REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Review of the 2006-2007 Annual Report of the Independent Commission Against Corruption

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At Sydney on Wednesday 9 July 2008

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The Committee met at 10.00 a.m.

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PRESENT

Mr F. Terenzini (Chair)

Legislative Council	**Legislative Assembly**
The Hon. G. J. Ajaka	Mr R. D. Coombs
The Hon. G. J. Donnelly	Mr D. R. Harris
Reverend the Hon. F. J. Nile	Ms J. L. McKay
	Ms L. A. McMahon
	Mr J. R. O'Dea
	Mr R. G. Stokes

CHAIR: I call the meeting to order. It is a function of the Committee on the Independent Commission Against Corruption to examine each annual and other report of the Commission, to report to both Houses of Parliament in accordance with section 64 (1)(c) of the Independent Commission Against Corruption Act. The ICAC Committee welcomes the Commissioner of the Independent Commission Against Corruption and other officers and executives of the Commission. I also welcome and thank Committee members for appearing. The Committee has received a submission from the Independent Commission Against Corruption in response to a number of questions on notice relating to the annual report for 2006-07. Commissioner, do you wish to make this submission part of your evidence today and to be made public?

Mr CRIPPS: Yes.

CHAIR: I will need the concurrence of members of the Committee to make that authorisation, perhaps by a show of hands. I authorise the submission to become part of the Commission's evidence and also to be made public. The Independent Commission Against Corruption has also supplied the Committee with a table detailing various investigations into State Rail and RailCorp. The table was produced in evidence by the Independent Commission Against Corruption during a public inquiry at which the former chief executive of RailCorp, Mr Vince Graham, gave evidence. Commissioner, do you have any objection to this document being made public?

Mr CRIPPS: No.

CHAIR: Thank you, Commissioner. I authorise that document to be made public. I ask witnesses to now take the oath or affirmation.

JERROLD SYDNEY CRIPPS, Commissioner, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney,

THERESA JUNE HAMILTON, Deputy Commissioner, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney,

MICHAEL DOUGLAS SYMONS, Executive Director, Investigation Division, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, and

ROY ALFRED WALDON, Executive Director, Legal Division, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, sworn and examined:

ROBERTA LYNN ATKINSON, Deputy Director, Corruption Prevention, Education and Research, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney,

ROBERT WILLIAM WALDERSEE, Executive Director, Corruption Prevention, Education and Research, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, and

LANCE COREY FAVELLE, Executive Director, Corporate Services, Independent Commission Against Corruption, 133 Castlereagh Street, Sydney, affirmed and examined:

CHAIR: Commissioner, would you like to make an opening statement to the Committee?

Mr CRIPPS: Thank you very much. Members of the Committee, when I last spoke to this Committee I mentioned that the Commission was concerned with how it should discharge its secondary function referred to in section 14 (1) (a) of the legislation. That section, as I am sure most people here are aware, gives the Commission the function to assemble evidence that may be admissible in a prosecution of a person for a criminal offence against the law of the State in connection with corrupt conduct and to furnish that evidence to the Director of Public Prosecutions. Since then the ICAC has entered into a new memorandum of understanding, which in fact expired last May, which attempts to address a number of issues arising by reason of the fact that the two separate agencies are obliged to discharge law enforcement functions in circumstances where neither can be said to be responsible for the final outcome in any particular case.

The secondary obligation imposed by section 14(1) has been interpreted over the years as requiring the ICAC to act in the same way as the police act when matters are referred to the Office of the Director of Public Prosecutions [ODPP] by the police. For reasons which I have already outlined to this Committee, the legal

justification for the ICAC undertaking this activity is, I think, questionable. The High Court has reminded us that the ICAC is not a law enforcement agency, therefore the question must be asked to what extent it is entitled or permitted to act as one. Nevertheless, as I have mentioned, a pragmatic view was taken by my predecessors that law enforcement should be carried out by the Commission because if it did not do so nobody would. Neither the police nor the ODPP is prohibited as a matter of law from undertaking these functions. Rather, as I understand it, the decision in each case is a policy decision. As I have said, the Commission seeks to cooperate with the ODPP and I accept the ODPP is anxious to cooperate with the Commission. Deputy Commissioner Hamilton can answer any questions relating to the cooperation of the organisation with this new MOU that is coming into existence. At the end of the day, neither agency is responsible for the outcome in any particular case and it would seem to me the time has come for Parliament to clearly outline how the Commission should function in the area of law enforcement, if that is a function it should have.

Earlier, when discussing this matter with the Committee, I have referred to the fact that in my opinion it is not open to the Commission to exercise coercive powers, post-investigation or pre-investigation, for the purpose only of obtaining evidence that may be admissible and/or of interest to the ODPP and any other person who claims to be interested. It is generally accepted, I think, that almost all ICAC's coercive powers are predicated on the proposition that the Independent Commission Against Corruption, as presently established, should not be concerned with criminal convictions as such. Nonetheless, many members of the public and indeed a significant number of parliamentarians seem to think that the Commission should be undertaking functions beyond those mandated by its charter, that of investigation and exposure on one hand and corruption prevention on the other. Hence its efficacy tends to be measured not only by the number of criminal convictions secured by the ODPP but also by the length of sentences imposed by the judiciary on people found guilty of corrupt conduct.

As things presently stand, at the conclusion of investigation the Commission expresses an opinion, as it is obliged by law to do, as to whether consideration should be given to obtaining the advice of the ODPP with respect to the prosecution of a person for a specified criminal offence. If advised by the ODPP that the prosecution should be commenced, it is left to the Commission to file the court attendance notice [CAN]. That of course gives to the public the appearance that the Commission has commenced criminal proceedings (which it has) and is responsible for the outcome (which it is not). I am not by these remarks intending to be critical of the ODPP because I do not know enough about its operations to criticise its priorities and decisions as to why, for example, it will not issue CANs in its own name even though the prosecution is taken over by the ICAC as soon as ICAC lodges the CAN. Moreover, I accept that cases coming from ICAC are much more complicated and sophisticated than generally appears in criminal law prosecutions.

Although the legislation makes it clear that the ICAC has two principal functions—of investigation and exposure and corruption prevention—people believe, as I have said, that it includes being responsible for criminal convictions and the length of sentences. The Commission's almost total lack of control over what happens once criminal proceedings have commenced does not appear to loom large in the judgements that people make about the Commission. As we all know, there are all sorts of reasons why a lay-down misère criminal prosecution might result in a verdict of not guilty or, if guilty, result in a pathetically light sentence. For example, witnesses may not come up to scratch, presentation may not have been wholly competent, the matter could be before an aberrant judge, a mad jury or, as has been the case, before a magistrate who believes that Parliament should never have taken away the privilege against self-incrimination, hence people who tell lies should not be punished. In all events, whether that is so or not, ICAC has no control over these matters.

The purpose of the above observation is really a plea to the Parliament to define with more precision what it wants the ICAC to do in respect of the administration of the criminal law and how it is intended to do that. I am also aware that unless the problems are addressed, ICAC will be unfairly criticised for matters over which it has no control and hence public confidence in it as an institution tends to be damaged or diminished.

A matter of particular concern to me is the unfortunate tendency of lower courts to impose very light sentences, mostly without any imprisonment, for people who have been found guilty of telling lies under oath to this Commission. In the early days of the Commission the Court of Criminal Appeal expressed the opinion that it would be a rare case indeed where a person who told lies did not finish up in jail, and by that I mean behind bars; I do not mean weekend detention. The case before the Court of Criminal Appeal was about someone who had been jailed and that person—he told lies—argued that it was unfair that he should be jailed because, first, the lies he told were not to protect himself—he said he was telling lies so he was not seen as dobbing in his mates—and, secondly, there had been six or eight magisterial decisions in which the magistrate had given bonds. The Court of Criminal Appeal said, no, it should be a jail sentence, the legislation does not distinguish between whether you are telling lies to protect your friends or whether you are telling lies to protect yourself. It went on to say it did not investigate

the question of what six or eight magistrates might have done but said that if they had done what they were said to have done, clearly they did not understand their function. What they had done of course was to give bonds.

The question I have to address is that telling lies in evidence given under oath carries a penalty. The penalty for that under section 87 is jail for five years. However, another section in the legislation provides that that section need not be used by the ODPP because with the consent of the person who is charged it can be heard before a magistrate in a Local Court. In order to emphasise the importance that should be attached to people telling the truth to this Commission, it is my suggestion that that second section should be repealed and there should be no option if someone tells a lie to this Commission but that they go to a higher court and get treated accordingly. I cannot emphasise enough the importance of people telling the truth to the Commission. If they do not tell the truth to the Commission, or fear they will be punished, the efficacy of what the ICAC does is seriously diminished.

Answers given under oath, as everyone here knows, are not capable of being used in a prosecution for a criminal offence or indeed civil or criminal disciplinary proceedings. It has been said that the purpose of that section is to encourage people to be more honest and open when they talk to the Commission, in the belief that nothing they say will be used against them. I have spent nearly four years in the Commission and I have conducted all the public inquiries and most of the compulsory inquiries, and it has been my experience that that protection of itself does not cause people to tell the truth. People who tell the truth to ICAC usually tell the ICAC what they think it already knows, and even then they will put a gloss on what the truth is to make their conduct appear to be less culpable than would otherwise be the case. It is my belief, whether it is shared by other people or not, that they should be aware that if they tell lies they will be punished. What encourages people to tell the truth is to know that they will be jailed if they do not. This is necessary if ICAC is to function efficiently.

This brings me to section 37. I mention this because it was also mentioned, I think, to some extent by the inspector whose meeting with the Committee I have had the advantage of seeing in the transcript. Section 37, as you know, provides that any evidence that is given, if someone takes an objection, cannot be used in any civil, criminal or disciplinary proceedings. There is an argument that the privilege against self-incrimination should be taken away, but I think the practical view is that that is so deeply ingrained in our judicial system that I do not think Parliament would get rid of the privilege against self-incrimination. What concerns me is that this evidence cannot be used in civil or disciplinary proceedings.

As to civil proceedings, it means that somebody can admit that they have defrauded the State of thousands of dollars, yet that admission can never be used against them if the State wishes to recover that money. As to disciplinary proceedings, there is no jail attached to disciplinary proceedings. The Commonwealth has comparable legislation to NSW. It does not give people any protection for disciplinary proceedings; nor, as I understand it, does the Police Integrity Commission. So I would suggest that serious consideration be given to amending the section to make it clear that at least civil and disciplinary proceedings are outside its ambit. If it turns out, as some people have said, that that will inhibit people from telling the truth (which I doubt because I think what inhibits them is knowing that they will go to jail if they do not tell the truth) then we will deal with it again. But my experience has been that they will still tell as much as they believe the ICAC knows; they will probably tell a little more if they think they will go to jail if they do not. In any event, they should be punished and at least the State should be able to recover from them what they have fraudulently taken from the State.

There is one last matter I would like to mention, and it is something more in the nature of a request than anything else. In recent months the ICAC has been subjected, as everybody knows, to criticism from some members of Parliament and epithets used which, if applied to a court of law, would have amounted to scandalising contempt. I do not suggest that members of the public and certainly not members of Parliament should be denied their right of free speech. Indeed, it was as a result of my suggestion that there was removed from the ICAC legislation provision which would have made those comments contempt of the Commission and punishable as such. I took the view that scandalising contempt, if it continued to be a doctrine of law, should be restricted in its application to the judiciary and not extended to administrative bodies.

If public statements are accepted—which I accept and I think most people here and political parties accept—and if the State and the Parliament are committed to stamping out corruption and claims to support the ICAC as an institution, most people here would agree that for the ICAC to discharge its function properly it must have the confidence of the public. The legislation established this Committee with the powers to supervise the workings of ICAC. It also established an Inspectorate. That also, I might add, was on my suggestion before I became Commissioner. It would seem to be therefore—and this is the request—if Parliament is to have concerns about the activities of the ICAC, the best place to deal with those concerns, and which at the same time will preserve public confidence in the body as an institution, would be through the recognised channels, namely, the

parliamentary joint committee to the extent that it can be done, but if not the inspector, who has enormously wide powers.

As is apparent, I suppose, to most people here, I generally decline to enter into public controversy in my position as Commissioner. I take the view that I want to advance the Commission, but I do not want to advance my own personality. The request I make therefore is this: If members of Parliament have any concerns with the way this Commission is functioning, that concern should be dealt with by reference to either the Committee or to the Inspectorate where the matter can be handled rationally and sensibly and where reasonably minded people can discuss the matter objectively. That is my final remark. One other matter I thought I would raise before you is this. When I read through the meeting you had with Inspector Kelly I noticed there were quite a number of questions directed to corruption prevention and education, where it should be, how it should operate and the like. It occurs to me that it may be appropriate for the new director, Dr Waldersee, to give a short outline of that at this stage if you wish him to or wait until he is asked questions. I leave it to you.

CHAIR: I anticipate there will be quite a few questions on the impact of recommendations and corruption prevention. I intend to ask a few questions on the issue and then I will allow Committee members to ask you questions on that. Thank you for that statement. On viewing your report, my first question is about the assessment section in your Commission. We have noticed that there have been four resignations in that section of the Commission over a relatively short period of time. Generally, is there a higher turnover in that section compared to other sections in your office? If so, what is the reason for that? Also, is there anything that contributes to that in that section?

Mr CRIPPS: I will ask Ms Hamilton to answer that because she is the head of that assessment section. Before she does, though, let me say this. We have a number of divisions in the ICAC, as you know. The one that is probably the most stressful and the one from which it is least likely that a person can advance further in the organisation or indeed in any other organisation is assessments. So it is an area that we have to be particularly careful about. Generally speaking, it is my experience that staff are very good at this.

Ms HAMILTON: As the Commissioner said, there is a relatively high turnover in assessments. In relation to the comparison with other divisions**,** it depends on the division. For example, legal is very stable and has been for many years. It tends to have a very low turnover. The investigations division has a slightly higher turnover. In respect of the high turnover in assessments, as the Commissioner has pointed out, it is a front-line area dealing with difficult complainants. I think though that probably a more telling factor is that there is relatively little chance to progress to other divisions, and we have tried to address that recently by allowing some suitable assessment officers to be seconded to the investigation division to work as assistant investigators. I think that has worked out quite well because it allows them to get a broader look at what the Commission is doing, not just see the initial complaint. It is more satisfying and it may eventually result in their being able to go more permanently to another division. I hope that addresses your inquiry.

CHAIR: I have no doubt that you have measures in place to deal with that but I can understand how it is the front line of your operations. I have noticed in your report that you have made some changes to your assessment process with checklists and different measures to address the issues. Was that a result of the 12A audit or was that just the Commission?

Ms HAMILTON: We did make some changes as a result of the 12A audit to firm up the procedures and to make sure that there was a more uniform approach to the assessment of matters by creating a checklist, and the inspector did identify some matters where in his view there had been inconsistent criteria.

CHAIR: One thing I want to ask you about is questions three and four and your answers to those questions. It appears obvious in your answers to those questions that on one hand the average time taken to deal with complaints has gone up from an average of 45 days to 109 days, and one of the reasons you have put down is the delay in receiving information from agencies. We have the Department of Education and Training around nine months; the Department of Corrective Services, 25 months. You have another statistic in there with the Department of Education and Training that resulted in about 1,000 days waiting for information. I notice that in answer to question four you reviewed this issue and you have set yourself a 60-day target. As I understand it, you will exclude that time now from your reporting statistics and I think you call this reporting on discrete areas and you will exclude that time. That will make your statistics look better. Will there be information in your reports about the time delay waiting for agencies? Are you concerned about this delay? What are your observations and comments about that? It is stifling your operations, I would anticipate.

Ms HAMILTON: At this stage, as I understand it, those discrete targets have been set as internal targets. We are still reporting on total time, including the time with agencies. Despite that, the average finalisation has been reduced now—in the January-March 2008 quarter to 78.5 days. That is due to a number of factors such as the manager has taken efforts to increase morale, team building, the transfers we were talking about and just generally keeping an eye on it. At this stage we are still counting the time and we still manage to reduce the time, and I think that is because we are keeping more of an eye on agencies and being less generous with extensions of time for them to respond to us. In the past I think if they asked for another month or two months, they were automatically given it. So we are keeping an eye on that to try to keep those times down and hopefully over time that will have an effect but it will not happen overnight.

CHAIR: I want to get on to the topic of recommendations that the Commission makes and the implementation of those recommendations. The Committee is keen to ask you some questions about this to ascertain how it is working. In 2006-07 there were 47 recommendations made to Railcorp with regards to certain investigations. We have 27 of those in Operation Persis and Operation Quilla has some outstanding issues. What we are noticing with Railcorp, we have a situation where the implementation plan is yet to come into the Commission and yet this is ordinarily the time we would expect a 12-month progress report. With Operation Quilla I think there are similar issues with delays in reporting. We know from the document that you have been good enough to make available to us that with regards to Railcorp over seven investigations we still have the same issues recurring for the Commission, and it seems as though we are getting a delay in the implementation and we are getting these recurring themes in these investigations. I know you have the system in place where you follow up on recommendations by posting them on the web, et cetera. Just staying with Railcorp for the moment, are you satisfied with the way things are going? Do you have any comments and observations to make about this particular agency in view of its history and in view of the work it gives the Commission and its lateness in providing you with information?

Mr CRIPPS: Yes, I am prepared to comment on that but I would ask you, before I do comment on it, to bear this in mind. The reports for what we call Monto—that is the State Rail list of the recent rash of six or eight inquiries—have not been made. I will be talking about matters where there can be no doubt about what has happened because there has been a public inquiry and admissions have been made so there is no question of the Parliament not being aware of what is going on. My short answer to your question is that I am not satisfied. I am not happy about the time lapse. Perhaps we should have pushed it a bit harder and I think in the future we will. I think the way we should do it is probably through sections 53 and 54, which I am aware would send the matter to the Parliament or the Government to handle. I will ask that people who are probably better able to discuss this than I am how careful we have to be about how far we get into ensuring that people undertake these processes we think they should.

We cannot give people tick-offs for the detail because we run the risk that if a complaint is made to the Commission about something happening we are compromised by the fact that we are thought to be part of the problem. However, could I say this? I am aware, and I think almost everybody in the Commission is aware, of the problems associated with Railcorp or State Rail. And there has been a repetition of conduct notwithstanding exposures and recommendations made. We are at the present time giving serious consideration as to how we will deal with this in a way that we have not dealt with other matters before, but I would rather not talk about that now except to tell this committee that the Commission is concerned that corruption that has been exposed and made public and within no time, it gets exposed again. We have had illustrations in evidence, as you are probably aware, of people doing these things while they know that there is a public inquiry going on about other people, and they are doing the very things that the other people are doing—so something has to be done to stop this.

In the future we think that it has to be something more but eventually probably you will find that we will be throwing it back to the Government or the Parliament to respond to it. But the short answer to your question is we are concerned about the repetition of this conduct both because it does in a sense affect public perception of the quality of our work. The perception is that we keep exposing it and nothing happens. But there is also the problem about what can happen, and whether we have the power or, for that matter, the skill or expertise to do anything about it. I do not know whether anyone else wants to speak about these matters.

Dr WALDERSEE: I will just speak briefly on the issue of RailCorp. First, noting that RailCorp is exceptional by its intransigence, not typical of what happens following a finding. It is a very special case. The corruption prevention recommendations, as the system typically works, are developed within the investigation process. They are made, the agency shifts across, we follow up, as you understand that is the process. We assess the implementation. We do not step in and act as administrator and take charge. To do so is not only not our

role, it would not be an effective role were it to be made our role. If the management, after a finding, will not take responsibility and ownership of the recommendations and implement them, then the issue of implementation is way beyond the scope of corruption prevention. We cannot do it as administrator, and as the Commissioner has said, if we did we would then be held liable. It would give the managers the ability to shift responsibility for future corruption across to the ICAC. So generally it is not something we can do so we stop where we are. Our final recourse is a part 5 escalation and information to the Minister that this is not being done and it is then the Minister's responsibility. If they want to put in an administrator or they want to sack the senior management, whatever they deem fit, but that is well beyond the role of corruption prevention.

CHAIR: On a wider scale, we also have the situation with the Department of Corrective Services with 16 recommendations fulfilled. It has given you a reason why it would not implement one recommendation because it has addressed it in a different way, et cetera. Firstly, were you satisfied with that response from the Department of Corrective Services? In a broader sense, you have 80 per cent of your recommendations being implemented across the board, are you satisfied that the recommendations being implemented are having any effect on corruption in these agencies?

Mr CRIPPS: To the extent that these recommendations have not been picked up and carried, to the question I would have to say I am not satisfied that they have been done properly. The extent to which, if they were done properly, there would be no repetition of the conduct, I cannot answer that question. One of the problems, of course, as you are aware, and this committee is aware, that in the area of corruption it is extremely difficult to know whether any particular steps that are taken will result in less corruption, whether there would be corruption if they had not been taken because we do not know how much corruption there is there or we do not know how much has been stopped. We like to think that the exposure, particularly of senior public officials engaged in corruption, will have the effect of deterring other people from behaving badly, and I think it generally does.

People have only got to look back 20 or 30 years and see what we all took as almost par for the course conduct now does not happen in lots of areas, whether it was secondary employment, conflict of interests and the like. But the answer is I am not happy about them not implementing these recommendations or, at least, not giving us a satisfactory explanation. I think the problem we have here—and I take responsibility for this—probably there should have been more recourse much quicker to sections 53 and 54. It should have been referred to the Minister to deal with, and the Minister then, if it could not be dealt with, could refer it to the Parliament. I think perhaps we should be doing more of that, and we will be doing more of that in the future.

CHAIR: In relation to corruption prevention, I have noticed that in your response to the questions you are implementing—

Mr CRIPPS: Which question?

CHAIR: Question 12, Commissioner. In regards to your working closely with the Department of Health for the corruption prevention project you have put in place there, the results from the study in 2001 and the instigation of this project in 2003 where you have carried out a research on the public sector which has highlighted some corruption risk in the Department of Health. I think I read in your report where something was presented in August 2007. Would you provide the committee with an update on how that project is going?

Mr CRIPPS: Could I pass that question onto Ms Atkinson?

CHAIR: Certainly.

Ms ATKINSON: Yes, the output of that particular project was a train the trainer tool kit on preventing risks in the health sector. That was developed and released in August 2007. It was very well received. We had a train the trainer session where our staff actually drew in the relevant people from the health sector to demonstrate how the tool kit would be used, and that was, in effect, our launching of the project. We will be following up how well that tool kit is used in the public health sector, how useful it is and whether, in fact, it needs to be changed. So in due course there will be a review of that particular tool kit.

CHAIR: I have noticed in your statistics that the section 10 complaints make up 6 per cent for the Department of Health, and the section 11 complaints make up 14 per cent but your protected disclosures make up 18 per cent. Are those figures reflective of the difficulty there is in getting complaints out of the Department of Health? Is that one of the reasons why you think this tool kit will have an effect? I am saying that your figures

are fairly low percentage wise, compared with local government or State Rail and you have instigated this tool kit, which is very good. Do those figures reflect any particular problem with the Department of Health about complaints coming forward?

Ms ATKINSON: As you know the Department of Health is a big sector so there will always be complaints concerning the Health sector to the ICAC. So this is a long running project—I think its genesis was in about 2003, and there are particular issues with the Health sector that have been very difficult for Health administrators to deal with. I think they have been listed in our response to your question on notice. So there are issues of misuse of resources, conflict between public duty and the private interests of some of the medical staff and so on. So they were seen as areas whereby we could intervene and help administrators deal with those particular issues. It also seemed to us that the best way to do this was to encourage the Health sector to take on the responsibility of training people in the related policies and practices rather than us attempt to take that on our own shoulders, hence the train the trainer tool kit.

CHAIR: Is there any contemplation of that kind of initiative being used in RailCorp where there is an obvious problem?

Mr CRIPPS: I do not know, but I have to say what is being referred to by corruption prevention obviously is predicated on the basis that there is total cooperation from the agency concerned. Now I do not know what will happen with RailCorp. It is a very big problem. It is bigger than Health. For example, the amount of complaints and reports from Health are really quite small, I think, compared with the size of it as a government bureaucracy. I just do not know.

CHAIR: At first glance, I am suggesting, that your recommendations are not having an effect on RailCorp?

Mr CRIPPS: I think that is a fair enough comment.

CHAIR: You have got this initiative with Health where you are going in and creating a kit and allocating resources. Would you see that something like that would be of benefit with RailCorp?

Mr CRIPPS: It is possible. As I said to you earlier in response to your first question, how we deal with RailCorp at the end of the day when this one report—we are going to come out with one report devoted to corruption prevention. Normally we would put it at the end of reports but with this one there will be one report. These will be matters that people will be looking at as possible solutions and trying to give some advice on the matters. At the present time we have not done that so I do not know whether it would work if we did.

Ms ATKINSON: Could I add something to that?

Mr CRIPPS: Yes.

Ms ATKINSON: The general principle, as Commissioner Cripps has stated, is that these tool kits are developed in cooperation with the agencies that are going to use it. The precursor to this was a tool kit that we developed with the university sector, and that was again done as a cooperative enterprise just as the Health one was. So I think for us to work with an agency to develop a tool kit we need to have that agency supportive of the need for that kind of training. In fact, the project that lay behind this, the research that lay behind it, was very much a consultative, cooperative project so that the Health sector itself were of a mind with the ICAC about the particular issues where training was needed.

Mr CRIPPS: And also could I just finally add to this that we are conscious at ICAC I think that at the end of the day things like codes of conduct and train the trainers programs can be just pieces of paper if the organisations which get them do not take them in the right spirit and apply them as they have to be applied, namely to put an end to bad practices. So we have to be, as Ms Atkinson has said, confident that we are getting the proper cooperation.

CHAIR: I want to put this to you: as you know we had a meeting with the inspector last week and we have given you the transcript.

Mr CRIPPS: Yes, you did.

CHAIR: As I recall it the inspector expressed certain views about various parts of your operation, one of which was corruption prevention. As I remember his view was that the corruption prevention function does not have much prominence, and it is difficult to measure the success of that function. He was thinking about proposing that the function should be undertaken by a central government agency focussed on this issue which would give you the time to do investigation and exposing corruption. He suggested basically to allocate it to another agency and you can get on with investigating and exposing corruption because of what he perceived to be the ineffectual nature of it. Do you have any comments on that?

Mr CRIPPS: I do. The first comment I would make is this that corruption prevention never stands alone anyway in our organisation, most of the work is dependent on what we discover in public inquiries and compulsory examinations where the precise issue of corruption is identified, and that precise issue is then dealt with. I do not really see the advantage of setting up yet another organisation to do this. By way of illustration, one of the things that—I think the Parliament has finally done this—I did not want, the ICAC, to have was the corruption prevention function of the police, when we did not have the function of investigating the police. Now the Parliament has taken that and given it to the PIC, which is where it should be. I do not know that there should be any other organisation set up to do this, but I invite Mr Waldersee to comment.

Dr WALDERSEE: I would like to respond to this, having also read the transcript of Mr Kelly's testimony. In the bigger context, just before the excerpt you quoted, one of the reasons that there was thought to be very little impact of the corruption prevention function was the stability over time of the number of complaints made to the ICAC and the number of investigations that were undertaken, and this was taken to be evidence corruption prevention is not working as was intended when the Act was initially brought in.

The stability argument I think is too broad because of the difficulty of measurement. The number of complaints could just as easily be taken to be an indication of the effectiveness of deterrence, and the argument that was woven through the testimony was that deterrence, exposure, is the core function. The ICAC does deterrence and it does prevention. The stability argument has to apply to both equally because you cannot say it is corruption prevention. Conversely, the stability argument could be said to be an indicator of great success because there are changes within the environment, such as the demographic shifts to sea changes that puts pressure on councils' development functions and planning functions; there is discretion contracting within government services, all increasing the risk of corrupt behaviour occurring.

So the environment is not stable; it is actually enhancing the probability of risk. Stability of complaints could therefore just as easily be taken as a great indication of success within a deteriorating corruption probability environment. So it makes sense.

CHAIR: Are you saying—

Dr WALDERSEE: I am saying we do not know. We do not know what this stability means. It could mean that corruption prevention is highly effective at raising reporting, which is one of the targets—to educate people on how to report corruption they see, while at the same time reducing the actual number of corrupt occurrences that would also produce stability or, as was presented last week, that there is no impact whatsoever of deterrence or corruption prevention, which is equally possible. So I am saying these numbers cannot be really used to make much of an evaluation of what is really happening.

What can be done, given the environment shifts—we are not clear what the numbers mean—we can measure the effectiveness of what we think are the mechanisms for reduction of corruption. So if we educate people within organisations on how to go about making protected disclosures, we can measure if there has been a shift in the knowledge and propensity to report corruption if it is encountered. That we can measure. We do it a bit; I plan on doing it more as the new executive director.

It looks like investigation produces a measurable outcome because you have a number of findings. The number of findings is not a measure of deterrence and the number of recommendations we make are not a measure of prevention effectiveness. So it has got to be very carefully thought out what that means. The idea that was floated was the idea that corruption prevention should maybe move off to a central agency. The argument behind that was corruption prevention is essentially a policy function and should be located in a policy type agency, because discretion within policy is what creates corrupt opportunity. That was my following of the argument in the transcript.

What I would say about corruption prevention is that we are most definitely not a policy agency. If there is not discretion within government it is a massive machine; it could not function without discretion being there. Corruption prevention therefore is not about policies that allow discretion, it is about management of that risk created by the discretion. So the issue is one of structures, processes, control systems, the way management is run, detection risks—exactly the same sort of management structural process issues that would be found in an insurance company or a bank. But it is most definitely more like management advice than it is policy advice. That is why I do not feel it should be moved on those grounds.

I would like to add, as the Commissioner has pointed out, corruption prevention is not independent of investigation and exposure. Corruption prevention operates within investigations to understand the structural control systems, procedures—the failures that allowed the corruption to occur in the first place. Without that involvement in investigations we could not make recommendations and without our involvement in investigations they would find themselves short of the knowledge necessary to understand the structures, processes and controls needed to run the investigations.

Mr CRIPPS: Could I just add one matter? I think these sorts of implied criticisms sometimes tend to overlook why ICAC was originally set up. It was set up against the backdrop that the ordinary criminal law could not attend to the problem of corruption. We all know that if there have been 20 muggings in Hyde Park and the police did something about it and the next year there are none, you can infer that police action has resulted in that happening. But when you do not know how many muggings there are in Hyde Park and you never will know until it is known, it makes the question of what is deterrence and what works complicated.

CHAIR: I can quite understand the argument about incorporating corruption prevention in with investigation because the two work hand in hand. What I was asking is that given the Inspector's comments and given the recurring problems we have in certain agencies, is there another way to implement, on health issues, for example, other initiatives or think outside the square and implement other initiatives to address this recurring problem in what appears to be an agency which the signs are continues to feature in investigation reports?

Mr CRIPPS: Without going through it again could I just say this: What you are saying has been really taken on board by us in the decision that was made. We will look at all these separate allegations of corruption in State Rail and at the end of the day, and unlike any other one, we will sit down and try and work out how we can bring in a system that will reduce that. We keep talking about corruption prevention; what we are really talking about is corruption reduction: I do not think anyone is going to stop it.

CHAIR: I agree with that. I think realistically that is right.

Mr DAVID HARRIS: Just following on from that and building on the comments of Mr Waldersee, I think what we found with child protection is that when we strengthened the reporting laws people played it safe, so everybody reports everything. The fact that ICAC is there means that you are obviously getting more reports because people play it safe. If there is a perception there might be corruption they will refer it to you just in case—and in a lot of cases it is to protect their own behind in a lot of ways. So, as you mentioned earlier, that means that your assessment procedures at that first point are very important. I have read how you have brought in the new procedures.

At this stage, and I am not sure how long ago you introduced them, have you been able to do an initial evaluation on how that new system is working and do you have in place any internal audit procedures where you do random checks on ones that have been rejected and ones that have been accepted just as a checking mechanism to make sure that the procedures are working well?

Ms HAMILTON: As I understand, the manager of the assessment section has done some auditing of the checklist; it is part of her management role. Could I say: I think she has been a very successful manager. With complaints increasing in certain quarters she has managed to actually get the numbers down. The Commission as a body has not done a formal audit of that process at this time, but that may well be a good idea. I think the fact that we seem to be getting more efficiencies in the assessment process probably is some indication that it is working, at least because I think people are able to deal with it more quickly because they know what they are looking for when they look through a complaint, and they are assessing it more quickly. But certainly an audit of how consistently the criteria are being applied would be something we would look at in the future.

Mr DAVID HARRIS: In a kind of follow-up from the Commissioner's opening comments: There is a general view now that ICAC is the panacea of all solutions to everything. As soon as something happens anywhere it is flicked to ICAC to get them to investigate it. Do you feel it is probably necessary in a way to re-brief politicians at this point on the actual operations scope of ICAC—I am a new person in Parliament and have not had a briefing for example—just to make sure that people really understand that role? Because I know it is good for the media sometimes to say, "Get ICAC to investigate it", but, as you say, that then impacts on the public perception that if it is not then ICAC is not working.

Mr CRIPPS: I touched on this in my opening speech about what perceptions there were, including perceptions of parliamentarians. I would be very happy to address the Parliament or parliamentary representatives as to just why it works. The only aspect of it I would not disclose is what the legislation will not let me disclose, namely, the details of any particular investigation. I would be more than happy to do that, because, as you point out, there does seem to be a perception these days increasingly that as soon as anything goes wrong everyone seems to think that ICAC can jump in and do something.

We have powers and very important powers, and a very significant power is to call people up, put them in the box, take away their right of silence and privilege against self-incrimination. We cannot do that at the whim of somebody who wants to get that information; we have to do that because we are satisfied we should be investigating and we should be using those powers. The short answer to your question is yes, I would be quite happy to speak to the Parliament or representatives of it on this issue and explain as much as they wish to know about it.

Reverend the Hon. FRED NILE: One of the issues that concerns me is the matter you raised earlier, Commissioner, when you said that criticism by members of Parliament was not helpful to the Commission and the whole issue of the credibility of ICAC at the moment, and your response to some of the allegations that have been in the media concerning, apparently, an employee within ICAC about which there are question marks, and individuals who are under investigation claiming that they were acting as ICAC officers, which obviously was false; and, thirdly, the claims by some of those individuals that they are getting information from within ICAC about some of these cases. What is your response to some of those criticisms, which obviously in the public's mind are damaging to ICAC's credibility, and probably that is the intention?

Mr CRIPPS: I think I know the issues and the people and personalities behind the question that you are asking. I am more than happy to answer those questions. I am conscious that there is a provision in the legislation to the extent that any of them are being investigated I cannot make that information available to you. I think I know what you are referring to and I think I know the issues. I do not think that this raises that issue of you being precluded from hearing that. What I would like to do, if it is satisfactory to this Committee, is respond to those questions in camera. I would be happy to do that.

Reverend the Hon. FRED NILE: In your answers to questions under the memorandum of understanding, I refer to your answer to question 29. This has been one of my concerns: to get speedy cooperation with ICAC by the DPP, who, in my opinion, were not giving that absolute cooperation. I can understand that they have their own priorities and role, and you come in as ICAC with your matters, and it is almost like saying, "That is interfering with what we want to do", and that is put to one side; it is not given top priority. The memorandum of understanding was to try to change that situation and in your answer you have indicated that certain things have been agreed to, such as an assigned lawyer would arrange a conference with relevant ICAC officers, et cetera. My general question is: In your opinion, are those changes working within the cooperation area between ICAC and the DPP? Is it successful or does more need to be done?

Mr CRIPPS: It is moving towards a good result, I hope—as good as you can get against the backdrop that at the end of the day nobody is responsible. Would you mind if the Deputy Commissioner answers this, because she is the person who liaises with the DPP? Could I mention this, though. I have referred to the administration of the general criminal law. There is another aspect of that which is probably more germane to the problems I have than the administration of the general criminal law. It is the administration of the Independent Commission Against Corruption Act itself and the administration of those where there are offences against that Act. That concerns me much more than the administration of the general criminal law, because unless that is attended to we will not function properly.

Ms HAMILTON: I have been meeting every two months with the lawyer in the DPP in charge of our matters. I think it has had an effect: they are allocating lawyers to our briefs when they go over; we are having meetings with them. I think its effect will be mainly seen in new matters. I think one effect, as we have said in

our response, is that apart from a couple of old and very difficult matters, which are still hanging around, all the briefs presently with the DPP went over only last year, and that is a big improvement on past years where we have had matters that have been there three or four years.

I think if we keep working in the direction we are, the time limits will be substantially reduced in the future. One issue we are looking at in drafting a new memorandum of understanding is that we notice that it puts a lot of timelines and duties on the DPP at present but it does not say much about what we are doing. We will be incorporating timelines for ourselves. We aim to get a brief to the DPP within X months, at the completion of the public inquiry, and that will hopefully improve it even further.

Reverend the Hon. FRED NILE: I appreciate the emphasis on timelines and so on. The bottom line, however, is: Do we get a successful outcome? Does the DPP actually prosecute someone and is someone found guilty, after all the work you have done?

Ms HAMILTON: I think the timelines have a big effect on whether you do get a successful result, both in terms of witnesses being available, the evidence being fresh, and in particular on sentence. I think one reason that corruption matters are getting relatively light sentences at the moment is that people are being sentenced many years after the offence has occurred and courts are traditionally reluctant to sentence people to imprisonment for things that happened many years ago. The timelines do not just exist in isolation; they actually affect the result of the prosecution.

Reverend the Hon. FRED NILE: So there can be a deliberate attempt to delay the whole process, from a lot of directions?

Ms HAMILTON: I am sure that often a prospective defendant would prefer that the matter was delayed as long as possible—as you would.

Ms LYLEA McMAHON: In relation to a number of recommendations of the inspector, there were three main areas of recommendations. I would like to know how they have proceeded or are being implemented. There were recommendations about improving the formal process and follow-up in relation to section 53 referrals. There were also recommendations about improved record keeping, and there were also recommendations concerning improvements to probity vetting procedures regarding appointments.

Mr CRIPPS: Other people may wish to speak about this, those who have more detailed knowledge of what is going on. Section 53, I think we have largely dealt with. I accept that we should perhaps be a little more proactive in using sections 53 and 54 than we have been to date, and we will do that. Regarding the records, I will have to leave that to other people. As you may know, it was my original part report that stopped before I got appointed. I had the view that we really did need an inspector. The institution needed an inspector for two reasons: first, to make sure that the covert powers we had—which exceed the powers that almost any other body in Australia has—were being exercised properly, so as to ensure that we behaved ourselves, and that we knew, and if we did not, we might be caught; and secondly, I think it increases public confidence in the efficacy of the institution. As to the records, I am not sure which ones—[1]

Ms HAMILTON: The records kept for the notices—

Mr WALDON: I might be able to answer that. As you know, the inspector conducted an audit on our exercise of powers under various sections of the Independent Commission Against Corruption Act. During the course of that audit he was looking for compliance with our procedures, which require that before any power is exercised, that is under sections 21, 22, 23 and 35 of the Act, there should be a supporting minute to the Commissioner or Deputy Commissioner who is assigning that notice. I am confident that in all cases there were supporting minutes, but there was some difficulty, particularly in older matters, in locating the physical copy, or even in some cases the electronic copy, of those supporting minutes.

[1] In his corrections to the transcript the Commissioner, Mr Cripps, clarified his evidence to the Committee in the following manner: 'I had the view that the ICAC needed an Inspector, the institution needed an inspector for three reasons. First to make sure the cover and coercive powers it had (which exceed the powers of the police) were being exercised properly. Secondly, if it did not defaulting people would be caught. Thirdly, to increase public confidence in the efficacy of the institution. As to the records, I am not sure which ones-'

During the course of the audit as that became apparent, I implemented a new system in the Commission which now requires that those supporting minutes be kept with the copy of the notice, and those supporting minutes and the notices are filed with our property section. These days, if you were to conduct an audit on notices or summonses that have been issued since that audit was conducted by the inspector, you go to the property section and for each notice or summons that has been issued there will be a supporting minute attached to it and filed with it.

Ms LYLEA McMAHON: Have you yourself conducted an audit to ensure that that is occurring?

Mr WALDON: I have done a spot audit on a number of matters to see that that has been occurring, and the result has been positive.

Mr CRIPPS: As to the third matter you raised—which I think was probity, was it not?

Ms LYLEA McMAHON: Yes, probity vetting procedures regarding appointments.

Mr CRIPPS: I am not sure what this is directed to. I am not aware that there has been a complaint about this. Perhaps there has; I do not know. What I thought I would do at the next meeting with the inspector is find out what he is referring to. If you can tell me what me what he is referring to—

Ms LYLEA McMAHON: There was a recommendation in relation to improving your probity vetting procedures in relation to appointments regarding a complaint the inspector had received.

Mr CRIPPS: I am not suggesting that something has not caused him to make that remark, but I do not know the details. I will take it up with the inspector and find out, and if we have probity issues I will certainly try to address them.

Ms LYLEA McMAHON: In July 2006 the inspector wrote to the Commissioner recommending that the ICAC review its probity vetting procedures as part of good record keeping and accountability, and also that recommendations be considered in any review of the ICAC's vetting procedures. That appears on pages 14 and 15 of the inspector's annual report.

Mr CRIPPS: Could I take that on notice? If it is acceptable to the Committee, I shall send the response to this question in writing.

Ms LYLEA McMAHON: With regard to prevention activity in relation to the health department, you are intending to do a review of how effective that prevention activity has been. What methodology are you considering, and what activities are you considering?

Dr WALDERSEE: I will go first, in terms of considering the future, and Lynn can go second and say what is already in place. The methodologies I intend to use will not be a global de-corruption reduction. As the Commissioner has noted, we do not know how much corruption there is in the first place, so how can we know if we have reduced it? What it will do—and this is how I intend to evaluate all programs from now on—it will be a straightforward before-and-after measurement. If the training is designed to give managers a certain amount of knowledge on how to structure or arrange their organisation, we want to know: What did they know before and what do they know after, and is that different? That would be the measure of effect: it would be a quantitative methodology, looking to see whether we achieved some sort of statistically significant improvement in what we were trying to achieve with this training.

What we will never be able to ascertain is whether the training and the skills that had been given to the manager were implemented in a realistic way or a genuine way, as opposed to, "Thanks for the day off for the training", because that would again require us to be highly interventionist. We would have to go into the organisation, and we would then have to, as a consulting firm would, nose around and try to determine the genuineness of what has been undertaken. That gets back to my earlier comments that that is really not the role. We are there to provide the tools. We will provide assessment—but not where we kick the door in and walk in and say we are going to do it. If they want it done, we can do it, but we are not able to force ourselves.

Ms LYLEA McMAHON: It would not be things such as interviews or surveys?

Dr WALDERSEE: Yes. But it would be: What were we trying to achieve with the training? So down the line we hope it will be: we train, they implement, and corruption is reduced. We do not believe there is much point in trying to measure that far down the line. We would measure back at the beginning: We train; we have changed their knowledge. It is then up to the organisation and the management to take that knowledge and implement it. Sorry, it looks like I am losing you.

Ms LYLEA McMAHON: No. I suppose I struggle with this idea that if there is a prevention role, that is really around changing people's behaviour.

Dr WALDERSEE: Yes.

Ms LYLEA McMAHON: Not just if they have the knowledge, but whether their behaviour is changing?

Dr WALDERSEE: Yes.

Ms LYLEA McMAHON: I understand the argument you are putting: that responsibility for that lies with the management. But if there is not some measure that that is occurring or not occurring, how is the management of that organisation held accountable for that?

Dr WALDERSEE: In this sort of situation where we are providing advice, we are not holding management accountable. The accountability of management gets much more into an investigation of—ultimately what you are saying is: Are they being negligent in the way they behave, in a way that will allow corruption to occur? That is way beyond what a training program assessment could ever do; that is investigatory powers.

Ms LYLEA McMAHON: But one of the KRAs is accountability. So I would have thought there was some role for the ICAC in that level of accountability, particularly, as we have just been talking about, with regard to RailCorp, where there have been numerous investigations and numerous recommendations. I would have thought there is a role in that prevention aspect of holding organisations accountable, and that in fact you have the power to do that in terms of a part 5 escalation to the Minister.

Dr WALDERSEE: That is generally done, though, within the context of the aftermath of an investigation, where there have been findings. It is not generally done where there is a cooperative arrangement to deliver training.

Ms LYLEA McMAHON: I suppose that then comes back to the systematic approach to ensuring that recommendations are implemented and have, in effect, exacted some change in behaviour—which is where the two come together.

Dr WALDERSEE: The recommendations that flow from an investigation we do follow up; we do assess. At the moment it is done by reporting by the agency. In hard cases, such as RailCorp, in the future, I believe it should be an on-the-ground assessment. But that is in the context of findings following an investigation, where it is a joint effort by management and ourselves, and that can then be escalated to a part 5. Whereas, where it is essentially a joint or collaborative approach to try to improve the situation within an organisation, it would be a bit off-putting if we then escalated that to the Minister after they, in good faith, had asked for us to work with them to help improve things, and we did that and then said, "No, it is not good enough; the Minister is going to hear about this." That would be quite detrimental to anybody ever coming to us and asking for that sort of assistance. That is my view.

Ms LYLEA McMAHON: What about those areas where you identify risk? Last year we spent some time discussing prevention in local government. That is an area where the ICAC has identified a risk. It is a little different to where an organisation asks you for assistance?

Dr WALDERSEE: Yes. The middle ground—and this is what I am currently developing, I have only been on the job for two months or something like that—we seem to have a highly reactive approach. If someone asks us for help we help them. If somebody is being investigated we become involved in the investigation. My concern was that we increase our productivity in target areas and focus our effort, because there are only 22 of us. Local government is one of those areas that we are moving on, and we have specifically prioritised our targets. At the local government level it is coastal planning departments. So it is highly specific. That is where

the corruption incentive is; that is where complaints are coming. What we are going to do is activist and interventionist. It will be advice on structures, control systems, increasing detection risk. It will involve some research.

For example, we do not know why people do not comply when we give recommendations. Is it that they do not know or they will not? If they do not know, education is a great answer. If they will not, it is a waste of time. So we need to know some of those factors before we can go forward. It will involve education. It will involve detection risk through activities such as informing progress associations, external oversight bodies, the general public on what to look for, what we need in a complaint. Do not just phone us up because you do not like the development. That does not work. We need to know details. It will involve management training. It will involve looking at what they have got on the ground and some tailoring. It will involve increasing detection risks by making the community aware of what is going on. It will involve research so that we know exactly what we are supposed to be targeting in the first place. That is now starting, but it is not in place yet, not in two months.

Ms LYLEA McMAHON: You will be able to report on that?

Dr WALDERSEE: Yes, indeed.

Ms LYLEA McMAHON: Will you be reporting on it separately or as part of the annual report?

Dr WALDERSEE: It will not be in this annual report because the year has finished. So it will probably be reported separately. We are similarly looking at targeting human services. That is our second priority area and that includes housing, aged care, health, et cetera, which as the research discussed earlier in the Committee showed is a high-risk area too. So it will be that same sort of comprehensive targeted and proactive approach.

Mr JONATHAN O'DEA: The productivity you just talked about did not cover increasing focus on following a legislative program. That is really what, I think, the Inspector was talking about—that when there are either legislative changes or changes driven by Parliament there is a need to be a little more proactive in anticipating where gaps might be created. I took on board your answer about where the education or prevention function best sits and the good reasons you put forward why it might stay with the Independent Commission Against Corruption. Behind a lot of the comments was the perceived need for there to be more proactive focus in terms of following legislative change. I suggest you might take that on board in terms of your productive focus. Do you have any comment on that?

Mr CRIPPS: Yes, we certainly will take that on board. I suppose to some extent we have done this sometimes. We periodically get requests from a government as to proposed legislation and what it will do. Because it has been announced publicly we have had requests from the Minister for Planning about whether certain things should be changed. We respond to those as we can, but we respond to them in the same way really that Dr Waldersee refers to generally, that is, we do not get involved in the detail of it but we will draw to the attention and have drawn to the attention of the relevant Minister the corruption risks associated with what they are preparing. Then it is their decision. After all, as we all know and as Dr Waldersee has said, the whole of government functions on discretion. The wider the discretion and the more important that discretion is to the people who receive it, the greater the risk of corruption. That is what we have to advise people.

Mr JONATHAN O'DEA: I noted your comments in relation to sections 53 and 54 and the intention to be again more proactive in potentially escalating matters to the relevant Minister. It was not clear to me whether or not you had actually escalated any matters to date. Given the situation that RailCorp and your response to question 35 (d) about RailCorp's still outstanding implementation plan, do you intend, if you have not already, now escalating it to the Minister for Transport?

Mr CRIPPS: We will give independent consideration to that. We have not done it. You can infer that it is more likely than not that will happen unless we get a response very quickly.

Mr JONATHAN O'DEA: Following on from question 19 and a question raised with the Inspector about the security of your building and, indeed, his own security, I note that you are housed in a Stockland building which is not a publicly owned building. I have heard a school of thought from some reasonably persuasive authorities that the Independent Commission Against Corruption should be housed in a secure government-owned building.

Mr CRIPPS: I can understand that. Our relationship with Stockland over the last couple of years has not been altogether favourable, I have to say. They are redoing their building and they have caused us all sorts of problems.

Mr JONATHAN O'DEA: Have there ever been any security issues, physical security or security of information?

Mr CRIPPS: No. It is just that they have shut it down and done all sorts of inconvenient things, but there have been no security issues, not that I am aware of.

Mr FAVELLE: No. The question you are obviously referring to was the additional costs associated with security for that year.

Mr JONATHAN O'DEA: The question was not related to that. It was more related to the fact that you are operating in a building that is privately owned rather than government owned and hand in hand with that goes a lack of control over the sorts of issues that were addressed in question 19. Also, there are other security issues, such as listening device capabilities in windows that you do not have ultimate control over, and a whole range of issues. There is a school of thought—and, as I said, it is on good authority that I have heard these concerns—that the Independent Commission Against Corruption should be housed if not in its own building then certainly in a tightly controlled government building.

Mr CRIPPS: There is a strong argument about that. Indeed, I know it is different from ours, but the Hong Kong ICAC has recently got its own building. They attached huge importance to that. Are you going to give us the money to have our own building?

Mr JONATHAN O'DEA: The starting point might be that you state a clear view of your requirement.

CHAIR: If the Inspector is requesting to move, maybe we can organise something.

Mr CRIPPS: I see a force in what has been said in terms of security, although I do not know of any security problems. I would be grateful if more detail of those could be given so that I can address them and make sure they do not happen.

Mr JONATHAN O'DEA: Reverend the Hon. Fred Nile raised one, but you do not have to wait for it necessarily to happen.

Mr CRIPPS: No, of course not.

Mr JONATHAN O'DEA: I am encouraged by your willingness to address Parliament. I think that would be a good thing and I hope or expect that Mr Harris's suggestion would be welcomed by all in the spirit in which it was offered. I would be interested in hearing your views, and it may be appropriate to mention it in an address if it occurs, as to this issue. When a matter is sent to you for initial assessment or examination and does not proceed to a formal investigation, the tendency of parliamentarians and others is to then claim that the person concerned has been cleared or exonerated by the Independent Commission Against Corruption. I think that is distorting public perception as well as the integrity of proper process. Would you comment on that and whether it is an issue worthy to address?

Mr CRIPPS: I will address Parliament on that. You have to understand that sometimes there is a perception amongst members of the public that when a complaint comes to the ICAC it has nothing else to do except deal with that complaint. Of course, you have lots of complaints coming in, we have lots of inquiries going on, we have lots of work to do and we have to deal with each complaint in the context of the legislation, which itself recognises our discretion in this area. There are areas where we think there could be something in this, we will send it away to somebody else, we will not deal with it, and the like. It is an issue we have to bear in mind and I would like the Parliament to bear that in mind. I am very happy to speak to the Parliament about this.

Mr JONATHAN O'DEA: You talked about referring matters elsewhere. When a matter comes in at the initial stage and it has not gone to an investigation, how often would the ICAC refer a matter back to Government?

Mr CRIPPS: Do you mean the agency from which the problem arose?

Mr JONATHAN O'DEA: Correct.

Ms HAMILTON: Quite a lot.

Mr JONATHAN O'DEA: Is that process transparent?

Mr CRIPPS: It is transparent.

Ms HAMILTON: Basically any matter that we do not want to do ourselves, we cannot do ourselves and it is not going to be an actual 53 or 54 referral, if we think that somebody needs to look at it or at least be aware of it we will refer it back to the government department against whom the allegation is made. I cannot off the top of my head give you a figure, but that would happen in a lot of cases. Perhaps even, it would be fair to say, in the majority of cases we do nothing more than refer it back to the government agency to which it relates, so that they can be aware of it. We are not necessarily saying that you need to investigate this. We are not saying it is corrupt conduct. We are saying that you should be aware of this, this has been said, we have not looked at it, we do not know if it is true or not, but we are giving it to you for your information. That happens in a lot of cases.

Mr JONATHAN O'DEA: There is no further tracking?

Mr CRIPPS: No.

Mr JONATHAN O'DEA: Do you have no concerns that it might be buried by someone who has a vested interest?

Ms HAMILTON: We remind principal officers in our literature and in any talks we give that just because we have sent it back in that way, if they looked at it and they uncovered corrupt conduct, they are still under an obligation to refer that corrupt conduct back to us. So to a certain extent we do rely on people to whom this information is referred complying with their duty to refer allegations of corrupt conduct to us if they uncover it.

Mr JONATHAN O'DEA: What is your view in terms of protected disclosures, employee whistleblowers and the current process that the Parliament has suggested in terms of review, that is, this Committee? What is your view in terms of how suitable you think that process is and whether you have any comments?

Mr CRIPPS: Do you mean how suitable a review is of itself?

Mr JONATHAN O'DEA: How suitable the review is, including by this Committee? Also, do you have any input or suggestions as to what we should be looking at?

Mr CRIPPS: Everyone recognises there are a huge amount of problems associated with protected disclosures. Everybody knows that the question is: What is the best way to deal with it? We would certainly cooperate, but maybe the Deputy Commissioner has some view about that.

Ms HAMILTON: I have had a lot to do with whistleblowing both in Queensland formerly and here. It is an enormously difficult area. I think one of the biggest problems with it is that all of the Acts that create whistleblowing legislation, perhaps by necessity, make it very complex. You have to give the right sort of information, you have to be the right sort of person, and it has to be about a very specific kind of conduct. That, or course, means that for a lot of people who consider themselves whistleblowers, the legislation does not consider them whistleblowers. So that is the first problem that a review might need to look at. The second problem that is again hard to address is the protections to whistleblowers. You can charge people criminally who take reprisals or you can take certain civil actions, but it is very hard to protect whistleblowers from the reality of people not talking to them in the office or not inviting them to drinks. That sort of reprisal is something that legislation probably cannot deal with. That is the real problem of protected disclosures. I do think a review of it is a good idea because the legislation is always something that can be improved in respect of protected disclosures.

Mr JONATHAN O'DEA: You are comfortable with this Committee undertaking that review, of which Parliament has given an intention?

Ms HAMILTON: Yes.

Mr CRIPPS: We would not dare criticise Parliament.

Ms HAMILTON: It is a matter for Parliament obviously. As the Commissioner says, I do not think we should second-guess that decision.

CHAIR: No doubt, we will talk about that in the future.

The Hon. GREG DONNELLY: Commissioner, in relation to RailCorp, you mentioned there was a program of completing investigations with the production of a final report into RailCorp.

Mr CRIPPS: Yes.

The Hon. GREG DONNELLY: Are you able to provide a timetable about your intentions in this regard in some detail, or is it something that will be done in due course?

Mr CRIPPS: Could I take that on board?

The Hon. GREG DONNELLY: Sure.

Mr CRIPPS: I am conscious that we have timetables for these things. I would just like to get a clearance that I can make that available under section 64 because we are still investigating.

The Hon. GREG DONNELLY: Sure. That would be good

Mr CRIPPS: If we can, you will get it.

The Hon. GREG DONNELLY: That would be fine. My next question relates to the issue of overseas jurisdictions. Obviously corruption investigating bodies are creatures of their own legislative framework. I think we all appreciate that. Looking around the table, I am not speaking for other members but for myself. I am pretty unfamiliar with similar sorts of bodies around the world. From time to time we hear about the Singapore model being quite a good model and been quite strong in different areas. There are obviously weaknesses and strengths for each institution. I am just wondering whether you think it would be of value for this Committee, on an ongoing basis, to keep itself apprised of best practice inside some of the comparable bodies overseas. I note there was a conference last year—I was unable to get to it and I do not know whether other Committee members went to it—where there were bodies coming together in respect of this from Singapore and elsewhere. But in terms of a Committee like this being better informed about best practice, internationally speaking, for corruption bodies, do you have a view about whether we should be trying to inform ourselves about that?

Mr CRIPPS: Yes, I think you should, but what I would encourage you to do is probably not just go around and look at what everyone else has done, but see what they are intending to do and how efficient they are. For example, there is a view abroad that we are very similar to the Hong Kong ICAC. In fact, our similarities begin and end with the name. The Hong Kong ICAC is a law enforcement agency. People have the right of silence, they have privilege against self-incrimination, they have legal professional privilege, they call people and hold them incommunicado for 40 days or something—they have huge powers. They employ 1,400 people for a population of 7 million, which is about the population of New South Wales, and they have legislation which says, for example—this is the biggest thing in the public area—that if you, as a public servant, cannot account for your wealth by reference to your salary, and you fail to give a proper explanation to a judge, you can go to jail for 10 years. You tend to think: Who wants to remove privilege against self-incrimination if you have those powers?

They say, and I do not criticise them for this, the problem was very great, as was the problem they had with getting the legislation through; they had to pass legislation that effectively bypasses it all. But that is what you have to look at. If you do not mind my saying so, it raises the issue that I have raised before in my opening, namely, what it is that Parliament wants us to do? At the present time, on the face of legislation, it is to expose

corruption and probably, as I say, prevent or reduce corruption. That is really what the Parliament wants to do. If it wants us to go further than that, by all means look at other institutions and see how they work, with probably one caveat: well before your time everyone used to say that if something happened in Sweden or Canada, everyone should follow it in Australia. I got to the point that whenever anyone mentioned Sweden or Canada, I held both sides of the chair.

The Hon. GREG DONNELLY: I well appreciate the point you are making. My next question goes to the question of technical capability. If I recall, last year we asked Mr Symons a question about whether or not ICAC has, to coin a phrase, the very best or very good equipment and technology to deal with the villains and crooks, given that they are very sophisticated and clever. I do not have the transcript from last year. If I recall correctly, I think the general answer was that there was a belief that you are pretty much up there in terms of the capability and in terms of what you need to carry on your investigating responsibilities and powers.

Mr CRIPPS: Yes.

The Hon. GREG DONNELLY: I am just wondering whether that is still the view—that in fact you have the very best in terms of what is needed to conduct the investigations?

Mr CRIPPS: Yes.

The Hon. GREG DONNELLY: If not, what would need to be done to address that issue?

Mr SYMONS: Do we have the very best? No. What would we do to adjust it? Triple our budget. To be sensible about it, yes, we are continuing monitoring what is available in the marketplace and what is suitable for our application. We have bought equipment this year. We have worked within our budget application for that type of equipment. I do not have any major problems of equipment in the sense that we have been withheld funds; in other words, we do have the right equipment. Yes, we are monitoring all the time. We are involved with other agencies—continually involved with other agencies in joint committees and things—to see what is in the marketplace. But, look, we could get a satellite put up in the sky that can pinpoint your badge on your shirt, but we are not going to go to that length. But, no, we do have sufficient equipment. I am content that we do monitor the outcome.

The Hon. GREG DONNELLY: Sure. My final question goes back to a point Reverend Nile made in his line of questioning about the memorandum of understanding with the DPP. On page 20 of the answers to the questions on notice, if you do not mind my saying so—and I am not being cheeky here—your answer to question 29A does not quite clearly answer the question in terms of are you satisfied. I think in answering the Reverend's question you said, and I do not wish to paraphrase you, words to the effect that you were as satisfied as you reasonably could be in the circumstances. This was not in your answer but in response to his questioning this morning.

Mr CRIPPS: Oh, I see.

Reverend the Hon. FRED NILE: It is question 29.

The Hon. GREG DONNELLY: It is on page 20 and it is question 29A. You lay out the assignment of the lawyer with the DPP.

Mr CRIPPS: It does not seem to be on mine. Would you mind just referring to it again?

The Hon. GREG DONNELLY: This is page 20, question 29. The question asks, "Are you satisfied with the current MOU and its operations?" You lay out in your answer what is there, but it seems to me that in terms of our reflections last year—we went through this in a bit of detail and I think it was raised last year in particular when questioning the Inspector—a tension operated in different manifestations, if I may put it that way. Obviously the MOU has gone some of the way, and I think that can be implied both from what you say here and from your comments this morning, but do you think there is more that we as a Committee could do to press forward and improve this even further, or are you content to allow it just to settle, see how it goes for a period and then review where we are after a reasonable period?

Mr CRIPPS: I suppose my short answer is that you make up your own minds about what you would prefer to do. So far as we are concerned, you can ask Ms Hamilton again how good this is and whether it wants

improving. I think she has already said that we are hoping for improvements. I am sorry if that answer was ambiguous. But it also raises this question in relation to which I would like, if we could, to request a response: Could it clearly be identified what our role is intended to be? Once we get that clear, a lot of other things will follow. But as far as what the parliamentary Committee wants to do, I can see no reason why the parliamentary Committee cannot take what steps it wants to take, unless they apply to particular investigations. By the time we are dealing with these matters that are in the MOU, the investigation is usually finished. You cannot talk about what happened in the investigation, but you can talk about what might happen to people who are going to be punished or not punished.

Ms JODI McKAY: My question relates to the implementation of the ICAC recommendations. I know we have touched on RailCorp and the Department of Corrective Services. I am taking into consideration that I am a new member, so feel free to say that I am totally off track with this, Commissioner.

Mr CRIPPS: Yes.

Ms JODI McKAY: I sit on the Public Accounts Committee as well, so we work with the Auditor-General. One of the important roles that we play is in terms of closing the loop on the implementation of recommendations. An initiative we introduced this year relates to the holding of public hearings, the bringing in of departments and asking them about the implementation of recommendations. This relates purely to systems and processes and making them accountable. Putting aside the terms of reference of this Committee, because we need to look at that, it seems to me it is about closing the loop in a public sense. I know you have reports at 12 months and 24 months, but what we found in introducing this approach is that suddenly departments get very busy about looking at those recommendations because they are called in here and they appear before us. If they discount a recommendation, we ask them to account for that approach and why they are not following up on that. Is that not something that could be of assistance?

Mr CRIPPS: Yes, I suppose so.

Ms JODI McKAY: Taking aside the terms of reference of this Committee, is that something that could happen?

Mr CRIPPS: Yes, I think it is. I think it is something you could do and it probably would be helpful to us. I imagine your Committee deals with waste and mismanagement as well as corruption?

Ms JODI McKAY: Yes, it does. It is primarily related to systems and processes. The Auditor-General has found it very helpful because it is closing the loop and it does something that he cannot do.

Mr CRIPPS: Yes.

Ms JODI McKAY: Other than the annual reports, such as the 12-month report and the 24-month report, we can as a Committee bring them in and ask them to account for the implementation of those recommendations.

Mr CRIPPS: Yes.

Ms JODI McKAY: It is a follow-up audit that is saying that we are not just accounting for it in a recent report, but actually saying, "How did you do this internally? What are the processes that you have now implemented within your organisation that are following up on what you have done?"

Mr CRIPPS: I am sure that would be of value to us. It would be a source of information that we could have regard to, so long as it did not put us in that position that Dr Waldersee said we should not be in; as long as it would not put us in that position.

Ms JODI McKAY: No.

Mr CRIPPS: You would just be furnishing us with information. I think, speaking for the Commission, we would be grateful to have that information.

Ms JODI McKAY: All right. We might take that on board, Chair. The other question I have relates to the work you have been doing with the Health Care Complaints Commission. I notice there is some substantial

income forecast. Is that the motivation for the efficiency of shared services, or is the motivation about income generation? How did that eventuate? What is the motivation for it?

Mr FAVELLE: I think it is both. Personally I think it is both. It has been a Government reform program for corporate services for a number of years to have a shared service environment. One of the limitations that ICAC would have is that, because of the nature of what we do, we need to maintain control over our own corporate service activities. We have covert operations, et cetera, that we need to keep secret, but there was always the opportunity for us to provide services to another party. Because of associations we had with some of the people of the Health Care Complaints Commission, this was the opportunity where we could do that. It allows that shared service environment.

It certainly gives us the ability to maintain the capacity to offer a range of corporate services, with the Government obviously needing to maintain strict control over funding, and we are subject to normal Government funding, efficiency gains, and things like that. We knew that if we continually have to meet these efficiency gains without some ability to defray some of our costs, such as corporate services, that would cause us a problem in the future. It is both income generation but also obviously efficiency in terms of a scale.

The other factor that I have always promulgated, I suppose, as part of doing it is that we are like agencies, and we have an understanding of the role that they perform. That helps in relation to the delivery of corporate service for them. If you are a bureau-type of involvement at the corporate service level, you may have no real understanding of the underlying operational areas that are being delivered by that other agency for which you are providing corporate services. It gives us synergy that allows the organisations to benefit jointly, both in terms of the services and in terms of the nature of what they do. Corporate services, certainly in things like human resources policies, are more focused and they might be developed in consultation with the Health Care Complaints Commission at their particular operational requirements, rather than if you are a separate agency that would not understand it. It has a range of benefits.

Ms JODI McKAY: Is it something that you are looking at expanding further? Obviously the synergy has to be there.

Mr FAVELLE: The synergy has to be there. We have looked at other possibilities, but the problem is that if we go beyond the size we are now, we have to probably bring in a lot more resources and then it becomes not so economical. At this stage we have been able to use some level of excess capacity.

You might have 15 per cent of an accounts payable officer. You cannot suddenly get rid of 15 per cent of an accounts payable officer but you could get some other work that utilises their time. Once you get to a point where you are pretty well utilising most of people's ability to provide services you have to add extra resources and it may then be counterproductive. We could do limited things but at this stage I think they would be limited into the future.

The Hon. JOHN AJAKA: Commissioner, we have talked about ICAC having dual roles of investigation and education. One of the difficulties I have with the dual role of education is that when an educator goes into a department to try to educate and meet with and talk to various personnel, they know that person is from ICAC and I see a difficulty with the free flow of information that they might not have if you were not ICAC, if it was another department. I am wondering whether having the tag of ICAC, who you are and the powers you have inhibit some of those you are trying to educate against corruption, or is it the opposite and it helps. What are your views on that?

Mr CRIPPS: I will let Dr Waldersee answer that, except to say this: I suppose it depends on what education you are providing. If it is being provided by somebody else on the basis that it is going to go to ICAC anyway, I do not know.

Dr WALDERSEE: The role of education as part of corruption prevention—I noted in the transcript from last week of Inspector Kelly that the suggestion was that to place it in another agency may or may not be appropriate. The question was raised whether education would lose its ability to impact, or corruption prevention more broadly. His answer was that it essentially depended on the priority given to it by that other agency. That is how I remember the transcript. To some extent I agree with that but I also believe that the imprimatur of ICAC itself gets people's attention. I believe there is no conflict between the deterrent role and the education role because the people being educated are not those who are taking the little bribes and causing trouble, they are the managers responsible for the control of the organisation. It is in their interests as well as

ours that they take this on board and implement it, otherwise they are likely to be answering to a hearing within ICAC. I believe there is an ICAC effect that is above and beyond that which is simply a prioritisation within a central agency that is able to get the effect across.

Put it this way: if RailCorp will not respond to us in corruption prevention, who on earth will it respond to, other than the Minister himself? I do not see there is a conflict. Just to finish the education issue, another point raised was that if the effect of ICAC is essentially through deterrence—as I said earlier, I am not convinced there is any evidence that deterrence works any better than prevention—the education function is taking resources from the exposure function. That was also one of the reasons why it should be moved out. Education is a very small part of corruption prevention. In terms of the total number of people in ICAC, it is around three per cent. Of that, at least half and possibly all the salary costs are covered by fees. At most we are talking 1.5 per cent of the budget, if it is taken out, can go into exposure and in the worst case the fees that are generated may in fact—we are still trying to work the costings on that. It is a bit rubbery.

The Hon. JOHN AJAKA: That leads to my next question. Looking at the aspect of resources, if there was a genie in a bottle and you were able to order more resources—not to the extent of looking at the badge on my lapel—at a realistic level does ICAC require further resources to be able to increase its educational component? In other words, if you are using 97 per cent of your resources on investigation and only three per cent—

Mr CRIPPS: I do not think he said that.

The Hon. JOHN AJAKA: I am not saying he is saying that, but if you were, and clearly you do not want to reduce your investigation resources—you need those—is there a need or a request for additional resources for education by way of personnel, money etcetera? Is that something this Committee should look at?

Dr WALDERSEE: First of all, I do not want to have misled this Committee.

The Hon. JOHN AJAKA: I did not mean it that way; it was just an example.

Dr WALDERSEE: Education is one part of the corruption prevention division, it is not all of the division. The corruption prevention division provides ongoing advice to agencies that ask us "What do we do next?" There are assessments referred to us for advice, so it is a corruption prevention issue not an investigation issue. We are involved in investigations. I am not trying to say our entire division is only three per cent. It is the education function within that which is integrated into the rest.

The Hon. JOHN AJAKA: I understood that.

Dr WALDERSEE: Okay, I thought there might have been a misunderstanding. I then promptly forgot the question.

The Hon. JOHN AJAKA: Is there a need for further resources to be able to increase the educational aspect so that it would have some realistic effect on prevention?

Dr WALDERSEE: My approach since I have taken this position has been that we probably have not achieved the maximum impact out of the resources we already have. There are a grand total of 22 to 24 of us and there are tens of thousands of public sector employees and hundreds of agencies. To spread ourselves across all that is pointless. We could not do anything and nor would I dare ask for the amount of resources we would need to do that. As I mentioned earlier, we are moving to a much more focused approach, targeting the particularly high-risk areas. We have just completed a planning day where we believe we have identified those high-risk targets. It is now a matter of redeploying within the division to make sure that we are able to bring to bear our corruption prevention education, research and training capabilities and go out there and actively target these areas. Until that is done it would be unreasonable to ask for more money because the short answer is that it is not yet clear we have achieved the maximum bang for the buck, to use that term.

The Hon. JOHN AJAKA: Commissioner, when you ask us to have a good look at what should be the role of ICAC, do you see that maybe there should be a concentrated effort on the more serious and more systemic corruption and not simply have ICAC looking at each and every matter referred to it? Maybe even the referral to ICAC should be vetted so that it allows you to concentrate your resources on what the public would perceive were the major matters of corruption.

Mr CRIPPS: Yes indeed. Let me say this, though: The legislation itself, which was amended about four or five years ago, in terms said ICAC had to direct its attention to serious and systemic corruption. There was some doubt about what those words meant—was the word "and" meant to be construed disjunctively or conjunctively. I took the view that it was to be construed disjunctively, so it was "or". We have got that. To that you have to add the definition of corruption. From a lawyer's point of view the definition of corruption is capable almost of sweeping up anything that amounts to being dishonest if there is a disciplinary procedure in the agency. I cannot have people telling me someone is corrupt because they lied about being at their grandmother's funeral and that can result in disciplinary action. I took the view, when I was looking at this issue in more detail than I have since looked at it, that there was indeed justification for people to say that in theory at least the definition of corrupt conduct travelled far beyond what people in the street would think was corrupt conduct.

However, when I was doing that inquiry I wrote to the Bar Council, the Council for Civil Liberties and the Law Society and said, "I have had this raised with me. Would you please give me illustrations of when conduct has been declared to be corrupt that people in the street would not think is corrupt?" None of them could give me an illustration of it, so I finally took the view that if you start mucking around with the definition you are going to have more litigation, and it has not happened. We do this all the time, incidentally. We see something that could be corrupt and we send it back to an agency or we think it is so minute we might not do anything about it. We are doing it the whole time. We are concentrating our resources. People have to have regard to the fact—people may not like us saying this—that sometimes you get to the position where you are so flooded with work—indeed, State Rail has flooded us with work—that you have to start making priorities as to whether you can keep on doing it. We have had occasion in the past, with the cooperation of the Parliament or the Government, where we have said we really are flooded and we have a really bad one coming in, can you help us out, and we have been helped out.

The Hon. JOHN AJAKA: Is there an argument that the definition should be "serious and systemic", not "or"? Is there an argument that that would—

Mr CRIPPS: No, I do not think so myself, because you could have something that is hugely serious but may not be systemic. We have done one—the mayor of a municipality taking a bribe, money across the counter. That would be serious. The more tricky one is what should we do if it is systemic but not serious. I think my answer to that would be I would like to see what it is they are talking about before deciding how we deal with it.

The Hon. JOHN AJAKA: Thank you, Commissioner. Looking at the role of ICAC, is there an argument for ICAC to be a little more like the Hong Kong model, where they actually have the final power of prosecution, to eliminate this problem? One of the difficulties I have is hearing that you receive an initial complaint and seven years later someone is looking at whether charges are going to be laid. I just find that preposterous. Given the fact that you have already got into the investigation and you have special counsel who is well aware of it, should he suddenly take on the role of Crown Prosecutor and continue with it so that you see it to finality? Is there a good argument for this Committee to look at that?

Mr CRIPPS: I thoroughly agree with you that the administration of criminal justice requires a statement that it is an outrage for someone to be prosecuted 10 years after they have done something unless there is some really good reason for it, like someone has been murdered and nobody knew about it. But it is really a matter for the Parliament to tell us what we should be doing.

The Hon. JOHN AJAKA: Which is what I am after.

Mr CRIPPS: My personal view is we should have a much bigger say in prosecuting people who have committed offences under our legislation because we are very concerned that our legislation should function properly. As to the general criminal law, I do not know. We would have to see what it is that is causing the problems at the present time, and there are problems. Incidentally, I am not intending by these remarks to try to criticise the DPP. In fact, as you know, I have mentioned that I do not know what their priorities are. I have also mentioned that our prosecutions are very complicated. They require deep analysis and a lot of man-hours go into it, and they have their priorities. I do not know what the answer is. However, I would like to have a look, and maybe invite this Committee to have a look, at the Queensland legislation. I am told, and maybe Ms Hamilton can correct me, that they engage in some sort of independent prosecution. My own view at the present time is that it is a very big issue. It goes to the whole question of what the DPP is all about. However, that said, I like to

put the view that so far as our legislation is concerned we should have control over people who break the law under our legislation.

The Hon. JOHN AJAKA: A final question: Earlier you mentioned that at least in civil and disciplinary proceedings the evidence given should be admissible in those proceedings. Would you go so far as to say that that should also apply to criminal proceedings—in your personal view?

Mr CRIPPS: I think it should actually. Practically, I think it will not. If you have an understanding of the development of the criminal law in the Western world, at least for 150 years, privilege against self-incrimination is so deeply entrenched that it is almost impossible to get rid of it for the purpose of criminal prosecutions. We make people incriminate themselves and then we say "We can't use it against you criminally". But let me say what the argument is to not abolish it but at least modify it. Twenty years ago the New South Wales Parliament, for the first time under the Greiner Government, resolved that the problem of corruption in this State was so awful and it affected public confidence in the ability of the State to function properly that you needed to bring in an institution like the ICAC. That got through the Parliament and, as I said earlier, everyone seems to think it should remain that way because of the problem.

The fact is that if the only way you can deal with corruption is this way, the question is: Why not take the extra step and make sure that people who have in fact been guilty of serious corruption do not go to jail? Why should they get this protection? True it is, people may say, "Well, if you take that protection away from section 37 people will tell lies rather than incriminate themselves." And that is possible, but in that event they should know that if they do tell lies they will go to jail for that. That is my view, but I think if you took a view around the Law Society, the Council of Civil Liberties, those people who have not swooned away would come back and say, "Certainly not, the privilege against self-incrimination remains inviolable." I still have doubt about this; I suppose it is my background. I do not like the thought of a privilege against self-incrimination being totally got rid of because, after all, it is directed at ensuring that the power of the State is kept under control. That is the essence of the privilege against self-incrimination. I will just tell you what the argument is, but I do not know what my answer is.

Mr ROBERT COOMBS: The Hon. John Ajaka has stolen my thunder somewhat. What I am trying to grapple with is utter frustration—both yourself and indeed Mr Kelly articulated this last week—in that you have investigated, you have obviously got a position where in all likelihood there is corrupt activity but nevertheless a prosecution is not undertaken or it just fades and ends up in an inappropriate situation, to say the least. Mr Kelly even described the situation where one particular person from a government agency was not prosecuted and ended up with promotion. When we asked him what is to be done, he mentioned the Hong Kong model. I have not had a look at the Hong Kong model but from your short synopsis this morning I am not sure that the Hong Kong model is appropriate for the circumstances in New South Wales. I said at the outset that I am grappling with this because I would like us to be doing something concrete about it.

I am wondering whether you have any comment on what is best to be done. Should we be writing to you with some recommendations, or can you make recommendations to this Committee? It might go so far as using the current system better. It might go to a situation where we do make some recommendations back to our Parliament in relation to implementing some law enforcement principles and all that goes along with it. Of course, all that stuff, I do not have to tell you, and I think you just touched on it—there are tremendous political implications with it but as far as I am concerned there are probably just as many political implications if we do not lift the bar and recognise that, despite all the good work over the past 15 or 20 years, there is still a corrupt element out there and we have to tackle it. I suppose it is a long-winded question but nevertheless I think it is time somebody dipped their toe in the water, so to speak, and said, "Come on, this has got to be done if we are to go to the next level."

Mr CRIPPS: I think I have unambiguously dipped my toe in the water about what should happen to disciplinary proceedings and civil proceedings: Protection should not be there. Some might say that I am up to my knees in water. Also, you have to remember—this is why I would like Parliament to think about what it wants of us because eventually that is what we are; we are a servant of the Parliament. Eventually it must work out what it is because, leaving aside section 37, under our legislation, as you know, we do not have to be satisfied beyond reasonable doubt before making a finding of corrupt conduct, although the seriousness of the finding is certainly taken into account in whether you come to a conclusion. So we have that problem, and maybe they say, "Well, if you go any further you have to have it beyond reasonable doubt". But these are issues that people have to talk about, but I actually agree with you that if you have an institution like the one we have

and you want to make it function and you want to have the public confident that it is functioning, I think we have to go a little further about how you treat people who have been caught stealing from the public.

Mr ROB STOKES: I have two questions. I have been listening to what has been going on today and also the interview we had with the inspector, going to the role of ICAC. I noted the inspector's comments that he felt that there might be some sense in having the policy function transferred to a central unit of government.

Mr CRIPPS: That is for prevention.

Mr ROB STOKES: For prevention. In light of that, in light of Dr Waldersee's response to those comments, and also to the fundamental position that corruption risk arises where there is an institutional discretion, in light of those things, are you satisfied that there is an appropriate level of consultation between the Commission and a Minister or department in the preparation of legislation that institutionalises discretions? What I am thinking of specifically if there has been a lot of activism by the Parliament in relation specifically to planning law and that has shifted a lot of the discretions from a local level to a central level. With that as an example, have you been satisfied that there has been an appropriate level of consultation between the Parliament and the Parliamentary Counsel in preparing legislation of that type, or do you think there is a need for a formal protocol or those sorts of things?

Mr CRIPPS: I do not think there is a need for a formal protocol about this. I think we have been informed by the Government what it proposes to put to the Parliament. I suppose we would also accept any view that was put by the Opposition as to whether it has a role, but at the end of the day it is a parliamentary decision. Frankly, I cannot understand how governments in the Western World could operate if the bureaucrats did not have discretions. You would end up like Russia was, I think. Of course, planning generates more discretion than perhaps most others because whether you get a planning approval or not may mean you are a millionaire or you are broke. These are very big problems, and the bigger the discretions, the bigger the risk, particularly if the big discretion is sounded out in big money.

I suppose if there were a protocol as to how everyone got together before legislation finally went into the Parliament, I could certainly look at it. Let me just say that at the present time we do sometimes get views from the Government and sometimes we do not answer them because you can see the question is asked so they can get up in the Parliament and say, "ICAC has ticked this off". So we just do not answer it, but we have a look at it and see whether we will answer it or not. The same as we would look at anyone else from the Parliament to make a submission, but we have it in our own mind that we had to respond to this in a way that keeps us above party politics and at the same time can make a useful contribution to the debate.

Mr ROB STOKES: My second question is also related to planning matters. I noted Dr Waldersee's comment about an investigation focusing on planning matters for coastal councils. That made me reflect that as a result of the major project SEPP most significant coastal developments now fall within the ambit of the Department of Planning. Is your investigation designed to look also into the department, given that that is where most of the discretion now lies?

Dr WALDERSEE: I do not want to go off the track again but it is not an investigation; it is intervention, meaning it is an activist corruption prevention activity. We are not going to demand councils let us in to investigate them. It is a proactive corruption prevention and intervention, not an investigation. But I agree with your point that everything within a kilometre of the beach is a State level should they choose to do so. Are we going to look at that or intervene there? It is not on our list at this point. When I say it is not on the list, it is on the list; it was about number three after, I think, health and human services, infrastructure and then planning. They were seen in about that order as probably the riskiest so picking them off one at a time it was not currently top of the list but I take your point. What happened in Wollongong could easily have been simply shifted to the central level and the same thing occur there. But it is on our list. We just thought there were higher risk items.

Mr CRIPPS: Can I add to this because planning is an area about which I had some knowledge before I took on this job? What is self evident about planning and the fact that you have a discretionary planning system is that there are huge corruption risks. However, it is for the Parliament to decide how to deal with those. They are so obvious that it is a wonder anyone has to say, "What are the planning risks? What are the corruption risks?" They are obvious: bribes, all sorts of things. The question is how you deal with it and at the same time keep the system fluid and discretionary, as it has to be. That is what I think. I know I am avoiding answering the question but I do not think ICAC has a special expertise in that area at all. I think everyone in the community has a view about how you stop this, the people's representatives in Parliament best of all.

Ms LYLEA McMAHON: In relation to councils' general inspections, I know that many other agencies have the power of identifying an area of potential risk, particularly to conduct general inspections. Is that something within the consideration or auspice—

Mr CRIPPS: General inspections?

Ms LYLEA McMAHON: Yes, general inspections. If there is an area that you identify at risk. Underpayment of wages in the hospitality industry, for example, was identified as an area of risk from the Office of Industrial Relations, so it has the power to conduct general inspections in restaurants.

Mr CRIPPS: We have not done that, to my knowledge.

Ms LYLEA McMAHON: Is that something that is either within the consideration or the auspice of the powers of their ICAC?

Mr CRIPPS: Well it does relate, I suppose — people here may have different views about this, but it does relate to the function that we have of being what they call proactive rather than reactive. The question is what we should do and how much more money we need to do it.

Dr WALDERSEE: I do not know whether the ability to inspect without cooperation of the agency is permissible under the Act as it has not been done. It would be an activity in high-risk areas that it would be quite nice to have if you felt that a coastal council, for example—to stick with that example—was potentially at significant risk, that it was not doing things appropriately, for corruption prevention to be able to say, "We would like to have an inspection of what is going on just to make recommendations." I think the problem, as I understand it, is if we do turn up corruption, then there is little choice but to report it and proceed to an investigation. So it all becomes quite coercive, which reduces people's willingness to cooperate. So in short it would probably be nice but it would be exceptional or where you would ever use it.

Mr SYMONS: We have the right under section 20 of an own-initiative investigation but that would have to be based on reasonable grounds.

Ms HAMILTON: Presently, the Commissioner can authorise us to enter any public authority and inspect their records and copy them if it is suspected corrupt conduct has been occurring. I think you are talking more about a prevention style of general inspection.

Mr CRIPPS: It is almost like an audit.

Ms HAMILTON: Like an audit, which we do not have at the moment, and I think, from what Dr Waldersee said, he thinks it might be counterproductive in that you would not get the cooperation in any case.

Dr WALDERSEE: It would be very rarely you would want to use it, I believe.

Ms ATKINSON: In the past we have undertaken what we used to call corruption risk reviews but again that was with the cooperation of the agency. We discontinued those, and they will have a rebirth in the form of a self-directed corruption risk review on the Internet in due course. That project is in train at the moment.

Reverend the Hon. FRED NILE: You put some proposals to the committee about some changes to legislation. It would help the committee if you would put that in writing and send it to the committee or to the Minister?

Mr CRIPPS: Yes, we will send it to this committee and then you can decide what you want to do with it.

Reverend the Hon. FRED NILE: You could send it to the Minister with a copy to the committee?

Mr CRIPPS: Yes, or we can do both: give it to you and a copy to the Minister or to the Minister and a copy to you.

Reverend the Hon. FRED NILE: Just so there is no confusion over exactly what you want. I would like to be precise in order to deal with your issue.

Mr CRIPPS: Yes.

CHAIR: Reverend, is that in connection with section 116?

Mr CRIPPS: Yes, are you talking now about section 116?

Reverend the Hon. FRED NILE: The one about the civic and disciplinary proceedings.

Mr CRIPPS: Yes, okay there is that one.

Reverend the Hon. FRED NILE: You did say earlier you would like more precision on the role of ICAC?

Mr CRIPPS: Yes. There is one mentioned in our submission about whether we extend the limitation period beyond six months because we often do not find out people have been deceitful to us inside six months. We can put them all down in writing.

Ms HAMILTON: There was also the perjury?

Mr CRIPPS: Yes, lying under oath should be treated as seriously as perjury.

Ms HAMILTON: They are the core issues.

Mr CRIPPS: We will do that, certainly, yes.

CHAIR: I note the table included in your answers in your submission to question 28. I thank you for providing that, it is very useful, as a proposal that details time limits or time taken for you to refer a matter to the DPP and ultimately get advice from the DPP. It clearly shows at a glance the enormous delays that you have had in the past. I noticed towards the end of that table in operations Cadmus, Aztec, Quilla and Pelion a general reduction in the days that it has taken the Commission to submit a brief. We talked earlier in the last meeting, as I remember, about you preparing admissible evidence during investigation. Is there a connection with that new practice? Has it generally reduced delays?

Ms HAMILTON: Yes, I would say that it has. Could I say, for example, in Cadmus charges have now already been recommended and laid, and I think that shows that if you can get the briefs over there more quickly they will be looked at more quickly and charges can be laid more quickly. And also in the next public inquiry that we are going to hold that will be the first time where we actually look to have the briefs ready practically by the end of the public inquiry, Mr Symons informs me. So that is what we are working towards, that there will not be a big delay; that the briefs will be getting prepared sort of almost as you go and that will be reducing and reducing.

Mr WALDON: Could I just add to that just briefly? You will notice on the first page of that chart in relation to operation Cordoba the number of days between the report and the brief to the DPP was 96, which was a very low number of days. We looked at why it was in Cordoba that we were able to get the brief to the DPP much quicker than in other matters. One of the reasons we identified was that something similar to a brief preparation plan had been worked on between the lawyer and the investigators working on that matter so that the offences had been identified, the elements of those offences had been identified, and what evidence we needed to put together to prove those elements had been identified. And then in putting together the brief that document had been used to assemble the brief. So what we have done as a result of that is now to change our procedure and introduce preparation of brief preparation plans as a mandatory matter for all new matters. Those plans are being prepared and signed off by the lawyers and the investigators by the executive director of ID and myself. They are then being used as a plan to put together the brief. So I think from now on that will assist in also bringing down the number of days between the investigation being conducted and the brief going to the DPP.

CHAIR: I detect from that table and from your remarks in answer to question 29(b) in regards to the memorandum of understanding, you quite rightly point out that the process of improvement is going to take

some time to take into effect. You also mention at the beginning of page 21, I detect, that already some improvement has occurred in the Office of the DPP getting material back to you which is very encouraging to see. I will be very interested to see how things develop from there, in particular, with new provisions in the memorandum of understanding about the allocation of lawyer. I would like to think that we could expect less time with the Commission doing investigations as a result of replying to requisitions by the DPP. In one case I saw you had to procure 35 statements, which seemed to me to be astounding, considering you have already conducted an investigation. That leads me to the next question. You mentioned that you are not authorised to continue and seek statements in response to requisitions by the DPP if there is no investigation. Do you need any legislative amendment for that?

Mr CRIPPS: I think it gets back to what we talked about earlier what the Parliament wants us to do. First of all, I have a very firm view that we cannot get statements from people unless we are investigating, exercising our coercive powers. I do not think, for example, when we are finished investigating and prepared a report—I know theoretically we never really finish—I do not think we can say because we have started investigations we can haul people in left, right and centre to get information from them about criminal prosecutions. As you know, although the answers people give on these compulsory powers, cannot be used against them, the answers cannot, the information can and often is. So the law enforcement authority can just go around and, in fact, get admissible evidence for something that they know is the fact but cannot be proved they would like it to be proved.

Now we exercise this function at the present time. I have the greatest misgivings about us ever using this otherwise than while we are investigating a matter, and consequently I have a misgiving, but not as strong, as to whether we should be even going out and interviewing people about these things. They obviously think they are being interviewed by the police. But I am not saying it should not happen, all I am saying is you, I mean the Parliament, ought to regulate and tell us what you want me to do.

CHAIR: You have highlighted in your opening statement and throughout the course of this hearing that there needs to be a clear setting out of your role. The inquiry that you started that ended up being called the McClintock report, taken over by Mr McClintock, SC, touched on a few of these issues.

Mr CRIPPS: Yes.

CHAIR: In relation to the proposal being put forward about you prosecuting matters or instituting proceedings, Mr McClintock said in his report, as I remember, to address the delay that you be able to institute proceedings without the advice of the DPP to get things going because then it comes under the control of the court.

Mr CRIPPS: Yes.

CHAIR: He was concerned to reduce the delay by that method. You have mentioned today that you need a clear-cut indication of what your role is. You have also mentioned the offences under your Act. As I understand it you are asking for control over instituting prosecution of offences under your Act?

Mr CRIPPS: Yes.

CHAIR: But you also want those offences now to be strictly indictable?

Mr CRIPPS: At least lying to the Commission.

CHAIR: That is right, so they are strictly indictable on indictment?

Mr CRIPPS: Yes.

CHAIR: When you say control of the prosecution are you saying that you want to be able to prosecute those matters?

Mr CRIPPS: I must say I have not really pursued this until I get an indication, I suppose, in a sense of what Parliament wants us to do. I suppose an issue could arise where I say a matter should be prosecuted but the DPP says "No". When that happens I know that I can lodge the CAN but the DPP can just simply withdraw it because he can take over the proceedings. I am not saying these sorts of things happen. I think we ought to have

a greater say in who gets prosecuted and who does not. We have had a few examples, which I will go into in private if you want, but not publicly.

CHAIR: You mentioned those in your report.

Mr CRIPPS: Where I think we should have gone full ball but other views prevailed. Eventually the other view does prevail because we cannot do anything about.

CHAIR: The inspector has made his view quite clear which is that you should be both an investigating and prosecuting authority.

Mr CRIPPS: Yes. He has got to think that one through I have to say.

Ms HAMILTON: Could I just point out from what I read what the inspector was saying, and the recommendation you have referred to from the McClintock report, is that the Commission should be able to charge without the advice of the DPP. The second issue is I do not think the Commission or even Mr Kelly was suggesting that the Commission would be actually appearing to prosecute in the court, particularly not on indictment because the only body in this State that can prosecute on indictment is, of course, the DPP's office as I understand it.

CHAIR: That is correct. I thought you are saying you are law enforcement.

Ms HAMILTON: As the Commissioner mentioned before, the sort of half-way house which is not quite that you are out there actually conducting the prosecutions, but it does affect timeliness, is what they have done in Queensland where the Commission can lay the charge without seeking the advice of the DPP. That was able to be achieved without legislative amendment because the Queensland Act says that after the Commission investigates it may refer a report to the DPP. So everybody took that to mean it may refer it, if it is a complex matter or it wants the advice of the DPP, but it does not have to refer every matter to the DPP, it can commence the charge itself. That would not be possible at the moment for the ICAC because the Act is clearer in requiring it at the moment to refer matters to the DPP at the end of an investigation.

CHAIR: When you say that you would like more control over offences under your Act, is that in relation to simply instituting proceedings without having to have word back from the DPP as whether you should or should not, or their advice?

Mr CRIPPS: That is certainly one of them but I am not sure I do not think it should not go further than that. I think we should have more control.

CHAIR: How far?

Mr CRIPPS: It would have to be worked out I suppose in conjunction with what the Government or the Parliament wants with respect to the role of the DPP and the role of us. For example, as an illustration, what happens when I think a recommendation someone should be prosecuted for telling lies. The DPP then looks at it and says "I do not think the evidence would lead a jury beyond reasonable doubt to conclude that" whereas I think it would or that "We have not got the wherewithal to do this. We have got other priorities on our plate" and that could well be right. The question is should there be an alternative? Maybe there should. Maybe one can get the Solicitor-General to do the prosecuting on behalf of the ICAC.

CHAIR: Do you see your office as having a prosecutorial role?

Mr CRIPPS: No, not unless you change the whole thing. Our Act now, people must bear in mind, any person who reads this Act and pays no attention to the way aspects of it have been administered would say "we have nothing to do with criminal prosecutions except assemble evidence. I would have thought that generally meant what evidence we had for our investigation, we just put it into an orderly form and send it off. But we do not do that and we do not do it because if we do not do it nobody does. And so there is a strong argument for the doing of it. I just want that regulated, that is all.

CHAIR: Again if I have it clear, you want more control and prosecutorial role to institute the proceedings?

Mr CRIPPS: Yes.

CHAIR: And perhaps have an agency prosecute until finality?

Mr CRIPPS: If there is a real dispute.

CHAIR: If there is a dispute with the DPP?

Mr CRIPPS: Yes.

CHAIR: And certain offences strictly indictable. That creates problems with the Office of the DPP?

Mr CRIPPS: Yes, it does.

CHAIR: Ms Hamilton referred to the control of indictable matters. Do you see yourself as a Commission prosecuting those matters in a Local Court like other agencies under their own Act?

Mr CRIPPS: I suppose one could but one would have to set it up so that people would be aware. You would have all these what they call Chinese walls. You have to be a bit careful about how you set this up to be exposing on the one hand and prosecuting on the other, bearing in mind the coercive powers. We have to take into account the powers we have, as you know, far exceed the powers of the police, and people may very well think you are getting into a police state if you are letting those people in the one organisation behave in that way.

CHAIR: I know because we had a discussion with the Inspector last week about this, and as I recall it, he wanted you to have your own prosecutorial role.

Mr CRIPPS: Yes. He has told me that privately.

CHAIR: Which creates the issues that you have highlighted. I just wanted to be clear on what it is you thought was appropriate. Just one other matter, again within the McClintock report about public inquiries and private examinations of public inquiries. As you are aware, when ICAC first started off it was very much an out-in-the-open exposure of corruption because the scene was very different back then, and over the years it has changed to more of gathering admissible evidence but more so a restriction on public inquiries. Before the McClintock report I think section 31 referred to the fact that hearings can either be held in public or in private and will be determined by the Commission according to public interest.

Mr CRIPPS: With a preference to go public in the earlier legislation.

CHAIR: That is right. Very early it was the presumption was public but you could set up a private examination if it was for certain reasons. Then I think in 1991 it changed: it could be either according to the public interest, and of course as you know, with the McClintock report the legislation changed again. Mr McClintock obviously recognised the importance of a public hearing in your Commission, and I have no qualms with that: I think he called it the culmination of investigation and an investigatory tool. I personally do not cavil with that. Other members might have a view but I do not cavil with that. How has the new change in legislation affected the processes?

Mr CRIPPS: I am not sure about that. Maybe Mr Waldon can answer that because he has been with the Commission virtually since it started. The McClintock view, which was essentially the view I had, although I had not reduced it to writing, I adhered to from the moment I became Commissioner. I took the view that there were all sorts of considerations that had to be gone into before you went public; you should not just presume because you are going to do an inquiry it should be done in public; you had to have regard to people's reputations and the like.

But there were cases where, for example, the only way the public could be confident that you could resolve a highly disputed issue of fact would be to do it in public. In that event a person's reputation would probably have to stand behind the public interest in ICAC proceeding properly. But perhaps Mr Waldon can answer this question.

Mr WALDON: I can answer it very simply I think. I do not think there has been much difference in what has gone public and what has not gone public both immediately before and immediately after the McClintock report. I think there was always, prior to the McClintock report, careful consideration given to why we should go public if we were looking at going public. I was looking for it but I have not been able to find it but I think in answer to one of the questions on notice we set out an extract from our operations manual.

CHAIR: Question 34 on page 24.

Mr WALDON: The issue about serious and systemic corrupt conduct is obviously an additional matter which came in as a result of changes to the Act. But most of those dot points were in previous operations procedures dealing with the issues that you would take into account in deciding whether to have a public inquiry or not. So I think the short answer is I do not think there has been much difference in what matters have gone public and what matters have not gone public as a result of those changes to the legislation.

CHAIR: It was mentioned in the McClintock report that there were some excerpts from the parliamentary joint committee back in 2002 where they came up with a recommendation saying that wherever possible, as I remember it, investigations we cannot do in private and there would be an expository type public hearing on already investigated material when there is sufficient to make an adverse finding. I think things have moved a long way in the way the Commission operates, and I think it is operating very well, but how far away do you operate from that?

Mr CRIPPS: I do not think we do operate that far from that. Obviously, we do not have a public inquiry unless we really see that there is a case for having it, and there is a double-barrelled reason for having it public: one is to just expose, which we are meant to do if we can; it is also to give the person who is on the receiving end of the allegation the opportunity to counter that allegation in public, if that is what that person wants to do. But generally speaking it is done in the context that we have had an investigation and we have a fairly powerful case. I do not mean by that that people should think because we go public therefore we have got a committed view on anything, because that is not so. One of the big things we take into account in a public inquiry is the person who is on the receiving end of the allegation must have the chance to put all information before us that may counter the view that the Commission might prime facie hold.

But then we could have a case, which I have not had really at the present time, where ordinarily you would not go public, but in order to satisfy the public that the matter is being treated properly and openly, with transparency, you might have to go public. But, having said that, I have to say I am not going to be railroaded by politicians either. I have to make my own independent judgement about that, but it could happen.

CHAIR: I noticed, I think it was, the Bankstown-Strathfield inquiry, did not go public. Incidentally, could I say this: you are not obliged to give reasons but you do, and we all appreciate that. But I think in those reasons you said that the evidence had already been gathered. So it seems to vary from case to case, from inquiry to inquiry. I just wanted to ask how far away you operate from that original recommendation from the parliamentary joint committee, and it does not seem like it is very far away from it at all.

Mr CRIPPS: I do not think so.

Mr WALDON: I do not think it is that far away. I take on board what the Commissioner says as well: I do not think we want to get to the stage where we do everything in private and then, having established the facts, do a show hearing in public. I do not think we want to do that. But what we want to do in private, I think, is to get enough evidence to establish whether or not there is an issue of corruption to show whether it is a serious or systemic issue, and then we can make a decision whether we should continue it in private or go public. And the public inquiry stage is not just a revealing of what has happened in private or the compulsory examinations, it is also there to adduce evidence and obtain additional evidence to enable us to establish whether there has been corrupt conduct.

But certainly a lot of work is done in private in order to get to that first stage of determining whether there might be something there that is worthwhile investigating in a permanent public arena.

CHAIR: Do you get many instances when you conduct a public inquiry where people approach you for the first time?

Ms HAMILTON: As a result of the public inquiry?

CHAIR: Yes.

Mr CRIPPS: Yes, we have had that—very few. But mostly they are people who know what the issue is and say, "It is much worse than you think it is".

CHAIR: Is it theoretically possible clinically to have a private examination and gather enough evidence to make adverse findings and simply have a straight expository public hearing?

Mr CRIPPS: Yes, it could happen. But one would have to be very careful when one did that that first of all we never denied anybody's right to answer the allegation the way they wanted to answer it if it was a reasonable way to answer it. If people said, "I know you say that, but I want to say this and I want this public", it would not bind me but I would take that into account.

CHAIR: In your requested amendment to the Act, section 116, if you have any further comment to make I do not have any difficulty with that at all.

CHAIR: No, I have no further comment.

CHAIR: Admittedly I had not noticed it and I cannot see why section 82 (v) is not included in that section.

Mr CRIPPS: I think there are four matters.

Ms HAMILTON: There are four but the one that the Chair is referring to is extending the time limit to three years, which it has been for similar offences, and there just seems to be no reason why it should not be extended also for that, and we would appreciate the Committee's support to do that.

CHAIR: Unless other members want to make any comment about it, I do not have any problem with that. If no-one else has any other questions what we propose to do is perhaps have a short break and then move into an in-camera session.

(Short adjournment)

(Evidence continued in camera)

(The Committee adjourned at 1.26 p.m.)