corruption in high-profile public inquiries. As a consequence, reliably gauging trends in the reduction of corrupt behaviour in those agencies that have received corruption prevention training is not feasible.

Question 18

Could you elaborate on the ways that the Corruption Prevention Division improved systems, policies and procedures in the NSW public sector in the 2012-2013 reporting period?

In addition to its advice, training and investigative functions, which largely result in recommendations to single agencies, the Corruption Prevention Division undertakes projects with a view to making recommendations to government in relation to issues of substantial sector-wide corruption risk and public concern. Projects include single reports and discussion papers. In 2012-13, the Commission undertook projects involving information technology contracts and non-government organisations (NGOs).

The Corruption Prevention Division contributed to the improvement of processes surrounding government funding of human services NGOs in a number of ways. As discussed in the *2012-13 Annual Report*, the Commission released two papers on the topic, the second of which made a series of recommendations to reform these processes.

Subsequent to the publication of these papers, the division has elaborated on its position in a number of venues. On 2 April 2013, evidence was given by Commission officers to an *Inquiry into Outsourcing Community Service Delivery* that was held by the Community Service Committee of the Legislative Assembly. The findings of that inquiry are consistent with key elements of the Commission's report. The Department of Premier and Cabinet is working on an information system that would address many of the key information management weaknesses outlined in the final report. In its review of grants management, the Ministry of Health has included the core set of ICAC recommendations for the guidance they provide.

From time to time, the Commission also responds to calls for submissions on proposed government reforms. For example, in 2012-13 the Commission responded to the NSW Government's green and white papers concerning proposed reforms and implementation details for a new planning system. As part of this process, the Commission provided advice about corruption opportunities associated with performance-based assessment regimes for development applications. In particular, the Commission advised that performance outcomes contained in local plans should be meaningful and measurable. The specific features of the proposed system that required further quantification were also discussed. The Commission's submissions also identified areas in the proposed system where the discretion conferred on decision-makers appeared largely unfettered.

In addition, the Commission's submissions stressed the importance of improved expertise in the proposed system and discussed ways experts could become embedded in the new system. Other issues covered in the submissions included the desired skill set and characteristics of decision-makers in the planning system, the specific aspects of the proposed system that lacked clarity and the limited availability of third party appeal rights under the proposed system.

Since 2012-13, the Commission has been involved in on-going discussions with the Department of Planning and Infrastructure over the government's response to the issues raised in the Commission's submissions. As part of this process, the Commission reviewed versions of the *Planning Bill 2013* and *Planning Administration Bill 2013*. The Commission supported a number of further changes to the proposed legislation including the withdrawing of the possibility for a development to be subject to different assessment tracks, the restoration of judicial review rights and the extension of judicial review rights to the making of strategic plans, as well as stricter requirements concerning access to the code assessment route (a proposed new assessment process not requiring public consultation). The Commission also made the observation that the success of the proposed scheme will rest on strategic plans, regulations and codes that have not yet been drafted.

In addition, the Commission has continued discussions with the department over the set of criteria for determining the "merit assessment" category of development. These discussions have concerned the need to ensure that the set of assessment criteria is sufficiently robust to be capable of independent verification.

Question 19

The Committee notes that there are new arrangements and a revised course in place as part of the 2013-2014 ANU executive program. Please inform the Committee of the features of the new course. Will scholarships be offered for the new program?

The arrangements with the Australian National University Crawford School of Economics and Governance concluded with the completion of the 2012 course. Changes to federal directions no longer permitted the "Corruption and Anti Corruption Course" to be conducted as a combined Masters in Public Policy as well as an executive short course.

In early 2013, the Commission sought to maintain its association with the Australian National University (ANU) by entering into negotiations with Professor Adam Graycar, Director, ANU Research School of Social Sciences, to deliver a joint ANU-ICAC executive course. Those negotiations were successful and a partner agreement was entered into that included the continuance of scholarship arrangements for NSW public officials.

The 2013 course, *Beyond risk-management - Leveraging operational effectiveness*, was planned as an executive short course only. It was aimed at public sector managers in a position to influence the operational design that underpins their organisation's day-to-day activities. The scholarship selection criteria were directed to applicants in these roles and 14 scholarship holders attended. The majority of the course content was delivered by Commission officers.

Variations of the course have been conducted for the top management team of a government department and at the Australian Public Sector Anti-Corruption Conference. The course has been highly rated by participants.

Question 20

Appendix 5 notes that 30% and 23% of the corruption prevention recommendations made as a result of Operation Columba have been fully implemented by the NSW Police Force and the Division of Local Government respectively, with full implementation being dependent on legislative change. Please elaborate on this and provide an update on the current status of these recommendations.

Please Note: The Division of Local Government was not subject to recommendations in Operation Columba. Rather, the Division of Local Government received a recommendation which related to Operation Magnus (on the next line of Appendix 5 of the annual report, p.10)

The NSW Police Force was responsible for implementing eight recommendations. Recommendation 1 is complete. Four recommendations have been partially implemented, and implementation of three recommendations has yet to commence.

The NSW Police Force advised the Commission in November 2011 that the *National Vocational Education and Training Act 2011* had inadvertently rendered certain provisions of the *Security Industry Act 1997* inoperative and, inter alia, the Police Commissioner did not possess the authority to regulate or audit security training conducted by registered training organisations (RTOs). The Police Force was therefore unable to implement many of the recommendations in the Commission's Operation Columba report until this matter was resolved.

The commencement of certain provisions of the *Security Industry Amendment Act 2012* on 25 June 2012 provided the NSW Police Commissioner with ultimate responsibility for all integrity related functions in relation to security training, assessment and certification that occurs for NSW security licensing purposes. This legislative change allowed for the implementation of recommendation 1.

The NSW Police Force advised the Commission in December 2012 that the newly formed Security Licensing & Enforcement Directorate (SLED) would be fully operational in early 2013. The Commission requested an additional report in December 2013. This final report was received and explained that positions needed to be filled at SLED.

The NSW Police Force advised the Commission in November 2013 that SLED will be fully operational in early 2014 and that delays in implementing the recommendations were experienced due to difficulties in filling key positions. The Commission requested to be notified if recruitment delays were still being experienced in June 2014. The Commission will be following up this matter at that time.

Question 21

According to the 2011-2012 Annual Report (page 126) the Department of Corrective

Services' progress report indicated that it had fully implemented 58% of the corruption prevention recommendations made as a result of Operation Cicero.

- ***What percentage of the recommendations were implemented, not implemented and partially implemented by the Department in 2012-2013?***
- ***Is the Commission satisfied with the Department's implementation of the corruption prevention recommendations?***

At 30 June 2013, the Commission had yet to receive Corrective Services NSW's final report into the implementation of the Cicero recommendations.

During 2012, however, the Commission undertook an investigation into the smuggling of contraband into the Metropolitan Special Programs Centre at the Long Bay Correctional Complex (Operation Drake). The report was furnished to the presiding officers on 25 January 2013. While there were differences in specifics of the conduct, the systemic failures exposed were similar to those in Operation Cicero. In arriving at recommendations in relation to Operation Drake, Commission staff reviewed the status of the Cicero recommendations, liaised with Corrective Services NSW staff and the then newly appointed Commissioner, Peter Severin.

Recommendation 14 stated *that the Premier introduces an amendment to the Public Sector Employment and Management Act 2002, and any other relevant legislation, to give the Commissioner of CSNSW non-reviewable power to remove custodial corrections officers on the basis of a loss of confidence in an officer's suitability to continue as a corrections officer, similar to the power currently held by the Commissioner for NSW Police under section 181(d) of the Police Act 1990.* At the time of the public inquiry, the then Commissioner, Ron Woodham, was of the view that such a provision would be desirable. However, discussions during the implementation of the recommendations revealed a similar recommendation made in relation to the NSW Police Force following the Wood Royal Commission had not proved effective, as orders made under these provisions in NSW were appealable and so provided no advantage over the normal disciplinary process. The Commission therefore accepted that recommendation 14 should not be implemented.

The implementation of certain other recommendations (installation of CCTV and metal detector screening machines) was constrained by cost issues and the heritage listing of certain facilities.

Corrective Services NSW's efforts to address the issue of the smuggling of contraband are now being taken further forward with the implementation of the recommendations made in Operation Drake. The Commission is satisfied with this approach and anticipates receipt of a final report into the Operation Cicero recommendations this financial year.

Question 22

Has the extensive investigation workload of the Commission impacted on the meetings and/or work of the ICAC internal committees, the Executive Management Group, Strategic Investigations Group or Prevention Management Group in 2012-2013?

The Executive Management Group, Strategic Investigation Group and Prevention Management Group are key elements of the Commission's internal accountability system. During 2012-2013, these committees continued to meet regularly. The only discernible

impact of the increased investigation workload on these committees was an increase in the number and complexity of matters considered by the Strategic Investigation Group.

Question 23

Page 44 of the Annual Report notes that the principal lawyer for prosecutions continued to work on operational work rather than prosecution brief preparation. Has this impacted on the time taken for provision of briefs to the DPP?

The involvement of the principal lawyer (prosecutions) in investigation work did not impact on the time taken to provide briefs to the DPP.

The principal lawyer (prosecutions) has two principal roles. One is to work on investigations in the same way as other lawyers. The other involves identifying improvements to the Commission's criminal prosecution brief procedures and assisting with and overseeing preparation of briefs.

The lawyer who works on an investigation is usually responsible for working with the investigators to prepare a brief of evidence for the DPP and then, once the brief is submitted to the DPP, maintaining liaison with the DPP until the matter is finalised. The principal lawyer (prosecutions) had not worked on previous investigations requiring the preparation of briefs of evidence. Other lawyers were responsible for the preparation of briefs of evidence during the relevant period.

Question 24

Page 44 of the Annual Report notes that the main challenge for the Legal Division in 2012-2013 was "to maintain high standards of legislative and procedural compliance and meet accountability requirements in the face of a substantial workload, including the conduct of public inquiries." Assuming that the workload continues to be high in the future, what strategies does the Legal Division have in place to ensure continued high standards?

The Legal Division continues to meet this challenge by identifying matters requiring priority, maintaining flexibility in the assignment and reallocation of lawyers to matters and continuing the allocation of the principal lawyer (prosecutions) to investigation work.

The Executive Director Legal continues to review all applications for the exercise of statutory powers (whether under the ICAC Act or other legislation) to ensure they meet relevant regulatory and Commission requirements and that the proposed exercise is appropriate given the circumstances of the particular investigation.

Steps are also taken to ensure that legal staff who leave are replaced with suitably qualified and experienced lawyers who will be able to quickly adapt to the Commission's work, maintain the required standards of legislative and procedural compliance and meet the Commission's accountability requirements.

Question 25

What feedback has the Commission received regarding the *biannual Corruption Matters* newsletter?

The Commission does not receive a great deal of feedback regarding *Corruption Matters*, but the anecdotal feedback that it does occasionally receive is generally positive. This has included expressions of appreciation for publishing the newsletter and praise for the content. *Corruption Matters* has also received feedback about content including, for example, some

commentary from a local government internal auditor about the Commission's NGO discussion paper from a story in 2012, in response to which the Commission provided the full paper to the reader.

Commission staff have reported positive feedback about the newsletter while training in the field, including from the CEO of the Dorrigo Plateau Local Aboriginal Land Council who told staff that he reads it cover-to-cover.

There have also been requests or notifications about reproducing articles from *Corruption Matters* in agency staff newsletters; most recently, this included a request from Young Shire Council to reproduce in its staff newsletter an article on ethical culture by Dr Robert Waldersee that ran in the November 2013 edition of *Corruption Matters*.

The Commission is presently working to transform the current print edition into an HTML e-newsletter. A content review is also underway as part of this process and it is anticipated that feedback about what readers would like to see in the newsletter will be sought when the new publication is rolled out within the next few months.

Question 26

Please provide the Committee with an update on the ICT infrastructure project discussed on page 57 of the Annual Report.

The Commission issued a tender in September 2013. Based on internal and external feedback, the Commission found it necessary to review the technical specifications to remove certain identified technical ambiguities. An external IT consulting firm was engaged and updated/refreshed the tender specification. This resulted in tender responses being delayed. The Commission's Executive Management Group decided on 19 February 2014 to endorse the recommendation of the Commission's Information and Technology Steering Group to accept the tender of Datacom Pty Ltd, subject to security vetting and acceptance of contractual terms. It is anticipated that the first stage of the contract, being due diligence and sign-off of user specifications and the project plan, will commence mid- to late- March 2014. The project is due for completion in late November 2014, subject to any unforeseen issues arising out of the Commission's relocation to its new premises.

Question 27

Please update the Committee on the office relocation planned for 2014.

On 25 May 2013, the Commission engaged Custance Australia Pty Ltd to provide architectural design services. Stage 1, which comprised needs analysis and concept design, was completed on 31 January 2014. In order to ensure that the Commission is able to relocate prior to its lease expiry date of 15 October 2014, the Commission had to commit to the commencement of the design work in November 2013, in the absence of a signed lease, as leasing negotiations were not yet finalised. Work has commenced on detailed design specifications and tender documentation. It is anticipated that the latter will be completed by early April to allow tendering to commence, with fit out works planned to start on 2 June 2014. Government Property New South Wales (GPNSW) signed the lease for the new premises on 5 February 2014 and has forwarded it for execution by Investa Pty Ltd.

Question 28

At the public hearing held as part of the review of the 2011/12 Annual Report, the issue of meeting EEO targets was raised. Has the Commission examined the potential for

providing training positions to people of Aboriginal and Torres Strait Islander descent in the 2012/13 reporting period?

The Commission does not employ any trainees due to the nature of the Commission's work, stringent security vetting procedures and limited supervision resources. The Commission does, however, take a proactive approach in publicising all vacant positions through Indigenous job networks.

In 2013, the Commission employed a new Indigenous employee which means it now employs two full-time staff who identify as Aboriginal. Both of these positions are fully funded by the Commission. The Commission is currently working towards meeting the NSW Public Sector target of 2.6% Aboriginal employment within the public sector by 2015.

The Commission has previously been successful in achieving tied funding through the NSW Department of Education's Elsa Dixon Aboriginal Employment Program for partial funding for the employment of an assessment officer. Current applications for indigenous funding through the Elsa Dixon program close on 14 March 2014. The Commission will be lodging an application under the program for tied funding for the 2015-16 financial year.

Question 29

At the public hearing held as part of the review of the 2011-2012 Annual Report, Commissioner Ipp commented that "there has been a substantial increase in the number of litigation matters being managed by the Commission." The Committee notes the significant increase in external legal fees, as listed on page 73 of the 2012-2013 Annual Report.

- a) What are the reasons for the increase in litigation?***
- b) What impact has managing litigation had on other aspects of the Commission's work?***
- c) Was the increase in litigation unique to the 2012-2013 reporting period or part of a continuing trend?***

Before answering this question it is relevant to set out some details of the relevant litigation matters.

The two litigation matters involving Cessnock City Council and the City of Ryde Council, referred to at pages 47-48 of the *2012-2013 Annual Report*, have been finalised and the Commission's files closed.

As of 1 February 2014, there are eight other litigation matters, three of which have been finalised except for recovery of costs.

The most recent litigation (summons served on 15 January 2014) arises from certain recommendations made by the Commission in its December 2013 report *Operations Jasper and Acacia – Addressing Outstanding Questions*. Cascade Coal Pty Ltd, Mt Penny Coal Pty Ltd and Glendon Brook Coal Pty Ltd claim the relevant recommendations affecting mining exploration licences relevant to their operations were made without or in excess of jurisdiction and that there was a denial of procedural fairness.

The Commission does not consider the claims have any merit. A hearing date is yet to be set.

The three next most recent matters arise from findings of corrupt conduct made against Travers Duncan (case no. 2013/249678), John McGuigan, John Atkinson and Richard Poole (case no. 2013/325031) and John Kinghorn (case no. 2013/326066) in the Commission's Operation Jasper report.

In each of these matters declarations are sought that the corrupt conduct findings are wrong in law, were made without or in excess of jurisdiction and are a nullity.

The Commission does not consider the claims have any merit.

The three matters have been set down for concurrent hearing commencing on 23 June 2014.

In the fifth matter, Travers Duncan commenced proceedings in the NSW Supreme Court in March 2013 seeking an order restraining the Commissioner from further presiding over the Operation Jasper public inquiry and orders restraining the Commissioner and the Commission from preparing the report on the investigation.

On 10 April 2013 the Supreme Court dismissed Mr Duncan's summons and ordered him to pay the Commission's costs. Mr Duncan appealed this decision to the NSW Court of Appeal. On 25 June 2013, the Court of Appeal dismissed the appeal and ordered Mr Duncan to pay the Commission's costs. Mr Duncan's application for special leave to appeal to the High Court was dismissed with costs on 25 July 2013.

Steps are now being taken to recover costs in this matter.

In the sixth matter, the plaintiff, Martin Waterhouse, is seeking orders requiring the Commission to investigate allegations previously made to the Commission. The Commission is seeking to have the proceedings dismissed.

The seventh matter arose from the findings of corrupt conduct made against Angela D'Amore MP in the Commission's December 2010 report on its investigation into the submission of false claims for sitting day relief entitlement by Ms D'Amore and members of her staff.

Ms D'Amore sought a declaration from the NSW Supreme Court that the Commission had exceeded its powers under the ICAC Act in making corrupt conduct findings against her.

On 14 May 2012, the Supreme Court dismissed Ms D'Amore's summons and ordered her to pay the Commission's costs.

Ms D'Amore appealed this decision to the NSW Court of Appeal. On 21 June 2013, the Court of Appeal dismissed the appeal and ordered Ms D'Amore to pay the Commission's costs. Ms D'Amore's application for special leave to appeal to the High Court was dismissed with costs on 13 December 2013.

Steps are now being taken to recover costs in this matter.

The eighth matter arose from a finding of corrupt conduct made against Charif Kazal in the Commission's December 2011 report on its investigation into the undisclosed conflict of interest of a senior executive of the Sydney Harbour Foreshore Authority.

Mr Kazal sought an order or declaration from the NSW Supreme Court setting aside or declaring invalid or unlawful the Commission's report, a declaration that the report was

made without jurisdiction or in excess of jurisdiction, a declaration that on the facts as found in the report the determinations or findings were wrong in law, and an order or injunction preventing the Commission from acting on or taking any further steps in reliance on the report. It was ultimately argued on behalf of Mr Kazal that, if relying upon s 9(1)(a) of the ICAC Act as a basis for a corrupt conduct finding, the Commission should be satisfied beyond reasonable doubt that the offence had occurred and there was sufficient admissible evidence to support a prima facie case. On 7 February 2013, the Supreme Court dismissed Mr Kazal's summons and ordered him to pay the Commission's costs. Harrison J held that the Commission's task is to make findings on the balance of probabilities and s 9(1)(a) of the ICAC Act does not require the Commission to consider whether its findings are capable of proving an offence to the criminal standard on admissible evidence.

Steps are now being taken to recover costs in this matter.

The Commission's answers to the specific questions asked by the Committee are set out below.

29a. The increase in litigation is due in the main to persons or entities that have been subject to adverse findings or recommendations seeking to have those findings or recommendations set aside.

29b. In each matter the Crown Solicitor has been instructed to act for the Commission and counsel have been engaged. The main work impact has been an increase in the workload of the Executive Director Legal who is responsible for briefing the Crown Solicitor and managing the litigation from the Commission's end.

The litigation has had no impact on the Commission's exercise of its functions, including the conduct of its investigations or public inquiries.

29c. It is difficult to answer this question. The extent to which there may be future legal challenges to the Commission will depend upon whether those who consider themselves aggrieved by the Commission's operations believe that they might succeed through litigation in preventing the Commission from proceeding or in overturning particular findings. Nor can the Commission exclude the possibility that those with sufficient funds may seek to disrupt the Commission's proceedings by initiating unnecessary litigation.

Question 30

Please describe the 'fee for services' listed on page 73 of the Annual Report. There has been a significant increase in fees for services for the 2012/13 reporting period. What factors led to this increase?

This account contains expenditure incurred on a fee for service basis, commonly provided on a contractual basis. The factors that led to a significant increase during the reporting period include the undertaking of the biennial community attitudes survey, relocation of servers, forensic document services for handwriting analysis and settlement of a copyright infringement claim.

ANNEXURE A

Question 5

How is the Investigation Division working to keep the skills and knowledge of its staff up to date in a rapidly changing technical and digital environment?

In the 2012/2013 financial year, Investigation Division staff undertook the following digital technology training and development:

- On 12 July 2012, the Electronic Evidence Specialist (EES) attended the ISC2 Secure Sydney 2012 conference centred on issues in connection with electronic data security.
- The following training was provided to ID staff by JSI, the Commission's telecommunications interception system provider:
 - o Between 18 and 20 September 2012 four ID staff undertook system administrator (system, product management and warrant administration) training.
 - o On 21 September 2012, two ID staff undertook system administrator (Technical) training.
 - o Between 24 and 27 September 2012 twelve ID staff undertook system user training.
- Between 24 and 28 September 2012, three staff members undertook an iBase system designer course supplied by Visual Analysis in Canberra.
- On 3 and 23 October 2012, twelve ID staff undertook 1.5 hours of training on the use of the SAI Global smartsearch function. The training was provided at the Commission free of charge by SAI Global.
- On 16 October 2012 the EES attended the Australian Information Security Association National Conference in Sydney.
- On 16, 17 and 31 October 2012 six ID staff undertook 1 hour of refresher training in the use of the Commission's case management system.
- On 18 and 25 October, 13, 14 and 15 November 2012, ten ID staff each received 1.5 hours of training in the use of various advanced features of the Commission's document management software and Microsoft Office applications.
- On 9 November 2012, the EES and the Forensic Technical Officer (FTO) undertook a day of advanced training in the use and administration of the Commission's forensic analysis software (NUIX).
- Between 17 and 22 March 2013 the FTO attended 35 hours of the Graduate Certificate in Forensic Computing course, Adelaide University.
- On 19, 20 and 22 February and 21 and 22 March 2013, a total of 43 ID staff undertook 2.5 hours of training on the Commission's new Telecommunications Interception and Access policy and procedures.
- On 13 May 2013, three ID staff undertook 4 hours of training in the use of the Commonwealth's AUSTRAC data.

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- On 7 and 8 May 2013 three chief investigators and the FTO attended the JSI conference in Sydney.

On 12 and 13 June 2013, the Executive Director ID attended the Information Governance and E- Discovery conference in Sydney.

ANNEXURE B

**PROSECUTION TIMESCALES
FOR MATTERS CURRENT
FROM
1 JULY 2012 TO 31 DECEMBER 2013**

REPORT	REPORT DATE	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE	CURRENT STATUS
AMBROSIA								
More	21/12/05	16/3/07	450	Nil		17/9/12	2012	For sentence
Kayrouz	21/12/05	16/3/07	450	8/11/11	22/2/12	13/8/12	1977	27/6/13 3 year good behaviour bond
Aboulhosn	21/12/05	16/3/07	450	Nil		18/12/12	2104	Appeal against severity of sentence to be heard March 2014
Sleiman	21/12/05	16/3/07	450	Nil		18/12/12	2104	DPP advised insufficient admissible evidence
Karam	21/12/05	16/3/07	450	Nil		26/8/12	1990	DPP advised insufficient admissible evidence
Ayoub	21/12/05	16/3/07	450	Nil		6/8/12	1970	DPP advised insufficient admissible evidence
Allem	21/12/05	18/9/07	636	Nil		13/4/12	1669	Sentenced 17/12/13 to 100 hours community service
Constantin	21/12/05	18/9/07	636	Nil		27/4/12	1683	Appeal against conviction to be heard May 2014
MONTOGH J & MINERVA								
Laidlaw	19/11/08	25/11/09	371	Nil		21/9/12	1031	20/6/13 sentenced 10 months imprisonment
Kotevski	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence
Hansen	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence
Araldi	19/11/08	25/11/09	371	Nil		21/9/12	1031	21/3/13 15 month good behaviour bond
Hili	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence
Schliebs	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence
Severino	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

ANSWERS TO QUESTIONS ON NOTICE

REPORT	REPORT DATE	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE	CURRENT STATUS
Petrovski	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence
Affleck	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence
Penny	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence
Skinner	19/11/08	25/11/09	371	Nil		21/9/12	1031	DPP advised insufficient admissible evidence
MIRNA								
Sanhueza	18/12/08	8/1/09	21	Nil		10/7/12	1279	Sentenced 14/10/13 to 3 years imprisonment.
C. Taylor	18/12/08	8/1/09	21	Nil		10/7/12	1279	Left Australia
A Taylor	18/12/08	8/1/09	21	Nil		10/7/12	1279	Left Australia
Xuereb	18/12/08	8/1/09	21	Nil		10/7/12	1279	Sentenced 12 months home detention
ARGYLE								
Smith	4/11/09	12/10/10	342	20/1/11	15/8/11	5/10/11	358	Being prosecuted under s176A Crimes Act. For trial 26/5/14
Rossello	4/11/09	14/9/10	314	12/4/11	19/5/11	12/4/11	210	Charges dismissed
SEGOMO*								
Hart	15/3/10	7/9/10	174	11/3/11	17/5/12	14/9/12	913	For sentence on s 319 Crimes Act offences
Paul	15/3/10	7/9/10	174	11/3/11	17/5/12	14/9/12	913	2/8/13 placed on 16 month good behaviour bond
Kelly	15/3/10	7/9/10	174	11/3/11	17/5/12	14/9/12	913	20/5/13 court dismissed charge
Trinder	15/3/10	7/9/10	174	11/3/11	17/5/12	To come		Awaiting advice from Crown Solicitor's Office (CSO)
Nankivell	15/3/10	7/9/10	174	11/3/11	17/5/12	5/10/12	934	CSO advised insufficient admissible evidence
CORINTH								
Paluzzano	13/7/10	19/7/10	6	24/2/11 1/5/11	3/3/11 8/7/11	21/9/11	439	15/2/13, 14 month suspended sentence

REVIEW OF THE 2012-13 ANNUAL REPORTS OF THE ICAC AND INSPECTOR OF THE ICAC

ANSWERS TO QUESTIONS ON NOTICE

REPORT	REPORT DATE	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE	CURRENT STATUS
VARGAS Kelly Dacombe	1/9/10 1/9/10	19/11/10 19/11/10	79 79	10/2/11 Nil	13/9/11	12/6/12 2/8/11	571 256	Sentenced 1/5/12 12 months home detention. Appeal lodged. Sentenced 5/3/12 4 months imprisonment (suspended)
SYRACUSE D'Amore	7/12/10	10/3/11	93	29/4/11 21/9/11	23/1/12 23/1/12	13/5/13	795	DPP advised insufficient admissible evidence
SIREN Buckley Kane Funovski Harvey Makucha	22/3/11 22/3/11 22/3/11 22/3/11	1/4/11 1/4/11 1/4/11 1/4/11	10 10 10 10 10	2/5/11 10/11/11	28/11/11 28/11/11	3/9/12 19/10/12 23/5/12 19/2/13 19/2/13	521 567 418 690 690	Mr Buckley died 6 month suspended sentence, 5 Year good behaviour bond DPP advised insufficient admissible evidence DPP advised no prosecution for discretionary reasons DPP advised insufficient admissible evidence
MAGNUS Romano	20/4/11	12/9/11	145	14/10/11 15/8/12 15/5/13	8/3/12 15/11/12 22/5/13	15/8/12	338	Being prosecuted for misconduct in public office, offences under ss 178BA, 249C & 125 Crimes Act & s87 ICAC Act. For trial 14/3/14
CHARITY S Lazarus M Lazarus	31/8/11 31/8/11	20/1/12 20/1/12	142 142	Nil Nil		22/2/13 22/2/13	299 299	Being prosecuted under ss 300(1), & 178BB Crimes Act Being prosecuted under s 87 ICAC Act

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

ANSWERS TO QUESTIONS ON NOTICE

REPORT	REPORT DATE	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE	CURRENT STATUS
NAPIER Watkins Kelly Costello	12/12/11 12/12/11 12/12/11	16/7/12 16/7/12 16/7/12	217 217 217	Nil Nil Nil		29/4/13 3/7/13 1/5/13	287 352 289	19/12/13 placed on 12 month good behaviour bond DPP advised insufficient admissible evidence DPP advised insufficient admissible evidence
VESTA Kelly C. Kazal	16/12/11 16/12/11	19/3/12 19/3/12	94 94	21/5/12 21/5/12	25/5/12 25/5/12	20/2/13 20/2/13	339 339	DPP advised insufficient admissible evidence DPP advised insufficient admissible evidence
BARCOO Johnson	18/1/12	29/2/12	42	19/9/12	20/10/12	24/10/12	238	20/1/14 sentenced 18 months home detention
BARROW Au	14/6/12	9/10/12	117	10/12/12	12/4/13	13/5/13	216	20/12/13 sentenced 200 hours community service
CRUSADER McCallum McLean	30/8/12 30/8/12	10/10/12 3/10/12	41 34	Nil Nil		27/8/13 27/8/13	335 328	Being prosecuted under ss 249B, 157 & 192E Crimes Act Being prosecuted under s 178BB Crimes Act
PETRIE R Mason Foster V Mason	27/9/12 27/9/12 27/9/12	16/11/13 16/11/13 16/11/13	414 414 414					DPP to provide advice after Medich murder trial DPP to provide advice after Medich murder trial DPP to provide advice after Medich murder trial
CITRUS Demiralay Kantarzis	24/10/12 24/10/12	28/11/12 28/11/12	36 36	11/10/13 Nil	N/A	11/10/13 11/10/13	317 317	Being prosecuted under s 87 ICAC Act Being prosecuted under s 87 ICAC Act

REVIEW OF THE 2012-13 ANNUAL REPORTS OF THE ICAC AND INSPECTOR OF THE ICAC

ANSWERS TO QUESTIONS ON NOTICE

REPORT	REPORT DATE	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE	CURRENT STATUS
JAREK Burnie Kelly Lapham Morgan Pearce Smith Stokes Verdeyen Wright	29/10/12 29/10/12 29/10/12 29/10/12 29/10/12 29/10/12 29/10/12 29/10/12 29/10/12	2/7/13 30/9/13 30/9/13 30/9/13 30/9/13 30/9/13 30/9/13 2/7/13 30/9/13	246 336 336 336 336 336 336 246 336	Nil 3/12/13 Nil Nil Nil Nil Nil Nil Nil		5/9/13 3/2/14 9/1/14 N/A 3/2/14 N/A N/A 9/1/14 9/1/14	65 97 72 97 181 72	27/11/13 9 months suspended sentence DPP advised insufficient admissible evidence Being prosecuted under ss 80 & 87 ICAC Act Awaiting advice from the DPP DPP advised insufficient admissible evidence Awaiting advice from the DPP Awaiting advice from the DPP Awaiting advice from the DPP Being prosecuted under s87 ICAC Act Being prosecuted under ss 193B Crimes Act & ss80 & 87 ICAC Act
DRAKE Te-Hira	25/1/13	6/5/13	101			15/11/13	193	DPP advised insufficient admissible evidence
STARK Faysal	27/3/13	27/3/13	0	10/5/13	6/9/13			Awaiting advice from the DPP
JARILO Macdonald Medich	31/7/13 31/7/13	6/8/13 6/8/13	6 6	23/9/13 23/9/13				ICAC finalising responses to outstanding requisitions ICAC finalising responses to outstanding requisitions
INDUS M Obeid P Obeid Rocco Triulcio Ross Triulcio	31/7/13 31/7/13 31/7/13 31/7/13	30/9/13 30/9/13 30/9/13 30/9/13	61 61 61 61					Awaiting advice from the DPP Awaiting advice from the DPP Awaiting advice from the DPP Awaiting advice from the DPP

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REPORT	REPORT DATE	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE	CURRENT STATUS
JASPER Macdonald E Obeid Snr M Obeid Duncan McGuigan Atkinson Poole	31/7/13 31/7/13 31/7/13 31/7/13 31/7/13 31/7/13 31/7/13							ICAC preparing brief ICAC preparing brief ICAC preparing brief ICAC preparing brief ICAC preparing brief ICAC preparing brief ICAC preparing brief
ACACIA Macdonald Maitland Ransley Poole	31/7/13 31/7/13 31/7/13 31/7/13							ICAC preparing brief ICAC Act brief with DPP. Crimes Act brief being prepared ICAC preparing brief ICAC preparing brief
TILGA Paul Diekman Huskic	26/9/13 26/9/13 26/9/13							ICAC preparing brief for delivery in February 2014 ICAC preparing brief for delivery in February 2014 ICAC preparing brief for delivery in February 2014
TORINO Di Bona	26/9/13							ICAC preparing brief for delivery in February 2014

*The prosecution briefs in Operation Segomo were forwarded to the DPP. The matter was then referred by the DPP to the Crown Solicitor's Office (CSO) for advice and action. The Commission has acted upon the advice of the CSO.

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

This appendix contains a transcript of evidence taken at a public hearing held by the Committee on 28 March 2014. Page references cited in the commentary relate to the numbering of the original transcripts, as found on the Committee's website.

DAVID DANIEL LEVINE, Inspector, Office of the Inspector of the Independent Commission Against Corruption, and

FELICITY CANNON, Officer Manager, Office of the Inspector of the Independent Commission Against Corruption, affirmed and examined:

CHAIR: It is the function of the Committee on the Independent Commission Against Corruption to examine each annual and other report of the Commission and the Inspector of the Independent Commission Against Corruption and report to both Houses of Parliament in accordance with section 64(1)(c) of the Independent Commission Against Corruption Act.

The Committee welcomes the Inspector of the Independent Commission Against Corruption for the purpose of giving evidence today in matters relating to the Inspector's report 2012-13. Inspector, I thank you for your attendance. Would you like to make an opening statement before we commence questions?

Mr LEVINE: Yes, briefly, Mr Chairman. First, today is Ms Cannon's last day after five years with the Inspectorate of the Independent Commission Against Corruption [ICAC]. She is moving on and I express my thanks and repeat the expression of thanks from Mr Harvey Cooper, AM, my predecessor, for the splendid work she has done.

I took up office as Inspector on 10 February, the office having become vacant on 30 September 2013. I am also the Inspector of the Police Integrity Commission. The legislation enabling the one person to occupy both offices was assented to in September of last year. I anticipate that one effect of the one person occupying both offices will be beneficial in the financial sense that instead of there being six people there will be essentially three. Whether there will be any need for an additional staff member will depend upon the workload. The amendments last year usefully provided in the case of each Inspectorate for the appointment of an assistant Inspector. Secondly, on the subject of the financial aspect, it is too soon to say whether or not more than three days per week will be required for however many people. I anticipate that for some months, for reasons I will come to shortly, there will be longer periods than three days.

When Mr Cooper retired at the end of September, not surprisingly, and consistently with his management of his office, everything was up to date. There then was the period in which there was no Inspector in office—that is, from 1 October to 10 February—during which about 22 new files were opened. Since 10 February, 14 files are open and approximately five have been closed. That probably does not indicate very much because a lot of the files were new complaints or new matters from old complainants. Some of those opened and then closed

were dealt with after my arrival on 10 February by the exercise of my powers, principally on the basis that the complainant, alas as is common in this type of organisation, could not articulate any matter of substance or, if the complainant could, it was beyond the jurisdiction of the Inspector.

Thus far the Independent Commission Against Corruption has been very busy. I have had no formal contact with the Hon. Megan Latham, the new Commissioner, who has been occupied in matters apparently of great moment. Nonetheless, a regime has already been put in place where I can have contact with an Assistant Commissioner of the Independent Commission Against Corruption and I have remote access to ICAC's records, which is a matter of the utmost efficiency and value. I will interpolate that now that I have, as it were, arrived at the ICAC the remote access will be put in place in my other capacity as Inspector of the Police Integrity Commission [PIC].

CHAIR: Looking forward to the year ahead, based on your early days in the job how do you see your ability to balance your two roles as the Police Integrity Commission Inspector and the Independent Commission Against Corruption Inspector?

Mr LEVINE: I think it will work. There are matters in the Police Integrity Commission Inspectorate of some substance and some age that will, in effect, be prioritised to dispose of them. Once that happens and once, if necessary, I have had the opportunity to confer with the Commissioner of the Independent Commission Against Corruption and the staff settle in and our equipment is in place, I am confident that, certainly within six months, we will be running fairly smoothly. That, of course, requires the rider that something could suddenly explode in one field or the other. But based on the history, I think it will work smoothly.

Mr ANDREW GEE: Inspector, I think you have already touched upon it, but are there any aspects of the Inspectorate's practices or procedures which stand out to you as requiring improvement?

Mr LEVINE: Yes. I do not intend to be critical of my predecessor or of what happened in the interregnum when there was no Inspector. I think the analysis of communications from the public can be streamlined. The complaining member of the public has, of course, a perception as to what happened before the ICAC, but the best source as to what happened before the ICAC is the ICAC. It will require, from time to time, I would imagine, some balancing but one thing I hope to streamline is the analysis and discrimination of the complaints as they come in.

Mr ANDREW GEE: How do you do that? How do you streamline it?

Mr LEVINE: There has been a practice of the complainant being called in to be interviewed. I do not propose to follow that practice, except in the most extraordinary of circumstances. The powers and functions of the Inspector can be exercised, in principle, without a collateral description of what happened before the ICAC given by a person who might have been adversely affected by the ICAC. That will be a major area of reform. If I perceive that there is some injustice or unfairness evolving from it, then I will reconsider it. But I have been overwhelmed, in fact, by the amount of paper accumulated during this interregnum period that is at least disproportionate to what I perceive the issue of complaint to be and now that I am there I hope, particularly with the assistance of my legal officer, to rationalise the process.

Mr ANDREW GEE: So, fewer interviews?

Mr LEVINE: Fewer interviews. I can say that in relation to the Inspectorate of the Police Integrity Commission where I have been since February 2012 I have interviewed one person. That has worked well, taking into account, of course, the vast difference in jurisdictions.

Mr RICHARD AMERY: I recognise that you are coming here to answer questions about a report in which you have had no involvement, so anything you might be asked about, I suppose there is an avenue for you to take it on board, or it may be something that is a reflection of your first 12 months in the job. I refer to page 18, as a starting point for my question:

Priority has been given to dealing with complaints and from 1 July 2008 to 30 June 2009 there were 188 complaints. In none of the complaints with which I dealt did I make a finding of misconduct on the part of the ICAC.

Which was great. My question to you, and in fact something that you might be looking at over the 12 months is—and it is probably too early for you to answer straight up—do you feel that the role of the Inspector should be expanded?

The Committee knows your role and that of the Commissioner but for the people making complaints there is a misapprehension that you are some sort of an appeals court, or something like that. I just do not know how the public perceives the role of the Inspector, if no complaint has ever been held up or has been bowled out because it does not cover the jurisdiction. I think this can be very valuable to the whole process, if you have these dual roles because you have a comparison situation and there is some work that has been done in other States. Do you think that in the future the role of the Inspector may have to be expanded to satisfy a public perception?

The other point I want to make is that the ICAC investigates a number of high-flying people who are well-heeled, if you do not mind my saying that, and they have a lot of resources. But many people are just employees of StateRail or the local council or something. Anybody can be challenged and I think an ICAC finding goes to a Supreme Court, or something like that. So those people have no avenue financially, they are restricted by their lack of resources to appeal if they feel an injustice. Maybe they are the people who are complaining to the Inspector, only to be told that the role of the Inspector is so restricted that their view, their case or their grievance cannot be dealt with. Can you say anything about a comparison between the two roles you have had and whether there is the potential in the future to expand it?

Mr LEVINE: The first step that can be taken is education. That is a fairly simple step and all public documents from within the Inspectorate make it even more clear what the present role of the Inspector is, either by way of pamphlet or, more commonly, on the website. People do not, I agree, understand that the Inspector is not an appeal court and are aggrieved if they are forced, quite understandably, to embark upon litigation in the Supreme Court. But that is not that common. I would otherwise reserve my position about expanding the role of the Inspector.

One thing at present the Inspector does not do, should not do and should not be seen to be attempting to do is, in effect, to be present looking over everyone's shoulder down at the ICAC or the PIC from the commencement of an investigation to its conclusion. The audit function of the Inspector, the proactive function, does not extend that far, or if it did, why have it in a separate role of an Inspector? You could have the Ombudsman—I do not think his empire could accommodate much more—but you do not need someone down there all the time. Secondly, if the Inspector does have some appellate function that will result, and necessarily result, in a blowout of the resources that he or she will require, they will have to read all the cases, everything, and be like an appeal court, and I think that would be disproportionate in the end to the function.

I think the starting point is a legitimate one, because we keep coming across it, that people do not understand that if you want to complain about corruption by a public officer you go to the ICAC. If you want to complain about the misconduct of a police officer you go to the PIC. What they often see on the website is that above each Commission there is an Inspector, so they say, "Why not go to the top at the beginning?" It is a natural human instinct, I suppose, but then they are provided with a letter that says, "No. If you want to complain about a police officer you go to the PIC; if you want to complain about the weighbridge operator at whoop whoop you go to the ICAC".

Mr RICHARD AMERY: If you get one of those complaints and you saw it and you said, "Oh well, this is a straight crime matter"—it is stealing or an assault or whatever is the general complaint—do you have the authority then to say, "This is not a matter for me. I will refer this to the police", or to whatever authority?

Mr LEVINE: If it is a complaint that a police officer has executed a search warrant and has stolen a bundle of bank notes I refer it to the PIC in the full knowledge that that will be referred by it.

Mr RICHARD AMERY: But if they made the same complaint to you about an ICAC officer, would you refer that to the police?

Mr LEVINE: I would refer that to ICAC in the first instance. They are rare.

Mr RICHARD AMERY: I hope so.

Mr LEVINE: Yes, they are. I have not been in ICAC long enough, but even in the PIC it is extremely rare. There has been an example in the PIC that was, in fact, referred to it before my appointment, in the last year or so. But the best body to investigate it was ICAC.

CHAIR: You are probably well placed with the two roles, the dual roles that you have to make some observations in relation to the McClelland report and some of the recommendations into entering a memorandum of understanding between the ICAC and PIC, the sharing of resources between the two. What are your thoughts and observations on that?

Mr LEVINE: Memoranda of understanding are often no more than documents that state the obvious and are, more often than not, not required. I think that it is desirable not to be coy about the issue, and the real issue is, moving on from memoranda of understanding, why should the PIC exist independently of ICAC? That is the burning question, and on that I have a very firm view. The Police Integrity Commission has its origins, as we all know, in the

Royal Commission in the 1990s. The police are part of the third arm of government: the administration of justice. The ICAC one might consider to be more part of or more related to the executive branch of government on a far wider field.

But the police are part of the administration of justice: to prevent crime, to solve crime and to initiate, where appropriate, through the Directors of Prosecutions, criminal proceedings in the courts of justice. I am, I suppose, a bit of a traditionalist but I think it is very important to view the police as part of the administration of justice and thus not easily capable of being merged into the executive branch, which I think the ICAC represents. Let us hypothesise that it happened. You would have to set up so many sterile zones to keep the executive away from the police as part of the administration of justice that you would reach the point of saying, "Well, why did you bring them in in the first place?"

That view, of course, does not exclude, where practicable, arrangements being made on an administrative basis, even on an investigation basis. I am speaking for myself but I view the Police Force as part of the administration of justice and it should enjoy independence from other branches or arms of government and be seen to be enjoying it. That would be to the benefit of not only the community but, importantly, the police. The police might not like the PIC, they might not like the Inspector of PIC. If everyone loved everyone no-one would be doing their job properly, I suppose. I can say no more than that.

CHAIR: Do you think that the PIC would suffer if the ICAC merged with it, in terms of more resources being allocated towards the ICAC rather than through the PIC?

Mr LEVINE: I am sorry I missed the first part of your question.

CHAIR: Do you think if the bodies were to be merged that the PIC would suffer and that more resources would be allocated towards the ICAC as opposed to investigating police incidents?

Mr LEVINE: Yes, that could happen. Also the ICAC resources, without the experience that is exclusive to the investigation of PIC matters, would impinge upon the efficiency of the PIC component of the ICAC. That is the fear I have. The PIC has developed its expertise, culture and the like and it should be maintained independently.

The Hon. LYNDA VOLTZ: It would also be very difficult to encompass the only arm of government empowered to use force on behalf of the State into the ICAC model because of the very nature of what police do and the special Acts they operate under.

Mr LEVINE: I think I understand your question. Yes, it is a sign of the level of sophistication and civilisation of our governance that the Police Force has a special role in maintaining the order of our community. I do not think that would be beneficially affected by moving part or, indeed, the whole of it into some far wider body that deals with more discreet components of our community, whether it is infrastructure, local government or anything like that.

Reverend the Hon. FRED NILE: Without merging the two organisations, is it possible to share some of the resources?

Mr LEVINE: I think it would be possible to share some administrative resources and possibly some investigation resources, but the level of discretion that would be required would have to be extremely high. That is why I was talking about these sterile zones. If you extrapolate from that you end up in the position: If you are going to be so protected working with that, why join in the first place? Probably at some levels yes, but not at the expense of the independence of everything associated with police.

CHAIR: Would those administration issues be so minor that it would not be worth considering?

Mr LEVINE: That could happen. I do not know if it boils down to a "Can we borrow your car?" type of thing.

The Hon. LYNDIA VOLTZ: Or that the cost of trying to implement those administrative changes would be so great that it would obviate the benefit in doing so?

Mr LEVINE: Yes.

Mr THOMAS GEORGE: Ms Cannon, firstly, thank you for your service.

Ms CANNON: Thank you.

Mr THOMAS GEORGE: It is nice of you to spend your last day here with us. Is there anything you would like to bring to the attention of the Committee from where you sit within the organisation?

Ms CANNON: Not from my point of view at an administrative level. We have two Inspectors who have different management styles and that is going to be a big change to how it works, but not to Mr Levine's staff; they are very well organised themselves. It is going to be a better future. It has been lovely working there. I will miss the work, the topic and the content.

The Hon. NIALL BLAIR: My question may be more appropriate for the Commissioner rather than the Inspectorate, but one thing that has been raised with me is the lack of closure from ICAC referrals or complaints. When something is preliminarily investigated and then not continued with there is no feedback to those who maybe were either referred or subject to some investigation. Particularly, if it is made public by a party that someone is subject to a referral to the ICAC. The ICAC seems to be open-ended in that sense. Has that issue been raised with you or have you seen complaints made in relation to that area?

Mr LEVINE: The answer to the second part of your question is I believe so, to the extent that I have had the opportunity. In relation to the first part, it is probably a better question for the Commissioner whether of the ICAC or the PIC. The fundamental thing about each Commission is that they are inquisitorial and the public part might only be a very small part of it, but I would be very surprised if either Commissioner would dispute the proposition that reputational damage at least can be done by the mere mention of a name in connection with one inquiry. From some of the documents I have seen—I cannot articulate it very well but one is to the effect: "Hang on, six people were said to be affected, five have been referred to the DPP, I am the sixth. What has happened to me?" That is a PIC matter but it is a legitimate inquiry and it is being pursued. That is about all I can say.

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Reverend the Hon. FRED NILE: There is no procedure where correspondence is sent to a person telling them the outcome of the hearing and so on?

Mr LEVINE: In that instance I do not know whether there was. That is what I am looking into. The ultimate document, of course, is any report that is handed to the relevant parliamentary committee, and the report should be clear, in my view, as to who goes to the DPP for further scrutiny and who does not and why because there is no evidence that would warrant it. I think people are entitled, subject to the inquisitorial nature of these Commissions, to closure if it can be given to them.

The Hon. NIALL BLAIR: But you are able to do that. You have mentioned that you open files and then close them. I guess you then correspond with the complainant to say that the matter is closed one way or the other?

Mr LEVINE: Yes, if I receive communication from someone and assess it. In one instance it might be that what you are really doing is complaining about alleged corrupt conduct by a councillor somewhere. The body you complain to is ICAC. Ditto, what you are really doing is complaining about the conduct of a police officer. The body you complain to about that is the PIC and for some bizarre—and it usually is bizarre—reason I forward the actual document and say, "Could you look into this, Commissioner", and they will take whatever course they think.

CHAIR: Thank you very much for coming in today. We appreciate your time.

(The witnesses withdrew)

(Short adjournment)

MEGAN LATHAM, Commissioner, Independent Commission Against Corruption,

SHARON LEIGH LODER, Executive Director, Investigation Division, Independent Commission Against Corruption, and

ROBERT WILLIAM WALDERSEE, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, affirmed and examined; and

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

ROY ALFRED WALDON, Solicitor to the Commission and Executive Director, Legal Division, Independent Commission Against Corruption,

ANDREW KOUREAS, Executive Director, Corporation Services Division, Independent Commission Against Corruption, and

TRENT DAVID WHITE, Manager, Assessments Division, Independent Commission Against Corruption, sworn and examined:

CHAIR: The Committee welcomes the Commissioner and staff of the ICAC for the purpose of giving evidence on matters relating to the Commission's annual report for 2012-13. Thank you for your attendance today and your appearance in your first Committee meeting, obviously in relation to a report before your time. Commissioner, would you like to make an opening statement?

Ms LATHAM: Only to say that when I appeared before members of the Committee last Friday I made some general comments about my experience since becoming Commissioner of the Independent Commission Against Corruption. Of course, for the period that is covered by this annual report I was not the Commissioner, it was the Hon. David Ipp, AO, QC. I can only say that I was aware, as was everyone, of the very productive year that the Commission had over the course of the period covered by the annual report, and the annual report reflects that. Generally speaking, I think the report bears witness to the very productive work of the Commission over that period of time. The executive directors and the Deputy Commissioner who are here today can all take credit for the production.

CHAIR: What do you see as some of the challenges for the year ahead and can you make some comments in relation to resourcing? I know it is early days and you have been quite busy since becoming Commissioner but can you identify resourcing issues or challenges you will encounter over the next 12 months?

Ms LATHAM: Resourcing is always a challenge and by that I do not mean to convey that the Commission is not aware of the need for public agencies generally to be responsible about the expenditure of public money. Having said that, though, we are continually facing challenges that arise principally in the area of investigations, keeping up-to-date information technology systems that keep track of a wealth of information and have the capacity to allow us to develop databases that cross-reference information that actually improve and enhance our investigation techniques and the results of those investigations.

As I said to some members of the Committee last Friday, information technology systems are becoming more and more expensive and more and more sophisticated but if we do not stay ahead of the game we risk actually losing the capacity to conduct some of these investigations into agencies that have their own sophisticated information technology systems. So that is a continuing challenge in terms of resources. The other thing that I would say—although the Commission is in very good health, rude health at the moment in terms of the quality of its personnel—it is an ongoing challenge to attract and maintain very highly skilled staff in every division of the Commission, particularly when you look at some of the comparators, for example, in the legal profession across the public sector without even talking about the private sector.

Even in the public sector I do not think some of the positions in the Legal Division are paid adequately. I think we could be attracting much better quality legal staff and that is probably true in respect of the Corruption Prevention Division as well. Dr Waldersee operates a very sophisticated policy unit with some very highly qualified people but to attract those people we should be offering salaries above what we can currently offer. Having said that, a lot of people who have enormous ability and talent take the job because they are interested in the work but that only lasts for a particular period of time. So then we have to confront the problem of turnover and losing corporate memory when we would really have preferred to have maintained a core quality staff who can develop and pass on those skills.

The other thing that I would say about challenges is that the Commission has again before it a very busy year in terms of public inquiries. We have public inquiries that are practically banked up, one after the other, until the end of this year. It has been a challenge but one that the Commission has listened to. To maintain that kind of schedule of public inquiries, it mobilises a very large number of people at the Commission who work very long hours while the public inquiry is on and then once it is finished involves a tremendous amount of work in bringing all that material together, producing a report and making recommendations. While that is going on we are actually ramping up for the next inquiry, so there is a very high demand on resources. One would expect that after a period of time of working at that kind of pace you would get some kind of burnout. Again, that is something that contributes to staff turnover. Generally speaking, that is my snapshot in the two months that I have been there.

Mr RICHARD AMERY: Commissioner, I acknowledge your opening comment that you were not the Commissioner when this report was written. To help me understand how public and private inquiries work, I note that on page 29 with respect to public inquiries, compulsory examinations, it states:

If the Commission determines it is in the public interest to do so, it may take evidence from witnesses in compulsory examinations. These examinations are held in private. When inquiries are held in public, the evidence is generally heard before (and made available) to the public, subject to discretion

My question is in two or three parts. Is the public inquiry just a duplicate of the behind-closed-door inquiry when evidence is taken in private and then you go to a public inquiry? Let me explain. As a member of Parliament I sat in the Chamber this week and last week and heard of the opening comments of counsel assisting the Independent Commission Against Corruption with respect to two members of Parliament, one former member and one sitting member—the Premier in fact—that there were no allegations of corruption. That was day one of the inquiry. That is the public part. Had that already been determined in the private investigation? All I am saying is: How could you pre-empt what a witness was going to say during the next couple of weeks about anybody? Is anyone going to produce a smoking gun that is going to make those opening comments incorrect? I do not know the process. Is it a rehearsal and everything is exactly the same?

Ms LATHAM: No, it is definitely not; in fact, far from it. In fact, the compulsory examinations serve a very important role, and that role is that we often have people come in for a compulsory examination who simply provide us with very valuable information that we then can use in order to take our investigations further. We may not and on many occasions have not called every witness that we have had in the Commission under a compulsory examination. By the time you get to the public inquiry you have honed down the breadth and scope of the inquiry and that process is ongoing. But the compulsory examinations very much help you to narrow the scope and purpose of the inquiry and to hone in on what it is that you are really hoping to discover. Yes, to answer your question, sometimes there are smoking guns, but in terms of the example that you give with the current inquiry—and again without disclosing information that I am not at liberty to disclose—

Mr RICHARD AMERY: No, just generally.

Ms LATHAM: By way of example, if there is a suggestion that someone may have something relevant to tell us—for example, we receive some notes under a notice to produce and we find somebody's name in the notes that we were previously unaware of—we might call that person in either to speak to us or to undergo a compulsory examination and that will actually clarify the position and it will, in some circumstances, persuade us that the notes are a fabrication, for example.

Mr RICHARD AMERY: That is how I understood it. In light of that, is it not a bit unusual for counsel to make a declaration of someone's guilt or innocence on day one of an inquiry? I am a former policeman, and in my day we generally did not find out until the end of the case whether someone was guilty or not.

Ms LATHAM: Like all those things, counsel assisting is spelling out where we anticipate the inquiry will go. The opening statement does not by any means stand in concrete. We might discover something in the course of the inquiry that is different from what was said in the opening statement.

CHAIR: Obviously you use your discretion. You may feel the need to say that, in the circumstances, the Premier is not implicated to ensure that there is no speculation.

Ms LATHAM: There is nothing that we know of now. That does not mean that it might not emerge at a later time.

CHAIR: Absolutely.

Ms LATHAM: I do not know whether you saw the reference in the press the other day to the fact that I might have formed a preliminary view about someone. In fact, the comment that was made was that, as things then stood, based on the evidence that we had called up to that point, there might be some difficulty determining that someone was guilty of corrupt conduct. I then said, "But I do not know what else is going to emerge at this inquiry." It is a moving target. We do not make any firm findings until we have finished the public inquiry.

Mr RICHARD AMERY: Thanks, Commissioner.

CHAIR: Under section 52 of the Independent Commission Against Corruption Act, there is the ability for witnesses to make an application to the Attorney General to have their legal fees paid. There have been media reports about this and we raised the matter at the roundtable last week. As somebody observed, there was certainly a roomful of lawyers on the first morning of the RailCorp inquiry. Do you think there should be any amendments to the Independent Commission Against Corruption Act in relation to witnesses being able to apply to the Attorney General for financial assistance?

Ms LATHAM: I do not think the solution lies in the amendment of the Act. It is important to understand that if someone is called to give evidence before the Commission in a public inquiry they do not have the option of refusing to answer questions. Because we do not necessarily know where the inquiry is going to lead us, that person may, at the end of the process, have a finding of corrupt conduct made against them. So there needs to be a provision whereby they can obtain legal representation—subject, though, to this. To be quite frank, I think there are far too many people represented at public inquiries when they play an

incredibly minor part which cannot, on any view, be considered to put them at any risk of a finding of corrupt conduct.

I think there is some merit in the view that it is a bit of a lawyers' honey pot. They know they are going to get paid, because the fees are coming out of the public purse. I think the solution might lie with the Legal Representation Office—that is the body that funds the representation for those people. It is probably worthwhile looking at their guidelines to see who they fund and to what extent. I do not know enough about that. I do not know to what extent those guidelines could be tightened. It is always difficult to know where to draw the line.

I certainly think that in public inquiries there would be a number of people who we could quite confidently say would never be in the firing line. Having said that, anybody called before the Commission is usually very nervous about being called. However, in the course of the public inquiry that we are currently conducting, a number of people have come along without legal representation, because that is their choice, and they have not been disadvantaged by that.

CHAIR: I refer to witnesses who are only giving a small testimony at the Independent Commission Against Corruption and are not significant to the proceedings. Would you be of the view that there should be a change to their ability to apply for funding from the State for their representation?

Ms LATHAM: I think there is always scope for the Commission to say to someone that we are calling them just for information. We are calling them because they are capable of giving information to the public inquiry that we need for those purposes. Sometimes you call a forensic accountant to explain some accounts. The person is there by way of providing information. They are not there because we think that they are involved in the process or we think that they are in any way at risk of a finding. There is scope to say to people like that, "You do not need representation for this purpose." I am not sure to what extent those kinds of decisions are made by the Legal Representation Office or otherwise. Mr Waldon might want to comment on that because he has been there for a very long time.

Mr WALDON: I agree with the Commissioner's comments in relation to that.

The Hon. LYNDA VOLTZ: I would like to follow up on that. I have noticed a tendency for some questions to be asked, particularly of political people who appear, that have no relevance to the case but are only being asked to embarrass them. Those people may not necessarily turn up with legal representation. There is obviously a tendency when politics is involved for questions to be asked of people that really should not be asked. They do not have any defence once they are in the stand. Do you take that kind of scenario into consideration?

Ms LATHAM: I try as much as possible to make sure that the questions that are asked are relevant and appropriate. Even though the press does not necessarily report it, anybody can come and see how the proceedings are managed. If I think a question is inappropriate or irrelevant, I will simply disallow it. I do try to control questioning. The difficulty is that there are a lot of people with very large egos in the room who are all trying to justify their expense to their own client.

From my perspective, it is not like sitting in a courtroom where there are only two parties. I have 20 barristers sitting in a room, all wanting to make their mark. It is a delicate balancing act. I do not want to name names, but we do get some very combative and very unpleasant counsel. Sometimes it is difficult to control them without shutting them down entirely and then being at risk of a finding of a denial of procedural fairness. The balancing act comes down to me. I acknowledge the force of what you say. Unfortunately, it is a function of the environment that we work in.

Reverend the Hon. FRED NILE: When you have a public inquiry, select the witnesses at the beginning of the inquiry and advise the media of those witnesses, do you make any attempt to classify the witnesses? For example, do you say, "These are witnesses who are under suspicion and these are witnesses who we are asking to assist the inquiry," so that people do not jump to conclusions?

Ms LATHAM: Counsel assisting will often do that. Counsel assisting will often say, "I call so-and-so. Commissioner, this witness is here to tell such and such." That is also by way of informing the public and everybody else where this person fits into the picture. That is something we do from time to time.

Reverend the Hon. FRED NILE: But not as a rule.

Ms LATHAM: Not as a rule; but, for example, there is a period in the current inquiry that is being put to the back of the process next week. We are calling a lot of people just to talk about the financials and just to talk about the accounts. At some point, counsel assisting is going to say, for the information of the public and the profession, "These witnesses who are concerned with this aspect will be called on Tuesday and Wednesday", and we also publish in advance a list of witnesses we anticipate we will be calling that day.

Reverend the Hon. FRED NILE: That is what I am saying. Would it help to put in brackets after their name, "Only to assist the Commission"? There are a lot of members of Parliament who are very nervous at the moment. By implication, it sounds like they are under suspicion.

Ms LATHAM: Yes, I understand that. I think that is something that we could take on board and think about. Sometimes it is hard to know.

Reverend the Hon. FRED NILE: Because the line is blurred.

Ms LATHAM: Sometimes the line is blurred. But it is also difficult, if you want to be giving the public, as we do, not just the substance but the appearance of absolute impartiality, we do not want to place any particular witness in a privileged position, if you understand my point. We do not want to be seen to be doing favours to anybody by simply telegraphing that we do not think there is an issue in relation to them because everybody who is called as a witness is going to feel somewhat nervous.

Reverend the Hon. FRED NILE: Yes.

The Hon. NIAL BLAIR: Commissioner, I want to talk not about public hearings but more about investigations. In the report at pages 27, 28 and 29, you talk about "How we investigate". I guess what I am looking for is, for want of a better term, closure of some

investigations, particularly closure for those who may have been referred. If there is a determination by the ICAC that no further action is required, what feedback goes back to those who may have been referred so that they can get some closure? The second part of that is: How do you make sure that the ICAC does not become maybe a political football or a tool that is used to maybe tarnish people by a frivolous referral that someone makes public, such as, "I have referred such-and-such to ICAC", without that closure at the other end or a statement from the Independent Commission Against Corruption to say, "No further action is taken."?

Ms LATHAM: We have a process. Mr White, who is in charge of the Assessments Division, in a sense can speak to how those complaints come in. But the assessments panel sends the complaints and a summary of the allegations, which are thoroughly set out by officers in the Assessment Division, through to the executive. We all look at them. We all determine what we are going to take further and what we are not going to take further. Everyone has a say in that. The ones that we do not take further are sometimes not taken further because it is appropriate to refer them back to the department or agency with which the complaint is concerned.

Then we pass the investigation to those agencies under the powers that we have under the Act and ask them to report back. Very often we are satisfied with the investigation that those agencies have carried out. The ones that we take further and we investigate further, which is, I think, what you are referring to, we will always get to a point where we decide that there is nothing further to investigate. We send letters to the relevant people indicating why we have decided not to investigate further. I think what you are referring to, though, is that there is no public process by which we announce that we no longer are pursuing this particular complaint.

The Hon. NIALL BLAIR: Yes.

Ms LATHAM: I think that, as you say, probably causes some disgruntlement for people who have been the subject of a complaint. Sometimes, though, you see there is a problem but we determine, either in the exercise of our discretion or because it is a kind of conduct that we do not consider serious enough to warrant a full investigation, that we are not going to take it further. The fact that we do not take it further does not necessarily mean that there was not something wrong. Certainly, Ms Loder, who is in charge of the investigation division, and Mr White can speak to that.

Mr WHITE: Just in relation to complaints that are made to us, we deal with the complainant themselves. We provide them with a response in terms of the outcome of their complaint, the decision that we have made and whether we are going to be taking it forward. The Commission's policy is not to confirm or deny that we have received a complaint. I understand that some complainants do like to announce publicly that they are referring something to ICAC, and our interactions are then with the complainant in terms of collecting further particulars, if necessary, and then ultimately informing them of the outcome of that.

The Hon. NIALL BLAIR: What interaction do you have with the person that the complaint has been made against, not the person making the complaint? Let us say that someone makes a complaint to ICAC and announces that publicly, and that is found to have no substance to it at all. You do a preliminary investigation. Do you go back to the person who made the complaint but also the one that maybe has been named as being referred to ICAC?

Then how do you then handle that, if it is determined that it was just done out of malice or without due cause?

Mr WHITE: During the assessment process, we do look for indicators as to whether a complaint might be either frivolous or vexatious. Within the assessments process, though, we do only deal with the complainant so there is no formal correspondence either by way of clarifying the allegations with the subject. However, having said that, if the assessment panel decides it will proceed with a preliminary investigation, then there may be circumstances under which engagement occurs with the subject—going through procedural fairness and so forth. But I think it is important that at the assessment stage, we are just trying to assess whether there is a reasonable suspicion that corrupt conduct has taken place.

Ms HAMILTON: Could I just say something on this? With the great bulk of matters that we get, the person who is the subject of it does not know and never hears, and we try to keep it confidential.

The Hon. NIALL BLAIR: Sure.

Ms HAMILTON: The problem with somebody publicising the fact that they have made a complaint is an issue that there have been attempts to deal with over many years, as you are probably aware. They recently tried to deal with it in Queensland. There was a recommendation that it should be made an offence for somebody. They obviously wrestled with it, as we have, and could not come up with one. The trouble is that it is very hard to come up with a provision that is not too broad and unfair to stop people from publicising the fact that they have made a complaint. I do think that our policy of never confirming or denying that there is a complaint until we go public does mean that—I think it engenders confidence in our processes; that we are going to keep it confidential.

We cannot stop other people talking about it, unfortunately, but I think most people these days realise that the fact that something has been referred to the ICAC does not mean that there is any substance to it and does not mean that the person who is the subject of it is going to have an adverse finding. I do appreciate the problem, but it is a problem that agencies like this have wrestled with for many years and no-one has been able to come up with a formula that would not unfairly penalise somebody who does have to talk about the fact that they have referred it in some way, while catching those who do it for malicious purposes.

The Hon. NIALL BLAIR: What about if they have not made a referral, yet publicly announce that they have, in order to tarnish someone's reputation? Surely that would warrant at least a moving away from that neither confirming nor denying.

Ms HAMILTON: There have been rare occasions in the past when we have been willing to confirm that a matter has not been referred. If mischief is being caused by somebody going out and saying, "I've referred this to the ICAC", we have on occasions said "that is not right". I think that is an important exception if problems are being caused by somebody falsely claiming they have referred a matter. We would be willing to deny on the public record that we had that matter in some cases.

The Hon. NIALL BLAIR: Would that extend to the organisation the person worked for or was attached to? Let us say I had an employee and was told that employee had been referred to the Independent Commission Against Corruption when that was not the case, I

would be concerned about that allegation. Can I contact the Independent Commission Against Corruption to get confirmation?

Ms HAMILTON: In exceptional cases, but the problem is it is no good having it confirmed or not within our policy if you start making exceptions, because when you say it then nobody believes you. They think it is the case because we have said we do not confirm or deny, whereas before we said we had not got a complaint. You have to be strict and that is the fairest way to do it. In very exceptional circumstances, where there has been a lot of public disquiet, we may. But we have to stick to the general policy, because otherwise people know straight away what we are really saying when we say we do not confirm or deny.

The Hon. NIALL BLAIR: If a person was aware they had been referred to the Independent Commission Against Corruption and an investigation had occurred with the information going back to the person who made the referral, that person may still worry for years about that referral. Can that person contact the Independent Commission Against Corruption to be told the investigation has been concluded?

Ms HAMILTON: I understand we have done that in particular cases where there has been an investigation.

Ms LODER: We do that if an affected person requests information about whether an investigation is closed. We will advise them, as we would the complainant.

Mr RICHARD AMERY: On page 100 of your report you refer to the recommendation about an investigation into false claims concerning the former member for Drummoyne Angela D'Amore and some of her staff—Operation Syracuse. The status of this investigation was finalised because the Director of Public Prosecutions advised there was insufficient admissible evidence to prosecute. I had some disagreement with the previous Commissioner about the significance of this matter and whether there should be a public inquiry. This case was finished in December 2010. I consider the matter to have been relatively minor and one where I would have thought it would be relatively easy to find out whether an offence had been committed and then the Director of Public Prosecutions could have advised you—and I know you cannot answer for the director. This investigation is in your annual report for the period ended 30 June 2013.

When did the Independent Commission Against Corruption receive advice from the Director of Public Prosecutions that there was insufficient evidence to prosecute? What was the Independent Commission Against Corruption's process to notify Ms D'Amore that there would be no prosecution? I found out around Christmastime that this decision had turned up in some obscure part of the Independent Commission Against Corruption's website. I get the impression that the Director of Public Prosecutions advised the Independent Commission Against Corruption some time ago and the person complained about, who had been on tenterhooks for years, did not know about the advice. What is the process? Does the person get a letter immediately after the Independent Commission Against Corruption is advised there will be no prosecution?

Ms LATHAM: You would appreciate that we cannot talk about individual matters.

Mr RICHARD AMERY: It is the process; it is in your report.

Ms LATHAM: The process has been problematic in the past; there is no doubt about that. It was partly a function of the Director of Public Prosecutions saying it had insufficient resources and partly—as David Ipp and I said at the last hearing—a problem of staff at the Independent Commission Against Corruption already being involved in the next inquiry. The difficulty in reorganising all the evidence into the form of a brief, bearing in mind we do not have statements from everybody only the transcript of the public inquiry, is that it is unhelpful for us to dump the transcript on the Director of Public Prosecutions. We try to reduce a lot of that material to the form of written statements so it is in the form of a brief. That process has not been the best in the past. We are trying to improve the speed at which we complete the task. Since the matter you referred to, the Director or Public of Prosecutions has been given additional resources to deal with referrals from the Independent Commission Against Corruption.

I am having a meeting with the Director of Public Prosecutions the week after next where I propose to talk to him about further improving the process whereby one of the solicitors from what is called the Special Crimes Unit, which does all the advising work when we send a recommendation to prosecute, comes to the Independent Commission Against Corruption at the end of the inquiry to assist in the preparation of the brief. That would mean the instructing lawyer in the inquiry would be in a position to work closely with that solicitor to work up the brief to a point where it goes to the Director of Public Prosecutions in a timely fashion and the solicitor involved with preparing the brief does not have to spend a week reading the brief. I hope to work out something with the director to improve those processes.

Mr RICHARD AMERY: I understand the issue with the Director of Public Prosecutions. If I am the person who, in 2010, has an allegation made against me I might wait three years for the Director of Public Prosecutions, which I know is not your fault, to advise the Independent Commission Against Corruption that there will be no prosecution. When do I find this out?

Ms LATHAM: I would think you would find out at the same time, because the Director of Public Prosecutions would have a practice of informing the accused. That person would be legally represented and there would be a process to inform the legal representative or the person directly that the Director of Public Prosecutions had determined not to prosecute.

Mr RICHARD AMERY: Other cases noted in your annual report have dates for when the Director of Public Prosecutions advised it had sufficient evidence to proceed, but for this case there is no date.

Ms TANIA MIHAILUK: It seems when the Director of Public Prosecutions advises there is insufficient evidence there is no date, but when there is evidence to proceed with prosecution there is a date.

Ms LATHAM: Bear in mind that if the Director of Public Prosecutions does not advise us, we do not know when the decision is made. We are only told the decision has been made. However, the Director of Public Prosecutions is obliged to tell the prospective accused the decision has been made.

Ms TANIA MIHAILUK: Which we do not know.

Ms LATHAM: Which we do not know.

REVIEW OF THE 2012-13 ANNUAL REPORTS OF THE ICAC AND INSPECTOR OF THE ICAC
ANSWERS TO QUESTIONS WITHOUT NOTICE (TRANSCRIPT OF EVIDENCE)

CHAIR: Do you think the Director of Public Prosecutions should be under an obligation to advise the Independent Commission Against Corruption when the determination has been made?

Ms LATHAM: I think we are ultimately advised, but are we advised as soon as the decision has been made? I do not know.

Mr WALDON: The Director of Public Prosecutions sends us a letter telling us what view has been formed. Sometimes that is not the end of the matter and we consider the view expressed and get back to the Director of Public Prosecutions with further issues for consideration or we ask for a reconsideration of advice. Sometimes the view is changed and sometimes not, at which time we get a final letter. Once we get the final letter and we accept that advice, we place that advice on our website. We do not write to people, as we expect people to keep in touch with the advice we put on our website, which gives the outcome of the referral to the Director of Public Prosecutions.

Mr RICHARD AMERY: You do not put out a press release?

Mr WALDON: No.

Mr THOMAS GEORGE: Any time you have been advised there is insufficient evidence, there are no dates as to receiving that advice, but when there is sufficient evidence there are. The dates listed in the report, if you have a look down that page—I am not talking about any particular person—in cases that had insufficient evidence it does not state the date you received the letter but when there is evidence you state the date.

Ms LATHAM: Perhaps that is something we can improve on and we can then change our systems to record that date.

Mr RICHARD AMERY: It would be helpful if that information was in future annual reports. Also, if I can just focus on that point, in relation to somebody who is waiting on whether they are going to be prosecuted and possibly going to jail, I would have thought there would be some reasonable action to identify particular cases where someone is not going to be prosecuted. By the way, someone said something about justice delayed, but December 2010 to 2013 is a long time to wait for a claim.

Mr WALDON: If people are interested in what the outcome of the recommendation is, then we invite them to keep in touch with our website. As soon as we have made the decision to accept the advice of the Director of Public Prosecutions that goes on the website.

Mr RICHARD AMERY: I hope you do not get any complaints because an 80-year-old person does not know how to do that.

Mr THOMAS GEORGE: It is not about this particular case, but you do not tell them to look at the website to see if they are on a charge. If you received a letter about me, I do not know to look at the website. I think that could be looked at and that when they are cleared or otherwise they do not just go and look at the website.

CHAIR: In circumstances where prosecutions are not going to be brought against somebody who has gone through the Independent Commission Against Corruption process, they should at least be afforded a public statement that they might be—

Ms LATHAM: That should come from the Director of Public Prosecutions because ultimately that is their decision.

Mr WALDON: And they do get a public statement because it is on the website.

Ms LATHAM: And they are free to publicise that as much as they like.

The Hon. LYNDA VOLTZ: If you are going to come back with further information that you had asked them to look at, it would be difficult for the Director of Public Prosecutions to write to someone saying there is insufficient evidence to pursue a matter because they would then review the additional information you provided. That was, by definition, why you did not have the date. You get advice from the Director of Public Prosecutions, you may provide further advice to them and they may then review that advice but decide not to prosecute.

There is probably a fault in the chain, because the original advice from the Director of Public Prosecutions is not the be-all and end-all of it. There is still a possibility that the Independent Commission Against Corruption will come back and say, "We would like you to consider this further information", and there becomes this time lag. So the Director of Public Prosecutions cannot write to a person who is being directed and say, "We have decided there is insufficient evidence"; there may be further action by the Independent Commission Against Corruption.

Ms LATHAM: At some point though they will make a final decision that they are not going to prosecute.

The Hon. LYNDA VOLTZ: At that point do we know that they then write to the—

Ms LATHAM: They definitely do. As someone who worked for many years in the office I know that is exactly what they do. They write to say that the Director of Public Prosecutions proposes to take no further action, and that is in every case, not only a referral from the Independent Commission Against Corruption or an investigation that has been initiated by police.

The Hon. LYNDA VOLTZ: We may clarify that with the Minister for Police and Emergency Services.

Reverend the Hon. FRED NILE: Following up on that comment, has the Director of Public Prosecutions ever made it clear that it is not the issue of evidence but the question of resources and that the offence is so minor that they are not prepared to use all their resources?

Ms LATHAM: I am certainly not aware of anything to that effect and that is not something that I could comment on. I think that the director would have to be asked himself if he considers that to be a problem.

Reverend the Hon. FRED NILE: They do not tell you why they have decided not to proceed with it?

Ms LATHAM: No.

Reverend the Hon. FRED NILE: You mentioned a lack of resources in one of your comments earlier.

Ms LATHAM: That was certainly a reason why, in the past, they have had problems mounting prosecutions as quickly as one would hope. But, as I said, they have had additional resources allocated to them since then. Getting back to your point, the director has an unfettered discretion under his Act to determine whether he prosecutes or not, and even if we have a strong view about the availability of admissible evidence, the director is at liberty to decide that he will not prosecute because he thinks there is no reasonable prospect of a conviction. That is a different test from saying there is not enough admissible evidence. All I am pointing out is that he has a broad discretion whether to prosecute or not and that is not something that the Commission has any influence over.

The Hon. NIALL BLAIR: I apologise, I have one final question. Can the Independent Commission Against Corruption take any action against someone who uses their name?

Ms LATHAM: Yes.

The Hon. NIALL BLAIR: For example if they said, "I referred such-and-such to the Independent Commission Against Corruption", and they have not actually done so, can the Independent Commission Against Corruption take action against that person?

Ms LATHAM: I thought you were referring to someone who had represented that they were an officer of the Independent Commission Against Corruption.

The Hon. NIALL BLAIR: No, sorry.

Ms LATHAM: I do not think there is any specific offence under the Act.

The Hon. NIALL BLAIR: There are two things: one, making a false statement to the Independent Commission Against Corruption and making up an allegation; and actually signing to the effect that they have made a referral.

Ms LATHAM: Yes, "I have done it but I have not". I do not think there is any specific offence that covers that kind of representation.

The Hon. LYNDIA VOLTZ: If somebody made a complaint to the Independent Commission Against Corruption about someone that was obviously untrue, there is no action that could be taken?

Ms LATHAM: Well, no. What you do not want to do is stop people from making complaints. There are people who genuinely believe there is something wrong when, in fact, there is not.

Mr RICHARD AMERY: Commissioner, your panel of people here cannot answer the question when you got the advice on this particular matter and when you put it on the web page. You are not allowed to provide that sort of advice; is that right?

Mr WALDON: Sorry?

Mr RICHARD AMERY: In relation to Operation Syracuse, are you unable or is it inappropriate for you to advise when the Director of Public Prosecutions advised you that there would be no evidence; and, secondly, are you able to advise when that information was posted on your website?

The Hon. LYNDA VOLTZ: You can take it on notice.

Mr WALDON: We will take it on notice.

CHAIR: Section 37 of the Act restricts evidence given under objection to be used in criminal and civil proceedings. Previously it included disciplinary proceedings and the Act was amended last year to allow disciplinary proceedings to be given. Do you think there could be further amendments to the Act, particularly civil proceedings, for example, where an officer may have defrauded an agency and proceedings could be brought against them to reclaim those funds that have been defrauded in those circumstances?

Ms LATHAM: This is a topic on which reasonable minds might differ, so I do not think there is any one right answer. I have not discussed it with Mr Waldon, so I do not know what his view is. I can tell you that my personal view is that I think answers given under compulsion should be admissible under civil proceedings. The reason I say that is because traditionally where you have a power to compel someone to answer questions, the right against self-incrimination, which is thereby rendered nugatory, has always been a right against self-incrimination in criminal proceedings.

Traditionally it has only ever been a right which applies rigidly in criminal proceedings, so I think that there is some justification for allowing people to use those answers in civil proceedings. However, as I said, that is a matter of public policy. I think it is something that would ultimately have to be considered, for example, at a Law Reform Commission level where they could look at that question in total. The difficulty with making amendments in one area is that it often has unintended consequences. That is something that would have to be considered at a very comprehensive public policy level. That is my view. I do not know what Mr Waldon thinks.

Mr WALDON: No, I agree with that. I do not know if you recall but some years ago the Commission actually made a submission that the Act should change so that evidence that was given under objection could be used against a public official in disciplinary proceedings but also in civil proceedings if those civil proceedings related to the conduct. Our Act was subsequently amended to allow the evidence given under objection to be used in disciplinary proceedings where a finding of corrupt conduct was made against the relevant public official. But the Government took the view that it did not want to go to the next step and amend the legislation to allow the evidence to be given in civil proceedings.

Reverend the Hon. FRED NILE: I refer to one of your earlier comments about a solicitor being detached from the Director of Public Prosecutions and would go to the Independent

Commission Against Corruption. I think that is an excellent idea. I have raised the issue of having a division of the Director of Public Prosecutions working with the Independent Commission Against Corruption so this whole brief situation will run a lot smoother. Could that solicitor be permanent? The solicitor would not be changed every six months but would have a continuing relationship and maybe that could grow into a unit of the Director of Public Prosecutions.

Ms LATHAM: I think the problem is this: we do not see ourselves as having a role in actually mounting prosecutions. That is the independent function of the Director of Public Prosecutions. I do not think we want to actually create a unit within the Independent Commission Against Corruption or the Director of Public Prosecutions.

Reverend the Hon. FRED NILE: No, within the Director of Public Prosecutions.

Ms LATHAM: We want to work much more closely with the Director of Public Prosecutions. I had in mind—and I do not want to embarrass Lloyd Babb because we have not had this discussion yet—because the Director of Public Prosecutions has a number of solicitors who work within the Special Crimes Unit, the person who would ultimately be responsible for carrying that brief forward and briefing a Crown Prosecutor and possibly instructing in a trial should be the person who has continuity of the matter from the moment of preparation of the brief all the way through. That means that there would be different solicitors from time to time who would come to the Commission at the end of the inquiry in order to assist in that process. It would not be the same person.

Reverend the Hon. FRED NILE: Different cases, yes.

Ms LATHAM: And that has a number of advantages. It actually improves your skill base across the whole of the Special Crimes Unit so that you are not reliant on just one person and it also ensures continuity of the carriage of the brief. I have to say though I am very much aware of the fact that that kind of allocation of resources for the Director of Public Prosecutions is very problematic because just the nature, volume and flow of the work in the Director of Public Prosecutions often means that a solicitor who starts off preparing a brief is not necessarily the same solicitor who instructs at the trial. It is the continuity of personnel which is the challenge.

CHAIR: Just coming back to the last line of questioning in relation to the amendment to allow an ability to prosecute in disciplinary proceedings, how effective has that amendment been since that change has been made?

Mr WALDON: It is difficult to say because obviously we deal with a number of public officials in our inquiries and ultimately we make findings of corrupt conduct against them. But in most cases those public officials have usually been dealt with by the relevant authorities where they come from by being dismissed before we get to the stage of actually finalising our report. I think since the amendments have come in there have been a couple of occasions where we have taken advantage of the change to the legislation because the public official, at the time the report came out, had not been dismissed or dealt with in disciplinary proceedings. But in most cases the public official has gone before the report comes out. In some cases the public official may have been dismissed even before the public inquiry has commenced.

CHAIR: In relation to your experience in some of the civil matters, it could arise based on a change in the Act. How effective do you think that change would be?

Mr WALDON: It is very difficult to say. I am not aware of many instances where civil proceedings have been taken to recover money from public officials. It is difficult to say to what extent in practical terms that would be an advantage. I mean, in theory it could be a great advantage and it really depends on the individual matters that we deal with. I think in a lot of matters, civil proceedings, although they might potentially be available for a number of reasons, probably would not be taken. Certainly in matters where there are large amounts of money involved, and there is a possibility that you might actually be able to recover those monies, then civil proceedings will certainly be open and it would certainly be much easier, I would have thought, to proceed with those proceedings if you could use the evidence that the public official had given during the course of the public inquiry.

The Hon. LYNDA VOLTZ: You have had no applications under the Government Information (Public Access) Act approved and two were knocked back. Were they knocked back because administratively they were incorrect or because of the nature of the type of information they were asking?

Mr WALDON: I am not sure. I would have to look at that. We do not get many applications under the Government Information (Public Access) Act.

The Hon. LYNDA VOLTZ: You have zero everywhere except for two that were knocked back and I assume they were the only two applications.

Mr WALDON: One of the reasons for that is under the Government Information (Public Access) Act you cannot make a valid application for anything which relates to our complaint handling, investigative report writing or corruption prevention functions. So most people do not make applications because the information they want relates to those functions. Most of the ones that are knocked back are knocked back on the basis that they are simply not valid applications because they are seeking information in relation to those functions. I cannot comment specifically in relation to the two to which you referred. I will take that on notice because I do not have that information to hand at the moment.

Reverend the Hon. FRED NILE: As you know, the McClelland report talks about sharing resources with the Police Integrity Commission, which I personally do not believe is a good idea because of priority of resources; they would fight over various equipment and so on. What is your opinion?

Ms LATHAM: In short compass, I think it is a terrible idea. Interestingly, where it has been done elsewhere it has not worked particularly well. Members would be aware that we regularly have meetings with Commissioners from other relevant anti-corruption agencies in Australia. All of us are of one mind that it does not work. We share resources as much as we can without compromising our functions. I do not think there would be any cost savings at all if you were to, in effect, make it one body, the Police Integrity Commission and the Independent Commission Against Corruption, because in order to maintain a proper focus on police corruption you would have to maintain the same level of resources as the Police Integrity Commission currently has. You would, in effect, be doubling the size of the agency; you would not be making any relevant savings. There would be some consequential savings in things like administration but it would be a drop in the bucket.

But the more pressing reason for me to say that I think it would be a terrible idea is that it would be very difficult to maintain Chinese walls within an organisation where there would be personnel working on police corruption matters and personnel working on other corruption matters. It would be very difficult to maintain the confidentiality that we maintain in respect of our investigations and vice versa. That would have very deleterious effects in terms of the integrity of our investigations. I think police corruption is a world unto itself. You have to have people who understand the way police work, who understand the hierarchy and the level at which commands operate.

There are enormously technical rules around police operations. It is a technically difficult area and unless you have a body that is devoted entirely to that it is going to fall through the cracks. I completely endorse what Bruce James said publicly not so long ago about the McClelland report. I do not know of any leader of any anti-corruption agency in Australia and certainly none of the previous Commissioners of the Independent Commission Against Corruption who would contemplate such a move.

The Hon. NIALL BLAIR: I want to move on to prevention and the training workshops, but I will start with the advice. In 2012-13 there were 97 phone and email advice requests compared with 133 the year before. We can look at that in two ways. Is it a concern that the number of requests for advice is down, or is it positive that more people are able to identify and hopefully address these themselves? Does the Commissioner have a view on that?

Ms LATHAM: Dr Waldersee has his finger on the pulse.

Dr WALDERSEE: It is a matter we have been looking at for quite a while now. I think two factors are at play. One is that government agencies themselves increasingly have internal expertise. A lot of ex-corruption prevention people are now working in Transport or Family and Community Services or somewhere and they do not need to come to us as much. The other thing that has changed quite significantly is the growth in the private sector advice market. A lot of public service agencies would rather go to a major consulting firm; it keeps it all manageable. It is something we have noticed for a long time, and that is one of the reasons we are refocusing away from a capability around advice and more to a capability around analysis of State systems and larger organisations.

The Hon. NIALL BLAIR: The number of seminars conducted was 107 versus 116 the year before. That number is relatively stagnant. I know it went up from 2010-11 to 2012, but are you happy with the number and are other external factors taking up some of the load?

Dr WALDERSEE: There is a lot of training being provided by the private sector but, unlike advice, there is a lot to be said for agencies to have the Independent Commission Against Corruption brand. They quite like the training and they like the public presentation. There are two changes that led to that sharp change: We took out fees and we added additional workshops in procurement and so on. There was a spike up and it stabilised. We are not saying no to anyone, so if people ask we are able to provide it. It seems to have stabilised at that level.

The Hon. NIALL BLAIR: It is pleasing to see the increase in the regional areas.

CHAIR: Corruption prevention is important work done by the Commission and it probably does not get the public attention it deserves. One of the reports in which the Commission had a significant role to play was in relation to lobbying. A number of recommendations were made. One of the recommendations was banning of success fees, which the Government implemented. Will you make some observations in relation to the issues connected to lobbying of political parties and make some general recommendations that you think should be looked at?

Dr WALDERSEE: To put it in context, one of the issues we have had is that when the third party lobbyist recommendations were adopted the problem became that people moved to in-house. If they are moved to in-house and you start to capture them they are threatening, "We'll stop calling ourselves government relations, we'll call ourselves planners and then you can't get us." But that said, there are people within organisations who are clearly lobbyists and they are hired to be lobbyists. We recommended that they are captured within the lobbying regulation and we have not shifted from that position. As a result of the coalmining report where we asked the Government to relook at the issue of lobbying, the response has been that that will be reconsidered. I suppose it is back with the Government and it is being actively looked at.

The Hon. LYNDA VOLTZ: A lot of corruption prevention can be done in relation to cybercrime and fraud, which move very quickly. Given that New South Wales does not have a specialist police unit, where does that kind of prevention of corruption through information technologies that are shifting so quickly sit in government?

Dr WALDERSEE: That I really cannot comment on. I can take it on notice and do some research, but it is not something ICAC has looked at. I do not think it is giving anything away to say we get very few indications that corruption is occurring through cybercrime.

The Hon. LYNDA VOLTZ: An example is the person who defrauded Queensland Health of millions of dollars. I know it is a complex question. Maybe you can take it on notice and come back with where exactly in government that prevention of corruption occurs.

Dr WALDERSEE: That was an accounts payable manipulation, whereas I think that cybercrime is the Russian mafia making attacks on our information technology systems. That must sit more with the Crime Commission than us.

The Hon. LYNDA VOLTZ: Yes, in those contexts but in other examples it is manipulation of computer systems and information technologies by employees in government agencies. They are the people who do not have to get past the firewalls. Will you take that question on notice?

Dr WALDERSEE: Yes.

Mr RICHARD AMERY: I have noticed that nearly 3,000 matters are assessed by your Assessment Section. You talk about moderately complex and straightforward matters. I assume there is talk about what is minor, what is moderate and what is more serious. Do you have a sort of box ticking process about the amount of money involved or the number of people involved in the corruption and who the person is when deciding how to rate the seriousness of a matter? Also, how does the landscape of a particular year affect the Assessment Section?

REVIEW OF THE 2012-13 ANNUAL REPORTS OF THE ICAC AND INSPECTOR OF THE ICAC
ANSWERS TO QUESTIONS WITHOUT NOTICE (TRANSCRIPT OF EVIDENCE)

For example, in the past 12 months or two years I cannot imagine you were dealing with too many complaints about the misuse of paperclips when you had a few multimillion dollar coalmine tenements floating around. It would not be every year that you would have to deal with such serious matters. Is the process the same? When you have high-profile, serious cases around, it is pretty easy to decide where to put your resources, but in two or three years times you will still have a \$30 million organisation with all its resources but you may not get complaints that are so serious. What is the process of the Assessment Section and what role does it play? Is it down to the Commissioner to make the final decision or is a recommendation just adopted?

Mr WHITE: We assess every single complaint based on the merits of the evidence and supporting material that is provided. We do not feel that it would be an appropriate approach to assessment if we had a tick-box system or some sort of classification based on a dollar figure or the seniority of the person involved. Having said that, we do take those factors into account and that sort of thing tends to gravitate to what is assessed by the assessment panel through the course of the inquiries that we make.

In relation to your comment about what is considered a simple matter versus a moderate to complex matter, all matters that are received by the Assessment Section come through a triaging process that I am involved with. A lot of the matters that we get are very simple in terms of there is not much in the way of supporting information, nor is there much in the way of prospects of getting that supporting information so they are classified as simple. However, the moderate to complex ones tend to be ones where there might be a large amount of supporting material that needs to be read through but that may not necessarily indicate a likelihood of corrupt conduct having taking place.

So it is more a way for the assessment officer to determine the best skill set that is required and the level of experience for a matter that we receive. Some matters that might initially appear to us to be not serious, once we collect further material from the complainant or from other sources, may give us reason to think that they are more serious. So, therefore, the matter is presented that way to the assessment panel.

Mr RICHARD AMERY: So it is not comparative to what is available? What choices have you got to investigate, using those extreme cases I was just referring to? Would it depend on the year or how busy—

Mr WHITE: In relation to what the Commission decides to take on for investigation and what goes back, I might refer that to the Commissioner or the Deputy Commissioner to answer that.

Ms HAMILTON: I think it is true that in some years you get a lot more serious matters and in another year you might lower the bar. So something that you would not have investigated in one year in another year you would. It is very hard to talk more generally than that, but we try to feed through enough matters for preliminary investigations that are going to allow us to do a reasonable number of major operations during the year to expose corruption, which is our primary function. In general, we are bound to only look at systemic or serious corrupt conduct—that is the starting point.

Even in a slow year, you would have to be satisfied that it is serious or systemic corrupt conduct. It might be because it involves a lot of money, or a very senior person, or because somebody is in danger, or for some other reason. There is an assessment process and the annual report lists, in general, the sort of factors we take into account, but they are, of necessity, very general. The main thing is we want to make sure that we are investigating, within the limit of our resources, every matter that deserves to be investigated and that is what we try to do each year.

Reverend the Hon. FRED NILE: Just a general question: It is very difficult to get convictions. Would it help if the criminal code was amended to have a new offence of corrupt conduct or something like that?

Ms LATHAM: There is a common law offence of misfeasance or misconduct in public office which is a catch-all. I think there is probably scope and Mr Waldon would probably have a better idea, given the length of time he has been at the Commission. But I think there is probably scope to look at particular kinds of offences that we see reasonably often that more adequately capture the nature of the corrupt conduct than just a general kind of misconduct in public office offence. I know that there are some offences in Queensland that we do not have and there are some issues around things like having secondary employment in circumstances where you are using that secondary employment and the information that you have in your primary employment to advance your economic interests. So there are some issues like that which I think are capable of being addressed by even summary offences that would operate as a much more effective deterrent.

Reverend the Hon. FRED NILE: Could you look at that as to whether you could formulate some suggested recommendations?

Mr WALDON: I can say a couple of things about that. I think the first thing is that lack of prosecutions is not because there is a lack of criminal offences, it is because there is often not sufficient admissible evidence to prove the offences that are there. Most of the corrupt conduct findings that we make—not all, but most—are based on a criminal offence. Some of those end up being prosecuted because there is admissible evidence; many end up not being prosecuted simply because there is not sufficient admissible evidence. Operation Jarek, for example, is a good indicator of that. There were, I think, something like 41 findings of corrupt conduct against individuals in that matter. A lot of those findings were based on the admissions made by the individuals themselves but their admissions were given under section 38 objections and could not be used in prosecution against them.

While there was other evidence available that evidence, in itself, was not sufficient to warrant prosecution. So in the case of most of the people involved in Operation Jarek, for example, we did not even make a recommendation that consideration be given to their prosecution because when we analysed the evidence we knew that there just would not be sufficient admissible evidence to justify prosecution. It was not worthwhile wasting our time or the time of the Director of Public Prosecutions, putting together a brief of evidence when we knew, at the end of the day, that the result would be that there was not sufficient admissible evidence to prosecute.

In relation to the second issue as to whether there might be other offences which we could look at, I think the previous Commissioner did write to the Premier during the course of last year identifying one particular offence which was an offence which I think is in existence in

Queensland and Tasmania. In those States if you are a public official and you have an interest in a private contract which relates to your exercise of public official functions, then there is an offence in Queensland and Tasmania which encompasses that conduct. It is not an offence which exists in New South Wales but we have written to the Government about that and we are awaiting a response.

Reverend the Hon. FRED NILE: Good.

CHAIR: Do you think that in circumstances where that offence was not brought in here you would not get a conviction whereas in a similar circumstance in Queensland you would obtain a conviction?

Mr WALDON: Once again, it depends on the issue of admissible evidence. Prosecutions will only get up if there is sufficient admissible evidence.

Ms HAMILTON: I must say because that offence would be based on the fact that you have an undeclared private interest in the contract, the evidence would be pretty easy because it is up to you to declare the fact that you, as a public official, have an undeclared private interest in a contract, with your public agency. I would think that the evidence possibly would be available, even without admissions from the affected person.

Ms LATHAM: And just from the existence of documents which would demonstrate the existence of the contract and the scope of the work. So you would not necessarily be relying upon the evidence of the accused.

CHAIR: Yes.

Mr THOMAS GEORGE: Commissioner, in the previous session we had the Inspector, the Hon. David Levine, here who indicated that he had not had a chance to meet with you yet but he has met with the Deputy Commissioner. Following on from comments last week, where one of the previous Commissioners had concerns about the joining of the two organisations together, how have you found the process since the Inspector has taken on the overall position? Has it worked well so far? And do you have any concerns about the future?

Ms LATHAM: I think the process works very well. I have absolutely no concerns. Having a common Inspector, an Inspector who presides over the Police Integrity Commission and the Independent Commission Against Corruption, I do not think that is problematic. I think a common Inspector is not necessarily a problem. I have a very good working relationship with David Levine, I have known him for a long time and we both have the same background. So I do not envisage there being any problems at all in our relationship, it has been very open and frank. He has already written to me on a number of occasions just to tell me what the outcome was in relation to a couple of complainants who had been dissatisfied with being told that their complaint could not be investigated because it did not come within the ambit of the Act, or for some other purpose, and who then took their complaint to the Inspector. We have, I think, a very productive working relationship.

Reverend the Hon. FRED NILE: He did indicate that he was having trouble having meetings with you because of your heavy load.

Mr THOMAS GEORGE: He was not saying that you were not available but he had met with the Deputy Commissioner.

Reverend the Hon. FRED NILE: The previous Inspector used to have a monthly meeting with the Commissioner.

Ms LATHAM: I will certainly at the end of this inquiry be having a meeting with him. I have to say after his appointment was announced we had dinner together. I do not know if that counts as a meeting.

Mr THOMAS GEORGE: Who paid?

Ms LATHAM: I think we split the bill.

The Hon. NIALL BLAIR: Good answer. One issue he did raise—and I cannot remember now if he was referring to ICAC's website or the Inspector's website—is there is a perception that when people see the structure they see the Inspector sitting above ICAC, so they think that they will go straight to the top to make a complaint.

Ms LATHAM: Yes, they do.

The Hon. NIALL BLAIR: Is that something that—

Ms LATHAM: I think some people—and I am choosing my words carefully here; Mr White might have a comment about this—people who I would classify as what we used to call in the law vexatious litigants and serial complainants, people who laud their own self-importance in writing to official bodies and I am sure—in fact I know—are the kind of people that we see in the courts as vexatious litigants are exactly the same people that you will see turn up in the office of the Ombudsman and ICAC. They go to everybody.

Mr THOMAS GEORGE: I hadn't noticed!

Reverend the Hon. FRED NILE: They come to us too.

Ms LATHAM: Yes, I know. So I think one of the answers to that question is that that is probably the type of correspondence that he is getting. But I think, generally speaking, most people know that the first port of call is to our Assessments Division.

Mr WHITE: I agree with the Commissioner's comments in relation to that. There is only one occasion that I am aware of since I have been at the Commission since October last year where the Inspector needed to forward a complaint to us because the person had gone to that person in the first instance and, as it turned out, that person had come to us many times before.

The Hon. NIALL BLAIR: It is not an education process that we need, it is particular—

Ms LATHAM: It is an unfortunate fact of life.

Reverend the Hon. FRED NILE: If we change the chart and just have a line going sideways—ICAC, Inspector.

Mr THOMAS GEORGE: But one thing he did raise, and it came out on a number of occasions last week, he said education of the public of an understanding of—

Ms LATHAM: The structure.

Mr THOMAS GEORGE: Yes. He did mention education, and you just touched on it. But, again, that is something that was mentioned a few times last week. Education came out as a need.

Mr WHITE: Where I think it is a bit of a challenge for them is that I think a number of the complainants do believe that they can appeal the decisions that we are making to the Inspector.

CHAIR: In relation to certain sectors, and looking at the level of complaints in relation to local government and also within agencies such as RailCorp, there seem to have been numerous investigations into that agency, including the most recent one. What role do you think ICAC has in promoting cultural change within these organisations?

Ms LATHAM: I think it has a huge role, but I do not think that that necessarily emerges either entirely or even to a significant extent from public inquiries. I think public inquiries have the capacity to shame and expose particular individuals, but I do not think that that is enough to make a cultural change; in fact, I know it is not because there were several, as you say, inquiries into RailCorp. Just in February this year we had yet another one where it was patently obvious that nobody had really given any thought to what constitutes a conflict of interest under the code of conduct. Yet you would have thought from previous inquiries that some shift would have occurred. The fact that it has not really occurred to a significant extent I think is a reflection of the culture within the organisation. Dr Waldersee does a lot of work in that area. But I think what is important is that the work that Dr Waldersee does kind of leverages off the public inquiries. I think the two work in tandem and it is an important process. Much of what he does is built upon the results of the public inquiry.

CHAIR: Will you be doing some work following the recent RailCorp—

Ms LATHAM: Yes.

Dr WALDERSEE: In addition to the training that is reported here we have also put together a very senior executive-level training. The entire top of Roads and Maritime Services recently we went through, including the CEO, and we will offer this to RailCorp—or Sydney Trains now—as well. But it is quite common that following an investigation we will go in and we will conduct training for the organisation and look at what went wrong and talk to the senior management, and we will do that again here.

The Hon. LYNDIA VOLTZ: A lot of those referrals from Transport and Maritime Services are coming from heads of agencies though, are they not? I think the figures in the book, whether they are coming from the public or whether they are coming from heads of agencies, would be as a result of the kind of work you are doing?

Dr WALDERSEE: No. I think that is just the section 11 reporting requirements that heads of agencies have to report to us. That is probably why they are coming through there.

The Hon. LYNDA VOLTZ: Because there seem to be a lot of those section 11s in some agencies as opposed to other agencies—Roads and Maritime Services it was very high in Health. I was wondering if that was because of the work that—

Dr WALDERSEE: Mr White deals primarily with the section 11 reports. He might want to explain the variation.

Reverend the Hon. FRED NILE: You have been conducting visits to these various agencies?

Mr WHITE: Yes. We do regularly visit agencies and agencies regularly visit us. I cannot comment on specifically what occurred during the previous financial year because I was not present. But we do identify where agencies are not reporting to us on a regular basis and we also do identify where agencies might be undergoing a significant amount of change, and that change might result in new structures that might have an impact one way or another on their section 11 reporting. So we are proactive in managing those agencies as well.

Reverend the Hon. FRED NILE: What is the plan that you have for the future now that you have been there a few months? Will there be regular visits to those agencies now?

Mr WHITE: The plan for the future—as you would appreciate there is a very large number of agencies that we interact with—is to look at probably some of the smaller agencies that we probably do not get as many reports proportionately from that we really should, and that includes local government agencies, and engage with those.

Mr WALDON: Mr Chair, could I just raise one thing? In response to the question that was asked about the GIPA applications. I had a look at page 109 of the report and I can confirm that the reason those two applications were refused was because they were for information relating to our investigative or complaint handling functions.

Mr THOMAS GEORGE: On a lighter note: The Commissioner must be relieved that, from the stories we heard last week, we were not here to politically score points.

CHAIR: Thank you very much for coming in today and giving evidence.

Appendix Three – Extracts from Minutes

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 17)

1.33 pm, Thursday 21 November 2013
Room 1153, Parliament House

Members Present

Mr Amery, Mr Coure, Mr Gee, Ms Mihailuk, Revd Nile, Mr Perrottet, Ms Voltz.

Staff in attendance: Rachel Simpson, Dora Oravec, Jenny Whight.

1. Apologies

Apologies were received from Mr Blair, Mr George, Mr Owen and Mr Rees.

2. Confirmation of Minutes

Resolved, on the motion of Mr Gee, seconded Reverend Nile: That the minutes of the deliberative meeting of 31 October 2013 be confirmed.

3. ***

4. Forward planning - 2012-2013 annual report reviews – ICAC and Inspector of the ICAC

The Committee noted the indicative timeline for the reviews of the 2012-2013 annual reports of the ICAC and Inspector of the ICAC. Discussion ensued. The Committee agreed that given the current vacancy in the position of the Inspector of the ICAC, questions on notice would be sent to the Inspector once the position was filled.

Resolved, on the motion of Mr Amery, seconded Mr Gee: That the Committee commence its reviews of the ICAC and ICAC Inspector's 2012-2013 annual reports and approve the indicative timeline for the annual report reviews.

5. ***

6. Next meeting

The Committee adjourned at 1.42pm until a date and time to be determined.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 18)

3.01pm, Thursday 23 January 2014
Room 1153, Parliament House

Members Present

Mr Amery, Mr Blair (via telephone), Mr Coure, Mr Gee, Mr George, Ms Mihailuk, Revd Nile, Mr Perrottet.

Staff in attendance: Carly Maxwell, Dora Oravec, Mohini Mehta.

1. Apologies

Apologies were received from Mr Owen, Mr Rees and Ms Voltz.

2. ***

3. Confirmation of Minutes

Resolved, on the motion of Mr Coure, seconded Reverend Nile: That the minutes of meeting no 17 held on 21 November 2013 be confirmed.

4. ***

5. ***

6. 2012-2013 annual report reviews -ICAC and the Inspector of the ICAC

The Chair advised members that the ICAC were sent questions on notice on 10 January, with responses due by 28 February. Questions for the public hearing, to be held in the Macquarie Room on Friday 28 March, will be prepared following the receipt of the responses.

The Chair noted that questions on notice will not be sent to the ICAC Inspector due to the vacancy in the office and the timing of the hearing shortly after the new officeholder commences his term. Indicative questions will be prepared in advance of the hearing and circulated. Members noted the draft notice of hearing for Friday 28 March.

7. ***

8. Next meeting

The Committee agreed to meet on Thursday March 6, subject to members' availability.
The Committee adjourned at 3.50pm until a date and time to be confirmed.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 19)

1.32 pm, Thursday 6 March 2014
Room 1153, Parliament House

Members Present

Mr Amery, Mr Blair, Mr Coure, Mr Gee, Mr George, Ms Mihailuk, Mr Owen and Mr Perrottet.

Staff in attendance: Carly Maxwell, Dora Oravec, Jenny Whight and Mohini Mehta.

1. Apologies

Apologies were received from Revd Nile, Mr Rees and Ms Voltz.

2. Confirmation of Minutes

Resolved, on the motion of Mr Coure, seconded Mr Amery: That the minutes of the deliberative meeting held on 23 January 2014 be confirmed.

3. ***

4. ***

5. 2012-2013 annual report reviews – ICAC and the Inspector of the ICAC

5.1 Public hearing arrangements

The Committee noted a revised notice of hearing and the new venue of the State Library for the public hearing on Friday March 28.

5.2 Answers to question on notice from ICAC

The Committee noted answers to questions on notice from the ICAC.

6. ***

7. ***

8. Next meeting

The Committee adjourned at 1.48pm until Friday 21 March 2014.

Minutes of proceedings of the Committee on the Independent Commission Against Corruption (No 20)

10.07am, Friday 28 March 2014
Jean Garling Anteroom
State Library of New South Wales

Members Present

Mr Amery, Mr Blair, Mr Gee, Mr George, Ms Mihailuk, Reverend Nile, Mr Perrottet and Ms Voltz.

Staff in attendance: Carly Maxwell, Dora Oravec, Jenny Whight and Mohini Mehta.

1. Apologies

Apologies were received from Mr Coure, Mr Owen and Mr Rees.

2. Deliberative meeting

2.1 Confirmation of minutes

Resolved, on the motion of Mr Amery, seconded by Mr Gee: That the minutes of the deliberative meeting of 6 March 2014 be confirmed.

2.2 Media orders

Resolved, on the motion of Ms Voltz, seconded by Mr Gee: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 28 March 2014 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

2.3 Publication orders

Resolved, on the motion of Ms Voltz, seconded by Mr Gee: That the answers to question on notice from the ICAC be authorised for publication and uploaded on the Committee's website.

Resolved, on the motion of Ms Voltz, seconded by Mr Gee: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

2.4 Answers to questions taken on notice

Resolved, on the motion of Reverend Nile, seconded by Ms Voltz: That the

witnesses be requested to return answers to questions taken on notice and supplementary questions within 2 weeks of the date on which the questions are forwarded to the witnesses.

3. Public hearing

The press and the public were admitted. The Chair opened the public hearing at 10.15am and after welcoming the witnesses gave a short opening address.

The Hon. David Levine, Inspector, Office of the Inspector of the Independent Commission Against Corruption (ICAC) and Ms Felicity Cannon, Office Manager of the Inspector of the ICAC were affirmed and examined.

The Inspector made a brief opening statement.

The Chair commenced questioning of the witnesses followed by other members of the Committee. Evidence concluded the witnesses withdrew.

The Committee took a short adjournment at 10.50am and resumed the public hearing at 11.06am.

The Hon. Megan Latham, Commissioner, Independent Commission Against Corruption, Ms Sharon Loder, Executive Director, Investigation Division, Independent Commission Against Corruption and Dr Robert Waldersee, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, affirmed and examined. Ms Theresa Hamilton, Deputy Commissioner, Independent Commission Against Corruption, Mr Roy Waldon, Solicitor to the Commission and Executive Director, Legal Division, Independent Commission Against Corruption, Mr Andrew Koureas, Executive Director, Corporate Services Division, Independent Commission Against Corruption, and Mr Trent White, Manager, Assessments Division, Independent Commission Against Corruption, sworn and examined.

The Commissioner made a brief opening statement.

The Chair commenced questioning the witnesses, followed by other members of the Committee. Evidence concluded, the witnesses and the public withdrew.

The public hearing concluded at 12.37pm.

4. ***

The Committee adjourned at 12.45pm until a date and time to be determined.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 22)

1.05 pm, Wednesday 28 May 2014

Room 1254, Parliament House

Members Present

Mr Amery, Mr Blair, Mr Coure, Mr Gee, Ms Mihailuk, Revd Nile, Mr Smith and Ms Voltz

Staff in attendance: Carly Maxwell, Mohini Mehta, Jenny Whight.

1. Apologies

Apologies were received from Mr George, Mr Owen and Mr Rees.

2. Confirmation of Minutes

Resolved, on the motion of Revd Nile, seconded Mr Gee: That the minutes of the deliberative meeting held on 28 March 2014 be confirmed.

Resolved, on the motion of Revd Nile, seconded Mr Coure: That the minutes of the deliberative meeting held on 16 May 2014 be confirmed.

3. 2012-2013 annual report reviews – ICAC and the Inspector of the ICAC

3.1 Answers to questions taken on notice by ICAC at March 28 public hearing

The Committee noted the answer to the question taken on notice by Mr Waldon. Discussion ensued. Resolved, on the motion of Mr Blair, seconded Mr Coure: that the answer to the question on notice be treated as confidential and that the Committee write to the ICAC to request that their answer be redrafted in such a way that it could be made public.

The Committee noted that an answer to the question taken on notice by Dr Waldersee had not yet been received.

4. ***

5. Next Meeting

The Committee adjourned at 1.48 pm until a date and time to be determined.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 23)

1.19pm, Thursday 19 June 2014

Macquarie Room, Parliament House

Members present

Mr Smith, Mr Amery, Mr Coure, Mr Gee, Mr Blair, Mr Rees, Ms Mihailuk, Revd Nile.

Staff in attendance: Carly Maxwell, Dora Oravec, Jenny Whight, Mohini Mehta.

Apologies were received from Mr George, Mr Owen and Ms Voltz.

1. ***

2. Deliberative meeting

Mr Blair and Ms Mihailuk left the meeting.

2.1 Confirmation of minutes

Resolved, on the motion of Mr Coure, seconded Reverend Nile: That the minutes of meeting no 22 be confirmed.

2.2 ***

2.3 Annual Report Reviews – ICAC and ICAC Inspector

Publication of answers to questions taken on notice by the ICAC

Resolved, on the motion of Mr Amery, seconded Reverend Nile: That the answers to questions taken on notice by Mr Waldon and Dr Waldersee be authorised for publication and uploaded on the Committee's website.

3. Next meeting

The Committee adjourned at 2.08pm until a date and time to be determined.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 24)

1.07pm, Thursday 18 September 2014
Room 1153, Parliament House

Members present

Mr Smith, Mr Amery, Mr Blair, Mr Holstein, Mr Gee, Mr George, Mr Rees, Ms Mihailuk, Revd Nile, Ms Voltz.

Staff in attendance: Helen Minnican, Dora Oravecz, Jenny Whight, Mohini Mehta.

1. Apology

An apology was received from Mr Coure.

2. ***

3. Confirmation of minutes

Resolved, on the motion of Mr Rees, seconded Mr Gee: That the minutes of the meeting held on 19 June be confirmed.

4. ***

5. 2012-2013 Annual reports of the ICAC and ICAC Inspector- consideration of Chair's draft report

The Chair spoke to the draft report, previously circulated.

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

Resolved, on the motion of Mr George, seconded Mr Rees, that the Chair and secretariat be permitted to correct stylistic, typographical and grammatical errors.

Resolved, on the motion of Mr George, seconded Mr Blair, that, once tabled, the report be posted on the Committee's website.

6. ***

7. Next meeting

The Committee adjourned at 1.37pm until a date and time to be determined.