



*PARLIAMENT OF NEW SOUTH WALES*

*COMMITTEE ON THE ICAC*

***COLLATION OF EVIDENCE  
OF THE COMMISSIONER OF THE ICAC  
MR BARRY O'KEEFE AM QC***

***ON GENERAL ASPECTS OF  
THE COMMISSION'S OPERATIONS***

*FRIDAY, 15 SEPTEMBER 1995  
PARLIAMENT HOUSE, SYDNEY*

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**COMMITTEE FUNCTIONS**  
**INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988**

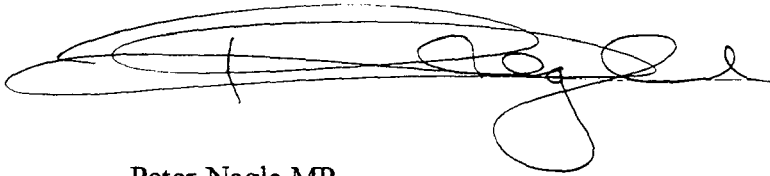
- "64 (1) The functions of the joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise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

## ***CHAIRMAN'S FOREWORD***

The Committee on the ICAC is vested by legislation with the principal function of monitoring and reviewing the exercise by the Commission of its functions. The former Committee established a procedure whereby public hearings were held every six months with the Commissioner of the ICAC. This procedure placed much material on the public record about the Commission's operations and was an effective accountability tool. The present Committee, which was appointed on 30 May 1995, will continue these procedures.

This is the first public hearing with the new Commissioner of the ICAC, Mr Barry O'Keefe AM QC. Commissioner O'Keefe is the second permanent Commissioner of the ICAC. A new leader to an organisation obviously brings change and I am pleased to report that the level of openness and accountability that Commissioner O'Keefe has brought to the ICAC is commendable.

The Committee during the Commissioner's term will continue to oversee the Commission's operations ensuring that the substantial powers it has been given are used properly and to the general good of the people of New South Wales.

A handwritten signature in black ink, appearing to read 'Peter Nagle', with a large, sweeping flourish underneath.

Peter Nagle MP  
Chairman

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## **CHAIRMAN'S OPENING STATEMENT**

### **CHAIRMAN:**

The public hearing today of the parliamentary joint committee with the Commissioner of the Independent Commission Against Corruption, Mr Barry O'Keefe, is being conducted pursuant to the Committee's function under the Independent Commission Against Corruption Act to monitor and review the exercise by the commission of its functions. This is the first hearing between the Committee and the new Commissioner of the Independent Commission Against Corruption. The commission is no longer a body in infancy but has, since its inception in 1989, developed a substantial bank of experience and accumulated many significant achievements as an anti-corruption agency. Prior to the public hearing the Committee sends to the commission a series of questions to which written answers are requested. These questions seek to inquire into all aspects of the commission's operations. The written answers to these questions I now table so that they can be made publicly available and be incorporated into the record of today's proceedings.

Upon an examination of the written answers it can be clearly seen that the ICAC is a body that is, arguably, accountable to no other body in this State. These answers provide for all interested persons a substantial window into the commission's activities. On behalf of the Committee I commend the commissioner and his staff for the detailed work that has been put into answering the Committee's questions. These questions will be tabled in the Parliament along with evidence taken today. I invite Commissioner O'Keefe to make an opening statement before we proceed to questions.

## **MR O'KEEFE'S OPENING STATEMENT**

### **Mr O'KEEFE:**

Thank you, Mr Chairman, for your generous opening statement. Your Committee has an important role to perform in relation to the Independent Commission Against Corruption. The commission itself has an important role to play in relation to the public sector of New South Wales. Both the commission and the parliamentary joint committee thus have important but different roles to play. However, those roles are complementary and in my view each body should have the same end point in mind when performing its respective function. As Commissioner of the Independent Commission Against Corruption it is my objective to ensure that the commission is the principal public sector probity organisation in the State and that it is acknowledged as such not only in New South Wales but throughout Australia and beyond. In short, excellence is my goal.

The parliamentary joint committee is our parliamentary accountability body. Through it the commission responds to the Parliament and thus to the people of New South Wales. I hope that the objective of all members of the Committee is to ensure that the Independent Commission Against Corruption is the premier public sector probity body in New South Wales and is regarded as such in our State and beyond. Our functions though different are complementary. They will be best performed and our objectives will be best achieved by an approach which is constructive rather than confrontational, positive rather than negative, and studied rather than sensational. I look forward to a fruitful relationship between the commission and the parliamentary joint committee in my term as commissioner.

# **1 GENERAL UPDATES/BRIEFINGS**

The Committee would appreciate general updates/briefings on the following aspects of the Commission's operations since 4 August 1994:

## **1.1 the status of current investigations which have been the subject of public hearings and forthcoming report;**

See answer to 1.1.1.

### **1.1.1 Does the ICAC have a backlog of work to complete? If so, how large is it?**

The Commission does not have a "backlog of work to complete" but it does have a considerable amount of ongoing work which will result in public reports. The Commission is currently undertaking the following investigations involving public hearings:

- (i) Operation Sturt concerning the conduct of Giuseppe Morizzi, former alderman on Fairfield City Council in relation to his dealings with Neeta Homes Pty Limited and Neeta Constructions Pty Limited in the Fairfield District between 1988 and 1992;
- (ii) Operation Weave concerning the New South Wales Police Air Wing;
- (iii) Operation Flax concerning the Southern Mitchell Electricity Board.

It is expected that each of these investigations will be completed in time for investigation reports to be tabled in Parliament this year.

The Commission has recently completed hearings in Ballina concerning Byron Bay Council. At the time of preparing these answers submissions have not been finalised. I expect that the report in this matter will be published early in the new year.

The second report into the payment of a parliamentary pension to Phillip Smiles is in advanced draft and should be completed shortly. The report will be published later this year.

### **1.1.2 What major investigations are in the pipeline?**

Apart from the investigations referred to above, the Commission is engaged in substantial investigative activity across a number of public sector agencies. These include New South Wales Aboriginal Land Councils and the State Rail Authority. The Commission has issued a media release concerning the ALC investigation (Appendix One). It would not be appropriate to comment in any detail on those

operations as to do so might prejudice them.

## **1.2 the Commission's corruption prevention work;**

Corruption Prevention work has proceeded on a broad front over the last twelve months.

### *Co-operative Efforts with Central Policy Agencies*

The Commission worked and is working with a range of central policy and accountability agencies to develop policies and best practice guidelines to support effective management and assist in minimising corruption. Key areas included the review of public sector codes of conduct with the aim of producing a new model code, best practice guidelines for internal audit and internal control systems, the Ombudsman's Good Conduct and Administrative Practice Guidelines, new procurement and disposal guidelines and the development of best practice guidelines for development controls in local government. Collaborative efforts with the Audit Office of New South Wales and the New South Wales Ombudsman's Office had led to their contribution to the following projects initiated by the Commission:

- . induction training materials for use across the New South Wales public sector outlining concepts such as public duty and public interest;
- . management training materials focussing on ethics and accountability; and
- . publication of a special edition of the Commission's newspaper "Corruption Matters" dealing with protected disclosures.

### *Advice*

Numerous advice matters have been completed since August 1994. The Commission is continuing to work more co-operatively with public sector agencies and more and more such agencies are seeking advice before problems emerge. Increasingly the Commission advises agencies about the public/private sector interface. Advice was provided in relation to the proposed widening of the M4 tollroad, the Hunter Valley rail access, Southern Sydney railway, Prince of Wales Hospital and the Homebush Olympic facilities.

To communicate public sector buyers requirements to the private sector suppliers, a brochure was collaboratively developed with the Commission, New South Wales Supply Service, and the Information Technology Service for dissemination by public sector organisations participating in the Government's "Meet the Buyers" event on 14-15 June 1995. This brochure was well received and will be disseminated to public sector agencies for further distribution to suppliers. It will be made available again to participants in Meet the Buyers Newcastle event.

### *Corruption Prevention Reports*

In anticipation of the Protected Disclosures Act the Commission, together with the New South Wales Ombudsman and New South Wales Auditor-General, developed guidelines to assist organisations establish internal systems for staff to report corruption, maladministration and serious and substantial waste. Over 2,500 copies have been distributed to all state government agencies and local councils. The Commission also produced a publication entitled "Contracting for Services - The Probity Perspective". The booklet aims to ensure integrity in contracting for services and in those organisations which provide services to the public sector. Work is continuing on the Commission's "Practical Guide to Corruption Prevention" which should be available early in 1996. A discussion paper on issues associated with conflicts of interest on the part of former public officials should also be released late 1995 or early 1996.

### *Projects - A Multidisciplinary Approach*

Increasingly, the Commission adopts a multidisciplinary approach to its inquiries. Corruption prevention staff are involved early in any investigation. The focus is therefore not just on the investigation of individual conduct but also on the organisational culture and systems that allow or promote such conduct. Multidisciplinary approaches have been taken in the Harness Racing Authority investigation, current work being done with Port Stephens, Byron Shire and Fairfield councils and Operation Weave ( New South Wales Police Air Wing).

### *Contributions to other Government Initiatives*

Commission support was integral to the establishment of the New South Wales Public Sector Fraud and Corruption Prevention Forum. The Forum provides a conduit for information sharing for those with particular corruption prevention responsibilities. The first event of the Forum was held in April and attracted more than 100 public sector people representing over 60 government agencies.

### *Assisting and Monitoring Implementation of Change*

The Commission has continued to monitor responses to its corruption prevention projects. The report "Corruption Prevention and Plant Hire - An Evaluation" was recently published. Review reports on the principles established in "Taken for Granted" and the results of the Commission's work on the RTA's property disposals procedures will be published in late 1995. The Commission is also participating in the joint monitoring committee with the New South Wales Police Service to facilitate the implementation of the second "Milloo" report recommendations.

A public sector wide need for ethics programs has been highlighted by the success of the Health Ethics and Accountability Package prepared in conjunction with the Health Department. Wider application of the package is being considered. Arising from the work with local councils the Commission is currently undertaking a joint project with the Department of Local Government to develop practical guidelines directly related to the day to day problems faced by local councils in dealing with conflicts of interest and improving understanding of the differing roles and responsibilities of councillors and staff.

### *Conferences and Seminars*

During the last year the Commission has been represented at more than 40 seminars and conferences. Presentations have been made to both public and private sector agencies including peak bodies and professional organisations. These events help public sector organisations to identify and reduce opportunities for corruption and to improve integrity through organisational and attitudinal change. Through such seminars the Commission reaches a wide cross section of the public sector. In addition, the Commission has actively sought opportunities to participate in private sector conferences. As a result, requests for presentations from private sector interests are increasing.

## **1.3 the Commission's public education work;**

The public education work of the Commission is now encapsulated within the Community Relations program. The discussion below follows the outline of the strategic plan.

### *1. Formal and Professional Education*

#### *School and Formal Education*

During the period the Commission, with the support of the Board of Studies and practising Legal Studies teachers, finalised the production and disseminated to

legal studies teachers throughout the state, of a teaching resource kit to facilitate instruction of *The Individual and the State* section of the Legal Studies syllabus.

Included in the kit is a video and teacher's handbook which encourages students to address corruption issues and as individuals help ensure corruption is prevented through their own responsible actions. The effects of corruption and the responses of individuals to such behaviour are also explored in the material.

All New South Wales public and private schools (645) teaching Legal Studies were provided copies of the kit free of charge. The kit is available at a charge of \$100 to other interested parties.

The kit was trialed with school students and outlined to Legal Studies teachers at their annual conference on 21 October 1994. Feedback to date has been positive. It is intended that a formal evaluation of effectiveness of the materials will be undertaken by the Commission's Research Unit in 1995 - 96.

Following the successful launch of the Legal Studies kit, the Board of Studies and the Department of School Education were approached to identify other areas where the development of teaching resource materials would be mutually advantageous. The HSC Business Studies syllabus and the Civics component of the draft K-6 HSIE (Human Society In the Environment) curriculum were nominated.

As a result, the Commission has begun a project to develop curriculum materials for use in the teaching of HSC Business Studies.

The contract has been let to Film Australia and the project is proceeding to schedule with completion proposed for November 1995. Distribution and promotion will be completed by March 1996.

The other area nominated for possible further work, the Civics component of the HSIE curriculum, is now under review by the Board of Studies Syllabus Review Committee. It is hoped that there will be a decision on this early in September. Liaison with the Auditor General and the Ombudsman Office indicates that this is an area where a collaborative project is possible.

#### *Tertiary and Professional Education*

Discussions exploring the resourcing of TAFE curricula components have been initiated and the Business Services area has been nominated for further examination. Discussions with the TAFE Business Services Industry Specialists are advancing. The impact of the restructuring of TAFE needs to be assessed.

Development work to identify professional and industry bodies with whom the Commission could form strategic relationships has been initiated.

One recent outcome has been an invitation from the Institute of Chartered Accountants, Australia for the Commission to participate in a video to educate the Institute's Professional Year membership on ethical issues. The Commission has accepted the offer and the Director of Community and Prevention Services will be filmed in panel discussions on issues arising from scripted hypothetical ethical dilemmas. Other panellists will be:

- Peter Jollie, a past President of the Institute of Accountants
- Australia Securities Commission
- Price Waterhouse
- The Royal Melbourne Institute of Technology
- Credit Reference Association

## *2. The Community*

### *Communications*

A short corporate video to support the speaking and seminar commitments of the Commission was completed as scheduled. The video outlines basic information about the Commission, its role and work, in an interesting way. A copy of the video has been provided to the Committee.

In February the Commissioner launched his Future Directions statement to a breakfast gathering of public and private sector leaders at the State Library. Following the launch and the development of the Corporate and Strategic Plan, work commenced to develop corporate materials to communicate this approach. New corporate materials are being developed together with a revision of the Commitment to Service and Standards. In addition to supporting the Commission's seminar program and speaking engagements, the materials will support displays and participation in events.

Discussions to explore collaborative opportunities in public education with the Ombudsman and Auditor General were initiated.

A display was provided at the 1995 Local Government and Shires Association Conference. It is anticipated that participation in such events will be expanded in the coming year.



### *Visitors*

The Commission has hosted international, interstate and other visitors interested in the operation of the ICAC. Among the international visitors were:

- Norifumi Takeda, Public Prosecutor the Sapporo District Public Prosecutor's Office in Japan, to research aspects of Australia's criminal justice system;
- Mr O P Chadda, National President of the Anti-Corruption Association of India to consider corruption prevention models that might apply in India;
- a group of 20 Vietnamese Lawyers from the Vietnamese Ministry of Justice and legal education institutions undertaking a Western Law Course at Sydney University was addressed by the Commissioner;
- a delegation of Officials from the Russian Federation including the Minister for Justice, The Deputy Attorney General, the Chairman of the Supreme Court, the First Deputy Chairman of the Supreme Arbitration Court, the Deputy Minister of the Interior and the Assistant to the Minister for Justice met with senior Commission officers. The delegation explored opportunities for co-operative arrangements between government law/justice jurisdiction in Russia and Australia;
- Australian College of Defence and Strategic Studies;
- Andrew Foster, Controller UK Audit Commission for Local Authorities and health;
- three school group visits were arranged.

### *Publications*

Since August 1994 the Commission published 14 reports and discussion papers. These were:

#### *Corruption Prevention Projects*

- Monitoring Cash Handling in Public Hospitals - August 1994.
- Corruption Prevention and Plant Hire - An Evaluation - October 1994.
- Contracting for Services - The Probity Perspective - May 1995.

### *Investigation Projects*

- . Treatment of Staff Complaints in a Minister's Office - August 1994.
- . Police and Paedophiles - Interim report on Investigation into Alleged Police Protection of Paedophiles - September 1994.
- . Investigation into the RTA and Property Disposal - February 1995.
- . Investigation into the Randwick City Council - February 1995.
- . Investigation into Circumstances Surrounding the Payment of a Parliamentary Pension to Mr PM Smiles - February 1995.

### *Other Publications*

- . Annual Report 1994 - October 1994.
- . Inquisitorial Systems of Criminal Justice and the ICAC - A Comparison - November 1994.
- . Internal Reporting Systems - February 1995.
- . Community Attitudes to Corruption and the ICAC - May 1995.
- . Corruption and Related Issues - An Annotated Bibliography - June 1995.
- . What to Expect When Dealing with Government (brochure produced in conjunction with New South Wales Supply Service and Information Technology Service) - June 1995.

### *Young People*

The young people of today are the public servants and decision makers of the future. This group has therefore been identified as a target audience. Work is already underway to inform young people through school curricula work. Further work is being planned to engage this audience.

#### **1.4 the work of the Commission's Research Unit;**

The Research Unit seeks to better inform the Commission's efforts to reduce corruption in the New South Wales public sector. To this end, the Research Unit has completed the following projects in the last year:

*1994 Community Attitude Survey:* This yearly telephone survey of a random sample of New South Wales adults measures public perceptions of corruption and of the work of the ICAC. It is undertaken to facilitate the Commission's education and corruption prevention work.

*The relationship between police and paedophiles:* A literature review was

undertaken by the Unit and included as a chapter of the 'Interim Report into the Relationship Between Police and Paedophiles'. The chapter examined factors, including corruption, which could affect the successful identification, investigation and prosecution of child sexual abuse cases.

*Annotated bibliography:* In order to better resource and inform Commission staff, the Research Unit has produced an updated version of its annotated bibliography. The bibliography covers a range of topics including codes of conduct, defining corruption and workplace crime. This document is also available to the public.

*Complainants' expectations of the ICAC:* The Research Unit conducted a study examining the expectations held by members of the public who bring information to the Commission (complainants). The large volume of information collated by the ICAC means that every individual complaint cannot be investigated. Furthermore, the Commission does not see that the resolving of individual issues or grievances is its primary role. It is of more value to New South Wales for the ICAC to focus on major and systemic forms of corruption. This does not mean that the information provided by members of the public is not used. It can be used by the Commission to inform its more strategic and preventative work. However, people expect that their matters will be dealt with. With such expectations, a number of complainants are likely to be disappointed.

The project focused on complainants' expectations of:

- the role of the ICAC, especially in complaints handling;
- the process the ICAC has for dealing with complaints;
- the outcomes that would result from their making a complaint; and
- the type of feedback they would receive from the ICAC.

The study also examined how the ICAC handles these expectations.

The project involved focus groups with staff who have responsibility for dealing with complainants and their information, as well as an examination of complaints files. As a result of this work, the Commission is exploring how it could better communicate with complainants about its procedure for handling information received from them.

*Dissemination of Research Unit work:* To increase awareness and understanding of corruption and related issues, the Research Unit aims to disseminate the results of its work. In the last year, Research Unit staff have given conference papers based on the results of particular projects (e.g. on the *Unravelling Corruption* study and the project concerning the management of police informants). In addition to this, the summary report of *Unravelling Corruption* has been included

as a chapter of a reader for university students about business ethics. A paper based on the study has also been accepted for publication in the international journal *Crime, Law and Social Change*. The Editor of this journal (Prof. Michael Johnston) commented in correspondence that:

*From my perspective, as one who has done similar work, it is an example of what we could accomplish here [USA] if we could get public agencies interested in the systemic study of corruption, instead of the current pattern of public exorcisms.*

In mid-1995, the number of Research staff increased from two to four. The expanded Unit is now settling its research program for the next twelve months. Potential projects include a review of the Protected Disclosures Act, an evaluation of the Education Unit's curriculum work and a follow up study to *Unravelling Corruption*. The Research Unit continues to support the work of others within the Commission who are undertaking their own research or evaluation projects.

**1.5 prosecutions arising from Commission investigations and convictions, (ie. an update of the table provided to PJC on 4 March 1994)**

Table is attached at Appendix Two.

**1.6 the Commission's current budget and staffing position; and**

**1.6.1 Specifically, by how much was the ICAC budget underspent in the last financial year?**

The actual net cost of services provided by the Commission was \$3.054 million below the original budget estimates. The underlying variance was attributable to two main factors:

- (i) the Commission's staffing levels were on average 14% below budget forecasts;
- (ii) the level of formal investigations activity was below budget expectations which generated savings, particularly in legal costs, transcript fees and other related items.

**1.6.2 How much money has the ICAC spent since it was established?**

The Commission has received \$81,657,000 in government allocations represented by recurrent expenditure of \$70,935,000, capital expenditure of \$8,393,000 and non-monetary funding, being leave liabilities accepted by the State, of \$2,329,000.

**1.6.3 How do you think we should judge whether New South Wales is getting**

**value for money for the ICAC?**

The ICAC was established to expose and reduce corruption in the New South Wales public sector. This is what the public demanded and what the ensuing legislation allowed for. The question of value for money should therefore be considered in terms of whether:

- . the ICAC is achieving what it is meant to achieve;
- . the cost is reasonable for the output.

In judging whether or not the cost is "reasonable", or the benefits "satisfactory" there are a number of factors which could be considered by the Committee.

The question of how to measure whether the Commission is achieving its objectives, has been addressed in question 18.1. Listed there are the range of performance indicators taken from the 1995-98 Corporate Plan. These are used by the Commission to judge whether or not it is meeting its objectives: objectives which were settled in consultation with major stakeholders.

When judging the cost/output question a number of indicators should be considered.

- (i) The cost of having a standing investigative body compared to that of setting up a new Commission or inquiry whenever an instance of possible corruption requires investigation. The costs to be considered include:
  - . *financial costs* (eg of accommodation, equipment, services and staff)
  - . *time spent establishing the inquiry before work can commence* (eg recruiting and equipping staff)
  - . *experience* (eg of staff who have worked on one inquiry, not being utilised for the next)
  - . *information/intelligence* (eg knowledge, intelligence or information gathered in one inquiry is not translated to the next)
  - . *accountability* (ie a body which exists after the life of its inquiry and can therefore take responsibility for the work undertaken)
  
- (ii) The amount of "down-time" between investigations. The ICAC has **no "down time"** between major investigations. Even if high profile investigations are not taking place, work continues on preliminary investigations and covert investigations as well as work on corruption prevention, education, complaints handling and research.

- (iii) The fact that the Commission does more than merely investigate. Its corruption prevention, education and research capacity are not generally found in ad hoc inquiries or Royal Commissions.

When measuring the value for money of the ICAC, the less tangible benefits of its existence and work must also be considered. These include:

- less opportunities for corruption to occur as a result of ICAC prevention work undertaken;
- positive changes in community attitudes to corruption;
- reduced tolerance of corruption occurring in the work place (and therefore greater willingness to take action about corruption);
- greater protection for those reporting corruption within the workplace;
- a higher chance of being caught and punished for being involved in corrupt conduct (therefore greater deterrence);
- greater public trust in the mechanisms of government;
- a public and a public sector which are better equipped to prevent corruption from occurring, and to take action about corruption which has taken place.

A recent study by the Commission indicates that 64% of recommendations made in Commission reports for system changes have been implemented by public sector agencies. This is, however, only a small window into the extent to which the Commission has been agent for change in New South Wales. The work of the Commission in the area of corruption prevention and education, outlined above, contributes on a daily basis to change in the public sector and to improved dealings between the public and private sector.

All of the factors outlined here are having a positive effect on the way in which the community views the institutions of government. The "value" of this attitudinal change cannot be measured in monetary terms. Similarly, it is impossible to ascribe a monetary value to the corrupt dealings which the Commission's very existence may have prevented - because corruption is essentially a hidden crime, occurring in private, its incidence is not able to be quantified. Consequently the fiscal value of systems reform to decrease the opportunities for corruption is not readily quantifiable.

#### **1.6.4 Please provide details of staff changes since the last hearing?**

The last figures relating to staff provided to the previous Committee were effective as at 1 August 1994. The figures provided hereunder are current up to 18 August 1995 and are provided in the same format as the previous meeting.

	1/8/94	18/8/95	
<b>Permanent Staff</b>	118	128.2	(Includes 3 permanent staff currently on LWOP and 4 permanent staff on secondments outside the Commission)
<b>Temporary Staff</b>	10	7.6	
Total	<u>128</u>	<u>135.80</u>	

**1.6.5 Is the turnover of staff above average? If so, why?**

The Commission is a comparatively small employer engaged in specialised work. This means that there are not always career opportunities available for employees within the Commission. Traditionally the Commission has also employed seconded employees from the public sector and on term contracts. These factors have all contributed a turnover rate between 24% and 35%.

The turnover rates for permanent staff, on a financial year basis, since the Commission was created are:

1989/90	-	32%*	* May include temporary staff
1990/91	-	35%*	
1991/92	-	30%*	
1992/93	-	24%	
1993/94	-	28%	
1994/95	-	26%	

The Commission has taken action to reduce turnover by putting in place a range of new employment practices in the Commission's 1994 Enterprise Agreement. These include:

- an improved performance management system;
- a change from contract employment to performance-based employment;
- improved communication and consultation between management and employees through the Commission Consultative Group which was created under the Commission's first Enterprise Agreement signed on 30 November 1994;
- better training and development opportunities to enhance employee skills;
- more flexible work arrangements;
- encouraging public sector employees to come to the Commission as

permanent employees rather than on secondment.

It is intended these steps will reduce the turnover rate by 25% of what it was prior to the Enterprise Agreement.

**1.7 the work of the Operations Review Committee.**

Since the last hearing on 3 August 1994 the Committee has met a total of 11 times. The table below represents the meeting dates and the number of matters processed at those meetings.

<b>DATE OF MEETING</b>	<b>MATTERS/FILES CONSIDERED</b>
07/10/94	68
05/11/94	89
02/12/94	135
10/02/95	192
03/03/95	91
07/04/95	116
05/05/95	79
02/06/95	86
07/07/95	99
04/08/95	149
02/09/95	112

In February 1995 all then current members were reappointed with the exception of Ms Felicity Wardhaugh. Appointed in her place was Ms Meredith Rankin, a solicitor in private practice. The current membership of the Committee is as follows:

- Commissioner B S J O'Keefe QC
- Assistant Commissioner
- Mr Laurie Glanfield, Director General, Attorney-General's Department
- Mr Tony Lauer, Commissioner of Police
- Reverend Ballantine-Jones, Clergyman
- Ms Carmel Niland, Company Principal
- Mr John Bragg, Chartered Accountant



- Ms Meredith Rankin, Private Solicitor

**1.8 the work of the Corruption prevention section.**

Refer to previous answer at 1.2.

**1.9 the work of the investigative section.**

The Section consists of Investigators, Analysts (both criminal and financial), Assessment officers and general support staff. Preliminary investigations are conducted into matters referred to Investigations by the Assessments Panel which was established in the past 12 months (see answer to question 4.1). The majority of those investigations do not reveal evidence of corrupt conduct and in such instances the matters are not further investigated. Reports on those matters which are deemed to warrant further investigation and the use of Commission powers are submitted to the Commissioner, following consultation with Legal Services, for formal approval of a scope and purpose document which sets the parameters of the investigation. Examples of such current investigations are cited at paragraph 1.1.1 above.

The Section employs a wide range of investigative approaches including interview of witnesses and suspected persons, execution of warrants to search premises and take possession of property which may assist the investigation, covert surveillance on suspected persons, use of listening devices on persons, in vehicles and premises, and use of telephone intercepts. The powers under sections 21 and 22 of the ICAC Act have been used to good effect during the period to obtain information and documents etc for assessment by Analysts to assist investigations. The Commission's ability to hold private hearings at very short notice has been used quite frequently and greatly assists the investigative process.

**1.10 the work of the legal section.**

The Commission's Lawyers are a part of the core services of the Commission. They provide legal, policy and strategic advice and services to the Commission. In particular the Lawyers ensure that the Commission's work is performed lawfully and fairly. They provide legal support to the Commission's investigations and manage the Commission's hearings. The work includes preparing statutory processes for obtaining evidence, examining evidence obtained by Investigators, liaising with witnesses, instructing Counsel in hearings and at times appearing as Counsel Assisting in hearings. At the conclusion of investigations Lawyers work closely with the presiding Commissioner to prepare the investigation report. The Lawyers also participate in and at times lead multi-disciplinary investigation teams.

Legal Services is responsible for liaising and dealing with requests from the

Commission's primary accountability bodies, namely this Committee and the Operations Review Committee. With respect to the latter Legal Services provides support to the Operations Review Committee, conducts quality control reviews of a percentage of reports to the ORC and organises an annual independent audit of reports to the Committee.

Legal Services liaises with the Director of Public Prosecutions and other public sector agencies in relation to any prosecutions or disciplinary actions commenced following an investigation and represents the Commission in litigation.

#### *Legal Changes Affecting the Commission*

Legal Services monitors and advises the Commission on legal changes affecting the Commission. In the past year these have included:

- (i) amendments to the ICAC Act, principally: amendments to section 9 to provide for a code of conduct for members of Parliament such that conduct which involves a substantial breach of an applicable code may amount to corrupt conduct for the purposes of the ICAC Act;
- (ii) the commencement of the Protected Disclosures Act: the Commission's work in relation to this legislation has been outlined above under the heading Corruption Prevention. Commission Lawyers have worked with the other investigative agencies and the Commission's Corruption Prevention Officers to settle the guidelines to assist organisations to establish systems for reporting corruption, maladministration and serious and substantial waste. In addition Legal Services has been involved in settling a Commission information brochure on protected disclosures.

#### *Recommended Legal Changes*

In the past year the Commission has made recommendations for or submissions concerning legal changes in a number of areas.

Submissions were made concerning the remaking of the Commission's Regulations by 1 September 1995 necessitated by the repeal provision under section 10 of the Subordinate Legislation Act 1989. As a result of the Commission's submissions a new Regulation has been made which incorporates both the Independent Commission Against Corruption Act (Disclosure of Financial Interest) Regulation 1989 and the Independent Commission Against Corruption Act (General) Regulation 1989.

In addition to this the Commission sought to clarify whether the Mayor or a General Manger of a local council was to be construed as the principal officer for the purposes of the section 11 reporting requirements under the ICAC Act.

Submissions received by the Commission from local councils supported the proposition that the General Manager should be the principal officer. The new ICAC Regulation now prescribes that the General Manager is the Council's principal officer for the purpose of section 11.

Legal Services also prepared or contributed to submissions in respect of the following:

- (i) The Privacy and Data Protection Bill 1994;
- (ii) The Committee's Discussion Paper on Pecuniary Interests and Codes of Conduct;
- (iii) The Telecommunications (Interception) Amendment Bill 1994;
- (iv) The Model Forensic Procedures Bill;
- (v) The Model Mental Impairment Bill.

**Questions Without Notice**

**(1.1.1) Current Investigations**

**The Hon. B. H. VAUGHAN:**

**Q:** I ask you to look at question 1.1.1. I have received quite a number of representations recently by organisations in the Byron shire. You mention that you are halfway through an investigation into Byron Bay Council.

**A:** The public hearings in relation to the Byron Bay Council were completed in August. There are some written submissions to come from one party. Otherwise the matter is now to be the subject of a report.

**Q:** At that time, did the Byron Bay Environment and Conservation Organisation make a submission?

**A:** No.

**Q:** Did the Byron Environment Centre make a submission?

**A:** No.

**Q:** Did the Broken Head Protection Committee make a submission?

**A:** No. None of those organisations sought leave to appear or was represented at any of the hearings.

**Q:** Did they lodge submissions at all?

**A:** No. Well, they had not up until this morning. They were not invited to, having not taken part in any hearing. That did not prevent them from having the right to do so. If they had done so and raised new matter it would have been necessary as a matter of natural justice to those involved to go back and expose those matters publicly as other matters have been exposed. I am not aware of any such submissions.

**Q:** Was the focus of your inquiry on the Batsons quarry and Club Med?

**A:** No. There were two focal points. The first was an area down on McGettigans Lane which was the subject of rezoning. The second was an allegation that senior officers in the council—namely, the general manager and the manager of the planning department—had a pecuniary interest in ensuring that the rezoning took place. As it happened, the hearing took a somewhat different turn as a result of the execution of search warrants during the course of the hearing. Material was obtained that called into question the bona fides of the principal complainants. I will say no more because I have not yet determined the outcome of that. There was a rather dramatic turnaround in the hearing in the second phase. The hearing did not concern Club Med or the quarry. Might I say, however, that in that community it does not matter what you do, someone will say bad things about you. I would not want to live in that community.

**Mr WATKINS:**

**Q:** I was fascinated to hear what you said about customer satisfaction. You said that less than a point of a per cent of your customers were dissatisfied. I would be interested to know how you came to that conclusion.

**A:** You take five years and an average of 500 section 10 complaints per year and you look at the material we have in relation to persons who expressed dissatisfaction to us. That is the only way we can judge that. The number is fewer than 20. You relate that to the 2,500 complaints and that is where you get the percentage.

**The Hon. B. H. VAUGHAN:**

**Q:** I would like to return quickly to the Byron Bay Council inquiry which I have already referred to today. Can you assure me that in the event of your discovering that there are written submissions from community groups arising out of your Byron inquiry that you will read them, if you have not already done so?

**A:** I am not clear on what you mean.

**Q:** This is now relating to Club Med and the quarry. You explained to me that there were no personal appearances of certain community groups, which I named at the time. I am asking you now to assure me that if they have made written submissions you will consider them before the second report.

**A:** I would need to look at them. I cannot give you that assurance. I do not know whether the submissions, if there are any, are directed towards the subject matter of the inquiry.

**Q:** If you discover that they are directed towards the subject matter, will you read them?

**A:** Indeed.

(1.2) Corruption Prevention Work

**Mr TURNER:**

**Q:** In relation to your education and corruption prevention policies, which I congratulate you on, what do you have as an outreach program in the country areas for education and corruption prevention?

**A:** The officers of the commission go to country centres. Again, there had been some duplication between the Ombudsman's office and the ICAC in their visits. I sought to integrate those so that we do not spend twice the amount of money that needs to be spent in order to get the messages across. I have a view that if it is feasible in both a budgetary and logistic sense if a public hearing concerns a country area, the commission ought to try to sit in that country area. That is one of the reasons I sat in Byron Bay. Where you have dissension in the community that community ought to be readily able to see the process whereby you examine the complaints. We could not do that with the Bathurst matters for Southern Mitchell Electricity because of exigencies of time. It was more important to have that heard quickly rather than on the spot. I would anticipate in the Aboriginal land council matter that there could be hearings in country centres. In terms of the officers moving around, they go on a face-to-face basis both for corruption prevention and education purposes to various country centres. One visit that achieved some publicity was two officers of the commission who went to Lord Howe Island. I do not see Lord Howe Island as being any different from Dubbo, Wagga or wherever; it is part of New South Wales.

**The Hon. B. H. VAUGHAN:**

**Q:** Or Liverpool?

**A:** It is pretty easy for people to come in from Liverpool to Sydney. The report that I had there was that they were able to deal with the matters face to face much more quickly and effectively than long reports written by mainland boffins, which was the complaint that the Lord Howe Island people were making. The ICAC is about New South Wales, not only about Sydney. My view is that we ought to reach out into the country areas. We get a percentage of complaints and reports from country areas and we should service them there.

(1.4) Research Unit

**CHAIRMAN:**

**Q:** You received the questions sent to you by the Committee and you have returned the answers. As you have heard, they have been tabled. I refer you to question 1.4 which relates to the work of the research unit. Can you provide further details of the study conducted by the ICAC research unit into expectations of complainants to the commission?

**A:** As you will see from the written answer at page 9, there is an expectation in the community that the commission will be, at least as far as complainants are concerned, a complaints handling body. That is not our function under the Independent Commission Against Corruption Act. Of course, we obtain material from people by way of complaint pursuant to section 10. Last year we received approximately 765 complaints under section 10. We of course get much more information and reports under section 11. We had some 7,500 of those last year. When the expectations of complainants were examined, most seemed to think that the commission must follow up the complaint with a detailed investigation. That is neither our function nor is it within our budgetary capability to do so. The procedure that is adopted in relation to each complaint has been set out in other questions, as you would be aware.

However, there are some who are not happy with the outcome. That is inevitable. It is very rare that the expectations of each complainant will be exactly met, particularly if it is not part of our function to set out to meet them but rather to expose and investigate actual corrupt conduct. However, in the respect of the majority of complainants, when advised of the outcome they accept it. However, there are some who do not. In the past the attention that was given to those dissatisfied complainants was perhaps not as extensive as it might have been. My view is that, within reason, one should try to explain to the dissatisfied complainant the process by which the end point was reached. Beyond that, we cannot go and we ought not to go. There are some people who you will never satisfy; it does not matter what you do. All we could say is, "Yes, you are right", even if you do not believe them to be right. That is not our function. The expectations of the complainants in relation to the ICAC are not always easy to understand individually.

We know that there is an expression of dissatisfaction by some—a few, I hasten to say. If you look at the number that I am aware of that have expressed dissatisfaction and compare that number to the total number of section 10 complaints over the life of the commission, the percentage that we are looking at is less than a point of a per cent. That is not bad in terms of customer satisfaction. No organisation is perfect; there is always room for improvement. I hope that the directions that I have given in relation to dealing with complainants and those who were dissatisfied will help to improve that score. I do not think that dissatisfaction will be eliminated.

*(1.5) Prosecutions arising from ICAC investigations*

**Mr TURNER:**

**Q:** I have noticed that the Director of Public Prosecutions has abandoned a number of matters that were referred to the ICAC and your schedule which you have annexed here refers to certain matters that you have received. In view of the fact that section 9(1)(a) provides that for conduct to be corrupt it has to be a criminal offence and/or other offences, is there a fundamental problem between the ICAC and the DPP on the interpretation of a criminal offence?

**A:** No. I think there are two things. One is that the standard of proof for the prosecution of a criminal offence is proof beyond reasonable doubt. Before the ICAC the standard is the civil standard, bearing in mind the seriousness of the allegation. So, you would start with a different

standard of proof; it is much higher for the criminal prosecution. Secondly, the material that the ICAC can operate on includes the admissions that are made by the target, if I can call the person that, in the course of a public hearing or even a private hearing. If the witness has taken an objection under section 37, that evidence cannot be used against that witness in a subsequent criminal prosecution. So, both the onus or standard of proof and the evidentiary load or material is different before the ICAC and in a prosecution.

You may have a person who admits corrupt conduct and a criminal offence, but that admission before the ICAC cannot be used against that witness in a later prosecution. It is not difficult to understand why the DPP may decide not to prosecute such persons. You may then be put back to the DPP being limited to documentary material and perhaps the evidence of somebody who claims that certain actions were done. Against that you have the defendant who says they were not done or who does not say anything in the criminal prosecution. One ought not test the effectiveness of the ICAC by reference to the number of prosecutions that are successful. We are not a prosecuting body. We are about investigating and exposing corruption.

**Q:** You quoted an example where a person admits the offence, admits to being corrupt and admits breaking the criminal law but because of the circumstances you have described that person can walk away from punishment. He or she is a criminal, from his or her own mouth; he or she has admitted the offence yet can escape any penalty, apart from the odium of being a corrupt person. Should there be some mechanism in the middle by which to catch that person?

**A:** You have a very difficult balance. When the Parliament enacted the Independent Commission Against Corruption Act it stripped the witnesses of the protection that the common law gives to them of non self-incrimination, et cetera. The quid pro quo for that was that if they take an objection and, nonetheless, incriminate themselves, you cannot use that. That was a very important balance in the legislation. If you are going to change that balance, there is a much wider civil liberties question that is involved and a much wider question involved in relation to our whole common law about self-incrimination, and I would not like to deal with that off the cuff. That is a very difficult question.

**The Hon. B. H. VAUGHAN:**

**Q:** You mentioned Randwick Council a while ago. I suppose, like the rest of us, you read the newspapers. There is a matter of great notoriety at the moment concerning Alderman Matthews and Mr Messina. They were found by the commission to have conducted themselves corruptly. You will recall that the DPP advised you that no further action would be taken. I am intrigued, as are most readers of the newspapers, as to why it would have taken from 7 August until local government election eve last Friday—and this, of course, is on the statement of the Director of Public Prosecutions—for these people to be advised that no further action would be taken against them. I ask the question because one of those who has been re-elected believes that he was very, very severely prejudiced by that failure of the commission to advise him of the result of the DPP inquiry. Also, the town planner concerned, Vincent Messina, has found himself to be unemployable whilst the sword of Damocles was hanging over his head, namely, corrupt conduct.

**A:** The delay between the advice of the DPP to the commission and the commission's advice to

Mr Matthews is not something I would defend; it is an error. I have made inquiries as to why it occurred. It ought not to have occurred and I can say no more than that.

**CHAIRMAN:**

**Q:** On that point, is it the responsibility of the DPP also to advise the two people concerned, as well as to advise you?

**A:** I understand their practice is not to do so.

**Q:** They leave it to you?

**A:** Well, not to advise the persons directly. I might say that no inquiry was made of the commission by Mr Matthews during that time either.

*(1.6) Commission's budget*

**Mr WATKINS:**

**Q:** My next question relates to the budget of the commission and what you have been talking about. What do you see as the ideal budget of the Independent Commission Against Corruption to do what you think it should be doing?

**A:** In the way in which I have re-formed the organisation and in the light of the budget discussions that I have had with the Premier's Department, I am satisfied that the budget we get this year, if adhered to—and I hope it will be—will be adequate to perform the functions that are set out in our program. That includes educational matters and it includes investigation. The investigation section will remain the biggest section of the commission. There are 50-odd officers involved in that section. Compare that with corruption prevention, where we have 19 officers, and with education, where we have 12 officers plus an add-on, a media officer who is part of that area, and that will give you some idea of the balance.

Assume for the moment that police complaints come back to, and remain with, the ICAC. Then there is no question but that the budget that we presently have would not deal with that and deal with our other matters adequately. Of course, if it comes to the ICAC from somewhere else, it comes with some budgetary implications of saving elsewhere. On what we are doing at the moment and the way we are going about our work we can manage on our budget. It is fair to say that it would always be nice to have another million or two million dollars but we have to live in a State where everybody is strapped and we have to make economies and do things better than they have been done in the past. That is what I am trying to do.

**Q:** It is a key question, though, is it not? One of the shortcomings of the ICAC in not achieving a better result in respect of police corruption investigation was surely due to a lack of funds available to do the job. Are we dealing with a certain level of corruption in New South Wales that we are stuck with because we are not putting enough money into the Independent Commission Against Corruption? By the end of next year or soon after we will have spent



\$100 million in New South Wales on the ICAC. Is it value for money? It is a vast infusion of public funds; are we getting value for it?

**A:** I have no doubt that the view taken within the public sector and within the community is that the very existence of an organisation such as the Independent Commission Against Corruption has an effect on the corruption level. That is number one; it achieves that by its very existence. The more effective it is the better we will have achieved that objective. There is no doubt in my mind that the awareness in the public sector of the need for probity is much higher as a consequence of the activities of the commission in the past. I have little doubt that it will be even higher as a result of the direction I have determined the commission should take.

Is the commission providing value for money? The figure of \$100 million is a lot of money, I grant that, but \$100 million is a very small part, for instance, of the budget of the State Rail Authority; its budget is in excess of \$1 billion. The savings that have been effected in the State Rail Authority in tendering, contracting, et cetera, far exceed our annual budget. I cannot give you a figure but, for instance, on the Trackfast inquiry that was held into the northern line restoration and safety—earthmoving—there were estimates of \$20 million and \$25 million said to have been wasted. In other words, it was said that half the cost of performing that work was excess. In the current matter that I am doing in relation to the police air wing, without going into figures, some millions of dollars in savings are now effected as a result of changed procedures.

At some stage I would like to do an analysis of actual tangibles. It is very difficult though. What has not happened is hard to quantify. You have got to also make the assumption that it has not happened because of the existence of ICAC. Both of those are assumptions that you would have to build into your models, but it is something that I have in mind to do. Add that to the intangibles, such as people living in a community where they say probity is a priority. If you scrap an organisation such as the ICAC, what is the public response? Surely the response is that governments and parliaments do not care about honesty and probity in New South Wales. I do not know how you measure those intangibles. I do not think you do; all you can do is catalogue them and let people make their own assessment.

**Q:** Except that we have to. We have to always ask: is the money that is being spent being spent in the right manner?

**A:** I understand that. It is very easy to look at the inputs; they are measurable according to a budget statement each year. The outputs are much more difficult to quantify. What I have done, however, is this. I have introduced a system whereby, before we embark upon an investigation that is going to involve considerable resources, something other than routine, it is necessary for the officers who are in the multidisciplinary teams that are going to be involved to draw up a program, both in terms of time and resources—human and monetary—for that activity. They put a figure on it: half a million dollars, for example. I am then in a position to ask whether the anticipated output from that is worth putting half a million dollars into. You are then able to look as you go along as to how you are going on time and money. You have not achieved the objective here; how long before you do? You can review that and say that we have spent this much and we have not really got anything out of it. Do we put more money into it or not? It is an ordinary business management tool, but it is not one that has been applied

before. I fortunately come from the local government sphere where it was par for the course to do that in well-run councils. It seems to me that this organisation is no different and that we should be doing the same thing, and that is what is happening. Hopefully we will be able to measure these things over the course of time. I think a year is a bit optimistic when you look at the intangibles.

**The Hon. I. M. MACDONALD:**

**Q:** I want to continue with one of the more important aspects of section 1 of the Committee's questions. It has been noted that there was a shortfall of about \$3 million in expenditure last year, which would have comprised, if my memory serves me correctly, a very substantial part of the overall budget.

**A:** About 20 per cent.

**Q:** In relation to the comments that have been made about value for money, is any outside auditing of the commission conducted, both in terms of its expenditure and the benefits that are received? Are the comments that are made on pages 11 and 12 in-house conclusions or is there some objective, independent assessment of how the ICAC is travelling in this concept of value for money? In relation to that, what role has the Auditor-General been playing in respect of the ICAC? After seven years, do you think we need a full review of the effectiveness of ICAC by an outside body to have a good look at how it is operating?

**A:** Dealing with the second part of the question first, it is always good for an organisation to have some external body look at its operation. The knowledge that the review will happen causes the organisation to gee itself up and put its best foot forward. The question of timing is important. I have spent the last ten months getting things reorganised and building morale. An immediate review could have adverse effect. Firstly, there is always a perception, particularly among lower echelon staff, that an outsider's view is threatening. I do not take that view, but members can understand that lower level members of an organisation think that way. Secondly, the effectiveness of the organisation must be looked at not only in a historical context, but also in terms of what is actually happening and its potential. The systems and programs we have put in place have not yet had time to bite, and a review held now would only tell what happened under a previous administration. Timing would be important.

Considering our financial accountability, the Auditor-General, of course, conducts our statutory audit and vouches for the money in and money out. We recently had one of his officers with us for two to three months at my request looking at our systems and functions to determine whether the work is being done in the most cost effective manner. That does not tell you anything about the output, but it will tell you about how to go about doing your work within the process. I think that is a step in the process you are looking at. It is in place. The officer has not done his report yet—we should have it fairly soon—but he has just about finished his review of internal systems. I thought that that process was fairly important to follow early in my administration so I would know where we were coming from and what internal changes might be necessary to fit in with our new direction and programming. I hope that by the time I meet with the Committee on the next occasion the report will be not only to hand, but also any changes it suggests, and are found to be appropriate, will be made.

**Q:** If I understand you correctly, you are saying that an independent review of the effectiveness of ICAC would be okay, but not at this time.

**A:** Exactly: that is highly desirable, but it is a question of timing.

**Q:** Page 12 of the document indicates that you had a study conducted on recommendation implementation, and that about 64 per cent of the recommendations have been implemented. Who did that study, and is it available? Also, what analysis has been made of the 36 per cent of the recommendations which were not implemented?

**A:** Our research unit did that study, if I recall correctly.

**Mr FENELEY (Solicitor to the Commission):**

**A:** The study was done internally by going to each of the public sector agencies on which we report and make formal recommendations, and making assessment of the implementation of the recommendations. The result of that work is soon to be published in the commission-style newspaper. We have had input from the Auditor-General and the Ombudsman.

**The Hon. I. M. MACDONALD:**

**Q:** Has a study been done on the 36 per cent of the recommendations which have not been implemented?

**A:** I think the answer to that question is no, but I will check. That relates to public sector agencies, but we have not done so well in legislative matters or matters to be referred to the Law Reform Commission. Again, that is out of our hands. I expect that as a result of what we call new directions—although that term is jargon and would be better called the change in emphasis we have adopted—our strike rate in relation to recommendations implementation will increase. As a result of the changes, the process is much more of a cooperative and iterative process. The agencies are asked, "How would you go about doing it?" They answer and explain the faults they find. They are asked how they would remedy the problems, and they make suggestions. Our officers have input on how the job would be better done. Either a consensus is achieved, or a known basis for disagreement is determined. I would expect as a result of that process being adopted we were likely to have an even higher adoption rate than the situation of outsiders coming in and saying, "Do this, this and that." That would lead to some resistance, and often that resistance may be soundly based. These agencies know their business, and it is our job to know their business. That is part of a new direction and I hope that things will improve.

**Mr LYNCH:**

**Q:** Why was the ICAC budget underspent by \$3 million?

**A:** If you consider the money rather than the reason, the money was not spent because the staff were not employed. The staff were not employed because there was not a permanent commissioner to say, "This is what we are going to do, so let's get on and do it." The situation

was drifting. Nobody wanted to make a decision until the new commissioner was appointed because it was thought that he or she may make a different decision. The net result was that our staffing, instead of a complement of 156, was about 120 average. That is where most of the money was not spent. Regarding the remainder of the money, in a period between the end of the Milloo inquiry in February 1994 to Operation Violet—the Smiles matter—in January 1995, the Randwick council inquiry was the only matter which proceeded as a public hearing. The hearing rate was very low. I cannot tell you the figure off the top of my head, but an underspending was involved. Frankly, I had a fit when I was appointed. When it looks like \$3 million will go back to consolidated revenue, one can do one of two things, namely, do not let it happen again or try to spend the money. However, you cannot rationally crank up an organisation to try and spend the money sensibly and responsibly. In the time available to me, I did not embark on that course. I said, "So be it. Let's make sure that we do not lose it next year." Members can be assured that there will be no underspending in the coming year; everybody is working very hard.

**Q:** What sort of a structure do you have in place to monitor your expenditure and to determine that no underspending of that magnitude will occur in the future?

**A:** That is done monthly. The accounts section presents to me and senior management monthly reports on expenditure and projected expenditure tables to tell us how we are going. From December last year it was really clear that we were going to underspend. The projection made in January of this year was almost spot on. The reporting is not only regular, but pretty accurate.

**Q:** From what you say, the \$3 million underspent resulted from a lack of staff employed. What in practical terms did that mean? For example, were inquiries not processed and investigations not conducted?

**A:** It really meant that nothing substantial that was new was undertaken. The engine turned over and any section 10 complaints and section 11 reports were progressed. Beyond that and the Randwick inquiry, nothing much was done for the first six months of the financial year. The advent of my appointment changed that, but you can only do so much in a given time. This financial year, on the budgets that we have agreed to—and I hope we will retain—our problem will be determining how close to the wind we will sail. It will be very close. We may have to make decisions in the second half of the year not to build up staff because of the expenditures likely to be involved in probable public inquiries.

**Mr TURNER:**

**Q:** You gave a short answer that you had set up a body between yourself, the Auditor-General and the Office of the Ombudsman to handle the matter. Have there been any demarcation disputes to date in that regard?

**A:** No.

**Q:** Or is it all working relatively well?

- A:** Yes. I have a very good working relationship with both Mr Harris and Ms Moss; we speak to one another regularly. If matters arise that need to be discussed each of us is available to the other without any delay or difficulty. It is a good working relationship.
- Q:** Is there a point of first contact if there is a demarcation dispute? Does it go to one of the bodies to determine who should handle it?
- A:** No, it is really a process of saying, "Well, this fits within your framework better than it does within mine", or vice versa.

## **2 NEW DIRECTIONS**

### **2.1 What changes have occurred in the ICAC's operations and procedures to implement the "New Directions" for the ICAC announced by Commissioner O'Keefe on 21 February 1995.**

The New Directions speech announced that there would be greater emphasis placed on prevention and education in the Commission's work. The Commission sees this as a logical development and one anticipated when the ICAC Act was introduced.

Since that time staffing levels have been increased and over the next 12 months will be further increased in the areas of prevention and education will be increased in order to meet the program goals for these areas of the Commission's work. At a structural level the Commission has combined the two areas under one program manager to achieve improved planning and co-ordination of the work.

On a broader level the Commission will continue to place emphasis on a multi-disciplinary approach to its investigations to ensure that prevention and education opportunities are identified at the earliest possible stages of an investigation.

Increased collaboration and co-operation with departments and agencies is occurring and has been referred to in answers to question 1 above.

### **2.2 Should the ICAC be the new Police Complaints unit on serious matters replacing the Internal Affairs unit?**

The Commission's view is that serious complaints against police should be investigated by the ICAC but whether this would have the effect of "replacing the Internal Affairs Unit" remains to be seen. The Commission considered the issues surrounding police misconduct and complaints in Chapter 5 of its Second Report on the Investigation into the Relationship Between Police and Criminals (April 1994). In particular the Commission recommended:

The Commission recommends that criteria be developed to determine those types of complaints which should be investigated by an external agency. Such investigation can be undertaken by the agency alone, on a joint taskforce basis with the Police Service or some other body. In appropriate circumstances the investigation could be conducted by the Police Service but monitored by the external agency.

The Commission's view then and now is that the Police Service must take a responsibility for managing its officers. This includes complaints made against

them and taking appropriate action against wrongdoers. In the event that the ICAC is given responsibility for investigating serious complaints then to the extent practicable responsibility for disciplining police officers should involve the Police Service.

The Commission has made a number of submissions to the Government on this issue and has been invited to provide a submission to the Royal Commission into the New South Wales Police Service which is also considering this issue.

**2.3 What role should the Ombudsman have on minor complaints against Police?**

The Commission believes that the Ombudsman's existing role of monitoring police complaints should remain unchanged except to the extent necessary to facilitate the Commission investigating those matters classed as serious complaints.

**2.4 Does the Commissioner believe that the New South Wales Parliament and Government is fundamentally in need of an ICAC?**

Yes. In a recent survey of New South Wales adults, over 90% of respondents believed that corruption was a problem in New South Wales. Ninety-one per cent considered that having the ICAC was a good thing for the people of New South Wales. Reasons given for this view included that: the ICAC acts as a necessary watchdog; it exposes corruption; it acts as deterrent; and that it is independent. The Commission's investigative and prevention work confirms that there is certainly a real and continuing need for the ICAC in New South Wales.

**2.5 Does the Commissioner believe that the New South Wales public service is fundamentally corrupt? If not, why not? If so, why?**

No, I do not believe that the New South Wales public service is fundamentally corrupt.

It is not possible to estimate the *prevalence* of corruption in the New South Wales public sector. There are several reasons for this. Firstly, corruption is an essentially hidden crime. It occurs between consenting parties and it occurs largely in private. There is often no evidence that corrupt conduct has taken place. Secondly, public sector employees do not have a shared understanding of what "corruption" is (from *Unravelling Corruption: A Public Sector Perspective*). What may be corrupt to some people is considered acceptable practice by others.

I can therefore only speak of my impressions. To say the public sector is "fundamentally corrupt" would imply that *every* public sector employee and process is inherently dishonest or fraudulent. I cannot believe that to be the case.

However, from the number and nature of complaints and reports of corruption received and the corrupt conduct exposed, it is clear that corruption remains a problem in New South Wales. The public also perceive that they are affected by corruption. In a survey of New South Wales adults (*Community Attitudes to Corruption and the ICAC - 1993*), effects of corruption on the community mentioned by respondents included: loss of faith or disillusionment; loss of trust; and financial effects, such as increased taxes and wasted public money.

Recognising this concern, it *is* possible to identify and reduce opportunities for corruption to occur. The ICAC works with public sector agencies to do just that. It *is* possible to foster a public sector culture where corruption will not be tolerated. Through its education program, the ICAC works to this end. It is also possible to deter people from partaking in corrupt activities. The ICAC does this first by increasing the chance that corrupt people will be detected and secondly, by taking action to expose corruption when it occurs. We do this not only through our own investigative work, but by fostering the reporting of corruption within organisations, and encouraging organisations to take action on their own behalf.

## **2.6 Should the ICAC have a sunset clause?**

The public sector is not static; it is dynamic, with new technologies and challenges confronting it on a regular basis. Opportunities for corruption will develop alongside these new challenges which may not have been present previously. There will need to be some body to assist organisations to meet these challenges and the Commission is the best equipped to fulfil that need.

### **Questions Without Notice**

#### **(2.1) Major achievements of the ICAC**

#### **CHAIRMAN:**

**Q:** In the period since you have taken office what have been the major achievements of the ICAC?

**A:** I think perhaps one should look at that question against an historical background. I was appointed as commissioner on 14 November 1994. There had been no permanent commissioner for some eight months prior to that time. That had had an adverse effect upon the commission both in relation to staffing numbers and morale. On my appointment I took the view that it was necessary to restore morale to give to the commission a definite direction, one that could be pursued, that all would know what that direction was and that staff numbers be built up to perform our function properly. The outcome of that determination was that, first, we have restored staff morale. According to all measures that I have been able to apply, staff morale is now high. People are busy, which is generally a good thing for morale. There is nothing worse in a place than to have people sitting around not fully occupied. One, they lose



a sense of direction and, two, there is far too much time to gossip about real and imagined concerns. Busy people tend to be happy people, and you may be assured that the commission's officers are very busy.

I have successfully reversed the trend in staff turnover. There is every indication that staff turnover is falling further beyond that indicated in the tabled answers. In relation to the direction the commission is taking, having regard to our statutory warrant as set out in the Independent Commission Against Corruption Act, and the understanding of that warrant from the speeches in the Parliament at the time of the introduction of the Act, I determined that the time had come when an additional emphasis should be placed on corruption prevention and on education as part of that. That was launched in February this year. It has been incorporated into our corporate plan and into the programs that have been assembled under that corporate plan. So, the new direction is clear. It is expressed both in my introduction of it on 21 February, in our corporate plan and in our strategic plans under that. At the same time, the commission has been moved to a program management basis so that people will know what is expected of them, what is to be achieved, that what can be achieved can be planned, and that there is sufficient flexibility to enable the commission to vary its priorities according to the exigencies of the time.

I think every new head of an organisation has an opportunity to instil into that organisation a new enthusiasm, a new emphasis in approach, and a restoration of morale. That is part and parcel of that enthusiasm. It is my view that you cannot lead from behind; you must lead from in front. As a consequence, it is my policy to be there early, to be there late, and to be there throughout the day. No-one in the organisation is ever asked to do something in terms of time at work that the commissioner does not do. That communicates itself clearly to the staff, and has done so very well in the time that I have been there. Our investigative function had not been utilised to the full extent during the time that there had been no permanent commissioner. The investigative function has been revitalised and the methods of investigation that I have authorised extend over the full range: covert surveillance, bugging of individuals so that conversations can be recorded and, if necessary, telephone interception. I take the view that these are appropriate and legitimate tools, tools which the law recognises as being available, and as such they should be used in appropriate cases. What has been achieved since I have been commissioner? I think a turnaround of an organisation that was feeling a bit lost into one that has direction, enthusiasm, high morale and a determination to be the best.

(2.1) New directions for the ICAC

**Mr WATKINS:**

**Q:** This relates to the expectation the community has about the ICAC. It is critical to its good health. You have said so several times. I am worried that the people of New South Wales have the wrong idea about what the ICAC is there for. If the community still has the wrong idea five years after the ICAC was established, something is wrong and it should be addressed. I think there is a view that people expect the ICAC to investigate their allegations of corruption. If the Independent Commission Against Corruption is to move away from that into a new direction and become a new creature in prevention and education, should that not be made clear to the people of New South Wales?

**A:** I will deal with the last part of the question first. The ICAC has always been a creature whose statutory mandate was to investigate and expose corruption and also to eliminate or minimise corruption. That is what section 13 tells us. If you go to the second reading speech by the then Premier, which was embraced by the House, you will find that he says in the course of it there will come a time in the life of this organisation when the emphasis which is presently upon investigation will be complemented by an emphasis on long-term prevention and education.

It is that that I have taken up in the new direction speech of 21 February 1995. The creature remains the same; the balance within it changes somewhat. Coming back now to the question of investigation, of 765 complaints received a percentage of those—a quite high percentage—in fact on initial examination and assessment do not involve corrupt conduct within the meaning of the Act, whatever the believe of the complainant may be. I do not make the statute; Parliament does that. I do not define what corrupt conduct is; the Parliament does that. I, as Commissioner, apply that to the facts brought forward by individual people and if what they say does not amount to corrupt conduct, but they would like it to, I cannot make them happy; it does not matter what the commission does.

There are some who bring forward matters that could amount to corruption. Whether they do or not will depend upon a further elucidation of the facts. Some of those are matters which do not have any across-the-board application. They are individual and, in terms of the corruption that one wants to eradicate from this State, they are not insignificant but not significant; they are not something that is headline material. What do you do with a budget of \$14 million-odd? Do you chase each of those or do you try and adopt a strategic approach? You look at that data or those data and look at other data and try and find the most relevant threads that will ensure that the money spent on the ICAC by the community is spent to best advantage. It is spent to best advantage by investigating and exposing the most important corruption; it is not spent to best advantage by satisfying individual complainants.

That is the view that I have taken and I think it is a view that my predecessor took. I adhere to that view. As to expectations, I agree with you that at the end of five years one would hope that the message is getting through. Part of the education programs that I have asked the officers of the ICAC to devise includes education of the community in the public arena so that there will be a better understanding of what the ICAC is really about. That takes time and I think it is something that, in the setting up of the ICAC, got a bit lost. That is because the priorities then were different. My predecessor was setting up an organisation; it needed to make its mark. I am there to ensure that it fulfils its statutory mandate and, at the same time, does so in a way that is understandable by the community. I am addressing that customer satisfaction aspect—if you can call it "customer"—in the education program, but that will take time.

*(2.4) Government confidence in the ICAC*

**The Hon. D. J. GAY:**

**Q:** I have served on this Committee since its inception. It is amazing when one goes from Government to Opposition how the perception of attitudes seems to change. The view of whether the ICAC is important or whether it is an interference that you may rather do without

seems to have changed too. How important is the confidence of government to morale and, consequently, the effectiveness of the ICAC?

**A:** I think it is important for the employees at the ICAC to believe that what they are doing is important for the State. Everybody likes to perform a worthwhile function. The recognition by government that it is a worthwhile function is part and parcel of that, but it is not the be-all and end-all of it. I am not speaking in specifics now but it is conceivable that one could have a corrupt government which could be very adverse to the ICAC. Then you would get your strength in the organisation from the knowledge that you are performing what the people of this State wanted you to do. If the desire of government and the desire of the people of the State is congruent then you are in a double whammy situation: the employees feel that they are doing their job well.

My role as commissioner is neither to be adverse to, or in bed with, government: it is to be independent. When government seeks advice, the principles that are to be applied to a given transaction should be clearly stated, but the decision is a government decision. We are not there to say that we do not agree with the decision. The function of the ICAC is to say whether correct probity principles have been applied. There will be political decisions made which involve factors which, as long as they are known and transparent, are well and good. Our job is not to put the brake on government; it is to put the brake on wrongdoing. Section 13(1)(f) of the Act stresses this. It talks about the advice that we give being consistent with the effective and efficient operation of the agencies of government. We are there to facilitate and make sure that what is done is done honestly, not to stop it being done. If government recognises that—and I am sure governments do recognise it if we do our job properly—then there is no sense of antagonism. There is a sense of all wanting to achieve the same ends: that New South Wales is an honest place to bring your money to invest; New South Wales is an honest place to do business in; you will get a fair go here. That is what we are about.

*(2.5) Public Sector Corruption*

**CHAIRMAN:**

**Q:** In the New South Wales public sector what systemic changes are most needed to minimise corruption? Do you have a view on that matter?

**A:** It depends upon the area that you are in. Firstly, most systems ought to be fairly simple. The more complex they get and the more value judgments that are involved in the process, the more readily can corruption occur. Secondly, no one person should have control of the whole process from beginning to end. Thirdly, no one person or group of persons—that is, the same people—should be in the one decision-making or regulatory function position for too long a period; there ought to be a turnover. Beyond those principles you have got to look at the function that is being performed and what is necessary to achieve the ends that the agency seeks to achieve, and to build into that those principles, and there may be other relevant principles as well. Largely, it is a question of systems which tell those who are rightly disposed how to deal with situations, and at the same time make those who do not deal with them in a manner which is consistent with proper probity stand out more quickly and more easily.

### **3 NEW PROCEDURES FOR PUBLIC HEARINGS**

**3.1 Could the Commission please provide an overview of the current procedures for public hearings?**

A copy of the Commission's Procedures at Hearings document is attached at Appendix Three.

**3.2 Are there any allegations of excessive legalism in ICAC operations and, therefore, a denial of natural justice? If so, what is the Commissioner's view?**

The Commission is not aware of any such allegations. Also the question seems to be equating excessive legalism with a denial of natural justice and I'm not sure that this equation can in fact be made. However, the Commission's hearings and operations are conducted with regard to the principles of natural justice. Further the Commission does not indulge in excessive legalism. It is not bound by the rules of evidence and takes an inquisitorial approach, but it recognises and respects the rights of witnesses.

**3.3 The Metherell-Greiner affair entailed a lot of hearsay evidence, particularly Dr Metherell's diaries. Should the ICAC screen hearsay or irrelevant evidence that could create an atmosphere where natural justice may be denied. Should people unfairly named in hearsay or irrelevant evidence be granted an injunction from the Court of Criminal Appeal on the grounds that a person could not obtain a fair trial?**

This question raises a number of different issues and in the interest of clarity I will deal with each separately.

*1. Should the ICAC screen hearsay or irrelevant evidence that could create an atmosphere where natural justice may be denied?*

The Commission is not bound by the rules of evidence and has a discretion to admit hearsay evidence. It is also required pursuant to section 17(2) of the ICAC Act to exercise its functions with as little formality as possible. That being said, the occasions where hearsay evidence which can damage a person's reputation is admitted are restricted to when the information has had some real evidentiary weight and is integral to the collection of further evidence relating to the subject and other witnesses.

During a hearing, evidence which is considered cogent at that time is admitted in order to support and assist a certain line of questioning. If recommendations for

be tested for admissibility in the primary courts. Hearsay is notoriously problematic and it is not uncommon for it to be admitted in proceedings in primary courts, being tested on appeal.

The Commission does not admit evidence it considers irrelevant. However, at the commencement of a hearing the evidence may at face value appear relevant and it is only with further inquiry that the value of it is diminished. For the Commission to take too rigid a view on relevancy would likely result in possible fruitful inquiries being passed up, and would involve a certain amount of prophesising as to outcome on the Commission's part.

As stated elsewhere, Commission hearings are conducted in observance of the rules of natural justice, and this observance extends to what evidence is led and the circumstances in which it may be led eg in a private hearing at least initially.

2. *Should people unfairly named in hearsay or irrelevant evidence be granted an injunction from the Court of Criminal Appeal on the grounds that a person could not obtain a fair trial?*

First, the Court of Criminal Appeal would not seem to be an appropriate body from which to seek an injunction, as the court of judicial review for the Commission is the Supreme Court of New South Wales. Secondly, a person appearing before the Commission is not in fact "on trial". However if the question is directed at trials which arise out of Commission hearings and reports, it should be pointed out that when the Commission expresses an opinion pursuant to section 74 of the Act in a report about criminal action, a brief of evidence is prepared and forwarded to the office of the Director of Public Prosecutions. The DPP then evaluates whether the brief can support charges being laid. The conduct of any resulting criminal proceedings is the responsibility of the DPP. The Commission neither decides on the prosecution nor conduct its.

If the question is querying the potential prejudice that may arise from publicity associated with Commission hearings, I am of the view that this is no more or less harmful than that associated with tribunals, Royal Commissions, criminal proceedings and litigation. Indeed the use of private hearings in appropriate cases can render the process in the Commission less harmful to the innocent.

**3.4 Should witnesses appearing before the Commission be video recorded and televised thereby allowing full public scrutiny? If not, why not? If so, why?**

Commission hearings are more often than not conducted in public thereby allowing those who are interested the opportunity to observe the Commission's work. The issue of televised hearings is one not limited to the Commission, but to tribunals and courts generally. The Commission holds the view that televised proceedings are not appropriate at this time, however it will observe developments on this issue with interest. The current trial of O J Simpson in the United States of America highlights many of the problems caused by or associated with the televising of proceedings.

**Questions Without Notice**

**(3.1) Current Procedures for Public Hearings**

**Mr TURNER:**

**Q:** The former commissioner had a practice of videorecording witnesses for record purposes, as he put it. Does that still continue?

**A:** There is a little video screen on the bench and when the witness is first called I video them so if I need to remember who the person was I can relate a name to a face. Sometimes if there is some critical question when the demeanour of the witness is important it may be switched on again. These are not for public purposes; these are very much internal to the commission. I hope I did not create that impression.

**Q:** No, you did not. That question arose because the former commissioner happened to mention it to us last time. It was another issue which has now passed and gone.

**The Hon. B. H. VAUGHAN:**

**Q:** At 3.1 did you not say that you had some television set-up to assist you as to the identification of the witness?

**A:** Yes.

**Q:** Is that on display?

**A:** No.

**Q:** So they cannot see that?

**A:** No, it is a little three-inch square inset into the bench and it runs for a short while and then

I turn it off once I see who the witness is. Occasionally, as I said, I will run it where there may be a question of demeanour involved. Occasionally if I am asking questions of a witness I will run it, lest there be any question later raised of the bullying of a witness, which was raised against one of my predecessors, Assistant Commissioner Roden.

**Q:** No other party present has the advantage of also seeing that screen?

**A:** Nobody.

**Q:** It seems to be a bit one-sided.

**A:** Why?

**Q:** On the demeanour question.

**A:** I am the one who has to make the decision. They make their submissions; I make the decision and it is in aid of that decision-making process.

**The Hon. B. H. VAUGHAN:**

**Q:** I am prompted by the remarks of the Hon. D. J. Gay about a person being given a reasonable opportunity to give evidence and to be legally represented. I seek your assurance on that. In 1989 a member of the upper House in New South Wales was telephoned by the ICAC and asked to come down and make a statement about a north coast development called Blue Lagoon, or something. He spoke to me and asked me to come down with him. I said, "No, you never go to anything like that without counsel". He went for the chat and was directed to the servant of the commission, who had invited him for the chat. The receptionist in the outer office pointed to a door and he went through the door and found himself in a court room, the person at door said "Mr Deputy Commissioner, the Honourable Mr so-and-so appears before you." My friend walked from the door to the box. I think it was the most outrageous thing that I can recall, and that is one of the reasons I have always had an avid detestation for the ICAC, with all due respect to the present incumbent.

**A:** All I can say is that I cannot envisage that happening while I am commissioner. The rules of natural justice are very important and are fundamental to our legal system. It is true that their content varies according to the nature of the activity that is being engaged in and the nature of the forum, but every person should know at least before he or she goes to a place that they are going to give evidence. My practice would certainly not be as you have presented, has not been that, and will not be that.

**Mr WATKINS:**

**Q:** Does that apply also to questions by officers of the commission?

A: No.

Q: A person may think an interview is to take place and it suddenly turns into fairly detailed questioning about other matters. I am suggesting that sometimes interviews are arranged not under false pretences but that matters are not explained beforehand to some of the people being interviewed—for instance, the example just mentioned about being asked to attend for a chat and being questioned about matters other than what was expected?

A: In those circumstances such persons are not required to answer the questions and they may insist upon the formality of a summons and a private hearing. Since I have been commissioner I know of no case where there has been any suggestion of impropriety in the interview of witnesses either at or away from the commission and I would be certainly astute to ensure that did not happen.

**The Hon. B. H. VAUGHAN:**

Q: Do you hear matters in camera? Do you have that discretion?

A: Oh, yes. In fact, I have adopted a policy of private hearings where an allegation is made particularly against a person who may be a public figure or whose reputation, business or family may be damaged by the allegation. I hear the allegations and have them tested in private and then I have the person the subject of the allegations in as well for a private hearing. I then make an assessment as to whether or not a public hearing is justified. I have taken the view that if sensational allegations have been made and a long time elapses before they can be dealt with, that is quite unfair and will not happen.

Q: You can run it like a grand jury with you deciding instead of the jurors?

A: Exactly. It has a number of upsides. It has a slight downside on cost but also has the upside that it tends to ensure that when you go to a public hearing you have limited the issues quite a bit. I think it is a very beneficial process.

Q: I agree.

A: It is one I will use more and more.

*(3.3) Metherell - Greiner inquiry*

**The Hon. I. M. MACDONALD:**

Q: My question relates to item 3.3 on page 21. I find your answers interesting indeed. Specifically, the diaries being used at that time seem to be, to any casual observer, rather sensational and almost completely unrelated to the matters at hand in a direct sense. Your answer I think obscures a lot. It just waltzes around the topic without getting to the facts of the matter. Incidentally, in relation to the previous matter you said that the treatment of persons



recently was wrong and that it should not have happened that way. Can you spell it out? Do you not think that the diaries being released in the way they were was incorrect and no matter of fine use of English can get around that fact?

- A:** Assume for the moment that it was a trial and not an inquiry or an investigation before the Independent Commission Against Corruption, and assume that Dr Metherell gave evidence of the kind that he gave, orally. He would undoubtedly have been able to be cross-examined upon his diaries and the diaries would have got into evidence, without any doubt, in a trial in that way, in the same way as the diaries of the honourable Mr Armstrong in the Armstrong and Barton trial all got into evidence in an Equity proceeding. There is no doubt in my mind that, trial or investigation, those diaries would have got into evidence. How they were dealt with at the hearing is not a matter that I am conversant with. I have not been through those transcripts and I know no more than I read in the press at the time. Suffice it to say that, one way or another, it was inevitable that the diaries would get into evidence. I do not think I can say any more than that.
- Q:** Inevitable in the sense that there would have been some follow-up trial? They did not have to get into evidence in the way they did.
- A:** Why not? A man says that this, this and this happened.
- Q:** Certain bits could have been dealt with that related to that directly, could they not?
- A:** One of the difficulties is that you have what appears, from my recollection of it, almost to have been a stream-of-consciousness type of writing in which the writer always emerged as the hero. I can only tell you my impression: the writer always appeared as the hero. It is very difficult to dissociate one part from another. What is fact, what is imagination or what is reconstruction you cannot tell without an examination of the whole. I think it was almost inevitable that the whole lot got into evidence. In a trial the use that you may make of those diaries on an evidentiary basis may be different from an inquiry. As I apprehend it your question was directed towards their publication rather than to the use thereafter made of them, that is, that they were pretty sensational stuff.
- Q:** Yes, and most of it irrelevant to the inquiry.
- A:** Well, if the issue was what was said between the Premier and Dr Metherell—
- Q:** There is no question but that that would be relevant.
- A:** —and that this goes to that, that is admissible. Then it is admissible to test his version of that in a diary against other things that may be thought to be a little more fanciful and less concrete than that. That is what happened in the hearing, as I understand it.
- Q:** You were a bit more definitive in 3.4 where you virtually come down saying you do not want the televising of the ICAC.
- A:** There is no question of that in my mind.

**Q:** Could you elaborate? You say that the current trial of O. J. Simpson highlights many of the problems. This is an issue that has been pursued with some vigour.

**A:** When you have media in a public forum, particularly television, people adopt roles. It is almost inevitable. Firstly, they adopt roles that are likely to get them a 10-second grab on the news of an evening. That is not the way in which information is most accurately purveyed. Secondly, witnesses undoubtedly feel intimidated by the presence of television cameras. Thirdly, there is a degree of hyperbole that is engaged in, both in terms of words and actions, by people who want to make some television splash. Finally, I think it can be very adverse to persons whose faces and testimony come together at a time far removed from an ultimate finding, when what remains is that image, words and picture, even though the image is ultimately not the true image of what the occurrences were. I think there are a whole host of factors that I could catalogue against allowing media television into the ICAC hearing.

## **4 COMPLAINTS PROCESS**

### **4.1 Could the ICAC please outline the process of what happens to a complaint made to the Commission?**

All information received by the Commission, including those matters classified as "complaints", are registered by entering relevant information onto the Commission's data base (the Enquiry Registration System). A file is then created. The file is then forwarded to the Manager, Assessments, for consideration by an Assessment Panel.

The Assessment Panel was instituted in October 1994 as a means of improving the efficiency and timeliness of the Commission's assessment system. The Panel comprises the three Directors of Investigation Services, Community and Prevention Services and Legal Services or their nominees. It is assisted by the Manager Assessments. That Panel meets four times each week and it ensures that complaints and other matters are assessed promptly.

The Panel is provided with a brief written summary of each complaint, and the Manager, Assessments provides a fuller, verbal description of the matter, together with a recommendation as to future action.

The Panel then considers each complaint against established criteria, and recommends a course of action which could include immediate investigation, further preliminary inquiries or referral to another agency. A letter acknowledging receipt is then sent to the complainant, where known.

For those complaints where it is recommended that the matter not be investigated, a report is prepared for consideration by the Operations Review Committee, which meets monthly, other than in January. The Committee makes recommendations to the Commissioner about the reports it receives. Once the Commissioner has made a decision - usually within a week of the Operations Review Committee meeting - a letter is then sent to the complainant, advising the outcome.

### **4.2 Has the Commission set an acceptable time limit for:**

#### **(a) the complainant to be notified of the receipt of their complaint;**

Complaints are registered within two working days of receipt and acknowledged within five working days.

#### **(b) the complaint to be investigated by:**

- (i) the ICAC**
- (ii) other agencies**

The initial decision to investigate a complaint is made by the Assessment Panel, which considers complaints within two working days of registration.

In the case that the Commission is investigating, no specific time limit is set, principally because the complexity of each complaint and the availability of resources will influence the time required to investigate. However, as an accountability mechanism, all complaints not finalised must be reported to the Operations Review Committee six months after receipt, and monthly thereafter.

If a complaint has become a formal investigation, it is reported to the Operations Review Committee at least every three months.

In the case where the Commission has referred a complaint under section 53 of the ICAC Act to another agency for investigation, it is usual practice to set a date by which a report on that agency's investigation is required. Once again, dates are normally set after considering the complexity of the matter, and there is provision for an agency to request additional time to complete an investigation, if necessary.

- (c) the complainant to be notified that their complaint will not be subjected to formal investigation.**

The time limit adopted for notifying complainants that their complaint will not be the subject of a formal investigation is that such should occur within ten working days of the Operations Review Committee recommending and the Commissioner deciding a complaint is not to be investigated.

Generally, with those matters recommended by the Assessment Panel as not to be the subject of investigation from the outset notification should occur within forty days of receipt of the complaint.

A complaint that has been the subject of some initial enquiries (but has not become a formal investigation), is to be reviewed by the Manager, Assessments or other senior officer within sixty days of receipt of the complaint. If the decision is not to take the matter further, the complaint is to be reported to the Operations Review Committee, and the complainant is to be notified of the outcome within ten working days of the Commissioner's decision.

**Questions Without Notice**

**Mr LYNCH:**

**Q:** I turn now to the question of satisfaction with ICAC and responses to complainants. The most frequent complaint the Committee would hear about ICAC is the length of time taken for ICAC to notify complainants about ICAC's response to a matter. Someone who came before the Committee sent a letter which ICAC lost, and that person received no response for nine months. I am not suggesting that that is a typical situation. What do you think is an appropriate time frame for a response to a complaint, and what sort of mechanism is in place to monitor such things?

**A:** Pages 24 and 25 of the document set out some of the times. One of the early tasks I had done was determining our average time and finding the norm. I cannot give you off the top of my head the percentage of compliance, but it is pretty high. It is fair to say that foul-ups occur at times, but nine months is not good. I even found one case much worse than that. However, having someone who is concerned with ensuring that things are done promptly has an effect on staff. We now have a system to check back on a random and a broader basis to ensure that things do not fall between the cracks. Delays happen in any place. They should not happen, but they do. The times set out on pages 24 and 25 are reasonable.

As a result of the requirements of the operations review committee, delays can occur in matters which will not be the subject of formal investigation. A report may go to that committee which may want more information or may not agree with the recommendations based on the information available, so more must be collated. We do have figures about the percentage of acceptance for reports, but it is the exception that always tests the system. You can have a situation in which, for instance, a complaint that is received, say, in late September will not get up to the December ORC meeting. There is not one in January, so it does not get considered by the ORC until February. Then it may not get through on the first occasion, although the high percentage does. But it may not on that occasion, so it may slip another month. So you could have, even in a routine matter, depending upon its time of receipt, a deal of time elapse before it is finalised.

When you go into a more extensive lot of inquiries, and even a formal hearing, then it is very difficult to tell how long it is going to take. Often, once you start a hearing, even though you have got specific terms of reference, it opens up because people come forward with additional material. That is one of the great advantages of the public hearing system: it causes people to come forward and give you additional information, and that often prolongs a hearing. That is what happened in Byron; Mr Vaughan asked about Byron. We did two segments on that, and material coming forward, including the search warrant material, just protracted that hearing.

**Q:** You said there is now a system to check back on what has happened to things, both on

a random basis and on a broader basis. Are they new systems that have been introduced?

**A:** Yes.

## **5 REVIEW OF THE ICAC ACT**

### **5.1 Is the Commission still of the opinion that amendments to the ICAC Act are needed?**

I take it that by "still of the opinion that amendments to the ICAC Act are needed?" you are referring to the Commission's previous submissions on necessary amendments to the Act. The Commission has made specific submissions on a number of occasions namely:

#### *PJC Review of the ICAC Act*

As the Committee is aware, the Commission gave broad general support to the recommendations for amendment in the "Review of the ICAC Act, May 1993". In that report certain aspects were to be referred to the Law Reform Commission. As far as the Commission is aware, that referral has not yet taken place. The Commission would be pleased if that referral occurred so that the outstanding issues raised in the Review could be resolved.

#### *Section 112 ICAC Act*

The Commission prepared a submission seeking amendment to section 112 of the ICAC Act, forwarded to the Committee by letter dated 17 May 1993. The submission sought a broadening of this section in order to overcome some perceived anomalies in the operation of the section which might frustrate the intention of the section. For a fuller description and discussion of the amendments sought please refer to the original submission (copy attached).

#### *Park Plaza and Section 11*

Recommendations put forth in the Commission's Park Plaza Report relating to section 11 being amended so as to apply to Ministers of the Crown are yet to be taken up. However, the distribution by the Commission of revised section 11 reporting guidelines have largely resolved other difficulties earlier identified with reporting compliance.

#### *Other Amendments*

In addition to the above matters the Commission considers that the Act requires amendment in two other areas, namely:

- (i) to strengthen the provisions concerned with the protection of those who assist the Commission;

- (ii) to remove those provisions which require the Commission to utilise the services of New South Wales Police Officers and replace them with alternative provisions.

*Protection Provisions*

The Commission supports a broadening of the provisions within the ICAC Act for the protection of those who provide information to the Commission. At present, limited protection is afforded by sections 50, 92, 93 and 94 to those assisting the Commission with an investigation. These are concerned primarily with physical safety (section 50) or with creating offences related to those who take action against witnesses (sections 92, 93 and 94). These provisions do not make it an offence to prejudice, intimidate or harass any person who is assisting the Commission. Such assistance may of course occur before a person becomes a witness.

By contrast section 131 of the Criminal Justice Act, makes such conduct an offence (referred to in the Act as the "offence of victimisation").

Under section 131, a person who:

- (a) prejudices, or threatens to prejudice, the safety or career of any other person; [section 131(a)]
- (b) intimidates or harasses, or threatens to intimidate or harass, any person; [section 131(b)]
- (c) does any act that is, or is likely to be, to the detriment of any person; [section 131(c)]

because the person referred to in paragraph (a), (b) or (c) has "given evidence to the Commission, or has assisted the Commission by furnishing information or producing any record or thing" (section 103) is guilty of an offence, for which the prescribed penalty is a fine.

In addition to the sanction provided under section 131, a person who has engaged or intends to engage in "victimisation" may be restrained by means of the statutory injunction available under section 104. In this way the injunction available under section 104 supplements the penalty provided under section 131 for this type of conduct.

While the Supreme Court of New South Wales has the power to grant an injunction to restrain "any conduct in which a person (whether or not a public official) is engaging or in which the person appears likely to engage, if the conduct is the subject of, or affects the subject of, an investigation or proposed investigation by the Commission" (section 27 ICAC Act), this provision appears



to be more limited than the CJC provision. The Commission would like to see its own Act amended to ensure that protection is available to all persons who assist the Commission irrespective of when that assistance is given.

*New South Wales Police Provisions*

The Commission believes that it would be appropriate to amend the legislation such that it was not necessary for the Commission to rely on New South Wales Police Officers as this would give the Commission greater flexibility in the way in which it conducts its investigations. There are only three such provisions in the Act. The first relates to search warrants under Division IV of the Act. The Act provides that a "member of the Police Force" executing a search warrant may in certain circumstances search a person found in or on the premises. Similarly the Act provides that the Commissioner may in certain circumstances issue a warrant for the arrest of a person where he is satisfied the person will not attend before the Commission to give evidence without being compelled to do so. Under that provision the warrant may be executed by "any member of the Police Force" (section 36(7)). The third provision occurs in relation to contempt of the Commission under Part X. The Act provides that if a contempt of the Commission is committed in the face or hearing of the Commission then the offender may be taken into custody by a "member of the Police Force".

**5.2 If so, could the Commission please briefly outline those amendments?**

Refer to 5.1 above.

**Questions Without Notice**

**(5.1) Amendments to the ICAC Act**

**Mr WATKINS:**

**Q:** I would like to ask a question about the New South Wales police employed at the Independent Commission Against Corruption referred to at 5.1 on page 28 under the heading "New South Wales Police Provisions." It says that under the legislation you in fact need to have police in the ICAC, or certainly someone with police powers.

**A:** Yes.

**Q:** It raises the matter of the employment of New South Wales police in the ICAC to which you referred earlier. I was intrigued to hear you say that you have taken a decision, because of your interpretation of public concern about police employment in the ICAC, to reduce numbers to no more than 25 per cent.

**A:** Of the investigative staff, yes.

**Q:** Why I find that strange is because it is probably a bit of a sham really. Why are you concerned about the employment of New South Wales police in the ICAC? I would like to know why before I continue with that question.

**A:** I will deal with the first question, which is a prefatory statement, that it is probably a bit of a sham. That is just not right. It is not a sham and it is not intended as such. If "sham" has some special meaning, then I would like to know it.

**Q:** This is why I asked the question. If you are concerned about the employment of New South Wales police at the ICAC, surely you should take remedial action about that. You should remove the New South Wales police from the ICAC, up to the point of, as I said, certain powers. But I understand that that could in fact be legislated to someone else. You should either remove them or embrace them as being a valid part of the organisation. But to reduce them to a certain percentage as a result of some public perception is a sham. They are either no good or they are—

**A:** Perceptions do not necessarily have anything to do with fact. A perception may only be a perception and not a fact.

**Q:** I suppose that relates to my earlier question: why?

**A:** If you go back to the beginning of ICAC when Mr Temby first engaged investigators, most of them came from the New South Wales police force as seconded officers. In fact, close to one hundred per cent of the investigative staff were serving New South Wales police officers on secondment. If the public perception is correct that serving police officers should not be involved in the investigation of other police officers who are alleged to be corrupt, that situation cannot prevail. However, a high percentage of our investigations are not concerned with allegation of police corruption at all. Investigative skills held by police officers, detectives in particular, are valuable to the ICAC.

The re-organisation of the ICAC's methods involves a much broader use of multidisciplinary teams. In so far as police are the subject of the investigation, it is possible and effective to have teams which contain no serving New South Wales Police Service officers, or ex-police officers. At the same time, it is necessary to have some police officers fulfil the functions necessary under our Act as it stands, and also perform investigative functions into matters not involving police. I arrived at the figure of 25 per cent in consultation with the director of investigations, as this enabled him to have the appropriate number of teams relating to police complaints while isolating police from them. At the same time, we should have the benefit of police officers in relation to other investigations. As it happens, the number of police officers has fallen below 25 per cent. It is currently three officers, and 25 per cent represented six officers, if I remember correctly.

**Q:** So, are New South Wales police officers not involved in any ICAC investigations into any matters which may be related to police corruption?

**A:** That is the present situation.

- Q:** It depends on what you define as matters which may affect police corruption, does it not?
- A:** Of course it does. When you look at local government, it is not hard to determine that the matter has nothing to do with police. With health services, agriculture and various departments, the demarcation is very easy.
- Q:** In some cases, yes, and others no.
- A:** That may be so, but I have not yet struck that yet. It might be right.
- Q:** I am intrigued that you are saying that you relate this reduction in police officers to the idea of public concern, but what you have done will not allay public fears.
- A:** That is a view you hold; it is not one I hold.
- Q:** Do you believe that what you have done will allay those public fears?
- A:** If properly understood, yes.
- Q:** In a perfect world, it would. I suggest that it is not understood. One of the comments repeatedly heard is that ICAC is hamstrung or cannot get at the root of corruption in New South Wales; most people accept that the Police Service is at the heart of the corruption because of the involvement of New South Wales police. I am not saying that, but it is certainly an expression I have heard many times, and it seems to be one to which you are reacting by reducing the number of police in the commission.
- A:** I reacted to it. It is a perception and I have taken the view that the reduction in police is one aspect which enables us to counter that perception. Whether that will ever get rid of the perception, I do not know. It is a question of what one can get through to the public, and what the public is given by the media.
- Q:** That is the perception business, I understand that. That is why I am saying that this reduction really is a sham because it does not go to the heart of the problem.
- A:** You say that. I disagree, and the basis of our disagreement is well defined.

**The Hon. I. M. MACDONALD:**

- Q:** The reality behind this paragraph of your report is that your thinking is quite a devastating critique of the police force. You are saying that you have a few officers in investigation teams, but you do not want them. Also, you want the Act amended in such a way that New South Wales police cannot even execute a warrant or take somebody into custody.
- A:** No, you misunderstand what I am saying. If the commission officers had those powers, it would not be necessary at all to employ New South Wales serving police officers. While you have that restriction on the powers of ICAC officers who are not police officers, you need some police officers. If you want to get rid of the police presence, you must empower the ICAC

officers equivalently.

**Q:** You are supporting the point I am making. You have such lack of confidence in the New South Wales Police Service that you want the Act amended so that your commission officers can conduct activities such as, I presume, issuing search warrants and taking people into custody. You do not want any personnel associated with the New South Wales police doing such things.

**A:** You read too much into my statements. To say that I have no confidence in the New South Wales Police Service is not the necessary consequence of the amendments I postulate.

**Q:** You do not want any reference to New South Wales police in the Act.

**A:** I do not want it to be essential that we must employ police. The decision should be made on a case-by-case basis. If it means employing police, so be it. If it means some selected officers being employed, so be it. Currently, we are bound to have some police officers in the investigation, but I want an amount of flexibility.

**Q:** So, you want the Act to refer to “any member of the commission”, or some specified member.

**A:** I mean particular officers by designation, not name. You would not want our support officers to have that power.

**Q:** Indeed. So you believe, as Mr Watkins already said, that this is really a measure to improve the public image and confidence that people could have in the commission by eliminating or reducing the role of the New South Wales police?

**A:** I have in mind not making it essential that we rely on the police. We should have the option not to rely on the police as circumstances make appropriate. At the same time we must have some police officers.

**Q:** To fulfil the obligation?

**A:** Yes, to fulfil the obligations our staff cannot fulfil because of the provisions of the Independent Commission Against Corruption Act.

**Mr LYNCH:**

**Q:** If the amendments were adopted in the near future, would you continue to want to have members of the Police Service seconded to the commission?

**A:** That depends very substantially upon whether the commission continues to handle police complaints, and upon the climate in the community. At the present time, I try to think in terms of principles. The royal commission has said that the names of 200 police officers are likely to be the subject of adverse evidence—let us call it 500. That relates to a period of 15 years or more. The earliest incident to date which the royal commissioner has considered is from 17 years ago—let us call it 15 years for the moment. The Police Service at last report comprised

13,569 officers. Going back 15 years, the figure was down to about 8,000 officers. Call the median 10,000, and assume a rollover of about 10 per cent of officers a year.

**Q:** That is an interesting use of the word.

**A:** Turnover is different from rollover. In that time the body of officers is 30,000-plus people, yet we are looking at 500 officers of the 30,000 who will be subject to adverse evidence. It is a very small percentage. Certainly it is unacceptable, but in terms of percentages it is quite small. To stigmatise the Police Service as being corrupt, and requiring them all to resign, as one newspaper suggested, is verging on the absurd. Are you to say then that of the residual percentage of officers, the vast bulk, that none of them should be considered for investigative work? I find that difficult to accept. It is a matter of who is selected. In the most recent inquiry into New York police conducted by Mr Justice Mollin, whom I think the chairman has met—

**CHAIRMAN:**

**Q:** I was unable to meet him.

**A:** I met him and tried to ascertain how they got hold of the investigators they used to unearth the 30th precinct problem—this is an area pretty much like our Kings Cross. Mr Frank O'Hare, the principal investigator, spent some time with me indicating how they picked people they knew to be fair dinkum—my words, not his—and honest. They picked officers from the police service to investigate the police. They had an entrance to the networks and knew what was taking place. It is a matter which needs to be considered, not just rejected. I am not saying that we would not have any police at all if the amendments were made. However, if we have them, we want to be very selective. I would like the flexibility to employ or not employ, as it is a mix of skills we are looking at.

**Mr LYNCH:**

**Q:** From what you have said regarding figures, it is almost as though you accept the rotten apple theory in relation to police corruption.

**A:** I do not understand.

**Q:** It is the problem of one rotten apple in the barrel.

**A:** Five hundred officers subjected to adverse evidence is unacceptable. What is more serious than the individual event is the group involvement, as is clearly the case in Kings Cross, and as was the case in New York's 30th precinct. This is a much more serious problem. It is not just a man or woman who wants \$500 to let a drunk driver off. It is ingrained and systemic, and that is the serious problem.

**Mr WATKINS:**

**Q:** No-one here, especially me, suggests that the huge bulk of our police force is corrupt, but you

said earlier you can choose from this group and you will be able to choose someone who will be clean, who will not be corrupt. How do you do that? From what we have seen over the last three or four months no-one can be sure, because there have been all sorts of unexpected outcomes.

**A:** It is not just the New South Wales police. We have seen in the royal commission that one of their own officers, who is not a New South Wales police officer, has had some allegations made against him. The answer to that is in any system, whether the person you choose is a serving police officer, an ex-police officer or somebody from outside, there is always a prospect that in a large number of choices a mistake will be made. But according to the Mollin theory and the O'Hare theory, if you know the people you are dealing with and you have got the right person to make the choice or to assist you in the choice, your prospects of making the mistake are very small.

**Q:** It goes against the Wood theory.

**A:** Which is?

**Q:** What the police royal commission has been doing.

**A:** That is not the Wood theory. That was a direction of the Parliament. The Parliament said that no serving police officers were to be employed. That was an imposed thing on Mr Justice Wood. I do not know what his theory is.

**Q:** A parliamentary theory, call it whatever you like.

**A:** You called it the Wood theory. It is a parliamentary theory.

**Q:** I do not know who Mollin is.

**A:** Mr Justice Mollin was a member of the New York Supreme Court, who had retired and has investigated corruption in the New York police force.

**Mr TURNER:**

**Q:** If you extend the argument that Mr Watkins is adopting, a number of lawyers are dishonest, so you would have to rule out employing any lawyers in your commission. A number of public servants are corrupt—that is why you are there—so you would probably have to rule them out from serving on your commission. You would be fairly lonely.

**A:** I cannot do it all myself. There is no way I can spend \$14 million, even on holidays at Lord Howe Island.

**CHAIRMAN:**

**Q:** At the end of the day you have to try to choose those people who—

**A:** —who are best suited for the job you are doing, and one or some of those may be police officers. I have a theory, however, that it is desirable for the commission to have officers that it employs, not that it seconds, carrying out these major functions. That way the loyalties belong to the ICAC, not to some other body. Secondly, seconded officers have this problem: they come to us for, say, two years and then they go back to the Police Service. It is almost inevitable that they will, at least unconsciously, be aware that their future when they go back may be coloured by what they do when they are on secondment. So getting the officers is very important—getting them to come and be our people, not somebody else's person on loan.

**The Hon. D. J. GAY:**

**Q:** We have strayed from ICAC matters and gone into a police investigation. I chaired an investigation committee into the police which went over 12 months. An understanding of what happens within the police force is almost imperative in order to discover what is happening. If you do not have an understanding of how police operate, how the culture works, and the nuances within the police force, you are going to miss a lot of what happens. That is why it is important, provided you can get the right officers, to have police there to discover what is happening. That is a statement rather than a question.

**A:** I take your point, but I still like the idea that people who are the investigators at the commission should overwhelmingly be commission employees and not seconded people. Their loyalties are there at home. We are home.

## 6 DEFINITION OF CORRUPT CONDUCT

### 6.1 **Have recent amendments to the ICAC Act, ICAC (Amendment) Act 1994, resolved the difficulties previously identified with the definition of corrupt conduct in the Act?**

As the Committee would be aware, the Review of the ICAC Act identified difficulties with the definition of corrupt conduct provided in the Act. The ICAC (Amendment) Act 1994 in part resolves these difficulties, however, as referred to in 5.1 some difficulties remain. For example certain other office holders are not covered by the amendment: Boards appointed by the Governor are not subject to any disciplinary instrument and as such are outside the jurisdiction of the Commission for the purposes of section 9(1)(b).

The ICAC (Amendment) Act 1994 provides that a substantial breach of the applicable Code of Conduct shall bring Members of Parliament under the jurisdiction of the Commission for the purposes of section 9(1)(b). Whether the amendment will resolve the difficulties identified in the Greiner decision is largely dependent on the content of the applicable codes, and without knowing what this might be, it is difficult to provide an appropriately informed view.

In the Report on Investigation into Circumstances Surrounding the Payment of a Parliamentary Pension to Mr P M Smiles (February 1995) I considered the amendments to section 9 and in particular the new section 9(5). I expressed the view that the reference to "**a** law", (emphasis added), its explication by the parenthetical clause "(apart from this Act)" and the requirement for the Commission to identify "**that** law" (emphasis added) are strong indicators that the law referred to is either a statute law or a law made pursuant to the provisions of a statute. It does not, in my opinion, include the unwritten law, whether it be the common law or the law of equity as developed by the courts. This could warrant consideration.

A potential problem recently identified is in relation to local government Councillors. Since the introduction of the Local Government Act 1993, Councillors do not operate under a disciplinary instrument. While the Local Government Act makes provision for all councils to adopt a Code of Conduct, there has been no research concerning the number of Councils who have actually adopted a Code. Unless the Codes of Conduct is adopted as the disciplinary instrument, Councillors are only within jurisdiction if they commit a criminal offence.



**6.2 If problems still remain with the definition, what are they?**

Refer to 5.1 and 6.1 above.

**6.3 If there are any, how can those problems be resolved?**

In relation to the ICAC Act generally, the difficulties with the legislation have long been identified, an extensive study by this Committee has been undertaken, recommendations have been made, and yet there has been little action apart from the ICAC (Amendment) Act, taken to date. There is little more that the Commission can do.

As to those difficulties associated with corrupt conduct the Commission would like to see an amendment to deal with the problem areas. It is up to the legislature to pursue the issues further.

**Questions Without Notice**

**(6.1) Definition of Corrupt Conduct**

**Ms ANDREWS:**

**Q:** Can you expand on the view you expressed in answer to question 6.1, that the reference to the law in section 9 of the Independent Commission Against Corruption Act refers only to either a statute law or a law made pursuant to the provisions of a statute.

**A:** You will find the reasoning for that in the Smiles report. I have reasoned it through there, and it is much better that you read that and see the reasoning for it. This is a truncated version of it. One of the most important things is that you be able to identify "that law". If you are talking about the common law, it is very hard to identify that law. It suggested to me very strongly that you were looking at something written, either a statute or a regulation. If the Parliament wants to go beyond that, I think that the legislation needs to be amended to cover that. There is an interesting question, however, that arises under section 9 that is also analysed in the Smiles report.

If you go back to the seventeenth century and early eighteenth century, there was a big development of the law relating to corruption amongst public officials: misbehaviour of a public official in a public office. The judges at that time constituted that as a common law misdemeanour. There is a very fertile field there for tying section 9 and section 8 together. That is slightly off the point you are asking, but it is all dealt with in much the same part of the Smiles report. It is reasoned through there, and I have quoted the cases and set out my reasoning in extenso.

**Q:** So nothing is really new.

**A:** If you look at section 8(1)(a) and section 8(2)(a) you will find that many of those thumbnail

sketches are to be found in descriptions of the common law offence in the early eighteenth century cases, so what the draftsman has done is put into words what a lot of the common law was there. I have not yet worked it out because it was not necessary to do so in the Smiles case, but a case will arise in which that interrelation between sections 8 and 9 via the breach of public trust concept and the common law misdemeanour of misbehaviour in public office can be utilised to tie the two together and find corrupt conduct against somebody.

**Mr LYNCH:**

**Q:** In question 6.1 at the bottom of page 29 you talk about codes of conduct with local government.

**A:** There is a misprint there. "Unless a Code of Conduct is adopted as the disciplinary instrument" should be the third last line.

**Q:** I recall your predecessor writing to all councils under the old Act telling them they had better adopt a code quick smart, and enclosing a draft code. My unscientific observation is that the vast majority of councils followed that advice, for fairly obvious reasons. It would seem that the research you suggest may well be undertaken by the ICAC, and that you probably have a legitimate role to do that. In practical terms it may be a case of councils adopting, under the new Act, a code that they probably adopted prior to the introduction of the new Act.

**A:** We can recommend that they do so; we cannot make them do so. But until they do so there is a problem about the disciplinary question.

**Q:** But a letter from the ICAC has a fairly persuasive effect on most councils.

**A:** Yes. Well, I hope so.

**The Hon. I. M. MACDONALD:**

**Q:** In this definition of corrupt conduct you have raised a few points about the operation of the section. One thing that has always concerned me about part 3, and particularly the definition of corrupt conduct, is that because it is so broad and encompasses so many levels of activity in sections 8 and 9 it possibly undermines the concept of corrupt conduct because it pursues corrupt conduct beyond what I would regard as serious offences on the one hand and goes into areas which are a lot less serious. In a way it then encourages a lot of people to take a very broad view of what corrupt conduct is when they make a complaint to the commission. You seem to be receiving a lot of these sorts of complaints. For instance, in a matter that came before the Committee—and I will not go into the details—the manager of the assessment section gave a small statement about corrupt conduct and said:

The Commission's role is limited to exposing and minimising "corrupt conduct," as defined in the ICAC Act. Often matters referred to the Commission relate more to maladministration or even mismanagement than they do corrupt conduct. In such cases, the Commission must carefully consider whether it has jurisdiction to pursue an investigation. If corrupt conduct has not occurred, the Commission can take a matter no further.

When the Act first came into force 7½ years ago I commented that the definition of corrupt

conduct was far too broad, and as a consequence you were receiving many complaints from individuals in the public sector which really do not relate to corruption but to mismanagement, and that at some point of time we should be considering having a definition of corrupt conduct rather than having this sort of definition?

**A:** Section 8(1)(a) states:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions . . .

That may involve something serious; it may not. If it involves something serious and it is recent, generally it falls within the criteria that we adopt to at least look at it further. If it then either involves an important issue or a lot of money, or extends across more than one agency, it falls within the criteria to further investigate. But the catch-all nature of it may also call up minor matters that fall within the words but are not going to fall within our criteria for further proceeding. If you restrict those words you may miss out on some things that at first glance do not appear to be so serious but on second glance do. That is number one.

Number two, a number of our complaints are based upon the proposition that my view of what the correct outcome of the proceedings should have been—this is the complainant speaking—is generally, "I should have got the job" or "Somebody else ought not to have got the job", and because he or she should have got the job—or because somebody else did not get the job but should have got it—therefore the process must have been corrupt, that it was not an honest or impartial exercise of official functions. Sometimes that may be correct, other times it may not. The reasoning is unsound but the end point may be right. The question that I have about corrupt conduct is the distinction between section 8 and section 9. Really corrupt conduct involves a composite—not yes, you come within section 8, but fall outside section 9—which leads to the statement that they were really corrupt but they got out under section 9. That is not what the concept is about at all. I have not had time, with all the other things I have had to do, to think through how one should marry section 8 with section 9, but that they should be married in some way is my view.

Where does one then alter the words in 8(1)(a),(b),(c) and (d)? It involves a number of considerations and one is the consideration raised by the Hon. I. M. Macdonald: is it too catch-all? The difficulty is if you change the ground rules you then have to reorganise all your criteria, et cetera. So you have a great period of uncertainty. We have had enough time to settle down on these. If change is to be made I would like to see it as the marrying of sections 8 and 9, rather than too much changing of the words in 8(1).

**Q:** The Committee is getting lots of complaints from people who have been to the ICAC, many of whom we have referred to it, of course. A lot of those complaints seem to revolve around this misnomer in relation to what is corrupt conduct. Because corrupt conduct is defined far more broadly than a criminal offence or a serious disciplinary offence under section 9(1)(c), a lot of people make complaints to us and are misunderstanding both the Act or how that conduct comes within the Act. They are getting very upset with the ICAC and say, as in this letter, "No, we have not taken this further because we believe the ICAC does not deal with these sorts of areas, it only deals with corrupt conduct".

**A:** I am not sure that a change in definition would get away from that.

**The Hon. D. J. GAY:**

**Q:** There has been a definitive Committee report on this matter.

**A:** I realise that but I am not sure that a change in definition would obviate that problem. You will just have a different basis of misunderstanding.

**The Hon. I. M. MACDONALD:**

**Q:** If it was focused heavily on the criminal side of things?

**A:** But it is far beyond that. Take the parliamentary situation. The amendments to section 9 by the introduction of subsection (5) will, I have no doubt, give rise to a number of problems for us when the codes of conduct are conducted. That was the will of the Parliament and we have to cope with that. We have to be better at the way in which we get our message across to the public about our real function and role. That is part of the education program. In the order of things we have to go to the public sector first and spend the public funds allocated to us. In the order of priorities, education is there and community education forms part of that program. The amount of money I can allocate to that is fairly limited at this stage.

**The Hon. B. H. VAUGHAN:**

**Q:** May one still get a declaration from the Supreme Court that one's conduct is not corrupt? I can recall a solicitor having obtained such a declaration.

**A:** You could, yes.

**Q:** Does the court in that instance award costs against the commission? If not, why not?

**A:** If there were an ordinary proceeding in the court and the commission was unsuccessful, then costs would follow the event, subject to the overriding discretion of the judge if there were special circumstances. I would think yes is the answer, but it is a matter for the court.

**Q:** Has there been an instance of that since you have been the commissioner?

**A:** No.

## 7 CONTEMPT

- 7.1 In the light of the Deborah Cornwall matter, does the Commissioner believe that there is a need for further consideration by the ICAC of its provisions in relation to contempt?**

The Cornwall matter is the subject of a pending appeal and therefore it would not be appropriate to comment on it. However, the provisions relating to contempt as provided in the ICAC Act are a necessary adjunct to the effective exercise of the Commission's coercive powers. The Commission has the power to compel witnesses to answer questions. That is a power conferred by Parliament. When a witness does not provide answers to questions asked at a Commission hearing, the Commission must have some recourse.

In relation to the specific provisions, the powers have to date been exercised rarely and cautiously. The Commission itself cannot punish for contempt, rather that power is vested in the Supreme Court of New South Wales. In that way the exercise of the Commission's contempt powers is safeguarded and controlled. It is the Supreme Court, not the Commission, who adjudicates upon the guilt or innocence of someone against whom the Commission has initiated contempt proceedings.

- 7.2 If so, is it necessary to have a contempt power as wide as that in Part 10 of the ICAC Act? In particular, would the operations of the ICAC be impeded in any way if its contempt power did not extend to demeaning or insulting comments about the Commission or Commissioner?**

First, in relation to the contempt power "extending to demeaning or insulting comments" - this is not an accurate translation of the powers in question. The word "demeaning" is not used in the Act, nor is the section limited only to the Commissioner or Assistant Commissioner. Section 98(d) of the Act states that it is an offence if a person "wilfully threatens or insults" the Commissioner, Assistant Commissioner, legal practitioners assisting the Commission, an officer of the Commission or witnesses or their legal representatives authorised to appear at the hearing.

Secondly, the contempt powers must be viewed contextually: it is largely dependent upon what that insult or threat actually is. Obviously the contempt powers would be unlikely to be used for trivial insults or insults that were unrelated to a Commission hearing or investigation. The powers are necessarily wide: as stated in 7.1 the Commission has the power to compel witnesses to answer questions. It is therefore necessary to have some remedy available to the Commission when a witness refuses to answer questions. As to insults directed

at either the Commission or the Commissioner or others specified in the relevant section, the applicability of the contempt provisions could only be determined on a case by case basis. Again it would be dependent on the context and the content of the insult. Obviously threats to Commission staff, witnesses, and those assisting the Commission need to be viewed in a serious light. The Commission, being a creature of statute, has only those powers given to it by statute. This is to be contrasted with the situation of the Supreme Court, which has inherent jurisdiction and commensurate powers.

**7.3 Should the onus of proof to obtain a prima facie case for contempt of the ICAC be an evidentiary matter and the Commission's power to certify a prima facie case of contempt be removed?**

No. The Commission is currently limited to certifying the contempt to the Supreme Court. The Supreme Court then inquires into the matter and determines whether the person is guilty of contempt. The procedure laid down with respect to contempt in the ICAC Act is a procedure used by the Court system generally. The Commission has no inherent power with respect to contempt and therefore the legislative provision is necessary.

***Questions Without Notice***

**CHAIRMAN:**

**Q:** You firmly believe that the issuing of a certificate is warranted in contempt matters?

**A:** I do, yes. The matter then goes to the court and the court examines the circumstances for itself. You do not get in the same adversarial situation that you otherwise would get into. It is the standard way in which things are dealt with in the Supreme Court. They do it pursuant to inherent powers, but we do not have those. We need statutory powers.

## **8 LEGAL REPRESENTATION**

### **8.1 What is the Commissioner's view of the right to legal representation before the ICAC?**

The ICAC Act requires the Commission to give a reasonable opportunity for a person giving evidence at a hearing to be legally represented. In doing so the Commission must weigh the public interest in ensuring that the investigation itself is not prejudiced by the delay which may be occasioned by affording the opportunity for a person to be legally represented.

The relevant issues were canvassed in the Committee's Report on Legal Representation.

The Commission's practice in the past has been a presumption in favour of legal representation, especially in relation to public hearings. Also any affected person would always be given an opportunity to seek legal advice and assistance prior to any findings being made by the Commission. My view is not at variance with the past practice, if anything it is even more favourable to the position of witnesses.

### **8.2 Should people who are affected or personally interested in ICAC inquiries be funded from Consolidated Revenue, particularly if they are cleared of any wrong doing or corrupt conduct?**

In this Committee's report in June 1993 "Legal Representation before the ICAC" the Commission made several submissions in relation to this issue. It is a matter for Government how claims for funding are dealt with, and how funds from consolidated revenue should be allocated.

#### **Questions Without Notice**

##### **(8.2) Funding for legal representation**

**The Hon. D. J. GAY:**

**Q:** Item 8 relates to legal representation. I link my question with section 11, which was the inquisitorial area. My concern is on two sides. There have been recommendations from this Committee, as you are aware, but the problem lingers that despite the fact that Commissioner Temby said that the hearings are non-adversarial. Counsel assisting are, in most instances, highly motivated and highly skilled. The inquiries are quite inquisitorial, which puts pressure on people who are mostly public servants or public figures. They then have to obtain legal representation. Commissioner Temby said that a competent solicitor would be adequate, which I totally disagree with.

Anyone who attended the ICAC represented by only a solicitor would be patently stupid. That means that they have to have bar representation and that means probably about \$15,000 per week for a person who is attending the ICAC. We need to do something about it. The ICAC needs to look at it; you as commissioner need to make a suggestion. I notice in question 8.2 you put it straight back to Government, and you said, in relation to funding, that rather than address it at the level of counsel at the ICAC, we have to address the attitude and inquisitorial manner and the way it is done and/or with allocation for funds for people before the ICAC. People should not be disadvantaged by, nor should they be frightened of, participating before the ICAC, as they are at the moment.

- A:** My practice both in public and private hearings is to advise people of their rights in relation to legal representation, and to offer them the opportunity to seek that legal representation before they give their evidence. I have not yet struck a case where there was such a pressing need to take evidence there and then that a couple of hours could not be spent trying to get legal representation. A number of people, particularly at private hearings, decline my invitation. They are then advised about their rights to object. Quite frankly, I do all that I can to get them to object. That is their right and they should know it. I have a fairly long dissertation that I give to them, that it is their right.

If they do not want legal representation and the matter proceeds, there are times when I will perhaps adjourn to give them an opportunity to further consider their position if they look like getting into trouble. That is a personal view that I have. After 36 years at the bar I am conscious of the rights of individuals and I am not going to abandon that as commissioner. The question of costs is a difficult one. Costs of \$15,000 per week are very high and without going into the figures I have had leading senior counsel involved as counsel assisting for a fraction of that. Adequate representation for a lot less than that can be obtained. However, assuming for the moment that it is \$5,000 a week, that is far beyond the purse of a high percentage of people in the community and I think that in a good percentage of matters some experience in counsel is needed before the commission. The question of costs does need to be addressed but I think that has to be addressed by government or the Parliament.

- Q:** It would help if you, as commissioner, gave a definitive recommendation rather than saying, as you did there, that it is for government. I accept that for the commission to act properly it has to act in an inquisitorial manner, but do not forget that the commission is going through a pretrial basis in many instances and testing evidence in public that in normal courts would be done out of the public arena. For you to continue to be effective you have to address the problem for participants. Even if it is \$5,000 or \$10,000 most public inquiries last three or four weeks; the average is probably six weeks. That is a lot of money, it is half an average house for most people.

**CHAIRMAN:**

- Q:** Even if you have only a minor role you have to be there for most of the inquiry in case you



change from a minor role to a major role and have to defend yourself. Unfortunately that is where the costs blow out for a lot of people. Instead of being there for three days they are really there for the whole event. I do not think that can be changed because one does not know how the evidence will come out.

**A:** However, I want to caution, Mr Chairman, that the upshot of this is not that the cost of representation comes out of our budget.

**Q:** No. That has been discussed on many occasions.

**A:** It has to be a different budget, otherwise all I will do is say that we cannot afford to have public hearings. That is a self-limiting and destructive approach.

**Q:** That is what your predecessor said.

**The Hon. I. M. MACDONALD:**

**Q:** Are you prepared to put that formulation in straight words: that you favour the question of legal representation so long as it does not come out of your own revenue?

**A:** Yes, and the question of public funding has to be addressed.

**Q:** Will you be writing to the Premier and Attorney General to seek a review of this matter?

**A:** I will get my budget set first.

**Q:** After 1 October are you prepared to write such a letter?

**A:** We will see.

## 9 SEARCH WARRANTS

- 9.1 **This Committee recommended in its Report “*Review of the ICAC Act*” (May 1993), that judicial scrutiny should be applied to the exercise of coercive powers by the ICAC. Taking into account the Commission’s increased emphasis on corruption prevention and education, does the Commissioner believe it is still necessary for the ICAC to possess a power to issue its own search warrants?**

To date the Commission has not exercised its power to issue its own warrants. Warrants have been issued by magistrates and thus do receive a degree of judicial scrutiny.

Having said that, I can envisage circumstances where it would be appropriate and necessary for the Commissioner to issue search warrants. An example would be a highly sensitive investigation into the judiciary. The Commission does not view the use of its coercive powers lightly and this is reflected by the fact that all warrants to date have been issued by a magistrate. Further the exercise of the Commission's coercive powers receive scrutiny on a regular basis as the Commission reports on the extent of their use in its Annual Reports.

## 10 WHISTLEBLOWERS PROTECTION AND COMPLAINANT CONFIDENTIALITY

### 10.1 What procedures and arrangements with other agencies have been implemented by the ICAC to give effect to the *Protected Disclosures Act 1994*.

As the Committee would be aware the Protected Disclosures Act (PDA) provides for three external investigating authorities to receive and examine allegations. These are the Auditor-General, the Office of the Ombudsman and the ICAC.

The three investigative authorities co-operated to produce guidelines on internal reporting systems to assist agencies to comply with the Act.

Since the passage of the PDA the three authorities have developed an explanatory document on the PDA. The document is a series of questions and answers designed to provide accurate and relevant information to those affected by the Act. This complements material issued by the Premier's Department.

### 10.2 How do you counter the criticism of "Whistleblowers Australia" that the ICAC is a failure in protecting individuals who have made complaints of corrupt conduct?

As discussed above in response to question 5 the ICAC Act provides for the protection of witnesses and physical protection. The sections do not, in the Commission's view, afford sufficient protection for those who assist the Commission. They are not in my opinion broad enough properly to protect individuals who have made complaints of corrupt conduct which the Commission has declined to investigate or is still in the process of assessing.

The Commission would welcome legislative amendment to extend the protection provisions. While the Protected Disclosures Act has helped, there are concerns that the protection provided by it has some deficiencies, and the Commission would like to see those deficiencies remedied. An obvious example is that no protection is offered to those public officials providing information pursuant to section 11 of the ICAC Act. The Commission will make submissions concerning those matters to the Joint Committee provided for in the Protected Disclosure Act 12 months after the date of assent ie 12 December 1995. (The Act did not commence in operation until 1 March 1995 but the review period specified in the legislation is tied to the date of assent rather than the date of commencement.)

As to countering the criticism of Whistleblowers Australia, it is difficult to make

a constructive response to this question without more specific information, namely the exact nature and content of the criticism referred to.

**Questions Without Notice**

**(10.1) Protected Disclosures Act**

**Mr TURNER:**

**Q:** How many complaints would the ICAC have had under the Protected Disclosures Act?

**A:** I cannot tell you. On the first day that I came to work there was no outside queue of people with paper bags over their heads wanting to make disclosures. What was reputed to be an absolute torrent waiting to descend on us all has not happened; there has been the smallest trickle. We have had very few; I cannot give you a number, but under 10.

**Mr FENELEY (Solicitor to the Commission):**

**A:** It might be worthwhile saying that because of the nature of the Act just about any complaint we get from a public servant is classified as a protected disclosure. Very few people who have come to us since the introduction of the Act have appreciated that they were making a protected disclosure or did so because they felt they were making a protected disclosure. In a sense they are the same complainants as we were getting previously, by and large. It is just that we are now classifying them as protected disclosures.

**Mr O'KEEFE:**

**A:** Yes. I was dealing with your question on the basis of somebody coming in and saying, "Because of this Act I want to tell you this."

**Mr TURNER:**

**Q:** You are now saying you now disclose everything that is protected disclosure?

**A:** Not everything, but a high percentage of them are, or we treat them as such.

**Q:** Would that later compromise you in the sense that if they came under the Protected Disclosures Act—and I am going down uncharted waters now—their last resort is the media and/or politicians, whereas if their complaints were treated as complaints to the ICAC they would not have that last resort protection?

**A:** That only arises if either there is a declinature to act or no action and more than six months goes by. Experience teaches that those persons who may have made a complaint and are not satisfied with the outcome may well have gone to the media in any event. I do not know that anything really changes there. What does change is the protection that is afforded to the complainant who proceeds in accordance with the Act in relation to defamation and other actions, be they disciplinary or otherwise. There is an additional protection there.

**Q:** By what is either a written or indirect unwritten rule you are virtually putting a large number of complainants over into the protected disclosure legislation which would give them certain additional rights that they would not have enjoyed if there were a complainant under the normal process of the ICAC.

**A:** We have done that for abundant caution until there is some court decision that clarifies the legislation. Advice was taken on this from the Crown Solicitor, the Auditor-General and the Ombudsman. The ICAC has agreed to take that approach. It is a common approach to each of the agents.

*(10.2) Complainant confidentiality*

**Ms ANDREWS:**

**Q:** My question relates to the degree of confidentiality that is provided to people who bring complaints to the ICAC. You undoubtedly would be aware of the Whistleblowers of Australia group. In the *Sydney Morning Herald* of 13 May, 16 of the New South Wales whistleblowers were reported as having been interviewed by a journalist. Of those, not one felt they were given a fair deal or given sufficient protection by bringing their complaints to the ICAC. This cuts to the very bone of the ICAC because the idea is to fight corruption in our society. If people feel they are not going to be given protection or that their complaints are not going to be treated with the highest degree of confidentiality, it puts a question mark over the future of the ICAC. Can you provide a response as to what is being done about that problem?

**A:** I think first you must determine whether there is a problem, then see what they are doing. May I state the principles first, as far as I am concerned. Confidentiality is a high priority, but a higher priority is to expose corruption; that is number one. Those two may at times come into conflict. It may not be possible at times to retain or maintain confidentiality and expose the corruption. These will be exceptional cases, but they can occur. The second thing is that there are a number of allegations of corruption that do not, of their nature, qualify for the expenditure by the ICAC of its funds in pursuing them. A number of those are referred to other agencies. It may be the Police Service; it may be the organisation that is itself the subject of complaint. In dealing with those, my instruction is that every effort should be made to maintain the confidentiality of the complainant.

Sometimes, even though the name is not mentioned, the very fact of the complaint will designate either the person or a limited range of persons who may have been the complainant. You have two choices. Do you do nothing or do you do something, with that possible risk? That is a value judgment that you have got to make in each case. Generally the value judgment is in doing something—it is better to do something. Recently we had a case in which, when I reviewed the file, I was not happy with the way in which the complainant had finished up. The baddies seemed to have been reprimanded and that was all, and the goodie had gone somewhere else to work, in another State. That did not strike me as being a very good thing. Seven hundred-odd hours later and three trips to the country with a number of officers, the matter was worked through and I was then satisfied that we had done as much as could be done. I think the complainant actually was in that case.

However, there is a limited number of cases that you can expend that sort of time and money on. That looked to me to be a case that we might be likely to have a public inquiry into. When 26 witnesses were examined, that just was not a goer. However, there are some who allege that their confidentiality was not respected. In a couple of the cases that I have been able to get the names of and examine, the confidentiality was breached by the complainant himself or herself, not by the ICAC. No allegation was made by those complainants that we breached their confidentiality, although two of those cases are included in the 16 that you have referred to. Look at the 16—16 out of, if I remember correctly, 88 persons polled. You are polling a very special audience. That is not a high percentage in itself. It is more than I would like, but you have to look at it across the board.

It is very difficult often to deal with those complaints if you do not have chapter and verse. If you are going to follow something up, you have to know what it is you are following up. I have not had a great deal of success in getting chapter and verse to track those things down. That is the past. For the future I have given an instruction—and I am sure it will be obeyed—that we must do all in our power, consistent with the performance of our function, to preserve confidentiality. I can do no more than that and I have no doubt that however hard we try there will be the odd mistake, but it will be the exception.

**Q:** The question of confidentiality is very important. Do you feel that perhaps the legislation could be tighter; do you think it could be amended? Also, what do you think of the suggestion that all complaints about the ICAC should be put through to the Ombudsman and then referred to the ICAC or wherever the Ombudsman determines they should be directed?

**A:** Could I take that on notice? I would like to think about that. I did not actually think that was quite the suggestion. I thought the suggestion was that it should come to the parliamentary joint committee and it should move between the Committee and the ICAC, but I would like to take the Ombudsman question on notice. In the written answers we refer to what I regard as the need to strengthen the protection provisions. At the present time they do not apply to persons who may just be complainants. The whistleblower protected disclosures legislation does, but there is controversy about that.

Assume you get an anonymous complaint. How can you keep confidential the name of a person you do not know? I do not think you can, but we treat that, nonetheless, as a protected disclosure, but even then revealing the facts of the complaint can sometimes identify the complainant. I think the answer to your question—is there some legislative amendment needed—is yes. Its precise nature needs to be carefully considered, so that you do not, by totally restricting the information about the identity of the complainant, prevent the investigation of the subject matter of the complaint. You have to be very careful about that; it is a difficult balance.

## **11 INQUISITORIAL REPORT**

### **11.1 What lessons has the ICAC learnt from its study of inquisitorial systems of justice?**

In the Committee's second Report on Commission Procedures and the Rights of Witnesses dated February 1991, the Committee called upon the ICAC to conduct a study of the inquisitorial system of criminal justice as it operates in Europe and elsewhere and its application to ICAC hearings.

The inquisitorial process is greatly misunderstood in Australia, whereas our research has demonstrated that it is well accepted, but not without questioning, in some other countries. It became clear from this that the Commission needs to take steps to explain the inquisitorial method to the community in order for it to better understand our work. More immediately the Commission appreciates that it is necessary for those appearing at Commission hearings to appreciate that the hearings are part of the investigative process. They are neither a committal proceeding, nor a trial. The Commission's experience is that many lawyers as well as witnesses who appear before the Commission struggle with this concept and arrive at Commission hearings with an expectation that the Commission will behave like a Court and, in particular, that they will have the same rights as to those of parties involved in civil or criminal litigation. The Commission firmly believes in the inquisitorial process and the research, represented in the Commission's Inquisitorial Report, reaffirms the Commission's view that the approach it takes is the correct one.

### **11.2 Have any specific changes been made to ICAC procedures as a result of this report?**

No. As then Commissioner Temby noted in 1993 when giving evidence to the Committee "... the study on the inquisitorial system is likely to be more of theoretical interest than practical application". (Collation 15 October 1993) See the answer to 11.1.

### **11.3 Could the Commission please provide details of the expenses incurred in relation to that report, including the cost of study tours by Commissioner Temby to California in August 1991 and France and Italy in September 1992 and the study tour by two senior Commissioner officers to France, Germany and Italy in June 1992?**

Commissioner Temby, along with the Solicitor to the Commission, visited California to examine the inquisitorial procedures of the Grand Jury, agencies dealing with conflicts of interest in local government and the use of prisoner

informants in prosecutions which had been investigated there. The latter was of relevance to the Commission's Koa investigation. The cost of this study tour was \$24,530.

Commissioner Temby also visited France and Italy in September 1992 to build on the work previously undertaken in relation to judicial systems and discuss issues concerning police corruption. The cost of this study tour was \$28,815.

The Director of Administration and Education, and a Principal Lawyer met with investigating and prosecuting officials and comparative law experts to research inquisitorial systems in Germany, France and Italy in June, 1992. The cost of this study tour was \$23,925

**11.4 Could the Committee be supplied with all the work completed by Mr Brian McKillop in relation to that report?**

A copy of Mr Bron McKillop's initial report to the Commission is attached. As the preface of the Commission's report acknowledges, it was "... compiled primarily by Mr Bron McKillop, a senior lecturer in law at the University of Sydney, with the assistance of ICAC General Counsel, Simon Stretton and other ICAC staff." (A copy of Mr McKillop's report can be obtained by contacting the Committee Secretariat.)

***Questions Without Notice***

***(11.1) Inquisitorial Report***

**CHAIRMAN:**

**Q:** From your experience, what are the major differences in the ICAC's inquisitorial operations compared to those in a court?

**A:** The first is that in a court the judge is supposed to adopt a neutral role and to leave the conduct of the proceeding in the main to the respective representatives of the parties before it. In the commission the commissioner may take, and I do take, a fairly active role in the questioning of witnesses. The interplay between the questions of the commissioner and of counsel assisting or otherwise is very important. I have found that counsel assisting may not be getting very far in the questioning, but a few questions from a commissioner often elicit facts that are very important in the determination of the matter.

There is a fundamental difference in the role of the presiding officer—judge compared with commissioner. Second, counsel assisting is not restricted to non-leading questions, though very often the most cogent, telling evidence comes when the witness is asked a non-leading question, generally when the witness has been brought to a point where the



non-leading question has to be either an untruth or the truth in extenso. That is another difference. Leading questions are part and parcel of the armoury of the examining counsel, not just the cross-examining counsel. Third, the order in which you may deal with the evidence differs very much in a court compared with the commission. My practice is commonly to put the target in fairly soon after the primary allegation is made on oath by the principal witness against the target to see what the response of the target is: denial, explanation, acceptance.

It has a number of benefits. One, it can shorten the matter. Two, it gives the person whose conduct has been impugned an immediate opportunity to deny that so that you get a balance in reporting. They are the fundamental differences. Of course, the final difference is that whilst the court makes determinations as to right and wrong, all the commission does is make findings in relation to corrupt conduct and make recommendations. It has no final executive function to perform in relation to witnesses.

**Mr LYNCH:**

**Q:** Could you comment on what seems to be a contradiction? On the one hand you say that you are not a judge in a court, you are a commissioner in an inquiry and somewhat different principles apply.

**A:** The application of the principles differ.

**Q:** On the other hand, in response to a question about whether there ought to be a code of conduct or set of guidelines, you say that you do not need that because the principles are there. It seems to me that the principles would come mainly from situations involving judges in courts. Is that right?

**A:** But by analogy. The analogue is there and the principle can be extrapolated. You extrapolate it to the different role that has to be performed. It will depend on the case, but the essential difference is whether or not the credibility of the particular person is in issue, whether the conduct of that person is in issue or whether the evidence of that person is the backbone and tangential to the case. That was the Smiles case.

(11.4) Research Report prepared by Mr Bron McKillop

**Mr WATKINS:**

**Q:** My question relates to item 11.4 on page 38 and has to do with the report of Mr Bron McKillop. It is fair to say that upon examination the ICAC report entitled, "Inquisitorial Systems of Criminal Justice and the ICAC: A Comparison" and a report prepared by Mr Bron McKillop appear to be virtually the same. Can you please explain why information gathered on study tours by former Commissioner Temby to California in 1991 and to France and Italy in 1992, and by the Director of Administration and Education and a principal lawyer to Germany, France and Italy in 1992 was not incorporated in the ICAC report?

**A:** I cannot.

**Mr FENELEY:**

**A:** When then Commissioner Temby gave evidence here some years ago he said that he thought it was unlikely that the study was going to result in any practical impact on the way in which the commission performed its duties. Bron McKillop was asked to prepare a report. As the report acknowledges, it is based almost entirely on his report and the work done by him and commission officers in bringing that up to date. I suppose all I can say is that the commission's own studies that it conducted confirmed the views expressed by Mr McKillop, and the commission did not seek to go beyond that.

**Mr WATKINS:**

**Q:** Mr McKillop apparently said in the preface to the report that his is an outsider's view and necessarily needed to be, but it seems to be relied upon in preference to research conducted by commission staff.

**Mr FENELEY:**

**A:** That is clearly the case.

**Mr WATKINS:**

**Q:** Were the reports from the studies tours prepared by the commissioner or other senior commission officers?

**Mr FENELEY:**

**A:** Reports were prepared by those who went overseas and looked at these aspects, but they were not ultimately included into the final document.

**Mr WATKINS:**

**Q:** Are they available?

**Mr FENELEY:**

**A:** I would have to check. I did not for the purposes of this, but I will take that on notice.

## **12 OPERATION MILLOO**

### **12.1 Does the Commissioner agree that in the light of the Police Royal Commission investigation that Operation Milloo would be seen by many as a relative failure?**

I agree that it is likely that some who are not aware of the nature of the investigation conducted in Operation Milloo may see it as a relative failure by comparison to the Police Royal Commission. However, Operation Milloo was a tightly framed investigation in which the Commission set itself specific terms of reference. Within those terms of reference the investigation achieved its objectives.

The corruption prevention and education work which was conducted during the investigation and followed after it has led to and continues to achieve significant change in operating procedures within the Police Service, particularly relating to informant liaison and control and record keeping.

At the end of the investigation the Commission established an ongoing working relationship with the Police Service to initiate, measure and monitor the implementation of the recommendations made in the report.

The Commission did not have a specific budget for conducting a general inquiry into the Police Service and therefore whilst it can be argued that other and further investigations into aspects of the Police Service would have been justified, Operation Milloo itself was successful.

Prior to the announcement of the Royal Commission into the New South Wales Police Service the ICAC was in the preparatory stages of further investigations into the Police Service. These investigations related to Kings Cross, Police and drugs and Police and motor cycle gangs. All of these matters were handed to the Royal Commission, together with the material which had been collected by the Commission.

Operation Weave which is examining allegations concerning the Police Air Wing is an example of ongoing work into possible corrupt activities within the Police Service.

**Questions Without Notice**

**(12) Operation Milloo**

**Dr MACDONALD:**

**Q:** It is clear that the community is alarmed at the level of disclosure that is currently being exposed at the royal commission. I would like you to expand on where you feel the ICAC was not able to achieve those sorts of results. You have addressed that matter on pages 39 and 40, but was it the question of resources, was it the terms of reference, was it the staff at the ICAC, was it the methodology they used, was it the attitude in the ICAC? You answered the chairman's question about whether the ICAC could take over the responsibilities of the royal commission. I put it to you that there may be a lack of public confidence that the ICAC can do the job, because it seems that the royal commission has been so successful where the ICAC may well have failed.

**A:** I asked the officers at the ICAC to get out for me the headlines in the press at the time Milloo was proceeding. It is interesting to see that the headlines about the success and the level of success of the ICAC in the Milloo inquiry do not differ significantly from the headlines about the royal commission. In other words, at a time something may look successful. In hindsight and by comparison at another time it may not look quite as successful. Public confidence responds very much to media massaging, and at one time it may be high; at another time it may not be so high in relation to the ICAC. If you look at one of the great headlines, "Police corruption—Temby throws the book at them", that is, I suppose, adulatory—that is number one.

Number two, there were two aspects to Milloo, and there was the prospect of a third. My predecessor's term ran out before that aspect could be taken up, and that, I might say, was principally concerned with the Kings Cross area. I do not want to go into operational matters, but suffice it to say that a great deal of material was gathered and made available for the royal commission in respect of the Kings Cross area and the persons involved there. There was then a period of eight months in which there was no permanent commissioner and nobody to embark upon that inquiry, and the royal commission was then set up, so it was an area into which we could not any longer trespass. I cannot talk about the determination of individuals in the commission. I can only talk about my own determination. My own determination is to do the job that is given to me as well as I can do it, and past experience teaches that I do most of my jobs pretty well.

**Mr WATKINS:**

**Q:** The tabled answers suggest that Milloo was a success and, from what I have heard today, that investigations by the ICAC were successful, but at the same time we have the sorry saga down the road. There seems to be a major divergence between the two. Is there an acceptance that the commission failed to succeed in its duty to expose and prosecute

corruption in the New South Wales police force?

**A:** It does not have a duty to prosecute corruption in anybody. Put that to one side. The question of the failure of duty depends upon how you define the way in which the duty is fulfilled. My predecessor made a decision for reasons which, to him, were adequate, to split the investigation into the police into three parts. Two were dealt with, the third was not. The fact that it was not dealt with is a function of a number of matters. One was budgetary; a second was time, that is, his time was running out; and a third was that I think he did not want the commission to become just a police corruption investigation organisation. Having said that, there is no doubt that the material contained in the commission's files about Kings Cross was such that in my view, had it been open to me so to do as commissioner, I would have activated that as a further investigation and formal hearing. I cannot say that the result would have been the same as Justice Wood has got. I can say that all but two of the names are names that were within our files and given to the royal commission. So, I would expect that there would have been a fair degree of success in relation to that.

**Q:** How will the Parliament say to the people of New South Wales that major corruption will be investigated in the future and the ICAC will be more successful in rooting it out?

**A:** All I can say is that that would be my determination. I am a fairly determined person. Quiet though I may appear at times, one ought not misjudge that quietness for lack of effectiveness or, in relation to the rooting out of corruption, ruthlessness, using all the modern methods that are legal for that purpose. I have given a lot of thought to the matter and I have no doubt that I and the organisation that I now head as re-formed are adequate to that task.

**The Hon. I. M. MACDONALD:**

**Q:** Do you think it was not adequate in the past?

**A:** I can only say that as far as it went, it was successful. The terms of reference in Milloo 2 were limited. It was a success in terms of the terms of reference. If they had extended into Milloo 3, the terms of reference would have been a different story I think.

**Q:** Are you confident that in the future the ICAC can effectively handle major investigations into the police and we can have confidence in it being able to do that?

**A:** Absolutely.

## **13 THE ICAC AND THE POLICE ROYAL COMMISSION**

**13.1 Do you think that the ICAC's public image and effectiveness have been damaged by the success of the Police Royal Commission and the relative failure of the ICAC's investigation of Police corruption?**

The public image of the ICAC and therefore possibly its effectiveness may be perceived to have been adversely affected by the ongoing comparisons in the media between the results of the Royal Commission and the work of the ICAC.

Little credit has been given in the media to the ICAC (or other Agencies such as the New South Wales Police Service and the State Crime Commission) for the information, intelligence and assistance that has been provided to the Royal Commission by these bodies.

Operation Milloo and Operation Tamba were both successful in investigating corrupt conduct by New South Wales Police and bringing about significant long-term change in policy and attitude within the Police Service.

**13.2 Why didn't the ICAC investigation into Police corruption have a more successful outcome?**

This has been dealt with in my answer to question 12.1.

**13.3 What is the relationship between ICAC and the New South Wales Police Royal Commission?**

The relationship between the ICAC and the Royal Commission is excellent. Since the initiation of the Royal Commission, the ICAC has provided every possible assistance by way of resources, information and intelligence. The two bodies liaise on a regular basis and will continue to do so. My personal relationship with Justice Wood is also excellent.

**13.4 Considering the New South Wales Police Royal Commission's refusal to use New South Wales Police Service members in its investigations and the success of those investigations, have you considered reforming the make up of the ICAC personnel?**

It was not a question of the Royal Commission refusing to use members of New South Wales Police, rather the Royal Commission's Terms of Reference prohibited it from using New South Wales Police officers. Having said that the Royal

Commission's investigations have undoubtedly had considerable success. The degree to which that success can be slated home to the fact that it did not use New South Wales Police Officers is a matter on which I cannot comment. The Commission has always been aware of the potential problems associated with having current or former New South Wales Police Officers working within the Commission. The fact is, however, that over the past 24 months the numbers of New South Wales Police Officers have been reduced.

Since my appointment I have directed that members of the New South Wales Police Service should account for no more than 25% of investigation staff. Today there are only three current and eight former New South Wales Police Service members attached to the Commission. This compares with the following figures for previous years:

YEAR:	CURRENT:	FORMER:
1994	10	4
1993	11	4
1992	14	2

The ICAC Act itself appears to envisage some ongoing association with the New South Wales Police Service. Certainly some of the powers required by ICAC Investigators are limited to members of the New South Wales Police Service. For example the power to search persons during the execution of a search warrant is limited to members of the Police Service. The contempt provisions also envisage that a Police Officer would be available to take a person into custody. If the Commission is to move to a situation in which it has no New South Wales Police Officers, then the Commission would require additional powers for its permanent and seconded investigators to overcome these problems. The Royal Commission sought and was granted such additional powers for its seconded investigators. The ICAC should be in no less a situation. (Refer also to the answer to question 5.1).

**13.5 Does the New South Wales Police Royal Commission make the long-term future of the ICAC, in its present form, doubtful? What would you envisage the future of corruption control is in New South Wales after the Royal Commission reports?**

No. The success of the Royal Commission only highlights the need for an ongoing investigative body, equipped with appropriate powers, to deal with corruption within the State.

The outcomes of the Royal Commission may highlight the need for additional

resources in the adoption of a greater range of strategies to deal with corruption problems.

I believe that appropriately resourced, and with the necessary legislative backing, the ICAC is the logical body to continue the work of the Royal Commission following its Report. The lesson from past Royal Commissions is that there needs to be a strategy for the monitoring of, and where necessary providing assistance with, the implementation of recommendations. In the absence of such a strategy change does not occur. The ICAC is perfectly placed to do such ongoing work.

### **Questions Without Notice**

#### **(13.1) ICAC and the Police Royal Commission**

**Mr WATKINS:**

**Q:** Considering the move in emphasis towards education and corruption prevention and what I call the abject failure of the ICAC to deal with police corruption in the past, how can you argue that the commission should retain the power to investigate serious complaints against the police in the future? Should it not be passed to a more effective body that will do the job properly, as can be seen at the moment?

**A:** The question makes a number of assumptions, the first of which I do not agree with. The second is that it makes an assumption that some other body is more effective without defining what that body is. You will not be able to have a royal commission of the kind that we presently have ongoing forever. Amongst other things, the cost of maintaining that will not be a cost which past experience teaches us that the State will be prepared to bear. The degree of success that the commission has had in the past in relation to police corruption is a matter about which minds may differ. When the Milloo inquiry was proceeding its degree of success was regarded as high both in political circles and in media circles. If the police royal commission had not been established, there is no doubt that I would have pursued matters in the Kings Cross area. That was in our files. I do not want to say things that are operational, but suffice it to say that there are only two names, if I remember correctly, that are new to me. It is hard to say that you did not run well in the race when your legs were cut off before you got into the straight. That is what happened with the royal commission being set up in relation to Kings Cross.

**Q:** Are you suggesting that if the police royal commission had not been established you would have turned up the level of corruption that we are seeing in New South Wales at present?

**A:** Had the royal commission not been set up I as commissioner would have dealt with matters that are in our files concerning Kings Cross. Whilst I could not predict that our results would have been the same as those of the royal commission, there would have been



quite a revelation in relation to corruption in the Kings Cross area. However, we did not have the opportunity to proceed with that. One of the reasons that my predecessor had not proceeded with it was that in the allocation of funds that were available, a lot had been spent on Milloo 1 and 2 and it was necessary to look at other matters in the meantime.

**Q:** I suppose that is a point: Milloo 1 and 2 did not turn up the dirt they should have.

**A:** But you have to ask yourself what the terms of reference of Milloo 1 and 2 were and what the terms of reference of Milloo 3 would have been. The terms of Milloo 3 would probably have centred on Kings Cross. If you ignore the Lismore segment of the present police royal commission, Kings Cross has been the primary focus of the royal commission.

**Q:** You would have to question the terms of reference of Milloo 1 and 2, would you not?

**A:** I cannot. I did not work them out.

**Q:** But you are responsible now as the commissioner for—

**A:** No, I am not. I am responsible for what I do. All I can do is say that in the past those decisions were made. I did not make them.

**Q:** I am not saying that you did.

**A:** They were made for good reason, no doubt.

**Q:** That is a strange defence.

**A:** I do not want to sound defensive. I am just saying what the facts are.

**Q:** But you are defending the ICAC's role in Milloo 1 and 2. You are suggesting that if there had been different terms of reference—

**A:** I am saying that when looking at a problem you may segment it. The segmentation of the problem into 1 and 2 and then the prospect of 3 seemed, at the time, quite appropriate and still seems not inappropriate. We never got to 3 because the royal commission was set up.

*(13.5) ICAC's role in investigation of police corruption*

**CHAIRMAN:**

**Q:** Would the ICAC be able to fulfil the function of investigating any misconduct against New South Wales Police Service officers after the conclusion of the police royal commission? If so, in what way?

**A:** I have no doubt whatsoever that the commission could perform that function and perform it well. Some time ago I asked the officers of the commission to compile a strategy for dealing with complaints against police officers. Of course, complaints fall into a number of categories ranging from the most serious allegations of corruption to matters that are really quite administrative and in one sense not of transcending significance but of significance to those persons who are involved—things like rudeness, uncooperativeness and the like. That material is presently in the course of preparation. I do not wish to go into the details of it at the moment. Suffice it to say that the expertise of the commission is both as an investigative body and as an exposure body and also, importantly, as a corruption prevention body. That expertise is available and ready to be utilised in relation to police complaints.

The fact that the royal commission is presently proceeding has not prevented the commission from continuing with a role in relation to police matters. At the present time, as the tabled answers will indicate, we have a public inquiry with hearings proceeding in a matter known as Operation Weave: an investigation into the police air wing. That will continue next week and the report should be available before the end of the year. Some concern has been expressed in the past about the level of New South Wales serving police officers in the commission. Earlier this year I gave a directive that the number of police officers involved in the staff of the commission should be not more than 25 per cent of the investigative staff. At the present time, if my memory serves me correctly, there are three serving officers and eight former police officers from the New South Wales Police Service on the ICAC staff.

Our Act requires that we have some police officers to perform certain functions, but I took this step because of public concern about police involvement in the investigation of complaints against police. That is something that needs to be reviewed, both as to the level and the desirability of police involvement in the investigation of complaints against police. That will form part of the submission that the officers of the commission are presently compiling. The short answer to your question is that I have no doubt at all about the expertise of the commission to perform the function that your questions calls up. Secondly, you may be assured that I have the determination and the necessary background to ensure that any function the commission performs in that regard is properly performed.

**Dr MACDONALD:**

**Q:** You indicated to the Committee that you would be comfortable about taking over the functions of the royal commission. If that occurs, will the ICAC have to undergo some change? You referred to resource questions. Do they include staffing?

**A:** In answer to each of those questions—there were three questions really—yes, I do feel comfortable. Yes, there would need to be an organisational change. I have given some considerable thought to how that might be and whether one isolates that section or does not. In relation to resources, I cannot tell you the answer to that. That is part of the submission that

the officers are working on, and I am waiting on some material as to the actual number of complaints dealt with presently internally, within the police internal affairs bureau. Until I get that it is hard to know what level of complaint I am dealing with and hence to determine what a budgetary consequence may be. You would need a structure that was different from the one at present.

**Q:** What about some of the methodology that is used, some of the sting operations that are being undertaken by the royal commission?

**A:** My view is that that is quite good. It is commonly said that the royal commission does not employ New South Wales police officers. I would have thought that their principal employee had been Sergeant Haken, who had given them most of the material that they have.

**Mr LYNCH:**

**Q:** He is no longer an employee.

**A:** I think he may still be.

**Dr MACDONALD:**

**Q:** As commissioner are you comfortable undertaking sting operations?

**A:** My view is that whatever is within the law is appropriate to expose corruption. When you are dealing with police officers, they are used to dealing with criminals and corrupt police officers adopt the same tactics as criminals. We must be even more cunning than they and use methods that are appropriate to uncover them. I have no hesitation in doing that.

## **14 ICAC AND THE COURTS**

### **14.1 How does the Commissioner see the relationship between the ICAC and the normal courts of law in this State?**

This question may suggest to some that the ICAC sees itself as a court. It does not. The Commission was established as an independent body: independent from both the executive and the judiciary. The Commission is not a court and is not bound by rules or practice of evidence. It can inform itself on any matter in such manner as it may consider appropriate and relevant.

The Commission hearings are, however, conducted in accordance with the principles of natural justice. They are subject to judicial review by the Supreme Court of New South Wales and this is a valuable accountability mechanism.

## 15 ICAC'S OTHER ROLES

### 15.1 Does the Commissioner believe that the ICAC has a role in providing advice, guidance and rulings in relation to ethical issues as distinct for issues relating to illegality or criminality?

The ICAC Act identifies the following matters for advice by the Commission:

- laws governing, and the practices and procedures of, public authorities and public officials;
- revision of methods of work or procedures which may be conducive to corrupt conduct;
- ways in which corrupt conduct may be eliminated;
- changes in practices or procedures compatible with the effective exercise of an organisation's functions, to reduce the likelihood of the occurrence of corrupt conduct; and
- strategies to combat corrupt conduct.

Many organisations have sought advice from the Commission on aspects of their codes of conduct. The Commission considers that codes play an important role in improving integrity in the public sector. Codes relevant to the particular workplaces are helpful in resolving ethical issues which may arise for staff.

The Commission does not provide rulings on ethical issues. Whilst the prevention of corruption and maintenance of appropriate standards of probity and integrity are the responsibility of individual departments and agencies, the Commission assists in the process by advising, commenting and giving guidance on processes and procedures and raising issues which require consideration in relation to questions of ethics.

### 15.2 Should the ICAC have an advice section that can encourage the public sector to contact them and to seek their advice on contemplated actions; thus enabling those who seek and obtain written advice from that section to rely on that advice (provided the facts have not materially altered) to protect themselves from an allegation of corrupt conduct?

The Commission has always provided advice to public sector agencies. The advice deals with general accountability principles rather than being prescriptive in nature. The Commission does not seek to prescribe actions to public sector agencies, rather agencies must adopt and understand the general governing principles and thereby incorporate them into their decision making processes. The Commission does not propose to provide "compliance certificates" to public

sector agencies. It is essential for public sector agencies to understand and incorporate the general accountability principles and to embrace them rather than have them imposed upon them by the Commission.

## **16 MEDIA BRIEFINGS**

### **16.1 What is the Commissioner's policy on providing briefings to the media?**

As an agency committed to the ideal of transparency, the ICAC does not favour the use of off-the-record briefings, to the media.

Media briefings are arranged to announce major Commission activities including the completion of investigations, corruption prevention, education or research work. Invitations to such briefings are issued broadly; there are no favourites.

Questions from the media on a day-to-day basis are handled in an open, helpful manner by the Media Manager. Operational or security reasons often necessitate a "neither confirm nor deny" response to inquiries about investigative work.

### **Questions Without Notice**

**The Hon. I. M. MACDONALD:**

**Q:** Have you come across instances where your media section has given off-the-record briefings on matters to journalists?

**A:** No.

**Q:** Have you heard of instances of it in the past?

**A:** Yes.

**Q:** Is it a practice you thoroughly discourage?

**A:** Absolutely. My view is that if you have an organisation that is concerned about transparency and equality, you cannot have favourites. You cannot have sections of the media dealt with in a way that is different from other sections of the media. That is the first. Second, the idea of telling people in advance what the evidence will be is fraught with difficulties. It tends to slant the reporting, even though the evidence may fall out somewhat differently from the way in which it was anticipated it might fall out. Third, once you start that process it seems to me that there is no drawing back from it. You are a captive of your own process or procedures. So, you are better not to start it. That is the view I took when I went there; it is the view that I adhere to and I really do not see that I will change that.

## 17 SMILES INQUIRY

**17.1 Why didn't you stand aside from the ICAC hearing into the superannuation payment to Mr Phillip Smiles?**

Because I did not consider it necessary to do so. The Commission had done considerable investigative work prior to me making the decision to hold public hearings. The preliminary investigation had gathered most of the relevant documents and Commission officers had obtained statements of information from most of the persons involved. Based on this information it appeared that the Commission's initial concerns that the matter may involve corrupt conduct were unfounded. Nevertheless, significant questions remained about the way in which the decision was made by the Trustees of the Parliamentary Contributory Superannuation Fund. In deciding to proceed with the investigation and hold public hearings I considered my previous contact with Mr Smiles and decided that in view of the nature of that contact and the nature of the investigation there was nothing which would prevent me presiding over the hearings.

**17.2 Do you regard attending the second wedding of Mr Phillip Smiles as a guest as falling within the description of your contacts with Mr Phillip Smiles given to the Smiles hearing on 16 January 1995?**

See the answer to question 17.4.

**17.3 Do you regard inviting Mr Phillip Smiles and he attending your 60th Birthday celebration, as falling within the description of your contacts with Mr Phillip Smiles given to the Smiles hearing on 16 January 1995?**

See the answer to question 17.4.

**17.4 When you advised the Smiles hearing on 24 January 1995, that Mr and Mrs Smiles and their children had never visited your home, why didn't you also advise the hearing that Mr and Mrs Smiles had attended your house on the occasion of your 60th Birthday function?**

I made two statements to the public hearing concerning my association with Phillip Smiles. The first made on 16 January 1995 was as follows:

*Before you start I think I should say that, as I think most people at the bar table would know, I live in a place that is a subdivision of Mosman which is part of the Electorate of North Shore and formerly of the Electorate of Mosman. I was Mayor of that Municipality for a period of 10 years and during the course of my time on the Council and as Mayor I, of course, knew Mr Smiles as our local member and in the course of that time had*



*various dealings with him. I merely disclose that. I don't think, as far as I'm concerned, it makes any difference but I think it should be put on the table.*

The second, made on 24 January 1995, was as follows:

*On the opening day of the hearing I stated publicly that during the course of my time in council at Mosman and as Mayor I came to know Mr Smiles as the Local Member and as a consequence had various dealings with him.*

*That I had been Mayor of Mosman and that he had been Member for Mosman were already matters of public record and undoubtedly known to all counsel involved in the proceedings.*

*No application was made then or at any time, including today, by any counsel representing the interests of any person or group before the Commission that I should not continue to hear the evidence and report in relation to this Inquiry. Regrettably, my impartiality in relation to the present Inquiry has recently been questioned in a newspaper article published at the weekend. It contained a number of errors and conveyed a false impression.*

*In order to ensure that public confidence in the Commissioner and in this Inquiry is maintained let me make it clear. Mr Smiles and I are not and never have been personal friends, nor are my wife and Mrs Ruth Smiles friends; they never have been. The suggestion in the article that our children knew one another is unfounded. One has only to look at the age brackets of the children to see the absurdity of such a suggestion. My eldest child is 31. Mr Smiles's eldest child is, as I recall, a quite young teenager. All of my children, whom I've contacted, assure me that they've never even met the Smiles children. The innuendo in the article that the two families were friendly and visited one another is without substance. Mr and Mrs Smiles and their children have never visited my home.*

*My dealings with Mr Smiles arose out of and were connected with my membership of the council, particularly my position as Mayor and the fact that he, Mr Smiles, was the Parliamentary representative for the area of Mosman. As I've indicated, the article contains a number of errors. They include the statement that my wife and Mrs Ruth Smiles were friends; that's wrong. The statement that my children knew his children is also wrong.*

*But there is a much more serious error involved at the heart of the*

*article. It arises not from the statements of fact but from innuendo.*

*The heading of the article, Mosman True Blues, combined with the reference to Mosman as, "the bluest ribbon seat in New South Wales" and the description of me as "the Liberal Party backed Mayor of Mosman" placed in close proximity to incorrect references of a family association and relationship conveyed the impression that Mr Smiles, his first wife and his family were close friends with me and my family and that all this occurred in a party political context. That is completely wrong as a quite elementary check would have shown.*

*I am not and never have been a member of any political party. I have never sought pre-selection from any party for any seat in Parliament, either Federal or State. I was never backed by the Liberal Party or any other party for election to the position of Mayor of Mosman. Thanks be to God, Mosman Council has never been one in which party politics played a part.*

*The innuendo is not only incorrect but shows a fundamental lack of understanding as to how Mosman Council worked during the 23 years that I was a member of it.*

*The only new fact in the article was that I attended Mr Smiles' second wedding in 1991. I did. So did a number of other representatives of Local Government, including a number of members of Mosman Council. The wedding was also attended by members of the Parliament from both sides of the House.*

*I hope that we have seen an end to the questioning of the impartiality to be brought to bear in relation to this hearing. As is apparent from the absence of application from any member of the bar, including that member of the bar who represents interests associated with the Opposition, as well as those who represent interests associated with the Government members, it is apparent that that is not a concern felt at the bar table.*

*It is important, however, that the public know the facts and it is a great shame that the article which causes me to make this statement made no reference whatsoever to what occurred on the first day of the hearing in relation to the matter that I put on the table.*

When I made the first statement on 16 January 1995 I did not consider it necessary to go into any detail concerning contacts I had had with Mr Smiles beyond making it clear that in my official capacity as Mayor of Mosman I had had

various dealings with him. My attendance at Mr Smiles second wedding and his attendance at my 60th birthday celebration occurred because of these official contacts and positions and not because of any personal friendship.

When I made the second statement to the public hearing on 24 January 1995 I did so because of an article that had been printed in The Sun-Herald. That article contained a number of significant errors that would have conveyed the impression that not only were Mr Smiles and I close personal friends but that he, his then wife and our families were close. It also wrongly suggested a party political context for the alleged friendship. At the time of making this statement I was angered by the article and the Committee might note that this is evident in the tone of the statement set out above. My intention at the time was to address the inaccuracies in the article and to state clearly that Mr Smiles was not a personal friend of mine and that I had never been backed by the Liberal Party or any other party for election to the position of Mayor of Mosman.

**17.5 How do you distinguish this matter from the Richard Hayes matter in which your predecessor stood aside?**

The Richard Hayes' matter is quite different in several respects. That matter was not the subject of a formal investigation and was reported to the Operations Review Committee with a recommendation that it not be further investigated.

By contrast the investigation into the circumstances surrounding the payment made to Mr Smiles was the subject of a formal investigation with public hearings.

In the Hayes matter, one of the persons complained about was Ms Marilyn Walton, then head of the Complaints Unit of the Health Department. In a newspaper publication (the Good Weekend) Ms Walton was profiled along with other women who occupied senior positions. In that article Ms Walton indicated she was in fact a friend of Mr Ian Temby, then ICAC Commissioner.

In view of that claim and the fact that it was being recommended to the Operations Review Committee that Mr Hayes' complaint not be investigated, for more abundant caution Mr Temby declared a "conflict of interest" and did not participate in the decision of the Operations Review Committee. This was clearly to avoid any claim that the acknowledged friendship was the basis on which it was decided not to investigate that particular matter. Whereas, in the Smiles matter I decided that the Commission should investigate and hold public hearings.

**17.6 On 5 February 1995, the present Attorney General and then Shadow Attorney General, The Hon. Jeff Shaw QC, MLC issued a media release dealing with the attendance of Phillip Smiles at your 60th Birthday party following a *Sun Herald* report on 22 January 1995. The press release said in**

part:

**“Mr O’Keefe had made a statement at the commencement of the ICAC hearing that he had met Mr Smiles on various occasions while Mayor of Mosman. This latest allegation seems to fall outside that explanation. Mr O’Keefe should also explain why he did not mention this meeting when he made a statement three weeks ago regarding his attendance at Mr Smiles’ second wedding in 1991. If *The Sun Herald* report is true, there is no doubt that in a similar situation a judge would have disqualified himself from hearing a case.”**

**(I) Do you agree generally with the comments in this release?**

I am unable to agree or disagree "generally with the comments in this release". To the extent that my statement to the hearing did not refer to Mr Smiles attendance at my 60th birthday celebration, then it could be said that the "allegation seems to fall outside that explanation". This does not take into account the context, namely the fact that the "explanation" was a statement made in response to a specific newspaper article. The statement did not purport to be an exhaustive description of all contact I had with Mr Smiles.

**(ii) Specifically, do you agree with the comment in the final sentence of the release?**

It is hard to say whether in a similar situation a judge would have disqualified himself from hearing a case. If Mr Smiles had been a defendant in a prosecution or a plaintiff or defendant in civil litigation where final rights were being determined then some judges in my position may have felt it appropriate to disqualify themselves from hearing the case.

**(iii) If not, why not?**

See answer to (ii).

- (iv) **Do you agree that a similar standard apply for the Commissioner as for a judge in a criminal trial, in relation to disqualifying himself or herself?**

Similar principles need to be considered, however the Commission does not determine final rights and the status and relevance of the actions or conduct of the person appearing before the court or tribunal will always be important considerations. At the commencement of a criminal trial a judge may need to assess whether his or her knowledge of a defendant may result in actual bias or the apprehension of bias. The situation would be different if the judge was considering the question in relation to a witness in the trial although much would then depend on the extent to which that witness' evidence and credit were critical to either the prosecution or defence case.

Mr Smiles was not in any sense a party to proceedings before the ICAC. He was a witness.

- (v) **If not, why not?**

See answer to (iv).

- (vi) **Do you believe that the development of guidelines on a code of conduct would be useful to deal with a situation such as this?**

No, I do not.

- (v) **If not, why not?**

The principles in relation to bias are well known and are regularly considered by courts and tribunals.

### **Questions Without Notice**

**Mr LYNCH:**

**Q:** What do you say are the principles governing the situation of a commissioner in an inquiry?

**A:** First, that a commissioner who is conducting an inquiry should have no personal interest in the outcome of the inquiry. In other words, his or her personal conduct should not be involved. Second, there should be no close personal relationship between a target and the commissioner hearing the matter—target or potential target for that matter. You have to make the assessment about the potential target before you embark upon the hearing, based upon the material that you have available to you which, before you embark upon a hearing, is generally fairly extensive. Thirdly, there ought not to be any emotional relationship between the commissioner hearing a matter and a person giving evidence which may be central to the issue to be

determined. They are the sorts of principles that one would apply.

**Q:** I take it from what you have said that on the basis of one of those principles being that a person would have to be a target or a potential target, that that might have been one of the principles operating in the Smiles case which suggested that you did not have to step aside. Is there any situation, bearing in mind Smiles' position in that hearing, in which you would have stepped aside? Could there have been any connection between you and Smiles to sufficiently require you to step aside?

**A:** I have thought about that. I doubt that. What did Mr Smiles do? He was convicted, he tendered a resignation, he made an application to the fund and he subsequently made an application to commute in accordance with, I think, section 21B of the Parliamentary Contributory Superannuation Act. What was at issue in that case was the basis on which the trustees made their decision and whether any influence was brought to bear by members of the Government on the trustees in relation to that decision. In reaching their decision, were the trustees influenced by factors that were extraneous to proper grounds for consideration? In looking at those matters, all of Smiles' actions were concerned with providing the stage on which the trustees were to perform their function. I could not envisage that his credibility would be involved in the case and there could be no finding against him.

The findings that were potentially able to be made adverse to people were against the trustees and a member of the Government who might have sought to influence the trustees. The report, which you have no doubt read, indicates that that was not the case. When you look at the way in which the report is structured, there is no issue about the Smiles role. That was common ground amongst everybody. In a court you consider the response of the counsel for the parties. I did that in this case as well. There was a wide spectrum of interests involved, none of whom—whether on the Government side, the Opposition side, or the public service side—thought that the issue that was to be determined was in any way affected by anything that Mr Smiles did or did not do. That being so, I saw no reason to step aside—and I still see no reason. I think the report makes that fairly clear. I find it difficult to envisage a circumstance where it might have become relevant. It did not, and I did not see it as becoming relevant beforehand.

**Q:** Was it always the case that Smiles' behaviour was not going to be the centre of the inquiry?

**A:** Yes. If you look at the scope and purpose of the inquiry you will see that that is so.

**Q:** Is there a general procedure that is adopted when a question of conflict arises or when a question of the commissioner standing aside arises? Is there a set procedure for that?

**A:** The possibility is flagged and then discussed in senior management, with the solicitor for the commissioner who is part of that, and with his officers who are concerned with the potential inquiry. A decision is made then on the basis of the material available about whether to step aside. That procedure does not have to be applied very often. However, it is fair to say that a person who comes from my background and has had a public presence for a very long time will have a nodding acquaintance, at least, with a number of political figures who may become before the commission. If you excluded yourself because you had a nodding acquaintance with

somebody you may exclude yourself from a whole host of matters, and it is unnecessary to do so. The centrality of that person to the subject matter of the inquiry, the issues before the inquiry and the degree of association are relevant matters for consideration. They are considered not just by the commissioner, but by members of staff as well. You get a cross-sectional view and a decision is arrived at.

**Q:** Was that procedure adopted in the Smiles case?

**A:** It was.

**Q:** I refer you to question 17.6, paragraph (I). You stated, "The statement did not purport to be an exhaustive description of all contact I had with Mr Smiles." In retrospect, do you think that statement reads as though it could be interpreted as being an exhaustive statement? Is that where some of the controversy may have arisen?

**A:** I have read it through again and I do not think so. What was being said was that Mr Smiles and Mrs Ruth Smiles and my family were close friends. That is the allegation I was seeking to rebut. Everything I said about that was completely accurate. I suppose you could have made a broader focus, but I was focused on a particular assertion. I was dealing with that. Looking back on it, the 60th birthday question had not entered my mind. Those of you who know Mr Smiles will know that he had a tendency to be late and to leave early. That is my recollection of that event.

**The Hon. B. H. VAUGHAN:**

**Q:** Had all of this happened in a commercial court, a court in which you sat, would you have disqualified yourself then?

**A:** No.

**Q:** You would not have? I am astonished!

**A:** I would not have disqualified myself if the issue had nothing to do with Mr Smiles' conduct. If his conduct had been at issue or if he had been a party to it, that would be a different matter.

**Q:** I am referring to him as a party.

**A:** But he is not a party.

**Q:** If he had been a party in your court, would you have disqualified yourself?

**A:** Yes, if he had been a party in the court.

**Q:** That is one of the problems we have with the ICAC: it has all the paraphernalia of a court but it does not function like one. That is what I have against it.

## **18 PERFORMANCE INDICATORS FOR THE ICAC**

### **18.1 What performance indicators are presently used to measure the performance of the ICAC as an institution?**

The Commission measures its performance on a number of levels, each of which is integrated into one comprehensive system. Annual individual performance agreements are made with each Commission staff member. These individual performance agreements are specifically linked to the objectives and standards detailed in the Strategic Plan for the program area where that staff member works. The Strategic Plans for each program area are in turn linked to the aims and objectives detailed in the Corporate Plan. This system enables the Commission to use a full range of measures to indicate how well it is achieving its corporate goals. It also ensures that the work of each individual employee is directed towards the achievement of these goals.

Performance standards for the ICAC, are listed in the 1995-1998 Corporate plan. These standards are specifically linked to the five desired outcomes of the Commission's work listed under the Corporate Mission. The desired outcomes and their relevant performance standards are:

We will know when our leadership in combatting corruption promotes integrity and accountability in the public sector and those who deal with it, when:

- . public sector agencies seek our input, consult us and develop and adopt strategies for exposing and minimising corruption
- . those who deal with the public sector recognise and accept defined standards of integrity as integral to such dealings.

We will know when our selection of work brings greatest benefit to the public sector and the community of New South Wales, when:

- . the results of our work have broad applicability and lead to effective change within the public sector
- . we have established the strategic capability to identify and undertake that work.

We will know when we have sound relationships with public sector agencies and other organisations with whom we work, when:



- we have working agreements with those agencies and organisations
- we have policies, practices and a culture which emphasise and support the Commission's commitment to sound working relationships with such agencies and organisations
- we participate in appropriate co-operative efforts with such agencies and organisations.

We will know when public sector organisations are motivated to minimise corruption and are capable of doing so, when:

- the Commission's experience and expertise is made available in a way that is accessible and relevant to the agencies' needs
- such expertise and experience is used by agencies and leads to increased awareness and effective change within those agencies.

We will know when the New South Wales community is aware of, understands and supports the need to combat corruption in the public sector and the role of the Commission in this regard, when:

- we have sound programs to raise awareness and promote understanding of the effects of corruption and our shared responsibility in combatting it
- our programs result in increased awareness of the role of the Commission and the detrimental effects of corruption.  
(ICAC Corporate Plan 1995 - 1998).

Tools used by the ICAC to evaluate its corporate performance include:

- relevant statistics (eg about the number and types of complaints received; number, range and content of reports released; numbers and range of publications disseminated; etc.);
- CP monitoring projects: these projects are designed to evaluate the effectiveness and applicability of recommendations made in Corruption Prevention reports;
- evaluation of ICAC strategies (eg of the curriculum materials developed for use in schools);
- yearly community attitude surveys, to ascertain community awareness and understanding about corruption and of the ICAC;
- specific projects, such as the analysis of action taken by public sector agencies in response to recommendations made in investigation reports;
- feedback from public and private sector agencies and officials about their interaction with the ICAC (eg in seminars or workshops).

**18.2 What further performance indicators should be adopted?**

As in all self-reflective organisations, performance indicators for the ICAC are dynamic. They are periodically revised, so as to reflect any shifts in emphasis in the Commission's work. The Commission will continue to pursue its policy of ongoing review and development, in the area of performance measurement at the corporate level.

**18.3 Has any cost-benefit analysis been conducted of the ICAC's operations?**

The Commission has over the last five years prepared costing information on all investigations undertaken by the Commission which have resulted in a public report being produced. This information is reported through the Annual Report each year.

While the costing of specific operations is relatively straightforward it is not possible to quantify the more generalised aspects of operations. As referred to in my response at 1.6.3 2.4 the value or benefit of much of the Commission's work is not measurable in fiscal terms. One cannot put a price on the promotion of ethical values and the prevention of corruption.

**18.4 If not, why not?**

See 18.1, 1.6.3, 2.4 and 2.5.

**18.5 Are any such studies planned for the future?**

The costing of investigations will continue to be undertaken each year. The Commission is currently refining its costing methodology to provide more meaningful information which will allow the Commission to cost corruption prevention projects as well as investigations and to determine in advance the estimated cost of a given investigation.

In accordance with the Government's policy for all government organisations the Commission is currently costing its Corporate Services activities in order to provide a more efficient and effective Corporate Services function.

**Questions Without Notice**

**Mr WATKINS:**

**Q:** Question 18.3 talks about measuring the ICAC's work in fiscal terms. I think we need to move down that path.

**A:** I am not at issue with you. In relation to those matters that you cannot put a money value on,

you should be able to list what they are so that individuals can make their value judgments in relation to those benefits.

**Q:** It would be very helpful for us.

**A:** I am moving towards that. I must say that I frequently get to work at 5.30 a.m. and leave at 7.30 p.m., but there is still a limit to what I can do. We are moving in that direction.

## **19 EDUCATION**

### **19.1 Granted your increased emphasis upon the educative role of the ICAC, how many ICAC employees have qualifications for this educative task?**

The educative work of the Commission is broad. Educative outcomes issue from investigation, corruption prevention work, public contact enquiries and media coverage as well from the work of the Education Section. Hence it is the range of qualifications and experience of Commission staff which contributes to the achievement of educative outcomes.

In regard to the educative work undertaken by the Education Section, strong project management experience together with a background in a range of creative fields is required. The qualification emphasis is on experience rather than merely on academic qualification, although academic qualifications are desirable. It is not expected that all qualifications and skills needed to carry out the projects will be captured within the Education Section. The diversity of qualifications and skills needed is well represented outside the Commission and can be engaged and brought to projects in a number of ways.

### **19.2 What percentage or proportion of ICAC staff have qualifications for this educative task?**

As stated in the answer to the previous question, all staff within the Commission contribute to its educative outcomes.

All staff within the Education Section have qualifications which fit the description outlined above.

### **19.3 Should there be an alteration in the emphasis on ICAC staff employment so that more staff with an educative basis are employed?**

Recruitment action is underway to further expand the Education Section resources.

## **20 MISUSE OF THE ICAC FOR POLITICAL PURPOSES**

- 20.1 What do you intend to do regarding the continual disregard for your direction not to use ICAC for political point scoring (refer copy of your letter dated 3 March 1995 at Appendix Four)?**

**I draw your attention to the most recent of many examples of apparent politically motivated and extremely public referrals to ICAC (refer copy of The Hon. Carl Scully press release dated 23 June 1995 at Appendix Four).**

With respect to the general question about the misuse of the ICAC for political purposes, the Commission has always striven to impress upon those who refer matters to the Commission, whether by complaint or section 11 referral, either to keep the fact of the referral confidential, or if that is not possible, to keep any comments concerning it to a minimum.

There are many good reasons for this. With the exception of referrals from both Houses of Parliament under section 73 of the Independent Commission Against Corruption Act, the Commission has a discretion as to whether it will investigate a matter. Therefore when an individual refers a matter to the Commission and makes a public statement to the effect that the Commission will be investigating it, that statement could prove to be wrong and in any event is misleading as it suggests that the Commission has made a decision to investigate.

Apart from other considerations this could prove embarrassing for the individual concerned if the Commission ultimately decides not to investigate particularly in circumstances where the Commission feels it is necessary to issue some public statement to that effect. There are more significant considerations, however. Publication of the fact that the matter has been referred to the ICAC could compromise any investigative activity the Commission may wish to conduct and may unfairly damage the reputations of those persons who are the subject of the complaint or referral.

With respect to the example referred to in the question I raised my concerns about this with the Premier and he responded immediately by issuing a memorandum to all Ministers which I believe fully addressed the issues I have just outlined. A copy of that memorandum is attached at Appendix Four.

## **21 MISCELLANEOUS**

- 21.1 In the six months prior to the State Elections, how many interviews did the ICAC initiate with Government and Opposition members and Labor and Liberal endorsed candidates?**

The meaning of this question is unclear. In particular I do not understand the relevance of the six month period prior to the State Election. In any event, the question is presumably seeking information about the number of politicians interviewed in the course of Commission investigations during that period. The Commission does not ordinarily keep such statistics as the need to interview or speak to a politician may arise in the course of dealing with many complaints. Apart from this I do not consider it appropriate to comment in any detail on operational matters.

- 21.2 Do you think that your involvement with a political organisation such as "Australians for Constitutional Monarchy" is damaging to the ICAC?**

No. The organisation is completely unrelated to the work of the ICAC. It is non-political. The Committee is drawn from all sections of the community; some are members of political parties - from both sides of the House; others (like me) have no association with any political party. The issue is an important one for our nation. Appropriate debate on it is essential. Citizens should be encouraged to take part in that debate and as an Australian I believe I should help to ensure that this occurs.

- 21.3 Do you believe that the effectiveness of the ICAC has been jeopardised by the political controversy surrounding your appointment?**

No. The Commission certainly went through a difficult period due to the hiatus between permanent Commissioners. The fact of the appointment has meant that the ICAC has been able to chart its course for the future and get on with the important work it has to do. This is far more significant than any short term political controversy that may have been associated with my appointment.

- 21.4 What does the ICAC see for the future role of the ICAC Parliamentary Committee?**

The Commission views the Parliamentary Committee as an important accountability mechanism. Its role is to provide independent scrutiny of the Commission. As well as its role of guardian of the public interest, the Commission would also like the Committee to be an advocate for Commission initiatives.

**21.5 Should the state of New South Wales have a serious and complex fraud office? If so, should it, with an appropriate allocation of funds, be a part of the ICAC. If not, why not?**

New South Wales currently has a serious fraud office: the Fraud Enforcement Agency (FEA) which deals with serious fraud. The Commission is also a member of the Inter-Agency Fraud Committee which is made up of representatives from agencies which deal with fraud. The Committee aims to ensure that duplication of work is avoided, as well as providing a liaison mechanism for the agencies concerned.

While there is fraud occurring in the public sector, there is also significant fraud occurring outside of it. The Commission's jurisdiction is, as the Committee is aware, restricted to and directed at corrupt conduct involving New South Wales public officials or agencies. The current New South Wales FEA is not so restricted in its jurisdiction and the Commission would not support re-allocation of funds away from it and towards the Commission.

**Questions Without Notice**

**(21.2) Commissioner's involvement in "Australians for a Constitutional Monarchy"**

**Mr WATKINS:**

**Q:** I refer to question 20.2 regarding Australians for Constitutional Monarchy. I suppose it comes back to what I have been talking about today: the public perception of the ICAC. You are the public face of the ICAC. In your position you should act in an honourable and correct way. Do you think that your involvement in a community organisation—you have denied that it is a political group—which is deeply involved in a political process enmeshes you into a political issue? Is that something that a man in your position should step back from?

**A:** No, I do not. I am interested in many things. For instance, I am the president of the Friends of the Bradley Bushland Reserve. That sounds like a pretty innocuous group. I am also the president of the Mosman Parks and Bushland Association. That also sounds innocuous. Both of those organisations actively campaign for the preservation of open space, parkland and natural bushland in Mosman. That includes Middle Head. In a sense it could be said that that is political. If that is the definition of "political" that you adopt, it means that people who take public office are excluded from expressing any views about a whole range of community activities. I do not think that is the law and I do not think it is good sense.

You say that Australians for Constitutional Monarchy is involved in a political process. It is political in the sense that it may involve questions of the Constitution. Adopting that definition makes almost everything we do political. I really do not think that being commissioner of the ICAC should debar me from expressing my views publicly about our Constitution, where we have come from and how it has served us. It should not debar me from expressing my views about the open space around Sydney Harbour. They are all important issues on which I have

strong views and which I think I am entitled to express, notwithstanding my job. I go to a committee meeting and I find members of the Labor Party; Doug Sutherland is a very prominent member. For the good of the party he stood down from the council. No-one could be more committed to his party than he. I went to a rally about Middle Head. Who did I find on the platform with me? Tom Uren. There are some things that transcend party politics, which is different from political issues.

**Q:** Both of those people are deeply involved in a public way in the political process, but you are not. You are in an institution that necessarily stands back from that and cannot be seen to be in that process. That is why I am suggesting that perhaps your involvement in other organisations which have a political side to them is something that you as a commissioner should not be involved in. Is it not true that, generally speaking, that would be the position accepted by many of the people in your position—perhaps the various judges of the courts, for example?

**A:** Justice Michael Kirby is a member of Australians for Constitutional Monarchy. I refer to another issue which is likely to arise in this State: euthanasia. That issue may be described as political. I happen to regard it as one of the most important issues that this State may have to face. I certainly would not see my position as Commissioner of the Independent Commission Against Corruption as debarring me from taking part in that debate.

**Q:** I suppose that is what I am getting at, your understanding of your right to be involved—and I am not saying you do not have that right—but questioning you on that. Many people see the principle completely differently.

**A:** I am not sure that that is right. I understand the argument but I also understand that that sort of principle applied to public officials, and including judges, is somewhat different in the 1990s to the way it was in the 1950s. In the 1950s it was almost unheard of that a judge would make any public statement. These days that is not so. I do not see this as being any different. Is the argument that because I am commissioner I should be muzzled about things that are selective?

**Q:** No. The argument is that because of the need to ensure that the ICAC as a body is above reproach and is out of the political process as much as it possibly can be, therefore people involved in it should make a judgment to step back from involvement in causes or community groups that may cause a substantial number of people in the community to have a political reaction to them.

**A:** You say “beyond reproach.” I must say I do not regard upholding our Constitution as reproachful. I would have thought that that was once regarded as being patriotic, and if you cannot be patriotic and be the Commissioner of the Independent Commission Against Corruption, then it is a strange world.

**Mr LYNCH:**

**Q:** I am interested in this view, and I think it is probably a realistic one, about the changing perception of what judicial officers and quasi-judicial officers can and cannot do. Do you think it is now accepted that judicial officers would be members of a political party? Back in the



1950s I think that would have been an absolute no-no. I suspect it probably still is, but I am wondering.

- A:** I do not know that it was a no-no in the 1950s. What I do know is that in the 1950s if a judicial officer was a member of a political party he or she—well, there would not have been any women in the 1950s—would not have advertised that. These days I think it is still not being advertised. I am certainly not and never have been a member of any political party and would regard it as antithetical to my role to be a member of a political party, or to have been a member of any political party, but that cannot be a view that could prevail since my predecessor had been a member of a political party and the Parliament knew that when he was appointed. It is a bit of mishmash I think.

## **CONCLUSION**

**CHAIRMAN:**

Thank you for attending before the Committee today. It is the first time you have appeared before the members of the Committee, and I hope we were not too tough on you. We look forward to you appearing before the Committee again in due course.

**Mr O'KEEFE:**

Mr Chairman, when I said in my opening statement that I was looking for an approach which was constructive rather than confrontational, I did not intend to mean that it was a Dorothy Dix. Your function is to ensure that I perform my function. I recognise that and I respect the right of the Committee to question me in the way that you have. I must say I do not regard anything that I have been asked today as excessive or as aggressive, but as honestly seeking my views and my approaches. There were some matters I did not agree with. So be it, but at least we know what the basis of non-agreement is. They have been dealt with as matters of principle rather than as matters of personality, and I certainly for my part intend to maintain that. Thank you for your courtesy.

# **APPENDIX ONE**

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## **Aboriginal Land Council Inquiry Media Release**





1 of 2 pages.

## INDEPENDENT COMMISSION AGAINST CORRUPTION

MEDIA RELEASE

29 August 1995.

### IMPROVED SYSTEMS SOUGHT THROUGH LAND COUNCILS INQUIRY

Greater equity and benefits for all sectors of the Aboriginal community through improved operating and management systems for NSW Aboriginal Land Councils are the objectives of an ICAC inquiry announced today by Commissioner Barry O'Keefe, QC.

Initiated after a high number of complaints about land council operations, the inquiry's principal focus is on corruption prevention and education issues. The complaints, mostly from Aboriginal people, concern such matters as maladministration, lack of recordkeeping, misuse of public money, irregularities in council elections and favouritism.

There are 117 local and 13 regional Aboriginal Land Councils throughout NSW; more than \$360 million has been received by the councils since 1983. The 7.5 per cent of Land Tax set aside to fund land councils ends in 1998.

A multi-disciplinary team of Aboriginal and non-Aboriginal officers is being used in the inquiry.

Many Aboriginal and State Government sources assisted the ICAC in its decision to hold a formal inquiry. The Commission will continue to liaise with these sources, in addition to consulting broadly with Aboriginal groups and other relevant agencies to ensure its work and ultimate recommendations are well informed and culturally appropriate.

It is yet to be determined whether hearings will be necessary in this matter.

At the end of the inquiry either a report will be prepared and/or the results will be communicated to appropriate officials, including land councils and Aboriginal groups involved with this matter.

"The number and nature of matters brought to the Commission's attention over a period of time have made this inquiry necessary," Commissioner O'Keefe said.

"Most of the matters have come from Aboriginal people themselves, who are concerned about how public resources meant to meet the needs of their communities are being used.

"As corruption prevention through systems improvements is a significant ICAC function, the Commission has a role to play in ensuring land councils are operating effectively, meeting their broad statutory responsibilities and being fair in dealing with various groups of Aboriginal people, especially minority groups.

"This is particularly so if land councils are to provide lasting benefits to Aboriginal people after 1998 when they are expected to be self-funding." End.

More information: Mark Davis 318 5828; pager 925 3911, number 375 699.

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## BACKGROUND TO THE ICAC INQUIRY INTO ABORIGINAL LAND COUNCILS

\$364.7 million has been given to ALCs since 1983. Under existing funding arrangements, one half of this money is to meet the cost of administering the State, Regional and Local Land Councils, the other is invested to finance land purchases after 1998.

The members of Aboriginal Land Councils in NSW have a right to expect fairness, honesty and integrity in the administration of their funds. The ICAC project seeks to assist the Aboriginal Land Councils of NSW to operate efficiently and effectively, thereby maximising the funds available by the year 1998 at which time land acquisition must be self-funding.

The project aims to identify and expose practices that could allow corrupt conduct in Aboriginal Lands Councils, and having done so, recommend practical changes that meet the needs of Aboriginal peoples and appropriate regulatory agencies as well as accountability requirements.

Corruption prevention and education are key features. The focus for this work includes: loopholes in the existing legislation that may create confusion and uncertainty, accountability arrangements within Aboriginal Land Councils, elections and their administration that cause conflict, and systems for dealing with money, investments, business enterprises and benefits.

The Commission gave much thought to the best approach and considered relevant cultural, political and natural justice issues. Matters have been selected for investigation and corruption prevention work based on a review of numerous complaints, mostly from Aborigines and Aboriginal communities. Those matters that showed a high level of systemic significance or serious alleged corrupt conduct were selected as the basis for the Commission's further work.

Project outcomes reflect the Commission's commitment to providing Aboriginal Land Councils with the same benefits and support accorded to other public sector agencies, and stress respect for Aboriginal interests and culture.

Desired outcomes include: the identification of systems failures or abuses, provision of culturally sensitive solutions, adoption by Land Councils of formal, culturally appropriate structures and mechanisms to reduce present deficiencies, a culturally appropriate Code of Conduct for elected members and staff, and the introduction of appropriate financial practices to safeguard and optimise funding and fair allocation of resources.

# **APPENDIX TWO**

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**S.74(5) and S.74A(2) Findings:  
Consideration of Prosecutions**

**S.74(5) and S.74A(2) Findings:  
Consideration of Disciplinary  
Action/Dismissal**





## **PROSECUTIONS REPORT**

Entries under the heading "Statement pursuant to s74(5) ICAC Act" or "Statement pursuant to s74A(2) of the ICAC Act" indicate that the report on the investigation included a statement in relation to the consideration of prosecution of a person for one or more specified offences.

In reports published before the end of 1990 a statement under s74(5) was as to "whether there is or was any evidence or sufficient evidence warranting consideration" of such action. Following the amendments to the Act in December 1990 a statement under s74A(2) was as to "whether or not in all the circumstances the Commission is of the opinion that consideration should be given to such action.

In cases where no report has been published in relation to a formal investigation matters have been referred directly to the Director of Public Prosecutions and the entries under the heading "Matters Referred to DPP" indicate the charges suggested for consideration.

The entries listed on the last page of the report under the heading "Other Prosecutions" are those which resulted from inquiries which were not part of a formal investigation.

## **DISCIPLINARY ACTION REPORT**

Entries under the heading "Statement pursuant to s74(5) ICAC Act" or "Statement pursuant to s74A(2) of the ICAC Act" indicate that the report on the investigation included a statement in relation to the consideration of disciplinary action or the taking of action with a view to dismissal (or otherwise terminating the services) of a public official or both.

In reports published before the end of 1990 a statement under s74(5) was as to "whether there is or was any evidence or sufficient evidence warranting consideration" of such action. Following the amendments to the Act in December 1990 a statement under s74A(2) was as to "whether or not in all the circumstances the Commission is of the opinion that consideration should be given to such action.

In cases where no report has been published matters have been referred directly to the relevant authority and the entries under the heading "Matters Referred" indicate the action suggested for consideration.



## PROSECUTIONS REPORT - PJC

### OPERATION 1 (ALPHA)

#### REPORT ON INVESTIGATION RELATING TO STAIT, DAINFORD AND WAVERLEY COUNCIL

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
BALOG, Tabor	2 x s.249F and s.249B(2)(a)(ii) Crimes Act and 2 x s.249F and s.249B(2)(b) Crimes Act (aid and abet corrupt giving of secret commission)	2 x s.249F and s.249B(2)(a)(ii) Crimes Act and 2 x s.249F and s.249B(2)(b) Crimes Act	Pleaded guilty. Convicted and sentenced to 500 hours community service; recognisance of \$1,000 to be of good behaviour for 3 years and \$10,000 fine
DAINFORD CONSTRUCTIONS P/L	Corruptly giving commissions - DPP to determine exact offence	2 x s.249B(2)(b) Crimes Act and 2 x s.249B(1)(a)(ii) Crimes Act (corrupt commissions received and offered)	Matter withdrawn 30 April 1991. Commission did not wish to proceed against Dainford
STAIT, Donald	2 x s.249B(1)(b) Crimes Act, 2 x s.249B(1)(a)(ii) Crimes Act (receiving corrupt commissions)	2 x s.249B(1)(b) Crimes Act and 2 x s.249B(1)(a)(ii) Crimes Act (corrupt commissions received and offered)	Pleaded guilty. Convicted and sentenced to 500 hours community service, recognisance of \$1,000 to be of good behaviour for 3 years and \$10,000 fine

### OPERATION 3 (BARRACUDA)

#### REPORT ON INVESTIGATION INTO NORTH COAST LAND DEVELOPMENT

Name	Statement pursuant to s.74(5) ICAC Act	Offences Advised by the DPP	Outcome
CASELL, Barry John	S.87 ICAC Act (false or misleading evidence), 3 x conspiracy	2 x s.87 ICAC Act (false or misleading evidence) and 1 x s.89 ICAC Act (conspiracy to give false evidence)(A); and 4 x s.87 ICAC Act (false or misleading evidence)(B)	In relation to the (A) charges, no evidence was offered so charges dismissed. In relation to the (B) charges Cassell pleaded guilty and was sentenced to 8 months imprisonment to be served concurrently. Bail was granted in self of \$4,000. All grounds appeal lodged. The matter was heard at the Court of Appeal where it was ruled that the matter be referred back to the Judge to state a case.
GARDINER, Jennifer	S.97 Election Funding Act	S.97 Election Funding Act	Pleaded guilty. S.556A Crimes Act (no conviction recorded)

GLYNN, Paul Edward	2 x common law bribery and 2 x s.178BB Crimes Act	2 x common law bribery and 2 x s.178BB Crimes Act (obtaining financial advantage by false or misleading statement)	Pleaded not guilty. The 2 x common law bribery charges were discharged. DPP appealed against the quashing of indictment in relation to the 2 x common law bribery charges. Court of Criminal Appeal dismissed the appeal. In relation to the 2 x s.178BB charges, the Informations were dismissed and the DPP was ordered to pay \$67,500 to the Clerk of the Local Court.
HOGAN, Francis Vincent	2 x common law conspiracy.	Not proceeding	
HOGAN, Thomas Edward Paul	5 x common law conspiracy and 2 x attempted common law bribery	1 x conspiracy to bribe(A) (in relation to Mercer in association with Munro) and 3 x common law bribery(B).	Conspiracy to bribe charge was dismissed.
LYNN, Noel	S.87 ICAC Act (false or misleading evidence) and common law bribery.	Common law bribery. Not proceeding with s.87 ICAC Act	Committed for trial. Not guilty verdict directed.
McAULIFFE, Garry Keith	Conspiracy to bribe	Not proceeding	
MILLS, James	Common law bribery; s.101 Local Government Act and s.96 Local Government Act	Common law bribery. Not proceeding with s.101 and s.96 Local Government Act	Committed for trial. Not guilty verdict directed.
MUNRO, Roger Gareth	S.249B Crimes Act (secret commissions bribery/attempted bribery ; conspiracy and attempted common law bribery.	1 x conspiracy to bribe(A) and 3 x common law bribery(B). Not proceeding with conspiracy charge and s.249B Crimes Act (secret commissions)	
PEARSON, Angus Alexander	Conspiracy to bribe	DPP not proceeding	
POULOS, James	S.87 ICAC Act (false or misleading evidence) and common law bribery	Common law bribery. Not proceeding with s.87 ICAC Act	Committed for trial. Not guilty verdict directed as a result of incomplete tapes of evidence.
ROSS, Michael John	S.87 ICAC Act (false or misleading evidence) and 2 x conspiracy	2 x s.87 ICAC Act (false or misleading evidence) and 2 x conspiracy charges	Conspiracy charges were dismissed. Ross pleaded guilty to 2 x s.87 which was substituted for the conspiracy charges. He was sentenced to 6 months imprisonment to be served concurrently. Bail was granted in self of \$4,000. Severity appeal lodged at District Court of Sydney. The sentence of the Magistrate was quashed and in lieu thereof sentenced to 200 hours community service to be served concurrently.

**OPERATION 8 (ITA)  
REPORT ON INVESTIGATION INTO DRIVER LICENSING**

Name	Statement pursuant to s.74(5) ICAC Act	Offences Advised by the DPP	Outcome
ANDERSON, James Rae	1 x s.87 ICAC Act (false or misleading evidence)	Insufficient evidence	
ARISTODEMOU, Anthony	3 x s.87 ICAC Act (false or misleading evidence)	3 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty on 2 counts in agreement with the DPP that the remaining count be no billed. Committed for trial, convicted and sentenced to 2 months imprisonment. Sentence appeal was lodged at Court of Criminal Appeal but was subsequently dismissed.
CATALDO, Mario	3 x s.87 ICAC Act (false or misleading evidence)	5 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty in relation to 2 counts if other 3 counts no billed. Committed for trial, convicted and sentenced to 200 hours community service and entered s.558 recognisance of \$1,000 to be of good behaviour for 3 years, conditional on payment of \$3,000 fine.
DANDACHLI, Ghasson	6 x s.87 ICAC Act (false or misleading evidence)	4 x s.87 ICAC Act (false or misleading evidence)	Pleaded not guilty. Information dismissed at the committal hearing.
FORSYTH, Vernon Joseph	7 x s.87 ICAC Act (false or misleading evidence)	5 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty to 2 x s.87 ICAC Act if other 3 counts no billed. Convicted. In relation to first count he entered recognisance in self of \$2,000 to be of good behaviour for 3 years. In addition, fined \$1,250 plus court costs of \$45. In relation to second count he entered recognisance in self of \$2,000 to be of good behaviour for 3 years. In addition, fined \$1,500 plus court costs of \$45.
HELOU, Salim	2 x s.87 ICAC Act (false or misleading evidence)	2 x s.87 ICAC Act (false or misleading evidence)	Pleaded not guilty. Matter dismissed due to lack of corroboration.
KELERGIS, Nicholas	3 x s.87 ICAC Act (false or misleading evidence)	4 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty of 2 x s.87 and sentenced to 80 hours community service per count to be served concurrently. Information withdrawn in relation to the other two counts.

KERIN, Harvey	1 x s.87 ICAC Act (false or misleading evidence)	Insufficient evidence	
LAWES, Keith	6 x s.87 ICAC Act (false or misleading evidence)	7 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty of 3 x s.87. Information withdrawn in relation to other 4 counts. In relation to first two counts fined \$750 and \$45 court costs per count. In relation to remaining count entered recognisance in self of \$1,000 to be of good behaviour for 2 years.
MANTON, Kenneth John	3 x s.87 ICAC Act (false or misleading evidence)	3 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty. Sentenced to 100 hours community service per count to be served cumulatively.
PEPONIS, John	3 x s.87 ICAC Act (false or misleading evidence)	2 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty. Sentenced to 80 hours community service per count to be served concurrently and \$45 court costs per count.
SEXTON, Paul Anthony	2 x s.87 ICAC Act (false or misleading evidence)	6 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty to 2 x s.87. Information withdrawn and dismissed for other 4 counts. Sentenced to 60 hours community service on first count. Entered recognisance in self of \$1,000 to be of good behaviour for 2 years on remaining count.
UKHANNA, Mark	1 x s.87 ICAC Act (false or misleading evidence)	Insufficient evidence	

**OPERATION 9 (LAUREL)  
INVESTIGATION INTO CONDUCT OF SRA EMPLOYEE AND ALLOCATION OF CONTRACTS**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
HARRIS, Simone Michaelaine	25 x s.178BB Crimes Act (make false statement with intention to obtain financial benefit)	22 x s.178BB Crimes Act (make false statement with intention to obtain financial benefit)	Committed for trial. Pleaded guilty. Fined \$1,000 and entered recognisance in self of \$100 to be of good behaviour for 3 years.
MYCHALEWYCZ, Oleh Richard	25 x s.178BB Crimes Act (make false statement with intention to obtain financial benefit)	23 x s.178BB Crimes Act (make false statement with intention to obtain financial benefit)	Committed for trial. Pleaded guilty. Convicted on all counts and ordered to perform 500 hours community service.

**OPERATION 11 (KARRI)**  
**REPORT ON CONDUCT OF POLICE OFFICERS IN THE SUTHERLAND DISTRICT**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Offences Advised by the DPP</b>	<b>Outcome</b>
Oliveri, David William	Bribery	Not proceeding due to unavailability of material witness	

**OPERATION 15 (OSMOSIS)**  
**REPORT ON INVESTIGATION INTO DEALINGS BETWEEN HOMFRAY CARPETS**  
**AND THE DEPARTMENT OF HOUSING**

<b>Name</b>	<b>Statement pursuant to s.74(5) ICAC Act</b>	<b>Offences Advised by the DPP</b>	<b>Outcome</b>
BURT, John	S.249B Crimes Act 1919 (receipt of corrupt commissions)	Not proceeding due to death of key witness	
GOODALL, John	S.249B Crimes Act 1919 (receipt of corrupt commissions)	Not proceeding due to death of key witness	
KELLY, Marc	S.249B Crimes Act 1919 (receipt of corrupt commissions)	Not proceeding due to death of key witness	
WILLIAMS, Jack	s.249b Crimes Act 1919 (payment of corrupt commissions)	Not proceeding due to death of key witness	
WYLES, Kevin	S.249B Crimes Act 1919 (payment of corrupt commissions)	Not proceeding due to death of key witness	
WYLES, Susan	S.249B Crimes Act 1919 (payment of corrupt commissions)	Not proceeding due to death of key witness	

**OPERATION 20 (TAMBA)  
REPORT ON UNAUTHORISED RELEASE OF GOVERNMENT INFORMATION**

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
ALLEN, Robert Keith	Bribery	Insufficient admissible evidence	
BAPTIST, Christopher John	2 x s.309 Crimes Act (aiding - unlawful access to data in computer); 1 x s.87 ICAC Act (false or misleading evidence) and 3 x bribery	2 x s.87 ICAC Act (false or misleading evidence). (In relation to s.309 and bribery charges mentioned above, further material being provided to DPP).	Pleaded not guilty to 2 x s.87. Committed for trial and sentenced to 2 months imprisonment for each offence, to be served concurrently.
BARNES, Harry John	S.87 ICAC Act (false or misleading evidence) and bribery	2 x s.87 ICAC Act (false or misleading evidence). Insufficient admissible evidence for bribery charge	Pleaded guilty. Fined \$2,000 and entered recognisance to be of good behaviour for 18 months.
BARNES, Suzanne Joan	S.87 ICAC Act (false or misleading evidence) and bribery	1 x s.87 ICAC Act (false or misleading evidence) and 1 x s.88 ICAC Act (offences relating to documents or other things). Insufficient admissible evidence for bribery charge	Pleaded guilty. S.87 - fined \$2,00 and entered recognisance to be of good behaviour for 18 months. S.88 - fined \$1,500 and entered recognisance to be of good behaviour for 18 months.
BENTLEY, Reginald	2 x conspiracy to bribe	3 x conspiracy to bribe	Committed for trial.
BETTS, Jeffery Charles	2 x s.309 Crimes Act (unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence); 2 x bribery and 1 x conspiracy to accept bribe	3 x conspiracy to accept bribe (in lieu of 2 x bribery and 1 x conspiracy to accept bribe). Insufficient admissible evidence for 2 x s.309 Crimes Act (aiding - unlawful access to data in computer) and s.87 ICAC Act (false or misleading evidence) charges	Pleaded guilty. Committed for trial. In relation to 1 x conspiracy to accept bribe, entered into recognisance in the sum of \$10,000 to be of good behaviour bond for 5 years. Remaining 2 conspiracy to accept bribe offences scheduled. Order also made confiscating the sum of \$13,254 being proceeds from crime.
BIGGS, James	S.87 ICAC Act (false or misleading evidence)	Insufficient evidence	
BLAKEY, Carl	Bribery	Insufficient admissible evidence	
BRACEY, John Everett	S.309 Crimes Act (aiding - unlawful access of data in computer); s.87 ICAC Act (false or misleading evidence) and 2 x bribery	3 x common law conspiracy to bribe (in lieu of 2 x common law bribery). Prosecution not warranted for s.87 ICAC Act (false or misleading evidence) and s.309 Crimes Act	
BROWN, Keith	S.88 ICAC Act (offences relating to documents or other things)	Insufficient evidence	



<b>BUCKLEY, Kenneth</b>	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient evidence	
<b>BYASS, Kay</b>	2 x s.87 ICAC Act (false or misleading evidence)	1 x s.87 ICAC Act (false or misleading evidence)	Information discharged at committal hearing.
<b>CAINS, David</b>	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient evidence	
<b>CHAD, Kerryn</b>	S.88 ICAC Act (offences relating to documents or other things)	2 x s.87 ICAC Act (false or misleading evidence) and 4 x s.88 ICAC Act (offences relating to documents or other things)	
<b>CHAD, Nelson</b>	S.309 Crimes Act (aid the unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and s.88 ICAC Act (offences relating to documents and other things)	2 x s.309 Crimes Act (aid the unlawful access to data in computer); 4 x s.87 ICAC Act (false or misleading evidence); 4 x s.88 ICAC Act (offences relating to documents and other things) and common law conspiracy	
<b>CLARKE, Warren Maxwell</b>	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient evidence	
<b>CLUGSTON, Bruce Thomas</b>	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient evidence	
<b>CORDWELL, William</b>	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient evidence	
<b>CROSS, Leslie</b>	S.88 ICAC Act (offences relating to documents or other things)	Prosecution not warranted	
<b>CROSSLEY, Tanya</b>	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient admissible evidence	
<b>CROTHERS, Alan</b>	S.309 Crimes Act (unlawful access to data in computer) and 2 x bribery	Insufficient evidence	
<b>DALRYMPLE, David</b>	S.87 ICAC Act (false or misleading evidence)	2 x s.87 ICAC Act (false or misleading evidence)	Pleaded not guilty. Convicted on both counts and sentenced to imprisonment for 3 months to be served by way of periodic detention .

DARLINGTON, Colin William	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	20 x s.249B(2) Crimes Act (corrupt inducements for advice). Insufficient evidence for s.309 Crimes Act and bribery	Pled not guilty. On first count entered into recognisance in the sum of \$5,000 to be of good behaviour for a period of 3 years. Remaining 19 counts order made dismissing charge without proceeding to conviction.
DE ZILWA, Alston	2 x conspiracy to bribe	2 x conspiracy to bribe	
DEVINE, Janet	S.87 ICAC Act (false or misleading evidence)		
DEVINE, Paul	S.87 ICAC Act (false or misleading evidence) and bribery		
EBBES, Peter Ronald	S.87 ICAC Act (false or misleading evidence)	1 x s.87 ICAC Act (false or misleading evidence)	Pled guilty. Convicted, and fined \$400 plus court costs of \$46.
EDWARDS, Jeffrey David	3 x s.309 Crimes Act (unlawful access to data in computer) and 3 x bribery	3 x conspiracy to bribe. Insufficient admissible evidence in relation to 3 x s.309 Crimes Act (unlawful access to data in computer)	Pled guilty. Convicted of all 3 offences and fined \$5,000 and placed on good behaviour bond for period of 3 years.
ELELMAN, Leon	2 x s.309 Crimes Act (aiding - unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and 3 x bribery	3 x s.249B Crimes Act (conspiracy - corrupt commissions or rewards) and 1 x s.87 ICAC Act (false or misleading evidence). In relation to 2 x s.309 Crimes Act (aiding - unlawful access to data in computer) DPP advised prosecution not warranted	Pled guilty to 3 x s.249B Crimes Act. S.87 offence scheduled and will be taken into account at sentencing. Committed for trial.
ELLIOTT, Phillip Michael	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient admissible evidence	
FARDELL, Bryce	S.309 Crimes Act (aiding - unlawful access to data in computer); 2 x s.87 ICAC Act (false or misleading evidence) and bribery	3 x s.87 ICAC Act (false or misleading evidence). In relation to s.309 Crimes Act (aiding - unlawful access to data in computer); 1 x s.87 ICAC Act false or misleading evidence) and bribery awaiting outcome of consideration by Commonwealth DPP	Pled guilty. Sentenced to 300 hours community service on first count. Fined \$500 on the remaining two counts.
FARMER, Jack	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient admissible evidence	
FIELD, Graham	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient evidence	

FITZPATRICK, Thomas	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient evidence	
FRANKLAND, Craig	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient evidence	
FRANKLAND, Stephen	S.309 Crimes Act (unlawful access to data in computer) and bribery	S.309 Crimes Act (unlawful access to data in computer) and bribery	
FRAZER, Graham William	S.87 ICAC Act (false or misleading evidence)	1 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty. Convicted. Entered recognisance of \$1,000 to be of good behaviour for 2 years, plus court costs.
FRISCH, Peter	1 x s.309 Crimes Act (aiding - unlawful access to data in computer) and 1 x bribery	Insufficient evidence	
GINTY, Paul	Bribery	Insufficient evidence	
GREIG, Bruce	Bribery	Insufficient evidence	
GURNEY, Christianne	S.309 Crimes Act (aiding - unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and bribery	Insufficient evidence	
GURNEY, Robert	S.309 Crimes Act (aiding - unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence); s.88 ICAC Act (offences relating to documents or other things) and bribery	1 x s.88(1) ICAC Act (offences relating to documents or other things) and s.89(a) ICAC Act (procuring false testimony by witness). In relation to s.309 Crimes Act (aiding - unlawful access to data in computer) and bribery charges, the DPP advised there is insufficient evidence	Pleaded not guilty. In relation to s.88(1) ICAC Act - 1 month imprisonment with hard labour. In relation to s.89(a) ICAC Act - 2 months imprisonment with hard labour. Sentences to be served cumulatively. All grounds appeal lodged.
HAHN, Stephen	S.87 ICAC Act (false or misleading evidence)	S.87 ICAC Act (false or misleading evidence)	Committed for trial. Not guilty verdict directed.
HARRISON, Stephen Eric	S.309(3)(e) Crimes Act (unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and bribery	2 x s.309(3)(e) Crimes Act (unlawful access to data in computer). Insufficient admissible evidence in relation to s.87 ICAC Act (false or misleading evidence) and bribery	Pleaded guilty. S.558 Crimes Act (deferred sentence). Entered into recognisance in sum of \$5,000 to be of good behaviour for period of 2 years.

HEDGES, Andrew Neil	S.309 Crimes Act (unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and 2 x bribery	3 x s.87 ICAC Act (false or misleading evidence). Insufficient admissible evidence for s.309 Crimes Act (unlawful access to data in computer) and 2 x bribery charges	Pleaded guilty. Six months periodic detention on each count (to be served concurrently).
HERDEGEN, Ruth	S.88 ICAC Act (offences relating to documents or other things)	Insufficient evidence	
HOOKER, Keith	S.309 Crimes Act (aid the unlawful access to data in computer) and 2 x bribery	Insufficient admissible evidence	
JAMES, Stephen	S.309 Crimes Act (aiding - unlawful access to data in computer) and 2 x bribery	1 x conspiracy to bribe in lieu of bribery charge. Insufficient admissible evidence in relation to second bribery charge and s.309 Crimes Act	
KERR, William	2 x bribery	Insufficient evidence	
LENTON, Robin	Bribery	Insufficient evidence	
LEWIS, Mark	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Pleaded guilty. Fined \$1,000 and entered recognisance to be of good behaviour for 2 years.
LINDSAY, Drew	Bribery (aiding)	Insufficient evidence	
LINDSAY, Julia	Bribery	Insufficient evidence	
LIVINGSTON, Ronald	2 x bribery	Insufficient evidence	
LOUGHLIN, John	S.309 Crimes Act (aiding - unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and bribery	1 x s.87 ICAC Act (false or misleading evidence). Insufficient evidence for s.309 Crimes Act (aiding - unlawful access to data in computer) and bribery charges	Pleaded not guilty. Fined \$750 and placed on 2 year good behaviour bond.
MAILEY, Richard	S.309 Crimes Act (aiding - unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and 2 x bribery	2 x s.87 ICAC Act (false or misleading evidence) and 2 x conspiracy to bribery. Insufficient evidence for s.309 Crimes Act (aiding - unlawful access to data in computer)	

MALLARD, Warren	Bribery	Insufficient admissible evidence	
MATEER, Helen	S.88 ICAC Act (offences relating to documents or other things)	Insufficient admissible evidence	
MAWSON, James	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery		
McGRATH, Jean	S.87 ICAC Act (false or misleading evidence)	Insufficient admissible evidence	
McLACHLAN, Jeffrey Richard	15 x s.249B Crimes Act (corrupt commissions or rewards - bribery) and 1 x s.309 Crimes Act (aiding - unlawful access to data in computer)	15 x s.249B Crimes Act (corrupt commissions or rewards - bribery). Insufficient admissible evidence for 1 x s.309 Crimes Act (aiding - unlawful access to data in computer)	Pled guilty. S.556A Crimes Act (offence proven but no conviction recorded). Entered into a recognisance in the sum of \$5,000 to be of good behaviour for 3 years and ordered to pay court costs of \$46 for each offence.
McLEAN, Richard	Bribery	Insufficient admissible evidence	
McMARTIN, Robert	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient admissible evidence	
McMASTER, Alexander	S.88 ICAC Act (offences relating to documents or other things)	Prosecution not warranted	
MOONEY, John Bede	S.309 Crimes Act (unlawful access to data in computer) and bribery	Indemnity given against prosecution in return for evidence against John Scott.	
MOORE, Rodney	S.87 ICAC Act (false or misleading evidence)	S.87 ICAC Act (false or misleading evidence)	Pled not guilty. Found not guilty at committal.
MORAN, Robert Charles	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient evidence	
MUSGRAVE, Stephen Wayne	S.309 Crimes Act (aiding - unlawful access to data in computer) and 2 x bribery	Insufficient evidence	
NAYLOR, Stephen Craig	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient admissible evidence	
O'CONNELL, Michael	2 x s.309 Crimes Act (aiding - unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and 2 x bribery		

O'TOOLE, Christopher John	S.309 Crimes Act (aid the unlawful access to data in computer) and bribery	Insufficient admissible evidence	
PAGE, Norman Gregory	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient admissible evidence	
PERSSON, Dorothy	S.88 ICAC Act (offences relating to documents or other things)	S.88 ICAC Act (offences relating to documents or other things)	Pled not guilty. Magistrate held that the evidence not given voluntarily. DPP appealed. Appeal heard. Referred back to Magistrate for clarification.
PLAYFORD, Colin Wesley	S.309 Crimes Act (unlawful access to data in computer) and bribery	8 x s.309 Crimes Act (unlawful access to data in computer). Insufficient evidence relating to the bribery charge.	Pled guilty. Placed on 3 year good behaviour bond.
RALSTON, Peter	Conspiracy to bribe		
REDDIE, Robert Anthony	Bribery	Inaufficient evidence	
ROBERTSON, Brian	S.87 ICAC Act (false or misleading evidence)	Evidence does not warrant prosecution	
ROBERTSON, David Sutton	8 x s.309(3)(e) Crimes Act (aid the unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence); 3 x s.249B Crimes Act (corrupt commissions or rewards) and 2 x bribery	8 x s.309(3)(e) Crimes Act (aid the unlawful access to data in computer) and s.87 ICAC Act (false or misleading evidence) and 3 x s.249B Crimes Act (corrupt commissions or rewards). Insufficient evidence for bribery charges.	Pled guilty to s.87 ICAC Act and guilty to 8 x s.309(3)(e) Crimes Act. In relation to s.87 ICAC Act - sentenced to 2 months hard labour (to be served concurrently with s.309 Crimes Act matters sentence). In relation to first 2 s.309(3)(e) Crimes Act - 2 months imprisonment. Fined \$3,200 on remaining 6 s.309(3)(e) counts. In relation to s.249B Crimes Act Informations were withdrawn at committal. Severity of sentence appeal lodged in relation to s.309 conviction, together with all grounds appeal in relation to s.87 conviction.
ROBINSON, Kevin	S.309 Crimes Act (aid the unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence); bribery and 2 x conspiracy to bribe	S.87 ICAC Act (false or misleading evidence) and 2 x common law bribery	Committed to District Court for sentencing.
SAMER, David	Bribery	Insufficient admissible evidence	

<b>SAMUELS, Barbara</b>	S.88 ICAC Act (offences relating to documents or other things)	Insufficient admissible evidence	
<b>SCOTT, Christine</b>	S.88 ICAC Act (offences relating to documents or other things)	Insufficient admissible evidence	
<b>SCOTT, John</b>	2 x s.309 Crimes Act (aiding - unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence); bribery and conspiracy to bribe	2 x s.87 ICAC Act (false or misleading evidence); 3 x s.249B Crimes Act (corrupt commissions or rewards - bribery) and 1 x conspiracy to bribe. Insufficient evidence for s.309 Crimes Act (aiding - unlawful access to data in computer) charge.	The 3 x s.249B Crimes Act and 1 x conspiracy to bribe charges committed for trial. The 2 x s.87 ICAC Act charge was stood over for mention to await outcome of other charges.
<b>SENKOWSKI, Richard</b>	S.309 Crimes Act (unlawful access to data in computer)	Insufficient admissible evidence	
<b>SHERIDAN, David</b>	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient admissible evidence	
<b>SHIELS, Richard</b>	S.88 ICAC Act (offences relating to documents or other things)	Public interest does not warrant prosecution	
<b>SIBRAA, Gregory</b>	DPP to decide	2 x s.1316 Commonwealth Social Security Act 1991 (soliciting disclosure of protected information)	Pleaded guilty. Fined \$2,000, 300 hours community service and placed on 3 year good behaviour bond.
<b>SMITH, Bradley York</b>	S.88 ICAC Act (offences relating to documents or other things); s.309 Crimes Act (aiding - unlawful access to data in computer) and 1 x bribery	2 x s.88 ICAC Act (offences relating to documents or other things). Insufficient admissible evidence for s.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Pleaded not guilty. Fined \$4,000 plus \$50 court costs per count (8,100 in total).
<b>SPACEY, Michael</b>	S.309 Crimes Act (aiding - unlawful access to data in computer); s.87 ICAC Act (false or misleading evidence) and 2 x bribery	S.87 ICAC Act (false or misleading evidence). Insufficient evidence for s.309 Crimes Act (aiding - unlawful access to data in computer) and 2 x bribery charges	
<b>STEPHENS, Robert Jon</b>	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient admissible evidence	
<b>STEWART, Kingsley James</b>	DPP to decide	S.70(1) Commonwealth Crimes Act	Pleaded not guilty. Committed for trial.
<b>SWEET, Barry</b>	3 x s.309 Crimes Act (aid the unlawful access to data in computer) and 3 x bribery	Insufficient admissible evidence	

THELWELL, Terence	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Insufficient admissible evidence	
THOMAS, Warren Robert	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient admissible evidence	
THURSTON, Craig	2 x s.309 Crimes Act (aiding - unlawful access to data in computer) and 3 x bribery	Insufficient evidence	
TUITE, Thomas Owen Sydney	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient admissible evidence	
TUNSTALL, Wilfred	217 x s.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient admissible evidence	
VAN POPPEL, William	S.87 ICAC Act (false or misleading evidence)	Insufficient admissible evidence	
WADDELL James Macbeth	S.309 Crimes Act (unlawful access to data in computer)	2 x s.309 Crimes Act (unlawful access to data in computer) and 1 x s.87 ICAC Act (false or misleading evidence)	
WALKER, Gregory	Bribery	Insufficient admissible evidence	
WATHAROW, Terence	S.87 ICAC Act (false or misleading evidence) and 2 x bribery	Criminal proceedings not be instituted	
WATTS, Lynette	S.309 Crimes Act (aid the unlawful access to data in computer) and bribery		
WATTS, Monique	S.309 Crimes Act (aid the unlawful access to data in computer) and bribery		
WATTS, Robert	S.309 Crimes Act (aid the unlawful access to data in computer) and bribery		
WEBSTER, Steven	S.309 Crimes Act (unlawful access to data in computer) and bribery	Insufficient evidence. Position may alter subject to Elelman prosecution.	
WEGERICH, Francis	4 x s.87 ICAC Act (false or misleading evidence)	4 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty to 2 x s.87 ICAC Act. Fined \$500 and placed on good behaviour bond.



<b>WELLS, Gary Arthur</b>	2 x s.309 Crimes Act (aiding - unlawful access to data in computer); 2 x s.87 ICAC Act (false or misleading evidence); 2 x bribery and 2 x conspiracy to bribe	7 x conspiracy to bribe and 1 x s.87 ICAC Act (false or misleading evidence). Insufficient evidence for 2 x s.309 Crimes Act (aiding - unlawful access to data in computer) and 2 x bribery	Pleaded guilty. Placed on 5 year good behaviour bond and ordered to pay \$25,000 under Confiscation of Proceeds of Crime Act.
<b>WILLIAMS, Dennis Malcolm</b>	S.309 Crimes Act (aiding - unlawful access to data in computer) and bribery	Indemnity given against prosecution in return for evidence in relation to the prosecution of John Scott	
<b>WILSON, Eric</b>	S.87 ICAC Act (false or misleading evidence) and bribery		
<b>ZOGHBI, Assad</b>	2 x s.309 Crimes Act (aiding - unlawful access to data in computer) and 2 x bribery		

**OPERATION 22 (VINCIBLE)  
INVESTIGATION INTO ALLEGATION THAT SYDNEY CITY COUNCIL EMPLOYEE SOLICITED AND OBTAINED MONIES  
RE TRADE REFUSE IN SOUTH SYDNEY COUNCIL AREA**

<b>Name</b>	<b>Matters Referred to DPP</b>	<b>Offences Advised by the DPP</b>	<b>Outcome</b>
<b>DONNELLY, Leon</b>	S.249B(1)(b) Crimes Act (corruptly receiving commissions and other corrupt practices) and s.178BA or s.178BB Crimes Act (obtaining money by deception or false or misleading statements)	S.249B(1)(b) Crimes Act 1900 (corruptly receiving benefit)	Pleaded guilty. Entered into recognisance in sum of \$1,000 to be of good behaviour for 12 months, plus court costs of \$40.

**OPERATION 23 (WALLOW)  
REPORT ON INVESTIGATION INTO HARASSING TELEPHONE CALLS  
MADE TO EDGAR AZZOPARDI**

Name	Statement pursuant to s.74(5) ICAC Act	Offences Advised by the DPP	Outcome
ABEL, Gregory Stephen	4 x s.80(c) ICAC Act and 1 x s.85ZE Crimes Act 1914	4 x s.80(c) ICAC Act and 1 x s.85ZE Crimes Act	Pleaded guilty. Fined \$5,000 plus court costs and 200 hours community service.
BROWN, Peter	1 x s.85ZE Crimes Act 1914 (inciting); s.6 Crimes Act and s.87 ICAC Act (false or misleading evidence)	2 x 87 ICAC Act (false or misleading evidence). Insufficient evidence to proceed with s.85ZE Crimes Act and s.6 Crimes Act 1914	Pleaded not guilty. Convicted summarily to 50 hours community service on both counts. (Dismissed from Police Service). Appeal to Supreme Court to have convictions quashed dismissed with costs.
WILLIAMS, Kylie Michelle	? x s.87 ICAC Act; s.7A and s.85ZE Crimes Act 1914 (inciting)	6 x s.87 ICAC Act (false or misleading evidence) and s.7A and s.85ZE Crimes Act 1914 (inciting)	Pleaded guilty. 6 x s.87 ICAC Act - 80 hours community service per count and court costs. S.85ZE Crimes Act - 4 months imprisonment but released on recognisance of \$1,000 to be of good behaviour for 3 years. Fined \$4,500 plus court costs.

**OPERATION 24 (YARRA)  
REPORT ON INVESTIGATION INTO POLICE AND TRUCK REPAIRERS**

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
BUDWORTH, Luke John	Break, enter and steal	Break, enter and steal	Pleaded guilty. Committed for trial. Sentenced to 9 months imprisonment.
HENWOOD, Gary	Break, enter and steal and larceny as a servant	Break, enter and steal and larceny as a servant	In relation to break enter and steal and larceny as a servant, 10 months fixed term imprisonment. In relation to the false pretences, recognisance of \$5,000 to be of good behaviour for 5 years and accept supervision and guidance of Probation and Parole Service.

**OPERATION 31 (HELIX)  
REPORT ON INVESTIGATION INTO ROAD WORKS IN THE SHIRE OF KYOGLE**

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
MOSS, Earl Desmond	1 x s.178BA or s.178BB Crimes Act	Not proceeding - exculpatory evidence obtained	
STANDFIELD, Harold John	2 x s.87 ICAC Act (false or misleading evidence)	2 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty on one count and fined \$250 plus court costs. On second count - s.556A Crimes Act (offence proven but no conviction recorded). All grounds appeal withdrawn and dismissed.

**OPERATION 35 (KOA)  
REPORT ON INVESTIGATION INTO THE USE OF INFORMERS**

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
DUNN, Barry Wentworth	2 x Listening Devices Act	Not proceeding	

**OPERATION 36 (LEARY)  
INVESTIGATION INTO CONDUCT OF NIGHT ATTENDANTS EMPLOYED AT  
FLEMINGTON MARKET BY THE SYDNEY MARKET AUTHORITY**

Name	Matters Referred to the DPP	Offences Advised by the DPP	Outcome
BEATTIE, Ronald Norman	1 x s.156 Crimes Act (larceny by a servant)	1 x s.156 Crimes Act (larceny by a servant)	Pleaded guilty. Fined \$300 plus court costs of \$45.
CASTRO, Geoffrey William	4 x s.156 Crimes Act (larceny by a servant)	4 x s.156 Crimes Act (larceny by a servant)	Pleaded guilty. Fined \$500 plus court costs of \$45 on first count. Sentence deferred on remaining 3 counts in consideration of self recognisance in sum of \$500 to be of good behaviour for 3 years.

MARTIN, Noel Mervyn Leslie	3 x s.156 Crimes Act (larceny by a servant)	3 x s.156 Crimes Act (larceny by a servant)	Pleaded guilty. All grounds appeal listed.
NOONAN, Ronald William	3 x s.156 Crimes Act (larceny by a servant)	3 x s.156 Crimes Act (larceny by a servant)	Pleaded guilty. Fined \$300 plus court costs and \$376.40 witness expenses on first count. Sentence deferred on second count with self recognisance of \$150 to be good for 12 months.
O'SHEA, Kenneth George	4 x s.156 Crimes Act (larceny by a servant)	4 x s.156 Crimes Act (larceny by a servant)	Pleaded guilty. Fined \$500 plus court costs on first count. Sentence deferred on remaining 3 counts in consideration of self recognisance of \$500 to be of good behaviour for 3 years
SCHETTINO, Gerardo	1 x s.156 Crimes Act (larceny by a servant)	1 x s.156 Crimes Act (larceny by a servant)	Pleaded guilty. Fined \$500 plus \$45 court costs.
TUKERANGI, William Henry	1 x s.156 Crimes Act (larceny by a servant)	1 x s.156 Crimes Act (larceny by a servant)	Pleaded not guilty. Matter heard ex parte. Fined \$500 plus \$45 court costs and witness expenses of \$375.40.

**OPERATION 37 (LEENA)  
INVESTIGATION INTO CONDUCT OF SERGEANT PINKERTON AND OTHERS  
IN CONJUNCTION WITH CONFINEMENT OF PRISONER  
LIVERPOOL POLICE STATION**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
PINKERTON, William James	1 x s.99(1) Police Service Act (bribery)	6 x s.99(1) Police Service Act (bribery)	Pleaded not guilty. DPP directed proceedings be terminated. Informations dismissed.

**OPERATION 39 (MILLOO)**  
**REPORT ON INVESTIGATION INTO THE RELATIONSHIP BETWEEN POLICE AND CRIMINALS**

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
BELLAMY, Graham Valentine	S.87 ICAC Act (false or misleading evidence); stealing and conspiracy to steal	3 x s.87 ICAC Act (false or misleading evidence) and 1 x s.178A Crimes Act (fraud)	
BOWEN, Grahame Peter	10 x s.87 ICAC Act (false or misleading evidence) and ss.319 & 393 Crimes Act (conspiracy to pervert the course of justice)	3 x s.87 ICAC Act (false or misleading evidence)	
CHAFFEY, Lance William	Common law misdemeanour - failure to perform duty	Not proceeding with prosecution since Chaffey cleared by Police Tribunal of disciplinary action	
CONNOR, Bradley Robert	S.87 ICAC Act (false or misleading evidence)	3 x s.87 ICAC Act (false or misleading evidence)	Pleaded guilty. S.558 Crimes Act - entered into a recognisance in the sum of \$3,000 to be of good behaviour for 3 years. Ordered to pay \$46 court costs on each charge.
DALY, Ronald	S.393 Crimes Act (conspiracy - 2 x conspiracy to pervert the course of justice and 1 x conspiracy to bribe a public official) and s.87 ICAC Act (false or misleading statements)	1 x s.393 Crimes Act (conspiracy to pervert the course of justice) and 4 x s.87 ICAC Act (false or misleading statements). Insufficient evidence in relation to the conspiracy to bribe public official charge	
HARDING, Brian Robert	12 x s.87 ICAC Act (false or misleading evidence) and ss.319 & 393 Crimes Act (conspiracy to pervert the course of justice)	6 x s.87 ICAC Act (false or misleading evidence) and 6 x s.330 Crimes Act (false swearing) in the alternative	
STOCKWELL, Graham Daniel	S.117 Crimes Act (larceny)	1 x s.117 Crimes Act (larceny)	Pleaded guilty. S.558 Crimes Act (deferred sentence). Entered into a recognisance in the sum of \$3,000 to be of good behaviour for 3 years. In addition, ordered to pay \$46 court costs.
WEDDERBURN, Colin Francis	S.8(1) Police Regulations and Misconduct Act (official misconduct) and ss.319 & 344A Crimes Act (attempt to pervert the course of justice)	Insufficient evidence	

**OPERATION 40 (MIMOSA)  
INVESTIGATION INTO CONDUCT OF ALDERMAN HELEN ROBBIE  
OF SYDNEY CITY COUNCIL AND OTHERS IN RELATION TO ALLEGED USE OF COUNCIL STAFF  
AND DOCUMENTS FOR HER PRIVATE PURPOSES**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
ROBBIE, Helen	1 x s.300(1) Crimes Act (making or using false instruments)	1 x s.300(1) Crimes Act (making or using false instruments)	Pleaded not guilty. S.556A Crimes Act (matter proven but charge dismissed).

**OPERATION 45 (BANKSIA)  
REPORT ON INVESTIGATION INTO CONDUCT OF PRESENT AND FORMER OFFICERS  
OF STATE RAIL AUTHORITY IN GRAFTON AREA RE AWARDING OF WORK TO CONTRACTORS**

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
BELL, David Brian	S.249B(1)(b) Crimes Act (corrupt commissions or rewards) and s.80(c) ICAC Act (obstruction of Commission - false or misleading statement)	266 x s.178BB Crimes Act (obtaining money, etc. by false or misleading statements). DPP advised that s.80(c) ICAC Act is statute barred	
CHILD, Ronald Thomas	97 x s.178BB Crimes Act (obtaining money by false or misleading statements) and 6 x s.249 Crimes Act (corrupt commissions or rewards)	1 x s.87 ICAC Act (false or misleading statements), 92 x s.178BB Crimes Act (obtaining money by false or misleading statements) and 5 x s.249B(1) Crimes Act (corrupt commissions or rewards received or solicited by an agent)	Committed for trial in relation to s.87. Discharge of 92 x s.178BB but committed for trial on remaining 5 x s.249B(1).
CZAPLA, Jan Aleksander	S.249B(1)(b) Crimes Act (corrupt commissions or rewards) and s.80(c) ICAC Act (obstruction of Commission)	DPP advised s.80 ICAC Act is statute barred. Insufficient evidence to proceed with 1 x s.249B(1)(b) Crimes Act (corrupt commissions or rewards), but will review matter if further evidence is obtained.	
DAVIES, Ian Neil	S.178BB Crimes Act (obtaining money, etc. by false or misleading statements); s.300(1) Crimes Act (making or using false instruments) and s.249B(1)(b) and (2)(a) or (b) Crimes Act (corrupt commissions or rewards)	92 x s.178BB Crimes Act (obtaining money, etc. by false or misleading statements) and s.249B(1)(b) and (2)(a) and (b) Crimes Act (corrupt commissions or rewards)	Informations dismissed

DAVIES, Phillip George	S.249B(1)(b) and (2)(a) or (b) Crimes Act (corrupt commissions or rewards); s.178BB Crimes Act (obtaining money, etc. by false or misleading statements)	S.249B(1)(b) and (2)(a) and (b) Crimes Act (corrupt commissions or rewards) and 2170 x s.178BB Crimes Act (obtaining money, etc. by false or misleading statements)	Discharged on 150 counts of s.178BB. Committed for trial on remaining 2,020 counts.
ELMS, Geoffrey Samuel	S.249B(1)(a)(i) or s.249B(1)(b) Crimes Act (corrupt commissions or rewards) and s.87 ICAC Act (false or misleading evidence)	4 x s.87 ICAC Act (false or misleading evidence) and 1 x s.249B(1)(b) Crimes Act (corrupt commissions or rewards)	Pleaded guilty to 4 x s.87 ICAC Act. Sentenced to 3 months imprisonment. Information dismissed in relation to 1 x s.249B(1)(b) Crimes Act.
FULLER, Charles Russ	S.249B(2)(a)(i) or (b) Crimes Act (corrupt commissions or rewards)	1 x s.249B(2)(b) Crimes Act (corrupt commissions or rewards)	Informations dismissed at committal.
GILLART, Michael Christopher	3 x s.178BB Crimes Act (obtaining money, etc. by false or misleading statements); s.300 Crimes Act (making or using false instruments) and 5 x s.249B(2)(b) Crimes Act (corrupt commissions or rewards)	3 x s.249B(2)(b) Crimes Act (give corrupt commissions or rewards) and 5 x s.249B(2)(b) Crimes Act (give corrupt commissions or rewards)	Set down for sentence indication in relation to 3 x s.249B(2)(b). Committed for trial in relation to 5 x s.249B(2)(b).
GREBER, Trevor Raymond	S.178BB Crimes Act (obtaining money, etc. by false or misleading statements)	1,058 x s.178BB Crimes Act (obtaining money, etc. by false or misleading statements)	
HAY, June Margaret	S.249B(1)(b) Crimes Act (corrupt commissions or rewards) and s.87 ICAC Act (false or misleading evidence)	3 x s.249B(1)(b) Crimes Act (aid and abet - corrupt commissions or rewards)	Committed for trial.
HAY, William Ross	S.249B(1)(b) Crimes Act (corrupt commissions or rewards); s.87 ICAC Act (false or misleading evidence) and fabricating a document	3 x s.249B Crimes Act (aid and abet - corrupt commissions and rewards) and 1 x s.87 ICAC Act (false or misleading evidence) and 1 x fabricating a document	Committed for trial in relation to 3 x s.249B. Sentenced to 200 hours community service in relation to s.87 and fabricating document offences/
JOHNSTON, Peter	S.178BB Crimes Act (obtaining money by false or misleading statements) and s.249B Crimes Act (corrupt commissions or rewards)	11 x s.178BB Crimes Act (obtaining money, etc. by false or misleading statements) and s.249B Crimes Act (corrupt commissions or rewards)	
KENNEDY, Gary	S.249B(1)(b) Crimes Act (corrupt commissions or rewards)	Insufficient evidence	
WEARING, Michael Bruce	S.249B(2) Crimes Act (corrupt commissions or rewards)	Insufficient evidence, but will review matter if further evidence is obtained	

**OPERATION 47 (DILLI)  
REPORT ON INVESTIGATION INTO THE CONDUCT OF BRIAN ZOUCH**

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
MERTON, Leslie	S.249B(2) Crimes Act (corrupt commissions or rewards); s.249F Crimes Act (aiding, abetting, etc.) and common law bribery	Conspiracy to bribe	
ZOUCH, Brian	2 x s.249B Crimes Act (corrupt commissions or rewards)	S.87 ICAC Act (false or misleading evidence) and conspiracy to bribe	

**OPERATION 51 (INDEX)  
INVESTIGATION INTO RELATIONSHIP OF PAUL McINNES  
OF STATE RAIL AUTHORITY AND PRIVATE CONTRACTORS**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
McINNES, Paul Bruce	S249B(1) (a)(i) Crimes Act (corrupt commissions or rewards) S178BB of Crimes Act (making false statements with intent to obtain financial advantage)	1 x s.249B Crimes Act (corruptly soliciting a benefit; 12 x s.178BB Crimes Act (making false or misleading statements with intention to obtain financial advantage); 4 x s.249B(1)(a)(i) Crimes Act (corruptly receiving benefit) and 1 x s.178BA Crimes Act (attempt to dishonestly obtain financial advantage by deception)	Pleaded not guilty. Committed for trial. Convicted of 8 x s.178BB and 2 x s.249B(1)(a)(i) and sentenced on each count to minimum term of 2 years and 3 months gaol with additional term of 9 months per count (all sentences to be served concurrently). Appealed to Court of Criminal Appeal against conviction and sentence. Appeal against conviction withdrawn and appeal against sentence dismissed.



**OPERATION 53 (KILPA)  
INVESTIGATION INTO CONDUCT OF TERENCE CARRINGTON BAXTER**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
BAXTER, Terence Carrington	2 x s.249B(1)(a)(i) Crimes Act (corrupt commissions or rewards)	2 x s.249B(1)(a)(i) Crimes Act (corrupt commissions or rewards)	Pleaded guilty. In relation to receipt of corrupt commission, s.558 (deferred sentence) in consideration of self recognisance of \$500 and to be of good behaviour for 2 years. In relation to solicit of corrupt commission, fined \$750 plus \$45 court costs.

**OPERATION 54 (NARDU)  
INVESTIGATION INTO UNAUTHORISED APPROPRIATION AND SUPPLY OF DOCUMENTS  
FROM THE REGISTRY OF BIRTHS, DEATHS AND MARRIAGES**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
DAVIES, Catherine Joy	2 x s.156 Crimes Act (larceny by a servant) 4 x s.296 Crimes Act (falsifying certificates)	1 x s.156 Crimes Act (larceny by servant), s.159 Crimes Act (larceny by servants in Public Service) and 4 x s.296 Crimes Act (false certification of certificate)	Pleaded guilty. S.156 Crimes Act sentenced to 120 hours community service; s.159 sentenced to 80 hours community service. 4 x s.296 Crimes Act, s.558 Crimes Act recognisance of \$1,000 to be of good behaviour for 3 years and fined \$750.
GARVAN, Jennifer Anne	2 x s.302 Crimes Act (custody of false instrument)	2 x accessory before the fact to the false certification of birth certificates 2 x s.302 of Crimes Act (custody of a false instrument)	Pleaded guilty. For each charge received s.558 Crimes Act (deferred sentence) conditional on entering into recognisance of \$500 to be of good behaviour for 2 years and fined \$250.
WILLIAMS, Paul	1 x s.302 Crimes Act (custody of false instruments)	1 x s.302 Crimes Act (custody of false instrument) and 1 x accessory before the fact to the false certification of a birth certificate	Pleaded guilty. In relation to accessory before the fact charge received s.558 Crimes Act (deferred sentence) - entered into recognisance of \$500 to be of good behaviour for 2 years and fined \$250. DPP withdrew s.302 charge.

**OPERATION 55 (ORBIT)  
INVESTIGATION INTO CONDUCT OF EDISON M ADAM**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
ADAM, Edison Markus	11 x s.178BA Crimes Act (obtaining benefit by deception - accessory before the fact) and 13 x s.249B Crimes Act (corruptly soliciting and receiving bribes)	11 x s.178BA Crimes Act (obtaining benefit by deception - accessory before the fact); 10 x s.249B Crimes Act (corruptly receiving bribes) and 3 x s.249B Crimes Act (corruptly soliciting bribes)	Pleaded guilty to 1 x s.249B (receipt), 10 x s.249B (solicit) and 2 x s.178BA. In relation to 2 x s.178BA - 12 months periodic detention. In relation to 11 x s.249B - 6 months cumulative periodic detention. Severity and sentence appeal heard at Parramatta District Court. Severity appeal dismissed but Adam's sentence amended to penal servitude of 2 years to be served by way of periodic detention.
XUEREK, Julian Joseph	11 x s.178BA Crimes Act (obtaining benefit by deception) and 10 x s.249B Crimes Act (corrupt commissions and rewards - solicitation of a bribe and aiding and abetting solicitation of a bribe)	11 x s.178BA Crimes Act (obtaining benefit by deception); 1 x s.249B Crimes Act (corrupt commissions and rewards - aiding and abetting solicitation of a bribe) and 9 x s.249B Crimes Act (corrupt commissions and rewards - solicitation of a bribe)	Pleaded guilty to 2 x s.178BA Crimes Act and 10 x s.249B Crimes Act. In relation to 2 x s.178BA received 12 months periodic detention. In relation to 10 x s.249B received 6 months cumulative periodic detention. Severity appeal was heard at Parramatta District Court and dismissed.

**OPERATION 62 (TAPDANCE)  
INVESTIGATION INTO RELATIONSHIP BETWEEN BRIAN O'MARA AND  
BRIAN O'MARA & ASSOCIATES AND EMPLOYEES OF THE WATER BOARD**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
O'MARA, Brian	S.178BA Crimes Act (obtaining money, etc. by deception)	S.178BA Crimes Act (obtaining money, etc. by deception)	Pleaded guilty. Fined \$2,000 plus \$46 court costs and ordered to pay \$1,200 compensation.

**OPERATION 63 (IVORY)**  
**INVESTIGATION INTO CONDUCT OF OFFICERS OF THE**  
**NORTHERN SYDNEY AREA HEALTH SERVICE, THE DEPARTMENT OF PUBLIC WORKS**  
**AND OTHER PUBLIC OFFICIALS**

Name	Matters referred to DPP	Offences Advised by the DPP	Outcome
FLEMING, Rodney Trevor	2 x s.178BB Crimes Act (publish statement with intent to obtain financial advantage) and 4 x s.178BA Crimes Act (dishonestly obtain financial advantage)	2 x s.178BB Crimes Act (publish statement with intent to obtain financial advantage) and 4 x s.178BA Crimes Act (dishonestly obtain financial advantage)	Pleaded guilty. In relation to s.178BB - entered recognisance of \$1,000 to be of good behaviour for 2 years plus court costs of \$300. In relation to s.178BA - s.556A Crimes Act (deferred sentence).

**OPERATION 67 (PROTON)**  
**REPORT ON INVESTIGATION INTO MATTERS RELATING TO POLICE AND CONFIDENTIAL INFORMATION**

Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
FREEMAN, Gregory	2 x bribery and attempted bribery	2 x receipt of bribe and 1 x attempted solicitation of bribe	

**OPERATION 75 (RINGER)**  
**REPORT ON INVESTIGATION INTO THE RTA AND PROPERTY DISPOSAL**

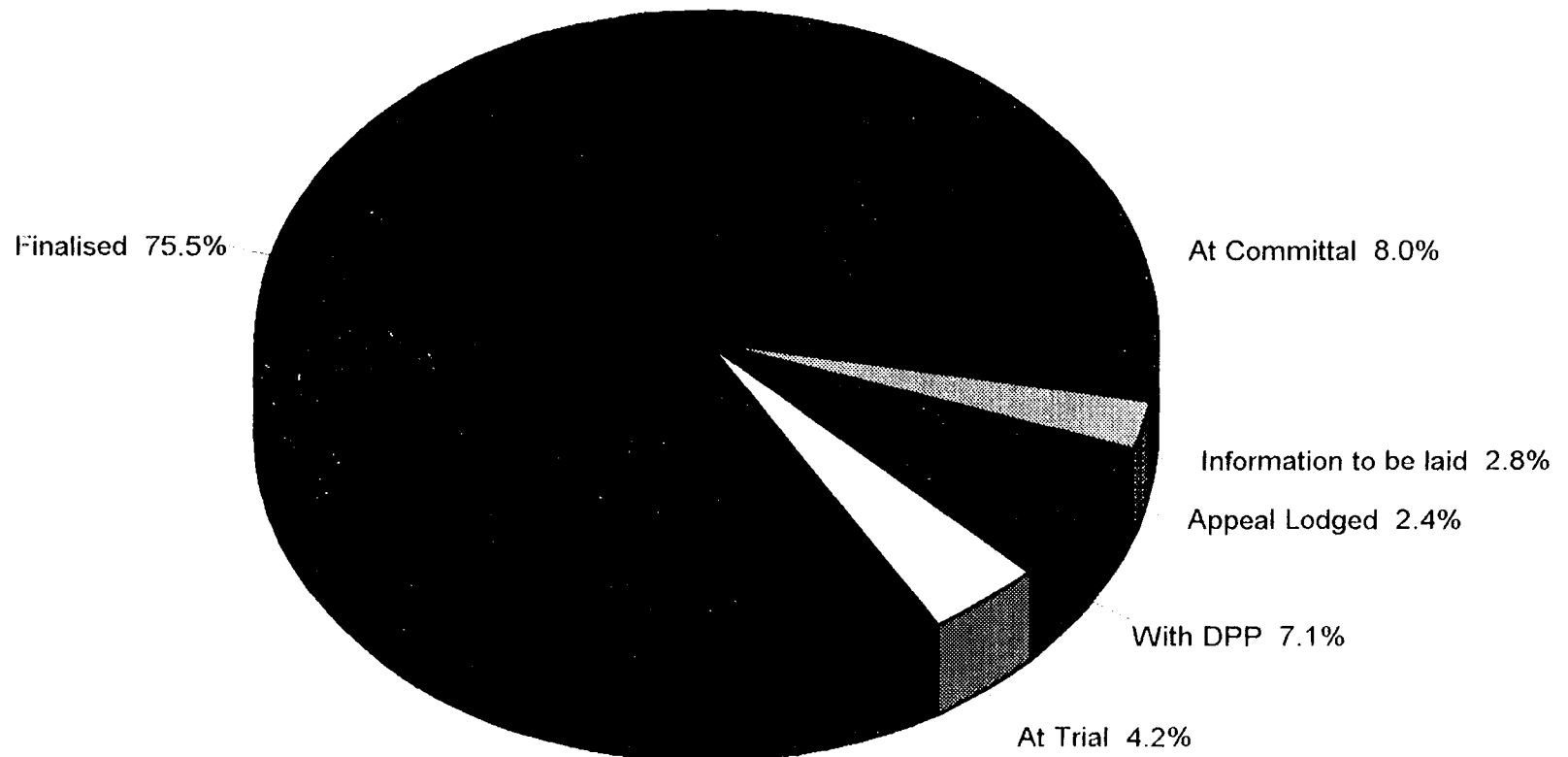
Name	Statement pursuant to s.74A(2) ICAC Act	Offences Advised by the DPP	Outcome
SAMUEL, Peter	Common law bribery and/or s.249B(1) Crimes Act (corruptly soliciting and receiving bribes)		

**OTHER PROSECUTIONS**

Name	Matters Referred to DPP	Offences Advised by the DPP	Outcome
BYRNE, John Michael	S.178BA Crimes Act (obtaining money, etc. by deception)	S.178BA Crimes Act (obtaining money, etc. by deception)	Pleaded not guilty. Prima facie case found but dismissed Information due to application of May v. O'Sullivan.
DUGANDZIC, Pero	S.249B(2)(a)(i) or (ii) Crimes Act (corrupt commissions or rewards)	S.249B(2)(a)(ii) Crimes Act (corrupt commissions or rewards)	Pleaded guilty. Fined \$2,000.
HICKEY, Allan James	2 x 178BA Crimes Act (obtaining money by deception)	2 x 178BA Crimes Act (obtaining money by deceptions)	Pleaded guilty. Committed for trial. s.558 (deferred sentence) on condition enter into recognisance self \$1,000 to be of good behaviour for 3 years.
JENNINGS, Raymond	S.249B Crimes Act (corrupt commissions or rewards)	5 x s.249B(2) Crimes Act (corrupt commissions or rewards)	No charges were instituted due to the medical incapacity of the defendant
KALLIAS, Evanglos	1 x s.249B(2)(a)(i) Crimes Act (corrupt commissions or rewards)	Insufficient evidence	
MATSOUKAS, Harry	2 x s.249B(2) (corrupt commissions or rewards)	2 x s.249B(2)(a)(ii) Crimes Act (corrupt commissions or rewards)	Pleaded not guilty. Prima facie case found but Magistrate held jury not likely to convict. Informations dismissed.
STEFANIC, Albin	Proceeded directly to the DPP	S.249B Crimes Act (corrupt commissions or rewards)	Pleaded not guilty. Convicted summarily. Received s.558 (deferred sentence) conditionally on entering into recognisance in sum of \$500 to be of good behaviour for 12 months. Fined \$700 plus court costs of \$46. Forfeiture order of \$300 made under Confiscation of Proceeds of Crime Act (NSW). All grounds appeal listed at District Court of Sydney.
THEOHRIS, Con	S.249B(2) Crimes Act (corrupt commissions or rewards)	Insufficient evidence	

# STATUS REPORT ON PROSECUTIONS ARISING OUT OF ICAC INVESTIGATIONS

as at 30 June 1995 (212 persons)





## DISCIPLINARY ACTION REPORT - PJC

### OPERATION 3 (BARRACUDA) REPORT ON INVESTIGATION INTO NORTH COAST LAND DEVELOPMENT

Name	Statement pursuant to s.74(5) ICAC Act	Head of Authority Decision	Outcome
CURRAN, Richard Denis	Disciplinary action under s. 66(f) Public Sector Management Act	Disciplinary action under s. 66(f) Public Sector Management Act	No record of any disciplinary action having been undertaken.
MERCER, Noel Richard	Disciplinary action under s. 66(b), (e) or (f) Public Sector Management Act	Disciplinary action under s. 66(b), (e) or (f) Public Sector Management Act	Demoted

### OPERATION 8 (ITA) REPORT ON INVESTIGATION INTO DRIVER LICENSING

Name	Statement pursuant to s.74(5) ICAC Act	Head of Authority Decision	Outcome
AMORE, Benito	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed. Appeal dismissed.
ARARCO, Salvatore	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed.
BERAINI, John	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Driving instructors licence lapsed - unable to renew. Appealed.
CATALDO, Mario	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed.
CORPS, John Barry	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed. Appealed to NSW Industrial Commission. Appeal was also made under GREAT, but this was subsequently withdrawn.
DANDACHLI, Angela	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Matter still proceeding.
DODIC, Ivan	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence.

Name	Statement pursuant to s.74(5) ICAC Act	Head of Authority Decision	Outcome
FLYNN, Noel Thomas	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
FORSYTH, Vernon John	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
FRASER, Alan Michael	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
FREZZA, Lina	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed.
GARCIA, Ignacia	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence for 6 months.
HELOU, Salim	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence.
KALERGIS, Nicholas	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed. Appeal dismissed.
KEWAL-SINGH, Subeq Sing	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	
LAWES, Keith	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
MANTON, Kenneth John	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
MATTA, Joseph	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence.
MITRODIMAS, Ernest	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed to Burwood Local Court.
NG, David Yiu Fai	Action under motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence.
NGUYEN, Thanh Thin	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence.



Name	Statement pursuant to s.74(5) ICAC Act	Head of Authority Decision	Outcome
PEPONIS, John	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed to Burwood Local Court but found to be unfit person to be driving instructor.
PETROU, George	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed to Supreme Court.
PHAM, Van Dai	Action under the Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under the Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Licence lapsed - unable to renew.
PYPER, Quentin Thomas	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed. Appealed to NSW Industrial Commission. Appeal was also made under GREAT but this was subsequently withdrawn. Pyper also tried to get driving instructors licence but this was refused.
RIX, Alan Christopher	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
SEXTON, Paul Anthony	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
SIMMONS, Victor John	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed. Appealed to Industrial Commission but withdrawn before hearing commenced
STOJANOVIC, Alda	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed but withdrawn before hearing.
TADDROUS, Michael	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Taddrous is now deceased.
TAKSA, Michael	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed. Appealed to NSW Industrial Commission. Appeal was also made under GREAT but this was subsequently withdrawn.
TRUONG, Van Huong	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed to Fairfield Local Court.
TSINTRIS, Anastasia	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed to Supreme Court, but was found to be unfit to hold a driving instructors licence.

Name	Statement pursuant to s.74(5) ICAC Act	Head of Authority Decision	Outcome
UKHANNA, Charles	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed to Fairfield Local Court.
VIEIRA, Joao	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed to Supreme Court.
WALL, Murray Joseph	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed. Appealed to Industrial Commission but withdrew before hearings.
ZUNIC, Steve	Action under the Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Action under the Motor Vehicle Driving Instructors Act (cancellation of driving instructors licence)	Cancellation of driving instructors licence. Appealed but was found not to be a fit person to hold a driving instructors licence.

**OPERATION 15 (OSMOSIS)  
REPORT ON INVESTIGATION INTO DEALINGS BETWEEN HOMFRAY CARPETS AND  
THE DEPARTMENT OF HOUSING**

Name	Statement pursuant to s.74(5) ICAC Act	Head of Authority Decision	Outcome
McBeth, Eric	Disciplinary action under s.66(e) Public Sector Management Act	Disciplinary action under s.66(e) Public Sector Management Act	Reprimanded under s.66(e) Public Sector Management Act.

**OPERATION 17 (RADAR)  
INVESTIGATION INTO WHETHER PAYMENTS WERE MADE TO POLICE OFFICERS  
IN LIVERPOOL AREA**

Name	Matters Referred	Head of Authority Decision	Outcome
PRIEST, Michael Patrick	Police Service disciplinary action	Bring discredit upon the Police Service	Permitted to resign
SUTTON, Stephen Wayne	Police Service disciplinary action	Bring discredit upon the Police Service	Permitted to resign

**OPERATION 18 (QUANDARY)  
REPORT ON INVESTIGATION INTO WALSH BAY REDEVELOPMENT PROJECT**

<b>Name</b>	<b>Statement pursuant to s.74(5) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
<b>MACDONALD, Les</b>	Disciplinary action under s.66 Public Sector Management Act or dismissal or termination of services.	N/A	Resigned prior to publication of the report.

**OPERATION 20 (TAMBA)  
REPORT ON UNAUTHORISED RELEASE OF GOVERNMENT INFORMATION**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
<b>ALLEN, Keith Robert</b>	Police Service disciplinary action	Police Internal Affairs considering matter	
<b>BAPTIST, Christopher John</b>	Police Service disciplinary action	Dismissal	Dismissed.
<b>BETTS, Jeffery Charles</b>	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
<b>BRIGHT, David Baird</b>	Police Service disciplinary action	2 x provide false/unauthorised information	Not sustained on both counts. Counselling by Commanding Officer regarding confidentiality of his password.
<b>CLARKE, Warren Maxwell</b>	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
<b>CLUGSTON, Bruce Thomas</b>	Police Service disciplinary action	Dismissal	Suspended from duty. Permitted to resign.

DUNDAS, Hugh Arthur	Police Service disciplinary action	Reprimand	Counselled by District Commander regarding unauthorised release of information.
EBBES, Peter Ronald	Roads & Traffic Authority disciplinary action (s.53 referral)	Disciplinary action	Disciplined due to misconduct, reprimanded and transferred to non-sensitive work location.
ELLICOTT, Peter Kenneth	Police Service disciplinary action	Reprimand	Counselled by District Commander regarding unauthorised release of information obtained through Police Service computer system.
ELLIOT, Phillip Michael	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
FARMER, Jack	Police Service disciplinary action	Dismissal	Suspended from duty. Permitted to resign.
HARRISON, Stephen Eric	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
JACOB, Paul Yervan	Police Service disciplinary action	Reprimand	Counselled by Commanding Officer regarding unauthorised release of information.
KYLE, Robert Alexander	Police Service disciplinary action	Reprimand	Counselled by District Commander regarding unauthorised release of information.
McMARTIN, Alan	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
MOONEY, John Bede	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
MORAN, Robert Charles	Police Service disciplinary action	Reprimand	Suspended but subsequently restored to duty. Reprimanded by District Commander in relation to engaging in unapproved secondary employment and unauthorised release of information from the Police Service computer system.
MUSGRAVE, Stephen Wayne	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
NAYLOR, Stephen Craig	Police Service disciplinary action	Reprimand	Suspended but subsequently restored to duty. Reprimanded by District Commander in relation to his responsibilities concerning the use of confidential police information.

O'TOOLE, Christopher John	Police Service disciplinary action	Dismissal	Suspended, then resigned.
PAGE, Norman Gregory	Police Service disciplinary action	Dismissal	Suspended, then resigned.
PLAYFORD, Colin Wesley	Police Service disciplinary action	Departmental investigation.	Suspended but subsequently restored to duty.
REDDIE, Robert Anthony	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
STEPHENS, Robert John	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
THOMAS, Warren Robert	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
TUITE, Thomas Owen Sydney	Police Service disciplinary action	Dismissal	Suspended, then resigned.
TUXFORD, Paul Edward	Police Service disciplinary action	Reprimand	Counselled by Commanding Officer regarding the need to ensure secrecy/security of all confidential police information and records
VALLIS, Paul Graham	Police Service disciplinary action	Reprimand	Reprimanded by Commanding Officer in relation to accessing/releasing confidential police information.
WADDELL, James Macbeth	Police Service disciplinary action	Suspension from duty	Suspended. A direction issued for the preferment of departmental charges of "misconduct" and "disobedience" with penalty yet to be determined.
WARK, Lorraine Gail	Disciplinary action by Personnel Directorate, Police Service, under the Public Sector Management Act	Disciplinary action by Personnel Directorate, Police Service, under the Public Sector Management Act	No evidence of misconduct.
WELLS, Gary Arthur	Roads & Traffic Authority disciplinary action (s.53 referral)	Dismissal	Dismissed.
WILLIAMS, Dennis Malcolm	Roads & Traffic Authority disciplinary action (s.53 referral)	Reprimand	Reprimanded. Transferred to non-sensitive work location.
WYLIE, David Rodney	Police Service disciplinary action	Reprimand	No evidence to sustain release of confidential police information.

**OPERATION 23 (WALLOW)  
REPORT ON INVESTIGATION INTO HARASSING TELEPHONE CALLS MADE  
TO EDGAR AZZOPARDI**

<b>Name</b>	<b>Statement pursuant to s.74(5) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
WILLIAMS, Kylie	Departmental investigation and disciplinary action	Suspended from duty pending investigation	Resigned
ABEL, Gregory	Departmental investigation and disciplinary action	Suspended from duty pending investigation	Resigned
BROWN, Peter	Departmental investigation and disciplinary action	Suspended from duty pending investigation	Dismissed
HALL, Craig	Departmental investigation and disciplinary action	Suspended from duty pending investigation	Charged with misconduct but reinstated to full duties with 2 years loss of seniority and subject to performance review and inspection.

**OPERATION 24 (YARRA)  
REPORT ON INVESTIGATION INTO POLICE AND TRUCK REPAIRERS**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
"B"	Police Service disciplinary action	Dismissal	Dismissed.
ROSS, Desmond Edward	Police Service disciplinary action	Dismissal	No disciplinary action taken other than to transfer him to other duties.
SCHONBERG, Peter John	Police Service disciplinary action	Dismissal	Cleared of disciplinary charges.

**OPERATION 26 (VINYL)  
REPORT ON INVESTIGATION INTO THE MARITIME SERVICES BOARD  
AND HELICOPTER SERVICES**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
JONES, Barry Edward	Dismissal	Dismissal	Jones tendered his resignation to the Maritime Services Board during the hearings.

**OPERATION 30 (GIDGEE)  
REPORT ON INVESTIGATION INTO THE PLANNING AND BUILDING DEPARTMENT  
OF SOUTH SYDNEY COUNCIL**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
HORIATOPOULAS Nicholas	Dismissal from South Sydney Council	Dismissal	Dismissed by South Sydney Council. Appealed to Industrial Court and was reinstated

**OPERATION 31 (HELIX)  
REPORT ON INVESTIGATION INTO ROAD WORKS  
IN THE KYOGLE SHIRE**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
ALBERT, Wayne Keith	Dismissal from Kyogle Shire Council.	Disciplinary action	No action taken.
KNIGHT, Patrick	Disciplinary action by Kyogle Shire Council - admonishment	Disciplinary action	Formally admonished.
MOSS, Stanley Lex	Dismissal from Kyogle Shire Council.	Disciplinary action	Demoted.

**OPERATION 35 (KOA)  
REPORT ON INVESTIGATION INTO THE USE OF INFORMERS**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
WOODHAM, Ronald	2 x s.85(f) Public Service Act 1979 (improper conduct)	2 x s.85(f) Public Service Act 1979 (improper conduct)	No action taken. The recommendation was set aside by the Supreme Court.

**OPERATION 38 (LINDEMAN)  
REPORT ON INVESTIGATION INTO THE SYDNEY WATER BOARD  
AND SLUDGE TENDERING**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
BOGEHOLZ, Sergio	Disciplinary action for misconduct - termination of services	Termination of services.	Dismissed. Appealed to GREAT and was reinstated.

**OPERATION 39 (MILLOO)  
REPORT OF INVESTIGATION INTO THE RELATIONSHIP BETWEEN POLICE AND CRIMINALS**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
CHAFFEY, Lance William	Police Service disciplinary action	2 x R.9(4) Police Service Regulations (failure to perform duty)	Charges dismissed.
CONNER, Bradley Robert	Police Service disciplinary action	12 x R.9(2) Police Service Regulations (false duty book entries) and 3 x R.9(3) Police Service Regulations (failure to perform duty/form inappropriate association)	Dismissed from the Police Service.
JOHNSON, Desmond Keith	Police Service disciplinary action	R.11(g) Police Service Regulations (failure in duty as police officer)	Charged with "neglect of duty". Admitted substance of charge. Received counselling from Assistant Commissioner.



MYATT, Robert John	Police Service disciplinary action	R.9(3) Police Service Regulations (failure to exercise strictest honesty and truthfulness) and 2 x R.9(4) Police Service Regulations (conduct calculated to bring discredit on the Police Service)	Charges dismissed.
PARKER, Kevin Joseph	Police Service disciplinary action	9 x R.9(2) Police Service Regulations (false duty book entries) and 7 x R.9(3) Police Service Regulations (failure to perform duty/form inappropriate association).	Dismissed from Police Service.
PRIEST, Robert	Police Service disciplinary action	5 x R.9(7) Police Service Regulations	Reduced in rank to 1st year Constable and will not be eligible for promotion until the expiration of 12 months.
SPENCE, Keith Malcolm	Police Service disciplinary action	R.9(4) Police Service Regulations (action calculated to bring discredit on Police Service), R.9(3) Police Service Regulations (failure to exercise strictest honesty and truthfulness), R.9(4) Police Service Regulations (conspiracy to pervert the course of justice) and R.9(4) Police Service Regulations (acceptance of bribe)	Departmental charges stayed until criminal charges dealt with. Trial yet to be heard. Suspended with pay.
STOCKWELL, Graham Daniel	Police Service disciplinary action	10 x R.9(2) Police Service Regulations (false duty book entries) and 11 x R.9(3) Police Service Regulations (failure to perform duty/form inappropriate association)	Dismissed from Police Service.
TAYLFORTH, George Henry	Police Service disciplinary action	R.9(4) Police Service Regulations (false duty book entries)	Charges withdrawn following advice from Crown Solicitor's Office.
WEDDERBURN, Colin Francis	Police Service disciplinary action	R.9(4) Police Service Regulations (failure to perform duty) and R.9(7) Police Service Regulations (failure to discharge duties impartially)	Admitted charges. Reprimanded by State Commander and fined \$2,000 (\$1,000 on each charge). Opted to take retirement.

**OPERATION 44 (ALLI)**  
**REPORT ON INVESTIGATION INTO THE STATE RAIL AUTHORITY - TRACKFAST DIVISION**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
CAMP, Gary	Disciplinary action with view to termination of his contract.	Internal investigation	Services terminated.
WILSON, Tony	Disciplinary action for misconduct	Internal investigation	Dismissed prior to publication of the report. Appealed

**OPERATION 45 (BANKSIA)**  
**REPORT ON INVESTIGATION INTO THE STATE RAIL AUTHORITY - NORTHERN REGION**

<b>Name</b>	<b>Statement pursuant to s.74A(2) ICAC Act</b>	<b>Head of Authority Decision</b>	<b>Outcome</b>
BELL, David	N/A	N/A	Resigned during investigation.
CHILD, Ronald Thomas	N/A	N/A	Services terminated as a result of information disclosed during public hearings.
CZAPLA, Jan Alexander	Dismissal	Dismissal - warrant issued for arrest	Services terminated by SRA as result of information disclosed during public hearings. Appealed to Transport Appeals Board.
ELMS, Geoffrey Samuel	Disciplinary action in relation to 3 x receipt of corrupt payments	Disciplinary action in relation to 3 x receipt of corrupt payments	Services terminated as a result of information disclosed during public hearings. Appealed to Transport Appeals Board.
HAY, William Ross	N/A	N/A	Services terminated as a result of information disclosed during public hearings.

**OPERATION 52 (JOURNAL)  
REPORT ON INVESTIGATION INTO THE METHERELL RESIGNATION  
AND APPOINTMENT**

Name	Statement pursuant to s.74A(2) ICAC Act	Head of Authority Decision	Outcome
GREINER, Nicholas Frank	In terms of s.9 ICAC Act , dismissal on reasonable grounds.	N/A	Resigned from State Government. Appealed corruption finding in Supreme Court and was successful.
MOORE, Timothy John	In terms of s.9 ICAC Act , dismissal on reasonable grounds.	N/A	Resigned from State Government. Appealed corruption finding in Supreme Court and was successful.



# **APPENDIX THREE**

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## ICAC's Procedures at Public Hearings





## INDEPENDENT COMMISSION AGAINST CORRUPTION

### **INDEPENDENT COMMISSION AGAINST CORRUPTION**

#### **PROCEDURES AT HEARINGS**

The Commission may hold hearings for the purposes of an investigation (s30 ICAC Act 1988). Hearings are an aid to, or part of, the investigation process. They are not held to "present a case" after a completed investigation.

Hearings may be held in public, or in private, or partly in public and partly in private, as the Commission decides (s31 ICAC Act).

Hearings will generally be conducted in public, unless circumstances warrant otherwise. This is because public hearings enable the public to see and hear about the Commission at work which enables the public to be educated about corruption, enhances public confidence in the Commission, and tends to increase the provision of information to the Commission. Closing submissions may be heard in private, although evidence has been received in public.

The Commission will hear and consider applications for all or part of a hearing to be private. Such applications will generally be heard in private if that is requested. Reasons for decisions will be given. By s31 the Commission is obliged, in reaching such decisions, to have regard to any matters which it considers to be related to the public interest. Private hearings may be necessary to avoid prejudice to current indictable criminal proceedings (s18). Other matters of relevance may be danger to personal safety or well-being, the need to protect an informant's identity, or unfair or unnecessary damage to reputation arising from anticipated evidence. This is not an exhaustive list.

The following procedure will be followed in respect of public hearings.

1. When, for the purpose of an investigation, the Commission decides to hold a public hearing, the Commission will generally give notice of that intention, both publicly and to such persons as the Commission believes are substantially and directed interested in any subject matter of the hearing.

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2. The notice will state the general scope and purpose of the proposed hearing, and the date, time and place of the first sitting.
3. One purpose of the notice will be to enable those persons who may wish to appear and be represented to arrange for their applications to be made on the first sitting day.
4. As provided by the Act, hearings will be conducted and presided over by the Commissioner or an Assistant Commissioner (s30(2)).
5. The courtesies which are customary in courts of law will be observed. Robes will not be worn. The person presiding should be addressed as "Commissioner" whether s/he be the Commissioner or an Assistant Commissioner.
6. Leave to appear for a person substantially and directly interested in the subject matter of the hearing or for a person who will be giving evidence at the hearing, will generally entitle the legal representative to ask questions of witnesses and to make submissions, but not to give advice to the person represented while he or she is in the course of giving evidence. Leave to appear may however be subject to limitations particularly when the person represented has an interest in part only of the subject matter of the hearing.
7. Leave to appear may be granted in respect of a hearing generally, or in respect of a specified part of a hearing.
8. Witnesses may apply for leave to be legally represented when they give evidence. Witnesses who wish to be legally represented should arrange to have their lawyer present at the time they are required to give evidence. Leave will generally be granted.
9. The hearings will be conducted with due regard to the provisions of section 17 of the Act, which provides:
  - (1) The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.
  - (2) The Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and hearings shall be conducted with as little emphasis on an adversarial approach as is possible.
10. In the case of witnesses who have furnished statements to the Commission, such statements may, in the discretion of the person presiding, be read in lieu of examination-in-chief.
11. In the case of a person seeking to give evidence, or of a person proposed as a witness by any person appearing or represented at a hearing, the Commission will generally require that a statement of the proposed evidence be provided to counsel assisting the Commission.



12. In view of the provisions of s17 of the Act the Commission may accept signed statements from persons not called as witnesses, or other informal proof, in relation to matters it considers not to be contentious.

13. Hearsay and other legally inadmissible material will generally only be received insofar as it appears to the person presiding that it may further the investigation for the purposes of which the hearing is being held. The Commission will not permit public hearings to become vehicles for the purveying of gossip, rumour or speculation. Questions must not be asked of, or propositions put to, a witness, without justification on the basis of the knowledge of, or instructions given to, the person asking the question. When questions are put to a witness which go to credit but not to an issue in the investigation, the Commission will generally not permit evidence to be called on collateral issues.

14. Statements or records of interview taken by ICAC investigators from significant witnesses will not as a matter of course be made available to other "affected persons". The question of access to such material will be determined by Counsel Assisting and a decision made dependent on various considerations.

15. When the Commission is aware that evidence will be given, in public hearing, of corrupt conduct by a person, the Commission will endeavour, where practicable and where it will not prejudice the investigation, to inform the person in advance. The person may then choose to attend and hear the evidence, or obtain a transcript of evidence.

16. Where a serious allegation is made about a person in a public hearing, the Commission will endeavour to afford the person an early opportunity to respond, subject to the seriousness of the allegation and the circumstances of the investigation. Such response may be by evidence, in writing, or other means, as appropriate.

17. The Commission will not necessarily hear all evidence about a person before it first takes evidence from that person, although a person the subject of evidence will be given the opportunity to respond to all the evidence. This simply means that an affected person will not only be called to give evidence after all other evidence, and sometimes affected persons may be called to give evidence more than once during a hearing where the investigation so requires.

18. The Commission may make orders prohibiting publication of evidence, generally, or temporarily, or in specified circumstances (s112). Such orders are most often used in relation to private hearings or current criminal proceedings. Orders may be made for reasons including, but not limited to, the following: to protect a person named in, but not the subject of, a Commission hearing; to prevent publication of an allegation pending a response by the subject of it; to protect the safety or welfare of a person; to protect minors; to protect trade secrets or law enforcement procedures; or for national security reasons.

19. Submissions on evidence may be taken in writing, or orally, or a combination of both, as appropriate to the circumstances of particular investigations, and may be taken in private.

20. As required by s74 of the Act, all public hearings will be the subject of report to Parliament. Each report must include, pursuant to s74A(2), a statement in respect of each "affected person" as to whether the Commission is of the opinion that consideration should be given to the prosecution of the person for a specified offence, or the taking of action against the person for a specified disciplinary offence or with a view to dismissing, or dispensing with or terminating the services of, the person. Reports may also contain findings of corrupt conduct in relation to an affected person. An "affected person" is a person against whom substantial allegations have been made in the course of, or in connection with, an investigation.

Private hearings are generally conducted similarly to public hearings, save that:

- . they are not usually publicly advertised;
- . members of the public, or classes of people, or individuals may be excluded from the hearing;
- . the requirements as to an early public opportunity to respond to allegations, or prior notice of anticipated evidence, may not apply because allegations are not made in public,
- . orders pursuant to s112 ICAC Act are generally made prohibiting publication of some or all of the evidence. These orders generally have the effect that the media cannot report the evidence and those present in the hearing cannot talk about the hearing to others, save that witnesses can talk with their legal representative. These orders can be lifted or varied as the Commission considers desirable.

May 1995

# APPENDIX FOUR

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Copy of Premier's Memorandum  
95-34:

**“Referral of Matters to the  
Independent Commission Against  
Corruption.”**



3 March 1995

TO ALL MPS  
State -

1~

Dear 2~

The purpose of this letter is to request your co-operation in the confidential handling of complaints to the Commission of possible corrupt conduct. I am writing in the same terms to all Members of the New South Wales Parliament.

Quite often an announcement is made that a matter has been or is being sent to the Commission. In consequence the Commission may become embroiled in a controversy involving persons outside the Commission. This has not happened frequently in the State Government sector, but there have been some instances.

Real harm can follow from publicising allegations of corruption before or at the time of their submission to the Commission. This harm can occur in two main ways. The first is that unfair damage to people's reputations can be caused by the premature publicity of claims of corrupt conduct. The second is that, if there is any basis for the complaint, such publicity may lead to the disappearance of important evidence.

All that has been said is by way of request. The Commission cannot and does not seek to limit the way in which people make complaints or provide information to it. However, as a general rule, the public interest will be best served by confidential submission of complaints and information.

Yours faithfully

The Hon B S J O'Keefe AM QC  
Commissioner

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\*\*\*END\*\*\*



## MEDIA RELEASE

23 June 1995

### BATHURST POWER BOARD SACKED, ICAC TO INVESTIGATE

The Independent Commission Against Corruption will investigate the circumstances surrounding a pay-out of nearly \$1.4 million to two top managers of a Bathurst-based electricity distributor.

Acting Minister for Energy, Carl Scully, said today he will refer the matter to the ICAC on the basis of advice he has received from the Crown Solicitor.

"The ICAC will investigate the chairman and board of Southern Mitchell Electricity, the two managers who received pay outs and any other people involved.

"Regardless of what the ICAC may find, I have today sacked the board of Southern Mitchell Electricity and appointed Mr Peter Holligan as a temporary administrator," Mr Scully said.

"I have taken this action in line with the recommendations flowing from the departmental investigation into the terminations," Mr Scully said.

Mr Scully said investigation had found that the majority of the board behaved incompetently in approving the pay-outs.

The investigation revealed that SME general manager Jeffrey Horner was paid \$922,725 and assistant general manager Edwin Chenery \$519,443..

Mr Scully said he wanted to make it clear that only five of the eight directors voted to approve the pay-outs.

"Councillors Leslie Wardman, Lyle Orreal and William Crawford voted against the pay-outs and tried to have the payments stopped.

"In my view these three men fulfilled their responsibilities as board members and trustees of public money.

**(See major findings overleaf)**

**The major findings of the departmental investigation are:**

- No board papers were distributed prior to the special board meeting on 14 June which decided to terminate the contracts
- In the meeting board members were given a lengthy legal advice supporting the proposal to grant the \$1.4 million pay-out
- Mr Horner and Mr Chenery provided the legal advice supporting the pay-out but this was not made clear to many of the board members at the meeting
- This legal advice influenced the decisions of a number of directors
- The board did not seek any independent legal advice
- Mr Toole did not keep a copy of the legal advice nor include one in the records of the meeting and directors were not allowed to take a copy of the advice with them from the meeting.
- It was inappropriate for Mr Horner and Mr Chenery to be present while the board considered and voted on whether to terminate their services.
- The board did not discuss the size of the pay outs to Mr Horner and Mr Chenery before they were made.
- The deeds of release that transferred the \$1.4 million to Mr Horner and Mr Chenery were prepared on their instructions. There is no evidence of Mr Toole seeking independent legal or managerial advice on this matter.
- The size of the pay outs were excessive by public service standards.

Media contacts: Paul Willoughby (041) 110 4384 or Michael Coutts-Trotter (041) 123 2904 or (02) 228 3535.



PREMIER OF NEW SOUTH WALES  
AUSTRALIA

MEMORANDUM NO. 95-34

23393

REFERRAL OF MATTERS TO THE INDEPENDENT COMMISSION  
AGAINST CORRUPTION

(Memorandum to all Ministers)

Section 73 of the ICAC Act provides that the Parliament can refer matters to the ICAC for investigation. If a matter is referred pursuant to this section, the ICAC must investigate that matter (Section 73(2)).

Section 10 provides that any person may make a complaint to the ICAC about a matter that concerns or may concern corrupt conduct. The ICAC may investigate such a complaint or decide that it need not be investigated (Section 10(2)). Simply because a matter has been referred, pursuant to section 10, to the ICAC by a Minister, a Member of Parliament or any other person does not automatically mean that ICAC will conduct an investigation.

Instances have arisen where, after referring a matter to the ICAC, Ministers have announced that the ICAC is investigating/will investigate that matter. Such premature announcements can cause embarrassment, both for the Minister and the ICAC, if the ICAC subsequently determines not to carry out an investigation. Such announcements may also cause unfair damage to the reputation of persons named in a complaint.

With these concerns in mind, Ministers are requested to apply the following guidelines when referring matters to the ICAC:

- (a) Any public announcements should only indicate that the referral has occurred and should not state, or imply, that the ICAC is investigating/will investigate the matter.
- (b) Ministers should ensure that no announcement is made until after the referral has actually occurred.

Before deciding to make an announcement, Ministers are also requested to consider whether premature publicity might cause unfair damage to a person's reputation or whether it may otherwise prejudice any subsequent investigation (eg through the disappearance of important evidence).

Bob Carr  
Premier

Issued: Legal Branch  
Contact Officer: John Schmidt  
Telephone: 228 3225  
Date: 31 August 1995