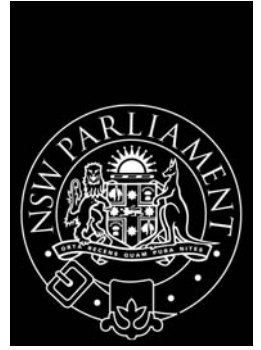


PARLIAMENT OF NEW SOUTH WALES



Committee on the Independent Commission Against Corruption

EXAMINATION OF THE 2003 - 2004 ANNUAL REPORT OF
THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Incorporating edited transcripts of evidence

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly. Committee on the Independent Commission Against Corruption

Examination of the 2003-2004 annual report of the Independent Commission Against Corruption, Committee on the Independent Commission Against Corruption, Parliament NSW Legislative Assembly. [Sydney, NSW]: The Committee, 2005, 101p; 30cm

Chair: Hon. Kim Yeadon MP

"December 2005"

ISBN 0 7313 5186 X

1. ICAC Committee—New South Wales
 2. Examination of the 2003 - 2004 annual report of the Independent Commission Against Corruption (July 2005)
- I Title.
- II Series: New South Wales. Parliament. Legislative Assembly. Committee on the Independent Commission Against Corruption Report; no. 5/53

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MEMBERSHIP & STAFF

Chairman	The Hon. Kim Yeadon MP, Member for Granville
Members	Ms Kristina Keneally MP, Member for Heffron
	Mr John Mills MP, Member for Wallsend (Chairman of Committees)
	Mr Andrew Tink MP, Member for Epping
	Mr Paul Pearce MP, Member for Coogee
	Mr John Price MP, Member for Maitland (Deputy Speaker)
	Mr Anthony Roberts, Member for Lane Cove
	Mr John Turner MP, Member for Myall Lakes
	The Hon. Jenny Gardiner MLC
	The Hon. Peter Primrose MLC (Vice Chairman)
	Reverend the Hon Fred Nile MLC
Staff	Mr Ian Faulks, Committee Manager
	Mr Jim Jefferis, Senior Committee Officer
	Ms Annette Phelps, Committee Officer
	Ms Millie Yeoh, Assistant Committee Officer
Contact Details	ICAC Committee Parliament House Macquarie Street Sydney NSW 2000
Telephone	02 9230 2161
Facsimile	02 9230 3309
E-mail	icac@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au

TERMS OF REFERENCE

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

CHAIRMAN'S FOREWORD

The annual report of the Independent Commission Against Corruption for 2003-2004 reflects an active and productive period of work by the Commission. This report is the last report to be presented to the Parliament by Commissioner Moss who completed her five-year term in November 2004. It is a pleasure, on behalf of my Committee, to thank her for her dedicated service. I would also, personally, like to commend her for the exemplary performance of her duties.

The Independent Commission Against Corruption advised that there was an unprecedented need for its services during the review period including a strong demand for corruption prevention and education services. During 2003-2004 it published an extensive number of investigation reports and corruption prevention and research publications and it also further developed co-operative arrangements with peer agencies.

Although the Independent Commission Against Corruption believes there were no significant low points regarding corruption prevention it advises that its investigations and the increasing number of complaints received during 2003-2004 show that corrupt conduct and system deficiencies continue to be issues requiring attention by the Commission and relevant public sector agencies.

At the international level the Independent Commission Against Corruption reports a continued interest in measuring the effectiveness of integrity policy initiatives as evidenced by Australia's study, presented at the 2004 Organisation for Economic Cooperation and Development (OECD) Public Governance Committee Symposium, on how to assess measures for promoting integrity and preventing corruption in the public service.

In her Foreword, Commissioner Moss reports that although the number and complexity of matters dealt with in 2003-2004 tested the Independent Commission Against Corruption's capacities it was able to manage the substantial workload efficiently and effectively. Enhancements made in 2003-2004 to the Commission's complaint recording and case management system contributed to the efficient handling of the increased workload. The Commissioner concluded that the Commission now has the skills and the commitment needed to meet its objectives and fulfil the expectations of the community. However, she warns that in the context of increasing demand for the Commission's services that the organisation has reached the limit in terms of the efficiencies it can introduce without compromising its functions.

In the course of his evidence, Commissioner Cripps said his investigations supported the view of his predecessor and that the budget position was not good largely because of "blown out hearing days" and the cost of transcripts and interpreters. This has led to an effort by the Commissioner to make fuller use of Independent Commission Against Corruption staff in connection with inquiries.

This situation indicates the necessity for a careful appraisal of the Independent Commission Against Corruption's financial needs. The ICAC Committee in its recommendations has

therefore asked the Commission to conduct a careful audit of expected expenditure needs for the financial years 2005-2006 and 2006-2007.

One matter of current concern that exacerbates this financial position is that approximately fifty percent of the Independent Commission Against Corruption's capital expenditure and two percent of its recurrent expenditure for 2005-2006 has been allocated to the establishment and operations of the Office of the Inspector of the Independent Commission Against Corruption. This matter has been considered by Commissioner Cripps in the Commission's annual report for 2004-2005.

The annual report states that in 2003-2004 the Independent Commission Against Corruption received 2,886 matters of which:

- 901 were categorised as section 10 complaints, that is, complaints involving an allegation of corrupt conduct;
- 306 were categorised as protected disclosures; and
- 677 as section 11 reports from principal officers.

The annual report states that the Assessment Panel, which is an internal panel of the Commission, has the responsibility for determining what action, if any, should be taken in regard to the matters received.

The role of the Operations Review Committee in respect of these matters was unfortunately not clarified in the course of the recent McClintock review. Section 59(1) of the Independent Commission Against Corruption Act states that a function of the Operations Review Committee is to advise the Commissioner whether the Commission should investigate a complaint or discontinue the investigation of a complaint. Although the Operations Review Committee has a say in proposals to discontinue investigations the statutory function of advising whether a complaint should be investigated by the Commission has apparently been taken over by the internal panel of the Commission so that the Commission in effect becomes its own adviser.

This matter has some history which need not be outlined here except to say that it remains a matter that sits uncomfortably in the context of mandatory procedures meant to be followed by the Independent Commission Against Corruption and the Operations Review committee.

The Independent Commission Against Corruption's future investigations will have additional direction as a result of recent changes to the Independent Commission Against Corruption Act requiring the Commission, as far as practicable, to direct its attention to serious and systemic corruption.

The questionable efficiency of the Operations Review Committee remains of concern to the ICAC Committee. In the course of his evidence Commissioner Cripps stated he is applying himself to this issue. It would seem appropriate that the Inspector of the Independent Commission Against Corruption should also turn his attention to ways of improving the effectiveness and appropriateness of the procedures governing the Operations Review Committee and the ICAC Committee recommends this be done. The ICAC Committee also considers it would be appropriate for the Inspector to report his findings and recommendations within six months to Parliament.

Another matter that the ICAC Committee believes will need oversight by the Inspector of the Independent Commission Against Corruption is the relationship between the Independent Commission Against Corruption and the Office of the Director of Public Prosecutions. In the course of the examination of the annual report on 6 April 2005 Commissioner Cripps advised the ICAC Committee that he had become aware of some tension between the Commission and the Office of the Director of Public Prosecutions concerning the implementation of Commission recommendations. The Commissioner says he and Mr Cowdery have agreed to set up a committee, which they are in the process of doing, to revise the Memorandum of Understanding between their organisations.

This action is being taken to address the repeated concern of the ICAC Committee about the need to remedy inordinate delays between the date briefs are received from the Independent Commission Against Corruption and the date a decision is made by the Office of the Director of Public Prosecutions on whether or not to initiate proceedings. Recommendation No 3 of the ICAC Committee's report relates to this matter.

Delays at the investigation stage are the subject of recent changes to section 76 of the Independent Commission Against Corruption Act which oblige the Independent Commission Against Corruption to include in future annual reports additional information about the time taken to deal with complaints. This information will be used by the Inspector of the Independent Commission Against Corruption to examine issues of delay in the completion of investigations. The average turn-around time—defined as the time from receipt of a matter to the provision of information to the complainant on the Commission's decision—was 51 days in 2003–2004.

In this report the ICAC Committee makes some observations about improving the governance system for Independent Commission Against Corruption investigations and inquiries. Currently no audit is made of the ongoing costs of investigations and hearings although this is the area that Commissioner Cripps says has been the cause of the budget 'blow out'. The Committee supports the putting in place of activity-based costings, preferably on a monthly basis, so as to provide a more complete picture for the purpose of an operational review.

In Report No. 3/53 of September 2004 the ICAC Committee recommended that the Cabinet Office give attention to finalising the revised Ministerial Code of Conduct. In the course of the public examination of Independent Commission Against Corruption officials on 23 February 2004 and again on 6 April 2005 it was reported that the Ministerial Code of Conduct had not yet been prescribed or adopted for the purpose of the Independent Commission Against Corruption Act. The Commissioner has previously stated that finalising the review of the Ministerial Code has a bearing on the Commission's capacity to make findings of corrupt conduct having reference to s.9 of the Independent Commission Against Corruption Act. The ICAC Committee also recommends to the Cabinet Office that the Ministerial Code of Conduct be published in an appropriate form so that its contents are known and available.

In the course of the public examination on 6 April 2005 the Independent Commission Against Corruption reported to the ICAC Committee it had completed a review of performance measures and it was able to confirm that a comprehensive suite of key performance indicators are to be reported upon in the 2004-05 annual report. It also confirmed it had in place appropriate data collection systems for this purpose. The ICAC Committee will be

closely examining this matter in the context of the next annual report to see if it has addressed one of the major current weaknesses in performance reporting by the Commission.

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

LIST OF RECOMMENDATIONS

RECOMMENDATION NO 1

In Report No. 3/53 of September 2004 the Committee recommended that the Cabinet Office give attention to finalising the revised Ministerial Code of Conduct. In the course of the public examination of ICAC officials on 23 February 2004 and again on 6 April 2005 it was reported that the Ministerial Code of Conduct had not yet been prescribed or adopted for the purpose of the Independent Commission Against Corruption Act. The Commissioner of the ICAC has previously stated that finalising the review of the Ministerial Code has a bearing on the Commission's capacity to make findings of corrupt conduct having reference to s.9 of the Independent Commission Against Corruption Act. The Committee also recommends to the Cabinet Office that the Ministerial Code of Conduct be published in an appropriate form so that its contents are known and available.

RECOMMENDATION NO 2

The examination of the Annual Report of 2003-2004 identified a need for more detailed statistics on complaints. The Committee recommends that annual reports of the Independent Commission Against Corruption should in future show a breakdown of complaints so as to disclose the type of complaint, the number received by each public sector agency and the number of those complaints investigated.

RECOMMENDATION NO 3

In Report No. 3/53 of September 2004 the Committee recommended that the Independent Commission Against Corruption hold discussions with the Office of the Director of Public Prosecutions to remedy inordinate delays between the date briefs are received and the date a decision is made on whether or not to initiate proceedings. The Committee notes Commissioner Cripps has expeditiously acted on this recommendation and that he and the Director of Public Prosecutions are currently revising the Memorandum of Understanding between the Commission and the Office of the Director of Public Prosecutions. In view of the importance of this matter the Committee recommends that the Inspector of the Independent Commission Against Corruption monitor and assess the impact of any new arrangements between Commission and the Office of the Director of Public Prosecutions and report to Parliament within six months on whether they have improved or are likely to improve operational effectiveness.

RECOMMENDATION NO 4

The Committee recommends that the Inspector of the Independent Commission Against Corruption examine ways of improving the effectiveness and appropriateness of the procedures governing the Operations Review Committee so that it can exercise a more productive advisory role. The Operations Review Committee and the Commissioner should be parties to that examination. The Committee also considers it would be appropriate for the Inspector to report his recommendations within 6 months to Parliament.

RECOMMENDATION 5

To assist the Committee in its examination of the Annual Report 2003-2004 the Committee obtained independent advice from Mr John Chan-Sew, a specialist financial and economic consultant. Mr Chan-Sew concluded that there was little noticeable improvement in the quality of performance reporting since the 2001-2002 Annual Report. He said that a significant part of the development work carried out in recent years on key performance indicators had not been reflected in the 2003-2004 Annual Report. Mr Pritchard, Deputy Commissioner, in his evidence confirmed that a comprehensive suite of key performance indicators are to be reported on in the 2004-2005 annual report. The Committee recommends that the Independent Commission Against Corruption continue to give its attention to this undertaking. The Commission should also address other concerns detailed in the report of Mr John Chan-Sew set out in Appendix 1. The Commission should, in due course, advise the Committee of the action proposed to be taken in response to those other concerns.

RECOMMENDATION 6

In her Foreword Commissioner Moss says that in the context of increasing demand for Independent Commission Against Corruption's services that the organisation has reached the limit in terms of the efficiencies it can introduce without compromising its functions. In the course of his evidence Commissioner Cripps said his investigations supported the view of his predecessor and that the budget position was not good largely because of "blown out hearing days" and the cost of transcripts and interpreters. So as to analyse the position, the Committee recommends that the Commission prepare, for the consideration of the Committee, a detailed audit of expected expenditure needs for the financial years 2005-2006 and 2006-2007.

CHAPTER ONE - INTRODUCTORY REMARKS

It is a function of the Joint Parliamentary Committee on the Independent Commission Against Corruption (the ICAC Committee) to carry out an examination of each annual report of the Independent Commission Against Corruption and report to Parliament upon it in accordance with section 64(1)(c) of the Independent Commission Against Corruption Act.

This report provides a record of the examination of the annual report of the Independent Commission Against Corruption for the 2003-2004 financial year.

The ICAC Committee had the benefit of a detailed and careful submission from the the Independent Commission Against Corruption in response to a number of questions on notice relating to the 2003-2004 annual report. Many of these written responses were the subject of further questioning by Committee members in the course of the Committee's public examination of the annual report, or in a series of supplementary questions forwarded to the Commission for further comment and advice.

This report comprises an edited record of the written documentation forwarded by the Independent Commission Against Corruption and the examination of witnesses representing the Commission at a public hearing on Wednesday 6 April 2005.

CHAPTER TWO – GENERAL MEETING WITH THE COMMISSIONER TO EXAMINE THE 2003-2004 ANNUAL REPORT

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

Question 1: Positive events during 2003-2004

QUESTION: *What were the positive events – perhaps better described as the memorable events – of 2003-04 regarding corrupt activity and corruption prevention in New South Wales?*

RESPONSE: In 2003-2004 we dealt with unprecedented demand for our services, undertook investigations and corruption prevention work in a wide range of highly complex areas and maintained a high rate of productivity. There were a large number of challenging investigations into highly specialised areas of public sector work and complex public-private sector interactions; and a strong demand for our corruption prevention and education services.

During the year, we:

- received and assessed 2,886 matters from public officials and members of the community, involving 3,550 specific corruption allegations (an increase of 37 percent on the previous year)
- conducted a total of 395 preliminary enquiries and preliminary investigations conducted 48 investigations, including 33 days of public hearings
- provided responses to 375 requests for corruption prevention advice
- published ten reports on major investigations, containing a total of 92 specific recommendations for agencies to address identified systems weaknesses and improve their corruption resistance.

The number and complexity of matters we dealt with in 2003-2004 tested our capacities but we were able to manage the very substantial workload efficiently and effectively. In doing so we made full use of the skills and resources introduced into the organisation over the past five years.

Our investigations into the introduction of contraband into the High-Risk Management Unit at Goulburn Correctional Centre and the Metropolitan Remand and Reception Centre, Silverwater not only uncovered corrupt conduct by specific correctional officers, but also highlighted deficiencies in the implementation of policies and procedures that created opportunities for the corrupt conduct. Our specific corruption prevention recommendations should, if fully implemented, reduce opportunities for the introduction of mobile phones, drugs and other contraband into New South Wales prisons.

Our investigation into safety certification and training in the New South Wales construction industry not only uncovered extensive corrupt conduct by a number of accredited assessors, but also highlighted the need for proper monitoring and auditing of private contractors providing services to public sector organisations. The corrupt conduct uncovered in this investigation has serious ramifications for workplace safety throughout the New South Wales construction industry.

As the New South Wales public sector and the wider community adopt new roles, functions and processes, new forms of corruption and corruption risks are emerging. We also continue to deal with traditional high-risk areas such as procurement and tendering and regulatory functions.

Recognising the issues arising from the emergence of public-private partnerships we produced a range of electronic and print resources, including *Developing a statement of business ethics* to help public sector organisations manage business relationships with the private sector.

We delivered Stage 2 of our campaign to raise awareness of corruption and the role of the Independent Commission Against Corruption among non-English speaking background communities, and we continued our Rural and Regional Outreach Strategy with information and education programs delivered in the New England region and Mudgee. Our activities in New England included the delivery of a training session to local Aboriginal land councils.

In 2003-2004 we further developed our cooperative relationships with peer agencies, including a joint project with Queensland's Crime and Misconduct Commission to develop guidelines and a practical toolkit for managing conflicts of interest.

We were also a participant in the National Identity Crime Taskforce (ICTF) and collaborated with the Australian Federal Police, Australian Crime Commission, Customs, AUSTRAC, and state police and investigative agencies to provide a coordinated approach and rapid response to the new and emerging manifestations of identity crime.

Question 2: Low points during 2003-2004

QUESTION: *What were the low points during 2003-04 regarding corrupt activity and corruption prevention in New South Wales?*

RESPONSE: During 2003-2004 there were no significant low points regarding corrupt activity and corruption prevention in New South Wales. However, investigations conducted and the increasing number of complaints received during 2003-2004 show that corrupt conduct and system deficiencies continue to be issues requiring attention and action from both the Independent Commission Against Corruption and the relevant public sector agencies.

Question 3: Major political, research and social issues debated in the public sector 2003-2004

QUESTION: *Based on monitoring literature and policy development activities in Australia and overseas, could the Independent Commission Against Corruption indicate what were the major political, research and social issues concerning corrupt activity and corruption prevention involving the public sector that were debated during 2003-2004?*

RESPONSE: There was less activity in the international arena than 2002-03 because some of the usual international meetings (such as the biennial International Anti-Corruption Conference) were not held. Nevertheless some policy themes are apparent in the activities of governments and international organisations. As in previous years, these have built on themes that have been developing for several years in the anti-corruption sector.

Last year we identified the following themes in corruption prevention policy development and activities:

- policy initiatives affecting relationships between the private and public sectors
- improving the accountability of public officials,
- internationalising anticorruption standards and processes, and
- developing tools to measure policy effectiveness.

The range of issues that dominated policy activities in public sector corruption prevention during 2003-2004 continued to build on these themes particularly in the work of international organisations.

The perceived need to address corruption risks in public sector-private sector relationships was evident again this year in the work of the Organisation for Economic Cooperation and Development (OECD) Governance program. The previous year's work on conflicts of interest was finalised with the publication of the Organisation for Economic Cooperation and Development's *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences* in January 2004. This work will be followed by a focus on corruption in public procurement, which will be the subject of a symposium of the Organisation for Economic Cooperation and Development Global Forum on Governance in late November 2004.

Specific policy initiatives to improve the accountability of public officials were evident at national and sub-national levels of government. In Australia, the Organisation for Economic Cooperation and Development Guidelines on Managing Conflicts of Interest in the Public Service were the basis of a publication, *Managing Conflicts of Interest in the Public Sector: Guidelines and Toolkit*, released by the Independent Commission Against Corruption and the Queensland Crime and Misconduct Commission in November 2004.

The need for an anti-corruption agency at the national level was canvassed following allegations concerning officers of the Australian Crime Commission and the former National Crime Authority, with the Commonwealth Government announcing in June

2004 that it would introduce an anti-corruption agency with jurisdiction over federal law enforcement bodies.

The Victorian Government also considered the anti-corruption agency model and rejected it in favour of enhancing the Ombudsman's powers to deal with police corruption in that state.

Political corruption was the focus of the 2004 Global Corruption Report published by the non-government organisation, Transparency International, with recommendations about campaign financing, regulation of conflicts of interest and asset disclosures, increased international engagement with governments of developing countries and protection of media standards and independence.

The trend to internationalise methods for reducing corruption by promoting models of good governance is an ongoing objective of international organisations, such as the World Bank, that are concerned with corruption prevention. The impetus for the approach is driven largely by concerns about waste in international aid and development assistance.

Good governance models emphasise the development of democratic and civil society institutions (for example, a free press, non-government organisations, public interest law and advocacy) and advocate corruption prevention methods that integrate a range of institutional and policy measures. The prevailing model is the national integrity system approach that is currently being used by Transparency International to measure the integrity of nations. The Australian National Integrity Systems Report (dealing with the Commonwealth level only) was released at the Transparency International 2004 Annual General Meeting in Nairobi in October.

In a three-year Australian Research Council-funded project (2002-04), Griffith University's Key Centre for Ethics Law Justice & Governance and Transparency International Australia have been working on a National Integrity System Assessment (NISA) for Australia, which identifies and describes those institutions with an integrity and/or anti-corruption focus at the Commonwealth, state and local levels. A draft report was released in November 2004 (and is available at <http://www.griffith.edu.au/centre/kceljag/nisa/draftreport.pdf>).

An integrated approach to preventing corruption is also taken by the Asia-Pacific Anti-Corruption Action Plan, which was developed by the Asian Development Bank in conjunction with the Organisation for Economic Cooperation and Development in 2001. The Plan was endorsed by Australia in 2003 and commits signatory countries to a common set of anti-corruption policy principles and standards.

Finally, there has been a continued interest in measuring the effectiveness of integrity policy initiatives. In 2004 Australia contributed a study presented at an Organisation for Economic Cooperation and Development Public Governance Committee symposium on "How to Assess Measures for Promoting Integrity and Preventing Corruption in the Public Service" which also evaluated case studies from the United Kingdom, Finland, France and Korea. This topic is expected to be the subject of ongoing work in the light of increased expenditure by developed countries governance projects in the developing world.

Question 4: Research projects 2003-2004

QUESTION: *What were the research projects commenced, completed or otherwise in progress in 2003-2004 commissioned by or involving the Independent Commission Against Corruption which concerned issues of corrupt conduct or which had major implications for corruption investigation or corruption prevention, organised under subcategories of:*

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

the project manager, and consultant (if any).

RESPONSE:

Community Attitudes Survey				
Terms of Reference	Background	Status	Resources Required	Project Manager
This project was a survey of a sample of the NSW community to ascertain: <ul style="list-style-type: none"> • perceptions of corruption and its effects; • attitudes to reporting corruption; • awareness of the ICAC; and • perceptions of the ICAC. 	The survey has been conducted periodically since 1993. A core set of questions is re-administered each time the survey is conducted and allows a comparative analysis of previous surveys.	Research findings were published December 2003.	One ICAC Senior Research Officer and a Senior Corruption Prevention Officer designed, analysed and prepared the report detailing the results. The ICAC spent \$19,800 on questionnaire testing, sample selection and data collection by consultants, AMR Interactive.	Executive Director, (Corruption Prevention, Education and Research Division).

Profiling the NSW Public Sector: Follow up				
Terms of Reference	Background	Status	Resources Required	Project Manager
<p>The project set out to assess implementation progress in the NSW public sector in relation to five key areas of corruption prevention strategies:</p> <ul style="list-style-type: none"> • corruption risk management • code of conduct; • internal audit; • gifts and benefits; and • internal investigation. 	<p>In 2001, the ICAC undertook a major research project to develop a snapshot of corruption risks facing NSW public sector organisations and corruption resistance strategies they had in place to address these risks. The final report on the project was published in January 2003.</p> <p>In mid- 2003 it was considered appropriate and timely to assess in a limited way whether implementation of key policies and procedures has progressed since the 2001 survey.</p>	<p>A draft report is awaiting approval prior to publication.</p>	<p>One ICAC Senior Research Officer.</p>	<p>Manager, Research and Prevention, (Corruption Prevention, Education and Research Division).</p>

Sponsorship Project				
Terms of Reference	Background	Status	Resources Required	Project Manager
<p>This research aimed to collect information about:</p> <ul style="list-style-type: none"> the nature and extent of sponsorship of and by public sector organisations; and the corruption risks organisations perceive to be associated with sponsorship and the strategies they have in place to manage these risks <p>The research was focussed at assessing the current relevance and value of the ICAC publication <i>And Now a Word from our Sponsors</i>, as well as developing specifications for an ideal updated publication to address this topic.</p>	<p>As part of an ongoing review of all ICAC corruption prevention publications, the booklet <i>And Now a Word from our Sponsors</i> (1995) was reviewed and found to be out of date and in need of replacement. Research was required to inform development of new sponsorship guidelines.</p>	<p>Research has been collected from a sample of organisations, selected to ensure a broad cross section of the public sector in terms of size, type, functions and geographical spread.</p> <p>The research will be used to inform replacement of the publication <i>And Now a Word from our Sponsors</i>.</p>	<p>One ICAC Senior Research Officer.</p>	<p>Manager, Research and Prevention, (Corruption Prevention, Education and Research Division).</p>

Non-English Speaking Background (NESB) Campaign				
Terms of Reference	Background	Status	Resources Required	Project Manager
<p>The evaluation of the NESB Campaign addressed within 12 language communities:</p> <ul style="list-style-type: none"> • campaign reach; • impact in relation to understanding that bribery is a form of corruption; • impact in relation to reporting of corruption; and • impact in relation to awareness of the ICAC. 	<p>The ICAC NESB Campaign aimed to:</p> <ul style="list-style-type: none"> • increase understanding that bribery is a form of corruption; • promote the reporting of corruption; and • increase awareness of the ICAC. <p>The Campaign addressed 25 language communities through community language radio.</p> <p>Campaign components included:</p> <ul style="list-style-type: none"> • three mini-drama style advertisements; • community service announcements; • in-language interviews for some communities; and • some supporting print materials including a brochure and posters. 	<p>This research project has been completed.</p>	<p>One ICAC Senior Research Officer</p> <p>\$30,448 paid to consultants, Cultural Partners Australia, for questionnaire design, sample recruitment, data collection.</p>	<p>Manager, Research and Prevention, (Corruption Prevention, Education and Research Division).</p>

Identify Fraud and NSW Public Sector Project				
Terms of Reference	Background	Status	Resources Required	Project Manager
<p>The project set out to:</p> <ul style="list-style-type: none"> • identify the systems and process vulnerabilities in NSW public sector agencies that may enable the creation and issue of fraudulent or unlawful identity documents; • identify opportunities for targeted investigations; and • produce guidelines to assist agencies to identify and manage related corruption risks. 	<p>Many forms of identification are generated by State based agencies and organisations. Identity fraud has always been an enabler of crime that has recently taken on greater significance due to the current focus on organised crime and counter-terrorism.</p> <p>The Australian Crime Commission's Identity Fraud Register indicates that the majority of recorded fraudulent identities are based on driver's licence identification. Fraudulent identities can be generated by forgery, theft, corruption or poor internal practices within an issuing agency.</p> <p>While there are a number of State and Commonwealth agencies examining identity fraud and identity theft from various perspectives, no agency has taken a whole-of-sector approach, examining the individual systems and processes of issuing agencies and determining the scope for identity fraud brought about by issuing agency interrelationships.</p>	<p>A draft publication has been prepared and is awaiting approval prior to publication, planned for the first quarter of 2005.</p>	<p>One ICAC Senior Corruption Prevention Officer and one Analyst.</p>	<p>Manager, Research and Prevention, (Corruption Prevention, Education and Research Division).</p>

Question 5: Bibliographic details of Independent Commission against Corruption documents published in 2003-2004

QUESTION: *Please provide the bibliographic details of monographs, reports, chapters, journal articles, or pamphlets on corrupt conduct, or which had major implications for corruption investigation or corruption prevention, that were written by officers of the Independent Commission Against Corruption or consultants contracted to the Independent Commission Against Corruption that were published in 2003-04.*

RESPONSE:

Investigation reports:

July 2003	Report on an investigation into the conduct of The Hon. Malcolm Jones MLC
August 2003	Report on investigation into the conduct of certain officers of the New South Wales Grains Board
September 2003	Report on investigation into conduct of the Rail Infrastructure Corporation and others in relation to Menangle Bridge
September 2003	Report on investigation into the theft of zoological specimens from the Australian Museum between 1997 and 2002 and related matters
September 2003	Report on investigation into the conduct of an officer of Integral Energy
November 2003	Report on investigation into certain applications made to the Department of Fair Trading for building and trade licences
December 2003	Report on investigation into Mr Glen Oakley's use of false academic qualifications
February 2004	Investigation into the alleged misreporting of hospital waiting list data (section 14(2) report)
February 2004	Report on investigation into the introduction of contraband into the High Risk Management Unit at Goulburn Correctional Centre
June 2004	Report on investigation into conduct of The Hon. J. Richard Face
June 2004	Report on investigation into safety certification and training in the NSW construction industry

Corruption prevention and research publications:

- September 2003 IT Security Management for Local Government: Facilitator's Guide
- September 2003 Regulation of secondary employment for Members of the NSW Legislative Assembly: Report to the Speaker of the Legislative Assembly
- November 2003 Fact-Finder: A 20-step guide to conducting an inquiry in your organisation
- December 2003 Community attitudes to corruption and the ICAC
- March 2004 In Whose Best Interest: An educational resource designed to provide guidance to local Councillors on how to resolve conflicts of interest
- June 2004 Developing a statement of business ethics
- June 2004 Providing advice on corruption issues: A guide for Members of the New South Wales Parliament
- June 2004 Providing advice on corruption issues: A guide for NSW Local Government Councillors

Corporate documents:

- October 2003 Annual Report 2002–2003
- February 2004 A message to all local government candidates from the ICAC Commissioner
- June 2004 Our statement of business ethics

Multilingual and community resources:

- October 2003 Reporting corruption to the ICAC (brochure)
- October 2003 Introducing the ICAC: A guide for NSW public officials (brochure)
- October 2003 Introducing the ICAC: A guide for the NSW community (brochure)
- May 2004 Bribery = crime brochure produced in five additional languages
- May 2004 Corruption is wrong postcard produced in five additional languages
- June 2004 Introducing the ICAC: A guide for the NSW community brochure, produced in 29 languages other than English

June 2004 Reporting corruption to the ICAC brochure, produced in 29 languages other than English

Corruption Matters Newsletter:

December 2003 Corruption Matters No. 23

Question 6: Corruption awareness activities 2003-2004

QUESTION: *Please provide a general summary of corruption awareness activities undertaken by officers employed by the Independent Commission Against Corruption, or consultants contracted to the Independent Commission Against Corruption, during 2003-04.*

RESPONSE: In addition to its investigation function, Section 13 of the Independent Commission Against Corruption Act confers corruption prevention and education functions on the Independent Commission Against Corruption. The Commission fulfils these functions by providing advice, education and training resources and guidance to public sector agencies and local government authorities, as well as by educating public officials and the wider community about corruption and how to report it.

In 2003–2004 the Independent Commission Against Corruption published a range of resources in print, radio and video formats and undertook a range of advisory and training activities to build awareness of corruption issues and the role of the Commission and to assist public officials and organisations to identify and manage corruption risks.

Non-English speaking background communications campaign

In 2003–2004 the Independent Commission Against Corruption successfully implemented the second stage of this campaign, designed to raise awareness of the Commission and its role among non-English speaking background (NESB) communities and to encourage people of non-English speaking background to report suspected corrupt conduct to the Commission.

Stage 2 of the project involved:

- a re-run in February 2004 of the initial radio campaign, which features radio mini-dramas illustrating common corruption scenarios;
- an outreach component, using bilingual staff of the Independent Commission Against Corruption to produce pre-recorded interviews on corruption issues, broadcast on community radio stations;
- additional translations and printing to provide information resources in a total of 30 languages;
- two cross-cultural communication workshops for Independent Commission Against Corruption staff;
- a marketing campaign to promote the Independent Commission Against Corruption's multilingual resources to public sector agencies; and
- an evaluation of the radio campaign, with additional questions about other components of the project.

The marketing campaign resulted in requests from New South Wales public sector agencies for a total of 68,715 copies of the Independent Commission Against Corruption's multilingual publications.

The quantitative evaluation of the radio component of this project demonstrated that the campaign was successful in reaching the target audience and effectively delivering key messages. Of the 360 respondents covering 12 languages, 75% recalled at least one component of the radio campaign. Eighty percent of those who were exposed to the campaign agreed that it is important to report officials who ask for a bribe, compared to just over half (56%) of those not exposed to the campaign.

Stage 3 of the campaign is due to commence soon and is designed to ensure that effective communication with people of non-English speaking background on public sector corruption and the role of the Independent Commission Against Corruption is integrated into the day-to-day work of public sector agencies and the Commission. This stage will be delivered in 2005.

Publications

The Independent Commission Against Corruption maintains an active publishing program, with 30 publications produced in 2003–2004. These publications include a number of publications designed to raise general community awareness of the role of the Commission. Publications of this type produced in 2003–2004 include:

Information brochures

In 2003–2004 the Independent Commission Against Corruption produced a series of three brochures outlining the role and functions of the Commission and how to report corruption to the Commission. 15,000 copies of these brochures were printed and distributed and have subsequently been reprinted (in August 2004) to meet demand. The brochures have also been translated into 30 community languages and posted on the Independent Commission Against Corruption website as part of the Commission's non-English speaking background communications campaign.

Corruption Matters

The Independent Commission Against Corruption's *Corruption Matters* newspaper is distributed free of charge to around 12,000 readers across the New South Wales public sector. *Corruption Matters* reports on recent investigations, corruption prevention campaigns and projects. *Corruption Matters* was extensively redesigned in 2003–2004 and edition Number 23 was produced and distributed in December 2003.

The Independent Commission Against Corruption surveyed 200 *Corruption Matters* readers in early 2004 to evaluate the changes made to the content and format of the newspaper. The survey responses provided an indication that *Corruption Matters* is well-read, with respondents reporting an average of eight readers per copy, and that the publication is considered well-designed, easy to read and informative. Survey responses will be taken into account in producing *Corruption Matters* issues in 2004–2005.

Government News

The Commissioner provides a column for *Government News* magazine, which is a nationally distributed magazine focusing on issues of relevance for all three levels of government, with the primary readership being middle management in local government. The magazine, which is published 11 times a year, is a very useful vehicle for the Independent Commission Against Corruption to emphasise its corruption prevention messages to the local government sector. Commissioner's columns in 2003-2004 covered such topics as:

- statements of business ethics;
- the Independent Commission Against Corruption/Local Government Managers Australia Governance Health Check and other resources for local government;
- use of investigative powers; and
- conflicts of interest.

Redevelopment of the Independent Commission Against Corruption internet and intranet sites

The Independent Commission Against Corruption website was redesigned to be more accessible to users, with easier navigation and search facilities. The new site 'went live' to the public in February 2004. As part of the redevelopment, the Commission relocated its web-server from an offsite service provider to host the site on our own premises. This has improved security of online reporting of corruption matters and includes an additional layer of firewall protection for the Commission's systems and network.

Training and public presentations

The provision of training and speakers is an important part of the Independent Commission Against Corruption's corruption prevention work. The Commission provides training and speakers to help public sector organisations build their own corruption resistance capacity. These engagements also provide an opportunity for interaction and information exchange between Commission officers and public officials.

In 2003-2004 Independent Commission Against Corruption officers undertook 43 public speaking engagements and briefings on the Commission's work and provided 37 training sessions to local councils and a range of public sector agencies. A complete list of seminars, workshops and other speaking engagements by Commission officers is included in the Annual Report 2003–2004 as Appendix 12.

In 2002–2003 the Independent Commission Against Corruption established a part-time dedicated training officer position to enhance the professionalism of training provided by the Commission and strengthen its training systems. In 2003–2004 the training officer coordinated and delivered training and developed five generic training modules for use by Commission officers. These modules cover the following areas:

- Introduction to the Independent Commission Against Corruption;
- Reporting to the Independent Commission Against Corruption;
- Managing Conflicts of Interest – Local Government;
- Managing Conflicts of Interest – State Agencies; and
- Managing Gifts and Benefits.

Wherever possible, training materials have been developed in accordance with the competency standards outlined in the National Public Services Training Package.

Investigation skills training

The Independent Commission Against Corruption conducts one-day Fact-Finder workshops focusing on internal investigations. These workshops are intended to equip public officials, who may be called upon to conduct internal investigations, with the skills to conduct such investigations fairly and effectively. The Commission has produced a written resource, *Fact-Finder: A 20-step guide to conducting an inquiry in your organisation*, to complement the workshops, and a revised and updated edition of this resource was published in November 2003.

The Fact-Finder workshops are offered in-house to requesting organisations and also offered to a general audience through the Institute of Public Administration of Australia (IPAA). Fact-Finder workshops are also conducted as part of the regional education and training in the RAROS program.

Four Fact-Finder workshops were held in 2003–2004. Evaluations of these workshops – and of the Fact-Finder publication, which was reprinted in September 2004 to meet demand – were consistently positive.

Training for local government

Since June 2001 the Independent Commission Against Corruption's Local Government Strategy has focused on tendering and contract administration, development and planning approvals, use of council resources and cash handling. In 2003–2004 the emphasis was on the development of resources and training to enable Councillors to recognise and manage conflicts of interest, and to develop effective information security practices.

In Whose Best Interest is a training resource that provides guidance to local government councillors and council staff on how to identify and manage pecuniary and non-pecuniary conflicts of interest. The video-based resource tells the story of a fictitious Murrawarra Regional Organisation of Councils meeting and dramatises the conflicts of interest faced by councillors and council staff. In the related training workshop, participants are required to help the characters featured in the video to identify and resolve a range of conflicts of interests.

The interactive resource consists of a 22-minute video, a facilitator's guide and materials for workshop participants. The resource also has an evaluation section for councils to assess the effectiveness of the training after conducting sessions with councillors and staff.

In Whose Best Interest was launched by the Minister for Local Government, the Hon. Tony Kelly MLC, in November 2003.

In 2003–2004, 246 copies of *In whose best interest* were distributed to councils and members of the advisory committee that helped develop the resource. To encourage council managers and councillors to use the resource, Independent Commission Against Corruption

officers conducted train-the-trainer workshops in metropolitan and regional New South Wales from April to June 2004. Ninety-eight participants from 56 councils attended the workshops and evaluations of the workshops were very favourable.

In 2003–2004 the Independent Commission Against Corruption also produced information security and e-corruption awareness resource materials for local government, to assist councils to identify and manage corruption risks associated with new and emerging technologies.

Increasing awareness of corruption through the media

Public awareness of corruption in the New South Wales public sector is also increased through media coverage of the Independent Commission Against Corruption and its work. The Commission receives substantial print, radio and television coverage of its public hearings and investigation reports, which in 2003-04 included:

- the hearings and report on safety certification and training (WorkCover NSW);
- the hearings into the Koopahtoo Aboriginal Land Council;
- the hearings and report regarding the Hon. J. Richard Face;
- the report on the theft of specimens from the Australian Museum;
- the report on the investigation relating to Menangle Bridge; and
- the hearings and report into the trafficking of contraband into the High Risk Management Unit, Goulburn Correctional Centre.

The Independent Commission Against Corruption also receives media coverage of its corruption prevention activities, which also helps to raise public awareness of corruption issues in New South Wales. In 2003-04 this included coverage of the RAROS (Rural and Regional Outreach Strategy) visits to New England and Mudgee; the launch of the *In Whose Best Interest* video resource for local government; and the continued roll-out of the *Corruption is Wrong* campaign for people of non-English speaking background.

Rural and Regional Outreach Strategy (RAROS)

The Rural and Regional Outreach Strategy (RAROS) program is an important corruption awareness activity that involves events targeted at the community, public and private sectors. Rural and Regional Outreach Strategy programs typically include:

- training workshops for public officials;
- meetings and discussions with regional managers/directors and general managers of councils;
- visits to agencies to discuss corruption resistance;
- workshops with students at local schools; and
- interviews with local media.

Two Rural and Regional Outreach Strategy programs were conducted in 2003-2004: a five-day program in the New England region in November 2003 and a smaller program in the Mudgee area in May 2004. The New England program delivered training, education and information session to 265 public officials and community leaders, including local Aboriginal land councils, and 94 students. The Mudgee program delivered sessions to 54 public officials and community leaders and 14 students.

Participants in Rural and Regional Outreach Strategy events are asked to evaluate the activities. Responses to the 2003-2004 programs were very positive. All of those who provided responses on the usefulness of the training sessions rated them as either very useful (55%) or quite useful (45%), with 96% of participants indicated they had a “much better” (43%) or “better” (53%) understanding of the key topics covered in the workshops.

Australian National University – Independent Commission Against Corruption corruption and anti-corruption course

For the past six years the Independent Commission Against Corruption has worked in partnership with the Australian National University to deliver a post-graduate course unit in corruption and anti-corruption. This successful and internationally recognised course is designed for middle and senior managers from public sector agencies around the world. It aims to help participants devise strategies to make organisations more corruption-resistant.

A key element of the course is assisting senior managers of public sector organisations to understand the causes of corruption and the measures they can adopt to prevent it. From the Independent Commission Against Corruption 's perspective, the value of the course is its practical focus and the participation of New South Wales public sector managers who, upon completion of the course, can incorporate these insights into their day-to-day work. The unit can also count towards a Masters Degree at the Australian National University's Asia Pacific School of Economics and Government.

The 2003 course was held in August/September at the Australian National University campus in Canberra and at a venue in Sydney.

The Independent Commission Against Corruption offers scholarships to New South Wales public officials to attend the course, and receives a large number of applications each year. The aim of the scholarships is to help build capacity in corruption prevention in the New South Wales public sector. Ten scholarships were offered for the 2003 course. Priority was given to senior employees of the New South Wales state and local government sectors. Four of the ten scholarships were allocated to employees from rural and regional New South Wales.

Raising awareness of corruption in the private sector

One of the key areas of many allegations dealt with by the Independent Commission Against Corruption is the different values and varying expectations regarding probity that can exist between the public and the private sectors. The Commission often suggests that agencies act to raise awareness among their private sector partners by developing a statement of business ethics.

In May 2004 we released a publication to assist agencies in this regard. *Developing a statement of business ethics* provides New South Wales public sector organisations with detailed advice on communicating core public sector values and practices to private sector contractors and partners. Responses to the Independent Commission Against Corruption's survey on functions, risks and corruption resistance strategies in the New South Wales public sector, published as *Profiling the NSW public sector* in January 2003, indicated that there was overwhelming support for the provision of advice in this area.

Strong working relationships with the private sector play an important part in today's public sector environment. All levels of the public sector in New South Wales, from state agencies to local councils and universities, draw on private sector skills and resources to support the services they provide.

Statements of business ethics provide an excellent vehicle for helping public sector organisations ensure that their business relationships with the private sector are fair, ethical and productive for all concerned. The Independent Commission Against Corruption's research and investigations have shown that the better the understanding of public sector values and practices the contractor has, the better the project outcomes tend to be.

A number of public sector organisations including numerous New South Wales local councils, the State Rail Authority, the Roads and Traffic Authority, and the Department of Commerce have provided the Independent Commission Against Corruption with invaluable assistance in developing the guide.

Question 7: Provision of formal legislative advice

QUESTION: *Please provide general summary details of the circumstances where officers of the Independent Commission Against Corruption have provided formal advice on proposed legislation (including regulations), discussion papers, etc, during 2003 – 2004.*

RESPONSE:

Local Government Amendment (Discipline) Bill 2004

In 2003-2004 the Independent Commission Against Corruption provided advice to the Department of Local Government on the Local Government Amendment (Discipline) Bill 2004. This advice including liaising with the Department over:

- a cognate amendment to section 9 of the Independent Commission Against Corruption Act. Section 9 of the Independent Commission Against Corruption Act is colloquially known as a 'seriousness test'. The effect of this amendment was that a reference to a disciplinary offence in section 9 now includes a reference to a substantial breach of an applicable requirement of a code of conduct adopted under section 440 of the *Local Government Act*; and
- proposals to suspend Councillors for misbehaviour contained in the Bill.

The Independent Commission Against Corruption was also involved in a group established by the Department of Local Government to review the draft model code of conduct for councils. The Bill made provision for a prescribed code of conduct applying to all councillors and staff. The Commission also lodged a submission to the Department when the draft model code was released for public comment.

Department of Infrastructure, Planning and Natural Resources (DIPNR) Section 94 Contributions and Development Levies Taskforce

In January 2004, the Independent Commission Against Corruption made a submission to the Department of Infrastructure, Planning and Natural Resources's Section 94 Contributions and Development Levies Taskforce. This Taskforce was examining legislative proposals to augment the powers of consent authorities to strike agreements with development applicants for additional contributions for local infrastructure and amenities.

While the Independent Commission Against Corruption did not oppose the need for additional flexibility in obtaining developer contributions, it did raise a number of concerns in relation to:

- the possibility that existing planning standards would be compromised by the desire to gain a much needed piece of land or infrastructure;
- local councils relying on developer contributions to fund routine expenditure; and
- the allocation of developer contributions to projects that are unrelated to the development or that have not already been identified as priorities.

A number of the Independent Commission Against Corruption's concerns were reflected in the recommendations made by the Taskforce.

United Nations Convention Against Corruption

In February 2004, the Commonwealth Attorney General's Department requested the Independent Commission Against Corruption to consider the United Nations Convention Against Corruption and advise of any changes to New South Wales legislation that may be required to comply with the Convention.

The Independent Commission Against Corruption advised that some changes to New South Wales laws would be needed in order to comply with the following provisions of the convention, including:

- Article 23 – laundering of proceeds of crime. The current money laundering offences in New South Wales, contained in section 73 of the Confiscation of Proceeds of Crime Act 1989 did not satisfy articles 23(2)(a) and 23(2)(c) of the Convention. This was because the New South Wales Act only applies to a narrow range of predicate offences, namely indictable offences against New South Wales law; and
- Article 31 – freezing, seizure and confiscation. The current mechanisms for freezing, seizing and confiscating criminal property in New South Wales are contained in the Confiscation of Proceeds of Crime Act 1989 and the Criminal Assets Recovery Act 1990. These Acts did not satisfy article 31(1)(b) of the Convention because they do not extend to “instrumentalities ...destined for use in offences.”

We also advised the Commonwealth Attorney General's Department that there might be a need to further examine whether existing New South Wales laws adequately comply with Article 12 (private sector) and Article 53 (measures for direct recovery of property) of the Convention. In addition, we advised that current New South Wales laws do not presently make any provision in relation to the recommended measures referred to in the following articles of the Convention:

- Article 12(2)(e) – restrictions on the employment of public officials after they leave the public sector;
- Article 20 – creation of an offence of illicit enrichment; and
- Article 21 – bribery in the private sector.

Commonwealth Surveillance Devices Bill

In June 2004 the Independent Commission Against Corruption responded to an invitation to consider whether it should be included as one of the agencies to be included in the Commonwealth Surveillance Devices Bill. The Bill applies to the use of surveillance devices for the investigation of certain Commonwealth offences and requires agencies to obtain warrants for use of surveillance devices such as listening devices, some forms of optical surveillance, data surveillance and, in some circumstances, tracking devices.

As it is possible that some Independent Commission Against Corruption investigations may involve Commonwealth offences (particularly those involving financial transactions) the Commission submitted that provision should be made in the legislation for it to be one of the agencies that could apply for such warrants.

Submission to the Cabinet Office regarding section 87 of the Independent Commission Against Corruption Act

In March 2004 the Independent Commission Against Corruption responded to a letter from the Cabinet Office supporting the application of a provision such as s.331 of the Crimes Act to the offence of giving false or misleading evidence under s.87 of the Independent Commission Against Corruption Act. Section 331 provides that where a jury is satisfied an accused has made two conflicting statements on oath and is satisfied the accused made one statement knowing it was false the jury can make a finding the accused is guilty of perjury even though it is unable to determine which statement is false.

Question 8: Submissions to public and Parliamentary inquiries

QUESTION: *Can the Independent Commission Against Corruption provide, where publicly available, copies of submissions made by the Commission to public and Parliamentary inquiries – excluding the ICAC Committee – during 2003-04?*

RESPONSE: The Independent Commission Against Corruption made a submission to the Legislative Council Standing Committee on Privilege and Ethics inquiry into Parliamentary privilege and the seizure of documents by the Independent Commission Against Corruption, dated 6 November 2003.

The Independent Commission Against Corruption understands that it is generally preferred that submissions be released and made available from the committee or inquiry to which it was made. There is no objection on our part to the submission being made available to the Committee by the Legislative Council Standing Committee on Privilege and Ethics.

Question 9: Operating budget 2003-2004

QUESTION: *What was the Independent Commission Against Corruption's 2003-2004 operating budget, organised in terms of investigation and corruption prevention functions?*

RESPONSE: The operating budget of the Independent Commission Against Corruption is structured around each business unit's direct financial management responsibilities. The budget model also groups Commission-wide costs under a separate business cost centre, comprising salary on-costs such as superannuation, long service leave and workers compensation and indirect Commission-wide expenses such as office and equipment rental, computer leases and maintenance, audit fees, training costs, postage & freight, insurances, general stores and contract security.

The following operating budget for 2003-04 for investigations reports the direct costs controlled by that function and comprises the three business unit cost centres of Strategic Operations, Complaint Handling and Assessments and Legal Services

	Salaries \$	Other Operating Costs (Non-salary) \$	Total \$
Strategic Operations	3,893,777	445,701	4,339,478
Complaint Handling & Assessments	848,470	18,000	866,470
Legal Services	1,041,439	582,700	1,624,139
Total	5,783,686	1,046,401	6,830,087

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

	Salaries \$	Other Operating Costs (Non-salary) \$	Total \$
Corruption Prevention	2,020,644	369,000	2,389,644

Question 10: Budget for advertising, publicity and community relations.

QUESTION: *What was the Independent Commission Against Corruption's 2003-2004 budget for advertising, publicity and community relations activities?*

RESPONSE: The 2003-2004 budgets for advertising, publicity and community relations activities were as follows:

- Advertising and publicity \$ 93,699
- Community relations activities \$127,250

Further examination of the budgetary position took place during the public examination of the annual report at Parliament House on Wednesday 6 April 2005.

Mr YEADON (CHAIRMAN): Thank you, Commissioner, for that opening statement. I might take up on your first issue. You ask that the Committee note the Commission's budgetary or funding situation. We certainly do that. Irene Moss, your predecessor, advised the Committee that over the past year there had been an unprecedented number of matters raised with the Independent Commission Against Corruption and we were told by the Deputy Commissioner that over 90% of the complaints get no further than the complaint stage and do not result in any investigations. Former Commissioner Moss foresaw a need to enhance the Commission's budget so that it could remain an effective force against corruption, and the Commissioner backed up her call for more resources by saying employee related expenses last year accounted for around 75% of the organisation's budget, or the net cost of resourcing the organisation.

In the 2003 annual report she said that the organisation had reached the limit in terms of its efficiency drives and so forth to get better value for money, or maximize the value for money, and it could not introduce any more without fundamentally compromising its functions. I note very much that you say that you ask the Committee to note it, but I suppose I put the question back around to you, given that you are a new Commissioner there, you have been there for five months, I would ask you to inform the Committee of your view of the budget situation and what you perhaps might see as a desirable budgeting situation for the work that you see the Commission needs to do over time. In that sense the Committee may be able to assist you vis-a-vis the executive in terms of seeking any additional funding that you think you might require, so I would ask you to elaborate on that issue further if you would like.

Commissioner CRIPPS: My investigations certainly support what my predecessor had said, but the mere fact we have got now a 30% increase, 2,800 or something complaints, they have got to be actually processed. That takes time and they have got to be reported to the Operations Review Committee, which is quite a lengthy procedure and it takes money. I would also point out that to date this year, I think—and I will be corrected if I am wrong—we have had about 135 hearing days up to date. One of the reasons why I wanted to take over these hearings was to avoid as far as possible having to retain people from outside of the Commission, but I have not been able to do it all and there is a lot of it coming up, so we will have a lot of those to be dealt with.

Our budget position is not very good largely because of these blown out hearing days, together with the fact that transcripts are very expensive and in the inquiries that I have been

doing there has been a large number of people who need the assistance of interpreters, and anyone who understands the procedures of the sort that I go through, will understand just how slow interpreters make the proceedings, and how expensive they are because you have not only got to employ an interpreter but it has got to be translated.

I have been told that hearings from July to the end of March was 35 private hearings days and 84 public hearing days.

Of course, as I said earlier when I made my short opening, we really do have this role of prevention of corruption, which relates very much to the way the investigations go. I try not to keep apart the prevention and the investigations because in point of fact they are all part of the one function we have, one overall function, and that is to reduce or minimise as far as possible, corruption. There may be other people here who are more familiar with the budgetary details who can speak.

Mr FAVELLE: The budget that we are currently in, our 2004-05 budget, when that was set we were asked to meet a level of savings of about \$450,000 and, as the Commissioner mentioned, we have had a significant number of hearing days in comparison to previous years. It looks like we will have about 150 days estimated. The average for the previous four years was about 73, so it looks like double that work. In terms of cost it looks like \$1.1 million for legal expenses, for transcripts, for translation services, compared to the previous year of about \$400,000. This is a significant impost in addition to the need to, in real terms, reduce some of our funding, recognising as former Commissioner Moss may have indicated we have had an increase in the general numbers of matters referred to us for analysis and assessment, so this is making it quite difficult.

We have sought some additional funding from Treasury and that may well be coming for this year, but I think in the future as many other departments are also experiencing there will be further reductions that will put further stress on the organisation financially.

Question 11: Progress on activity-based costings.

QUESTION: *Would you please advise the Committee on the progress you have made towards activity-based costings. Do you cost investigations and hearings?*

RESPONSE: The Independent Commission Against Corruption has implemented an activity-based costing model from the beginning of the financial year 2004-05 which focuses on identifying the direct costs of individual major (Category 1) investigations incorporating hearings, Category 2 investigations, preliminary inquiries, complaint handling and assessment, corruption prevention and corruption education activities. The Commission will assess the results of activity-based costing at the end of 2004-05.

Due to the complexity of processing, activity-based costings are performed on a quarterly basis.

Question 12: Cost of hearings

QUESTION: *What was the approximate cost per day incurred by the Independent Commission Against Corruption of a public hearing as against a private hearing over the period 2003-2004?*

RESPONSE: The Independent Commission Against Corruption did not routinely maintain daily records of costs and expenses for public and private hearings in 2003-04. A description of the direct operating expenses per day as they apply to private and/or public hearings is shown below.

Generally there is little difference between the cost of public and private hearings. Furthermore, private hearings usually involve the examination of a single witness as opposed to conducting what might be generally understood to be a “hearing” from the example of the Commission’s public hearings (where all or most of the affected parties are in attendance or represented by counsel).

External legal fees

External legal fees for Counsel Assisting by the Independent Commission Against Corruption during 2003-04 ranged from \$1,500 - \$2,200 per day (plus GST). Total fees paid to external Counsel Assisting also include preparation for the hearings and preparation of any final submissions. The cost of some private hearings may be reduced by the use of ICAC lawyers as Counsel Assisting.

Where an external Assistant Commissioner is appointed to conduct hearings, sitting fees are paid according to set rates that currently are equivalent to the daily rate for an acting Supreme Court Judge which is approximately \$1,000 per day.

Transcript fees

Transcript fees for the full day of hearing, regardless of whether the hearing is held in private or public cost approximately \$1,000 per day (plus GST) in 2003-04. This figure is based on a cost of \$12.50 per transcript page.

Witness expenses

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

Hearing notices

Generally a hearing notice (which is only required for public hearings) is approximately \$1,100 per notice per paper (usually for Saturday papers).

Question 13: Publication of transcripts of private hearings

QUESTION: *The Commissioner's Foreword states that in 2003-2004 transcripts of various public and private hearings were posted on the Independent Commission Against Corruption website. What are the circumstances in which transcripts of private hearings are published?*

RESPONSE: Evidence given in private hearing is usually made subject to a non-publication order made pursuant to section 112 of the Independent Commission Against Corruption Act. Such orders are made when the Commission is satisfied that it is necessary or desirable to do so in the public interest. If the reasons for making the section 112 order cease to apply it is general Commission practice to lift the order. This removes the restriction on publication of the transcript. This often occurs where public hearings follow a private hearing. Where the evidence given in private hearing is similar to that given in public hearing, or the private hearing evidence is relevant to the public hearing, it is general practice to lift the suppression order and make the evidence public. In these circumstances, it is usual to publish the private hearing transcript on the website in conjunction with publication of the public hearing transcript.

In some cases where a public report is made after private hearings and there have been no public hearings, it may be in the public interest to publish the private hearings transcript. This occurred in the Independent Commission Against Corruption's investigation into the conduct of the Rail Infrastructure Corporation and others in relation to Menangle Bridge.

Justification for printing the transcripts of private hearings and the need for these hearings were the subject of further questions during the examination of the annual report:

Mr PRICE (ICAC COMMITTEE): Given that some of the concerns expressed in past meetings has been the destruction of reputations of people who are subject to inquiry, in relation to the annual report, page seven, the Independent Commission Against Corruption posted the transcript of seven public hearings and two private hearings on the Commission's web site. What causes you to decide to make public the transcripts of private hearings which could be extremely sensitive?

Commissioner CRIPPS: I have assumed from that they were private hearings that became public.

Mr PRITCHARD: That was the Menangle Bridge inquiry, which was conducted in private but for which there was a public report.

Mr PRICE (ICAC COMMITTEE): Is there the need to print the private transcripts if you have got a public transcript?

Mr WALDON: In those cases they were not public hearings. They were private hearings and in both cases the relevant parties were notified that that was the intention we proposed, to lift the suppression order in relation to the private hearings and as I recall there were no objections to that course of action.

Commissioner CRIPPS: And so, as I said earlier, to fulfil what I imagine was thought to be the function, namely to let people know why it was we came to these conclusions.

Mr PRITCHARD: I think you will find that this was a question which was on notice.

Mr PRICE (ICAC COMMITTEE): It was answered to some degree in the report that was sent back to us, but I just wanted to check it out again because it was asked, and I just get a little concerned. Some of the early inquiries from the Independent Commission Against Corruption might as well have had a brass band in front of the inquiries, because everybody knew. The media knew before the person involved. I quote the instance of the Newcastle earthquake and the inquiries made of the Lord Mayor and some private citizens over some contractors who were doing repairs. 'Private' hearings did not really mean much because it was before they knew.

Commissioner CRIPPS: I cannot speak about those but I can say that this information becomes public when it is in the public interest to do so, either to clear someone's name or explain to the public why we have done what we have done.

Mr PRICE (ICAC COMMITTEE): It is reviewed fairly carefully before that is done?

Commissioner CRIPPS: Yes, and some care is taken, not always successfully, to try to keep people's private lives out of these investigations as far as it can be done. I have tried without success.

Mr WALDON: I would like to add that care is also taken as far as possible to notify people that this is the intention, that is to lift the suppression orders and make the evidence public and to seek their submissions in relation to that before it is done.

Commissioner CRIPPS: That entitles anyone to come in and say I know you have decided this, but why do you need to publish this, so people do get the opportunity.

Mr PRICE (ICAC COMMITTEE): Do they get an opportunity to discuss with the Commissioner's office draft items in the report, the final reports?

Commissioner CRIPPS: Of, you mean, maybe adverse comments to them?

Mr PRICE (ICAC COMMITTEE): When the matter is concluded and in the process of compiling the report, is any reference made to the individual?

Commissioner CRIPPS: When someone is assisting the Commission to do it, even if it was a Commission servant, but usually it is a barrister, the barrister produces submissions, what that person is saying the findings should be, and those are given to all affected persons for their comment as to what they say about that.

Mr PRICE (ICAC COMMITTEE): That is a good change.

Mr WALDON: It is not a change in procedure at all.

Mr PRITCHARD: Counsel assisting commissions have always been prepared, and even when the Commissioner proposes to make a finding that has not been canvassed in the submissions of counsel assisting, that is telegraphed to the person concerned before it is done.

Mr WALDON: It is a fundamental principle of natural justice that you advise someone of a possible adverse finding.

Mr PRITCHARD: If the Commission were to make a finding against someone that they had not been made aware of in terms of being made aware of the allegation and given a chance to respond, we would be hauled before the Supreme Court very quickly.

Mr PRICE (ICAC COMMITTEE): I have a marginal case that I will show you

Commissioner CRIPPS: I think you can assume that will not happen now.

Later in the hearing, these issues were examined again:

Mr YEADON (CHAIRMAN): Commissioner, to return to your comments, you indicate the heavy workload that is there with hearings both public and private. There has been debate around this Committee and in other fora about the need for public hearings and a range of people see it as an iteration of what occurs privately. Is there any scope to reduce that workload in hearings by perhaps not moving to public hearings as often as is done now or in every case—and you could comment on this—but I take it from what you are saying is that the public hearings component or the public hearings have an education and prevention component in them. I assume that that is correct, but I would be interested to hear if you believe that there is any other value that comes out of public hearings if they are indeed an iteration of what has occurred in private.

Commissioner CRIPPS: The function of a public hearing, as you have pointed out, is educative and also, one hopes, attracts the confidence of members of the community that we are actually making findings and discharging our functions in a way that is justified so that they can look at the public hearings and see what it is and why we have done what we have done. I take your point about whether the way of doing that could be more cost effective. I think it has to be in the form of a public hearing, because otherwise it is private and people do not get the educative or, I suppose, the confidence factor.

What I have done in a couple of hearings when I found out that pretty well what people were going to say and it is necessary to say it in public, to get them to make statements and put the statements before them, so you can get through a number of people, seven or eight people in a couple of hours, instead of having a lot of people going on day after day repeating what is in their statements. That goes on to the net and can be picked up by the journalists if they want to do it and the public are aware of it.

So far as private hearings are concerned, what we tend to do is if we want to make a private hearing public, in the public interest, we lift the suppression order and put it on the public hearing without requiring - this is my policy at all events - without requiring everyone to go over and over it again so that people can see it. That is what I am doing in that regard.

Mr YEADON (CHAIRMAN): I am pleased to hear that you are looking at ways to make that more efficient and cost effective.

Question 14: Reporting to the Operations Review Committee

QUESTION: *The annual report at page 15 states that during 2003-04 the Independent Commission Against Corruption commissioned an external review of reporting to the Operations Review Committee. The annual report also states that an independent audit was undertaken of the performance of financial services. Would you please supply a copy of these reports so they can be examined by the Parliamentary Joint Committee?*

RESPONSE: The internal audit reports relating to the audits of reporting to the Operations Review Committee (ORC) and financial services are attached.

With respect to the recommendations in the ORC reporting review, these have been given effect by means of existing reports available from the Independent Commission Against Corruption's case management system (ICS) or subsequent modifications.

The recommendations from the review of Finance have also been implemented.

The subject of the Operations Review Committee was raised again in the course of the public examination of the annual report.

Mr YEADON (CHAIRMAN): I would like to turn briefly, if I could, to the Operations Review Committee. I note from the annual report at page 61 that an independent internal audit of the Operations Review Committee was conducted during the review period to improve its efficiency. I wonder if you could tell us the findings?

Commissioner CRIPPS: I am told you people have been given that report.

Mr PRITCHARD: We have given you a copy of that report.

Mr YEADON (CHAIRMAN): The reason why I raise it is because I am sure you are aware that Mr Bruce McClintock in his review of the Independent Commission Against Corruption Act recommended the abolition of the Operations Review Committee. That was rejected by the Government and whilst it probably is of no great import, I agreed with that proposition given that I do not see the new Inspector of the Independent Commission Against Corruption having the resources or the time to tick off all the possible matters to be investigated. I just wonder if you have any views yourself in relation to that review and what may have come out of it and how you might look at making the Operations Review Committee operate better? Bruce McClintock advocated for its abolition; he clearly saw it as a less than efficacious body, if you like, so I wonder what views you may have formed in the five months since you have been there in relation to that.

Commissioner CRIPPS: And as I had in the three months before I had been there. Nothing has changed, but what the Parliament says is what we do. I think we will have to start thinking how we do it because we get 800 pages every two months. They have to be circulated to eight different people. They have to be printed and it is quite a business. I am

really trying to apply my mind as to how we fulfil the function we have to fulfil, at the same time making it less expensive. We were going to talk about that, oddly enough, at the Operations Review Committee this Friday, but I have not spoken to them yet, but we will have to do something about it.

Question 15: Compliance inspections of the Independent Commission Against Corruption the Ombudsman

QUESTION: *The Annual Report states the Independent Commission Against Corruption was subject to 3 compliance inspections by the Ombudsman in respect of telephone interceptions and controlled operations. What problems, if any, do these inspections disclose?*

RESPONSE: In the 2003-2004 year the Ombudsman conducted two compliance inspections of the Independent Commission Against Corruption's telecommunications interception records and one compliance inspection in relation to its controlled operations records.

The first inspection of telecommunications interception records found that although receipts for reports made to the Attorney General under section 6(b) of the Telecommunications (Interception) (NSW) Act 1987 were included in all files, copies of the actual report were not included in all files. Action was taken by the Independent Commission Against Corruption to rectify this problem.

This inspection also ascertained that *pro forma* paragraphs were used in the compilation of section 6(b) reports that resulted in inaccurate information being provided to the Attorney General in two instances. One warrant was issued on a telephone number that was not connected. The report to the Attorney General indicated that information, obtained under the warrant, was used by the Independent Commission Against Corruption in relation to a prescribed offence. Another warrant was issued on an incorrect number and subsequently revoked. Again the report to the Attorney General incorrectly indicated information obtained by use of the warrant was used by the Commission. Further reports were provided to the Attorney General to rectify these matters.

No problems were identified in the second inspection of the Independent Commission Against Corruption's telecommunications interception records.

The inspection of the Independent Commission Against Corruption's controlled operations records identified two instances where the section in the Authority to Conduct a Controlled Operation dealing with the use of assumed names by law enforcement participants had been deleted or crossed out rather than a specific entry being made that no authorisation had been granted for the use of an assumed name. While the legislation is not clear on what is actually required in this instance, the Ombudsman's concerns have been addressed by modification to the *pro forma* and training of staff.

In one matter, the Ombudsman found that a copy of the operational plan had not been placed with other documents on the file. This has been remedied.

The Ombudsman also noted that in one matter, the name and signature on the application to conduct a controlled operation did not correspond with the name of the applicant on the Authority. A new application and Authority was prepared to rectify this matter.

Question 16: Findings of corrupt conduct

QUESTION: *How many findings of corrupt conduct were made by the Commission during 2003-2004 and how many of these findings were accompanied by recommendations for the consideration of criminal or disciplinary action?*

RESPONSE: Findings of corrupt conduct were made against 18 persons. Of these, 17 were subject of recommendations for the consideration of criminal prosecution. The following Independent Commission Against Corruption reports are relevant:

- (a) Report on an investigation into the conduct of The Hon. Malcolm Jones MLC (July 2003) – a finding of corrupt conduct was made against one person. Recommendations were made to the Director of Public Prosecutions to give consideration for the prosecution of that person for offences under the Crimes Act and Independent Commission Against Corruption Act.
- (b) Report on investigation into the conduct of certain officers of the NSW Grains Board (August 2003) – findings were made in the report that 4 persons engaged in corrupt conduct. Recommendations were made in the report that the Director of Public Prosecutions give consideration to the prosecution of three of these persons for various offences under the Crimes Act. No recommendation for prosecution was made in respect of Mr Broadfoot because of his assistance to the Independent Commission Against Corruption in its investigation, his serious and potentially life threatening illness and the fact that his evidence would be necessary to found any prosecution of two of the other persons named in the report which would require that he be indemnified as a witness.
- (c) Report on investigation into the theft of zoological specimens from the Australian Museum between 1997 and 2002 and related matters (September 2003) – a finding of corrupt conduct was made against one person. A recommendation was made that the Director of Public Prosecutions give consideration to the prosecution of that person for offences under the Crimes Act. Separate to the report, the Independent Commission Against Corruption also referred to the DPP the conduct of three other persons for consideration of prosecution for various offences under the Crimes Act.
- (d) Report on investigation into the conduct of an officer of Integral Energy (September 2003) – a finding of corrupt conduct was made against one person. A recommendation was made that the Director of Public Prosecutions give consideration to the prosecution of that person for various offences under the Crimes Act.
- (e) Report on investigation into certain applications made to the Department of Fair Trading for building and trade licences (November 2003) – a finding was made

that one person engaged in corrupt conduct. A recommendation was made in the report that the Director of Public Prosecutions give consideration to the prosecution of that person for various offences under the Crimes Act and the Independent Commission Against Corruption Act.

- (f) Report on investigation into Mr Glen Oakley's use of false academic qualifications (December 2003) – a finding was made that one person engaged in corrupt conduct. Recommendations were made that the Director of Public Prosecutions give consideration to the prosecution of that person for various offences under the Crimes Act.
- (g) Report on investigation into the introduction of contraband into the High Risk Management Unit at Goulburn Correctional Centre (February 2004) – a finding was made that one person engaged in corrupt conduct. A recommendation was made to the Director of Public Prosecutions that he give consideration to the prosecution of that person for offences under the Crimes Act.
- (h) Report on investigation into conduct of The Hon. J Richard Face (June 2004) – a finding was made that one person engaged in corrupt conduct. Recommendations were made that the Director of Public Prosecutions give consideration to the prosecution of that person for the common law offence of misconduct in public office and for an offence under the Independent Commission Against Corruption Act.
- (i) Report on investigation into safety certification and training in the NSW construction industry (June 2004) – findings were made that 7 persons had engaged in corrupt conduct. Recommendations were made in the report that the Director of Public Prosecutions give consideration to the prosecution of each of these persons for various criminal offences. A further recommendation was made that the DPP give consideration to the prosecution of one other person for an offence under section 87 of the Independent Commission Against Corruption Act.

Question 17: Proceedings against Mr John Swann

QUESTION: *The Committee notes that Appendix 2 of the Annual Report states that proceedings against Mr John Swann are not to proceed having regard to the age of the matter and evidentiary difficulties. That matter involved the investigation of what the Commission categorised as serious corruption occurring among officers of the former State Rail Authority of New South Wales. The Commission published its investigation report in June 1998. Would you please advise the status of the recommendations relating to the other 11 officers who were identified as corrupt and the estimated cost of the Commission's investigation and hearing? The lapse of six years appears the principal reason why the prosecution of Mr Swann could not proceed. What was the reason for this delay and what active steps did the Commission take to expedite the matter?*

RESPONSE: The Independent Commission Against Corruption's public report contained recommendations that consideration be given to the prosecution of Mr Swann for offences of conspiracy to cheat and defraud the State Rail Authority and offences under s.178BB of the

Crimes Act. These recommendations related to fraudulent overtime claims and a dishonest arrangement Mr Swann made with a State Rail Authority contractor to repay a \$5,500 debt he owed to the contractor by having the contractor add that sum to an invoice to the State Rail Authority for work done by the contractor for the State Rail Authority.

No criminal proceedings were instituted against Mr Swann mainly due to evidentiary difficulties. One of the witnesses, necessary to prove certain records, died and two others expressed an unwillingness to provide statements.

The Independent Commission Against Corruption provided a preliminary brief of evidence to the Office of the Director of Public Prosecutions in December 1998. The Office of the Director of Public Prosecutions replied in March 2000 with a number of requisitions for additional evidence. This evidence was provided in October 2000. Meanwhile, the Office of the Director of Public Prosecutions had raised further requisitions for additional evidence in April 2001. This evidence was obtained as requested and provided in September 2001.

In December 2001 the Office of the Director of Public Prosecutions recommended proceeding against Mr Swann for an offence under s.178BB of the Crimes Act subject to some further additional evidence being obtained. The Office of the Director of Public Prosecutions advised there was insufficient admissible evidence to prosecute Mr Swann for other offences. The brief could not be completed due to the inability to obtain all the required statements referred to earlier.

Given these considerations as well as the nature and age of the matter and the fact that Mr Swann had resigned from the State Rail Authority during the course of the Independent Commission Against Corruption's hearing in 1997 it was decided not to proceed with the matter.

The Independent Commission Against Corruption's report contained findings of corrupt conduct against 15 other persons. Of these, six were officers of the State Rail Authority at the time of the relevant conduct. The report contained recommendations that consideration be given to the prosecution of four of these persons. After considering the evidence, the Office of the Director of Public Prosecutions advised that there was insufficient evidence to prosecute in relation to three persons. One person was successfully prosecuted for an offence under section 87 of the Independent Commission Against Corruption Act and sentenced to 12 months imprisonment suspended upon him entering into a 12-month bond.

Nine persons who were not public officials were also found to have acted corruptly. Of these, seven were subject to recommendations that consideration be given to their prosecution. Two persons were successfully prosecuted for offences under section 87 of the Independent Commission Against Corruption Act. One person died and the Office of the Director of Public Prosecutions advised there was insufficient evidence to proceed against the remainder.

The Independent Commission Against Corruption has not undertaken any calculation of the financial cost of its investigation and hearings in this matter.

Question 18: Prosecution of Mr John Kite

QUESTION: *Appendix 2 also lists a decision on the possible prosecution of Mr John Kite as "Awaiting outcome". The Commission's report was issued in December 2001. What is the reason for the continuing delay in finalising the consideration of the Commission's recommendations in this matter?*

RESPONSE: Court Attendance Notices were served on Mr Kite on August 2004 for one offence under section 319 of the Crimes Act and 55 offences under section 87 of the Independent Commission Against Corruption Act.

Subsequent to publication of the Independent Commission Against Corruption's report there were discussions with the Office of the Director of Public Prosecutions concerning the contents of any prosecution brief. Following these discussions a brief was prepared and sent to the Office of the Director of Public Prosecutions in November 2002. The Office of the Director of Public Prosecutions raised a number of requisitions for additional material in February 2003, some of which required further clarification from the Office of the Director of Public Prosecutions. Most of the additional material was provided in July 2003 with further material being provided in November 2003 and January 2004. Delays with providing all of the material were caused by the complexity of the material required to complete the brief.

Advice was received from the Office of the Director of Public Prosecutions in May 2004 that there was sufficient admissible evidence to proceed against Mr Kite. However, it was necessary to obtain particulars of the wording of the averments from the Office of the Director of Public Prosecutions and also to seek clarification of some aspects of the advice. This was received in July 2004 and the CANs were issued later that month.

During his evidence on 6 April 2005 Commissioner Cripps commented on the relationship between the Independent Commission Against Corruption and the Office of the Director of Public Prosecutions:

Commissioner CRIPPS: I thought I would also mention that when I was doing the inquiry for the short time I was doing it, I became aware of some tension between the Independent Commission Against Corruption on the one hand and the Office of the Director of Public Prosecutions on the other, concerning the recommendations made by the Commission and the implementation of those by advice by the Office of the Director of Public Prosecutions. Pursuant to this I have actually had a lengthy meeting with Mr Cowdery, the Director of Public Prosecutions, and he and I have agreed that we will set up a committee, which we are in the process of doing, to revise the memorandum of understanding that we have, because it seemed to me there was no point in going back over stale material, but we should all move forward to see how we can better implement this service.

I would also ask this Committee to bear in mind that our function in implementing this service is mandated of course by the legislation which says that we have to produce and make available admissible evidence. I am sure this Committee does understand that the function of exposing and finding corrupt conduct and corruption prevention really has nothing to do in terms with what we are required or what prosecuting authorities are required to do. They can only present a case on admissible evidence for the acceptance or otherwise of a jury of the case, so I just thought it was important to raise that. My inquiries from this

institution, and I feel confident that Mr Cowdery meant what he said when he said that we could improve this situation and we will not have too many delays, I hope, in the future concerning recommendations and actions taken on it.

The other thing that I thought I would mention before I start answering questions is that as people here may have remembered when I was at my nomination hearing, I expressed the view that I thought that because the nature of Independent Commission Against Corruption's principal function, which is to discern corrupt conduct and also to prevent it happening in the future, means that we are an investigative body. We are not a court of law and our findings do not have legal consequences, and it seemed to me therefore and conformably with other experience in the Commission, that I should attempt to ensure that the Commission discharges its function conformably with this investigative role it has.

There does seem to be a tendency, and I do not make this statement over-critically, that if you hand these things over to the lawyers they tend to judicialise any institutions they grab hold of, and it seems to me that this institution should remain clear of that, and therefore I have tried to implement a process whereby as far as possible I will do all the hearings and it will be my ambition subsequently to include members of the in-house team of the Independent Commission Against Corruption to do the private hearings at least, maybe the public hearings, and for the complicated ones we will still have to get assistance from Phillip Street, but we do have a number of very skilled lawyers and a number of very skilled investigators and it is my ambition to do that.

Later in the public examination on 6 April 2005 there was further consideration of the relationship between the Independent Commission Against Corruption and the Office of the Director of Public Prosecutions:

MR YEADON (CHAIRMAN): I would now like to turn to your comments in relation to the Office of the Director of Public Prosecutions. You are probably aware that the Committee, and myself in particular, have had some concerns about findings by the Independent Commission Against Corruption going on to prosecution in the courts, and I am very pleased to hear that you have had discussions with the Office of the Director of Public Prosecutions in relation to that matter. If I understood you correctly, you said you are going to negotiate a new memorandum of understanding with the Office of the Director of Public Prosecutions in relation to how you interact together.

I suppose for my side I would be interested if you could give us any insights into what may have created what is perceived to be a backlog of prosecutions up to this point in time. Just as a matter of interest, clearly you are going to deal with the issues going forward to try and make it more efficient, but I would be very interested if you have gained any insights from your discussions with the Office of the Director of Public Prosecutions in relation to that matter.

Commissioner CRIPPS: Such insights as I have had come from not only the Director of Public Prosecutions but also from my own team and particularly with Clive Small. One of the problems I have perhaps identified, it has been identified really for me, is that perhaps there was a tendency in the Independent Commission Against Corruption to bring forward its investigation and conclude the investigation and then people start assembling this evidence for the Office of the Director of Public Prosecutions.

As I have said to you earlier, the assembling of this evidence for the Office of the Director of Public Prosecutions is vastly different from the assembling of material that goes forward at inquiry. I think Clive Small has suggested to me, and I raised this with Mr Cowdery, that perhaps what we ought to be doing is the Independent Commission Against Corruption should be getting this material over to the Office of the Director of Public Prosecutions in the course of the investigation and not when the investigation finishes.

I understood recently that John Pritchard went to Jakarta to attend a conference that he insisted he should undertake and not me and he had a discussion with a member from Mr Cowdery's office. Perhaps I would invite Mr Pritchard to say something.

Mr PRITCHARD: We had some discussions with the managing lawyer in the Office of the Director of Public Prosecutions who is responsible for prosecuting offences that the Independent Commission Against Corruption refers. We have had some talk about ways of engaging the Office of the Director of Public Prosecutions, as the Commissioner indicated, in the prosecution process rather than, as the Commissioner indicated, simply have two parts: We do an investigation and report and we lob a brief of evidence on the Office of the Director of Public Prosecutions and then they do their bit. The discussions I have had with Ms Watson-Wood is to try and have more of a seamless transition, a link between the two, rather than having two compartments.

Some of the differences that arise sometimes when the Office of the Director of Public Prosecutions look at the briefs and say, no, we do not think there is sufficient evidence. I think what we are trying to do is say, well, all right, if you take that view and it is a bit late in the day to now start compiling evidence, or approach the brief in a way which corresponds with the advice you give. If we engage you in the process earlier and you know where we are going and we both know where we are going the prospects of advice being given on something they have not seen before could be less.

We have discussed ways of having a Office of the Director of Public Prosecutions lawyer specifically attached to Independent Commission Against Corruption matters who we can deal with, liaise with and raise issues with along the way, so we are heading in the same direction before we simply lob a brief of evidence on them. We raised ideas about having a Office of the Director of Public Prosecutions lawyer at the Commission once a month, something like that.

There certainly is a resolve on both sides to try and address this issue of doing something about the briefs in such a way that when we do give them a brief of evidence under investigation, it does not come as something they have not seen before and have no familiarity with. As the Commissioner said, even on overnight flights to Jakarta work of the Independent Commission Against Corruption still goes on, because Ms Watson-Wood attended the same conference as me. This is in response to the Indonesian Commission for the Eradication of Corruption, which has been recently set up. They wanted, specifically, assistance on this area, so Ms Watson-Wood was attending to give the perspective of the Office of the Director of Public Prosecutions. We discussed that issue about trying to engage the Office of the Director of Public Prosecutions. There has been a traditional reluctance by the Office of the Director of Public Prosecutions to do that because they, as I said in this

forum before, they do have a very strict view about what their role is; their role is to prosecute, not to investigate. They do not often give advisory opinions.

Having said that there is some leeway for that to change. As the Commissioner said, and we are aware of the Committee's view, and we are aware ourselves, because the history of the Independent Commission Against Corruption dealing with briefs and prosecutions, certainly now might be different, but is not held up as a model. We probably would not dispute that. Having said that we are hopeful that with this review of the Memorandum of Understanding we can work in and factor in something like that so we can engage the Office of the Director of Public Prosecutions in the process a lot earlier than currently occurs.

Mr YEADON (CHAIRMAN): It may not be an issue for this Committee but I suppose the other possible unintended consequence that could come out of that is that you commence an operation or an investigation and you inform the Office of the Director of Public Prosecutions and they expend a range of resources in looking at that. I am not sure how involved they would be. It could be the case that that investigation, after a period of time, is terminated due to the fact that you simply found nothing and there could be implications for the Office of the Director of Public Prosecutions in expending a good amount of time and energy on a range of investigations that may not go through to any conclusion, in that sense. I suppose it is more a matter for the Office of the Director of Public Prosecutions rather than the Independent Commission Against Corruption.

Commissioner CRIPPS: When I spoke to Cowdery that was not an issue that he raised although obviously that could be a problem for him. I have to say, without going over this, we have had differences with the Office of the Director of Public Prosecutions as to whether we thought there was sufficient evidence but they said there was not so it stopped there. We are trying to fix that up. Perhaps maybe Clive Small wants to add something.

Mr YEADON (CHAIRMAN): Thank you, Commissioner. If Mr Small has any comments on the issue—

Mr SMALL: I think some of the opportunities for improvement in both the preparing a brief for Independent Commission against Corruption hearings, or for finality by the Commission, and for criminal prosecutions actually has to start back during the investigative stage. Generally speaking, traditionally, what has occurred is that the priority has been to prepare, if you like, a brief for the Independent Commission Against Corruption hearing. The form and collection of statements and material for presentation to an Independent Commission Against Corruption hearing certainly satisfies the Commission, but it does not meet the criminal, or the court's requirements for prosecution in a criminal matter.

What we have been doing of late is taking a far greater interest in the possible emergence of criminal briefs in our investigations. Once we recognise the likelihood of a criminal offence emerging we have then moved to taking statements in the form that would meet a criminal prosecution. That avoids duplication. That is, traditionally we would interview a witness on tape, the transcript of that interview would be typed up and that would be presented to the Independent Commission Against Corruption. However, to use it in criminal proceedings we would have to go back and get a formal statement. From the Commission's point of view that saved a lot of time if there was no criminal brief, but it added time at the back end, when a brief was to be prepared. So what we are doing now is trying to avoid that duplication and

where we think it likely that there will be a criminal prosecution the evidence is gathered in a form that is admissible and we make any extra documentation necessary for the Independent Commission Against Corruption. That means we do it once. It also means that we are preparing the brief of evidence as we go and a substantial part, if not the whole of that brief, is prepared by the time we have gone to a public hearing.

Mr YEADON (CHAIRMAN): I suppose, in a sense, you have in fact there teased out and elaborated upon a distinction that the Commissioner drew between the differences that exist between a prosecutorial investigation and an Independent Commission Against Corruption investigation. On that distinction that you have drawn I assume that the criteria that will be used for a non-prosecution investigation will remain the same as it has in the past. Do you understand what I am saying? In a sense you can find people corrupt but it does not go on to a prosecution. It is not going to, to put it bluntly, change the outcome of investigations, in that sense, given that you are more conscious of that distinction and the two bodies of evidence that exist there.

Mr SMALL: It should not affect that at all. The benefit should be in improving and reducing the times to get to prosecution.

This matter was taken up again later in the hearing:

Reverend The Hon. FRED NILE (ICAC COMMITTEEE): I have in my mind some comment at a previous hearing with Independent Commission Against Corruption officers that there was some problem in material supplied by the Commission to the Office of the Director of Public Prosecutions, where it was felt that it was not adequate or sufficient for conducting a prosecution. Has that area been resolved or is there still tension in that area?

Commissioner CRIPPS: That was the situation that led to me inquiring into this and of course you have got to remember that if we get a statement from some person and that person gives a statement, either by saying it is an induced statement, that is I am giving it to you on the understanding it will not be used against me, or alternatively gives it at a private hearing, subject to that objection, that cannot be used. I did not go into great detail about this but it is not to be supposed that because the Office of the Director of Public Prosecutions has said on other occasions we do not think the evidence is good enough that that is a view we have actually gone along with. We have gone along with it in a practical sense because if we started the proceedings it would have to be taken over by the Office of the Director of Public Prosecutions and if that Office says 'I do not want to do it', there is not much point in us starting the thing all over.

Ordinarily what Mr Small spoke about is probably the way to manage this, to get the material early to the Office of the Director of Public Prosecutions so that people are not scurrying around years after the event, or months after the event, doing what they essentially think is really not the principal function they are there to do, as the Independent Commission Against Corruption Act makes clear. We have got to do it so far as we can, but the Act makes clear that our principal function is to find if it is there and to expose corrupt conduct and also provide strategies for eliminating corruption. That is how I can answer that.

Reverend The Hon. FRED NILE (ICAC COMMITTEEE): Do you believe that the Office of the Director of Public Prosecutions responds promptly to matters that you refer to them?

Commissioner CRIPPS: I do not want to play a blame game about this because we have had troubles about not doing things quickly and the Office of the Director of Public Prosecutions has had troubles about not doing things. They have changed officers, for example, and one officer will say, and we have had that experience, that they would not go ahead with a prosecution that an earlier officer said is all right. I am not saying that there is anything malicious about this but the two of us have not got together and worked out how we should do this and that is what we are doing at the present time. There has been delay on both sides.

Reverend The Hon. FRED NILE (ICAC COMMITTEEE): The Office of the Director of Public Prosecutions sometimes complains, not specifically regarding Independent Commission Against Corruption, but the general pressure and their own budgets.

Commissioner CRIPPS: Yes.

Reverend The Hon. FRED NILE (ICAC COMMITTEEE): I ask as to whether there needs to be a special unit within the Office of the Director of Public Prosecutions that deals with your referrals and that the Government allocate additional funds for that special unit?

Commissioner CRIPPS: That is what I would call a junket (but Mr Pritchard would call an education trip) revealed on his way to Jakarta—that they are going to do that. They are going to provide someone there who will liaise with us.

Mr PRITCHARD: They have a specific unit now which deals with our referrals, Police Integrity Commission, police officers, public officers, so that is a special branch that just deals with them.

Reverend The Hon. FRED NILE (ICAC COMMITTEEE): That is a big improvement then.

Mr PRITCHARD: It is a dedicated unit.

Commissioner CRIPPS: I had not realised you were out of the room when I went through this before, so I apologise. If there is anything that you want me to clarify, please feel free to do so.

Question 19: Handling of complaints against Independent Commission Against Corruption staff

QUESTION: *In 2003-2004, a total of 5 complaints against Independent Commission Against Corruption staff were received. Appendix 6 states these were all handled by the Solicitor to the Commission. Briefly, what is the method of handling such complaints adopted by other Australian anti-corruption bodies?*

RESPONSE: The procedures set out in the Independent Commission Against Corruption policy on complaints against officers of the Commission provide that:

- Complaints about officers, either by another officer or any other person, are generally to be made to the Solicitor to the Commission, who then advises the Commissioner and recommends a course of action.
- Should the Commissioner decide that the complaint involves a serious allegation and that an investigation is necessary, the Commissioner will direct a person external to the Commission to be engaged to conduct an investigation and report to the Commissioner.
- Should the Commissioner decide that an investigation is necessary but that the allegation is less serious, the Commissioner will assign the investigation to a member of Executive Management. In most cases, this will be the Solicitor to the Commission.
- All complaints against Commission officers that could constitute corrupt conduct are to be referred to the Operations Review Committee for advice following the completion of the investigation. All other complaints may be referred to the Operations Review Committee for advice.
- The Solicitor to the Commission is responsible for ensuring that every complaint is the subject of both an interim reply and, later, a substantive reply.

The Crime and Misconduct Commission in Queensland advises potential complainants that a complaint about it or one of its officers may be made to the Crime and Misconduct Commission in the first instance and inquiries will be made by the Crime and Misconduct Commission, while there is further provision for a complaint to be made to and investigated by the Parliamentary Commissioner attached to the Parliamentary Crime and Misconduct Committee.

The Corruption and Crime Commission of Western Australia has a Parliamentary Inspector, to whom complaints about the Corruption and Crime Commission may be similarly directed.

One of the functions of the Inspector of the Police Integrity Commission under s.89 of the Police Integrity Commission Act is to deal with allegations of misconduct involving Police Integrity Commission staff. The Independent Commission Against Corruption supports such a model and has previously submitted that an Inspector should replace the Operations Review Committee and have similar functions to those of the Inspector of the Police Integrity Commission, including the capacity to deal with complaints against officers of the Independent Commission Against Corruption.

Question 20: Initiation of criminal proceedings

QUESTION: *Would you please outline the circumstances in which officers of ICAC will, in future, be involved in the initiation or carriage of criminal proceedings as a result of recent changes to the Criminal Procedure Act 1986 and related regulations. (Appendix 5) of the Annual Report refers to this matter)?*

RESPONSE: In 2003 a number of changes relating to criminal prosecutions were introduced. One of these changes provided for commencement of criminal proceedings through the issuing of Court Attendance Notices (CANs). Prior to these changes, Independent Commission Against Corruption officers were informants for “Informations” issued on the advice of the Director of Public Prosecutions.

The amendments to the Criminal Procedure Act 1986 replaced the previous provisions for issuing “Informations” under the Justices Act, instead requiring Court Attendance Notices to be issued by “public officers”. The definition of public officers inserted by the amendments did not originally include Independent Commission Against Corruption officers. In order to continue to initiate criminal proceedings on the advice of the Director of Public Prosecutions, the Commission successfully sought authorisation for Commission officers to issue Court Attendance Notices. This was done by way of insertion of clause 12B into the Criminal Procedure Regulation 2000 by the Criminal Procedure Amendment (Public Officers) Regulation 2004.

Question 21: Ministerial Code of Conduct

Mr O'FARRELL (ICAC COMMITTEE): Commissioner, I want to go to the questions on notice, the first set, and in particular questions one to six, which relate to codes of conduct. That is in the first set of questions, I think I was told by the staff that was sent over.

Mr PRITCHARD: We are only aware of one set of questions on notice. The first question was to deal with the positive events that are described as memorable events. I think, Mr O'Farrell, you are referring to the answers on questions on notice from the last hearing.

Mr YEADON (CHAIRMAN): That is correct, Mr O'Farrell.

Mr O'FARRELL (ICAC COMMITTEE): In relation to that, I apologise for the confusion on the cover sheet, the previous Commissioner, in answer to those queries, confirmed that the Ministerial code of conduct had not been presented or adopted by regulation, therefore, it was not an applicable code of conduct for the purposes of the Independent Commission Against Corruption Act and some might say is otherwise worthless, has that changed over the past twelve months? Has it been presented or adopted so it is applicable code of conduct under the Independent Commission Against Corruption Act?

Commissioner CRIPPS: What I know about that is, of course, the Members' code of conduct has been promulgated. It slots into section 9 of the Independent Commission Against Corruption Act. It was intended, as I gather, that the Ministerial code of conduct would do that and I understood that drafts of that have been drawn, but not by us. To my knowledge they have not become law.

Mr O'FARRELL (ICAC COMMITTEE): You accept the difference between an ordinary Member of Parliament and an executive Member of Parliament who actually has a decision making role and therefore there being two codes; a general code for ordinary Members of Parliament—

Commissioner CRIPPS: I could understand how people might say that a Ministerial responsibility may transcend or be more detailed than a Member's one.

Mr O'FARRELL (ICAC COMMITTEE): The situation is that the Ministerial code is not an applicable code under the Independent Commission Against Corruption Act and that still remains the same today.

Commissioner CRIPPS: To my knowledge that is correct.

Mr O'FARRELL (ICAC COMMITTEE): The second issue I want to raise is that in that earlier evidence or advice to questions former Commissioner Moss indicated that the Independent Commission Against Corruption had initially expressed concern in 1998, seven years ago, that ministers were not at that time covered by a Ministerial code of conduct and that, "The adoption of a code of conduct by all members should not result in the diminution of the standards of behaviour expected of Ministers whose duties are more extensive than those of other members and whose access and control of public funds is far greater than is the case for those members". And she went on to say, "The ICAC has subsequently reiterated those concerns". Do I take it that those concerns continue within the Independent Commission Against Corruption? If you do not have the document I will have to give it to you; page 5, second last paragraph. I just have one more question.

Commissioner CRIPPS: I suppose all I can say about that is this; this all went back to about 1993, this problem, and there were all sorts of solutions put forward and two of them were a Members code of conduct and Ministerial code of conduct. We understand that a Ministerial code of conduct has been drafted but not effected. I can say this, it is obviously a question for, I suppose, the parliament to promulgate, to pass this. I don't know of a case we have had, I will stand corrected because I really do not know of a case we have had, where we feel that our investigations have been frustrated by lack of a Ministerial code of conduct. I actually invite anyone here who understands the history to contradict me.

Mr O'FARRELL (ICAC COMMITTEE): The concern initially expressed by the Independent Commission Against Corruption in 1998, about that matter, continues?

Commissioner CRIPPS: I expect it does. We anticipated it would come in and it has not come in.

Mr O'FARRELL (ICAC COMMITTEE): My third question goes to the response where the former Commissioner indicated that the public availability of codes of conduct were important both to those to whom the code applied as well as to the public.

Commissioner CRIPPS: Yes.

Mr O'FARRELL (ICAC COMMITTEE): Is it of concern to you that, unlike, for instance, the federal Ministerial code of conduct which is available with three simple clicks on your computer, the Ministerial code of conduct is not available online? Two phone calls today to Premier's and cabinet have failed to elicit a copy of the Ministerial code of conduct. I have raised this issue before.

Ms WAUGH: If we were advising another agency about the code of conduct, we would suggest that it be available to the public and easily accessible. That would be the advice that we would give.

Mr O'FARRELL (ICAC COMMITTEE): My issue is not you, it is the public. I take the point that Ministers should have a copy: I am sure they do, even though it is not worth anything given it has not been adopted by regulation. But the Independent Commission Against

Corruption is very clear that there is also a public interest and that public interest is being overlooked.

Commissioner CRIPPS: If this was the view of the Government of what Ministerial codes of conduct should be, the public should know about it.

Mr O'FARRELL (ICAC COMMITTEE): I am sure it is the view of the Government.

Question 22: Statistics on complaints

Ms KENEALLY (ICAC COMMITTEE): I note in the annual review you profile matters received, you profile allegations by type, you have a complaints profile, you mentioned at the beginning that you cover 130 public sector organisations, 159 local councils, do you keep statistics on complaints and allegations by public sector agencies and councils?

Ms WAUGH: We can extract that data.

Ms KENEALLY (ICAC COMMITTEE):: You can extract it, but you do not have it as part of the annual report.

Mr PRITCHARD: Do you mean a breakdown of each particular council?

Ms KENEALLY (ICAC COMMITTEE): A breakdown, say, so many complaints received about this agency, so many complaints received about that agency.

Mr PRITCHARD: We can do that.

Ms WAUGH: I think we would be reluctant to pick out individual agencies. But we could certainly do sectors, which is what we did in the profiling report. Rather than say, this particular council, Baulkham Hills for example, we can say these were the nature of the complaints in local government, in universities, in the health sector.

Ms KENEALLY (ICAC COMMITTEE): I wonder from a corruption prevention stand point would not it be useful to have that information, to know if there are certain agencies and/or councils that are attracting a high number of complaints.

Ms WAUGH: For our purposes, when we target our work and when we do our planning processes, we inform ourselves of that. My division had a planning day today, and part of the materials for consideration was a break down of complaints by sector and highlighting particular agencies we may be concerned with.

Ms KENEALLY (ICAC COMMITTEE): In that case would you look at what percentage of those complaints are dismissed, or not followed through, not deemed worthy of investigation? Say a certain agency might have received a high number of complaints but perhaps only a small percentage of them would be followed through, in terms of investigation.

Ms WAUGH: For the purposes of planning, no, we would not look at it from that point of view. What we tend to look at is the trends and the data. We have a separate section that looks at what has been uncovered in our investigations that are relevant to us.

Ms KENEALLY (ICAC COMMITTEE): It would seem to me that might be useful information to have, for example, to pick a department, the Department of Education, just for the sake of argument, has received a high number of complaints, but in actual fact only a small percentage were deemed worthy of investigation. If you just went by the statistics you might assume because it attracts a high number of complaints there is a corruption problem. But if you went by the statistics of the complaints you investigated you might determine that it perhaps attracts a high number of complaints because it interacts with people lives more directly than, say, other departments.

Ms WAUGH: When we are planning we do cover that for our internal purposes. We do look at what we have investigated. We triangulate the data to bring different points up. Part of process is what have we investigated with the Independent Commission Against Corruption in the last 12 to 24 months, and that is a factor that is considered. We do not look at any particular segment of data in isolation, it is looked at jointly. So we look at complaint trends, what we have investigated and what we know, for example, from the profiling.

Ms KENEALLY (ICAC COMMITTEE): You would use that data in planning your corruption prevention strategies?

Ms WAUGH: Yes.

Ms KENEALLY (ICAC COMMITTEE): Would you share that data with some of those agencies?

Ms WAUGH: It is interesting that you should say, it has actually come up. The Commissioner does an induction with new Chief Executive Officers, and one of the things we are looking at putting into those induction packages is a profile of their own agency so they can identify where the risk areas are for them as the Chief Executive Officer.

Mr PEARCE (ICAC COMMITTEE): Can I follow up on the point that Ms Keneally raised, and it is in the annual report 2003-04, page 21, complaints from the public sector—Section 10 complaints—where it talks about the 30% increase that you mentioned earlier. It indicates that, for example, 25% roughly of complaints related to building and development applications and rezoning matters. Where within this report is there actually an assessment: this is the number of complaints, that is the quantum of the increase in the complaints? Where, within the report, is actually an analysis of whether in fact there was any substance to any of these complaints? I know from my past life in my time in local government that every time somebody fails in an application they say "I will go to ICAC". You are possibly presenting to the public a false impression of the level of corruption that is occurring, at least as far as these Section 10 complaints are concerned.

Mr PRITCHARD: I suppose the answer to that is directly no, there is not a breakdown, if you like. The other part of the equation is not there. As you mentioned, say 25% of building development applications of which X per cent are found to have something in them, no, but I think as we indicated in the report, which follows from the number of allegations that we get

to the total of the Section 10 protected disclosures, and Section 11, which were 800-odd, I suppose indirectly when we say of all those allegations we received 40-odd turned into investigations, so I take your point, that directly, no, but indirectly I suppose one sees, yes, these are total allegations we received but of that 1800-odd that actually turned into investigations it is 40, so indirectly I suppose there is a suggestion, an inference there, yes, a lot of them have nothing in them.

Mr PEARCE (ICAC COMMITTEE): Could I suggest that it might be appropriate, rather than being an inference, there be something more concrete so that the public gets a proper impression of what is the level of actual corruption, as opposed to perceived or assumed corruption.

Ms WAUGH: I do not think that will give you an actual level of corruption. I do not think you can measure that. We can tell you what we have done. We can talk about substantiation rates in terms of what we do, but that does not equate to a level of corruption.

Mr PEARCE (ICAC COMMITTEE): What I am getting at is that this, as it presents now, is a raw set of figures. It presents a pretty dark situation. We have a 30% increase in the number of Section 10 complaints. I am only looking at Section 10. That presents as a pretty dark picture, but it may not be a dark picture.

Ms WAUGH: As we have said before, an increase, what does that mean? Does that mean corruption is going up? We do not know that. It could mean that the public is more aware and is reporting more, and that is a good thing.

Mr YEADON (CHAIRMAN): I think the point that is being made is if there is an inordinate or a large number of complaints under Section 10 against local government or whatever, it is often reported that a complaint has been made about such-and-such council to the Independent Commission Against Corruption. That gets lots of publicity and so forth and either the media or people do not stay with it until the conclusion of that allegation and therefore you can be left under the impression that there is just endemic corruption throughout local government. What level of corruption is there or not is not what is really being asked but, I suppose, a mitigating factor against that perception that can be created out there, so in that sense if you put out information saying we received 1500 complaints in this area and only X number were worthy of investigation and only X number went on to a corrupt finding, if that material is put out there, then it educates the community better about the level of corruption that not so much exists there, and you might not be getting to all of it, but it shows the level of corruption that has been uncovered as a result of investigations on the back of a large number of complaints. You must understand what is being said there. Impressions can be created through the media simply through complaints being made and people do not get to understand the real situation because they do not follow through to see what the conclusions of these investigations are.

Ms KENEALLY (ICAC COMMITTEE): Following on from that, it would seem completely obvious that you would receive a high number of complaints about council and development applications, or the Department of Housing, or about places that interact all the time with people's lives as opposed to, say, the Department of Corrective Services which only interacts with a small part of community. Within the Department of Corrective services the percentage of complaints that you actually find are investigatory might actually be much higher, so I

think simply reporting the number of complaints without reporting the number that are investigated, it does create a false impression.

Ms WAUGH: You mean matching it to the actual complaints data?

Ms KENEALLY (ICAC COMMITTEE): Yes.

Ms WAUGH: Because we do report on how many investigations we do. We investigate a very small number, so we also have to be careful not to create the impression that we have assessed and investigated all of these matters and there is nothing in it, because that is not true either.

Mr YEADON (CHAIRMAN): I suppose the Committee is not asking to you put data in there that does not have integrity, but I suppose at the end of the day the Independent Commission Against Corruption has to be explicit and say they have not investigated or have not pursued X number of complaints, and you might give a reason for that, which is accurate information for the community and can only be of benefit.

Mr ROBERTS (ICAC COMMITTEE): Have you been able to determine a pattern? Just following on from that, I come from local government as well.

Mr YEADON (CHAIRMAN): Me too.

Mr ROBERTS (ICAC COMMITTEE): It is that favourite period around council election times where there is always a flood of allegation and counter allegation, have we through the Independent Commission Against Corruption been able establish a pattern there? Have you looked for a pattern there?

Commissioner CRIPPS: I think we thought there would be more around election time, more complaints around election time.

Mr PRITCHARD: Yes, we anticipated you may raise that. We did a bit of a search about whether there was, as the 2003-04 report would have covered the local government elections in March of last year. We just had a brief look as to whether there was an increase in complaints about local government around the period of February-March of 2004. Statistically, there wasn't a huge spike. There were a lot of complaints about councils and there were some complaints about the elections in particular, but there was not actually an identifiable spike.

Mr PEARCE (ICAC COMMITTEE): What about August-September when people thought the election was going to be on?

Mr PRITCHARD: This covered a period of March 2003 to February 2005, so it covered that period to see whether around those particular times there was going to be any particular increase. It was not only about local government in particular, but about the elections in particular, because there were a lot of complaints about the elections. The elections themselves only attracted a statistical rate of 1.99 per cent of all complaints received in that period. There was some increase in the level of complaints, inquiries about councils, both by members of the public and Section 11 referrals, compared to years before and after, but

nothing that you could point to that would suggest that the elections were responsible for a huge spike or anything like that. There was certainly some suggestion they do fuel more complaints. The other thing that we thought you might read into that too is the local government elections increase awareness about councils so people may ring in just to complain about a council, not so much related to the fact that it is related to a local government election.

Commissioner CRIPPS: One of the problems about getting the information, which I got from one of our chief assessors, was she said if you start asking people too much why you are complaining now and why you are doing this, they get the feeling that they are the ones being harassed, so they have to be careful about how they do it, so she says.

Question 23: Whether ICAC can investigate complaints about the Ombudsman and Police Integrity Commission

Mr YEADON (CHAIRMAN): Just to return to categories of agencies and so forth, something I thought of earlier, would it be your understanding that the Independent Commission Against Corruption has jurisdiction to investigate other integrity agencies such as the Ombudsman and the Police Integrity Commission, and have you ever had a complaint in relation to those agencies?

Mr PRITCHARD: We cannot investigate the Police Integrity Commission. The Police Integrity Commission Act specifically provides that Police Integrity Commission officers are beyond our jurisdiction unless they are referred to the Independent Commission Against Corruption by the Inspector of the Police Integrity Commission. Otherwise they are out of jurisdiction.

Mr YEADON (CHAIRMAN): That is individual officers rather than the Police Integrity Commission itself?

Mr PRITCHARD: I think it is actually officers.

Mr YEADON (CHAIRMAN): Same as the Ombudsman, just because they are an integrity agency one hopes they are always full of integrity, but they are full of human beings as well, are they not?

Mr PRITCHARD: I think the Police Integrity Commission Act actually refers to conduct as opposed to people.

Mr YEADON (CHAIRMAN): People are the ones that undertake conduct, I would have thought.

Mr PRITCHARD: Any conduct, be it of a person or the Commission, certainly the Police Integrity Commission is beyond that.

Mr YEADON (CHAIRMAN): In your view if you received a complaint about the Ombudsman's office you would have the ability to investigate that agency?

Mr PRITCHARD: The Ombudsman's office? I think we do.

Mr YEADON (CHAIRMAN): Have you ever received a complaint in relation to alleged corruption there?

Mr PRITCHARD: Yes, I think we have. We do receive complaints about officers of the Ombudsman's office, yes.

Mr YEADON (CHAIRMAN): I have had a few myself, as a Member, and I wonder what the state of play is there.

Commissioner CRIPPS: Apparently there was some time ago, 1990.

Ms WAUGH: We do our own evaluation.

Mr YEADON (CHAIRMAN): I assume there was no finding of corrupt conduct?

Commissioner CRIPPS: As you know, I cannot get into this because of section 64(2).

Mr PRITCHARD: To answer the question, Ombudsman we can investigate but Police Integrity Commission we cannot.

Commissioner CRIPPS: We can via the Inspector, and I think we are about to get an Inspector of the Independent Commission Against Corruption.

Mr PRITCHARD: The Commissioner of the Police Integrity Commission is also exempt from Section 11.

Reverend The Hon. FRED NILE (ICAC COMMITTEE): You just got your Inspector of the Independent Commission Against Corruption.

Mr YEADON (CHAIRMAN): Reverend Nile might be able to inform us of the situation. He has come from the Upper House and the Independent Commission Against Corruption Amendment Bill has gone through. I think you said one amendment was accepted by the Upper House, is that right, in relation to the Director of Public Prosecutions?

Reverend The Hon. FRED NILE (ICAC COMMITTEE): Yes, about referring matters to the Director of Public Prosecutions before proceeding. An amendment on contempt was defeated, and all the other amendments were defeated.

Question 24: Protected evidence

Mr PEARCE (ICAC COMMITTEE): Mr Small, I refer to your earlier answer in relation to the preparation of evidence for subsequent use in a possible criminal prosecution. In putting this evidence together is cognisance taken of the relatively coercive powers of the Independent Commission Against Corruption, compared to normal investigation powers of the police, and what procedure protections are put in place to ensure that an individual's rights, that normally apply in a criminal investigation, are respected?

Mr SMALL: If a person is a suspect in a criminal investigation we apply all the standards that would apply to the New South Wales police. That is, once we believe there is enough evidence to have the person arrested, we would apply the criminal court standards. We do have cases, of course, where we identify a person as being involved in some criminal activity but might be on the edge of the activity or in a position where they are not, if you like, a central target, let me put it that way. On those occasions we could get an approval, if this was the way we wanted to go, we wanted that person as a witness as opposed to a potential offender, then we would go through the normal processes of an induced statement and would treat it that way, again applying the same principles.

Mr PEARCE (ICAC COMMITTEE): Generally in criminal proceedings the prisoner has a general right to silence, which is it not the case in Independent Commission Against Corruption proceedings.

Mr SMALL: It does not become admissible evidence.

Mr PEARCE (ICAC COMMITTEE): What I am getting at is it is important that evidence which is obtained by utilising that coercive power is not then subsequently put together as evidence prepared for the prosecution.

Commissioner CRIPPS: No.

Mr PEARCE (ICAC COMMITTEE): You have procedural processes in place to ensure that does not become the case. I have a sense of unease about what you said earlier, the way of the preparation of the evidence. I can understand the preparation of evidence for an inquiry for the Independent Commission Against Corruption. I got a sense of unease that if you were doing that and preparing evidence at the same time for a criminal prosecution, the two could get mixed up.

Mr WALDON: Perhaps I can answer that. The only time that the right to silence is abrogated is when you are required to give evidence at a hearing. So, that is the only circumstance where the right to silence is abrogated. You are entitled, in those circumstances, to seek a declaration, which is generally done and the declaration is granted, which means that although you are obliged to answer all the questions in the hearing, that evidence cannot be subsequently used against you in criminal prosecution or disciplinary proceedings. That is the way that matter is dealt with.

Mr SMALL: Can I say to clarify, put you at ease, I hope. When I was talking there we need to distinguish between people who are likely to be witnesses in criminal prosecution and a person who is likely to be an offender who may have a warrant or have action taken against them subsequently. When I was talking about the way in which the evidence was gathered to accommodate both, I was primarily talking about people who would be potential witnesses that prove a case.

Commissioner CRIPPS: It would mean, as Mr Waldon said, that the right of silence is only lost once a hearing comes on. When the hearing is there the right of silence is protected so far as future proceedings are concerned. After all the police are not required to give a warning to everybody they happen to speak to in respect of an offence. It is only once they

have come to a conclusion that there is sufficient evidence to charge, and that is what happens with us. If we start interviewing people and think they have done it you give it to them, and you might as well because if you didn't give it to them the evidence would be thrown out anyway.

Mr WALDON: We can't compel people to participate in the interview. If they do not wish participate or if they come along and during the course of the interview they feel uncomfortable, then they can walk away.

Question 25: Ryan v. Director of New South Wales Wildlife Service

Mr YEADON (CHAIRMAN): Commissioner, it probably goes to the matter of Ryan v Director of New South Wales Wildlife Service, which I know you are very familiar with. The judge found that Ms Colbey, who presided at the preliminary disciplinary hearings under the Public Sector Management Act in regard to Suzanne Ryan, had been provided with a copy of the Independent Commission Against Corruption's public report, which contained extensive quotes of protected evidence. The judge said he was satisfied that Ms Colbey had regard to protected evidence, contrary to Section 37 of the Independent Commission Against Corruption Act. As a consequence, the judge made orders in favour of Ms Ryan. What actions are you contemplating to ensure that disciplinary proceedings against public officials are not contaminated by exposure to protected evidence while at the same time ensuring that the reports of the Independent Commission Against Corruption document the full extent of the relevant matters considered in an inquiry?

Commissioner CRIPPS: The first thing I would say is that the second matter you mentioned is obviously the most important one. The second one is, I think it is up to these public officials. I have not read the Ryan case, so I don't know what it is. If they used information against Ryan and she had an objection and therefore it could not be used against her, we cannot do much about that. If that is what happened.

Mr YEADON (CHAIRMAN): Do the reports indicate that when you have the transcript?

Commissioner CRIPPS: What?

Mr YEADON (CHAIRMAN): That the evidence was under objection.

Commissioner CRIPPS: I think it should be understood that merely because somebody objects to answering questions on the ground it might incriminate them, it does not mean that every one has to pretend that material is not there. If someone admits under compulsion that they have committed a crime there is nothing to stop the police from finding evidence to establish that crime. All it means is they cannot use the statement of the person. So I suppose it depends upon how the people who want to use this decide to use it. I suppose ordinarily our investigators would say to people like Ryan, I would think, look, unless you can prove it in another way you can not prove it by her statement. I don't know that we would do that actually.

Mr PRITCHARD: Normally when we receive inquiries from authorities who want to take disciplinary action based on investigation they will request the transcript, as it were, the

whole transcript. In which case we can determine whether it is appropriate to provide the transcript. But I suppose we have to rely on the fact that those people who take the disciplinary action, there is case law on this, they have to be aware that you have to mount your own case in support of disciplinary action, bearing in mind the rules of evidence that apply to the particular tribunal that you are operating in. To that extent if they commence proceedings or initiate proceedings and the tribunal is thinking that they can rely on evidence that has been obtained under compulsion, and therefore in breach of Section 38, the Act itself says you can not do that. I suppose to the extent that there is any protection there it is provided by Section 38 itself. What the Commissioner said, the evidence that someone gives, it is not an immunity. It does not operate as an immunity. It is not a transaction immunity, in the sense no matter what you say it is off limits forever, it does not operate that way. It can lead to other inquiries being taken as a result of that information.

Mr YEADON (CHAIRMAN): You, in that sense, do not indicate in your reports whether the evidence was given under objection or not?

Mr WALDON: I think we generally would. We would indicate that when we are looking at Section 74A statement, as to whether there is sufficient evidence to prosecute.

Mr YEADON (CHAIRMAN): What 'generally' circumstances would create the exception.

Mr WALDON: We do that when we are looking at the issue of whether a recommendation should be made for prosecution for a criminal offence or the taking of disciplinary action. We generally look at, and examine, what available evidence there is. If the only available evidence is the admissions of the person itself, and that is subject to a Section 38 declaration, we would make that clear. From time to time we do get contacted by agencies who are aware that we have had public hearings in relation to matters that relate to their functions and they seek from us copies of the transcript of the public sector employees who have given evidence in those inquiries. When we make those available we make it clear to them whether there has been a Section 38 declaration, and if there has, what the effect of that declaration is. So they know that although they have a copy of the public transcript they can not use the evidence against that person because that evidence is subject to the Section 38 declaration.

Question 26: Disability Action Plans of the Independent Commission Against Corruption

Mr MILLS (ICAC COMMITTEE): I have some relatively technical questions. The annual report, page 110, appendix 17 discusses the Disability Action Plan of the Independent Commission Against Corruption, and my question is: Has the Commission implemented all of the recommendations of the audit report of the Australian Quadriplegic Association? You will notice in the first couple of paragraphs on that page, of appendix 17, it refers to "some" of the recommendations being implemented.

Mr FAVELLE: I can probably answer that question. I can provide it here; if you feel it is not sufficient we will provide more information. There were 133, is my best recollection, recommendations that came out of that very extensive review that was undertaken, that audit was undertaken by the Australian Quadriplegic Association representative. As best we can

we have resolved those recommendations to the point where we have either dealt with them because they can be dealt with. We have either referred them to the building management people associated with the building, because a lot of them had to do with access within the building itself that we don't have direct control of. Or we have decided that in the circumstances that we would not take any further action on the recommendation, mainly because some of them related to where we may have had a person with a disability and we needed to do something, but we did not have a person with that disability that needed to be actioned. We would do it when a person who might have had a disability, in the future, came to us. We endeavoured to resolve all those matters to the extent that we could do it in a practical and reasonably economic situation.

Question 27: Employment policy for Aboriginal persons

Mr MILLS (ICAC COMMITTEEE): I also wanted to ask then about page 107, the table 19, showing that the Independent Commission Against Corruption does not currently employ any Aboriginal persons. The zero employment of Aboriginal people seems to have been the case for the last three years. What is the policy regarding employment of Aboriginal people and what efforts has the Commission made during the last year to afford development opportunities to Aboriginal people? There are various departments, like Premier's and the Department of Education and Training, that provide funding to public sector agencies for that purpose.

Mr FAVELLE: Certainly we do not have any specific people at this point from an Aboriginal background. However, we are looking at right now the various opportunities that you have under a range of different programs that do exist, as you have made mention, in the Premier's department, and I am looking to put a recommendation to the executive about taking advantage of some of those opportunities. Our biggest problem, being a very tiny agency, is that if we need to offer full-time employment we can often take on a temporary situation and some of the opportunities that are available to us have temporary situations but many of them require a full-time commitment beyond the initial period, and that gets very difficult for a small agency. But we are exploring a couple of those situations now.

That is particularly in areas where we do have more contact with the public, such as when complaints are received, and we are looking at whether we can provide either a temporary role or a full-time role in that area that might be focussing on people from indigenous backgrounds. We are looking at it right now but it is very difficult in a small organisation to take someone on without impacting the overall resources of the Independent Commission Against Corruption.

Question 28: Protected disclosures

The Hon. JENNIFER GARDINER (ICAC COMMITTEEE): In your annual report there is reference to protected disclosures. The number has virtually doubled in the last year under review. Does the Independent Commission Against Corruption have any sense of why that would be so?

Mr PRITCHARD: I think there is probably a greater awareness of the Protected Disclosures Act now. That has been around for some 10 years now. There has been growing awareness of that. Sometimes a lot of the complaints that we receive about public sector organisations are often anonymous and it is a bit unclear whether they are protected disclosures under the Act. They may not be protected disclosures, but we tend to err on the other side of making them so. We cannot point to anything in particular. Protected disclosures increased from 213 to 306. I cannot point to anything in particular that would suggest where there has been an increase, other than a greater awareness. Certainly, we get a lot more complaints from public officers around times of restructuring and things of that nature within public service departments.

The Hon. JENNIFER GARDINER (ICAC COMMITTEE): They might feel more vulnerable at that time.

Mr PRITCHARD: Yes, restructurings and mergers tend to bring out particularly a lot more complaints about the larger agencies that are going through those sorts of processes. There tend to be a lot more complaints. When that happens that tends to bring out more protected disclosures.

Question 29: Key Performance Indicators

Mr YEADON (CHAIRMAN): In the In brief and the Results sections of the annual report there is a statement that the Independent Commission Against Corruption has completed a review of performance measures with recording against these measures scheduled for the 2004-05 financial year. Would you confirm that a comprehensive suite of key performance indicators are to be reported upon in the 2004-05 annual report and that you have in place appropriate data collection systems?

Mr PRITCHARD: The short answer is yes. We have been doing quite a bit of work on performance measures at a divisional level as well, so I think you will find that in 2004-05 that yes, we will address the question. It is not easy for agencies like this. I do not want to plead bleeding heart or anything but it is difficult to actually get some; bear in mind now that the [Independent Commission Against Corruption] Bill [2005] is through that amendments to Section 76 of the Independent Commission Against Corruption Act will now require us statutorily to include things like the times between complaints being received and lodged and how long it takes and so on, so we will have to statutorily address those sorts of issues.

Ms WAUGH: We are able to.

Mr PRITCHARD: We can do that.

Mr YEADON (CHAIRMAN): We will look forward to it.

Mr PRITCHARD: You have something to look forward to.

CHAPTER THREE – ANSWERS OF COMMISSIONER TO FURTHER QUESTIONS ON NOTICE

These further questions were taken on notice following a public hearing before the ICAC Committee on 6 April 2005

Question 30: Report of Mr John Chan-Sew

FURTHER QUESTION: *The ICAC Committee, in its examination of the 2002-2003 annual report, made a series of recommendations for change in performance reporting based on the assessment of that annual report and related planning documents by Mr John Chan-Sew. It is my understanding that although some suggested changes have been incorporated in the Corporate Business Plan nothing has been done to act on recommendations related to the contents of the Strategic Plan and in particular, performance reporting. In a note to the Committee, Mr John Chan-Sew has stated that little has been done to advance the standard of reporting since the 2002-2003 Annual Report. Would you like to comment on this situation?*

RESPONSE: In answering this question it is assumed that the reference to the ICAC Committee's examination of the 2002-03 report is an error and should in fact refer to the Committee's examination of 2001-2002 annual report.

The Independent Commission Against Corruption formally replied to the recommendations contained in the Committee's report of its examination of the 2001/02 annual report as well as the 2002/03 report when both were formally published and tabled in October 2004, by way of letter dated 12 November 2004 from former Commissioner Moss. For further assistance, a copy of that letter is attached.

As was noted in that letter it was an unfortunate consequence of the simultaneous tabling of the ICAC Committee's reports that the report dealing with the 2002/03 Annual Report did not give any indication of the extent to which the Commission had addressed matters raised by Mr Chan Sew regarding the 2001/02 Annual Report.

It is also worthy of note that there are no recommendations in the ICAC Committee's report for the 2002/03 Annual Report touching on matters raised by Mr Chan Sew in relation to the 2001/02 Annual report.

It does not appear that there are any issues of statutory compliance raised by Mr Chan Sew in relation to the 2001/02, the 2002/03 Annual Reports or indeed, based on the recent hearings, the 2003/04 Annual Report. To the extent that there are any outstanding matters raised by Mr Chan Sew which the Independent Commission Against Corruption has not commented upon, they appear to be issues of individual style and presentation which the Commission has noted and will take into account when considering the layout and methods of presentation for future Annual Reports.

Question 31: Implementation of Independent Commission Against Corruption's corruption prevention recommendations

FURTHER QUESTION: *Commissioner, the annual report at page 37 states that the Independent Commission Against Corruption made 92 corruption prevention recommendations to public sector organisations during 2003-2004. The Independent Commission Against Corruption states it receives progress reports from these organisations regarding the implementation of these recommendations. However, I note that most of the progress reports listed in Appendix 3 at page 92 were made in July 2003. That is, they were out of date by one year for the purpose of compiling the 2003-2004 annual report. Why doesn't the Independent Commission Against Corruption follow up the status of its own recommendations, instead of relying on a voluntary feedback that isn't keeping either the Commission or the Parliament up to date?*

RESPONSE: The Independent Commission Against Corruption began requesting feedback from public sector agencies about the implementation of corruption prevention recommendations included in investigation reports as part of its 'Recos on the Web' project in 2000. As part of the project, the ICAC periodically requests agencies to provide an update of their progress in implementing the recommendations. One such request was made to a number of subject agencies in June 2003 and they were requested to provide their feedback by July 2003. This is why there were a large number of progress reports received at that time.

Appendix 3 reports on the progress reports received in the 2003-2004 financial year. Reports received in July 2003 fall within this reporting period and therefore are current in relation to the 2003-2004 annual report.

The Independent Commission Against Corruption has recently reviewed its processes for the follow up of the implementation of its corruption prevention recommendations. The new system began in January 2005. We request agencies that were the subject of an ICAC investigation and related recommendations to provide to the ICAC:

- An implementation plan outlining how the agency proposes to implement the ICAC's recommendations and when they propose to implement them (plan to be submitted within 3 months of the report being published).
- A progress report on the implementation of these recommendations (to be submitted 12 months after the publication of the investigation report).
- A final report on the implementation of the ICAC's recommendations (to be submitted 24 months after the publication of the investigation report).

Agencies are advised that this information will be uploaded onto the Independent Commission Against Corruption website and encouraged to provide further updates past the 24 month period if they make further progress in implementing any recommendations. The new procedure commenced with the report into Koombahtoo Local Aboriginal Land Council published in April 2005.

Although the Independent Commission Against Corruption regularly contacts subject agencies to request information on their implementation of its recommendations, the ICAC does not have any statutory authority to compel agencies to implement its corruption prevention recommendations. Situations may arise where the subject agencies'

implementation of the ICAC's recommendations is unsatisfactory, in that there is a low level of implementation or that the action taken does not address the corruption risks that the recommendation was intended to address. If the ICAC has such concerns, it alerts the subject agency to these concerns and continues to monitor the agency.

Question 32: Conduct of hearings by Assistant Commissioner

FURTHER QUESTION: *In what circumstances does the Independent Commission Against Corruption appoint an Assistant Commissioner to conduct a hearing rather than rely on the Commissioner? I gain the impression that when what you might call a high profile case arises that it has been, at least previously, the Commission's frequent practice to appoint a Senior Counsel as Assistant Commissioner.*

RESPONSE: As indicated at the hearing on 6 April 2005, it is the intention of the present Commissioner to preside at public hearings as far as practicable.

In the past the Commission has sought the appointment of Assistant Commissioners to conduct hearings in circumstances where workload commitments or, in a limited number of instances, a perceived conflict of interest have prevented the Commissioner from conducting those hearings. It has not been the Commission's practice to seek the appointment of Assistant Commissioners on the basis that the hearing involves a "high profile" case.

Question 33: Basis for holding public inquiry

FURTHER QUESTION: *The annual report at page 32 discusses the various considerations that the Independent Commission Against Corruption weighs up when deciding whether or not to hold a public inquiry in regard to a particular matter. Under the changes in the Bill to amend the Act these considerations have been formalised in Section 31. One of the considerations you must now take into account is the risk of undue prejudice to a person's reputation that might arise from a public inquiry. Will it be your future practice, from the point of view of procedural fairness, to obtain the views of the parties involved?*

RESPONSE: The Independent Commission Against Corruption is not required to specifically seek the views of those involved in its investigations on the risk of undue prejudice to a person's reputation in holding or not holding a public inquiry. As a general rule, it has not been the Commission's practice in the past to do so. The provisions of the amended section 31 are such that it is not intended to alter this practice. This is because the issue is usually an obvious one and seeking the views of those involved would not be of assistance to the Commission.

Those involved in an Independent Commission Against Corruption investigation can make submissions on this issue at any point of the investigation. These can and do include submissions that names or other details identifying a witness in a hearing be suppressed under s.112 of the Independent Commission Against Corruption Act. All such submissions are always given careful consideration by the Commission.

Question 34: Awaiting advice from the DPP

FURTHER QUESTION: *I notice that in Appendix 2 of the Annual Report which deals with prosecutions and disciplinary matters, that several of them, including that of Mr John Kite, are nearing their fourth anniversary at the Office of the Director of Public Prosecutions, awaiting a decision on whether to prosecute. Commissioner, is it fair to the parties to allow these matters to drag on year after year without resolution?*

RESPONSE: The recommendations concerning Mr Kite were made in December 2001. Court Attendance Notices for 1 offence under s.319 of the Crimes Act and 55 offences under s.87 of the Independent Commission Against Corruption Act were served on Mr Kite in August 2004.

As indicated in the hearing on 6 April 2005, the Commission is actively examining its own work practices and undertaking discussions with the DPP to reduce any unnecessary delays in the prosecution decision making process.

Question 35: Assessing the admissible evidence

FURTHER QUESTION: *One of the Independent Commission Against Corruption's functions under Section 14 of the Act is to assemble evidence that may be admissible in the prosecution of a person for a criminal offence and to furnish that evidence to the DPP. When you go through the evidence to determine what is admissible wouldn't this give you a realistic idea of whether or not you should recommend to the DPP the consideration of prosecution action? The fact that the DPP has on so many occasions had to come back and report that there is insufficient admissible evidence suggests to me that the Commission's legal team is not adequately appraising the evidence before you make your recommendations.*

RESPONSE: It is standard Commission practice, before making any recommendation as to consideration being given to prosecution, to assess the available admissible evidence. The Commission may also take into account what additional admissible evidence may reasonably be expected to become available in the future. For example, the Commission may reasonably expect that certain witnesses will be prepared to provide statements, in admissible form, to support a prosecution. In some cases such witnesses may ultimately refuse to provide statements or may not be available.

There may also be differing views as to what constitutes sufficient admissible evidence. The Independent Commission Against Corruption does not always agree with the assessments made by the DPP. In such cases the Commission can make representations to the DPP but must ultimately accept the advice of the DPP.

It is also important to bear in mind the nature of the prosecution referral recommendation under section 74A(2) of the Act has which has been considered in a number of investigation reports.

In his Report on Investigation into the conduct of the Hon J Richard Face (June 2004), Assistant Commissioner Peter Johnson, SC observed (at pp 57-58) as follows:

What factors are relevant to the making of a statement under s.74A(2) of the Act? It is to be noted that the section requires a statement as to whether or not "in all the circumstances" the Commission holds a particular opinion. The existence of this phrase suggests a range of factors which might be taken into account. In the Trackfast Report, Assistant Commissioner Sackville QC said (page 10):

"In resolving that question, I consider that an important, but not decisive factor, is whether admissible evidence is available which might be relied upon in hypothetical criminal proceedings relating to the specified criminal offence. There would be no point, for example, in expressing an opinion that consideration should be given to a prosecution, if it is quite clear that there is simply no admissible evidence to establish an element of the specified offence, and no realistic prospects of gathering any such evidence.

On the other hand, the act expressly contemplates that 'all the circumstances' should be taken into account in formulating the opinion referred to in section 74A(2). These include, for example, the possibility that further investigation or analysis may produce admissible evidence that could be taken into account by the prosecuting authorities in determining whether to institute a prosecution. They also include the possibility that the prosecuting authorities may be able, independently, to adduce admissible evidence to support factual findings which have been supported before the Commission through evidence that would not be admissible in criminal proceedings. It is, after all, the prosecuting authorities which are entrusted with the responsibility of deciding whether the admissible evidence is sufficient to warrant a prosecution being instituted."

In the ICAC Report, Rebirthing Motor Vehicles: Investigation into the Conduct of Staff of the Roads & Traffic Authority and Others, November 2000, [then] Assistant Commissioner Cripps QC at pages 93-94 agreed with and adopted these observations of Assistant Commissioner Sackville QC. In the Report on Investigation into Conduct Concerning the Woodward Park Project, February 2003, Assistant Commissioner Slattery QC observed at page 51 that, in considering whether a s.74A(2) recommendation ought be made:

"... I must take into account whether there is a sufficiency of available admissible evidence to justify the institution of proceedings. I must also be satisfied that there would be a reasonable prospect, based on the evidence, of proceedings being instituted."

Question 36: Implementation of recommendations of Profiling Report

FURTHER QUESTION: *A draft report has been prepared on the implementation of the recommendations made in the Independent Commission Against Corruption's 2001 Profiling Report (Operation Umbrella). Can you briefly outline the level of implementation of the recommendations?*

RESPONSE: This report is currently in draft form. The results will be available in June 2005. The findings show agencies continue to adopt the recommendations of the original report. Further detail on implementation will be available when the report is published.

Question 37: Identity fraud

FURTHER QUESTION: *One of the research projects conducted by the Independent Commission Against Corruption during the preceding year was in regard to identity fraud. The annual report states that although a number of agencies at state and commonwealth level are examining this matter from specific viewpoints the Commission was the only one taking a whole of sector approach. Can you give us an overview of the results of the study, which I understand will be published sometime in 2005?*

RESPONSE: The survey results are for internal use only and in itself will not be the subject of a public report. However, the results are informing the development of a corruption prevention publication on identity fraud which is currently in draft and will be published later this year.

Question 38: Implementation of recommendations of inquiry into Goulburn Correctional Centre

FURTHER QUESTION: *In your answer to question on notice number 1 you mentioned the benefits that would follow if your recommendations were implemented relating to your inquiry into Goulburn Correctional Centre and the Remand and Reception Centre at Silverwater. Have your recommendations been implemented?*

RESPONSE: As advised, the Independent Commission Against Corruption has recently revised its Recos on the Web program that follows up progress by agencies in implementing recommendations from ICAC Investigation Reports. Under this program the first report from the Department of Corrective Services on the matter concerning the Goulburn Correctional Centre is due late this month (April). The information contained in the report will be made available on the ICAC website after receipt of the report.

In the meantime the DCS has provided an interim report to the Commission (dated 24 June 2004) on its progress in implementing the recommendations on this matter. This interim report outlines current procedures (as at June 2004) for conducting searches at the Goulburn Correctional Centre and for a random search program that includes staff. It states that four identified maximum security prisons have enhanced security procedures, and X-ray equipment has been introduced. It outlines new monitoring arrangements to ensure a consistent approach to searches across maximum security centres.

The interim report also states that the Department of Corrective Services (DCS) has established two taskforces to address the system deficiencies that allowed the misconduct identified in the two investigation reports to occur. The focus of Taskforce Con-targ is to deal with the introduction of contraband in correctional centres. Improved and extended search procedures are a focus of this taskforce. Taskforce Skye has been implemented to address corruption within the DCS, principally through the collection, collation and analysis of intelligence.

The interim report states that the telephone system used by inmates has been replaced with a system that has additional security features that will assist monitoring of inmate phone calls. It also states that a training and development program is being developed for staff

working in the High Risk Management Unit at the Goulburn Correctional Centre. Staff working in this Unit are selected on the basis of merit and now work to a different roster from that of the main gaol.

With regard to the investigation concerning the Metropolitan Remand and Reception Centre (MRRC) at Silverwater, the first progress implementation report is not due until September 2005. The information received will be reported on the 'Recos on the Web' website. The Commission has no further information on the implementation of recommendations concerning the Metropolitan Remand and Reception Centre.

Question 39: Complaints

FURTHER QUESTION: *I would like to ask the Commissioner a question relating to complaints. Under Section 81 of the Independent Commission Against Corruption Act if a person makes a wilfully false complaint they are liable to six months imprisonment. However under Section 17K of the Defamation Act there is a defence of absolute privilege for a publication to the Independent Commission Against Corruption. Do you think the blanket protection given in the case of defamation should be qualified so as to be consistent with the approach taken in Section 81?*

RESPONSE: The Independent Commission Against Corruption does not consider there is any need to qualify the protection afforded by s.17K of the Defamation Act. Section 81 of the Independent Commission Against Corruption Act makes adequate provision for those who wilfully make a false complaint.

Question 40: Benefits in conducting public hearings

FURTHER QUESTION: *Why, when it is clear from private hearings before the Independent Commission Against Corruption that a public official is involved in misconduct do we have to go through the process of public hearings? There must be a substantial cost to this, but for what net gain?*

RESPONSE: There are a number of benefits in conducting public hearings. These include:

- wide exposure of corrupt conduct,
- educating the public about corruption,
- deterring corrupt conduct,
- encouraging others with relevant information to come forward, and
- providing transparency and accountability of the Commission's fact-finding processes.

The Independent Commission Against Corruption is always mindful of the need to not unnecessarily duplicate the evidence given in private hearings. However, the question appears to be based on an incorrect assumption that public hearings are simply a re-run of private hearings. This is not so.

Generally, private hearings are conducted to test the veracity of the allegations of corrupt conduct and to refine the issues to be covered in public hearings. Public hearings may incorporate some or all of the evidence given in private hearings but also involve the taking of

additional evidence both from those witnesses who gave evidence in private hearings and from other witnesses. Public hearings also provide an opportunity for the evidence of particular witnesses to be tested through cross-examination. To avoid unnecessary duplication, and where it is appropriate to do so, the evidence given in private hearings may be tendered in evidence in the public hearing rather than recalling the witness or taking the witness over areas previously covered in the private hearing.

The Independent Commission Against Corruption does not always proceed to public hearings after private hearings, even in cases where it considers it in the public interest to publish a report on its investigation. For example, in its investigations into Mr Glenn Oakley's use of false academic qualifications (report published December 2003) and its investigation into conduct of the Rail Infrastructure Corporation and others in relation to Menangle Bridge (report published September 2003) the Commission, after considering what was in the public interest, determined it was not necessary to hold further hearings in public but instead relied on evidence given in private hearings.

Question 41: Independent Commission Against Corruption hearings on Saturday

FURTHER QUESTION: *The ICAC Committee has noted that on occasion the Independent Commission Against Corruption sits on a Saturday. Under what circumstances will the Independent Commission Against Corruption sit on a Saturday? What is the typical costs of a Saturday sitting?*

RESPONSE: It is highly unusual for the Independent Commission Against Corruption to sit on a Saturday.

The Commission conducted a private hearing on a Saturday on one occasion during the course of its investigation into the conduct of The Honourable Peter Breen MLC. This day was chosen to suit the availability of Mr Breen's legal representative.

The Commission has not undertaken a calculation of the costs associated with this hearing however they are unlikely to be significantly greater than those associated with weekday hearings.

Question 42: List of witnesses and sitting days

FURTHER QUESTION: *Why doesn't the Independent Commission Against Corruption publish the full listing of witnesses examined and sitting days where witnesses were examined, when it tables an investigation report?*

RESPONSE: The Independent Commission Against Corruption does not consider it necessary to publish such a table.

Generally, the Commission publishes in its reports the number of days on which public and private hearings were conducted.

Persons whose evidence is relevant to the fact-finding process are usually identified in the report and their evidence examined. Persons against whom substantial allegations have been made in the course of or in connection with the investigation (ie “affected persons”) are the subject of statements under s.74A(2) of the Independent Commission Against Corruption Act.

Question 43: Inquiry into governance on Norfolk Island

FURTHER QUESTION: *I refer to the report by the House of Representatives Joint Standing Committee on the National Capital and External Territories of an inquiry into governance issues on Norfolk Island. The report, “Quis custodiet ipsos custodes? Inquiry into governance on Norfolk Island”, was tabled in early December 2003. Recommendations made by the Joint Standing Committee included proposed amendments to ‘engage an independent institution’ to investigate allegations of corrupt conduct within the Norfolk Island Legislative Assembly, the Norfolk Island Administration, and all statutory boards and government business enterprises, with a formal proposal that the Norfolk Island Act 1979 (Cth) be amended to apply the Independent Commission Against Corruption Act 1988 (NSW). Could you give an indication of any discussions or actions regarding this recommendation that have involved the Independent Commission Against Corruption?*

RESPONSE: On 20 May 2003 the Chairperson of the Joint Standing Committee on the National Capital and External Territories, Senator Ross Lightfoot, wrote to the Commissioner advising of the terms of reference for the inquiry into governance on Norfolk Island and requested an opportunity to discuss with the Independent Commission Against Corruption the issues and recommendations arising from the ICAC report on Lord Howe Island. The Chairperson advised that the ICAC could meet with the Committee in public or in private.

The then Commissioner, Irene Moss, extended an invitation to the Joint Standing Committee on the National Capital and External Territories to attend a briefing on the Independent Commission Against Corruption’s work in relation to small and isolated communities at the ICAC premises. This briefing occurred on 24 July 2003. It would appear that at this briefing the Committee raised the question of whether the ICAC would be a suitable agency to provide the following for Norfolk Island:

- a corruption prevention audit of the Norfolk Island Government and Legislative Assembly;
- a corruption prevention and education strategy for the public sector and the Legislative Assembly;
- an investigative role to address allegations of corrupt conduct.

On 30 July 2003 Senator Lightfoot wrote to Commissioner Moss stating in respect of the above that:

We understand that this would depend upon either the Norfolk Island Government or the Commonwealth reaching an agreement with ICAC and the New South Wales Government to extend the jurisdiction of your organisation to Norfolk Island.

Senator Lightfoot also requested comment on the technical and resource issues that would need to be addressed if such an approach were possible.

On 22 August 2003 Commissioner Moss responded in writing as follows:

You have advised that the Committee is in the process of drafting its report and would appreciate our advice as to whether the approach set out in points 1 to 3 above were possible and, if so, the technical and resource issues that would need to be addressed to put in place such an arrangement.

As you are aware, the Commission has been granted its jurisdiction in relation to New South Wales public officials by the NSW Parliament. This jurisdiction includes more than NSW Government officials and extends to the employees of bodies that include the health services, local government and the public universities. The NSW Government funds the Commission to exercise its functions with respect to its jurisdiction. Therefore, putting to one side the question of the attitude of the Commonwealth Government and Parliament, it would seem that a major technical issue to be resolved would be securing the consent and agreement of the NSW Government to the proposal. It may also be necessary to secure the consent of the NSW Parliament to enabling or facilitating legislation although this is a matter that might ultimately be resolved by the NSW Government. Because I am not able to speak for the NSW Government I would recommend that contact be made with the NSW Government to discuss the proposal directly with it.

For my part, if the Commonwealth and NSW Governments and/or Parliaments were to agree to vest jurisdiction in respect of Norfolk Island public officials in the Commission, I would accept that decision. As you would no doubt appreciate, the Commission would, however, have to be appropriately resourced to carry out these functions.

Appropriately resourcing this additional jurisdiction is, at present, very difficult to determine. In the main, this arises because of lack of information about the nature and scale of the corruption issues arising in the governance of Norfolk Island. The Commission would need to make a detailed assessment of the situation in Norfolk before it would be able to develop a resource plan. Given that some resources would then need to be allocated to undertake this assessment two issues arise. First, it would not seem prudent for an assessment to be undertaken unless there was some certainty that such an assessment would not be a waste of the resources. Second, the assessment itself would need to be appropriately resourced. As to how much might be involved in resourcing the assessment, this would depend on how much information would be readily available to the Commission from sources such as the evidence provided to the Committee and that is otherwise publicly available material. Further discussion and receipt of the Committee's available information holdings will assist in giving the Commission a better idea about the nature and scale of the issues arising.

I am happy for the Commission to continue its dialogue with the Committee about the proposal but believe that to do so productively the Committee will need to involve the relevant Governments as soon as possible.

The Joint Standing Committee on the National Capital and External Territories did provide the Independent Commission Against Corruption with relevant sections of the draft Committee report for comment. On 17 September 2003 the Commission responded by restating the position outlined in Commissioner Moss's letter of 22 August 2003.

There has been no further correspondence or discussion between the Independent Commission Against Corruption and the Joint Standing Committee on the National Capital and External Territories.

Question 44: Number of complaints against local councillors

FURTHER QUESTION: *Could you give the Committee an idea of the number of local councillor matters (that is, matters relating to an elected official in local councils) that are brought to the Independent Commission Against Corruption, over, say, the past five years?*

RESPONSE: The Independent Commission Against Corruption's complaint management system does not keep statistics on complaints against councillors as a separate group or category of public official but rather is directed to recording complaints relating to individual councillors within each separate council, that is the central reference subject point is the council, not the councillor or councillors. Figures are also kept on individual councils and councils as a whole or group. To extract and compile figures or statistics relating to local councillors separately, while possible, would require an extensive and resource intensive manual accounting process.

Question 45: Number of matters referred by the Independent Commission Against Corruption to the Pecuniary Interest Tribunal

FURTHER QUESTION: *How many matters did the Independent Commission Against Corruption refer to the Pecuniary Interest Tribunal during the 2003 – 2004 financial year?*

RESPONSE: The Independent Commission Against Corruption does not refer matters to the Pecuniary Interest Tribunal. Where appropriate, information about pecuniary conflicts of interest is referred to the Department of Local Government who brings matters before the Tribunal.

Question 46: Monitoring how Pecuniary Interest Tribunal deals with referred matters

FURTHER QUESTION: *How does the Independent Commission Against Corruption monitor how the Pecuniary Interest Tribunal deals with referred matters?*

RESPONSE: Not applicable – see answer to question 45 above.

Question 47: Independent Commission Against Corruption participation in whistleblowing project of Australian Research Council

FURTHER QUESTION: *The Independent Commission Against Corruption is participating in a three-year Australian Research Council (ARC) funded linkage project "Whistling While They Work", which will investigate public interest disclosures (whistleblowing) in the public sector. What is the Commission doing to assist this project?*

RESPONSE: Over the life of this three-year project, the Independent Commission Against Corruption will provide \$60,000 as a cash contribution and make in-kind contribution (i.e.

staff time) of \$12,800. The ICAC is also a member of the Steering Committee which provides oversight to the project.

Question 48: Assessment of sufficiency of admissible evidence

FURTHER QUESTION: *During the hearing there was discussion about the collection of evidence and its use in investigations by the Independent Commission Against Corruption, and later in prosecutions and disciplinary actions. Does the Independent Commission Against Corruption make an assessment of the amount and sufficiency of admissible evidence before making a recommendation as to prosecution or disciplinary action?*

RESPONSE: Yes - see the answer to Question 35 above.

Question 49: Investigation arrangements relating to Camden and Campbelltown Hospital allegations

FURTHER QUESTION: *During the hearing, Mr Roberts MP asked a question regarding the investigation into Campbelltown and Camden hospital matters. In his question, Mr Roberts also intended to ask for your comments regarding the adequacy and effectiveness of arrangements put in place to allow the concurrent investigations between Mr Bret Walker SC and the Independent Commission Against Corruption into allegations related to Camden and Campbelltown Hospitals.*

NOTE—In a joint statement by Bret Walker SC and the Independent Commission Against Corruption on 19 December 2003, the previous Commissioner, Irene Moss and Mr Walker confirmed that they had agreed to establish a close working relationship to avoid any duplication between inquiries and to ensure all matters were thoroughly investigated. Mr Walker's inquiry was to focus on the adequacy and safety of patient care at both hospitals and the health care complaints process. Any allegations of corrupt conduct that might emerge during Mr Walker's inquiry, and which require reference to the Independent Commission Against Corruption, would be referred to the Commission as they arise.

RESPONSE: The statement by Bret Walker SC and former Commissioner Irene Moss AO was issued following their meeting in response to the announcement of Mr Walker's appointment to conduct the Special Commission of Inquiry (SCI)

At that meeting it was recognised that the similarities in the terms of reference for the SCI and the nature of matters the Independent Commission Against Corruption was then investigating could give rise to overlap and duplication such as interviewing relevant witnesses, obtaining the same documentation etc notwithstanding the different focus (standards of patient care as opposed to corrupt conduct) of each respective investigation.

Following the issue of that joint statement and throughout the duration of the SCI until it delivered its final report on 30 July 2004, senior officers involved with both investigations met on a regular basis – usually fortnightly - to update each other on

progress with their respective inquiries and to provide a forum and process to co-ordinate a transfer and sharing of relevant information and material subject to the constraints and requirements of each inquiry.

These meetings proved an extremely useful forum aimed at ensuring that the potential for duplication was reduced and for updates to be provided on the progress of each investigation.

There were no matters arising from the Final Report of SCI that were referred to the Commission for further investigation or consideration.

Question 50: Appointment of Mr Clive Small as Executive Director, Strategic Operations Division, Independent Commission Against Corruption

FURTHER QUESTION: *A Question on Notice was asked of the Chairman, the Hon. Kim Yeadon MP, by Mr Peter Debnam MP on Tuesday 1 June 2004. The question, and the Chairman's answer is as follows:*

QUESTION 2226

ICAC APPOINTMENT - Mr Debnam to Chair of the Committee on the Independent Commission Against Corruption

In relation to Mr Clive Small's ICAC appointment:

- (1) Will you convene a meeting of the Committee to allow the ICAC Commissioner to explain the selection process and respond to the following questions?*
- (2) When was the ICAC aware of the need to fill the vacancy of Director, Strategic Operations?*
- (3) When was the position advertised?*
- (4) Were previous Directors, Strategic Operations, subject to an advertised selection process?*
- (5) Did ICAC follow its own "Recruitment and Selection Guidelines -Impartiality, accountability, competition, openness and integrity"?*
- (6) How was the pool of potential applicants maximized?*
- (7) What is the status of the appointment?*
- (8) What are the details of Mr Small's contract (including contract period and remuneration)?*

ANSWER

(1) The Committee on the Independent Commission Against Corruption has regular meetings with the Commissioner. Under the Independent Commission Against Corruption Act 1988 Section 64 (1) (c) the Committee must examine the annual reports of the Commission. The matters raised in (2) to (8) will be best dealt with during an examination of the 2003-2004 annual report of the Commission.

Could the Independent Commission Against Corruption provide a response to parts (2) to (8) of Mr Debnam's question?

RESPONSE: On 29 April 2004, the then Commissioner, Irene Moss AO, issued a media release in relation to the temporary appointment of Mr Clive Small to the position of Executive Director, Strategic Operations Division in response to matters raised by Mr Peter Debnam MP. The text of that release is produced below:

ICAC Commissioner responds to questions raised by Peter Debnam
Thursday 29 April 2004:

The Independent Commission Against Corruption (ICAC) Commissioner Irene Moss AO has refuted concerns raised by the Shadow Police Minister regarding the appointment of former Assistant Police Commissioner Clive Small to head the organisation's investigations division.

The position of Executive Director of the Strategic Operations Division became vacant this month with the resignation of Mr Michael Outram who will take up the position of Director of National Operations at the Australian Crime Commission in Canberra.

Mr Small is in the process of being appointed to the position at the ICAC for a period of up to 12 months. ICAC policy allows a temporary appointment to be made for a period of 12 months, and longer with the approval of the Commissioner.

Commissioner Moss said it was preferable to make an interim appointment to the position because a new Commissioner is due to commence at the end of the year.

"A number of options were canvassed in filling this position for the next 12 months, and I decided that it was best for the organisation to directly appoint a skilled and experienced investigator," she said.

"This will ensure there is a smooth transition between Commissioners and that the incoming Commissioner can have a say in a permanent appointment once the position is advertised. The appointment of Mr Small will also ensure the smooth continuation of our ongoing investigations."

The Commissioner said that Mr Small was a very talented investigator chosen for his abilities and comprehensive experience in law enforcement in NSW.

"I am very much looking forward to having him on board," she said.

"It is disappointing that Mr Debnam has decided to publicly question this decision without seeking to clarify the situation with the Commission first."

Mr Small commenced his twelve month appointment on 25 May 2004 on a total remuneration package within the scale of SES Level 3 applicable to this position. From 1 October 2004 that scale is \$161,051.00 to \$181,850.00 per annum. Mr Small's remuneration within that scale is a matter between him and the Commissioner.

As this temporary appointment is about to conclude, the position is soon to be advertised with a view to it being filled on a more established basis.

CHAPTER FOUR- REPORT OF MR JOHN CHAN-SEW

To assist the ICAC Committee in its examination of the 2003-2004 Annual Report of the Independent Commission Against Corruption the Committee sought advice from Mr John Chan-Sew, a specialist financial and economic consultant. He was asked to comment on:

- the form and content of the Strategic and Corporate Business Plans (including an assessment of their adequacy in providing a framework to hold the ICAC accountable for its performance);
- the reporting of performance results achieved against the Strategic and Corporate Business Plans (and, in particular, the desired outcomes, objectives, planned initiatives/projects and performance targets as identified in the planning documents); and
- compliance with the statutory disclosure requirements as specified in the Annual Reports (Departments) Act 1985 and Regulations and the Independent Commission Against Corruption Act 1988.

In regard to the Strategic Plan, Mr Chan-Sew said the most significant issue of concern was the quality of the performance measures shown in the document. He concluded those measures were inadequate to assess the objectives (particularly the efficiency and effectiveness aspects) of the operations and the performance outcomes achieved. This was because the measures were mainly concerned with the workloads of different activities such as complaints received by the ICAC; investigations undertaken; reports produced; corruption prevention advice provided; and corruption resistance reviews conducted.

A further issue was that quantitative targets had not been specified for all of the performance measures shown in the plan.

In the case of the Corporate Business Plan, the most significant issue identified was again the inadequacy of the performance measures and targets. Mr Chan-Sew said the number of quantitative performance measures included in the Business Plan fell short of what was required to effectively measure the extent of achievement of the Commission's objectives.

One of the positive features of the plan was the comprehensiveness of the information provided on the financial outlook and budgetary position. The usefulness of the information, however, could be further enhanced by also including in the document prior year comparatives and a trend analysis.

Mr Chan-Sew said that because of the major deficiencies identified in the two planning documents and the absence of significant information from the Strategic Plan the concern is that the stakeholders of the ICAC would have a difficult task in effectively monitoring the Commission's activities and in holding the agency accountable for its performance

Mr Chan-Sew identified two major concerns with the Annual Report.

Firstly, there was little noticeable improvement in the quality of performance reporting since the 2001-2002 Annual Report despite specific statements made in that report that more work was to be done in further developing the key performance indicators. Mr Chan-Sew's

review found that a significant part of the development work carried out in recent years on key performance indicators had not been reflected in the 2003-2004 Annual Report

Secondly, a number of the key performance indicators and projects and initiatives identified in the 2003-2004 Corporate Business Plan have not been reported against in the 2003-2004 Annual Report. A major implication of this is that some aspects of the Commission's performance have remained largely unaccounted for.

The Committee's recommendations address the findings of the report.

The full text of Mr Chan-Sew's report is set out in Appendix 1.

CHAPTER FIVE – COMMENTS ON THE REVIEW OF THE 2003-2004 ANNUAL REPORT

Governance system to monitor the Independent Commission Against Corruption's investigations and inquiries

This matter was the subject of a question in the course of the examination of the annual report on 6 April 2005. It was raised by the Chairman as a result of a letter from Mr J.R. Marsden, the Senior Partner of Marsdens Law Group, to the ICAC Committee expressing concern about aspects of the investigation into the conduct of the Hon. Peter Breen MLC, one of which was the length of the inquiry which occupied 22 hearing days. Mr Marsden said the Independent Commission Against Corruption had been asked “to inquire why they went mad.” The following is the text of the question and answer in relation to this matter given during the examination of the annual report.

Mr YEADON (CHAIRMAN): As you have indicated earlier and as we all know, this Committee cannot delve into investigative matters and I do not want to do that but out of one investigation has arisen a general question of procedure, as I see it, but if you do not see it that way you clearly indicate it and do not answer it. I will tell you the investigation simply so that you can better understand where I am going. It is the Breen inquiry. I will not talk about the Breen inquiry other than to just nominate it so you can reflect back yourself on it and perhaps understand where I am coming from. In a general procedural way—and it may be a question for Mr Small—when agencies investigate things, regardless of who the agency is, you can get hold of the wrong end of the stick. In other words you are thinking on it or where the direction of your investigation is going could be wrong, and you could look in another area perhaps and find evidence that would indicate to you that it is going wrong, but it may not have occurred to the organisation or the investigators because they are immersed in the activity of investigating a particular area. What mechanisms, if any, exist within the Independent Commission Against Corruption to check against a particular investigation to see that it is not heading in the wrong direction or off the rails?

I suppose to give an example by way of another area that I am familiar with, within rail safety, for example, transport areas, they often have a unit that simply is doing a desk top analysis of what is occurring, completely removed from the actual people who are undertaking the real world investigation and those two bodies of information, if you like, are brought together at the executive level as a testing mechanism to see that that practical world examination is on track. I put that as one example that is used that I am aware of in other areas of activity that involve investigations and so forth.

I am not asking whether or not the Independent Commission Against Corruption has exactly that type of mechanism, but I suppose I am asking as a general procedural thing, or a general approach within the Commission in relation to investigations, if there are mechanisms to check periodically or in an ongoing way

that an investigation is on the right track or that the actual individual investigators, for whatever reason, have got hold of the wrong end of the stick and have gone off in a diametrically opposed direction to where the investigation should be going.

Commissioner CRIPPS: What I should have mentioned when I opened was that I inherited, fortunately I think, a very good governance system and one of those is a group of people called the Investigation Management Group, and that meets every two weeks. It is a committee comprising senior executives and people who are involved in the investigation to do the very thing you are talking about, to make sure these investigations are on track, whether we are going the wrong way or whether information is coming in saying what we thought was happening earlier has not happened. Mr Small may wish to make some comments about what his own group does, but the executive of the organisation does this every two weeks in respect of all major investigations.

Mr SMALL: I think there is some additional strands to this and if we could talk about the larger investigations now, not preliminary inquiries, but all the major investigations have attached to them a corruption prevention officer and a lawyer and they participate in, if you like, the operational meetings, and discuss the strategies that are applied, and that occurs once an inquiry is under way, roughly between once a week and once a fortnight, depending on progress that has been made on other inquiries and other commitments. There is a well-documented accountable trail which leads to the Investigations Management Group. The chief investigator of each investigation attends that meeting and has input to the future directions.

The Investigations Management Group deals with it at a broader strategic level about where are you going for the next fortnight, what are the critical issues, rather than the detail of the operational strategy. It is a fairly comprehensive and accountable mechanism which keeps us very much on track.

Commissioner CRIPPS: We have actually at page 27 of our annual report referred to these matters.

Mr YEADON (CHAIRMAN): You have referred to some of those processes.

The details in the annual report referred to by Commissioner Cripps generally cover the points given in evidence. They show the Investigation Management Group's objective is regularly to review the strategy and progress of investigations and to provide operational direction. Several important concerns need to be touched upon. The first is that the injury and expense borne by a party is likely to be increased in protracted proceedings. Mr Marsden stated the cost to his client of the Breen proceedings was well over \$300,000. This cost arose in relation to the investigation of an anonymous complaint in which no findings of corrupt conduct were made.

Another related issue is the public expense of an investigation and hearing. In his evidence Commissioner Cripps said the Independent Commission Against Corruption's budget position was not good because of the number of "blown out hearing days." The Commission, in

answer to Question on Notice No 12, revealed it did not during 2003-2004 maintain daily records of costs and expenses of public and private hearings. This means, for instance, the Commission would only have a vague idea of the total costs involved in the Breen proceedings. The same would apply in the John Swann proceedings which were not finalised with the DPP for 6 years. The Commission was in fact asked, in Question on Notice No 17, to estimate the costs of the Commission's investigation and hearings in the John Swann matter. The Commission replied:

The Independent Commission Against Corruption has not undertaken any calculation of the financial cost of its investigation and hearings in this matter.

The lack of any audit of the ongoing costs of an investigation and hearing would remove much of the incentive to ensure a matter did not run a day more than necessary. The ICAC Committee has previously supported putting in place procedures for activity-based costings. This would put the Independent Commission Against Corruption in a position to audit the costs of investigations and hearings, preferably on a monthly basis, so as to provide a more complete picture for the purpose of an operational review. At Question on Notice No 11 the Commission reports on the progress it is making.

Existing advisory arrangements relating to the Operations Review Committee should also be improved so as to further strengthen the governance of investigations. Although the Operations Review Committee is given a strong advisory function by section 59 of the Act—and this function has been broadened by the Commissioner to include advising if an investigation should be continued—it has to a large extent been sidelined to the role of accepting action already decided upon by the Independent Commission Against Corruption. In the details given at page 27 of the annual report it is clear that the Investigation Management Group is regarded by the Commission as the body that provides the sole direction on critical operational decisions. The Operations Review Committee is not mentioned in that context. This is not surprising because the way its work was structured during 2003-2004 made it impossible for it to have a constructive role. The annual report under the heading "Accountability and Governance" shows that the Operational Review Committee was asked by the Commission to consider 1807 matters during the six meetings it held in 2003-2004, an average of 301 matters a meeting. One helpful change recommended by the consultants engaged by the Commission during 2004 to audit Operations Review Committee procedures is shorter report deadlines by the Commission to allow more timely advice from the Operations Review Committee.

If the Operations Review Committee is to perform the useful advisory role intended by the Legislature and by the Commissioner in connection with decisions on whether or not an investigation should be continued or discontinued it will need to be kept more advised of the current operational standing of investigations so as to be in a position to give any advice on their continuance that may be appropriate.

The ICAC Committee recommends that the Inspector of the Independent Commission Against Corruption examine ways of improving the effectiveness and appropriateness of the procedures governing the Operations Review Committee so that it can exercise a more productive advisory role. That examination could include consideration of the preparation of guidelines that the Operations Review Committee could consider for adoption in relation to the performance of its advisory role relating to the continuance or discontinuance of

investigations. The Operations Review Committee and the Commissioner should be parties to that examination. The Joint Committee also considers it would be appropriate for the Inspector to report his recommendations within 6 months to Parliament.

Statistics – The need for more particulars

The examination of the Annual Report of 2003-2004 identified the need for more detailed statistics on complaints. This became apparent from the exchange between officers of the Commission and members of the Committee in the course of that examination on 6 April 2005. That exchange is set out under Question 22 headed Statistics on Complaints. The Committee recommends that annual reports of the Independent Commission Against Corruption should in future show a breakdown of complaints so as to disclose the type of complaint, the number received by each public sector agency and the number of those complaints investigated.

Relations between the Independent Commission Against Corruption and the Office of the Director of Public Prosecutions

In the course of his evidence on 6 April 2005 (extracts of which are at Question on Notice No 18,) Commissioner Cripps made several observations relating to the future relationship of the Independent Commission Against Corruption with the Office of the Director of Public Prosecutions. The first of these was that he had initiated discussions with Mr Cowdery, the Director of Public Prosecutions and they had agreed to set up a committee to revise the Memorandum of Understanding between the two organisations. That memorandum has apparently not been revised since it was entered into on 10 August 2000. It sets out the responsibilities of the parties in relation to liaison arrangements and in relation to the furnishing of evidence by the Commission to the Office of the Director of Public Prosecutions.

The memorandum provides for meetings to be held between the Independent Commission Against Corruption and the Office of the Director of Public Prosecutions to agree upon timetables for the issuing of requisitions, the answering of requisitions and the furnishing of advice by the Office of the Director of Public Prosecutions as to whether criminal charges are available. Having regard to the large number of matters that remain categorised, often for several years, in the annual reports of Commission as “Awaiting outcome” these meetings could not be very frequent. This may be one reason for the tension that Commissioner Cripps mentions in his evidence in connection with the relations between the two bodies.

Commissioner Cripps reports Mr Cowdery’s view that the situation can be improved and that in future they will not have many delays. Mr Pritchard, in his evidence, said the intention is to engage the Office of the Director of Public Prosecutions at an earlier stage, possibly by having a lawyer from the Office of the Director of Public Prosecutions specifically attached to Independent Commission Against Corruption matters so that liaison can take place as the matter progresses in the Commission.

Mr Pritchard made this comment:

There certainly is a resolve on both sides to try and address this issue of doing something about the briefs in such a way that when we do give them a brief of evidence under investigation, it does not come as something they have not seen before and have no familiarity with.

The ICAC Committee commends both the Independent Commission Against Corruption and the Office of the Director of Public Prosecutions on their active approach to overcome existing delays. One reservation it has is that the arrangement would invariably lead to a situation where the Office of the Director of Public Prosecutions becomes the determining authority on whether the Commission should include in a report a recommendation for the consideration of the prosecution of a person for a specified criminal offence. Under section 74A of the Independent Commission Against Corruption Act this role is exclusively the function of the Commission.

Ryan –v- Director of New South Wales Wildlife

This case was discussed in the course of the ICAC Committee's examination of the annual report. Transcript extracts appear at Question on Notice No 25.

The remarks by Independent Commission Against Corruption officers in the transcript do not appear to address the problem disclosed in this case which was that the person presiding at the disciplinary hearings had been provided with a copy of the Commission's report containing extensive quotes of protected evidence. The judge was satisfied this had influenced the presiding officer. The issue seems to be are any safeguards necessary to prevent quotes of protected evidence contained in Commission reports tainting disciplinary proceedings? The Commission should further examine the situation.

Appendix 1 – Report by Mr John Chan-Sew on the Review of the 2003-2004 Annual Report and the related Strategic and Business Plans of the Independent Commission Against Corruption: (January 2005).

Introduction

Under the terms of reference for the consultancy, a review was conducted of the following documents for the Joint Parliamentary Committee on the Independent Commission Against Corruption:

- The ICAC 2003-2004 Annual Report
- The ICAC Strategic Plan for 2003-2007
- The ICAC Corporate Business Plan for 2003-2004

The key purpose of the review was to provide comment on:

- the form and content of the Strategic and Corporate Business Plans (including an assessment of their adequacy in providing a framework to hold the ICAC accountable for its performance);
- the reporting of performance results achieved against the Strategic and Corporate Business Plans (and, in particular, the desired outcomes, objectives, planned initiatives/projects and performance targets as identified in the planning documents); and
- compliance with the statutory disclosure requirements as specified in the Annual Reports (Departments) Act 1985 and Regulations and the Independent Commission Against Corruption Act 1988.

This report is intended to assist the Joint Parliamentary Committee in its conduct of an examination of the 2003-2004 Annual Report of the ICAC in accordance with section 64(1)(c) of the ICAC Act 1988.

There are three major sections in this report presenting:

- the findings of the review of the Strategic and annual Corporate Business Plans;
- the findings of the review of the Annual Report with a special focus on the adequacy of performance reporting and compliance with statutory disclosure requirements; and
- a set of detailed recommendations aimed at further improving the quality of the planning documents and the Annual Reports in the future.

Background

At a public hearing conducted in February 2004 on the 2002-2003 Annual Report of the ICAC, a number of performance reporting issues were raised by members of the Joint Parliamentary Committee with the Commissioner and other senior officers of the ICAC. The major issues discussed were:

- dissection of corruption advice requested and types of corruption detected into specific areas and also by agency or sector (including trend information);
-
- information on complaints received that were assigned 'no action required' by the ICAC as distinct from those complaints that were referred to other agencies for appropriate action;
- complaints received against Members of Parliament and Ministers;
- average timeframes between inquiries, briefs to the Director of Public Prosecution and Court action;
- gap between corruption findings by the ICAC and successful prosecutions;

- reporting of community attitude survey results (including an analysis of trends and changes in corruption over time);
- key performance indicators of the quantity, timeliness and quality of outputs; and
- progress report on the project involving the corruption risks of the health sector.

At the hearing, officers of the ICAC indicated that they would give further consideration to the above matters when preparing the Annual Reports for the next and future financial years. A review of the Annual Report for 2003-2004 has shown that, apart from a progress report on the project involving the corruption risks of the health sector, no real additional performance information of the kind as discussed at the February 2004 hearing has been incorporated in the document.

In early December 2004, Jim Jefferis of the Committee Secretariat forwarded an email to Stephen Murray, Executive Officer to the ICAC Commissioner, requesting an update on the issue of performance reporting. In particular, advice was sought on:

- whether the Commission has developed a comprehensive set of key performance indicators to assess efficiency and effectiveness;
- whether those indicators are being used for internal reporting and performance management; and
- whether those indicators have been reported on in the 2003-2004 Annual Report and, if not, whether they are to be reported on in the following financial year.

In his reply, Mr. Murray provided the following extract from the letter sent by the Commissioner to the Committee in November 2004:

‘I note that the 2003-04 Annual Report reports that during the year we completed a review of performance measures, with reporting against these scheduled for 2004-05. The 2003-04 Annual Report details performance against the objectives of the ICAC Strategic Plan for 2003-07. Further enhancements to our internal reporting processes and business systems will assist further performance reporting. Undoubtedly, these measures, and the associated reporting, will continue to be fine tuned and improved, but I believe this to be a significant advance on where we were at in previous Annual Report. The importance placed on performance reporting is an issue that will certainly be flagged with my successor and the Executive Directors who have previously appeared before the Committee are well aware of your interest in and your expectations concerning future reporting.

The 2003-04 Annual Report reports our performance against the key objectives of the 2003-07 Strategic Plan on pages 11-17, 27, 39, 51 and 57. Further internal measures for performance reports are presently the subject of consideration of senior management, and we should be in a position to report further at the next meeting with the Committee’.

In both the ‘2003-2004 In Brief’ and ‘Results for 2003-2004’ Sections of the Annual Report, there is a statement that the Commission has ‘completed a review of performance measures with reporting against these measures scheduled for the 2004-2005 financial year’. However, from reading the report, there seems to be some doubt about this commitment as on page 55, it is indicated that ‘In 2004-2005, the ICAC

will further develop these measures to provide more information on the ICAC's overall performance and efficiency'. This statement can be interpreted to mean that the performance measures are still being developed and the process has not yet been completed. This interpretation is further supported by the Commissioner's comment made in November 2004 (see above) that additional internal measures for performance reports 'are presently the subject of consideration of senior management'.

To confirm that a comprehensive suite of key performance indicators are in fact to be reported on in the 2004-2005 Annual Report, the Joint Parliamentary Committee may wish to make a request for the full details of the indicators. Also, the Committee should ascertain from the Commission at the public hearing on the 2003-2004 Annual Report:

- whether the necessary information collection systems have been established to capture the old as well as the new performance data; and
- whether the new suite of key performance indicators (including targets) have already been incorporated into the Strategic and Corporate Business Plans and are currently being used for internal management reporting purposes.

The main point is that if the new set of indicators are to be reported on in the next Annual Report, the Commission should have been collecting the data since 1 July 2004 and reporting against the targets set to the executives during the course of the year.

Review of Strategic and Corporate Business Plans

Strategic Plan

In reviewing the ICAC's planning documents, the focus was on assessing how adequate they are in explaining:

- results to be achieved – what is the Commission going to do?
- the planning context – why is the Commission doing it?
- how to achieve the objectives – how is the Commission going to do it?
- the accountability structures for delivering results – how will the *Commission know whether it was successful?*

Planning provides a strategic direction for the ICAC. In pursuing that direction, desired outcomes and objectives are determined together with strategies, action plans and resource allocation to indicate how they are to be achieved. The ICAC's plans are important instruments of accountability because the performance measures and targets and initiatives as specified in the documents are expected to be used to account for the actual performance results achieved. If the performance measures and targets and the other key elements in the planning documents are deficient, the end result is that it will have an adverse flow-on effect for ex-post accountability through the Annual Reports.

The Strategic Plan for 2003-2007 is only a short document with a limited coverage of the essential matters. Basically, it sets out:

- the mission, role, strategies and corporate values of the organisation;
- the key result areas and the related objectives; and
- a number of broad measures of performance.

Normally, the Strategic Plan is a document that is prepared to provide a structured framework for a strategic coverage of the future direction and challenges of an organisation as well as its objectives, strategies and broad measures of success. Using these criteria, a review of the Commission's document has identified a number of major deficiencies:

The most significant issue of concern is the quality of the performance measures as shown in the document. Those measures, as a whole, are grossly inadequate in assessing the objectives (particularly the efficiency and effectiveness aspects) of the operations and the performance outcomes achieved. This is because the measures are mainly concerned with the workloads of different activities apart from two measures of timeliness of outputs (i.e. complaints assessed within appropriate timeframes and investigations finalised within six months). The workload measures disclosed are related to such matters as complaints received by the ICAC; investigations undertaken; reports produced; corruption prevention advice provided; and corruption resistance reviews conducted.

A further important issue is that quantitative targets have not been specified for all of the performance measures shown in the plan. Therefore, it is not clear as to the levels of performance that are aimed for by the Commission. In the 2003-2004 Corporate Business Plan, there is a statement (page 3) that 'the ICAC strategic management framework endeavours to align ICAC's Corporate Strategic objectives and targets with both the Corporate Business Plan and the individual Divisional Business Plans'. This is an incorrect statement, as the Strategic Plan does not contain any performance targets at all.

As part of the balanced scorecard approach to performance management, there are two measures specified in the plan for capability building i.e.:

- 'deliver a staff development program that addresses technical, professional and management learning needs'; and
- 'continued commitment to developing corporate information management services that enable better business outcomes'.

The planning document has not indicated how the success or otherwise of the above two aims is to be measured. This is another example of the vagueness and inadequacy of the planning document in relation to performance measurement.

The plan has not given any details on the key initiatives and priorities of the Commission over the five-year period. The details need to include particulars of the strategic projects and initiatives as well as timelines and target dates.

There is no discussion on cross-agency planning issues and measures of individual agencies' contribution to the joint outcomes. (In the 'Commissioner's Message', increased co-operation and collaboration with peer agencies is mentioned as part of the new and more efficient work practices).

The plan has not included any information on the benchmarking of the Commission's performance against its counterparts in the other Australian jurisdictions.

To provide a background context, it is necessary to include a commentary on the future operating environment and developments as well as the Commission's planned responses to the key challenges. This has not been done in the document although there is some

information on key challenges and the Commission's responses provided in the Corporate Business Plan. In addition, it would also be useful to include in the future plans:

- some brief details on stakeholder expectations and corporate governance arrangements; and
- a commentary on the critical success factors. (These factors generally reflect the considerations that are critical to the achievement of the priorities and objectives and they have a major influence on how the operational plans and risk management strategies are developed).

There is a clear absence of financial and budgetary information in the document. A separate Section should be included to deal with the financial outlook incorporating a commentary as well as high level data for the planning period (e.g. summarised projected financial and budget statements).

The inclusion of an 'Overview' Section would further help to facilitate a better understanding of the plan. This Section normally provides brief information on such matters as the role of the agency, manner of establishment, legislative charter (where applicable), organisation structure, staff profile and numbers and budget funding levels. In this Section, the Chief Executive Officer often also outlines the key focus of the organisation for the planning period.

Corporate Business Plan

The Corporate Business Plan has a one-year timeframe and its purpose is to identify the process to achieve the established objectives and agreed business outcomes of the Commission. It is essentially an action plan with an operational focus and it sets out:

- the mission, key result areas, objectives, key outcomes, corporate values and strategies of the Commission;
- a brief outline of the major challenges and the Commission's planned responses to those challenges;
- the strategic planning assumptions that have shaped the planning process;
- the performance measures (together with a small number of performance targets) for the different key result areas;
- a description of the business structure;
- an analysis of the identified risks together with details of risk minimisation strategies; and
- a summary of the budget allocations and staff resources for the 2003-2004 year as well as a set of projected Statement of Financial Performance and Balance Sheet.

It is more appropriate to include the information on the planning assumptions and the responses to the key challenges in the Strategic Plan rather than the Corporate Business Plan. This also applies to the details regarding risk management and control.

In the case of the Corporate Business Plan, the most significant issue identified is the inadequacy of the performance measures and targets. For each of the stated objectives, a series of so-called performance measures and targets have been listed in the document. However, on closer examination, the following concerns were noted:

The number of quantitative performance measures included in the plan is quite limited and they fall short of what are required to effectively measure the extent of achievement of the

Commission's objectives. Also, for most of the quantitative measures shown, targets have not been specified. A vast majority of the measures are only concerned with workloads or activity levels. The following are examples of the few that are directed at measuring effectiveness:

- reduce time taken to assess and investigate matters and respond to complaints;
- favourable feedback from Director of Public Prosecution on briefs prepared;
- percentage of investigations completed within 6 months; and
- Operations Review Committee accepts at least 80% of ICAC recommendations.

In the plan, there is a separate Section listing all the key outcomes that are aimed to be achieved by the Commission as a result of the implementation of the Corporate Business Plan. However, there is no indication at all in the document as to how the degree of success in achieving those outcomes is to be measured nor have any performance targets been set.

Quite a large number of the matters listed as 'performance measures' are in fact in the nature of planned projects or initiatives. Target dates or timelines have only been given for a few of these matters. The following are some examples of the planned projects listed:

Implement a strategic risk assessment framework and improve targeting of matters by the pre-assessment panel.

Review existing activities with partner agencies and formalise arrangements.

Impact of corruption resistance reviews evaluated.

Some of the performance measures listed are only descriptions of the ongoing activities of the Commission. Two such examples are:

- 'monitor and report on the effectiveness of covert and investigative techniques'; and
- 'regular meetings held, performance monitored and recommended business improvements implemented'.

One of the positive features of the plan is the comprehensiveness of the information provided on the financial outlook and budgetary position. The usefulness of the information, however, can be further enhanced by also including in the document prior year comparatives and a trend analysis.

Given the major deficiencies identified in the two planning documents and the absence of significant information from the Strategic Plan as indicated above, the concern is that the stakeholders of the ICAC would have a difficult task in effectively monitoring the Commission's activities and in holding the agency accountable for its performance

Review of Annual Report

The 2003-2004 Annual Report has not been written in a succinct manner with a clear focus on accountability for the ICAC's performance results. Instead, it contains a vast amount of low level details on not only the major but also the minor initiatives and projects of the Commission as well as its ongoing functions and activities. A large part of these details can

and should be provided to the stakeholders by other means of communication but not in the Annual Report e.g. the Commission's website and information brochures.

Throughout the report, there is limited discussion and analysis of how successful the Commission was in achieving its objectives and planned performance outcomes. Only a small number of key performance indicators are referred to in the report and those indicators are mainly concerned with workloads rather than measures of efficiency, effectiveness and outcomes. In none of the cases reported have the results been compared to targets.

There are two key concerns:

Firstly, there is little noticeable improvement in the quality of performance reporting since the 2001-2002 Annual Report despite specific statements made in that report that more work was to be done in further developing the key performance indicators. The review has found that a significant part of the development work carried out in recent years on key performance indicators has not been reflected in the 2003-2004 Annual Report. In particular, a large majority of the indicators as shown in the following two documents (see Appendices A and B for examples) have not yet been adopted for annual reporting purposes:

- Strategic Direction document for the 2001-2006 period; and
- A document titled 'Performance Indicators for the Independent Commission Against Corruption' (February 2001).

Secondly, a significant number of the key performance indicators and projects and initiatives as identified in the 2003-2004 Corporate Business Plan have not been reported against in the 2003-2004 Annual Report (See Appendix C for examples). A major implication of this is that some aspects of the Commission's performance have remained largely unaccounted for.

Set out below are further comments on other aspects of the Annual Report:

A number of the key elements in the planning documents (particularly the Corporate Business Plan) have not flowed through to the Annual Report. The major omissions include:

- statements relating to the mission, desired outcomes, objectives, corporate values and broad strategies of the Commission; and
- details of the environment in which the Commission operates and also the key challenges it faces and the planned responses to those challenges.

The '2003-2004 In Brief' Section at the beginning of the report only presents a number of workload indicators about the different functions of the Commission and also a brief report on completed projects and initiatives. This Section should be restructured as an Overview Section or Executive Summary providing a high-level commentary on the performance for the year including:

- progress towards achievement of the Commission's planned outcomes and objectives;
- key performance indicators and targets and a brief review of achievement;
- extent of achievement of the major initiatives planned for the current year;
- highlights and successes during the year as well as problems and setbacks in performance;
- financial results and position for the current year as compared to budgets and past trends; and
- plans and outlook for the following year.

It is noted that the 'Commissioner's Foreword' (pages 6-9) contains some comments about the outlook and the challenges faced by the Commission. Apart from these, there are also references to instances of increasing levels of activities and completed initiatives. A Statement from the Chief Executive Officer should convey a series of key personal messages in relation to such matters as highlights for the year and commitment to performance targets; acknowledgement of successes and failures; key performance results in comparison with targets and benchmarks; and major future challenges. These matters have been covered only to some extent in the Annual Report. In particular, there is very limited commentary on achievement of efficiency and effectiveness.

Throughout the report, there are references to key performance indicators on workloads (e.g. numbers of complaints received and investigations undertaken). For example, page 19 of the report indicates that the number of section 10 complaints increased by 30% from 2002-2003, protected disclosures increased by 44% and section 11 reports increased by 9%. Further details of complaints received over the last 3 years are shown in a Table on page 20. However, as in some other cases, a discussion and analysis of the trend data has not been provided.

On the same page, there is a comment that the average turnaround time for giving advice of the Commission's decision after receipt of a complaint was 51 days in 2003-2004. This is an example of those instances where both targets and trend data have not been given to assist the readers in assessing the results achieved.

A further example of a similar issue can be found on page 43. It is reported that the Commission completed 2 corruption resistance reviews in 2003-2004. However, there is no mention of the fact that 6 reviews were in fact planned for the year. In the absence of this information, the readers would not be aware of the failure to meet the target set and the reasons for the under-performance.

In those cases where it is not possible to set a meaningful performance target in advance, it is appropriate to present only prior years' comparatives together with the current year's results but the data must be accompanied by a trend analysis. Examples of such cases are numbers of complaints received and assessed, investigations conducted, corruption prevention recommendations made and investigation reports produced.

The commentaries in the 'Review of Operations' Section of the report are not linked to the 16 specific objectives of the Commission as stated in Strategic and Corporate Business Plans. As a result of this structural deficiency of the report, it has made it difficult for the readers to properly assess the extent of achievement of those objectives.

The report (page 46) indicates that a survey of the community's attitudes to corruption and the ICAC was conducted in 2003. This was part of the periodic surveys to examine community perceptions of corruption and its effect, attitudes to reporting corruption, awareness of the ICAC and perceptions of the ICAC. The information provided in the report on the survey results is limited and there is an absence of trend data and analysis. Also, the details relating to the scope of the survey and the methodology used are not available. A comprehensive and properly designed survey can provide a series of important indicators of the effectiveness of the Commission's operations. In view of this, future Annual Reports should present detailed information on the scope of the survey and the methodology adopted

so that the validity and reliability of the results can be assessed by the readers. In addition, the actual results presented need to be accompanied by trend data and a discussion and analysis. These disclosure requirements should be applied to the surveys of both external and internal stakeholders.

Another example of the deficiency of performance reporting can be found in the 'Our People – Our Organisation' Section of the report. The only information provided here are details of completed projects and initiatives and ongoing activities. There is a clear absence of effectiveness measures in relation to, for example, the learning and development functions and the administrative and technological support provided to the organisation. The Commission's success in these areas can be assessed in a number of ways such as by the conduct of a survey of staff attitudes on a wide range of organisational management and development issues.

The Commission operates, from time to time, in collaboration with other agencies such as the NSW Police, the NSW Crime Commission, the Australian Federal Police and the National Crime Authority. The report has not provided any comments on the shared responsibilities for cross-agency performance issues and also on the ICAC's contribution to the joint outcomes. Further, an attempt has not been made in the report to benchmark the ICAC's performance against the results achieved by similar agencies in the other Australian jurisdictions. (Presumably, part of the reason such evaluation and benchmarking was not done was because the quantitative performance indicators were not readily available).

The Annual Report has not provided a discussion and analysis of the financial and budgetary position of the Commission. An excellent report is one that:

- presents financial information in a way that assists readers in understanding the information;
- provides comparative data over a number of years;
- integrates financial and other resources management information into the main body of the report and not simply presents financial statements at the end of the report; and
- provides a discussion and analysis of the financial activities and management of the organisation as well as a commentary on all material factors that affected or will affect financial performance or position.

There is a 'The Year Ahead' Section included for each of the major areas of operation. These Sections mainly identify those projects and initiatives earmarked for the next financial year. The report needs a separate Section at the end to deal specifically with the future operating environment and developments as well as future plans and major projects (including those that are designed to further improve performance). In particular, this Section of the report should contain pertinent forward-looking information and comments such as:

- a discussion of the future outlook for the Commission (including issues and events that are likely to have a significant impact on the following year's performance or position);
- details of expected future changes and trends within the operating environment; and
- an outline of what the Commission aims to achieve in coming periods (particularly in the next year) in relation to the strategic priorities and performance targets that have been set.

Compliance with Statutory Reporting Requirements

The Annual Report has complied with all the statutory disclosure requirements as specified in the Annual Reports (Departments) Act and Regulations. However, a review of compliance with the annual reporting provisions in the ICAC Act 1988 has identified an issue requiring attention. The Act requires the disclosure of details on any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions. In the report, there is only limited information given on this matter apart from a statement made on page 37 that 92 specific corruption prevention recommendations were made in the 10 investigation reports published in 2003-2004.

Recommendations

The existing Strategic Plan for 2003-2007 is not adequate and it needs to be expanded to include:

- a set of the major performance indicators together with the targets set;
- details of the strategic priorities and initiatives earmarked for the planning period (including timelines and target completion dates);
- an explanation on how benchmarking comparisons and cross-agency performance are to be evaluated;
- a commentary on the future operating environment as well as the Commission's planned responses to the key challenges;
- brief details of corporate governance arrangements, stakeholder expectations and the Commission's critical success factors; and
- high-level financial and budgetary information.

Corporate Business Plan

The Corporate Business Plan for 2003-2004 is a reasonably well-constructed document. The only major deficiency is related to the performance measures and the planned initiatives and projects. It is recommended that all future plans should present:

- key performance indicators and targets that are capable of measuring the desired outcomes as well as the efficiency and effectiveness of the operations; and
- target completion dates or timelines for all major initiatives and projects.

It is critical that all the key elements in the two planning documents flow through to the Annual Report. It is not the case with the 2003-2004 Annual Report of the Commission.

Annual Report

The Commission's Annual Report should provide information about:

- the organisation;
- the context/environment in which it operates;
- what it sets out to achieve;
- what it does/services it provides;
- what it actually achieved;
- those factors which made it happen; and
- where the organisation is heading.

In examining the report, the readers should be able to:

- gain a ‘snapshot’ view of the overall performance during the year;
- undertake a detailed analysis and assessment of what the Commission has achieved against the desired outcomes, objectives and targets set and the reasons for under-performance;
- track the performance of the Commission over time and against its peers; and
- make judgements about the likely performance of the Commission in the future.

To provide a meaningful discussion and analysis of the performance results of the Commission, the Annual Report needs to disclose the following matters:

- a comprehensive set of key performance indicators that are linked to the desired outcomes and each of the objectives of the Commission and are used consistently from year to year;
- brief explanation of the significance of the key performance indicators including details of any changes from the previous year;
- performance targets for the year as stated in the Strategic and Corporate Business Plans;
- a comparison of the actual performance achieved during the year with the targets set;
- adequate explanations for instances of major under and over-performance and, in the case of under-performance, also details of lessons learned and actions taken to improve future results;
- performance results for the last five years in relation to each of the major areas of operation (i.e. trend data and a discussion and analysis of changes over time);
- financial and non-financial information to show how resources and strategies influenced the results for the year (including the costs involved in providing the major outputs);
- a benchmarking comparison with the performance results achieved by similar agencies in other Australian jurisdictions; and
- an outline of the major initiatives and projects planned for the year and details of the results achieved (together with explanations for any delay and the revised target date for completion).

The commentaries on performance should also cover:

- the extent to which the Commission was wholly or partly responsible for the outcomes achieved;
- shared responsibilities for cross-agency performance issues and the Commission’s contribution to the joint outcomes;
- highlights of major achievements as well as significant shortcomings, setbacks and problems in performance;
- major factors, events and trends that affected the Commission’s performance during the year; and
- responsiveness to client concerns about service problems (including references to the effectiveness of the complaints handling system and the use of complaints information as feedback mechanism to improve services).

It is further recommended that a ‘Financial Commentary and Analysis’ Section be included to provide a clear link between the financial statements and the ‘Review of Operations’ Section

of the report. Apart from a trend analysis, this particular Section should also focus on providing a commentary on the financial activities and management of the Commission.

To assist the readers in obtaining a 'snapshot' view of overall performance and an insight into future outlook and developments, the Annual Report also needs to incorporate an 'Overview' or 'Executive Summary' Section at the beginning and a separate Section at the end that is dedicated to dealing with the future directions and developments of the Commission at the strategic level. (See earlier part of this report for suggestions of the contents for these two Sections).

Appendix A to the Report of Mr John Chan-Sew

Examples of Key Performance Indicators identified in the ICAC's Corporate Strategic Direction document titled 'The Way Ahead 2001-2006' but have not been adopted for annual reporting purposes

- Extent of reporting of corrupt conduct.
- Quality of the referrals to the Director of Public Prosecution and other public sector agencies.
- Relevance and timeliness of the corruption prevention advice given to agencies.
- Take-up rate of corruption resistance strategy by agencies.
- Extent to which the ICAC's services, products and advices are used in and beyond New South Wales.
- Effectiveness of the working relationships with the Operations Review Committee and the Parliamentary Joint Committee on the ICAC.
- Effectiveness of the ICAC's dealings with its stakeholders.
- Community's perceptions of the ICAC's effectiveness.

Appendix B to the Report of Mr John Chan-Sew

Examples of Key Performance Indicators identified in the 'Performance Indicators for the Independent Commission Against Corruption' Document (February 2001) but have not been adopted for annual reporting purposes

- % of investigations completed within budget and target timeframe established.
- % of investigations resulting in exposure of serious corruption or need for system change.
- % of investigations resulting in referral of significant admissible evidence to relevant authority.
- Feedback from the Director of Public Prosecution on the quality of briefs provided by the Commission.
- % of corruption prevention recommendations implemented by affected agencies following investigations and also by agencies with similar functions to the affected agencies.
- % of corruption resistance reviews resulting in identification of significant corruption risks.
- % of corruption resistance review recommendations implemented by targeted agencies.
- Results of survey of the perceptions of key stakeholders (e.g. Members of Parliament, public sector agencies, oversight bodies, contractors, internal auditors and media) regarding the nature and extent of corruption in the New South Wales Public Sector and in public sector agencies.

Appendix C to the Report of Mr John Chan-Sew

Examples of Key Performance Indicators and initiatives/projects earmarked for 2003-2004 in the Corporate Business Plan but have not been reported on in the Annual Report

- Favourable feedback from Director of Public Prosecution on briefs prepared.
- Reduce time taken to assess and investigate complaints.
- Achieve 90% compliance with Operations Review Committee requirements for timeliness accuracy and relevance.
- Assess the implementation of data mining intelligence software for broader application across the Commission to identify strategic key risks and problem sectors. Risk profiles for each sector developed and maintained.
- Review and recommend improvements in use of informants by December 2003.
- Develop a framework to identify and recruit confidential sources within corruption risk areas.
- Implement performance reporting with ICS (Investigation Classification System) for trend analysis and benchmarking.
- Review existing activities with partner agencies and formalise arrangements.
- Establish operating procedures with NSW Police for search warrants and covert assistance by December 2003.
- Impact of corruption resistance reviews evaluated.

Appendix 2: Letter to the ICAC Committee from Irene Moss AO, Commissioner, Independent Commission Against Corruption, 12 November 2004

FILE COPY

12 November 2004

The Hon. Kim Yeadon MP
Chairman
Parliamentary Joint Committee on the ICAC
Parliament House
SYDNEY NSW 2000

Dear Mr Yeadon,

Thank you for the opportunity to address the Parliamentary Joint Committee on 21 October 2004. It was a good opportunity to give some extended consideration to some of the broader issues facing the ICAC and the work it does. I would also like to thank you and the Committee Members for the strong statement of support for and appreciation of the achievements of the Commission during my term as Commissioner. I very much appreciated those comments, and I know they were also well received by the Executive and staff.

I would also like to take this opportunity to refer to the reports tabled by the Parliamentary Joint Committee on the ICAC on 8 October 2004:

- *Report on Examination of the 2001 - 2002 Annual Report of the Independent Commission Against Corruption, Final Report; and*
- *Report on Examination of the 2002 - 2003 Annual Report of the Independent Commission Against Corruption, Final Report.*

While I acknowledge the support expressed generally for the ICAC and its work in those reports, there are a number of matters where I would like to offer some comments, for the record and the sake of completeness, in respect of the findings and observations contained in them. I shall offer these comments in respect of each report in turn.

Report on Examination of the 2001 - 2002 Annual Report of the Independent Commission Against Corruption, Final Report

- *p. ix - Reference to "dearth of prosecutions"*

The report makes the point that the 2001-02 Annual Report stated that there were 17 instances where cases did not proceed because the DPP determined there was insufficient evidence.

The Annual Report in fact records that this was the outcome for 16 cases. I note that each of these matters was investigated prior to my commencement as Commissioner in November 1999.

Upon my commencement I indicated that I was not satisfied with these outcomes and asked our investigators and lawyers to put a greater emphasis on gathering admissible evidence and not to rely solely or predominantly upon admissions obtained under s 38 of the ICAC Act, which generally cannot be relied upon in further proceedings, unless absolutely necessary.

In our 2001-02, 2002-03 and 2003-04 Annual Reports we reported that there were 0, 2 and 0 matters respectively arising from investigations conducted during my time as Commissioner where the DPP did not proceed due to insufficient evidence. I believe this indicates the impact of my emphasis on a greater focus on gathering admissible evidence and making recommendations for prosecution only where we were satisfied that the evidence gathered would provide a reasonable prospect for further action by the DPP.

- *pp x-xi – Comments on performance reporting*

While developing a more comprehensive performance reporting regime has been one of the more difficult projects during my time as Commissioner, I believe we are well advanced in developing more detailed reports to enable ourselves, our stakeholders and the community in assessing the ICAC's performance from year to year.

I note that the 2003-04 Annual Report reports that during the year we completed a review of performance measures, with reporting against these scheduled for 2004-05. The 2003-04 Annual Report details performance against the objectives of the ICAC Strategic Plan for 2003-07. Further enhancements to our internal reporting processes and business systems will assist future performance reporting. Undoubtedly, these measures, and the associated reporting, will continue to be fine tuned and improved, but I believe this to be a significant advance on where we were at in previous Annual Reports.

The importance placed on performance reporting is an issue that will certainly be flagged with my successor, and the Executive Directors who have previously appeared before the Committee are well aware of your interest in and your expectations concerning future

reporting.

- *pp x-xi – Comments on statutory reporting requirements and reporting against ICAC corporate planning documents*

Unfortunately due to the timing of the 2003-04 Annual Report, the concerns expressed in the reports could not be specifically considered in preparing the report. However, the Executive and I noted the specific comments with respect to the Annual Reports for 2001-02 and 2002-03 at the time of the respective hearings, and as far as possible, the Committee's concerns expressed at that time were subsequently addressed as appropriate in the course of compiling the 2002-03 and 2003-04 Annual Reports.

I believe that an unfortunate consequence of the simultaneous tabling of the Committee's reports is that the report dealing with our 2002-03 Annual Report does not sufficiently indicate the extent to which we addressed the matters of concern arising from the hearing concerning the previous year's report.

In respect of the statutory reporting requirements, our Annual Report is usually compiled against the checklist of matters required to be reported and associated circulars issued by NSW Treasury. I am confident that our subsequent reports fully comply with statutory annual reporting requirements, and certainly Treasury has not advised us of any concerns in this regard. I am also confident that the subsequent reports are also better aligned with our corporate planning documents.

As for the comments suggesting that some matters detailed and described beyond statutory and performance reporting, such as case studies, be reported in appendices to the Annual Report, I believe that it is appropriate to continue to report these matters in the body of the report. These are important for reporting to stakeholders and the community on the work carried out by the ICAC beyond what might be included in investigation reports tabled in Parliament. Consequently, I believe that future Annual Reports will (and should) continue to detail case studies. This is also consistent with the annual reporting practices of some of our peer agencies (such as the NSW Ombudsman and the Queensland Crime and Misconduct Commission).

- *p. xiv: Recommendation 2, concerning the compilation of a comprehensive list of all previous recommendations for the consideration of criminal or disciplinary proceedings and reporting of the date of investigation reports to provide a guide to the age of the matter*

Section 76(2)(e) of the Independent Commission Against Corruption Act requires the ICAC to include in the Annual Report:

the extent to which its investigations have resulted in prosecutions or disciplinary action in that year.

This has been followed in respect of all the Annual Reports prepared in my time as Commissioner, and as far as I am aware, in previous Annual Reports.

The Appendix relating to criminal and disciplinary hearings in the 2001-02 and 2003-04 Annual Reports contained information on the month and year for the release of each investigation report giving rise to recommendations concerning consideration of criminal and disciplinary proceedings. That this practice was not followed in the 2002-03 Annual Report I can only attribute to an oversight.

- *p. xiv: Recommendation 3, concerning cost benefit analyses of corruption prevention publications and advice*

We appreciate that our corruption prevention initiatives should be evaluated to determine the value to the public (and as appropriate, the private) sectors. Presently this is done by inviting feedback and carrying out occasional surveys of public sector managers. These surveys have previously indicated a very high regard for our corruption prevention work, with over 90 per cent in one recent survey saying that they would seek our advice again.

My concern about undertaking formal cost-benefit analyses would be the difficulty in costing the benefits. For instance, I would be reluctant to impose additional costing requirements on public sector agencies to obtain the information needed for a full cost-benefit analysis.

It should also be appreciated that a major focus of our corruption prevention work is developing recommendations and advice that, as far as possible, utilise existing governance systems and processes, such as the code of conduct, internal auditing and risk management, so as to minimise the compliance costs for agencies.

Report on Examination of the 2002 - 2003 Annual Report of the Independent Commission Against Corruption, Final Report.

- *pp. vi-vii, p. 1: Discussion and Recommendation No. 3, concerning meeting with the DPP to discuss delays in matters referred by the ICAC for consideration of criminal proceedings*

As previously stated in correspondence to you, this discussion and recommendation in the original version of the Committee's Report were clearly based on the mis-transcription of evidence given by me to the Committee. I note that my evidence referred to in the Chairman's Foreword has subsequently been corrected so that it now accurately reads:

When Commissioner Moss was asked what the Commission and the DPP were doing to improve the situation she replied:

*Commissioner Moss: We **do meet** with them on this issue. (My emphasis)*

However, the Committee's report goes on immediately to state that:

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

The Committee then goes on to recommend that:

... the Commission hold discussions with the DPP to examine practical steps to remedy inordinate delays between the date briefs are received and the date a decision is made on whether or not to initiate proceedings. (p. xi)

To the extent to which these observations draw on the original mis-transcription, I believe that they do not and cannot follow from the ICAC's present practice of meeting with the DPP on the issue of delays. I am confident that if there is no movement on the matter of delays in future then this will be canvassed again with the DPP.

In relation to the further recommendations contained in the reports with respect to activities and follow up that should be undertaken by the ICAC, I believe it appropriate that these be referred to my successor for consideration, and I shall do so.

Thank you for this opportunity to offer some comments on the reports, and I hope that they are of some assistance to the Committee.

This being my last formal dealing with the Committee, may I take this opportunity to acknowledge the interest and support of the Committee I observed during my term, and offer you and the Committee my best wishes for the future.

Yours sincerely

Irene Moss AO
Commissioner