

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION

REVIEW OF THE 2009-2010 AND 2010-2011 ANNUAL REPORTS OF
THE INDEPENDENT COMMISSION AGAINST CORRUPTION

At Sydney on 17 February 2012

The Committee met at 9.45 a.m.

PRESENT

Mr M. R. Speakman (Chair)

Legislative Council

The Hon. N. Blair
Reverend the Hon. F. J. Nile
The Hon. L. Voltz

Legislative Assembly

The Hon. R. S. Amery
Mr M. J. Coure
Mr A. R. Gee (Deputy Chair)
The Hon. T. George
Ms T. Mihailuk

CHAIR: The Committee on the Independent Commission Against Corruption welcomes the Commissioner of the Independent Commission Against Corruption and other members of the Independent Commission Against Corruption executive for the purpose of giving evidence on matters relating to the Commission's annual reports for 2009–10 and 2010–11. I convey the thanks of the Committee for your appearance today. As part of the formalities I will ask each of you to either take an oath or make an affirmation. We will commence with Commissioner Ipp.

DAVID ANDREW IPP, Commissioner, Independent Commission Against Corruption,

ROBERT WILLIAM WALDERSEE, Executive Director, Corruption Prevention, Independent Commission Against Corruption,

JACQUELINE LOUISE FREDMAN, Manager, Assessments Section, Independent Commission Against Corruption, and

SHARON LEE LODER, Director, Investigation Division, Independent Commission Against Corruption, affirmed and examined:

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

ROY ALFRED WALDON, Solicitor to the Independent Commission Against Corruption,

STEPHEN ANDREW OSBORNE, Deputy Director, Investigation Division, Independent Commission Against Corruption, and

ANDREW KOUREAS, Executive Director, Corporate Services, Independent Commission Against Corruption, sworn and examined:

CHAIR: Commissioner, would you like to make an opening statement before we commence with questions?

Mr IPP: Yes, thank you for that opportunity. On the last occasion that I addressed this Committee I said that the work of the Commission had increased to the extent that we were not investigating matters to which we would have directed attention had we had greater resources. I am pleased to report today that that situation has changed fundamentally. While we are extremely busy we have been given the additional funds we have requested. In key areas we have increased the members of our staff and have made other staff changes. We have been fortunate in being able to attract skilled, experienced and committed persons who have added to the professionalism and efficacy of the agency. The present position is that we are coping with the material that should be investigated and no matter that should be investigated is being ignored because of lack of resources. The backlog of matters subject to preliminary investigation has been cleared. Full-scale investigations are being treated with the care that they need. Targets are generally being met without the constant need for overtime work. As the additional resources we have been given have made such an important difference I shall summarise what we have done with the money we have received.

Initially the Commission requested recurrent supplementation funding of \$2.3 million for 2011 to meet its additional workload. As the request was made shortly before the 2011 election the New South Wales Treasury approved only a one-off supplement of \$1.2 million for the 2011 financial year. Since then approval has been given on a recurring basis for additional annual funding of \$2.2 million. The initial additional \$1.2 million was received late in 2010. Accordingly it could only be used for part of the year and for contract and not permanent staff. Nevertheless, it was of considerable assistance in coping with the sharp increase in investigatory work the Commission was undertaking. It enabled the Commission to employ six additional temporary officers and to finance \$500,000 extra legal costs incurred by reason of significant increases in public inquiries and compulsory examinations that occurred in 2010.

At the beginning of 2010 the Commission had a lengthy backlog of matters subject to preliminary investigation. In that year the extra staff assisted in clearing the backlog. The matters subject to preliminary investigation were reduced from 138 in 2010 to 66 in 2011. The number of preliminary investigations has thus been reduced to appropriate bounds, which are within the Commission's capacity. I should add that the \$1.2 million was also used for other projects. Amongst these were improvement of our payroll and financial systems, our electronic document and records management system, obsolete surveillance equipment and the implementation of a timekeeper module that records time spent on projects and investigations.

The recurring annual funding increase of \$2.2 million applied as from 2011. This sum enabled the Commission to increase its permanent staffing by 11 officers and to meet the increased recurring external legal fees caused by the increase in the Commission's public inquiries. The balance was used for associated operating expenditure, including the upgrade of the Commission's surveillance equipment base, enhanced information technology capabilities and support, as well as additional office space for the additional staff. I should mention that the Commission has applied for a special grant for this financial year to enable it to conduct certain important investigations that require a high degree of professional specialisation for which some outside assistance will be needed. Should this grant be forthcoming the Commission in the coming year will focus much of its resources on these investigations. The overall satisfactory situation in which the Commission finds itself is basically the result of the additional funding we have received. I should say publicly that I am grateful both to the previous Government and this Government for acceding to our requests in the prompt and helpful manner they have and for the support and cooperation that has been provided to us.

While on the topic of resources, I need to give an update to question 30 of the questions on notice. After the answer had been given the Commission was provided with a detailed design specification by consultants who had earlier undertaken a review of the Commission's information communications and technology strategy. The estimated costs of new ICT equipment, according to the detailed design specification, were considerably higher than those the consultants had nominated in their earlier review. Unfortunately, the initial estimate had formed the basis of the Commission's earlier funding request and subsequent NSW Treasury approval. This increase in the estimated costs has caused the Commission to investigate whether its core ICT strategy can be implemented in a less expensive way. It may be, however, that the Commission will have to seek additional funding to update its ICT infrastructure.

There is an additional matter in this respect as well. Since the early 1990s the New South Wales Crime Commission has supplied telecommunications interception, known as TI, facilities to the ICAC. These include infrastructure software and technical assistance. These facilities were supplied at virtually no cost. Towards the end of last year, however, due to changes in the NSWCC system architecture it became apparent that the NSWCC will be unable to continue to provide this service to the ICAC at the level required. Consequently, the ICAC has commenced a review of its TI infrastructure options. This review indicates that it will cost the ICAC between a few hundred thousand to \$1 million to replace these facilities. The options are still being investigated.

Coming now to the investigation and exposure of corruption, the increased extent of the Commission's activities in this regard is probably the most significant aspect of the achievements highlighted in our annual reports for 2010 and 2011. These activities are illustrated by the following. In 2009 the Commission undertook seven public inquiries and 33 compulsory examinations. In 2010, however, the Commission undertook 138 preliminary investigations; four full-scale investigations were carried over from 2009, and 20 full-scale investigations were commenced. These 24 full-scale investigations resulted in 12 public inquiries and corrupt conduct findings against 28 persons.

In 2011 the Commission undertook 66 preliminary investigations, continued to investigate nine investigations carried over from 2010 and initiated a further 15 full-scale investigations. Thus the Commission again undertook 24 full-scale investigations in this year. These resulted in nine public inquiries, which led to corrupt conduct findings against 26 persons. In the same period the Commission undertook 124 compulsory examinations, up from 33 in 2009. Commission lawyers acted as counsel in 118 of these. Public inquiry days in 2011 amounted to 70, compared to 28 in 2009. In 2011 Commission lawyers issued 101 section 21 notices, up from 13, and 651 section 22 notices, up from 329.

These statistics do not give the complete picture of the commission's activities. At times, after significant resources have been devoted to particular investigations, it is discovered that what originally were thought to be suspicious circumstances were not brought about by corrupt conduct and such investigations are terminated without public inquiry. Also, while some investigations are simple and can be completed rapidly, others might be highly complex, taking many months of concentrated investigation to achieve an outcome. Factors of this kind cannot be reflected in the bare statistics the Commission publishes. All in all, I think it fair to say that the number of the Commission's investigations, public inquiries, consequential results of these activities and the concomitant degree of corruption that is exposed, place it well ahead of similar agencies in Australia. The Commission, however, is acutely conscious of the need to maintain and improve its results and standards.

The escalating complexity of investigations the Commission undertakes, both contextually and technologically, is a problem unlikely to diminish. The facts we investigate are increasingly complex, involving inter-related activities by multiple parties in highly specialised fields. Additionally, the explosion of digital communications

continues to test the Commission's investigative capability, that is, to find relevant evidence, and to maintain the skills, knowledge and technological facility to capture and interpret it. The Commission needs to ensure that its management systems and processes, including forward planning, continuously improve. Awareness of this need is very much part of the Commission's ethos.

The DPP and the Commission have signed a new MOU that is designed to avoid the serious delays that have previously affected and prejudiced prosecutions of ICAC offences. The Commission is focusing on preparing as far as possible a brief to the DPP at the same time as preparing a public inquiry. This approach is paying dividends. Generally, however, more needs to be done by the Commission in order for it to comply with the MOU. We are trying our best.

A principal function of the Commission is to investigate and expose corruption. A secondary function is to assemble evidence for the prosecution of criminal offences. Two matters of the utmost significance arise from this dichotomy. Firstly, the evidence available to the Commission for the purposes of making corrupt conduct findings invariably differs significantly from the evidence which is admissible in criminal proceedings. Very often evidence admissible in a public inquiry is not admissible in a prosecution. Also, it is not unusual for crucial witnesses who are compelled to appear in the public inquiry to refuse to cooperate in a prosecution. This means that a finding of corrupt conduct does not necessarily carry with it the likelihood of a criminal conviction or even a prosecution. That is why the ICAC Act prescribes the investigation and exposure of corrupt conduct as a principal function, unlike the gathering of evidence for a criminal prosecution. Secondly, the Commission may decide to pursue a public inquiry because the alleged corrupt conduct is so serious that its exposure is in the public interest even though there may be little or no likelihood of a criminal conviction. It is therefore entirely inappropriate to measure the Commission's performance by reference to the number of offences proved in the criminal courts.

Having expressed this caveat, I will now give you the relevant statistics for criminal prosecutions over the years 2010 and 2011. In 2010, 16 persons were prosecuted for criminal offences and 14 prosecutions were completed. Of the 14, eight were convicted of all or some of the charges and six were found not guilty. In 2011, 18 persons were prosecuted for criminal offences and 14 prosecutions were completed. Of the 14, 12 were convicted of all or some of the charges and two were found not guilty.

I turn now to corruption prevention, an equally important aspect of the Commission's functions. Over the last two financial years the corruption prevention division has targeted the high-risk areas of lobbying, planning and procurement, while also increasing the training and educational output.

The first of three major corruption prevention projects was the investigation into the regulation of lobbying in New South Wales. The investigation reviewed relevant Australian and international literature and regulatory systems and prepared an issues paper for comment. This attracted more than 60 submissions. In August 2010, 48 witnesses gave evidence at an 11-day public inquiry held as part of the investigation. The investigation revealed that lobbying attracted widespread perceptions of corruption and involved a number of corruption risks. The Commission's report, released in November 2010, made 17 recommendations for change. These recommendations were designed to create a new regulatory scheme that was accountable and transparent while at the same time was practical and simple.

The Lobbying of Government Officials Act recently introduced gives substantial effect to two of the Commission's key recommendations, namely, the abolition of success fees and the introduction of the cooling-off period for ex-Ministers and Parliamentary Secretaries before they can lobby a government official. These two reforms, however, while not unimportant, do not go anywhere near establishing a complete lobbying scheme of the kind the Commission recommended and do not remove the perceptions of corruption that presently attend lobbying practises. The Commission remains hopeful that its other recommendations will be reflected in legislation in due course.

The second major corruption prevention project undertaken in 2011 related to part 3A of the Environmental Planning and Assessment Act under which developments declared to be major projects were determined by the Minister. Since the Commission published its report on this project, legislation has been introduced which meets many of the Commission's concerns.

A third major corruption prevention project addressed systemic weakness in the State's control of procurement. This project led to the Commission making seven recommendations. The New South Wales Government has advised recently of its general intention to adopt the Commission's recommendations.

Through nearly 140 training and speaking events in 2010-11, the Corruption Prevention Division of the Commission has directly reached some 3,700 people thereby increasing their awareness and skills in preventing corruption.

To further strengthen New South Wales procurement, the Commission has introduced training for managers in procurement probity, and it is now one of our most requested training workshops. A significant aspect of the Commission's work was the furnishing of corruption prevention advice to public officials and members of the public. During the two years 2009 and 2010 the Corruption Prevention Division responded to more than 250 requests for such advice.

In conclusion, as the questions on notice are penetrating and wide ranging, I hope that the answers give you a full picture of the Commission's operations. We are happy to expand on any that need clarification.

CHAIR: The functions of this joint Committee include not only reviewing your annual and other reports, but also examining trends and changes in corrupt conduct. I will commence by asking this very open-ended question. In your opening statement you spoke about the increasing complexity in managing to investigate the digital revolution and its effect on your work load and the way you do things. What trends or changes in corrupt conduct, if any, have you observed that you think may need to lead to an amendment of your functions or powers?

Mr IPP: The area of corrupt conduct that has received perhaps the greatest focus by the Commission in the past year has been procurement. We have been involved with Operation Jarek, which involved investigating more than 100 local authorities. We have not yet provided our report, so it is premature to express any final conclusions. But I think it is apparent to anybody who has read the evidence in that case and seen the admissions made by so many people that there is a serious issue at least at the local government level with procurement, which is basically, I think, a lack of understanding of the obligations of persons who buy goods and services for local authorities. We are hoping that with that inquiry and the increased level of interest by local authorities in this area that the issues will improve. In other areas it is difficult to detect any different particular concerns. I have to say that my general impression is that, contrary to what I sometimes read and hear, the level of corruption in New South Wales is not particularly high.

CHAIR: Are there any trends that might require your functions or powers to be enhanced or finetuned in any way?

Mr IPP: We have no requests at the moment.

Mr ANDREW GEE: You mentioned the issue of procurement and training for managers, and also how it related to local government. The report says that 40 per cent of the section 10 complaints related to local councils. Does the Commission conduct specific anti-corruption training for local council staff?

Mr IPP: It does. I think Dr Waldersee will be able to give you the detail on that. I think there is one particular area that is a problem and that is country councils in outlying areas. It really is quite difficult for the Commission to conduct training sessions in these outlying country areas, which can be so far away and might involve a whole week away from the office, as it were. But we do our best. Perhaps Dr Waldersee can expand on that.

Mr WALDERSEE: Are you referring to procurement in particular or councils' skills in general?

Mr ANDREW GEE: Council skills in general, but they would include procurement, given the recent investigations.

Mr WALDERSEE: Yes. The training we carry out is tailored when it is delivered. When we go to councils, it is council cases they work on, it is council examples, et cetera. In terms of reaching the councils, we are increasingly working with the ROCs of the local areas to try to get them to organise a number of councils to come together in one place. That makes it easier to reach multiple councils in rather remote areas. Even though this inquiry is about previous annual reports, we also now are looking at going out in conjunction with the Local Government Management Association. That makes it easier: they do a lot of the organising and make the contacts and we come along and deliver what we can in behind. Maybe that is not quite what you are getting at.

Mr ANDREW GEE: No, that is helpful. Following on from what the Commissioner said about the difficulties in contacting or involving regional areas, I notice in the report that you made two regional visits over the past

year. Is there any scope to increase those numbers of visits? During those visits do you conduct training with local council staff?

Mr WALDERSEE: Okay. Each year we carry out two regional visits. Those visits are quite large and they rotate around the State so that all areas are covered in a rotating way. I think we cover all of the State every five years, which does not sound much. But they are quite large so they have community breakfasts to talk about what ICAC does in reporting to community leaders, training for the local councils and government agency regional offices plus visits to the local agencies to discuss the issues that they might be facing. But that is not all the regional and rural outreach or training that we do. They are the two big programs. In addition to that we are travelling around the State as I described earlier. But, essentially, it is to provide training. Sometimes it is to provide advice when they request. In terms of the scope to increase the major outreach, I think we would struggle with our current demands to have a third. But, as I said, we are moving towards the ROC-based training where we can go to one place and reach multiple councils in one go as a more efficient way.

Ms TANIA MIHAILUK: Commissioner, you commented earlier about procurement concerning not just staff. I understood that you implied also a lack of understanding by the persons who supply the goods and services to local government?

Mr IPP: Absolutely.

Ms TANIA MIHAILUK: What are your suggestions to the Parliament in general? Is it training or is it possibly outside the scope of ICAC in relation to the private sector? What can we do to better understand the challenges?

Mr IPP: We have recommended to councils that they provide their suppliers with, as it were, a code of conduct because this involves not only educating the councils but also educating the suppliers. In that inquiry many suppliers indicated their surprise at being told that what they were doing was improper. They accepted that it was improper but said that that is something that has happened for a very long time. Some of the suppliers were multinational companies. They were actually introducing in Australia marketing practices that they had employed all over the world. It really does require education not only of councils but the suppliers. We have no reach to the suppliers ourselves. We can only get to them by trying to persuade councils to inform the suppliers of what is expected of them.

Ms TANIA MIHAILUK: Another question for Dr Waldersee. In relation to the training that you do undertake of staff my question relates to a possible concern not only with the training that staff may have or may not have undertaken in relation to procurement and their role in procurement but supervision that may or may not be taking place at some levels of local government. I appreciate that in some areas councils differ in the way they supervise staff in this area: Do you see a difference depending on whether it is regional, rural or city in the way that staff are supported?

Mr IPP: We have made recommendations to councils relating to supervision of staff. The detail I will leave to Dr Waldersee to comment on.

Mr WALDERSEE: The issue you touch on is one that concerns us. I will refer to what we have started to do about it. If people know they should not take a gift there is no point training them that they should not be taking a gift. The question is: Are they supervised? Are the systems within which they work correct? Is the overall approach of the council correct? We have put together a publication, which seems to be filtering around quite significantly, about looking at how you manage procurement. It goes to the issue of the staff have to know, so training has to be appropriate, but the management has to follow it, the system design has to be right, the motivation of the staff has to be right, and the structural arrangements by which they are supervised have to be right. Rather than putting out prescriptive recommendations, given that everyone is different, we have tried to raise the issues and give options to managers. There is a paper called "The Management Challenge", which came out in December 2011. It is widely read, as far as we can tell, already. I think it has been distributed very widely around the country, it seems.

Mr THOMAS GEORGE: Through the Commissioner to Dr Waldersee: Have the regional organisation of councils been supportive in their encouragement of councils coming to these training or information days.

Mr WALDERSEE: The ROCs vary from ROC to ROC. They are more notable in their variation than their similarity. The average may not be a meaningful answer. To give an average overall—they are very helpful. Some of them do not want us there. Generally speaking they are very helpful.

Mr THOMAS GEORGE: That is disappointing to hear.

Mr RICHARD AMERY: That they are helpful.

Mr THOMAS GEORGE: Some of them have not been helpful.

Mr WALDERSEE: To be fair, it is a burden.

Mr THOMAS GEORGE: Have you also raised the issue with the Shires Association of New South Wales?

Mr WALDERSEE: I would have to take that on notice. We try and talk to the various peak bodies and to local representatives. My guess is probably, yes, but I would have to take that on notice.

Mr RICHARD AMERY: My question relates to your comments today, and in the forward, in relation to the number of prosecutions as a result of investigations and the interesting statistics in relation to the two reports. For example, I notice going back to 08-09; 21 of 52 prosecutions; then 16 out of 28; 18 out of 26; and this year it has gone up. The percentage of prosecutions out of these findings is increasing which highlights the result of employing a lawyer to improve the briefs of evidence to the Office of the Director of Public Prosecutions [ODPP]. Based on the statistics in 2010-11, there were 26 persons subject to a corrupt finding of which there were 18 persons prosecuted arising from those investigations. What I am trying to find out, to break down those numbers, is of the 18 people prosecuted how many of those were prosecuted for the primary complaint? If they were complaining about the local government issue of taking a gift, were they prosecuted for that or is that 18 made up of making a false statement or statutory declaration or something that arose out of the investigation? How many of those complaints result in a prosecution for the primary allegation?

Mr IPP: I will ask Mr Waldon to reply to the detail of that. As far as I can recall there are none that were prosecuted other than for the primary complaint. It is our general policy not to prosecute people if we cannot prosecute them for the primary complaint. Mr Waldon may correct me.

Mr WALDON: I cannot give you details of precise numbers but the appendices in each annual report sets out the offences for which people are prosecuted and details of those offences. In most cases they have been prosecuted for the primary offence. I understand the "primary offence" to be the offence for which we started the investigation of corrupt conduct. There may be subsidiary offences for the people who were involved in the main offence where they have given false evidence to the Commission, but generally those offences are in addition to the primary offences.

Mr IPP: You will understand that sometimes they are prosecuted for the main offence but they are found not guilty on the main offence but found guilty of lying.

Mr RICHARD AMERY: To help me understand how the reports are written, in relation to page 131 of the 2010-11 report, which was overseas travel, I notice in 2009-10 you all stayed home. In relation to table 50, overseas travel appendix 7, it talks about Mr Symons went to Japan and it was \$1,381, and then there is three particular trips involving Hong Kong, Thailand and Macau where there is no amount of money in the column. There is obviously an explanation for that; either that, or, I want the name of your travel agent. Why is there nil?

Mr IPP: Either they paid themselves or they were paid by the host.

Mr RICHARD AMERY: We do not write down if the Hong Kong Independent Commission Against Corruption is the funding source for the trip?

Mr IPP: Not in the report. We only write down when we spend our own money. Where it is nil at least all or part of the fares are paid by the host but we do not pay. We do not pay where we say we do not pay, where it is nil.

Reverend the Hon. FRED NILE: Your staff have been invited?

Mr IPP: That is right.

Reverend the Hon. FRED NILE: I note that you said that you are happy you are getting increased resources. Page 18 of the report lists the matters investigated by the Commission. In 2009-10, under the heading "Own Initiative", there were 24 cases, but in 2010-11 there were only three.

Mr IPP: Are you referring to table nine on page 18?

Reverend the Hon. FRED NILE: Yes. I assume "Own Initiative" means that you initiated those inquiries.

Mr IPP: That is correct.

Reverend the Hon. FRED NILE: Is that because you were concerned about available resources to conduct further inquiries?

Mr IPP: It is just circumstances. Sometimes we initiate our inquiries because of information that is received. But largely we act on complaints.

Reverend the Hon. FRED NILE: I know.

Mr IPP: There is no connection between acting on our own initiative and our resources, although there was a time when we did not have money and we were reducing the number of investigations. We would be very hesitant about acting on our own initiative at that time.

Reverend the Hon. FRED NILE: I think it is a good thing that you do conduct some inquiries on your own initiative in response to information you have received. I think that keeps everybody on their toes. Who within the Commission initiates those inquiries? Would a director make a recommendation to you?

Mr IPP: Generally it is one of the directors or me. We might notice something in a newspaper.

Reverend the Hon. FRED NILE: In your opening remarks you said that there may be a need for more resources because in some investigations you need to use outside resources. You have a large staff and equipment. Are those resources for some technology?

Mr IPP: It is for specialised skills. We might need people with specialised knowledge that we do not have.

Reverend the Hon. FRED NILE: What knowledge would that be?

Mr IPP: Without any disrespect, I would not like to disclose that because there are current operations. As soon as I tell you what they are and that becomes public, the people will know what we are investigating.

Reverend the Hon. FRED NILE: I do not want the detail, but I understand that it is an area of technology or something like that.

Mr IPP: Yes.

Reverend the Hon. FRED NILE: I am pleased that through the different inquiries we have this improved relationship with the Director of Public Prosecutions. Are they now happy with the briefs you are preparing? You indicated that it seems to be working now.

Mr IPP: We have had marriage counselling and we are getting on better. We are trying to understand each other.

Mr THOMAS GEORGE: What is the name of the counsellor?

Reverend the Hon. FRED NILE: There has been an improvement, but there is still room for improvement.

Mr IPP: You are right on every count.

The Hon. LYNDA VOLTZ: You referred to the procurement survey. You had 3,200 suppliers on the list and you received responses from 1,515, which is 43 per cent. Is there some indication as to why 57 per cent did not respond?

Mr WALDERSEE: We did not follow up or hunt down a sample of non-respondents, which is one of the ways you can work out the difference. We were actually surprised at how big the response rate was. In this sort of

research a response rate of about 20 per cent to 25 per cent is the norm. We considered it very high for the supplier survey.

The Hon. LYNDIA VOLTZ: That is nice, but why do people not respond to surveys normally?

Mr WALDERSEE: It could be a bunch of reasons including that they cannot be bothered, it is time consuming or they are worried that we might somehow be working out who they are.

The Hon. LYNDIA VOLTZ: They may not think it is an important issue.

Mr WALDERSEE: They may not; that is possible, too. It is very speculative.

The Hon. LYNDIA VOLTZ: They are all speculative without any data to back them up. I refer to the survey you sent out to public authorities. You said that you sent them out in hardcopy. You have not identified how you contacted suppliers. Was that done using hardcopy or email?

Mr WALDERSEE: That was email using DSTA. Essentially, it was the Department of Commerce's database. That was a database of all suppliers to the New South Wales Government that were known to the Department of Commerce. They were linked to an electronic survey system.

The Hon. LYNDIA VOLTZ: They could click on it?

Mr WALDERSEE: Yes.

The Hon. LYNDIA VOLTZ: I asked the Commission to provide me with a copy of the surveys linked to these reports. I have been provided with the supplier survey but not the one that went to public authorities. Is there some reason for that?

Mr WALDERSEE: Only that I was told you wanted only the supplier survey. I am more than happy to provide the public authority survey.

The Hon. LYNDIA VOLTZ: I would appreciate that. I note that 12 per cent of the responses were from government departments, which is 18 government departments. How does that measure up against the number of government departments that were captured as part of that mail out? It is 12 per cent of the responses, but is that 50 per cent of government departments or 70 per cent? How many government departments did not respond?

Mr WALDERSEE: I will take that question on notice and work out the details.

The Hon. LYNDIA VOLTZ: I would appreciate that. I would also like you to compare that with the number of local councils that responded and how many surveys were sent out.

Mr WALDERSEE: Yes.

The Hon. LYNDIA VOLTZ: Is there a reason that the responses to the question "Has a public official ever asked you to give him or her a gift, cash or benefit" were not included in the report?

Mr WALDERSEE: Again, I would have to look at the analysis. There is nothing that I can remember that made that outstanding. It is not in there because it was not a perception question. The publication eventually became an issue of perception. This was an actual experience question and the answer was somewhat concerning—about 7 per cent to 10 per cent said that they had personally been asked for some sort of gift by a public official. That was concerning, but it was not a perception.

The Hon. LYNDIA VOLTZ: Let us go to that perception as opposed to the actual experience question. I have a copy of newspaper report that I can only assume refers to a press release. It states:

Granting gifts or benefits worth more than \$20 during the process was also rife, 48 per cent of respondents reported, with 36 per cent saying those items were accepted by government employees.

The reality is that 36 per cent had a perception or thought they were accepted.

Mr WALDERSEE: Yes.

The Hon. LYNDIA VOLTZ: The next question—the one that has not been reported—deals with the fact that they were or were not because it was an actual question, not a perception. Is that not correct?

Mr WALDERSEE: The next question being—

The Hon. LYNDIA VOLTZ: Yes, the one asking whether a public official has ever done that.

Mr WALDERSEE: I think they are going to two things. One is the perception that it is common that gifts are accepted. The other one asked whether they had experienced being asked for a gift. That is quite a different issue.

The Hon. LYNDIA VOLTZ: Yes, but in your press release you did not define that this was a perception and that you had an actual response about whether people said they had an actual experience. The press release implied that this was an actual response from the suppliers as opposed to a perception and there was indeed another question that outlined whether they had direct experience of that.

Mr IPP: Are you asking a question?

The Hon. LYNDIA VOLTZ: Yes, I am.

Mr IPP: What is the question?

The Hon. LYNDIA VOLTZ: Why did it have 36 per cent said that those items were accepted when, in fact, the next question is the actual question about whether suppliers were saying they were accepted?

Mr WALDERSEE: Sorry. The next question was solicited.

The Hon. LYNDIA VOLTZ: That is right. Has a public official ever asked you to give him or her a gift of cash or benefit?

Mr WALDERSEE: The question that was a perception is: Is it your perception that it is common that people offer gifts to government? The other question was the soliciting of gifts by government from a supplier which is quite a different thing. One is an unsolicited gift being sent by a supplier—six steak knives with your purchase. It is quite different for a public official to come along and say, "If you want this job you had better give me a gift." It is mixing a perception of an offer of how common it is for suppliers to offer gifts in the procurement process with a personal experience of having a gift solicited from you in return for a government contract purchase. I think they are quite different.

The Hon. LYNDIA VOLTZ: The question is: How typical do you think it is for the public sector officials to accept gifts or benefits? The next question is: Has a public official ever asked you to give him or her a gift? What is disclosed in the press release is that 36 per cent were saying those items were accepted by government employees. Should the impression given to the media have been that 36 per cent thought there was a perception?

Mr WALDERSEE: I do not have before me the press release but the issue is that it was perception. I did a number of interviews on this and made it clear it was perceptions. We had no intention of creating the impression it was other than perception. The paper itself is full of suppliers' perceptions. The issue is a perceptions matter because they are the reality of those people. If that is different from some objective reality then it indicates the suppliers need to know differently. If suppliers believe the situation to be corrupt it will impact on their likelihood to bid for government work, it is also likely to impact their perception on whether they should offer a gift to just stay in the game.

The perceptions are very important. The paper said perceptions. All my interviews said perception. I am not sure exactly what was said in that press release but it was never meant to imply that it was anything other than perception.

The Hon. LYNDIA VOLTZ: Have the results of the answers to that actual question about whether a public official ever asked you to give him or her a gift of cash or benefit ever been released to the public?

Mr WALDERSEE: I cannot remember it.

The Hon. LYNDIA VOLTZ: Will you check that and get back to the Committee?

Mr WALDERSEE: I can.

The Hon. NIAL BLAIR: Commissioner, I refer to your opening statement which has led us into the procurement area about trends and current changes in corrupt areas. I want to look at the impact that technology has had on those trends and also on the way that you actually carry out investigations. Would you comment on the impact of the technology and whether that is leading towards these trends in procurement or any other areas of corrupt conduct?

Mr IPP: Is your question whether technology assists—

The Hon. NIAL BLAIR: in creating those trends. What impact does technology have on you having to investigate these matters?

Mr IPP: I can only speak from my experience. My experience has involved sitting as presiding Commissioner in all but two or three inquiries over the past two years. I am not sure whether any procurement matters were in those two or three. I do not think that technology has been an issue in any of those. Technology is certainly an issue in the investigation because people try to conceal what they are doing. There is a continual use, of course, of computers and deletion of material from computers. A major question for us is the collection of material that has been on computers, finding and tracing it because sometimes we have got hundreds of thousands of pages that have to be gone through and, there again, we just cannot read every one so we have got to use some kind of technological aids to dredge through and find what we are looking for.

There we use our forensic team and sometimes have to get outside help for that but that is very much a technological issue. Technology is terribly important in the detecting area, in the investigation area, but we have yet to experience technology being used in a very sophisticated way to commit procurement frauds although I expect that that is something that will happen.

CHAIR: I want to ask about section 53. Have there been cases when you have exercised your powers under section 55 to take further action because you have not been satisfied that the relevant authority has properly handled a section 53 referral?

Mr IPP: I cannot recall. I know we have considered it.

Ms FREDMAN: I have been at the Commission for almost five years now and we have not exercised our powers in that time. Anecdotally, I think we may have some time ago in the past five to 10 years, but certainly not in the past few years.

The Hon. NIAL BLAIR: Is there a pattern in terms of the agencies that get referrals under section 53, and those that do not?

Ms FREDMAN: No, I would not think so, not to my observation.

The Hon. NIAL BLAIR: I read the protocol that was provided with the answers to the questions on notice. Is there any systematic process for accessing the capacity of agencies to receive a referral?

Ms FREDMAN: We consult with the agency before we propose to send the referral, and if there are any concerns raised at that stage then those concerns can be taken on board in the decision-making processes as to actually make the referral to them. There are certainly agencies, say smaller councils, for example, who will contract out the investigation to a specialist body.

Mr IPP: We are very sensitive about those. We are sensitive in one respect particular and that is where the complaint is against an executive of the council, because sending it back to the council to investigate an executive of the council is not a good idea generally. We try to avoid that.

Mr ANDREW GEE: Commissioner, the report states that on 1 July 2011 the Public Interest Disclosures Committee came into existence. Is the operation of that Committee to date living up to the expectations of the Commission?

Mr IPP: The Deputy Commissioner deals with that and I will ask her to answer that question.

Ms HAMILTON: The Committee has only met a couple of times to date. I think it has the potential to be very useful. It is a very high-level committee, as you will have noted from the membership. They are all chief executive officers, the Police Commissioner et cetera. We have already identified a couple of the matters where we think the Act could be amended. We do not think a couple of the amendments that have been made as a result of recommendations from this Committee's predecessor have achieved quite what they were intended to, so we will be going back to the Government to seek clarifying legislation. But, in general terms, I think that the Committee has the potential to be a very useful tool for getting improvements into the way in which whistleblowers are dealt with in this State.

Mr ANDREW GEE: How often does the Committee meet?

Ms HAMILTON: It meets about once every two months.

Mr RICHARD AMERY: In relation to the statistics about the increase in public hearings and the like, and bearing in mind that they are used as a reason for submissions to improve the budget and so on, what would be the cost? Is there an average cost of public hearings, or a daily cost of a public hearing, as part of a pie chart of your budget?

Mr IPP: I am not understanding you.

Mr RICHARD AMERY: I understand that some types of hearings might go for many more days than others, but how much would it cost, in general terms?

Mr IPP: The cost will involve the cost of counsel and the cost of the transcription service. The cost of counsel depends upon whether there is a senior counsel or not. It would be \$4,000 a day.

Mr WALDON: \$3,000 for junior counsel and \$1,800 for junior counsel.

Mr IPP: And the transcription costs?

Mr WALDON: That would be \$1,200.

Mr RICHARD AMERY: So we are talking around about between \$7,000 and \$8,000 a day as the average price of running a public hearing?

Mr IPP: No, no. We do not have two counsel. We have \$3,000 a day plus \$1,200, which is \$4,200 a day, at most.

Mr RICHARD AMERY: And that is a pretty good ballpark figure?

Mr IPP: Yes.

Reverend the Hon. FRED NILE: In response to question on notice No. 7, you highlighted that the Commission is unable to access the New South Wales Police computerised operational policing system, that you want to vet your own prospective employees, and that this has caused delays. Do you have any plans on how you either get access to that, or do we need to change the legislation to allow you to do that?

Mr IPP: We have asked for a change in the legislation because that is the only way we can deal with it.

Reverend the Hon. FRED NILE: You have already asked the Premier?

Mr IPP: The Premier's Department, yes.

Reverend the Hon. FRED NILE: Is there anything that this Committee can do to assist you?

Mr IPP: Your support would be very much appreciated.

Reverend the Hon. FRED NILE: Have you had any other matters that you have referred to the Government for possible amendments to the Act to assist your Commission's activities?

Mr IPP: No. I am sorry to say this, but we are content.

Reverend the Hon. FRED NILE: Good. That is very pleasing.

CHAIR: Have you formulated the amendments you would like in relation to the computerised operational policing system [COPS]?

Mr IPP: If you are asking me whether we have drafted it, the answer is no. There are apparently a number of agencies which have a similar complaint, and they have complained as well. The drafting will have to cater for everyone, and so this is a matter for the parliamentary draughtsman.

Reverend the Hon. FRED NILE: We have spoken about local government. Obviously in your activities, there is a reference concerning non-government organisations.

Mr IPP: Yes.

Reverend the Hon. FRED NILE: Do you have any particular concerns there?

Mr IPP: Oh yes.

Reverend the Hon. FRED NILE: Can you update us on what progress you are making?

Mr IPP: Yes. We have got concerns, and it is currently a project of corruption prevention that will take time because it is complex. But the basic problem with non-government organisations [NGOs] is that they operate with taxpayers' money, but without the controls. The Ombudsman, the Auditor-General and ourselves very often do not have jurisdiction over them. While they are funded by government money, they are very jealous of their own rights, and we do not have any access to them.

That becomes an issue when non-government organisations are doing work that is inherently of a governmental nature. There is only one way to deal with that and that is through legislation, but it is a very complex problem because every non-government organisation is different. Some non-government organisations may be susceptible to our jurisdiction; others may not. What is really needed is some kind of umbrella legislation that puts all non-government organisations under the jurisdiction of those agencies. But that, I think, will cause a tremendous scream of protest from the non-government organisations.

Reverend the Hon. FRED NILE: Would it be possible, though, as you said earlier, just to focus on those non-government organisations that are receiving government funding?

Mr IPP: I think all of them are.

The Hon. LYNDIA VOLTZ: Mainly the church organisations.

Mr IPP: That is how they are financed.

Reverend the Hon. FRED NILE: You were saying that that would require further legislation. Are you recommending that, or is that a matter you are still considering?

Mr IPP: We have a project going on in which we are investigating this. As I said, it is a complex matter because some non-government organisations need it more than others. You will just have to read the Auditor-General's report because he has dealt with this. Some, I think, are more likely to fall under our jurisdiction than others on the present state of the law. But there is generally a state of uncertainty about it.

Reverend the Hon. FRED NILE: Have you had many complaints about corruption in non-government organisations directed to the Independent Commission Against Corruption [ICAC]?

Mr IPP: We have had some complaints, but we do not investigate those because we do not think that we have jurisdiction.

Reverend the Hon. FRED NILE: We will wait for you to further develop those amendments.

Mr IPP: Yes. We hope that by the time of our next meeting we will have produced something on it, but I am not sure. Certainly within the next 18 months, we should.

The Hon. LYNDIA VOLTZ: Just going back to the question of lobbying of government officials, how precisely are "government officials" defined? For example, would a person who is paid a retainer by the government to sit on a board that directly advises the government on capital works expenditure be covered by that?

Mr IPP: The answer is that I cannot remember the definition. We have moved on from there. Our recommendations contained a complete scheme, including a definition, and it was all explained in the report. You will find it there.

The Hon. LYNDIA VOLTZ: So would a person who sat on a government advisory board that reports directly to government on capital expenditure be captured by that?

Mr IPP: I do not think so.

The Hon. LYNDIA VOLTZ: You do not think so?

Mr IPP: No.

The Hon. LYNDIA VOLTZ: And there would be no requirement for them to keep a lobbying register?

Mr IPP: No.

The Hon. LYNDIA VOLTZ: And there would be no requirement for them to stand aside or notify anyone if, for example, the company they were involved in—

Mr IPP: I do not think so, Ms Voltz. As I say, I cannot remember the precise wording of the definition that we recommended, but it was certainly never our intention to capture people like that. But you will find it all there. It is all argued, and reasons are given for the proposal in the report.

The Hon. LYNDIA VOLTZ: Why was it never your intention to capture people like that?

Mr IPP: Look, I cannot remember and, quite frankly, I do not think it is appropriate for this Committee to deal with detailed questions of that kind. That is not what the function of this Committee is for, and I am not ready for that.

The Hon. LYNDIA VOLTZ: I am sorry. I am only responding to an issue you raised in your opening statement about the lobbying of governing officials.

Mr IPP: You are asking a question about a detailed definition of lobbyists, and I do not recall the definition that we recommended, so I am unable to answer the question, save to tell you that you will find the answer when you read the report.

The Hon. LYNDIA VOLTZ: All right, okay. Thank you for that. Let us go back to the survey of government suppliers. Perhaps Mr Waldersee could respond?

CHAIR: Just interposing, Ms Voltz, as I understand the procedure, questions are directed to the Commissioner, who will decide whether he or one of his staff members responds.

The Hon. LYNDIA VOLTZ: In regard to the way the survey in supplies was done, it is probably a very simple question, but in the ranking of "how vulnerable to corruption you consider each of the following public sector methods" on the buttons that they could respond were "most vulnerable" to "least vulnerable", which were all negatives; there was no option there for "not vulnerable", which would replicate other questions where you had "not typical". I am wondering why the question was framed that way.

Mr WALDERSEE: Sorry, the lowest ranking button was—

The Hon. LYNDIA VOLTZ: They were all levels of vulnerability but there was no option for the other kind of response that they did not believe it was vulnerable and that a "not vulnerable" response could be elicited from the suppliers.

Mr WALDERSEE: But surely low vulnerability is effectively "not vulnerable"; it is a degree of not vulnerable. I am sorry; I do not have the answer options in front of me.

The Hon. LYNDIA VOLTZ: It is because the impression you get from the report, in figure 7 in the report the rankings of corruption vulnerability come out with "most vulnerable" and "second most vulnerable". There is nothing in there that gives you the grab that says which systems are not vulnerable, and to my mind I would have thought panels were a much more transparent process of doing supplies as opposed to tendering or whatever. But there was nothing in the report that kind of grabbed you that way because the way it came out is as "most" and "second most vulnerable" in the report.

CHAIR: Would you like to formulate a question?

The Hon. LYNDIA VOLTZ: I am asking why there was a "not vulnerable" response in there. The way the report is it comes to showing that things are vulnerable but what it does not tell me is what suppliers actually think is best practice.

Mr WALDERSEE: It was the suppliers' perception of risk that was the purpose of the survey. But in terms of whether "not vulnerable at all" had been a button would not have changed what we have answered in this figure 7. What we have shown is 5 per cent—which is what you just said—only 5 per cent believe that panel contracts have a high level of vulnerability relative to direct negotiations that 30 per cent see. To me it is showing what you said you thought it would show, and it does, which is: panels are less vulnerable; they are not seen as a very vulnerable method relative to a direct negotiation. I do not quite see what the issue is.

The Hon. LYNDIA VOLTZ: I know you read it that way but I am not sure that I necessarily read it that way. What that figure tells me is the one they had the most concern about; it does not necessarily tell me the one they had the least concern about because it goes on the two top rankings of "most" and "second most". What it does not tell me is the one that they find best practice.

Mr WALDERSEE: It is what is known as an ipsative scale. If it is not the top two it is the bottom three. If the top two take us to 20 per cent then we know 80 per cent have a rank that is less.

The Hon. LYNDIA VOLTZ: I am not sure that I know that, but I will not get into a lot of detail about it other than I do not know that people did not rank all four of them as vulnerable; I do not know if some people in certain areas ranked all three; and I do not know that because I do not know which one people would have said these are not vulnerable at all because that is not reflected.

Mr IPP: You are obviously very interested in that report, so if you provide a list of any questions you wish answered we will do our best to answer all of them. It might be useful, if you wish, for you and Dr Waldersee to meet and he can answer all of the questions that you have when he has got all of the documents in front of him. We would be happy to provide you with any information you want.

The Hon. LYNDIA VOLTZ: Thank you.

CHAIR: Mr Blair?

The Hon. NIAL BLAIR: Mr Chair, I apologise to the Committee that I had to step out of the room. I will forfeit my turn because I am fearful of asking questions that have already been asked.

CHAIR: Would anyone else on the Committee like to ask questions?

Ms TANIA MIHAILUK: Commissioner, just on what Reverend the Hon. Fred Nile raised in relation to non-government organisations, I understand you are preparing a paper that will look at extending the Commission's jurisdiction in relation to non-government organisations, which I think is quite worthy. Will you be looking at assessing non-government organisations? Perhaps it is premature to ask this; perhaps it is best left until next hearing? I appreciate that some rely on various different levels of funding and not just on State funding; there are, of course, a large number of non-government organisations that have their own means of seeking donations and so forth, but at the same time they from time to time, rather than regularly, seek certain grants. I wonder how you would keep a register of that; for example, for those who may occasionally seek a local government grant as part of the community grants annual. Perhaps it is premature to ask that but I think it is a good step forward for the Commission to have a register.

Mr IPP: If I may so, that is a very good question, and these are the matters that we have got to look at. This is why it makes it so complex, and, of course, each non-government organisation is different—differently financed, different duties, different make-up. I think there are hundreds of them.

Mr WALDERSEE: There are thousands and at least 7,000 or more just in human services in actual contracts and grants. I do not know if you are getting at the issue of the departmental management of the funding arrangements as a primary control. Is that what you are talking about, or a register?

Ms TANIA MIHAILUK: I wonder how you would extend your jurisdiction, because some may only occasionally enter into an arrangement of seeking a grant. There are a large number, for example—and I think of local government—that may never seek a grant from the State but rather seek small grants occasionally from their respective local government and could they potentially fall out of the scope?

Mr IPP: Those difficulties may make it impossible to recommend legislation. The number involved and the differences and complicity make it really difficult. One possibility is to provide for jurisdiction by reference to the kind of services, so that if the non-government organisations deliver services which are inherently the function of government then you might provide jurisdiction. That does pose really difficult questions of definition, but it is one possible way to go because, as you point out, to go simply by way of finance might be inappropriate. It is just a very difficult question. But the problem is that there is no doubt that some non-government organisations do work that used to be done by government, over which there is no public control.

Mr RICHARD AMERY: In relation to page 59 regarding litigation in relation to the Angela D'Amore case, I understand it is before the Supreme Court at the moment so you cannot say too much about it, but I would like to ask one question. In relation to that investigation, how many members of Parliament were investigated as a result of that particular inquiry?

Mr IPP: Under the Act, as you well know, this Committee has no jurisdiction over individual operations.

Mr RICHARD AMERY: So you cannot answer that question?

Mr IPP: There was one operation, which I publicly stated, called Operation Syracuse where we investigated many members of Parliament and we reported to the Speaker. The Speaker has been given a confidential report on the full investigation. We acted strictly in accordance with the Act in that regard and I am sure that the members of Parliament involved, who I may say are on every side of the political spectrum, would be very unhappy if I were to say anything about it today.

Reverend the Hon. FRED NILE: With regard to anonymous complaints, you give a case study where you conducted an investigation and there was no improper activity, but you could not report on that because you did not know who made the complaint. Could there not be some general procedure—

Mr IPP: I am sorry, Reverend Nile, do you mind repeating that? I am not sure if I understood you.

Reverend the Hon. FRED NILE: You had an anonymous complaint, which you then investigated, regarding some improper activity within a council.

Mr IPP: Yes.

Reverend the Hon. FRED NILE: You found that there was no improper activity, but you could not report that.

Mr IPP: Correct.

Reverend the Hon. FRED NILE: You cannot report back to an anonymous person.

Mr IPP: Yes.

Reverend the Hon. FRED NILE: Is there not some way that it could be reported in general terms, that the Commission has inquired into improper activities in a particular council and found no improper activities? I am thinking that if there are rumours in the town that this is happening and you have proved that it is not—

Ms FREDMAN: If I may answer that, Reverend Nile, you might be referring to one of the case studies where it was under assessment, so it has not actually been investigated.

Reverend the Hon. FRED NILE: I am referring to case study no. 1 on page 19. You conducted an inquiry.

Ms FREDMAN: Yes, it is a matter that did not proceed to investigation, it remained in the assessments area, so it would not be accurate for us to put out a public statement to say that we found no corrupt conduct. It is a matter where it remained in assessments, it did not proceed beyond assessment, so there was no actual investigation.

Reverend the Hon. FRED NILE: There was no investigation?

Ms FREDMAN: That is right, so there were inquiries made within assessments and the determination was that it did not proceed any further, so it would not be appropriate on our part to say that we had conducted an investigation and found no corrupt conduct. The decision was that we did not pursue the matter beyond assessments.

Reverend the Hon. FRED NILE: So there could be corruption?

Ms FREDMAN: That is right, we cannot state with certainty one way or the other.

Reverend the Hon. FRED NILE: I thought you had come to the conclusion that there was no corruption.

Ms FREDMAN: No.

CHAIR: Commissioner, is there anything you would like to say in closing?

Mr IPP: No. Thank you for the hearing.

CHAIR: On behalf of the Committee, I thank the Commissioner and his team for appearing this morning. I close the public hearing and the Committee will commence a short deliberative meeting in private.

(The witnesses withdrew)