



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*

MONDAY 27 MAY 1996  
PARLIAMENT HOUSE  
SYDNEY

*Further copies available from -*

Ms Ronda Miller  
Clerk to the Committee on the ICAC  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Tel: (02) 230 3055  
Fax: (02) 230 3309

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ISBN:

*Committee on the  
Independent Commission Against Corruption*

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Mr P G Lynch MP

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Mr D Wright - Acting Project Officer; Mr J Tremain - Acting Project Officer

Ms F Gow - Assistant Committee Officer

**From 1 August 1996**

Mr D Emery - Project Officer

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## **COMMITTEE FUNCTIONS**

### ***Independent Commission Against Corruption Act 1988***

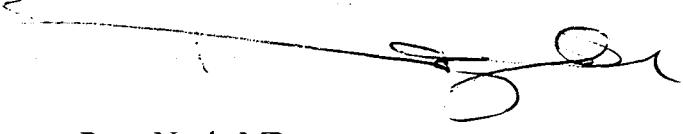
- “64 (1) The functions of the Joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;
  - (b) to report to both House of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise 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 Joint Parliamentary Committee on the ICAC holds public hearings with the ICAC Commissioner about every six months to help it monitor and review the work of the Commission. These hearings provide Committee members with an opportunity to request information about the way the Commission exercises its official functions; and to have that information placed on the public record. The hearings are, therefore, essential for ensuring the ICAC remains accountable to the NSW Parliament and ultimately to the people of NSW whose interests it was created to serve.

Mr O'Keefe AM QC has attended two public hearings since he became Commissioner, and has given the Committee valuable information and insight into the operation of his organisation and its day to day management. These six monthly meetings are valuable to the Committee members and to the Parliament.

This report is the record of the 11th meeting between the Committee and the Commissioner since the ICAC's inception in 1989.



Peter Nagle MP  
**Chairman**

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## COMMISSIONER'S OPENING STATEMENT

I would like, if I could, Mr Chairman and gentlemen, to give an overview of the last six months. Without doubt, the last six months at the Independent Commission Against Corruption have been the busiest in its history. If you go to points 1.8 and 1.9 (*in page 23 of this report*) you will see that the exercise of powers, which is an indicator of investigations, has been very high. If you compare it with the preceding twelve months, there is a 42 per cent increase - 219 compared with 154. If you look at the number of warrants for the period to May, that is, a period of ten months, there are 47; that is 2.35 times higher than we have ever had at any time in the history of the commission. Previously, 20 was the high point, during Operation Milloo.

You will see in the second table, in point 1.8 the consequences of there being no permanent Commissioner after my predecessor's term of office came to an end. That had some significant consequences, not only in terms of the exercise of powers, but in terms of pressing forward with investigations. So that when I came to the commission in November 1994 there was not only an inadequacy of staff, but the place was marking time. It took more than a little time to crank up the activity. But for the period certainly commencing June to December 1995 the level of work was significantly increasing. If you look at the period January to May 1996, and you look at the number of warrants, that six months almost doubles the preceding six months.

The sort of level that we are looking at in the January to May period is the sort of level that, in that order - a little less, a little more - I would expect to maintain. That is because our investigative staff are working extremely hard. Could I return to that shortly.

Could I then ask you to go to in the annexure 3 "Matters considered by the Operations Review Committee". You will see the number of matters that went to the Operations Review Committee; that is, the bar chart document, rather than the pie chart. If you leave aside a spike which you will see in 1993, which was a one-off blitz on matters, the level of disposition of matters before the ORC is higher than it has been in the life of the commission. There are six occasions on which more than a hundred matters were disposed of, and two on which more than 175 were disposed of. They are big agendas, and I must say that the Operations Review Committee performed its task well, with members indicating that they had a good grasp of material that was briefed to them. What I do point out is that disposing of that number of matters requires substantial effort on the part of the assessment staff in both assessing matters and making preliminary inquiries, and in preparing reports for the Operations Review Committee.

Could I then ask you to look at points 1.1 and 1.3 which deal with the work undertaken by the Corruption Prevention and Education Unit of the commission. *Practical Guide to Corruption Prevention* is a major work of ongoing value. It is in modular form, with 16 modules, which

can be added to. And they can be readily amended because they are in the loose-leaf form. It is a document which has been sought throughout Australia and from overseas, and a second run of that is under way. If you look at point 1.3 you will see some of the material of an educative kind that we have been producing, in conjunction with various agencies, but particularly the Board of Studies and the TAFE people. Point 1.3 also lists publications.

In addition, the Corruption Prevention and Education Unit has been engaged in 21 seminars and conferences. This is in addition to the number of occasions that I as Commissioner speak or make a presentation. These are almost invariably of an evening. It is a rare week that I do not have one; it is quite common that I will have two. Now, that requires quite a bit of work to prepare. I get some assistance from the Education Section of our Corruption Prevention and Education Unit, but a lot of that has to be done by me on my own. It is part of the outreach of the Commission to let people know what we are doing and, depending upon the nature of the organisation being addressed, also to gain their cooperation in relation to further corruption prevention activities within the organisation.

Aboriginal Land Council work and the Olympics are major activities which have occupied a lot of time of the Commission, and they are ongoing. Although expensive, my judgement is that they are expenses well justified. If you look at the Olympics, for instance, the level of contracts let today, or at the time I made the last calculation, was \$1.75 billion. The best estimate that one can make at this stage, on figures that have been made publicly available, is that no less than \$2.5 billion will be expended in contracting out for services and structures. That is an enormous amount of money, and it is to be done in a time frame that is tight. So it is important that procedures be properly determined, regulated and monitored; and, finally, that we do this before we get a problem. It should be done proactively, and steps are being taken in that regard with a joint working task force. One thing that is important is that we not create an impression, merely by our presence, that there is something wrong. It is a fine line to tread. I hope we have evolved a way of doing that.

The standing of the Commission in Australian and other circles is high. Visitors from Papua New Guinea and Sri Lanka, various places, have come to see how we work. This is largely as a result of addressing conferences. The two particular conferences that had a beneficial affect in that regard were the one in Israel last year and the one in Beijing in October, the Seventh International Conference.

I have presently got applications from Papua New Guinea, China, Thailand and India to allow officers of like agencies, either inland revenue or supervision, to come and see how we work; and then, having learnt our methods, to go back and apply them in their countries of origin. Fitting those people in is not easy. It depends upon the time that they want to come. Some want to come for up to two to three months. That poses real problems, for what we get and what they get. The view that I have taken is that first priority must be given to Papua New Guinea because of our relationship with that country, and the obligations, moral and legal, that we have to it. Our trading relationships with other countries will be a factor in determining what the order of priority in relation to the various requests is.

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We have had visits from Queensland and Western Australia, to see how we work. Western Australia, in particular, have taken back quite a deal of material, with a view to making the report that had been called for over there for the setting up of an organisation that will oversee the exposure and elimination of corruption in the public sector. This has been done by good staff. If you go to point 8.15 you will see the situation in relation to staff. We have had an 11.25 per cent increase in staff in the period from 1 August 1994 to May 1996. Concurrently with that we have reduced our turnover of staff very significantly.

Can I say that the cost of staff turnover, where it occurs, is high - not merely in advertising and processing the applications, but in the re-allocation of work, the time that is necessary for new staff to get up to speed, et cetera. Every time we lose a member of staff above a given level you can, I think, look at something like \$30,000 that you are losing in impetus. That is pretty substantial. So the cutting down of staff losses is important.

One of the things that I believe - and it is certainly borne out by what has happened - is that if people are busy and interested, that is, if their work is interesting, then you are less likely to have high turnover. We have one problem that I think will have to be addressed in the next six months, and that is that there is a limit to the extent to which you can call upon staff to respond to workloads. I think at the present time it would not be possible to keep staff indefinitely at the pitch of working that they are presently at. There will have to be some peaks and troughs; and, as a management matter, I have asked the managers of staff to arrange their programs to give people an opportunity to have, not time off but not the same degree of pressure on a continuing basis. So you will have cycles where people, having had a high point, will have less pressure put on them for a time, for recuperation.

Money: in 1995-96 our parliamentary appropriation was \$13.020 million. In 1996-97 it was \$13.071 million. So that predictions about gutting, slashing, et cetera, have not been borne out by the budget papers. In 1994-95, as members of the Committee who have been on the Committee for some time will recall, there was an underspend of \$3.2 million. You can see why when you look at point 1.8 to which I invited your attention. It was a straight function of there being no permanent commissioner, and no direction having been established. The place was drifting. That is not so now.

This year we will overspend to an extent in the order of \$200,000. In order to contain over-expenditure, we have postponed certain work, in particular, public hearings. We have just had to do that to contain expenditure. The hearings will nonetheless commence before the end of the financial year, but will have to spread into the new financial year. This is partly a function of the fact that Operation Yalta, which is the present matter concerning Mr Semple's regrading, arose after all the programs had been determined and expenditure embarked upon. I mean, it came at a time that it was not possible to cut off quite a lot of the corruption prevention and education programs. We had contracts with people, and if we had cut that work we would have been up for a penalty, damages. So we had to continue with that.

When you add that to the actual cost to the Commission of the hearing, but subtract the delayed expenditure on the other hearings, that is how we got to the "about \$200,000" overspend. Prior to that, I think we were riding to be spot-on, or plus or minus \$50,000. There are things over which we have no control. So, what we have done this year is, without diminishing our investigative function or capacity, indeed whilst enhancing it, we have also increased significantly our research. In particular, there has been a valuable piece of research done in relation to protected disclosures, which is referred to in the papers.

It is, I think, in four phases: we have done two; the second lot of material has not been analysed yet; the third has been authorised; but the first set of data has been analysed, published and distributed to all members of Parliament. It revealed a less than satisfactory response amongst agencies, both government and local government, to the implementation of that legislation, and it has given rise to a strategy to improve that situation. So the six months have been a very busy six months.

The one area, I think, that we need to look at is the publication of our reports. There are several reports presently in draft, some of which will be published before the end of the financial year, but more of which will be published in July. It is just a question of how many hours there are in a day to do things. However, I think it is fair to say that now that the reorganisation of the Commission has been completed, most of our policies, where they have not been in existence, have been brought into existence; and where they were in existence, they have been reviewed. That work has been completed. I have confidence in the senior management that is now in place. As a consequence, there will be more time for me, as Commissioner, to attend to matters that pressure of work really have prevented me from so doing until now. That is the overview that I would give, Mr Chairman and gentlemen.

## **GENERAL UPDATE ON OPERATION AND FUNCTIONS OF ICAC**

### ***Questions on Notice***

#### **1. GENERAL UPDATES/BRIEFINGS**

The Commission provided the Committee with updates and briefings on the following aspects of the Commissioner's operations since 15 September 1995:

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

- (i) Operation Sturt - is concerned with the conduct of a former Alderman of Fairfield City Council. The taking of evidence and submissions in relation to one segment has concluded. It is anticipated that the hearing of evidence and submissions in relation to the second segment will be completed in August 1996;
- (ii) Operation Talisman - is an investigation into the circumstances surrounding payments made to Pamlan Pty Ltd for cleaning services provided to State Rail Authority of New South Wales during the years 1990-1993, and also the conduct of a former State Rail Authority of New South Wales public official Mr Damon Schreiber. Evidence was heard initially in private on seven days in December 1995. Evidence was continued in public and private in January 1996 and February 1996. Counsel Assisting submissions and submissions from affected persons were made and received in February. Some further financial investigation is continuing and the report is currently being prepared by the Commissioner;
- (iii) Operation Yabbie - concerning Byron Bay Council. The report is in draft form;
- (iv) Operation Weave - concerning the Police Air Wing. The report is in draft form;
- (v) Operation Yalta - this is a current investigation into the re-evaluation of the position of Director General of the Department of Community Services position.

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

### **Work with central policy agencies**

The Commission continues to work co-operatively with central policy and accountability agencies on projects to develop and implement best practice guidelines to minimise the incidence of corrupt conduct. A revised public sector code of conduct and a review of existing public sector codes, on which the Commission has worked jointly with the Public Employment Office, is currently being published.

Corruption prevention staff participated in a working group with the Police Service and the Ombudsman to implement recommendations arising from a report by the Office of the Ombudsman on access to confidential information.

The Commission is currently developing induction training materials for public sector agencies to use to raise awareness of public duty and ethical issues among newly recruited public officials. The Environment Protection Authority, the Office of the Ombudsman, the Public Service Association and RIPAA are assisting with the project.

Corruption Prevention staff have also coordinated a consultative group, including representatives from several central policy agencies, to examine the issues surrounding the increasing use of probity auditors in the public sector. The aim is to develop a consistent, comprehensive approach to the roles, functions and use of probity auditors so as to ensure and enhance effectiveness of the practice.

### **Corruption prevention reports**

*The Practical Guide to Corruption Prevention* has been the most significant corruption prevention product of the Commission since September 1995. The *Guide* is designed as an easy-to-use reference for Chief Executive Officers and those public officials with the responsibility for ensuring that systems and procedures are designed to minimise opportunities for corrupt behaviour.

The publication brings together information on the corruption prevention issues most commonly raised with the Commission. It gives clear practical advice in separate modules on 16 topics including Corruption Prevention Plans, Conflicts of Interest and Purchasing. The first print run of 1500 copies has been widely distributed to public sector organisations in the State. There has been a large demand from Commonwealth and interstate agencies, from the private sector and even from overseas. A second printing will be

necessary. A copy of the *Guide* has been previously supplied to the Committee.

A review of the Commission's principles for public sector agencies entering into sponsorship arrangements with private sector organisations was completed. The review and the revised set of principles were published as a report. A brochure for the private sector was also widely distributed.

### **Advice**

A wide variety of advice matters have been completed since September 1995. The demand for advice remains strong, and agencies appear to be seeking help earlier. The *Practical Guide* is improving the efficiency and effectiveness of our advice by providing a concise summary of principles and best practice to which to refer inquirers.

Advice was provided in relation to various Olympic issues, the proposed leasing of the Showground to Fox Studios Australia, the City West Gateway site, the Pier One development, and the SRA's automatic ticketing system maintenance contract.

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

### **Projects in progress**

#### *Aboriginal Land Councils*

The most significant multi-disciplinary project continuing during the last seven months is an investigation into Aboriginal Land Councils (Operation Zack). The nature and quantity of complaints received alleging fraud and other corrupt conduct in the land council system clearly indicated the need for an inquiry. The main thrust of the investigation involves an examination of the practices and procedures of Aboriginal Land Councils with a view to facilitating changes to systems and procedures to minimise future opportunities for corrupt conduct. In addition there is some associated investigative work directed to exposing corrupt conduct. Teams of Aboriginal and non-Aboriginal Commission officers have visited land councils throughout the state. A discussion paper is planned for release in September 1996.

### *The Olympics*

Most public sector organisations with responsibilities related to the Olympics have sought some corruption prevention advice. Most of them have recognised the need to avoid corruption and promote probity and integrity. As a proactive matter a strategy needs to be developed to enable the Commission:

- to assist key public sector agencies develop and implement timely corruption prevention strategies to minimise the occurrence of corruption in the organisation and aftermath of the games;
- to respond quickly to any allegations of corruption involving public officials;
- to be in the best position to identify corruption risk and to conduct proactive investigations if necessary.

### *Local Councils*

Work is nearing completion on a joint project with the Department of Local government to develop practical guidelines for local councils in dealing with conflicts of interest and improving understanding of the differing roles and responsibilities of councillors and staff.

### *Investigative capacity of public sector agencies*

Responding to a widely-expressed need among public sector agencies, the Corruption Prevention Section is undertaking a project designed to assist agencies to improve their internal investigative systems and capabilities. The product will not be a step-by-step guide to conducting investigations, but rather will deal with important issues which need to be considered while either conducting an internal investigation or when planning the establishment of an internal investigation unit. An additional module will be produced for the *Practical Guide to Corruption Prevention*, along with a best practice handbook for inexperienced investigators.

### *Involvements in Investigations*

The Commission's increasing use of a multi-disciplinary approach to investigations has meant significant involvement of Corruption Prevention officers in the investigations into Southern Mitchell Electricity and the Police Air Wing and in current work being undertaken with the Public Employment Office, the Department of Land and Water Conservation and the investigation into the soliciting of bribes within the University of Western Sydney.

A major review was undertaken of the policies and procedures of Port Stephens Council to ensure that effective corruption prevention strategies were in place and being implemented. This work was the result of a Commission investigation. Seven training sessions were run for Councillors and staff.

### **Contributions to other Government initiatives**

The Commission has continued its support for the Public Sector Corruption Prevention Forum. Two seminars have been held since September, one with the theme of internal investigations and one focussing on ethical awareness and cultural change.

The Commissioner and the Director of Corruption Prevention and Education are members of the Ministerial Advisory Committee on the Police Academy. This Committee was established by the Police Minister to advise on future strategies for the Academy and education and training generally within the Police Service.

### **Conferences and seminars**

In addition to my speaking engagements the Commission has since September been represented at 21 seminars and conferences. Presentations were given to a wide variety of public and private sector organisations including the Australian Institute of Police Management course on management, an Australian Institute of Purchasing and Materials Management seminar, Department of Health auditors conference, and a number of groups of local government managers.

A review of the corruption prevention regional seminar program for public sector agencies showed high levels of acceptance of the corruption prevention message from agencies. The ongoing seminar program aims to target “industry” groups of agencies, and concentrate on middle managers and specialists in agencies - those with direct responsibility for corruption prevention.

Arising from the findings of the Commission’s 1996 Community Attitudes Survey, it has been decided to run a program of presentations for Parliamentarians and their staffs. Survey respondents reported that local MPs are often the first avenue for people reporting corrupt conduct. The seminar sessions will cover the functions of the ICAC and corruption issues generally as they may relate to the work of a Member of Parliament.

In October two staff members, in addition to the Commissioner, attended the 7th International Anti-corruption conference in Beijing. One Corruption Prevention Officer was chosen to give a paper about the New South Wales approach to corruption prevention (attached). The Commissioner presented a paper to the Plenary Session of the Conference. The two officers also visited the Hong Kong ICAC to discuss approaches to corruption prevention work. The Hong Kong approach of targeting particular agencies for proactive in-depth attention is currently being analysed. A “diagnostic” tool is being developed to assist in this work.

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

#### **Formal and Professional Education**

##### *School and formal education*

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

The Commission engages the expertise of stakeholders by forming advisory committees for each of its projects. This ensures products are challenging, interactive and relevant to teachers and students.

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

- The *Individual and the State* HSC Legal Studies kit was evaluated in 1995. Teachers found the kit user friendly and effective in meeting the requirements of the syllabus. Some helpful suggestions for improvement were made. Therefore it was revised, reprinted and further promoted to schools, TAFE colleges and universities. The kit has proved popular with hundreds of education institutions ordering it. The total cost of production (700 kits, promotion and distribution) was \$24,000.
- The HSC Business Studies kit *Ethics and Enterprise - A Life Cycle of a Business* was launched on 24 November 1995. The kit consists of a video, teachers’ handbook and student activity sheets. One thousand kits were produced by Film Australia Pty Ltd, for \$66,000. The distribution and promotion was to 820 TAFE campuses and high

schools throughout New South Wales, the South Pacific and South East Asia.

- For the Design and Technology syllabus for years 7-10 the Commission has contracted Australian Council for Education Research (ACER) to produce a 30 minute instructional video on corruption and ethical considerations for teachers, a teachers' manual and student activities by the end of June 1996. The total cost for 1,000 copies, will be \$90,000.
- For the HSC Design and Technology syllabus the Commission has contracted Show-Ads Interactive to produce an interactive CD ROM, teacher notes and student activities. The total cost for 1,000 copies is \$70,000; it will be completed by the end of June 1996.
- For the K-6 Science and Technology syllabus a CD-ROM with associated materials is being produced. It is expected to be used in over 2,000 primary schools and reach over 600,000 students. The project will be completed in 1997.
- Contributions are made by the Commission to the Board of Studies New South Wales teaching development programs. Officers periodically attend in-house training days and provide Board staff with guidance on initiatives. Yvonne Miles, Manager, Education Section participated in the production of a training video for secondary teachers in the use of appropriate technology on 8 May 1996.

#### *Tertiary and professional education*

- Liaison with TAFE resulted in the release and distribution of *The Individual and the State* in June 1995 for use in TAFE courses.
- A poster competition with TAFE was conducted from February until May 1996. Workshops for over 500 TAFE students were held in 15 campuses. TAFE graphic design students were given a design brief to analyse what corruption is and its detrimental effect on society. Almost 500 entries were received. Forty-five finalists have been selected by a judging panel to appear in an exhibition which will open in Parliament House in July and then travel to promote the Commission's anti-corruption message to the public.
- Peter Gifford, Director Corruption Prevention and Education, participated in the production *Ethics in Business*, a training package for the Institute of Chartered Accountants, Australia.
- Discussions continue with peak bodies in the private sector, other tertiary bodies and peak organisations for the Commission to find opportunities to contribute in educative programs.

### **The community**

- The first and second editions of the *Corruption Matters* newspapers were produced in September 1995 and April 1996 and distributed to approximately 15,000 people within the public sector and wider community. Recipients included Members of Parliament, local government staff, councillors and council libraries, SES personnel, public sector auditors, human resource managers, professional bodies, hospital managers, educational institutions and libraries.  
The first edition reviewed the implementational rate of recommendations made in the Commission's investigation reports over the previous eight years. The second edition included a special feature on the first year of operation of the Protected Disclosures Act 1994; the experiences of the Commission, the Office of the Ombudsman, the Auditor General and the local government and Shires Association; a case study of Pittwater Council's internal reporting system; articles about codes of conduct for Members of Parliament and new guidelines for the Local Government Act 1993.
- Other joint public and community education projects underway include the public sector induction kit, the investigation techniques conference and the production of community publications.
- Education Officers form part of the team engaged in a review of the New South Wales Aboriginal Land Council system (Operation Zack). An education strategy is being developed to assist with the efficient management of land councils, to facilitate the introduction of reforms as necessary and to ensure that the community, especially the Aboriginal community, is aware of the functions and responsibilities of the various land councils in New South Wales.
- Two community research projects were commenced in March 1996. Each research project will cost \$30,000 and be completed by the end of June 1996. They will inform the ICAC of the needs, knowledge and best education strategies for non-English speaking background communities and community advisers.  
The Non English Speaking Background project aims to establish the education needs of the non-English speaking community in relation to what constitutes appropriate procedures, communication, service and conduct from the public sector. The research is being conducted by Cultural Perspectives Pty Ltd by way of interviews with key government and community agencies and focus group discussions with key language groups (Arabic, Chinese, Spanish, Vietnamese).  
The Community Advisers research project is being conducted by Keys Young Pty Ltd through interviews and a survey and aims to inform the ICAC as to the best ways to implement a program to inform

community advisers about the ICAC and how to deal with corruption related enquiries.

### **Visitors**

The Commission received visitors from the following agencies and organisations interested in the operation of the ICAC, since September 1995:

- |                       |                                                                                                                                                                                                                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 16/1/96               | Mr Siva Selliah, Commissioner, Sri Lankan Commission to Investigate Allegations of Bribery or Corruption                                                                                                                                                                                 |
| 8/2/96                | Western Australian Select Committee on Police Corruption                                                                                                                                                                                                                                 |
| 23/2/96               | Hong Kong Tripartite Working Party:<br>Dr Fanny Oheung and Mr Won Suet-Ming - Independent Police Complaints Council<br>Mr Jack Chan - Security Branch Hong Kong Secretariat<br>Mr Louie Lau - Chief Superintendent, Royal Hong Kong Police Complaints and Internal Investigations Branch |
| 7/8/95 and<br>21/5/96 | Mr Simon Pentanu, Commonwealth Ombudsman, Papua New Guinea                                                                                                                                                                                                                               |
| 30/4/96               | Professor Dove Israeli of the University of Tel Aviv, Israel                                                                                                                                                                                                                             |

### **Displays**

The following displays were coordinated to inform the public and private sectors of current ICAC publications and projects:

- |             |                                                                                                                                                                                                                                                  |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14-15/9/95  | Sponsorship on the Cutting Edge Conference: announcing the release of <i>And Now a Word From Our Sponsor</i> report (revised sponsorship principles) and the <i>What to expect when dealing with the New South Wales Public Sector</i> brochure. |
| 13-14/10/95 | Teachers Federation Conference: announcing the release of the new Business Studies Kit and distributing ICAC publications.                                                                                                                       |
| 19/10/95    | Corruption Prevention Forum: promotion of ICAC services, corporate materials and publications.                                                                                                                                                   |

- |            |                                                                                                                       |
|------------|-----------------------------------------------------------------------------------------------------------------------|
| 19-20/3/96 | Internal Audit in the Public Sector: promotion of ICAC services, corporate materials and publications.                |
| 14/3/96    | Corruption Prevention Forum: promotion of ICAC service, corporate materials and publications.                         |
| 15/3/96    | Business Educators Conference: promotion of ICAC school education resources and corporate materials and publications. |

### **Publications**

#### *CP Projects*

- |                                          |                |
|------------------------------------------|----------------|
| And Now a Word From Our Sponsor          | September 1995 |
| Practical Guide to Corruption Prevention | February 1996  |

#### *Investigation Reports*

- |                                                                                                                     |              |
|---------------------------------------------------------------------------------------------------------------------|--------------|
| Purported Termination of Employment of Jeffrey Horner and Edwin Chenery by Southern Mitchell Electricity            | January 1996 |
| Investigation into Circumstances Surrounding the Payment of a Parliamentary Pension to Mr PM Smiles - Second Report | April 1996   |

#### *Other Publications*

- |                                                                                                                                                              |                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Annual Report 1994-95                                                                                                                                        | October 1995   |
| Annual Report Summary 1994-95                                                                                                                                | December 1995  |
| Corruption Matters Newspaper                                                                                                                                 | September 1995 |
| Corruption Matters Newspaper                                                                                                                                 | April 1996     |
| Community Attitudes to Corruption and the ICAC                                                                                                               | March 1996     |
| Monitoring the Impact of the Protected Disclosures Act 1994 - Phase 1 - Survey of New South Wales Public Sector Agencies and Local Councils - Interim Report | April 1996     |

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

The Research Section seeks better to inform the Commission's efforts to reduce corruption in the New South Wales public sector. To this end, the Research Section has undertaken the following work since 15 September 1995.

#### **Monitoring the impact of the Protected Disclosures Act 1994**

A project monitoring the implementation and impact of the *Protected Disclosures Act 1994* in New South Wales public sector agencies and local councils was commenced in October 1995. The aims of the study are to inform:

- (i) the Parliamentary review of the Act;
- (ii) central agencies about the needs of organisations with regard to the implementation of the Act's provisions;
- (iii) New South Wales public sector organisations about what they can do to maximise the benefits of the Act.

The study comprises four discrete phases, the first two having been completed.

*Phase 1:* The first phase involved a survey of all New South Wales State government agencies and New South Wales local councils to determine the proportion of organisations that has implemented internal reporting systems and the proportion that has informed employees about the Act.

In total 258 of the 272 New South Wales public sector agencies and local councils responded to the survey. This response rate of 94% provided a good sample from which to draw conclusions about the New South Wales public sector's response to the Act eight months after the introduction of the legislation. Key findings of the survey included:

- almost two-thirds of local councils (63%) and one-half of government agencies (48%) had not implemented internal reporting systems for protected disclosures;
- three-quarters of local councils and one half of government agencies had not informed their staffs about the Act;
- almost one-third of local councils (31%) and one in six government agencies (17%) did not expect the Act to have any impact on their organisations;
- one-fifth of local councils (21%) and a little over one-third of government agencies (36%) expected the Act would have a positive impact on their organisations;
- the difficulties some organisations experienced in their attempts to interpret and implement the Act were:
  - (i) resource constraints making implementation and training difficult;
  - (ii) difficulties in understanding and interpreting the Act and making it comprehensible for staff;
  - (iii) identifying areas of overlap with other legislation and trying to understand where the Act sits in relation to other Acts;
  - (iv) determining how to undertake the cultural change required to make the Act work.

*Phase 2:* The second phase involved in-depth interviews with representatives from nine New South Wales public sector agencies and six local councils. The interviews were intended to explore the concerns that these organisations may have with the *Protected Disclosures Act 1994*.

Examples of some issues raised by organisations include:

- confusion as to where the Act sits in relation to other Acts. Common examples included the potential conflict between the Freedom of Information Act and the Protected Disclosures Act and the relationship between the ICAC Act and the Protected Disclosures Act;
- whether the Act protects people from defamation action;
- concerns about the lack of resources for training and resource materials for employee education;
- questions about what is required of organisations in the provision of protection to their employees.

Organisations interviewed identified the following needs in relation to responding to the Protected Disclosures Act:

- *Ongoing practical guidance and information about:* conducting investigations; implementing internal reporting systems; protecting staff; legal interpretations and definitions; changing organisational culture.
- *Education requirements:* generic training materials for general staff education and to train staff who are going to be receiving protected disclosures;
- *Information exchange:* organisations want the central agencies to coordinate information exchange between organisations about their experiences with the Act.

*Phase 3:* The third phase will involve a survey of New South Wales public sector employees. The questionnaire will seek to identify the factors that might encourage or discourage New South Wales public sector employees from making protected disclosures.

*Phase 4:* This phase will endeavour to seek the voluntary and confidential participation of individuals who have made protected disclosures

to the ICAC to ask them about their experiences with the Act and how it may have impacted upon them.

The results of Phase 1 were discussed with the Premier in April 1996. He agreed that an inter-departmental committee should be convened to address the needs identified in the research.

### **Community Attitude Survey**

In October 1995, a representative sample of 515 adults across New South Wales were interviewed to obtain information on: community awareness and public sector services; community perceptions of public sector integrity; and awareness of what they, as individuals, can do about corruption. Public understanding of and support for the work of the ICAC was also examined. Information obtained from the survey, which was designed by the Research Section and conducted by a commercial research company, assists the Commission's education and corruption prevention work. Examples of findings from the study, the ICAC's third in a new series of annual attitude surveys, are provided below.

- Ninety-six per cent of respondents considered that corruption, in the New South Wales public sector, is a problem for the community. More considered it to be a *major* problem in 1995 (58%) than in the previous year's survey (44%). Less than 1% considered corruption not to be a problem for the community (4% in 1994). A further 3% had no opinion.
- Respondents were asked: *When there is corruption in the New South Wales public sector, what, if anything, can an ordinary member of the public do about it?* Approaching their local Member of Parliament was the most frequently reported course of action open to an individual, nominated by more than one-third of respondents. In total, over three-quarters of the sample were able to nominate one or more things that they potentially *could* do if they were faced with corruption in the public sector.
- Respondents were also asked what they believed they *could* and *would* do in response to the following scenario:

*A developer gets council permission to build a block of units on a small public park near your home. You suspect the developer has corruptly paid off someone at the council.*

Because the scenario pertained to a local council, it is not surprising that most mentioned approaching the local council, local Member of Parliament, Mayor or councillors. When asked whether the respondents thought they actually *would* take such action, nearly 60% of respondents said they would *definitely* take the action specified, while a further 25% said they would *probably* take that action.

- People who were not in the paid workforce such as unemployed, retired, students, etc (60%) were more likely to agree that *there is nothing that they could personally do about corruption in the New South Wales public sector* than were New South Wales public servants who formed part of our community sample (38%).

Findings about the ICAC included that:

- Ninety-one per cent of respondents agreed that having the ICAC is a good thing for the people of New South Wales. Only 3% believed that the ICAC was not a good thing, and 6% said they did not know whether it was a good thing or not. The most common reasons provided for saying that the ICAC was a good thing included that: the ICAC is somewhere for people to go to report corruption; it acts as a deterrent and keeps people honest; it provides a necessary watchdog; and that it exposes and makes people aware of corruption.
- Three-quarters of the respondents who knew of the ICAC said they would feel comfortable to approach the ICAC with information about corruption. Of the minority who said they would *not* feel comfortable, half said that there was *no other* organisation they would feel more comfortable to approach than the ICAC, with information about corruption.
- Members of the public in New South Wales appear to support both a corruption prevention and an education role for the ICAC strongly, in addition to its investigative function. Fifty-five per cent of respondents considered that it is more important for the ICAC to reduce opportunities for corruption than to investigate individuals. Only 16% thought the reverse. More than one-quarter of respondents (27%) thought the ICAC should do both: investigate individuals *and* reduce opportunities for corruption to occur. Also, when asked to say which of the two statements they agreed with more, 83% of respondents selected the statements: *As well as doing investigations, ICAC should actively educate people so that corruption will not be tolerated*. The remaining 17% selected the statement *The ICAC should stick to investigating corruption*.

This survey is also discussed in Questions 6.1, 6.2 and 6.3.

### **Review of ICAC HSC Legal Studies Curriculum Kit**

In November 1995, a three-stage review was undertaken to explore how well the ICAC's HSC Legal Studies curriculum kit *The Individual and the State* had been received in New South Wales high schools teaching Legal Studies in 1995. The kit, comprising a video and teacher's handbook, had been developed by the ICAC's Education Section and distributed at the beginning of the 1995 school year to all high schools in New South Wales. In summary, the aims of the review were to explore:

- the number of schools that knew about and had used the kit;
- teachers' and curriculum specialists' views about the overall usefulness of the kit, the suitability of the content and format of the video and teacher's handbook, and how well the kit met the requirements of the HSC Legal Studies Syllabus.

The three stages of the review were: a survey of the 441 high schools teaching Legal Studies in 1995; telephone interviews with a selected sample of teachers who had used the kit; and telephone interviews with nominated curriculum specialists. The response rate for the survey was 97% (426 high schools).

Some major findings from the review were:

- seventy-four per cent of respondents had heard about the kit, and 49% had used it;
- the majority of teachers agreed the kit was "user friendly" and met the requirements of the syllabus;
- teachers appreciated the format of the kit following the format of the syllabus;
- all teachers who had used the handbook thought it was useful;
- teachers generally agreed that the video was effective in raising the complex concepts and issues the syllabus requires students study;
- the level of language used in the kit was considered by some respondents to be "above" some groups of students.

Information from such reviews assists the Commission's planning and development of other resources for schools.

### **Dissemination of "Unravelling Corruption: A Public Sector Perspective"**

There has been continued interest in the survey of New South Wales public sector employees' attitudes to corruption and reporting corruption, the findings of which were originally released in mid-1994. In December 1995, a paper based on this work, *Layers of decision: Linking social definitions of corruption and willingness to take action* was published in *Crime, Law and Social Change: an International Journal*. Another paper, *Stories about corruption: The use of scenarios in surveys*, which focussed on the methodology used was presented at the Australasian Evaluation Society, International Conference, which was held in Sydney at the end of September 1995. The summary report has also been included as a chapter of a reader for university students about business ethics. The *Unravelling Corruption* data file has been requested by, and supplied to, the Criminology Department at the University of Melbourne for use in teaching research methods to their criminology students. Deakin University has requested to use some sections of the research report in their Graduate Diploma of Management (Technology Management) and their MBA (Technology Management) for practising engineers and related professionals. A request has also been received to use sections of *Unravelling Corruption* material for the Young Achievement Australia's Business Alive Program. In addition, the Queensland Public Sector Management Commission has sought permission to use some of the scenarios and attitude statements in their own survey.

### **The 7th International Anti-corruption Conference: Selected quotations from papers**

The 7th International Anti-corruption Conference was held in Beijing from 6 to 10 October 1995. It was attended by approximately 650 delegates from 77 countries. The Commissioner, the Research Manager and a Senior Corruption Prevention Officer attended from the New South Wales ICAC.

Approximately 87 papers were delivered and a further 165 abstracts were disseminated. In order to make the information in these papers more accessible, the Research Section collated the more relevant sections of the papers and organised these quotations under a series of subheadings representing 33 themes, e.g., "Accountability", "Business Ethics", "Codes of Conduct", "Corruption Definitions", "Corruption Statistics", "Education Strategies", "Private Sector" and "Reporting Corruption".

### **Annotated Bibliography**

In order to resource and inform Commission staff and others interested in the literature on corruption-related issues better, the Research Section is currently updating its Annotated Bibliography of relevant articles. The Annotated Bibliography provides an alphabetical listing of abstracts within topic areas. Approximately 200 books, papers, journal articles and reports have been collated and condensed for this publication. This bibliography has been expanded to cover material on 27 different topic areas including topics such as codes of conduct, conflict of interest, defining corruption, effects of corruption, organisational culture, whistleblowing and workplace crime.

### **Status report on ICAC publications**

In October 1995, a report summarising the information contained within ICAC Investigation and Corruption Prevention reports was produced by the Research Section. The report gave a brief overview of the nature of the activities that the Commission has undertaken from 1989 to mid-1995. During that period 39 public investigation reports and 16 corruption prevention reports were produced. The four types of conduct discussed most frequently in the 55 reports were:

- “conflict of interest” discussed in 23 reports;
- “bribery and secret commissions” discussed in 18 reports;
- “lack of systems/policy” discussed in 14 reports; and
- “partiality” discussed in 12 reports.

### **Other work currently in progress**

The Research Section is also currently preparing a research proposal outlining a methodology for evaluating the *Ethics and Enterprise* curriculum materials kit prepared by the ICAC Education Section for students studying the HSC subject Business Studies. At the request of the Education Section, the data from the past three community attitude surveys are being reanalysed to determine differences in the attitudes and perceptions of young adults (those aged 18 to 24 years) and those who are older. The Research Section 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.

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

For the 1995/96 financial year the Commission's budget allocation is \$13,022,000 in recurrent expenditure and \$180,000 in capital expenditure. The Commission's present staffing level is 146 and it is anticipated that there will be an increased average of 139.68 for the year, on a staff ceiling of 145 for the year (also see answer to question 8.15).

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

In this year three new members were appointed to the Committee. The current membership is as follows:

- The Honourable B S J O'Keefe AM QC - Commissioner.
- Mr Laurie Glanfield - Nominee of the Attorney General.

Mr Laurie Glanfield is the Director General of the Attorney General's Department. He is also Director and Vice Chairman of the Australian Commercial Disputes Centre, a Director of the Motor Accidents Authority, a Trustee of the Solicitors Trust Accounts Fund, a General Councillor of the Constitutional Centenary Foundation, a Charity Referee under the Dormant Funds Act 1942 and a member of the Legal Practitioners Admission Board 1993.

- Mr Neil Taylor APM - Acting Commission of Police.
- Reverend Harry Herbert - Community Representative.

Reverend Harry Herbert is the General Secretary of the Board for Social Responsibility in the Synod of New South Wales of the Uniting Church of Australia. The Board is responsible for the chaplaincy, community services, and social justice work of the Uniting Church. He is also President of the Council of Social Services of New South Wales, a member of the Legal Aid Commission, Chair of the New South Wales Government Social Justice Reference Group, and Chair of the Social Impact Committee for the 2000 Olympics. He serves on a

number of church boards, including the War Memorial Hospital, Burnside, James Milson Nursing Home, and Ravenswood School.

- Ms Carmel Niland - Community Representative.

Carmel Niland is the principal of Carmel Niland & Associates, a company specialising in organisational change and managing diversity. She serves on the Council of the University of New South Wales, the governing body of TAFE and on the New South Wales Migrant Employment and Qualifications Board. She was formerly the President of the Anti Discrimination Board.

- Mr John Kennedy - Community Representative.

John Kennedy is a partner in the Sydney law firm Bartier Perry & Purcell. He is a fellow of the Australian Institute of Company Directors. He is Chairman of the Board of a Credit Union and lectures on the legal responsibilities of directors. John has acted for an "affected person" before a lengthy ICAC investigation.

- Ms Yvonne Grant - Community Representative.

Yvonne Grant is a qualified lawyer who has practised both here and in England. She has also recently lectured in Corporations Law and Business Ethic at Macquarie University. She is a member of the Nurses Registration Board and is currently the Chairperson of its Professional Standards Committee.

I would like to express my appreciation to Mr Tony Lauer, Mr John Bragg, the Reverend Ballantine-Jones and Ms Meredith Rankin for their valuable contribution to the previous Committee.

Attached is a table setting out matters considered by the Committee over the life of the Commission.

**1.8     the work of the investigative Unit; and  
1.9     the work of the legal Unit.**

The Legal Unit and Investigation Unit are primarily concerned with the Commission's investigative activity. Since September of last year there has been a marked increase in the number of formal investigations undertaken by the Commission. Seventeen formal investigations have been approved in the period whereas for the same period the previous year only nine formal investigations were approved by the Commission or Acting Commissioner.

Formal investigations are those that involve using the Commission's powers and/or involve considerable resources. There has also been a corresponding increase during the period in the use of the Commission's powers, as can be seen from the following chart:

Powers	September 1995 to May 1996	September 1994 to May 1995
Section 21	21	9
Section 22	165	119
Section 23	9	1
Search Warrant	24	25

Perhaps more significant in terms of covert investigations are the following figures in respect of listening device warrants:

Period	Number of Warrants
January to May 1996	30
June to December 1995	17
January to June 1995	0
July to December 1994	2
January to June 1994	0
January to December 1993 (Milloo)	20

The following particular information is provided in relation to each of the Units:

### **The work of the Investigation Unit**

The Unit 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. The majority of these preliminary investigations do not reveal evidence of corrupt conduct, or corrupt conduct of a significant kind. 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 for consideration and determination, following consultation with the Legal Unit, 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 above.

The Unit employs a wide range of investigative approaches. These include 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 as well as 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 both the investigative process, the protection of personal reputations and the integrity and confidentiality of government action. Such a process also assists in containing the cost of investigations.

### **The work of the Legal Unit**

The Commission's lawyers are primarily concerned with the Commission's investigative function. In the main their work is case work, rather than part of administration. In particular the lawyers are concerned to ensure that the Commission's work is performed lawfully and fairly. The lawyers also participate in and at times lead multi-disciplinary investigation teams. 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, preparing hearings, 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 in the preparation of the investigation report.

The Legal Unit is responsible for liaising with and dealing with requests from the Commission's primary accountability bodies, namely this Committee and the Operations Review Committee. With respect to the latter the Legal Unit 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.

The Legal Unit 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**

The Legal Unit monitors and advises the Commission on legal changes affecting the Commission. Since the September meeting last year the most significant legal change was an amendment to the Telecommunications (Interception) Acts 1979. The most important amendment is to the definition of Class 2 offence in s5(D) of the Act.

The definition of a Class 2 offence has been extended to include an offence punishable by a period of imprisonment of at least seven years and which involves bribery or corruption by an officer of the Commonwealth, State or Territory. This would include offences of corrupt commissions under Part IV(A) of the New South Wales Crimes Act.

The definition has also been extended to include offences punishable for a period of imprisonment of at least seven years where certain conditions are satisfied.

The amendment to the Telecommunications legislation is very significant for the ICAC because the Committee will appreciate that bribery is commonly encountered in corruption allegations. Prior to this amendment the seriousness test for obtaining a warrant for a telephone intercept from a Federal Court Judge was such that telephone interception was generally not available to the Commission for its investigations into corrupt conduct. In this respect I consider that the implied criticism of the ICAC in the interim report of the Royal Commission into the New South Wales Police Service concerning the ICAC's use of its telephone intercept powers was illfounded and unwarranted.

### **Recommended legal changes**

Since the last meeting of the PJC the Legal Unit has been primarily concerned with preparing submissions in relation to the proposed Police Corruption Commission Act and the consequential amendments to the ICAC Act. The Police Corruption Commission Bill and the Cognate Bill are currently before Parliament. The PCC Bill contains many provisions taken directly from the ICAC Act and the ICAC is pleased that many of the submissions it has made for amendments to the PCC Bill or for consequential amendment to the ICAC Act have been adopted in the tabled legislation. Many of the amendments will ensure that the PCC and the ICAC have complimentary powers. Of particular significance to the ICAC will be the following amendments to its legislation:

- (i) a provision which will give ICAC officers, who are seconded police officers from outside New South Wales, the powers of a New South Wales police officer. This provision will give the ICAC greater flexibility in recruiting investigators by relieving it of the need to rely on secondments of New South Wales police officers to ensure that the ICAC has the necessary police powers to assist investigations;
- (ii) a provision has the necessary police powers to assist the investigator to conduct searches of persons in certain circumstances during the execution of search warrants. Currently this power is only available to police officers. This provision will reduce the need for the ICAC to be reliant on New South Wales police officers;
- (iii) s93 and 94 of the ICAC Act as currently drafted create offences against individuals or employers where they are the cause of violence, punishment, damage, loss or disadvantage or prejudice in employment to a person because they have been a witness before the Commission or have complied with the notice provisions under s21 or 22 of the Act. The ICAC sought an amendment to extend the offence provisions beyond witnesses and those who comply with notices to persons who assist the Commission during its investigations. This will mean that if a person has lodged a complaint or is providing the Commission with information it will be an offence to take action against that person on account of them having assisted the Commission;
- (iv) it is proposed to replace the existing s50 of the ICAC Act which deals with protection of witnesses with a new provision which gives the Commissioner the power to direct the commissioner of Police or a prescribed public authority or prescribed public official to provide protection or to assist in the provision of that protection.

#### **Other items of interest for the Legal Unit**

Since the last meeting include:

- The Unit has been conducting a review of all non-publication orders made during Commission hearings since the establishment of the Commission. The aim of this project is to remove non-publication orders where they are no longer needed or to amend them so that they are fixed for a specified period of time.

- A number of witnesses commenced proceedings in the Supreme Court during the course of the hearing in Operation Sturt seeking orders requiring the Commission to provide the witnesses with a copy of the private hearing transcript of a particular witness and other documents at a particular stage of the investigation. The proceedings were dismissed with costs.
- The Legal Unit has participated in a review of the Protected Disclosures Act. A submission has been provided to the Cabinet Office and a further submission to which the Legal Unit is contributing will be provided to the Committee on the Office of the Ombudsman by 31 May 1996.

*Questions Without Notice*

**CHAIRMAN:**

**Q:** In regard to the central policy and accountability agencies, how many are there that you work with outside the Police Service and the Ombudsman?

**A:** And, of course, the Auditor-General. If we look at the PEO, that is one we are working with. This is not working, but working with. We have a number of ventures going that involve the PEO and RIPAA, the Royal Institute of Public Administration. The Premier's Department, in connection with the Olympics and the setting up of a committee there; TAFE; Education. We are presently doing something with Land and Water Resources. There are a number of them that we work with. This is part of the implementation of the policy of cooperative ventures with people. You have a problem: we will help you to solve your problem. That is how we come to work with a number of these agencies.

We have a dedicated team, for instance, for the SRA, which is almost a bottomless pit. I will not comment beyond that. But we have one team there, but you could have more teams than that. I must say that the resources that need to be applied or can properly be applied to the SRA will need to be reviewed in the light of the decision, essentially, to disband the internal audit unit of the SRA. The long-term effect of that, or even the short-term effect of that, we are yet to assess.

**MR WATKINS:**

**Q:** Why is the SRA such a black hole?

**A:** Well, it is old. That is, it has been there for a long time. It did not move with the times for a long time, so the systems were not very good. In fact, they were very bad.

There was an ingrained belief that certain practices, which are clearly corrupt conduct and dishonest, were par for the course. And all those things take a long time to work through. And the other thing is that they have a very big budget. They have a \$1.2 billion budget. So it is big, and not good control, with a culture that was adverse to our elimination of corruption.

**MR WATKINS:**

**Q:** What sort of practices are you referring to?

**A:** Tendering, whereby there was either no tendering, or where there is tendering the controls in relation to it are poor; employees forming companies, or having dummies that get the contracts that they are assigning, and then creaming off moneys from them. They are the sorts of things that happen across a wide range of activities in the SRA.

**MR WATKINS:**

**Q:** Why does it not happen with, say, the RTA?

**A:** The RTA has, I think, upgraded its systems much more than the SRA. That is number one. Number two: the RTA is not nearly as big an organisation, with as many layers of responsibility and authority as the SRA. Those are two factors that spring to my mind. But the fact is that there have been problems in the RTA but they have not been as extensive as those that we are able to bring to exposure in the SRA. I do not think that the level of employment in the RTA is anything like that of the SRA. But the main thing is controls, I think, and whether organisations have moved with the times or not.

**MR WATKINS:**

**Q:** Have you got any idea when you think you would be able to get the SRA to a point where this sort of endemic corruption is no longer present?

**A:** I cannot give you a time. What I can say is that, from my discussions with senior management at the highest level, there is within the organisation a commitment to do that. But I cannot give you a time frame on that.

**MR O'FARRELL:**

**Q:** Commissioner, I note in a recent Auditor-General's report on State Rail which specifically looked at these sorts of areas the point at which it concluded was that the organisation was large, had gone through massive change, and that working with the

ICAC a number of controls had been put in place. The suggestion from the Auditor-General was that, because of the speed at which that change had occurred, the culture had not matched. What role is there for the Independent Commission Against Corruption in following through to ensure that that cultural change, which is clearly important, occurs?

**A:** That is part of our education program. I think I indicated on the last occasion that our education program involves, first, looking at the inductees; let them know what the right thing to do is, and trying to imbue in them a spirit of doing the right thing. Then the next level is those who are getting promotion. You work from the bottom up there, and from the top down through senior management to imbue them with the spirit. In the end, it is the SRA that has got to do it itself. We help. But our education programs, particularly the inductee training program, which is well under way now, are aimed at that.

**MR O'FARRELL:**

**Q:** So you basically have a pincer movement going: you have got the inductee trainer program, plus you have got the commendable work you do with the students, which is outlined in the information tabled today.

**A:** Yes.

**MR O'FARRELL:**

**Q:** At the end of the day, do you have enough money to devote to both tasks?

**A:** You could always say, "We could do with more." But, as long as you know for a given time ahead what your allocations are going to be, then what it makes you do is plan your work; and it makes you order your priorities. And we have done that very well this year - really well, I think. It is a great credit to the staff. I give them a vision as to what I hope we will be doing. How will you go about this? They come back with plans, and we go through them. Then the programs are prepared. Then we prioritise the programs. Then, having prioritised them, which takes into account the cost of them, we then determine, if we have got to cut something, which is best to cut, or which is best to postpone? And, if it is postponed, does it then come up higher in the next year, or not? Those are all management and operations things that you have got to look at.

But, knowing that you cannot just go back and say, "I want another \$2 million" means that you are very careful about your resources. I have a meeting every month with departmental heads, and I flog them about their budgets. The Corporate Services and Research Unit produces figures for me, and I will spend the whole week-end on them.

Then, the next week, we will go through it and see what is happening. Why are you over? Why are you under on this? Will you meet that deadline? It has made everybody budget conscious.

Sure, if we had another \$500,000 added it would be terrific. I could then dedicate, say, three officers in the corruption prevention and education area just to a raft of matters that the police want done. They want them done, it is urgent that they be done to complement the work of the Royal Commission, but what has to suffer for it? How do you reorganise? So the answer is: it is a mixed blessing. Knowing that you have a limited amount makes for discipline.

**MR O'FARRELL:**

**Q:** I would like to pursue this issue of forward planning. Commissioner, you plan on a period 12 months ahead, or do you have a rolling three- or five-month period?

**A:** We have a corporate plan for five years. We have plans within that for three. And then they firm up, and we look at a 12-month program in advance, and then we look at that program on a three-month review basis as well.

**MR O'FARRELL:**

**Q:** What sort of budgetary time frame do you work on? Do you have any commitment from government and Treasury about forward estimate covering the three- and five-year period?

**A:** We do not for five. We have an indicative figure up to 1997 at the moment. It would be better if we had a bit more, number one. And, number two, it would be even better if we knew that we could safely work on that. You have always then, however, got to work to your programs; so that if there is a disaster, like somebody taking a million dollars out of the budget for any reason, how do you reorganise your work, and what are the priorities? Those are built into the programs. It will mean that valuable work would not be done, and it would mean that we would have a sort of hiccup in the progressing of work. But we would survive, I suppose.

**MR O'FARRELL:**

**Q:** I notice in your opening comments that you made play of the fact that your budget this year has been largely left intact.

**A:** Yes.

**MR O'FARRELL:**

**Q:** Although I notice that according to the budget papers staffing is expected to decline again, and you refer to that in your evidence. How do you feel about public comments from the Government, or what assurances do you have from the Government that in fact there is not to be a substantial cut made to ICAC's budget as the PCC, or what is now called the PIC, comes on stream?

**A:** There are two issues involved. One is what the budget of the PIC might be and where it should be funded from. Now, that is a policy matter. However, I should point out that there is in the Royal Commission's report an inconsistency on this, one of many matters in relation to this. In the course of the report the statement is made that one of the reasons for recommending that there be a separate body is - and I refer to page 92 - the "risk that resources of the Division would be drawn away from police corruption, particularly if a major inquiry was undertaken in some other area." So, if you have got both, you might lose money from the police. Then, at the top of the very next page it says, "Part of the existing budgets of the ICAC could be transferred to the new agency." You cannot have both.

That is at the heart of the problem. That is one of a number of inconsistencies in the Royal Commission report, and it will be interesting to see the outcome of an analysis of that report - which will take place, no doubt, at some other time and perhaps in another place. We have done some. The question, though, will then depend upon the extent to which we lose function and lose the cost of performing that function. There are two things about that.

First, we will keep corruption prevention and education for police. Interestingly, another inconsistency in the Royal Commission report is that those two functions - that is, investigation and corruption prevention and education - ought not be in the same body because, it is said, perhaps when you have done corruption prevention and education and it had not worked, you would not investigate. Yet, no sooner was the ink dry on this report than the PCC was seeking to have a corruption prevention and education function, realising that in the long term that is the way to go. But that has not happened. So it will remain an investigative body.

The cost to the ICAC of corruption prevention and education for police will continue therefore. What has been the cost of, and what should be regarded as the cost of investigation. We have worked those figures out for the last two years. The amount involved is quite low. If you go back in time, however, and look at the Operation Milloo inquiry, which was a major inquiry, the costs were quite high. If that sort of cost, which is for a one-off situation, were taken as a recurrent event, it would gut our budget. But I am not anticipating that that will happen. Our submission is to the contrary, and I have asked to have an opportunity to discuss the matter with the Premier before any decisions are made.

The answer to the final part of the question is: I don't have any firm assurances in relation to budget, except I do say that the Premier came out and addressed the staff of the Independent Commission Against Corruption and assured the staff of the ongoing role and importance to the present Government of the role of the Independent Commission Against Corruption in the governmental structures of this State.

**MR LYNCH:**

**Q:** You said the internal unit of the SRA either had been disbanded or was about to be disbanded. Has that happened, or is it still to happen?

**A:** It is being transferred, and the numbers are being reduced. I do not know that it has happened yet, but the proposition is that, from being a generalised oversight group, it would be transferred and become only part of the infrastructure group, and its numbers would be significantly reduced. That is a governmental announcement as part of the reorganisation. Further than that, I am not privy to.

**MR LYNCH:**

**Q:** There have been no discussions between the SRA and yourself about the ongoing role that the commission might have as a result of that announcement?

**A:** I am not privy to those, but I know the corruption prevention and education unit is in fairly close contact with and is monitoring what is happening there.

**Mr LYNCH:**

**Q:** Operation Zack, which you refer to several times in your papers, did that arise out of complaints made to the commission, or was it an own-motion decision?

**A:** Mr Lynch, when I came to the commission I had prepared for me a list of agencies and organisations that had been the subject of more than a given number of complaints over a given period. Aboriginal Land Councils, if I remember correctly, were very high on the list; about 84 complaints were outstanding in respect of them. Now that is high when you look at the number of people who are involved in Aboriginal Land Councils. Most of those complaints came from Aboriginal people themselves. So you had a high number of complaints from the people who were supposedly the beneficiaries of that type of organisational structure.

We then analysed the nature of the complaints, to see whether they could be categorised. A number could. Then a decision was made as to the best way of

dealing with that. The Auditor-General had complained that there were a number of Aboriginal land councils where there could be no audit carried out, either because there were no papers or inadequate papers. The number of land councils that had qualified audits where they had been carried out, was high. So you had a situation that was very unsatisfactory, and you had a large number of people who were claiming to be entitled to receive benefits saying that they were not receiving them.

Our initial examination of the matter suggested that we would best serve the interests of the system and the people who were to benefit from the system by having essentially a corruption prevention exercise rather than primarily an investigative exercise. In the course of the corruption prevention exercise, however, some matters came up that called for investigation, and may call for further action in relation to the persons the subject of the investigations. But the primary thrust is to determine what is the root of the problem and determine how that can be overcome by an adjustment of systems.

It may involve some recommended amendments to the Act, but many of the things that were found can, in my belief, be dealt with by administrative means. Some of the lines are very clear. I do not want to pre-empt the report on it, but some of the lines are very clear.

**Mr LYNCH:**

- Q:** So it is the case that the operation arose not from a racist campaign by people against the land councils, but as a result of complaints from witnesses?
- A:** Quite the contrary. In fact, the number of non-Aboriginal complaints is quite low. I cannot give you a figure, but the very high percentage of those complaints come from Aboriginal people. What has happened is that as part of the organisation of the investigation - that is what it is called, although it is a corruption prevention exercise - I think 13 centres had been chosen for the Commission to go to and listen to what the people say, examine their systems, examine the operations of the offices. And I have made it my business to go to every one of those that we have been to to date, and I will go to each of them. It is important to indicate to the people who are either the subject of the inquiry or associated with it that the commission, through its commissioner, takes this matter very seriously and regards it as a high priority matter. And it is working well. We are getting a great deal of cooperation.

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

**Q:** Going back to Operation Zack for a second, do you intend having public hearings into this?

**A:** I do, yes. But the nature of the activity that we are engaged in calls, I think, for a lot of corruption prevention work to be done before we get to that. I do not want to create an atmosphere of an adversarial nature.

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

**Q:** I can see the danger in that, given some of the posturing that is going on at a Federal level.

**A:** We have been able to avoid that, but that is because we had a very closely thought-through plan of action in relation to it, and we were able from the outset to get the confidence of the Aboriginal people; and I think we have retained that.

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

**Q:** So you are actually putting in place better management systems?

**A:** Yes. That is what we are looking at at the moment. It goes to office management, to systems of who votes at annual general meetings, and that sort of thing, to try to avoid stacking and to try to avoid nepotism and things like that.

## **PUBLIC SECTOR/PRIVATE SECTOR INTERFACE**

### ***Questions on Notice***

- 2. The Commission provided the Committee with more information on the Commission's work on public sector/private sector interface.**

Whilst the public and private sectors have always interfaced to some extent, the use of the private sector for the provision of public services and public infrastructure is increasing. This poses a challenge to the public sector to maintain ethical standards and duty to the public interest while moving to a more commercial approach. Increasingly the Commission is dealing with public/private sector issues across the range of its activities.

Activities involving the interface with private sector have included:

#### **Project - Public/Private Sector Interface**

The Corruption Prevention and Education Unit has recently begun a project examining current issues arising from the public/private sector interface. The project's broad objective is to improve the way the State does business by developing strategic alliances with the private sector to achieve:

- awareness and understanding by the private sector of the legal and work environment within which the public sector operates - its ethical base, values and need for outcomes which deliver the best value to the community;
- an understanding by the private sector of its responsibilities in this regard, and;
- effective corruption prevention strategies in response to emerging issues.

The first stage of the project is research. A discussion paper, outlining the issues and providing a preliminary analysis of their impact/implications for the public/private sector interface will be produced in July this year. The paper will be circulated and comment sought from relevant public and private sector organisations.

#### **Business Studies Kit**

*Ethics and Enterprise - Life Cycle of a Business.* The HSC resource kit was launched in November 1995. The kit was developed to teach the attitudes and values outcomes and objectives of the syllabus to years 11 and 12 students studying the HSC business Studies Syllabus. This syllabus was selected as these students are future decision makers in the private sector as well as the public sector.

The project's Advisory Committee included representatives from the private sector.

### **Ethics in Business Video**

"Ethics in Business" was produced jointly by the Institute of Chartered Accountants in Australia (ICAA) and Michael Schildberger's Business Essentials Pty Ltd with the support of Price Waterhouse, CRA and the Royal Melbourne Institute of Technology. The ICAC provided technical assistance and the Director of Corruption Prevention and Education participated in the video as a member of the Expert Panel. The video was produced in response to a demand for training resources in the area of ethics education. The video raises several practical ethical issues confronting members of the accounting profession and is versatile enough to be used as part of a tertiary education course, as training support material for the ICAA's Professional Year Program, as a supplement to existing training and development programs within firms or as part of a broad management ethics program.

### **Sponsorship Principles Review**

In September 1995 the ICAC released *And Now a Word From Our Sponsor* the review of the ICAC Sponsorship Principles Report 1993. A supplementary brochure, *Sponsorship and the New South Wales Public Sector*, targeted at the private sector, was also produced. These publications were promoted at a conference in September, *Sponsorship on the Cutting Edge*, and through the Australasian Sponsorship and Marketing Association.

### **Association of Consulting Engineers Australia (ACEA)**

The ACEA worked in consultation with the ICAC to produce a booklet entitled *Qualification Based Selection - The Probity Perspective*. This booklet provides guidelines to assist both public sector and other organisations in maintaining integrity when using Qualification Based Selection to procure engineering and management services. It also aims to provide information on the ethical standards expected from ACEA member firms providing services to the public sector. It is being distributed Australia wide.

### **Seminar Presentations**

The Commission has presented to a number of seminars involving the private sector including the 1996 Conference of the Australian Society of Certified Practising Accountants, the national forum of the Australian Institute of Purchasing and Materials Management and the Fifth Annual Conference of the Patient Care Technology Group.

A number of presentations to Commission staff were provided by the Department of Public Works, the Treasury and others to enable the Commission to be better informed concerning private sector involvement in the provision of public infrastructure.

### **Advice**

The Commission has provided a number of advice and assistance to both the public and private sector on issues concerning the public/private sector interface. By way of example:

advice has been provided to the City West Development Corporation about various issues including extension of the closing for tenders for Pyrmont Point, the Gateway site tender and licensing arrangements at Walsh Bay. Advice has also been provided to City Rail in relation to automatic ticketing systems and to the Newcastle Ports Corporation.

### *Questions without Notice*

#### **Dr MACDONALD:**

**Q:** I wanted to ask the Commissioner a question on joint sector development. You made a comment in the early part of your report about corruption prevention looking ahead to the Olympics. Later on, in reply to a second question, you talked about the need to be aware that government is now developing closer partnerships with the private sector. For instance, you make some comments about the City West development project. I guess that that may be a feature of Olympic planning, et cetera. Do you have a view as to whether you are too constrained under your Act to be able to reach into the private sector? Do you see any need for your Act to be amended in any way to include this concept of public/private partnership that is developing in government? The Auditor-General has had something to say about this and the difficulty that he has in trying to come to grips with that new partnership that is developing within the economic circles. Would you like to make a response to that?

**A:** First, I think that section 8(1)(a) is sufficiently broad to bring in what I would describe as a pendant jurisdiction, that is, a jurisdiction in respect of persons who are not public officials but who deal with public officials. If you look also at section 13, which talks about principal functions, that is assisted. We have had no challenge to our jurisdiction where we have gone into the private sector, where they are in conjunction with the public sector. I would prefer, rather than amending the Act, to test our power and see what the response is first by the private sector, over

whom we would seek to exercise jurisdiction, and if it is challenged by the courts. I would rather see that than to just amend the Act.

**Dr MACDONALD:**

- Q:** Are we going to create a society where we have a very low level of corruption within the public sector and a relatively high level of corruption within the private sector?
- A:** Interestingly, a public attitude survey this year suggested that the public think that the private sector is less corrupt than the public sector. That is the perception. It does not matter what the fact is for the moment. But that is the perception. The second thing is that in every corrupt situation you have a tempter and a tempted. It would be my objective - and I have said this on a number of occasions during the speeches that I have made - within my time as Commissioner to have a government policy that says: government agencies may only deal on a contractual basis for services or for provision of structures, et cetera, with organisations that have in place codes of conduct and means of monitoring them that mesh with those in the public sector, so that you have complementarity in public sector and private sector.

At the present time the hypothesis you advance is rationally available, but when you look at the nature of the work that we are doing, reaching out into the private sector, there is a recognition in the private sector of the need for integrity and for accountability where it is dealing with public agencies and public moneys. That is there at the top.

**Dr MACDONALD:**

- Q:** Are there in fact any private sector corporations that already do have codes of conduct?

**A:** Yes, there are.

**Dr MACDONALD:**

- Q:** Could you give me an example of that?

**A:** Yes. Leightons is one of them. I know that.

**Dr MACDONALD:**

- Q:** Is that in any way consistent with aspirations that you have for the public sector?

A: Yes, it is. I am sorry, for the private sector. For the public sector -----

**Dr MACDONALD:**

Q: My question was: are the sorts of codes of conduct that Leightons might have in any way consistent with the sorts of aspirations that you have for the public sector, or is it merely a set of rules that does not bear any resemblance to what you would have written had you been allowed to write them?

A: I cannot tell you that detail. I could take it on notice.

**Dr MACDONALD:**

Q: I quite like the concept that you have raised that the public sector should not deal with the private sector unless we are confident that that private sector organisation is abiding by certain standards that would mean some kind of accountability or auditing of what those standards are.

A: As a corollary of that, one of the ideas that I have is that where somebody either breaches their own code or acts inconsistently with the public sector code and our Act, they should be rather like the unsuccessful tender companies - on the no list for a period. In other words, by so arranging the economic sanction you instil in the private sector organisation a higher degree of desire to do the right thing. So, sure, you have to have some monitoring of it - and I have not gone into that at the moment - but certainly do not have a budget that would enable us to do that at the moment. We are beginning on this, but we must give our first priority to the public sector. That is our mandate, primarily.

**Dr MACDONALD:**

Q: Do you see any argument to extend that mandate? In other words, I would be concerned if the day arrived when the Independent Commission Against Corruption was merely dealing with lesser issues, such as a free lunch or a couple of bottles of wine or something like that, when the big boys out there in the private sector are getting away with it. Should we be concerned with corruption within society that is broader than the public sector. Maybe that is more a philosophical question.

A: I have a view, and that is that we should be even more relentless in our pursuit of the offerer, the tempter, than we should of the tempted. You will find that the law says the same thing in relation to receivers and thieves. Receivers are dealt with more heavily in penalty than thieves, as a rule, on the basis that if you did not have receivers what is the point of people breaking, entering and stealing if they cannot

get rid of the stuff? I think that is the sort of analogy that is appropriate. It is certainly what I apply.

**Dr MACDONALD:**

**Q:** What about your powers under the Act in terms of the offerer?

**A:** Well, 8(1)(a) will take in corrupt conduct. And if they have offered a bribe, or sought to engage with the public official in wrongdoing, then there is a conspiracy, so that they come within section 9(1). So you have got corrupt conduct and you have probably got a criminal offence.

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

**Q:** Commissioner, following up your answers to questions from Dr Macdonald, a number of us have been fairly keen on the proposition that you were putting forward in relation to private sector codes and their relationship to the public sector in terms of contracting and what-have-you. Are there any steps that you could take to further this idea, perhaps by way of conferences and reports in the long term, so that we can actually work on what I think is a very positive idea?

**A:** Yes. I actually think it is a quite important matter. The climate is probably propitious for something like that to happen. The private sector is much more attuned to those ideas than it would have been even five or six years ago. If it was going to be done, I think it should be done as a consultative process, with the players in the private sector. I do not pretend to know how one would plan such an exercise, but the Commission does have officers who would be capable of doing that. If it is the wish of the Committee, I will take that back and see how we could work something out and then slot it into a program.

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

**Q:** Most members I have spoken to are very much in agreement with this idea.

**A:** It is something that I have floated in quite a few places where I have spoken, and I have not so far received resistance from the private sector. But the number of people in the private sector to whom that has been said might be a hundred - and you have a much wider audience than that when you look at the provision of services and of work as well. I do not quite know how you would plan it, but it is an exercise that we could work out and cost and fit it into our program somewhere, if that is the wish of the Committee. One way of dealing with it, of course, would be to have a reference from the Parliament, and that would be without any problem at all. I mean an expression from the Parliament. If the Committee itself expresses

that view, then certainly we would give it the respect that this Committee's deliberations deserve.

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

**Q:** Do you require, say, a resolution from our Committee?

**A:** It would be handy, because in prioritising then it gives me a basis for say: well, this is a matter of considerable public interest since it commands interest from our parliamentary committee, because we have criteria that we work out and apply to the determination of what we will do and will not do.

**Mr O'FARRELL:**

**Q:** Commissioner, on the same point: governments around the world in a number of areas can impose this sort of regime by refusing to deal with companies or countries that do not have codes in one area or another in place. Is that the sort of idea you were expounding?

**A:** That is the idea I have got, yes. You do not have to have legislation for it.

**Mr O'FARRELL:**

**Q:** So you would not deal with a company tendering in New South Wales unless of course it had a code of conduct or code of ethics?

**A:** Yes. Take a cleaning contractor, for instance. All that the contractor may have to do is adopt the code that its association has. So you can do it at a number of levels. There would be a number of small organisations that really could not afford to have their own independent code, but trade associations and professional associations would play a big role there. That is referred to in the papers. We have recently worked with the ACEA in providing probity considerations to be included in a tendering concept that is going Australia-wide. That is a way in which you could do it.

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

**Q:** I am on the Privacy Committee of New South Wales, and we have been working through a large number of major associations and groups of financiers and so on to try to get codes of conduct in practice and in place. So I would see that as in some way mirroring that process.

A: Yes.

**Dr MACDONALD:**

Q: Just following that up. Commissioner, codes of conduct may be only as good as the sanctions that apply to them. How do you sanction the private sector?

A: All you have got to have is one who breaches, is caught and is put on a stop list, and that is a very big sanction. Take a major contractor who was excluded for a period of 12 months from public contracting work. The effect on that major contractor's cash flow would be enormous.

**Dr MACDONALD:**

Q: But would they report to the Independent Commission Against Corruption? If O'Farrell Constructions, or something, had a code which it had breached and one of its employees recognised this, what would the process be?

A: I do not know. You would have to work that out. Rather than give an answer off the top of my head, it is really something that you have got to turn from the conceptual into the practical, every-day procedure. That is a process that would involve quite a lot of work, I would think.

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

Q: There are a lot of models for it.

A: Yes. You would need to examine each of those to see what in each of those is desirable, or which is the best approach to it. We have not done that. As I say, it is my concept and it is one of the things that I hope to achieve during my time as Commissioner. Maybe now is the acceptable time to start.

**Dr MACDONALD:**

Q: I think it is particularly important because there is a move at various levels of government, including local government, particularly at Mosman Council for instance where so much of its work is being contracted out that they must have arrangements with the private sector. So I guess it will become more relevant in years to come.

A: Yes. I think it is highly likely that that model will be adopted more widely in local government; and that means that the need for some such thing will be even greater. So you get in early and condition people right at the outset.

## ***RECOMMENDATIONS IN THE SECOND "MILLOO" REPORT***

### ***Questions on Notice***

- 3. In light of the evidence of the Royal Commission into the New South Wales Police Service, has the Commission reviewed the recommendations it made in the second Milloo report?**

Since the release of the second Milloo Report in April 1994, the Commission has been involved in monitoring the implementation of those recommendations. To date this has taken the form of participation in various monitoring committees, steering committees for specific projects and the implementation committee for Recommendation 5 which itself deals with monitoring and evaluation.

Implementation of the recommendations has now reached the stage where it is appropriate for the Commission to report publicly on the progress made by the Police Service. A draft has been prepared concerning work to date. However, it is intended to undertake field work to ascertain the effectiveness of new systems such as the standard work management system, the investigation priority system introduced as part of COPS and the progress made in introducing new records management and brief handling systems. A public report is expected in August.

The Commission's recommendations regarding the matter in which misconduct by police and complaints against police are handled, have been dealt with through the processes of the Royal Commission and do not require any further work by the ICAC.

### ***Questions without Notice***

#### **Mr WATKINS:**

- Q:** In the answers to Questions on Notice forwarded to us today regarding the second Milloo report, you say in the middle paragraph of your answer, "However, it is intended to undertake field work to ascertain the effectiveness of new systems such as the standard work management system, the investigation priority system introduced as part of COPS and the progress made in introducing new records management and brief handling systems." What is the extent of that field work, and is it in conflict at all with the work of the police royal commission, and does it have the cooperation of the police, or would some of that field work be covert work?

- A: No, it is not covert work. And it is with the cooperation of the Police Commission. The officers of the Commission have quite recently met to upgrade the nature of the field work with the Assistant Commissioner Jeff Jarratt. I cannot tell you the detail of the nature of the work, except to say that if you look at each of the system changes that were recommended, it is to confirm earlier work that had been done in relation to their implementation, that is, the systems being put in, and now to look as well at the effectiveness and monitoring of them. There was a draft report prepared in respect of this last year. I was not satisfied with the report; I thought it needed more work done on it, and that is being done.

## **ROYAL COMMISSION INTO NSW POLICE SERVICE - INVESTIGATIVE TECHNIQUES**

### ***Questions on Notice***

#### **4. What has the Commission learned from the work of the Royal Commission into the New South Wales Police Service to improve its own pro-active investigative techniques?**

The Commission has always employed proactive investigation techniques. By this I mean that the Commission has sought proactively to identify areas in which corruption may be occurring and to target those areas for investigative attention.

The Commission has also employed covert investigative techniques such as surveillance, listening devices and at times telephone intercepts. The use of these has been substantially increased since my appointment as Commissioner (*vide ante*). I acknowledge that the Royal Commission has had a number of successes to date in employing electronic surveillance in the pursuit of its inquiries. However, whilst I do not doubt the Royal Commission's extensive use of these techniques, the techniques themselves are common to a number of investigative agencies. In addition to selecting its targets the Royal Commission had the benefit of the work done by the ICAC and a number of other agencies.

A major limiting factor on the use of these techniques is that of budget. The ICAC has a budget of approximately \$14 million a year. A proportion of this is available for investigations thus the ICAC has had to be judicious in the allocation of scarce funds to covert techniques.

The ICAC has to cover the whole of the public sector (some 386,500 people) with this budget, as well as the public/private sector interface. By comparison the Royal Commission is concerned with a sub-set of some 13,100 persons. Its budget has, to date, exceeded \$60 million. The ICAC has approximately \$35 per annum per head of public sector employees to spend. In contrast the Royal Commission has about \$2,300 per annum per head to spend on the sub-set of the Police Service.

The fact that a listening device warrant is obtained from a Supreme Court Judge on a particular target is no guarantee that anything of use will be recorded during the period in which the listening device is in place. Nevertheless, the listening device must be monitored throughout the period and this requires staff to work at times around the clock for weeks at a time. During that period those personnel are not available to conduct day to day investigative or other work. Where the device is successful and produces evidence of corrupt activity the results can be very dramatic and can often shorten what would otherwise be a lengthy inquiry.

There are no guarantees, however, and if the device does not produce any worthwhile evidence then the allocation of the personnel resources for that period is not productive.

It can be seen then that with a limited budget the covert techniques involve substantial financial risk and that risk must be carefully managed. The budget allocated to the Royal Commission has undoubtedly ensured that the Royal Commission has been in a position in which it could afford to take more expenditure risks in this area.

Despite these considerations the Commission has increased its covert activity since the last meeting (*vide ante*).

As noted above prior to the amendment to the telephone intercept legislation which is outlined under Legislative Change above, it was extremely difficult for organisations such as the ICAC to successfully apply to Federal Court Judges for telephone intercept warrants because the categories of offences which would entitle a Judge to issue a warrant were very narrow. The amendment to the legislation in December last year to include bribery of public officials has dramatically increased the possibilities of telephone interception for agencies such as the ICAC. This will bring with it a significant budgetary cost and the Commission is in the process of making a specific submission to cover the budgetary cost. This cost will no doubt be in line with the estimated cost for the PCC in the area of telephone intercepts.

## **ESTABLISHMENT OF THE POLICE CORRUPTION COMMISSION**

### ***Questions on Notice***

#### **8. 8.1 and 8.6 What is your view on the establishment of the PCC?**

The establishment of the PCC is a matter of government policy and will be a matter for the Parliament. The views of the Commission were set out in its submission to the Royal Commission. It is not my function to second guess government policy or pre-empt the decisions of Parliament. Any comment over and above that already in the public domain should I believe depend on whether the Parliament decides to set up a committee to consider the Bill.

Committee members will be aware that the ICAC in its second report on the Investigation into the Relationship Between Police and Criminals (April 1994) stated that complaints against police in which the public has a vital interest or concern should not be left with the Police Service because the public would be unlikely to accept the results from a Police Service investigation. The Commission made the following recommendation:

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 with some other body. In appropriate circumstances the investigation could be conducted by the Police Service but monitored by the external agency.

In considering which outside agency should deal with such matters the Commission made the following statement:

If it is decided that such special cases should go off to an agency other than the Independent Commission Against Corruption, as it would prefer for fear of a swamping effect, then the Commission's existing jurisdiction should remain unimpaired. At least from time to time an anti-corruption body which has jurisdiction in relation to the entire public sector will need to do police related work. This inquiry is a good example. It has gone far beyond the mere investigation of particular instances. As is clear from this report, there is heavy emphasis upon helping the Police Service achieve systemic change (page 70).

Following that report the Commission participated on a working party convened by the Police Ministry to further consider the issues. The view of those on the working party at that time was that the Commission should, subject to funding, take on a greater role in relation to serious complaints against police. The Commission's approach to this question was cautious because as outlined in the report it feared that its attention to the remainder of the public service and in particular its approach to systemic change might suffer if a significant part of its attention had to be focussed on dealing with serious complaints against police. Ultimately, however, the Commission took the view, as had others, that the creation of a separate body to deal with police complaints would unnecessarily fragmentise the approach to dealing with corruption in New South Wales and in particular the creation of another agency would create coordination problems between the various accountability agencies. The Commission, at the request of the Royal Commission, made a submission to the Royal Commission outlining its proposal that it should be the body responsible for dealing with serious complaints against police and that this should be achieved by setting up a separate unit within the ICAC which for accountability purposes would be separately funded and would have a permanent Assistant Commissioner appointed to be responsible for the day to day running of the unit. The Commission had made a similar submission previously in meetings with a special committee established by the Premier to consider these issues.

It will be seen then that the stance taken in staking a claim in this area was not at all controversial. It had been a matter canvassed well in advance between all of the relevant agencies and was considered to have significant costs benefits for New South Wales. If there was controversy in this issue it arose only after the Royal Commission's Interim Report had directed unexpected, and in the main unjustified, criticism at the ICAC arising from the somewhat shallow and inadequately sourced reasons for the recommendations of the Royal Commission about the ICAC's role in serious complaints against police.

## **8.2 What discussions have been held with the Police Royal Commission regarding the transfer of any powers, duties and budget resources to the proposed PCC?**

There have been no discussions with the Police Royal Commission and nor would there need to be regarding the "transfer of any powers, duties and budget resources to the proposed PCC". The Commission is participating as a member of the PCC Implementation Committee which has been responsible for drafting the PCC and Cognate legislation and this has seen the PCC legislation mirror many of the provisions in the ICAC Act. Whilst the ICAC will cease to have jurisdiction in relation to the investigation of complaints against police it will retain its ability to conduct corruption prevention and education work to assist the Police Service.

On the question of budget and resources the Royal Commission has demonstrated that to conduct investigations involving extensive use of covert techniques effectively a significant budget is required. For these reasons the Commission proposes that there should be no decrease in its budget and that consideration may need to be given from time to time to special budgetary supplements for investigative purposes where the ICAC can demonstrate that a particular public sector agency warrants particular investigative focus which will involve high cost due to the need for extensive use of covert methods.

**8.3 If establishment of the PCC results in a budget cut to the ICAC, where do you propose to direct those cuts in your budget?**

A budgetary cut would not be justifiable. If a sustainable budget cut were to occur, the Commission's programs would be compromised.

**8.4 What role do you see for the ICAC after the establishment of the PCC?**

With respect to police, and as outlined in the answer to Question 3, the Commission intends to complete its monitoring and to report publicly on the implementation of the recommendations made in the second Milloo Report. The draft PCC Bill specifically provides that the Commission functions of corruption prevention and education in relation to the Police Service will not be affected. The Commission is continuing corruption prevention and education work with the Police Service. Discussions have already been held with Assistant Commissioner Jeff Jarratt on the areas of priority for such work and the best means for effective and co-operative work between the ICAC and relevant units of the Police Service. In addition, the Commission's representatives (Commissioner or nominee) continue on the Ministerial Advisory Committee on the Police Academy.

The Royal Commission has been and will continue to be informed of the work being undertaken by the ICAC. Following the establishment of the Police Corruption Commission, the ICAC will establish an effective working relationship with that new body so that that body can benefit from our experience and our corruption prevention and education work can benefit from the experience of the PCC.

The role of the ICAC will not otherwise change after the establishment of the PCC. It will continue to have jurisdiction to investigate the vast bulk of the public sector and the public/private sector interface.

**8.11 What role does the Commissioner see for the Police Commissioner on the Operation Review Committee in view of the recommendations of the Police Royal Commission?**

Apart from being a valuable accountability mechanism for the ICAC, the Operations Review Committee is able to provide valuable advice and suggestions to me concerning the Commission's investigative functions. In this respect the Commissioner of Police, having specialist investigative knowledge, is able to make a valuable contribution by providing advice and insights on matters related to criminal investigations and prosecutions. Whilst the Committee had previously expressed some concerns about the fact that the ICAC Act required the Police Commissioner to be a member of the ORC that was in a context in which the ICAC had responsibility and jurisdiction in relation to corrupt conduct on the part of police officers. Now that the PCC will be responsible for the investigation of police complaints there presumably can be no objection to the Police Commissioner having a continuing role on the ORC.

**8.12 What role does the Commissioner see for the continuing role of investigation by the ICAC considering the present emphasis on prevention and education? How have the ICAC resources and budget been changed to reflect this emphasis?**

Whilst the Commission has given special emphasis to corruption prevention and education there has been no diminution of the role of the investigations. In fact, as noted in the answer to question 1.8 and 1.9 there has been a marked increase in investigative activity by the Commission over the past seven months and I expect that level of activity will continue.

With respect to budget, there has been no reduction in the budget allocated for investigative activity.

**8.13 Does the Commissioner propose to further review the involvement of New South Wales Police in the ICAC investigation area following the revelations of the Police Royal Commission?**

The New South Wales Police Service has always been a valuable source of experienced police investigators. Whilst ever the Commission had a role in investigating police conduct there could be some concern, a perception that New South Wales police attached to the Commission may in some way compromise those investigations. In view of this I restricted the number of seconded New South Wales police officers. At present there are only five at the ICAC. Now that the PCC will be responsible for police matters I believe the ICAC can even more confidently look towards the New South Wales Police Service for skilled investigators. In this regard it should be noted that the PCC may itself use New South Wales police officers even though it does not actually employ them.

The Commission must always thoroughly security vet those it intends to employ, however beyond the need to remain vigilant in that area I do not believe that the

revelations of the Police Royal Commission will in themselves have any impact on the New South Wales Police Service being a valuable source of skilled staff.

***Questions without Notice***

**Mr LYNCH:**

**Q:** Commissioner, you have referred to the royal commission's interim report and you talk about "unexpected, and in the main unjustified, criticism at the ICAC arising from the somewhat shallow and inadequately sourced reasons for the recommendations of the Royal Commission about the ICAC's role in serious complaints against police." What, specifically, do you regard as the unjustified criticism?

**A:** If you go to page 92 of the Royal Commission's first report 1991-92 you will find nine dot points that are the reasons for recommending a separate body. The ninth one says - and I will deal with it as an exemplification - that other agencies such as the Australian Federal Police, the NCA and the NSWCC *might* feel greater confidence in the dissemination of sensitive information to a smaller specialist agency than to a multi functional agency which has a larger staff." The Australian Federal Police made no submission at all. The NCA made no submission at all. I made it my business to speak to Commissioner Palmer and have my staff speak to the NCA. They have no such feelings. The New South Wales Crime Commission did put in a submission. Its submission is contrary to this. Now, where is the support for that? Anything "*might*" be, but a *might* is not a fact; and it is not a fact the more so when it has no evidence to support it.

Can I take another of the dot points. "There is a public perception that the ICAC has failed to tackle police corruption or to use its coercive power with sufficient determination and initiative." Can I stop there. There are in this report 411 footnotes. What is amazing is that not one of the reasons on pages 91 to 92 has any footnote to support it. If you then search this report for evidence to substantiate that, you will find one footnote that may be support for it - a section in a submission made by The Whistleblowers Australia Incorporated - not referred to us, nothing that we were called upon or given an opportunity to respond to.

I mean, if one were to apply *Mahon v Air New Zealand* to this report, you could over turn it, because we were not given an opportunity to deal with these matters. And that seems to be the sole basis for that. Now, I could analyse each of the other reasons, and each of them can be shown to have similar sorts of problems. I have already highlighted the question of drawing away resources - at the top of page 92 -

and then the suggestion that that is precisely what should be done in respect of the new body.

I have not referred to "competition could exist in access to technical services and surveillance, with the potential for divided loyalties." That is a management question. And in every organisation, even the PCC, there will be competition for resources among differing investigations. I do not want to go too much into that, but that is the sort of basis that I would advance.

**Mr LYNCH:**

**Q:** If I could go back to your comments about dot point nine: you are in fact saying that the Royal Commissioner has got it very wrong; that he has expressed as the views of the NCA and the Crimes Commission views that they do not hold, or views which in some cases are directly opposite to the views that they hold?

**A:** Actually, he has not. The real vice of that is that he has used the word "might". And anything "might" be so. But it so happens not to coincide with the fact - a fact that could readily have been checked if anybody had wanted to do that.

## **COMMUNICATION WITH COMPLAINANTS**

### *Questions on Notice*

#### **5. From the Commission project on complainant expectations, what has been done to improve dealings, and in particular communication, with complainants?**

As a result of the project on complainant's expectations the Commission reviewed its standard correspondence to complainants and to those who provide information to the Commission. Copies of the relevant standard correspondence are attached in appendix 4. An early initial response time has been adopted of five working days, with an average in fact of about three working days. In addition to this the introduction of the Assessment Panel, which was reported in the last answers to questions on notice, has resulted in a substantial decrease in the turnaround time for dealing with information received.

The Commission recognises that it must manage the expectations of those who provide information, however, this will not necessarily mean providing such persons with detailed information about the nature of the investigations which is being or has been conducted by the Commission. The Commission takes the view that unless an investigation is the subject of a hearing and a report to Parliament it would generally be unfair, or constitute a breach of confidentiality, to those who are the subject of complaints or to those who assist the Commission with its inquiries to reveal details of the inquiries undertaken. To provide details to the complainant could arm the complainant with information which could then be used against the individuals concerned, politically or otherwise.

In the end the Commission must make a decision as to whether the matter warrants investigation and subject to the views of the Operations Review Committee the complainant is informed of that decision. The extent to which the process is detailed often involves a delicate matter of judgment.

### *Confidentiality of Complainants*

#### *Questions on Notice*

#### **8.10 What steps has the ICAC taken to further protect the confidentiality of complainants? What is the Commissioner's view of the Protective Disclosure Act in this regard?**

It is not clear what the question intends by the expression "to further protect". The Commission has previously advised the Committee (as it has advised complainants)

that it is not always possible to guarantee complete complainant confidentiality in the circumstances. The fact that somebody provides information to the Commission about serious corrupt conduct may necessitate taking evidence from that person and if the evidence is to be the subject of any adverse finding it would be necessary to make that person available for cross-examination by those representing the person who is the subject of the complaint. Therefore it would be wrong to mislead complainants to that they believe their names may never become public or known to the persons the subject of complaint. Furthermore, if the Commission decides to refer a matter to another agency it may be necessary to disclose the name of the complainant if not doing so would prevent the other agency adequately and lawfully investigating the matter. This approach is reflected in the Commission's referral procedure, a copy of which has been provided to the Committee, and is also reflected in the provisions within the Protected Disclosures Act. That Act allows the identity of a complainant to be disclosed in a number of situations including where it is necessary for the purposes of the investigation or for procedural fairness considerations. Whilst the Commission has expressed a number of concerns about the Protected Disclosures Act these do not include concerns about the confidentiality provisions.

## ***Protected Disclosures***

### ***Questions without Notice***

#### **Mr LYNCH:**

**Q:** The other issue that I want to raise briefly is that you refer in your prepared answers to the question about the Protected Disclosures Act that you are preparing a submission to the Ombudsman committee. There was also reference to a submission to the Premier. Is the submission to the Ombudsman committee going to include all the material that was submitted to the Premier?

**A:** Yes. I was very concerned when I got the result of the first phase at what was happening, and I thought it was essential that as soon as possible we try to activate something. That is why I went and saw the Premier. The parliamentary committee on the Ombudsman is looking at amendments to the Act. The material that I provided to the Premier, together with other material as well, will go to that committee, because we have progressed now into the second phase. We have not completed that analysis, but we will certainly do so during the life of that committee.

## **SURVEY OF COMMUNITY ATTITUDES TO CORRUPTION AND THE ICAC**

### ***Questions on Notice***

#### **6. 6.1 What does the Commission believe is the benefit(s) arising out of the Survey of Community Attitudes to Corruption and the ICAC?**

In general terms, the Commission believes that the primary benefit arising from a survey of a representative sample of the New South Wales adult community is to become better informed about the general public's understanding of corruption and their knowledge of, and support for, the work of the ICAC. This, in turn, can be used to direct attention to those areas in which proactive work can be undertaken. This is essential given that, as defined in the ICAC Act, the Commission's functions include:

- s13(1)(i) "to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration"; and
- s13(1)(j) "to enlist and foster public support in combatting corrupt conduct".

The importance of the role of the community in combatting corruption is also reflected in the Commission's current Corporate Plan.

The ICAC has been conducting annual community attitude surveys for the past three years. The purpose of these surveys is to inform our education and our corruption prevention work. One example is the information which has resulted in the Commission deciding to undertake a program for Members of Parliament to equip them better to deal with constituency matters which may involve corrupt conduct (vide infra).

The 1995 community attitude survey focused on:

- community perceptions of New South Wales public sector services and integrity;
- community awareness of what they, as individuals, can do about corruption;
- community understanding of/ and support for/ the work of the ICAC.

One example of how the information can be used in our education work is as follows:

When asked what they could do about corruption, more than one-third of respondents mentioned approaching their local Member of Parliament. If people are going to go to their local Member of Parliament when faced with corruption, this raises a number of issues for the ICAC to consider. For example, we need to consider how well informed are Members of Parliament about:

- i) the options available to deal with corruption;
- ii) the role, function and jurisdiction of the ICAC; and
- iii) how to pass on information or a complaint to the ICAC?

A further question concerns how well *resourced* Members of Parliament are to properly inform their constituents about corruption and how it can be dealt with.

Other specific benefits of conducting community attitude surveys include better informing our efforts to reduce corruption by identifying:

- community perceptions of their relationship with the public sector (e.g., whether or not they consider the public sector has an impact on their lives; the services that are most frequently recognised as being provided by the public sector; their perceptions of public versus private sector integrity) in order to provide a context in which to understand community perceptions of corruption in the New South Wales public sector and to plan suitable messages for the community education programs [1995 survey];
- perceptions of corruption as a problem for the community over time [1993, 1994 and 1995 surveys];
- community attitudes to reporting corruption over time [1993, 1994 and 1995 surveys];
- factors which may affect community willingness to take action about corruption [1995 survey];
- the level of public support for the Commission's placing additional emphasis on corruption prevention and educational work in addition to its investigative role [1995 survey];
- the images that members of the community hold about "corruption in the New South Wales public sector" [1994 survey];
- perceived effects of corruption on the individual, family and the community [1993 and 1994 surveys].

## **6.2     What was the cost of the survey?**

Much of the work for the 1995 survey was done within the Commission by the ICAC's Research Section. The survey was designed by the ICAC Research Section. The data were analysed and the report was written by the ICAC Research Section. An external research company, Taverner Research Company, was engaged to conduct the telephone interviews and to code the data. The cost of the work of this external research company was \$12,850.

The total cost of preparing, undertaking and printing the report amounted to \$14,000.

## **6.3     The survey shows that only 6% think that the ICAC is a place to go to do something about corruption. The ICAC was the 8th named agency in the list to go. As a specialist anti-corruption agency, does this not reflect poorly on the public profile and/or public confidence on the ICAC?**

What these results suggest is that the ICAC is not foremost in people's minds as a place to report corruption. However, the level of complaints to the Commission under s10 of the ICAC Act has increased substantially over the last ten months.

While the ICAC does take complaints about corruption from members of the public, it was never meant as the first point of call. As we saw in the scenario about the local council, people nominate going to the agency where the corruption is alleged to have occurred. It is a more efficient process to have individuals complain directly to organisations, allowing the organisations to resolve issues, where this is possible.

It should also be remembered that where complaints are made to the relevant department or local council, the principal officer of that authority has an obligation under s11 of the ICAC Act, to notify the ICAC of any matter that the principal officer "suspects on reasonable grounds concerns or may concern corrupt conduct". Hence the ICAC would be informed of the conduct by the authority to which the individual has made the complaint.

While the response may possibly reflect on public profile or association with the name "ICAC", it does not reflect on public confidence. As the surveys have indicated, public support for the ICAC is consistently very high. For each year, over the past three years over 90% have considered the ICAC to be a "good thing for the people of New South Wales". Furthermore, when asked whether they would feel comfortable bringing information about corruption to the ICAC, three-quarters of the respondents, who knew of the ICAC, said they *would* feel comfortable to approach it with information about corruption. Of the minority who said they would *not* feel comfortable, half of these said that there was *no other* organisation that they would feel more comfortable to approach than the ICAC.

The survey finding shows many people realise the value of dealing directly with a local authority in the first instance when reporting alleged corruption, i.e., their MP or the local council, before taking the matter to enforcement or accountability agencies, such as the Office of the Ombudsman (a complaints handling body), the New South Wales Police Service, or the ICAC.

The Commission focuses on systemic corruption. Whilst not investigating all information received, the Commission analyses its data to determine any patterns or trends and to guide its corruption prevention and education work.

The Community Attitude Survey shows that more than 90% of respondents believed the Commission was a good thing for New South Wales, and that more than 80% said the ICAC has been successful in exposing corruption in New South Wales.

*Questions without Notice*

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

**Q:** Who conducts your surveys?

**A:** They are designed by our people and conducted externally. So let us assume that you have got one now, and that the community believes that there should be some such mechanism. How do you test our effectiveness? One way is to ask: what do other agencies and other places think about our operation? The number of people that we have come to us, the number of people who want to come to us and learn from us, suggests that there are a number of areas in which we are regarded highly. Indeed, if I take the Transparency International people, who are worldwide, they regard us as the pre-eminent organisation in this field. So, what do others think about us?

Secondly, what are the successes in exposing matters that ought not to occur - corrupt conduct, maladministrations? Well, some result in a return of money to the State. Southern Mitchell Electricity was one. Some look like they may involve a return of money to the State. One of the matters in draft report is in that category. Others involve major changes to systems. Milloo was such a report.

The Royal Commission, with great respect, was very critical of Milloo, but they did not ask us or anybody just what changes to systems had been made, and how far they had gone, and how much better things were. I mean, one of the great weaknesses of the first report of the Royal Commission is that they never asked us. They never sought our advice. They never sought what we were doing. They drew

down the curtain, as it were, as at November 1994 without looking at what was going on thereafter. However, that is another matter.

If you look at the number of agencies at the present time that are working with us to review and alter their systems as a result of our investigations - and some of them are not public hearings yet; and some of them may not become public hearings because a public hearing can be very bruising for an organisation and for individuals, and I am very conscious of that - but when you get a major organisation that avoids first a major tender process, and is completely changing the management of tenders because of what we revealed by a private non-public investigation, the savings to the State are quite marked. Yet it is not in the public arena. The question is: should it be in the public arena? The difficulty then is that as soon as somebody cooperates with you and you expose their systems as having been defective, they tend to clam up and do not cooperate with you in the same way. They might say you have "ratted" on them. What the criteria might be I have found very difficult to determine in the investigative field.

**Mr WATKINS:**

**Q:** But there can be more work done on this, can't there?

**A:** There can be. There is no doubt that there can be.

**Mr WATKINS:**

**Q:** May I ask whether you could do that by the time you next come back?

**A:** Can I say that you are completely right about more work being able to be done on it. It may not be exhaustive. What I have tried to do is to get the place working and producing, motivated. I am confident that we are at that stage now. I do not think we can work people too much harder. In fact, I think we will get burnout if we are not careful. Now it is time that we can give attention to those things. But, in the order of priorities, it is important that we be able to satisfy our parliamentary masters and the Parliament. I mean, we are the servant of the Parliament and the people. I thought we had to get the job going first, and now we can review that. But I take that on point, and I think your point is right.

**Mr WATKINS:**

**Q:** And, as we discussed earlier, we are probably entering a critical time regarding future funding for the Independent Commission Against Corruption, so it is probably a good time to do it.

A: Yes.

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**CHAIRMAN:**

Q: In regard to page 5, you say that as a consequence of the survey you are thinking about running some seminar sessions for members of Parliament in regard to the ICAC. Have you put much thought into that?

A: Yes. It is under way now. Our first public attitudes survey showed that the first port of call for quite a high number of people is their local member, and properly so. It actually shows a confidence in local members that is a bit inconsistent with some of the bagging that you as members of Parliament get in the media. The second thing is that a number of members - I do not suggest a flood, but a number sufficient to command attention - have said, "Well, can you help us with this, this and this?" Put those two pieces of data together and it is suggested that some program for members was desirable, and the Corruption Prevention and Education Unit is working on that at the moment.

**CHAIRMAN:**

Q: That would be appreciated. The workload of members of Parliament is pretty high. If you are going to have these seminars, you could base them on regional areas so that you could have one at Parramatta where the local members surrounding Parramatta could go to it, rather than bringing people in here.

A: I must say I had not thought of that. It is a consideration that we would certainly take into account.

**CHAIRMAN:**

Q: It deals with staff as well.

A: I think, rather than duplicate or triplicate, I would try to get the Ombudsman and the Auditor-General to come in and do a segment as well.

**CHAIRMAN:**

Q: Talking about seminars, there has been a view by members of this Committee that once we get rid of the little approach that we have been on for some time - and I hope in the very near future we will finish it - that is, the issue of ethics, because some lower House members of this Committee make up the ethics committee as

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well - is to look at a project on what Mr Watkins has been talking about, relating to the cost effectiveness of the ICAC, its role, the way you use your public inquiry powers, the way witnesses are dealt with, the way in which documents are seized, et cetera. As part of that ongoing program, which hopefully we will sort out in consultation with yourself and your good officers, one of the things we were contemplating was a seminar where this Parliament would sponsor a seminar on people's view of the ICAC, and then invite people to come and run the seminar, as maybe a one-day or two-day seminar, with guest speakers, broken up into sessions, et cetera, to look basically at ways and means of dealing with issues arising from the ICAC. I mean, there are a lot of people out there who have high respect for you; there are some people out there who deserve what they got, who are now putting their consciences together and perhaps do not think so much of you. I think the time has come, after seven years, for us to look in that direction. We hope that it will be a very constructive seminar to look at what people view this important body as having done. What is your view on that?

- A: Ensuring a balance would be the difficult thing. You tend to find in most activities that the antis and the knockers, those with an axe to grind, come forward. Some axes are legitimately there to grind, and others are not. But the satisfied majority do not say anything. So you would need to be very cautious about the organisation of it.

## **PUBLIC SERVANTS EMPLOYMENT**

### *Questions on Notice*

**7.2 Do you believe it is the prerogative of the Government of the day to hire and fire public servants in accordance with established guidelines?**

Yes, it is the prerogative of the government of the day to hire and fire public servants in accordance with established guidelines. The Commission's role in this area is to work with relevant agencies to ensure that guidelines include any necessary corruption prevention measures and that they are implemented appropriately.

## **MISUSE OF REFERENCES TO THE ICAC**

### ***Questions on Notice***

#### **8.14 What steps will the Commissioner take to avoid reference to the ICAC as a means of causing political damage to individuals?**

I assume this question is directed at the damage that can flow when individuals choose to state publicly that they have referred complaints about other persons to the ICAC. This practice which is not uncommon within state and local government politics is one which the Commission has sought to discourage. Committee members will recall that in response to a similar question from the Committee in September 1995 I said that:

“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 any 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.”

Committee members will recall that in June of last year I raised my concerns about a particular matter of this kind with the Premier and he responded immediately by issuing a memorandum to all Ministers on the subject. A copy of that memorandum was provided in September 1995 to the Committee.

## ***Vexatious Complaints and Subjudice Matters***

### ***Questions without Notice***

**CHAIRMAN:**

**Q:** Commissioner, may I bring you back to the issue that we were discussing earlier concerning people who, after making complaints, or people who know of someone who made complaints to the ICAC, then goes public - not for the purposes of educating the public but for causing damage to the person who is being reported. I did send you a copy of an article that appeared in the *Parramatta Advertiser*. I do now know whether you got that.

**A:** I did.

**CHAIRMAN:**

**Q:** May I read that article to you, because, if anything, I think it shows there is a major problem. I know you did say earlier that you did not think any type of criminal penalty should be applied to people who do that. But the consequences to the innocent victims and their reputations in the community, particularly if they have businesses in the community, is enormous. Just for the edification of members, I show the major problem with this. This is the article which appeared in the *Parramatta Advertiser* on 8 May 1996. The headline is " 'Immoral' deal", and then in large bold letters "Row over council decision":

*THE Independent Commission Against Corruption will assess a controversial Auburn Council tender awarded to the deputy mayor's real estate agency last week.*

*In confidential session, council endorsed CIA Real Estate's tender to manage 16 council properties, understood to be worth about \$15,000 over three years.*

*Independent councillor Le Lam is a director and licensee of that company*

*She declared a pecuniary interest and did not debate or vote on the issue.*

*But the decision raised the ire of some councillors and unsuccessful tenderers, with all sides enlisting advice from the ICAC.*

*One company, The Professional's Real Estate at Berala, has questioned the ethics of the decision.*

*In a letter to the ICAC licensee J A Rodi claimed the tender was "unethical and improper".*

*"Our question to you is to clarify if such conduct is acceptable and ethical and should this company be eligible to make the submission," Mr Rodi said.*

*Property manager and former councillor Helen Lane said it was not a case of sour grapes, but the principle at issue.*

*Outspoken councillor Terry Keegan blasted the decision and tried to overturn it.*

*"If it's not illegal, it's immoral," he said.*

*"Regardless of whether Mrs Lam has declared a pecuniary interest in the matter.....her company will get financial gain through this action.*

*"We should exclude ourselves as councillors from applying in the first place for tenders such as this," Mr Keegan said.*

Then there is a little bit about the mayor, but then it says:

*Mrs Lam said she received advice from the ICAC before council's decision last week assuring her that, as long as she declared an interest, all was above board.*

*She said she had no input in the tender document and that she would receive no financial gain.*

*"As far as I am concerned I have done nothing wrong at all," Mrs Lam said.*

Mr Commissioner, the situation in regard to that is that this lady is the deputy mayor. She is not the owner of that real estate agency; she is an employee, but she is the licensee of it. She is on the council. She sought the advice of the ICAC, and she declared that in confidential session, and yet the *Parramatta Advertiser* was able to get hold of the confidential session and also Mr Rodi's letter that was written to you. Now, when one looks at what Mr Rodi had to say, he takes the protection of the ICAC Act in regard to defamation, and he has all those advantages, but at the same time the deputy mayor suffers the ire of the community. I might say she is the second Chinese deputy mayor to be elected to a council in Sydney. But, be that as it may, she is a woman whom I have known for seven years, and I hold her in

high esteem as a very honest, decent, hardworking individual. Helen Lane, who is mentioned in this article, is the ex-deputy mayor who was defeated in the last council election. She works for Mr Rodi. And, of course, if anyone knows about immorality or illegality, it's definitely councillor Keegan. But, be that as it may, that is the type of article - and I am not criticising the *Parramatta Advertiser*; it's a good article for them to write, and it is well written by the journalist. One would not step back and say that she or he should let it go. But, be that as it may, the consequences of it to the innocent victim are enormous. So, therefore, do you really now think, after thinking about the pain and hurt that I can assure you councillor Le Lam has gone through as a consequence of that article, that something more should be done to protect innocent victims from people who just use the ICAC so that they can destroy their opponents in the local area?

- A: Can I hasten to add, Mr Chairman, that I have no knowledge of the matter at all. I don't know whether anybody has written to us, or to me, or that the matter is before the Commission. Nor do I know whether anybody sought any advice. So the answer has to be a general answer, using this publication as an example of the sort of thing that might occur.

The nature of the offence that might be created to deal with this type of situation is somewhat difficult to envisage. Either it stifles all comment and all debate, including a response to anonymous material that may be put into the public domain, or it is more particular. I have great difficulties, as I have said on a previous occasion, in envisaging what the nature of the offence that might be created would be, and even greater difficulty in knowing how you would go about proving it.

For every statutory provision that might seek to deal with it, there will be a way around it. I can remember, in my own childhood, electoral posters applied to telegraph poles, and somebody pasting over them a swastika. The response to that was to paste over the opponent's posters a hammer and sickle - so you got the Nazis and the Communists, both by nasties. You cannot deal with that. It is covert. Actually catching people doing it is very difficult. And I think the same could well apply in respect of this type of activity.

Assume that it is done in the House, not in public. That might mean that some things can be done in the House over which the House itself exercises control, but nobody outside. This example here was apparently said in a council meeting. Do you stifle debate in the council as well? The point that is raised is a point of public perception. How you put it, and whether you back it up with the ICAC is a question of, maybe, tactics and style.

I have great difficulties in knowing what the nature of the offence would be. The type of approach that publicises reports, either in the impersonal or personal way, is

undesirable. In the end, I think we can do no more than look at prospective people who may infringe. They tend to be in the political field, so, they are parliamentarians and members of council. Beyond that, it is almost impossible to anticipate. So, should you then take action after the event? My suggestion is that if you do that it will be said to be a vendetta against free speech, and in the broader picture of the situation it would be more likely to damage the standing of the ICAC than to enhance it. I would urge caution in relation to that.

**CHAIRMAN:**

- Q:** It is not helpful for the ICAC in its investigation to have Mr Rodi or Ms Lane disclosing publicly letters that they have written off to the ICAC in regard to a councillor, or anyone, is it?
- A:** It is not helpful at all for anybody to assume or to say that, "We will investigate a particular matter." Except for the Parliament, whose will we obey by resolution of both Houses, we have a discretion. This matter now being drawn to my attention, I will take appropriate recourse to the people involved to point out the principles. But, beyond that, I don't urge that other than cautioning if you are contemplating the creation of an offence. I think it is a can of worms and very difficult to deal with.

**Dr MACDONALD:**

- Q:** I might follow up on that. I think what you are pointing out, Commissioner, is that you cannot legislate against vexatiousness. When you are a schoolboy and you have somebody threatening to report you to the headmaster, or whether you are a motorist who has an accident and the other motorist threatens to take you to the police, there will always be that possibility. What ICAC could possibly do in its dealings with the community and the public generally is to remind the public that 90 per cent, or whatever percentage it is, of the matters referred to it are rejected or do not need follow-up and have no basis, and so on, to try to destigmatise this concept of a referral to ICAC means you are corrupt. You might like to take that on board as a useful outcome from what the Chairman said.

- A:** Yes, I do.

**Mr LYNCH:**

- Q:** One other way of dealing with it is, when you are sending out your regular reminder to people for council elections not to make complaints and advertise the fact, perhaps it might be pointed out to them that publicly declaring that you have made a complaint to ICAC is one of the matters to be taken into consideration when

determining whether a complaint is in fact vexatious; that is, if you put your letter in to ICAC and put out a press release at the same time, *prima facie* you are probably not making a serious complaint.

A: I do not know that that follows. You may have a legitimate complaint and try to milk it for as much as you can, in every field that you can. I think that is too general a statement.

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

Q: Have you ever had a go - to use the vernacular - at someone for putting in what you considered to be a vexatious complaint?

A: Not in my time. I think not. My predecessor did have a go at somebody for insulting the commission - "a pack of ratbags" and all that sort of stuff - and failed. It is an offence to make a false complaint, but the nature of the offence is such that you would really have to prove that the person had no genuine belief in the subject-matter of the complaint.

**Mr O'FARRELL:**

Q: Commissioner, whatever the rights and wrongs of the particular matter that the Chairman has brought to our attention, the complainant and the person who has gone to the media still has to abide by the laws of defamation, do they not?

A: Yes.

**Mr O'FARRELL:**

Q: So, if this letter is defamatory, the person who feels aggrieved has an option to pursue that through the courts.

A: If a person who is aggrieved can show that it was published other than to the Independent Commission Against Corruption, or under a circumstance of absolute or qualified privilege, has a right of action.

**CHAIRMAN:**

Q: I do not have any problem, Mr Commissioner, with Mr Rodi and Ms Helen Lane making a statement to the Independent Commission Against Corruption about a matter that they were concerned about. I think that is only fit and proper. But then to deliberately expose it to public scrutiny before the ICAC even has a chance to investigate - because you do not know anything about it yourself - is a matter that I

think could be referred to as immoral and improper, but it was definitely not helpful.

**A:** I think one of the things that this points up is probably the need for me as Commissioner to remind people engaged in local government of the need to refrain from so doing, not just at election time but on a reasonably regular basis. But that will not assist in relation to those who are outside a council.

**Mr WATKINS:**

**Q:** I remember spending a very uncomfortable two hours at my place of work with two ICAC investigators over a matter, where they came in my view under the guise of investigating something, and I discovered after about an hour that in fact they were investigating me about a matter that had gone to the press. I found their behaviour unbelievably offensive and probably improper. So I have some sympathy for the view opposed to what you are putting regarding the powers of the Independent Commission Against Corruption in trying to lessen references or making public references to the ICAC. I am in the political process, so I can see how it can be damaging, but an all powerful ICAC putting pressure on people in the community is not something that I want to see arrived at all.

**A:** Could I ask how long ago this was?

**Mr WATKINS:**

**Q:** It was in early 1995. That is another matter. But I think we should be very cautious about extending the powers of the ICAC into moving into areas of vexatious complaints. I find that an extremely disturbing drift.

**A:** The Act does provide for that, but ----

**Mr WATKINS:**

**Q:** For what is seen to be a vexatious complaint.

**A:** You have got to prove it. My view is that unless you have a clear case, a case that is self-evident virtually, that it causes more problems for us and diverts attention and resources from the activities that we should be engaged in than it is worth.

**Mr WATKINS:**

**Q:** If that area is finished, I have some questions on other matters.

**CHAIRMAN:**

**Q:** We will move on to Mr O'Farrell to talk about the Speaker and matters being raised in Parliament during an ICAC inquiry. Is that right?

**Mr O'FARRELL:**

**Q:** Yes, indeed. Commissioner, can you initially elaborate on what you seek from the Presiding Officers in relation to mention of ICAC issues in either House of Parliament? Then I may have a few questions for you.

**A:** The proposition is that, once a public hearing in relation to an investigation has been embarked upon, the Presiding Officers treat that by analogy with a matter in court and apply the same rules. You cannot call it the sub judice rule, but it is the same rule. The sub judice rule is really a rule of public policy, and the public policy seems to me to be equally applicable. There are a number of reasons for that. One is that questions in the House have a force as fact in the mind of many of the public which in fact they are not; they are in fact questions seeking a fact.

**Mr O'FARRELL:**

**Q:** But a loaded question.

**A:** They may create a false impression or expectation. Secondly, since the question, if allowed, may cause a member to answer in heat, because it is directed towards a member, that answer may be adverse to the member when, on reflection, the member gives a fuller version and that may strike at the credibility of the member unfairly. Thirdly, it is undesirable that the proceedings before the Commission that are in the public arena should be politicised, which questions and matters in the House tend to do. For those reasons, I would advocate that the Presiding Officers adopted that rule. As I have indicated, I would also seek to have the members of the major political parties give a sort of undertaking and apply the sort of principle that the now Premier did when he was in opposition in relation to ICAC inquiries. That is in relation to public hearings.

**Mr O'FARRELL:**

**Q:** There are two issues, are there not: the issue of whether evidence before the ICAC should be the subject of analysis, scrutiny, debate in the Parliament?

**A:** Yes.

**Mr O'FARRELL:**

**Q:** And then is there not another issue which relates to person A, who may be a public figure, who said before an ICAC inquiry was established, for instance, that he was not in place X on day Y, and that person may have told the Parliament that fact; and then, before the commission, subject to full cross-examination and testing of evidence, it may in fact be established that that was wrong. Now, clearly, that issue in a Parliament, where the misleading of Parliament has dire consequences, is of issue; and surely that is a separate issue; and they are separate sorts of issues to the first scenario, which relates to trying to analyse evidence before the commission.

**A:** They may be separate, but they are separate in one sense only. But, more importantly than that, it seems to me, if the matter of misleading the Parliament is to be raised as an issue, then it is a question of time at which it is raised. I tend to think that things can be raised in the House while matters are still in course and before resolution is arrived at, for political reasons, rather than to expose what the true situation is.

If the exercise is to expose what the true situation is, and the member has or may have misled the Parliament, that will wait without any difficulty until such time as the hearing is concluded and the report is presented. Then there will be a finding one way or the other in respect of it that may enhance the question or it may take away much of the basis of the question. It is a question of timing, I think.

**Mr LYNCH:**

**Q:** Can I make one minor point on that. There is an interesting philosophical question in that, because the Independent Commission Against Corruption Act says that evidence given by witnesses cannot be used for other purposes.

**A:** Cannot be used in any criminal, civil or disciplinary proceedings.

**Mr LYNCH:**

**Q:** Unless it is for false declarations, or whatever. It seems to me quite interesting that Parliament has said that is the case, yet there is a real possibility that evidence that is given can then be used to pursue the heinous crime of misleading the House. I mean, it is an interesting sort of contradiction.

**A:** I had not thought that through, but there would be a way in which you could ask in the House the same questions of a member as answers had been given to the ICAC and see what you elicit. I had not thought that one through.

**Mr O'FARRELL:**

**Q:** I am also interested in what you perceive as the current Premier's philosophy in opposition in relation to ICAC matters, because I well recall sitting in the adviser's box and having the now Premier drop a bucket on a particular company, and that ended up before the ICAC. In fact, I think the question was worded in that way. So what is it that you perceive Mr Carr's policy was in opposition?

**A:** The Premier has informed me, both orally and to my recollection in writing, that the policy of the then Opposition was that once a public hearing of a matter had commenced they would not ask any questions in the House concerning the matter. Now, that does not deal with the situation before there is a public hearing, or after, but it does deal with the running of the public hearing time.

**Mr O'FARRELL:**

**Q:** You mentioned in earlier advice about matters regarding the Bathurst electricity issue. I presume from your evidence that you are equally critical of the Minister, who rose in our place on two occasions to dump a bucket on the National Party candidate, who also happened to be chairman of that electricity board, firstly, advising the House that it had been referred to ICAC; and, secondly, advising the House, as I recollect, before ICAC had reported, of more information on the issue.

**A:** I cannot speak of the second matter. The first matter caused me to write to the Premier, as a result of which the Premier issued a very strong circular to all of his Ministers concerning that. His response was immediate and, with respect, very appropriate.

## *Legal Aid*

### *Questions without Notice*

**Mr LYNCH:**

**Q:** Could I refer to two perhaps less controversial issues than those. Section 52 of the primary Act has a legal aid scheme set out in it. To your knowledge, has anyone ever actually been granted legal aid under that section?

**A:** Yes. As far as I am aware, everybody who has appeared in investigations that have involved public hearings that I have been involved in has had such a grant.

**Mr LYNCH:**

**Q:** This may be a bit more technical and you may not be able to answer it, but is it in fact legal aid under section 52 through the Attorney General, or is it another scheme altogether?

**A:** It is legal aid through the Attorney General.

**CHAIRMAN:**

**Q:** I think Mr Brad Hazzard may contradict you about getting legal aid, as he points out -----

**A:** But that is not in my time.

**CHAIRMAN:**

**Q:** He points out continually that he did not get legal aid.

**Mr LYNCH:**

**Q:** In fact, in the RTA inquiry there were no funds allocated for that purpose at all.

**A:** With respect, it is not the decision of the Commission whether or not it is granted. That is a matter for the Attorney General.

## **ICAC STAFFING AND BUDGET**

### ***Questions on Notice***

**8.15 Would the Commissioner detail staff changes in the ICAC over the past year? How does this compare to previous years?**

Category of Staff	1/8/94	18/8/95	17/5/96
Permanent Staff	118	128.2*	126**
Temporary Staff	10	7.6	16.4
<b>TOTAL</b>	<b>128</b>	<b>135.8</b>	<b>142.4</b>

\* includes three permanent staff currently on leave without pay and four permanent staff on secondment to other agencies.

\*\* includes one permanent staff currently on leave without pay and two permanent staff on secondments to other agencies.

In November 1994 the Commission registered its first Enterprise Agreement with staff. In entering into that Agreement the Commission and staff envisaged that one of the improvements which would result from the package of changes made by the Agreement would be reduced employee turnover. One of the performance measures agreed to for reduced employee turnover was a reduction in unplanned staff turnover by 25% in the first 12 months after registration of the Agreement. As can be seen from the following summarised information this was achieved:

- (a) 12 months prior to Enterprise Agreement 26% (28 people)
- (b) 25% reduction target 19.5% (21 people)
- (c) Actual for Dec 94 - Nov 95 13% (14 people - a 50% reduction)
- (d) Dec 95 - April 96 8% (10 people)
- (e) Average per EA year 16% (19 people - a 39% reduction)

**8.16 Is the budget of ICAC underspent? If so, by how much?**

It is anticipated the Commission will spend its total allocation this financial year, perhaps slightly more. This has resulted because there has been significant increases in productivity across the Commission. The Investigation Unit has undertaken extensive proactive work some of which has resulted in hearings and will result in further hearings being undertaken over the remainder of this financial year. Extensive work has also been carried out within the Commission's corruption prevention and education programs (*vide ante*).

## ***Cost-effectiveness of ICAC's activities***

### ***Questions without Notice***

**Mr O'FARRELL:**

**Q:** Commissioner, could I return to the issue that Mr Watkins raised earlier about performance measures for the Independent Commission Against Corruption. You referred in your evidence to the work that the commission had done with State Rail, and that covered areas such as tendering, north coast land deals, disposal of property and the like. Has either State Rail or the commission itself endeavoured to put a cost figure on that in terms of what savings there were to an authority with a billion-plus budget, which might therefore put your paltry budget into some sort of perspective? And, going back to your opening statement, you referred to the work that the ICAC had undertaken in relation to the Olympics in determining or regulating/monitoring of contracts which, as you said, might in the end be worth something like \$2.5 billion. Is that a possible performance measure that the ICAC can use to demonstrate its effectiveness and perhaps get more resources out of government to continue that sort of work?

**A:** It is one of them. Whether or not one uses it to get more resources or merely to maintain a level of resources is another question. But it is certainly one of them. There are two matters that are in draft report at the moment, each of which involves quite substantial sums of savings or returns, hopefully, to the State.

**Mr WATKINS:**

**Q:** Regarding the cost effectiveness of the ICAC's activities, you rightly refer back to your answer in September last year. That is an area that does concern me. We spent a bit of time this morning talking about the amount of funds available to the Independent Commission Against Corruption and whether it was enough or too much. These are questions that should exercise the minds of members of this Committee. In September you suggested that in looking at the cost effectiveness of what the commission does, you would at some stage like to do an analysis of actual tangibles, that it was something that you had in mind to do. You also suggested when it was brought up again in September, that you were moving towards trying to give us, as representatives of the Parliament, something concrete that we can work on about cost effectiveness. Now, it does not seem, from your answer - in which you repeat the answer that you gave in September - that you have moved in that direction. Has anything been done? If so, what? And when can we start to get some vehicle that gives us analyses of those matters?

- A: The first thing is we look at some of the product that we are producing, coming away from investigation for the moment. We have undertaken a review of the HSC Legal Studies kit, *The Individual and the State*. We have planned the carrying out of a like exercise in relation to the kit "Ethics and Enterprise - life cycle of a business", which is the second item on page 26. These are products which are produced for educational purposes, and their effectiveness can be judged externally by those who either use them or decide not to use them, as the case may be. That second project of monitoring has been held over until later in the year because of the time of distribution of that work.

In the systems field, the corruption prevention people have gone back into areas of the SRA where system changes have been recommended to determine the extent to which those recommendations have been adopted. In relation to investigations, the criteria there are: what do you produce by your work? And, if there is nothing being produced, how quickly can you determine the probability that nothing is being produced or is going to be produced, so that you can cut it off.

In terms of developing precise criteria across the board, I think that is not possible. You have to do it in relation to each compartment. The unit directors are working on that. They have not produced them. Can I say this though: taking an investigation where you determine that covert surveillance, physical and electronic, is appropriate - and we have had, as you will see from this report, a number of those - you may listen for 48 hours and watch for 48 hours and get two sentences that really are critical. You have got to make a decision, after a given time, whether you are likely to get any more.

Now, there are mechanisms for stirring up activity that we can take, but in the end there are a number of these about which you will have to say, "We will cut it off" because we cannot afford to spend any more money for what we are getting out of it. How do you measure your effectiveness there? You might have got something; you might not have. We have selected already, on a strategic basis, what we make the subject of these investigations. I have racked my brains about what are the criteria that you apply to determine success? You may work very well and get nothing, either because you are dealing with extremely sophisticated and cunning people, or alternatively, because there is nothing there. I cannot distinguish between the two.

There are some areas where the criteria for value for money in concrete terms are going to be very hard to work out. In product, it is easy. You do a review of effectiveness, and we have put that system in place. You select a time at which it is appropriate to do it - twelve months, eighteen months - and have an external review. But, with investigations, it is very difficult.

**Mr WATKINS:**

**Q:** That is where I really have trouble. I mean, if the ICAC was in the business of producing educational material and reports and so on, it would be very easy for us to judge whether there is value in what is being done. We do that all the time. But it is very difficult for us to determine what is the value of your investigation into corruption and its outcomes. But we have to do that because, frankly, I am very disturbed by a \$13 million budget that has no definite criteria for judging whether or not it is successful. My perception of the Independent Commission Against Corruption's success, and probably the community's perception, is based on media reports of who was dragged in and whatever.

Are we correctly spending a substantial amount of money that goes to the Independent Commission Against Corruption? I think we have to try to get some concrete criteria to help us come to that decision. As a member of the Committee and a member of the Government, I am not convinced. I know I have got a particular view about funding that you probably would not like. So your responsibility is to convince me otherwise.

**A:** You may start off by going back to taws and saying: should there be an ICAC? I mean, that is one way of approaching it. Our community attitude surveys suggest that that would be unacceptable to the community.

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## ***Employment of Police Officers***

### ***Questions without Notice***

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

**Q:** Commissioner, I would like to go over a couple of things you have already mentioned, and you might enlighten us a bit more. In relation to your very high turnover, why do you think you have such a high turnover?

**A:** Of staff?

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

**Q:** Of staff, yes.

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- A: If you go back in time, part of the problem was the number of seconded officers who came for a limited time. So their duration at the Commission was going to be limited anyway. That was number one. To overcome that, I have tried to move to more permanent officers - on the basis that their primary allegiance then is to the Independent Commission Against Corruption, not to the organisation whence they come and to which they may return.

The second thing is that I think there was a management style in prior times that did not empower people, so that the senses of fulfilment and achievement were not what they might have been with a different management approach. Thirdly, it is a small organisation in public service terms. So that the career path for ambitious people stops at a given level. So they are going to look elsewhere. Finally, I think the period from about November-December 1993 until a year later, when I was appointed, my predecessor was preoccupied with the Milloo report.

Following his departure from the Commission, there was an interregnum and people were concerned that the organisation may cease to be. So a number of them left. Those are factors that I can identify. There may be other factors. Some of them are management, some of them are environmental - like the last one - and some of them are just the size of the organisation.

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

- Q: Given the difficulties that the Wood Royal Commission is exposing with police activities in this State, are you still employing New South Wales police? If not, have you changed policies on this? Are you intending in effect to ban employment of New South Wales police to ICAC? If not, what sort of steps are you taking to prevent the sorts of activities that have been exposed in the Wood Royal Commission, not only just lying in court and taking money and what-have-you but also actively interfering with and in some cases frustrating or perverting the course of justice?

**CHAIRMAN:**

- Q: It is a long question.

- A: I understand the thrust of it, and, with respect, Mr Chairman, it is a fair question, and I am quite happy to deal with it. In about March of last year - and I say that date off the top of my head - I determined, because of the political climate that then existed, to restrict the number of New South Wales serving police officers that we employed at the commission. I think at the moment we have only three, and that is a very low percentage.

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

**Q:** What was the high point?

**A:** At one stage virtually every investigator was a seconded police officer. If you go back into the origins, it was a move over of New South Wales police and the odd sprinkling of Australian Federal police. So I restricted that, and it is standing at three. We do need some for the performance of certain functions, not the least of which is search of persons. There is a legislative amendment that we have proposed which I think is in the bill presently before the House. That will obviate the need for New South Wales police officers.

The question then, however, is: If we are not going to be investigating police, why should we exclude a source of very highly trained and good investigators, provided that we know, as much as anybody can know anything in this life, that we are going to get people who are not corrupt. That is a vexing question. Can I digress for a moment. One should not assume either that all New South Wales police officers are corrupt or that all Australian Federal police are not. The Royal Commission, which looked as if that was the way it was going, soon discovered that that was not so. Indeed, two officers that had been with the Independent Commission Against Corruption and had gone to the Royal Commission and were found to have been engaged in corrupt activities came out of the Australian Federal Police. So you have got to find a source somewhere, and the police forces or services are the best source.

My desire still is to have people who are dedicated to the Independent Commission Against Corruption, that is, permanent employees. So the number of seconded people I want to keep low, so that there will not be a return, whatever happens, to the same high number of New South Wales police officers. However, there is a plus that comes out of New South Wales police officers working in a place like the ICAC. The Chairman of the CJC in Queensland and his predecessor both say that the flowthrough of Queensland police in that organisation, which now means that more than 20 per cent - it is almost up to 25 per cent - of commissioned officers have had some experience at the CJC, means that the culture of the CJC - and, we would argue, the culture of the ICAC - is able to be in the Police Service itself; something rubs off on them. Now that is a theory. I cannot give you any empirical evidence.

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

**Q:** That is not the sort of evidence we got from the CJC, where the police force were in fact totally antagonistic to any officer that went and spent a period of time with them and went back to the service.

A: On the Serpico principle, a time comes when that turns over and those who are antagonistic are not only in the minority but are regarded as the wrong headed ones. It is a time question.

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

Q: It could be some time. Having looked at that agreement between the Nationals and the Police Service, I would think that we have a way to go, haven't we?

A: I do not want to get into that. Mr Justice Carruthers is dealing with that. Can I come back to your core question. The answer is that I do not have any proposal to totally exclude New South Wales police officers, either serving or former. I would prefer that if New South Wales police officers want to come to the Independent Commission Against Corruption, they might come and get a taste and then become permanent officers there. I would much prefer that, and that is what I am working towards. In fact, we had three last year, within the current year, that had been New South Wales police officers, resigned from the New South Wales Police Service and came to us as full-time investigators.

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

Q: Are you recruiting overseas at all?

A: We are not recruiting investigators from overseas. Our Director of Investigations, who was a superintendent, Peter Darlaston, with the AFP, was transferred to Singapore as the AFP liaison officer for Singapore in Brunei. I had to replace him, and I was able to get a just-retiring detective superintendent from the AFP, Guy Slater. I appointed him until October 1996, and his job has been advertised worldwide because I want the best quality. I say this without any disrespect to his abilities: whoever beats him will have to be pretty good. But that is the only job that we have advertised overseas.

I have had applications from some members of the Royal Hong Kong Police Force and the Hong Kong ICAC for investigator jobs, but they are not as a result of advertisement or attempt to recruit; they are those officers seeking to come here for various reasons. They just take their place with other applicants and are assessed on merit.

**Mr WATKINS:**

Q: Commissioner, I was interested in your earlier comments about staffing. I am now moving away from the view of seconded officers, to wanting to ensure a commitment to the ICAC from people, because that would be their prime work

commitment. I was interested, in particular, in reference to your rather controversial appointment and in your requirement to be able to go back to the bench after your time as ICAC Commissioner, and how your requirement to have a life after the ICAC guaranteed sits in relation to what you expect of your staff.

**A:** Once an employee comes as a permanent employee, there is no limit on the duration of that employee's employment, subject to satisfactory service. They may stay for 20 years. The Act requires that I can stay no more than five years. That is a quite different situation. Indeed, it seemed to me that having the knowledge in advance that I could go back to the bench was an enhancer of independence rather than anything else. In so far as divided loyalties are concerned, I do not think I could give any more of my time or of myself to the work activities that I give to the commission. I think that has carried through very markedly into the morale of the commission and the commission staff.

**Mr WATKINS:**

**Q:** I am not suggesting otherwise.

**A:** No. I understand. But that is the distinction I would make. On the one hand I am limited in the time that I have; and my working life, hopefully, will not be at an end when I am 66 or 67, whereas an employee has, subject to performance and good behaviour, an indefinite time there.

**Mr WATKINS:**

**Q:** Did your appointment require a change to the Act?

**A:** Yes. And that change, you will note, has been carried forward into the PCC bill, subject to one matter, to which, I might say, we have taken objection: namely, the PCC Commissioner could retain judicial status and judicial title. I think, with great respect, that that is totally inconsistent with the concept of a judge. A judge and an investigating police officer type of person - which I am and he will be - occupy two different roles, and they ought not to be confused. I would put that submission.

**Mr WATKINS:**

**Q:** So do you see yourself as a sort of judge-on-hold at the moment?

**A:** I resigned my commission on 14 November 1994. The statute provides that upon the termination of my time as commissioner, the commission revive, I think is the wording in the statute. No, I see myself at the moment as outside the judicial stream. I am a commissioner. I may become a judge again. Can I say that is why

I have always been at pains, when the press describe me as Mr Justice O'Keefe, to write to them and say, "Look, I'm not Mr Justice; I'm the Commissioner."

**Mr WATKINS:**

**Q:** I wonder to what extent that is semantics. However, I will leave that.

## **PROTOCOLS FOR SEIZING DOCUMENTS AND QUESTIONING WITNESSES**

### ***Questions on Notice***

#### **9. What protocols do you have in place when seizing documents and questioning witnesses in a non-inquiry investigation?**

The ICAC Act provides for a number of ways in which the Commission may obtain documents.

Pursuant to s22 of the ICAC Act the Commissioner can direct that a person produce nominated documents to the Commission. The Commissioner can, pursuant to s35 of the ICAC Act, compel a person to appear before the Commission and produce documents. Where the document sought is held by a public authority the Commissioner can, pursuant to s23 of the ICAC Act, authorise a Commission officer to enter the public authority's premises or the premises used by a public official in his/her capacity and there inspect documents and take copies of documents.

The Commissioner can, pursuant to s40 of the ICAC Act, issue a search warrant where he considers there are reasonable grounds for doing so. Alternatively an officer of the Commission can seek the issue of a search warrant from an authorised justice pursuant to s40 of the ICAC Act and the Search Warrants Act 1985. To date all search warrants executed by the Commission have been obtained after an application has been made to an authorised justice. This seems to me to be the preferable course, except perhaps in a case of extreme urgency and special circumstance.

In the execution of a search warrant clear lines of authority and responsibility are delineated within the team responsible for the execution of the warrant, with one member being allocated as the team leader.

During the execution of a search warrant or a s23 notice the person executing the warrant or notice is required to identify himself/herself and any of the team members present as officers of the ICAC. The occupier is provided with an Occupier's Notice. An officer of the Commission will read and explain the Occupier's Notice to the occupier. Should it become necessary officers executing either a warrant or a notice can, by using a mobile phone or after obtaining consent from the occupier using the fixed phone on the premises, seek specific advice from more senior Commission officers and also allow the occupier to speak to senior officers at the Commission during the execution of the warrant or notice.

The investigation team has to decide which method of obtaining documents is appropriate in the particular circumstances of the investigation. If there is a concern that documents might

be destroyed then in order to secure the documents a search warrant would normally be the most appropriate method of obtaining that document.

Prior to the exercise of any Commission power, which includes an application being made by an officer of the Commission to an authorised justice for the issue of a search warrant, the request for the exercise of that power is discussed with the Legal Unit. Where an application is made to an authorised justice that application is settled by the Solicitor to the Commission. If the authorised justice issues the search warrant the warrant is executed in accordance with Commission policy and the Search Warrants Act 1985. The Search Warrants Act 1985 requires a report after the execution of a search warrant and, pursuant to the Act's Regulations and Commission policy, a receipt for all items seized is provided to the occupier of the premises searched.

When a search warrant is being executed on a lawyer's office Commission officers follow the guidelines which were agreed between the Australian Federal Police and the Law Council of Australia on 7 June 1990, and which have been essentially adopted by the New South Wales Police Service and the Law Society of New South Wales. These are currently published in the New South Wales Solicitors Manual. The one major difference between the Commission policy and the guidelines is that in cases of a claim of legal professional privilege being made then provided the person making the claim agrees to the disputed documents being held by the Commission, pending a formal determination in relation to the claim, they are held at the Commission as opposed to being held by a third party.

### **Execution of a Search Warrant on a Public Authority/Public Official in his/her official capacity**

Shortly prior to a search warrant being executed upon the premises of a public authority or the premises of a public official acting in his/her official capacity, liaison with the public authority will normally occur.

### **Questioning witnesses outside hearings**

Commission investigators are required to behave in accordance with the Code of Conduct at all times. They must carry out their duties impartially and with integrity. Officers must treat those they wish to question fairly and with respect and not discriminate against anyone on the basis of sex, race or religion or otherwise.

Officers are required to seek the co-operation of persons they wish to interview without making any threats or promises. It is acknowledged that persons are not obliged to answer questions and no undue pressure should be placed upon those who may be able to assist the Commission.

***Questions without Notice***

**CHAIRMAN:**

- Q:** You have answered questions about obtaining warrants and interviewing witnesses. In your response you talk about the procedures that you go through and how you take documents.

This matter was discussed at length, and there has been another inquiry by this Committee back in 1989, I think, concerning that. Some very worthwhile material and recommendations came from it, and I believe the ICAC created protocols to deal with these types of issues. Assume, for the sake of discussion, that your officer takes his warrant, serves it upon the recipient to collect the documents, and the recipient refuses to give the document. How would you then go about dealing with the breach of the warrant?

- A:** In the first instance that officer would ring in to discuss the matter that had arisen, with either his team leader, or, if the team leader is not there, with the unit director. The unit director may or may not consult me. That would depend on the nature of the matter that arose. But, in the end, the warrant would be executed.

- Q:** And is failure to obey the warrant a criminal offence?

- A:** Yes, as is a failure to respond and attend upon a summons. A person can be arrested for that and can be charged.

- Q:** I think one of the most important things about having the warrant issued is that all the appropriate process steps ensure fairness in regard to the recipient as well as ensuring that there is sufficient reason for the issuing of a search warrant.

- A:** There are two steps. One is the issue, and the other is the execution. In so far as the issue is concerned, there is power in the commissioner of the ICAC to issue search warrants. It is a power that is there in reserve against the contingency that there may be something extremely urgent arise at a difficult time. It is not a power that I have exercised at all. In fact, I think it has not been exercised even by my predecessor. It is valuable to have it there, but I have taken the view - and I think this is the longstanding view of the Commission - that we are much better being able to justify before an independent judicial officer the issue of a search warrant than we are to issue our own, except in exceptional circumstances. And that is what we do. The issue has to satisfy the legal criteria.

The execution criteria we have adopted from recommendations that came from an earlier Committee. I have imposed a further restriction on their execution in

relation to time, without a formal consent from me. Although it is possible for a warrant to be issued I think from 6.00 a.m. to 8.00 p.m., I have issued an instruction that they are not to be executed from 8.00 a.m. if domestic dwellings are involved. I just find it unacceptable to me as a family man to think of people coming into the house when wives are cooking breakfast and kids are getting ready to go to school. So I have restricted it in that way.

In the end, the execution of a search warrant is a quite important matter, and it is one where the law overrides private rights; and the exercise of that function ought to be very well thought through and executed with as much dignity to the people who are the subject of the warrant as is possible.

**Q:** What was this other power that you say you have?

**A:** There is a power in the commission under section 45, I think, to issue a search warrant. But, as I say, it has not been done. It is a reserve power against a contingency. But there are other powers. Sections 21, 22 and 23 require the production of documents, under which you give the notice to the person and the person sends the documents in. In most cases we use those powers. We use the search warrant where it is thought that such notice may result in the destruction or loss of the documents.

**Q:** In regard to interviewing a witness, say a husband and wife, how would you go about that? First of all, how would you go about interviewing the witness who had come to your office? Do they go into a room? What is the procedure? How many officers are involved? What, basically, is said to them?

**A:** They do, and their interviews are recorded. The officers have a standing instruction as to protocol to be observed, the proper warnings to witnesses, et cetera. They are not videoed; we have not any video facilities for interviews. We have a program to get them. Funding that we will have to work out. We have got some funding for it.

**Q:** So you bring them into a room and sit them at a table. How many officers would be present?

**A:** Normally two.

**Q:** And they would be treated with dignity, and they would be questioned sternly, I presume.

**A:** The instructions are that they are to be treated with proper respect. I have not, in my time, had any complaints made to me to the contrary. Sternly? I cannot say

that. Often you catch more flies with honey than you do with vinegar. The very best of the investigators, I think, have much more of a conversational tone than they do a sergeant major tone.

**Q:** There would not be a question like this - and, let me assure you from the outset, it has never been put by any ICAC officers I have told about - but a question like this: Would you lie for your husband? Would an officer in your organisation ask a question like that?

**A:** I would hope not. I have given instructions and let it be known that if investigators conduct interviews or behave in a way that is unacceptable, they are out the door. And "unacceptable" means, amongst other things, not complying with the law and recognising that people have rights and human beings have dignity.

**Q:** For example, you would not contemplate having three officers? Two officers are sufficient to talk to people?

**A:** You may have a situation in which you need somebody to translate.

**Q:** This would be a situation where these people speak and understand perfect English.

**A:** I cannot think of a situation. There may be some operational problem that would give rise to that, but I cannot think of a reason. We have not got enough resources, Mr Chairman, to spare three people to interview one person, as a rule.

**Q:** Thank you for that. A final question would be asked such as, If you discuss this matter with your husband - and vice versa, to the husband about the wife - you will both be imprisoned. What would be your comment about that? Would that come from your organisation - not that you will be processed, but you will be imprisoned?

**A:** I cannot believe that that would be said. What is likely to be said, and as I say myself in private hearings, having made a section 112 order, that there is confidentiality applying to this process, and that for you to breach that confidentiality could amount to an offence. Now, I apprehend that to be different from what you are asking me.

**Q:** Indeed. And, just going back to the search warrants, your officer turns up not with a search warrant but a letter from a particular person who says, "Under such and such an Act we are allowed to seize these documents. You will deliver these documents up by 12 noon." But they turn up at 1 o'clock in the afternoon. Do you think a person would be right to make inquiries of their lawyers as to whether or not they have to deliver up these documents?

- A: I would have thought so.
- Q: A letter, in your view, considering you have power to issue search warrants, would have been a more appropriate document than a letter from a senior officer of say a government department?
- A: From us, I must say that something in the nature of a letter might be a notice under section 23. But it does not look like a letter; it looks like a very formal notice, and it has appended to it a statement of the rights and obligations on whom the document is served.
- Q: Then say, after the person gets their legal opinion, they are told by the officer that unless they deliver up the documents straight away they will be arrested and thrown into prison - thrown into prison!
- A: If I ascertained, Mr Chairman, that one of my officers did that, he or she would be out the door as soon as I found out about it and substantiated that it was so.
- Q: Then the lawyer comes across to the office and sits down with the people to discuss the matter. They come to an agreement that they will photocopy the documents and deliver up the documents to the appropriate person. They then proceed to photocopy the documents. By 4 o'clock in the afternoon they are still there, because there are an enormous number of documents, and they are still in the process of being photocopied. After a conversation with a senior officer from this department, the senior officer threatens to imprison the senior officer of that department together with their solicitor, together with the civilian who is also the political head of that department. What would be the situation in regard to that, unless they handed the documents up straight away?
- A: I hope you are not suggesting that any of my officers would do this.
- Q: It is not the ICAC, I can assure you.  
*[PA]*
- A: I think somebody is having an attack of megalomania, to be quite frank with you.
- Q: And during this conversation about imprisonment the officer who is still in the department then proceeds to the photocopying room and removes the documents and walks out of the building with them, without them being photocopied. They are in the process of being photocopied when he removes the original documents.

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

- Q: The commissioner is saying this is terrible.

A: Mr Macdonald is right: I am saying this is not my lot.

**CHAIRMAN:**

Q: I know indeed it is not, because I know from the years that I have sat on this Committee the protocols that have been put in place by the ICAC. But what is important is that those documents had information in them concerning myself, concerning senior members of government, not adverse, but they are conversations I have had with people. But what is more important about that is that there are only about four pages, I believe, of those documents dealing with this investigation. But this organisation has all those documents, which are nine books that thick, of conversations that people had with other people concerning matters. It is a matter of grave concern to me that the rights and liberties of the subject of the State of New South Wales have been absolutely violated by this organisation, under a power which I think gives them the right to do, which no-one picked up.

A: They had the power?

Q: I think they have the power to do what they did.

A: Our protocols and instructions would not countenance that.

Q: Not the power to imprison or threaten to imprison, but the power to take the documents.

A: Yes.

Q: And therefore it is a matter which, if I am wrong about that, would be a matter that you would interview these people about, because if I am right about this, and they did have the right to take the documents, it could amount to conduct which definitely the ICAC should set out protocols for, in respect of this other government department in dealing with these matters. So, would you talk to these people?

A: All I can say is that should we receive a complaint in respect of such a matter, it would be assessed in accordance with the usual protocols of the commission, and a determination made whether or not it should be further pursued.

Q: Thank you, Commissioner.

## ***PROSECUTIONS ARISING FROM ICAC INQUIRIES***

### ***Questions without Notice***

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

- Q:** Commissioner, at the last meeting in September I asked for a status report on prosecutions.
- A:** Can I apologise for one thing. You have got the pie chart and further information in Appendix 2, but I have not got the total numbers in a table. That is an omission. We will overcome that next time.
- Q:** The question I wanted to ask, and what I was perhaps ineptly getting at in September, was that I would like a break-up of the actual convictions in the courts for offences that are beyond offences under the Independent Commission Against Corruption Act itself - in other words, convictions for the actual subject-matter of the inquiry.
- A:** Yes, we can do that. Actually, I went through what is now the next schedule to these graphs earlier this year and did some figures. I now cannot remember them, but it is a mechanical thing to take that out.
- Q:** Secondly, I notice that you are proposing to embark on the sort of Taxation Office style of targeting various organisations and agencies for in-depth attention. This is on page 5 of your report.
- A:** Well, I wouldn't say Taxation Office style. I would say our own style, and that we would do it keeping information confidential and acting in accordance with our protocols.
- Q:** It is interesting that you seem to be avoiding some of the techniques of the Royal Commission to some extent, such as entrapment, the sting, the set-up.
- A:** The High Court has said in relation to police investigations that those methods are not lawful. My belief is that the High Court will, over time and probably short time, move towards saying that those same rules apply to investigative bodies like the ICAC and query a Royal Commission. In order to pre-empt that I have said that our investigators are to observe the norms that the High Court has said are the proper norms. Entrapment and stings are included in that, and they are not devices to which we resort.

**Q:** The commission seems to have felt that that was part and parcel of a modus operandi.

**A:** That is a matter for the commission. Mr Justice Wood runs his show; I run my show.

## **COMMISSIONER - DISCLOSURE OF INTERESTS**

### ***Questions on Notice***

**8.7 Would the Commissioner please provide a list of all associations, institutions and community groups of which he is a member or active supporter?**

I believe this to be a private matter. However, I have prepared a list for the Committee which I ask to be treated as confidential.

**8.8 When Mr Justice Kirby was elevated to the High Court he resigned from involvement in Australians for a Constitutional Monarchy, saying that his new position "required him to distance himself from controversy". Is the Commissioner still a member of this monarchist organisation? If so, why?**

On elevation to the High Court Mr Justice Kirby became responsible for dealing with constitutional issues and as such it would have been inappropriate for him to remain a member of "Australians for a Constitutional Monarchy". That is to be contrasted with his functions as President of the Court of Appeal of New South Wales in respect of which he saw no problem. The position I hold as Commissioner of the ICAC does not involve me in determining any constitutional questions. My involvement in issues concerning our constitution is irrelevant to my duties as Commissioner.

**8.9 Has the Commissioner recently written to the people of Parramatta on behalf of the National Trust?**

No.

### ***Conflicts of interest***

#### ***Questions without Notice***

**Mr WATKINS:**

**Q:** Commissioner, regarding employees of the commission, is there a code of conduct that applies to the commission and police?

**A:** Yes.

**Q:** Could we have a copy of that?

A: Yes.

Q: Does that apply to you, Commissioner?

A: No. We have been over this before. In fact, it is déjà vu. It is the same question. We have been through that.

Q: What I was moving onto from that, after reminding ourselves of that, is there a pecuniary interest register that is part of that code of conduct for employees of the ICAC?

A: Under our regulations pecuniary interests are required to be revealed by all officers of the commission, as are conflicts of interest. My experience is that from time to time such declarations are made. I know with myself that if I go somewhere and give a speech and somebody gives me a book or a bottle of whisky, that is declared the next day.

Q: Who has access to the register?

A: The security people have access to that. It is not material -----

Q: Do you?

A: I suppose I would have. I do not as a matter of practice go to that or to the personal files of employees unless there is a specific reason so to do. If a matter arose that was untoward and had been reported, then the protocol is that it is reported to me. But I must say that has not happened in my time.

Q: So you follow the same rules regarding a pecuniary interests register as all your employees?

A: I do.

Q: So that is lodged and your security people have access to that and so on?

A: Yes. I think, actually, with mine, I may send a copy either to Mr Findlay or Ms Brodie, or both. But that is the way it is dealt with. It is a file note that goes into a register.

Q: Just moving on to the matters on page 40, which relate again to issues that have come up in the past -----

**Mr O'FARRELL:**

**Q:** Mr Watkins, before you proceed: Mr Chairman, what power gives this Committee the right to test these issues continuously, as I notice from doing my homework last night these issues were canvassed last time around? It seems to me that many of these matters relate to activities undertaken by the commissioner before he became commissioner. I am just curious, having read the ICAC Act last night, what power enables us to raise these questions?

**CHAIRMAN:**

**A:** Maybe it is a matter which you should hold until we have a discussion in the House in regard to it. But I do take note of what you say about these matters having been raised on other occasions.

**Mr WATKINS:**

**Q:** The situation has changed between then and now. I take you to 8.7. Perhaps I should explain why I ask these questions again, because again you as the Commissioner of the Independent Commission Against Corruption are deeply involved in the wider political process, as your position and your commission are. One of the things that is critical to its continuing success is that you and the commission should be seen to be above or separate from partisan political ----

**A:** No party political activity, yes.

**Q:** I would perhaps push that wider into political activity.

**A:** It depends on how you then define it. In one sense, almost everything one does can be said to be political.

**Q:** Yes. But, where I am coming from, it seems to be a fairly commonly held position that the judges - and I know that you are no longer in that position - take the position of stepping back from such activities and such behaviour, and for very good reason. I am still concerned, and I will ask again: have you changed your view because of what Mr Justice Kirby did? Or why haven't you changed your view? Isn't it a problem that involvement in semi-political organisations like that - and that is just an example - do have an effect on your public standing and therefore the success of the ICAC?

**A:** As you will see from the list that has been circulated, I belong to and am associated with some 30 organisations. A number of those organisations may be regarded as organisations which may indicate some views that I hold about various things, or

may be expected to hold about various things. The first on the list, of course, is prime among those. And the seventh from the bottom of the first page of the list may well be regarded as being in like category.

None of the organisations to which I belong or with which I am associated engages in party political activity. A number of them engage in activities of a moral, social, environmental or like kind, and I do not think being the Commissioner of the Independent Commission Against Corruption divorces one from one's community or the issues that may burn in the community. What it does do is preclude one from being involved in party political activity.

It does not even, in my view, preclude one from belonging to a political party, although I do not, but my predecessor did and had run for a seat in fact under the name of that party. But that was not regarded as something that debarred him from office, and I do not regard it as so doing.

The issue that is raised in relation to 8.7 and 8.8 are linked, as I read them. I do not have any duties, as I have said in my answers, which deal with constitutional matters, and I respectfully adopt what Mr O'Farrell says: nothing that I do or say has any legal effect upon constitutional arrangements. The way in which that debate develops will be, as we now know, through a people's convention. The desire of government seems to be to keep it aparty-political. Whether that will happen, I do not know. But that is the objective.

I do not think either being a member of Australians for Constitutional Monarchy, or the Republican Movement if the contrary were the case, has any impact upon the way in which I perform my duties, or the way in which people perceive that I perform my duties.

**Q:** Don't you?

**A:** No, I don't. That is my quite firm view. It is a matter that I have thought about a great deal since last these questions were asked, but I adhere to the same view that I expressed then. And it seems to be that what Mr Justice Kirby has done reinforces that view. It depends upon a nexus between what you are doing or may be called upon to do and the matter in issue. I do not think I can articulate it more than that.

## **CONCLUSION**

### **CHAIRMAN:**

Mr Commissioner, thank you for appearing before our Committee. You have enlightened us. We appreciate the time that you and your staff put into the answering of the questions and the professional way in which they were answered.

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

Could I thank the Committee for a number of suggestions that have been made that I think, taken on board and acted upon, will help us. As I said on the first occasion that I appeared before the Committee, I see the relationship as being a two-way relationship. I have something I can inform you of; you have ideas that I can take away and test. I thank you for that and for your courtesy in dealing with me today.

### PREVENTION IS BETTER THAN THE CURE: CORRUPTION PREVENTION IN NSW, AUSTRALIA

Leigh Elliott  
Senior Corruption Prevention Officer  
NSW Independent Commission Against Corruption  
GPO Box 500,  
Sydney NSW 2001

#### ABSTRACT

The New South Wales Independent Commission Against Corruption (ICAC)<sup>1</sup> has a statutory responsibility to prevent as well as investigate corruption. In response the ICAC has a corruption prevention function that focuses more on improving systems and procedures than on the conduct of individuals and is an essential element in the ICAC's fight against corruption.

The paper provides an overview of the corruption prevention strategies used by the ICAC. The ICAC accepts that it is an impossible task to try to prevent corruption in the public sector on its own. It believes that to succeed in preventing corruption it is essential to have the cooperation and assistance of the agencies towards which its work is directed. Recognising that the definition may differ in other countries, the paper defines what constitutes probity and integrity in NSW. Corruption prevention activities outlined in the paper are:

- how the ICAC works in consultation with individual agencies to reduce opportunities for corruption;
- the cooperative efforts the ICAC has undertaken with central policy units of government;
- how corruption prevention strategies complement the role of investigations;
- how the ICAC undertakes corruption prevention projects that have a broad focus and provide guidelines for all public sector agencies;
- how the ICAC monitors the effectiveness of corruption prevention projects;
- the information and education activities undertaken by corruption prevention staff.

Specific examples are also used to show how the strategies have been implemented in practice and their impact on the organisation involved. The paper also examines the impact that the corruption prevention function and the ICAC generally, have had on the NSW public sector.

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<sup>1</sup> The ICAC is based in Sydney, New South Wales. NSW has a population of approximately 6 million people and is the most populous state in Australia.

## **1.0 INTRODUCTION**

We have a saying in Australia that "*prevention is better than the cure*". Much of the discussion about corruption revolves around how bad it is, how to detect it and what to do with those who participate in it. But how do you prevent corruption from occurring in the first place? The ICAC recognises that it is an impossible task to try to prevent corruption in the public sector on its own and believes that if it is to succeed in preventing corruption, it is essential to have the cooperation and assistance of the agencies that it works with.

Effective corruption prevention strategies require a knowledge of the organisation and those who know most about an organisation. Those who know most are those who work in it. They know where corruption is occurring or is likely to occur, who should be responsible for preventing it, and what would be the best way to stop or minimise corruption opportunities. Through consultation with the agency involved, the ICAC can gain information about the systems, policies and procedures of the agency. In cooperation with the agency, the ICAC is then able to use its expertise on corruption prevention issues to develop strategies that are most likely to work effectively in that organisation. The joint efforts of the ICAC at one end and the targeted agency at the other, are considered the most efficient and effective means to combat corruption.

The purpose of this paper is to provide you with some examples of how we at the ICAC work towards minimising and preventing corruption in our state.

When the ICAC came into being in March 1989, its initial focus was on conducting investigations and hearings into allegations of corruption. The Corruption Prevention function was not established until a year later in 1990 and initially consisted of only three staff out of a total of 117. In the intervening five years the Corruption Prevention function has quickly expanded to the current staffing levels of 19 staff out of 140 staff. This reflects the shift in the ICAC's focus since its establishment to an active strategic corruption prevention orientation.

## **2.0 OVERVIEW OF THE NSW ICAC**

To place the corruption prevention work of the ICAC in context, it is necessary to outline the ICAC's three main functions.

### **2.1 Investigations:**

The ICAC's investigative function is the best-known. The ICAC uses investigation, and hearings to expose and deter corrupt conduct. Hearings are held for the purposes of investigation and the ICAC can summon a person to appear at a hearing to give evidence, produce documents, or both. The Commissioner or an Assistant Commissioner conduct hearings, which can be public, private or a combination of both, to determine the facts of the case.

Examples of an investigation followed by hearings are the inquiry into the unauthorised release of confidential information held by government, which revealed a widespread and lucrative trade in illegally obtained information. Another example is the investigation into

dealings between the State Rail Authority and private contractors, which revealed widespread and costly corrupt practices in the awarding of contracts. A recent example is the investigation into the dealings between the chief town planner and elected representatives of a local council with property developers, which revealed corrupt practices in the granting of development and building approvals in the town.

## **2.2 Education:**

The ICAC Act also requires the ICAC to carry out public education work to increase community awareness of corruption issues. This is being achieved through seminars, publications and by developing links with outside organisations. Recently, the ICAC has been able to include a component on corruption in the legal studies curriculum of high school students.

## **2.3 Corruption prevention:**

The third function is corruption prevention. This work seeks to minimise opportunities for and the incidence of corruption in public administration. We do this by working to improve management and administrative systems, which broadly includes review of systems and policies, as well as practices and procedures and to recommend changes to reduce opportunities for corruption.

The three functions work together in an integrated way to solve the problem of corruption. Indeed, sometimes investigation of a complaint may establish that, although there was no wrongdoing, there are deficiencies in the system that would encourage wrongdoing or make it difficult to detect. In many such cases, the Corruption Prevention Department will get involved. Our role then is to provide advice and assistance in addressing those deficiencies.

## **3.0 SETTING THE SCENE: TRENDS IN THE NSW PUBLIC SECTOR**

To have an understanding of the context that the ICAC operates in, it is useful to be familiar with some major trends that have been emerging in NSW and Australia generally over the last decade. These trends include:

- Corporatisation: some government agencies are expected to be financially self sufficient from the government, receive no direct funding from Treasury and operate similarly to other non-government companies (Eg. water supplies);
- Privatisation: government services being sold to the private sector;
- Private sector involvement in the development of public infrastructure;
- Development of major infrastructure projects such as new and improved rail and road links, water supplies, bridges;
- Industrial relations system moving away from fixed awards to enterprise agreements;
- Increased emphasis by the community on the government being accountable;
- In March 1995 the NSW Liberal/National Party State government, which had served for seven years, lost the state election to the NSW Labor Party. It is not known if the change in government will alter the focus and approach of government operations however, no clear policy changes have emerged as yet.

These trends have lead to significant changes in the NSW public sector, and Australia generally, in recent times. There is now much greater interaction with the private sector. Business practices in the public sector have had to become more commercial and competitive. Managers have greater discretion in decision making and are required to be more accountable for their actions. These changes have increased opportunities for corruption to occur in the NSW public sector. The ICAC is aware of the rapidly changing circumstances and the need to be flexible and innovative in its approach to prevent and minimise corruption.

## 4.0 CORRUPTION PREVENTION IN PRACTICE

### 4.1 What constitutes probity?

Corrupt conduct is defined in the ICAC Act. The definition is intentionally as broad as possible to avoid loopholes. The key concept is misuse of public office in the public sector of NSW. Corrupt conduct happens when:

- A public official carries out public duties dishonestly or unfairly;
- Anyone (including a public official) does something that could result in a public official carrying out public duties dishonestly or unfairly;
- Anyone (including a public official) does something that has a detrimental effect of official functions and involves any of a wide range of matters including, for example, fraud, bribery, official misconduct, violence;
- A public official (or former public official) breaches public trust; or
- A public official (or former public official) misuses information or material obtained in the course of duty.

Corrupt conduct is not itself a criminal offence. Under the legislation, it is not considered corrupt conduct unless it involves (or could involve) a criminal offence, a disciplinary offence or be reasonable grounds to dismiss a public official.

From this definition, the ICAC has developed two main principles that are the basis of the ICAC's corruption prevention advice and strategies. These are the requirements of being impartial in all dealings and ensuring that the best possible value for public money is being achieved. The principles of impartiality and best value for money are achieved by:

- having open competition and regular market testing;
- having an open and transparent process with a clear, structured decision-making process;
- dealing with conflicts of interest;
- having in place necessary accountability requirements;
- monitoring and evaluating performance.

By adhering to these principles, public sector organisations can help to minimise opportunities for corruption and ensure probity.

The NSW ICAC uses several different corruption prevention strategies to minimise and prevent corruption. These are outlined below.

#### **4.2 Assisting individual agencies**

More public sector agencies are accepting their responsibility to improve public sector integrity. An indicator of the increasing awareness of the public sector regarding the need to maintain probity, are the increasing number and varied nature of requests from agencies for advice and assistance from the ICAC. Advice is provided to government agencies on improvements to policies and procedures. The numbers of requests for advice are rapidly increasing. For example, there were 100 requests for advice in the 1992/93 financial year, 150 requests in 1993/94 and these have expanded to 206 in the 1994/95 financial year, ending on the 30 June.

Advice has been provided on a wide range of topics including purchasing and disposals, recruitment practices, the selection of consultants, conflicts of interests, internal mechanisms for reporting corrupt conduct, codes of conduct, secondary employment, and security of information to mention a few. More than one-third of the requests for advice from the ICAC relate to tendering practices.

**Case Study:** A complaint was received from the Students Union of a university, that a senior staff member, with responsibility for purchasing cleaning equipment and supplies for the university halls of residence, was also the distributor for a cleaning supply company. She was selling her products to the college that she administered and claimed that the commission she earned from the sales was used to fund a university scholarship program.

The university was advised to instruct the person to cease selling the cleaning products to the college as it was a conflict of interest that is contrary to the principles of probity. The ICAC also worked in conjunction with the university to review the university's tendering and purchasing procedures. Areas identified for improvement included the procedures for managing conflicts of interests. It was recommended that the university should establish a conflicts of interest register that required staff to obtain permission before conducting personal business while an employee of the university.

Because of this work the university offered to hold a general corruption prevention seminar for all staff and included the administrator involved in the original complaint. A one day seminar was presented to over 60 participants that included university and other public servants from the region. The topics covered included how to incorporate corruption prevention strategies into everyday operational activities, how to deal with conflicts of interests, probity in tendering and purchasing.

#### **4.3 Cooperative efforts with central policy units of government**

Central policy units of government develop statewide policies and procedures that assist individual government agencies to carry out government policy by issuing guidelines and standards. The ICAC works cooperatively with these units to ensure that the principles of probity are fundamental to the guidelines and standards. Examples of cooperative efforts include:

- a joint review with the NSW Premiers Department on Public Sector Codes of Conduct. (The NSW Premiers Department is a major policy development

- organisation for the NSW public sector.) This review examined agencies' approaches to developing and implementing codes of conduct and aims to help them further to ensure the codes are active policy documents contributing to the creation of an ethical organisation culture;
- The Office also sought and included advice from the ICAC on probity aspects in its *Contracting and Market Testing Policy*, *Procurement and Disposal Guidelines*, and *Guidelines on the Use and Engagement of Consultants*;
  - advising and assisting the Premier's Department in the development of guidelines for private sector involvement in the provision of infrastructure for the 2000 Olympic Games;
  - assistance to the Department of Local Government and Cooperatives on their *Model Code of Conduct* for local government and their *Local Government Tendering Regulations*.

The publications listed above represent government policy on these topics and all government agencies are required to incorporate these guidelines into their systems and work practices. Failure to comply may constitute corrupt conduct and be considered as a disciplinary offence.

The Premier (the elected head of the state of NSW) has also issued a memorandum encouraging government Ministers to consult with the ICAC on major development proposals where issues of probity may arise. Advice is frequently sought from the Corruption Prevention Department on large, complex and controversial projects such as the construction of hospitals, tollways, and railways.

#### **4.4 Corruption prevention and its role in investigations**

Initially, corruption prevention and education strategies were generally only considered at the completion of an investigation. The ICAC now takes a multi-disciplinary approach when conducting investigations with investigators, corruption prevention officers and education staff work in teams throughout the investigation. Corruption prevention and education work may also continue after the work of the investigators has ceased.

**Case Study:** Several complaints were received over time regarding a local council located in a popular tourist region. This is a region that has experienced a rapid growth in population and subsequent property development over the last 10-15 years. The council had established its own company to undertake property development of council owned land.

Allegations were made that some elected representatives of Council and senior staff had acted corruptly. The allegations included receiving payments and gifts from private developers who were then able to purchase council land at prices below the market rate, and for using council staff and resources for their own interests. Some councillors who had business interests were said to be benefiting from work given to their private companies by the council without having to compete on the open market. Councillors were also said to be using confidential information gained through their position on the council to purchase land that was likely to increase in value once council's development

plans were publicly announced.

An investigation was commenced into these allegations and a multi-disciplinary team was established. At this time the investigation is in its final stages and it is yet to be decided if the ICAC is to have hearings into this matter. While the investigation is in progress, the ICAC commenced its corruption prevention work with the council. Several areas were identified where the council needed to develop and improve its policies and procedures. Corruption prevention staff met with council officers to discuss what strategies would be most appropriate to prevent or minimise opportunities for corruption in the future. The recommended strategies developed in consultation with the council include:

- an ongoing education program for staff on corruption prevention issues that involve ICAC staff conducting awareness sessions for all staff and councillors;
- the adoption of an integrated corruption prevention plan;
- the establishment of an internal reporting mechanism to encourage staff to report corrupt conduct;
- conducting a risk assessment that identifies the areas where corruption is most likely to occur and to put in place the appropriate preventive measures;
- clearly stating the accountability requirements of managers to detect, prevent and report corrupt behaviour;
- developing a policy on conflicts of interest; and
- further developing the council's code of conduct by including guidelines on how to handle the offer of gifts or benefits.

At the completion of this initial process the ICAC will prepare a report for the council detailing the outcomes of its corruption prevention work and making recommendations for future work over the following 12 months. The ICAC will continue to provide assistance and will monitor the council's application of the corruption prevention strategies over a 12 month period. A further review will be conducted at the end of the 12 months to assess the progress and effectiveness of the corruption prevention strategies. Education officers will work with the local community to ensure that they have a clear understanding of the workings of council and its decision making processes.

This work has also prompted the ICAC to undertake a joint project with the Department of Local Government that aims to:

- develop guidelines to help all NSW local councils to identify, assess and manage conflicts of interest; and
- provide guidelines for councils on defining and managing staff and councillor roles and responsibilities.

The resulting guidelines will be distributed to all councils in the state.

#### **4.5 Projects: broadening the focus**

Another way in which the ICAC's Corruption Prevention function aims to improve public sector integrity is through examining the detailed operation of a system in one or more government agencies. This involves working with the agencies to look at policies and procedures and the practical operation of the system. The work frequently results in a

report incorporating practical recommendations to reduce opportunities for corruption while still maintaining or improving efficiency. The reports are advertised and distributed widely to ensure that the ICAC's corruption prevention work reaches the widest possible audience. There have been over 20 corruption prevention reports completed since the inception of the Corruption Prevention Department in 1990.

**Case Study:** A major corruption prevention project has focused on the ICAC investigation into the relationship between police and criminals. Two important projects were conducted resulting in the publication of two extensive reports. The reports included 16 recommendations for improvement to systems and procedures by the NSW Police. These recommendations were aimed at improvements in systems for the management of criminal investigations, record keeping, the management of informants, the conduct of prosecutions and the handling of complaints by the Police Service.

The first project related to the way police deal with informers. Initiated by an ICAC discussion paper published in 1993, the project resulted in the creation of guidelines for the handling of police informers. Guidelines, established in response to submissions and following discussions with operational police, were implemented in May 1994.

The second and more extensive project examined the management of criminal investigations by the police service. Undertaken jointly by the ICAC and the police service, the project resulted in the publication of a discussion paper in October 1993. Entitled *A High Risk Area - The Management of Criminal Investigations*, the paper prompted extensive discussions within the police service. In consultation with ICAC corruption prevention officers, the Police Service prepared an action plan for implementing recommendations for changing the management of criminal investigations and prosecutions. It was seen as important by both institutions that the work is done jointly, because solutions imposed by outsiders on an organisation tend not to work. That is especially true if the organisation is large, has a highly dispersed staff and an entrenched culture. These are all characteristics of the Police Service in NSW.

The NSW Police Service has continued to work in close cooperation with the ICAC to carry out the action plan. A series of working parties was established within the Police Service to carry out specific recommendations. A joint monitoring committee which includes representatives of the police service and the ICAC has been charged with overseeing implementation. The Committee has met quarterly since April 1994.

ICAC involvement has continued at other levels. ICAC officers were members of several working parties and provided informal advice to police officers with responsibility for the application of specific recommendations. The ICAC continues to monitor the work of the Police Service and the effectiveness of the new systems, particularly those requiring statewide application such as the case management system and new record keeping practices.

The progress made by the Police Service in implementing the recommendations are the subject of an initial monitoring report due for release shortly. It is intended that a

second, final monitoring report will be produced before the end of 1996. Until these new systems have been in operation for a substantial period, at least 12 months, a final judgement cannot be made. Their effectiveness is dependent on the success of the Service in training its officers and providing managers with the skills to use the new systems effectively.

On their own, these systems will not eradicate corrupt practices. They should however, make it more difficult for corrupt officers to escape detection and will allow bodies like the ICAC, the Ombudsman and any future Royal Commissions to carry out their roles more effectively. Other examples of recent project reports are attached at Appendix I.

#### **4.6 Monitoring the effectiveness of corruption prevention projects**

The ICAC monitors and evaluates corruption prevention project reports to find out whether recommendations have been carried out and whether they have been effective. As mentioned previously on the discussion regarding the work into the NSW Police Service, the ICAC has monitored the work of the Police and assisted in the implementation of many recommendations. This monitoring process has been in place since the investigation first commenced in 1991 and will continue at least until 1996. The recommendations made by the ICAC and their subsequent application have shown to be effective in identifying systemic weaknesses and improving the integrity of the Service.

#### **4.7 Information and education activities**

In 1994/95, corruption prevention staff spoke at over 50 seminars, conferences and workshops to increase awareness of probity issues. Presentations are given to both public and private sector organisations in response to requests for speakers.

The ICAC also has its own one day seminar program during which it covers topics such as: defining and identifying corrupt conduct, corruption prevention in the workplace, the establishment of an internal mechanism for the reporting of corruption, how to manage conflicts of interests, security of confidential information, tendering and purchasing procedures. These seminars have proved to be an effective mechanism for informing and educating public officials on corruption prevention issues.

### **5.0 CONCLUSION**

Corruption prevention has been a major growth industry in NSW over the past 10 years. This growth has been in response to public shock and disapproval of what was revealed in parts of our public sector. ICAC investigations and corruption prevention work have often been the catalyst for a cooperative process where the ICAC and other relevant government bodies have contributed to important recommendations for change. Many of these recommendations have then been taken on board.

Fraud and corruption prevention strategies are now integral responsibilities for all chief executive officers and managers in the NSW public sector. All state government departments are now required to have in place a code of conduct. It is a policy requirement in NSW for all government agencies to develop and implement a plan for the prevention of both internal and external fraud. Fraud Control Plans have now been

broadened to incorporate Corruption Prevention Plans that also cover non-financial areas of corruption including conflicts of interest, gifts and benefits, recruitment and selection practices.

Many public sector organisations now have specialist Fraud Prevention Sections staffed with Fraud Control Officers. Early in 1995 a group of NSW public sector fraud prevention professionals banded together to form the NSW Public Sector Fraud Prevention Committee. The committee provides an opportunity for these professionals to network, share information and provide expertise and assistance to others entering the field of corruption prevention. The ICAC plays an integral role in supporting and resourcing this committee.

This paper has described the strategies used by the ICAC to prevent corruption from occurring in the first place or minimising opportunities for corruption to occur in the future. Specific examples have been provided to show where those strategies have been successful. Emphasis has also been placed on consulting and cooperating with the government agencies involved. The NSW ICAC believes that the community has a right to expect public officials to act with integrity and in the public interest. Probity should be an integral part of any process in the public sector. The ICAC considers its corruption prevention function, which focuses on improving systems and procedures rather than the conduct of individuals, as an essential element in the fight against corruption. As a result of its efforts, the ICAC has increased integrity and ethical behaviour in the NSW public sector.

## APPENDIX I

### RECENT CORRUPTION PREVENTION REPORTS

*Contracting for Services: The Probity Perspective* - designed to provide guidelines for public sector organisation to maintain integrity and probity when contracting for services. It also aims to provide information on the ethical standards expected from organisation contracted to provide services for the public sector. It includes a best practice model and a probity checklist that can be for use by individual organisations.

*Internal Reporting Systems* - designed to facilitate the introduction of effective internal reporting systems that enable an organisation to acknowledge and act upon reports of corruption, maladministration and serious and substantial waste as defined by the newly enacted NSW Protected Disclosures Act.

*Trips and Traps: Travel in the NSW Public Sector* - provides guidelines to assist public authorities to improve management and control official travel.

*Taken for Granted?: Better Management of Government Grants* - examines how funding bodies administer grants, to identify system weaknesses that might give rise to corruption opportunities and to devise general principles to reduce such opportunities and increase accountability.

*Pitfalls or Probity: Tendering and Purchasing Case Studies* - uses case studies drawn from actual situations of commonly occurring problem areas and suggests ways in which solutions can be found.



# STATUS REPORT ON PROSECUTIONS ARISING OUT OF ICAC INVESTIGATIONS

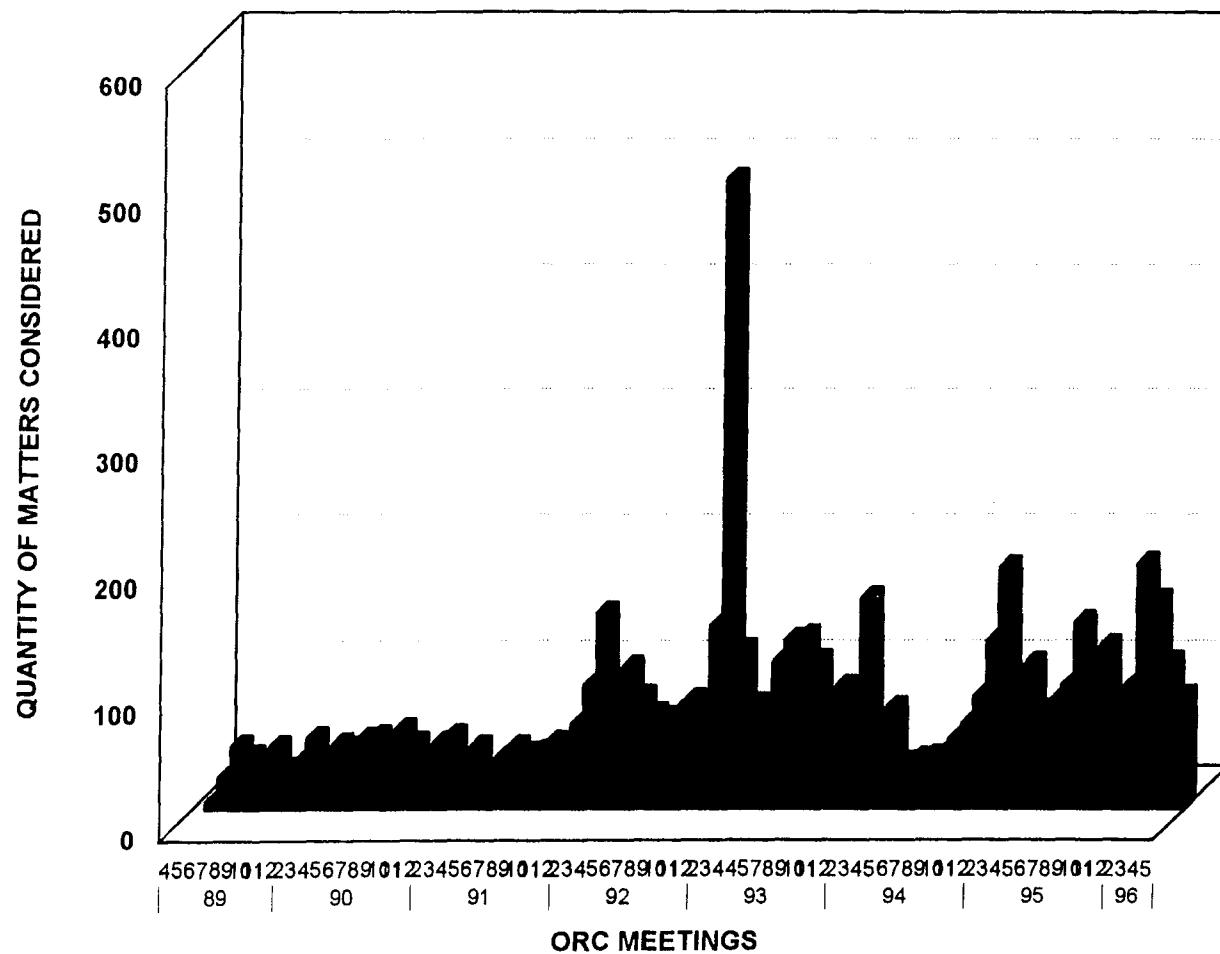
as at 20 May 1996 (228 persons)





# MATTERS CONSIDERED BY THE OPERATIONS REVIEW COMMITTEE

79 MEETINGS INVOLVING 6617 MATTERS



The Operations Review Committee (ORC) has met a total of 79 times. The graph represents the quantity of matters considered by the ORC at each of the meetings. The same matter may be reported to the ORC on numerous occasions, so that the figures include repeated matters.

The matters reported to the ORC are essentially comprised of complaints received pursuant to s.10 of the ICAC Act, however they may also include s.11 reports where they are linked to a s.10 complaint or formal investigation.

The matters are reported by way of either:

- a Report on Investigation;
- a Further Report concerning non-commencement of Investigation;
- a Report on Assessment concerning non-commencement of Investigation;
- a Report on Preliminary Enquiry concerning non-commencement of Investigation; and
- a Status Report.

■ MATTERS CONSIDERED PER MEETING



21 May 1996

Our Ref: E9

**PRIVATE & CONFIDENTIAL**

Dear

I refer to your letter of (DATE) concerning (WHAT).

The information you have provided will be assessed as soon as practicable and, when a decision has been made we will advise what the Commission proposes to do with the information. Please find enclosed a brochure outlining the way the Commission deals with information it receives.

**OPTIONAL PARAGRAPH**

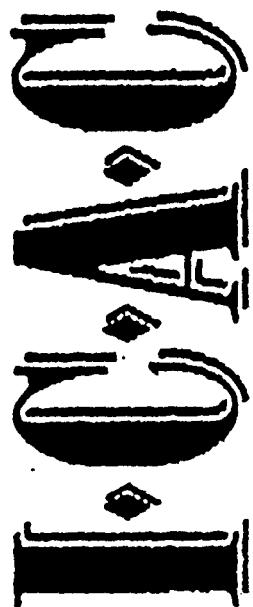
In conducting further inquiries it may assist the Commission to discuss the matter directly with, or refer the matter to, another agency. This may involve identifying you as the source of the information. If you have any objection to this I would appreciate it if you would let the Commission know, by letter or phone, the reason for that objection within fourteen days of the date of this letter so that the Commission may consider your views when making a decision about this. In making this decision, consideration will be given to the seriousness of the matter and whether it would be in the public interest to take this course of action.

**OPTIONAL PARAGRAPH**

If no response is received, the Commission will make a decision based on the information in its possession as to what action, if any, is appropriate. This may include identifying you as the source of the information.

It will assist us in further contact about this matter if you quote the reference number appearing in the top right corner of this letter.

Yours faithfully



INDEPENDENT COMMISSION AGAINST CORRUPTION

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# WHAT HAPPENS To YOUR INFORMATION ?

## WHAT DOES THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC) DO?

The role of the ICAC is to expose and reduce corruption in the NSW public sector. It does this by investigating serious allegations of corruption, making recommendations to improve public sector practices and conducting educational activities.

## WHAT IS THE NSW PUBLIC SECTOR?

The NSW public sector is all state and local government organisations and some organisations which receive NSW Government funding.

## WHAT IS CORRUPT CONDUCT?

Corrupt conduct is conduct by or affecting a public official (a person employed by or holding office in the NSW public sector) which is improper, dishonest or partial. The ICAC cannot act on information which does not directly or indirectly involve the NSW public sector.

## CORRUPT CONDUCT MUST BE SERIOUS.

For conduct to be examined by the ICAC it must be conduct which amounts to a criminal offence, a disciplinary offence, or conduct which would warrant dismissal.

*It is important to note that the ICAC cannot resolve personal grievances and does not act on the basis of rumour, innuendo or speculation.*

## WHAT HAPPENS TO THE INFORMATION YOU GIVE?

All information concerning corruption is examined by Commission officers and a decision made as to the most appropriate means for dealing with it.

## HOW DOES THE ICAC DECIDE WHAT TO INVESTIGATE?

### FACTORS CONSIDERED

Some of the factors considered when assessing information include:

- the age of the information provided;
- if the information can be more appropriately handled by another agency;
- if the matter is minor in that it does not indicate any systemic corruption or organised scheme. (Systemic corruption is that which arises from inadequate or inappropriate agency policies, procedures or work practices, rather than one-off instances of corrupt behaviour);
- how specific the information is;
- the need for the ICAC to maintain a broad focus in the work it undertakes.

Only a small percentage of information received proceeds to investigation. This is because the ICAC is focussed on systemic corruption and must be selective in the work it undertakes.

## INFORMATION NOT INVESTIGATED

Before the ICAC decides not to investigate a matter it must consult the Operations Review Committee (ORC). The ORC is a group of people appointed by the Governor, and includes four community representatives.

Even if a full investigation is not carried out the information you provide could lead to work on systems for preventing corruption.

## WHAT FEEDBACK WILL YOU GET?

You will be told of the ICAC's decision about your information. This could include advice that your information has been referred to another agency.

## IS YOUR INFORMATION CONFIDENTIAL?

The ICAC takes care to keep information confidential when that is appropriate. Confidentiality is often important to assist investigations and to protect innocent people.

However the ICAC does not guarantee complete confidentiality in all circumstances. The Commission may need to refer your information to another agency for investigation or the matter may go on to a public hearing. Wherever possible, you will be told of referral to another body.

Independent Commission Against Corruption  
GPO Box 500 Sydney NSW 2001 or DX 557  
Cnr Cleveland & George Streets  
Redfern 2016  
Phone: (02) 318 5999 or Toll Free: (008) 463 909

## **APPENDIX 5**

### ***POST ORC CORRESPONDENCE TO COMPLAINTANT (S.10)***

21 May 1996

Our Ref: E9

**PRIVATE & CONFIDENTIAL**

Dear

I refer to the information you provided to the Commission on (DATE) concerning (WHAT). It has been carefully examined by Commission officers.

You will have previously received a brochure from the Commission outlining how your complaint would be dealt with. This brochure indicated that the Commission, having obtained the advice of the Operations Review Committee, might decide not to investigate a complaint. An explanation of the role of the Committee is provided in the pamphlet attached to this letter.

An assessment of your matter has been carried out by Commission officers and a report submitted to the Operations Review Committee. The Committee has recommended to the Commissioner that the complaint should not be the subject of further enquiries or a formal investigation. The Commissioner has accepted that advice.

#### **OPTIONAL PARAGRAPH**

The Commissioner has agreed, however, that your complaint should be brought to the attention of (AUTHORITY) for further examination.

#### **DLG PARAGRAPH**

The information you provided has been referred to the Department of Local Government to assist its role in improving the performance of councils generally. While the Department reviews every complaint referred by the Commission, it may not take specific action on every one. The Department may contact you if it proposes to take further action.

Thank you for contacting the Commission.

Yours faithfully,



**INDEPENDENT  
COMMISSION  
AGAINST  
CORRUPTION**

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**THE OPERATIONS  
REVIEW  
COMMITTEE**

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**SOME IMPORTANT  
INFORMATION FOR THE PEOPLE OF  
NEW SOUTH WALES**

## **OPERATIONS REVIEW COMMITTEE**

The Operations Review Committee (ORC) is an important part of the Commission. The object of the Committee is to monitor the Commission's performance of its investigative functions, especially in relation to matters within jurisdiction which are brought to it by members of the public.

The Committee is constituted under the ICAC Act 1988, and the functions set out in s.59:

### **FUNCTIONS**

59. (1) The functions of the Operations Review Committee are as follows:
  - (a) to advise the Commissioner whether the Commission should investigate a complaint made under this Act or discontinue an investigation of such a complaint;
  - (b) to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.
- (2) The Commissioner shall consult with the Committee on a regular basis, and at least once every 3 months.

## **MEETINGS AND REPORTS**

Meetings of the ORC are scheduled once per month and are held on Commission premises.

The present procedure is that detailed reports are prepared in relation to each complaint, setting out the complaint, the extent of inquiries undertaken, an assessment of the matter and a recommendation as to any further action by the Commission.

These reports are circulated to ORC members one week in advance of each meeting, so that members can individually consider each matter. At the meeting any reports a member wishes to discuss are identified and the Committee determines the recommendation it will make to the Commissioner. If a matter is not identified the recommendation in the report becomes the recommendation of the ORC. On occasions, complex matters are held over to a subsequent meeting which may allow the ORC to examine files and consider the matter in greater detail. The ORC may also request that further inquiries be conducted. In this event the results of these further inquiries are reported to the Committee.

In addition, regular reports on current investigations are submitted to the ORC for information. The Committee can offer advice to the Commissioner in any of these matters.

## **ORG MEMBERS**

The Operations Review Committee consists of 7 members, being the following:

## The Hon B S J O'Keefe, AM QC Commissioner

**Mr Neil Taylor, APM**      **Acting Commissioner of Police**

**Mr Laurie Glanfield**      **Director-General**  
**Attorney-Generals Dept.**

The balance of the Committee comprises 4 persons appointed by the Governor to represent community views:

**Rev Harry Herbert** Clergyman

Ms Carmel Niland, AM Management Consultant

**Mr John Kennedy** Lawyer

**Ms Yvonne Grant**      **Lawyer**

## **APPENDIX 6**

### **PROTECTED DISCLOSURE ACKNOWLEDGMENT LETTER**

21 May 1996

Our Ref: E95/

**PRIVATE & CONFIDENTIAL**

Dear ,

I refer to your letter received by the Commission on (DATE) concerning (WHAT).

The purpose of this letter is to acknowledge receipt of your complaint, which appears to be a protected disclosure and will be treated as such by the Commission. Your complaint's continuing status as a protected disclosure is dependent upon the requirements of the Protected Disclosures Act being met. The Act does not protect disclosures made frivolously or vexatiously, nor those which principally involve questioning the merits of government policy or are made in order to avoid disciplinary action. Please find enclosed a brochure which provides more information about protected disclosures.

The information you have provided is being assessed, and as soon as a decision is made, you will be notified. Please also find enclosed a brochure outlining the way the Commission deals with matters and likely outcomes.

#### **OPTIONAL PARAGRAPH**

In making any further enquiries into your complaint, it may assist the Commission to discuss the matter directly with, or refer the matter to, (AUTHORITY). This will involve identifying you as the source of our information. Your written consent is requested to this course of action, and I would appreciate your prompt reply.

It will assist us in further contact about this matter if you quote the reference number appearing in the top right hand corner of this letter.

Yours faithfully,

**Mark Hummerston  
Manager, Assessments**

Your identity will remain confidential except under the following circumstances:

- You consent (usually in writing) to the release of your name.
- It is necessary to disclose your identity to the person whom the information concerns in the interests of fairness.
- It is necessary to do so in order to effectively investigate the matter.
- Release of the information is necessary in the public interest.

Decisions about fairness, effective investigation and public interest are made only by senior officers within the Commission.

#### DISCLOSURES TO MEMBERS OF PARLIAMENT OR JOURNALISTS

If you intend to make a disclosure to a Member of Parliament or a journalist, then to remain protected by the Act, you must first have given substantially the same information to an investigating authority or officer of a public authority as outlined before. Having done that you must not give your information to a Member of Parliament or a journalist until the authority or public official has:

- decided not to investigate the matter; or
- decided to investigate but the investigation has not been completed within six months of your original disclosure; or
- has investigated the matter, but there has been no recommendation that action be taken; or
- has not told you within six months of the disclosure whether or not the matter is to be investigated.

In addition, the public official making a disclosure to a member of Parliament or a journalist must have reasonable grounds for believing the disclosure is substantially true and the disclosure must be substantially true.

#### WHERE CAN I GET MORE INFORMATION AND ADVICE ?

Public officials who are considering making a disclosure may obtain advice from the NSW Ombudsman. Phone (02) 286 1000 or 008 451 524. Public Officials who have made a Protected Disclosure to the ICAC may get more information from the ICAC by phoning (02) 3185999 or 008 463 913.

# Protected Disclosures and You

