



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

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## Collation of Evidence

of the Commissioner of the ICAC  
The Hon. B S J O'Keefe AM QC

on General Aspects  
of the Commission's Operations

July 1997

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**COMMITTEE MEMBERSHIP**

**Legislative Assembly**

- Mr P R Nagle MP (Chairman)
- Ms M T Andrews MP
- Mr D F Beck MP
- Mr P G Lynch MP
- Dr P A C Macdonald MP
- Ms R P Meagher MP
- Mr B R O'Farrell MP
- Mr J A Watkins MP



**Legislative Council**

- The Hon. D J Gay MLC
- The Hon. I M Macdonald MLC (Vice-Chairman)
- The Hon. B H Vaughan MLC



**Secretariat**

- Ms R Miller - Clerk to the Committee
- Mr D Emery - Project Officer
- Ms L Pallier - Assistant Committee Officer



Committee on the Independent Commission Against Corruption (left to right):  
Mr Peter Nagle MP (Chairman), Ms Marie Andrews MP, Mr Don Beck MP, Mr Paul Lynch MP,  
Dr Peter Macdonald MP, Ms Reba Meagher MP, Mr Barry O'Farrell MP, Mr John Watkins MP,  
The Hon. Duncan Gay MLC, The Hon. Ian Macdonald MLC, The Hon. Bryan Vaughan MLC.

## COMMITTEE FUNCTIONS

### *Independent Commission Against Corruption Act 1988*

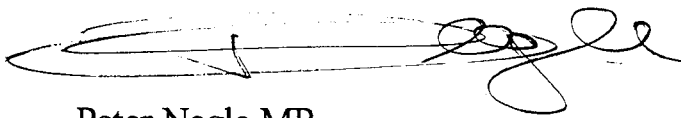
- “64 (1) The functions of the Joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise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

## CHAIRMAN'S FOREWORD

This report contains the submission and evidence provided by the Commissioner of the ICAC for his 14th and 15th public hearing with the Parliamentary Committee.

On behalf of the Committee, I would like to thank the Commissioner for his contribution to the public hearing. I also wish to express my appreciation to the Members of the Committee for their participation in the meeting and to the Committee Secretariat for its support.

The half yearly meetings with the Commission are a valuable mechanism through which the Committee can exercise its oversight robe. As with previous public hearings with the Commissioner, the July meeting was the focus of a great deal of public interest from the media and members of the general public. Proceedings covered various aspects of the Commission's operations and the Committee took considerable evidence on this occasion.



Peter Nagle MP  
**Chairman**

## 1. GENERAL

### 1. Has there been any significant change to the total number of matters received by the Commission and the classification of individual matters since the last public hearing?

No.

#### Complaints and Reports

The total number of individual matters received by the ICAC during the past financial year was 1625, as Table 1 demonstrates.

**TABLE 1: ICAC – INDIVIDUAL MATTERS RECEIVED IN 1996–97**

Classification	Number of Matters	Percentage of Total
Complaints (s10)	1027	63.2%
Protected Disclosures* 193		11.9%
Outside jurisdiction*** 73		4.5%
Reports (s11) **	427†	26.3%
Information	129	7.9%
Inquiry	32	2.0%
Dissemination	6	} 0.6%
Own Initiative (s20)	4	
Referral from Parliament	0	
<b>Total</b>	<b>1625§</b>	<b>100%</b>

\* It should be noted that protected disclosures are but one form of s10 complaints and are included in the figure of 1027

\*\* Excludes s11 matters reported by schedule

\*\*\* Outside jurisdiction refers to complaints which were assessed not to be within jurisdiction

† An increase of 10.3% on 1995–96

§ This figure represents a 4% drop and it may be a consequence of the changed statutory powers for dealing with complaints against police

**Public Authorities Subject to Complaints**

**TABLE 2: ICAC – PUBLIC AUTHORITIES SUBJECT TO COMPLAINTS FROM THE PUBLIC 1996–97**

Local Government	35.2%
Police*	8.3%
Aboriginal Land Councils	6.9%
Corrective Services	6.7%
Courts and Justice	4.6%
School Education/TAFE	3.9%
Department of Community Services	3.4%
State Rail Authority	3.2%
Members of Parliament	2.4%
Health/Area Health Services	2.4%
All others	23.0%

\* Police removed from ICAC jurisdiction 1 January 1997

**2. What public authority is subject to the largest portion of complaints received by the Commission?**

See Table 2 above.

**3. *Public hearings* – How many matters dealt with since the last public hearing have involved hearings and how many hearings were conducted by the Commission in public or private, or a combination of both?**

Nine matters have involved hearings; solely private five; both public and private four.

**4. Under section 64(d) of the ICAC Act, the Committee has a function to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct. Have there been any trends or developments in relation to systemic corruption which**

**warrant drawing to the Committee's attention, for example, in the area of contracting services?**

The ICAC has not identified any significant trends or developments in relation to systemic corruption. The area nominated by the Committee, Contracting for Services, is an area which has been the subject of significant systems work within the public sector. This work was partly motivated by the Gyles Royal Commission into the Building Industry and by the ICAC's activities. The effect of this work has been to put in place detailed contracting requirements for the public sector. Consequently detailed information and guidance is available to all public sector agencies on how to deal with contracting issues. Despite this the ICAC continues to see examples of individuals abusing the trust that is placed in them by subverting the contracting requirements. However, to some extent such corruption is opportunistic and does not necessarily indicate any failing within the organisation concerned.

The ICAC has noted that the general area of inspectorial functions is one in which corruption can occur because of the high degree of autonomy and discretion exercised by such officers.

In terms of future challenges the ICAC believes that the area of contracting out of government services will provide real challenges for the public sector in dealing with the complex probity and accountability issues which are likely to arise. Apart from examining this matter at the theoretical level the ICAC is drawing on its current experience with advising on contracting out issues to identify probity and corruption risk issues. To the extent that it is necessary or appropriate the ICAC will provide advice to government on these matters.



## 2. INVESTIGATION AND LEGAL SERVICES

### 5. What is the current investigative workload of the Commission?

**What is the status of investigations conducted since our last meeting in December 1996, which have been the subject of public hearings or reports?**

The investigations area is working at full capacity.

#### **Overview**

Sixteen formal investigations were approved by the Commissioner in 1996–97, compared with 17 such investigations in the previous year. Formal investigations involve use of the ICAC's powers, for example hearings, use of search warrants, listening devices, etc, and/or involve considerable resources. Three Assistant Commissioners were appointed during the financial year to preside over ICAC hearings.

#### **Public Hearings since December 1996**

Each of these matters has been or will be the subject of a public report.

#### ***Investigation 81 into Aboriginal Land Councils (Zack)***

As the Committee is aware, this significant multi-disciplinary project, continuing during 1996–97, is an investigation into Aboriginal Land Councils (ALCs). The nature and quantity of allegations about fraud and other corrupt conduct in the land council system clearly indicated the need for an inquiry. Of significance was the fact that the overwhelming majority of complaints had come from Aboriginal people. The investigation includes an examination of the practices and procedures of ALCs with a view to uncovering corrupt conduct and facilitating changes to systems and procedures to minimise opportunities for corrupt conduct.

In May 1997 the ICAC commenced a six week session of public hearings into some specific allegations about a number of local Aboriginal land councils and the New South Wales Aboriginal Land Council. The matters examined in the public hearings were selected (from the 200+ complaints received) because each was illustrative of the range of corruption issues which are an impediment to the optimal functioning of Aboriginal land councils. Also see **Preventing Corruption in Aboriginal Land Councils** in response to Question 8.

#### ***Investigation 93 into SRA (Aroo)***

Operation Aroo investigated a number of allegations about corrupt conduct arising out of the old State Rail Authority. At the end of the hearing the heads of the four new rail entities gave presentation on how they would deal with corruption prevention in the new organisations.

***Investigation 114 into Local Councils (Cal)***

The ICAC investigated the conduct of certain persons in relation to Lane Cove Council, Holroyd City Council and Fairfield City Council.

***Investigation 116 into TransGrid, Pacific Power and Integral Energy (Coruna)***

Operation Coruna investigated corrupt conduct involving officers of TransGrid, Pacific Power and Integral Energy and their dealings with the private sector, principally representatives of Australian Pacific Oil and Maeo Pty Ltd. The corrupt conduct related to the methods of disposal of surplus or waste assets and included the receipt of secret commissions in return for the non recording of sales, knowledge of competitors tender details and alteration to tender documents.

**Matters reported since December 1996**

Operation Yabbie concerned Byron Bay Council. The report was made public in April 1997.

Operation Thimble concerned the DPP Office in Lismore. The report was made public in June 1997.

**6a. Has the Commission significantly increased its use of formal powers under sections 21, 22, and 23 of the Act?**

No, not if 1995 is taken as the base year (see Table 3).

and

**6b. To what extent has the Commission obtained and executed search warrants and listening device warrants?**

The use of the ICAC's search warrant and listening device powers over the past two years is set out in Table 3:

**TABLE 3: ICAC – USE OF FORMAL POWERS**

<b>Powers</b>	<b>1996-97</b>	<b>1995-96</b>
Section 21	15	39
Section 22	210	243
Section 23	8	12
Search Warrant	19	37

*Committee on the ICAC*

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LD Warrants	39	47
<b>Total</b>	<b>291</b>	<b>378</b>

**7. What is the status of any prosecution actions arising from Commission Investigations since the Commission last met with the PJC in December 1996?**

Arising out of Operation Cal George David Bertocello was charged with corruptly receiving \$20,000. He was convicted and sentenced on 23 June 1997 to serve two years with a minimum term of 18 months.

### 3. CORRUPTION PREVENTION UNIT AND RESEARCH UNIT

8. What activities have been undertaken by the corruption prevention unit and the research unit and has the work of these sections had any particular focus?

#### I. CORRUPTION PREVENTION SECTIONS

The focus of the Corruption Prevention Sections' work continues to be proactive strategic prevention aimed at the whole and selected parts of the public sector, together with advice and corruption minimisation work targeting particular agencies. The outcomes sought are described in the ICAC's recent outputs and in corporate and strategic plans.

#### Recent Outputs

The past eight months has been a period of intense activity to produce a range of corruption prevention products. These have included the following publications:

#### Probity Auditing: When, Why and How

In December 1996 the ICAC released its publication, *Probity Auditors: When, Why and How*. The publication was prepared in response to the increased use of probity auditors by public sector agencies to demonstrate their adherence to probity standards and processes. Several investigations by the ICAC into various public sector projects in which probity auditors were engaged, revealed a number of problems regarding the role, capability and function of probity auditors.

Typically a probity auditor is an individual (or organisation) engaged to observe and review a complex government project. Agencies frequently use probity auditors to provide an independent opinion on probity issues and to verify that the processes actually followed are consistent with government regulations, guidelines and best practice principles.

The ICAC considers that probity auditors should be used by government agencies as the *exception* rather than the rule and that agencies should not need outside assistance to demonstrate that probity considerations have been attended to. Probity consideration should be built into the systems and agencies should have internal procedures to monitor compliance. However, the ICAC recognises that with a certain class of complex projects, public sector agencies have found probity auditors a useful way of ensuring compliance with probity obligations and as a corruption prevention strategy.

The publication, which is one of the first to define what constitutes probity auditing and the role of a probity auditor, provides assistance to organisations who are using, or are intending to use a probity auditor by detailing:

- . the criteria to be considered before engaging a probity auditor;
- . the processes that should be followed to find and select a probity auditor;
- . what should be included in the formal terms of reference for the project;
- . the role of the probity auditor and the tasks they should undertake;
- . the general principles of probity which agencies and probity auditors should consider throughout the project.

### **Implementation of Recommendations from the ICAC Investigation into the Relationship Between Police and Criminals (Milloo)**

In February 1997, the ICAC published its report on the implementation of recommendations made in the second Milloo Report. The recommendations dealt with a number of issues including the management of informants, case management systems for criminal investigations, management and supervision, record keeping, prosecutions and the handling of misconduct and complaints.

The ICAC's monitoring of the Police Service's performance found that progress had been made in most areas. The most significant area of failing continued to be in the need for improved management policy and practice throughout the Service. This includes the use of the corruption prevention tools recommended in the second Milloo Report. These failings were recognised by the new Police Commissioner and substantially documented by the Royal Commission.

### **Preventing Corruption in Aboriginal Land Councils**

In the second half of 1996 extensive consultations with Aboriginal communities on issues of systemic reform, and investigation of specific allegations of corrupt conduct were completed. A major milestone in this long-term project was reached in February 1997 when the Deputy Premier and Minister for Aboriginal Affairs, the Honourable Dr. Andrew Refshauge, launched a comprehensive discussion paper, *Preventing Corruption in Aboriginal Land Councils*, on systemic reform of the Aboriginal land council system. At that time, he also announced a review of the Aboriginal Land Rights Act 1983, to be conducted in concert with and assisted by the ICAC inquiry.

To support the release of the discussion paper, a series of 15, two day workshops was conducted throughout metropolitan and country New South Wales. The purpose of these workshops was to provide an open forum for Aboriginal people to debate the issues raised in the discussion paper and to provide feed-back directly to ICAC officers. This provided many grass-roots community members with an opportunity to make what were, in effect, oral submissions, which could then be combined with the many written submissions received.

The results of the investigation and the recommendations for systemic reform are planned for delivery in the first quarter of 1997-98, to be followed by a program of continuing support to help implement the recommendations. In the meantime public hearings in relation to some specific allegations in four local Land Councils, are nearing completion.

## **Under Careful Consideration: Key Issues in Local Government**

This publication was released in March 1997. The publication is the result of a joint project by the ICAC and the Department of Local Government (DLG) and is intended to provide guidance on conflicts of interest and avoid the formation of improper associations between councillors and staff.

Part 1: *Managing Conflicts of Interest*, provides guidelines for councillors and staff on how to avoid real or perceived conflicts of interest. It also includes a model for dealing with conflicts of interest and gives detailed guidance and a process for dealing with the complex issues that have to be considered.

Part 2: *Managing the Provision of Information Interaction between Councillors and Staff*, aims to assist councillors and staff to understand their roles and responsibilities more clearly, and how they should operate and interact in order to perform their job effectively. A draft model policy is also included as a guide for councils to develop their own policy that suits their individual needs.

To ensure the relevance and usefulness of the final product during the research and development phase of the project, the project team consulted widely with local councils, peak bodies and other relevant organisations who work with local government. The ICAC and DLG records were also reviewed to identify key issues and case studies. A number of councils and relevant external bodies reviewed the draft report.

The guidelines will be monitored and reviewed to ensure their effectiveness. It is expected that these guidelines will be refined and thus improved, with the benefit of ongoing industry consultation.

Each Council in New South Wales has been sent ten copies to enable a wide distribution of the publication. It is intended that each councillor should receive a copy. The Department of Local Government has also sent the publication to councils via the electronic mail (e-mail) system to allow councils to print as many additional copies as required.

The publication has received extensive media coverage, with over 40 local newspapers providing coverage of the publication's release and subsequent discussion by local council staff and councillors.

## **Managing Post Separation Employment**

This discussion paper, released in May 1997, proposes stronger controls over senior public officials who leave public employment to take up related positions in the private sector. The paper's basic proposition is that the community is entitled to expect its public officials to act honestly, fairly and impartially, and that their decisions are not influenced by plans for, or offers of, outside employment. The paper examines problems that have arisen or that may arise, such

as bribery, self interest, misuse of confidential government information, influencing former colleagues and lobbying. It discusses various measures used to deal with such problems such as using codes of conduct, restrictive covenants in employment contracts and cooling off periods.

The discussion paper has sought submissions from public sector organisations and other interested parties on whether further measures are necessary on this topic. We will evaluate responses before deciding on any representations to the government.

### **Direct Negotiations in Procurement and Disposals**

This publication, released in June 1997, aims to assist public sector organisations, both state and local government, in deciding when it might be appropriate to enter into direct negotiations with one supplier or proponent rather than conduct a competitive process, and principles to follow once such a decision is made. Comments on the draft report were sought from a number of central policy agencies.

The project arose because of the large number of requests for advice on this issue which the ICAC has received from public sector organisations over the last few years. Matters we have dealt with range from small-scale procurement to large infrastructure developments. While there is a wide range of regulations, guidelines and policies on procurement and disposal, there is no clear guide on the principles involved in deciding whether to negotiate directly. No single publication covers the probity issues involved. The appendix to the report summarises much of the "framework" of rules.

The ICAC expects a large demand for this publication.

### **Internal Investigations Module and Handbook**

These two publications were released in June 1997. The first is an additional module for the ICAC's *Practical Guide to Corruption Prevention* and provides a framework for establishing an investigative capability within an organisation. The *Investigation Handbook* provides guidance to those given the task of completing an investigation.

### ***NEW CORRUPTION PREVENTION PROJECTS***

Two other projects were commenced in the period since October last year.

### **Recruitment and Selection**

Since its establishment, the ICAC has received a significant number of complaints regarding recruitment processes. An analysis of the ICAC's complaints database for the period from June 1994 to April 1997, revealed that the ICAC received 555 complaints regarding "employment practices". Of these, 160 complaints (29%) related directly to recruitment processes.

Public sector organisations can demonstrate publicly a commitment to probity and high ethical standards by ensuring that recruitment processes are carried out fairly and openly and have no suggestion of partiality or favouritism. Corruption-free recruitment and selection processes set the tone of the whole organisation. It is often the first point of contact with the agency for the majority of staff and can send a clear indication of the ethical climate of the organisation.

The existing framework of policy and procedure governing recruitment and selection is comprehensive, detailed and quite prescriptive. Despite the existence of this framework, some public officials still manipulate the process to suit their own purpose. Frequently, it is not that the rules are not being followed, but that the spirit of fairness is lacking or not apparent.

Work has commenced on a project to identify the corruption prevention issues in the recruitment and selection process. The objectives of the project are to raise awareness of probity issues in public sector recruitment, identify the principles of probity to be satisfied in recruitment processes, reduce the complaints to ICAC regarding recruitment and be able to respond to the complaints that are received. It is anticipated that the project will be completed in late 1997.

Additional information is provided in the answer to Question 11 below.

### **Government Inspectors**

The Corruption Prevention section is completing follow up work from recent hearings into the operation of local government inspectorial functions. A project is underway to determine the extent of opportunities for government inspectors to act corruptly. It is anticipated that a set of guidelines will be developed to assist organisations minimise opportunities for inspectors to act corruptly. The project involves detailed discussions with a number of relevant organisations, the development of guidelines and rigorous testing of the usefulness of recommendations.

This matter is also referred to in Question 11 below.

### ***ADVICE AND CORRUPTION MINIMISATION WORK***

The provision of advice and seminars on corruption issues to public sector organisations continues to represent a large proportion of the Section's work. Major submissions were made to the Royal Commission into the New South Wales Police Service, to the Department of Urban Affairs and Planning on their White Paper on Integrated Development Assessment, and to the Premier's Department on their Discussion Paper on Recruitment and Selection in the New South Wales Public Sector.

A great deal of support was provide to the four new rail organisations in developing their corruption prevention strategies. This work was done in parallel with investigations work into and hearings in relation to corrupt behaviour uncovered in the old State Rail Authority. In a new approach to investigation hearings and with the active support of the relevant Minister, the ICAC



invited CEOs of rail organisations to provide evidence of their strategies and then attend workshops to address specific corruption prevention issues.

Major pieces of advice work by the section included advice on the Walsh Bay development, the Eastern Distributor project, Wharves 9 and 10 at Darling Harbour, the sale of Axiom funds management, and National Functional Competencies for Fraud Prevention, Detection and Investigation for the Commonwealth Law Enforcement Board.

## **II. EDUCATION AND MEDIA SECTIONS**

The work of the Education Section embraces public sector and community audiences. The work undertaken is strategically planned – the focus thus is to achieve these strategically planned activities. An outline of the strategic intent is summarised below. See also Question 9 below.

### **Public Sector Education**

The following projects have been undertaken to help educate the public sector.

- (a) *Identify opportunities and work with key central and regulatory agencies to help influence the public sector on a whole-of-government scale to support ethics and corruption minimisation*
- The *Protected Disclosures Steering Committee* is chaired by the ICAC. It works to develop strategies to more effectively implement the Act. The Committee draws its membership from the ICAC, New South Wales Ombudsman's Office, Audit Office of New South Wales, Premiers Department, Department of Local Government, Police Integrity Commission and the New South Wales Police Service. More information is provided in Question 11 below.
  - The *Public Sector Ethics initiative*. Joint work with Public Sector Management Office (PSMO) on an Ethics Working Party. This joint initiative is identifying and implementing ways in which ethics can be structured into the policy framework. Ways to help and support agencies to implement it are also being developed.
- (b) *Provision of resources to enable others to work as an extension of the ICAC in helping shape organisational attitudes, values and culture that support ethics and corruption minimisation*
- *Corruption Matters Newspaper*. The ICAC's tri-annual newspaper, aims to inform the New South Wales public sector about ethical and corruption-related issues and stimulate thought and discussion. Articles cover a range of ICAC work - eg new educational resources, training and events; current corruption prevention issues and investigation updates and reports.

- *Conduct Becoming ... the personal responsibility of public duty*, is a resource to help to raise participants' awareness of the application of ethics and public duty to their work. Intended as a flexible learning tool, the kit can be used by trainers, managers, or individual learners. Used appropriately the kit has the capability to help shape public sector attitudes and values.

### **Community Education**

The public education initiatives are outlined in the ICAC's Strategic Plan within Program 2 and are outlined below in Question 9 but in brief they are:

- (a) *Strategies to shape ethical attitude and behaviour through formal and professional education*
  - *Talk of Toppsville*. Primary school resource for years K–6 Science & Technology. The kit aims to enhance students' abilities for responsible participation within the community and develop an enriched view of themselves, society, the environment and the future. It has linkages to other syllabi including Civics.
  - *Valuing our work*. High school resource for year 7–10 Design and Technology syllabus. The kit includes a video demonstrating teaching techniques to assist the exploration of values, a teachers' manual and student activities for ethics, values and attitudes education.
  - *Ethics in Design & Technology*. High school resource for HSC Design and Technology syllabus. The resource includes a multi media CD ROM, teacher notes and student activities to assist ethics, values and attitudes education.
- (b) *Strategies to inform about the ICAC and how to take responsibility against corruption*
  - *Community Advisers Project* is a strategy to assist those in the community who act as advisers to better help those who come to them with corruption issues. Phase 1 of the projects focuses on MPs, chamber magistrates, local government councillors. See also Question 14 below.
  - *NESB Project* responds to the needs of those in the community of non-English speaking backgrounds. The first phase of the project will centre around a brochure focussing on bribery.
  - *Regional Poster Exhibition & Transit Advertisements* ensures that information about the ICAC reaches regional New South Wales and reaches a wider audience than those who read the metropolitan daily newspapers.

- . *Corporate materials, events and displays* ensure information is available to those who know to request it.

(c) *Extend media relations reach*

- . This work is on-going in nature. Media training and the implementation of media strategy recommendations are two current foci.

(d) *Provide corporate relations services*

- . Ensure co-ordination of visitors, register speaking engagements, and provide design and print production services to the ICAC.

### **III. RESEARCH SECTION**

The Research Section's work seeks to better inform efforts to reduce corruption by:

- . conducting original empirical research on corruption and related issues;
- . providing research support for major ICAC projects;
- . acting as an information resource for the ICAC in order for the ICAC to remain up-to-date with current research;
- . disseminating research findings to appropriate audiences;
- . providing a consultancy service to other areas of the ICAC wishing to conduct their own research or evaluation; and
- . monitoring and/or evaluating ICAC work.

In the past year, the Research Section has focused its efforts in the following areas:

#### **Informing Investigations**

##### ***Aboriginal Land Councils Investigation***

The Research Section has been actively involved in the inquiry into Aboriginal Land Councils by evaluating the process used in the project. Operation Zack was evaluated because it encompassed a unique approach involving ongoing consultation processes with Aboriginal Land Councils, Aboriginal communities and with service providers to these communities. The Research Section provides ongoing support to the Zack team and advice regarding methodological issues that arise.

In-depth interviews were conducted with a sample of the interdisciplinary team members and with a sample from the Aboriginal communities involved in the ICAC's data gathering field visits. Some of the findings include:

- Aboriginal people want the ICAC to investigate allegations of corruption in the Aboriginal Land Council system, and want those suspected of corruption to be exposed publicly;
- visits by Aboriginal Liaison Officers and extended field visits to Aboriginal communities were very beneficial in allowing the ICAC to gain access to Aboriginal communities and to gain co-operation and commitment of the communities to develop solutions to problems within the system; and
- Aboriginal community members were asked what they thought of the ICAC contact with them. Fifteen out of 15 people said the ICAC had treated them with respect. They were happy that the ICAC was tackling the problem of corruption in the Aboriginal Land Councils and a vast majority of those interviewed were happy with the approach used and the people involved.

## **Informing Corruption Prevention**

### ***Impact of the Protected Disclosures Act 1994***

In order to inform Corruption Prevention work the Research Section conducted a large survey of public sector employees' views about reporting workplace corruption. This public sector employee survey was conducted as one of four components of the ICAC's research monitoring the impact of the *Protected Disclosures Act, 1994*. The survey was primarily intended to explore the attitudes of public sector employees to reporting workplace corruption. Of particular interest were the barriers that employees perceive exist to their being able to speak out about wrong-doing in their organisations. The survey also provided preliminary benchmarking statistics regarding knowledge of, and attitudes to the *Protected Disclosures Act* and to reporting corruption. These will be useful baseline data for ascertaining the long-term impact of the Act on organisations, their employees, and the reporting of workplace wrong-doing.

Preliminary analysis of the data indicated that:

- more than one-half of all respondents (53.6%) said that they did not know of procedures in the workplace for reporting corruption;
- the percentage who did not know of internal reporting procedures was significantly higher for respondents from local councils compared with those from government departments (61% versus 49%);
- more than one-half of respondents (53%) said they did not know who they could go to outside of their organisations to report corruption;
- in total, one-third of respondents had *no* knowledge which would help them to report corruption.

The second component of the ICAC's research monitoring the impact of the *Protected Disclosures Act, 1994* was a qualitative research survey of people who have made protected disclosures to the ICAC. The research explored their experience in reporting corruption to their organisations and what they think their organisations could have done differently, their

understanding and expectations of the Act, their understanding of the role of the ICAC and their expectations of the ICAC.

An important outcome of the research into the *Protected Disclosures Act 1994* is a joint committee (referred to in Question 8 II) which the ICAC chairs, formed in July 1996 with members from the New South Wales Ombudsman, the Audit Office, New South Wales Premier's Department, Department of Local Government and the Police Integrity Commission and the New South Wales Police Service.

### ***Analysis of Complaints received by ICAC***

Two separate analyses of complaints the ICAC receives which contain allegations of corruption have been conducted. This information is of use to Investigations, Corruption Prevention & Education.

One study focused on section 11 of the ICAC Act which requires the principal officer of a public authority (eg, the Chief Executive Officer of a government department, the general manager of a local council) "to report to the ICAC any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct". The section 11 reports were categorised into areas of activity and nature of the alleged corrupt conduct.

The other study took a cross section of New South Wales Public Sector organisations about which the ICAC receives complaints each year. Similarly this study detailed the types of allegations of corruption and the area of workplace activity in which they occur. Work is continuing using the results from these two studies to develop ways of better categorising information the ICAC receives about alleged corruption.

### **Informing Education**

#### ***Review of HSC Business Studies Curriculum Support Kit***

The Research Section undertook a four-stage review of the ICAC HSC Business Studies curriculum support kit *Ethics and Enterprise: A life cycle of a business*. The kit had been developed by the ICAC and, in 1996, had been provided free of charge to all high schools in New South Wales. It contains a video, a set of student activity sheets, and teachers' handbook and was developed specifically for the HSC Business Studies course to provide teachers with a resource which emphasises the required values and attitudes components of the Syllabus. The purpose of the review was to ascertain how useful the kit had been to teachers in providing that support for the syllabus, and to explore students' views about the video. The review also aimed to explore:

- . how many teachers knew about and had used the kit;
- . how appropriate the level of language was for students;
- . whether or not the video 'story' was relevant to the experience of students;

- . for which parts of the course teachers were using the kit;
- . whether or not teachers and curriculum specialists would recommend the kit as a useful resource for teachers.

Preliminary analysis of the results has shown that teachers do know about the kit (75%), are planning to use it, thought it was successful in helping to teach the values and attitudes requirements of the Business Studies Syllabus and of the teachers who had used the kit (95%) would recommend it to others. Full analysis will be completed in July 1997.

### **Setting Directions for Future Corruption Prevention & Education Work**

#### *Community Attitude Survey*

The 1996 Community Attitude Survey was conducted with a random sample of 511 people over the age of 18 years, from across New South Wales to explore people's general attitudes to corruption, particularly in relation to public and private sector workplaces, their attitudes to reporting corruption, their perceptions of the effects of corruption, and how big a problem corruption was for the community. Awareness of and support for the ICAC was also explored. To ensure independence an external company conducted the telephone interviews.

Information gained through the survey is used to inform the ICAC's corruption prevention and education programs. A number of key issues emerged from the survey which included:

- . there is a very high degree of support for the ICAC;
- . people clearly understand the negative impact of public sector corruption on them and their families;
- . a very high percentage of people accept that they have a responsibility to report corruption;
- . people expect a higher standard of probity from the public sector than the private sector;
- . a substantial number of people have misconceptions about some of the basic functions of the ICAC, yet they are supportive of the organisation.

While a small number of responses indicated some misunderstanding about the different roles of various state and federal government agencies and regulatory authorities, responses revealed a very high level of agreement that having the ICAC is a good thing for the people of New South Wales (93%). The most common reasons given were that the ICAC acted as a deterrent and kept people honest, that there was a need to have something, and that it was good to have a watchdog/monitoring body. Some further results are:

- . 82% thought the ICAC had been successful in *exposing* some of the corruption in New South Wales;
- . 53% thought the ICAC had been successful in *reducing* the level of corruption in New South Wales;

- only 4% of people thought that public sector corruption in New South Wales is not a problem for the community.

For further information see the answer to Question 13.

### ***Review Crime Prevention Literature***

A review of the criminological literature was undertaken to identify and apply approaches to offenders and offending to the problem of minimising corruption in the New South Wales public sector. The crime prevention literature has a number of applications for those interested in minimising corruption. In general terms, it advocates taking an informed approach to corruption minimisation by developing an understanding of the process of engaging in corrupt conduct. In this way those seeking to minimise corruption would be better placed to identify *how* and *where* to intervene to optimise the likelihood of prevention.

Six specific lessons were identified in this review of the criminology literature.

Interest in exposing and minimising public sector corruption within Australia has dramatically increased over the past decade. This literature review is intended to promote discussion of potential strategies for combating corruption by the growing numbers of people interested in this challenge.

### ***Review of Corruption Prevention Literature***

Although corruption research is still in its infancy, written material has accumulated about factors which may be related to the occurrence of corruption. During the current financial year a literature review commenced with the purpose of collating in one place factors which have been identified as possible corruption risks.

### **Disseminating Information**

#### ***Annotated Bibliography***

In order to better resource and inform ICAC staff and others interested in the literature on corruption-related issues, the Research Section has again updated its Annotated Bibliography. Approximately 280 books, papers, journal articles and reports have been collated and condensed from a wide range of sources for this publication. The Annotated Bibliography provides an alphabetical listing of abstracts within 28 topic areas, including topics such as codes of conduct, conflict of interest, defining corruption, effects of corruption, organisational culture, whistleblowing and workplace crime.

#### ***Philippine Business Ethics Network***

The ICAC Research Manager, Dr Angela Gorta, was invited by the Philippine Business Ethics Network and the University of Asia and the Pacific, to address the inaugural Philippine Business

Ethics Conference, held on 20 March 1997. The conference was attended by more than 100 prominent businessmen, government representatives and politicians.

Dr Gorta was asked to discuss strategies for combating corruption based on the experiences of the New South Wales ICAC. In her paper, Dr Gorta focussed on five strategies which the ICAC has found to be important in preventing corruption:

- (i) focus on systems, not on individuals, to prevent future corruption;
- (ii) take a multi-pronged approach to combating corruption;
- (iii) work with other agencies;
- (iv) consider the employees' perspective, in order to inform corruption prevention strategies; and
- (v) monitor outcomes.

**9. What public education initiatives have been undertaken by the Commission and how will the effectiveness of these initiatives be measured?**

**Shaping Attitude and Behaviour through Formal and Professional Education**

The ICAC employs strategies to help make the community more resistant to corruption. To this end attitude and behaviour shaping techniques are used.

Such strategies work to engage target audiences in a personal examination of issues and reassess attitudes and perceptions. Because of this, such strategies usually need personalised delivery. The ICAC is not resourced to undertake such an outreach but by working with and through organisations that do, strategies to shape attitudes and behaviours have been successfully implemented.

Young people have been a key target audience of the ICAC because they are the citizens, decision makers and public servants of the future. Analysis of community attitude surveys has suggested that young people (aged 18–24) are more likely than older people to think that there was little that they could personally do about corruption, and less likely to believe that public sector corruption would affect them or their families. This analysis supports the targeting of young people by the ICAC.

Because schools and educational institutions are in the business of equipping students for life and employment in professions or industry, the ICAC has sought to work with them on projects that help achieve the respective goals of each.

Joint work with the Office of the Board of Studies, New South Wales Department of School Education, and teaching professionals has resulted in several well received resource kits. The kits help teachers fulfil the attitude and value outcomes specified in syllabi, and in so doing enable



teachers to become the means through which the ICAC achieves its outreach. The ICAC equips teachers to help do its work, by assisting teachers to do theirs.

The following resources have been or are currently in the course of being developed and/or promoted by the ICAC:

### **K-6 Science & Technology**

Primary school students have been targeted in an interactive multimedia CD ROM, *The Talk of Toppsville*, produced linked to the New South Wales Science and Technology K-6 Syllabus. The kit helps teachers achieve the attitude and value outcomes required in the syllabus. Linkages to other syllabi are drawn, with Civics being of particular note.

The animated story contained in the CD ROM focuses on a small community's planning decisions for the future. It provides a platform from which students can explore ethics and values through the dilemma and value positions of the characters. A linear program is available for years K-2, the interactive program and classroom activities being more suited to years 3-6.

The classroom activities provide opportunities for students to clarify values, examine differing values positions and potential conflicts arising from these positions and relate them to their own experiences and environment.

*The Talk of Toppsville* was produced a total of 3000 units were produced in June 1997. A distribution strategy has been formulated. This includes a launch in August 1997. Kits will be provided free to all primary schools on request. If it achieves its intended reach, more than 600,000 students a year will be exposed to the resource.

The effectiveness of the resources has in part been assured by having the Department of School Education and Office of the Board of Studies participate in the its development. It was also tested with teachers to ensure that it addressed teacher needs. Focus groups held with students tested the capacity of the resource to achieve the intended attitude and value outcomes. Once it has been in use in schools for an appropriate period, a formal evaluation of its effectiveness will be undertaken by the ICAC's Research Section.

### **HSC Design & Technology**

*Ethics in Design & Technology* addresses the HSC Design and Technology syllabus. It consists of an interactive multi media CD ROM, teacher notes and student activities for ethics, values and attitudes education. The kit was launched in February 1997 and distributed to schools, TAFEs and universities who requested copies. Promotional work including advertisements, seminar attendance and speaking to Professional Teaching Associations was conducted and will continue into 1997-98.

The effectiveness of the resource has in part been assured by having the Department of School Education and Office of the Board of Studies participate in the its development. In the lead up to its distribution demand was very strong and anecdotal advice indicates that it has been very well received. Professional Teacher Associations have assessed the kit and made presentations to peers recommending its use.

### **7–10 Design & Technology**

*Valuing Our Work* was produced for the years 7–10 Design and Technology syllabus. It consists of a demonstration video, teachers' manual and student activities for ethics, values and attitudes education. The kit was launched in February 1997 and was distributed to schools, TAFEs and universities who requested copies. Promotional work including advertisements, seminar attendance and speaking to Professional Teaching Associations was conducted and will continue into 1997–98.

The effectiveness of the resource has in part been assured by having the Department of School Education and the Office of the Board of Studies participate in the its development.

Once the resource has been in use in schools for an appropriate period, a formal evaluation of its effectiveness will be undertaken by the ICAC's Research Section.

To promote ethics in design and technology the ICAC is sponsoring an Ethics Award in the 1997 Ministerial Young Designers Awards (MYDA). The awards were established to encourage Years 7 and 8 students to investigate the world around them and design solutions to problems that interest them. By including ethics in the judging criteria students are prompted to look at the consequences of their designs on the environment and on society.

### **Business Studies Evaluation**

The ICAC's Research Section has conducted an extensive evaluation project which has involved telephone interviews and workshops with teachers and students. Some initial results of the evaluation are summarised as follows:

- 75% had heard about the kit;
- of these, 57% have used it; and
- of those who have used it almost all (95%) would recommend the kit to other teachers.

These early findings support the anecdotal information received that the materials have been well received and used for syllabi and ages other than HSC Business Studies. The more qualitative information elicited through the workshops will be available at a later date.

Interest has been shown by Transparency International members in Russia to have the material modified for use in Europe to teach ethical considerations in business.

## **The Community**

The ICAC aims to provide information to those who are most in need. The level of need varies throughout the community, but the ICAC has targeted those who may be most vulnerable – those who are least likely to be aware of the New South Wales Government's intolerance of corruption, and of the capacity of the ICAC to intervene; and those who cannot speak English, have low literacy levels or who are geographically isolated.

The approach has been to use research to identify target groups and their needs and respond to this information with reliable strategies. At the same time these specific strategies have been complemented by the provision of attractive simple to read corporate materials that respond to the information requirements of those with more general needs.

## **NESB**

The Non-English Speaking Background Project responds to the needs of difference NESB groups. Research into Non English Speaking Background Communities which was completed in June 1996, established education needs of non-English speaking communities in relation to what constitutes appropriate procedures, communication, service and conduct from the public sector. The research was conducted by way of interviews with key government and community agencies and focus group discussions for key language groups (Arabic, Chinese, Spanish, Vietnamese). After consideration of the research, a brochure focussing on what constitutes bribery was developed for use in a wider communication strategy.

The effectiveness of the brochure in matching the needs of each targeted group, has been assessed by market testing. Feedback has indicated that the draft is largely appropriate - but with some adjustment needed (inclusion of more examples and illustrations). These enhancements will be included when the brochure is produced in the 1997-98 financial year. The brochure will be a key element in a larger campaign to inform people from non-English speaking backgrounds on appropriate behaviour when dealing with public officials, as well as the agencies they can contact if they have a complaint about a public official or government service.

## **Community Advisers**

The Community Advisers Community Project aims to equip those in the community who act as advisers to assist those in the community who come to them with corruption problems better. The project has its foundation in Community Advisers Community Research. Through interviews and a survey, the research informed the ICAC of the best ways to implement a program to inform community advisers about the ICAC and how to deal with corruption related enquiries. In line with the recommendations and findings of the research, specific communication strategies are being implemented to meet the needs of various groups.

The first phase of the response to the research has been to implement a strategy addressing one significant group (Members of Parliament, councillors and chamber magistrates) whose needs are highly aligned.

The *Guide for Community Advisers* was produced to assist this group to help their constituents and members of the public with corruption-related enquiries. The loose-leaf folder contains chapters on ICAC processes, jurisdiction and services. It is in the course of distribution and is designed for easy updating and additions.

The effectiveness of the kit resides in the sound research that informed its conception. In addition to this initiating research, further assessment of audience need was carried out during its development by way of interviews with councillors, Parliamentarians and Chamber Magistrates. The resulting guide has the capacity to be modified in response to further needs as they become apparent.

### **Regional Poster Exhibition**

*Corruption Matters Student Perspective* is a travelling exhibition of 45 posters produced by TAFE design students who were finalists in the ICAC's 1996 poster competition. The posters represent student's views on corruption and the importance of its exposure and prevention. The tour, which at the last hearing had been held at Casula and Parliament House, has continued as scheduled throughout New South Wales as outlined below:

Newcastle Regional Museum	6 November 1996 – 26 January 1997
Wollongong City Gallery	7 February 1997 – 2 March 1997
Albury Regional Art Centre	14 March 1997 – 6 April 1997
Orange Regional Gallery	18 April 1997 – 25 May 1997
Manning Regional Art Gallery	4 June 1997 – 29 June 1997

In the next financial year the following are scheduled:

New England Regional Art Museum	18 July 1996 – 31 August 1997
Tweed River Regional Art Gallery	3 September 1997 – 5 October 1997
Lewers Bequest & Penrith Regional Art Gallery	10 October 1997 – 23 November 1997

To increase the learning opportunities from the travelling exhibition an education kit was distributed to local primary and high schools in the areas in which the exhibitions were held. The kit contains information on the poster competition, the ICAC and corruption. There are suggested activities for teachers teaching K-6 and 7-10 and worksheets for K-6 students. The kit was designed to be used in conjunction with a visit to the exhibition, although it can be used independently as a resource for teaching about corruption and ethical behaviour. A total of 1900 kits were produced, of which 1300 were distributed in the financial year ending 30 June 1997.

The exhibition has fostered an understanding of the importance of exposure and prevention of corruption in New South Wales. It has proven to be effective in increasing community awareness of the ICAC. The evaluation of the exhibition to date shows that 76% of people attending have an increased awareness of corruption. With 61,862 people visiting the exhibition at the first six venues, it has provided the ICAC with an innovative and successful tool to promote anti-corruption messages. The compilation and assessment of the evaluation data will continue and will be reported on once it and the exhibition is completed.

### **Transit Advertising Campaign**

Two posters from the *Corruption Matters Student Perspective* exhibition were selected to take the ICAC's anti-corruption messages to the streets of Sydney. *Lift the Lid*, designed by Simone Horder, Enmore Design Centre and *Awareness-Cure for Corruption*, designed by Lucas Gresham, Newcastle TAFE were displayed on over 150 buses throughout May and June 1997.

The advertisements have attracted a good deal of favourable anecdotal review, with the Police Royal Commission expressing enthusiasm for them. Information as to the impact will be reported once the planned evaluation is complete.

### **Corporate Materials and Events/Displays**

*The History of the ICAC* brochure was produced as an addition to the corporate brochure information package. Other brochures include *Serving the NSW Community*, *Functions of ICAC*, *Guarantee of Service*, *What is Corruption?*, *Making a protected disclosure to the ICAC*, *Making a Complaint about Corrupt Conduct*. Thousands of information packages have been distributed at conferences, events, launches and as a result of requests. Copies were sent to all Members of Parliament.

The Education Section actively promoted understanding of the role of the ICAC at a number of events through displays and information stands. Displays were held at education conferences, IPPA seminars, an international ethics conference and the New South Wales Government City Bookshop.

October 3–6 Australian Association for Professional and Applied Ethics Conference  
1996 Display

October 1–28 Government Information Service Bookshop, Chifley Square, Feature  
1996 Display of ICAC information

There has been no formal evaluation of these two particular activities.

## **Corporate Relations Activities**

### *Visitors*

Since October 1996, the ICAC has received representatives from the following agencies and organisations:

- October 1996            Ministry of Internal Trade, People's Republic of China. Delegation of ten people led by Mr Jin Yude, Vice Minister.
- January 1997  
(three days)            Mr Guru Saran, Deputy Commissioner of Taxation, India (Enforcement) and Executive Director (Vigilance), Engineers India Limited (a Government corporation).
- Mr David Schacher, Associate Counsel, Conflicts of Interest Board, New York.
- February 1997  
(five days)            Mr Ray Bange, Senior Assignment Officer, Corruption Prevention Department, Hong Kong ICAC.
- April 1997              Mr Haji Nordin bin Ismail, Director Investigations and Mr Basri bin Idrus, Investigations Officer, Anti Corruption Agency (ACA) Malaysia.
- May 1997                Senior Sergeant Jeff Gee, South Australian Police, Anti Corruption Branch.
- June 1997  
(nine days)            Secondment for training of four officers from the Anti Corruption Agency (ACA), Malaysia:
- Mr Ahmad Rosli bin Mohd Sham, Deputy Public Prosecutor  
                                 Mr Ahmad bin Mandus, Investigations Officer  
                                 Mr Hanif bin Mohamed, Investigations Officer  
                                 Mr Ahmad Zahidi bin Hj Murad, Senior Assistant Investigation Officer.
- June 1997              Federal Agent John Lawler, to prepare for his role as Senior Liaison Officer, Washington.
- June 1997              Five delegates from Philippines National Police and National Bureau of Investigation:
- P/Chief Supt (General) Jovencio I Sales, Inspectorate General  
                                 P/Supt (Colonel) Noel O Delos Reyes, Chief Admin & Management  
                                 P/Chief Inspector (Major) Benedicto B Lopez, Chief Law & Order  
                                 Attorney Mario F Sison, Supervising Agent

Attorney Horten S Hernaez Jr, Senior Agent (Anti Graft Division)

***Publications***

***Investigation Reports***

- . *Report on the Charter of Aircraft by the Police Air Wing* – October 1996
- . *Report on the Public Employment Office Evaluation of the Position of Director-General, Department of Community Services* – November 1996
- . *Report on the Investigation Concerning the 1993 Byron residential Development Strategy and Associated Matters* – April 1997
- . *Circumstances Surrounding the Offering of no Evidence by the NSW DPP on an All Grounds Appeal at the Lismore District Court on 25 May 1995* – June 1997

***Corruption Prevention***

- . *Probity Auditing: When, Why and How* – December 1996
- . *Implementation of Recommendations from the ICAC Investigation into Police and Criminals* – February 1997
- . *Under Careful Consideration: Key Issues for Local Government* – March 1997
- . *Managing Post Separation Employment* – April 1997
- . *Direct Negotiations in Procurement and Disposals* – June 1997

***Research Publications***

- . *Corruption and Other Related Issues: An Annotated Bibliography* – May 1997
- . *Community Attitudes to Corruption and the ICAC 1996* – May 1997

***Other Publications***

- . Annual Report 1995–96
- . Annual Report Summary 1995–96
- . Corruption Matters Newspaper

**10. In October 1996 the Commission indicated that the Corruption Prevention Unit intended to commence a project to develop a corruption prevention diagnostic model. What progress has been made in relation to this project and how does the Commission intend to promote this model?**

This project is a priority for the new financial year. Preparatory work has included research into various risk management, management review and organisational values diagnostic methodologies. The importance of addressing cultural values has been recognised and will be a vital component of the new project.

The ICAC anticipates the diagnostic model having three main purposes:

- for ICAC use, to diagnose the ethical condition of individual agencies' operations (eg, as part of the corruption prevention component of formal investigations or in response to agencies' requests for advice);
- for ICAC use, to identify ethical/corruption prevention trends and weaknesses across a range of organisations' operations (eg survey of educational institutions or of purchasing/contracting policies and procedures of local councils); and
- for individual agency use, as a self-diagnosis tool (for this purpose, it is anticipated that the diagnostic model will be presented as a new module of the Practical Guide to Corruption Prevention).

**11. What work has the Commission undertaken in cooperation with other central policy and accountability agencies towards minimising the occurrence of corrupt conduct?**

Since the ICAC's last report to the Committee, the ICAC's Corruption Prevention & Education Unit has continued to work in cooperation with several public sector agencies to incorporate corruption prevention strategies. These initiatives include:

**Department of Public Works and Services**

(a) *Code of Practice for NSW Government Procurement (January 1997)*

The ICAC participated on the Standards of Behaviour Working Party to develop best practice guidelines on procurement in the New South Wales public sector. The Working Party has developed a Code of Practice for New South Wales Government Procurement which defines the standards of conduct required by both parties (public and private sector) in the procurement process, their obligation to comply with policies and regulations to promote responsible business practice and a commitment to best practice expected of both parties. The code applies to procurement by all agencies of the New South Wales Government. It applies to procurement of goods and services of all kinds including consultancies and professional services, service and



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facilities contracts, construction and capital equipment, and leasing. The code has been finalised and is to be submitted to government for approval and adoption.

(b) *Code of Conduct and Ethics for NSW IM&T (May 1997)*

The Department's Government Information Management Division has been drafting a *Code of Conduct and Ethics for NSW IM&T* (Information Management & Telecommunications). The purpose of the code is to clarify ethical behaviour expected from public sector organisation and their employees in their dealings with industry and what is expected of the private sector and industry associations operating in high technology industries. It is intended that this code complement the government's policies and procedures on procurement and disposal and organisation's individual codes of conduct.

The ICAC has been a member of the working party that has been developing and reviewing the Code.

**Premiers' Department**

(a) *ICAC response to Discussion Paper on Recruitment and Selection in the NSW Public Sector (November 1996)*

The Public Sector Management Office (PSMO) within the Premier's Department is developing new guidelines for recruitment and selection in the public sector. In November 1996 the Office circulated a discussion paper which reviewed the policies, legislation and current practices which guide recruitment in the New South Wales public sector. The paper outlined a number of strategies intended to strengthen merit and integrity. The ICAC was invited to comment on the discussion paper and made a substantial submission regarding the ethical issues that should be considered in the recruitment process.

(b) *The Model Code of Conduct for NSW Public Sector Agencies - Policies and Guidelines (June 1997)*

The ICAC and the Premier's Department undertook a joint review of the model New South Wales Public Sector Code of Conduct and agency-level codes of conduct. As a result of the reviews, the model Code was revised and guidelines developed to assist agencies to review and revise their own codes of conduct. The new model code and guidelines were released in June 1997.

Chief Executive Officers of New South Wales public service organisations are encouraged to review their agency's existing code to reflect the principles and provisions of the new model code and the unique circumstances and objectives of individual agencies.

The ICAC in conjunction with the Premier's Department is also participating in a program to assist agencies to revise and implement their code of conduct to raise awareness of ethical issues in the workplace.

(c) *Implementation of recommendations arising from the ICAC's inquiry into the Semple matter*

Following an initial approach by the ICAC to explore ways to assist the implementation of recommendations, the PSMO has endorsed the approach of structuring ethical considerations into policies, guidelines and framework documents wherever appropriate.

A Planning Group involving the ICAC, PSMO, and union representatives has been formed. The Ethics Working Party has been recognised within the consultative framework contributing to public sector reform.

A CEO Forum on 1 and 2 August 1997 is expected to provide an opportunity to launch the Ethics Initiative.

The Department is currently developing a manual of the "*Public Sector Executives Scheme*" which is an update of the previous manual on the "*State Executive Service*". The ICAC has commented on the draft manual. Additional strategies include incorporating ethics training into the IPAA (Institute of Public Administration Australia) training program. The ICAC is also providing comment regarding ethical considerations in the *SES Code of Conduct*, *Quality Management Guidelines*, a review of the *Personnel Handbook*, and in the review of the merit principle.

Several agencies have commenced programs to ensure a practical understanding of ethics. In June 1997 the Commissioner addressed senior executive participants in the RTA's ethics seminar "Tone at the Top" and will contribute further with RTA's Chief Executive, Ron Christie, in a video to be used in the expansion of the program.

The Chief Executive of the Rail Access Corporation, Judi Stack, launched the Corporation's Fraud and Corruption Control Program in early July 1997 at a meeting of all staff. The ICAC endorsed the materials and congratulated the Corporation on its exemplary model of corruption prevention and promotion of ethical considerations.

In April the ICAC launched the Department of Community Services program of ethics seminars to cover the whole of the Department.

### **White Paper Submission to the Department of Urban Affairs and Planning**

During the year the Department of Urban Affairs and Planning (DUAP) released a white paper entitled *Integrated Development Assessment*. The white paper proposes significant changes to existing planning laws. One effect of the legislation will be to allow private sector consultants to act as inspectors on behalf of local councils. This situation could raise new opportunities for corrupt conduct to occur, the ICAC believes these issues need to be addressed in the proposed legislation. A detailed submission on the white paper, suggesting controls to be included in the legislation, was forwarded to DUAP. An offer was made to provide corruption prevention personnel to work with the Department to develop further the probity aspects of the legislation.

### **Inspectorial Functions**

The Corruption Prevention Unit is completing work as a follow-up from recent hearings into the operation of local government inspectorial functions. A project is underway to determine the extent of opportunities for government inspectors to act corruptly. It is anticipated that a set of guidelines will be developed to assist organisations to minimise opportunities for inspectors to act corruptly. The project has involved detailed discussions with a number of relevant organisations, the development of guidelines and rigorous testing of the effectiveness of recommendations.

### **Protected Disclosures Act Implementation Steering Committee**

The ICAC chairs the Protected Disclosures Steering Committee which was formed in July 1996 to develop strategies to more effectively implement the Act. The Committee has members from the ICAC, New South Wales Ombudsman's Office, Audit Office of New South Wales, New South Wales Premier's Department, Department of Local Government, Police Integrity Commission and the New South Wales Police Service. In the last financial year seven meetings were held and the following initiatives were achieved:

- review and advice prepared on the content of agency and council internal reporting systems;
- two interactive workshops for local government managers on the effective management of information, investigations and staff. The workshops were developed in partnership with the Institute of Municipal Management;
- creation of a state-wide database of protected disclosures co-ordinators;
- comment on protected disclosures guidelines for local government prior to release through the Ombudsman's Office;
- development of state-wide workshops for local government staff and elected representatives which will be conducted in 1997-98.

### **Direct Negotiations in Procurement and Disposals**

See comments on this publication in Question 8 above.

### **Internal Investigations**

Two publications are being produced this year to assist in the conduct of internal investigations by organisations. The first publication is an update addition to the ICAC's *Practical Guide to Corruption Prevention* and provides a framework for establishing an investigative capability within an organisation. The second publication, entitled *Investigation Handbook* provides guidance to those given the tasks of completing an investigation within departments and agencies.

As part of the research and development phase of the project the ICAC convened a focus group to consult on the content, including identification of major issues and problems and the presentation of the final product. The focus group and external review panel included representatives from central policy agencies such as the New South Wales Ombudsman, Department of Local Government, the Fraud Enforcement Agency and Internal Affairs Department within the New South Wales Police Service and representatives from potential user groups including TAFE, Sydney City Council, Maitland Council, Workcover, SRA, RTA, and the Department of Corrective Services.

**Department of Local Government – *Under Careful Consideration: Key Issues in Local Government***

In March 1997, the ICAC, in conjunction with the Department of Local Government, released the publication *Under Careful Consideration: Key Issues in Local Government*. The publication is the result of a joint project by the two organisations and is intended to reduce conflicts of interest and avoid the formation of improper associations between councillors and staff.

The Local Government Act 1993, the DLG's model code of conduct and previous ICAC reports such as the *Investigation into Local Government, Public Duties and Conflicting Interest (March 1992)*, provide some guidance on these issues. However, both the ICAC and DLG realised that councils needed a specific document which provided more detailed, practical assistance on how to deal with day to day situations as they arise in a consistent, timely and accountable manner. In early 1995, the ICAC and the DLG embarked on a joint project to address these issues. The publication is presented in two parts.

Part 1: *Managing Conflicts of Interest*, provides guidelines for councillors and staff on how to avoid real or perceived conflicts of interest. It also includes a model for dealing with conflicts of interest and gives detailed guidance and a process for dealing with the complex issues that have to be considered.

Part 2: *Managing the Provision of Information and Interaction between Councillors and Staff*, aims to assist councillors and staff to understand their roles and responsibilities more clearly, and how they should operate and interact in order to perform their jobs effectively. A draft model policy is also included as a guide for councils to develop their own policy that suits their individual needs.

To ensure the relevance and usefulness of the final product, the project team consulted widely during the research and development phase of the project with local councils, peak bodies and other relevant organisations who work with local government including the New South Wales Ombudsman, the Local Government and Shires Association and the Institute of Municipal Management. The ICAC and DLG records were also reviewed to identify key issues and case studies. Prior to its release, a draft of the publication was sent to several councils and relevant external bodies for review.

The guidelines will be monitored and reviewed to ensure their effectiveness. It is expected that these guidelines will be revised and improved with the benefit of ongoing industry consultation.

Each Council in New South Wales has been given ten copies to enable a wide distribution of the publication. It is intended that each councillor should receive a copy. The publication has also been sent to councils via the electronic mail (e-mail) system to allow councils to print as many additional copies as required.

The publication has received extensive media coverage, with over 40 metropolitan and local newspapers providing coverage of the publication's release. There has also been ongoing media coverage as councils undertake debate of the issues raised and the recommendations made in the publication. More than 2,500 copies have been distributed.

In response to the release of the publication, several councils contacted the ICAC to request presentations on the issues raised in the report.

### **Recruitment and Selection Project**

Since its inception, the ICAC has received a significant number of complaints regarding recruitment processes. An analysis of the ICAC's complaints database for the period from 1 June 1994 to the 21 April 1997, revealed that the ICAC received 555 complaints regarding "employment practices". Of these, 160 complaints (29%) related directly to recruitment processes.

In response, the ICAC Corruption Prevention & Education Unit has been undertaking a project to identify the corruption prevention issues in the recruitment and selection process in the New South Wales Public Sector. The objectives of the project are to raise awareness of probity issues in public sector recruitment, identify the principles of probity to be satisfied in recruitment processes and reduce corruption within the process. The ICAC intends to produce material to help agencies ensure that their processes and procedures promote integrity and are able to withstand public scrutiny. It is not intended to produce a prescriptive set of rules or procedures.

The ICAC has actively sought input from and support of those public sector organisations that play an important role in the development, implementation and monitoring of personnel policy and practice in the public sector and those that have extensive experience and responsibilities in relation to recruitment and selection. In May 1997 two focus groups were convened by the ICAC and were attended by representatives from 20 organisations. The response to the ICAC's invitation was exceptional with only 2 groups unable to attend. Representatives attended from central policy agencies including the Premier's Department, Office of the Director of Equal Opportunity in Public Employment, Anti Discrimination Board, Office on the Council of the Cost of Government, Department of Industrial Relations and the Government and Related Employees Appeal Tribunal (GREAT). Other major public sector employers were represented including the New South Wales Police Service, Department of Health, Department of School Education, State

Rail Authority, Department of Community Services and Roads and Traffic Authority. Other groups who attended included the Public Service Association and the Australian Human Resource Institute.

It is anticipated that the project will be completed in late 1997.

### **Corruption Matters Newspaper**

*Corruption Matters*, the ICAC's newspaper is also a vehicle demonstrating the co-operation with other central agency and accountability agencies. Articles by agencies such as the Ombudsman Office, Audit Office and Premier's Department have been published covering areas such as protected disclosure, and the new Model Code of Conduct.

**12. What progress, if any, has been achieved in relation to the discussion at our last meeting concerning the uptake and implementation of the *Practical Guide to Corruption Prevention* by agencies seeking advice from the Commission? Has the impact of this publication on the Commission's advice work been formally measured? Has the review of the contents been completed? If so, what modules were updated and included in the amended version?**

The *Practical Guide to Corruption Prevention* continues to be a popular publication. The ICAC receives a steady stream of requests for the publication in either hard copy or computer diskette form. The *Guide's* text has been available since March 1997 on the ICAC's internet site, which had been accessed by almost 1200 people by mid June. The international anti-corruption body, Transparency International has incorporated the *Guide* in its National Integrity Systems Sourcebook as an example of best practice corruption prevention resource materials for use in other countries. The text will also be included in the resource materials for an Australia-wide Public Sector Ethics Training CD ROM project.

The *Guide's* impact on the ICAC's advice work has not been formally measured. The level of awareness of the *Guide* has been informally gauged by Corruption Prevention Officers as high and modules continue to be extensively used in the provision of advice. A letter sent to copy-holders in late 1997 asking for feedback on the *Guide's* usefulness and notifying them of the then forthcoming module on Internal Investigations evinced relatively few comments, however, all of them were favourable.

A new module giving guidance to agencies on conducting Internal Investigations will be distributed in July.

**13. What were the results of the community attitude survey conducted in October/November 1996?**

The 1996 Community Attitude Survey was conducted between 15 and 30 October 1996, with a representative sample of the New South Wales population. A total of 511 people over the age of 18 years from across New South Wales were interviewed. To ensure the independence of the data collected, an external company was contracted to administer the survey on behalf of the ICAC. The ICAC Research Section conducted the data analysis and wrote the report.

Overall, responses to the survey provide important insights into people's perceptions of corruption. This information is used to inform the ICAC's corruption prevention and education programs which are part of the statutory functions of the ICAC. What is particularly noteworthy about responses to this survey is the lack of statistical difference in the way people see things. It appears that their views are remarkably similar regardless of gender, age, employment status, or area of residence.

The survey is in course of distribution.

**Understanding Corruption and its Effects**

There has been a reduction in the percentage of respondents who think that corruption is a *major* problem for the community (58% in 1995, 49% in 1996), and a rise in the percentage who think that corruption is a *minor* problem for the community (38% in 1995, 43% in 1996). In contrast, there has been a rise in the percentage of respondents who think they and their family are affected by corruption (46% in 1994, 56% in 1996).

When asked to comment about the effects of several hypothetical scenarios involving corrupt behaviour, respondents distinguished between different types of corrupt behaviour and how direct the impact of that behaviour would be on them. They also made clear, strong links between the corrupt acts and any likely effects they would have on them or their family.

**Acceptable Workplace Behaviour**

One of the most revealing sets of responses to this survey concerns *differences* in perceptions about what is acceptable and/or corrupt behaviour in the public sector workplace and what is acceptable and/or corrupt behaviour in private business. When presented with three separate hypothetical scenarios about situations that could arise in many workplaces, it was evident that people do distinguish between different types of behaviour and make separate judgements about behaviour being *acceptable* or *unacceptable*, or, *corrupt* or *not corrupt*. They also make separate, considered judgements about the standards of behaviour they expect from the public sector workplace and the standards of behaviour they expect from private business. Respondents regarded workplace behaviour in the public sector more stringently than workplace behaviour in private business. In all three scenarios more people said the behaviour was *unacceptable* and



*corrupt* in a public sector setting that in private business. This is despite other responses indicating that corruption is corruption wherever it occurs.

When asked if they thought that what is seen as "corruption" in the public sector is seen as "smart business" in the private sector, 57% disagreed. Sixty-eight per cent agreed that if workplace behaviour were seen as corrupt in the public sector then it would also be considered corrupt in private business. An even greater proportion (73%) thought the reverse was true: if behaviour were corrupt in private business then it would also be corrupt in the public sector.

In terms of general views about an activity being corrupt, respondents indicate that corruption is not mitigated by the number of people involved, or whether it involves personal gain, it is still a corrupt activity. Respondents' views are that corruption is corruption wherever it occurs.

### **Reporting Corruption**

Responses to this section of the survey reveal a major contrast in people's attitudes. On the one hand, people appear to have very positive attitudes toward acceptance of their responsibilities to report corruption, while on the other hand, there appear to be several important issues likely to mitigate against people reporting corruption.

The majority of respondents have positive attitudes towards reporting corruption in the New South Wales public sector, feel they can do something about corruption (57%), and that something useful will be done if they do report it (60%). A very high percentage feel they have some responsibility to report corruption (90%), and that they know how serious corruption needs to be before reporting it (58%). Over half said they would not report corruption unless they had enough evidence to prove it (55%), and 76% think that if you do report corruption you will suffer for it.

### **Support for the ICAC and its work**

Respondent knowledge of and support for the ICAC remains extremely high, with 93% believing that having the ICAC is a good thing for the people of New South Wales. Responses from a small number of people indicate that there is some misunderstanding in the community about the roles of various state and federal government agencies and regulatory authorities, particularly in terms of anti-corruption activities. But this is perhaps less significant than their support for an anti-corruption body *per se*.

Exploration of the success of the ICAC in exposing and reducing corruption in the New South Wales public sector revealed that an increasingly high percentage of respondents (82%) thought the ICAC had been successful in *exposing* some of the corruption in New South Wales, and just over half (53%) thought the ICAC had been successful in *reducing* the level of corruption. A substantial minority responded that ICAC has been either *unsuccessful* (25%) whilst 22% were unsure whether the ICAC has been successful or not in reducing corruption. The main reasons given were that corruption was still evident in the New South Wales public sector therefore it had

not been reduced, or, people did not know how much corruption there was in the first place, so they could not say whether it had been reduced.

The issues raised by these respondents, both for *reducing* and *exposing* corruption, are part of dilemma the ICAC faces in carrying out its statutory functions. For example, as the organisation continues to expose corruption in the New South Wales public sector, and people are more prepared to report corruption than previously was the case, members of the community may interpret this an indication that corruption is increasing, or not being reduced.

In terms of respondent knowledge about the role of the ICAC, there are clearly a number of basic misunderstandings and misconceptions about the jurisdiction and powers of the ICAC. For example, nearly two-thirds of respondents are under the impression that the ICAC can investigate allegations of corruption in the private sector, even when the corruption has nothing to do with the public sector. Further, 59% of respondents think that the ICAC has the power to prosecute people, when in fact, it does not have this power. Other misunderstandings include people thinking that the ICAC is the anti-corruption body for the whole of Australia, or that it *cannot* investigate allegations of corruption against judges, magistrates, local government officials, or parliamentarians.

Media reports are the most common source of information for people about the activities of the ICAC. The ICAC maintains a prominent profile in the media. It is likely that public opinion of the ICAC varies, influenced by media coverage at the time.

**14. What progress, if any, has been achieved in relation to the discussion at our last meeting of the education of Members of Parliament, and their staff, in the functions and practical application of the services of the ICAC to Parliamentary duties?**

The findings of the 1995 Community Attitude Survey prompted the ICAC to advise the PJC in its May 1996 evidence of our intention to run a series of presentations to Parliamentarians and their staff.

As advised at the last PJC hearing, we received in June 1996, the results of research into the needs of community advisers. This research suggested that the above approach did not take into account the needs of Parliamentarians.

The research identified Members of Parliament as key community advisers with a significant role to play in helping the public with corruption-related matters. It also indicated that Parliamentarians had a medium to high level of knowledge about the ICAC and were interested in receiving more information about the ICAC predominantly in the form of pamphlets or information kits. The holding of seminars by the ICAC was not favoured with only 10% of MLAs surveyed, and no MLCs, expressing the view that they would be useful to them.

*Committee on the ICAC*

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As an initial response the Commissioner forwarded correspondence to Parliamentarians in July 1996, together with a range of materials explaining the role of the ICAC. The Corruption Matters poster exhibition was also hung at Parliament House in October 1996.

Since the last public hearing by the Committee a Guide for Community Advisers has been produced. It aims to help Members of Parliament, councillors and chamber magistrates assist their constituents and members of the public with corruption-related enquiries. The loose-leaf folder contains chapters on ICAC processes, jurisdiction and services. Distribution commenced in June 1997 and is proceeding. The Guide is designed for easy updating and additions.

## **4. OPERATIONS REVIEW COMMITTEE**

**15. Has there been any change to the membership of the ORC, and how does the Committee currently operate?**

### **Membership of the ORC**

The Committee consists of eight members. There has been a change in one of the four community members. The newly appointed member is Ms Penelope Pether.

### **Functions of the ORC**

The ICAC Act provides that the functions of the Committee are to advise the Commissioner whether the ICAC should investigate a complaint made under this Act or discontinue an investigation of such a complaint; and to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.

The Commissioner has a statutory obligation to consult with the Committee on a regular basis, and at least once every three months. In practice the Commissioner meets with the Committee every month, except January.

The Committee is one of the ICAC's most important accountability mechanisms. The Committee operates under the following Terms of Reference, as agreed by the Commissioner and the other members of the Committee:

- (a) to advise the Commissioner whether the ICAC should discontinue or not commence an investigation of a complaint;
- (b) to advise the Commissioner at least every three months whether the ICAC should continue an investigation;
- (c) to advise the Commissioner whether the ICAC should discontinue an investigation conducted on its own initiative or on a report made to it;
- (d) to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee, and
- (e) to bring to the attention of the Commissioner any matters relating to the Operations of the ICAC which the Committee considers important.

Quite apart from the fact that the Committee has legislative backing, the ICAC views the Committee as playing an important role. In simple terms, the object of the Committee is to monitor the ICAC's decision to not investigate or to discontinue investigations, especially in relation to section 10 complaints. The Committee is functioning effectively and efficiently.

**16. How often did the ORC meet during the 1996-97 financial year, and how many matters did it consider?**

### **The Workload of the Operations Review Committee**

The Committee generally meets on the first Friday of every month, excluding January. The meetings are held at ICAC premises with the Commissioner or Assistant Commissioner as Chairperson. A quorum is five members, one of whom must be the Commissioner or an Assistant Commissioner.

Information is presented to the Committee by ICAC officers by way of written report. Four categories of reports are presented to the Committee. The categories are:

#### **Progress Reports on Investigation**

A Progress Report is prepared in relation to a formal scope and purpose investigation, undertaken by the ICAC.

A Progress Report provides the Committee with a resume of the events which led to the investigation, a summary of the investigation conducted and the results obtained, to date, the current position or proposed action, the resources required for the investigation and finally the recommendations. Any use of "formal powers" since the last progress report is reported.

#### **Reports Concerning Non Commencement of Investigation**

This category of report relates to a section 10 complaint of possible corrupt conduct where it is proposed not to undertake a "formal scope and purpose" investigation. There are three types of reports that fall into this category, namely:

**Reports on Assessment Concerning Non Commencement of Investigation.** These reports are prepared by the Assessment Section and indicate that the matter has not progressed beyond initial assessment of the complaint.

**Schedule of Matters considered by the Assessment Panel Concerning Non Commencement of Investigation.** This is prepared by the Assessment Section and provides a summary of all matters considered by the Assessment Panel not to warrant further ICAC attention.

**Report on Preliminary Enquiry Concerning the Non Commencement of Investigation.** These reports are prepared by the Investigations Unit and indicate that the matter proceeded to preliminary investigations and the results achieved.

The above distinction has been developed as an internal monitoring mechanism to reflect the source of the report and the work that has been done in relation to the matter.

### **Further Report Concerning Non Commencement of Preliminary Investigation**

This report is a means by which further information is provided to the Committee in response to the Committee's previous advice requesting that further enquiries to be made or information sought by the ICAC before any decision can be made regarding future action.

### **Status Reports Concerning Section 10 Complaints**

These reports relate to section 10 complaints of possible corrupt, conduct where the complaint has been with the ICAC for a period of six months and it is intended that the matter remain active. Once a section 10 complaint is older than six months it is reported on a monthly basis to the Committee until the matter is closed. Status reporting is an accountability mechanism instigated by the ICAC to ensure that ICAC officers handle matters in a timely fashion and do not keep them active for longer than is necessary. Status Reports must outline to the Committee what future action is proposed.

During the period between 1 July 1996 to 30 June 1997 the Committee met 10 times and considered 1068 reports. One further meeting which was scheduled had to be cancelled because of the absence of a quorum. The reports were distributed as follows:

. Progress Reports on Investigation	49
. Further Report Concerning Non Commencement of Preliminary Investigation	20
. Report on Assessment Concerning Non Commencement of Investigation	141
. Schedule of Matters considered by the Assessment Panel Concerning Non Commencement of Investigation	674
. Report on Preliminary Enquiry Concerning Non Commencement of Investigation	122
. Status Reports Concerning Section 10 Complaints	62

**17. To what extent did the ORC make specific comment on, or alteration to, recommendations before accepting reports submitted by the Commission?**

and

**18. In how many matters did the ORC decide not to accept the recommendations and to seek further information on a report?**

The Committee members are provided with the reports a week prior to each meeting so as to allow them sufficient time in which to consider all the reports.

During the meetings, the Committee may reject or accept recommendations made by ICAC officers and/or request that further investigation be undertaken in relation to any matter reported to it. Of the 1006 reports considered by the Committee (excluding status reports):

- the Committee accepted the recommendation made in relation to 849 of the reports, without any alteration or comment;
- the Committee made specific comment or alteration to the recommendation before accepting the report in relation to 108 reports;
- the Committee did not accept the recommendation made, but rather sought further information and required further reports to be prepared, in relation to 49 reports.

Of the 1068 reports considered by the Committee, 450 recommended referral to another agency for its consideration. Of these 450 the Committee accepted the recommendation in respect of 361, while 65 were accepted after the Committee made specific comment or alteration to the recommendation (27 of these reports had their referrals altered). The recommendations of the remaining 24 reports were not accepted by the Committee because further information was required.

**19. How many ORC reports were subject to internal and external audit, and what were the major findings of any audits?**

The ICAC has, for the past three years, arranged to have an external audit conducted of the reports submitted to the Committee and the associated complaint files. This has been an important means of checking the integrity and quality of reports submitted. In early 1994 the ICAC introduced a further quality control mechanism involving internal audits of the reports and associated files. Each of these is dealt with below.

### **Internal Audit**

The Project Officer is responsible for randomly selecting reports submitted to the Committee at the monthly meetings and strictly evaluating the reports against the contents of the associated file(s). The audit examines reports for possible inaccuracies or inadequacies, and determines

whether the report is in the correct format, as specified by the ICAC's internal policies and procedures.

Where the Project Officer is dissatisfied with the report submitted either a further report is requested correcting any deficiencies picked up in the audit or the report author is advised of any deficiencies for the purpose of preventing the same occurring in the future.

During this audit period a total of 85 reports were requested for audit. To date 72 of these reports have been audited. The remainder are currently being audited.

The table below represents the results of the audit based on the level of non-compliance with the adequacy, accuracy and format standards required.

**TABLE 4: ICAC – AUDIT RESULTS JULY 1996 TO JUNE 1997 INCLUSIVE**

<b>Number of reports audited to date</b>	<b>72</b>
<b>Inadequacy</b>	<b>1</b>
<b>Inaccuracy</b>	<b>1</b>
<b>Incorrect form</b>	<b>1</b>
<b>Further action required in terms of ORC reporting</b>	<b>Nil</b>

The above results indicate that the quality of information being presented to the ORC is high.

### **External Audit**

External audits are undertaken at the end of each financial year and are conducted by an independent auditor.

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

The audit randomly selected 100 enquiry files from a population of 1781, being the number of complaint files received during the financial year. The specific objectives of the audit were to:

- determine whether the complaint classification procedure had been appropriately applied; and



from an examination of the complaint files included in the sample, determine whether:

- (i) a matter classified as a complaint was reported to the Operations Review Committee for advice prior to closure;
- (ii) in the event that the Operations Review Committee called for a further report, one was presented in the specific time frame;
- (iii) the requirement for reporting on the status of a matter was complied with;
- (iv) where a complaint became, or was incorporated into a formal scope and purpose investigation, it was included in the final report submitted to the Operations Review Committee recommending discontinuance;
- (v) that the graphical representations provided to the Operations Review Committee concerning the number of complaints received and finalised each month are accurate and adequate;
- (vi) that where the minutes recorded of each meeting specify some action to be undertaken by the ICAC, that the request is complied with.

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

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

## 5. FINANCIAL MANAGEMENT AND RESOURCES

**20. In light of the Budget Estimates for 1997–8, how does the Commission intend to accommodate the reduction in funding and are there any particular programs or areas of operation affected by this reduction?**

and

**21. In your answers to the questions on notice (number 22) for the last public hearing with the Committee, the Commission undertook to provide a Statement of Financial Performance (SFP) in April 1997. Has this statement been prepared for submission to the Committee?**

As this response to questions on notice is being provided to the Committee on 4 July 1997, ie, four days after the start of the new financial year, work on accommodating the reduction in funding is still in progress. It is anticipated that this work, and the preparation of the Statement of Financial Performance for 1997–98 will be completed by 14 July 1997 and submitted to the Committee four days before the public hearing on 18 July 1997.

## 6. RECENT REPORTS

**22. Has the DPP acted on the recommendations contained in the report on the *Investigation Concerning the 1993 Byron Residential Development Strategy and Associated Matters* that Mr McMahon, Mr Loane and Ms Dobson be prosecuted?**

When the ICAC makes recommendations in a report that consideration should be given to the prosecution of a person for a specified criminal offence it is necessary for the ICAC to assemble whatever evidence maybe admissible against the person and to furnish any such evidence to the Director of Public Prosecutions for consideration. Work is currently underway in preparing a brief of evidence in relation to the above report to be sent to the DPP.

**23. What feedback have you received on your suggestions from the discussion paper *Managing Post Separation Employment?* Does the Commission propose to undertake any further initiatives in this area?**

Details about this publication are included under Question 8 above. The feedback received to date shows a range of views; while some respondents are opposed to any post separation controls, others have expressed some support for introducing measures for certain, but not all, categories of public official. There is also general support from some respondents for the suggestions in the discussion paper. Other feedback is that the discussion paper is a useful reference document and one public sector organisation has said it will revise its code of conduct as a result.

As the ICAC is still accepting submissions on the discussion paper at the time this response is being prepared, we have not commenced formal evaluation. However, as the discussion paper foreshadows, while we have views on the desirability of corruption prevention measures on the topic, it is intended to take the submissions into account before deciding whether and/or what further initiatives are warranted. When the ICAC's views are finalised, it will make recommendations to government.

**24. What feedback have you received with regards to your publication, *Probity Auditors: When, Why and How*, which outlines the criteria, processes and general principles for engaging a probity auditor?**

The feedback to date has been positive. In December 1996 the ICAC released its publication, *Probity Auditors: When, Why and How*.

Detail about the publication is provided in answer to Question 8 above.

It was expected that the report would have a relatively small, select market of readers and only 1000 copies were made in the initial print run. Copies of the report were sent to relevant individuals and organisations and others were advised by letter only of the report's release. Demand for copies of the report was unexpectedly high and an additional 1000 copies were printed in April 1997.

The *Australian Accountant*, the Journal of the Australian Society of Certified Practising Accountants, with a circulation of over 90 000, included an article on the release and content of the report in its April edition.

When preparing the report, the ICAC consulted closely with a range of public sector organisations including the Department of Public Works and Services (DPWS), which plays a significant role in the planning and oversight of public sector infrastructure projects. As a result of this consultation and the subsequent release of the report, the Department is establishing a register of pre-qualified probity advisers for New South Wales Government projects. The register will help to ensure that probity advisers are selected through a competitive process, that there is a common understanding of the role and functions of all parties and will promote the independence of a probity adviser.

It is anticipated that expressions of interest will appear in the press in June 1997. The Information Package for potential applicants is based on the ICAC's publication on Probity Auditing. Those who responded will be reviewed by an assessment panel chaired by the DPWS Policy Division, along with representatives from the ICAC and the Audit Office.

The publication has also been used as the basis for selecting a probity adviser on other DPWS projects which have arisen prior to the register being established. The Premier's Department has used the publication when seeking a probity auditor to oversee the purchase of a computer system for the Police Integrity Commission. The ICAC has a representative on the assessment panel for that engagement.

The Audit Office, which was consulted throughout the project's development, has requested and circulated large numbers of the publication amongst its staff.



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**REPORT OF PROCEEDINGS BEFORE**

**COMMITTEE ON THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION**

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**At Sydney on Friday, 18 July 1997**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

Mr P. R. Nagle (Chairman)

The Hon. D. J. Gay  
The Hon. B. H. Vaughan

Ms M. Andrews  
Mr D. F. C. Beck  
Mr P. G. Lynch  
Dr P. A. C. Macdonald  
Ms R. Meagher  
Mr B. R. O'Farrell  
Mr J. A. Watkins

**CHAIRMAN:** I declare the meeting open and I welcome Mr Barry O'Keefe, Commissioner of the Independent Commission Against Corruption, to his fifth public meeting with the Committee. Mr O'Keefe is accompanied by Mr John Feneley, Solicitor to the Commission. For the record, this is the fourteenth meeting between the Committee and the Commissioner since the ICAC's inception in 1989. This morning the first part of the hearing will focus on the answers provided to questions forwarded to the Commissioner. The Committee will then go in camera to discuss answers to a second set of questions concerning a range of matters which include some confidential areas. The meeting will then reopen to the public to hear further discussions between the Committee and the Commissioner.

**BARRY STANLEY JOHN O'KEEFE,** Commissioner of the Independent Commission Against Corruption, on former oath:

**CHAIRMAN:** Do you want to make an opening statement?

**Mr O'KEEFE:** I have not been sworn.

**CHAIRMAN:** You are on your former oath. Do you wish to make an opening statement?

**Mr O'KEEFE:** Yes, I have not received my summons yet.

**CHAIRMAN:** On your former oath you do not actually require one, as I understand it.

**Mr O'KEEFE:** Do I not require a summons to attend before the Committee?

**CHAIRMAN:** I will clarify that point.

**Mr O'KEEFE:** I am happy to do it but it is a formality that may afford some protections that do not otherwise apply. I would prefer to have a summons.

**CHAIRMAN:** You have now been served with a summons executed under my name. For the record, have you received a summons?

**Mr O'KEEFE:** I have. I appear today in accordance with the request of the Committee and the summons which has just been served upon me. As I said when I first appeared before this Committee, I believe that the Legislature acted wisely in providing that there be a mechanism for parliamentary accountability of the ICAC to its master, the Parliament, and that the concept of having a committee is beneficial. If it is to achieve its purpose to best advantage it is highly desirable, first, that I recognise and act in accordance with a spirit of cooperation that is necessary in order to make the Committee work well.

Cooperation, however, is a two way matter and if the Committee is to operate to best advantage in its oversight role it is my view that, first, the atmosphere in which the

Committee conducts its activities should, as far as possible, avoid confrontation. Second, it should avoid personalities and the personal, and concentrate on the activities of the organisation and what might be seen to be any improvements that can be made in the operation of the organisation.

The concept of Parliamentary accountability is one that is not uncommon in New South Wales. The Ombudsman and the Police Integrity Commission are cognate bodies which have a committee which oversees, in the Parliamentary oversight sense, their activities and functioning. It is unfortunate that over recent times there appear to have been some tensions, largely emanating from part of the Committee, not the totality, and not reflected in any reports of the Committee, which have been less than beneficial to the smooth running of the Committee or, for that matter, to the morale of the organisation which I am privileged to head.

I hope that today will be a return to a situation in which the spirit of cooperation and inquiry are maintained and developed. There are reasons to hope that that might be so because since we last met there have been at least two positive developments which are pleasing to the Commission and to me as Commissioner in the extreme. The first is that members of the Parliamentary Joint Committee have assisted the Independent Commission Against Corruption during the early part of this year with a project that we have been engaged on for some time developing corporate performance indicators for the Commission as an operating body.

That project has been through a number of stages which have involved many consultations with various groups, stakeholders and those interested. I am very pleased that the majority of the members of the Parliamentary Joint Committee were able to take part in that and gave their time to do so. The draft which has been refined as a result of those various consultations should reach a final or semi-final form by the end of next month. I am hopeful then that the draft indicators will be able to be provided to the members of the Committee for comment. Then, in accordance with our usual procedures, we will formalise them, adopt them, print them and have them distributed. I would like to thank the members of the Committee for their assistance on this project.

The second positive development, and I think the first time that this has been done during the life of the Committee and the life of the Independent Commission Against Corruption, was the joint briefing session that was held between members of this Committee and members of the Operations Review Committee in June of this year. Deliberately I did not take part in that. I thought it appropriate that relevant Commission officers should unveil, lay out, and make apparent the processes of the Commission; and that the members of the two accountability bodies—one Parliamentary the other essentially community—should meet and be able to make assessments each of the other and perhaps as a consequence, I hope, have greater confidence each in the other. Particularly is this so for the Parliamentary members of this Committee in relation to the appointed members of the Operations Review Committee.

Chairman, you and the other members would recall that there are some ex officio members, myself, any assistant Commissioner, police Commissioner, and the Attorney



General's representative, but then there are community representatives that are nominated by His Excellency the Governor on the advice of the Premier. That committee has worked well and it was highly desirable, it seemed to me, that the members of the two accountability bodies should meet, and do so in an atmosphere in which there was exposition rather than opposition or the prospect of any confrontation.

The nature of the informal setting was beneficial and I believe that the mechanism of informal briefings of that kind is an excellent way of fostering a constructive working relationship between the committees, and between the Commission and the committees. I hope that the members of the Committee who attended—and I thank them for that attendance and for giving their time—found the same. One member of the Committee had an unfortunate experience outside the Commission but I hope that our response to that was sufficient to put at rest that unpleasantness and to certainly indicate to the person responsible for the unpleasantness that that sort of behaviour will not be tolerated, whether to a parliamentarian or to anybody else for that matter.

They are the opening matters. The questions which have been forwarded to us in two lots cover a very wide field and, as you may divine from the answers, a lot of effort has gone into providing material to answer those questions and, hopefully, to inform the Committee adequately in relation to the matters, the subject of their questions. Having said that I would ask that we go into a confidential session. There are a number of other matters that I wish to raise and it is inappropriate that I do so in public forum.

**(Evidence continued in camera)**

**(Public hearing resumed)**

**CHAIRMAN:** Commissioner O'Keefe, the Committee proposes to go through those answers that you gave originally—

**Mr O'KEEFE:** That is the 47 pages?

**CHAIRMAN:** Yes, that is so. We will deal firstly with questions 1 to 4. Do you wish to table those answers?

**Mr O'KEEFE:** I table the whole of the answers, with the exception of question 21. I table the answers on pages 1 to 47 of the first lot of questions and answers.

**Dr MACDONALD:** Question 4 seeks information about the trends and changes in corrupt conduct. You indicated in your answer that either you have not been able, for various reasons, to identify trends and changes, or you have not necessarily allocated the resources into looking at trends and changes. Do we have less corruption now in society as a result of the Independent Commission Against Corruption? I guess that allows you to answer in any way you wish. But are there some particular areas you would like to highlight in which there is now less corruption as a result of the activities of the ICAC?

**Mr O'KEEFE:** There are two ways in which you can deal with this. We can look at it as a scientific, analytical matter—and there are not data on that—or we can deal with it on a postulate basis combined with an anecdotal basis. Firstly, I can say that there was no measurement taken pre-1997-98-99, when the ICAC was set up. Secondly, measuring levels of existing corruption is very difficult because of the very nature of corruption; what you can measure is revelation. The better your methods of revelation become, the greater the amount that is brought to public attention, and thus there is a tendency to say: the more successful the exposure procedures, perhaps the more corruption exists. I think that is not right, as answer 29 in the supplementary answers analyses. You, as a medical practitioner, would be well-conversant with improved diagnostic methods, perhaps definitional methods as well, as sometimes giving a false view arising even where you do have two lots of statistics, old and new.

However, if you look at what has happened, firstly, as a result of Metherill-Greiner, parliamentarians amended the Independent Commission Against Corruption Act and codes of conduct have been introduced for members of Parliament. That focuses attention on the subject matter, and hopefully will cause members of Parliament to be more circumspect and considered about their actions. Secondly, Ministers have codes of conduct as a consequence of those inquiries. The same consequence, you would hope, would flow from that. Thirdly, as a result of the activities of the ICAC, to my knowledge there is not anybody—a public agency, that is—that does not have a code of conduct and methods of enforcement of that code of conduct. The degree to which it is enforced is a variable within agencies.

Fourthly, as a result of initiatives taken by my predecessor and a number of inquiries, all councils have adopted codes of conduct which focus attention of the elected representatives on their conduct. Fifthly, our most recent publication, which analyses the

relationship between employed officers and elected representatives in council, has been something that has been embraced pretty widely around the State—not universally, but a very high percentage of councils have adopted those procedures. As a result of the Semple inquiry, the Premier made a statement—and it has now been backed up by a directive—that all SES and CEO positions, when advertised, must include a requirement that the person who is an applicant show their commitment to integrity and how they demonstrate that commitment to integrity that is personal and in the section or department that they are concerned with.

Sixthly, in the next very short time we have been assured that CEO and SES contracts will all include performance indicators which relate to obligations in the contract for personal and departmental and sectional integrity and probity. I think a very important thing is that the Premier has repeatedly said that integrity in the public sector in New South Wales is a high priority for the Government of New South Wales. Seventhly, he has on a number of occasions contacted me—and this is anecdotal—about groups with whom he is negotiating—financiers, constructors, and the like—who say that doing business in New South Wales is better and easier; you know what the rules are, and you know that they are likely to be adhered to, because if they are not the ICAC will get on to you. And it is much different from doing business in some other places, where the wink and the nod and the back room and who you know and play golf with are more important. Finally, on 1 and 2 August, I think it is, the Premier's Department has invited me and the Premier to take part in launching a program for CEOs, a two-day seminar that is concerned with a number of issues, but in the forefront on the first day and on the second day will be questions of integrity in departments. If you combine that with what our community attitudes survey has shown—namely, that the exposure of corruption has given rise to an increase in community awareness of its detrimental effects—I think the answer is we are doing pretty well.

There is a problem always that when you talk about corruption occurring in the public sector and focus on that, you tend to focus on it to the extent that you put to one side the good and the honest people who are carrying out their jobs with integrity. It is perhaps wise to think of Australia in a world sense. A survey of 54 nations has shown that Australia is in the top 10 as far as integrity is concerned. But what we do have in Australia, and particularly in New South Wales, is a low threshold of tolerance. A lot of those things, I think, are able to be attributed to our activities in one form or another. We cannot take the whole of the credit for that, nor can you demonstrate it scientifically, but those people who respond to us tell us that the ICAC's existence and operations are a major factor.

**Dr MACDONALD:** You described the factors and influences that are likely to reduce the amount of corruption within the community. But question 4 states in part, "Under section 64(d) of the ICAC Act, the community has a function to examine trends and changes in corrupt conduct." My question was: how do you measure those changes? In your answer you have said, "We are doing pretty well." That is not a very objective or quantitative response. Is it just not possible to get any closer to it than saying we are doing pretty well?

**Mr O'KEEFE:** The extracts that you will see, taken from the literature in the answer to question 29 in the supplementary questions, suggest that what you say is correct.

I think that we can perhaps be a bit more scientific than that. But one of the things is that the analysis of complaints and the characterisation of complaints gives you some data, but I do not know that it gives you enough data to make really scientific statements about it. It is a difficult area. One thing that we do look at—and it is raised in the question—is that if you look at the changed mode of government doing business, there is a potential for increased corruption, and at a fairly substantial cost to the State of New South Wales. Where those changed methods have involved public entities, we have been concentrating on those entities to try to ensure that they get the right systems in place and the right culture in their organisations. Can I say that I believe that the four organisations into which the State Rail Authority has been split are a pretty good example of that.

**Mr O'FARRELL:** In relation to your comments about the CEO and the SES, could the failure of a senior public servant to provide information either to other government agencies or on the public record, upon which further decisions are made, constitute corrupt conduct?

**Mr O'KEEFE:** I think I would need more facts than that to determine—

**Mr O'FARRELL:** I suppose I look at Monday's Greenpeace statement in relation to the alleged failure of bureaucrats within the Environmental Protection Agency to reveal publicly and to other government agencies the level of pollution in Homebush Bay. Greenpeace has indicated that that matter will be referred to you. I am just wondering whether you would regard the failure to disclose that information, if indeed it did occur, as falling within the ambit of corrupt conduct? Certainly it would seem to touch on the integrity issue that you raised.

**Mr O'KEEFE:** It could fall within section 8. You would have to look carefully to see whether it fell within section 9. But even if it did not fall within the definition of "corrupt conduct", it may give us an indication of areas in which some corruption prevention work, or systems work, should be undertaken. You do not have to have actual corrupt conduct; it is sufficient that you have the potential for it there to cause us to look at CP work.

**CHAIRMAN:** If you did have that inquiry, you said you would be looking to see what past Liberal and National Party Ministers for the Environment had done over the last five years?

**Mr O'KEEFE:** I think you would look at right up to the present, which would cross party boundaries then.

**CHAIRMAN:** In regard to all the inquiries that have been conducted by the ICAC over the years, would it be correct to say that the type of corruption in the State of New South Wales is more opportunistic type corruption, instead of being systemic corruption?

**Mr O'KEEFE:** Are we excluding the police?

**CHAIRMAN:** Yes, excluding the police for the time being?

**Mr O'KEEFE:** Not invariably. There are some matters at which we are presently looking that may fall within the systemic category.

**CHAIRMAN:** I know that you have a lot of work on, but it might be an interesting area for the corruption prevention unit to one day have a look at what is opportunistic and what is systemic corruption, after you have done these inquiries?

**Mr O'KEEFE:** It is an interesting area. The difficulty is that there are many interesting areas, and there are areas that, if resources were not finite, we would go into. We really have to prioritise.

**(Short adjournment)**

**Mr WATKINS:** In question 1 the table on page 2 relates to complaints from the public. All surveys like this seem to indicate that local government is at least perceived to be a hot bed of corruption. Should the ICAC not give extra special focus to local government, considering that so many members of the community see that as a centre of corrupt activity?

**Mr O'KEEFE:** First, I think you have to analyse the council or councils against which the complaints are made to see whether any one council is the subject of a high number of complaints. Secondly, you have to determine the nature of the complaints. Many of the complaints about local government that are received from the public are not really about corruption; they are about matters of administration or management. Thirdly, you have to determine when these occur and whether they are related to some burning issue in the particular area about which complaints are made. That is all done as part of our process. We have had an inquiry going this year, called Cal, into three councils: Lane Cove, Holroyd and Fairfield. Then there are complaints that are made about electoral matters relating to councils and to members of Parliament and their relationships to councils.

On examination, a high percentage of those local government complaints cannot really be said to be related to corrupt conduct. However, what you say is correct: there is a public concern about local government, and we do give quite a lot of attention to it. The fact that a matter may not be the subject of a specific public inquiry by us does not mean that it is abandoned. We have found that if a matter is referred to the local government department or some councils under section 53 with a requirement for report back under section 54 we get a fairly good response. That is not universally true but quite a few matters are dealt with in that way. The next thing is that attention is given to publications that relate to local government that are related to performance of function by elected members and staff so as to heighten awareness. So there is a good deal of attention given to the area.

**Mr WATKINS:** I have a question about a specific local government issue. I am wondering whether this is the right time to explore that or whether I should leave it until later.

**CHAIRMAN:** It is up to you.

**Mr WATKINS:** Allegations have been made to me by a mayor of a local council area regarding the behaviour of a previous mayor. These allegations are supported by a letter from a senior officer of the council. Only after a great deal of consideration did the subsequent mayor, with the support of the senior officer, take the matter to the ICAC. The senior officer was very concerned that taking such action may in fact put his job at risk. The senior officer gave a detailed description of corrupt conduct about another employee of the council in relation to the previous mayor. Subsequently, that employee of the council left. It was not the senior officer but the other employee who was named. The matter went to the ICAC and the ORC, and the ORC determined that no further action be taken. Accordingly, that was sent back to the mayor who made the complaint. That caused great consternation to those people who had put their heads up and complained to the ICAC. They were concerned about future employment and about the status of the ICAC in the eyes of local government officials. For example, the next time the senior officer or the mayor sees something that he believes to be corrupt conduct, will the senior officer in particular report it to the ICAC? Has he not learnt the lesson that sometimes it is best just to shut up and ignore it? That is quite disturbing.

**Mr O'KEEFE:** Could you give me privately the details of that? I am not conversant with the matter. But can I say that as a matter of principle if you look at the resources that we have available we must make decisions, not all of which are palatable, and a percentage of matters that the complainant thinks are important, and on a scale have a relative importance, are not, of necessity, able to be further pursued. That can have an adverse effect on future behaviour in reporting matters by the public officials who are concerned. We are presently addressing how to deal with that situation both in terms of our correspondence and our intermediate dealings with the persons who make those complaints. One thing that happens in such a case is that, although the particular matter may not be the subject of express detailed investigation by the ICAC, it goes into our database and becomes part of the data against which we then make some strategic decisions. In the light of other pieces of data it may be resurrected to be looked at as part of an across-the-board examination in relation to particular functions, rather than just a one-off in one council.

**Mr WATKINS:** I will send you the details.

**Mr O'KEEFE:** From what you have told me it does not ring a bell, and if you do send the details it is probably better that names not be used publicly.

**Mr LYNCH:** Table 2 refers to local government complaints. Has there been any analysis of what categories they fall into? We are talking about roughly 500 complaints a year. Is there any way of categorising what the complaints consist of?

**Mr O'KEEFE:** We have done it in two ways. We have done it in relation to the nature of the complaints, first, elected officials and employed officers. We have done it in relation to geography, for instance, looking at the coastal strip that produces a very high percentage—excluding Newcastle, Sydney and Wollongong—looking at the residue to see whether characteristics in the areas are likely to be productive of complaint, and there are. They are invariably areas in which there is a state of flux. Disparate groups in the community take quite diametrically opposed views, so that anything contrary to their view

is viewed as corrupt because they must be right, and anything else must be corrupt. We have looked at that and we have looked at the areas of administration that attract the greatest number of complaints. Inspectorial function and regulatory function were high, and that is why Operation Cal was a public inquiry, which involved selecting three councils in respect of which we had a number of complaints. We were able to examine specifics from which we can draw a generality.

**Mr LYNCH:** Can you make that breakdown available to the Committee?

**Mr O'KEEFE:** We can get that material together. In fact, on the last occasion I think I may have used some of that material on the geographic distribution, but we can get that.

**Mr LYNCH:** I would be happy to see that.

**Mr O'KEEFE:** A category also relates to former members of councils, and often, particularly if former members progress into a parliamentary position and somebody wants to have a go at them, they will go into the local government past. We have not really segregated that. That is more anecdotal because though there are some of them, there are not enough of them to make a category.

**Mr LYNCH:** You would not think that numerically they would be very large.

**Mr O'KEEFE:** No.

**Mr LYNCH:** In your supplementary answers, question 22 contains a reference to section 11 reports. Table 1 refers to 427. The answer refers to 430. There is another figure of 1,825. I am trying to work out how all those figures hang together.

**Mr O'KEEFE:** Can I point out also that there is a discrepancy between the figure 430 on page 8 and the figure 427, which you will find on page 1, "Reports (s11)". I think the difference is that the figure of 427 was done before all the registrations for that year were done and another three turned up. In relation to the discrepancy—

**Mr LYNCH:** "Discrepancy" is probably the wrong word, but I am interested in whether the 430 is a part of the 1,825. I am interested in what the others are, apart from those 430?

**Mr O'KEEFE:** It is hard to say. They are schedule matters, and they are a whole range of things. By and large, matters that are not the subject of an individual reference are fairly trivial. Occasionally, when looked at, one will tie in with something else in our database and take on a new emphasis. But, by and large, the difference between 430 and 1,825 is all schedule matters that are relatively trivial. But they still take a bit of time to look at because you have to make assessments of them.

**Mr LYNCH:** Question 3, page 2 deals with public versus private hearings. What are the indicia you look to to decide whether to have a public hearing versus a private

hearing, or a mixture of both? What determines it?

**Mr O'KEEFE:** My starting point is section 112 of the Act. You will recall, all being members of the Legislature, that late last year, namely in September, the Legislature amended section 112 by adding subsection (1)(a), which provided that you could only deal with matters in private if it were in the public interest so to do. So the primacy is public, which really takes up the thrust of the Act about exposure. What are the indicia of public interest? They will vary from instance to instance, but very high on the list is that to do it in public would jeopardise the ongoing inquiry. If you have a hearing as an investigative tool in aid of the general inquiry and it is done early, it is done in private. If a person will not make a statement, for instance declines to make a statement as he or she is entitled to do, a summons is issued, the person comes in and is then asked, under compulsory process, what the story is.

That may give you leads, the person may make admissions, and ultimately that matter may become public. That is one indicium. Another is that at the stage to which the inquiry has proceeded, to reveal the names of persons who are not yet formally involved may have a very adverse effect upon the reputations and businesses of those persons, so that as a matter of social justice to that person—and that is a question of public interest in itself—we would not have that hearing initially in private. You may then get to a stage when it is clear there is sufficient evidence to warrant it being made public—it is not just a wild allegation—and there are a series of criteria like that that we apply to that determination. Generally, the earlier the inquiry is done, the more likely is it to be done in private.

**The Hon. B. H. VAUGHAN:** Has the ICAC received complaints about or against the Central Sydney Planning Committee?

**Mr O'KEEFE:** It is not the policy of the Commission to reveal complaints about particular individuals or entities. So I would not say yes or no to that question.

**The Hon. B. H. VAUGHAN:** In other words, you cannot say whether you do or do not receive them?

**Mr O'KEEFE:** No.

**The Hon. B. H. VAUGHAN:** If I asked you about Randwick Council, for example, it would be the same, would it?

**Mr O'KEEFE:** You would know that Randwick Council was the subject of a number of complaints in the past, all of which were taken up in an inquiry conducted by Acting Commissioner Mant, and was the subject of a report, I think at the end of 1995.

**The Hon. B. H. VAUGHAN:** I just put that as an example. I am not really interested in Randwick, I am only interested in the Central Sydney Planning Committee.

**Mr O'KEEFE:** Randwick is a very interesting instance, now that the Acting



General Manager, Gordon Messiter, has now been contracted as General Manager. The difference in systems and the difference in approaches since Mr Messiter has been there has been quite marked. Actually, I think Randwick is a likely success story.

**The Hon. B. H. VAUGHAN:** If I asked you whether the ICAC has complaints about Woollahra Council, for example, you could not answer me either?

**Mr O'KEEFE:** I would not, no. Except to this extent, that there is on the public record that we had a number of complaints in the past in relation to the parking station at Double Bay, and the council made them public. That is one thing I remember, but current ones we do not, no.

**The Hon. B. H. VAUGHAN:** To the same extent, there is nothing on the public record about the Central Sydney Planning Committee?

**Mr O'KEEFE:** Not that I recall, no. There is not.

**The Hon. B. H. VAUGHAN:** If you could recall it you would probably be able to answer whether there have been complaints about that committee?

**Mr O'KEEFE:** I could, but I would not. You could just as soon ask me have there been complaints about Dr Macdonald or any member of the Committee.

**The Hon. B. H. VAUGHAN:** But I am only interested in the Central Sydney Planning Committee.

**Mr O'KEEFE:** You are, Mr Vaughan, but your interest and the interests of other members of the Committee would be diverse and a question of principle is involved.

**CHAIRMAN:** We will now go on to investigation of legal services, questions 5 to 7 on pages 4 to 6.

**Dr MACDONALD:** The answer to question 7 refers us to the status of prosecutions. Is it the only one?

**Mr O'KEEFE:** It is the only one since the last hearing.

**Dr MACDONALD:** Is that surprising?

**Mr O'KEEFE:** No, the last hearing was held in December. We had a Christmas break. My recollection is that the matter of Harding, which was due for trial in May, went over for some reason that I do not understand.

**Dr MACDONALD:** Are prosecutions an indicator of the success or otherwise of ICAC? Are they a fair yardstick? On average it appears that there may be a couple of prosecutions per year. Are you happy that that is a reasonable outcome, bearing in mind the amount of corruption that may be occurring within the public sector?

**Mr O'KEEFE:** The answer is that it is not a proper indicator. Section 38 provides that if a witness takes an objection the evidence that is obtained in a hearing by way of admission or otherwise cannot be used against that witness in any civil, criminal or disciplinary procedure. So you may have them dead to rights in fact but the Parliament has said that we cannot use that evidence in a prosecution. If our function is to expose and to eliminate, and we have expressly a non-prosecutory function, it hardly seems fair to put one of our non-functions in as a measure of our success. The measure of success may be the question of exposure.

The second thing is that regrettably there is a very long lead time in relation to our putting together a brief, as we often do, and the ultimate hearing of the matter. The Harding case sticks in my mind. He was a former superintendent of police, you may remember. That prosecution has been adjourned and adjourned and adjourned. I do not know why actually, and it is now years old.

**Dr MACDONALD:** Are you advocating a prosecutorial role for the Commission?

**Mr O'KEEFE:** No.

**Dr MACDONALD:** Are you saying that issues raised by evidence derived from your inquiries cannot be used by the Director of Public Prosecutions?

**Mr O'KEEFE:** No. I am saying that the formal evidence given by the witness which may involve admissions of guilt cannot be used. The background material can be used.

**Dr MACDONALD:** In view of that are you advocating any change to the Act? Do you believe that the Act is hindering the Director of Public Prosecutions? Are you comfortable that that is the current circumstance?

**Mr O'KEEFE:** The Parliament decided that there was a compromise. You look at civil rights on the one hand and the fundamental rule of our law that says that people cannot be forced to incriminate themselves; you abrogated that for a particular purpose, namely the exposure of corruption in public hearings, and so the stigma applied and the facts were made known but the Parliament said that the tit for tat for that is that you cannot use it in a prosecution. I think that is a fair compromise and it is certainly one that the Parliament hammered out very strongly and carefully at the time the Act was passed. I would not advocate changing that.

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

**Mr O'KEEFE:** You are the Legislature, I am only a public servant, but the abrogation of the right to silence as a general rule is a very wide public interest issue and a civil rights issue. I happen to take a view in relation to it that obviously does not agree with Mr Gay's view but that is a matter for the Parliament to determine.

**Dr MACDONALD:** In your view does it hamper successful prosecutions?

**Mr O'KEEFE:** Yes it does, there is no question of that. There are a lot of prosecutions that would succeed if that evidence could be used, but that is the rule until it is changed, if it is changed. Prosecutions are not a good indicator of our success because we are not about prosecutions. Often you get a witness, I have had a witness before me, and you can stress to the witness that because of section 38 they are almost in a situation of a free kick. It is a no ball almost. They can do anything with it.

**Dr MACDONALD:** What is a no ball? Is that a quaint expression?

**Mr O'FARRELL:** It is a figurative expression, it is an English sport.

**Mr O'KEEFE:** It is a figurative expression. It is an English sport. It is also a very good Australian sport. As you know we have been doing pretty well the last couple of times. There is an equivalent somewhere north and west called hurling, isn't there? If you took away that protection you would find that a lot of people who now, because of that protection, will tell you the truth and expose the corruption, would not do so.

**Mr BECK:** Can you report on how the regional poster exhibition is going thus far?

**Mr O'KEEFE:** I have not got the figures for Taree but up until Taree nearly 62,000 people had seen the exhibition. It is my belief that by the time we get the Taree, Armidale, Tweed and Penrith figures we will certainly top 75,000. We have done a viewer survey and the viewer survey has been very positive in relation to causing people to think about corruption and the effect upon them. It has been a great initiative actually.

**Mr O'FARRELL:** You mentioned Operation Yabbie concerning Byron Bay Council and the report made public. Last week I received the ICAC "Guide for Community Advisers", on which I compliment you. Chapter three talks about what you should know within the Independent Commission Against Corruption Act and generally provides some advice in relation to the making of complaints, protected disclosures, and malicious or mischievous complaints. I do not know the background to the Byron Bay inquiry but it has been put to me by a local councillor, and it is a view that I share, that the subsequent prosecution of councillors following that inquiry sends a very—

**Mr O'KEEFE:** No, wrong.

**Mr O'FARRELL:** Wrong inquiry?

**Mr O'KEEFE:** No councillors have been the subject of any recommendation for prosecution.

**Mr O'FARRELL:** Is it members of the public who have been prosecuted?

**Mr O'KEEFE:** Yes.

**Mr O'FARRELL:** I am sorry, I take that back. Members of the public who presumably on this occasion have not been judged to be acting in good faith made some

complaints, the ICAC investigated and there was an inquiry and they are now to be prosecuted. Is that correct?

**Mr O'KEEFE:** A recommendation has been made that they should be.

**Mr O'FARRELL:** That sends a wrong signal to the community in relation to the raising of complaints and it has been put to me by a local councillor that it is a very strange thing for an organisation interested in rooting out corruption to do. The analogy he gave me was that in relation to the Ombudsman's office the Ombudsman makes an assessment before it launches an inquiry. From his own involvement with the current inquiry before that office where he has made a protective disclosure, he has been assured in the light of the Byron Bay situation that there is no possibility whatever the findings that he will subsequently be dealt with. Why are members of the public being prosecuted? Do you accept the point that it sends a wrong signal to the community?

**Mr O'KEEFE:** No, first, I do not accept that point. Second, it was not a protected disclosure and third, read the report. I have analysed in detail the wickedness of the primary person involved. He actually devised a strategy of lies and a publication of lies, purpose expressed in his memorandum to bring pressure on the bastards so they will have to say yes. If you want to protect people like that in the public, change the Act, but I would have thought with great respect that they are the very people that should not be allowed to get away with it. I mean, now do not make them councillors that are the subject of that allegation but make them parliamentarians. Surely when somebody makes a false, malicious, deliberately self-interested allegation and a series of them of the most florid kind, the law would be very remiss if it did not have some redress against such people, and that is exactly this case.

**Mr O'FARRELL:** Commissioner, it raises two issues with me, though, that if somebody does that to me I have a course under the law already.

**Mr O'KEEFE:** You do not. If they make that allegation to the ICAC it is the subject of privilege, so you have no right.

**Mr O'FARRELL:** Which raises the second question: why was it that evidence based on lies, in your words, got to the stage that an inquiry was conducted? What was wrong within the ICAC's operations that allowed that to reach that stage?

**Mr O'KEEFE:** Nothing. You had a very prominent solicitor who made a statutory declaration and produced a series of documents. What happens is that on the face of it there is something there that is pretty serious and pretty rotten. But as I say in answer to one of the other questions when part of a story is told it may convey one thing but when the whole story is told the picture is very different. It was only as a result of him coming back to Australia from Sweden and bringing back documents with him of which thereafter we were able to get hold that it could be seen that this story when told in whole was just a fabrication of lies. The next thing is that he had actually engaged in telling the first part of the story in the local press and through pamphlets so that the nasty part about the councillors was out.

**Mr O'FARRELL:** And actionable?

**Mr O'KEEFE:** If you could find "Mr Fast Buck\$", that is the person who published it and put at the bottom of his publication, "I haven't got a penny, you can sue me if you like but it won't do you any good." Where do you get redress? In fact, the ICAC was able to show that the councillors and the officers had acted properly and that they were subject to a concerted and secret effort to denigrate them and to destroy the process of the council.

**Mr O'FARRELL:** And that could not have been discovered without there being a full-scale inquiry?

**Mr O'KEEFE:** That is right.

**Mr O'FARRELL:** That just seems remarkable.

**Mr O'KEEFE:** It is the fact.

**Mr O'FARRELL:** Can I be advised at some later stage of what the inquiry cost?

**Mr O'KEEFE:** Yes. I do not know what it cost. I suppose we can work out a cost for it, yes.

**Mr O'FARRELL:** It just seems to be a failing, Commissioner, that something as black and white as you have described has to be taken to the degree it has before it can be revealed.

**Mr O'KEEFE:** But remember that that was only one aspect of the inquiry. There were councillors who had also made allegations, not the same as the allegations that Mr McMahan had made, but which went to the process in the council. Those two taken together, although dealing with different subject matters, suggested a malaise in the council that was very serious. They were dealt with in different segments and each were shown not to be with substance. Actually the report is full and speaks for itself and has been described by a number of locals as "spot-on". We got the thing right and the background right. I do not think that that will stop all the backbiting and horribleness that goes on in Byron Bay though.

**Mr O'FARRELL:** It is being interpreted in another council area far away from it as pressure being placed upon legitimate people making legitimate complaints to the ICAC about the operation of local government.

**Mr O'KEEFE:** This was an illegitimate person making an illegitimate complaint which was absolutely groundless so the analogy is just not apt.

**Mr O'FARRELL:** Maybe the ICAC's educative area needs to address that with local government.

**Mr O'KEEFE:** If you can tell me the council area I will ensure that copies of the report about Byron Bay goes to that council and to each councillor because it is well reasoned and the evidence is set out in detail.

**Mr O'FARRELL:** If that is the background, Commissioner, chapter three of your guide actually spells it out to the extent that it ought. In September 1995 it was publicly reported that the ICAC gave advice to the Department of Urban Affairs and Planning and the Department of Public Works about the then tender for the Walsh Bay redevelopment. Within this section can you advise me whether there has been in the last six months or in the last 12 months any continuous advice to either of those bodies about the Walsh Bay redevelopment?

**Mr O'KEEFE:** Yes there has been.

**Mr O'FARRELL:** Can you indicate whether that advice addresses the enormous delay that has occurred from the time of 22 February 1996 when the Government entered into preferred tender negotiations with Walsh Bay Properties? There have been three extensions of the time in order to finalise its contract, we are still awaiting a finalised contract being determined and in the meantime substantial changes have occurred to the scope of works. On 22 February the Premier said that the redevelopment would preserve and enhance the character, heritage and cultural significance of the area. As you may recall from one of your other responsibilities, towards the end of 1996 or early 1997 it was put that a couple of the piers would be demolished. My specific concern is has the Commission satisfied itself that the enormous delays involved in the Walsh Bay redevelopment are appropriate and has it been giving advice to both bodies about those issues?

**Mr O'KEEFE:** There are parts of that that I carry in my head and other parts that I do not. For more abundant caution, I should take that question on notice. I know that advice has been given in that period and that it has addressed a number of issues. I do not carry in my head the totality of those issues.

**Mr O'FARRELL:** I will come back to the principles involved in section 3.

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** Mr O'Farrell spoke about the Byron Bay matter. My question relates to another report by the Commission which was released in June this year relating to circumstances surrounding the offering of no evidence by the Director of Public Prosecutions on an all grounds appeal at Lismore District Court. In my view, that report brings into clear relief the system of accountability and decision making of the ICAC. To briefly remind people what was in the report, a local solicitor in Lismore made a submission to the local DPP office to lead no evidence in an appeal. Two local DPP solicitors agreed with that course of action. The matter went to Sydney to the Office of the Director of Public Prosecutions and senior counsel also agreed that the DPP would not lead evidence in the appeal. In other words, the convicted person would go free.

Subsequent to that, police in Lismore were upset that the conviction that they had

achieved in the magistrate's court had been overturned and they complained to the Director of Public Prosecutions about it. The DPP rejected all grounds of complaint. The police took it further and a complaint came to the ICAC from the police via Assistant Commissioner Small. For some reason the ICAC took this complaint seriously. The matter went to the Operations Review Committee, it was determined at some stage that the matter be investigated further and resulted in a report by the ICAC. In my reading of the report and knowledge of the case it was clear very early that there was great tension and resentment between the police in Lismore and the DPP. You are responsible for writing this report?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** You allude to the fact that some of that tension was due to jealousy between the police and the DPP.

**Mr O'KEEFE:** I do not use that word.

**Mr WATKINS:** You allude to the discomfort, disquiet, whatever, between the police and the DPP with the police losing prosecuting—

**Mr O'KEEFE:** At least potentially.

**Mr WATKINS:** Potentially. There is a trial on in New South Wales and so on.

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** Considering the background and the very detailed level of appeal that the matter went through by the Office of the Director of Public Prosecutions and after complaint, what led the ICAC to move ahead with the investigation? Before you answer that, I conclude that part of the question by saying that basically your investigation found that no corruption at all had taken place in Lismore and that the allegations made by the police in the matter had no credence. Therefore, what led the ICAC to make the decision to initiate a report that caused a great deal of cost and trauma to the people involved in the allegation?

**Mr O'KEEFE:** Firstly, the cost of that report was quite minor, but that is by the by.

**Mr WATKINS:** I mean cost to the individuals.

**Mr O'KEEFE:** Even then, I very much doubt that, except perhaps the officers of the Office of Director of Public Prosecutions whose actions were called into question and in respect of whom although no findings of corrupt conduct were made, there are not inconsiderable criticisms about their slackness in dealing with matters.

**Mr WATKINS:** You do not use the word "slackness".

**Mr O'KEEFE:** No, I think I used "inefficiency", "inadequacy" and "lack of

attention to detail".

**Mr WATKINS:** You did not use the word "slackness"?

**Mr O'KEEFE:** No, I do not think I used the word "slackness". That is your tit for tat for jealousy, which means that we are getting back to the personality question.

**Mr WATKINS:** You are on track.

**Mr O'KEEFE:** Anyway, that is by the by. Anything that touches on the enforcement of the criminal law inside the justice department is in itself serious. If a number of people inside the DPP, local and at Sydney, were either remiss in their performance of their duties or, worse still, corrupt—because essentially the allegation was that because of a de facto relationship between two people involved, one in private practice and one in the DPP, this decision had been made—that is serious and can strike at confidence in the system. Secondly, the police were in a state of some apparent perturbation. Concurrently we received, quite extraordinarily, having not received anything for a long time, other complaints, I think it may have been three, dealing with the DPP's office conducting prosecutions compared with the police. Was there a question here of some systemic weakness? So it extended into the system under which the DPP operated.

**Mr WATKINS:** Where did those extra complaints come from?

**Mr O'KEEFE:** They are recorded in the report. I cannot tell you the detail of that. They came from the police, ex-Police Service; I cannot remember the name. So we had something that was not solo. We had something that, if correct, was serious and we had diametrically opposed views as to what the situation was. That justified an investigation which, as you see from the report, was quite short, I think five days, and conducted at minimal cost but giving rise to a not insignificant number of changes in the way the DPP's operations were carried out. Certainly on the indicia that we would apply and did apply, the investigation was well justified.

**Mr WATKINS:** However, it could be suggested that this was an example of the ICAC being manipulated by police who were seeking their own ends in relation to a problem in Lismore.

**Mr O'KEEFE:** That is one view and when looking at hypotheses before we determined to engage in the investigation was an hypothesis that we thought about. But assume that it was so for the moment. It was not going to go away if it was ignored. One way to deal with it is to analyse the prime, the gross example to see if there is any substance in it. Significantly, since we embarked upon that inquiry we have received no further complaints from the police about the DPP conducting prosecutions.

**Mr WATKINS:** A copper in Lismore would be fairly foolish—

**Mr O'KEEFE:** I am not talking about Lismore. Lismore police station is one of many hundreds of stations throughout New South Wales.



**Mr WATKINS:** And other changes have happened in the Police Service. You made several recommendations. Why was no recommendation made about the behaviour of the police in bringing forward these allegations that had no basis?

**Mr O'KEEFE:** You will find that dealt with in the report. The report is clear that a number of people about whom investigation of their behaviour might have been conducted. That would have lengthened and increased the cost of that investigation. Since the DPP was the thrust of the investigation and I no longer have jurisdiction in respect of police, I did not want to get into that field.

**Mr WATKINS:** Did you make a recommendation that their behaviour be looked at by other parties, for example, the Police Integrity Commission?

**Mr O'KEEFE:** The report speaks for itself, Mr Watkins, and that is referred to.

**Mr WATKINS:** Could you explain to the Committee?

**Mr O'KEEFE:** I have distributed the report to each of the Committee members. I would explain it by inviting them to read the report, as I hope they might have done before now.

**Mr WATKINS:** It appears from my reading of the report that the decision for the ICAC to eventually kick off its investigation was due to the 14-page memorandum from Detective Sergeant Peter Gallagher, which is referred to in the report. I only saw reference to him once and I am not quite sure where that was. Through him came a beefed-up allegation with several more allegations of corruption at some stage. Has Detective Sergeant Gallagher had any involvement with the ICAC over the years?

**Mr O'KEEFE:** My belief is that prior to my time he worked for a short time as an investigator with the ICAC.

**Mr WATKINS:** So he is aware of how the ICAC operates and he probably knows quite a few of the present employees of the ICAC?

**Mr O'KEEFE:** As to the former I cannot tell you. As to the latter, the change in personnel would make that less probable than your question suggests. I cannot tell you the answer to that.

**Mr WATKINS:** Is the fact that he was a former investigator for the ICAC the reason ICAC went ahead with this case?

**Mr O'KEEFE:** No.

**Mr WATKINS:** Are you convinced that is the position?

**Mr O'KEEFE:** I am telling you no. I made that decision and the answer is no. It is not a question of being convinced; I made the decision.

**Mr WATKINS:** You would have made the decision after recommendations from other officers?

**Mr O'KEEFE:** And discussion with other officers.

**Mr WATKINS:** Did they know Detective Sergeant Gallagher?

**Mr O'KEEFE:** Some did, some did not.

**Mr WATKINS:** They believed that he was a good witness and could be believed?

**Mr O'KEEFE:** If you look, Mr Watkins, at what Sergeant Gallagher said, none of the things that he said were of his own knowledge; they were reported statements. So it was not a question of his credibility at all.

**Mr WATKINS:** But the people did consider that Sergeant Gallagher is a good witness, one that could be believed and therefore—

**Mr O'KEEFE:** They did not even consider him as a witness. There was no prospect that Gallagher would be a witness. So the answer to your question is no.

**Mr WATKINS:** But they accepted the credence of his 14-page memorandum? They must have?

**Mr O'KEEFE:** That is not so. They assessed the memorandum in the light of other material.

**Mr WATKINS:** And they accepted that the content of the memorandum was worth acting on?

**Mr O'KEEFE:** Yes. It was material that if true revealed a state of affairs that was worthy of investigation.

**Mr WATKINS:** And Gallagher did not appear as a witness?

**Mr O'KEEFE:** No.

**Mr WATKINS:** Is Detective Sergeant Gallagher presently being investigated by any other body?

**Mr O'KEEFE:** I cannot help you on that.

**Mr WATKINS:** Is he being investigated by the Police Integrity Commission?

**Mr O'KEEFE:** I cannot help you on that.

**Mr WATKINS:** Do you know?

**Mr O'KEEFE:** I do not know.

**Mr WATKINS:** It has been suggested to me that he is.

**Mr O'KEEFE:** I cannot tell you that, I do not know who made the suggestion and I do not know if it is true.

**The Hon. D. J. GAY:** Before the honourable member finishes, he has made an allegation about a person that may or may not be correct. I respectfully ask him to withdraw that.

**Mr WATKINS:** You can ask.

**The Hon. D. J. GAY:** I have asked.

**Mr WATKINS:** Commissioner, what has the ICAC done to repair the damage from this matter in the local community and to the professional people in Lismore?

**Mr O'KEEFE:** I do not know that there is any community damage; I have no evidence whatsoever of that. I know that the report has been well received and acted upon.

**Mr WATKINS:** What procedures have been put in place to ensure that when a matter is triggered to initiate investigation, that in fact such a decision is based on good, clear evidence that the matter should be investigated?

**Mr O'KEEFE:** Our whole procedures are directed to that as are our criteria for determining what will and what will not be (a) further investigated, (b) the subject of formal investigation, and (c) the subject of a hearing.

**Mr LYNCH:** In your comments about Operation Aroo—

**Mr O'KEEFE:** Can you tell me what question, please?

**Mr LYNCH:** Page 4 question 5 of the first set of answers. You talk there about the presentation from the four entities as an innovative thing, which I think we would all agree is good. Does the Commission propose to go the next step and have them come back at some stage to see whether the strategies they have adopted have been implemented, whether they have been effective, and how they think it is progressing?

**Mr O'KEEFE:** We have been doing that and on a progressive basis, and where there is any lagging, we take steps to try to bring that forward. There will be a review of that as at the date at which the report is written and then a part of the report will involve a recommendation as to the monitoring of that on regular bases. I can say that in respect of two of the organisations, they have instituted quite sophisticated methods along the lines that evolved out of the presentations and the colloquy that took place. Part of that has been the institution of corruption awareness and integrity provision seminars for all staff which the chief executives have either launched together with me or are about to launch with me.

The commitment I think is real, better in some than in others, and where we are not as strong in the others, we are pushing to ensure that it becomes so.

**Mr LYNCH:** If I could turn to question 6(b), table 3 deals with the use of formal powers. There seems to be in relation to some of those categories—certainly section 21 powers and search warrants—a significant reduction in the use of those powers.

**Mr O'KEEFE:** Yes.

**Mr LYNCH:** Is there a particular reason for that?

**Mr O'KEEFE:** Yes, the nature of the investigations that we have been carrying out have not warranted search warrants to the same extent as the earlier lot that we were doing and the section 21, we have been able to get a lot of that material without the need to resort to the use of formal powers, so it really relates to the nature of the investigations, the entities that are being dealt with, whether they are external to the public sector or not.

**Mr LYNCH:** If I could go back to the Operation Yabbie matter and Byron Bay Council. I have a different perspective to that of Mr O'Farrell. As I understand the recommendations for prosecutions, they were proposed prosecutions under section 81 and a conspiracy to create a public mischief?

**Mr O'KEEFE:** Yes.

**Mr LYNCH:** Do you think there ought to be further offences created? Is there a need for further tools to discourage false and malicious complaints?

**Mr O'KEEFE:** The answer to that question is probably yes, but it is complex. I do not think it can be just answered yes, no. Can I perhaps think about it a bit more and take that on notice. There is a real problem and there are some times. If you look at the times before State government elections, local government elections and Labor Party endorsements, which seem to be more prominent than coalition endorsements, then the nature and extent of complaints that come forward increases, as I have indicated earlier—I have not in relation to the third category, but it is much the same as the other two categories—and the graft rises. That, in turn, causes one to think when making the initial assessment why; the fact that it might be jaundiced or biased might not make it wrong but it would cause you to look at the facts that are asserted much more closely. But then the material that you would need to gather in order to show that it was both false and malicious gives you a pretty high threshold.

**Mr LYNCH:** It is a very high bar to get over?

**Mr O'KEEFE:** It is, and we have taken the view that when you have those sorts of complaints, you try to deal with them as quickly as possible and if the complainant has made public capital out of it, there are two ways of doing it: "I have complained to the ICAC about X" or a more sophisticated way is "I understand a complaint has been made; X has made it. I understand a complaint has been made about Y", without nominating X

as the source of it.

**The Hon. D. J. GAY:** Like Mr Watkins did earlier.

**Mr O'KEEFE:** I do not want to go into that. We try to deal with those as expeditiously as possible. Often it is not easy because often there is a scatter gun in these things, so you have a lot of rabbits to chase. If the person making the complaint has nominated himself or herself and made it public, then we tend to make sure that the person who is not the subject of further inquiries is entitled to make that public. We sometimes will do it ourselves, particularly if the complainant has made extravagant claims, but that often may be more effective and quicker than the prosecution process, which is often a long way down the track.

**CHAIRMAN:** It is an area we can look at during the review of the functional role of the ICAC.

**Mr O'KEEFE:** I think it is a matter that debate needs to take place on.

**Mr LYNCH:** The real substantive issue is that if you are chasing rabbits down warrens about untrue allegations and there are a whole series of true and proper allegations that need to be pursued, in effect you are wasting your time pursuing things that should not be pursued when there are a whole lot of other problems that do need to be dealt with?

**Mr O'KEEFE:** Absolutely, but when they are current, very fresh and may have an adverse effect on the parliamentary process, then we take the view that we should try to deal with them as quickly as possible. That does not always get you the answer that is wanted. For instance, recently we decided not to pursue a matter about weighbridges down at Wollongong and one other matter. The two people who are the subject of the other matter were councillors and they put out a press release saying how they had been cleared. I thought it was necessary to write to the local paper and say, "This is the correct position and that overstates it," and they did publish that. So, we do try to do that as a matter of fairness.

**Mr LYNCH:** On the section 38 and section 37 matters—the inability for evidence to be used in prosecutions—do I understand your position to be that if you did not have the power to make the general declaration under section 38, you would have less chance of getting the truth out of witnesses and, therefore, the fight against corruption might be prejudiced?

**Mr O'KEEFE:** I do, and very often, even if you cannot prosecute somebody, the fact of exposure and admitted exposure will have the effect that you want anyway. First, it sends the shock wave through the organisation, cognate organisations or those who perform cognate functions and generally the person the subject of that, unless they are really thick-skinned, go off somewhere else.

**Mr LYNCH:** My understanding of the practice of the Commission is also that section 37 allows witnesses to take objections. The general declaration to protect every

answer that they give is not given by the Commissioner or the person hearing the inquiry unless the person hearing it is content that the truth is being told and that it is not being used simply as a way of avoiding prosecution?

**Mr O'KEEFE:** Arising out of some criticism of one of my predecessors—not Mr Temby—where a section 38 declaration was not made in respect of a witness who was unrepresented and was not all that bright, I have a practice that if somebody may be in jeopardy, if they are unrepresented and if they appear not to understand what it is that they can get by way of advantage out of section 38, I will make a declaration anyway. Maybe it is a weakness on my part, but I think it preferable to do that than go the other way.

**The Hon. B. H. VAUGHAN:** Do you regard the Central Sydney Planning Committee as a local government authority within the definitions of your Act?

**Mr O'KEEFE:** I do.

**Mr O'FARRELL:** Can I take you back to Walsh Bay. The first question I asked was: was the Commission involved in ongoing consultation with either the Department of Urban Affairs and Planning or the Department of Public Works and Services about the Walsh Bay redevelopment, to which I think you said yes?

**Mr O'KEEFE:** And to others I thought you said.

**Mr O'FARRELL:** I think that was a part of the second question. It is the others that I wanted to come to now. Have you received complaints from others, third parties, maybe the two other unsuccessful tenderers, about goalposts being moved? If so, are they subject to either current or ongoing investigations or have they been deemed not to be worthy of investigation?

**Mr O'KEEFE:** Can I say in answer to that question that we have had reason to look at that matter. I cannot confirm or deny whether or not we have had express complaints. To do so would be, first, to expose the complainant and if there were a complainant I have not any brief to do that.

**Mr O'FARRELL:** So you cannot confirm or deny that there are investigations going on which are separate to advice you may be providing the Government on the Walsh Bay redevelopment.

**Mr O'KEEFE:** There is not.

**Mr O'FARRELL:** There is not investigation going on?

**Mr O'KEEFE:** No.

**Mr O'FARRELL:** So hypothetically, if complaints had been made to the Commission, they have been by a third party and it has been determined that they should not be formally investigated?

**Mr O'KEEFE:** On that hypothetical case that has to be so.

**Mr O'FARRELL:** In making that sort of hypothetical assessment would factors like the political returns, which are public documents, be examined in the context of developers and donations to political parties, which may or may not be regarded as having influenced decisions, be taken into account?

**Mr O'KEEFE:** That would depend upon the nature of the complaint, if there were a complaint, and the focus of that complaint, if there were a complaint.

**Mr O'FARRELL:** In relation to the ongoing advice that you are providing to the Department of Urban Affairs and Planning and the Department of Public Works and Services on the issue, can I assume that each time there has been an extension of the period of negotiation between Public Works and the preferred tenderer that the ICAC has been asked for advice?

**Mr O'KEEFE:** I cannot tell you that. I do not know is the answer.

**Mr O'FARRELL:** Can I ask whether the Commission was consulted by either of those bodies when the recommendation came forward initially that two, and then one of the piers, would be demolished, therefore substantially changing the original tender guidelines.

**Mr O'KEEFE:** As to the first part, I do not believe I should answer it. As to the second part, I can say that that will depend very much upon an interpretation of the guidelines. If you examine those guidelines very carefully, in my view there is an interpretation that does not agree with the premise of the question.

**Mr O'FARRELL:** In interpreting those guidelines will you go to the public comments made by people, including the Premier, which said on 22 February that Walsh Bay Properties, in being announced as the preferred tenderer, had a scheme which "will preserve and enhance the character, heritage and cultural significance of the area". Would that be taken into account in any assessment?

**Mr O'KEEFE:** I cannot tell you that. It would depend upon the assessment that one was making but my own view would be, if that came to be considered, that one would go to the guidelines and their proper construction, not what somebody said about them, remembering that what may be said outside the Parliament does not fall within the provisions of the Interpretation Act, which requires courts and other bodies to take into account what is said in the Parliament in interpreting the legislation.

**Mr O'FARRELL:** We are talking about public trust and the perception that the Walsh Bay redevelopment was about preserving and conserving that area, and statements about that issue made by the Premier who leads a government that is facilitating this development, versus a significant change to the tender which even the National Trust has expressed concern about.

**CHAIRMAN:** Order! That is a political statement about Mr O'Farrell's views on

the Premier, and what the Premier has to say not whether it is corrupt conduct arising out of what the Premier has to say.

**Mr O'FARRELL:** We will get to that when we deal with probity auditing. Commissioner, do you understand my concern that there is a perception, evidenced by the *Sydney Morning Herald* amongst others, that the goal posts in the Walsh Bay redevelopment have changed. People are wondering why the preferred tenderers have had three, possibly four, extensions without their being a retesting of the market. Certainly the report I read relating to probity suggested that there ought to be.

**Mr LYNCH:** Point of order. This is clearly outside the purview of this Committee.

**Mr O'FARRELL:** It is amongst the current investigations, I would have thought. The Commissioner has confirmed that there is ongoing advice to the departments.

**Mr O'KEEFE:** The editorial in the *Sydney Morning Herald*—

**Mr O'FARRELL:** No, I am referring to an article, not the editorial. I have read the editorial, but I am referring to the public perception.

**Mr O'KEEFE:** I think you will find that the editorial and the article are not quite in agreement as to their premises. I do not agree with either of them in relation to the proper interpretation of the specification.

**Mr O'FARRELL:** You do not believe that the goal posts have been moved?

**Mr O'KEEFE:** I did not say that. My belief about that is really not relevant.

**Mr WATKINS:** Has the National Trust presented a point of view about the proposed Walsh Bay redevelopment?

**Mr O'KEEFE:** About a month ago there was a forum at which the proponents of the present development presented the plan. An expert committee of the National Trust, not the board, expressed reservations on heritage grounds about part of the development.

**Mr O'FARRELL:** Which are repeated in this month's magazine.

**CHAIRMAN:** We will deal now with the corruption prevention unit and the research unit; questions 8 to 14, on pages 7 to 38.

**The Hon. D. J. GAY:** Commissioner, a local government publication deals with the relationship between councillors and staff. I was at the release of that document and I have read it. By and large it is a very good document. I suggest that one has to turn to pages 21 or 22 before one finds a good guide to councillors about proper relationship. Perhaps as an adjunct you could release a two-page easy-to-read document for councillors to have at hand during council meetings.



**Mr O'KEEFE:** I will take that on board. A check list like that might be handy to have and could be included in the agenda each night. The document has been very well received.

**The Hon. D. J. GAY:** Yes, and it was needed.

**Mr O'KEEFE:** The first part is concerned with managing conflicts of interest. I cannot remember where the second part starts, but it deals with the interaction between councillors and staff.

**The Hon. D. J. GAY:** On the question of interaction between councillors and staff, whilst you have addressed some of the problems and the new Act has addressed others, there still remains a situation within councils where you have a block of votes. The majority vote as a block and do not change at all, be it six to five, or six to four, or whatever. That power means that a general manager and/or senior staff will never cross that power. Have you been alerted to that situation? If so, have you considered investigating ways to overcome this or would you consider looking at this particular concern in the future?

**Mr O'KEEFE:** The fact that there are blocks will vary from council to council as to who are members of those blocks on given issues. In some councils you will have a block of five out of nine who will always vote one way, say, on an environmental issue. But the same five will not be part of the block that votes against, say, a financial issue. In other words there are issue-based blocks. In other councils there are party-political blocks and it does not matter whether they are on the Labor or coalition side of the divide. When you get those sorts of blocks you have a manifestation of the democratic process at the ballot box. If you then look at the situation of general managers there are some who are courageous and who stand up; some lose their jobs. Newcastle City Council is a prime example of that. Probably one of the finest general managers that this State has known, and is likely to know, lost that job for reasons that on the face of it do not bear analysis.

**Mr WATKINS:** Is that a personal view or a view of the ICAC?

**Mr O'KEEFE:** It is a view I formed as Commissioner of the ICAC, having looked at the material presented to it.

**The Hon. D. J. GAY:** It is also the view of the shadow minister for local government.

**Mr O'KEEFE:** I am not aware of that and it is not a factor that would influence me if I were. You do get situations in which some general managers may knuckle under in the interests of staying on. In my personal view that is a weakness of the system whereby total contract was substituted for tenure and that there is no mechanism for dealing with non-renewal of contracts. There may be a mechanism for dealing with termination of contracts in mid course. That ought to be addressed, but this is a personal view, not one the ICAC has examined. However, from our analysis we know that there is a high percentage of senior officers, under the contract system, who have not done their full contracts or who have not had their contracts renewed, and we have not examined those circumstances.

**The Hon. D. J. GAY:** Commissioner, you have taken on board the point I raised?

**Mr O'KEEFE:** Yes. I will refer the check list idea to Mr Gifford. I think it has a lot going for it.

**The Hon. D. J. GAY:** I refer to the City of Sydney Amendment Bill that recently went through Parliament. In his second reading speech the Minister indicated that the bill had the ICAC seal of approval. Under the city partners program the lord mayor is able to elicit donations. Were the structures of accountability within that program examined by the ICAC and found to be proper?

**Mr O'KEEFE:** I am not aware of that at all. I will take that on notice and forward a response. Your question is out of the blue.

**The Hon. D. J. GAY:** My supplementary question depended on your answer, but I will ask it anyway. I expressed concern as that bill was debated that the lord mayor has the ability—and I do not for one moment suggest that the current lord mayor is corrupt in any form whatsoever, I am talking about a lord mayor in the future—to go to developers and raise funds for the city, in the form of donations. The lord mayor has two votes on the Central Sydney Planning Committee, his own vote and a casting vote. Through a tortuous form of delegation between meetings of the CSPC, as chairman of the Sydney City Council Planning Committee he has the sole power to authorise developments over \$50 million. If a potential developer in Sydney, knowing that, is asked by a lord mayor, who has certain powers, to donate a few million dollars for the beautification of Sydney, the developer will not say no. I am concerned that that is creating a climate conducive to corruption.

**Mr O'KEEFE:** It is not a matter that I am aware of. I will take it on notice. You are really asking me whether that situation is conducive to the production of corrupt conduct and whether there should be some recommendation in relation to it. I will take it on that basis.

**CHAIRMAN:** The Committee will now ask questions about probity in Walsh Bay.

**Mr O'FARRELL:** I refer to question 8. Commissioner, your probity auditing report last year, specifically referred to probity, when, why and how. The report states that the ICAC does not advocate the routine use of probity auditors, and gives five criteria as to why probity auditors should be used. The second criteria is to provide reassurance for the community and those wishing to do business with the public sector that the outcome can be trusted. I am not sure, in the generic, how that is actually achieved without there being some sort of publication of the probity auditor's terms of reference or mission statement.

**Mr O'KEEFE:** One of the things that caused us to do this was that our examination of some of the early instances in which probity auditors had been appointed showed: first, a lack of process in determining who the probity auditor should be; second, an inadequacy of the brief as to what their function was; third, an inability of some of them to grapple with the problems; and, fourth, the data which they were given in order to found

their decisions, presented on the material available to us, was less than adequate. If you have those factors operating the warm, comfortable feeling that a probity auditor is making sure that everything is all right is ill founded.

Our publication was directed towards that. Also, it promotes a tendency in agencies to believe that they do not need to do anything about probity and integrity in their process; if things get hard they can get someone from outside. That weakens the whole concept of the ethos of the place being good, clean, open, transparent and honest: that you only worry about that for big things, not little things. That is a dangerous principle. That is why the document is couched as it is.

**Mr O'FARRELL:** The Walsh Bay redevelopment and the panel which was to determine the preferred tenderer and subsequent negotiations has been subjected to a probity audit. To whom does that panel report? Does the panel report to the Department of Public Works and Services, the Department of Urban Affairs and Planning, the Premier, or to the public? If it is not the latter, how does the panel provide the assurance to the community that those wishing to do business with the public sector are to trust the outcome?

**Mr O'KEEFE:** Walsh Bay or generally?

**Mr O'FARRELL:** Either, whichever one you feel comfortable with.

**Mr O'KEEFE:** To whom they report varies from authority to authority.

**Mr O'FARRELL:** I used Walsh Bay as an example. I am concerned that the auditor is employed by and reports to the Government. It seems to me that there is no public reassurance.

**Mr O'KEEFE:** It may depend on the characteristics and ability of the person that is appointed. If the terms of appointment require that person to be independent in the assessment, as they should do, and you have a person of integrity, then that should occur. One of the reasons that we say you should not have to resort all the time to probity auditors is that the system itself should deal with that.

**Mr O'FARRELL:** A section of your report refers to probity auditors and their terms of reference. Do you believe that those terms of reference should be publicly available?

**Mr O'KEEFE:** If you want to promote confidence, the answer to that is yes. In fact, if the process is a transparent process, the person appointing the probity audit would want that to happen.

**Mr O'FARRELL:** It is clear from looking at section 4(1) of the report that each of the criteria there applies to the Walsh Bay redevelopment, which is a significant development, so, correctly, the Government has appointed a probity auditor. Reading this report and knowing the Walsh Bay process, how could a probity auditor possibly reconcile

the continuation of a preferred tenderer negotiation despite significant changes to the basis of the tender and continuing delays? What is the correct role of the auditor in that process? Does he become a whistleblower to say, "Hang on. After three extensions this should again be put back to the market, or it should be put to the other preferred tenderers, or the other two unsuccessful tenderers", or does he simply become compliant because he is paid for by the Government?

**Mr O'KEEFE:** I think you will find that the Walsh Bay probity auditor was appointed well in advance of these criteria, so you cannot assume that these criteria have applied.

**Mr O'FARRELL:** But you would hope that these sorts of criteria might apply?

**Mr O'KEEFE:** We know what the situation is.

**Mr O'FARRELL:** So you have been giving advice to the probity auditor?

**Mr O'KEEFE:** No, we do not advise probity auditors. They have to be independent. We should not lean on them, and no-one else should lean on them. But Walsh Bay was a case study that caused us to think that this was a subject matter that needed attention.

**Mr O'FARRELL:** I am still grappling. Given the media reports, given the delays, and given chapter 6 of your report, how I, the *Sydney Morning Herald* or any other member of the public are given reassurance, to quote your report, that the process has been impartial and fair with no party being given advantage over another or unfairly discriminated against—

**Mr O'KEEFE:** I would have thought immediately in terms of the Freedom of Information Act.

**(Short adjournment)**

**Mr O'FARRELL:** One of the other reports seeks direct negotiations and procurement disposal, but of course also has relevance to Walsh Bay. In the report you set out a number of guidelines as to when direct negotiations are unlikely to be appropriate. One of those is following a tender process in which one tender is accepted and subsequently the project specifications are changed so significantly that, in effect, it is a different project. Do you accept that that applies to Walsh Bay, or that it could apply to Walsh Bay?

**Mr O'KEEFE:** Could I take that on notice? I cannot bring to mind the details that would enable me to deal with it. This project has been looked on at the ICAC as essentially a corruption prevention program. Whilst I understand what is going on, I cannot fill you in on the details on that.

**Mr O'FARRELL:** The final question in relation to that report relates to the advice given in the report that managers should not assume an open market. How can they be sure

that there is no new market player who may be able to meet the needs? Do you accept that because of the length of time from the granting of the preferred tenderer status to now, in some quarters that is seen as a direct negotiation, because at no stage during the process has the Department of Urban Affairs and Planning or the Department of Public Works gone back to either of the two unsuccessful tenderers or the wider market to again test the market, even though during that length of time, which now runs into almost two years, or 18 months at least, there have been changes in both the award of preferred tenderer status and the nature of the contract?

**Mr O'KEEFE:** It may. It will depend upon a whole variety of circumstances as to what constitutes the market.

**Mr O'FARRELL:** Which goes back to my first question: who then is checking on behalf of the public, on behalf of us all, that the process is above board, that we are getting the best outcome as far as Walsh Bay is concerned, that we are getting the best possible return for the taxpayer and that the processes involved, which include three to four extensions of time, have been without fault?

**Mr O'KEEFE:** The third would be the only one that would fall within our jurisdiction. The others may well be matters that the Auditor-General could comment on, as he did in relation to the Eastern Distributor for instance.

**Mr O'FARRELL:** The question you have taken on notice from me, relating to ongoing advice from the Commission to DUAP and the Department of Public Works, may answer that for me?

**Mr O'KEEFE:** It would not, in relation to Nos. 1 and 2.

**Mr O'FARRELL:** But it may, in relation to No. 3?

**Mr O'KEEFE:** It may. I will have to look at that.

**Mr WATKINS:** In question 8 on page 16 you have referred to the research into the Protected Disclosures Act, the establishment of a working party and initiatives such as that. On the last occasion on which you gave evidence to this Committee the honourable member for Manly suggested to you that you take some action. He said, "I would like you to exercise your mind between now and the next time we have a hearing as to how you can build confidence with whistleblowers rather than just through some correspondence between the two", and he went on to discuss how that may occur. The ICAC has established a committee to look into the Protected Disclosures Act, and you outlined the membership of that committee. Why was Whistleblowers Australia not invited to be represented on such a committee?

**Mr O'KEEFE:** I understood that they were represented on the committee. The Premier established that committee, and they were responsible for the invitees to the committee. But I thought they were on that committee. I am sorry, I am told that they are on an internal witness advisory committee. It was not a committee of our establishment. We

chair it, but we did not create it.

**Mr WATKINS:** Do you think it would be worthwhile to have Whistleblowers Australia on that committee?

**Mr O'KEEFE:** I do not think that is a matter for me to determine, since I did not convene the committee.

**Mr WATKINS:** You chair it—

**Mr O'KEEFE:** I do not. The ICAC chairs it. I do not chair it.

**Mr WATKINS:** I accept that. Do you have an opinion—?

**Mr O'KEEFE:** I do not have an opinion on that. I would have to take advice from those who sit on both committees to determine the effectiveness of that.

**Mr WATKINS:** Have you followed up the suggestion of the honourable member for Manly regarding building confidence with Whistleblowers, and has there been any progress between the ICAC and that organisation?

**Mr O'KEEFE:** The answer to the first question is yes. The answer to the second question is that I do not know.

**Mr WATKINS:** You do not know whether there has been—?

**Mr O'KEEFE:** You will have to ask whistleblowers whether there has been increased confidence. I think there should be. Whether there is, that is another question. I cannot tell you.

**Mr WATKINS:** Has that contact been via correspondence, or have there been meetings?

**Mr O'KEEFE:** There are contacts with various whistleblowers by the staff, by telephone. Mr Feneley, I think—or was it Mr Gifford—sits on the committee—

**Mr WATKINS:** Which committee is this?

**Mr O'KEEFE:** This is the interdepartmental committee.

**Mr WATKINS:** Who is on that?

**Mr O'KEEFE:** The Premier's Department, the Ombudsman, the Auditor-General, the ICAC, local government, and the Cabinet Office.

**Mr WATKINS:** Who established that committee?

**Mr O'KEEFE:** The Premier's Department.

**Mr WATKINS:** Have you personally, or your senior staff, met executive members of Whistleblowers Australia to discuss issues of interest—?

**Mr O'KEEFE:** I have not. I cannot answer for the senior staff, but I think not.

**Mr WATKINS:** Has Mr Feneley?

**Mr O'KEEFE:** I think not.

**Mr WATKINS:** Do you not think it would be worthwhile following up on the suggestion of the honourable member for Manly that meetings like that be initiated so as to try to resolve some problems amicably?

**Mr O'KEEFE:** I think they could be. It may depend upon who attends.

**Mr WATKINS:** What does that mean?

**Mr O'KEEFE:** Exactly what it says: it depends on who attends. I think it may be undesirable for me to attend, and I think it may be undesirable for me to attend with certain other people there, in view of what I could only describe as quite vituperative correspondence that I have received from those people.

**Mr WATKINS:** Will you initiate such contact and cause meetings to be held?

**Mr O'KEEFE:** I will take advice from senior staff on that.

**Mr WATKINS:** The impression you are giving is that you are not hopeful.

**Mr O'KEEFE:** I am not intending to give any impression. I am saying that I will take senior staff advice on that.

**Mr WATKINS:** Last time we met you alleged in your evidence that Mr Regan, who is a high-profile whistleblower, had misrepresented himself as an ICAC officer. Subsequent to that time has there been any contact with Mr Regan to resolve the difficulties between the ICAC and Mr Regan?

**Mr O'KEEFE:** Not by me. I do not know. I suspect that there has been some contact between an officer of the research section and Mr Regan, but I am not certain of that.

**Mr WATKINS:** Do you now accept that Mr Regan never misrepresented himself as an ICAC officer and is innocent of that charge?

**Mr O'KEEFE:** No as to the first part that he is innocent of that charge has been established but that is not the question. That is the first question.

**Mr LYNCH:** The answer to question 13 on pages 35 and 36 states that respondents regarded workplace behaviour in the public sector more stringently than workplace behaviour in private business. I am trying to explore why that might be the case and why people are responding that way.

**Mr O'KEEFE:** Some examples are given in the public attitude survey which I thought had been distributed. I am sure it has been distributed and you should have a copy of it. In it you will find these sorts of things. You are dealing with public money, thus you are dealing with my money. You have the strength of the bureaucracy behind you. You are in monopoly situations. You are dealing with persons' rights in a way that private individuals do not and therefore more is expected of you. Those are some of the primary factors that come out in that section.

**The Hon. B. H. VAUGHAN:** I listened reasonably carefully to the questions of Mr O'Farrell about Walsh Bay. I am interested to know whether the Central Sydney Planning Committee played a role in the Walsh Bay matters.

**Mr O'KEEFE:** I cannot help you on that. The answer to that is I do not know. If I was asked to give an impression without knowledge the answer is no, but that is impressionistic for me.

**The Hon. B. H. VAUGHAN:** Can you find out for me? Can one of your officers have a look at that? I would like to know whether the Central Sydney Planning Committee played a role.

**Mr O'KEEFE:** Yes, but if the role was that they made some complaint I would not confirm or deny that.

**The Hon. B. H. VAUGHAN:** Do you mean if someone made a complaint?

**Mr O'KEEFE:** Yes, that is right.

**Mr O'FARRELL:** Just to help the Hon. B. H. Vaughan, can I ask whether, prior to Central Sydney Planning Committee's in principle approval for the Walsh Bay redevelopment on 10 July 1996, it or Sydney City Council sought advice from the ICAC on any aspects of the proposal?

**Mr O'KEEFE:** I cannot tell you that.

**Mr O'FARRELL:** Will you take that question on notice?

**Mr O'KEEFE:** Yes. By that answer I do not mean that I will provide a yes or no answer.

**Mr O'FARRELL:** Because it could be operational?

**Mr O'KEEFE:** Well, it may in fact reveal the identity of a complainant.



**Mr O'FARRELL:** Except in that case the complainant would be a public body called the Central Sydney Planning Committee which is made up of State and local government representatives. Is that a problem?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** I refer to question 8 on page 18. You talk about the community attitude survey which we have just received. One line there stood out for me. The paragraph after the five dot points states, "While a small number of responses indicated some misunderstanding about the different roles of various State and Federal government agencies and regulatory authorities, responses revealed a very high level . . . ". Did only a small number of responses indicate a misunderstanding. I think that if you went out and did a survey—

**Mr O'KEEFE:** We did go out and do a survey, and the answer was small responses.

**Mr WATKINS:** But if you went out and did a fair dinkum survey—

**Mr O'KEEFE:** We did a fair dinkum survey and we did one that was statistically significant. You may not agree with the result—

**Mr WATKINS:** I am not challenging you on this. I am just interested in the way the survey was done. If I asked people in my street about the differences between various State and Federal government agencies and regulatory authorities I think only about 5 per cent of the people would understand. A lot of my colleagues have problems with those divisions, as I do. This survey showed that only a small number of people had problems with that area. It is a difficult concept, and I would think that you need a fair bit of knowledge to get those questions right.

**Mr O'KEEFE:** One thing that did emerge from the survey was that the 511 people who were contacted—and they were randomised in proper ways—showed what to me was a good understanding of many of the issues involved. It is easy to say that that is surprising. It is an elitist view to say that it is surprising because that assumes that you and I and all of us know better than the ordinary people.

**Mr WATKINS:** I did not mean that.

**Mr O'KEEFE:** I do not mean it either. What I am saying is that out in the community there are people who think about these things and they differentiate between public and private. When scenarios which applied to the public and private sectors are put to them they say undesirable, corrupt, not corrupt and not undesirable, and they do it pretty well. It is a bit like juries. They have a capacity for getting things right.

**Mr WATKINS:** I am not challenging their concept of what is and what is not corrupt behaviour. It is just their understanding of different agencies. People come to me as their local member—and I am sure they did when you were in local government—and

ask questions about another level of government because they do not understand who is responsible for it.

**Mr O'KEEFE:** And wherever I go they still do it. That is one reason that we put out the community advisers document.

**Mr WATKINS:** Recently have you received from your research unit reports that you have been unhappy with and sent back for rewriting?

**Mr O'KEEFE:** No.

**Mr WATKINS:** Have you received internal research reports from that unit recently?

**Mr O'KEEFE:** Yes, a number of them.

**Mr WATKINS:** What sort of things would they be?

**Mr O'KEEFE:** I think they are listed. I think from memory one of them was about whether or not you could take some principles relating to crime prevention and apply them to corruption prevention—whether there was some cross-pollination. Another was the draft of the community attitude survey. The third was a draft of one section of the four-part research in relation to whistleblowers. I think that that has now been published. There was a report about bibliography and whether or not we should do that.

**Mr WATKINS:** Have you ever sent any back because you were unhappy with the content?

**Mr O'KEEFE:** No. Often there are draft reports that come up. They are then discussed, and whether given areas are worth the amount of space given to them will be discussed at a management level. My input may be sought.

**Mr WATKINS:** Has that happened recently?

**Mr O'KEEFE:** The only thing I can remember is that a report came up about crime prevention and using those principles in relation to corruption prevention. The introductory section did not seem to touch upon that or had some misconceptions in it. That was discussed and sent back for consideration by the researcher. That was not just my view; it was a management view. I think there was a draft paper about Operation Zack presented by one researcher for discussion. Part of that dealt with the legislative framework in States other than New South Wales. When you looked at the subject matter of the conference at which the paper was presented that part did not seem to be germane and a suggestion was made to delete it from that paper but perhaps to use it as an appendix to one of our reports that comes out about Zack, that is, to look at the respective legislative frameworks in various States and parts of the Commonwealth and include that as a total paper. I cannot think of any other.

**Mr WATKINS:** So it would be inaccurate to say that you have sent reports back because you were not happy with the conclusions reached from the research data in them.

**Mr O'KEEFE:** That would be untrue. It would be true if it were ascertained that data on which a report in draft or otherwise had been determined were inaccurate. There would be a question raised as to the accuracy of the data and a request made to ensure that the data were correct. If they were not correct the researcher may change the conclusions. Do you have a specific report you wish to ask me about?

**Mr WATKINS:** No, that satisfies me. There is reference to a survey of protected disclosures. A certain number of people who had made protected disclosures were then surveyed about the process. I think about 30 people were surveyed.

**Mr O'KEEFE:** Thirty volunteered. In one sense there is a problem with that research on a technical basis. Because the 30 people are self-selectors and you do not have a random sample you would have to look at the results as being not statistically correct but perhaps an indication at least of a section of the people involved.

**Mr WATKINS:** So you asked for volunteers.

**Mr O'KEEFE:** You cannot make people take part in such a survey. A lot of protected disclosures people said, "I have done it. I helped you in the first part. I don't want to be further involved."

**Mr WATKINS:** Did the request go out to all the people that you acknowledge have made protected disclosures?

**Mr O'KEEFE:** I cannot tell you that. I do know that it was substantially more than 30, and 30 was all we could get out of the respondents.

**Mr WATKINS:** Did the organisation make a choice about who was asked?

**Mr O'KEEFE:** I cannot tell you that. I did not. The research section had a protocol that was determined in advance of doing it, and that was complied with, but I cannot tell you the detail of that protocol.

**Mr WATKINS:** Can either of your senior staff help you with that?

**Mr O'KEEFE:** We do not have our research people with us today. If you want to know what the protocol is we can get hold of it and send it to you.

**Mr O'FARRELL:** Table 13 in the report we received today deals with attitudes to reporting corruption and indicates an increase in the percentage of people who strongly agree or agree with the proposition that people who report corruption are likely to suffer for it. Does that cause concern? What will the Commission endeavour to do about it?

**Mr O'KEEFE:** The answer to your question is yes, it does. Secondly, as part of

our program we are seeking to ensure that at the top level—that is from the Premier, the Premier's Department and the central agencies—they bring pressure to bear on people about their reporting program. We can recommend, but we cannot enforce. We would then conduct further survey down the line to see whether that pressure has produced any improvement and, if it has not, give consideration to some sort of inquiry.

**Mr O'FARRELL:** Does the Commission undertake random checking of authorities to see whether those processes applied?

**Mr O'KEEFE:** Not random; we do it in totality, as a rule.

**Mr O'FARRELL:** But you tell the authority when you are coming in?

**Mr O'KEEFE:** No, we send them the material and say, "Reply." They do not know in advance that it is coming.

**Dr MACDONALD:** Earlier you commented about the general manager at Newcastle, and I am not particularly making reference to that person as an individual. It concerned me that he apparently lost his job.

**Mr O'KEEFE:** His contract was not renewed.

**Dr MACDONALD:** In the case of contracts is it more likely that because the general manager is beholden to the council he or she would be less likely to reveal corruption, which would perhaps be more likely to lead to concealment of corruption? Is there a lesson to be learned from Newcastle? You made specific reference to a very good general manager being lost to a council. Is that corruption in reverse, in a sense?

**Mr O'KEEFE:** Interestingly, we did not get a complaint about it. We were aware of it, but we did not get a complaint about it. It could be, is the answer to your question, and it indicates a problem that arises or can arise under the contract system. I suspect, but it is anecdotal, that it arises not because of florid things but because of quite minor things when the general manager puts up honestly his view and the council does not like it, then the council hopes to get rid of the general manager and replace him or her with somebody who may be more in tune with the majority. Experience also tells us that once people get into a position, often they assert their independence of judgment. They comply with the council's decision, it is true. But you are right, it is a potential problem.

**Dr MACDONALD:** As a corruption-fighting body, how do you intend to deal with that? Do you see that you need to give some lead on this?

**Mr O'KEEFE:** One of the issues that can be dealt with in a local government inquiry would be a suggestion, and arising out of our relationship paper and subsequent feedback, that the querying or otherwise of the general manager of certain other senior staff ought to be the subject of further parliamentary consideration.

**Dr MACDONALD:** But is this not about structure, in the sense that so long as we

have an Act and perhaps an expanding contract sector within local government it is an inducement to causal relationships between general managers and the mayor, or certain councillors to make sure they keep their jobs.

**Mr O'KEEFE:** That is right, but it needs parliamentary attention because it is in the Act. The Act needs attention in that respect.

**Dr MACDONALD:** The Local Government Act?

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** Would you make some recommendations in that sense?

**Mr O'KEEFE:** If there were an inquiry we would certainly do so, and we may well do so in one of our local government reports, perhaps Cal.

**Dr MACDONALD:** Do you mean if there were a review of the Local Government Act?

**Mr O'KEEFE:** Yes. We are not a law reform body, but we look at specific areas in which problems arise and then suggest that consideration may be given to the reform of the law in that area.

**Dr MACDONALD:** I put it to you that you should be less passive in the sense that if you see an area of potential corruption developing, it may be appropriate to make representations to the Minister for Local Government, as the Minister is amending the Local Government Act all the time. I do not think the Local Government Act has been reviewed since 1993, but there are many opportunities for it to be amended. I wonder if it is not your role to be a bit more pro-active.

**Mr O'KEEFE:** It is a big issue that would require the committal of resources. In the order of things—although you and I, perhaps because of our backgrounds, may think local government is tremendously important and the level of complaints suggest that—a number of other areas that are very serious and, in the committal of our limited resources, have to be prioritised. It is all a question of what you can do with the available resources.

**Dr MACDONALD:** Meanwhile, corruption prevails?

**Mr O'KEEFE:** I do not know that corruption prevails. That is a fairly jaundiced, negative view. I am not quite as jaundiced or as negative and I am a bit closer to it than you. But the issue I was looking at was a wider issue that we may look at, and that is the effect on the public sector generally not just local government, of the concept of contracts of employment for certain types of employees rather than a public service that is a career public service that does not have that, or which has some alternative to it. That is a much bigger question, but the local government is a subset of that.

**Dr MACDONALD:** There is no doubt that in terms of public policy, agencies and

local government are progressively moving towards contracting out. You would know that better than anybody with your background. Therefore, would you put to the Committee that we should make some recommendations in that sense? Whose responsibility is it to make a review?

**Mr O'KEEFE:** I do not think it is the role of the ICAC to be a law review committee. We can look at instances and point out problems that have arisen and suggest that consideration be given to amending them. But the problem goes beyond local government. I do not know that I can say much more than that. The inquiry could be quite far reaching and expensive.

**Dr MACDONALD:** As Commissioner, perhaps you could respond to this question by writing to the Committee with some anecdotal concerns you might have. I would not ask that the ICAC conduct the inquiry. Indeed, it is the role of parliamentarians to make public policy. But it might be helpful if the lessons learned through the ICAC were fed back to the Chairperson, and we may be able to discuss them and make reference to the Minister or the Government.

**Mr O'KEEFE:** I think we could do that. It is a question of applying some resources to it, but our computer databases would enable us to do something along those lines.

**Mr WATKINS:** I am a bit confused about the Newcastle matter. Is there an ICAC inquiry into—?

**Mr O'KEEFE:** We neither confirm nor deny there is an inquiry into anybody.

**Mr WATKINS:** Your defence of the general manager is a fairly strong—

**Mr O'KEEFE:** It was not a defence, it was a statement of what I believe to be a fact. It was also published very widely in the local press. He is a person who has had a very good career in local government. He was considered for the town clerkship of Sydney. It is not just a question of an idiosyncratic judgment.

**Mr WATKINS:** Your defence of the general manager is a fairly harsh criticism of Newcastle Council.

**Mr O'FARRELL:** A Labor-controlled council.

**Mr WATKINS:** Your defence of the general manager is a fairly harsh criticism of Labor-controlled Newcastle City Council is it not?

**Mr O'KEEFE:** I think it is a criticism of a decision made by that council.

**Mr WATKINS:** Is it appropriate that the ICAC Commissioner give such advice or make such comment about decisions by a democratically elected body?

**Mr O'KEEFE:** I was asked a question. I was asked for an answer. I was on oath. I gave the answer which I believe to be truthful. I believe that to be appropriate.

**Mr WATKINS:** Where was that?

**Mr O'KEEFE:** Here.

**Mr WATKINS:** As the ICAC Commissioner it is appropriate for you to make comments that are damning in their criticism of a democratically elected council?

**Mr O'KEEFE:** I do not think it was. That is your judgment. I think what I said was appropriate as an answer to the question.

**Mr WATKINS:** What happens if an investigation into Newcastle City Council comes before you?

**Mr O'KEEFE:** You mean on that matter?

**Mr WATKINS:** On any matter? How can you make an independent judgment about anything to do with the Newcastle City Council after making such a clear condemnation of that group?

**Mr O'KEEFE:** I do not agree that I made a clear condemnation of that group. I criticised a particular decision. If that decision came to be examined, clearly I could not deal with it. Otherwise, I see no problem.

**Mr WATKINS:** This gets to the heart of what I have been moving towards over the past couple of years, the notion of how close you can get to an issue as the Commissioner. Surely the position you should take is one of judicial reserve, of separating yourself from such matters because they may come before you. Today you have already said that if this matter regarding the general manager comes before you, you will not be able to deal with it.

**Mr O'KEEFE:** I think it would be inappropriate.

**Mr WATKINS:** Because of your comments here?

**Mr O'KEEFE:** No, for that and other reasons. But that would certainly be a public statement of my view on the matter, and I think in the light of that it may be perceived by some up there that they would not get a fair go.

**Mr WATKINS:** I would have thought that if any matter concerning the Newcastle City Council comes to the ICAC, which presumably it could, and the ICAC determines to act or not to act, that large numbers of people in the Newcastle community would consider the ICAC had not looked at the issue objectively because of your comments as the leader of the ICAC.

**Mr O'KEEFE:** I understand your view, but I do not agree with it.

**Mr WATKINS:** Do you think you will refrain from such comments?

**Mr O'KEEFE:** I have said I understand your view, and I do not agree with it. I would look at each matter on its merits and determine it in accordance with what I think is the proper law.

**Mr WATKINS:** Do you think that your long-term involvement with local government and your high profile involvement with local government is a negative in your position as head of the ICAC and that people's approach towards the organisation and what the organisation does is prejudiced by your past involvement in local government?

**Mr O'KEEFE:** No.

**Mr WATKINS:** Not at all?

**Mr O'KEEFE:** Not at all.

**CHAIRMAN:** Is the converse true, that your experience in local government enhances your position as the ICAC Commissioner?

**Mr O'KEEFE:** Because of my past experience I am constantly asked to speak and give guidance to local government.

**Dr MACDONALD:** How did you come to form a view about the former Newcastle general manager? Was it as a result of a personal association, or was it as a result of some investigation by the ICAC?

**Mr O'KEEFE:** It was not on the basis of idiosyncratic matters. It was on the basis of official matters. I cannot confirm or deny complaints or investigations. Suffice it to say I did know Mr Grant some many years ago, probably 20 years, maybe less, but about that. He worked at Mosman Council. Since then he has gone elsewhere. But the man was highly regarded throughout local government.

**Dr MACDONALD:** But your comments regarding the quality of the individual work is anecdotal rather than as a result of a specific inquiry?

**Mr O'KEEFE:** Yes, but anecdotal not based upon personal association.

**Dr MACDONALD:** Do you think it is appropriate to introduce anecdotal—?

**Mr O'KEEFE:** Section 17 of the Act provides that we are entitled to inform ourselves by informal and such methods as we regard as appropriate. We are not bound by the rules of evidence, and I think that is appropriate.

**Mr O'FARRELL:** Has the ICAC ever made adverse findings or recommendations



against any democratic institution in this State?

**Mr O'KEEFE:** Yes.

**Mr O'FARRELL:** Do you support the concept that democratic bodies are devoid of corruption or improper processes?

**Mr O'KEEFE:** No.

**Mr O'FARRELL:** Could democratic bodies improve their processes so as to reduce the likelihood of corruption occurring?

**Mr O'KEEFE:** Some could, some I cannot tell you about.

**Mr O'FARRELL:** Although you do not regard the ICAC as a law reform body, do you from time to time, in relation to departments, provide advice as to how processes, including the renewal of contracts or the appointment of new candidates or the replacement of old candidates, can be handled better?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** Mr Grant worked with you when you were mayor of Mosman, did he?

**Mr O'KEEFE:** No he did not. He did not work for Mosman Council when I was Mayor of Mosman.

**Mr WATKINS:** He worked for Mosman Council when you were an Alderman?

**Mr O'KEEFE:** Yes he did.

**Mr WATKINS:** And that is when you got to know Mr Grant?

**Mr O'KEEFE:** It is.

**Mr WATKINS:** How long was your relationship with him?

**Mr O'KEEFE:** I had no relationship with him. I knew him as an employee and not otherwise and I think it is about 20 years since he left.

**CHAIRMAN:** Commissioner, I notice the time.

**Mr O'KEEFE:** Let us keep going while we can.

**Mr WATKINS:** Have you maintained a close association with him since that time?

**Mr O'KEEFE:** No.

**Mr WATKINS:** You do not know professionally what his capacity or the performance of his duties in local government for 20 years has been, yet you feel happy today giving such an open affirmation—

**Mr O'KEEFE:** With great respect you can know of somebody's performance without being personally associated with them, and that is how I knew. The answer to the second part of your question is, yes I do.

**Mr WATKINS:** Do you give personal references for people who ask that know you? If someone like this gentleman Mr Grant came to you and said, "I am going for a job at Newcastle council" or presumably where he is going now, I don't know, and he said, "Could you provide me with a personal reference?"—

**Mr O'KEEFE:** I may or I may not; it depends on the circumstance.

**Mr WATKINS:** I am not asking about Mr Grant.

**Mr O'KEEFE:** You just did though.

**Mr WATKINS:** No, I said as an example, but say someone like him, someone that you know, a friend of the family, a colleague that you used to work with: do you provide such a reference to someone who comes to you seeking a reference?

**Mr O'KEEFE:** I often give references for members of staff who are leaving, members of staff who may be applying for another job. I rarely but occasionally give references outside that.

**Mr WATKINS:** Is it appropriate for an ICAC Commissioner to give a reference for someone outside the organisation?

**Mr O'KEEFE:** It is appropriate for me to do so. I did not say that I did it as the ICAC Commissioner and I do not recall having done so.

**Mr WATKINS:** You would not send a reference on ICAC letterhead?

**Mr O'KEEFE:** I cannot recall having done so unless it were official of some kind. I normally would not.

**CHAIRMAN:** Are there any more questions?

**Mr WATKINS:** I have certainly got a lot more questions.

**Mr O'KEEFE:** Can we go on as far as we can, Mr Chairman?

**Mr O'FARRELL:** Or alternatively can he simply table the questions?

**Mr WATKINS:** No I have got a range of questions that I want to ask the

Commissioner. It is important that the Commissioner is here to answer them. We have had public questioning for just less than three hours. We were led to believe that this would be a day hearing for this.

**Mr O'KEEFE:** I was not so led.

**Mr O'FARRELL:** Nor was I.

**Mr O'KEEFE:** And there never has been a day. In the past we have always broken at 1 o'clock.

**Mr WATKINS:** I remember distinctly saying that we set aside the day. Don asked what plane could he catch back up to the north. We set aside a day. I have a lot of questions to ask the Commissioner. It is important the Commissioner has the right to answer them in person.

**Mr O'FARRELL:** How long does Mr Watkins require?

**Mr WATKINS:** It depends whether other people ask questions as well.

**Dr MACDONALD:** I have a number of questions I want to ask the Commissioner.

**Mr WATKINS:** Other members have questions and certainly legitimate questions arise as the questioning of the Commissioner proceeds. I have sat here listening intently to 20 minutes of questioning at least on Walsh Bay. That is the member's right and it is what should happen. Now I have 20 minutes of questions on at least three other issues.

**Mr O'FARRELL:** Is that an hour's worth of questioning or 20 minutes of questioning?

**Mr WATKINS:** How long is a piece of string?

**Mr O'FARRELL:** That is what I want to know.

**Mr WATKINS:** It is unanswerable. I have suggested quite strongly that we adjourn today and that we come back together at a time that is suitable to members of the committee and the Commissioner. If that takes a month or six weeks—

**Mr O'KEEFE:** Would Monday be convenient Mr Chairman?

**CHAIRMAN:** Yes this meeting is adjourned until Monday, 21 July 1997, at 10.00 a.m.

**Mr WATKINS:** Can I suggest that on Monday we go until we finish?

**CHAIRMAN:** I assume that is what the Commissioner wants. That is why he wants to come back on Monday and finish it.

**(The witness withdrew)**

**(The Committee adjourned at 2.05 p.m.)**



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**REPORT OF PROCEEDINGS BEFORE**

**COMMITTEE ON THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION**

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**At Sydney on Monday, 21 July 1997**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

Mr P. R. Nagle (Chairman)

The Hon. D. J. Gay  
The Hon. I. M. Macdonald

Mr P. G. Lynch  
Dr P. A. C. Macdonald  
Mr B. R. O'Farrell  
Mr J. A. Watkins

**BARRY STANLEY JOHN O'KEEFE**, Commissioner of the Independent Commission Against Corruption, on former oath:

**CHAIRMAN:** I declare open the part-heard public hearing.

**Mr O'KEEFE:** Mr Chairman, before the Committee gets under way there is a matter I would like to deal with, please. At the meeting of the parliamentary joint committee which was held here at Parliament House on Friday, 18 July 1997 I dealt with a number of matters in private, as is contemplated by section 70 of the Independent Commission Against Corruption Act. Chairman and members will recall that that section provides that, for evidence given in private and any document produced, each is to be regarded as confidential, and the Parliament has provided for a sanction for a breach of the section.

Because of these provisions I was disappointed to read a statement in the metropolitan press this morning that I had refused to produce the file relating to the late David Yeldham, QC, and that statement attributes such information to a member of the Committee in a way that suggests something coming out of the private hearing. That is not necessarily so, but when you read the form of the material it suggests that. I do not intend to canvass what occurred in the private hearing of this Committee. To do so would constitute a breach of the law on my part, for I am bound by the same law as everybody else. Whether or not the file was the subject of the refusal to produce at that private hearing and whether or not further information on that matter was conveyed to the Committee at that hearing are not matters on which I propose to say further now. There are, however, some things that I would like to say publicly in view of what appears to be a significant misapprehension or lack of understanding revealed in an editorial in one of this morning's newspapers.

Publicly I would like to point out the following: first, the Parliament of New South Wales has prohibited the divulging or communicating to any person of any information obtained by an officer of the Commission by reason of or in the course of the exercise of that person's functions under the Act. By virtue of the definitions included in the ICAC Act I am, for the purposes of that section, section 111, an officer of the Commission. The section binds me as it binds every other officer of the Commission. The purpose of the section is clear: it is designed to ensure that people can come before the Commission with information and provide it secure in the knowledge that unless there is some overriding public interest that arises at some subsequent stage the material that they provide and the fact that they have provided it remain confidential. Of course, that is reinforced by the underlying premises of the protected disclosures legislation. However, if one looks merely at section 111 its clear intent is to ensure confidentiality of material coming to the Commission both as to content and as to source. It is an important section in the scheme of the Act.

Secondly, Parliament has provided that the prohibition may be relaxed if the Commissioner certifies that it is necessary—that is the word used, "necessary"—in the public interest to do so. The legislation commits that decision to the Commissioner. That is what our Parliament has provided. It is the Commissioner who must make the relevant judgment. That is what Parliament has stipulated. And in the exercise of that judgment the

Commissioner must act independently and having regard to the other provisions of the Act and his or her knowledge of the circumstances.

Thirdly, I made it clear when I appeared before this Committee in December 1996 that I had not formed the view that it was then necessary in the public interest to release the Yeldham file. I might say that notwithstanding correspondence between me and the Committee, which I do not propose to go into for it was on a confidential basis and I at least will retain the confidentiality of that correspondence, no argument has been advanced as to why it is in the public interest that the file should be produced at this stage. The file, I should point out, is a file from 1989—eight years ago. It was closed by my predecessor, Mr Ian Temby, QC, following an initial investigation and a recommendation from the then Operations Review Committee appointed under the ICAC Act—a mechanism that the Parliament has provided for internal scrutiny in relation to decisions whether or not matters should or should not be investigated. The matter has therefore, as far as the ICAC is concerned, been closed for many years. Since that time a new Commissioner has been appointed, staff have changed and the organisation of the Commission has changed. We are in a different era.

The matter was looked at by me in late 1994, shortly after I became Commissioner on 14 November 1994. That is approaching three years ago. At the time I looked at the matter it was already some four years since the file had been closed and it was some five years since the events which were the subject of the file. At that time I was satisfied that the matter had been the subject of proper process and that there was no warrant for reopening the file. Furthermore, the public official in question had then been retired for nearly five years, and that retirement followed a period of extended leave before retirement that went back, I think, until the middle of 1989, I think July 1989.

The matter did not rest there, however. You will recall that in December 1994, less than a month after I became the Commissioner of the Independent Commission Against Corruption, the two Houses of Parliament resolved that the matter should be transferred to the Royal Commission. Previously the Parliament had determined that the ICAC should investigate the matter—that is, the paedophile matter. That decision was changed in December 1994 and, in accordance with the resolution and in fulfilment of it that file went to the Royal Commission and has been there since. The Royal Commission has been examining the matters concerning the late David Yeldham, QC in considerable depth. That has been done, as we know from public reports, both in public session and in private session. Part of that investigation, as the public record indicates, includes looking at the investigation undertaken by the ICAC some now seven years ago.

The Royal Commissioner's report is due at the end of August and it is expected to deal with the matter in detail. Two possibilities occur. First, the ICAC's investigation may be made the subject of no criticism at all—either absence of criticism or a statement that it was, on the stated facts as known and the material properly available, properly conducted. If that be so, then the matter surely would be at an end. If there were to be criticism, then the matter would need to be looked at and we would say that we would look at it internally first, and then there may be a question as to the way in which the oversight role of this Committee might come in in relation to our investigation of that.



Fifthly, the Parliament of New South Wales has made provision for the functioning and functions of this Committee. They are not such as to authorise this Committee to investigate a matter relating to particular conduct or to reconsider a decision not to investigate or to discontinue an investigation of a particular complaint or to reconsider recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

In my judgment, the production of the file concerning the late the Hon. David Yeldham falls within this prohibition. May I test that conclusion in a number of ways. The mere fact that something is newsworthy or is made newsworthy does not mean that it is necessarily in the public interest that further information be made available. Thus, the reason that a matter becomes a matter of journalistic exercise and the public reads it may be because a member or members of the Committee asked questions about it. This Committee is a powerful committee; the members of this Committee are important people in our community; what they do and what they say are taken by the community as having some newsworthiness. The mere fact that a member of Parliament asks a question—particularly if the form of the question is defamatory, accusatory, cross-examination and confrontational in form—is likely to produce a headline. That mere fact does not constitute the subject matter of the question a matter in the public interest.

Let me test that this way. Assume a member, for political reasons, asks questions about a very old matter, a file eight or nine years old, relating to a political opponent—a potential candidate in that person's seat at the next election, or someone who is actually running in the seat, or someone who if damaged may damage the profile of the party or segment of the party to which that person belongs. Undoubtedly, that would gain quite significant media coverage. Why, with respect, would it be in the public interest that that matter be raked over? There may be no substance in it and all that matters is that the allegation is made. You, Chairman, and other members of the Committee have constantly asked me when I have appeared here: how can the ICAC control the making of complaints and the publicising of those complaints which can be damaging on the basis that it is recognised that that is inappropriate in the public interest that that should occur? Much worse would it be to suggest that files relating to those matters should become matters to be produced before this Committee, a Committee which normally sits in public. Even when it does not sit in public, recent events have shown that it can provide no assurance that the matters dealt with in confidence remain in confidence.

If the contrary view were taken to the one that I have espoused, one could have a system in which the reputation, the electoral prospects and the peace of mind of people could be in jeopardy; people who come forward with information would feel diffidence about coming forward; and you could have a Parliament where the numbers are closely divided and an adverse effect could be had on the running of government, even producing a change of government. We know that it is easy to make complaint, and it is very easy to make complaint against persons

in the political field, be they across the House or factional. Every member of Parliament and every person against whom a complaint is made, and thus a file created for that matter, is vulnerable to the proposition that because questions are asked about it in this Committee it is a matter of public interest and, therefore, the file should be produced. I reject that proposition; I reject it as a generality. If it is correct to reject it as a generality, with respect, on what basis would one exempt one file and say, "You can have that one, but none of the rest"? The proposition that I am advancing is one that is inherent in the legislation and is the view that I have taken of its proper interpretation.

Each matter of public interest must be considered separately as and when it arises. Nothing, in my view, has to date established that it would be in the public interest to produce the Yeldham file since, under the statute, Parliament has committed the making of the relevant judgment in that regard to the Commissioner—that is, me. That, in my view, is an end to the matter. That is the approach that I take; they are the reasons for that approach. The Royal Commission is seized of the matter now and, of course, if the Royal Commission does something with that report that changes the situation I would review that. I thought I should clarify that.

I return to the editorial. I think on reading it that Dr Macdonald may have been put in two places in the editorial: one referring to something that was said on another occasion perhaps, rather than something that was said in private hearing on Friday. A clear implication comes from it, perhaps unfairly, directed at a member of the Committee. If unfair, it is doing less than justice to this Committee and to the member in question in view of the provisions of section 70. I thought I should say that at the outset to define my position, that is, the position of the Commission. It is a rationally based, is based in the statute, and is a firmly held view.

**CHAIRMAN:** Mr O'Keefe, you have said on many occasions—in this Committee and at international conferences—that there are three basic accountability mechanisms for the ICAC. One mechanism is the joint parliamentary committee, another is the ORC in regard to operational matters, and the other is the Director of Public Prosecutions being a separate branch to determine whether a matter should be prosecuted. The DPP looks at a matter after you have dealt with it to determine it, instead of you being both the inquirer and the prosecutor. They are the accountability mechanisms.

In 1989 Parliament gave the ICAC some extraordinary powers—really draconian powers that had not been seen in this country. Since then other bodies have taken up those sorts of powers—such as the NCA and the CJC. That was because of a major problem facing New South Wales in the 1980s in regard to not only the perception of corruption but actual corruption. If this Committee is to assess the real functions and roles of the ICAC, to be an accountability mechanism, with you coming here—you have done some excellent work in the preparation of answers to the questions that members have asked—it seems to

me important that, first, there is a good working relationship between the Commissioner, the ICAC and the Committee and, second, that when there is a matter of grave concern to most of the Committee members it should be dealt with in ways that stop this type of publicity from occurring.

I saw the editorial only a minute ago. I saw the article on Saturday, which created some worry. If the Committee is to be a true accountability mechanism, there has to be a way in which serious matters that have arisen in this Parliament can be dealt with—the matter of Mr Justice Yeldham is a serious matter that was raised in this Parliament. An upper House member raised it, we then saw the tragedy of the former judge killing himself, and then what happened to that member. Other matters came to light that no-one in the Parliament knew anything about it. We are not seeking the file for curiosity's sake; there is a real question about the way in which complaints that are made to the ICAC are handled.

**Mr O'KEEFE:** No, with respect, there is question directed towards the handling of this particular complaint and the decisions made, and that falls directly within the prohibition in section 64.

**CHAIRMAN:** Under the Federal NCA legislation, the NCA committee has the power to call for files in the public interest. We do not have that power—we are excluded from reviewing. That is an excellent provision, from my point of view, because we do not want to become a court of appeal.

**Mr O'KEEFE:** If there were an equivalent provision in the ICAC Act we would not be having this colloquy. There is not, and the fact that there is not speaks volumes for the correctness of the interpretation that I have applied to section 64.

**CHAIRMAN:** I do not take issue with that. It is a problem for the Committee. The Committee is trying to do its best to deal with what is a controversial matter in the Parliament. As I said, some members of the Committee do not wish to see the file, but others feel that it is an important issue for the Parliament and the people of New South Wales.

**Mr O'KEEFE:** With respect, what is the issue? One investigation, one file, 1989-90.

**CHAIRMAN:** Why was one of the most senior judicial officers in New South Wales having serious complaints made about him in regard to paedophilia?

**Mr O'KEEFE:** You make the assumption that that is so.

**CHAIRMAN:** It is the only assumption I can make.

**Mr O'KEEFE:** Why is it the only assumption you can make? I do not say that it is or is not. With respect, there is a spectrum of possibilities there.

**CHAIRMAN:** Let us say that one of the complaints was not about paedophilia—accept that as the assumption. He was one of the highest judicial figures; he never had an inquiry. You had a most extensive and destructive inquiry about a former Premier of New South Wales, Nick Greiner, over a deal that was made with Dr Metherell.

**Mr O'KEEFE:** That is because the Parliament resolved that it should be so and referred it, pursuant to a resolution of both Houses, for determination and investigation by the ICAC.

**CHAIRMAN:** True, after your predecessor had gone to the Premier of the day, Premier Greiner, and said to the Premier that there should be an inquiry and the Parliament should direct the inquiry.

**Mr O'KEEFE:** I do not know that but if the Parliament, that is, the Houses of Parliament, should direct that there be an inquiry by the ICAC into that matter, we would be bound to conduct it. There is not such, and so I am bound then by the provisions of the Act—section 111, section 70, and section 6, I think it is, that deals with the definitions.

**CHAIRMAN:** The point I am trying to reach, Commissioner, is that in regard to those matters where you have those enormous powers to deal with any citizen of the State of New South Wales for alleged allegations of corruption, the Committee is tied in regard to seeing whether you are exercising those powers properly and with honesty. We can ask you questions but we are limited to function and role, as you have correctly pointed out.

**Mr O'KEEFE:** But, Chairman, with respect, I never exercised such function. That function was exercised in 1990 by Commissioner Temby.

**Dr MACDONALD:** Could I ask a question of you, Mr Chairman, relating to the remarks made by the Commissioner regarding confidential matters that were discussed by the Committee? I will not breach or explore particular questions, but there were certain questions that were regarded or determined to be not confidential any further.

**CHAIRMAN:** Question 5.

**Dr MACDONALD:** Question 5, which seems to me to go to the heart of what the Commissioner is raising today and, I might say, it was on the basis on which I made any comments to the press. The second thing is that the Commissioner in his remarks this morning, it seems, has opened up the issue of the Yeldham file and the Committee's request for that file. I want some direction from you, Mr Chairman, as to where we stand in terms of these confidential questions and whether we can talk about question 5, as it has been determined to be non-confidential and, if so, are the public aware of what the question was?

**CHAIRMAN:** That is what the Commissioner is talking about, part of question 5, which is the statement made to the Committee back in December in the transcript at page 120.

**Mr O'KEEFE:** Question 5, which I was quite happy to be made public, dealt with repeated assertions that in December 1996 I undertook to provide the Committee with the Yeldham file. That is not so.

**CHAIRMAN:** Can we formally table the question, and we are only talking about question 5 and all those matters that were on a confidential basis that we discussed in camera, except question 5.

**Mr LYNCH:** For completeness, there were only a limited number of those answers that were confidential. He tabled everything, except for the ones that he specifically meant to be confidential. That is the proper way to deal with it.

**Ms MINNICAN (Committee Director):** Questions to be excluded were 1, 2, 3, 4, 6, 7 and 21, and that is the copy I have provided Mr Feneley with to clarify that what we are about to table is correct.

**Mr O'KEEFE:** And question 4 in the original questions, with the additional material provided.

**Dr MACDONALD:** I suggest you read out the question for the public record because people do not know what we are talking about.

**CHAIRMAN:** Commissioner, do you want to formally table the responses, the answers to the questions, subject to those matters?

**Mr O'KEEFE:** Questions 1, 2, 3, 4, 6, 7 and 21, being the subject of confidentiality. Question 5 was this question:

As you undertook to do at the last hearing, will you provide the Committee with the Yeldham file so that it can review the ICAC decision-making process?

Now that has to be in relation to the Yeldham file. That takes us back to section 64, which specifically provides that the Committee may not reconsider or investigate either particular conduct or a decision not to investigate, or findings, recommendations, determinations and other decisions. The answer to the question was:

No. Furthermore, the form of the answer involved an inaccuracy. The previous answer was given to a question which was not on notice and in respect of which I had no opportunity to consider my reply. It was given at a time when I believed, wrongly as it transpired, that the file was a public exhibit in the Royal Commission. This clearly emerged from page 42 of the transcript of the meeting of 17 December 1996 when in answer to a question by the Hon Ian Macdonald MLC, I said:

"I will take that on notice, but I am reminded that the file relating to the particular matter has

been tendered in the Royal Commission. It is a public document now, so that it is readily available and, *to that extent*, its contents".

In answer to a further question by the Hon Ian Macdonald MLC, in relation to the exhibit, I responded:

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

The exhibit tendered at the Royal Commission was not made a public document and was therefore not available to be copied and disseminated.

This matter was dealt with in detail in my letters to the Committee dated 20 December 1996 and 8 April 1997 in which I indicated the position of the Commission.

The decision-making process of the Committee concerning whether a matter should be investigated or not investigated is not a matter which falls within the jurisdiction of the Committee.

**Dr MACDONALD:** As I recall, in our discussions on Friday both that question which has just been tabled and the answer, it was agreed, would not be confidential. Clearly the question was about the Yeldham file, and clearly the Commissioner reinforced his position that he is not prepared to provide it to the Committee. I want to make it clear that it was on that basis and in relation to that question that I made certain comments to the media. I object to some of the remarks the Commissioner has made about breaches of understanding.

The second thing I want to say, and this goes to the heart of the relationship between the Commissioner and the Committee, is that I find it a little objectionable being advised by the Commissioner as to what the functions of this Committee are. I read section 64 as he does and I believe that this Committee is in a position to determine whether it wishes to seek a file or not, and as to whether it believes it is within its jurisdictional powers to do so.

The Commissioner has asked us this morning to put up a good reason why the Yeldham file should be provided. I just say this. Most of the complaints I receive as a member of the ICAC Committee are from members of the public, and often whistleblowers, who have a concern that an issue has not been properly investigated. So it goes to the very heart of the role of members of this Committee that here we have an example of a file that was opened, has been viewed by two Commissioners, has been viewed by the ORC, and it has been declined to be investigated. That is not dissimilar to other concerns that we have about other issues of a more minor nature perhaps.

I believe it is in the public interest. I do not think any member of this Committee who has supported the request for that file is doing so for vexatious reasons, but doing it because it seems to go, as I said, to the very heart of whether the ICAC and the decisions being made are sound. It is in the public interest in that the matter has now been dealt with by the police Royal Commission. It also raises the question of the possibility of any particular relations that existed between members of the judiciary.

You argued, Commissioner, on the basis of principle. It may well be that the way the Committee needs to deal with this is to determine appropriate guidelines for an occasion such as this when it wishes to access a particular file, so that it gives you comfort that in future the Committee will not request a file for the wrong reasons. If you concede that that is a possible way forward—otherwise I can see this tension continuing—whereby the Committee could go into a deliberative session to determine the guidelines on which it would request this file, would that provide you with any comfort?

**Mr O'KEEFE:** It would provide me with comfort, but it would not overcome the provisions of the Act. If the Committee thinks it is appropriate that individual files should be the subject of call and, thus, made public, that is, people's complaints against people—parliamentarians or whoever they may be—made public or dealt with in private session, subject to all the vagaries that that has, and recent history has not been very comforting in that regard so far as the Committee is concerned, then that is a matter for the Parliament to say, not a matter for this Committee.

Guidelines would give me comfort. They may in some cases be of assistance, but they will not determine the matter. As I said in my opening statement, the question of public interest and the judgment in relation to it is committed to the Commissioner and that must be made in each case as the circumstances present. Guidelines may give some comfort or assistance, but they would not be determinative.

**Dr MACDONALD:** I understand it is not the intent of this Committee to reopen the Yeldham file and have the matter investigated. I understand that the purpose of seeking that file is to assist the Committee in exercising its functions under section 64(1)(a).

**Mr O'KEEFE:** What, to determine whether or not that decision was correctly made at the time?

**Dr MACDONALD:** Yes.

**Mr O'KEEFE:** Which is precisely the prohibition in the second part of that section.

**The Hon. D. J. GAY:** Section 64(2)(a), (b) and (c).

**Dr MACDONALD:** I disagree with that.

**Mr O'KEEFE:** You may, and it happened when I sat on the the Court of Appeal. Two would decide one way and one would decide another. There was a question of principle. One may be overruled three-nil in the Court of Appeal and restored five-nil in the High Court. These are matters on which judgments will differ but in the end I am committed under the statute, section 111, with making

that judgment, and I have made it.

**Mr WATKINS:** So it is very much your judgment?

**Mr O'KEEFE:** That is what the Act provides.

**Mr WATKINS:** And you can say you are bound by the terms of the legislation, but it is your interpretation that is critical in--

**Mr O'KEEFE:** No, it is not my interpretation. It is my application of the clear provisions of the statute to a given set of facts, and that is a question of judgment.

**Mr WATKINS:** It is how you apply the legislation.

**Mr O'KEEFE:** How that formula applies to a given set of facts.

**Mr WATKINS:** I would agree with Dr Macdonald in saying that this file is essential, I would think, in helping this Committee go about its correct business. How do you expect the parliamentary joint Committee to ensure that the ICAC is operating correctly if we can not test that by looking at the ways in which this file was dealt with?

**Mr O'KEEFE:** Because this file, even if looked at, would not tell you how the ICAC is operating. It will tell you what might have happened back in 1990.

**Mr WATKINS:** The file also came to the attention of ICAC in 1994.

**Mr O'KEEFE:** It did not come to the ICAC's attention; it came to my attention in 1994. I am not the ICAC. I am the Commissioner.

**Mr WATKINS:** It came to the Commissioner's attention in 1994?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** It cannot be said that this is simply a matter that is eight years old. It was revived at a later stage.

**Mr O'KEEFE:** No, it was not revived. It was drawn to my attention, as were a number of other files relating to a whole host of other matters, as to whether or not there was a reason to review them. Lest there be any misunderstanding, it was not just the Yeldham file. There was a whole pile of files.

**Mr WATKINS:** You gave evidence on that the last time. I was also displeased at this session being held in camera on Friday and I would like to ask you whether you think your attempt to deal with the issue in camera was really an



improper use of your powers, especially when from the answers we have before us there is nothing in the answers that has not been discussed in detail before, and especially when today in your opening statement you revealed a lot of your reasoning about the Yeldham file and what you have done. I am wondering why you determined that on Friday the discussion should be in camera and that the answers to these questions should still be confidential?

**Mr O'KEEFE:** Section 70 gives me that right and I exercised it.

**Mr WATKINS:** Why?

**Mr O'KEEFE:** Because I thought it was appropriate so to do, and might I say The Legislature has provided that it is the call of the witness, and the Speaker has reinforced that, I understand, since our last meeting.

**Mr WATKINS:** This is not about Mr Justice Yeldham; it is about the ICAC. It is not about confrontation; it is about proper accountability, and it is certainly not about sexual conduct; it is about potential for corruption. That is why this Committee is so deeply interested in this matter. I would like to make it clear that in my view it is in the public interest that the ICAC cooperate with the Committee over this matter. There is a strong feeling abroad in the wider community of New South Wales that Mr Justice Yeldham was looked after by many people and eventually by the ICAC and that goes to the heart of public confidence in the ICAC, and that public confidence is essential for an organisation like yours to maintain. That is why these questions are critical and why I would encourage you again to be more forthcoming in the discussion today and in producing the file.

**Mr O'KEEFE:** I have stated my view about the file. That view is one that, in light of the Royal Commission's report, will have to be reviewed because there may be new circumstances that then arise, but unless and until there are new circumstances, I have stated my view. I really do not profit the situation or advance it by doing other than saying it is a matter of principle, it is a question of the floodgates. You open for one file, you open it for how many files? You open it for a file about a former judge, do you open it about files for former politicians years and years ago or current ones when there is no substance but the effect of opening the file may be very disadvantageous and quite damaging?

**Mr WATKINS:** I do not think that needs to follow.

**Mr O'KEEFE:** That is your view, but I do not think that my training as a lawyer for many years and as a judge for some years leads me to the same conclusion. I can only rely upon my own honestly formed views, based upon my knowledge of the law and experience, and that is what I have done.

**The Hon. D. J. GAY:** Mr Chairman, my point is to you and to the Committee. As you are aware, I am the longest-serving member of this

Committee. I have served on this Committee since its inception in 1989. I should not think that it would have to be the role of a National Party member of Parliament to remind members of the Committee of the division of powers. This point gets really to the heart of the division of powers. Mr Chairman, as you yourself said earlier today, when we set up the ICAC Committee, we gave it incredible powers, to use your own words, draconian powers. If you read the *Hansard*, from both sides of the Parliament when the Independent Commission Against Corruption was set up the endeavour was to remove the ability of politicians to dabble in the day-to-day running and the cases that come before ICAC. Hence section 64, part 7, describes the constitution of the joint committee as follows:

- (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.

It is there in black and white and is absolutely clear. The Operations Review Committee really has the jurisdiction to go into the matter we are talking about at the moment. Some members of this Committee have said that we are really operating in the public interest on this matter. I worry that we are not operating in the public interest but are just trying to extract some salacious detail that will give a cheap headline and destabilise the Commission. I have real concern about the direction that members are trying to take this Committee.

**Dr MACDONALD:** I object to those remarks. I would like him to name which member is seeking salacious details.

**The Hon. D. J. GAY:** Any member who is trying to seek the detail of this document that we are not entitled to have.

**CHAIRMAN:** That is the view of the Hon. D. J. Gay.

**Mr WATKINS:** In direct answer to that, if you had read the editorial this morning, it answers it very well. It said that the ICAC is answerable not to itself but:

... the New South Wales Parliament, represented by the parliamentary committee. The ICAC is not a court. There is no tension between it and the parliamentary committee based on the separation of powers. The ICAC is a creation of the NSW Parliament and therefore answerable to it.

**Mr O'KEEFE:** That shows a fundamental misunderstanding. I doubt that the editor actually read the Act. The tension that exists is between on the one hand section 64(1) and the role of the Committee in relation to monitoring

combined with the prohibitions in section 64(2) and then the provisions of section 111, and, in particular, that subsection of section 111 that enables the Commissioner to relax confidentiality. That is the tension. It is not the classic tension of judge against government or Executive against Parliament. It is a different tension created within the statute.

**Mr LYNCH:** It has nothing to do with the separation of powers; it is about statutory interpretation.

**Mr O'KEEFE:** Only separation of powers in the sense of who has under this Act the respective powers. It is a definitional question rather than a constitutional question.

**The Hon. D. J. GAY:** Well, it is the separation of powers; it is about us directing.

**The Hon. I. M. MACDONALD:** In answer to question 5 you refer to the questions I asked on 17 December in relation to this matter. I take some degree of offence at the way that you have argued your case that the matter is not in the public interest with the comment that it is newsworthy and then you put a political construction up—

**Mr O'KEEFE:** Not in answer to question 5.

**The Hon. I. M. MACDONALD:** No, in your general scenario at the beginning of the session here today. Then you more or less said that this could lead to political point scoring and these sort of matters and potentialities in relation to broader matters if people are engaging in or wanting to run in an election, something of that nature, that could be used later on.

**Mr O'KEEFE:** But I did not anchor that to this. I merely indicated that that was a relevant consideration in relation to the public interest which then does apply to this particular file.

**The Hon. I. M. MACDONALD:** I beg to differ both with your interpretation and the interpretation of the Hon. D. J. Gay of this matter. I see that whether it is newsworthy or not, my view is that it is totally and utterly irrelevant. The key to the matter is: is there any more serious scenario you can see as the Commissioner of the Independent Commission Against Corruption in the protection of high judicial figures by, in the first instance the police, and other officers of the Government or the officers of the public sector and then later on the allegation that higher levels of authorities have then protected that judicial figure. That is the overwhelming point that is of great concern to me. In 1989 the Independent Commission Against Corruption received a complaint and within a year—I do not know the actual dates of the complaint and the decision not to pursue it—there is a decision by the Commissioner not to take the matter any further, to close the file, were the words you used. Up until last year there was a

lot of innuendo in relation to Justice Yeldham and the Wood Royal Commission but nothing surfaced until a member of Parliament raised the matters in the Parliament and then lo and behold there is an investigation; it becomes public. Witnesses are called and the matter is dealt with in the public interest.

**Mr O'KEEFE:** Well, some of it was.

**The Hon. I. M. MACDONALD:** Some of it was, and that is very intriguing as well. Then it is dealt with in the public interest after an extraordinary step is taken by a member of Parliament to raise the matters in a very public way using parliamentary privilege. What is disturbing me is that in 1989 a decision was taken to close the file and obviously later on there is far more substance to the matters that transpired under the public glare of the Wood Royal Commission. What went on in 1989? What was given to the Commission in relation to the matter, so that I can be assured that there was none of what I would regard as probably the most corrupt aspect of public life, that is, the protection of high officials against any form of scrutiny or investigation of matters which are clearly under our current law criminal or illegal? That is the reason I asked you the questions on 17 December and I thought you had more or less said we could have the file, and my rereading of it does not change my view on that. However, that is the reason I am concerned about the matter, that in 1989 complaints were made yet there was no public inquiry. We have public inquiries into Aboriginal Land Councils. They are being put before the public gaze over a few contracts in relation to matters—

**Mr O'KEEFE:** With great respect that is not right. There are millions of dollars involved in that.

**The Hon. I. M. MACDONALD:** I know you have dealt with that but that is a very public matter and it is being dealt with in a very public way. Yet these complaints, which are very serious complaints, were only finally dealt with late last year after an extraordinary speech in the Parliament. That is the worry and that is why I sought for that you give the Committee a fuller briefing of these matters. I was not particularly keen to receive a copy of the document but I thought at least the Chairman and the Hon. D. J. Gay or anyone else would have had the opportunity to have a look at the file to satisfy themselves and the Committee that there was not a cover-up or a high level protection by ICAC of that particular judge in 1989. That is central to our function as the Committee.

**Mr O'KEEFE:** At page 42 you say, "If it is readily available, could you photocopy it and send Committee members a copy?"

**The Hon. I. M. MACDONALD:** Yes, but the earlier ones.

**Mr O'FARRELL:** Just going back to question 5 so that I get it right, if it had been a public document at the Royal Commission it would have been tendered by you?

**Mr O'KEEFE:** Then there could have been no question of there being any public interest still extant. It was in the public domain. What was the point in not dealing with it in that way?

**Mr O'FARRELL:** When was the file tendered to the Royal Commission?

**Mr O'KEEFE:** I will take that on notice.

**Mr O'FARRELL:** Do you retain copies of files that are sent off to other bodies?

**Mr O'KEEFE:** Some we do, some we do not. It depends upon the nature of the file. That is certainly one that we retained a copy of.

**Mr O'FARRELL:** Does the Commission draw a file each time a complaint is received, or if a person has multiple complaints about them is there more than one file?

**Mr O'KEEFE:** The answer to the first question is yes. The answer to the second question is perhaps. It will depend upon the spread of the matters and whether they involve other people and other entirely different circumstances.

**Mr O'FARRELL:** I would like to address the two concerns put forward by the Hon. I. M. Macdonald. If there had been subsequent complaints made to the ICAC about Justice Yeldham, would they have been the subject of separate files and separate investigations, and were any such complaints made?

**Mr O'KEEFE:** In relation to the last part of the question, I neither confirm nor deny that, in accordance with the usual practice. However, if a complaint is made, a separate file is opened but part of the process that the ICAC engages in is then to search our data bank to determine whether or not there have been any other complaints about that particular person or that department or that sort of circumstance so that you do not deal with matters in isolation but look at them against the background.

**Mr O'FARRELL:** Again, any subsequent complaints would have been forwarded to the Operations Review Committee and there would have been similar ORC recommendations as to how the complaint would have been handled?

**Mr O'KEEFE:** Yes; that is, if the decision is made not to investigate.

**Mr O'FARRELL:** To address one of the concerns of the Hon. I. M. Macdonald, if there had been subsequent complaints he may well have an argument. But at this stage all the discussion has been about the Yeldham file, which it is appropriate to assume relates to one complaint made to the ICAC in 1989?

**Mr O'KEEFE:** That is right.

**Mr O'FARRELL:** The second concern that has been discussed generally is in relation to who judges the ICAC in its dealings with or over the Yeldham matter. Has the Yeldham file gone to the paedophilia section of the Police Royal Commission?

**Mr O'KEEFE:** Yes.

**Mr O'FARRELL:** Do you anticipate that the Commission will make recommendations and judgments about the ICAC's operations and decision in the matter?

**Mr O'KEEFE:** I anticipate from the way in which the inquiry went that there will be a detailed analysis of those matters.

**Mr O'FARRELL:** In terms of public accountability, it is satisfied because a Royal Commission will make recommendations about whether the ICAC acted appropriately or otherwise in relation to the Yeldham file?

**Mr O'KEEFE:** I cannot say that, because I do not know the content or recommendations that Mr Justice Wood may bring forward. But, what is clear is, whatever is said will need to be looked at and then two things assessed in the light of that: first, whether or not it is appropriate to revisit that file; and, second, whether or not the matter that is revealed in the Royal Commission's report answers the questions of concern that have been expressed by some members of the Committee.

**Mr O'FARRELL:** Have officers of the Commission been required to give evidence to the Royal Commission on this matter?

**Mr O'KEEFE:** There are parts of the Royal Commission's inquiry that have been dealt with in private. I do not want to go into that, or trespass. It may answer your question to say that matters have been inquired of from the Royal Commission to the ICAC in relation to that matter.

**Mr O'FARRELL:** So I should not ask you whether former Commissioner Temby or members of the Operations Review Committee at that time have gone before the Royal Commission?

**Mr O'KEEFE:** If they have I do not know that. Mr Temby is now no longer associated with the ICAC. I cannot help you on that.

**Mr O'FARRELL:** Commissioner—and maybe the Hon. D. J. Gay would want to answer this: has any operational file ever been provided to this Committee?

**Mr O'KEEFE:** No, I do not think so. It has not in my time and I am not aware of any having been so provided.

**CHAIRMAN:** And none has ever been asked for; this is the first.

**Mr O'KEEFE:** I do not think any has been asked for.

**Mr O'FARRELL:** Commissioner, do you or any of your officers have concerns about the confidentiality of this Committee and its operations? I am mindful of an incident last December.

**CHAIRMAN:** I interrupt, Commissioner: this is called a Dorothy Dixier.

**Mr O'FARRELL:** No, I am mindful of an incident last December when an investigator was named.

**Mr O'KEEFE:** I prefer not to answer that. I have accepted that what the Hon. I. M. Macdonald asked was asked in the heat of the moment without giving thought to it. It was done in good faith without any question of malice.

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

**Mr O'KEEFE:** There was correspondence between him and me, the nature of which I do not want to go into. Suffice it to say that the good faith of that error—which all of us can be capable of—was accepted by the Commission. Mr Feneley, appropriately, reminds me that a reading of the Royal Commission's public transcript in relation to the Yeldham matter, including the ICAC's investigation, will provide quite a deal of material. That could be made available to the Committee members or can be obtained by the Committee from the Royal Commission. There is a lot of material there.

**Mr LYNCH:** I am interested in exploring a positive way of dealing with these discussions and where they go. It could be inferred that your opening statement suggested a course of action whereby this Committee would defer any consideration until the Royal Commission released its next report and that maybe some things would flow from that that this Committee ought to look at in relation to the Yeldham matter.

**Mr O'KEEFE:** Or the ICAC.

**Mr LYNCH:** Or the ICAC. In fact you said the ICAC would look at it and that it would be appropriate for this Committee, in its oversight role, to look at that. On one view that is a sensible course. I have a problem with your interpretation of section 64(2). The point you make about what section 64(2) prevents the Committee from doing is probably correct. If section 64(2) prevents the Committee from doing something now, it will be prevented from doing it further in the year or early next year I assume. How can it be dealt with without

an amendment to the Act?

**Mr O'KEEFE:** First, it would be highly undesirable in my view that there be a relaxation of the confidentiality provisions of the Independent Commission Against Corruption Act. It would strike at the confidence of people in coming forward. Second, it may well subject people at critical times to adverse comment, albeit that down the track that comment was shown not to be justified. As I said on a previous occasion, the extent to which complaints against local government representatives and members of Parliament arise in the period before an election is quite dramatic. It could be quite mischievous if that happened. Returning to the first part of your question, when one views what Justice Wood said in the report and the extent to which matters may by him be made public and issues raised, then the question for consideration is as to necessity for the public interest as fresh material adds to the scale. That may change the consequence or a conclusion. I cannot tell that because I do not know what is in the report; and properly do not know. Does that help you?

**Mr LYNCH:** Yes, thank you.

**Dr MACDONALD:** I will approach this question from a slightly different angle. Presumably one of the functions of the ICAC Committee is to determine whether the Operations Review Committee is working effectively?

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** Indeed it is the subject of question 16 of the questions upon notice, to which you have given some replies. This matter was considered by the ORC on one occasion and it was decided not to investigate.

**Mr O'KEEFE:** That was its recommendation, yes.

**Dr MACDONALD:** How, in your view, is this Committee to go to the heart of the functioning of the ORC? How can we reach into the ORC and determine whether it is an effective review mechanism within the set-up of the ICAC?

**Mr O'KEEFE:** One thing I can say is that it is bad pedagogic practice to start with a negative, but it is important in the context so to do. Number one, you do not do it by looking at a 1989 file. What you do is perhaps look at a series of files which can be anonymised, say, as to who was the subject of complaint, who made the complaint and when the complaint was made—sometimes that may give a clue to who made the complaint, but not always—and take a random selection of files so that there is no loading.

We do not make a choice, somebody makes it on a scientific basis. Then look at what the reports were; do they really grapple with the problem; how did the ORC deal with those matters? You deal with it on a statistically scientific basis,



not on the basis of a one-off file. Preferably you deal with it by reference to things that are much more proximate and current than 1989-90. I think there is a mechanism for doing it properly.

**Dr MACDONALD:** Commissioner, you are basing your argument for not providing this file to the Committee on a principle and also on how you interpret the Act?

**Mr O'KEEFE:** The principle is related to that interpretation.

**Dr MACDONALD:** Would it assist the Commissioner if the Parliament were to determine that this file should be provided to the Committee?

**Mr O'KEEFE:** Do you mean both Houses of Parliament resolve that the file should be made available? With respect, I do not think that that would be any good. You would need an amendment to the Act, because the things that the Parliament can make decisions on that affect us are decisions in relation to matters that should be investigated. Both Houses of Parliament could resolve to now refer to the ICAC the complaint made in respect of the Hon. David Yeldham back in 1989 and then there would have to be a public inquiry about that. The whole of that matter would then be in the public domain.

However, can I remind you, with respect, that it is a 1989 matter. The Royal Commission is presently seized of it. To take that course would require a diversion of resources. In fact, I would ask for additional resources to do that, if they were forthcoming of course. One does it as we are required under our Act to do, but I think the mechanism will be slightly different from the one you postulated in your question.

**Dr MACDONALD:** Yes, it would be. But I do not know that it would be necessary to take a reference from both Houses of Parliament for the ICAC to investigate.

**Mr O'KEEFE:** It does, under the Act, yes.

**Mr WATKINS:** The original complaint to the ICAC about Justice Yeldham was in November 1989. I understand that Commissioner Temby visited the Chief Justice, Mr Murray Gleeson, who I understand was Chief Justice at that time. Can you confirm that he was the Chief Justice at that time?

**Mr O'KEEFE:** I do not remember when Chief Justice Gleeson was appointed.

**Mr WATKINS:** I understand Mr Murray Gleeson was Chief Justice in November 1989.

**Mr O'KEEFE:** When that visit took place?

**Mr WATKINS:** When that visit took place.

**Mr O'KEEFE:** I do not know that.

**Mr WATKINS:** No, I am telling you that it did. At some stage later in 1989 or perhaps 1990—you have it on your file—it went to the ORC. In September 1990 the matter was finished with by the ICAC, which determined it would take no further action.

**Mr O'KEEFE:** I do not recall. I remember the year, but I do not remember the month.

**Mr WATKINS:** That is fine. I have done some research and I think that those dates are right. In 1990 Justice Yeldham retired, finally.

**Mr O'KEEFE:** I checked on that before I came today. On 28 January 1990 he retired. He had gone on leave for, I think, six months prior to that time.

**Mr WATKINS:** Was a deal done between the ICAC and the Chief Justice to ensure that Yeldham would go from the Bench so as not to have an ICAC investigation? Do you know?

**Mr O'KEEFE:** I will take that question on notice.

**Mr WATKINS:** Last Friday you gave strong reasons why the Committee should not see the Yeldham file and we talked about those reasons today.

**Mr O'KEEFE:** No. Anything I did on Friday in relation to the Yeldham file was in private session. I do not wish to deny or confirm what was done in that. To do so, in my view, would be a breach of the Act.

**Mr WATKINS:** Okay. Let us cut out Friday. Today you have given strong reasons why the Committee should not see the Yeldham file. How do you know what is in the Yeldham file? When did you see it?

**Mr O'KEEFE:** I told the Committee on the last occasion that shortly after my appointment as Commissioner, on 14 November 1994, that file together with a number of other files were referred to me and I looked at them.

**Mr WATKINS:** Your arguments to the Committee today about whether we should be brought into your confidence relate to one only reading of the file that took place in 1994?

**Mr O'KEEFE:** Why do you assume one only?

**Mr WATKINS:** How many times did you read the file when it was given to you?

**Mr O'KEEFE:** I do not wish to go into that. But it is more than one certainly.

**Mr WATKINS:** But you have not read the file since when? When were you appointed Commissioner?

**Mr O'KEEFE:** 14 November 1994.

**Mr WATKINS:** So you have not read the file for several years?

**Mr O'KEEFE:** I think I may have looked through it before it went to the Royal Commission, but I cannot be certain of that.

**Mr WATKINS:** Did you, or did you not?

**Mr O'KEEFE:** I have given you my answer, Mr Watkins.

**Mr WATKINS:** In December, in the evidence on page 119, you indicated that you had not looked at the file when it went down to the Royal Commission.

**Mr O'KEEFE:** My recollection then was probably better than it is now.

**Mr WATKINS:** In other words, I remind you, you have not read the file since your original reading of it?

**Mr O'KEEFE:** That is my recollection.

**Mr WATKINS:** That is your recollection now?

**Mr O'KEEFE:** Well, I am sorry. I have no recollection of whether I did or did not read it before it went down to the Royal Commission. It is in my mind that I may have, but my evidence in December would be more proximate to that event and more likely to be correct.

**Mr WATKINS:** That means that the last time you read the file was when it was first placed on your desk, when you were first appointed. You may have read it several times, but that is when you made yourself aware of the Yeldham file. That is several years ago. You are justifying your position in relation to these matters on a reading of a very detailed document that is several years old?

**Mr O'KEEFE:** I am sorry, your question is what?

**Mr WATKINS:** Are you?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** Do you think you can do that? I know you are a very

intelligent man, Mr O'Keefe. But can you really justify your position, on a reading of a matter that is so old, after several years have passed?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** On your return to the Commission offices, could I ask you to take out the photocopied file, reread it, and then reconsider the requests of this Committee?

**Mr O'KEEFE:** You may, yes.

**Mr WATKINS:** Last time you were questioned on this matter you said that the reason why you were given the file, you assume, was that "he was a judge; I was a judge". Have you thought further about that? Is there any other reason why you think that the file may have been put before you?

**Mr O'KEEFE:** You would have to ask those who put it. I mean, it is an assumption on my part. But there were a whole host of files that were given to me. I assume they were selected by a number of officers, but their reasons I do not know.

**Mr WATKINS:** At that time you suggested also that there was no potential for corruption in the Yeldham matter, and you talked today about salacious sexual details and so on.

**Mr O'KEEFE:** I did not say that.

**The Hon. D. J. GAY:** I said that.

**Mr WATKINS:** Surely the fact that corrupt police may have been corrupted by what happened back in the late 1980s is an issue that was quite clear at the time and was an aspect that should have drawn the attention of the ICAC?

**Mr O'KEEFE:** I do not agree that that question falls within the purview of the Committee.

**CHAIRMAN:** I have ruled on that.

**Mr WATKINS:** You have been fairly critical today, and at other times, about the lack of confidentiality with this Committee, in regard to leaking and so on.

**Mr O'KEEFE:** Could you give me an instance of when I have been critical of leaking from the Committee? I said something this morning. Could you give me another instance?

**Mr WATKINS:** I have been rapped over the knuckles before about

confidential—

**Mr O'KEEFE:** Not by me.

**Mr WATKINS:** No.

**Mr O'KEEFE:** Then please do not ascribe to me what members of the Committee do—and may rightly do.

**Mr WATKINS:** I had not finished. Correspondence on the file indicates clearly your views about the lack of confidentiality in the Committee and your requests for the Chairman to do something about that. Have you so requested?

**Mr O'KEEFE:** I do not propose to deal with that question.

**Mr WATKINS:** I am simply replying to your request.

**Mr O'KEEFE:** I will say this. I think it is fair to say that no person in the Committee has been referred to by name in any correspondence of mine, and anything that I wrote was in consequence of clear statements that appeared in the press of matters that I had hoped would be confidential. Who in the Committee was responsible for that—whether anybody in the Committee was responsible for that—I do not know.

**The Hon. D. J. GAY:** Nor the Commission.

**Mr O'KEEFE:** There is no question of the Commission. Some of it came in relation to a letter that we had not even received but we were told we were going to receive, so it cannot come from the Commission.

**Mr WATKINS:** My question was: what measures have you undertaken? You have requested that the Chairman undertake measures to ensure that leaking from the Committee did not occur. What measures have you undertaken to ensure that leaking in relation to these matters has not occurred from the ICAC?

**Mr O'KEEFE:** All staff have been reminded of their obligations under section 111, and I will do so again. The nature of the correspondence, who saw it and who held it was such that it was very tight, and none of those persons made available anything to any person outside the Commission or discussed it with others—that I ascertained. So there was no doubt in my mind that the leak came from outside the ICAC.

**Mr O'FARRELL:** It came from the Committee. There is no doubt in my mind about that.

**Dr MACDONALD:** There may be some doubt in my mind. You cannot speak on my behalf.

**Mr WATKINS:** What recommendation went to the ORC with the Yeldham file?

**Mr O'KEEFE:** The recommendation was that it not be further investigated.

**Mr WATKINS:** Who was responsible for that recommendation?

**Mr O'KEEFE:** I decline to answer that question. That question has already been asked and dealt with in another circumstance.

**CHAIRMAN:** I have made that ruling.

**Mr WATKINS:** What supporting documents accompanied the file when it went to the ORC?

**Mr O'KEEFE:** That question has already been dealt with.

**CHAIRMAN:** I have made that ruling.

**Mr WATKINS:** When you became aware of the existence of the Yeldham file, did you consider sending it back to the ORC for review, and if not, why not?

**Mr O'KEEFE:** That question has already been answered—not only today but on a number of other previous occasions.

**Mr WATKINS:** Which draws me to ask, why was that matter dealt with as a confidential matter on Friday?

**Mr O'KEEFE:** Because it was asked in a different form.

**Mr WATKINS:** I have just read the precise question that went down to you, which you replied to in your confidential papers. Can you give the Committee background to the reasons why a surveillance team was tasked to follow paedophiles in 1994-95?

**Mr O'KEEFE:** I am sorry?

**Mr WATKINS:** Can you give the Committee the reason why an ICAC surveillance team was tasked to follow paedophiles in 1994-95?

**CHAIRMAN:** I rule the question to be out of order.

**Mr WATKINS:** What does that mean?

**CHAIRMAN:** It means that you cannot ask the question. It has been already dealt with in camera. Under the standing orders Commissioner O'Keefe is not required to answer it.

**Mr O'KEEFE:** That question has been answered in question 6 in private session.

**Mr WATKINS:** Once you became aware of the Yeldham matter, should not the team have been tasked to investigate Mr Yeldham now, not a judge?

**CHAIRMAN:** Commissioner O'Keefe, I rule that question to be out of order. We have covered the paedophile matter—

**Dr MACDONALD:** You may have covered it. There are a couple of issues I would like to raise. You have argued that to release the Yeldham file to this Committee would be a breach of section 64(2) of the Act.

**Mr O'KEEFE:** Section 111 of the Act.

**Dr MACDONALD:** On the basis that it is not part of our function under section 64(2)—

**Mr O'KEEFE:** No. On the basis that I have formed the view that it is not necessarily in the public interest so to do. That is reinforced by the ambit of the Committee's jurisdiction, and in particular the prohibition contained in relation to particular matters, decisions, recommendations, et cetera, contained in section 64(2).

**Dr MACDONALD:** Do you understand or appreciate why the Committee wants that file?

**Mr O'KEEFE:** I have no resolution of the Committee as to why it does. I assume that various members want it, and that such of the members who want it want it for different reasons. What those reasons are, I do not know.

**Dr MACDONALD:** You do not have a clear appreciation as to why certain members of the Committee may wish to see that file, even following the questioning this morning?

**Mr O'KEEFE:** They have not been communicated to me.

**Dr MACDONALD:** Do you believe it would be in breach of any section of the Independent Commission Against Corruption Act if the Committee were to request a copy of the file from the Royal Commission?

**Mr O'KEEFE:** That is not a question that falls within the purview of this Committee.

**Dr MACDONALD:** One of the arguments you have adopted this morning is that it is really not a contemporary matter, it is a matter that arose in 1989. You have made reference to that on a number of occasions, seeking to, I guess,

classify it as something that is of no particular relevance now because of the years that have gone by. Yet, many of the matters that were investigated by the Royal Commission went back into the 1980s.

**Mr O'KEEFE:** 1970s.

**Dr MACDONALD:** Convince me why it is that a matter that was dealt with by the ICAC in 1989, in which this Committee has an interest, is any different from many of those issues that were dealt with in the Royal Commission?

**Mr O'KEEFE:** The Royal Commission's terms of reference required that. That is the difference.

**Dr MACDONALD:** I do not find that a very convincing answer.

**Mr O'KEEFE:** You asked me why. I am telling you why. Perhaps if you had a look at the terms of reference of the Royal Commission you would find that what I say is not only convincing, it is black and white and incontrovertible.

**Dr MACDONALD:** May I say that if that is the case, you would understand that the Parliament was interested in the sense that it crafted those terms of reference bearing in mind the need to look at past years. How then can you continue to defend your position that it is of little relevance, when it is a file that was looked at initially by the ICAC in 1989?

**Mr O'KEEFE:** I have not used that term. I have used the terms that I have used in my answers. With respect, I think it inappropriate that you ascribe to me terminology that I have not used. I have given my reasons in detail, and, as Mr Watkins says, they are forceful reasons.

**Dr MACDONALD:** I would have thought that it would be important to you that there should be proper confidence in the ICAC and that it should not be seen to have gone soft or to be soft. I have some concern that there is a view out there in the community that the ICAC has gone soft—not necessarily since your appointment as Commissioner but over some years. This was reinforced by the Wood Royal Commission. The average person in the street would see the ICAC as having been very ineffective. We know there are good reasons for that, but it is about perception. I believe there is an appreciation out there in the community that the Yeldham matter was dealt with by the ICAC but that it did not investigate it. I put it to you that some members of the Committee have genuine reasons as to why they wish to access that file, one of them being that it is important that the Committee creates a perception of public confidence in the ICAC. I think this is creating an unnecessary tension and division between the Committee that represents the Parliament and yourself.

**Mr O'KEEFE:** Can I say a number of things. Firstly, it is undesirable that that be done. Secondly, there does seem to me, standing where I stand or having



sat where I have sat, that there was at least the possibility of an agenda to cause such a situation in some members of the Committee. I cannot be responsible for that. Thirdly, it is true to say that the ambit of the Royal Commission and the ambit of the Milloo 2 inquiry of the ICAC were fundamentally different. But so is the budget: \$100 million compared with a figure that we had of, I think for that investigation, less than \$7 million. Fourthly, the Milloo 2 report contained a whole host of recommendations.

The Milloo 3 report showed that the overwhelming majority of those have been adopted both by the Police Service and by the Royal Commissioner in his second report. Many of his recommendations echo recommendations made in the Milloo 2 report. To that extent, talking in terms of failure is a little less than fair and may have the very effect that you are postulating about reduction of confidence in the community and the ICAC's effectiveness. Next, if you look at the perception of having gone soft, you will find that there is a fundamental difference between the exercise of our puff powers—today they were described as draconian—since I became Commissioner, an enormous increase.

Finally, I draw attention to the public attitude survey that was distributed on 17 July. In that public attitude survey, 93 per cent of respondents took the view that the ICAC was a good thing and an important body for the State of New South Wales; and 82 per cent of respondents took the view that the ICAC was perceived as being successful in exposing corruption in New South Wales. So you have a very high level of scientific establishment of confidence in the community. There will be anecdotal material to the contrary, frequently from people who are dissatisfied. That does not make them wrong but it makes them anecdotal, and it creates a possibility that they are being a bit one-eyed about things. In terms of the premise of your question, our own scientific material, which confirms what has been done in prior years, is inconsistent with that. If one looks at a number of circumstances, my view is that there is strong support for the ICAC in the community.

The number of people who come forward to us with material suggests a high degree of confidence. The number of people who come forward when we are having public inquiries and provide yet more information is strong. On Wednesday of this week we will be having a further hearing in one matter as a result of particular information coming forward from persons in the community as a result of our public inquiry in relation to three public authorities. I know it is difficult to dissociate the anecdotal from the generalised conclusion, but that is why we conduct a scientifically based, well-researched public attitude survey, which has received commendation in statistical circles of a high order. It is well regarded. I can do no more than test it that way and use the powers that the Parliament has given to the best advantage. In section 1 of the answers you will find the exercise of powers on page 6. It has pretty much plateaued because we are about as flat out as we can be, and it varies a bit from category to category according to the nature of the investigation we are conducting.

**Dr MACDONALD:** You must be unhappy to see this matter being the subject of an editorial in the *Sydney Morning Herald*. It has been elevated to a status which perhaps you would rather it had not been. The question is: how can we resolve the Yeldham file issue without breaching section 111 and section 64(2)? Can you advise the Committee how we can proceed to deal with this, because I do not think that this is the end of it? Can you help us?

**Mr O'KEEFE:** I have given about as much thought to that as a man can give to a subject. On the one hand I can appreciate why some members may want to see the file. On the other hand there is a question of principle involved under section 111. If I had an easy response or resolution I would have given it long since. I will continue to think about it because I see it as a tension point, although I hope that the next time we meet we will not spend almost half of the time on just that one matter.

**The Hon. I. M. MACDONALD:** What I want to get through to you is, whether there are different agendas or different motivations for members of the Committee, at the end of the day the members of the Committee who are concerned about this matter are concerned about the potential for a high level cover-up, and we would be derelict in our duty if we did not press to see that in 1989 there was no scenario that developed whereby certain allegations were then dropped off the agenda of the ICAC in exchange for certain undertakings by the judge and in relation to other persons who may well have been consulted in relation to the matter. If we did not see that as a very serious matter we would be regarded as being derelict in our duty. I do not know the motivations of other people in relation to this matter or whether there are different agendas, but in the end do you not see that members of the Committee could have a grave concern about this matter, given the weight of it and the seriousness of the allegations that we have heard in relation to the matter, both publicly and possibly privately?

**Mr O'KEEFE:** I remind you that the ICAC, the Judicial Commission and the Royal Commission have all looked at this matter. The last of those is the Royal Commission, which under its terms of reference is entitled to, and I anticipate will, examine each of those entities and what was done by them in respect of the Yeldham matter or, as it later transpired, matters. We were only concerned, in this file, with the 1989 event. Whilst I understand what you are saying to me—you may be assured of your motivation in relation to your concern—there is this question of principle that does not have anything to do with the motivation of any individual who may want to see that file. The question is one of principle related to section 111 and the interrelation between that section, the factual matrix, and section 64. Might I say that there is not a resolution of the Committee requiring it.

**CHAIRMAN:** There was a resolution.

**Mr O'KEEFE:** There was a letter in which you asked what our attitude was and then asked us to define the attitude.

**CHAIRMAN:** I can assure you that there was a resolution by the Committee to request the file from the ICAC and the Royal Commission.

**The Hon. I. M. MACDONALD:** As for your point about all Committee members wanting to see the file, I am not particularly keen to see it. Would you consider allowing the Chair and another member of the Committee from the other side, so to speak, to view the file so that we can be satisfied that in 1989 the Independent Commission Against Corruption did not play a part in the protection or cover-up of various events?

**Mr O'KEEFE:** That is assuming that there was. Can I take that on notice? May I add this. I have referred to the Royal Commission's pending report. What that report says may change the balance in relation to the public interest, in which case there are mechanisms whereby the file, on a restricted basis, could be made available to the Committee, but that is dependent upon a change of circumstances and a change of view on my part. I am not ruling that out. I am not saying that it will occur; I am merely saying that the determination of the necessity of revealing something in the public interest depends upon a judgment made from time to time in the light of the then facts.

**Dr MACDONALD:** How could any matters dealt with in the final report of the Royal Commission alter your view, which seemed to be one of arguing that you had no way to move on section 111 and other sections? Can you describe the circumstances in which it could allow you some flexibility, which is what we are saying?

**Mr O'KEEFE:** I am saying that the public interest may be a variable from time to time, depending on the then stated facts. I do not know what the Royal Commission will say or the language in which anything about that file or the investigation may be couched. In the light of that I am leaving open the possibility that there may be a changed circumstance that could give rise to a changed decision. I am not saying that it will occur. However, as there are a multitude of ways in which it might be dealt with, until I know what the Royal Commissioner says I cannot make that judgment.

**Dr MACDONALD:** What part of section 111 is likely to be influenced—

**Mr O'KEEFE:** I did not say it was likely to be, I said it may be.

**Dr MACDONALD:** What part of section 111 might be influenced by the way in which the matter is dealt with by the Royal Commission?

**Mr O'KEEFE:** Section 111(4)(c).

**Dr MACDONALD:** So it gets back to the point that in fact you have exercised your discretion under section 111(4)(c)—that you certify at the moment that it is not in the public interest. You have used your judgment.

**Mr O'KEEFE:** Yes, and that is a judgment committed to me to be made from time to time.

**Dr MACDONALD:** And you believe that such judgment might be influenced by the way in which it is dealt with by the Royal Commission.

**Mr O'KEEFE:** Could be.

**Dr MACDONALD:** I used your words "might be".

**Mr O'KEEFE:** Well, could or might.

**(Short adjournment)**

**CHAIRMAN:** People in the gallery are invited in, but they are expected to remain quiet when the Commissioner is answering questions or when members of Parliament are asking questions. People should not wander around and look at documents on other people's tables. It is improper. The only people permitted into this area are Commissioner O'Keefe and his staff. Anyone else who wishes to speak to people, or anyone wandering around should not look at information on members' tables.

**Mr WATKINS:** That should surely apply to members of the Commissioner's staff as well.

**CHAIRMAN:** Yes, it does. That applies to everyone who is in the gallery, Commissioner's staff and other members of Parliament as well.

**Mr O'KEEFE:** There is no suggestion that any officers of the ICAC were looking at people's documents, is there?

**Mr WATKINS:** Yes, there is.

**Mr O'KEEFE:** By whom?

**Mr WATKINS:** By me.

**Mr O'KEEFE:** Who was the officer?

**Mr WATKINS:** Mr Hummerston.

**Mr O'KEEFE:** What was he looking at?

**Mr WATKINS:** He was up here looking at material scattered around my desk and on my desk. I do not appreciate it.

**Mr O'KEEFE:** We seem to have an issue of fact there.

**CHAIRMAN:** We will now go on to the Operations Review Committee, pages 39 to 44, questions 15 to 19.

**Dr MACDONALD:** In answer to question 15, in which there are queries about membership and the operations of the Operations Review Committee, you say at the bottom that the committee is functioning effectively and efficiently?

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** On what basis do you make that statement?

**Mr O'KEEFE:** It is apparent from the questions about a whole series of matters that each member of the Committee has read the material in detail and analysed it. Secondly, the degree of perception of the matter, or lack of perception if the report is not thought to be clear, is demonstrated. Thirdly, there are many instances in which the recommendation made by the staff is varied by the members of the committee. In other words, they are applying a critical faculty to the reports presented to them. Efficiently, each of the meetings finishes within a time frame on that day, which varies according to the extent of the agenda, but always within a reasonable time frame so that there is no question of people getting tired from sitting all night and going until two or three o'clock in the morning, with levels of rationality falling.

**Dr MACDONALD:** As they do in local government?

**Mr O'KEEFE:** If people go for too long there is a real problem.

**Dr MACDONALD:** In answer to question 19 you talked about internal and external audits and you mentioned that an external audit of reports was conducted. Do we have any details of that? As I understand it, you have given us details of one of the external audits on page 43?

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** Was that audit conducted by Mr Harris' office?

**Mr O'KEEFE:** Yes, that is the 100 randomly selected inquiry files referred to at the bottom of page 43.

**Mr O'FARRELL:** Question 19 relates to auditing of the Operations Review Committee and talks about a project officer randomly selecting reports submitted to the committee as part of the audit process. How does that person randomly select, and who ensures that he or she is randomly selecting?

**Mr O'KEEFE:** It happens to be a she, yes. Could I take it on notice? My impression is that it is a computer-generated randomisation, but I am not exactly clear on that.

**Mr LYNCH:** Question 16 deals with the reports that go to the ORC. Is it a complete file or is it a summary that goes to the ORC? What sort of detail goes to that committee?

**Mr O'KEEFE:** You may recall that on Friday some explanation was given of this. The process is that the file has the fact of the complainant, the nature of the complaint, the facts in support of the complaint, the principles to be applied, an analysis then applying those principles to the facts, an assessment as to what recommendations should be made and a recommendation. That is what is considered by the Operations Review Committee. In some instances, depending upon the nature of the matter, that report can be extremely voluminous. It may run into many, many pages, and the agendas are quite substantial.

**Mr LYNCH:** Question 18 refers to the number of times that recommendations to the ORC are rejected and the number of times they are not. When recommendations are not accepted by the ORC, is it merely a technical difference with the recommendation, or are they quite often substantial differences?

**Mr O'KEEFE:** The committee takes the view that the facts as revealed in the report are insufficient for the committee to adopt the recommendation. The committee then requires an additional report or, if a particular matter is referred to in the report that the committee feels needs further following up by way of investigation or inquiry it will request that that be done, it is done, and then it is brought back to the committee.

**The Hon. D. J. GAY:** Earlier today in your opening statement, and at other times, you made comments regarding the confidentiality of source. Has the ORC examined the situation when, on occasions—and it has certainly been brought to our attention—people who have made complaints to the ICAC have had their confidentiality breached by the case officers using their names and files to the people they are questioning?

**Mr O'KEEFE:** If you have any instance of that I would like to get it because that runs counter to our procedures.

**The Hon. D. J. GAY:** I cannot give you an exact incident.

**Mr O'KEEFE:** Unless, of course, the complainant has given consent to the name of the complainant being made known.

**The Hon. D. J. GAY:** This concern has recurred over a number of years, that when contact was made with a particular department, inadvertently the source of the original complaint becomes known and the complainant then becomes the victim. Has the ORC examined this particular situation?

**Mr O'KEEFE:** No, but if there is a suggestion in any recommendation that

the matter be referred back to a department or agency, we have now—this is in my time—adopted a different form of recommendation. If it is a protected disclosure it expressly adverts to that fact and the need to maintain confidentiality in relation to the name of the complainant, unless the complainant has agreed to have his or her name revealed.

On the other matters generally, the name of the complainant is not made known. Sometimes, however, the circumstances are such that with the mere statement of the circumstance it is almost impossible for people not to draw an inference that a particular person or persons was or were the complainant or complainants. It is almost inherent in that situation if you are going to make any inquiries about a particular matter at all that can happen. It is a limited category of case but it can happen.

**Dr MACDONALD:** I suppose the ORC looks at matters which you have declined to investigate, as we saw in the Yeldham matter. Does it look at a range of issues, looking at how cases you have dealt with have been dealt with and also—

**Mr O'KEEFE:** It might help if I tell you something about the agenda. First, there are the minutes of the previous meeting, matters arising from them. Then there is a schedule, section 2, that deals with formal inquiries which have been given a code name and a number when that has been the subject of a report. Then there is a detailed report in relation to the investigations that have been carried out up to that date. So that is upgraded as it comes forward on each occasion so the members know then what the development of a matter that is the subject of a formal inquiry—that is the use of our formal powers—is. They then look at a number of matters that have been the subject of disagreement between the committee and the recommendation and they look at what the further information is that they have requested—whether it has been provided, whether that changes the recommendation—and they consider that. Then they look at section 10 complaints which have been the subject of individual reports or which have been dealt with by the assessments panel and which are the subject again of individual reports. The numbers will vary from meeting to meeting. They then determine, as I have indicated, whether to agree with those recommendations or not—vary them, reject them and send the reports back for further consideration.

There is then a section about information that has been received. Material may be received that is not a complaint but it is information that is provided to each of the members of the committee, and if any of them take the view that it is something that may be categorised as a complaint and not information they can, and sometimes do, ask for a report in respect of that. The next category of matter is matters that have been referred to another authority, either formally pursuant to section 53 with a requirement to report back under section 64 or referred back for further information. There is a report as to the nature of the information that has been received or whether we are still awaiting the information and the committee may say, for instance, "We have been waiting on this for a while. Give

them some further follow-up and say that the committee is anxious to have that for its next meeting." We then look at matters in progress that are not the subject of formal exercise of powers but that have involved some further investigation. We then look at statistics about the Commission's outstandings and what the age characteristics of complaints and matters are. Then there is a general provision for general business, at which time various matters are discussed: for instance, performance indicators and things like that. There is a whole range of matters.

**Dr MACDONALD:** It seems that the vast majority of the 1,068 reports that were considered under section 10 complaints in that 12-month period were regarding matters that were not to be proceeded with and not to be investigated.

**Mr O'KEEFE:** It depends on what you mean by that. If they are management matters and systems matters we often do not investigate them. We refer them back to the agency and then have our corruption prevention people do some work with them.

**Dr MACDONALD:** I am just using your figures—674 out of 1,068 were matters considered by the assessment panel not to warrant further ICAC attention.

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** If the ORC has made that decision, how do you then deal with the complainant?

**Mr O'KEEFE:** There is post-Operations Review Committee correspondence that goes to the complainant.

**Dr MACDONALD:** In some cases, many of which are brought to our attention, the whistleblowers involved are concerned that certain matters have not been proceeded with. Are you confident that the way in which you are dealing with whistleblowers is satisfactory? Has there been any change in the way in which you deal with whistleblowers since our last meeting in December?

**Mr O'KEEFE:** The answer to your first question is that you can always do better, and we are trying to. We are presently reviewing, and are about at the end of the process of reviewing, the post-Operations Review Committee correspondence so as to be more informative. Consideration is being given at present to whether there should be some intermediate contact between acknowledgment and disposal where it is not a question of getting further information from the complainant but letting the complainant know that we are still seized of the matter and doing things, which is a fairly significant change. It is likely to be resource intensive but nonetheless it is something that we are presently about to embark upon in terms of implementation. We have been looking at what it means to the functioning of the Commission since we last met here.



**Dr MACDONALD:** What is the ICAC's relationship with Whistleblowers Australia?

**Mr O'KEEFE:** If one looks at the individual whistleblowers it is quite good. It is not good, I think, in relation to the organisation and I would prefer not to go into the personality reasons for that.

**Dr MACDONALD:** Leaving the personalities out of it, why—

**Mr O'KEEFE:** How do you?

**Dr MACDONALD:** Just do not mention any personalities and do not talk about personalities—

**Mr O'KEEFE:** No, I am not talking about that. I do not want to name names but sometimes you get people into particular positions who, whatever we did, however good we were, however attentive we were, would not be satisfied because they have a view as to a particular outcome and unless you come to the same view as they then it is very difficult to deal with them.

**Dr MACDONALD:** I think that I asked a question of you last time about the recommendation of, if think, the Ombudsman about the establishment of a protected disclosures unit and you said no.

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** Have you changed your view on that?

**Mr O'KEEFE:** No.

**CHAIRMAN:** There being no further questions on that matter we will move on to Financial Management and Resources, question 21, page 45 of the questions upon notice.

**Mr WATKINS:** I do not want an answer to this today but perhaps in the annual general report or at some later stage could the Commission report on how it is approaching the problems that may arise from the millennium bug or the changeover from 1999 to the year 2000 and what measures—

**Mr O'KEEFE:** We are well under way. It is not going to be a problem. Ms Brodie and her IT team have been looking at this and we do not contemplate any problem with it at all—touch wood. We are applying the best technology we can to ensure that there is no problem because otherwise it could be destructive of our databases going back to the start of the Commission.

**Mr O'FARRELL:** Commissioner, may I take you to the statement of financial performance that you forwarded to the Committee which I think shows

a further reduction in the Commission's budget, including a 2 per cent saving "required of all government agencies". Do you regard it as appropriate that a corruption investigation body should be treated in the same way as the State Rail Authority or the Department of Community Services, or indeed the parliamentary departments for that matter, in being forced to make productivity savings?

**Mr O'KEEFE:** There are difficulties, first, because of the labour-intense nature of the work that we undertake, secondly, the expectation that the legislation creates and that parliamentary statements often create that we will be in a position to deal with many more matters in depth than our financial resources enable us to and, thirdly, there is always the problem that one must balance off budget, and hence personnel, against the ability of the Commission to fulfil its function. Another function arises in the current year: namely, because capital authorisation limits are so restricted it has been necessary for us to look at the upgrading of our computer technology, our IT, by largely recurrent expenditure leases, which have been cleared by the Auditor General.

That will mean that although the reduction that we sustained was \$500,000—which, in the eye of the all over budget, is a small amount for the budget but a large amount for us, but better than many others did—if you add to that the amount that we would have to commit from the current expenditure to IT it is giving rise to a number of difficult decisions. Senior staff have been meeting regularly and diligently to bring up a common position. This week I am expecting a report that gives me three options to choose between, or perhaps something that arises out of those options. It is not easy.

**Mr O'FARRELL:** Somewhere in the answers—I can not find it—you have a table that indicates where your budget is spent according to operational area. Can you provide us, on notice, with an indication of the impact of budget reductions on those areas for the past few years? In other words, are investigative services being quarantined from budget cutbacks?

**Mr O'KEEFE:** You will find that at page 14 of the supplementary.

**Mr O'FARRELL:** Thank you. Two years ago would that table have looked the same? Would it have looked the same last year? Are investigations being quarantined from the cutbacks forced on you? In addition, are there things that you no longer do that you once did?

**Mr O'KEEFE:** If you look at the figures on page 14 you will see that in percentage terms the number of investigators has not really changed in any significant way. If you look at the figure of 31, which was the last two years of Mr Temby's period as Commissioner, you will see that that included people who were specifically allocated to Milloo. Some people were brought on board for that purpose. One can say that in relation to investigators we have maintained essentially the same situation. If you look at the number of lawyers, as a percentage of the total staff, you will see that we have not changed—it remains 6

per cent for 30 June 1997, and was 6 per cent in the last two years of Mr Temby's term.

I might say that the 135 figure compared with the 138 figure during Mr Temby's two years is different from an establishment figure, that is an actual figure. When I came to the Commission the establishment was 156. We could not possibly have sustained that on the budget that was then available to the Commission, and we certainly could not sustain it now. There is no area that we have withdrawn from that we were not in before. The question that is going to be difficult to know is the extent to which we can deal with given areas or should we elide given areas. The statute requires us to do investigation, corruption prevention and education. Having embarked on a policy in relation to education and corruption prevention, to cut it off at the knees before it has an opportunity to bite might be to deprive the community of the value of the money put in to date. Balancing that off with investigations is a difficult matter.

**Mr O'FARRELL:** At a previous public hearing you spoke about the cost of surveillance operations. Have the cutbacks over the past two years forced the Commission to reduce the number of surveillance operations undertaken or has it forced it to try to offset those with the use of other technologies, if that is possible?

**Mr O'KEEFE:** There are some areas that you can use technology without physical surveillance, but they are limited. You normally have to have some physical surveillance in conjunction with electronic surveillance. Both are expensive. In order to make a decision to commit those resources—I have to make the decision on recommendations made to me—I have to look at the general budgetary situation, the assessment by the relevant unit director as to the prospects of success of that investment in surveillance, its necessity for that particular investigation, and then make a decision. The less money you have, the tighter you have to be in exercising those judgments. The less money you have in the end, once people reach a given level of productivity—which is what they have reached now—you can only do less for less, you can not do more for less.

**Mr O'FARRELL:** In making those decisions—which are difficult and, in some cases, regrettable because you are being denied funds—is there a benchmark in relation to the likelihood of success? Does the investigating officer have to say there is a 65 per cent—

**Mr O'KEEFE:** No, it is a judgment, and part of the judgment will depend on the seriousness of the matter. Sometimes if the matter is serious and there is a given prospect of success, you may be caused to make a judgment to put the money in. Otherwise, what you have got is a situation in which you take the easy ones and that is not desirable in the long term. You need to have some short investigations in relation to particular aspects of governmental operation, maybe inspectorial functions, certain decision-making functions, regulatory functions, that will go across more than one department or agency. You also need to look at

the hard ones.

**Mr O'FARRELL:** Is it likely that in the past you have made decisions not to proceed with surveillance operations because of budget decisions, which might have produced a good result?

**Mr O'KEEFE:** That is possible; I can not deny that. We do not know what they might have produced. You do not know what it might have produced if you had been there a couple more days.

**Mr O'FARRELL:** Do you have any understanding with Treasury or the Premier's Department about your future budget? Is this going to continue into the future? Will you be forced to make more of these decisions about whether investigations proceed?

**Mr O'KEEFE:** We have a projected budget for 1998-99. There is a three-year projection for the budget. That is subject to the exigencies at the time that the budget is being prepared. That will depend on factors beyond my control, and probably beyond that of anyone at the moment. You will have to see those factors closer to the date on which the budget is done. When one talks about reductions in the budget, I agreed with Mr Baxter—the then director-general of the Premier's Department—to a reduction of \$750,000 in the year ending 30 June 1996. There was a further reduction of \$350,000 and now \$500,000. Of course, once you have lost the \$750,000 and \$350,000 there are, as it were, reductions each year from what you would have got had that not occurred. The effective reduction is not just \$500,000—it is \$500,000 plus \$350,000 plus \$750,000 this year, compared to what we would have had but for those reductions over that three-year period.

**Mr O'FARRELL:** Can you provide to the Committee, when it is finalised, your proposals for how you are going to handle the \$500,000 reduction this year?

**Mr O'KEEFE:** Yes, I think so. Of course, that is a matter that I must decide. It would be for information. If it were otherwise, this Committee could tell me and the Commission where it should spend its money.

**Mr O'FARRELL:** Alternatively, we could seek to influence the Government to ensure that you have the resources required to put up an adequate wall against corruption in this State. It concerns me and my coalition colleagues that since the election the Government has wound back your budget.

**Mr O'KEEFE:** I can provide that material. In fairness, as I have said in my answers here, the Premier has repeatedly stated—and publicly stated, not just to CEOs and those he deals with at the investment level—that the New South Wales Government is committed to a corruption-free State. That might assist you in that endeavour to get some more.

**Mr WATKINS:** To put Mr O'Farrell's outburst in context, it should be made clear that the ICAC has lost its responsibility for police corruption—a substantial part of its work. It determines where resources go—such as into advice giving and education, and thereby not into the sharp end of corruption investigation. It should be made clear that at the same time there has been a reduction in the budget, the PIC has been set up with a budget of \$9.7 million to combat corruption. At the same time, we have had an expensive police Royal Commission that is rooting out corruption. For anyone to suggest that the New South Wales Government is weak on corruption is absolute nonsense.

**Mr O'KEEFE:** The \$500,000 that we were refused this year reflected the decreased activity in the Commission relating to the deprivation of police matters. Going back to what was asked earlier by Dr Macdonald, if we had asked for \$9.7 million as an additional budgetary matter to investigate police, I think our prospects of getting it would have been less than sanguine. That has been recognised, for one area of the public service, as appropriate for this new body.

**Mr O'FARRELL:** How many departments, authorities and personnel does the Commission have anti-corruption responsibility for?

**Mr O'KEEFE:** There are 370,000 persons under our jurisdiction, and that excludes police. There are 177 local government authorities, in excess of 100 major departments and agencies, and then there is a whole set of peripheral organisations, boards, et cetera that come within us. I have just been advised that it is 575 organisations.

**Mr O'FARRELL:** So the loss of one authority and a few thousand staff does not reduce your responsibility greatly?

**Mr O'KEEFE:** No. We did a calculation in relation to that. There were discussions with Treasury and that is reflected in the \$500,000, as is our 2 per cent reduction.

**Mr WATKINS:** We have debated this before and I have challenged you before on your mathematics.

**Mr O'KEEFE:** You mean you were asking me questions?

**Mr WATKINS:** No, I have challenged you before on your mathematics.

**Mr O'KEEFE:** Being confrontational?

**Mr WATKINS:** A challenge need not be confrontational. A much clearer equation would be how many organisations has the ICAC actually looked at—which agencies has it looked at—then get the numbers of people involved in that perhaps and draw some equation?

**Mr O'KEEFE:** That makes an assumption that we had all the money to look at all the people we wanted to look at. How many we wanted to look at might be more to the point.

**CHAIRMAN:** Have you found the same type of culture that existed within the New South Wales police force, excluding local government, in any other government department in the State of New South Wales?

**Mr O'FARRELL:** There is one ongoing investigation that I could refer to.

**Mr O'KEEFE:** I prefer not to answer that question.

**CHAIRMAN:** We shall move on to recent reports, questions 22 to 24 on page 46 and 47.

**Mr LYNCH:** On the financial statements I notice that you—

**Mr O'KEEFE:** What page? Is it on the document—

**Mr LYNCH:** It is on the extra documents that were faxed to us about the financial statements. It refers to the corporate services program. For the last financial year there was \$2.28 million spent on corporate services and 27.5 staff. I do not pretend to be an accountant and it is one of my claims to fame that I am not but at first glance that strikes me as a very high figure. Can you comment on that? What does corporate services do because it is hard for me to know its precise function from that documentation?

**Mr O'KEEFE:** I think you should look first at the figure which is down by six from the preceding year. I think it was about 42 or 43 when I came to the Commission in November 1994, so there has been a very significant reduction in the numbers and consequent cost. That is partly because I determined that there should be a restructuring and a number of functions should be performed differently, and that has been quite efficient. Corporate services deals with our buildings, our insurance, our payrolls, our equipment, our IT, security and technical services. It deals with our relationship with Treasury, it deals with our audit, our internal continuing audit. It has a pretty wide-ranging sort of brief. What I have done first is to ensure that corporate services should not be a bottleneck or a funnel through which everything has got to pass. There has been a very significant devolution of function and budget to each of the units and that has meant that the corporate services department, through its accounting section, has to provide constant figures—and they are pretty good figures—about how we are going, about how each unit is going on budget and how programs are going against budget. I get those every month. I get them within about 10 days at the end of the month. I go through them in detail, I then discuss them with the director of corporate services and the accountant and then I get each of the unit directors in and quiz them about how they are going, why this has happened, why that has not happened, et cetera. It is a very useful management tool.

**Mr LYNCH:** In the program on the page before the table I referred to there is a reference to corporate services program client groups and to the monitoring and reporting of the Commission's performance to the Treasury, the Premier's Department and other central agencies. Is that primarily a financial reporting?

**Mr O'KEEFE:** The Treasury wanted us to provide to them the very material that we have provided to this Committee. I took the view that this was inconsistent with our independence, that we were answerable to this Committee and we would produce that material to this Committee. Treasury might then get it but this was our accountability mechanism. That is there. In terms of the Premier's Department, there are all sorts of directives about travel, how you book, all this sort of material, and the negotiations in relation to budget. They are matters in which corporate services take a pretty big role so that in the period, say from March to May, they are very much engaged in looking forward and trying to get what it is we need. No longer can you put in a wish list. You have got to have something that is pretty solid and they do that. Other organisations that we have a fair bit to do with are again the Premier's Department and, it is not called the Public Employment Office now, it is called the Public Sector Management Office, and that is one we have a lot of dealings with. That is the sort of relationship that they are responsible for.

**CHAIRMAN:** We move now to potential for conflicts of interest, questions 8, 9 and 10 on page 3.

**Mr WATKINS:** There is a question that relates to Mr Cox and a complaint regarding some issues relating to the National Trust which has been in the press in recent times. You may recall I asked you some questions about the National Trust at our last hearing?

**Mr O'KEEFE:** And the one before.

**Mr WATKINS:** You kindly wrote to the Committee in response to one of the questions that I asked you about the Newcastle ICAC?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** And there was some confusion over where that came from. You cleared that up in a letter on 8 May where you replied to the Committee and explained what it was?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** In that explanation you said that at some stage there was some work going on in Newcastle and a fax machine there had been marked with ICAC Newcastle and it had since come back to the office, hence the confusion. You still stand by the explanation that you gave?

**Mr O'KEEFE:** I do, and I do not believe actually that that emanated from the ICAC. I believe that the notation at the top may well have been a receipt by us, that is, from the National Trust itself. That is my belief. I cannot take it any further than my answers have.

**Mr WATKINS:** In question 8 I asked you, through the Chairman, about contact with members of the New South Wales Parliament and you said, "I do not believe so". Does that mean you do not remember or—

**Mr O'KEEFE:** I think it did not happen.

**Mr WATKINS:** It did not happen?

**Mr O'KEEFE:** That is my recollection. If you have something specific to jog my memory, well and good.

**Mr WATKINS:** Did you speak to the Hon. J. F. Ryan in the upper House about a motion regarding this matter, because he is on record at some length in *Hansard* talking about this issue?

**Mr O'KEEFE:** I do not think I ever contacted Mr Ryan. I cannot ever recall having had any contact other than the normal contact when I write letters sending material from the ICAC out to members of Parliament.

**Mr WATKINS:** So there were no phone conversations with members of the upper House over this matter?

**Mr O'KEEFE:** I do not recall any such conversation.

**Mr WATKINS:** Some allegations have been made that again have been in the press from Mr Cox regarding your involvement in the matter as Chairman of the National Trust.

**Mr O'KEEFE:** I do not recall those. What I do recall is that Mr Cox disagrees with a view that was taken of the interpretation of the will of the late Thistle Stead, a matter which is now before the Supreme Court and in respect of which I understood there had been a settlement. He does not agree with that view, but that is Mr Cox's view. The Chairman of the Stead Foundation has published a number of refutations of the allegations made by Mr Cox.

**Mr WATKINS:** There are allegations that the National Trust actually stacked the committee of that foundation.

**Mr O'KEEFE:** I had a look at that. I can find no support for that at all. Indeed, the stacking appeared to have been the other way, at the preceding meeting, by Mr Cox.



**Mr WATKINS:** And then wound up the foundation?

**Mr O'KEEFE:** No, that is not right either. The foundation is not wound up. The foundation is still extant.

**Mr WATKINS:** But that the foundation's bequest of \$1.2 million—

**Mr O'KEEFE:** The foundation never got a bequest and even if the interpretation of the advice to the National Trust is wrong, the Stead Foundation still gets no part of the bequest. The bequest is either that it goes to the National Trust with a precatation that the moneys be utilised in whole or in part for Wirrimbirra or, alternatively as a trust impressed upon it to spend on Wirrimbirra, not on the Stead Foundation—quite different—and that the Wirrimbirra Sanctuary is owned by the National Trust, not the Stead Foundation.

**Mr WATKINS:** Allegations regarding this matter have come to the ICAC. Is it true that Mr Cox has called for you to stand aside from your position as the Commissioner of the Independent Commission Against Corruption?

**Mr O'KEEFE:** I have had nothing to do with any complaints that he has made. I have not viewed his correspondence. I cannot assist you on that. That has been dealt with by other officers entirely. It seemed to me to be appropriate that I not be involved in that.

**Mr WATKINS:** When Mr Cox was giving evidence at the ICAC to Mr Hummerston—

**Mr O'KEEFE:** I do not think he gave any evidence.

**Mr WATKINS:** When he was being interviewed by Mr Hummerston and Mr Feneley at the ICAC offices, did you interrupt that interview?

**Mr O'KEEFE:** No. I popped my head in the door to speak to Mr Feneley about a matter that was quite urgent. Mr Feneley indicated that I should not enter the room. I did not realise Mr Cox was there. There was a person with his back to me and Mr Feneley came out and told me it was Mr Cox and I went away.

**Mr WATKINS:** So you are saying you did not know that Mr Cox was in the room?

**Mr O'KEEFE:** I had no idea.

**Mr WATKINS:** It was just a coincidence—

**Mr O'KEEFE:** Yes, absolutely.

**Mr WATKINS:** —that Mr Cox, who has made allegations about your role

in this matter—

**Mr O'KEEFE:** I do not know that he has and if you tell me that he has, then it is news to me.

**Mr WATKINS:** If Mr Cox has called on you to take certain action regarding this matter, you just coincidentally happen to interrupt the interview, the only time when he was down there?

**Mr O'KEEFE:** My policy is that I do not just ring up and call staff up to see me. I go through the premises at least three times a week and I go to senior staff's offices deliberately so that I can see what the staff are doing and staff can see me as interested in the work that they are doing. The answer to your question is yes.

**Mr WATKINS:** Is such an interruption appropriate, considering the sensitivity that Mr Cox holds—

**Mr O'KEEFE:** There was no interruption and I had no idea that Mr Cox was there. I have told you that.

**Mr WATKINS:** Mmm.

**Mr O'KEEFE:** Whether you say "Mmm" or not, that is the fact.

**Mr WATKINS:** It was suggested to Mr Cox at the interview that he not go to the media.

**Mr O'KEEFE:** I have no idea what was suggested to Mr Cox.

**Mr WATKINS:** I am informing you. Since that time has the National Trust issued press releases about this matter?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** If they have, is it appropriate that an organisation that you head, the National Trust, has issued press releases about a complainant to the ICAC, suggesting that he not go to the media about your organisation and the ICAC?

**Mr O'KEEFE:** That may depend upon the circumstances. If somebody tells a lie about you I suppose an organisation is entitled to defend itself, and the National Trust should. If somebody distorts the situation the same would apply. So it will depend entirely upon the circumstances. Those postulated in your question I do not think are correct.

**Mr WATKINS:** It is appropriate that you head an organisation that is subject to the jurisdiction of the ICAC?

**Mr O'KEEFE:** There is a question as to whether it is. The answer to that is that I have already answered your question at least three times before and my answer remains the same: yes.

**Mr WATKINS:** Only in recent months it has become clear that the National Trust is subject to the jurisdiction of the ICAC.

**Mr O'KEEFE:** That may be.

**Mr WATKINS:** If it is, is it appropriate for you, as the head of the ICAC, to remain in that position?

**Mr O'KEEFE:** Yes. It would simply mean that if any conflict of interest situation arose I would have to withdraw from that.

**Mr WATKINS:** If I called on you to resign as head of the National Trust would you say no?

**Mr O'KEEFE:** That is not a proper question.

**CHAIRMAN:** I rule that question out of order.

**Mr O'KEEFE:** With great respect, it does less than justice to this Committee and to you.

**Mr WATKINS:** Other allegations relating to your behaviour as head of the National Trust have come to the ICAC.

**Mr O'KEEFE:** Have there?

**Mr WATKINS:** Have there?

**Mr O'KEEFE:** I have no idea, you tell me what you are talking about.

**Mr WATKINS:** There was a matter relating to Everglades at Leura and dealings in relation to that.

**Mr O'KEEFE:** That was dealt with on a prior occasion. I do not think it falls within the ambit of this Committee's jurisdiction.

**Mr WATKINS:** But those allegations regarding the National Trust's involvement with Leura Everglades did go to the ICAC, did they not?

**Mr O'KEEFE:** I do not know.

**Mr WATKINS:** Does this questioning make it clear that your position is perhaps untenable at the National Trust?

**Mr O'KEEFE:** I think one must look at the source of the question and my answer to your question is no. You have asked me that question before on at least two occasions. My answer remains the same.

**Mr WATKINS:** Circumstances have changed since then. I refer to the ICAC Newcastle matter. I remain confused over that because at the hearing on 17 December you assured the Committee that National Trust press releases were not faxed out from the ICAC. From what you said earlier you now think that that may have been the case?

**Mr O'KEEFE:** I will have to take that on notice, I do not know. I have given you my answers.

**Mr WATKINS:** On page 140—

**Mr O'KEEFE:** I do not have that.

**Mr WATKINS:** I think you have a copy. At page 140 of the previous—

**Mr O'KEEFE:** Mr Watkins, I do not have that. I have up to page 62, that is all I have.

**Mr WATKINS:** This is page 140 of 25 October.

**Mr O'KEEFE:** I do not have that Mr Watkins, I have told you that three times. I do not have it with me.

**Mr WATKINS:** I thought you would have come prepared with that.

**Mr O'KEEFE:** You said that I had it. I do not have it, I did not bring it with me.

**Mr WATKINS:** I will draw your attention to it. In answer to a question from me regarding press releases you said:

Press releases for the National Trust are drafted by the National Trust press officer. They are brought through to me and I approve them.

I then asked:

And then they may then be faxed out from the ICAC office?

And you answered:

No, they are faxed out from the National Trust.

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** Then I asked about the Newcastle ICAC.

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** Do you still stand by that? It now seems that that press release with "Newcastle ICAC" across the top in fact emanated from a fax machine within the ICAC building at Redfern.

**Mr O'KEEFE:** I do, and I will tell you why. As I said on the first occasion, drafts are sent to me by the press officer. I look at them and fax them back to the press officer or person responsible at the National Trust and then they issue them from the National Trust.

**Mr WATKINS:** So you do fax out press releases?

**Mr O'KEEFE:** No, I do not fax out. I fax the copy back to the National Trust, but I do not fax out press releases.

**Mr WATKINS:** But you have faxed a press release from the ICAC offices at Redfern to another place?

**Mr O'KEEFE:** That is possible, I would need to look at the document, because I have not seen the document. Do you have a copy that you could show me?

**Mr WATKINS:** You have a copy yourself.

**Mr O'KEEFE:** Do you have a copy to show me. If you do, will you show it to me?

**Mr WATKINS:** There is a copy here that I am happy to show you.

**Mr O'KEEFE:** Then I will take your question on notice. Could I have that document please?

**Mr WATKINS:** What do you understand as a conflict of interest? What does that mean?

**Mr O'KEEFE:** It means many things, depending on the circumstances. It means that somebody is called upon to make a decision in relation to a matter on which they have a personal involvement, essentially.

**Mr WATKINS:** Perceptions of conflict of interest can be damaging to public figures like yourself, can they not?

**Mr O'KEEFE:** If they are soundly based they can be.

**Mr WATKINS:** Would you acknowledge as a growing impression that your role is being undermined because of perceptions of conflict of interest?

**Mr O'KEEFE:** Only by your questions; that is my perception.

**Mr WATKINS:** Are people other than myself suggesting that you are in positions where there are conflicts of interest?

**Mr O'KEEFE:** Not that I am aware of; not to me.

**Mr WATKINS:** Further down the page there is a question relating to your membership of the Military and Hospitaller Order of St Lazarus of Jerusalem and allegations of conflicts of interest that arise because of your membership of that.

**Mr O'KEEFE:** No, I think there was only one.

**Mr WATKINS:** One suggestion of a conflict of interest. What is the size of that order in New South Wales? How many members in New South Wales?

**Mr O'KEEFE:** I cannot tell you offhand; I will take that on notice.

**Mr WATKINS:** Would it be less than 30?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** I understand that it is less than 30.

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** How often does it meet?

**Mr O'KEEFE:** About once a month or perhaps every two months.

**Mr WATKINS:** You have indicated that at least one member of a local government council is a member of that order. Is he a member of Ku-ring-gai Municipal Council?

**Mr O'KEEFE:** Yes. I add that I cannot remember in the time that I have been a Commander of that that he has ever attended a meeting.

**Mr WATKINS:** You are a Commander? Can you explain that?

**Mr O'KEEFE:** Commander is the equivalent of a President.

**Mr WATKINS:** Are you the President of that organisation?

**Mr O'KEEFE:** No, I am the Commander.

**Mr WATKINS:** You are the Commander of that organisation?

**Mr O'KEEFE:** In New South Wales, yes.

**Mr WATKINS:** The St Ives Progress Association brought a matter to the ICAC over some time relating to problems with the St Ives bus company. The Committee discussed that at a previous meeting. That related also to Ku-ring-gai Council. Was the other member of the order who is on Ku-ring-gai Council involved in the issue relating to the St Ives Progress Association and the St Ives bus company?

**Mr O'KEEFE:** I cannot tell you, I do not know.

**Mr WATKINS:** He was part of the council that made decisions relating to an application?

**Mr O'KEEFE:** I do not know that either.

**Mr WATKINS:** I think you have written to the Committee to outline the history of that case. You have indicated that Ku-ring-gai council did in fact have a role to play in determining that matter.

**Mr O'KEEFE:** I do not think that that is accurate. Ku-ring-gai council made some decisions back in 1987 or 1988, or some time like that. I do not think the present member of the Order was a member of the Order at that time. My recollection is that the decision by the council was quite peripheral to the matter, the subject of the complaint to the ICAC which was about another entity.

**Mr WATKINS:** Again we have an organisation outside the ICAC that you are the Commander of that has members who are involved in a matter before the ICAC in which you have a role to play in determining whether corruption has taken place?

**Mr O'KEEFE:** No. I have answered that. No is the answer.

**Mr WATKINS:** Are your links to the Order not sufficient for you to realise that there may be a conflict of interest that arises?

**Mr O'KEEFE:** No conflict of interest arose.

**Mr WATKINS:** Question 25 relates to this issue. There was a question relating to a Court of Appeal decision regarding Mr Abraham. The Court of Appeal found that you should have disqualified yourself from hearing that matter on the grounds of apprehended violence, presumably when you were a Supreme Court judge. Could you explain what apprehended violence means?

**Mr O'KEEFE:** No. That is not a matter that is relevant to any matter that

the Committee is concerned with. I expressed that in the answer to question 25. The judgment will speak for itself, as will the statement that my conduct of that matter was scrupulously fair.

**Mr WATKINS:** You will not answer any further questions as to the nature of apprehended violence?

**Mr O'KEEFE:** No.

**Mr WATKINS:** Or why the Court of Appeal described your actions in that way?

**Mr O'KEEFE:** Mr Watkins, you no doubt have a copy of the judgment. If you do not, you can bespeak one; I am sure there will be one in the Parliamentary Library. I suggest you read that for my answer.

**Mr WATKINS:** At our previous hearing we discussed your use of ICAC resources to carry out your fairly extensive community activities. You indicated that your secretary would, on occasions, type a private letter or one for the National Trust. How often did that happen?

**Mr O'KEEFE:** I cannot tell you, but an analysis was done of the time spent on that. What she does is fairly limited and that was priced at an hourly figure that represented the cost and on-cost to the Commission, and I pay that on a quarterly basis.

**Mr WATKINS:** You gave evidence last time that that amounts to \$3,200 a year?

**Mr O'KEEFE:** I cannot remember the figure.

**Mr WATKINS:** You did, you said \$800 a quarter and then you corrected yourself and said, "In the vicinity of \$850". That \$3,200 worth of work is quite an amount?

**Mr O'KEEFE:** Is it, over a year? It is at some fairly substantial hourly rate so that there could be no criticism that there was featherbedding of the rate.

**Mr WATKINS:** Does your involvement in this organisation and your high profile leadership of the National Trust in particular put you at odds with your responsibility to the ICAC.

**Mr O'KEEFE:** No. Indeed I think that that profile has an advantageous effect in the community both as my standing as Commissioner and the work that I do and the acceptance of the ICAC as a body that is seeking to serve the community as other bodies are.



**Mr WATKINS:** That is an interesting answer.

**Mr O'KEEFE:** I think it is the correct answer.

**Mr WATKINS:** It is still interesting. Why is it not a fair judgment to say that your involvement with Australians for a Constitutional Monarchy means that you are unable to be above the political fray?

**Mr O'KEEFE:** It is no more relevant than the fact that my predecessor had been a member of the Australian Labor Party and stood for a seat for that party. But it was never considered that that matter would influence his judgment.

**Mr WATKINS:** Mr Temby was not a member of the Labor Party whilst he was Commissioner of the ICAC?

**Mr O'KEEFE:** I do not know that.

**The Hon. D. J. GAY:** He made a donation while he was Commissioner.

**Mr WATKINS:** Mr Temby was not a member of the Australian Labor Party when he was Commissioner of the ICAC?

**Mr O'KEEFE:** I do not know that.

**Mr WATKINS:** I am telling you.

**Mr O'KEEFE:** I do not know. If you are asking me a question, I do not know the answer.

**CHAIRMAN:** Order!

**Mr WATKINS:** That is fine. I will give you a copy of some extracts from a book, and I apologise that I do not have copies for the members of the Committee. The book is titled *Judicial Ethics in Australia*, written by the Hon. Mr Justice Thomas, a Supreme Court judge in Queensland.

**Mr O'KEEFE:** And the date of that, because he is no longer a judge?

**Mr WATKINS:** It was published in 1988. It was difficult to find a text on judicial ethics because very few have been written. In fact, only one has been written in Australia, and I understand that is it. I have highlighted extracts from those pages. In the third paragraph on page 36 Justice Thomas refers to Sir Darryl Dawson when talking about the Kilmuir Rules. Justice Thomas states:

With few exceptions the taking of a public stand by a judge on any controversial topic lowers his effectiveness as a judge.

At the top of page 37 Justice Thomas states:

The difficulties occasioned by a judge becoming involved in public causes make it plain that such activity is detrimental to the exercise of judicial power. In the end I have come firmly to the conclusion that in general it is improper for a judge to pursue the media or to become a spokesman on public affairs.

At page 40 Justice Thomas states:

The need for restraint in these areas was recently emphasised by Dawson J. The basic constraint must be the need to avoid public questioning of a judge's impartiality. This is put at risk by a judge who identifies himself with causes or otherwise voluntarily becomes involved in controversial issues.

Finally, at page 51 Justice Thomas states:

It seems fairly clear that after appointment a judge should not . . . actively support causes which produce partisan reaction in the community.

I know that in the past—

**Mr O'KEEFE:** It goes on to say that he should not be an active member of any political party and that he should not actively support causes which produce partisan reaction in the community.

**Mr WATKINS:** I know that you have outlined in the past that you are in fact no longer a judge, even though you were a judge of the Supreme Court, and under the legislation that you required to be changed for your appointment you will return to the Bench when your appointment finishes. Do you believe that the principles outlined by Justice Thomas applied to you when you were a Supreme Court judge, and if they did, why did you take a different view? Do those principles apply to you now, especially as you will be returning to the bench at the end of your time as Commissioner?

**Mr O'KEEFE:** The answers to your questions are no, and no. Might I say that the propositions that Justice Thomas adopts, largely from the Kilmuir Rules, are now in this country regarded by the highest levels of the judiciary as being no longer applicable—vide Sir Joe Brennan, Sir Anthony Mason, Justice Kirby and the Chief Justice.

**Mr WATKINS:** At least three of those four relate to judges who are actively defending decisions that they have made.

**Mr O'KEEFE:** No. Justice Kirby and others speak out on other matters as well.

**Mr WATKINS:** Three out of the four.

**Mr O'KEEFE:** And others speak out upon other matters as well.

**Mr WATKINS:** Perhaps they also do so because they are in the position of being a chief justice.

**Mr O'KEEFE:** Justice Kirby is a not a chief justice.

**Mr WATKINS:** Justice Kirby did resign from his membership of Australians for a Constitutional Monarchy—

**Mr O'KEEFE:** He did that because he felt that at some stage he may, as a judge of the court, have to pass upon a matter that touched upon the constitutional position of Her Majesty.

**Mr WATKINS:** May I suggest that those principles outlined by Justice Thomas in fact remain, that they are practised by most judges in Australia, and that they may, especially considering the very delicate position that you are in, be worthwhile considering for you to follow?

**Mr O'KEEFE:** I have given you my answer.

**Mr O'FARRELL:** May I pursue one of those points, which relates to your reimbursement for any private work that is done in your office. Does the Commission provide that sort of advice to other chief executives or chairmen in any other government authority, to advise them to follow the same course of action?

**Mr O'KEEFE:** I think it is in our practical guide. I would like to take that on notice.

**Mr O'FARRELL:** Could you also take on notice whether you provided advice to either the State Rail Authority or the Department of Transport about David Hill's extensive activities on behalf of Soccer Australia whilst acting chief executive of the State Rail Authority?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** Question 17 on page 5 relates to recruitment procedures at the ICAC. How many ICAC officers or former officers were named in relation to police corruption inquiries in New South Wales? The last paragraph of your response states that the Commissioner is aware of only two officers being named in relation to corruption inquiries. Both officers were employed by the Royal Commission at the time they were referred to and both were former AFP officers. Were they seconded to the Royal Commission from the ICAC?

**Mr O'KEEFE:** The Royal Commission selected them and asked us to second them. We did so. That was the way in which it went, I think. I cannot add to that.

**Mr WATKINS:** So you had two former AFP officers working for you—as investigators, I presume—who, it seems, had a history of corrupt behaviour?

**Mr O'KEEFE:** I think there was one instance for one officer, who was a very junior officer at the time, and there was more than one instance for another officer.

**Mr WATKINS:** How did they make it past the vetting procedures to join the ICAC?

**Mr O'KEEFE:** In the same way as they did in getting into the Royal Commission, I suppose. Vetting procedures will tell you a lot; they will not tell you everything in a person's life.

**Mr WATKINS:** It must have been disappointing for you as the Commissioner?

**Mr O'KEEFE:** Extremely.

**Mr WATKINS:** Especially, as you have outlined earlier, having regard to your view on being able to pick the bad apple in a—?

**Mr O'KEEFE:** No. I do not say that I can do that.

**Mr WATKINS:** But you see that as a viable—?

**Mr O'KEEFE:** But I do not claim to be infallible. Those who do claim to be infallible have got some problems. And even the best-regulated places may make mistakes. We made no bigger mistake than the Royal Commission has made.

**Mr WATKINS:** Who was responsible for recruiting them to the ICAC?

**Mr O'KEEFE:** I cannot tell you that. And I do not think it would be appropriate for me to deal with that.

**Mr WATKINS:** Because it would name ICAC officers?

**Mr O'KEEFE:** But it was also before my time. In fact, they may not have actually been there when I came. I cannot remember either of them as individuals. Certainly they came well before my time.

**Mr WATKINS:** Has a recently recruited investigator from the Federal police who was on probation to the ICAC also had to leave because he was given a show-cause notice from the Federal police?

**Mr O'KEEFE:** Not that I am aware of.

**Mr WATKINS:** Have there been any allegations of corruption relating to your officers that have required action, subsequent to these two that you referred to?

**Mr O'KEEFE:** Not that I am aware of, no. And I would expect that if they had, it would certainly be something that I would be aware of.

**Mr WATKINS:** Have you looked at your recruitment procedures in recent times to see whether there are ways in which you can tighten those procedures to ensure that possibly corrupt officers are not—?

**Mr O'KEEFE:** I think that as a result of the two instances that arose at the Royal Commission we reviewed the recruitment procedures. We have a process whereby policies and procedures are reviewed at intervals in any event, but I think we looked at that specifically as a result of that instance.

**Mr O'FARRELL:** In relation to question 17, have the budget cutbacks that have been forced on the ICAC had any impact upon your ability to hire first-rate investigators from those bodies? Have you found it harder in the last two years to attract good personnel because of the budget cutbacks?

**Mr O'KEEFE:** Our policy at the ICAC has always been to pay about 10 per cent in excess of the ordinary market. We would like to maintain that so that we get the best. I cannot tell you yet what effect the current year cuts will have; I hope they do not have that effect. But I have agreed to adopt the 1 per cent rise from 1 January 1997, the 3 per cent rise from 1 July 1997, and we are looking at the others.

**Mr WATKINS:** Question 19 refers to WorkCover having access to the ICAC premises. Does WorkCover have access to all ICAC premises?

**Mr O'KEEFE:** As far as I know.

**Mr WATKINS:** If an ICAC surveillance unit had a room or unit in a factory complex and WorkCover visited that premises, as WorkCover does, to check on things, the WorkCover officers would be provided with access?

**Mr O'KEEFE:** Well, they would, subject to the proper security requirements, of course.

**Mr WATKINS:** Some time in May-June 1996 did WorkCover seek access to a surveillance team's accommodation?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** If it did, was WorkCover inspection refused?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** If it was refused, was it because the premises were not up to occupational health and safety standards?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** In those premises were photographic chemicals being used in close proximity to lunch areas, which would amount to a breach of occupational health and safety rules?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** Did the unit avoid inspection totally because of the intervention of a senior officer of the ICAC?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** Were those premises closed down, at some cost, very soon afterwards to avoid the inspection?

**Mr O'KEEFE:** That, I do know. We have moved from those premises. We did so on a basis that was related to operational efficiency and cost.

**Mr WATKINS:** So they are no longer ICAC premises?

**Mr O'KEEFE:** I do not know what premises you mean, and I do not confirm or deny what premises were occupied for surveillance purposes.

**Mr WATKINS:** But you have moved from the accommodation, which means the premises are no longer used by you? Whereabouts is that?

**Mr O'KEEFE:** I am not going to provide that, because it may mean that current investigations would still be compromised.

**Mr WATKINS:** Even though you are not using the accommodation any longer?

**Mr O'KEEFE:** You make an assumption, Mr Watkins, that investigations do not go on for some time and that what is revealed in relation to places in the past may not have some consequence—that is, revelatory consequence—in relation to members in the criminal field.

**Mr WATKINS:** When you do follow those matters up, could you answer them in relation to my previous questioning of you regarding occupational health and safety breaches?

**Mr O'KEEFE:** The only question you have asked me is whether we have had only two meetings of the committee instead of the statutory four in one particular year.

**Mr WATKINS:** That matter has been resolved, has it?

**Mr O'KEEFE:** The answers are in the papers.

**Mr WATKINS:** On Friday I questioned you in some detail about the report released in June entitled "Circumstances Surrounding the Offering of No Evidence by New South Wales DPP at the All Grounds Appeal at Lismore". It was interesting to read this morning's *Sydney Morning Herald*. One article stated that lawyers are set to replace police prosecutors, and another article revealed how police are still lying in court. In answer to a question from Mr O'Farrell, you talked about the Byron Bay matter and some people being prosecuted for malicious—

**Mr O'KEEFE:** No.

**Mr WATKINS:** Can you remind us of that?

**Mr O'KEEFE:** I explained that recommendations had been made in respect of three people, that consideration be given to their prosecution.

**Mr WATKINS:** Is that the recommendation from the ICAC—

**Mr O'KEEFE:** Correct.

**Mr WATKINS:** —to the DPP?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** Why have you not made a similar suggestion relating to the police involved in the Lismore DPP matter, where it seems that that only went forward because of malicious reporting by the police to the ICAC?

**Mr O'KEEFE:** I have not so found, and you will find the reasons for that are in the report. There is one matter I would like to add to the answer to question 38A. I have given a number of reasons there. The additional material is this: as short a time ago as last year—I think it was in the September session—the Parliament amended section 112 of the ICAC Act to insert subsection 1A, which made it incumbent upon the Commission to find that it was in the public interest that any inquiries that were held were not held in public. So the assumption was that when the Independent Commission Against Corruption had an inquiry it would be held in public, and in order to reverse that the ICAC had to find that it was in the public interest to do to the contrary. That itself seems to be a very recent reinforcement by the Parliament of the need for public inquiries.

**The Hon. D. J. GAY:** A silly thing for us to do.

**Mr O'KEEFE:** The Parliament has enacted and I am bound by the Parliament's enactment.

**CHAIRMAN:** When you interview a person who may be a witness or a person substantially affected by an inquiry or potential inquiry, do you take them in and record the interview?

**Mr O'KEEFE:** They may come in or we may go to them.

**CHAIRMAN:** Is a tape made of the record of interview?

**Mr O'KEEFE:** It depends on what stage we are at. Initially there is often a discussion and then if it is decided that the nature of the material that can be provided by the witness is sufficient to take a formal statement, it is recorded.

**CHAIRMAN:** Does the witness get a copy of that tape for his records if he requests it?

**Mr O'KEEFE:** It depends upon the operational circumstances. Often, no. The same as the transcript in a private hearing may not be made available until an appropriate stage. At an appropriate stage it will be done but not necessarily immediately.

**CHAIRMAN:** If a person asks for a copy and an officer of the ICAC says that a copy will be provided, are you not honour bound to give that person a copy of the tape?

**Mr O'KEEFE:** I will take that on notice.

**Mr WATKINS:** I do not enjoy pursuing you over matters relating to a potential conflict of interest.

**Mr O'KEEFE:** Thank you.

**Mr WATKINS:** And I hope that I have done so with the politeness that you require.

**Mr O'KEEFE:** It is the politeness that is appropriate.

**Mr WATKINS:** I hope I have done so, after your warnings. I will continue with these questions. Do you not think that the point has been reached where it would be better to resign from community organisations so that those allegations of conflict of interest that are in the community will cease and you can get on with your job with the Commission?



**Mr O'KEEFE:** I spend about 75 hours a week on my work as Commissioner. It seems to me that no-one could ask for more. I do it with the degree of conscientiousness that I can bring to bear, and I think that is a high degree. I am not, in my heart or in my conscience, at all concerned that the questions that you ask are, first, soundly based or, secondly, generally abroad in the community, except to the extent that those questions have been asked here, and I do not think even then that they are. I have given a lot of thought to the question. My answer remains as it was before: I do not think that it is necessary so to do.

**CHAIRMAN:** We will now go in camera. There is another matter of concern to me as Chairman and perhaps to the Committee.

**(Evidence continued in camera)**

**(The witness withdrew)**

**(The Committee adjourned at 1.40 p.m.)**

# APPENDIX 1

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## STATEMENT OF FINANCIAL PERFORMANCE



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# 1. MISSION, OBJECTIVES AND KEY STRATEGIES

## *Mission*

To expose and prevent corruption in the New South Wales public sector.

## *Objectives*

- ◆ Our leadership in combating corruption promotes integrity and accountability in the public sector and those who deal with it.
- ◆ Our selection of work brings greatest benefits to the public sector and the community of New South Wales.
- ◆ We have sound relationships with public sector agencies and other organisations with whom we work.
- ◆ Public sector organisations are motivated to minimise corruption and are capable of doing so.
- ◆ The New South Wales community is aware of, understands and supports the need to combat corruption in the public sector and the role of the Commission in this regard.

## *Strategies*

The ICAC intends to:

- Be and to be recognised as the lead agency in promoting integrity in the New South Wales public sector.
- Be tenacious in combating corruption, maintaining our independence and protecting the public interest.
- Have regard for the impact of the Commission's work on organisations and individuals.
- Work collaboratively and co-operatively with public sector agencies and other organisations.
- Emphasise to the community and the public sector the benefit of preventing corruption.
- Undertake our work in a way that uses a diversity of skills and approaches.

## 2. COMMISSION FUNDING AND FINANCIAL PARAMETERS

	1995-96 Actual	1996-97 Actual	1997-98 Budget
<b>FUNDING</b>	\$'000	\$'000	\$'000
Consolidated Fund Recurrent Allocation	13,022	* 12,664	**12,849
Consolidated Fund Capital Allocation	180	240	240
<b>FINANCIAL PARAMETERS</b>			
Net Cost of Service	15,151	15,021	14,309
Capital Authorisation Limit	180	240	240

**Note:**

- \* In addition, the Commission used \$407,000 of its existing cash balances bringing the actual amount available to \$13,071,000. This figure, however, represents a decrease of \$750,000 when the increase for inflation is taken out.
- \*\* This figure includes a 3% salary increase and a 3.3% increase for other operating expenses as well as a decrease of \$500,000 relating to the cost saving to the Commission of not having to investigate police complaints which now go to the Police Integrity Commission, and the 2% savings required of all Government Agencies.

### **3. OUTCOME, OUTPUT, INPUT AND PERFORMANCE MEASURES**

#### **Program:**

Regulatory (Investigative) Program

#### **Clients:**

The Investigative Program has three main client groups:

- (a) The public sector of NSW, including all NSW government departments, statutory authorities, local councils, judicial officers and Members of the NSW Parliament
- (b) All private sector organisations which interact with the public sector
- (c) The NSW community

#### **Objectives:**

The Investigative Program of the Commission encompasses the Commission's investigations, legal and various technical areas. The objectives of the Investigative Program are:

- ☞ To investigate possible corruption in order to determine if and how corrupt conduct has occurred and to recommend changes or other actions which may be necessary to prevent or deter its re-occurrence.
- ☞ To provide legal services to the Commission and in doing so to promote accountability by the Commission and our officers in exercising Commission powers.
- ☞ To provide intelligence and technical capability to underpin investigations.

#### **Outcomes:**

The Investigative Program has the following outcomes:

- Identification and exposure of new and significant areas of corruption to the benefit of the public sector and the community.
- Professional, fair and robust investigations are undertaken.
- Sound, timely and appropriate information about corruption issues is gathered, developed and disseminated.

**Outputs:**

The following have been identified as outputs of the Investigative Program:

- Significant system weaknesses and or, significant corruption are exposed.
- Investigations are completed efficiently, effectively and meet legal requirements.
- High quality investigations and hearings are conducted and reports produced.
- A high proportion of ICAC recommendations is adopted and implemented by agencies.

**Inputs:**

	1995-96 Actual \$'000	1996-97 Actual \$'000	1997-98 Budget \$'000
Total Expenditure of Program (\$'000)	9,095	8,960	
Average Staffing (No#)	73.5	74.0	

**Performance Measures:**

- Analysis of the use of information reported under Section 10 and 11.
- Internal audit of matters reported to the ORC.
- Percentage and number of investigations completed within agreed time limits and within scope and purpose.
- Percentage and number of Report recommendations that are adopted by agencies.



**Program:**

Advisory Program

**Clients:**

The Advisory Program has three main client groups:

- (a) The public sector of NSW, including all NSW government departments, statutory authorities, local councils, judicial officers and members of the NSW Parliament
- (b) All private sector organisations which interact with the public sector
- (c) The NSW community

**Objectives:**

The Advisory Program comprises the Commission's corruption prevention, education and research areas. The objectives of the advisory program are:

- ☞ To promote public sector integrity through the improvement of systems, policies and procedures in order to minimise corruption opportunities and corrupt behaviour.
- ☞ To support community demand for a public sector that carries out its duties with integrity by developing strategies to motivate and enable people to act against corruption.
- ☞ To better inform efforts to reduce corruption.

**Outcomes:**

The Advisory Program has the following outcomes:

- Changed knowledge and attitudes towards corruption issues amongst the Commission's clients.
- Clients receive useful and credible advice, information and services.
- Sound, timely and appropriate information about corruption issues gathered, developed and disseminated.

**Outputs:**

The following have been identified as outputs of the Advisory program:

- Advice and information from the Commission is effective and provided at a reasonable cost to the Commission.
- There is an increase in sophistication regarding the types of advice and requests for assistance received from clients.
- A high proportion of public sector agencies have effective and practical corruption prevention policies and training in place.
- The community has a high level of understanding regarding the role of the ICAC and the definition of corruption.

**Inputs:**

	1995-96 Actual \$'000	1996-97 Actual \$'000	1997-98 Budget \$'000
Total Expenditure of Program (\$'000)	3,438	3,874	
Average Staffing (No#)	31.0	32.0	

**Performance Measures:**

- Percentage and number of stakeholders who consider ICAC advice timely, useful and credible.
- Increasing level of sophistication in types of advice sought.
- Percentage and number of public sector agencies:
  - with corruption prevention polices in place.
  - with corruption prevention training in place.
  - which consider such polices are effective and practical.
- Percentage and number of Report recommendations that are adopted by agencies.
- Percentage and number of agencies who regard ICAC recommendations as effective and appropriate.

**Program:**

Corporate Services Program

**Clients:**

The Corporate Services Program has three main client groups:

- (a) All sections and units of the Commission, to assist in the achievement of their and the Commission's objectives and strategies.
- (b) Individual staff and management of the Commission to ensure a healthy, interesting and secure work environment.
- (c) Treasury, Premier's Department and other central agencies in the monitoring and reporting of the Commission's performance.

**Objectives:**

The Corporate Services Program encompasses all other areas of the Commission which support the regulatory and advisory program areas: The objective of corporate services is:

- ☛ To support the Commission's work by providing the services to enable us to manage our staff and resources effectively.
- ☛ To liaise and interact with other government agencies to ensure accountability over use of the Commission's resources.

**Outcomes:**

The Corporate Services Program has the following outcomes:

- Clients receive useful, credible and relevant advice and interest, information and services.
- Information systems and services are based on user needs and support the Commission's core business.
- Commission maintains an optimum staffing level with the appropriate skills and experience.

**Outputs:**

- Provide useful and timely financial information for decision making, forward planning and cost effective management of the Commission's operations.
- Enhance the Commission's information systems to meet changing client needs, expand corporate information resources and focus on the integration of the various information management systems.
- Maintain an active, integrated and strategic recruitment policy that focuses on reducing the time taken to recruit employees with the desired skills and experience to match the position description.

**Inputs:**

	<b>1995-96 Actual \$'000</b>	<b>1996-97 Actual \$'000</b>	<b>1997-98 Budget \$'000</b>
Total Cost of Program (\$'000)	2,871	2,288	
Average Staffing (No#)	33.5	27.5	

**Performance Measures:**

- Service standards in Corporate Services Sections' guarantees of service are met.

## **4. SERVICE QUALITY STANDARDS**

The Commission's guarantee of service specifies that the Commission will:

- \* maintain as our primary concern the protection of the public interest and the prevention of breaches of the public trust.
- \* be tenacious in fighting corruption and maintaining our independence.
- \* deliver services which are useful, practical, strategically targeted and appropriate to our customers' needs.
- \* respond to customer needs in a way which maximises the impact of our activities and makes the best use of our resources.
- \* carry out our duties impartially and with integrity.
- \* meet the standards of ethical behaviour and accountability that we promote in our dealings with other government organisations.
- \* have regard for the impact of our work on organisations and individuals.

## **5. REPORTING AND MONITORING REQUIREMENTS**

The Commission has various reporting and monitoring requirements which assess funding levels, operational areas and the efficiency of the Commission. The following bodies comprise the accountability bodies of the Commission.

The Parliamentary Joint Committee (PJC) on the ICAC was established under the ICAC Act. The PJC is legislatively tasked to review and monitor Commission activities in addition to examining ICAC reports on relevant matters and trends in corrupt conduct. The Committee's role does not include reconsideration of ICAC operational decisions nor decisions relating to whether or not particular investigations or complaints should be pursued.

The Operations Review Committee was established by the ICAC Act. The Committee is responsible for advising the Commissioner whether the ICAC should discontinue or not commence investigation of a complaint.

The Treasury monitors the Commission funding on a monthly basis to assess any forecast changes in the budget result. The focus of the monthly reviews is to identify actual and anticipated variations in expenditure and revenues, the reasons for the variations and the source of funding to meet the identified variations.

## **6. RISK MANAGEMENT IDENTIFICATION AND STRATEGY**

### *Fraud Control*

As highlighted in the Commission's code of conduct the ICAC legislation provides that officers of the Commission, in carrying out their duties, are required to "regard the protection of the public interest and the prevention of breaches of public trust as (their) paramount concerns".

The work of the Commission could be undermined if any of its officers acted or was seen to be acting in a way which the Commission itself, or right thinking members of the community, would find reprehensible in any public organisation.

The Commission relies on various formal documents, including procedures manuals and the code of conduct to provide guidance in the prevention of fraud and internal accounting and like procedures to detect it should it occur. Although these documents will continue to play an integral part in this process, the Commission is in the process of developing a comprehensive Fraud Control Policy which will more clearly identify both the internal and external fraud risks to the Commission, assess the threat of fraud and the possibility of its occurrence, and review the existing internal controls to counter these fraud risks.

### *Internal Audit*

In line with Treasury guidelines on "best practice internal control", the scope of the Commission's internal audit program for 1996-97 has moved from a traditional focus on financial controls and compliance, to one which also incorporates assurance that the Commission's operations are being conducted effectively and efficiently. Internal Audit for the Commission is performed by the Auditor General.

The continued move to increasing internal audit activity to other than reviews of financial accounting systems and aspects of financial compliance has been beneficial in improving the efficiency and effectiveness of the Commission's operations. Some of the non financial areas targeted during the 1996-97 review which will assess the efficient use of the Commission's resources include, firearms, motor vehicle usage, travel, and property records.

Also included in the 1996-97 program is an independent review by the Auditor General of the reporting to the Operational Review Committee to determine the accuracy and adequacy of the Commission's reporting requirements and compliance with the Committees recommendations.

## **7. REVIEW**

Over the last few years through the streamlining of corporate services and the more efficient use of contracting out, the Commission has been able reduce its corporate service costs to assist in its move towards a broader approach to combating corruption. This has involved a greater emphasis on collaboration, advice and education while still retaining a strong investigative capacity.

The Commission has a commitment to continuous review. In progress at present are:

- (1) Review of the implementation of the Protected Disclosures Act.
- (2) Review of the way the Commission manages information received under section 10 and 11 of the ICAC Act.
- (3) Review by Internal Audit of the Auditor General's Department of the ORC reporting process adherence to selected operational, personnel and financial policies.

The Commission reviews regularly whether recommendations made in its Investigation and Corruption Prevention Reports are implemented. At present it is reviewing those made in the Report into the Sacking of the Director General of the Community Services Department (Semple Report)

## **8. ACCOUNTING POLICIES**

### *Insurance*

The Commission's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self insurance for Government Agencies. The expense (premium) is determined by the Fund Manager based on past experience.

### *Acquisition of Assets*

The cost method of accounting is used for the initial recording of all acquisition of assets controlled by the Commission.

Items of property and equipment acquired with an expected life in excess of one year and with a value of \$5,000 or more are capitalised. Values are determined on an asset-by-asset basis, although items which cannot operate independently of each other are considered together for the purposes of determining asset values.

#### *Depreciation of Non Current Assets*

Depreciation is provided for on a straight line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life.

##### (i) Leasehold Improvements

The Commission's leasehold improvements when constructed were projected to have a useful life of fifteen years or the unexpired period of the lease. All leasehold improvements have been assessed by Commission officers to be in good order and condition and are consistent with their projected remaining useful life.

##### (ii) Computer Equipment, Plant and Equipment

The Commission's computer equipment, plant and equipment when purchased was projected to have a useful life of five years. All computer equipment, plant and equipment have been assessed by Commission officers to be in good order and condition and are consistent with their projected remaining useful life.

#### *Leased Assets*

A distinction is made between financial leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased assets, and operating leases under which the lessor effectively retains all such risks and benefits.

Where a non current asset is acquired by means of a finance lease, the asset is recognised at its fair value at the inception of the lease. The corresponding liability is established at the same amount. Lease payments are allocated between the principal component and the interest component.

Operating lease payments are charged to the Operating Statement in the periods in which they are incurred.





# APPENDIX 2

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**QUESTIONS**

**ON**

**NOTICE**





INDEPENDENT COMMISSION AGAINST CORRUPTION

28 August 1997

Mr P Nagle MP  
Chairman  
Parliamentary Joint Committee on the ICAC  
Room 813  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

RECEIVED  
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Dear Mr Nagle

You will recall that at the meeting on 21 July 1997 it was necessary for me to take a number of questions on notice in order to provide the Committee with a considered response to the questions asked. I have delayed this response pending release of the Royal Commission's Final Report on the Paedophile Inquiry. The purpose of this letter is to address the questions I took on notice and a number of other matters arising from the hearing. I will address each in the order it appears in the transcript.

1. At page 15 Mr O'Farrell asked when the Yeldham file was tendered to the Royal Commission. I can advise that it was provided to the Royal Commission by the ICAC on 17 October 1995. It was not made a public exhibit, but was tendered on 5 December 1996 (Exhibit 2855).
2. At page 17 there is discussion about the extent to which the Royal Commission public hearing transcript addresses issues in relation to the Yeldham file. I draw the Committee's attention to paragraphs 7.392 to 7.403 of the Royal Commission's Final Report which summarise actions taken by the ICAC, to paragraphs 7.337 to 7.342 which deal with the 12 December 1988 Central Railway incident and the evidence taken by the Royal Commission.
3. At pages 19 and 20 Mr Watkins referred to a meeting taking place between the then ICAC Commissioner Ian Temby QC and Chief Justice Murray Gleeson in 1989. He asked whether a deal was done between the ICAC and the Chief Justice to ensure that Yeldham would leave the bench and so avoid any questions by the ICAC. Having re-examined the file I advise that there is no basis for the suggestion and I am satisfied that no such deal was done. I also draw the Committee's attention to paragraph 7.401 of the Royal Commission's Final Report:

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"Any suggestion of a corrupt agreement between Chief Justice Gleeson and Mr Temby is in the Royal Commission's view utterly spurious and without any factual foundation."

4. At page 21 I agreed with Mr Watkins' request to re-read the Yeldham file and reconsider the request by the Committee to have access to that file. I advise that I have re-read the Yeldham file and the relevant parts of the Royal Commission's Report and I adhere to the decision which I communicated to the Committee on the last occasion on which I appeared before it. I annex a short statement which I wrote in respect of this matter (Annexure 1).

I should say something about the Royal Commission's comments concerning the ICAC investigation. Although I do not consider the Royal Commission to have been critical of the ICAC, the Committee members will note that the Royal Commission, having dealt with its investigation into the Yeldham matters and specifically its investigation into the complaint received by the ICAC, commented that "with the benefit of hindsight" it would have been appropriate for the ICAC at the time to interview Mr Yeldham. With all due respect to this suggestion, it is totally at odds with the investigative approach taken by the Royal Commission itself. The Royal Commission pointed out that its investigation into the Yeldham matter commenced in July 1995. It determined that it would be *inappropriate* to approach Mr Yeldham at all until such time as it had investigative material sufficient to increase the chances of Mr Yeldham co-operating with the inquiry.

The Report details that the Royal Commission's investigation continued from July 1995 through to 9 October 1996 when the Royal Commission got its first breakthrough in the investigation in relation to *another* matter. This was *not* the Central Station incident which had been the subject of complaint to the ICAC. It was only in October 1996, almost fifteen months into its inquiry into Yeldham matters, that the Royal Commission considered it might be appropriate then to engage in some covert investigative activity. It was then not until 31 October that the Royal Commission interviewed Mr Yeldham. This was the same day that Ms Franca Arena named Mr Yeldham in Parliament. It is therefore surprising that the Royal Commission would suggest that the ICAC should have approached him at all. When the Royal Commission spoke to Mr Temby and asked him why the ICAC had not interviewed Mr Yeldham he responded as follows:

"The function of the Commission was to investigate corruption, not crime. Somebody from the ICAC could have gone to ask him whether the information which the police had concerning him had been used to sway him from the proper course of judicial duty. That would surely have been pointless. Had it been desired to find the answer to that question, a full investigation using hearings and coercive powers would have been necessary. I did not and do not believe that was warranted."

With respect I agree with Mr Temby's conclusion; more importantly, it is a conclusion which was clearly open and adequately supported.

Furthermore, it is not evident from the Royal Commission's Report that the Royal Commission itself asked Mr Yeldham whether the incident described in the Report had any impact on the exercise of his official functions, indeed paragraphs 7.410 and 7.411 suggest to the contrary. Although the Report does indicate that Mr Yeldham said that he had feared that his sexual activity might have led to some blackmail attempt, he stated that this had never occurred.

5. At page 23 of the transcript I undertook to remind all ICAC staff once again of their obligations under s.111 of the ICAC Act. I advise that I have done so.
6. At page 30 Mr O'Farrell asked a question about the method and monitoring of the random selection of ORC files undertaken by the Project Officer as part of the audit process. I can advise that for the external audit, the files are chosen by the external auditor who uses a computer to select files at random. For the internal audit, the project officer selects every tenth file from a computer generated list of files.
7. At pages 36 to 37 I agreed to consider providing the Committee with the Commission's proposals for managing the \$500,000 reduction in the ICAC budget for this year. That matter is under consideration.
8. At page 42 I took on notice Mr Watkins' question as to whether the National Trust had issued a press release in relation to a complaint made to the ICAC by a Mr Cox. I advise that I am not aware of any reference in a press release by the National Trust to a complaint having been made by Mr Cox to the ICAC.
9. At pages 43 to 45 Mr Watkins asked questions about whether a National Trust press release had been faxed from the ICAC. I have previously advised that I do not believe that a press release for the National Trust was faxed to the media from the ICAC. I have since ascertained that a copy of a press release previously issued by the National Trust was sent by facsimile by the ICAC's Media Officer to an individual in response to a request by that person for information about the subject matter of a press release made by the National Trust.
10. At page 46 I agreed to take on notice a question by Mr Watkins concerning the size of the New South Wales membership of the Military and Hospitaller Order of St Lazarus of Jerusalem. I advise that such membership was 29 as at January 1997, although I am of the view that this is not a proper question.
11. At page 50 I took on notice a question from Mr O'Farrell as to whether the ICAC provides advice to chief executives or chairmen in any Government authority regarding the reimbursement (to their bodies) for any private work that is done in their offices. An answer to this question will be provided prior to the next meeting.
12. At pages 50 and 51 I took on notice Mr O'Farrell's question as to whether the ICAC provided advice to either the SRA or the Department of Transport about the activities

of Mr David Hill on behalf of Soccer Australia whilst Acting Chief Executive of the SRA. An answer to this question will be provided prior to the next meeting.

13. At pages 52 and 53 I took on notice Mr Watkins' questions regarding an attempt by WorkCover to inspect the premises at which the ICAC's Surveillance Unit was accommodated. I advise that given the nature of the surveillance premises it would not be appropriate to go into any detail in respect of this matter outside an in camera hearing of the Committee. I can advise however that the matter in question was resolved to the satisfaction of WorkCover. I am prepared to give further information to the Committee at the next meeting should the Committee wish me to do so.
14. At page 56 I took on notice a question as to whether the ICAC is honour-bound to give a witness a copy of his or her interview if that person has been told by an officer of the ICAC that a copy would be provided to them. I advise that the usual practice is to give a witness a copy of the interview at a time that is appropriate, bearing in mind the needs of the investigation and the requirements of the law as to procedural fairness.

If an ICAC officer advised a witness that a copy of the interview would be provided at the conclusion of the interview, then I would expect that that should occur, subject to a development during the course of the interview which may have made provision of a copy of the interview potentially damaging to the integrity of the investigation.

Yours sincerely



The Hon B S J O'Keefe AM QC  
Commissioner



## ANNEXURE 1

**BARRY O'KEEFE**

# ICAC and accountability

**T**HE Independent Commission Against Corruption (ICAC) was established to ensure integrity and probity in the NSW public sector by exposing and eliminating corrupt conduct. Its budget is modest (\$13 million), its staff small (135), but it has jurisdiction over some 370,000 – government ministers, politicians, judges and others in the public sector.

To achieve its purpose, the ICAC has been given significant powers and because of this it should be accountable. Parliament has established two accountability bodies, the Parliamentary Joint Committee (PJC) and the Operations Review Committee (ORC). The former is made up entirely of politicians selected on a party basis; the latter entirely divorced from politicians and from politics.

The PJC is concerned with broad considerations and is forbidden by law from dealing with any particular complaint, conduct, investigation or decision of the ICAC. On the other hand, the ORC is required to consider each individual complaint and conduct that the ICAC believes it should not investigate because, due to limitations in resources, it must decide where to deploy them and on what matters.

The call by the PJC for ICAC to produce its file on the late Justice Yeldham raises an important issue. Whilst it is about accountability and the public interest, it concerns essentially whether the ICAC is to operate as Parliament intended and so continue to maintain community confidence in it as NSW's premier corruption fighting body.

It would be easy to hand the file over to the politicians who constitute the PJC, but wrong. It would be contrary to the ICAC Act, and would set a dangerous precedent in relation to all the



**The call for the ICAC to hand over the Yeldham file threatens the commission's independence.**

commission's files – to whomsoever they may relate.

The act gives responsibility for scrutinising the commission's handling of its investigative responsibility in relation to particular matters to the non-political ORC. The members of that committee include the NSW Police Commissioner, a nominee of the NSW Attorney-General and four community representatives appointed by the Governor, but no politicians.

It was the ORC which determined in 1990 that the ICAC's investigation of the complaint to the commission concerning David Yeldham at Wynyard railway station had been properly carried out and that further inquiries were not warranted. There is no lack of accountability there. In fact, that is precisely the way Parliament has said the ICAC should be accountable in relation to particular conduct, investigations and decisions.

Furthermore, the ICAC's handling of the Yeldham complaint has been examined in detail and in public by the Police Royal Commission. Its final report is due next month.

To give the politicians on PJC

access to the Yeldham file would not only be contrary to the letter of ICAC Act, but also against the spirit of the act, which recognises that a body like the commission with strong coercive powers and a role to investigate politicians and others in the public sector, should not be subject to the dictates of the government or MPs. It is and must remain independent.

If it were otherwise, the ICAC could be used as a tool by one political party against opponents, whether in Parliament or in the community, and could leave the commission with little credibility in going about its important work.

To ensure credibility, strict confidentiality is required of the commission in handling information it receives from individuals who report corrupt conduct.

The ICAC Act sets a high threshold before information may be released. The commissioner may only make information public if he or she believes that to do so would be in the public interest. I have formed the view that this condition has not been met.

The Yeldham matter generated considerable media attention when it was dealt with at the royal commission in December, but the mere fact that some elements revealed in a file may be newsworthy does not mean that it is in the public interest that the file be made public.

What is in the public interest is that the confidentiality of information which members of the community bring to the ICAC be maintained and that the potential for political interference in its investigative functions be minimised.

It is not that the contents of the file relating to this complaint are overwhelmingly important in themselves. The facts have been examined thoroughly by the royal commission and the conclusion clearly suggested by the evidence

is that the ICAC's original decision not to further investigate the 1988 Wynyard railway station incident was correct, as neither a known offence nor any corrupt conduct emerged.

This conclusion also debunks the purely speculative suggestions in the political arena of a "cover-up" to protect Justice Yeldham by Chief Justice Gleeson and the then ICAC Commissioner, Ian Temby, QC, in 1990, and by me in 1994 when I reviewed the file.

How can there have been a conspiracy to stifle a prosecution of the former Supreme Court judge when no known offence could be found? How can it responsibly be suggested that the ICAC has not been accountable in relation to the matter when the commission's investigation was independently reviewed by the appropriate accountability body, the ORC, and again in public in 1996 at the royal commission?

Should the PJC wish to test its claim to go through ICAC investigation files, it could do so in the Supreme Court. The commission would abide by the decision of the court. Until that happens, or until there is a significant change in circumstances, the commission will maintain its stand.

The ICAC's handling of the Yeldham matter has been accountable. The investigation was scrutinised by the non-political ORC in the manner prescribed by Parliament, which has recognised the undesirability of politicians meddling in the commission's day-to-day operations and investigations by expressly denying such a function to the PJC.

It is in the interests of an effective, credible ICAC and the people of NSW that the the different aspects of accountability remain separate.

*Barry O'Keefe is Commissioner of the Independent Commission Against Corruption*



## COMMITTEE ON THE ICAC

### RESPONSES TO QUESTIONS TAKEN ON NOTICE

SYDNEY: 18 JULY 1997

p19 Mr O'Farrell: *"...has the Commission satisfied itself that the enormous delays involved in the Walsh Bay redevelopment are appropriate and has it been giving advice to both bodies about those issues?"*

**Answer:**

The Property Services Group and later the Department of Public Works & Services (DPWS) have sought advice from the Commission at key stages of the project. Advice was sought and provided on the Expressions of Interest and the Call for Detailed Proposals processes and when significant probity issues arose, for example, issues of possible conflicts of interest and changes to the Walsh Bay Properties (WBP) preferred proposal. The Commission has provided advice concerning probity aspects of the project, as requested, since November 1994.

The Exclusive Negotiation Agreement (ENA) phase has been extended on four occasions, approved by the Minister in accord with the Terms of the Agreement.

In reviewing documentation and discussions with the Department, for the purposes of providing advice on the probity issues of accountability, fairness and equity and value for money, the Corruption Prevention Unit found that:

- the process was well documented with attention given to accountability requirements;
- documentation requested by the Commission was provided quickly by DPWS;
- the Minister was kept informed by DPWS via reports and briefings;
- the assessment process of the EOI's and Call for Detailed Proposals appeared to be rigorous and fair;
- whenever there was evidence of WBP attempting to go outside the scope of the Detailed Proposals Call, negotiations by DPWS brought them back into line;
- during ENA phase DPWS appeared to have continued to negotiate on the basis of maintaining or increasing value to

government.

p31 The Hon DJ Gay: *"...a good guide to councillor's about proper relationship. Perhaps as an adjunct you could release a two-page easy-to-read document for councillors to have at hand during council meetings".*

**Answer:** The suggestion of an on-hand checklist appears to have considerable merit. It would provide a ready point of reference during consideration of matters before council, as well as in committees and during day to day contact between councillors and staff.

Such a checklist would also enable members of the community to more readily understand the agreed rules by which staff and councillors are expected to abide. This understanding would be most useful when individuals approach councillors seeking assistance with a matter.

The publication, produced jointly by the Department of Local Government and ICAC, at page 22, suggests that "...councils should customise the (model) policy to suit their own particular needs." This not only recognises that different policies are suitable in different environments; it also encourages the development of policies by those to whom they will apply. This allows all involved to examine the issues and underlying principles. Furthermore the sense of ownership by those involved supports the application of the principles and resultant policies.

In these circumstances it would seem that an appropriate way in which to implement the suggestion, and to maximise the benefits which should flow from it, is to encourage councils to develop and produce their own summary check-list and to make it readily available to councillors and staff.

To encourage this, the Commission will consult with the Department of Local Government, with a view to writing to all councils suggesting that they take up the idea and outlining the benefits which might be expected.

p 32 The Hon DJ Gay: *" Were the structures of accountability within (the city partners) program examined by the ICAC and found to be proper?"*

**Answer:** In September 1996, the Department of Local Government invited the Commission to comment on the Exposure Draft Bill. The Commission responded early in October 1996, and suggested that public accountability would be assisted if contemporaneous scrutiny of

donations to a public space improvement project was made possible.

Sub-section 63(2) reflects adoption of the ICAC's suggestion.

p 32 The Hon DJ Gay: *"Supplementary question concerning whether the power of the Lord Mayor to seek donations from developers and having two votes on the Central Sydney Planning Committee are creating a climate conducive to corruption?"*

**Answer:** The Act provides that Council must publish widely that the acceptance of a donation will not "limit or affect the exercise by City Council of any of its functions". It furthermore provides for a process that is open to public scrutiny whenever donations are made. The Commission considers that the framework established by the Act does not create a climate conducive to corruption as there is an opportunity for interested parties to use these accountability mechanisms to challenge the circumstances in which such donations have been made.

The Lord Mayor, as a councillor, must comply with the City of Sydney's Code of Conduct which states the corporate ethics of the City of Sydney, and defines the requirement for ethical conduct: it also sets out the sanction that may be applied for breach of the code of any relevant law.

Within that framework, a Lord Mayor must exercise discretion and judgement to achieve the Act's objectives in the knowledge that their actions will be subject to the accountability measures it contains.

p 34 Mr O'Farrell: *"...refers to the principle that direct negotiations are unlikely to be appropriate following a tender process "in which on tender is accepted and subsequently the project specifications are changed so significantly that, in effect, it is a different project." He then asked, "Do you accept that that applies to Walsh Bay, or that it could apply to Walsh Bay?"*

**Answer:** The Direct Negotiations report clearly states at page 4 that:

*Negotiations which occur following a competitive process are generally a legitimate part of that process. This report does not intend to cover these sorts of negotiations. Examples include: ...negotiations with the preferred tenderer to refine details of their bid.*

The report also states at page 22 that direct negotiations are unlikely

to be appropriate when ...*following a tender process in which one tender is accepted, and subsequently the project specifications are changed so significantly that in effect it is a different project.*

The post tender negotiations between the Department of Public Works and Services (DPWS) and Walsh Bay Properties (WBP) were a published part of the process to select a preferred proponent and finalise a development agreement with that proponent. WBP are the preferred proponents. Upon their selection they conducted detailed testing of the site leading to a commercial decision that they could not proceed with their proposal due to the significant deterioration and pest infestation of the piers supporting the wharves. Instead they proposed a modification to their plan that involved some demolition of the site.

A key point is that there were no specifications as such for the project. Instead proposals had to address certain objectives for the site, one of which was preservation and renewal of the area. All three proponents asked to submit detailed proposals following the EOI, included some demolition/alteration of the structures on the site in their proposals. The Call documents stated that proposals must preserve the character of the precinct: demolition whilst not favoured was not prohibited by the Call. Preservation can mean adaptive re-use, reconfiguration and/or enhancement. All proponents were aware that their proposals would have to be accepted by the Heritage Council, the Department of Urban Affairs and Planning (DUAP) and Sydney City Council. DPWS stated that the negotiation phase aimed to ensure that the government got the return it expected from the Call proposal and that it was expected that there would be changes within the normal evolution of such a project.

In our concluding advice to DPWS the Corruption Prevention Unit accepted that, on the basis of the information supplied, probity considerations had generally been addressed and that there was no impediment to the exclusive negotiation agreement phase proceeding.

p 38 The Hon BH Vaughan:

*"whether the Central Sydney Planning Committee played a role in the Walsh Bay Matters?"*

**Answer:**

The Department of Public Works and Services has advised that the Central Sydney Planning Committee on 18 June 1996 resolved to support Walsh Bay Properties Stage 1 Master Plan DA subject to conditions. This resolution was referred to the consent authority, the Director General of DUAP on 12 July 1996.

p 39 Mr O'Farrell: *"...whether, prior to Central Sydney Planning Committee's in principle approval for the Walsh Bay redevelopment on 10 July 1996, it or Sydney City Council sought advice from the ICAC on any aspects of the proposal.*

**Answer:** The Central Sydney Planning Committee did not give approval in principle as it is not the consent authority. On 18 June 1996 it resolved to support Walsh Bay Properties Stage 1 Master Plan and referred the resolution to the DG of DUAP as consent authority. Neither the Council nor the Central Sydney Planning Committee sought advice from the ICAC.

p 45 Dr MacDonald: *"...you could respond to this question by writing to the Committee with your anecdotal concerns you might have (regarding the contractual employment of General Managers on local Councils)."*

**Answer:** A search of our data base reveals that the incidence of complaints to the ICAC concerning employment of General Managers, and in particular terminations, is quite low. Those we do get involve alleged threats concerning non-renewal of contracts, and secret meetings to discuss the General Manager's performance. The generally low incidence supports research conducted by the Department of Local Government which also tends to indicate that there is not a serious problem in this area.

The Department has advised the Commission that, unlike in the past when GMs were permanent employees of councils, it is routinely the case that the suitability of their performance is reviewed during and at the expiry of a contract. It is testing the market by advertising a position with the incumbent eligible to apply for the potential vacancy.

The Department had advised that from 1 May 1995 to 30 June 1997 (26 months) there have been 42 General Manager changes. That is a turnover rate of 10.95% per annum which the Department advises is not unusual. By way of comparison, the turnover of Chief Executive Officers within 81 and 83 state government agencies, in 1995 and 1996 respectively, was of the order of twenty percent per annum.

Furthermore, examination of the reasons given for the departure of those 42 General Managers indicates that just eleven appear to have left either due to non-renewal of their contracts at expiry or to their having been terminated/paid out prior to expiry.

In the circumstances there appears to be no evidence to indicate that the turnover rate of General Managers of local councils should be of particular concern to the Independent Commission Against Corruption.

SYDNEY: 21 JULY 1997

p 50 Mr O'Farrell: *"...reimbursement for any private work that is done in your office. Does the Commission provide that sort of advice to other Chief Executives or Chairmen in any other government authority, to advise them to follow the same course of action?"*

Answer: The Practical Guide to Corruption Prevention module on Secondary Employment provides advice; guidelines 5 and 6 are relevant.

*5. Staff may only undertake approved secondary employment in their own time.*

*You need to check on the likely times and duration of the secondary employment and whether it could adversely affect the efficient performance of the staff member's normal duties or their health and safety. Someone with a stressful night job is unlikely to be fit and alert at work next morning.*

*6. Staff must not use any official resources or information in the course of approved secondary employment or to help gain private employment.*

*In some organisations, staff have used departmental vehicles, materials and equipment to do part-time trade work in their off-duty hours.*

*Another possible area of corruption is the release or misuse of confidential information which is accessible to staff in the organisation but not to the general public.*

*For example, private security firms owned or operated by police officers or their families have an affair advantage if they use confidential information or the name and reputation of the police service for private purposes.*

pp 50-51 Mr O'Farrell:

*"...whether you provided advice to either the State Rail Authority*

*or the Department of Transport about David Hill's extensive activities on behalf of Soccer Australia whilst acting chief executive of the State Rail Authority?"*

**Answer:**           **No.**

# APPENDIX 3

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## ADDITIONAL QUESTIONS ON NOTICE





# ICAC

## INDEPENDENT COMMISSION AGAINST CORRUPTION

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16 July 1997

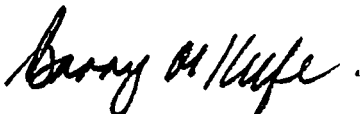
Mr Peter Nagle MP  
Chairman  
Parliamentary Joint Committee on the ICAC  
Room 813  
Parliament House  
Macquarie Street  
SYDNEY N S W 2000

Dear Chairman

I refer to the additional questions which were forwarded to the Commission with a notation that "the Committee does not require answers to them before the hearing day, they may be tabled on the day instead" and to your telephone request to the Solicitor to the Commission, Mr John Feneley, late last week asking that notwithstanding this, the answers be supplied in advance and preferably by today. I enclose a document dealing with such additional questions. Some of the matters dealt with in the document which addresses the additional questions are of a kind on which I will be requesting to give evidence in private and to have the document in which such answers are contained treated as confidential.

Since the enclosed document includes information, some of which falls inside and some of which falls outside the above category, and since the actual hearing has not yet commenced, I am disseminating the document and the information contained in it pursuant to s.16 of the *Independent Commission Against Corruption Act*, on the understanding that it is confidential. As a consequence, at this stage, the provisions of s.16(4) of that Act apply, as do the provisions of s.111. I ask that you ensure that the basis of dissemination is expressly stated to each member of the Committee and as well as to the officers who deal with this material.

Yours sincerely,



The Hon B S J O'Keefe AM QC  
Commissioner

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**OPERATION AND EFFECTIVENESS OF THE ORC**

**5. As you undertook to do at the last hearing, will you provide the Committee with the Yeldham file so that it can review the ICAC decision-making process?**

No. Furthermore, the form of the question involved an inaccuracy. The previous answer was given to a question which was not on notice and in respect of which I had no opportunity to consider my reply. It was given at a time when I believed, wrongly as it transpired, that the file was a public exhibit in the Royal Commission. This clearly emerges from page 42 of the transcript of the meeting of 17 December 1996 when in answer to a question by the Hon Ian Macdonald MLC, I said:

"I will take that on notice, but I am reminded that the file relating to the particular matter has been tendered to the Royal Commission. It is a public document now, so that is readily available and, *to that extent*, its contents." (emphasis added)

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In answer to a further question by the Hon Ian Macdonald MLC, in relation to the exhibit, I responded:

"I will get hold of *the actual exhibit*, get a copy and send it to you if you like, or send it to Mr Emery and he can distribute it." (emphasis added)

The exhibit tendered at the Royal Commission was not made a public document and was therefore not available to be copied and disseminated.

This matter was dealt with in detail in my letters to the Committee dated 20 December 1996 and 8 April 1997 in which I indicated the position of the Commission.

The decision-making process of the Commission concerning whether a matter should be investigated or not investigated is not a matter which falls within the jurisdiction of the Committee.

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**ANSWERS TO QUESTIONS 1, 2, 3, 4, 6 and 7  
TAKEN IN CAMERA**

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**ANSWER TO QUESTION 21  
TAKEN IN CAMERA**

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