

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

**REVIEW OF THE 2012-2013 ANNUAL REPORT OF THE
INDEPENDENT COMMISSION AGAINST CORRUPTION**

At Sydney on Friday 28 March 2014

The Committee met at 10.15 a.m.

PRESENT

Mr D. Perrottet (Chair)

Legislative Council

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

Legislative Assembly

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

MEGAN LATHAM, Commissioner, Independent Commission Against Corruption,

SHARON LEIGH LODER, Executive Director, Investigation Division, Independent Commission Against Corruption, and

ROBERT WILLIAM WALDERSEE, Executive Director, Corruption Prevention Division, Independent Commission Against Corruption, affirmed and examined; and

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

ROY ALFRED WALDON, Solicitor to the Commission and Executive Director, Legal Division, Independent Commission Against Corruption,

ANDREW KOUREAS, Executive Director, Corporation Services Division, Independent Commission Against Corruption, and

TRENT DAVID WHITE, Manager, Assessments Division, Independent Commission Against Corruption, sworn and examined:

CHAIR: The Committee welcomes the Commissioner and staff of the ICAC for the purpose of giving evidence on matters relating to the Commission's annual report for 2012-13. Thank you for your attendance today and your appearance in your first Committee meeting, obviously in relation to a report before your time. Commissioner, would you like to make an opening statement?

Ms LATHAM: Only to say that when I appeared before members of the Committee last Friday I made some general comments about my experience since becoming Commissioner of the Independent Commission Against Corruption. Of course, for the period that is covered by this annual report I was not the Commissioner, it was the Hon. David Ipp, AO, QC. I can only say that I was aware, as was everyone, of the very productive year that the Commission had over the course of the period covered by the annual report, and the annual report reflects that. Generally speaking, I think the report bears witness to the very productive work of the Commission over that period of time. The executive directors and the Deputy Commissioner who are here today can all take credit for the production.

CHAIR: What do you see as some of the challenges for the year ahead and can you make some comments in relation to resourcing? I know it is early days and you have been quite busy since becoming Commissioner but can you identify resourcing issues or challenges you will encounter over the next 12 months?

Ms LATHAM: Resourcing is always a challenge and by that I do not mean to convey that the Commission is not aware of the need for public agencies generally to be responsible about the expenditure of public money. Having said that, though, we are continually facing challenges that arise principally in the area of investigations, keeping up-to-date information technology systems that keep track of a wealth of information and have the capacity to allow us to develop databases that cross-reference information that actually improve and enhance our investigation techniques and the results of those investigations.

As I said to some members of the Committee last Friday, information technology systems are becoming more and more expensive and more and more sophisticated but if we do not stay ahead of the game we risk actually losing the capacity to conduct some of these investigations into agencies that have their own sophisticated information technology systems. So that is a continuing challenge in terms of resources. The other thing that I would say—although the Commission is in very good health, rude health at the moment in terms of the quality of its personnel—it is an ongoing challenge to attract and maintain very highly skilled staff in every division of the Commission, particularly when you look at some of the comparators, for example, in the legal profession across the public sector without even talking about the private sector.

Even in the public sector I do not think some of the positions in the Legal Division are paid adequately. I think we could be attracting much better quality legal staff and that is probably true in respect of the Corruption Prevention Division as well. Dr Waldersee operates a very sophisticated policy unit with some very highly qualified people but to attract those people we should be offering salaries above what we can currently offer. Having said that, a lot of people who have enormous ability and talent take the job because they are interested in the work but that only lasts for a particular period of time. So then we have to confront the problem

of turnover and losing corporate memory when we would really have preferred to have maintained a core quality staff who can develop and pass on those skills.

The other thing that I would say about challenges is that the Commission has again before it a very busy year in terms of public inquiries. We have public inquiries that are practically banked up, one after the other, until the end of this year. It has been a challenge but one that the Commission has listened to. To maintain that kind of schedule of public inquiries, it mobilises a very large number of people at the Commission who work very long hours while the public inquiry is on and then once it is finished involves a tremendous amount of work in bringing all that material together, producing a report and making recommendations. While that is going on we are actually ramping up for the next inquiry, so there is a very high demand on resources. One would expect that after a period of time of working at that kind of pace you would get some kind of burnout. Again, that is something that contributes to staff turnover. Generally speaking, that is my snapshot in the two months that I have been there.

Mr RICHARD AMERY: Commissioner, I acknowledge your opening comment that you were not the Commissioner when this report was written. To help me understand how public and private inquiries work, I note that on page 29 with respect to public inquiries, compulsory examinations, it states:

If the Commission determines it is in the public interest to do so, it may take evidence from witnesses in compulsory examinations. These examinations are held in private. When inquiries are held in public, the evidence is generally heard before (and made available) to the public, subject to discretion

My question is in two or three parts. Is the public inquiry just a duplicate of the behind-closed-door inquiry when evidence is taken in private and then you go to a public inquiry? Let me explain. As a member of Parliament I sat in the Chamber this week and last week and heard of the opening comments of counsel assisting the Independent Commission Against Corruption with respect to two members of Parliament, one former member and one sitting member—the Premier in fact—that there were no allegations of corruption. That was day one of the inquiry. That is the public part. Had that already been determined in the private investigation? All I am saying is: How could you pre-empt what a witness was going to say during the next couple of weeks about anybody? Is anyone going to produce a smoking gun that is going to make those opening comments incorrect? I do not know the process. Is it a rehearsal and everything is exactly the same?

Ms LATHAM: No, it is definitely not; in fact, far from it. In fact, the compulsory examinations serve a very important role, and that role is that we often have people come in for a compulsory examination who simply provide us with very valuable information that we then can use in order to take our investigations further. We may not and on many occasions have not called every witness that we have had in the Commission under a compulsory examination. By the time you get to the public inquiry you have honed down the breadth and scope of the inquiry and that process is ongoing. But the compulsory examinations very much help you to narrow the scope and purpose of the inquiry and to hone in on what it is that you are really hoping to discover. Yes, to answer your question, sometimes there are smoking guns, but in terms of the example that you give with the current inquiry—and again without disclosing information that I am not at liberty to disclose—

Mr RICHARD AMERY: No, just generally.

Ms LATHAM: By way of example, if there is a suggestion that someone may have something relevant to tell us—for example, we receive some notes under a notice to produce and we find somebody's name in the notes that we were previously unaware of—we might call that person in either to speak to us or to undergo a compulsory examination and that will actually clarify the position and it will, in some circumstances, persuade us that the notes are a fabrication, for example.

Mr RICHARD AMERY: That is how I understood it. In light of that, is it not a bit unusual for counsel to make a declaration of someone's guilt or innocence on day one of an inquiry? I am a former policeman, and in my day we generally did not find out until the end of the case whether someone was guilty or not.

Ms LATHAM: Like all those things, counsel assisting is spelling out where we anticipate the inquiry will go. The opening statement does not by any means stand in concrete. We might discover something in the course of the inquiry that is different from what was said in the opening statement.

CHAIR: Obviously you use your discretion. You may feel the need to say that, in the circumstances, the Premier is not implicated to ensure that there is no speculation.

Ms LATHAM: There is nothing that we know of now. That does not mean that it might not emerge at a later time.

CHAIR: Absolutely.

Ms LATHAM: I do not know whether you saw the reference in the press the other day to the fact that I might have formed a preliminary view about someone. In fact, the comment that was made was that, as things then stood, based on the evidence that we had called up to that point, there might be some difficulty determining that someone was guilty of corrupt conduct. I then said, "But I do not know what else is going to emerge at this inquiry." It is a moving target. We do not make any firm findings until we have finished the public inquiry.

Mr RICHARD AMERY: Thanks, Commissioner.

CHAIR: Under section 52 of the Independent Commission Against Corruption Act, there is the ability for witnesses to make an application to the Attorney General to have their legal fees paid. There have been media reports about this and we raised the matter at the roundtable last week. As somebody observed, there was certainly a roomful of lawyers on the first morning of the RailCorp inquiry. Do you think there should be any amendments to the Independent Commission Against Corruption Act in relation to witnesses being able to apply to the Attorney General for financial assistance?

Ms LATHAM: I do not think the solution lies in the amendment of the Act. It is important to understand that if someone is called to give evidence before the Commission in a public inquiry they do not have the option of refusing to answer questions. Because we do not necessarily know where the inquiry is going to lead us, that person may, at the end of the process, have a finding of corrupt conduct made against them. So there needs to be a provision whereby they can obtain legal representation—subject, though, to this. To be quite frank, I think there are far too many people represented at public inquiries when they play an incredibly minor part which cannot, on any view, be considered to put them at any risk of a finding of corrupt conduct.

I think there is some merit in the view that it is a bit of a lawyers' honey pot. They know they are going to get paid, because the fees are coming out of the public purse. I think the solution might lie with the Legal Representation Office—that is the body that funds the representation for those people. It is probably worthwhile looking at their guidelines to see who they fund and to what extent. I do not know enough about that. I do not know to what extent those guidelines could be tightened. It is always difficult to know where to draw the line.

I certainly think that in public inquiries there would be a number of people who we could quite confidently say would never be in the firing line. Having said that, anybody called before the Commission is usually very nervous about being called. However, in the course of the public inquiry that we are currently conducting, a number of people have come along without legal representation, because that is their choice, and they have not been disadvantaged by that.

CHAIR: I refer to witnesses who are only giving a small testimony at the Independent Commission Against Corruption and are not significant to the proceedings. Would you be of the view that there should be a change to their ability to apply for funding from the State for their representation?

Ms LATHAM: I think there is always scope for the Commission to say to someone that we are calling them just for information. We are calling them because they are capable of giving information to the public inquiry that we need for those purposes. Sometimes you call a forensic accountant to explain some accounts. The person is there by way of providing information. They are not there because we think that they are involved in the process or we think that they are in any way at risk of a finding. There is scope to say to people like that, "You do not need representation for this purpose." I am not sure to what extent those kinds of decisions are made by the Legal Representation Office or otherwise. Mr Waldon might want to comment on that because he has been there for a very long time.

Mr WALDON: I agree with the Commissioner's comments in relation to that.

The Hon. LYNDIA VOLTZ: I would like to follow up on that. I have noticed a tendency for some questions to be asked, particularly of political people who appear, that have no relevance to the case but are only being asked to embarrass them. Those people may not necessarily turn up with legal representation. There is obviously a tendency when politics is involved for questions to be asked of people that really should not be

asked. They do not have any defence once they are in the stand. Do you take that kind of scenario into consideration?

Ms LATHAM: I try as much as possible to make sure that the questions that are asked are relevant and appropriate. Even though the press does not necessarily report it, anybody can come and see how the proceedings are managed. If I think a question is inappropriate or irrelevant, I will simply disallow it. I do try to control questioning. The difficulty is that there are a lot of people with very large egos in the room who are all trying to justify their expense to their own client.

From my perspective, it is not like sitting in a courtroom where there are only two parties. I have 20 barristers sitting in a room, all wanting to make their mark. It is a delicate balancing act. I do not want to name names, but we do get some very combative and very unpleasant counsel. Sometimes it is difficult to control them without shutting them down entirely and then being at risk of a finding of a denial of procedural fairness. The balancing act comes down to me. I acknowledge the force of what you say. Unfortunately, it is a function of the environment that we work in.

Reverend the Hon. FRED NILE: When you have a public inquiry, select the witnesses at the beginning of the inquiry and advise the media of those witnesses, do you make any attempt to classify the witnesses? For example, do you say, "These are witnesses who are under suspicion and these are witnesses who we are asking to assist the inquiry," so that people do not jump to conclusions?

Ms LATHAM: Counsel assisting will often do that. Counsel assisting will often say, "I call so-and-so. Commissioner, this witness is here to tell such and such." That is also by way of informing the public and everybody else where this person fits into the picture. That is something we do from time to time.

Reverend the Hon. FRED NILE: But not as a rule.

Ms LATHAM: Not as a rule; but, for example, there is a period in the current inquiry that is being put to the back of the process next week. We are calling a lot of people just to talk about the financials and just to talk about the accounts. At some point, counsel assisting is going to say, for the information of the public and the profession, "These witnesses who are concerned with this aspect will be called on Tuesday and Wednesday", and we also publish in advance a list of witnesses we anticipate we will be calling that day.

Reverend the Hon. FRED NILE: That is what I am saying. Would it help to put in brackets after their name, "Only to assist the Commission"? There are a lot of members of Parliament who are very nervous at the moment. By implication, it sounds like they are under suspicion.

Ms LATHAM: Yes, I understand that. I think that is something that we could take on board and think about. Sometimes it is hard to know.

Reverend the Hon. FRED NILE: Because the line is blurred.

Ms LATHAM: Sometimes the line is blurred. But it is also difficult, if you want to be giving the public, as we do, not just the substance but the appearance of absolute impartiality, we do not want to place any particular witness in a privileged position, if you understand my point. We do not want to be seen to be doing favours to anybody by simply telegraphing that we do not think there is an issue in relation to them because everybody who is called as a witness is going to feel somewhat nervous.

Reverend the Hon. FRED NILE: Yes.

The Hon. NIAL BLAIR: Commissioner, I want to talk not about public hearings but more about investigations. In the report at pages 27, 28 and 29, you talk about "How we investigate". I guess what I am looking for is, for want of a better term, closure of some investigations, particularly closure for those who may have been referred. If there is a determination by the ICAC that no further action is required, what feedback goes back to those who may have been referred so that they can get some closure? The second part of that is: How do you make sure that the ICAC does not become maybe a political football or a tool that is used to maybe tarnish people by a frivolous referral that someone makes public, such as, "I have referred such-and-such to ICAC", without that closure at the other end or a statement from the Independent Commission Against Corruption to say, "No further action is taken."?

Ms LATHAM: We have a process. Mr White, who is in charge of the Assessments Division, in a sense can speak to how those complaints come in. But the assessments panel sends the complaints and a summary of the allegations, which are thoroughly set out by officers in the Assessment Division, through to the executive. We all look at them. We all determine what we are going to take further and what we are not going to take further. Everyone has a say in that. The ones that we do not take further are sometimes not taken further because it is appropriate to refer them back to the department or agency with which the complaint is concerned.

Then we pass the investigation to those agencies under the powers that we have under the Act and ask them to report back. Very often we are satisfied with the investigation that those agencies have carried out. The ones that we take further and we investigate further, which is, I think, what you are referring to, we will always get to a point where we decide that there is nothing further to investigate. We send letters to the relevant people indicating why we have decided not to investigate further. I think what you are referring to, though, is that there is no public process by which we announce that we no longer are pursuing this particular complaint.

The Hon. NIALL BLAIR: Yes.

Ms LATHAM: I think that, as you say, probably causes some disgruntlement for people who have been the subject of a complaint. Sometimes, though, you see there is a problem but we determine, either in the exercise of our discretion or because it is a kind of conduct that we do not consider serious enough to warrant a full investigation, that we are not going to take it further. The fact that we do not take it further does not necessarily mean that there was not something wrong. Certainly, Ms Loder, who is in charge of the investigation division, and Mr White can speak to that.

Mr WHITE: Just in relation to complaints that are made to us, we deal with the complainant themselves. We provide them with a response in terms of the outcome of their complaint, the decision that we have made and whether we are going to be taking it forward. The Commission's policy is not to confirm or deny that we have received a complaint. I understand that some complainants do like to announce publicly that they are referring something to ICAC, and our interactions are then with the complainant in terms of collecting further particulars, if necessary, and then ultimately informing them of the outcome of that.

The Hon. NIALL BLAIR: What interaction do you have with the person that the complaint has been made against, not the person making the complaint? Let us say that someone makes a complaint to ICAC and announces that publicly, and that is found to have no substance to it at all. You do a preliminary investigation. Do you go back to the person who made the complaint but also the one that maybe has been named as being referred to ICAC? Then how do you then handle that, if it is determined that it was just done out of malice or without due cause?

Mr WHITE: During the assessment process, we do look for indicators as to whether a complaint might be either frivolous or vexatious. Within the assessments process, though, we do only deal with the complainant so there is no formal correspondence either by way of clarifying the allegations with the subject. However, having said that, if the assessment panel decides it will proceed with a preliminary investigation, then there may be circumstances under which engagement occurs with the subject—going through procedural fairness and so forth. But I think it is important that at the assessment stage, we are just trying to assess whether there is a reasonable suspicion that corrupt conduct has taken place.

Ms HAMILTON: Could I just say something on this? With the great bulk of matters that we get, the person who is the subject of it does not know and never hears, and we try to keep it confidential.

The Hon. NIALL BLAIR: Sure.

Ms HAMILTON: The problem with somebody publicising the fact that they have made a complaint is an issue that there have been attempts to deal with over many years, as you are probably aware. They recently tried to deal with it in Queensland. There was a recommendation that it should be made an offence for somebody. They obviously wrestled with it, as we have, and could not come up with one. The trouble is that it is very hard to come up with a provision that is not too broad and unfair to stop people from publicising the fact that they have made a complaint. I do think that our policy of never confirming or denying that there is a complaint until we go public does mean that—I think it engenders confidence in our processes; that we are going to keep it confidential.

We cannot stop other people talking about it, unfortunately, but I think most people these days realise that the fact that something has been referred to the ICAC does not mean that there is any substance to it and does not mean that the person who is the subject of it is going to have an adverse finding. I do appreciate the problem, but it is a problem that agencies like this have wrestled with for many years and no-one has been able to come up with a formula that would not unfairly penalise somebody who does have to talk about the fact that they have referred it in some way, while catching those who do it for malicious purposes.

The Hon. NIAL BLAIR: What about if they have not made a referral, yet publicly announce that they have, in order to tarnish someone's reputation? Surely that would warrant at least a moving away from that neither confirming nor denying.

Ms HAMILTON: There have been rare occasions in the past when we have been willing to confirm that a matter has not been referred. If mischief is being caused by somebody going out and saying, "I've referred this to the ICAC", we have on occasions said "that is not right". I think that is an important exception if problems are being caused by somebody falsely claiming they have referred a matter. We would be willing to deny on the public record that we had that matter in some cases.

The Hon. NIAL BLAIR: Would that extend to the organisation the person worked for or was attached to? Let us say I had an employee and was told that employee had been referred to the Independent Commission Against Corruption when that was not the case, I would be concerned about that allegation. Can I contact the Independent Commission Against Corruption to get confirmation?

Ms HAMILTON: In exceptional cases, but the problem is it is no good having it confirmed or not within our policy if you start making exceptions, because when you say it then nobody believes you. They think it is the case because we have said we do not confirm or deny, whereas before we said we had not got a complaint. You have to be strict and that is the fairest way to do it. In very exceptional circumstances, where there has been a lot of public disquiet, we may. But we have to stick to the general policy, because otherwise people know straight away what we are really saying when we say we do not confirm or deny.

The Hon. NIAL BLAIR: If a person was aware they had been referred to the Independent Commission Against Corruption and an investigation had occurred with the information going back to the person who made the referral, that person may still worry for years about that referral. Can that person contact the Independent Commission Against Corruption to be told the investigation has been concluded?

Ms HAMILTON: I understand we have done that in particular cases where there has been an investigation.

Ms LODER: We do that if an affected person requests information about whether an investigation is closed. We will advise them, as we would the complainant.

Mr RICHARD AMERY: On page 100 of your report you refer to the recommendation about an investigation into false claims concerning the former member for Drummoyne Angela D'Amore and some of her staff—Operation Syracuse. The status of this investigation was finalised because the Director of Public Prosecutions advised there was insufficient admissible evidence to prosecute. I had some disagreement with the previous Commissioner about the significance of this matter and whether there should be a public inquiry. This case was finished in December 2010. I consider the matter to have been relatively minor and one where I would have thought it would be relatively easy to find out whether an offence had been committed and then the Director of Public Prosecutions could have advised you—and I know you cannot answer for the director. This investigation is in your annual report for the period ended 30 June 2013.

When did the Independent Commission Against Corruption receive advice from the Director of Public Prosecutions that there was insufficient evidence to prosecute? What was the Independent Commission Against Corruption's process to notify Ms D'Amore that there would be no prosecution? I found out around Christmastime that this decision had turned up in some obscure part of the Independent Commission Against Corruption's website. I get the impression that the Director of Public Prosecutions advised the Independent Commission Against Corruption some time ago and the person complained about, who had been on tenterhooks for years, did not know about the advice. What is the process? Does the person get a letter immediately after the Independent Commission Against Corruption is advised there will be no prosecution?

Ms LATHAM: You would appreciate that we cannot talk about individual matters.

Mr RICHARD AMERY: It is the process; it is in your report.

Ms LATHAM: The process has been problematic in the past; there is no doubt about that. It was partly a function of the Director of Public Prosecutions saying it had insufficient resources and partly—as David Ipp and I said at the last hearing—a problem of staff at the Independent Commission Against Corruption already being involved in the next inquiry. The difficulty in reorganising all the evidence into the form of a brief, bearing in mind we do not have statements from everybody only the transcript of the public inquiry, is that it is unhelpful for us to dump the transcript on the Director of Public Prosecutions. We try to reduce a lot of that material to the form of written statements so it is in the form of a brief. That process has not been the best in the past. We are trying to improve the speed at which we complete the task. Since the matter you referred to, the Director or Public of Prosecutions has been given additional resources to deal with referrals from the Independent Commission Against Corruption.

I am having a meeting with the Director of Public Prosecutions the week after next where I propose to talk to him about further improving the process whereby one of the solicitors from what is called the Special Crimes Unit, which does all the advising work when we send a recommendation to prosecute, comes to the Independent Commission Against Corruption at the end of the inquiry to assist in the preparation of the brief. That would mean the instructing lawyer in the inquiry would be in a position to work closely with that solicitor to work up the brief to a point where it goes to the Director of Public Prosecutions in a timely fashion and the solicitor involved with preparing the brief does not have to spend a week reading the brief. I hope to work out something with the director to improve those processes.

Mr RICHARD AMERY: I understand the issue with the Director of Public Prosecutions. If I am the person who, in 2010, has an allegation made against me I might wait three years for the Director of Public Prosecutions, which I know is not your fault, to advise the Independent Commission Against Corruption that there will be no prosecution. When do I find this out?

Ms LATHAM: I would think you would find out at the same time, because the Director of Public Prosecutions would have a practice of informing the accused. That person would be legally represented and there would be a process to inform the legal representative or the person directly that the Director of Public Prosecutions had determined not to prosecute.

Mr RICHARD AMERY: Other cases noted in your annual report have dates for when the Director of Public Prosecutions advised it had sufficient evidence to proceed, but for this case there is no date.

Ms TANIA MIHAILUK: It seems when the Director of Public Prosecutions advises there is insufficient evidence there is no date, but when there is evidence to proceed with prosecution there is a date.

Ms LATHAM: Bear in mind that if the Director of Public Prosecutions does not advise us, we do not know when the decision is made. We are only told the decision has been made. However, the Director of Public Prosecutions is obliged to tell the prospective accused the decision has been made.

Ms TANIA MIHAILUK: Which we do not know.

Ms LATHAM: Which we do not know.

CHAIR: Do you think the Director of Public Prosecutions should be under an obligation to advise the Independent Commission Against Corruption when the determination has been made?

Ms LATHAM: I think we are ultimately advised, but are we advised as soon as the decision has been made? I do not know.

Mr WALDON: The Director of Public Prosecutions sends us a letter telling us what view has been formed. Sometimes that is not the end of the matter and we consider the view expressed and get back to the Director of Public Prosecutions with further issues for consideration or we ask for a reconsideration of advice. Sometimes the view is changed and sometimes not, at which time we get a final letter. Once we get the final letter and we accept that advice, we place that advice on our website. We do not write to people, as we expect people to keep in touch with the advice we put on our website, which gives the outcome of the referral to the Director of Public Prosecutions.

Mr RICHARD AMERY: You do not put out a press release?

Mr WALDON: No.

Mr THOMAS GEORGE: Any time you have been advised there is insufficient evidence, there are no dates as to receiving that advice, but when there is sufficient evidence there are. The dates listed in the report, if you have a look down that page—I am not talking about any particular person—in cases that had insufficient evidence it does not state the date you received the letter but when there is evidence you state the date.

Ms LATHAM: Perhaps that is something we can improve on and we can then change our systems to record that date.

Mr RICHARD AMERY: It would be helpful if that information was in future annual reports. Also, if I can just focus on that point, in relation to somebody who is waiting on whether they are going to be prosecuted and possibly going to jail, I would have thought there would be some reasonable action to identify particular cases where someone is not going to be prosecuted. By the way, someone said something about justice delayed, but December 2010 to 2013 is a long time to wait for a claim.

Mr WALDON: If people are interested in what the outcome of the recommendation is, then we invite them to keep in touch with our website. As soon as we have made the decision to accept the advice of the Director of Public Prosecutions that goes on the website.

Mr RICHARD AMERY: I hope you do not get any complaints because an 80-year-old person does not know how to do that.

Mr THOMAS GEORGE: It is not about this particular case, but you do not tell them to look at the website to see if they are on a charge. If you received a letter about me, I do not know to look at the website. I think that could be looked at and that when they are cleared or otherwise they do not just go and look at the website.

CHAIR: In circumstances where prosecutions are not going to be brought against somebody who has gone through the Independent Commission Against Corruption process, they should at least be afforded a public statement that they might be—

Ms LATHAM: That should come from the Director of Public Prosecutions because ultimately that is their decision.

Mr WALDON: And they do get a public statement because it is on the website.

Ms LATHAM: And they are free to publicise that as much as they like.

The Hon. LYNDIA VOLTZ: If you are going to come back with further information that you had asked them to look at, it would be difficult for the Director of Public Prosecutions to write to someone saying there is insufficient evidence to pursue a matter because they would then review the additional information you provided. That was, by definition, why you did not have the date. You get advice from the Director of Public Prosecutions, you may provide further advice to them and they may then review that advice but decide not to prosecute.

There is probably a fault in the chain, because the original advice from the Director of Public Prosecutions is not the be-all and end-all of it. There is still a possibility that the Independent Commission Against Corruption will come back and say, "We would like you to consider this further information", and there becomes this time lag. So the Director of Public Prosecutions cannot write to a person who is being directed and say, "We have decided there is insufficient evidence"; there may be further action by the Independent Commission Against Corruption.

Ms LATHAM: At some point though they will make a final decision that they are not going to prosecute.

The Hon. LYNDIA VOLTZ: At that point do we know that they then write to the—

Ms LATHAM: They definitely do. As someone who worked for many years in the office I know that is exactly what they do. They write to say that the Director of Public Prosecutions proposes to take no further action, and that is in every case, not only a referral from the Independent Commission Against Corruption or an investigation that has been initiated by police.

The Hon. LYNDIA VOLTZ: We may clarify that with the Minister for Police and Emergency Services.

Reverend the Hon. FRED NILE: Following up on that comment, has the Director of Public Prosecutions ever made it clear that it is not the issue of evidence but the question of resources and that the offence is so minor that they are not prepared to use all their resources?

Ms LATHAM: I am certainly not aware of anything to that effect and that is not something that I could comment on. I think that the director would have to be asked himself if he considers that to be a problem.

Reverend the Hon. FRED NILE: They do not tell you why they have decided not to proceed with it?

Ms LATHAM: No.

Reverend the Hon. FRED NILE: You mentioned a lack of resources in one of your comments earlier.

Ms LATHAM: That was certainly a reason why, in the past, they have had problems mounting prosecutions as quickly as one would hope. But, as I said, they have had additional resources allocated to them since then. Getting back to your point, the director has an unfettered discretion under his Act to determine whether he prosecutes or not, and even if we have a strong view about the availability of admissible evidence, the director is at liberty to decide that he will not prosecute because he thinks there is no reasonable prospect of a conviction. That is a different test from saying there is not enough admissible evidence. All I am pointing out is that he has a broad discretion whether to prosecute or not and that is not something that the Commission has any influence over.

The Hon. NIAL BLAIR: I apologise, I have one final question. Can the Independent Commission Against Corruption take any action against someone who uses their name?

Ms LATHAM: Yes.

The Hon. NIAL BLAIR: For example if they said, "I referred such-and-such to the Independent Commission Against Corruption", and they have not actually done so, can the Independent Commission Against Corruption take action against that person?

Ms LATHAM: I thought you were referring to someone who had represented that they were an officer of the Independent Commission Against Corruption.

The Hon. NIAL BLAIR: No, sorry.

Ms LATHAM: I do not think there is any specific offence under the Act.

The Hon. NIAL BLAIR: There are two things: one, making a false statement to the Independent Commission Against Corruption and making up an allegation; and actually signing to the effect that they have made a referral.

Ms LATHAM: Yes, "I have done it but I have not". I do not think there is any specific offence that covers that kind of representation.

The Hon. LYNDIA VOLTZ: If somebody made a complaint to the Independent Commission Against Corruption about someone that was obviously untrue, there is no action that could be taken?

Ms LATHAM: Well, no. What you do not want to do is stop people from making complaints. There are people who genuinely believe there is something wrong when, in fact, there is not.

Mr RICHARD AMERY: Commissioner, your panel of people here cannot answer the question when you got the advice on this particular matter and when you put it on the web page. You are not allowed to provide that sort of advice; is that right?

Mr WALDON: Sorry?

Mr RICHARD AMERY: In relation to Operation Syracuse, are you unable or is it inappropriate for you to advise when the Director of Public Prosecutions advised you that there would be no evidence; and, secondly, are you able to advise when that information was posted on your website?

The Hon. LYNDA VOLTZ: You can take it on notice.

Mr WALDON: We will take it on notice.

CHAIR: Section 37 of the Act restricts evidence given under objection to be used in criminal and civil proceedings. Previously it included disciplinary proceedings and the Act was amended last year to allow disciplinary proceedings to be given. Do you think there could be further amendments to the Act, particularly civil proceedings, for example, where an officer may have defrauded an agency and proceedings could be brought against them to reclaim those funds that have been defrauded in those circumstances?

Ms LATHAM: This is a topic on which reasonable minds might differ, so I do not think there is any one right answer. I have not discussed it with Mr Waldon, so I do not know what his view is. I can tell you that my personal view is that I think answers given under compulsion should be admissible under civil proceedings. The reason I say that is because traditionally where you have a power to compel someone to answer questions, the right against self-incrimination, which is thereby rendered nugatory, has always been a right against self-incrimination in criminal proceedings.

Traditionally it has only ever been a right which applies rigidly in criminal proceedings, so I think that there is some justification for allowing people to use those answers in civil proceedings. However, as I said, that is a matter of public policy. I think it is something that would ultimately have to be considered, for example, at a Law Reform Commission level where they could look at that question in total. The difficulty with making amendments in one area is that it often has unintended consequences. That is something that would have to be considered at a very comprehensive public policy level. That is my view. I do not know what Mr Waldon thinks.

Mr WALDON: No, I agree with that. I do not know if you recall but some years ago the Commission actually made a submission that the Act should change so that evidence that was given under objection could be used against a public official in disciplinary proceedings but also in civil proceedings if those civil proceedings related to the conduct. Our Act was subsequently amended to allow the evidence given under objection to be used in disciplinary proceedings where a finding of corrupt conduct was made against the relevant public official. But the Government took the view that it did not want to go to the next step and amend the legislation to allow the evidence to be given in civil proceedings.

Reverend the Hon. FRED NILE: I refer to one of your earlier comments about a solicitor being detached from the Director of Public Prosecutions and would go to the Independent Commission Against Corruption. I think that is an excellent idea. I have raised the issue of having a division of the Director of Public Prosecutions working with the Independent Commission Against Corruption so this whole brief situation will run a lot smoother. Could that solicitor be permanent? The solicitor would not be changed every six months but would have a continuing relationship and maybe that could grow into a unit of the Director of Public Prosecutions.

Ms LATHAM: I think the problem is this: we do not see ourselves as having a role in actually mounting prosecutions. That is the independent function of the Director of Public Prosecutions. I do not think we want to actually create a unit within the Independent Commission Against Corruption or the Director of Public Prosecutions.

Reverend the Hon. FRED NILE: No, within the Director of Public Prosecutions.

Ms LATHAM: We want to work much more closely with the Director of Public Prosecutions. I had in mind—and I do not want to embarrass Lloyd Babb because we have not had this discussion yet—because the Director of Public Prosecutions has a number of solicitors who work within the Special Crimes Unit, the person

who would ultimately be responsible for carrying that brief forward and briefing a Crown Prosecutor and possibly instructing in a trial should be the person who has continuity of the matter from the moment of preparation of the brief all the way through. That means that there would be different solicitors from time to time who would come to the Commission at the end of the inquiry in order to assist in that process. It would not be the same person.

Reverend the Hon. FRED NILE: Different cases, yes.

Ms LATHAM: And that has a number of advantages. It actually improves your skill base across the whole of the Special Crimes Unit so that you are not reliant on just one person and it also ensures continuity of the carriage of the brief. I have to say though I am very much aware of the fact that that kind of allocation of resources for the Director of Public Prosecutions is very problematic because just the nature, volume and flow of the work in the Director of Public Prosecutions often means that a solicitor who starts off preparing a brief is not necessarily the same solicitor who instructs at the trial. It is the continuity of personnel which is the challenge.

CHAIR: Just coming back to the last line of questioning in relation to the amendment to allow an ability to prosecute in disciplinary proceedings, how effective has that amendment been since that change has been made?

Mr WALDON: It is difficult to say because obviously we deal with a number of public officials in our inquiries and ultimately we make findings of corrupt conduct against them. But in most cases those public officials have usually been dealt with by the relevant authorities where they come from by being dismissed before we get to the stage of actually finalising our report. I think since the amendments have come in there have been a couple of occasions where we have taken advantage of the change to the legislation because the public official, at the time the report came out, had not been dismissed or dealt with in disciplinary proceedings. But in most cases the public official has gone before the report comes out. In some cases the public official may have been dismissed even before the public inquiry has commenced.

CHAIR: In relation to your experience in some of the civil matters, it could arise based on a change in the Act. How effective do you think that change would be?

Mr WALDON: It is very difficult to say. I am not aware of many instances where civil proceedings have been taken to recover money from public officials. It is difficult to say to what extent in practical terms that would be an advantage. I mean, in theory it could be a great advantage and it really depends on the individual matters that we deal with. I think in a lot of matters, civil proceedings, although they might potentially be available for a number of reasons, probably would not be taken. Certainly in matters where there are large amounts of money involved, and there is a possibility that you might actually be able to recover those monies, then civil proceedings will certainly be open and it would certainly be much easier, I would have thought, to proceed with those proceedings if you could use the evidence that the public official had given during the course of the public inquiry.

The Hon. LYNDIA VOLTZ: You have had no applications under the Government Information (Public Access) Act approved and two were knocked back. Were they knocked back because administratively they were incorrect or because of the nature of the type of information they were asking?

Mr WALDON: I am not sure. I would have to look at that. We do not get many applications under the Government Information (Public Access) Act.

The Hon. LYNDIA VOLTZ: You have zero everywhere except for two that were knocked back and I assume they were the only two applications.

Mr WALDON: One of the reasons for that is under the Government Information (Public Access) Act you cannot make a valid application for anything which relates to our complaint handling, investigative report writing or corruption prevention functions. So most people do not make applications because the information they want relates to those functions. Most of the ones that are knocked back are knocked back on the basis that they are simply not valid applications because they are seeking information in relation to those functions. I cannot comment specifically in relation to the two to which you referred. I will take that on notice because I do not have that information to hand at the moment.

Reverend the Hon. FRED NILE: As you know, the McClelland report talks about sharing resources with the Police Integrity Commission, which I personally do not believe is a good idea because of priority of resources; they would fight over various equipment and so on. What is your opinion?

Ms LATHAM: In short compass, I think it is a terrible idea. Interestingly, where it has been done elsewhere it has not worked particularly well. Members would be aware that we regularly have meetings with Commissioners from other relevant anti-corruption agencies in Australia. All of us are of one mind that it does not work. We share resources as much as we can without compromising our functions. I do not think there would be any cost savings at all if you were to, in effect, make it one body, the Police Integrity Commission and the Independent Commission Against Corruption, because in order to maintain a proper focus on police corruption you would have to maintain the same level of resources as the Police Integrity Commission currently has. You would, in effect, be doubling the size of the agency; you would not be making any relevant savings. There would be some consequential savings in things like administration but it would be a drop in the bucket.

But the more pressing reason for me to say that I think it would be a terrible idea is that it would be very difficult to maintain Chinese walls within an organisation where there would be personnel working on police corruption matters and personnel working on other corruption matters. It would be very difficult to maintain the confidentiality that we maintain in respect of our investigations and vice versa. That would have very deleterious effects in terms of the integrity of our investigations. I think police corruption is a world unto itself. You have to have people who understand the way police work, who understand the hierarchy and the level at which commands operate.

There are enormously technical rules around police operations. It is a technically difficult area and unless you have a body that is devoted entirely to that it is going to fall through the cracks. I completely endorse what Bruce James said publicly not so long ago about the McClelland report. I do not know of any leader of any anti-corruption agency in Australia and certainly none of the previous Commissioners of the Independent Commission Against Corruption who would contemplate such a move.

The Hon. NIALL BLAIR: I want to move on to prevention and the training workshops, but I will start with the advice. In 2012-13 there were 97 phone and email advice requests compared with 133 the year before. We can look at that in two ways. Is it a concern that the number of requests for advice is down, or is it positive that more people are able to identify and hopefully address these themselves? Does the Commissioner have a view on that?

Ms LATHAM: Dr Waldersee has his finger on the pulse.

Dr WALDERSEE: It is a matter we have been looking at for quite a while now. I think two factors are at play. One is that government agencies themselves increasingly have internal expertise. A lot of ex-corruption prevention people are now working in Transport or Family and Community Services or somewhere and they do not need to come to us as much. The other thing that has changed quite significantly is the growth in the private sector advice market. A lot of public service agencies would rather go to a major consulting firm; it keeps it all manageable. It is something we have noticed for a long time, and that is one of the reasons we are refocusing away from a capability around advice and more to a capability around analysis of State systems and larger organisations.

The Hon. NIALL BLAIR: The number of seminars conducted was 107 versus 116 the year before. That number is relatively stagnant. I know it went up from 2010-11 to 2012, but are you happy with the number and are other external factors taking up some of the load?

Dr WALDERSEE: There is a lot of training being provided by the private sector but, unlike advice, there is a lot to be said for agencies to have the Independent Commission Against Corruption brand. They quite like the training and they like the public presentation. There are two changes that led to that sharp change: We took out fees and we added additional workshops in procurement and so on. There was a spike up and it stabilised. We are not saying no to anyone, so if people ask we are able to provide it. It seems to have stabilised at that level.

The Hon. NIALL BLAIR: It is pleasing to see the increase in the regional areas.

CHAIR: Corruption prevention is important work done by the Commission and it probably does not get the public attention it deserves. One of the reports in which the Commission had a significant role to play

was in relation to lobbying. A number of recommendations were made. One of the recommendations was banning of success fees, which the Government implemented. Will you make some observations in relation to the issues connected to lobbying of political parties and make some general recommendations that you think should be looked at?

Dr WALDERSEE: To put it in context, one of the issues we have had is that when the third party lobbyist recommendations were adopted the problem became that people moved to in-house. If they are moved to in-house and you start to capture them they are threatening, "We'll stop calling ourselves government relations, we'll call ourselves planners and then you can't get us." But that said, there are people within organisations who are clearly lobbyists and they are hired to be lobbyists. We recommended that they are captured within the lobbying regulation and we have not shifted from that position. As a result of the coalmining report where we asked the Government to relook at the issue of lobbying, the response has been that that will be reconsidered. I suppose it is back with the Government and it is being actively looked at.

The Hon. LYNDIA VOLTZ: A lot of corruption prevention can be done in relation to cybercrime and fraud, which move very quickly. Given that New South Wales does not have a specialist police unit, where does that kind of prevention of corruption through information technologies that are shifting so quickly sit in government?

Dr WALDERSEE: That I really cannot comment on. I can take it on notice and do some research, but it is not something ICAC has looked at. I do not think it is giving anything away to say we get very few indications that corruption is occurring through cybercrime.

The Hon. LYNDIA VOLTZ: An example is the person who defrauded Queensland Health of millions of dollars. I know it is a complex question. Maybe you can take it on notice and come back with where exactly in government that prevention of corruption occurs.

Dr WALDERSEE: That was an accounts payable manipulation, whereas I think that cybercrime is the Russian mafia making attacks on our information technology systems. That must sit more with the Crime Commission than us.

The Hon. LYNDIA VOLTZ: Yes, in those contexts but in other examples it is manipulation of computer systems and information technologies by employees in government agencies. They are the people who do not have to get past the firewalls. Will you take that question on notice?

Dr WALDERSEE: Yes.

Mr RICHARD AMERY: I have noticed that nearly 3,000 matters are assessed by your Assessment Section. You talk about moderately complex and straightforward matters. I assume there is talk about what is minor, what is moderate and what is more serious. Do you have a sort of box ticking process about the amount of money involved or the number of people involved in the corruption and who the person is when deciding how to rate the seriousness of a matter? Also, how does the landscape of a particular year affect the Assessment Section?

For example, in the past 12 months or two years I cannot imagine you were dealing with too many complaints about the misuse of paperclips when you had a few multimillion dollar coalmine tenements floating around. It would not be every year that you would have to deal with such serious matters. Is the process the same? When you have high-profile, serious cases around, it is pretty easy to decide where to put your resources, but in two or three years times you will still have a \$30 million organisation with all its resources but you may not get complaints that are so serious. What is the process of the Assessment Section and what role does it play? Is it down to the Commissioner to make the final decision or is a recommendation just adopted?

Mr WHITE: We assess every single complaint based on the merits of the evidence and supporting material that is provided. We do not feel that it would be an appropriate approach to assessment if we had a tick-box system or some sort of classification based on a dollar figure or the seniority of the person involved. Having said that, we do take those factors into account and that sort of thing tends to gravitate to what is assessed by the assessment panel through the course of the inquiries that we make.

In relation to your comment about what is considered a simple matter versus a moderate to complex matter, all matters that are received by the Assessment Section come through a triaging process that I am

involved with. A lot of the matters that we get are very simple in terms of there is not much in the way of supporting information, nor is there much in the way of prospects of getting that supporting information so they are classified as simple. However, the moderate to complex ones tend to be ones where there might be a large amount of supporting material that needs to be read through but that may not necessarily indicate a likelihood of corrupt conduct having taken place.

So it is more a way for the assessment officer to determine the best skill set that is required and the level of experience for a matter that we receive. Some matters that might initially appear to us to be not serious, once we collect further material from the complainant or from other sources, may give us reason to think that they are more serious. So, therefore, the matter is presented that way to the assessment panel.

Mr RICHARD AMERY: So it is not comparative to what is available? What choices have you got to investigate, using those extreme cases I was just referring to? Would it depend on the year or how busy—

Mr WHITE: In relation to what the Commission decides to take on for investigation and what goes back, I might refer that to the Commissioner or the Deputy Commissioner to answer that.

Ms HAMILTON: I think it is true that in some years you get a lot more serious matters and in another year you might lower the bar. So something that you would not have investigated in one year in another year you would. It is very hard to talk more generally than that, but we try to feed through enough matters for preliminary investigations that are going to allow us to do a reasonable number of major operations during the year to expose corruption, which is our primary function. In general, we are bound to only look at systemic or serious corrupt conduct—that is the starting point.

Even in a slow year, you would have to be satisfied that it is serious or systemic corrupt conduct. It might be because it involves a lot of money, or a very senior person, or because somebody is in danger, or for some other reason. There is an assessment process and the annual report lists, in general, the sort of factors we take into account, but they are, of necessity, very general. The main thing is we want to make sure that we are investigating, within the limit of our resources, every matter that deserves to be investigated and that is what we try to do each year.

Reverend the Hon. FRED NILE: Just a general question: It is very difficult to get convictions. Would it help if the criminal code was amended to have a new offence of corrupt conduct or something like that?

Ms LATHAM: There is a common law offence of misfeasance or misconduct in public office which is a catch-all. I think there is probably scope and Mr Waldon would probably have a better idea, given the length of time he has been at the Commission. But I think there is probably scope to look at particular kinds of offences that we see reasonably often that more adequately capture the nature of the corrupt conduct than just a general kind of misconduct in public office offence. I know that there are some offences in Queensland that we do not have and there are some issues around things like having secondary employment in circumstances where you are using that secondary employment and the information that you have in your primary employment to advance your economic interests. So there are some issues like that which I think are capable of being addressed by even summary offences that would operate as a much more effective deterrent.

Reverend the Hon. FRED NILE: Could you look at that as to whether you could formulate some suggested recommendations?

Mr WALDON: I can say a couple of things about that. I think the first thing is that lack of prosecutions is not because there is a lack of criminal offences, it is because there is often not sufficient admissible evidence to prove the offences that are there. Most of the corrupt conduct findings that we make—not all, but most—are based on a criminal offence. Some of those end up being prosecuted because there is admissible evidence; many end up not being prosecuted simply because there is not sufficient admissible evidence. Operation Jarek, for example, is a good indicator of that. There were, I think, something like 41 findings of corrupt conduct against individuals in that matter. A lot of those findings were based on the admissions made by the individuals themselves but their admissions were given under section 38 objections and could not be used in prosecution against them.

While there was other evidence available that evidence, in itself, was not sufficient to warrant prosecution. So in the case of most of the people involved in Operation Jarek, for example, we did not even make a recommendation that consideration be given to their prosecution because when we analysed the

evidence we knew that there just would not be sufficient admissible evidence to justify prosecution. It was not worthwhile wasting our time or the time of the Director of Public Prosecutions, putting together a brief of evidence when we knew, at the end of the day, that the result would be that there was not sufficient admissible evidence to prosecute.

In relation to the second issue as to whether there might be other offences which we could look at, I think the previous Commissioner did write to the Premier during the course of last year identifying one particular offence which was an offence which I think is in existence in Queensland and Tasmania. In those States if you are a public official and you have an interest in a private contract which relates to your exercise of public official functions, then there is an offence in Queensland and Tasmania which encompasses that conduct. It is not an offence which exists in New South Wales but we have written to the Government about that and we are awaiting a response.

Reverend the Hon. FRED NILE: Good.

CHAIR: Do you think that in circumstances where that offence was not brought in here you would not get a conviction whereas in a similar circumstance in Queensland you would obtain a conviction?

Mr WALDON: Once again, it depends on the issue of admissible evidence. Prosecutions will only get up if there is sufficient admissible evidence.

Ms HAMILTON: I must say because that offence would be based on the fact that you have an undeclared private interest in the contract, the evidence would be pretty easy because it is up to you to declare the fact that you, as a public official, have an undeclared private interest in a contract, with your public agency. I would think that the evidence possibly would be available, even without admissions from the affected person.

Ms LATHAM: And just from the existence of documents which would demonstrate the existence of the contract and the scope of the work. So you would not necessarily be relying upon the evidence of the accused.

CHAIR: Yes.

Mr THOMAS GEORGE: Commissioner, in the previous session we had the Inspector, the Hon. David Levine, here who indicated that he had not had a chance to meet with you yet but he has met with the Deputy Commissioner. Following on from comments last week, where one of the previous Commissioners had concerns about the joining of the two organisations together, how have you found the process since the Inspector has taken on the overall position? Has it worked well so far? And do you have any concerns about the future?

Ms LATHAM: I think the process works very well. I have absolutely no concerns. Having a common Inspector, an Inspector who presides over the Police Integrity Commission and the Independent Commission Against Corruption, I do not think that is problematic. I think a common Inspector is not necessarily a problem. I have a very good working relationship with David Levine, I have known him for a long time and we both have the same background. So I do not envisage there being any problems at all in our relationship, it has been very open and frank. He has already written to me on a number of occasions just to tell me what the outcome was in relation to a couple of complainants who had been dissatisfied with being told that their complaint could not be investigated because it did not come within the ambit of the Act, or for some other purpose, and who then took their complaint to the Inspector. We have, I think, a very productive working relationship.

Reverend the Hon. FRED NILE: He did indicate that he was having trouble having meetings with you because of your heavy load.

Mr THOMAS GEORGE: He was not saying that you were not available but he had met with the Deputy Commissioner.

Reverend the Hon. FRED NILE: The previous Inspector used to have a monthly meeting with the Commissioner.

Ms LATHAM: I will certainly at the end of this inquiry be having a meeting with him. I have to say after his appointment was announced we had dinner together. I do not know if that counts as a meeting.

Mr THOMAS GEORGE: Who paid?

Ms LATHAM: I think we split the bill.

The Hon. NIALL BLAIR: Good answer. One issue he did raise—and I cannot remember now if he was referring to ICAC's website or the Inspector's website—is there is a perception that when people see the structure they see the Inspector sitting above ICAC, so they think that they will go straight to the top to make a complaint.

Ms LATHAM: Yes, they do.

The Hon. NIALL BLAIR: Is that something that—

Ms LATHAM: I think some people—and I am choosing my words carefully here; Mr White might have a comment about this—people who I would classify as what we used to call in the law vexatious litigants and serial complainants, people who laud their own self-importance in writing to official bodies and I am sure—in fact I know—are the kind of people that we see in the courts as vexatious litigants are exactly the same people that you will see turn up in the office of the Ombudsman and ICAC. They go to everybody.

Mr THOMAS GEORGE: I hadn't noticed!

Reverend the Hon. FRED NILE: They come to us too.

Ms LATHAM: Yes, I know. So I think one of the answers to that question is that that is probably the type of correspondence that he is getting. But I think, generally speaking, most people know that the first port of call is to our Assessments Division.

Mr WHITE: I agree with the Commissioner's comments in relation to that. There is only one occasion that I am aware of since I have been at the Commission since October last year where the Inspector needed to forward a complaint to us because the person had gone to that person in the first instance and, as it turned out, that person had come to us many times before.

The Hon. NIALL BLAIR: It is not an education process that we need, it is particular—

Ms LATHAM: It is an unfortunate fact of life.

Reverend the Hon. FRED NILE: If we change the chart and just have a line going sideways—ICAC, Inspector.

Mr THOMAS GEORGE: But one thing he did raise, and it came out on a number of occasions last week, he said education of the public of an understanding of—

Ms LATHAM: The structure.

Mr THOMAS GEORGE: Yes. He did mention education, and you just touched on it. But, again, that is something that was mentioned a few times last week. Education came out as a need.

Mr WHITE: Where I think it is a bit of a challenge for them is that I think a number of the complainants do believe that they can appeal the decisions that we are making to the Inspector.

CHAIR: In relation to certain sectors, and looking at the level of complaints in relation to local government and also within agencies such as RailCorp, there seem to have been numerous investigations into that agency, including the most recent one. What role do you think ICAC has in promoting cultural change within these organisations?

Ms LATHAM: I think it has a huge role, but I do not think that that necessarily emerges either entirely or even to a significant extent from public inquiries. I think public inquiries have the capacity to shame and expose particular individuals, but I do not think that that is enough to make a cultural change; in fact, I know it is not because there were several, as you say, inquiries into RailCorp. Just in February this year we had yet

another one where it was patently obvious that nobody had really given any thought to what constitutes a conflict of interest under the code of conduct. Yet you would have thought from previous inquiries that some shift would have occurred. The fact that it has not really occurred to a significant extent I think is a reflection of the culture within the organisation. Dr Waldersee does a lot of work in that area. But I think what is important is that the work that Dr Waldersee does kind of leverages off the public inquiries. I think the two work in tandem and it is an important process. Much of what he does is built upon the results of the public inquiry.

CHAIR: Will you be doing some work following the recent RailCorp—

Ms LATHAM: Yes.

Dr WALDERSEE: In addition to the training that is reported here we have also put together a very senior executive-level training. The entire top of Roads and Maritime Services recently we went through, including the CEO, and we will offer this to RailCorp—or Sydney Trains now—as well. But it is quite common that following an investigation we will go in and we will conduct training for the organisation and look at what went wrong and talk to the senior management, and we will do that again here.

The Hon. LYNDIA VOLTZ: A lot of those referrals from Transport and Maritime Services are coming from heads of agencies though, are they not? I think the figures in the book, whether they are coming from the public or whether they are coming from heads of agencies, would be as a result of the kind of work you are doing?

Dr WALDERSEE: No. I think that is just the section 11 reporting requirements that heads of agencies have to report to us. That is probably why they are coming through there.

The Hon. LYNDIA VOLTZ: Because there seem to be a lot of those section 11s in some agencies as opposed to other agencies—Roads and Maritime Services it was very high in Health. I was wondering if that was because of the work that—

Dr WALDERSEE: Mr White deals primarily with the section 11 reports. He might want to explain the variation.

Reverend the Hon. FRED NILE: You have been conducting visits to these various agencies?

Mr WHITE: Yes. We do regularly visit agencies and agencies regularly visit us. I cannot comment on specifically what occurred during the previous financial year because I was not present. But we do identify where agencies are not reporting to us on a regular basis and we also do identify where agencies might be undergoing a significant amount of change, and that change might result in new structures that might have an impact one way or another on their section 11 reporting. So we are proactive in managing those agencies as well.

Reverend the Hon. FRED NILE: What is the plan that you have for the future now that you have been there a few months? Will there be regular visits to those agencies now?

Mr WHITE: The plan for the future—as you would appreciate there is a very large number of agencies that we interact with—is to look at probably some of the smaller agencies that we probably do not get as many reports proportionately from that we really should, and that includes local government agencies, and engage with those.

Mr WALDON: Mr Chair, could I just raise one thing? In response to the question that was asked about the GIPA applications. I had a look at page 109 of the report and I can confirm that the reason those two applications were refused was because they were for information relating to our investigative or complaint handling functions.

Mr THOMAS GEORGE: On a lighter note: The Commissioner must be relieved that, from the stories we heard last week, we were not here to politically score points.

CHAIR: Thank you very much for coming in today and giving evidence.

(The witnesses withdrew)

(The Committee adjourned at 12.37 p.m.)