

TABLE OF CONTENTS

COMMITTEE MEMBERSHIP	.....
COMMITTEE FUNCTIONS	.....
CHAIRMAN'S FOREWORD	.....
COMMENTARY & RECOMMENDATIONS	.....
QUESTIONS ON NOTICE	
1. INVESTIGATION & COMPLAINT STATISTICS	.....
2. PROTECTED DISCLOSURES	.....
3. INVESTIGATIONS & HEARINGS	.....
4. USE OF COMMISSION'S POWERS	.....
5. BUDGET	.....
6. RESEARCH SECTION	.....
7. CORRUPTION PREVENTION UNIT	.....
8. EDUCATION SECTION	.....
9. WEIGHING THE WASTE: AN INVESTIGATION INTO CONDUCT AT LOCAL COUNCIL WASTE DEPOT WEIGHBRIDGES AT ST PETERS & ELSEWHERE, JUNE 1999	.....
10. INVESTIGATION INTO THE DEPARTMENT OF CORRECTIVE SERVICES, 3RD REPORT - BETRAYAL OF TRUST	.....
11. REPORT ON INVESTIGATION INTO ABORIGINAL LAND COUNCILS IN NSW	.....
12. COMMUNITY & JOURNALISTS ATTITUDE SURVEY, JUNE 1999	.....
13. WALSH BAY	.....
14. MISCELLANEOUS	.....
TRANSCRIPT OF PROCEEDINGS	.....
INDEX TO TRANSCRIPT OF PROCEEDINGS	.....
APPENDICES	

DELEGATION'S REPORT ON HONG KONG COMPARATIVE STUDY

COMMITTEE MEMBERSHIP

LEGISLATIVE COUNCIL

The Hon J Hatzistergos MLC
Chairperson

The Hon D Oldfield MLC

The Hon J Ryan MLC

LEGISLATIVE ASSEMBLY

Mr J Price MP
Vice-Chairperson

Mr M Brown MP

Mr A Fraser MP

Mr K Hickey MP

Dr L Kernohan MP

Mr G Martin MP

Ms A Megarrity MP

Mr M Richardson MP

Secretariat

M H Minnican - Director

Ms H Parker - Committee Officer

Ms T van den Bosch - Research Officer

Ms N O'Connor - Assistant Committee Officer

COMMITTEE FUNCTIONS

Independent Commission Against Corruption Act 1988

“64 (1) The functions of the Joint Committee are as follows:

- (a) to monitor and to review the exercise by the Commission of its functions;
- (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- (c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission;
- (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

(2) Nothing in this Part authorises the Joint Committee -

- (a) to investigate a matter relating to particular conduct; or
- (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.”

CHAIRMAN'S FOREWORD

Following the election in March 1999, the Parliamentary Committee on the ICAC was reconstituted with new Members. A membership list appears at page 1. The new Committee remains committed to its role of providing oversight of the ICAC's role and functions, policies and procedures. Pursuant to this function, the Committee has continued the practice of previous Committees, and held public hearings with the Commissioner of the ICAC, Mr Barry O'Keefe, on two occasions in September and November 1999.

The General Meetings with the Commissioner provide the Committee with the opportunity of questioning the Commissioner on a variety of matters relating to the functioning of the Commission, its use of powers, its investigation outcomes and its budget. The collation of the evidence in this General Meeting Report places on the public record the valuable information obtained by the Committee. Only confidential information has been omitted from this report at the request of the Commissioner.

As part of the Committee's general oversight role, it is currently conducting a Review of the ICAC. A two member Committee delegation travelled to Hong Kong in September 1999, for the purpose of obtaining comparative information on the Hong Kong ICAC. The delegation's Report to the Committee is appended to this Report, and its recommendation was adopted by the Committee at a recent deliberative meeting. Further evidence has been taken and the Committee hopes to publish its first report, dealing with accountability, shortly.

I would like to thank my colleagues on the Committee for their participation in the two General Meetings with the Commissioner, and the Secretariat for its assistance. My thanks also to Commissioner O'Keefe and the Commission staff for the comprehensive information provided to the Committee.

This Committee's first General Meeting with Commissioner O'Keefe is also to be its last: Mr O'Keefe finished his term at the Independent Commission Against Corruption on 14 November 1999, and returned to the Supreme Court. I wish him well, and look forward to continuing the Committee's constructive working relationship with the new Commissioner, Ms Irene Moss.

Hon John Hatzistergos MLC
Chairperson

COMMENTARY & RECOMMENDATIONS

The Committee met with Commissioner O'Keefe for half-day public hearings on 24 September 1999 and 12 November 1999. The meetings provided the Committee with an opportunity to discuss a wide range of topics with the Commissioner, to obtain information, and to raise matters of concern.

- **Investigative priorities**

The Committee questioned the Commissioner on how the Commission determines its investigative priorities. The Committee believes that any agency that has independence and discretion in exercising its functions should make clear the reasoning behind its decision-making. Commissioner O'Keefe advised that the *Independent Commission Against Corruption Act 1988*, the Commission's Corporate Plan, and its Operational Strategy serve as the source of the Commission's assessment of its priorities. While the *ICAC Act* and the ICAC Corporate Plan are publicly available, the Committee sought access to the Commission's Operational Strategy. The Committee is pleased that the Commissioner undertook to provide that document to the Committee in camera, but notes that the document has not been received yet.

Recommendation 1

The Committee recommends that the Commission's Operational Strategy be forwarded to the Committee, on a confidential basis, as a matter of priority

The Committee notes the need for the Commission to make clear the general principles for the exercise of its discretionary powers, and the importance of explaining how decisions are made in relation to specific matters. The Commission's investigation and report on ticketing fraud at Manly Ferry Wharf arose as a case study in the course of the general meeting. Commissioner O'Keefe advised that the Commission determined to investigate fraud at Manly Wharf after the Police Service had been reluctant to undertake the investigation itself. There was a similar background to the Commission's investigation into the Illawarra Development Board. The Committee believes that factors such as these should be elucidated in the Commission's reports so that the public understands the reasoning for the Commission's decision to investigate. The Committee notes that the Commissioner has the power to direct an agency to undertake an investigation, and will question the Commission further on liaison between the Commission and the Police Service.

In respect of the Manly Ferry Wharf case study, the Committee was troubled with the issue of a press release by the Commissioner after the release of the public report. The press release indicated that the Police should consider obtaining further evidence with a view to laying charges against individuals found to have been corrupt by the Commission. The Committee is unable to determine whether and to what extent the ability of the Police to conduct such an investigation has been prejudiced by the course that the ICAC inquiry has undertaken, but will follow this through in subsequent reports. The matter however raises the question of the need for a clear exposition of the investigative course that the ICAC adopts.

Recommendation 2:

The Committee recommends that ICAC investigation reports include information such as factors in the Commissioner's decision to investigate the particular matter, and an explanation of the ICAC's investigative course, including its use of its powers.

The issue of providing reasons to complainants for Commission decisions not to investigate a matter will be considered further by the Committee in a subsequent report.

- **Media**

The Committee also sought and obtained a copy of the Commission's media policy, following questions about the ICAC's dealings with the media. The policy is appended to this report. The Committee believes that strict enforcement of the Commission's media policy, and particularly the requirement that staff not disclose sensitive operational material, is essential for the security of investigations and the protection of individuals' reputations.

- **Consultation in developing recommendations**

Concerns were also expressed by the Committee about the level of consultation undertaken by the Commission in developing its recommendations for systemic change and corruption prevention measures. Commissioner O'Keefe indicated to the Committee that there is no formal Commission policy on consultation concerning systemic recommendations, but rather the level of discussion is determined on a case by case basis.

This issue arose in the context of an examination of the Commission's Second Report on Parliamentary Travel. While the Commissioner implied in the course of proceedings that the recommendations in the Second Report were part of the consultation process, the Committee believes they appear more as final recommendations to be implemented.

The Committee is of the opinion that adequate consultation with agencies which are the subject of corruption prevention recommendations is essential for practical, workable recommendations to be generated, and recommends that the ICAC consult thoroughly with agencies as a matter of policy prior to the publication of the recommendations.

Recommendation 3

The Committee recommends that the ICAC develop a policy to consult thoroughly with agencies in the course of developing systemic corruption prevention recommendations. If this policy is departed from, the Commission should provide an explanation.

- **Staff Code of Conduct and internal reporting**

The Commission's staff Code of Conduct and internal reporting policies came under scrutiny as a result of an incident reported in the NSW Ombudsman's Annual Report for 1998-1999. The Ombudsman reported that she had investigated a protected disclosure concerning a Commission officer who had been involved in a sexual

relationship with the solicitor of a witness in a Commission investigation. The Ombudsman expressed concern about the adequacy of the Commissioner's response to an internal report about the matter, and particularly the lack of formal written file notes. The Ombudsman determined that because of the lapse of six months since the events, it would be inappropriate to alter the resolution.

Using the incident described in the Ombudsman's Annual Report as a case study, the Committee questioned Commissioner O'Keefe about the enforcement of the Code of Conduct. The Committee notes that the reputation and standing of the ICAC is fundamental and its decision-making needs to be of the highest ethical standard. The fact of the relationship occurring, the breach of the Code of Conduct, the failure of the officer to proactively report the relationship, and the inadequate formal written account of the Commission's response as identified in the Ombudsman's Annual Report are a source of concern to the Committee. The Committee believes that the Commissioner should ensure that the staff Code of Conduct is rigorously enforced, without undue emphasis being placed on subjective considerations.

The Committee is pleased to note that the Commissioner had reinforced the seriousness with which he regarded the breach of the Code, and had counselled the staff member involved. All staff were subsequently addressed on the general matters relating to the incident.

The incident also emphasises the importance of the *Protected Disclosures Act 1994* as an accountability mechanism, and the need to bring the Commission's internal reporting policy, and staff rights under the *Protected Disclosures Act*, to the attention of Commission staff. The Committee would like to examine the Commission's internal reporting policy, and requests that a copy be provided to it.

Recommendation 4

That the Commission provide a copy of its Internal Reporting policy to the Committee.

- **Budget**

Commissioner O'Keefe raised the question of the Commission's budget as an item for discussion. Figures were provided as to the level of the ICAC's funding in the ten years since its establishment, and these are found at Appendix D. Mr O'Keefe argued that reductions in the Commission's budget had affected the Commission's ability to investigate certain matters. The Commissioner was unwilling to identify any particular matters or areas that could not be investigated as a result of budgetary constraints. The impact on the Commission's programs has not been assessed, particularly in light of the removal of police complaints from the ICAC's jurisdiction, and the Committee intends examining this further at subsequent General Meetings.

Following the settlement of defamation proceedings commenced by Mr Paul Gibson MP against Commissioner O'Keefe, the Committee questioned the Commissioner about the settlement's impact on the ICAC's budget. The Commissioner fully co-operated in providing the material requested by the Committee in relation to this matter. In view of the confidentiality agreement applying to the settlement, the Committee unanimously

resolved that the figures supplied be kept confidential. After considering the information provided, the Committee is satisfied that there has been no impact on the budget of the ICAC as a result of the settlement.

- **Operations Review Committee**

The accountability provided by the ICAC's Operations Review Committee (ORC) was another matter raised for discussion. Further information was sought on the ORC's activities, the attendance of its Members, and issues arising as a result of the internal and external audits performed to assess the adequacy and accuracy of reports to the ORC. The Commissioner provided this information to the Committee, and it is appended to this Report.

- **Performance indicators**

The Committee examined with interest the Commission's performance indicators, as found in the Commission's Corporate Plan, and questioned the Commissioner about the way the ICAC measures the impact and outcomes of its investigations. The Committee believes that effective measurement of performance serves as a valuable form of accountability, and that performance measures should properly reflect the objectives of the legislation and the needs of the public sector.

Recommendation 5

The Committee recommends the Commission examine the appropriateness, relevance, accuracy, timeliness, completeness and comprehensiveness of its current performance indicators and, if necessary, produce new key performance indicators for the ICAC.

Recommendation 6

The Committee recommends that, in examining its performance indicators, the Commission seek expert advice from the Audit Office, and consult with the Committee concerning the development of key performance indicators.

Recommendation 7

The Committee recommends that the Commission regularly report on its key performance indicators to the Committee as part of the program of General Meetings conducted between the Committee and the Commission.

The Committee is examining the issue of performance measuring as part of the Review of the ICAC.

The Committee notes the Commissioner's assurances that all relevant documents relating to the Commission's performance audits have been made available to the Committee in one form or another, and feels that this is important for the Committee's exercise of its oversight functions.

- **Investigative outcomes**

The number of prosecutions and disciplinary actions arising from ICAC investigations was also discussed, as was the impact on individuals of findings of corrupt conduct.

The Committee notes that the Commissioner acknowledged that the impact of an investigation finding can be different depending on whether or not the affected person is a public figure, and he understands that the Commission has to focus on that. The 1999 Investigation into an officer of the Environmental Protection Authority was discussed as an example of this. The Committee plans to examine this in more detail as part of the Review of the ICAC.

- **Other matters**

Other topics covered in the course of the General Meetings were:

- the Commission's use of its covert powers
- vexatious complaints
- the Members' Code of Conduct, and
- the employment of seconded police at the ICAC and consequential security risks.

Finally, this being the last occasion on which Commissioner O'Keefe would appear before the Committee, he was thanked for his service to the community during his five years in the position of Commissioner. The Committee appreciates the work of the ICAC under Commissioner O'Keefe's tenure, and its attempts to fight public sector corruption through investigation, prevention and education. Government Departments and Agencies now have a heightened awareness of the importance of ethics in the functioning of the public sector, and the Commission's practical assistance has played a large role in this.

The Committee hopes to continue to work productively with the new Commissioner of the ICAC, Ms Irene Moss, as it undertakes its Review of the ICAC and its regular meetings with the Commissioner.

1. INVESTIGATION & COMPLAINT STATISTICS

1.1 How many matters were received by the Commission, and in what categories were they?

In the period 1 July 1998 to 30 June 1999, 1747 matters have been received by the Commission. The table below sets out a breakdown of the classification of matters received by the Commission over the last three financial years. The graph at Appendix A illustrates the number of matters received by the Commission for each financial year from 1988-89.

Classification	1996/97	1997/98	1998/99
Complaints (s.10)	774	797	677
Protected Disclosures (s.10)*	202	234	231
s.11 Reports	435	506	489
Information	139	140	183
Inquiry	32	29	21
Dissemination	6	11	14
Referral from Parliament	Nil	Nil	Nil
Outside Jurisdiction	79	103	131
Own Initiative (s.20)	4	5	1
Total	1671	1819	1747

*Complaints made by public officials will be classed as protected disclosures if they satisfy certain statutory requirements.

1.2 How were they dealt with?

All matters received by the Commission are carefully considered prior to a decision being made as to what action should be taken.

Initially, all matters are considered by the Assessment Panel which comprises the Directors of Investigations, Legal, and Corruption Prevention & Education, or their nominees. The purpose of this panel is confirm classification of matters and provide direction as to how each matter should be dealt with at first instance.

Matters which come within jurisdiction are assessed against the criteria set out in the ICAC Act, the Commission's Corporate Plan and operational strategy to determine which matters should be the subject of preliminary inquiry or investigation by the Commission.

In addition to the ongoing internal management of matters which are the subject

of preliminary inquiry or investigation, the Operations Review Committee also has the function of advising the Commissioner whether the Commission should investigate or discontinue an investigation of a s.10 complaint.

Matters which are not the subject of preliminary inquiry or investigation are assessed to determine the most appropriate course of action. This will, of course, depend on the nature of the matter. It may, for example, be appropriate to refer a matter to another agency for that agency to deal with the matter. In other cases, another agency may already be dealing with a matter, or have dealt with it, and it may not be necessary for the Commission to take any action. In some cases the Commission may decide to refer a matter for investigation to another person or agency pursuant to s.53 of the ICAC Act.

1.3 Which public authorities are most frequently the subject of complaint?

The table below provides the percentage of matters received by the Commission between 1 July 1998 and 30 June 1999 where the listed public authorities were the subject of the complaint.

Public authority	All Classifications**	Protected Disclosures
School Education/Education and Training	2%	4%
Aboriginal Land Councils‡	3%	4%
NSW Police Service†	3%	2%
State Rail/Railway Services/State Transit	3%	8%
Corrective Services	5%	10%
Community Services	7%	2%
Department of Health#	13%	12%
Local Government*	28%	19%
Sub total	64%	61%
Other public authorities	36%	39%
Total	100%	100%

* "Local government" comprises 177 councils throughout NSW.

† Police corruption ceased to be within the jurisdiction of ICAC from 1 January 1997.

Includes Area Health Services

‡ Includes 117 Local Aboriginal Land Councils and the NSW ALC.

** includes protected disclosures

1.4 Have there been any significant changes in the number, type or subject of complaint?

As the graph at **Appendix A** illustrates, there has generally been a steady increase in the number of matters received by the Commission over the life of the Commission.

The table below shows the percentage distribution of matters, including s.10 complaints, over the past six financial years.

Percentage Distribution of Matters based on their Classification

	93-94	94-95	95-96	96-97	97-98	98-99
s.10 Complaint	48.4%	52.7%	52.7%	46.3%	43.4%	38.8%
Protected Disclosure	0%	3.4%	11.6%	12%	12.8%	13.2%
Dissemination	0.8%	0.4%	0.3%	0.3%	0.6%	0.8%
Information	11.2%	5.4%	5.5%	8.3%	7.6%	10.5%
Inquiry	2.2%	1.8%	2%	1.9%	1.5%	1.2%
Outside Jurisdiction	11.4%	7.9%	4.6%	4.7%	5.6%	7.5%
Own Initiative	0.3%	0%	0.2%	0.2%	0.2%	0.1%
Referral (s.13)	0.1%	0%	0%	0%	0%	0%
Report (s.11)	25.2%	28%	22.8%	26%	27.8%	28.0%

The Protected Disclosures Act 1994 came into operation in March 1995. Prior to that time, most matters which are now classified as protected disclosures were classified as s.10 complaints.

Subsequent to it becoming known that the Commission was conducting an investigation into the Department of Corrective Services, there was a significant increase in the number of allegations of corrupt conduct relating to that Department, as opposed to the number received in previous years. In calendar years 1995 and 1996, a total of 72 matters was received by the Commission relating to the Department. In the period 1 January 1997 to August 1999 a total of 407 such matters was received. The bulk of these matters was received during the period during which the Commission's investigation was in its public phase.

Since the winding down of the public aspect of the Commission's investigation there has been a decrease in the number of matters received relating to the Department. These statistics illustrate the importance of public hearings in encouraging persons to come forward with information which may be of relevance to the investigation and corruption prevention initiatives.

2. PROTECTED DISCLOSURES

2.1 How many protected disclosures have been received?

Since the inception of the Protected Disclosures Act in March 1995 the Commission has received 912 matters categorised as protected disclosures.

2.2 Which public authorities have been the subject of protected disclosures?

The public authorities which have been the subject of a protected disclosure during the period from 1 July 1998 to 30 June 1999 are listed below:

Public authority

Local Government*

Corrective Services

Aboriginal Land Councils**

Ambulance Service

Department of Fair Trading

Healthquest

Community Services

State Rail / Railway Services / State Transit

Roads and Traffic Authority

Department of Health

Area Health Services

School Education / Education and Training

* "Local government" comprises 177 councils throughout NSW.

** Includes 117 Local Aboriginal Land Councils and the NSW ALC.

2.3 What progress has been made in changing organisational cultures in the public sector to encourage employees to report corrupt conduct? Is the level of compliance with the requirements of the Protected Disclosures Act satisfactory?

The ICAC has long advocated openness and transparency in the activities of agencies and in particular with respect to encouraging staff to identify and report any inappropriate conduct. It has also encouraged agencies to develop and implement internal reporting systems to assist staff to make reports internally and receive the protections available through the Protected Disclosure Act.

An indicator of the reaction of the public sector to the intent of the Protected

Disclosures Act 1994 is given by statistics about implementation of internal reporting systems (IRS).

The NSW Ombudsman conducted an assessment of IRS policies adopted by Schedule 1 (government departments) and Schedule 3 (declared authorities) agencies pursuant to the Public Sector Management Act and a range of other agencies within the NSW government.

The assessment involved 133 agencies and concluded, in August 1999, that 52 (39%) of agencies have very good policies in place, 16 (12%) have adequate policies and 32 (24%) have been assessed as inadequate. Some 33 agencies (25%) have yet to respond to the NSW Ombudsman's request to review IRS policies.

The Department of Local Government conducted a similar exercise and reviewed the 177 general purpose councils. This assessment resulted in a 100% response rate and found that 172 councils have established IRS. The IRS policies have been adopted by the elected council. The DLG is assisting the outstanding 5 councils to develop and adopt effective policies. Further information is detailed in the response to question 6.2.

3. INVESTIGATIONS & HEARINGS

3.1 What investigations have involved public hearings since the previous General Meeting? How many days of public hearings have there been?

In the period 7 July 1998 to 30 June 1999 public hearings have been conducted in relation to ten (10) Operations: Anschutz, Becker, Benda, Berdan, Besa, Cadix, Jommelli, Negri and Zack. There have been 52 days of public hearings.

Operation	Public
ANSCHUTZ	3
BECKER	8
BENDA	7
BERDAN	2
BESA	4
CADIX	3
JOMMELLI	12
NEGRI	11
ZACK	2
Total	52

3.2 What investigations have involved private hearings? How many days of private hearings have there been?

In the period 7 July 1998 to 30 June 1999 private hearings have been conducted in relation to ten (10) Operations: Anschutz, Becker, Benda, Berdan, Besa, Cadix, Jommelli, Negri and Weckmann. There have been 94 days of private hearings.

Operation	Private/Private Restricted
ANSCHUTZ	6
BECKER	6
BENDA	5
BERDAN	6
BESA	5
CADIX	31
JOMMELLI	30
NEGRI	3
WECKMANN	2
Total	94

3.2.1 How many private hearings did not move onto the public hearing stage?

Since 7 July 1998, only one (1) investigation, Weckmann, has not proceeded, at this stage, to public hearings.

3.3 What investigations has the Commission reported on in the past year?

Operation Codename	Investigation Report	Tabled at Parliament
Visual	Investigation into the Conduct of a Senior Inspector with the Department of Gaming and Racing	September 1998
Sturt	Report on the Investigation into the Conduct of an Alderman on Fairfield City Council	November 1998
Cadix	Investigation into the Department of Corrective Services – 2 nd Report: Inappropriate Relationships with Inmates in the Delivery of Health Services	November 1998
Encina	Investigation into Parliamentary and Electorate Travel - 2 nd Report: Analysis of administrative systems and recommendations for reform	December 1998
Becker E	Investigation into allegations made by Louis Bayeh against the Member for Londonderry, Paul Gibson MP	December 1998
Zack	Report on Investigation into Aboriginal Land Councils in New South Wales	June 1999
Cadix	Investigation into the Department of Corrective Services – 3 rd Report: Betrayal of Trust: The activities of two Correctional Officers	June 1999
Anschutz	Weighing the Waste: An Investigation into the Conduct of Local Council Waste Depot Weighbridges at St Peters and Elsewhere	June 1999

3.4 What is the implementation status of the recommendations arising from the following investigation reports: Cal (Council Inspectors); Cadix (Corrective Services); Sublime (Glebe morgue); Zack (ALCs); Becker (Parliamentary Travel); Coruna (Transgrid, Pacific Power and Integral Energy); and, Aroo (SRA). Have implementation rates generally been satisfactory?

Recommendations relating to prosecution and disciplinary action are dealt with at 3.5.

The present situation with implementation of recommendations for system reform is as follows:

Cal (council inspectors)

The investigation report was tabled in November 1997. It contained no recommendations for implementation concerning council inspectors. However, as a result of the inquiry the ICAC decided to review the accountability mechanisms adopted by councils in relation to health and building surveyors. A corruption prevention report was issued in June 1998; ICAC asked all local councils to compare and contrast their management of health and building surveyors with the report's recommendations. Councils were asked to assess their systems against the corruption prevention recommendations. Most local councils have, or intend to review their systems against the report. Corruption prevention and education officers have also worked with the Department of Local Government to issue resource materials to local councils to help them inform applicants of the role of regulatory officers.

Cadix (Corrective Services)

Three investigation reports have been published to date.

The first report (Conduct of Officer "Josh" Sua), which was tabled in February 1998, recommended changes to employee and visitor search policies and secondary employment practices. The Officer in question had ceased to be employed by the Department.

The second report (Cunningham and Barnes-Powell) concerned delivery of inmate health services in correctional centres by the NSW Correction Health Services. It recommended changes to guidelines concerning professional boundaries, the system of counselling of inmates, the presence of inmates in clinics, security of needles and syringes and interview rooms in correctional centres. Corrections

Health Service senior management has co-operated fully and has been implementing the report's recommendations at a satisfactory rate. Both officers have ceased to be employed by their departments.

The third report (Officers Brown and Bartley) highlighted deficiencies in the security of urinalysis program, the pre-release works program and security of case management files. Neither are now employed by the Department. See answer to question 10.1 for details.

Corrective Services has been considering all the reports' recommendations on a continuous basis, (through its Central Agencies Liaison Team (CALT)). Work continues on revising and implementing policy and procedural matters in consultation with the Corruption Prevention Unit and implementation rates have been satisfactory, considering the breadth and complexity of the task. Senior management has also shown good levels of co-operation and leadership, in accepting the challenge to change longstanding management systems and practices as a result of the inquiry.

Sublime (Glebe morgue)

This report was tabled in March 1998. Responsibility for the Glebe morgue was transferred from the Department of Health to the Central Area Health Service (CSAHS) shortly before the ICAC inquiry began. While the ICAC found that the Morgue did not have in place adequate policies, standards and procedures, which could have worked to minimise corrupt behaviour, CSAHS had commenced a management review of the Morgue and this was underway by the time the report was published. CSAHS senior management co-operated fully with the Commission throughout this exercise and has worked to change organisational culture, train, educate and develop staff, change recruitment and selection policies and procedures and management practices and procedures. Corruption Prevention Unit has monitored these changes and is satisfied with the results.

Zack (ALC)

The April 1998 Corruption Prevention Report made 26 recommendations implementation of which are the responsibility of the New South Wales Aboriginal Land Council, the Department of Aboriginal Affairs or the Office of the Registrar of the Aboriginal Land Rights Act. As foreshadowed in its original report, the ICAC is currently conducting a review of the implementation of the recommendations. That review should be completed and published in October 1999.

Becker (Administrative Systems within Parliament)

The second report on the Commission's investigation into Parliamentary and Electorate Travel included a description of the systems operating within Parliament and made 63 recommendations for their reform. The recommendations covered

diverse areas including, documentation, accountability, administration, entitlements and culture.

The ICAC has continued to work in co-operation with relevant stakeholders including the Speaker, the President, the Staff of the Parliament and the Premier's Department to review policies and systems that were the subject of many of the recommendations for change. For example, assistance was provided to the Parliament in relation to codes of conduct for parliamentary staff and electorate staff. Also, assistance was provided to Parliament with the development of an internal reporting system to address the power imbalance between Members and staff. Parliament has made good progress in responding to the Commission's recommendations including adoption of recommendation made in respect of the Members' Handbook and Committee Travel guidelines. In response to Recommendation 59 concerning induction training for Members including ethical behaviour and legal obligations, a briefing session was held by the Parliament for both Houses in respect of Ethics and Accountability for Members. Unfortunately, only about half the Members attended and the time allocated was not sufficient to permit a comprehensive discussion of ethical and legal issues. One session does not constitute a program.

The uptake of many of the recommendations by Parliament has been hampered by:

- the difficulty experienced by the Parliamentary Remuneration Tribunal in delivering a determination setting out the entitlements of Members. Many of the recommendations can only be implemented once it is known what the PRT's determination is. It will be necessary for the Parliament to digest the determination in order to ascertain the best way it can implement these recommendations.
- financial constraints imposed owing to budget cuts which has limited the extent to which Parliament has been able to pursue the recommendations with vigour.
- increased administrative burden created by the March election and the change of Members and electorates.
- the introduction of a new financial management and human resources within Parliament (known as the SAP).

Recommendations made in respect of the Members Code of Conduct, Oath of Allegiance and training and induction for Members have yet to be fully addressed by the Parliament, either through its Presiding Officers or the ethics committees of each House.

To aid implementation of the recommendations, the Commissioner wrote to all candidates for the NSW State election advising them of the ICAC's second report and highlighting some important areas that would require consideration by newly elected Members.

A monitoring report, which will detail the efforts made to implement the recommendations and identify any obstacles encountered, will be published in November 1999.

Coruna (Transgrid)

The report made no recommendations other than those recommending that consideration be given to prosecuting a number of persons. The Transgrid Officer at the centre of the inquiry died before the hearings were completed.

The electricity industry and the organisations in it have undergone profound change in recent years, principally because of downsizing, commercialisation and increased interaction with the private sector. The organisations involved in this report responded by introducing sound corruption prevention strategies that have addressed not only the systems issues but also the promotion of an ethical culture and framework.

Aroo (SRA)

The ongoing focus of the investigation was to support and monitor corruption prevention strategies of the new rail organisations. Each of the rail organisations has now developed innovative corruption prevention strategies, some of which the ICAC is using as best practice examples. These strategies should reduce systemic corruption in the rail organisations. This work is ongoing and the Commission is continuing to work co-operatively with the Minister for Transport and FreightCorp, RAC, RSA and SRA through their respective CEOs, senior management and, where applicable, Boards.

3.5 What are the statistics for the rate of adoption of recommendations for prosecution or disciplinary action?

The rate of adoption of recommendations for prosecution is 62.5% and 97% for disciplinary action to date.

3.6 What criteria are used for determining investigative priorities?

All complaints, reports and other information received by the ICAC are carefully considered prior to a decision being made as to whether it should be the subject of an investigation. Each allegation or report of corruption is assessed against criteria set out in the ICAC Act, the ICAC Corporate Plan and Operational Strategies.

The ICAC believes that each public sector agency has primary responsibility for preventing and dealing with corruption in the agency. This approach and the limitation of ICAC resources means that the ICAC attempts to select that work which has the potential to produce the greatest benefit to the public sector.

In pursuing this approach each complaint, report or piece of information received is considered by an assessments panel of senior staff, which generally meets four days per week. That panel can make a range of recommendations including:

- that the complaint or information does not concern corrupt conduct and it is therefore outside jurisdiction
- that the complaint or information concerns conduct which should be dealt with by the agency concerned or by another agency and that the complaint should be referred for information or for investigation by the appropriate agency
- that the complaint alleges corrupt conduct but that on the information available the matter is assessed as being unlikely to involve corrupt conduct and therefore does not warrant further consideration by the Commission
- that the matter may involve corrupt conduct and should be the subject of preliminary investigation pursuant to s.20A of the ICAC Act that the matter should be referred immediately to an ICAC investigative team because it appears to relate to corrupt conduct which is already the subject of investigation by the ICAC

4. USE OF COMMISSION'S POWERS

4.1 Since the General Meeting in July 1998, what use has the Commission made of its powers under sections 21 (obtaining information), 22 (obtaining documents or other things) and 23 (entering premises) of the Act?

The following table sets out the number of Notices issued by the Commission pursuant to ss.21, 22 and 23 of the ICAC Act from 1989 to 30 June 1999.

	S.21	S.22	S.23
1988/89	1	143	5
1989/90	25	102	1
1990/91	43	190	20
1991/92	38	229	9
1992/93	22	341	10
1993/94	10	239	2
1994/95	18	116	1
1995/96	29	223	4
1996/97	13	163	6
1997/98	42	367	36
1998/99	15	193	3
Total	256	2306	97

4.2 How many listening device warrants, telecommunication intercept warrants, and search warrants have been obtained and executed?

	Listening device warrants	Telephone interception warrants	Search warrants
1988/89	0	0	37
1989/90	1	0	44

Committee on the ICAC

1990/91	1	0	42
1991/92	20	0	18
1992/93	20	10	30
1993/94	2	1	36
1994/95	17	0	32
1995/96	3	3	20
1996/97	46	7	26
1997/98	74	15	22
1998/99	14	10	34
Total	198	46	341

4.3 How many controlled operations have been undertaken?

1997/98	2
1998/99	2
Total	4

4.4 The Ombudsman's Annual Report on Controlled Operations for 1997-1998 noted eight instances of non-compliance with the requirements of the *Law Enforcement (Controlled Operations) Act 1997* (see pp 13-14, 7.2(a) – (g) and 7.4 (a)). What actions have been taken to ensure that all the matters identified by the Ombudsman have been addressed?

For ease of reference the relevant extracts of the Annual Report to Parliament of the NSW Ombudsman pursuant to s23(1) of the Law Enforcement (Controlled Operations) Act 1997 for the period ending 30 June 1998 are reproduced below in italics. The Commission's comments in relation to each paragraph follow the relevant extract.

7.2 The following matters were noted that indicate non-compliance with the requirements of the Act:

Section 8 (1)(b) requires an authority to identify an operation by reference to the relevant plan. The format for the authority being used did not incorporate this. The ICAC has subsequently indicated it will amend its proforma to correct this.

The proforma has been amended.

Section 6(5) requires that the chief executive officer keep a written record of the reason/s for which s/he is satisfied as to the matters referred to in Section 6(3)(a). These were not able to be produced.

Steps have been taken to ensure that the record of reasons is fully completed at the time a controlled operation is authorised.

It is necessary to demonstrate that, in determining an application the chief executive turned his/her mind to the matters set out in Section 6(4)(a) and (b). These relate to the likelihood of success of the controlled operation compared with the likelihood of success of any other law enforcement strategy that it was practicable to conduct for the same purposes; and the reliability of the information concerning the nature and extent of the suspected criminal activity or corrupt conduct. One application was not quite complete in this regard. My officers recommended that these issues be specifically addressed in all applications

The proforma application has been amended by including separate paragraphs in which the matters set out in s6(4)(a) and (b) have to be addressed and the addition of clearer instructions within the proforma.

With respect to one matter, the Assistant Ombudsman indicated that he felt that the terms of the authority did not make totally clear what controlled activities were being authorised for the law enforcement officers of the ICAC involved.

The Commission considered that it had complied with the requirements of the Act in relation to this matter. However, the concern of the Assistant Ombudsman has been noted and additional instructions have been included in the proforma to ensure greater clarity.

In that operation, it further appeared that the authority purported to authorise the participation in controlled activities of a law enforcement

officer of another agency who did not meet the definition of a law enforcement officer of the ICAC. If that person was alternatively considered to be a civilian for the purposes of the operation it was not evident how the requirements of Section 7(3)(a) were satisfied. That section requires that a civilian participant may not be authorised to participate in any aspect of a controlled operation unless the chief executive officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation. Whilst the ICAC has subsequently informed me that these requirements could have been satisfied had the person been classed as a civilian participant, the mis-classification meant that the issue was not addressed.

As noted in the report there was a failure to address s7(3)(a) which arose because an officer from another law enforcement agency was incorrectly classified as a law enforcement participant and not as a civilian participant.

In his recent review of the legislation the Inspector of the Police Integrity Commission recommended that the definition of 'law enforcement participant' be amended to overcome the relevant operational problem which gave rise to this situation: that is the necessity for some agencies, including the ICAC, to use officers of another agency in a controlled operation who do not fall within the current definition.

Clause 3(c) of the Regulation requires a written record of each undertaking given by a civilian participant to be made. These were not among the controlled operation records produced at the time of inspection but have since been adequately identified.

As noted the relevant records did exist although they were not filed with the other controlled operations records at the time of inspection. The Commission's procedures have been amended to ensure that the records of undertaking are kept with other records. An additional proforma has been developed.

Section 8(1)(e) of the Act requires that the authority must state whether or not an authorised person may operate under an assumed name. The records did not adequately address this requirement. ICAC plans to remedy this by further training of its officers.

As well as additional training the proforma authority has been amended to ensure that this is adequately addressed.

7.4 Notifications

The notifications in relation to the receipt of reports under Clause 12 was deficient in that they failed to fully address Clause 12(g). The ICAC has indicated that it will amend its proforma to correct this.

The proforma notification to the Ombudsman has been amended to cover this.

It should be noted that the Ombudsman commented in paragraph 3.3.2 of her report that there were a number of compliance problems that had arisen as the various agencies settled the format of documentation. Most of the matters referred to by the Ombudsman on pages 13 and 14 that related to the Commission were of this type. Similar deficiencies were noted in relation to each of the law enforcement agencies.

In addition to reviewing the various proforma the Commission has taken steps to provide in-house training. Two seminars were presented to legal and investigative staff in September and October 1998 by those members of the legal unit who have been concerned in the development of the legislation and the proforma.

4.5 Does the *Law Enforcement (Controlled Operations) Act 1997* generally appear to be operating well for the purpose of the Commission's investigations?

The Act is generally operating well for the purpose of the Commission's investigations. Those operations which have proceeded have been successful. In the case of two of the four operations that have been authorised the operation was discontinued before commencement for operational reasons.

As noted in the Report of the Ombudsman referred to in question 4.4 and in the review of the Act undertaken by the Inspector of the Police Integrity Commission there are some aspects of the legislation which could be improved to overcome or minimise operational difficulties.

The Commission participated in the review of the Act together with representatives of the other law enforcement agencies currently nominated in the Act and the Ombudsman also took part. Representatives of a number of other agencies who have an interest in being covered by the Act also participated.

The Commission supports the recommendations made by the Inspector for amendments to the legislation. It should be noted that the Inspector quoted extensively from the submissions of the Commission in his report.

5. BUDGET

5.1 The Annual Report for 1997-1998 shows that \$46,000 was allocated for consultancies. What was the nature of the consultancies?

The Commission spent a total of \$45,727 for specialised services from five different consultants, each at an individual cost of less than \$30,000. The consultants and services provided are indicated below:-

- | | |
|-----------------------------|--|
| *KPMG Management Consulting | Assistance in the development of the Commission's tender to lease its computer systems. The final payment was \$7,937. |
| *Kathy Whimp | Writer engaged to assist with the Commission's corruption prevention report as part of the investigation into Aboriginal Land Councils. The cost of this project was \$8,670. |
| *Authentic Technologies | Provide advice and assistance in the migration of the Commission's specialised investigation software to the new computer environment. The cost of this advice and assistance was \$1,697. |
| *The Riches Group | Facilitate the development of the Commission's Corporate Plan for the three years ending June 2001. The cost of this project was \$24,823. |
| *Hewlett Packard | Customisation of the Commission's computer training, including manuals. The cost of this project \$2,600. |

Additional Information:

The Commission spent a total of \$31,670 for specialised services from six different consultants during 1998 - 99, each at an individual cost of less than \$30,000. The consultants and services provided are indicated below:-

- * The Riches Group
Assisted the Commission with its work on the Institutional strengthening Project for the Ombudsman Commissioner, Papua New Guinea. The project was principally funded by AUSAID. The Commission contributed \$4,200 to the cost of this project.

* Conflict Resolution Network Group
Facilitated the establishment of rules and procedures for the Commission Consultative Group. Total cost of this project was \$2,970.

* Gutteridge Haskins and Davey P/L
Undertook an audit of the Commission's air conditioning plant and equipment with a view to establishing a new contract for the maintenance of the plant and equipment. Cost to date \$1,000 with the project having a total cost of \$3,500.

* Roberts Weaver P/L
Reviewed the Commission's telecommunication with a view to recommending a five year technical solution and assisting in the letting of the tender. The total cost of this project was \$13,000.

* Synercon Management Consulting P/L
Assisted in the formulation of specifications for the replacement of the Commission's Library and Records Management systems, including the feasibility of a seamless information management system. The cost to date to the Commission is \$6,400.

* Arthur Andersen
Assisting the Commission in identifying opportunities to reduce fringe benefits tax costs which can be practically implemented. The cost to date to the Commission is \$4,100.

Unit/Section	Type of Services	Amount (\$)
Investigations	Use of Interpreters, Technical and Operational Support, document Examination, Firearms Licences, Telephone Intercept Charges	97,205.88
Legal	Use of Interpreters, Investigation Report Editing, Collation and Distribution, Lawyers Practising Certificates	17,293.75
Corruption Prevention	CP Report Editing, Collation and Distribution, Room Hire for Focus Groups and Sign Language Interpreter	6,498.50

Committee on the ICAC

Education	Media Service and Clippings, Publication Design, Editing, Collation and Distribution, Awards sponsorship and Internet Connection	135,640.90
Research	Data Collection for Community Attitude Survey	17,440.00
Corporate Services	Subscriber and information searches, computer system upgrades and job evaluation	74,313.19
Commission Wide	Internal Audit, Bank Charges, Plant Hire, Storage Charges and other miscellaneous services	57,349.93
Total Fees for Service		\$405,742.15

5.2 Re: \$110,000 allocated for motor vehicles, how many vehicles are run by the Commission?

The amount of \$110,000 relates to the leasing of 13 motor vehicles. Two of these vehicles are paid for mainly by the two Directors who have them as part of their remuneration packages. Their contributions to the cost of motor vehicles in 1997 – 98 were \$7,554. Each of these vehicles is 30% used by the Commission.

The 13 vehicles are used for operational purposes such as attending interviews with informants, witnesses and other meetings, serving process, executing search warrants and attending to other operationally sensitive matters.

6. RESEARCH SECTION

6.1 You indicated at our last meeting that a member of the Research Section was working with the Investigation Unit on identifying areas of potential need for investigation within the public sector. What areas have been identified and has any investigation taken place as a result?

Case management in NSW correctional centres was the focus of this research. This research was undertaken in conjunction with the ICAC investigation into the Department of Corrective Services (Operation Cadix). One of its elements was a segment concerned with improper relationships between some members of staff and inmates in New South Wales correctional institutions. Some of the enquiries undertaken as part of Operation Cadix revealed the pivotal nature of inmate/officer relationships in the management of correctional centres. The importance of case management as a method of managing inmates became apparent as the investigation progressed and public hearings were held. The research was undertaken to enable the ICAC to develop a better understanding of the case management method.

The project had several aims. One was to provide an overview of the historical context of case management and its contemporary application to corrections in NSW, elsewhere in Australia and overseas. The day-to-day operation of case management in NSW corrections was also explored through a series of structured interviews with officers and inmates in NSW correctional centres.

Findings indicate that a substantial number of officers and inmates consider case management to be 'a good thing': officers because it enables them to get to know the inmates better; inmates because it provides them with a specific officer whom they can approach. Inmates were concerned about the confidentiality of any information the officers had about them. Training of officers and recognition of the pivotal role they have in the delivery of case management was identified as an issue for management consideration.

A report on this research (*Case Management in New South Wales Correctional Centres*) was published in March 1999. In order to assist with the implementation of the recommendations flowing from this research, at the NSW Department of Corrective Services' request, the ICAC research officer was assigned to work with the Department of Corrective Services for an initial period of six months, commencing in January 1999. This assignment was subsequently extended until the end of September 1999.

6.2 Since the final report of the review of the Protected Disclosures Act, the Research Section has been involved in activities with the Protected Disclosures Act Implementation Steering Committee. What solutions to any of the problems revealed by the report has this involvement generated?

The Protected Disclosures Act Implementation Steering Committee (the committee) has been operating since July 1996. The Premier formed this inter-departmental committee to address needs identified in the ICAC research 'Monitoring the Impact of *the Protected Disclosures Act, 1994* in NSW Public Sector Agencies and Local Councils' Phases I and II. The Commission representatives on the committee are Peter Gifford, Director Corruption Prevention and Education, (Chair), Sue Bolton, Education Officer, and Vicki Klum, Senior Corruption Prevention Officer.

The ICAC research concluded that public sector agencies and councils needed practical guidance and information about:

- conducting investigations
- implementing internal reporting systems
- legal interpretations and definitions
- protecting staff
- how to change organisational culture
- generic training materials for staff education
- materials to train staff who are going to be receiving protected disclosures

The committee which reports to the Premier through the Director-General, NSW Premier's Department, has produced two reports.

Current membership of the committee includes:

Independent Commission Against Corruption (Chair)
The Audit Office of NSW
NSW Ombudsman
NSW Premier's Department
The Cabinet Office
Department of Local Government
Police Integrity Commission
NSW Police Service (Internal Witness Support Unit)

Responding to identified needs

Conducting Investigations

In October 1997 the ICAC released a handbook 'Internal Investigations' for the purpose of guiding agencies and councils in conducting investigations. A chapter in the 'Practical Guide to Corruption Prevention Guidelines' with the same title was also distributed to public officials in possession of the guidelines.

To support these materials the ICAC developed and is conducting in-house workshops through the Institute of Public Administration of Australia, NSW Branch (IPAA) to reinforce the advice and principles within the investigations resources. Content of the workshops comprises:

- natural justice
- protected disclosures
- planning an investigation
- collecting and handling evidence
- conducting interviews
- investigation reports
- outcomes of investigations

Implementing internal reporting systems

In Premier's Memorandum No: 96-24, agencies were directed to send the Premier's Department a copy of their internal reporting procedures and a brief outline of what steps they had taken to inform their employees to those procedures and implement them in their organisations. The documents submitted were forwarded to the Committee for action.

The NSW Ombudsman was requested to analyse assessed Internal Reporting Systems (IRS) policies adopted by Schedule 1 (government departments) and Schedule 3 (declared authorities) agencies pursuant to the Public Sector Management Act and a range of other agencies within the NSW government. In total 133 policies were reviewed. The analysis of the policies concluded:

- 52 (39%) rated very good and were based on either the model policy or an adaptation
- 16 (12%) rated generally adequate, but deficiencies were identified and advised
- 32 (24%) rated inadequate
- 33 (25%) of organisations had no policy or had not responded

These figures represent the situation at August 1999.

The Department of Local Government agreed to undertake the review of Local Government IRS by conducting a survey. This survey also served as a self-assessment checklist for councils to identify any areas of improvement to the

management of protected disclosures.

A 100% response rate was received by the Department of Local Government from the 177 general purpose councils. Key findings of the survey relating to general purpose councils indicated a marked increase in the number of councils who have implemented IRS since the ICAC research conducted in 1995/6. The survey also found:

- 172 councils (97%) have established an IRS. All policies have been adopted by the elected council.
- 5 councils (3%) do not have an IRS.

Most of the IRS included the basic information regarding the Act, such as protection for staff making disclosures, the nominated person(s) to receive disclosures and a commitment to support staff who report matters. A range of recommendations was included in the final report as solutions to the following problems identified:

- communicating IRS to staff
- information on external reporting
- management of procedures
- complaint handling skills

These concerns are being addressed by the Committee through advice, training and generic resources.

The Department of Local Government report contained a range of recommendations for professional training and ongoing monitoring of the implementation of IRS. The NSW Ombudsman and Department of Local Government have continued direct liaison with state agencies and councils. The results will be presented to the Premier in the forthcoming 1998/99 Annual Report of the Committee.

Legal interpretations and definitions

Advice and guidance has been provided to state agencies and councils by responding to ad hoc requests for advice, training and generic resources.

The Committee has also lent support to recommendations from the review of the Act conducted by the Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission.

The Committee monitors legislative and administrative reform and reports the results of monitoring to stakeholders.

4 – 7 Protecting staff, how to change organisational culture, generic training materials for staff education and materials to train staff who are going to be receiving protected disclosures

These identified needs have been addressed through training, generic materials, feedback mechanisms and advice.

Better Management of Protected Disclosures Workshops

The primary audience for these workshops was nominated protected disclosures co-ordinators, senior public sector management members and all staff who have a role in dealing with disclosures. In excess of 530 participants attended the 27 interactive workshops designed to raise participant knowledge and skills to manage the needs of people involved in the process and security of information.

Evaluation results show that the workshops were highly effective in meeting participant needs and expectations. Respondents indicated substantial increase in knowledge. This was gained in 5 key areas:

- internal reporting systems
- protections for staff making disclosures
- benefits for councils/organisations from protected disclosures
- investigation techniques
- role of the protected disclosures co-ordinator

Other initiatives to enhance knowledge, skills, understanding and implementation of the Act include:

1996/97

Protected Disclosures Co-ordinator Database: A database of all nominated protected disclosures co-ordinators is maintained by the ICAC. The database is used as a resource for communicating useful information regarding protected disclosures implementation and related training to agencies and councils.

Institute of Municipal Management Conference Workshops for Local Government: Two interactive workshops were conducted by the committee for conference delegates to enhance knowledge of the practical application of the Act.

Ombudsman's Protected Disclosures Guidelines, 2nd edition: Released in December 1996

General

Corruption Matters Newspaper: regular articles and practical advice are featured in the tri-annual newspaper from the ICAC, 15,000 copies of which are printed and distributed throughout the public sector.

Corruption Prevention Forum: Committee members have participated as speakers since the introduction of the Act.

1997/8

Focus Groups: In May and June 1998 the ICAC conducted eight focus groups with senior management members from state agencies and local government in Sydney and regional NSW. The focus groups were held to discuss the causes and solutions to the findings in the research study 'Monitoring the Impact of the *Protected Disclosures Act 1994*' which found high incidences of distrust in NSW public sector management.

The analysis of the information obtained through the focus groups was released in April 1999 in the discussion paper *Tips from the Top*. The publication was distributed throughout the public sector and to all Members of Parliament.

1998/9

ICAC and NSW Police Service Committee members presented at the National Investigation Symposium – checks, lies and videotape, 22 & 23 October 1998
ICAC Introduction to Internal Investigations Workshops
Planning of joint Ombudsman/Audit Office workshops for complaint handling
Ongoing *Better Management of Protected Disclosures* conducted on a needs-basis
Ongoing assessment of IRS and provision of advice to agencies and councils

Future Initiatives

In March 1999 the Committee Chair wrote to all Protected Disclosures Coordinators in state agencies and councils to survey their views on the value of Committee initiatives and provide a feedback mechanism for the Committee to respond to needs.

The findings of the survey are presently being collated and the final report drafted. The results will form the basis of the Committee workplan for the coming year. The report will be furnished to the Premier and a copy to the Parliamentary Joint Committee.

6.3 What conclusions have been drawn from the Research Section's research on public sector organisations and s.10 complaints, s.11 reports and protected disclosures, which was mentioned at the last General Meeting?

No conclusions have been drawn to date. The database about characteristics of public authorities is still in the course of being established.

6.4 During focus groups held to identify major corruption risk areas, public sector managers from metropolitan and regional centres evaluated the use of ICAC products and their experience with the ICAC. What were the results of this evaluation?

Forty-six public sector managers were the participants in ten focus groups held during November and December 1997. The following topics about public sector organisations' views of the ICAC were discussed:

1. Types of contact and experiences with the ICAC
2. ICAC services and products used in corruption prevention work.

ICAC contact and experience

Many participants from both country and city organisations were unaware that they could ring the ICAC for advice.

Those who had contacted the ICAC for ideas or advice felt they had a good relationship with ICAC staff, especially Corruption Prevention and Assessments staff.

When discussing the types and methods of educating and training public officials about corruption, many participants mentioned that they use contact with the ICAC as both a means of educating staff and as a deterrent.

The ICAC was also considered an effective threat to those who may consider acting corruptly.

Visibility of ICAC staff

The physical presence of ICAC staff going to organisations and making presentations or speaking with people was considered vital to making people understand the importance of corruption prevention.

Fear of the ICAC

Some perceived the ICAC to have a frightening or punitive image. Some suggested that this was useful because they used it as a threat tactic in their corruption prevention work. Others, however, saw this as a problematic image as it deterred them from approaching the ICAC for advice and assistance.

ICAC investigations

Those organisations that had experienced an ICAC investigation said that this had caused them to increase the priority given to corruption prevention in their organisation.

Participants described ICAC investigations as positive experiences when they perceived that the ICAC had acted quickly and achieved a tangible outcome.

Participants were unanimous in their opinions that investigation reports are useful tools which prompt them to think about issues which they may not otherwise consider.

Assisting organisations with the impact of ICAC investigations

Participants suggested that the ICAC should do more to help organisations get through investigations. They suggested that when embarking upon an investigation, the ICAC should give advice to the management of organisations about how they may be able to lessen the negative impact on staff. They would like the ICAC to educate management about the potential negative consequences of investigations at the outset and offer them helpful strategies for minimising those negative effects.

Outcome: In response to this request the ICAC has produced a publication entitled *How to Handle the Effects of an ICAC Investigation*, published in June 1999.

Information provision

Some participants referred to a lack of information provided to public officials in regard to:

- how it uses the information from s.11 reports and s.10 complaints;
- how much information organisations should provide to the ICAC when they are asked to look into a report;
- how organisations should conduct internal investigations.

Outcomes:

The ICAC produced a booklet entitled *Internal Investigations*. A chapter in the *Practical Guide to Corruption Prevention* with the same title was also distributed to public officials in possession of the guide. In-house workshops run with the assistance of Institute of Public Administration of Australia, NSW Branch (IPAA)

reinforce the advice provided in these resources.

In addition, ICAC Investigators are available to give guidance and ideas to organisations who are conducting their own investigations. Public officials have been informed of this service in the publications *Internal Investigations* and *Tips from the Top*.

The ICAC is currently revising its *Reporting corrupt conduct to the ICAC: Guidelines for principal officers* and is planning on reviewing its s.11 correspondence. It is also trialing a new information brochure for s.10 complainants to test whether it meets their information needs. The Commission's standard complaint correspondence sent to complainants has been redrafted in order to focus more on the complainant's role as an information provider and to ensure that the complainant understands the way in which the information will be processed by the ICAC. These changes should, amongst other things, result in better information about how information s.11 reports and s.10 complaints is used and how much and what type of information public authorities should provide to the ICAC when making a s.11 report.

Feedback about the outcome of investigations or reports

Some participants were concerned about the length of time it takes the ICAC to:

- give feedback about the outcomes of investigation after public officials have provided information to the ICAC;
- write reports and provide feedback on the outcomes of investigations.

ICAC products and publications

Generally positive comments were received about the:

- *Community advisers handbook*.
- *Practical guide to corruption prevention*.
- *Internal investigations handbook*.
- ICAC publications in general.
- Use of case studies.

More information was needed about:

- Tendering and contracting out.
- Public/private interface.
- Training for staff from Non-English Speaking Backgrounds.
- Tools for educating staff about corruption.

Some suggested that:

- Reports should clarify who the target audience is.
- Reports and publications should be shorter or accompanied by summaries.

General suggestions included:

- When reports are issued, follow-up workshops on the lessons learnt should be held.
- Use open forums to discuss issues arising out of reports.
- Need to reinforce rewards and punishments.
- Use more case studies if they are relevant and understandable.
- Publish ICAC summaries of reports in the public service notices.
- ICAC publications are useful as they provide examples.
- Use TV and local media for promotion in country areas.
- ICAC need to provide more examples of how to deal with loyalty vs. integrity.
- ICAC should provide advice and counselling services to accompany investigations.

An additional issue was that country offices do not receive all the publications and products their city offices receive. Distribution from head offices to regional/district offices of government agencies is not occurring as effectively as it might. Similarly distribution *within* country organisations is not occurring as effectively as it might.

Publications and products need to be specifically targeted in both content and marketing for:

- i. Field workers
- ii. General employees/staff
- iii. Middle management
- iv. Senior management
- v. Politicians

Outcomes:

- Revised Conduct Becoming training kit released to assist in educating local government and public sector agencies about public duty and responding appropriately to corruption
- Corruption Matters newspaper “makes it short” - publishes summaries of investigations and reports, makes available information about best practice preventive strategies, provides information about preventive training run by other agencies that readers can access, explores issues and fosters debate about corruption or ethics related matters
- Telemarketing used to increase regional uptake of Corruption Matters newspaper
- Commission website being redesigned to respond better to client needs and to make ICAC publications more accessible

- Resources developed for agencies to use to help inform non English speaking clients about bribery
- Distribution lists for reports have been expanded
- Summaries accompany reports were possible.
- Workshops are being conducted for publications such as *Ethics the Key to Good Management* upon request from organisations.

6.5 What new activities has the Research Section undertaken since our last meeting?

An outline of research work underway between 1 July 1998 and 30 June 1999 is provided below.

Ethical culture project: The ICAC is conducting a research project looking at ethical culture in the NSW public sector. This project has two components:

Ethics: The Key to Good Management, which was published in December 1998, involves a review of the ethics and organisational change literature. This review examines empirical evidence of how ethical culture impacts on the efficient functioning of an organisation as well as identifying which organisational factors impact upon ethical culture. The literature has shown that emphasising ethical work practices has a positive impact on the efficient functioning of an organisation. For example, the research has shown that the ethical tone of an organisation impacts upon:

- efficiency and effectiveness
- decision-making processes
- employee commitment and job satisfaction
- employee stress
- employee turnover.

Ethics survey: will explore the relationship between the tendency to behave unethically in an organisation and the perceptions about organisational leadership and values within the NSW public sector. The aim of the survey is to use the major factors identified in the literature (as outlined in *Ethics - the key to good management*) which impact on the ethical tone of organisations and as a basis for a tool which can help public sector managers to pinpoint problem areas for the creation of a strong ethical tone in their organisations. Questionnaires have been distributed to a sample of state and local government agencies. Completed questionnaires are still being returned.

Private contractors' perceptions of the public sector: This telephone survey with more than 200 contractors from private sector organisations that had been successful in gaining public sector contracts in the previous 12 months, was completed during the year. Given that the NSW public sector is increasingly relying on private sector contractors for the provision of services and given that there are different rules governing work practices in the public and private sectors, it is important to understand the knowledge and misconceptions that private sector contractors have about working for the NSW public sector. More information about this research can be found in the report, *Private contractors' perceptions of working for the NSW public sector*, which was published in January 1999.

Discussion paper about the corruption prevention challenges facing public sector managers: Focus groups were used to identify the key challenges which public sector managers have identified in their organisations, and the approaches which they have employed in their efforts to make workplaces as corruption-free as possible. The challenges and approaches are summarised in *Tips from the top: Senior NSW public sector managers discuss the challenges of preventing corruption* which was published in April 1999. The dissemination of the experiences and opinions of these managers in this paper is intended to stimulate thought and discussion among managers about how to optimise corruption prevention strategies within their own organisations. The consistent and overwhelming message from managers was that corruption prevention strategies require thought, effort, and commitment from the top. Managers were in agreement that corruption prevention should become part of an overall integrated management strategy, rather than being treated in isolation, as an add-on. Managers considered that if corruption prevention becomes a standard part of the organisation's overarching ethos, benefits will flow onto areas of general efficiency and effectiveness and be an advantage, rather than a burden on resources.

Unravelling Corruption II: The ICAC is repeating a survey which it conducted in 1993 in order to find out how perceptions of workplace behaviours and attitudes to reporting corruption have changed over recent years. Questionnaires were distributed to a sample of approximately 1500 public sector employees across NSW between March and June 1999. Data analysis has yet to commence.

Community and journalists attitude survey 1999: The 1999 community and journalists attitude survey was conducted with a random sample of 514 people over the age of 18 years, from across New South Wales and a sample of 100 journalists from print media, radio and television across New South Wales. The survey explored people's attitudes to corruption. Participants were asked about their attitudes to reporting corruption, their perceptions of the effects of corruption, and how big a problem corruption was for the community. Awareness

of and support for the ICAC was also explored. More information about this survey can be found in the report, community and journalists' attitudes to corruption and the ICAC, which was published in June 1999. (Refer also to answers to the questions 12.0-12.4.)

Organisational characteristics database: Work has continued on the development of a database of characteristics of NSW public sector organisations. The purpose of this database is to explore if there are any patterns in the differences between organisations about which the ICAC receives allegations of corruption and those about which the ICAC does not receive allegations. The differences between organisations that report to the ICAC under s.11 of the ICAC Act and those who do not make s.11 reports are also to be explored.

In addition, one member of the Research Section has continued her work on ***Case Management within correctional centres*** (refer to Q6.1 for more details).

7. CORRUPTION PREVENTION UNIT

7.1 Can you indicate how the Unit is continuing to assist public sector organisations incorporate strategies to manage change in relation to corruption prevention, and whether any assessment has been made of the success of these strategies?

The ICAC's current approach to helping organisations implement organisational change in relation to corruption prevention is outlined under 7.2. During the 1999/2000 financial year, the ICAC intends to pilot with a number of organisations the approach documented in *Organisational Integrity – Converting Values into Action*. This process will enable us to assess and enhance the effectiveness of the proposed strategies.

7.2 What activities have been undertaken by the Corruption Prevention Unit since the last meeting?

Corruption Prevention Strategies in the reporting period have included the following activities:

STRATEGIC PREVENTION

This work influences public policy so that it responds to ethical and corruption prevention issues. Strategic prevention also provides guidance on emerging issues affecting the whole or large parts of the public sector. As such, it often involves working with central policy-making or regulatory agencies to develop sector-wide policies and guidelines.

Implementing Change – An Organisational Integrity Model

The ICAC's current approach to corruption prevention gives greater recognition to the interdependency of a range of organisational features that together contribute to an organisation's ethical health and therefore its resistance to corruption. A conceptual ethical model has been introduced to reflect this interdependency and help structure our work with organisations.

The model is the cornerstone of a range of tools being developed by the ICAC which will assist public sector organisations assess their ethical health, develop co-ordinated strategies to enhance their resistance to corruption and successfully implement those strategies.

The ICAC has prepared a draft paper entitled *Organisational Integrity - Converting Values into Action* which describes the ethical model and its components and how it can be used by public sector organisations to evaluate and enhance their organisation's performance.

Guidance About Managing The Impact Of An ICAC Investigation

To meet the information needs of agencies that may be the subject of ICAC investigations, the ICAC published *How to handle the effects of an ICAC investigation: A guide for public sector managers*. That information includes an outline of the process of an investigation, the rights and responsibilities of staff during an investigation, how staff may react to that organisation being investigated, and how to improve an organisation in the wake of an investigation.

Liaison With Unions

The ICAC recognises the important role which unions can play in promoting ethical conduct to NSW public sector employees. Unions that have significant coverage of public sector employees were consulted on what information they need about the ICAC's work and what is involved in investigations. Further work will be done in the next financial year to assist unions in providing help to members about matters relating to corrupt conduct.

Preventing Corruption In Government Regulatory Functions

The ICAC has investigated corrupt conduct in both state and local government regulatory functions on a number of occasions. As part of a recent local government inquiry, the ICAC reviewed the way in which local councils manage environmental health and building regulation. That work resulted in a report in June 1998, *Accountable Health and Building Inspections: recommendations for local government*.

During the year work was undertaken to help implement the resource within the local government sector including:

- a media campaign,
- working with various local councils and relevant government departments, peak bodies and unions,
- consulting with key tertiary education institutions that offer courses in health and building surveying,
- the ICAC recognising that the issues raised in its report also had relevance for the public sector as a whole.

Recruitment and Selection

Recruitment and selection processes have formed the basis of 12 per cent of all complaints to the ICAC. As a result the ICAC undertook a project to review the corruption risks and concerns in public sector recruitment and selection practices.

In May the ICAC launched *Best Practice, Best Person: Integrity in Public Sector Recruitment*. Intended for public officials who manage or are otherwise involved in recruitment and selection process, the report will also assist public sector job candidates to understand how the system is meant to work.

The Offering And Acceptance Of Gifts, Benefits And Bribes In The Public Sector

As 51 per cent of formal investigations undertaken by the ICAC have at their centre the offering of gifts, benefits or other bribes to public officials, a project to consider this issue was a priority for the year.

A publication, *Gifts, benefits or just plain bribes* was produced to guide public officials who could be offered a gift or benefit, which may be a bribe in the course of their official duties.

New Technology

The public sector is moving to take advantage of the efficiencies provided by computers and communications technology, especially those associated with the Internet, for communication and service provision.

The ICAC has commenced a project to assist the NSW public sector develop strategies to deal with corruption risks brought about by the use of various electronic technologies. Progress is hampered by resources available – as was reported to Treasury in relation to the rejection of the ICAC's request for additional capital and other funds.

Forced Medical Retirement Of Public Sector Employees

During the year the Commission continued to receive complaints from a number of public sector employees who were dissatisfied with the way in which they were allegedly forced into medical retirement.

The Commission is currently focussing on examining in detail the procedures followed by those agencies which have been the subject of the majority of the complaints with a view to ensuring that future practice will be such that ethical standards are maintained at every stage of the process.

Briefings For Newly Appointed Ministers

The recent State election was followed by the appointment of a number of new Ministers. The ICAC recognised that these Ministers might appreciate a briefing to help them understand, identify and manage potential or actual corruption issues in their respective portfolios. Briefings were therefore provided for interested Ministers, who expressed their appreciation for the clarity and comprehensiveness of the briefings.

COMPLEMENTING INVESTIGATIVE WORK

Investigations and hearings have the effect of exposing corruption and describing how it came about. Corruption prevention enables organisations to emerge from the investigation process positively and with an increased likelihood that the problems will not recur.

Preventing Corruption In NSW Aboriginal Land Councils

Implementation of the 26 recommendations contained in its April 1998 Report on Investigation into Aboriginal Lands Councils in New South Wales was a priority for the year. See Q 3.4

Investigation Into Waste Services Provided In Sydney City Council

The ICAC has been assisting Sydney Council to understand the corruption issues involved in the operation of waste disposal depots and assist them in developing effective corruption prevention strategies.

Investigation Into The Department Of Corrective Services

This investigation has continued from the last reporting period. Commission Officers continue to work with the Department of Corrective Services on a number of issues exposed during the investigation. See Q 3.4.

ADVICE

The ICAC's corruption prevention advice—provided over the phone and in response to written or personal requests—is available to all public sector employees and agencies. Seminar presentations are made where a significant need is established.

Major Advice Matters

Major issues on which advice was provided included:

- remediation of Homebush Bay
- review of Government Procurement Policy codes of practice and tendering
- Internet corruption prevention issues
- contributions to a review of public tenant housing allocations which highlighted mechanism to ensure high levels of integrity in such systems
- advice to a number of agencies about implementing ethical leadership strategies

- giving advice to the Hong Kong ICAC about 13 best practice modules relating to topics including information systems security, stores management, investment of surplus funds in fixed income accounts and administration of consultants
- assisting a number of Councils to deal with perceived conflict of interests in the situation where they have a dual role as a regulator and a developer. In particular, advice was provided about measures that could be taken to facilitate public scrutiny and enhance accountability to ensure the impartial management of these dual roles.

Increasingly the ICAC is being asked to provide corruption prevention advice and assistance to overseas organisations, like the World Bank, and has been involved with Ausaid and the Asian Development Bank in the development and implementation of programs for countries such as Papua New Guinea, Thailand, Indonesia and the Philippines.

In addition, at the request of and with funding from the Commonwealth Secretariat, the Commission participated as one of an Expert Group of 10, to formulate anti-corruption strategies (both international and domestic) for the 54 Commonwealth nations. The resultant strategy recommendations will be considered by the Commonwealth Heads of Nations (CHOGM) at their meeting in Durban in November 1999.

Corruption Prevention Seminars

Standing arrangements, as well as specific requests from organisations, shaped the seminar program for the year. Presentations were given to public and private sector bodies by both the Commissioner and various members of the staff.

PROVIDING INFORMATION AND TRAINING

The ICAC encourages public sector agencies to help it expose and minimise corruption by making the relevant information and skills training available. Strategies that help inform the NSW public and public sector include the use of the media and the Internet, as well as the following:

Got An Ethical Problem?

The Commission produced a poster entitled "Got an ethical problem?" for dissemination to all public sector agencies in the State. The poster aims to provide simple, easy to follow guidance to public officials who are faced with an ethical dilemma because someone in the course of their work asks them to do something that may be questionable.

The NSW Corruption Prevention Committee Inc

The Committee is an incorporated body comprising elected members from the NSW public sector and ex-officio members from ICAC, Office of the Ombudsman, Audit Office and NSW Police Service. It promotes corruption prevention through publications, seminars and fora, which address a range of issues.

New Masters Course On Corruption and Anti-Corruption - Australian National University

In 1998, the Australian National University Asia Pacific School of Economics and Management established a new course focussing exclusively on corruption and corruption prevention methodology. The core of this new course is based largely on the ICAC corruption prevention approach and uses ICAC corruption prevention and investigation officers as lecturers and facilitators.

The great value of this undertaking is that presenting ICAC corruption prevention methods in a rigorous academic environment creates discussion and criticism, which can be used to inform the ongoing development of those methods.

8. EDUCATION SECTION

8.1 What were the results of the evaluation of the Commission's newspaper *Corruption Matters*?

The second questionnaire to survey reader's responses to *Corruption Matters* was distributed as an article in the newspaper. The pattern of these responses was highly aligned with the earlier focus group feedback.

- Most found the newspaper to be useful, relevant and easy to read and most read all of the articles.
- Copies are often read by more than one public official.
- Readers would like to see more frequent publication.
- In a self assessment question, over half of the respondents said that their knowledge had increased a great deal about what the ICAC does, corruption prevention strategies and information available from the ICAC.
- To improve regional uptake, telemarketing was carried out. Of the 132 regional officials contacted, 95 asked to be placed on the *Corruption Matters* mailing list. 30 said that they already received it and half of these requested more copies in future.

8.2 What were the results of the evaluation of the internal investigation workshops conducted for public sector staff?

The workshops are considered to be effective in meeting agency needs for assistance in this area and more are planned in the coming year. Of the 87 participants who attended the seven workshops, 75 completed evaluations producing the following results:

- 99% said the workshop was relevant (75% said very relevant)
- Participants reported increased understanding of
 - Natural justice 80%
 - Protected disclosures 87%
 - Handling evidence 85%
 - Planning an investigation 80%
 - Conducting interviews 73%
- All nominated key learning outcomes were met
- The presenters' knowledge was rated excellent or good in all subject areas.
- Some further information was considered desirable. The main areas where this was sought were:
 - Agency specific information / examples (7 requested more)
 - Interaction / case study (7 requested more)

- Public Sector Management Act (4 requested more)
- Framing of recommendations / report writing (3 requested more)

8.3 What activities have been undertaken by the Education Section since our last meeting?

The Commission's education work is substantially about communication. The Section assists the Commission to inform widely and to bring about changes in understandings and attitudes; and in behaviours – the way things are done. The work is directed at public sector and community audiences.

Education of the public sector aims to:

Promote understanding of ethics and public duty throughout the sector
Improve understanding of how to report / handle corruption allegations
Help inform the public sector about the ICAC including assisting the implementation of recommendations.

Education of the community aims to:

Inform about the ICAC and its work
Help people take responsible action against corruption by providing information and material
Provide input to formal and professional education to help shape ethical attitudes and behaviours
International liaison—keeping in touch with approaches concerning corruption prevention, education and investigation.

Since the last meeting the following activities have been undertaken:

PUBLIC SECTOR EDUCATION

Promote understanding of ethics and public duty throughout the sector

Ethics Working Party

The Ethics Working Party promotes the inclusion of ethics in the public sector policy framework, and supports the implementation of ethics and public duty related initiatives throughout the NSW public sector. It contributes to public sector policy in this regard by developing initiatives and referring them to the Chief Executives Committee for consideration and possible adoption. It is chaired by The Director, Public Sector Management Office, NSW Premier's Department and has members drawn from the Labor Council of NSW, NSW Ombudsman, Audit Office of NSW, NSW Treasury, Department of Public Works and Services, Department of Local Government, Department of Education and Training and the ICAC.

Implementation of ICAC ethics training resource

The 1996 video-based training resource, *Conduct Becoming...the personal responsibility of public duty*, was evaluated and further developed during the year. The expanded kit now includes concise background information and exercises on public duty as well as activities which incorporate the agency's own code of conduct

Public Sector Ethics Curriculum

In July 1997, the ICAC submitted a proposal to the Department of Education and Training to fund the development of an ethics curriculum for the public sector. The ICAC submission was approved in August 1998. The tender, prepared with the assistance of the NSW Public Sector ITAB was let in April 1999, to NSW TAFE Commission. The ICAC will help guide this initiative through direct consultation with the successful tenderers and also the Ethics Working Party

Ethics Poster

A poster entitled "Got an ethical problem?" was produced to provide simple, easy to follow guidance for public officials who are faced with an ethical dilemma. It also raises awareness about how to respond to questionable conduct by public officials. It will be distributed to all public sector agencies in the State.

Improve understanding of how to report / handle corruption allegations

Protected Disclosures Implementation Steering Committee

The Premier established the Protected Disclosures Implementation Steering Committee in 1996 to heighten public sector awareness and response levels to the provisions of the Protected Disclosures Act 1994. The Committee, which is chaired by the ICAC, includes representatives from the ICAC, NSW Ombudsman, Audit Office of NSW; NSW Premier's Department, Department of Local Government, The Cabinet Office, Police Integrity Commission and the NSW Police Service. During the year the ICAC also lead a number of Committee initiatives including workshops and focus groups which examined responses to findings published in Monitoring the Impact of the Protected Disclosures Act 1994. Focus group discussions were held with general managers of local councils and CEOs of state agencies.

National investigations symposium - checks, lies and videotape

This joint ICAC, NSW Ombudsman and Institute of Public Administration of Australia (IPAA) conference followed the successful 1996 Investigations Techniques Conference. It was held at Manly in October 1998. The Symposium was attended by over 250 participants from NSW, interstate and overseas agencies. Participants rated the conference highly as meeting needs and called for more formal training and resources.

Internal investigation training

The ICAC, with administrative support from IPAA, ran workshops to provide public sector personnel who are not professional investigators with practical advice on how to conduct a range of minor internal investigations competently and efficiently. The training helps implement the *Internal Investigations Handbook* published in October 1997.

Help inform the public sector about the ICAC including assisting the implementation of recommendations.

Corruption Matters Newspaper

Three issues of Corruption Matters, the ICAC's newspaper, were produced during the year. 15,000 copies of each issue were produced and distributed to individuals and agencies throughout the NSW public sector with readership expanding to include secondary school principals, protected disclosures co-ordinators and Aboriginal Land Councils as well as over 400 new subscriptions.

Assistance in implementing recommendations

Education Section support was provided to help implement corruption prevention recommendations arising out of Zack (advertisements) and Cal (suburban and regional media and DLG-distributed guidance)

COMMUNITY EDUCATION

Informing about the ICAC and its work

Internet

The overall aim of the ICAC's website development is to improve communication of agency information to public sector and community audiences.

The in-house development of the site continued during 1998-99. All of the major components of the first stage of the ICAC web site plan were completed, but the implementation of further plans was limited to the internal capability available. External assistance was needed to advise on how best to develop the site. As a result the ICAC tendered for the further development of the site including:

- re-designing the home page, site structure and site appearance
- establishing systems to enable consistent simultaneous internet publication of reports and other publications
- establishing ongoing evaluation and feedback systems for the site

- further developing the site content and site management procedures

A contract was let and a consultant was engaged to provide a report recommending a site design specification to meet ICAC requirements for current and future applications. That report was received and accepted by Senior Management. An Internet Project Plan for 1999-2000 will be developed to implement the consultant's report.

Media

The media manager handles the day to day issues associated with servicing media enquiries, and in particular those of the metropolitan daily and electronic media. Most attention is given to ICAC public investigation hearings, which provide easy access to many elements comprising news: misplaced trust in named public sector officials, waste of taxpayers' resources, and corrupt officials.

The Education Section is working to complement this media role through development of niche media plans emphasising preventive messages. The aim is to communicate more regularly to suburban, regional and other niche media where readership is aligned with ICAC target audiences. Planning is still in progress and work will commence in the new calendar year.

Publications

Eight Investigation reports, five Corruption Prevention reports, and seven Research reports were produced since July 1998.

Helping people take responsible action against corruption

Assistance to those whose first language is not English

Resources (a poster and separate brochures in English and 11 community languages) produced in the previous financial year were distributed and promoted. The materials were based on the message "Bribery = Crime in anyone's language". Over 17,900 English brochures and 20,000 of the various language brochures and the poster were distributed to public sector agencies, community organisations and ethnic-specific agencies and forums.

A press release advising NESB community members about the risks of corruption was translated into the 11 community languages and was published in 18 ethnic press outlets. The ICAC also ran 13 workshops with community workers and ethnic agency members to raise awareness of corruption as an issue.

Assistance to members of the public in reporting corruption to ICAC

A new information resource was produced for distribution to members of the

public who enquire about how to provide information, or who have provided initial information. The effectiveness of this material will be evaluated and the findings will be used to further improve communication in this area.

Input to formal and professional education

Promoting existing schools resources

Over recent years the ICAC has developed educational resources for schools to help teachers achieve the attitude and value outcomes specified in courses. While no new resources were produced since July 1998, work has been undertaken to increase the use of available material.

The recently evaluated and updated *Ethics & Enterprise kit* provides curriculum and attitudes and values teaching for students undertaking HSC Business Studies and also Year 10 Commerce. This kit was promoted and further distributed bringing the number of schools holding the kit to about 80 per cent of the schools that teach the subjects.

ICAC Ethics Award within the Minister's Young Designers Award

The *Minister's Young Designers Award* (MYDA) is a joint initiative of the Office of the Board of Studies NSW, NSW Department of Education and the Education Minister's office. It is designed to encourage Year 7 and 8 students of Design & Technology in NSW to achieve the objectives of that syllabus—including attitude and value outcomes strongly aligned with ethical reasoning. The ICAC has produced curriculum resources to support the teaching of these attitude and values outcomes.

The ICAC Ethics Award acknowledges the entry that best demonstrates the ethical nature of the process used in developing the design. The 1998 winners were Jonathan Bailey and Andrew Park from the Redeemer Baptist School, Sydney, for their 'Attention Seeker!' project.

International liaison

International visitors

The ICAC is seen as an international leader in the field of corruption prevention, education and investigation. The following international delegations visited the ICAC during 1998–99:

Committee on the ICAC

Visitor/ Delegation	Date	Purpose of Visit	Sponsor/Organiser
Senior Thai Public Servant delegation	9 July 1998	To discuss a range of issues concerning public sector management, including: Performance and accountability in the Australian public sector; The checks and balances of the Australian political system; Transparency of decision-making; Anti-discrimination and anti-corruption measures in the Australian political system	Development Studies Program, The University of New England, funded through AusAID
Mr Merhej, Lebanese Minister for Administrative Reform	10 August 1998	To discuss a range of issues concerning public sector management, including: Corruption, fraud and ethics; and publicsector reform and privatisation	Middle East and Africa Branch, Department of Foreign Affairs and Trade
Senior People's Republic of China Public Officials - representing the Chinese ministry of Foreign Affairs, the Supreme People's Court and the Ministry of Justice	12 August 1998	To be briefed on key operational sections of the ICAC (Legal, Investigations and Corruption Prevention)	Human Rights and Indigenous Section, Department of Foreign Affairs and Trade
The Hon Vincenzo Siniscalchi, Deputy President of the Anti-Corruption Commission, Italy, and Member of the Lower House of the Italian Parliament	21 August 1998	To discuss anti-corruption measures of the ICAC	National Operations Visits Office, Australian Federal Police
Senior delegates from the South African Public Service Commission	27 August 1998	To learn from the reform experience of the Australian Public Service, and selected federal and state agencies	Public Service and Merit Protection Commission

Committee on the ICAC

Visitor/ Delegation	Date	Purpose of Visit	Sponsor/Organiser
Joy Hassell, Director Internal Audit, East Tennessee State University	11 September 1998	To learn more about current fraud control, corruption, conflict of interest, and code of conduct methods in Australia	Internal Audit Department, the University of NSW
Members of the Irish Parliament's Committee on Members' Interests	16 November 1998	To gain a general briefing on the functions of the ICAC; to discuss issues related to the pecuniary interests of Mps	The Embassy of Ireland, Canberra
Bangladesh Public Administration Reform Commission	11 January 1999	To study the operations of the ICAC	Department of Foreign Affairs and Trade
Vietnamese Procurator delegation	5 February 1999	To study the operations and training techniques of the ICAC's legal and investigations sections	The Centre for Legal Education (Law Foundation)
Mr Aun Moniroth, Secretary-General, Cambodian Ministry of Economy and Finance	9 March 1999	To discuss: public financial management; public sector management reform; the role of the government in facilitating and supervising appropriate private investment	Department of Foreign Affairs and Trade - Special Visits Programme
Thai Senior Study Group Mission on Public Sector reform	11 March 1999	To study the operations of the ICAC	Public Service and Merit Protection Commission
Mr Thomaseu Warren, Chief Auditor of Samoa	19 March 1999	To discuss the workings of the ICAC's Corruption Prevention and Educaion, Investigations and Legal sections	Department of Foreign Affairs and Trade - Special Visits Programme
Mr Gerald Zackios Attorney-General of the Marshall Islands	21 April 1999	To discuss the impact of corruption on government officials, how Australia is attempting to eradicate corruption, practical measures and good governance	Department of Foreign Affairs and Trade - Special Visits Programme

Committee on the ICAC

Visitor/ Delegation	Date	Purpose of Visit	Sponsor/Organiser
Vietnamese court judges delegation	23 April 1999	To compare the ICAC o institutions such as the PIC, as well as to cover: role and overview of the Commission powers vested in the ICAC (especially investigations); how the Commission undertakes investigations right o the ICAC to investigate, and relationship with, the judiciary	Centre for Asian and Pacific Law in the University of Sydney
Vietnamese prosecutors - first delegation	29 June 1999	To gather information on how the ICAC undertakes investigations	Centre for Asian and Pacific Law in the University of Sydney
Vietnamese court judges - second delegation		To discuss: role and overview of the Commission powers vested in the ICAC (especially investigations); how the Commission undertakes investigations right of the ICAC to investigate, and relationship with, the judiciary	Centre for Asian and Pacific Law.

9. WEIGHING THE WASTE: AN INVESTIGATION INTO CONDUCT AT LOCAL COUNCIL WASTE DEPOT WEIGHBRIDGES AT ST PETERS & ELSEWHERE, JUNE 1999

9.1 Has Gosford City Council changed the operational and auditing procedures at its South Woy Woy waste disposal depot following the Commission's investigations into its operations?

Gosford City Council advises that it has conducted a full review of its operations and made a number of improvements. These include; installing video surveillance, daily computer reconciliation, revised gatehouse procedures, rotation of staff through the gate house and improved access and egress control.

9.2 The Commission's Report indicated that there had been only two responses to the joint letter sent by you and the Director General of the Department of Local Government in November 1998 to all local councils operating commercial or part-commercial waste disposal depots. Are you aware of any steps taken by the Department of Local Government to ensure that relevant councils review the operations of their waste depots and put into place the recommendations made in the Report?

The joint letter did not seek a written response, rather it asked those Councils which might be affected to examine their operations. The Department of Local Government is understood to be developing its capacity to advise Councils with respect to a range of aspects of their performance. Activities of a commercial nature, such as waste management depots are expected to be included.

9.3 The Report indicates that new employees at Sydney City Council receive information about the Council's Code of Conduct during their induction and orientation training. Are councils encouraged to hold refresher workshops for staff on ethics and Codes of Conduct at regular intervals, in order to reinforce this information and ensure that all staff remain conversant with behavioural standards

The ICAC encourages all State agencies, including Councils, to ensure that their staff are made, and remain, fully aware of all relevant codes of conduct and practices. Particular emphasis on ethical behaviour is encouraged. This includes refreshers in relation to standards of behaviour.

9.4 Prior to the ICAC investigation, the income for recyclable material removed from the St Peters facility was regarded as a perk for employees. This income is now split 50-50 between staff and Council. Do you regard this as a satisfactory policy?

The Council operates its waste depot as a commercial venture. It is open to Council to enter into any reasonable commercial arrangements including arrangements with its staff. The ICAC would advocate ensuring that any such arrangements are open, transparent and in the interests of ratepayers. The outcomes for the Council and the employees should be published and readily available to ratepayers and residents.

10. INVESTIGATION INTO THE DEPARTMENT OF CORRECTIVE SERVICES, THIRD REPORT – BETRAYAL OF TRUST

10.1 What progress has been made by the Department of Corrective Services towards implementing the recommendations contained in the Commission's report?

Brown Segment

Senior Correctional Officer Brown was dismissed from Corrective Services in December 1998. He was found to have formed improper association with nine inmates, released confidential information to inmates, warned inmates of imminent urinalysis testing, compromised the pre-release works program, received gifts and benefits from inmates and trafficked contraband in the form of money, food and alcohol.

As a result Corrective Services has taken the following corruption prevention measures.

Urinalysis Program

The purpose of compulsory urine drug testing of inmates is to reduce drug abuse, control the spread of disease caused by injectible drugs and reduce the negative effects of drug dealing and drug induced behaviour by inmates.

Corrective Services has determined that random selection of inmates for testing provides a relatively true picture of illicit drug use in correctional centres, so a computer based random sampling program is used to obtain samples.

Corrective Services has acknowledged that this information should be more effectively safeguarded. Lists of inmates will now be sent to secure areas within correctional centres. A designated officer will now secure the list until it is needed and be accountable for preventing advance warning to inmates. Only officers involved in testing will have access to the lists.

Improving the work release program

Corrective Services' Pre-release Work program aims to give inmates an opportunity to integrate and adjust to society prior to release and take responsibility for their own behaviour through the privileges associated with the program.

The ICAC's investigation revealed that the system could be and was abused and that sham employment arrangements had been contrived. Corrective Services has acknowledged the program's shortcomings and has thoroughly reviewed it. The principal initiative has been the creation of the Pre-release Program Unit. It has a corruption prevention focus and will monitor and administer the program.

The eligibility criteria for work release have been revised, as have the roles of correctional officers involved in inmate management. There will be stricter regulation of inmates' whereabouts on work release. Electronic monitoring of inmates on work release has been introduced. In future, inmates who breach work release conditions will generally be excluded from further participation in the program. Certain categories of inmates (e.g. drug traffickers, sex offenders) will be excluded from the program.

The rosters of staff responsible for checking inmates on work release will be secured. Because Officer Brown obtained this information and warned an inmate, only officers with a "need to know" will be able to access the rosters. All inmates' requests for excursions from a workplace will strictly controlled and logged electronically.

Since August 1998, the Department has electronically monitored work release inmates to ensure an inmate's compliance with the Department's standards of conduct, policies and procedures and the relevant legislation through both electronic checks as well as site visits.

Correctional officers involved in administering the work release program will be rotated every 2-3 years and will be subject to a special code of conduct.

Through the newly created position of Business Manager, the Department now intends to choose employers who will sponsor inmates on work release, to avoid sham arrangements. The Business Manager will create employment opportunities for inmates, acting as broker between the inmate and the employer.

Bartley Segment - Tampering with records

Correctional Officer Bartley was paid for improperly removing documents from a case management file in breach of regulations. Corrective Services reviewed file security generally and that all precautions should be taken to ensure the security and confidentiality of files.

Since the ICAC inquiry, new security measures for inmate warrant files have been devised. All correctional centres are required to have a file register and a system for tracking files and access to them. Observation areas are to be established

where files are accessed. Periodic reconciliation and audit of warrant files will occur. Deliberate breaches will be disciplinary matters

11. REPORT ON INVESTIGATION INTO ABORIGINAL LAND COUNCILS IN NEW SOUTH WALES

11.1 This report focuses on the Commission's investigation into five aboriginal land councils and makes findings of corrupt conduct against a number of individuals involved with the councils. Have any prosecutions been initiated by the DPP as a direct result of the specific findings of corrupt conduct made against the individuals named in the report?

The Commission is preparing briefs of evidence, in relation to each person against whom the Commission made a finding of corrupt conduct, for formal referral to the Director of Public Prosecutions for his consideration.

11.2 Corruption prevention aspects of the investigation were dealt with in an earlier report, dated April 1998. To what extent has the joint efforts of the NSW Aboriginal Land Council Registrar, the Department of Aboriginal Affairs and the ICAC resulted in implementing the corruption prevention strategies?

11.3 Is the Commission confident that the corruption prevention strategies put in place have acted to overcome the corruption and abuses of the Aboriginal Land Council system identified through the investigation? Is there any evidence to indicate success in this regard?

Answer to 11.2 & 11.3

As described in 3.4 above, the relevant agencies are moving to implement the recommendations. The ICAC is currently conducting a review of the implementation of the recommendations by each of the relevant agencies. That review should be completed and published in October 1999.

12. COMMUNITY & JOURNALISTS ATTITUDE SURVEY, JUNE 1999

12.1 In what way do community and journalists perceptions assist the ICAC to target its work, and what action has the ICAC taken following the results of previous reports?

Public attitudes are an important measure of the community's understanding and/or tolerance of corruption. A society that is tolerant of corruption is less likely to support efforts to fight it or to see that they have a role in exposing it. It is, therefore, important to continue to monitor community perceptions to ensure that tolerance of corruption remains low.

A recent Community Attitudes Survey conducted by the Hong Kong ICAC found that young people were becoming more tolerant of corruption than older members of the community were. This sort of result would set off alarm bells and highlight the need to target education campaigns at the younger members of the community. The NSW Community Attitudes Survey results have not shown a similar trend. In fact, respondents between 18 and 24 years were found to be more knowledgeable about the ICAC's corruption prevention role than were older respondents. This young age group was also more optimistic about the personal impact of reporting corruption than were respondents in older age groups.

Journalists were included in this year's survey because of their pivotal role in disseminating information and shaping public opinion. As key information providers to the community it is important to ensure that journalists have a thorough understanding of the role of the ICAC. Their understanding of the role of the ICAC, in addition to their perception about how the ICAC fulfils its function, was therefore sought.

Actions taken as a result of the previous Community Attitudes Survey Results

Corruption Prevention and Education Section has made use of the Community Attitudes Survey (CAS) responses for education strategies. Some examples are outlined below:

- The information brochure being prepared by Education for potential complainants is aimed in part at correcting misconceptions revealed in Community Attitudes Surveys
- ICAC's *Corruption Matters* newspaper has included articles designed to correct misconceptions

- The *Guide to Community Advisers* which provides community leaders with information to enable them to accurately inform and advise anyone who comes to them needing corruption assistance, is also built upon understandings revealed in CAS research.
- The 1997-98 Annual Report included additional chapters to provide more information explaining the Commission's functions and accountability, as well as to address misunderstandings about the Commission's role.
- Information from the CAS has prompted formation of an Education Section project "*Managing external perceptions*" to actively promote better understanding in areas of misconceptions about corruption and the ICAC which have been revealed in the community.
- As the media have been a very significant way by which the ICAC informs the community, previous CAS findings have informed the work which was undertaken to educate cadet journalists about the ICAC. These ICAC information sessions were well received by the cadets and suggestions were made by the respective media agencies to run the information sessions for more senior journalists. The CAS results will inform future education sessions which the Commission decides to offer.

12.2 Can the Commissioner supply the Committee with the original report prepared by Taverner Research?

Taverner provided raw data only. All of the statistical analysis was conducted by the ICAC Research Section. The disk containing the raw data and a sample two page print out of the data provided by Taverner Research has been provided to the Officers servicing the Committee.

12.3 What conclusions does the ICAC form about the results of this survey compared with those of previous ones as to its effectiveness in

- a) **changing perceptions about corruption and what can be done about it: and**
- b) **increased awareness of the ICAC?**

- a) From the results we can make the following statements about changes in

perceptions about corruption:

Almost two-thirds (63%) of both journalists and community members perceived that corruption has an effect on them or their families. This figure has gradually increased since the question was first asked of community members in 1994 when only 46% of the community perceived that corruption impacted on them or their family.

In addition, the perception that corruption is a major problem in NSW has increased from 44% in 1994 to 55% in 1999.

Awareness of the nature and effects of corruption has therefore been enhanced.

These changes are important because as the community becomes more aware of corruption as an issue that affects everyone, their tolerance of corruption will decrease. A community that is less tolerant of corruption is less likely to allow it to happen.

- b) The percentage of the community who can spontaneously name the ICAC without prompting has risen from 3% at its inception in 1989 to 44% in 1999 (see Figure 1 below). Only 11% of respondents in 1999 had not heard of the ICAC.

INSERT FIGURE 1 HERE
I.E CUT & PASTE FROM ORIGINAL ICAC ANSWERS

There has been a rise in the numbers in the community who perceive that the ICAC has been successful in exposing corruption, from 78% in 1994 to 84% in 1999. (97% of journalists)

There has also been a steady rise in the perception that the ICAC has reduced

corruption from 43% in 1994 to 59% in 1999. (70% of journalists)

In addition, knowledge of the role of the ICAC is increasing with more community members being aware that the ICAC does not have jurisdiction over the private sector unless it is involved with the public sector (44% in 1999 compared with 35% in 1996) and that the ICAC does not have the power to prosecute (53% in 1999 compared with 41% in 1996).

12.4 What changes, if any, does the ICAC intend to make in light of the findings of this report?

The survey results are still being considered for possible response. At present no major adjustments to ICAC education strategies are being considered for reasons outlined below.

Increasing perceptions that corruption has an effect on them or their families, and that corruption is a major problem in NSW, suggest that the community is less tolerant of corruption and is less likely to allow it to happen. This means that the Commission's focus does not need to be on raising awareness of corruption, but on supporting the community's inclination to act against it. Current Education strategies and existing resources are aimed at assisting reporting corruption (brochure to assist people reporting corruption, Guide for Community Advisors, NESB resources, Internet site) and will continue in this vein.

The community's ability to spontaneously name the ICAC without prompting also suggests that awareness of the Commission is good. Work to raise awareness of the Commission continues, largely through use of the media and development of the Commission website. Both these strategies have objectives that go beyond realising awareness, although they have that effect.

The community's improved knowledge of the ICAC suggests that the strategies employed in response to previous survey results (as outlined in 12.1) are having effect. The Commission accordingly is not considering altering existing strategies.

Overall the CAS results suggests that as the Commission does not need to concentrate as much on community awareness, it can move on to focus on areas of special need and on the public sector. This shift in emphasis has already taken place. Again no change in strategy is needed.

13. WALSH BAY

13.1 Has the ICAC had any role in advising on or investigating any aspect of the proposed redevelopment of Walsh Bay?

The ICAC provided advice to the Department of Public Works and Services on a number of occasions during the early stages of the Walsh Bay redevelopment project. The ICAC did not investigate the current process.

13.2 If so, what was that role, when was it undertaken, and what involvement did the Commissioner have in it?

The ICAC role was in accordance with its corruption prevention advisory function – it provided advice in response to specific requests from the Department of Public Works and Services.

In August 1995, the ICAC provided advice on specific aspects of the proposed “Call for Detailed Proposals”

In March 1997, the ICAC provided comments on aspects of the project including the negotiation strategy, risk management and the role, function and performance of the probity auditor.

The advice was provided by the Director, Corruption Prevention and Education. The Commissioner declared a conflict of interest and was not involved in the preparation of that advice.

14. MISCELLANEOUS

14.1 Does the Commission have a policy on handling the media? If so, can a copy of the policy be provided to the Committee?

Copy of policy in **Appendix B**.

14.2 Please find attached copies of press clippings relating to Night Racing at Canterbury Park Race course: *Daily Telegraph* 29 January 1997, 23 March 1998 and *Sun Herald* 5 April 1998.

14.2.1 Can you advise whether the statements attributed to the ICAC are factually accurate, and if so whether their source was authorised to make them and consistent with the Commission's media policy?

Comments attributed to an ICAC spokesman in the *Daily Telegraph* on 29 January 1997 are accurate and consistent with the Commission's practice of explaining its complaint handling procedures to the media.

What appears as confirmation of receiving the complaint, i.e., "A spokesman for the (ICAC) said the complaint in relation to night racing...", would have been made only after it had been established that the Residents, Business People and Local Trainers Committee (the complainant mentioned in the story) had told the journalist *it* had brought such a matter to the ICAC, and this had been confirmed by the Commission's Media Manager.

The usual practice of not commenting to the media about corruption allegations sent to the ICAC becomes superfluous even counterproductive when the complainant states "on the record" to a journalist that s/he has referred the matter to the Commission, especially when this has been verified by supporting ICAC documentation.

Receipt can be acknowledged in such cases, usually with elaboration as to what "the normal process" is. This includes a caution that any such matter must, have preliminary enquiries made before it can be considered further for action under the ICAC Act.

This process has been outlined correctly by the journalist, however, the opening paragraph comment that an ICAC investigation was "likely" is speculation, not based on anything said by the spokesman and inconsistent with the process outlined later in the story.

The *Daily Telegraph* story from 23 March 1998 contains information about the ICAC Operations Review Committee, which is available from the Commission's annual report (with appropriate yearly variations according to membership, etc.) and is therefore accurate.

Reference to the matter being dealt with at the 3 April 1998 ORC meeting would have been made by the complainant, and, if it was the case, confirmed by the Media Manager, with the qualification that a final decision may not be made on that date and the ICAC could not comment whenever a determination was made.

The *Sun-Herald* story of 5 April 1998 wrongly states that the ICAC "will announce this week if it will proceed with an inquiry into Canterbury City Council's handling of the Sydney Turf Club's development application for night racing". It is not the ICAC's practice to announce ORC advice publicly. This information did not come from the Commission.

The *Daily Telegraph* story from 5 May 1998 purports to say that the ORC decided the matter should not be pursued by the ICAC because "it found no evidence of criminal proceedings in the council approval process". Such a statement was not made by the Commission. The Commission is concerned with corrupt conduct and does not make a finding of this kind as part of the ORC process. Furthermore, the ICAC generally does not provide reasons for its decisions concerning complaints and therefore would not make such a statement to a complainant or to the media. It did not do so in the instant case.

14.2.2 Was the Canterbury Park matter considered at an Operations Review Committee meeting on or about 3 April 1998? If so, did the ORC recommend against investigation of the matter?

Yes. The ORC recommended against investigation.

14.3 What action is taken to enforce the media policy?

The Commission is not aware of any breach of its media policy.

14.4 Have breaches of the policy been detected and what action has been taken by you in respect of any breaches?

No. See answer to 14.3

14.5 If there have been breaches of the policy in respect of the Canterbury Park matter, can you advise what action was taken?

Not applicable.

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE INDEPENDENT
COMMISSION AGAINST CORRUPTION**

—————
At Sydney on Friday, 24 September 1999

—————
The Committee met at 10.00 a.m.

—————
PRESENT

The Hon. J. Hatzistergos (Chairman)

Legislative Council

The Hon. D. E. Oldfield

Legislative Assembly

Mr M. J. Brown
Mr A. R. G. Fraser
Mr K. Hickey
Dr E. A. Kernohan
Mr G. F. Martin
Mr M. J. Richardson

BARRY STANLEY JOHN O'KEEFE, AM, QC, Commissioner, Independent Commission Against Corruption of New South Wales, of 191 Cleveland Street, Redfern, sworn and examined:

CHAIRMAN: What is your full name, occupation and professional or private address?

Mr O'KEEFE: My full name is Barry Stanley John O'Keefe. I am the Commissioner of the Independent Commission Against Corruption, the address of which is 191 Cleveland Street, Redfern.

CHAIRMAN: In what capacity are you appearing before this Committee?

Mr O'KEEFE: I appear here pursuant to a summons issued by you, Mr Chairman, under the Parliamentary Evidence Act, section 4, returnable for today.

CHAIRMAN: Are you appearing in your capacity as Commissioner of the Independent Commission Against Corruption?

Mr O'KEEFE: I am.

CHAIRMAN: We have received your answers to the questions on notice, as amended. Is it your wish that the answers be included as part of your sworn evidence?

Mr O'KEEFE: It is my wish that all answers in full be made public and be part of the evidence that I give.

CHAIRMAN: Mr Commissioner, the Committee deliberated on those answers before you took the oath and has resolved that answers relating to the settlement involving yourself and Mr Gibson in the defamation proceedings are not to be published. I should indicate that that decision has been made unanimously, and at the Committee's request. I do wish to indicate to all present that the Committee has examined all the material and that the Commissioner has fully co-operated in the supply of all the material that has been requested in relation to this matter, and the Committee is satisfied that there has been no impact on the budget of the Independent Commission Against Corruption as a result of the settlement.

Mr O'KEEFE: Mr Chairman, I am bound by the Committee's ruling, but may I say that I protest that ruling. It is my view that the public of New South Wales are entitled to know what the settlement was, because there has been a great deal of disinformation that has been spread by various parliamentarians about the size of the settlement, all

of which has greatly exaggerated the actual size.

Secondly, an organisation such as the ICAC, which propounds the proposition of openness and transparency, should be seen as open and transparent, and the answers that we have supplied to the Committee are just that - full and frank and having the effect that you have stated.

Thirdly, it is unfortunate that the first act of the new Committee should be an act of suppression. Having said that, I recognise that I am bound by the determination.

CHAIRMAN: The Committee's decision has been predicated on the basis that the agreement between yourself and Mr Gibson was made confidential.

Mr O'KEEFE: Chairman, that is not actually correct. At the insistence of the plaintiff, Mr Gibson --

CHAIRMAN: I do not want to discuss the terms of settlement.

Mr O'KEEFE: But what you have said is not correct.

CHAIRMAN: That was the material supplied to me.

Mr O'KEEFE: That is not correct. You have been misinformed, and the matter will, of course, as a result of the Auditor-General's inquiry, be included in, and is included in, the annual report of the ICAC, so the matter will become public, in any event.

Mr FRASER: Just on that, Mr Chairman, we were led to believe that there was a confidentiality arrangement between the ICAC and Mr Gibson. You are saying that is not correct?

Mr O'KEEFE: I did not say that. What I said was, what the Chairman says is not correct. The arrangement between the lawyers on behalf of Mr Gibson and the Commission was that the settlement would not be made public except as required or appropriate for the purposes of law. This is such an occasion. So there is no prohibition in those terms in relation to the publication before this Committee or in our annual report.

I was, and remain, concerned that the matter be made public. However, the insistence of the other party did not permit that, and I am still very anxious to ensure that there not be any suggestion of concealment or secrecy in relation to the expenditure of public money.

Mr FRASER: I do not believe this Committee has the power to override a confidentiality agreement between lawyers in regard to any settlement, and I feel that any precedent that we set, or anything that we did contrary to that which set a precedent in law, would

be somewhat detrimental in any future case where confidentiality arrangements in any matter could then be overridden by a parliamentary committee.

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

CHAIRMAN: Mr O'Keefe, the issue before the Committee and which it raises is not the size of the settlement. That might be of interest to you and it may be of interest to the Auditor-General, but the matter which the Committee is concerned about is whether, in any way, ICAC funds were depleted by reason of this settlement. That is the only issue we are troubled by. That is the question that you were directed to respond to.

We have the information now that indicates that no ICAC funds have been, on balance now, depleted as a consequence of this settlement, and that is all that we are really here to talk about. We are not really here to enter into a discussion with you or break some agreement you have between yourself and Mr Gibson in relation to the defamation action.

The Hon. D. E. OLDFIELD: Mr Chairman, can I ask something here? It concerns me that what Mr O'Keefe is saying is in some conflict with the information that we were given, which caused that decision earlier to be made, and I was wondering whether we can actually get some independent legal advice as to which information is in fact correct, because what Mr O'Keefe is saying seems to make considerable sense with regard to whether this confidentiality agreement would hold up under the circumstances of this Committee and what is taking place here today.

CHAIRMAN: Was that directed to me?

The Hon. D. E. OLDFIELD: Yes. In other words, I am saying we did not know what Mr O'Keefe has told us before when we were making the decision about the confidentiality, which, under the circumstances of the evidence given before Mr O'Keefe's, I would have agreed with. Now, I have a slight problem.

CHAIRMAN: It arose out of the letter sent by the Independent Commission Against Corruption under the hand of Mr Feneley of 21 September 1999 in which he says:

In relation to the information provided at 5.5 I advise that the terms of settlement provided that the Commission, as a party to that matter, not disclose the terms of settlement otherwise than as required by law. The Commission regards the disclosure to the Parliamentary Joint Committee, in response to a question, as a disclosure required by law. It is a matter for the Parliamentary Joint Committee what it does with the information that is provided to it. If, however, the information is to be disclosed publicly I ask that it be made clear that it is disclosed by the Parliamentary Joint Committee and not by the Commission.

That is under the hand of Mr Feneley.

Mr O'KEEFE: That is an accurate statement.

CHAIRMAN: It may be an accurate statement, but what you are now doing is encouraging us to do what you were not prepared to do.

Mr O'KEEFE: That is not correct, Mr Chairman. I have never been not prepared to make it public. I have taken the view from day one that it is public money and that the public should know how much was involved and what happened.

CHAIRMAN: But, Mr O'Keefe, the easiest answer to that would have been to refuse to sign the terms of settlement, including the term that the terms not be disclosed.

Mr O'KEEFE: Mr Chairman, that would then have involved both the Parliament and a member of the Parliament, as well as the ICAC, in expensive and ongoing litigation, so that the costs of that to the public purse may have been much more.

CHAIRMAN: But you resolved the matter in that way.

Mr O'KEEFE: I did not.

CHAIRMAN: You were a party to the proceedings; I was not. You and the Commission decided that you were going to resolve this matter by way of terms of settlement as against running this matter in the courts and having the public see what was going on. Now, you want us to do what you were not prepared to do.

Mr O'KEEFE: I was always prepared to do that, Mr Chairman.

CHAIRMAN: Well, you could have done that in your negotiations.

Mr O'KEEFE: And it is done in the correspondence.

CHAIRMAN: Look, I think we have to move on, unless the Committee wishes to reconsider the matter.

Dr KERNOHAN: Mr Chairman, if I could just make a comment. I understand that the Commissioner has said that this figure will be published in the annual report.

Mr O'KEEFE: It will.

Dr KERNOHAN: On that understanding, then, that it will be available to the public, at that time, quite legally, as appropriate, I see no problems with us maintaining our confidentiality now and maintaining our stand because it will be available to the public, as I believe it should be, as soon as that report is published.

Mr RICHARDSON: When is that report due to be released?

Mr O'KEEFE: I anticipate it will be tabled in October.

CHAIRMAN: We will wait for that.

The Hon. D. E. OLDFIELD: Could I ask that, in the future, if such a matter as this is going to arise before this Committee and there is some potential conflict as to the legality of the confidentiality considering the proceedings, we have independent legal advice for full consideration before making such a decision?

CHAIRMAN: That would have been useful, but unfortunately we got the letter only a couple of days ago.

The Hon. D. E. OLDFIELD: I understand that, I am just saying, in the future --

CHAIRMAN: I take your point. Commissioner, do you wish to make an opening statement?

Mr O'KEEFE: I should, I think, say something. First, I would like to congratulate the members of this Committee on their appointment to it. It is an important committee in the scheme of oversight of public sector activities in New South Wales. I thank you, Chairman, for your courtesies and the opportunity to discuss issues with you concerning the Commission, not necessarily related specifically to matters arising today, but more generally about the operation of the ICAC and some of the accountability mechanisms that the Act presently provides in relation to that.

I would like also to thank the members of the Committee for attending the briefing at the ICAC on 30 August this year and hope that they benefited from it, as I hope they benefited from the interesting and fairly wide-ranging meeting that was held between various cognate parliamentary committees here in the Parliament of New South Wales.

I must say also that it is a comfort and a pleasure to know that this Committee will be moving to complete the review of the Act. It is appropriate that it should be done. There are a number of submissions that have been made and the consideration of those by this new Committee and whatever comes out of it I think will be important for the cohesion and coherence of the Act and its workability.

Could I renew my assurance that the Commission, as a body, and I, as commissioner, take the view that we should and will cooperate completely with the Committee. The importance of an oversight body such as the ICAC is enhanced by it being accountable through a committee such as this and the correct operation of such a committee is an important part of the balances and checks that are provided for in the Act.

I might say that whether this will be my last appearance before the Committee or not I do not know, but tomorrow there will be but 50 days left of the 1,826 days that I will have been commissioner, if I survive to 13 November. Between now and then we have scheduled nine reports to be published, including two corruption prevention reports. The other investigative reports are well-advanced, some of them in printing or in desk-

top publishing, rather; others still in review, but well under-way. I am fairly confident that that target will be met. Although it is only 50 days, the staff are working flat-out to ensure that our deadlines are met and that the organisation is running at full speed when the new commissioner comes on board, a benefit I did not have when I became commissioner because we had an interregnum or a gap, a hiatus, vacuum virtually, for eight months. My contact with the Premier's office suggests that no such vacuum will occur and that one can expect fairly soon an announcement as to the successor.

At the end of my term I will be leaving the ICAC in good condition. Its reputation is high and its effectiveness is demonstrated quite clearly by the research that we have done. It is recognised by the community, the media and by thinking politicians, and we are benefited, as you will see from some of the material in the answers, by the recognition that we are a world leader in the anti-corruption field, not only locally but internationally as well.

I can report to the Committee that the quality, dedication and morale of the staff are excellent and that we have largely chartered the challenges of the future. One of those challenges will be the increasing use of electronics and electronic transfer of data and the like within government. That carries with it particular risks. Having identified them, dealing with them is an expensive matter and may pose a problem. The successor that comes into the office will therefore be in a position to move quickly to accustom himself or herself to the procedures of the Commission, the relationships that we have with government and government departments and to build on the solid base which that successor will inherit.

Mr RICHARDSON: Mr O'Keefe, in terms of what you have just said, if there are nine reports to be published over the next 50 days, would it not have been helpful to have sped-up their publication to some extent so that they could have been provided to the Committee for this meeting?

Mr O'KEEFE: Well, it would have been if we had finished the hearings, but we finished one of those hearings, I think, late August and there is a time to write, there is a time to review, there is a time to desk-top publish. There are, I think, 23 working days that our contract requires for the printer to print it. Easy to say; not so easy to do. They are all fairly modern - by "modern" I mean current - matters. They will be available for the Committee and no doubt there will be officers who can respond to them. They will speak for themselves because, as you will have seen from previous reports, they are closely reasoned with good reference to the evidence that supports the conclusions, so theoretically, yes; in practice, no.

Mr RICHARDSON: You clearly could not have completed the re-birthing investigation report.

Mr O'KEEFE: One of those, the first segment, will be included in the nine that I have spoken of. We call that Operation Jommelli. The second segment of Jommelli, which

is number 2, as it has progressed and as the evidence has fallen in some private hearings in particular, has indicated an even wider net that needs to be cast and that means that it will be more attenuated than we had anticipated when it started. The results are better or worse, depending on which approach you are making. From our point of view, it is better because the investigation is revealing more than we thought. There will be a third aspect which will not be commenced until probably mid-November, something like that. Since we have the one assistant commissioner doing all, his priority at the moment is running the hearings of Jommelli 2 whilst he is writing the report in Jommelli 1, and that is one of the nine. It is an in-depth investigation and will have wide-ranging effects in relation to several pieces of legislation as well as administrative practice.

Mr BROWN: Mr O'Keefe, could you explain why there was no criticism in the reply of the New South Wales Audit Office, despite the fact that the Auditor General has been responsible for the external audit of the Parliament of New South Wales for the eight year period that was covered on the ICAC investigation?

Mr O'KEEFE: You would have to ask the Auditor General that, I cannot help you.

Mr BROWN: You cannot explain why there was no criticism?

Mr O'KEEFE: Well, it is his report, not my report.

CHAIRMAN: But you have made extensive criticisms of the operations of the Parliament.

Mr O'KEEFE: I have. The question that is directed to me is not what I have done, it is what the Auditor General did not do, and I am saying I do not know what his brief was, I do not know what he found, I do not know what emphasis he put on these things, I do not know what his checks were. You must ask the Auditor General about his report.

CHAIRMAN: It is somewhat anomalous that you would make so many criticisms and he makes none, is it not?

Mr O'KEEFE: Well, he did not in some of his earlier reports, but I think you will find in his last report he concurs with a number of the things that we said.

CHAIRMAN: The report that I think Mr Brown is referring to is the second report. Can you indicate to me, before that report was prepared, did you or your officers have discussions with the clerks of the Parliament or the presiding officers of the Parliament in relation to the recommendations made?

Mr O'KEEFE: I can tell you that the staff of the ICAC liaised with the parliamentary officers. I cannot tell you whether that was in relation to the detail of the recommendations. My feeling is that it was, perhaps not as to 63, but as to the thrust

of what those 63 recommendations produced.

CHAIRMAN: You have had discussions with the clerks and presiding officers since that time, have you not?

Mr O'KEEFE: Yes, indeed.

CHAIRMAN: And it has been brought to your attention, has it not, that a number of those recommendations that you have made are just impractical?

Mr O'KEEFE: No. In fact when I had the last meeting myself I think of 63 - and I am speaking now from recollection - 46 were recommendations that were capable of being implemented by the parliamentary executive rather than by Cabinet decision or legislative action and, in respect of most of those, there was agreement as to their adoption. As to a number of others, there was first a necessity for a Cabinet decision, and in respect of some others there was a necessity for legislative change. I think that the Speaker, in my meeting with him, and I do not have that note with me - and, Chairman, you must bear with me I hope: I had no idea you were going to ask about this detail, there is nothing in the 57 pages about this, so I will take that on notice, if I may.

CHAIRMAN: There is. You were asked some questions about --

Mr O'KEEFE: Not about the extent of discussions and dates and matters agreed upon with parliamentary officers. I have had two such meetings. The officers of the ICAC have had a number of them.

CHAIRMAN: Well, did you write this report with the recommendations?

Mr O'KEEFE: I was responsible for that report, the draft was prepared and I was responsible.

CHAIRMAN: Did you have any discussions with the presiding officers or clerks in relation to the 63 recommendations?

Mr O'KEEFE: I did not personally. In advance of the report, that is.

CHAIRMAN: One of the recommendations that you made was that volunteers not be allowed in MP's offices.

Mr O'KEEFE: Yes.

CHAIRMAN: Does that mean, for example --

Mr O'KEEFE: Can I tell you, Chairman, why? Do you wish to know the reason for that

recommendation?

CHAIRMAN: Well, no, I have not asked you a question yet.

Mr O'KEEFE: No, but if you really want to know the background of that, I can tell you. If you do not, then I will not intrude.

Dr KERNOHAN: I would like to know.

CHAIRMAN: I just wanted to know how far that recommendation goes? If an MP, for example, has a young person coming into the office to cut out newspaper clippings perhaps for the purpose of a folio that might be kept, you would say that the ICAC would regard that as something that would be objectionable?

Mr O'KEEFE: I would have to look at the circumstances.

CHAIRMAN: Well, that is the impact of the recommendation, is it not?

Mr O'KEEFE: What that recommendation was directed at was people coming into the office and in fact then doing party things or other things which were not parliamentary or electorate, using the equipment provided by public moneys and using resources provided by public moneys for purposes that were not parliamentary purposes or electorate purposes. They were, in the main, people who were volunteers, unassociated with the payroll of the Parliament, so that no one had any direct control over them and it was directed towards that sort of situation.

CHAIRMAN: But that was not what the recommendation said, was it?

Mr O'KEEFE: You have the recommendation in front of you.

CHAIRMAN: It just said that non-members of staff should not be allowed in members' offices.

Mr O'KEEFE: No, I do not think it says that. I think it indicates that they should not be permitted to be working there because every time a constituent visits, clearly you have a non-member of the staff in the member's office.

CHAIRMAN: But something like cutting out newspaper clippings for an member of Parliament - you would not regard that as something you would have any major objection to?

Mr O'KEEFE: No.

Mr RICHARDSON: Mr O'Keefe, I know of Federal members of Parliament who have three or four volunteers in every Friday to stuff envelopes. Would you regard that as

corrupt conduct?

Mr O'KEEFE: Not if it is related to parliamentary or electorate matters, but if what they were doing was using that as a base for something unrelated to parliamentary or electorate matters, then, that is a wrongful use of the resources provided by the taxpayer.

Mr FRASER: Do you have a definition of parliamentary or electorate matters?

Mr O'KEEFE: The answer to that is such as there is in the Act you must look at, and you do not find one, so you have then got to decide that on a case-by-case basis.

Mr FRASER: So someone putting a newsletter out to the electorate, which may or may have some party reference in it, which quite often it does have, and having volunteers put those in envelopes and posting them, would you see that as corrupt conduct?

Mr O'KEEFE: No. Newsletters to the electorate are part and parcel of electorate work. I would have thought that a member who did not do those things would be quite remiss in communicating with the electorate, and the fact that there are some additional things in it would not vitiate that. It then becomes a question of balance.

If you had the whole of it advertising a fundraising for a particular political party purpose and you had one little paragraph that happened to mention a snippet of what had happened in the Parliament, then you have got a question of what is the predominant purpose. You can have a thousand instances, and some will fall on one side of the line and some will not.

The other thing is that the form of the recommendation itself was, as the report indicates, intended to be the subject of an iterative process between the ICAC on the one hand and the parliamentary staff on the other so that the outcome, then, is covered by that general recommendation, and you may have specific case studies that have arisen indicating what is and is not acceptable, and that then falls within one of the other recommendations, which was about ongoing training and particular emphasis on case studies. I mean, you can spend all day taking examples but you do not actually further the principle.

CHAIRMAN: Perhaps if I could move it along here, I would just like to ask you this question. In terms of recommendations of this kind that you are making, what level of consultation do you normally have, particularly you as the author of the report, with the organisation which is the subject of the report before you actually make the recommendations as to the practicalities of that?

Mr O'KEEFE: Well, I tend to --

CHAIRMAN: Sorry, could I just say something? I was concerned with your answer

earlier that suggested that you had relatively minimal contact with the Presiding Officers and the Clerks before this report was prepared.

Mr O'KEEFE: I tend to have that sort of work done by the corruption prevention unit of the Commission, which is expert in these things. They do the initial work. Sometimes I discuss their recommendations - it is not just Parliament; there are recommendations that affect departments and agencies as well - and sometimes I do not.

CHAIRMAN: Do you have a policy?

Mr O'KEEFE: It is a case by case.

CHAIRMAN: Are you prepared to give us the details of the consultation that your office engaged in before you cleared the second report?

Mr O'KEEFE: Yes, I think so. I see no reason why not. I mean, there were officers down here for many, many days in the course of the preparation of the material for that report, and the consultations extended over weeks or months - I cannot tell you which.

CHAIRMAN: And you would have documented the days that there were attendances here and who was present?

Mr O'KEEFE: I would assume their diaries would tell me that. I mean, I do not have it on the schedule, but it is available material, and it is available within the Parliament too, I am sure, and we could correlate those two.

CHAIRMAN: Well, there is some criticism that there was not much consultation prior to the preparation of your report?

Mr O'KEEFE: It depends on who that criticism comes from.

CHAIRMAN: Anyway, I just wanted to hear your side of the story.

Mr MARTIN: In terms of getting back to the electoral office, commissioner, where do you see the distinction, or is it a grey area, between our roles as political people - the majority of us are members of political organisations - and our electoral office in terms of what we might do in terms of contact with our party organisation, seeing that there ought to be a very fine distinction and no party political stuff should generate from the electorate office?

Mr O'KEEFE: Well, there are two elements to that. The first one must consider - I think it is the last paragraph in the members' code of conduct. That is a new element in the equation and it equates party matters with parliamentary matters. Now, even that, surely, must have some limitations on it notwithstanding the apparent blanket nature of it.

Assume somebody, for instance, were to say, "I want to go to a meeting of an X organisation which happens to have views that fall within the ambit of one of the political parties." It has nothing to do with the Parliament or that person's electorate, but this is something that is held, we will say, in Honolulu. Where does that fall? You have got to make adjustment on those sorts of things.

Now, that provision in the members' code of conduct expands what is parliamentary or electorate in a way not contemplated when we were going through the exercise for the report. That is the first thing. And the second thing is, one must look at, on the one hand, what is party-related to the electorate or the Parliament, and I do not take the same view as the Auditor-General - the Auditor-General, as you may recall, took the view that parties had no place in Parliament. Well, that just runs counter to the history of the last, what, 300 years.

The party system is here and it is part and parcel of our stability in government in fact. But there will be things that are straight party and unrelated to the Parliament or the electorate, and this can happen particularly where you have a Federal system and you have things being done in the State office of a State member for a particular electorate, not for anything related to that electorate but for a broader Federal party purpose. I mean, you have got to really look at the circumstances in each case.

As with negligence, you can lay down what the rule is on which side of the line does a particular set of circumstances fall. I do not know that I can be any more help than that.

CHAIRMAN: They are very fine judgments, are they not?

Mr O'KEEFE: In some they are fine judgments and in others they are pretty gross.

CHAIRMAN: Gross ones we can exclude.

Mr O'KEEFE: In fact, it is gross ones that gave rise to that recommendation.

Mr FRASER: Mr O'Keefe, the report that came out on the holiday destinations with regard to parliamentary travel, I believe that the way the report was presented was one that gained a cheap headline, at the same time demeaning the position of parliamentarians and also, I would suggest, the standing of the ICAC.

I come from Coffs Harbour, and Port Macquarie is just south of me, and they were named as holiday destinations. I would put it to you that in the course of parliamentary travel between 1990 and the time your report was put out both those seats had a by-election, which meant there was fairly fierce political activity from Government and Opposition in regard to campaigning, policy announcements, campaign launches, et cetera, and yet none of that was reflected in your report.

As I said, I think it was a fairly demeaning thing to do to us and to your position, and I

just wonder whether or not we could put something in place that instead of coming out and saying "holiday destinations" and making it look as though there was a great rort of parliamentarians rushing to the North Coast when, in fact, I think if you looked at the times and dates of travel into those areas it would have been related very much to policy launches or by-elections, et cetera, where we as parliamentarians had, I believe, an obligation to be there and a right to be there, yet the report did not really reflect that.

What I am asking is can you do something into the future or can there be something put in place that when reports such as this are done they are not done for the sake of a headline and they are not done for the sake of demeaning the position of members of Parliament?

Mr O'KEEFE: Can I state quite emphatically that neither of those were the purposes of the report. Secondly, the choice of those destinations was made after consultation with the Auditor-General. He, in fact, drew attention to the excessive, as he regarded it, travel to those certain destinations. So it was not just an idiosyncratic choice.

Mr FRASER: Well, was there any regard -

Mr O'KEEFE: May I finish my answer, please? It was not just an idiosyncratic choice. Thirdly, although Coolangatta, Coffs Harbour and Port Macquarie were three destinations, there were a number of other destinations also, and some of those are holiday destinations, but when one examined, in fact, the periodicity of travel and the time frame of the travel - that is, the year and month, et cetera, and related it to other events - one could exclude a number of those, and they are not the subject of any comment. That is not universally true.

I recognise that there were by-elections. There was a by-election in Port Macquarie. I recognise that that is likely to attract travel. In fact, in the first report the then Minister for Transport, Mr Langton, went to Port Macquarie, as I recall, at that pre-election sort of time, and that was a matter, if I remember that report, that was not the subject of any adverse finding.

However, that is one aspect of the report. There are other aspects of the report that did give rise to serious cause for concern about the use of taxpayers' money by members of Parliament, not just the fact that they went to where they went, but what they said about why they were going. I mean, there is a lot of information that would have identified particular members that I thought was inappropriate, because of the nature and purpose of that report, to include in the report.

What has been done there is to anonymise it. That, I suppose, does have the disadvantage for those who are not the travellers that they may pick up some of the tab, as it were, that is raised by those who have travelled. But, on balance, it was thought better to do that, because the purpose of this report was to bring about change in a system that had been shown, certainly in lower House systems, at least Assembly

systems, I should say, to be less than satisfactory. That was the purpose of it.

There was no purpose to demean or to catch a headline. That, in a sense, is something that is external to us. You recognise that it may happen, but the form of the report I did not think was designed to do that. If I had wanted to do that in the report, there could have been a lot more contentious statements in it. It was pretty low key in the form of statement, I thought.

Mr FRASER: But did you look at all destinations in New South Wales or only those recommended by the Auditor General?

Mr O'KEEFE: I looked at destinations in New South Wales, in Queensland, in Tasmania, in Western Australia, in Northern Territory. We looked at a whole range of holiday type destinations. Some of them were destinations suggested by the Auditor General as a result of his examination; others were of our own notion, just to see whether or not you could test the ones that had been suggested against other destinations as well.

Mr FRASER: So qualification was given to the fact that there were by-elections in the seats of Coffs Harbour and Port Macquarie at that time?

Mr O'KEEFE: Quite frankly, I do not remember that detail. I do remember the question of elections and there was another issue that arose, as I recall, and that was party conferences, the annual conference of a party or a country branch of a party or something like that. That sticks in my head as something that we did look at, but you then have to relate that to particular dates of travel, and we did try to do that. Then we sent out notices under section 21 to members, who were still anonymous but could possibly become the subject of further investigation, to ask: Why did you do this? I can say here that most of those were pretty satisfactory explanations and that would have been published but for the fact that we are waiting at the moment to dispose of the Langton appeal which says none of this falls within our jurisdiction. That is the way that fell. I would have liked to dispose of that before I went.

Mr RICHARDSON: Commissioner, you would have to agree that there was a lot of adverse publicity that resulted from that initial report, adverse publicity about members of Parliament, and you are now saying that in fact a lot of that adverse publicity was not justified?

Mr O'KEEFE: No.

Mr RICHARDSON: There were satisfactory explanations for most of those trips to holiday destinations, all of which seem to be east of the great divide, by the way. If you go west of the great divide, it is okay, is that right?

Mr O'KEEFE: Well, we did look west of the great divide, but there were not all that

many holiday destinations west of the great divide until you got over to Western Australia, where there were a couple.

CHAIRMAN: You did not mention Dubbo and I understand that that is one of the towns that has one of the highest levels of tourist travel. You did not mention that place. Obviously that is not as sensational.

Mr O'KEEFE: Well, it may not have been as regular either and we certainly did not have anybody who said that they were going to use all their parliamentary warrants before their term expired by going to Dubbo.

CHAIRMAN: One of the recommendations you made on that issue was that the Legislative Assembly adopt the travel arrangements of the Legislative Council.

Mr O'KEEFE: In effect, yes.

CHAIRMAN: I am informed that, at the time of that recommendation, the Legislative Council actually had processes which were less rigorous than the Legislative Assembly. In fact the Legislative Council has since changed its system for travel to make it more rigorous. I am just wondering where you came up with the recommendation that the assembly should have the processes of the council when the council does not accept it because they have just changed it and the assembly does not accept it because they thought it too lax.

Mr O'KEEFE: Well, I do not agree that it was a lax system. In terms of results, it produced a much better, more transparent, cleaner result than what was happening in the lower House.

CHAIRMAN: That is not a way to judge it, by the results.

Mr O'KEEFE: Is that fair comment, Chairman?

CHAIRMAN: You do not necessarily judge it by results.

Mr O'KEEFE: That is a different comment, you do not necessarily, but it is certainly one of the touchstones.

CHAIRMAN: What are the others?

Mr O'KEEFE: Well, you look whether something works; you look whether it is rorted or not; you look whether it is likely to give rise to a perception of rorting. They are the sorts of factors that one might look at and we did look at and the upper House legislative council system was agreed, I might say - I remember that - to be a system that did not produce the same sort of problems.

CHAIRMAN: When you say "agreed", by whom?

Mr O'KEEFE: My recollection is that that was the agreement at the first meeting I had with the Speaker and the President after the report was tabled.

CHAIRMAN: That is not my understanding.

Mr FRASER: Surely a warrant which basically, and I paraphrase it, has a requirement on the bottom of it for me to sign as a member of Parliament - and I would probably use warrants more than anyone else in this room because of the situation I am in - which says, I sign this and declare that I am using it for parliamentary business, is a much better system than the system that operates in the upper House?

Mr O'KEEFE: That was not our observation and it certainly was not what happened in the Langton matter where there were clearly false certificates signed by the then Minister. Secondly, it was not what was revealed in the Langton matter in relation to a number of other members who signed certificates that were wrong, but I made the finding that they were not fraudulent, they were just erroneous.

Mr FRASER: The way I read that declaration is that I sign it on the basis that it is used in my parliamentary business, and I take it very seriously, when I sign a warrant and make that declaration, in effect, publicly?

Mr O'KEEFE: And if I might say, with respect, if everybody took the same view we would not have had a problem and we would not have had three reports.

Mr FRASER: But I am at a loss as to why the upper House system would be a better system because my understanding of the upper House system is basically a credit card type of system with no declaration made to anyone.

Mr O'KEEFE: No, the system, as I recall, was an acquittal against travel.

Mr FRASER: But that, to me, leads to the pot of gold. I tend to look at it, as a country member, that there is a pot of gold attitude there that you are given X amount of dollars and, at the end of the year, if that X amount of dollars is not expended --

Mr O'KEEFE: It is actually the life of the Parliament.

Mr FRASER: Well, whatever, but if that X amount of dollars is not spent you could find an excuse to get to London on what you have left in your account. As far as I am concerned, I would much rather see the travel documented by way of warrant which says you will use it within these confines, that is intrastate or interstate, as allocated and as declared by yourself saying: Yes, I went this year to Darwin - as I did in 1992 - for a constitutional convention, parliamentary business. I was invited there as a member of Parliament. If I go somewhere in the State, the test I normally try to apply as a self-

test is: If I was not a member of Parliament, would I be going there? If the answer is No, I would not, you do not go and you do not use a warrant to go, you take it out of your own pocket, but if it is an invitation to speak at a function somewhere, anywhere in New South Wales, and you are making a declaration along those lines, that to me says that, once you sign the declaration, it is a far better system than having what I term the pot of gold type travel that I believe the upper House has. My attitude would be that it was a far safer system as long as there was some responsibility applied internally, personally, and externally through that declaration made by the member.

Mr O'KEEFE: Yes.

Mr RICHARDSON: You made a number of recommendations relating to the members' code of conduct in the second report and you argue that clause 1 of the code of conduct relating to the declaration of a conflict of interest between private financial interests and decisions in which members participate in the execution thereof does not address circumstances in which members may be capable of considerable influence, even if not directly making decisions. Could you just provide some examples of what you had in mind in making that comment?

Mr O'KEEFE: I had a number of things in mind, and might I say that it is not easy - I cannot recall the date of that report, was it June?

Mr RICHARDSON: Last year.

CHAIRMAN: December 1998.

Mr O'KEEFE: I will have to rely upon my recollection, but a number of things: First, the criticism was directed at the word "financial" because there are a number of factors, like relationships by blood, by marriage, et cetera, that may nonetheless influence a decision but do not fall within the connotation of "financial", so that is one area that we were looking at. The second thing is I do not know if you were ever a member of a local council. My experience there taught me that there would be people who would actually declare an interest and make the grand gesture of leaving, having beforehand done all the lobbying. That is not foreign, I am sure, to any elected and voting assembly, so that was another area that that was intending to cause to be examined. I am trying to remember others.

Mr RICHARDSON: Can I give you an example, because it is something that I think the Parliament took a certain degree of interest in at the time, and that is when the decision was made to put poker machines into hotels. The Minister for Police said that he had stepped outside the Cabinet room at that time, just outside it, and he had not voted on that matter, given that he had interests in the Orient Hotel and the Mercantile Hotel, and now the Hunter's Hill Hotel, I believe. On the basis of what you are saying it would have obviously been entirely possible for the Minister for Police to have - I am not saying that he did, but it is entirely possible for him to have - lobbied his colleagues and

got them to agree to the introduction of poker machines into hotels. How would you actually deal with that situation? How can you actually create an environment in which the impression perhaps of the improper conduct is not projected to the public?

Mr O'KEEFE: Well, first, I have no idea of what the facts are and whether the postulate is correct, but let us make the assumption away from the individual case to a more general case. The type of conduct that you have referred to, assuming that it occurred, would not be a breach of that clause as it stands. The argument that we are advancing is that, whether it is financial in the sense of immediate gain or whether it is voting or having some other pressure effect, the code should deal with that and you should not only just refrain from voting but you should refrain from seeking to lobby, I suppose is the word, members of the Parliament in support of something that may be to your benefit or the benefit of somebody who is a member of your family. Now that is the principle. Proving the breach of it is a different thing. However, I would think most members of Parliament, and that is my own view and I cannot give you chapter and verse on it, but my view is that most parliamentarians, if the rule is there, will observe it.

As Mr Fraser said, if he asks himself, "If I were not a parliamentarian, would I be doing it", and the answer is no, you do not use the warrant. In this case you would say, "If I did not have this interest, would I be pushing this?" If the answer is, "No, I would not be pushing it", then you should stay away from it. That is how the individual resolves it. Proving it is a different matter, but having such a provision - widening it, that is - is a protection for the members because, if the rule is there, then I think the majority of the public, like me, will believe that the overwhelming majority of parliamentarians will want to do the right thing and will abide by the rules. That is why I was saying that the limitation of the rule itself bespoke the criticism in the sort of circumstances that you were postulating and certainly gave rise to the possibility of that perception. That is why we are advocating that.

CHAIRMAN: There are some questions I want to ask about the answers that you supplied. In the answer to 1.2 you indicate that you assessed matters within jurisdiction according to --

Mr O'KEEFE: Yes, the ICAC Act.

CHAIRMAN: -- and the Commission's corporate plan and operational strategy to determine which matters should be the subject of preliminary inquiry or investigation by the Commission. I have read the corporate plan and I know the ICAC Act, but I do not have any details of the strategy. Is that a document?

Mr O'KEEFE: Yes.

CHAIRMAN: Are you prepared to supply that to the Committee?

Mr O'KEEFE: Could I take that on notice, please?

CHAIRMAN: There is a document that exists called operational strategy?

Mr O'KEEFE: Yes, and that is variable. It varies from year to year and it is reviewed - it used to be quarterly, it is now three times year.

CHAIRMAN: How are the variations made?

Mr O'KEEFE: Well, Jommelli is a very good example. Part of the operational strategy is to progress Jommelli. You make an assessment at the beginning of it that it will require this many people for such a period and it will cost you this amount of money. Then it starts to open up and you find that it is taking you more people and more money. Since you have a finite pot, you then have to swing some money from something else into that, so you have to rearrange your priorities so that something that you had planned to commence at a particular time has to either slide down or be knocked out for that year, and that is the way we do that.

Your question, though, was a little broader than that, and that related to the criteria that we were looking at.

CHAIRMAN: That is correct. Your answer talks about criteria set out in the Independent Commission Against Corruption Act, the Commission's corporate plan and the operational strategy?

Mr O'KEEFE: In our operational strategy we have variables and those things which are more or less fixed, like criteria. They do not change very much. The application of them will change as circumstances change. For instance, we asked ourselves: does the subject matter of the complaint or reference or the data indicate a reasonable likelihood of involving corrupt conduct; secondly, is it too old or is it trivial or frivolous; thirdly, is it something that is a management matter and/or would be more appropriately dealt with by another agency given the roles, functions and resources and the jurisdiction of that agency?

Take, for instance, a complaint against a judge, which falls within our jurisdiction but you have a specialised body like the Judicial Commission. Would it be better that they look at it, at least as a first instance matter?

Another one is: is the matter the subject of an inquiry that has been instituted by another agency - Health Care Complaints, Ombudsman, et cetera?

Next, does the complaint or material as propounded to us, either by a chief executive officer or by a member of the public, lack specificity so that you cannot deal with it sensibly? An example, for instance: everybody in such and such a department is stealing equipment and they have been doing it for years. Now, how do you sensibly

go about examining that without spending a fortune?

When complaints lack specificity, almost invariably you can be sure it is some sort of a pay-back or not right. Is it vexatious and lacking in good faith? Does it involve a public sector area that we have looked at very recently and expended a lot of time and resources on and this is, if not the same as, then cognate to that?

Is there an opportunity to reveal the facts, as opposed to what people say about the facts, by appropriate electronic devices? Is it the sort of subject matter that has a public interest in it or a community interest in it?

Are there wide public sector benefits that would flow from the investigation? Are those benefits such that they would extend across one department or agency focusing, for instance, on a particular type of activity? Are there corruption prevention possibilities involved that might flow from the investigation?

There are many others as well, but these are the sorts of things that we use to assess whether or not resources will be applied.

Then, of course, you have got to ask yourself: if this is to be done, what resources will it take and do we have those resources? And that tends to be fairly well down the scale because you have got to determine the seriousness of it so that you can then compare it with other matters and determine whether they should be moved down and money that would be allocated to them should be allocated to this.

Mr RICHARDSON: Could I just follow that vexatious complaints issue?

Mr O'KEEFE: Yes.

Mr RICHARDSON: Last year you said that the people were entitled to raise anonymous complaints - I do not know how much weight you give to anonymous complaints, but they are entitled to do that - and that lodging a \$500 bond to review the instance of frivolous complaints would disqualify many people from complaining. Now, just before the State election you wrote to all the candidates encouraging them not to use ICAC as a political weapon during the election campaign.

Mr O'KEEFE: I did the same for the local government elections, too.

Mr RICHARDSON: Did that actually reduce the number of complaints?

Mr O'KEEFE: It did. Actually, it was quite significant. In the first couple of years that I was at the ICAC we found that the graph of complaints against members of Parliament, and pretty much the same was true about members of councils, rose dramatically in a period of three to six months prior to the election. We also found, because I wanted to get them out of the way so as not to provide false data for electoral decision, that a lot

of them had no substance in them, from which you had enough data to say, "Likely to be for political purposes and without substance."

Whether you call that vexatious or how you would characterise it, it is wrong. So how to deal with it? On the one hand, you may put a cost on people to lodge a complaint, but when you see the complaints that we get and the likely economic status of people who make them, because these are often disempowered, powerless people, to do that would have the likely effect of preventing them making their complaints, yet these are the very people who ought to have somewhere to go with their complaints.

Mr RICHARDSON: There is clearly a cost associated with every complaint that is made.

Mr O'KEEFE: There is.

Mr RICHARDSON: So if you could reduce the number of frivolous or vexatious complaints, not genuine complaints, obviously, but frivolous or vexatious complaints, that would actually benefit the Commission's work?

Mr O'KEEFE: But you would also, if you did that, exclude a lot of complaints that are not frivolous and vexatious. To come back, though, to complaints against members and members of councils, I decided to write - and I think I did it first three years ago - to aspirants and members both in the Parliament and local government.

The first year was reasonably successful, and the number of complaints fell; the second year was even better; and, this year, I do not think we had anything that you could regard as a massive change or a significant change in relation to the level of complaints.

I think the warning itself, plus its publicity, meant that people did not do it, because the false complainant finished up with egg on his or her face, so it rebounded as a tactic, and that was the object of doing what we did.

Mr FRASER: Taking that a step further, would it not be better on any complaints to basically have all proceedings in camera until such times as the complaint is proved or otherwise?

Mr O'KEEFE: But these are not complaints that are going to a hearing.

Mr FRASER: I know that, but what I am saying is that it is most sensational if someone has been reported to the ICAC. It has become sensational because a lot of the times the evidence as reported during the hearing is sensational in itself, or the questioning or what have you, and yet, at the end of the day, as in a number of instances, no action was taken by the ICAC but there is a taint on the person, especially in political circles, around for a long while.

What I am proposing is that if it was in camera and it was done in such a way that it was, therefore, not attractive to someone to use it as a weapon, those vexatious complaints, especially around times of elections - I mean, those letters --

Mr RICHARDSON: They do it by sending a letter. It is like going to the public and away you go, bang.

Mr FRASER: That is right. So, to me, if ICAC said, "Look, we will hold everything in camera," which I think is done in Hong Kong --

Mr O'KEEFE: They do not have hearings in Hong Kong.

CHAIRMAN: They do not have public hearings.

Mr O'KEEFE: They do not have any hearings in Hong Kong. They have investigations in Hong Kong and they have prosecutorial powers there.

CHAIRMAN: They do not any more.

Mr O'KEEFE: They did.

CHAIRMAN: But it has been taken off them.

Mr FRASER: Anyway, coming back to the fact that if you are in camera, if they are not public hearings, which gives a headline here, there and everywhere, and yet the report is still made public at the end of it with the recommendations, it would be less sensationalist and therefore less attractive to vexatious complainants.

Mr O'KEEFE: Well, can I just say this to that, first. That does not prevent the person who makes the complaint, or somebody that the person who makes the complaint sets up to do it, sending a copy of the letter to the paper or making a statement. What it then does do, however, is mean that the whole thing is shrouded in a secrecy so they actually achieve their objective because of that, and, believe me, the problem of people who say they - there are two ways of doing it. You either say X has been reported to the ICAC, when the person who says it is the one who has made the report but does not externalise that they have done it. The second one is, "I have reported so and so to the ICAC." That is less frequent. But both ways, even if there are private hearings, are damaging to the person the subject of the report.

Secondly, we have found that in Western Australia, where everything is done under the cloak of secrecy, there is not openness about it. There are two adverse effects. I have just spoken of one. The second one is there is this clamour amongst the press that there must be something in it; they would not have it secret if it were not.

Thirdly, I draw your attention to the answer to question 3.1 and 3.2.1. You will see upon

page 6 of my copy - I think it is the same one - that there were 94 days of private or private restricted hearings. If you go back to the preceding page there were 52 days of public hearings.

Now, the practice that has been adopted since I have been commissioner is, first, to test - this is assuming that you are going on to investigation, which most of these never hit, anyway, because you are able pretty quickly to look at it and say with even a couple of short inquiries external to the Commission, "There is nothing in this," so we are not going to expend resources and close this down, close the file and report to the operations review committee.

But where there might be something in it, what we do is we look, we go into a private hearing first and test whether or not there is substance in it. Now, you cannot do that with an anonymous complaint, of course, because you do not know who Mr Anonymous or Ms Anonymous is, but that is why that number there of 94 is almost twice the 52.

If it looks like there is something in it - there is a case to answer, in other words - then it goes public because the Parliament amended the Act to provide in section 112(1)(a) that we must have our hearings in public unless the public interest militates to the contrary. So that is how we try to deal with that.

Thirdly, with members of Parliament who are the subject of complaint or members of council who are the subject of complaint, we try to deal with those and get rid of them before the election. The difficult one is that these are the shrewdies who make the complaints. They wait until about a month before the election, knowing full well that by the time you receive the complaint and process it you cannot get it to an operations review committee, so you cannot close the file, so they can say there is an ongoing investigation.

Now, that is one of the cases in which we say, sometimes, if they want to make a big play of it, "Yes, we have received a complaint from X," naming the person we got it from where that is the person who is opening their mouth and making a big fuss about it.

The Hon. D. E. OLDFIELD: Mr O'Keefe, do you have a view on the prospect of penalties for baseless complaints?

Mr O'KEEFE: I do. One of the problems is, though --

CHAIRMAN: Western Australia does.

Mr O'KEEFE: We have a provision, too, but you have got to show that it was deliberately false, so that you have got to show that the person did not believe the truth of what they were saying, and that is a pretty heavy onus.

CHAIRMAN: I just want to ask you something before we move on on the question of

public and private hearings. You have, I think, indicated in the past that what you basically feel is that if the evidence reaches a particular point you would go to a public hearing as opposed to a private hearing, balancing the private interests and the public interest.

Mr O'KEEFE: Yes.

CHAIRMAN: In other words if the private interest outweighs the public interest, the hearing is conducted confidentially or in private.

Mr O'KEEFE: Well, that is a factor, and the public interest takes many aspects. It is not just --

CHAIRMAN: That is a factor?

Mr O'KEEFE: Yes, a factor.

CHAIRMAN: On the last occasion we were down at the ICAC I drew your attention to the comment which was made by Mr Feneley that concerned me, and that was that there is always a risk that if you do not go public you would miss out on evidence which you might be able to attract by going public. I indicated that I did not believe that that was the purpose of the public versus private balance.

Mr O'KEEFE: I do not agree with you on that, Chairman.

CHAIRMAN: You believe that, even if there is no evidence --

Mr O'KEEFE: No, I did not say that. What you said was you made the assumption that we had some evidence and then there is going public, which produces more. I do not think Mr Feneley said that, if we had no evidence, we never went public. That certainly has not happened in my five years as commissioner.

CHAIRMAN: Are you suggesting that, on occasions, you would go from private hearing to public hearing in order to attract further evidence? Is that one of the factors you would take into account upon going from a private hearing to a public hearing?

Mr O'KEEFE: There are two steps. First, you would only ever go to a public hearing if the testing of the evidence from the complainant - and you generally at that stage give the person complained against an opportunity to say something as well - leaves you in a state where there is sufficient to be looked at, there is a case to answer. Then you may make the decision to go public and, having done that, you know that it is likely that the number of complaints that come in as a consequence, either specific to that matter or cognate to that matter, is likely to be high. I think you will find in the papers here that there is a reference to that in relation to the corrective services and what were 70-odd complaints became 490 once the thing went public and a lot of those related to the very

subjects that we were looking at.

CHAIRMAN: I could accept that it might happen. What I am asking you is: As commissioner, is it your view that one of the purposes of going from private hearing to public hearing is to encourage people to come forward with information relevant to the investigation?

Mr O'KEEFE: Yes.

CHAIRMAN: So you would actually determine that a matter should go public so that you could get more evidence?

Mr O'KEEFE: Not just for that purpose, but that would be a factor that would be taken into account.

CHAIRMAN: How do you balance the private interest?

Mr O'KEEFE: You would have to look at the whole raft of factors. I cannot tell you how you balance the private interest because I do not know, in the case that we are talking about, what the public interest factors are. The private interest, in the end, is the reputation of a particular person. That is the usual private interest and that is a fairly important, but nonetheless narrow, segment of interest. The higher the profile of the person, the more likely it is that publicity could be damaging to that person, so the more careful you have to be about making that decision. However, at the same time, if you did not make that decision because somebody was a very important person, what would the public be saying about that? Because you are a big-shot you get special treatment. That should not be so either. That is, you cover up for so and so and so and so because they are big-shots, but you do not do that for the little bloke. Now that is not justice and it is not the public interest, in my view. It is a difficult balancing.

Mr MARTIN: In terms of the conduct of the private hearing as opposed to public, and my evidence is obviously only anecdotal, is it true that it is much more robust or intimidatory, from an adversarial point of view, in private hearings compared to public, particularly in relation to witnesses?

Mr O'KEEFE: I do not really think so. In the end, what you are looking for is the truth. If you actually stand over somebody, which we do not do, but if you do, then they may tell you what they think you want them to tell you, and there is nothing worse than that because you finish up with evidence that is not worth anything, so you may be firm, but you are firm in public hearings too.

Mr MARTIN: So there is no real difference between the two?

Mr O'KEEFE: If there is, it is not conscious and I am not conscious of it having happened.

The Hon. D. OLDFIELD: Mr O'Keefe, page 6, the Encina investigation, is that the report that was being alluded to in the media which indicated that there were 25 State members of Parliament who were being investigated?

Mr O'KEEFE: Well, 25 was wrong, it was 21, and they were not being investigated, they were the subject of further inquiry, but Encina is also called Becker E. It had two names and it had a change of name, but the short answer to your question is yes.

The Hon. D. OLDFIELD: Has that report been made available?

Mr O'KEEFE: Yes.

CHAIRMAN: That is the report that we were talking about earlier. Unless anyone has any questions --

Mr MARTIN: There is still another lap to go on that.

Mr O'KEEFE: I would like to dispose of as much of that as I could before I left, because if there is to be any flak about it I should be the person who wears the flak, number one, and, number two, the period of time between the second report and this I think is now getting too long. You lose impact and interest and the impact that we are seeking to gain is change in the system for the better. However, there then becomes the question: Do you expend the resources on it with the possibility - I do not think it is a strong one, but a possibility - that the Court of Appeal may take a different view to the view that Mr Justice Sperling took, which was the view that I took when writing the Langton report? Now if it was said in the Court of Appeal that the guidelines did not have any effect, then there is not any third report, it just ceases to be relevant. I do not think that that is a strong prospect, but when husbanding your resources you have to take it into account.

(Short adjournment)

CHAIRMAN: I want to ask some questions about the annual report. I am concerned about the Operations Review Committee and you have indicated what it does, its function and so on. You do not have much detail in the annual report about the ORC, particularly in terms of the attendance of members and the number of meetings. Is there any reason why we could not have that information?

Mr O'KEEFE: No, no reason.

CHAIRMAN: Would you be able to supply to us the attendances at each meeting?

Mr O'KEEFE: Yes. I can say that the attendance is very high, with the exception of one member.

CHAIRMAN: Well, that will be revealed when you give us the information.

Mr O'KEEFE: Yes, well, I can say: It is the police commissioner. What we have submitted is that his deputy ought to be able to attend in his stead so that, if he is unavailable, then his deputy is there and we have that presence, which is of some value, and we have found that, when the Commissioner is away and the deputy is acting commissioner, he has always been present at the meetings, but the commitments of the Commissioner have not allowed him to attend a lot of the meetings.

Dr KERNOHAN: These are once a month, are they not?

Mr O'KEEFE: Yes.

Mr RICHARDSON: There are a number of questions relating, I guess, to matters arising from the Becker inquiry, but last year you refused to answer whether MPs' offices in Parliament House had been bugged and there was an article in the *Sunday Telegraph* of 10/12 that the offices of at least five MPs - electorate or Parliament House - had been bugged by the ICAC. Can you tell me how many MPs have been bugged by the ICAC in the last year?

Mr O'KEEFE: I can tell you this, and I do not want to go beyond this: Any suggestion that officers of the ICAC bug parliamentary offices of members is without substance. Secondly, the recent publicity that has been given to that arose out of a speech by the Speaker in Fiji in which, by the skilful juxtaposition of various statements, notwithstanding a disclaimer, a clear impression was created that the ICAC had planted bugs in the member's rooms.

My recollection of the report that the Speaker obtained showed that, of five offices swept, one of them, which had previously been the office of the Honourable Paul Whelan and I actually do not remember whose it was at the time, whether it was Mr Gibson's office or somebody else's office by that time, was the subject of a report that said a wire was found in the ceiling that was, I think, consistent with a possible bug. I do not know what it was consistent with, it certainly had nothing to do with the ICAC.

As a consequence of that publicity and the possible adverse effects, I made a statement which said that, in considering that issue, first, everybody was bound by the law: The ICAC, members of Parliament and all citizens and that the law applied to everybody equally. Secondly, that in order to get permission to install a listening device or conduct a telephone intercept you have to have either a State or Federal warrant. Thirdly, that our use of listening devices and telephone intercepts is predicated upon two principles: Necessity and legality. Is it necessary? Is it legal?

There is a third matter that we take into account and that is, even if it is necessary and legal, is the nature of the offence likely to be revealed one of sufficient magnitude or severity to warrant such an intrusion on private rights? Having said that I went on to

say that, when one was looking at the House, you would have to think about, consider, the privileges of Parliament, the position of the Speaker and the President and you would have to consider also whether the House was sitting at the relevant time. There may be factors that would operate in respect of that.

Finally, can I say that I do not know how it would be possible to put a listening device into a member's room without the knowledge of the Speaker or the President. I just do not know how that would happen.

Mr RICHARDSON: Presumably somebody would pick the lock.

Mr O'KEEFE: But you have to get in, you have to get in to do it, and Parliament House is not like an ordinary premises, but that is all I really would be prepared to say in respect of an operational matter like that.

CHAIRMAN: What about the electorate offices?

Mr O'KEEFE: I would not see them as being subject to the same sort of restrictions as Parliament House. The House itself is a place that has special privileges attaching to it. It has special rules relating to ingress and egress. It is the place where the law of the State is made and the members in their parliamentary offices are in a different position from the members in their electorate offices or their homes, whatever. You would look at that on a case by case basis.

CHAIRMAN: When you gave a denial previously of any listening devices or telephone intercepts having been authorised by the ICAC on parliamentary offices I think you were careful in your language not to include within the term "parliamentary offices" the electorate offices of members?

Mr O'KEEFE: Quod ipse dixit.

CHAIRMAN: Do you deny whether the ICAC has been involved?

Mr O'KEEFE: I do not propose to answer that question. That is an operational matter.

Mr RICHARDSON: Can you understand why members of Parliament might feel angry with the ICAC?

Mr O'KEEFE: All people who have had their phones bugged or their houses the subject of listening devices are angry. I have had that happen to me on more than one occasion, and I was angry. However, the emotional response of criminals is exactly the same, so they are angry too.

Mr RICHARDSON: You mean the guilty are always aggrieved and aggressive?

Mr O'KEEFE: May I invite your attention to a well-known figure, Roger Rogerson, who was livid when his phone had been tapped, and even more livid when he thought that his house had been bugged. I mean, it is a natural human response, and the question is one of principle. Remembering that there are, in respect of both listening devices and telephone intercept warrants, conditions as to the disposal of the product after a given time and the disposal of any product and the revelation of any product that is not relevant to the inquiry.

Mr RICHARDSON: You said last year that all of the extraneous material would be destroyed?

Mr O'KEEFE: Absolutely. Well, it is. I have to certify to the Attorney General in respect of listening devices and to the Federal Attorney-General in respect of telephone intercepts exactly that. When the Ombudsman makes an examination of our records, even if I am late, a day late, in reporting, that is noted.

In one report I remember I had put in - we will say it is 12 something 12 99. It arrived on the 12th of the 12th 99 at the Attorney General's office. I had left the 11 out when I was signing it. I mean, the audit is sufficiently close to pick those sort of things up.

Mr RICHARDSON: Let me get this straight. You say that Parliament House is off limits but an MP's electorate office or his home may be fair game?

Mr O'KEEFE: I do not say that Parliament House is off limits. I said what the criteria to be applied are.

Mr RICHARDSON: But you also allege you would not know how to get into a member's office?

Mr O'KEEFE: But the Speaker may facilitate that. The Speaker, for instance, facilitated the service of process on five members of Parliament in their offices. He used that in his speech to say that officers of the ICAC had been to five different offices in the Parliament. Of course they had. They were accompanied by one of his employees, a parliamentary officer. They were accompanied to the office of the member to meet the member, who was there by arrangement. The service was effected and they left, except I think in one case they interviewed the member as well, who wanted to be interviewed.

So, I mean, that is why I said in the earlier principles that you would need to consider the position of the President and the Speaker. The Speaker may well facilitate that. You may have to make a case to the Speaker about it.

Mr RICHARDSON: And when you have inspected the records held by a member of Parliament you have always gone through due process? It always happens?

Mr O'KEEFE: Absolutely.

Mr RICHARDSON: Because you can issue a warrant yourself but you tend not to do that?

Mr O'KEEFE: Not that I tend not to. I have never done it. I have never issued a search warrant in the time that I have been Commissioner.

Mr RICHARDSON: You can always get that warrant.

Mr O'KEEFE: Through the judicial process. It is a safeguard for us as well. If there is some mistake, which I hope there would not be, at least you have a judicial officer interposed and you do not get the situation that looks as if the investigator, who is the issuer of the summons, has mucked it up right through, which is not good for the organisation.

Mr RICHARDSON: Have you ever applied for a warrant and had to investigate a member of Parliament and had that warrant rejected?

Mr O'KEEFE: No, but we did have two warrants rejected, one of ours and one of the Australian Federal Police I think it was, as a consequence of some publicity, false publicity, that had been given in relation to a matter, and I do not carry it in my head. They are the only two. It was in Jommelli.

Somebody in the Parliament leaked something, as a consequence of which we were refused our warrants - not listening device warrants; these were search warrants - because it was said by both magistrates, "Well, after this, it has blown and there are not going to be any documents." They are the only two that we have ever been knocked back for in my time as commissioner, because we are very careful about these things.

First, we consider whether it is necessary and appropriate to get a warrant, and then the case that is made is pretty strong.

Mr BROWN: Would you answer a question as to how many bugs you have operational at the moment or would you just classify that as an operational matter and not answer that?

Mr RICHARDSON: There is information about that in the report.

Mr BROWN: The number of operations?

Mr O'KEEFE: I thought this was right. I do not mind answering it. The answer is no. If we had some, it might be a problem because somebody might guess who it was, but we do not have any at the moment.

Mr BROWN: No bugs in operation at the moment?

Mr O'KEEFE: No.

Mr BROWN: Which would have answered the previous question as to how many bugs are in MP's offices.

Mr O'KEEFE: I do not see that it would because you are required under warrants that are issued for these things to remove them and take them off within a given time frame, and if it is a physical device in premises you are required to remove the device from the premises, not just deactivate it; you are required to remove it physically. That is a term of the warrant.

Mr RICHARDSON: So you not only have to get into the MP's office to insert the bug; you have to get in to take it out again?

Mr O'KEEFE: That is right, but it is not just members of Parliament, it is anywhere. The same is true anywhere.

CHAIRMAN: I just want to go back to the Operations Review Committee - I was looking at some information before - to ask you some questions about this matter. I notice on page 28 of the annual report -

Mr O'KEEFE: Do you have a spare copy of that?

CHAIRMAN: Perhaps someone could provide you with a copy. You should be familiar with the subject matter. I have discussed it with you before, I think. On page 28 - it is best that we get information on the ORC. I think a column is somewhat inadequate, with respect, but, commendably, the organisation has audited the reports that the ORC receives, and I congratulate you on that.

Mr O'KEEFE: Thank you.

CHAIRMAN: But I note that two reports out of 82 that were audited failed to meet adequacy standards and three reports failed to meet accuracy standards. Now, that may not be statistically a large number, but there is concern that it is happening.

Mr O'KEEFE: You have got to ask, though, the extent to which - I had a look at some of these reports, and --

CHAIRMAN: Wait a minute. I have not finished my question. Statistically, it may not be a high number, but it is of concern, firstly, because of the nature of the work that you are involved in doing and the repercussions of reports going up to the Operations Review Committee either being substandard or inaccurate.

What I want to know is what you have done as a consequence of that to ensure that information that the Operations Review Committee gets is both of a high quality and

accurate, and I also want to know in relation to those five cases what you did as a consequence in those matters that were the subject of that reporting.

Mr O'KEEFE: There are two categories. Mostly - I cannot say invariably, because I have not done a total audit - if there is some material that should be in the report and is not, the Operations Review Committee sends it back for more information. That, nonetheless, is an inadequate report because they do that, so before a decision is made in those matters, the material that the committee wants is provided, and then a decision is made on a supplementary or supplemented report. That is one category.

The other category is - and I cannot say that there is not such a matter; I cannot say there is, either - one that on the face of the material presents as adequate but there is something missing and it gets through.

Now, if that is picked up on the audit - we will make the assumption, without really knowing, that one of these was in that category - then you find out what the additional information is and, if it were such as to require a reassessment, then you make that reassessment, but, remember, that the matters that go to the ORC are matters in which they are going to recommend either that there be no further investigation or that there be one. So, either way, you have not got an adverse determination against somebody. However, you may have somebody slip off the hook who ought not to slip off the hook.

CHAIRMAN: That is the point.

Mr O'KEEFE: But you should also recognise that some of the inadequacies will be that - for instance, we had a couple at the beginning of the year where, for some reason or other, they had high numbers, E99 with a high number, for instance. That could not have been right. What they had done was, instead of cutting off the numbers as at 31 December, E98 numbers had continued with a few with the old numbering.

Now, that is an inadequate or an inaccurate report because you have a wrong file number on it. Now, that does not adversely affect anybody, except what it does is make tracking that thing very difficult if it is not picked up, but it is picked up.

CHAIRMAN: Can we find that in these cases what the nature of the inaccuracies or substandardness was and what happened as a consequence? Were they reviewed again? Were they picked up by the ORC and sent back for reinvestigation or what?

Mr O'KEEFE: I think we can, but I will take that on notice, if I may, because I assume that the file numbers of the files, for instance, are recorded and we can pick those out of the system.

CHAIRMAN: See, if the ORC is getting about a hundred reports - is that what they are getting on average?

Mr O'KEEFE: On average.

CHAIRMAN: And out of a sample of 82, five reports are found to have that problem that I mentioned, it means that every ORC meeting is at least getting a handful of cases which --

Mr O'KEEFE: Chairman, that is the logical fallacy to end all logical fallacies.

CHAIRMAN: Well, I am not sure that it is, but it may be because if this is an internal audit and that is how it has been conducted, they did not go out choosing these ones; they just did an audit and that is what they found?

Mr O'KEEFE: And you would have to look at the five to determine the nature of the inadequacies, but we can do that.

CHAIRMAN: I would also like to know how the 82 were chosen.

Mr O'KEEFE: There was a random selection.

CHAIRMAN: Out of one meeting or more than one meeting?

Mr O'KEEFE: Oh, no, out of files dealt with over a period, otherwise you might get, for instance, a new officer who was not so good at the reports who in one meeting did those and nothing else for the rest, and you need to have a proper statistically based sample.

CHAIRMAN: I take you now to the external audit. This is what I talk about when I say lack of reporting. You had the Audit Office of New South Wales carry out a random sample of the reports submitted to the ORC and the ICAC's response to requests for further action and other suggested changes.

Mr O'KEEFE: Where are we now?

CHAIRMAN: We are talking at the bottom of page 28 and the top of page 29.

Mr O'KEEFE: Yes.

CHAIRMAN: And then the findings of the audit - these are the findings of the audit:

The audit found that the ICAC fully complied with its statutory requirements for reporting to the ORC. In relation to procedural matters, the audit made some observations that may enhance the management of complaints. The ICAC will consider these observations in the course of projects being undertaken to improve strategic capacity.

That tells me nothing. It does not tell me what the observations were. We do not know whether there was a gravity that ought to be of some concern so that you are going to

do something about them, we do not know what the observations are and we do not know how you are going to exercise your discretion in terms of changing the systems. All we have been told is you made some observations and you will consider them. Why cannot we have the information as to what the observations were?

Mr O'KEEFE: If that would have been of assistance to the Committee I see no reason why it should not be provided.

CHAIRMAN: It would have been of assistance now. I think it would have been of assistance to the public of New South Wales.

Mr O'KEEFE: Well, Mr Chairman, might I say that this was a report that since it was published I have been twice before this Committee and that question was never suggested.

CHAIRMAN: I was not on the Committee.

Mr O'KEEFE: But, Mr Chairman, the Committee is a Committee of the Parliament. You are one person of it, with great respect, and your perspicacity may be more than the combined perspicacity of the other members, but all I can say is that that was not a problem to anybody in the past.

Mr RICHARDSON: I doubt this, Commissioner.

CHAIRMAN: Will you provide us with that information?

Mr O'KEEFE: Yes.

CHAIRMAN: And your response to it?

Mr O'KEEFE: Yes.

Mr RICHARDSON: Back in March, the *Sydney Morning Herald* ran an article about the ICAC's tenth anniversary and Gary Sturgess, the architect of the ICAC, said in that article:

ICAC has no profile and has made no significant contribution that I can think of to improve the integrity of the New South Wales Public Service".

Based on your opening remarks today, I guess that you would disagree with that. Do you have any comment on what he had to say?

Mr O'KEEFE: It would not be the first time.

Mr RICHARDSON: In the same article Nick Greiner suggested that the ICAC should

merge with the Police Integrity Commission. What is your view of that suggestion?

Mr O'KEEFE: There is a legislative provision separating the two. There may come a time when the merging of the two would be appropriate. At the present time the separation of the two has meant that the ICAC has been able to spend its budget without having to concentrate the larger section, I think, on police work. If you look at the PIC budget it is about \$12 million, if I remember the budget papers. Ours is \$13.69 million. We did not have a bigger budget than we have now essentially when we were dealing with police, so we had to deal with them on the equivalent, more or less, of our present budget. There has been an extra \$11 million provided for police complaints and integrity. Whilst that persists and while there is a concentration on that following the royal commission, I think that is working well. It is working for us quite well; I do not know how well it is working --

Mr RICHARDSON: That means that you would not claim to be under-resourced?

Mr O'KEEFE: I do. If we got back the \$3.1 million that has been taken off us every year since 1995, which is \$15 million, we would be able to have another investigative team, we would be able to have extra people in our research and we would be able to have extra people in corruption prevention. That \$3.1 million, I think it was, which was taken off us was a consequence of the hiatus between Mr Temby's departure and my arrival which resulted in under-expenditure to that extent.

Mr RICHARDSON: That means that there is corrupt activity in the public sector of New South Wales that is not being exposed due to the budget cuts, is that what you are saying?

Mr O'KEEFE: Yes, I do. In fairness, might I say that it would not matter how big the budget was, that would always be able to be said. It becomes a question of degree thereafter and I firmly believe that that additional money would be not only advantageous, but I think it appropriate that we get it back at some stage.

CHAIRMAN: When do you say you lost it?

Mr O'KEEFE: 1995.

CHAIRMAN: In 1995 your budget was \$12.364 million.

Mr O'KEEFE: Yes, but if you go back to the preceding year you will find that it was about \$15 million.

CHAIRMAN: No, it was not. It was \$13.8.

Mr O'KEEFE: Could I ask what the preceding year is?

CHAIRMAN: 1993-94.

Mr O'KEEFE: Are you looking at budget or are you looking at expenditure?

CHAIRMAN: I am looking at funding. In 1993-94 your funding was \$13.8 million; in 1994-95 it went to \$12.3 million. That was nett cost of services.

Mr O'KEEFE: Yes. \$3.1 million is the figure. I will give you the exact year and I will give you the correspondence.

CHAIRMAN: In 1995-96 the budget went to \$15.15 million.

Mr O'KEEFE: No, it did not. That was the nett cost of services, which includes retained income. The allocation was about \$13 million.

Mr MARTIN: What do you see as an appropriate level of funding?

Mr O'KEEFE: About \$15 million, and I am talking now in adjusted terms. I cannot tell you what it is in adjusted terms, it might be \$15.5, whatever, but there was a factor that we lost and we have lost it each year and, because you lose it back here, the money of that day is worth something more now.

CHAIRMAN: But you also lost the police work, which was about 30 per cent of the work that you did, when the Police Integrity Commission came in.

Mr O'KEEFE: No, that is not correct. 30 per cent of the complaints which we received related to police. Of that 30 per cent a large number came on schedule. They are not resource-intense the same way as section 10 matters are or individual complaints are, that is number one. Number two, in the time before I became commissioner, the Commission had carried out the Miloo 2 inquiry. I believe something in the order of \$7 million was expended on that. On the principles of allocation of resources that I talked about earlier, it was unlikely that we would be expending that sort of money on police during that time. That is why it is a good thing that there is \$11 million available for pursuing police corruption that would not have been available if the split had not taken place.

Mr FRASER: When you say in response to Mr Richardson's question that the lack of \$3 million means that there are people out there going uninvestigated or unconvicted or whatever, how do you come to that? Are you saying that a lot of cases that are reported to you would actually go into a further investigative stage?

Mr O'KEEFE: I do not say a lot; some would. Take, for instance, Operation Berdan. Operation Berdan was about Sydney ferries. The report in that is due before I leave. That was a matter which we had to continually postpone and at one stage it looked as if we would have to say no to the inquiry. I took the view that it had significant cost,

departmental connotations, and that we should apply some resources to it. By the time we had the resources to apply to it, a number of people were no longer available as witnesses, so the efficacy of that investigation was reduced, but it had many connotations.

Mr FRASER: Would there be a connotation that a case is reported and a recommendation is made by one of your officers not to proceed because of budgetary constraints?

Mr O'KEEFE: It could. It would not be one of the officers. Generally when you get to that stage it would be a management decision in relation to it where you know what the competing priorities are.

CHAIRMAN: Commissioner, are you prepared to identify the matters that you say you could not investigate or where you had to defer investigation of particular matters as a consequence solely of budget?

Mr O'KEEFE: I do not think it would be appropriate because there may be some of them that we would now want to investigate, and we do not put up signs like the police targeting drink-driving because that way you can be absolutely sure that people will go another way to get home, if they are driving, and if they are corrupt then evidence will disappear, so I mean there are some difficulties about that.

CHAIRMAN: But there are difficulties also in going out and making statements which appear to be, in the public eye anyhow, unsubstantiated simply on the basis of budget cuts. For example, a couple of years ago the ICAC decided that the police were not worth investigating.

Mr O'KEEFE: That is not a couple of years ago, that cannot be right. You must be wrong.

CHAIRMAN: A few years ago, five years ago.

Mr O'KEEFE: More than five.

CHAIRMAN: The point is that Mr Temby thought there was no corruption at the time in the police service.

Mr O'KEEFE: That has nothing to do with resources.

CHAIRMAN: That is right, it did not have anything to do with resources at the time, it was a decision that he made that it was not worth investigating because he did not believe that they were corrupt. Now if, for example, there is something that you think is of importance and ought to be investigated, which you lack funding for, what is wrong with just indicating the subject matter and allowing the Government to make a

determination, to direct you to investigate it or give you the funds to do it?

Mr O'KEEFE: The Government cannot direct it.

CHAIRMAN: The Parliament can.

Mr O'KEEFE: Yes, and that means then that the matter is debated as a public matter in Parliament and by the time you get to the evidence there is none. With great respect, that is not a solution.

CHAIRMAN: That is not an answer to the question I put to you. The question I put to you is: Why can you not identify and indicate that the sole reason is because you do not have the funds?

Mr O'KEEFE: I thought I had answered that question.

Mr FRASER: Could you give the number of cases?

Mr O'KEEFE: I cannot. It is not a matter which I have in my head at all.

Mr FRASER: No, but even on notice, could you give us the number of examples without identifying the case?

Mr O'KEEFE: By searching through reports, I am sure that we could get a number for a period and I would be quite happy to do that.

Mr RICHARDSON: An article in the *Sydney Morning Herald* a couple of weeks ago suggested that cuts of 20 per cent to the police internal affairs branch would affect your ability to carry out surveillance and bugging. Could you elaborate on that?

Mr O'KEEFE: The latter part is wrong. The former part may be right. Surveillance is labour intense. You need a given number of people, at least six in a team, in order to be effective. You need more than that if you are going to operate on a 24 hours a day basis. What we tend to do is get a team, maybe two teams, from the Australian Federal Police and similarly, when they need somebody and we are not flat-chat in surveillance, we will give them a team, so occasionally, but not so frequently, we use New South Wales police. It is a while since we have done that, but what they do - and they have done I think three or four times in the last year - is use our surveillance people, "May we have your team", and the answer is "Yes", but these days where user pays, they are obliged to pay for that. If they have not got the budget for it, they cannot pay for it, so they cannot use them.

CHAIRMAN: Bearing in mind a previous answer that you gave, I just want to draw your attention to an article in the *Daily Telegraph* of 23 December 1998 where it reports: He (that is you) said two major inquiries - including one into suspect travel by State MPs - had already been

postponed.

"You can't do more work with fewer people and do it well for less money when you find at the same time the complaint workload has increased by 100 per cent".

Are those comments correctly attributed to you?

Mr O'KEEFE: I cannot remember that, but, Chairman, I think you will find that those comments I made after the Langton report had been issued and that Langton report itself foreshadows a second report.

CHAIRMAN: That report came out in December 1998.

Mr O'KEEFE: Yes. I thought that was the date of the article.

CHAIRMAN: 23 December 1998.

Mr O'KEEFE: Yes. I am relying on recollection, but that is my recollection.

Mr RICHARDSON: Commissioner, you are almost coming to the end of your five years as Commissioner of the Independent Commission Against Corruption. Looking back over those five years, what would you say have been your greatest successes and your greatest failures, and do you believe that the New South Wales public sector today is less corrupt than it was in 1994?

Mr O'KEEFE: Moving backwards, the answer to your last question is undoubtedly yes. The greatest failure I think was the decision of the Supreme Court, Mr Justice Einstein, to remove me or injunct me from continuing in the Gibson matter. I do not agree with that decision; however, I am bound by it and thus I think it was a failure.

I think the greatest success has been to bring about a change in the way in which the members of the Government - I am talking now of the Premier, Treasurer and Ministers - view the ICAC as a permanent institution, an important part of the accountability mechanism for governments in New South Wales. Secondly, the embracing of that concept by the Government in a number of ways, which includes requiring probity conditions in SES and CEO contracts and key accountabilities, including those factors for SES and CEO. Next, the launch in January 1999 of the New South Wales handbook of conditions to be adhered to by those who contract for goods and services with the State of New South Wales. Chapter 5 in that document draws heavily on our work and is a response to our recommendations and has ten principles which, if adhered to by those who want to deal with the public sector, mean that you should cut down the number of tempters, but those three things also send a very significant message to people, namely that the Government of New South Wales is serious about integrity in government and that that message is well-received is exemplified by the extent to which people who want to invest with capital come to New South Wales to do so and state one of the reasons that they want to do so is: Here the Government is serious about

integrity in government dealings and did you get a fair go for your money. Now that is a big change. It is not spectacular, the way you have headlines perhaps for investigations, but it is really the stuff of change that the ICAC should be about. We should be an agent for change.

So recognition, permanence and the effect, and could I add, although it will be controversial in this milieu, the code of conduct for parliamentarians. I think that is a big step forward.

As you, Mr Chairman, pointed out, in one of our reports we recommended it should go further, but there is a code, it is there, and one can refine and strengthen it, if that is appropriate, over time, but the start has been made, and I think that is a direct on flow from Metherell-Greiner.

Mr RICHARDSON: Last year in response to a question from the Hon. Bryan Vaughan you said that you would give some thought to the possibility of ICAC developing a grand jury structure. Have you given any thought to that suggestion?

Mr O'KEEFE: Yes. I do not think it would be appropriate. You finish up introducing the concept of being a cog in the prosecutorial function that I think is inappropriate whilst you maintain those provisions like section 35, 36, 37, 38 in the Act about people self-incriminating and the like, and if you take those out, your ability to expose is severely weakened. What I said to him was that I would consider it, and did do so, and that is my conclusion.

CHAIRMAN: Commissioner, can I just ask you some questions on your media office?

Mr O'KEEFE: Yes.

CHAIRMAN: You answered some questions with reference to examples I asked you about Canterbury Park racecourse and the answers that you supplied?

Mr O'KEEFE: Yes.

CHAIRMAN: The first question I want to ask you is: do you notify complainants of the dates upon which matters which they have complained upon are to be the subject of discussions by the Operations Review Committee?

Mr O'KEEFE: No.

CHAIRMAN: You do not?

Mr O'KEEFE: No.

CHAIRMAN: Is there any mechanism by which a complainant can ascertain that

information from your office?

Mr O'KEEFE: No.

CHAIRMAN: Is that information confidential?

Mr O'KEEFE: Yes.

CHAIRMAN: Can you explain the details of the meeting of 3 April 1998 where the Operations Review Committee considered the Canterbury Park racecourse matter?

Mr O'KEEFE: It is possible that the complainant was told. Although our policy is not to do so it is possible that the complainant was told. I have not checked that.

CHAIRMAN: Well, I should indicate to you that the journalist informed me that he did not get it from the complainant, but, having said that --

Mr O'KEEFE: I must say I would have thought it would be unlikely that they would.

CHAIRMAN: That is consistent with your view. How else could that information have been released to the *Daily Telegraph*?

Mr O'KEEFE: I have no idea. It certainly did not come out of the ICAC.

CHAIRMAN: How would you know that?

Mr O'KEEFE: Well, I have asked the people who might be able to say that, and my recollection is that the journalist claimed that he had spoken to the media manager but he did not claim to have spoken to anybody else at the ICAC.

CHAIRMAN: These articles were being printed about a matter which you ultimately and the Operations Review Committee determined was worth pursuing?

Mr O'KEEFE: Yes.

CHAIRMAN: Correct. Yet all these articles appeared in the paper one after the other indicating dates on which deliberations were taking place by the Operations Review Committee, some of them, I might add, inaccurately, as you have correctly identified in your answer, and yet there has been no official response from you as Commissioner to clarify this issue, notwithstanding the fact that all sorts of accusations had been made both against the council involved and the council officers of the council.

Mr O'KEEFE: I am sorry, the question is?

CHAIRMAN: Well, the question is: why was there no response from the ICAC? You

have indicated before that once information such as this becomes public the media policy is you may have to respond in order to correct inaccuracies. You have identified in these various articles through your answers a number of occasions on which the articles were inaccurate. We are talking about page 57. One of the claims that was being made in the article was, at the bottom of page 57:

. . . the opening paragraph comment that an ICAC investigation was "likely" is speculation, not based on anything said by the spokesman and inconsistent with the process outlined later in the story.

And two paragraphs down:

Reference to the matter being dealt with at the 3 April 1998 ORC meeting would have been made by the complainant . . .

And you have indicated to us now that that was unlikely to have been the complainant who supplied the information.

Mr O'KEEFE: But unlikely things happen every day, Chairman.

CHAIRMAN: You do not say it is unlikely; you say:

Reference to the matter . . . would have been made by the complainant . . .

You have speculated, in effect.

Mr O'KEEFE: Chairman, could I do this? Rather than get into a matter that I know is dear to your heart --

CHAIRMAN: It is not dear to my heart?

Mr O'KEEFE: It is.

CHAIRMAN: It is an example. I just want to know why there was no response to these various articles.

Mr O'KEEFE: I will take that on notice and, Chairman, in the meantime I shall have the file looked at to see was there, for some reason, a date given to the complainant.

CHAIRMAN: In relation to matters of that kind, then, is it appropriate that the ICAC would comment on inaccuracies?

Mr O'KEEFE: No. You do not know until you have looked at it whether it is accurate or inaccurate. It is very easy now in 1999 to say that it is inaccurate. I cannot tell you what the state of this was as at 23 March and 3 April or 5 April 1998.

CHAIRMAN: If that article says that an investigation is likely and attributes that to the

ICAC and that is inaccurate at the time, why should not the ICAC respond?

Mr O'KEEFE: But, Chairman, how do you know what the answer is until you know the answer? And whether it is likely or not depends upon a process, and the process was incomplete at that stage.

CHAIRMAN: I will not get into semantics.

Mr O'KEEFE: It is not a semantics thing; it is a substance thing.

CHAIRMAN: Because you cannot say that an investigation is likely if --

Mr O'KEEFE: But we did not. We say that that was inaccurate; it was a speculation and inaccurate.

CHAIRMAN: And I say why did you not respond and clarify that?

Mr O'KEEFE: Because you do not know at that stage. Is it likely that there will be fireworks on New Year's Eve? The answer is yes, but you do not know it certainly. Is it likely that there will be fireworks the night before or the night after? There may be, but you do not know until you experience it. And here we are looking at a string of facts and allegations that need to be looked at before you can form a judgment about it.

CHAIRMAN: Have you ever had occasion to find in your organisation that confidential material has been leaked to the media?

Mr O'KEEFE: Yes.

CHAIRMAN: What have you done about it?

Mr O'KEEFE: I am sorry, leaked?

CHAIRMAN: That is right.

Mr O'KEEFE: But not to the media.

CHAIRMAN: Disclosed unauthorised?

Mr O'KEEFE: In relation to one leaking of material, not to the media but to someone else, the officer was dismissed. In relation to one other matter, it is currently under investigation. There was a third matter, and I was not able to determine whether it had been an officer of the ICAC or somebody else who had done it, so nothing could be done about it.

Mr FRASER: In any of those matters did it compromise the case?

Mr O'KEEFE: In the first case that I mentioned, it had - could we go into closed Committee for this, please?

CHAIRMAN: Would the media like to leave?

Mr O'KEEFE: It just occurred to me that this is an ongoing matter.

(Evidence continued in camera)

(Public hearing resumed)

Mr RICHARDSON: Coming back to the recommendations you made relating to the members' code of conduct, one of the items in the code of conduct is that members must not knowingly and improperly use official information which is not in the public domain or information obtained in confidence in the course of their parliamentary duties, and you said that MPs should not use leaked information to discredit an opponent party's policy proposals or an opponent. On that basis the proposition would be almost impossible and my friends from the fourth estate would be absolutely horrified. Could you expand on that? You say that MPs - and presumably Opposition MPs - should not use leaked information to discredit an opponent party's policy proposals or an opponent.

Mr O'KEEFE: No, I do not think it is Opposition solely, I think it could be anybody. It could be Government, Opposition, Cross-Bench.

Mr RICHARDSON: So the business of politics thrives on leaks?

Mr O'KEEFE: Well, we had a Prime Minister who had that as his nickname, no longer with us, but the use of confidential information that comes to people in their capacity as members of Parliament is no different, we believe, from information that comes to public servants in the course of their employment, and they are not able to use it for their private benefit and members of Parliament ought not be. Take, for instance, the Treasurer who knows that there is going to be an impost on wine or spirits or cigarettes or whatever. It would be most improper for that person to use that to either buy-up those commodities or, alternatively, wise-up somebody who might buy them and make a profit and be grateful later on. That is the gross case.

That is different, I think, from the use of information that comes to you that is legitimate to be used, for instance, within the Parliament. The asking of a question, properly founded, that may suggest or indicate wrongdoing on the part of some other member, is not only a function that is commonly performed but it is a legitimate use of the parliamentary process.

Mr RICHARDSON: I would hope so; otherwise, why does Parliament exist?

Mr O'KEEFE: Well, it exists to pass laws, but, as a matter associated with that, it also exists to ensure that the law passing process is a pure process. It does not strike at that sort of thing, but what it does strike at is that you learn something as a member of Parliament as to when something is going to happen and what is going to happen and you should not be using that.

Mr RICHARDSON: But you said specifically you should not use leaked information to discredit an opponent party's policy proposals or an opponent. I could not see how you actually function as a political party if you cannot use information that comes to you in the course of your employment as a member of Parliament within the parliamentary forum or indeed outside the parliamentary forum.

Mr O'KEEFE: No, but assume that you are a member of a committee and that the committee's deliberations are confidential and then, in the course of that confidential deliberation, you ascertain some information. That would be inappropriate to use either for your personal benefit or to discredit a policy of the opponent, your opponent party or opponent person. That does not mean that you may not, armed with that, find out the same material through a source that is not a confidential source. You may use an FOI, for instance.

Mr RICHARDSON: This document was marked "confidential". None of that has leaked from any member of this Committee.

Mr FRASER: That you know of.

Mr RICHARDSON: I would have seen it in the paper, I guess. They are confidential until they have been tabled.

Mr O'KEEFE: Well, they are supposed to be confidential until they are tabled, but I can read and, during my five years, I have read things that have come out of answers before I have come here to give those answers, so confidentiality is dependent upon the integrity of the people to whom the confidential revelation is made.

Mr RICHARDSON: Even so, the comments that you made on the members' code of conduct did not amplify matters in the way that you have today. You certainly said you should not be using leaked information to discredit an opponent party's policy proposals. That did not relate to material that came to you in your role as a member of the parliamentary committee.

Mr O'KEEFE: No, but that is an example. We have had now five, six, seven minutes' discussion. Reports never, or very rarely, have that sort of specific in them and they are the sorts of things that, in the process that goes on, for instance, a parliamentary committee and the proponent of a proposition like that work through and perhaps refine.

CHAIRMAN: There are other questions which can be dealt with at a later point in time.

Mr O'KEEFE: If it is suitable, a morning is better for me.

CHAIRMAN: All right. It may not be for a little while. Thank you.

Mr O'KEEFE: Can I thank you also because the tone of today's committee meeting has been, I think, very positive and the questions that have been asked, although searching, have been directed towards real issues that you, as members of the Committee, when doing your review of the Act, will need to address, and that is what I see as a very important function of this Committee and I thank you for that.

(The witness withdrew)

(The Committee adjourned at 1 p.m.)

REPORT OF PROCEEDINGS BEFORE
COMMITTEE ON THE INDEPENDENT
COMMISSION AGAINST CORRUPTION

REVIEW OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION

—————
At Sydney on Friday 12 November 1999

—————
The Committee met at 10.00 a.m.

—————
PRESENT

The Hon. J. Hatzistergos (Chairman)

The Hon. D. E. Oldfield

The Hon. J. F. Ryan

Mr A. Fraser

Mr K. Hickey
Ms A. Megarrity
Mr M. Richardson

CHAIR: Thank you Commissioner for appearing before the Committee of the Independent Commission Against Corruption today. Your appearance before the Committee is to continue discussions, which are part of our general meeting, and the Committee is pleased to hear your evidence. We would like you to take the oath again.

BARRY STANLEY JOHN O'KEEFE, sworn:

CHAIR: Would you please state your name, professional or private address?

The Hon. B. S. J. O'KEEFE: My name is Barry Stanley John O'Keefe. I am the Commissioner of the Independent Commission Against Corruption, the address of which organisation is 191 Cleveland Street, Redfern and I appear here today pursuant to a summons under your hand, pursuant to the Parliamentary Evidence Act 1901.

CHAIR: Commissioner, I have received a letter of 10 November 1999 under your name in response to some matters which were outstanding following the last Committee hearing. Is it your proposal that this be included as part of your evidence?

The Hon. B. S. J. O'KEEFE: Yes.

CHAIR: Members of the Committee would have received a copy of this letter previously signed under the hand of the solicitor of the commission dated 5 November, the contents are identical however, so you would have received it. If you wish to have another look at it you can. Arising from the documents, you will recall that at a previous Committee meeting you indicated that there was an operational strategy document and you took on notice my request to provide the Committee with a copy of that document. That was not attached to your correspondence. Have you considered whether you would be prepared to provide the Committee with a copy of that document, in camera if necessary?

The Hon. B. S. J. O'KEEFE: I had not considered it in that form, no, I had not, Chairman, I had merely considered it as a question as to whether or not it should be a public document and I took the view that it ought not to be. The question of camera is something I had not considered but I am prepared so to do.

CHAIR: I wanted to ask you a question about matters that were raised on page 137 of the Ombudsman's report.

The Hon. B. S. J. O'KEEFE: I am not aware of that and I have had no notice of that. Perhaps it would be best if I take that on notice.

CHAIR: Perhaps I should indicate to you what is specified there, you may be able to enlighten the Committee on some of the matters.

The Hon. B. S. J. O'KEEFE: Do you have a copy of it there?

CHAIR: Yes I do. First of all, in your annual report you indicate that the commission had

no protected disclosures made to it in the course of the financial year.

The Hon. B. S. J. O'KEEFE: No, that is not right. We had a number of protected disclosures made to us in the course of the year, it was some hundreds in fact. I cannot remember the number.

CHAIR: I should be more specific. I am talking about internal protected disclosures by staff of the ICAC.

The Hon. B. S. J. O'KEEFE: I think that is correct.

CHAIR: The Ombudsman in her report refers to an incident.

The Hon. B. S. J. O'KEEFE: I have not had an opportunity to read it.

CHAIR: You might just read the section, "Liaison goes too far", page 137. Just to enlighten you, this is an incident, Commissioner, which referred to a member of the investigative staff of the ICAC having a sexual liaison with the solicitor of a witness who was appearing before the ICAC.

The Hon. B. S. J. O'KEEFE: This was not a protected disclosure to the ICAC.

CHAIR: You did not treat it as a protected disclosure?

The Hon. B. S. J. O'KEEFE: It was not a protected disclosure to the ICAC. There was a disclosure to the Ombudsman who then conveyed that to the ICAC. Your question was, was there a protected disclosure made to the ICAC? My answer to that was I did not think so, and I remain of that opinion.

CHAIR: The Ombudsman report suggests that the matter was reported to the ICAC by members of the staff of the ICAC before it was reported to her.

The Hon. B. S. J. O'KEEFE: But not as a protected disclosure.

CHAIR: That is the answer to the question, you did not regard it as a protected disclosure?

The Hon. B. S. J. O'KEEFE: Exactly.

CHAIR: In any event, the matter that was the subject of complaint was that an investigative officer of the ICAC had had a sexual liaison with the solicitor for one of the witnesses who was involved in giving evidence, I think, before the ICAC.

The Hon. B. S. J. O'KEEFE: Yes, that was the complaint.

CHAIR: Are you familiar with the matter?

The Hon. B. S. J. O'KEEFE: I have some recollection of it. I do not carry the detail in my head and I am somewhat disappointed I might say that I was not apprised of this so that I could have got it into my head.

CHAIR: Perhaps you might read the Ombudsman's report, pages 137, 138. I take it you have not read these sections before?

The Hon. B. S. J. O'KEEFE: No. Yes, I have read that.

CHAIR: Commissioner, there were two complaints made in relation to that conduct: one, that it raised an issue of a potential conflict of interest on the part of the investigator, which was not proactively disclosed to the Commission as required by the code of conduct; and second, the potential breach of security that was involved in that incident. Do you consider that those two matters give rise to breaches of conduct on the part of the officer involved?

The Hon. B. S. J. O'KEEFE: Chairman, I dealt with that matter and as this report indicates I made a judgment in good faith. I do not resile from that judgment.

CHAIR: Was it a breach of conduct?

The Hon. B. S. J. O'KEEFE: In my view it was.

CHAIR: How should such breaches of conduct be dealt with under your code?

The Hon. B. S. J. O'KEEFE: In an appropriate manner.

CHAIR: Are subjective circumstances appropriate to be taken into account in dealing with matters which involve failure to proactively disclose a conflict of interest and a potential breach of security?

The Hon. B. S. J. O'KEEFE: I considered those matters. I took into account those and a number of other matters and came to my conclusion, as this report indicates, in good faith as it was. I do not see anything further that I can say than that.

CHAIR: The question that I asked you, are subjective matters appropriate matters to be taken into account, where you have breaches which involve a code of conduct, failing to proactively disclose a breach, a conflict of interest and a potential breach of security?

The Hon. B. S. J. O'KEEFE: In my view, in all cases where there is a breach of discipline, subjective matters relating to the officer the subject of that complaint, or who have been involved in the breach are appropriate to be taken into consideration. For instance, it is a breach of discipline for an officer to drive a motor vehicle whilst he is intoxicated, but there may be circumstances which would mitigate against a severe penalty being imposed. There may be circumstances in which an officer reacts inappropriately to a direction from his or her superior, but there may be domestic or like

circumstances, or pressure on the officer that would mitigate against any extreme measure being taken. As in the sentencing of people in courts, so too in the determination of the appropriate penalty or disciplinary action, subjective matters are not only material, they may be highly material depending upon their nature and the relationship of that circumstance to the subject matter of the breach of discipline.

CHAIR: That is not what was involved in this case, was it?

The Hon. B. S. J. O'KEEFE: I think it was.

CHAIR: The Ombudsman in fact said, your successor, said that she found it difficult—

The Hon. B. S. J. O'KEEFE: Mr Chairman, with great respect, when this was written she was not my successor and was not designated as my successor.

CHAIR: It is even more poignant in those circumstances. She says this, she found it difficult to accept in any objective measure that your action was adequate given the seriousness of the breach, and the commission must necessarily expect high standards of its staff in order to uphold its reputation and credibility. Do you disagree with that?

The Hon. B. S. J. O'KEEFE: Yes.

CHAIR: Why?

The Hon. B. S. J. O'KEEFE: It is very easy to second-guess what has been done by somebody who has full knowledge of a circumstance, when the second-guesser is a person who is judging according to pieces of paper. The law recognises this. That is why, on appeals from primary judges, appellate judges tend not to interfere with matters that involve various assessments of particular situations. That is a well-established principle.

Secondly, people may disagree upon an outcome when that outcome falls within parameters in which either judgment may be made. Minds differ. I do not agree. That does not mean that the person who disagrees with me is wrong, or not in good faith. It simply means that within parameters in which different judgments can be formed, different judgments were formed. Might I say also that the Ombudsman has no jurisdiction in respect of the ICAC, in respect of industrial matters. So that the consideration by the Ombudsman could not take into account industrial matters. As Commissioner, my determination had to take into account industrial matters.

Included in that was the fact that this officer had been under extreme pressure, had worked enormously long hours on this particular investigation, handling a very difficult informant. That was his role. He was not part of the team. I think when people are in those circumstances, they may make errors of judgment. People who are under pressure are more likely, if the pressure is sustained, to make errors of judgment than those who are able to sit down in an armchair, read papers and form the armchair view. The law, too, has said something about that. The law has rejected the armchair test in the ***** Castle case.

CHAIR: Commissioner, you mentioned it is easy for someone looking at bits of paper to form a judgment after the event. One of the matters that the Ombudsman also criticises, and in fact she expressed serious concerns about, was at the time that she came in to investigate the matter, there was no formal written account of the incident or action taken, recorded in any of the official files. What pieces of paper—

The Hon. B. S. J. O'KEEFE: I do not think that is correct.

CHAIR: That is what she says, "We had serious concerns that at the time of the investigation there was no formal written account of the incident, or actions taken, made, or recorded in the files." In fact, she goes on to say that there had been a direction by you for a formal minute to be drawn up, but due to operational pressures, this had not been done.

The Hon. B. S. J. O'KEEFE: I think if you look at the adjectives, formal written account, and delete now the formal, the statement is not correct. So what makes the statement correct is the insertion of the additional adjective, "formal", because the report itself goes on to say that the notes that were included in the file were, in her view, inadequate. So there were some written notes about what had occurred. The issue was the adequacy of it. The second issue was, the failure of the officer in question to comply with the direction that I had given, to make a formal note.

CHAIR: When was the matter recorded on the individual's file? Was it after the Ombudsman's involvement?

The Hon. B. S. J. O'KEEFE: I have no idea. If I had been told about this, I would have been able to be on top of that file. I do not know, is the answer.

CHAIR: How do you believe that the public would view the reputation of the ICAC in light of incidences of this kind, and the way they have been dealt with?

The Hon. B. S. J. O'KEEFE: I think if the public knew what I knew, they would probably concur in the view that I took. However, that is a speculation, as is the speculation as to what they might not do.

CHAIR: Are you concerned that the matter has been raised in the Ombudsman's report in the way that it has been?

The Hon. B. S. J. O'KEEFE: I am now. First, I am concerned that this should have been included in the report, without any notification to us, either before or after. Secondly, I am very concerned that it is quite poorly written. I have no idea who the "they" are that this report keeps talking about. No idea whatsoever. I mean, this as a piece of writing is a pretty scrappy piece of work. Now, that does not detract from the substance. But what it does do, it means whoever put it in did not give a lot of thought to it.

Mr RICHARDSON: Do you think you should take that up with the incoming

Commissioner?

The Hon. B. S. J. O'KEEFE: I do not know is the answer to that. Time is short, there are a lot of things to do, and maybe the staff will do that.

CHAIR: I would like to ask you this question relation to this incident. Was the commission's internal reporting policy adequate for dealing with allegations of a kind that the Ombudsman has identified?

The Hon. B. S. J. O'KEEFE: I think it was.

CHAIR: If so then, why was it necessary for an external agency to become involved in its investigation and resolution?

The Hon. B. S. J. O'KEEFE: Firstly, your question is wrong. It was not involved in its resolution. It had been resolved, and the Ombudsman chose not to alter the resolution. Number two, the complaint was made to the Ombudsman as a protected disclosure. Therefore, the Ombudsman had to deal with it.

CHAIR: The reason why the Ombudsman said that she could not change it was that her involvement came in six months later. It was only at that stage that the matter was recorded on the file of the person concerned?

The Hon. B. S. J. O'KEEFE: No, that is not correct either.

CHAIR: That is what she says.

The Hon. B. S. J. O'KEEFE: That is one of the things she said. Please read it, Chairman, and please read it accurately. Because she gives a number of reasons. That is one of them. Industrial considerations are another. I have not had time to study this, you obviously have. If I had been given notice of this, of course, I could have had an even greater depth of understanding of it. What I am saying is, that on a quick reading, there are a number of reasons assigned, and they are not said to be exhaustive.

CHAIR: Is it possible that your internal reporting policy could be published as an appendix to the collation?

The Hon. B. S. J. O'KEEFE: That will be a matter for the incoming commissioner.

CHAIR: Have you taken any changes in the ICAC since this incident has arisen to see that there is no repetition of it?

The Hon. B. S. J. O'KEEFE: I don't understand your question. Changes in the ICAC, what do you mean by that?

CHAIR: To encourage officers, firstly where there is a conflict of interest, such as a

sexual liaison with a solicitor for one of the witnesses of an investigation, that they disclose that up front without having to do so in the circumstances of this officer?

The Hon. B. S. J. O'KEEFE: I have gone further than that. You will see in this report that I spoke to the staff, and spoke not only to the staff member involved but to the staff generally. What I said went far beyond that. It is not a question of disclosing that you have had a sexual relationship. The question is, not to have it. And that was the issue that I put, and made that quite clear. So you do not get to the reporting, if that is adhered to.

CHAIR: Is there any reason why this incident was not disclosed in your report?

The Hon. B. S. J. O'KEEFE: No. But I mean, I have not read the Ombudsman's report, but I must say it does seem to me, when you look at the headings and some of the other things, to have been given a prominence that I find a little strange.

CHAIR: Page 137 of the Ombudsman's report is prominent?

The Hon. B. S. J. O'KEEFE: It was prominent enough for you to have spent the last half hour asking about it. I would say yes, it is.

CHAIR: But I read these things.

The Hon. B. S. J. O'KEEFE: So do others.

CHAIR: You did not.

The Hon. B. S. J. O'KEEFE: That is not my job to read it, quite frankly. It may be yours, because you are a member of the PJC that deals with the Ombudsman.

CHAIR: I am also a member of the PJC that deals with the ICAC.

The Hon. B. S. J. O'KEEFE: I understand that, but I do not know in which capacity you read it.

CHAIR: In both.

THE HON. B. S. J. O'KEEFE: How do I know that?

CHAIR: There was another incident that was referred to about security actually, in the report of the Police Integrity Commission, that you might be aware of, relating to an officer who disclosed information.

The Hon. B. S. J. O'KEEFE: That was a police officer, and that is a matter, I think, that should be dealt with in camera, and it was dealt with immediately. In fact, there were, as far as the investigations went, some benefits that accrued from the knowledge that that had happened on the part of this police officer, and what we got we were able to

do in the investigation. I do not want to go into the details of that. But as soon as the Police Integrity Commission said, in a joint task force that we were in, it is appropriate to move now, we moved immediately. He was removed from his secondment and he is now, I think, suspended—maybe the subject of charges, I don't know.

But it is inevitable that you may have such breaches of security. It is undesirable that you have them, it is essential that you find out about them fairly quickly, as we did, and it is unfortunate that this was a police officer seconded to us. I have sought, over the period that I have been Commissioner, to reduce that risk, by reducing the number of police officers. We have now only one on secondment, and he is in an area that he is not concerned with possible security breaches.

Mr RICHARDSON: Since we are talking about matters sexual, I was wondering Commissioner, what did you think of Ken Starr's investigation of President Clinton? Did you feel it was justified, did you feel it was properly prosecuted?

The Hon. B. S. J. O'KEEFE: I have no idea, and I do not propose to comment upon it. It has got nothing to do with my jurisdiction.

Mr RICHARDSON: It doesn't, in a sense, Commissioner, because Ken Starr was appointed as an independent counsel. You will be aware that the Office of Independent Counsel has been wound up in the United States.

The Hon. B. S. J. O'KEEFE: I do not think that is right. I think that Mr Starr has retired and his deputy has been appointed in his stead.

Mr RICHARDSON: No, on 30 June the independent counsel's statute, under which Ken Starr and his predecessors were appointed, expired.

The Hon. B. S. J. O'KEEFE: That may be, but I happen to know that his successor is his former deputy. Whether that is under a new statute or not, I cannot help you, because I am not concerned with the American jurisdiction.

Mr RICHARDSON: It is simply the way in which the independent counsel conducts investigations, Commissioner. I think that is an issue that is actually relevant to this Committee. You will be aware that there is some concern, within parliamentary ranks, at your use of public hearings. In fact, you were asked about that question on 2BL this morning.

The Hon. B. S. J. O'KEEFE: Yes, I was asked that question here on the last occasion.

Mr RICHARDSON: That is right.

The Hon. B. S. J. O'KEEFE: I gave the same answer there as I gave here, a little fuller here than this morning.

Mr RICHARDSON: You are familiar with the investigation of Theodore Olsen, of the

United States, by independent counsel, Alexia Morrison?

The Hon. B. S. J. O'KEEFE: No.

Mr RICHARDSON: It is quite a famous case. It goes back 10 years ago.

The Hon. B. S. J. O'KEEFE: My answer is still no.

Mr RICHARDSON: There was a dissenting judgment. The matter went to the Supreme Court, whether the independent counsel actually had the jurisdiction to investigate that matter. Theodore Olsen, for the benefit of the Committee, allegedly had given false and misleading testimony in a bitter dispute about Congressional access to EPA enforcement documents. It is a similar sort of issue to ones that have come before the Parliament of New South Wales. In a dissenting judgment, two justices of the Supreme Court actually found that the independent counsel did have jurisdiction in the matter. In a famous dissenting judgment, Justice Scalia wrote:

Besides weakening the presidency by reducing the zeal of his staff, it must also be obvious that the institution of the independent counsel enfeebles him more directly in his constant confrontations with Congress by eroding his public support. Nothing is so politically effective as the ability to charge that one's opponent, and his associates, are not merely wrong-headed, naive, ineffective, but in all probability, crooks, and nothing so effectively gives an appearance of validity to such charges as a Justice Department investigation.

The present statute provides ample means for that sort of attack, assuring that massive and lengthy investigations will occur, not merely when the Justice Department in the application of its usual standards believes they are called for, but whenever it cannot be said that there are no reasonable grounds to believe they are called for. The statute's highly visible procedures assure, moreover, that unlike most investigations, these will be widely known and prominently displayed. Thus, in the 10 years [remember this was written in 1988] since the institution of the independent counsel was established by law, there have been nine highly publicised investigations, a source of constant political damage to two administrations.

You still believe, Commissioner, that public hearings, particularly those that involve political figures, are justified?

The Hon. B. S. J. O'KEEFE: Not only are they justified, they are themselves a means of ensuring that the Parliament presents as transparent, not a club that closes down and protects its own, but when its own have done something wrong, or have given the appearance of having done something wrong, they are treated no differently from other citizens. Might I also remind you that Mr Justice Scalia's decision was dissenting, and what he says is his personal view. It did not—

Mr RICHARDSON: The office of the independent counsel has now been abolished.

The Hon. B. S. J. O'KEEFE: Would you please let me finish. I did give you the courtesy of asking your question in full, uninterrupted. The majority judgment took an entirely different view, and made no such statements. If they had, you would have been quoting them to me. So we have a Scalia view, and we have the predominant concluded view, a view of the Supreme Court of the United States. How the special prosecutor operates there is an American matter. Here, it is an Australian matter. And

the procedure that has been adopted in the time that I have been commissioner, whether the matter involves politicians, or whether it involves persons of otherwise prominence, or even if it involves citizens who are not prominent, where allegations are made, first they are investigated. Secondly, part of that investigation—if the first part of it shows some value in it—is the subject of a private hearing. At the private hearing, the subject of the investigation is given an opportunity to put his or her case, in private.

Then, and only then, an assessment is made as to whether or not a public hearing is justified. If it is justified, then it seems to me there is no reason why politicians should be permitted to protect themselves, by amending the legislation, so as to prevent the public knowing what the allegations, which have some substance, are. It is detrimental to the credibility of the Parliament, and it is detrimental to the credibility of the organisation, namely the ICAC, to adopt a special rule for a subset of the population. That is my view, as I expressed it on the last occasion. It remains my view today, and I am heartened by the fact that our Premier has taken the same view.

Mr FRASER: I do not think there is an inference in the report that Mr Hatzistergos and myself put before the Committee, there is no indication in that report that we want special treatment for politicians.

CHAIR: No, not at all.

Mr FRASER: What we are saying in that report is that if something—on the ICAC example—if something is followed through in a covert nature and it gets to a stage where a prosecution is recommended, then the Department of Public Prosecutions takes it forward and it goes into public hearings at that stage, which not only gives an opportunity for evidence to be tainted but at the same time gives an opportunity for the public to be made aware any way. What now happens in all cases where there are public hearings and the media are interested, basically the fact that the person is before the ICAC in some way condemns them, can taint evidence and at the end of the day no prosecution will follow.

Whilst there is an exposure of corruption or the possibility of corruption, at the end of the day if a prosecution does not take place because of the process, surely it is better that you have a situation similar to the Hong Kong ICAC where the covert operations collate and collect the evidence in a way where it is admissible into a court of law, a prosecution will take place and exposure of that particular incident, or rorting system, or whatever it is, is then guaranteed so that both criteria are then met.

The Hon. B. S. J. O'KEEFE: Your question, if it be a question, as opposed to a statement, involves a number of misconceptions and inaccuracies. First, the Chairman has assured me in writing that it is not his and your view that this should happen, but merely that it should be examined. You say to the contrary in the first part of your question, so you and the Chairman are at loggerheads about that.

Mr FRASER: That is being semantic.

CHAIR: That is not what he said. That is not my understanding.

The Hon. B. S. J. O'KEEFE: Well it is my understanding.

Mr FRASER: Well you are wrong.

The Hon. B. S. J. O'KEEFE: With respect, I don't think I am and the transcript will tell us that. You think I am, I don't.

CHAIR: I heard the same statements and that was my understanding.

The Hon. B. S. J. O'KEEFE: I heard them. Let me continue.

Mr FRASER: Commissioner, if I could just correct that, your perception there is incorrect, what I am saying is we did look at it, I believe personally that we should examine it, for the reasons that I gave you.

The Hon. B. S. J. O'KEEFE: Secondly, there has been no case in which there has been a tainting of evidence that would prevent a prosecution, none whatsoever. That is a furphy.

Mr FRASER: What about—

The Hon. B. S. J. O'KEEFE: Please let me finish.

Mr FRASER: I will let you finish and then I will come back to it.

The Hon. B. S. J. O'KEEFE: An absolute furphy. There is no case where evidence has been tainted. What may happen is that a person may take an objection under section 38, that means not that the evidence is tainted but the Parliament has provided it cannot be used adversely to the person in any criminal, civil or disciplinary proceedings. That is a somewhat different position from the position in the Police Integrity Commission, as a result of an amendment to their Act.

Thirdly, we have found that once you have an investigation that has gone forward and you have evidence that would found a prosecution, the prosecution itself does not give rise to the testing of that at all. We now have paper committals, so the first time that matter may come to public attention is when it comes on for trial, which may be three years down the track. With great respect, assume that you have a politician who is in fact corrupt, worse still, a Minister who is corrupt, and nothing is said and nothing is known. All that is known is that there is a charge and a presumption of innocence prevails, and three years down the track that person stands trial and the evidence then for the first time becomes known. We will assume there is a conviction. It is hardly likely that that sort of delay, which is inherent in our criminal justice system, will cause confidence in the parliamentary system, that has allowed that person to continue in office because of no exposure, no conviction.

One of the things that we do say is that the promptness with which these matters can be dealt with properly and openly is itself an advantage to the transparency and the health of the system, the parliamentary system I mean by that. One can plead special cases for special people and everybody who is in the public domain has an interest in not having their name associated with adverse facts in the media, everybody. Not just politicians, judges, councillors, prominent businessmen and the like. But the model that the New South Wales Parliament adopted in its 1998 Act, a model which I think is a very sound one, said that what we are on about is exposing corruption, and as our methodologies indicate, as I have said before, thereby combining corruption prevention with investigation, getting at the cause from day one. Now, of course, if what you are going to do is wait for a conviction, then departments and individuals will, as they do often initially, involve themselves in a denial process. It does not exist, it is not happening. When ultimately it is found to have happened it is likely that it will have been happening in that whole intermediate period. So there are many reasons.

CHAIR: I just want to clarify one thing if I could. The Commission does not determine guilt or innocence of a person who comes before it.

The Hon. B. S. J. O'KEEFE: I did not say it did.

CHAIR: No, but you are pretending as though your findings are a determination of guilt or innocence.

The Hon. B. S. J. O'KEEFE: Quite the contrary, for instance, take the Langton case. Let us take that.

CHAIR: Let me take another case.

The Hon. B. S. J. O'KEEFE: No, please, you asked me a question.

CHAIR: Not the Langton case. Let me take another case.

The Hon. B. S. J. O'KEEFE: No, let me take that because—

CHAIR: No. That case is still pending, I do not want to discuss it.

The Hon. B. S. J. O'KEEFE: That is why I want to discuss it.

CHAIR: Let me discuss one in relation to a report that you have just prepared in relation to an Environment Protection Authority official. You found a number of people corrupt?

The Hon. B. S. J. O'KEEFE: Yes.

CHAIR: You make findings of corrupt conduct?

The Hon. B. S. J. O'KEEFE: Yes.

CHAIR: You made a finding of a solicitor in that case that you said was corrupt, that had facilitated bribes to an Environment Protection Authority official?

The Hon. B. S. J. O'KEEFE: No. You are wrong.

CHAIR: What did you say about it? You tell me in your own words.

The Hon. B. S. J. O'KEEFE: There was no solicitor in that case at all.

CHAIR: Yes, there was.

The Hon. B. S. J. O'KEEFE: I think you are confusing it with the Liverpool case.

CHAIR: No, the EPA official who was involved in the transfer of land, who was selling land privately and had facilitated—I will get you the report, I will tell you his name.

The Hon. B. S. J. O'KEEFE: I did not do that report.

CHAIR: No, but someone had done it?

The Hon. B. S. J. O'KEEFE: You just told me I did.

CHAIR: It was your Commission and you signed the preface and you signed the letter, you take responsibility for this?

The Hon. B. S. J. O'KEEFE: What does the letter say, Chairman, does it say who did the report?

CHAIR: Does it matter who did the report?

The Hon. B. S. J. O'KEEFE: Can you tell me the name of the report?

CHAIR: It is a report into the conduct of an officer of the Environment Protection Authority.

The Hon. B. S. J. O'KEEFE: Yes. I remember that.

CHAIR: You know the one?

The Hon. B. S. J. O'KEEFE: Yes.

CHAIR: You mention a solicitor in there, I will tell you his name, it is a Mr Constantinidis.

The Hon. B. S. J. O'KEEFE: Constantinidis, yes.

CHAIR: You know that?

The Hon. B. S. J. O'KEEFE: Yes.

CHAIR: You found him corrupt didn't you?

The Hon. B. S. J. O'KEEFE: No. The commission did.

CHAIR: The commission did. You speak on behalf of the commission don't you?

The Hon. B. S. J. O'KEEFE: Well, I thought you had personalised this.

CHAIR: No, I am talking about the commission. When I say you, the commission.

The Hon. B. S. J. O'KEEFE: So when I hear you say "you", you mean the commission?

CHAIR: You can take your choice, it does not really matter.

The Hon. B. S. J. O'KEEFE: Then I do not understand your question.

CHAIR: The commission found him corrupt, you understand that?

The Hon. B. S. J. O'KEEFE: Yes I do.

CHAIR: Alright, good. Happy about that.

The Hon. B. S. J. O'KEEFE: It's a plain good question. The sort of question one would expect from an experienced barrister.

CHAIR: Terrific. You found him corrupt, you found that he had facilitated bribes, that he withheld some documents from the commission when he was asked to produce some documents under summons, and you then quizzed him and said where are these documents from the file? Then he produced the documents to the commission after he was aware that the commission had them?

The Hon. B. S. J. O'KEEFE: Yes.

CHAIR: You found that he had had a lunch, I think, at Hunters Hill where he was trying to get allegedly the other witnesses to the ICAC investigation to participate in distorting their evidence—

The Hon. B. S. J. O'KEEFE: In concocting a story.

CHAIR: In concocting a story. Very serious allegations. You also found in that particular case, however, that there was insufficient evidence to recommend a prosecution. You also found in that case that there was insufficient evidence to recommend disciplinary proceedings. How, in that particular case—this does not get a mention in any of the press stories about that solicitor—he is still out there in the community practising, still out there in clubs, I think he is a director of one major club that he is involved in. What is the value of that, a finding of corrupt conduct and

nothing happens, no media exposure, no disciplinary proceedings, no prosecution, nothing happens and this person is still out there, dealing with members of the public and dealing in social circles? You keep telling me about Mr Langton. I am telling you about this, a recent report, and that person is still out there. What do we do?

The Hon. B. S. J. O'KEEFE: That report was published I think on Monday, the first. I think it is a bit early for you to say nothing has happened.

CHAIR: Come on, commissioner, really. What is going to happen? It is a bit early to say! No-one even knows about it. I rang the Law Society, they did not even know about it.

The Hon. B. S. J. O'KEEFE: Please, Mr Chairman, could I really ask that you not adopt such an aggravated, I must say I regard it as antagonistic tone.

CHAIR: You have been around for a while.

The Hon. B. S. J. O'KEEFE: That is not an answer to what I have asked.

CHAIR: Tell me what is going to happen?

The Hon. B. S. J. O'KEEFE: I do not know.

CHAIR: What do you expect to happen?

The Hon. B. S. J. O'KEEFE: I would expect that the Law Society will look at it and then make its own determination.

CHAIR: But you have recommended against disciplinary action, you said the evidence is inadequate.

The Hon. B. S. J. O'KEEFE: They will examine that and if the evidence is inadequate, it is inadequate.

CHAIR: Do you regard it as satisfactory this person should continue to practise as a solicitor, continue to be a director of a club, continue to involve himself in transactions around the place of a kind that brought on that investigation, do you regard that as satisfactory? It is all right to talk about a politician being out of Cabinet or being out of Parliament, but do you regard that as a satisfactory state of affairs, following on from your investigation?

The Hon. B. S. J. O'KEEFE: If the evidence had revealed a breach of the solicitor's standards of conduct, the answer is no, it did not reveal that according to this report. That was Mr Stowe's view. You and I as practitioners—I used to be a practitioner once, I ceased to be a lawyer in 1994 when I was appointed to the Supreme Court, but you haven't—you and I would not regard that as satisfactory.

CHAIR: You ceased to be a practitioner, not a lawyer.

The Hon. B. S. J. O'KEEFE: That is a view that varies from place to place. However, there are many instances in which the conduct is what you and I would regard as unsatisfactory, it may or may not amount to professional misconduct. I have little doubt that the Law Society will look at this. We make a recommendation, that recommendation is not binding upon them.

CHAIR: They might look at it, commissioner, if they knew about it. They do not even know about it. No-one has told them about it.

The Hon. B. S. J. O'KEEFE: I think they do.

CHAIR: I have asked them.

The Hon. B. S. J. O'KEEFE: To whom did you speak?

CHAIR: I spoke to an officer of the Law Society and I will not identify the person who I spoke to, but I can tell you it was a senior person in the Law Society who was in a position to ought to know these things and was not aware of it.

The Hon. B. S. J. O'KEEFE: May I inquire when you spoke to that person?

CHAIR: Two days ago.

The Hon. B. S. J. O'KEEFE: Then things must move fairly slowly in the Law Society.

Mr FRASER: Can I come back to what you were saying before in response to my statement in the form of a question. It would appear that your criticism of changing the system of hearings, upon what we said and what we have asked, that this Committee examine at a later date, is that there is a delay in prosecution, rather than anything that would affect a prosecution. You are saying if you change the system the person could be found guilty of corrupt conduct by yourself, recommendations will go through for prosecution and it may not be heard for three or four years, so therefore the person remains where they are with a charge over their head. I would suggest to you, number one, something could be done about that system, but number two, the way I read the Constitution Act and the Parliamentary Elections and Electorates Act, if someone within Parliament is charged with a crime, that carries a sentence of a certain length, that they can be found unfit to serve and the Parliament can expel them anyway, and the prosecution continue?

The Hon. B. S. J. O'KEEFE: That did not happen in the Smiles case. It is only when you are convicted.

Mr FRASER: But he resigned?

The Hon. B. S. J. O'KEEFE: But it is only when you are convicted. It is not when you

are charged. And in fact you will find that the very debate about this matter, that raged in respect of

Mr Packard, there was another member charged with some taxation offences, and Mr Smiles, who was also charged with taxation offences, was that a person is innocent until proved guilty.

Mr FRASER: But they resigned from Parliament.

The Hon. B. S. J. O'KEEFE: But Smiles did not resign from Parliament until after he was convicted, and his appeal outcome was pending. He appealed, and that stayed the conviction. It is not correct to say that that is the only reason. If you look at the letter that I sent to the Chairman, dated 10 November 1999, there are a whole host of reasons given there.

CHAIR: The commission will be coming back to discuss that letter on another occasion. I discussed that with the Committee yesterday, and we will deal with the review issues separate to the reports.

[Short adjournment]

The Hon. B. S. J. O'KEEFE: Chairman, there are two things I would like to say. First, in relation to the first matter that you asked me about. I am looking at page 137 of the Ombudsman's annual report. I am a little mystified how one can know that an anonymous complainant is a member of our staff. I have not seen the letter, but I am a little bemused by that, but that is a comment. The second thing is, just to advert to the last matter about Constantinidis. I have not been able to check whether a copy of that has been sent to the Law Society, but if it has not, I can assure you, one probably will be sent.

CHAIR: Thank you. Will you follow through, and make a note that the commission advises it?

The Hon. B. S. J. O'KEEFE: I have not got too much time to follow it through, tomorrow is the last day.

CHAIR: It just struck me, quite seriously—

The Hon. B. S. J. O'KEEFE: I do not know that it has not been, or has. But if it has not been, I will ensure.

CHAIR: It is the issue that I am averting to generally, that following findings, particularly serious findings. I understand the impact that a finding can have on a person in a political position, because they are in an elected situation and obviously they are responsive to public opinion, following a media outcry. But what I am saying is, it does not have the same impact for people who are not in that position, such as a solicitor. Yet those persons' responsibility, particularly in a public sense, can be just as serious.

The Hon. B. S. J. O'KEEFE: I understand, and I accept that.

CHAIR: The commission has to focus on that.

The Hon. B. S. J. O'KEEFE: I understand that. I do understand, also, from one of the officers that that finding in respect of that person did get a great deal of local media attention. But of course, that does not bring it necessarily to official attention.

CHAIR: I can tell you that a number of people, who are involved in the club that he is involved with, were not aware. Perhaps that is another matter?

The Hon. B. S. J. O'KEEFE: Yes.

CHAIR: If you can follow through the matter and keep us apprised, or the officers could, through your successor. Before Ms Megarrity asks a question, I just want to ask you a question about the Manly ferries. I am not sure if you are familiar with that investigation?

The Hon. B. S. J. O'KEEFE: I read the report. I did not do the inquiry myself.

CHAIR: In relation to the general issue, you indicated there, I think at a press release that you issued, you made findings of corrupt conduct against 10 people, no charges recommended. But you issued a press statement saying that the police can lay charges if further admissible evidence is obtained. That concerns me, because all of the information is now out in the open. The section 38 admissions have been made, where relevant. How do you seriously expect the police, now, to go out there and acquire admissible evidence in relation to that fraud, bearing in mind all the publicity that that received, following all the public hearings and following the commission's report?

The Hon. B. S. J. O'KEEFE: Let us assume, for the moment, that there had been no inquiry by the ICAC.

CHAIR: I am not criticising you having an inquiry.

The Hon. B. S. J. O'KEEFE: No, but I want to test two situations. Let us assume that there had been no public inquiry and exposure of this material, and no admissions made, under compulsion, by those who were involved in the corrupt conduct. And let us assume further that police go out to interview them. Some information that is of a statistical kind, which was what we started off with, the probable outcome of that is that the people who are the targets, or subjects, of the investigation, would say, "I stand on my right not to incriminate myself. Go away. If you want to charge me, you charge me. But otherwise, I do not propose to answer any of your questions. That is my entitlement".

So you would have no evidence at all, and no exposure. We now have a situation in which a number of things have happened. One, there has been an exposure. Most of

them, as a consequence of that, have gone. So the system is rid of them in any event, which is one of the beneficial effects that we saw, not only from this inquiry but from a number of our inquiries, and from the Wood royal commission. Thirdly, if the police were now to go, they have a body of evidence that they could actually put to these people. Not as their admission, but as evidence, or material that you ask a person to rebut. They may still say, "Go away, I do not have to answer you", but you are no worse off than you were in the prior case.

CHAIR: Except that they know what the police know. That is the problem, commissioner. They know, now, through all the publicity, all the information, that the police know. And that is a problem, because they are more inclined not to answer if they know what the police know. And if they know, by a press release, that you have set the police on them?

The Hon. B. S. J. O'KEEFE: I do not agree with your value judgment that they would be any more or less likely to answer because they know.

CHAIR: You seriously believe that the police can now go out and get the evidence, of an admissible kind?

The Hon. B. S. J. O'KEEFE: I am suggesting that that is a possibility. And it is always a possibility. Let us go back. The police were not interested in this at the start. They were not prepared to investigate this.

CHAIR: Why not?

The Hon. B. S. J. O'KEEFE: If we had not done it, nothing would have been known. No change to the system would have occurred. No dismissals would have occurred.

Mr FRASER: Had it been reported to the police previously?

The Hon. B. S. J. O'KEEFE: I understand so, and in fact what happened was, they had a similar incident, as I understand, at Circular Quay, where they did it in-house themselves, and dismissed the people. And every one of them went to the—is it called GREAT? And each one was reinstated. Notwithstanding that the scandal was exactly the same, but had never been exposed in the way we exposed this one. The effect of our investigation was to rid the system of these people, and show to those who might otherwise engage in this activity, you may be the subject of an investigation and exposure, even if you are not the subject of prosecution.

Mr FRASER: But surely, if you investigated, collated evidence that was admissible, and recommended to the DPP that prosecution take place, the same effect would be had and those people would have eventually been prosecuted and the effect would have been had anyway?

The Hon. B. S. J. O'KEEFE: No, the issue depends upon the standard of proof, very often, before the ICAC, and in the way in which you and I and most people organise

their affairs, we do it on the balance of probabilities. Most of us do not conduct our lives on the basis that things are absolutely certain and therefore we will do them. We form a judgment as to what is the probable situation, and act on that. That is the standard of proof for the ICAC. When you get into the prosecution, it has got to be beyond reasonable doubt. Statistical evidence will assist you very much, as a rational human being, at arriving at a conclusion. That was the essential evidence that we had in respect of the ferry people. It would not be good enough, in most cases, in criminal proceedings.

Mr FRASER: Why would you feel that the police did not investigate it in the first place? Would it be a lack of resources, or what?

The Hon. B. S. J. O'KEEFE: I cannot tell you that. But take the Illawarra case, as well. The police were not interested in investigating that, either. And yet when we investigated it, there was a clear and consistent and utterly provable case based upon the documentation, without any admissions as to a public official using public moneys for private purposes. So I cannot tell you what the criteria for the police investigating or not may be. All I can know was here was a case in the Illawarra Development Board where it gave us this trilogy, to show that it is not just one set of organisations that is a problem, but that across a range of them you have a problem at quite senior levels, if you do not have proper systems and supervision, which was the object of the change exercise that we were on about.

Ms MEGARRITY: I think it follows on, Commissioner, from what we were talking about just before the break and also from something like the ferries case, but not specifically, I know when we talk about public hearings and public exposure, it is convenient to focus on high profile people like politicians and how important it is for everyone to be accountable. I want to focus on the ordinary people who work in an organisation, and as you point out, it is innocent until proven guilty. However, I think you will agree that popular perception is guilty until proven innocent, and whilst I know you cannot do anything about popular perception, I think we just have to come to terms with the idea that some of these public hearings, and some of the processes you have to go through, do adversely impact upon people who in fact may in the end, be exonerated even, or perhaps there may be a lack of evidence to effectively prosecute. These people do have friends, they do have families, they do have work colleagues. They may be part of their own social circles, their children in schools, and I just feel for those people who are caught up in that process, and therefore hauled over the coals, sometimes the subject of dawn raids and things like this.

I just wonder whether it is worse sometimes, what we do to ordinary people, in the end, as I said, who may either be exonerated, and of course that sort of exoneration does not make the same sort of popular gossip that the original allegation did in the first place, and the effect on not just the individuals, but the organisations that they work in, the friends and families of the other people who work with them, and that is what concerns me. Not so much the high profile public person. I acknowledge, and I am pleased to see now that the recently—and I do not know if it has always been the case—but the ICAC actually formally writes to other people in an organisation who have been investigated, or perhaps questioned, confirming that they have actually been

exonerated. When the report has come out, they actually receive a letter saying, "You have been cleared". That is a good thing, but I just worry about what happens in the lead-up to that, the stress, the strain. I would like to say that that is part of the reason why many of my colleagues talk privately about the idea of maybe less emphasis on public exposure for the sake of making sure that we target the right people, and not have other innocent people caught up in that process.

The Hon. B. S. J. O'KEEFE: A couple of things. First, we do not have dawn raids. I have given an instruction that where search warrants are to be executed in domestic premises, those search warrants are not to be executed before 8.00 a.m., unless there is an apprehension that the person involved is likely to do a runner. My reasons for that are quite simple. The execution of a search warrant is a very intrusive thing. Prior to eight o'clock, you may have a wife in a dressing gown, getting the breakfast, the kids at the breakfast table. What we are after are documents and if there is no fear that the documents will disappear between, 6.00 a.m. is the time, by law, you can do it, and eight o'clock, then do not do it. And that is our practice. There are very few exceptions that we have had to that. I think we had one in the Liverpool council case because there was a suggestion that Mr Mazzari was going to be leaving at a particular time, around six, with a bag of, we thought, material. That is an exception. But that would happen whether or not you had public hearings, because that is part of the investigative process before you get to a public hearing. But the point that you make about—and I hate the term—ordinary individuals, the non-high flier—

Ms MEGARRITY: I am just trying to distinguish between -

The Hon. B. S. J. O'KEEFE: I understand. We are on the same wavelength. The point that you make there is very real. Maybe it is not as dramatic in terms of the extent of publicity that it has, but it is still real. There we have done a number of things. If there is no evidence of any significant kind against a person, we very frequently give that person a code name, so that they are not actually named. They are X2, or whatever it might be. Or alternatively, counsel in opening makes it clear that such a person is not an affected person. That is the jargon of our Act. Not a target, in other words. There are some intermediate ones, where the evidence looks pretty good. Normally, where that is the case, it looks even better after they have been called, but sometimes it does not. They are the exception. And that is a hard case. But one should always be careful of not making bad law as a result of a few hard cases. That is about all I can say to you.

Ms MEGARRITY: Can I just say though, now that you are finished, the dawn raid one that I was referring to actually had nothing to do with the Liverpool council one. And, in fact, that person and family were dragged out of bed, I think it was 5.00 a.m.

The Hon. B. S. J. O'KEEFE: Where was that?

Ms MEGARRITY: The suburb was Padstow Heights and I can give you the details of that.

The Hon. B. S. J. O'KEEFE: When was that?

Ms MEGARRITY: It would be approximately 1995, I think it was. I can give you the exact time, but that person has never been, or certainly was put through the public hearing process.

The Hon. B. S. J. O'KEEFE: Are you sure it was not the State police, because our director of investigations has no knowledge of it.

Ms MEGARRITY: No. As I said, I can give you the individual's name. That person, and this is the final point that I want to make, has never actually formally been charged with anything. In his view he was following orders and I think that was pretty much how it was found out, how it was determined. But the impact on his life is still very significant and that is to me, as I said, he is just a person in the street, as a person that I know, but even so many years later, not to have his name cleared and to have been through that process, his family, his friends, as I said, there are some people now, who still will not really deal with him because they just assume that he must have been guilty.

The Hon. B. S. J. O'KEEFE: Let us assume that five o'clock is right. I must say first that is—

Ms MEGARRITY: It was to get documents, that was the point.

The Hon. B. S. J. O'KEEFE: It is quite extraordinary but, in my experience, and I certainly do not remember it, and I would expect to remember it. But secondly, let us make the assumption that it was necessary, that would be part of the investigative process and that would happen whether or not you had a public hearing.

Ms MEGARRITY: He was also still subject to the public hearing, and as you know it is quite an exhaustive process that you go through, because you have to do that, people's personal records and affairs are obviously discussed. So what I am trying to point out is there is an incredible stress on individuals involved, who either may or may not be charged at the end of the day, or indeed may have not had a case to answer as may have been first thought, or in the process have been perhaps misjudged, they have exercised, perhaps, poor judgment but not necessarily corrupt conduct.

I want to emphasise that point, that a lot of our concern about public exposure per se comes not from wanting to protect ourselves, but thinking about the people that we know and what the impact of, just the mere suggestion, the public suggestion. As I said, you cannot do something about popular perception about guilty until proven innocent, but we have to operate in that reality that we are dealing with people's lives and their health and in fact some of the most conscientious people, who, by virtue of a certain role in an organisation are therefore suspect, because they may have a role that either should have monitored or could have monitored a process, some of those most conscientious people take that sort of thing to heart more than those who perhaps are doing not the right thing because they know they take their chances. But the most conscientious people, sure, their exoneration comes in the end but it has a great toll on them.

The Hon. B. S. J. O'KEEFE: I might say though that experience at the bar for a very

long time, 36 years, also taught me that the possible pendency of a charge has a like effect on people. The involvement or potential involvement in litigation, or in a case of some kind, tends to take on a dominant effect in most people's lives and I think you would have, at least to an extent, a similar sort of emotional response to the prospect that a person may be charged, as opposed to being at a hearing, so it is a judgment as to what the difference is.

CHAIR: That is something I do agree with.

The Hon. B. S. J. O'KEEFE: But it is true, Chairman, it is true of civil matters too.

CHAIR: It is true of any matter.

The Hon. B. S. J. O'KEEFE: They can take control of the person's life.

CHAIR: Very much so.

The Hon. D. E. OLDFIELD: Something you said earlier Commissioner O'Keefe, it was actually probably nearly an hour ago now, with regard to secondment of police. You said that you had reduced the number of seconded police down to one. I got the impression that you had a particular problem with perhaps the integrity of police being seconded to ICAC. Is that a false impression or could you give me your other reasons?

The Hon. B. S. J. O'KEEFE: When the ICAC first opened for business on 13 March 1989 the majority of the investigators employed were in fact seconded New South Wales police officers. There were in those early days a number of allegations about leaks of information from the commission. I cannot tell you whether that was the fact or not. However, when I came to the commission we had moved in by that time to a state where about 30 per cent of the investigators were police officers. That was at a time when there was a good deal of contention about the integrity of the New South Wales Police Service. The commission itself had conducted two Milloo inquiries into the Police Service, the second one of which gave reason for concern about integrity in various areas of the Police Service. I took the view that as a matter of caution we should gradually reduce the number of police officers on secondment, that we had on secondment from the New South Wales Police Service.

I did that from about—before you came was it not, Guy, that had been done before you came, I had started that process. I started to reduce those and then there was an amendment to our Act which meant that we did not need police officers for certain purposes. There was still one that we needed them for, and gradually I reduced them until by the time the Williams event occurred we had only three officers. One of them completed his secondment on 30 June and I did not renew that. Williams, of course, left a little earlier, under the circumstances that I indicated to the Chairman. We had one other officer, who has been working with a seconded officer from the Director of Public Prosecutions Office, getting all the briefs together.

I have high confidence in him, but in any event, he is in an area in which security considerations of the kind that arose in the Williams case do not arise. We do still have

need under the Act, for one purpose, to have a police officer. So it has been a conscious decision and it has been a decision based upon a risk assessment, and the risk assessment tells you there could be a risk there, and in order not to have that risk fall in, I have reduced the ambit of the risk by reducing the number of officers.

The Hon. D. E. OLDFIELD: Do you believe that has worked, having reduced the secondment, you are happier now with what is taking place?

The Hon. B. S. J. O'KEEFE: I am happier, yes. It happens to be my view. It may be a view that was coloured by a large number of years at the bar and doing criminal law at the bar in my earlier days. However, the Wood royal commission really gave quite solid foundation for that view that I held, and I still adhere to it. I think it was a sound view, and I think the effect has been beneficial. If we had not had Williams, for instance, we would not have had the problem that we had.

CHAIR: Is Williams going to be prosecuted?

The Hon. B. S. J. O'KEEFE: I do not know the answer to that. There are other factors, and others will have to deal with that.

CHAIR: I only raised it publicly, because it was identified as a matter in the annual report of the Police Integrity Commission.

The Hon. B. S. J. O'KEEFE: Yes, but you will notice that there is in that no dealing with that matter. That is, the prosecution or not, and I think that there may be operational reasons for that.

CHAIR: We might be able to discuss them in camera later, if possible.

The Hon. J. F. RYAN: With regard to public hearings, and their usefulness, an elegant argument has been put to the Committee in another place with regard to the use of resources involved in public hearings, and the argument goes that when a public hearing is convened, everybody who attends the hearing feels the need to brief QCs and solicitors and so on. Particularly if it involves public officials, all of that is at public expense, and the questioning tends to be far more intense and formal, it goes for a longer period of time, and the consumption of resources is phenomenal. If I may in fact quote your statement, it says, "Public hearings, there can be no logical distinction between public and private hearings, insofar as asserted to the effect of hearings in obtaining sufficient admissible evidence". So to some extent, public and private hearings are as useful in obtaining evidence, to what extent should the consumption of resources be a relevant consideration, about whether or not you hold a public hearing?

The Hon. B. S. J. O'KEEFE: First, can I deal with the substrate of the question? The number of cases in which we have QCs appearing is actually very limited. We had them in Langton, we had them, too, in the case concerning Mazzari and Fairfield Council. Otherwise, what tends to happen is that people have junior counsel, or a solicitor, or somebody assigned by the Legal Aid Office. And they, I might say, do a very good job.

That is public money well spent. The numbers of people involved is not that sort of full and overflowing bar table concept that you have in some of the constitutional cases. Sometimes, you have a number of people, but the numbers involved are not enormous.

Secondly, by having had private hearings beforehand, and knowing what it is that an affected person, a target, has said, you tend to limit the ambit of the cross-examination. This depends a bit upon the experience and the approach of the assistant commissioner. But talking for myself, I have a policy whereby I defer cross-examination until we have heard the evidence from the persons against whom the allegation is made. That way, you know what are the issues, rather than people, as they used to do in committal proceedings, and now sometimes do in trials, run every point uphill and down dale. That does not happen. So that there is an economy there that is achieved. Not to say that hearings are not expensive, they are. However, if the object of the exercise is exposure, they are an important part of that exposure process. I think the cost, relative to the beneficial effect, is justified.

The Hon. J. F. RYAN: What sort of criterion would you use to make the judgment as to when it would be appropriate to consider cost?

The Hon. B. S. J. O'KEEFE: We always consider cost, but not for selecting whether or not it should be public or not. What we do, however, is consider the nature of the issue and how long we should allow for the hearing. Take the EPA case. I had been thinking of a different case, I must say. I apologise, Chairman, I was on the wrong horse there. Take that case. Mr Stowe heard that part of that case, and as a result of the private hearings that we had had over a limited number of days, my recollection is that public hearing only took a couple of days. It was a very short public hearing, because we had narrowed the issue down. There was not this room for grandstanding, and the like, which is a problem if you do not do that.

I have addressed this, over my five years, by first getting statements, second, having the private hearings, and hearing what it is that the affected person has to say. Is there an issue, then, and if there is an issue, how narrow is it? Normally, you find it is pretty narrow. Then the practice has been, this what you said, do you adhere to that, if not, how do you change it? So you do not have a re-run, as it were, of everything that has happened before.

The Hon. J. F. RYAN: Has ICAC had a look at the financial impact, and would they be able to supply the Committee with a couple of examples of the costs involved, both to ICAC and perhaps the estimated cost to other parties appearing, of what a public hearing would cost? If this is going to become a subject of debate, it might be useful to have some examples.

The Hon. B. S. J. O'KEEFE: The answer to that is it will depend on which hearing you are looking at. For instance, take Jamelli, that we are doing at the moment, which is about the re-birthing of motor cars. It is like dropping a stone in a pond, the more you look at, the more you find, and the more you find, the more you have to look at. You have got to make a decision, we do this on the basis of cost. Do you chop it here, and say, well, we have exposed the problem and we have seen that it is widespread? It is

now a matter for the police who are part of the task force to follow it up to the nth degree, and for the department to cure the defects that we have found.

So cost is relevant there. But in a case like Jamelli, we made a preliminary assessment of how long it would take and thus what it would cost. Of course, because of the nature of what has been happening, it has just blown out. Whereas EPA, we were able to contain that to a limited issue. So the best that we could do, I think, would be give a range and a probable cost per day, and that, of course, would then vary according to the nature of the matter, whether you had high fliers who wanted to engage their own Queen's Counsel, et cetera. Those sort of figures could be got out.

CHAIR: Commissioner, I do not know if there is any practical reason why this could not be done, but it would be useful if reports could explain why you have approached the matter in the way that you have. For example, I was interested to note today that a couple of investigations, you claimed the police were not interested in. I found that surprising, because when I first read the ferries' report, I thought, well really, this matter should have been handled by the police, initially. I know that there are systemic issues that are involved as well, and the ICAC could have addressed those. But it seemed to me that it ought to have been, perhaps more appropriately, at least, investigation at the outset from the point of view of particularly charging the individuals who were involved in it. Bear in mind also, that that involves fairly important matters of public interest.

Is there any reason why those sorts of issues cannot be identified? Is there any reason why in a report, for example, if you have chosen to go to a public hearing or a private hearing, and allowed people the benefit of section 38 of the ICAC Act, that the reasons why you have had to go that way cannot be explained, so that people know that attempts have been made, for example, to try and get evidence of an admissible nature, and yet that is inadequate, or it has been unsuccessful for one reason? Those sorts of issues could be fleshed out, even in the preface to the report, so that the people—

The Hon. B. S. J. O'KEEFE: Sometimes there is some statement along those lines, but it is not universal. Generally, when I write the report personally—I think if you look at the last couple of reports, particularly about Aboriginal Land Councils, you will find that I have dealt with that very issue, because it is part of the reasoning process.

CHAIR: I am not critical of that report.

The Hon. B. S. J. O'KEEFE: No, but it is part of the reasoning process whereby you take this course.

CHAIR: But the investigative course that you are taking, I thought in that report, was at least explained somewhat, so that we are able to understand why the commission chose to use its resources in the way that it did, and that if there is criticism to be voiced at some other agency, it can be directed at that agency, if they ought to have been involved in some aspect of it and did not. If it appears, as in some cases some of these reports appear to me, that the wrong investigative course ought to be taken, or another one ought to have been taken, that criticism may be unfounded if that issue

was explored and the commission was unable to proceed.

The Hon. B. S. J. O'KEEFE: I will ask the officers to take that on board, of course.

CHAIR: But if that could be done, it would certainly assist me, because at the moment I am going through all of these reports and I am saying, why was not this done? Why was not that done? Why was this agency not involved, and so on. Then it would clarify, in my mind, why you have issued a report.

The Hon. B. S. J. O'KEEFE: Of course, once we have had a public hearing we are required by law so to do.

CHAIR: I know that. But why you have conducted the investigation in the way that you have.

Mr RICHARDSON: Has any objective assessment ever been made of ICAC's effectiveness? Perhaps an external audit by a legal firm, or Attorney General, or an internal audit by an ICAC officer or a procedure investigator or a legal officer or an analyst?

The Hon. B. S. J. O'KEEFE: We examine various parts of our operation, and the Auditor-General does an internal audit, not just a financial audit. One of the purposes of this Committee is that very thing, as an external check.

Mr RICHARDSON: Has there been any external or internal check? Perhaps a document that we have not seen?

The Hon. B. S. J. O'KEEFE: There would be no document you had not seen, but there are documents of audit that are certainly either part of our annual reports or have been dealt with by this Committee at one time or another. There are certainly those documents.

CHAIR: Have you ever had a performance audit done on the organisation?

The Hon. B. S. J. O'KEEFE: We do in respect of certain areas. The all over performance audit—

CHAIR: By the Auditor-General, or someone of that nature?

The Hon. B. S. J. O'KEEFE: No, not in my time.

CHAIR: One of the things that you have made mention of in your report is that there is no room for further productivity gains. I take it that is a statement from yourself, is it?

The Hon. B. S. J. O'KEEFE: It is a considered statement of mine, having regard to the advice that I have received and my own observation. It is not idiosyncratic.

CHAIR: I accept that there might be some basis on it, in your view, for making it. But a performance audit, for example, by the Auditor- General, in relation to whether you are meeting your performance measures, would be useful.

The Hon. B. S. J. O'KEEFE: One of the things that we did, we tried with the last Committee to have agreement as to those performance measures. We just did not. We did not get any effective response. We adopted them, and they are in our corporate plan. So there are matters against which we make our assessment, and this Committee could make its assessment, by addressing those and asking us what we had done in fulfilment of these. Each quarter, I have a report from the officers who are in charge of the various units, the directors, as to how they have gone against their work plan and how that work plan is related to the criteria objectives, and the performance criteria. We do do that.

That, plus one other factor—which my predecessor was not keen on and I have been very keen on—and that is, looking at the accounts. The accounts tell you, monthly, what you are doing with expenditure. Whether or not expenditure is planned in accordance with the work plan, which fits in with your objectives and strategic approach. Whether your work plans are meeting expenditure criteria. If you are underspending, you know that you are not doing the work. Either that, or there has been some significant over-estimation of cost.

CHAIR: You have succeeded in your objectives, you do not need to spend as much money?

The Hon. B. S. J. O'KEEFE: It does not quite work that way. The ideal would be, when I close the door on Saturday and go to my car to go home, the final act, to say there is no corruption in New South Wales. But that will never happen. But we do do these internal checks, because it is important for me to know whether the organisation is spending its money in accordance with its planning. And then the planning itself is something that we can measure against our performance criteria, and our outputs can then be measured by this Committee, against those performance criteria that are public matters.

Mr RICHARDSON: Does that really measure, though, the effectiveness of the organisation?

The Hon. B. S. J. O'KEEFE: I think it does.

Mr RICHARDSON: Whether ICAC has actually performed its primary function of rooting out and reducing the level of corruption in the New South Wales public sector? You had the Premier, who is actually now boasting about the fact that companies want to come to Sydney to do business because of ICAC, because ICAC has rooted out corruption, because you know that you can actually deal with the public sector with confidence as a consequence of ICAC. But has that ever actually been measured objectively?

The Hon. B. S. J. O'KEEFE: I do not think it is boasting. I think it is a statement of a

fact. He repeated it to me yesterday, when I met with him. He has rung me to tell me of particular instances, and when I, as commissioner, have spoken at public fora, and workshops that involve the private sector, and private sector to the extent that it interrelates to the public sector, there is no question but that the very strong view that emerges is that the existence of an effective ICAC gives them confidence about contracting and investing in this State. That is what people tell you, but that is about as objective as you can get, in relation to what effect—

Mr RICHARDSON: It sounds pretty anecdotal to me.

The Hon. B. S. J. O'KEEFE: It depends on how many anecdotes you have.

Mr RICHARDSON: This is a key performance indicator is it, the number of anecdotes?

The Hon. B. S. J. O'KEEFE: No, with great respect. You make a joke of it, but the truth of the matter is that all statistical analyses involve the collation of a whole series of anecdotal incidents, and they do so in a scientific way. You ask a question that produces, for an individual, something that is anecdotal and then you bring it together.

CHAIR: On page 18 of the Police Integrity Commission's annual report they have a performance measure which is titled, "The significance and impact of investigative outcomes", that is, their performance measure. I have not seen a similar one for the ICAC.

The Hon. B. S. J. O'KEEFE: Have you looked at our corporate plan?

CHAIR: Yes, I have and I could not find it, is it there?

The Hon. B. S. J. O'KEEFE: I think you will find it there.

CHAIR: How do you measure it, have you measured it?

The Hon. B. S. J. O'KEEFE: We measure it in a number of ways. Take our advice function, for instance. When I came to the ICAC very few people came for advice, they did not want to know us. The view that was taken in the public sector was, if you tangle with ICAC you are in trouble, and my predecessor took the view that if you gave advice you might be wrong, therefore you should not give it, not a view that I take. Now we have in excess of 400 instances a year of departments and agencies coming for advice, in advance of the problem, generally.

CHAIR: Commissioner, I accept that, and that is a performance more on the prevention side, and I have always conceded that in prevention and in education, the ICAC does a very good job. The performance indicator that I referred you to from the PIC's annual report was the impact and significance of its investigative outcomes. I cannot see a similar performance criteria, which I think is a pretty significant one, in the ICAC report. I accept that the Committee previously may not have had the interest to take you through these, but I just want to know for my own knowledge, do you have a

performance criteria analogous to the PIC's one, which measures the significance and impact of the investigative outcome?

The Hon. B. S. J. O'KEEFE: We certainly do in selecting the matters that we investigate. One measure for instance is, do you expose corruption, and the overwhelming majority of the reports do that. But that is part of the process and the changed approach to our operation, namely, that we combine corruption prevention from a very early stage with investigations, means that we have to ask as well, not only have you exposed but have you brought about a situation in which the organisation in which the exposure has occurred done something about it? And what have they done? And secondly, are the issues that have been raised by the exposure of corruption such as to have application to other agencies, and if they do, have they done something about it, and have we urged them to do it? And the answer to all those questions is, yes. In every case that has been so, and you will find that in most of the reports, that is reported upon.

Mr FRASER: One thing that worries me, not long ago you said in the Jamelli case that it was a bit like dropping a stone in the water and a ripple effect. But you said a decision is made at some stage where you would then cut off the investigation due to a cost factor, as one of your considerations, I would assume, and then hand it over to police.?

The Hon. B. S. J. O'KEEFE: No, not hand it over, let the police take over because they are part of a task force that we are working with in respect of that matter. They are already in it.

Mr FRASER: That statement worries me on the basis that you would have the initial exposure, get the headline or whatever, and then say well, it is now your problem, we have done our bit and away it goes, because of budgetary constraints. Are you not following one of the ripples, it may be the biggest one you should be hitting and then walking away from it?

The Hon. B. S. J. O'KEEFE: No, you misunderstand what I have said and the process. Take Jamelli. In Jamelli we started off with a country registry, Lithgow, in which we found a series of Porsches that had been registered, a number that was not likely to be in Lithgow. Lithgow is not a Porsche town, the money there does not justify that, people have been doing it tough there. So we looked at that, and that was then the subject of the first Jamelli report. So what we did was, made the findings, made the recommendations for prosecution, but of course, that then led us, because of what emerged from that, to look at other registries, and I think we have looked at eight registries at the moment, in and around the metropolitan area. We have looked at nine, because we looked at one on the North Coast that proved not to be worth while pursuing, there was not anything in it.

But take the other eight. Now what happened there was, the second report will undoubtedly show that in respect of each of those eight, there were Porsches, there were Jaguars, BMW is another popular car in this area, and the statistics showed that particular officers were involved in a high percentage of those being registered. We

then discovered that what has been the outsourced, privatised, blue slip procedure, has been a hotbed of corruption. I think the figure is \$1500 a head.

Then there is a scam about false licences, you use the false licence plus the blue slip to get a vehicle registered. The vehicle may not even exist. When it does not exist it is almost invariably stolen or burned, and the insurance money collected on the non-existent vehicle. Our object is to expose and eliminate corruption. We have been working with the RTA to rectify their systems. However, assume for the moment that we have identified six blue slip places—I can not tell you the number because Mr Cripps is doing that—there may well be another 20, but that is not something that we are looking at because that is a criminal offence there, and it may be just a criminal offence and no public official involved.

What we are concerned about is the public officials and we have established the pattern, now it is up to the RTA to do it, and for the criminal charges it is up to the police to continue their investigations, which we have been helping with. And the material that we have been able to get, although it cannot be used against the individuals in prosecutions, has provided an incredible amount of material that the police can then follow up and get their own material that they would not have otherwise been able to get. And of course, in a couple of cases we have had people roll over and so there will be admissible evidence against the criminals. So it is not a question of saying we are going to forget about it, we have got to focus on what our objective is and that objective has been achieved.

Mr FRASER: Your inference before was that you were taking a budgetary consideration into how far you follow through.

The Hon. B. S. J. O'KEEFE: We do. For instance, do we do, having done eight registries, do we do 12, or do you get any more out of 12 in terms of the defect in the system than you got out of eight, and our view was you did not. You had established a pattern in each of these eight registries that was so close to being identical it did not matter, so if it is happening in another lot of registries, which will take time and money to prove, although the statistics suggest it may be happening, then you have not advanced your case.

Mr FRASER: So you do follow it up with the police on an ongoing basis?

The Hon. B. S. J. O'KEEFE: Absolutely. That is one where we have worked very closely with the police. We have had a task force from very early, day one almost. We share information, and they have a function in the task force and we have a different function, the same as we did with Liverpool council and Rogerson with the PIC. You may recall that he was there one day, our place another day, and each of us was looking at a different aspect of his conduct. So we do work very closely. We have to define what our functions and objectives are, and that is what I was getting at there. Money does have a relevance there. We could have stopped at three, there were three strong cases. But I personally took the view that three was a bit light on, and that since we had these others, and it was not going to cost that much more, we should do those others. Once we go beyond that, then there is a lot more work to be done.

Mr RICHARDSON: There are clearly other motor registries where corruption is prevalent, is that right?

The Hon. B. S. J. O'KEEFE: The statistics suggest that, yes.

Mr RICHARDSON: What efforts are going to be made by the police to prosecute those matters?

The Hon. B. S. J. O'KEEFE: Two areas there. One is the chief executive officer of the RTA, who was Ron Christie and is now Paul Forward. They both have been very active in ensuring that first, the officers identified, statistically, are moved away from areas where they can engage in this type of conduct. That then helps you to test whether or not the statistics change or not. If they do, of course, that is another credible piece of material on which you may then found disciplinary proceedings. But that is in the RTA's court.

Mr RICHARDSON: Do you have any idea how many country registries might be involved in this scam?

The Hon. B. S. J. O'KEEFE: I cannot tell you that.

CHAIR: At the last public hearing I did voice some concerns about the second report on parliamentary travel, and the fact that recommendations had appeared to be prepared without appropriate consultation with the Presiding Officers and the Clerks of the Parliament. You have conceded that in the report that you have just issued, and indeed, you have—

The Hon. B. S. J. O'KEEFE: I do not know, with respect, that that is right.

CHAIR: In relation to the recommendations, you have conceded in the report that they were not discussed with either the Presiding Officers or the Clerks.

The Hon. B. S. J. O'KEEFE: And have given a reason for that.

CHAIR: Indeed, you have also conceded that at least two of those recommendations that were made are now impractical. The other two were changed, I think. I do not want to go over that, but what I would seriously suggest be taken on board by the commission is this, and that is that you have a process of consultation in relation to recommendations with the agency that you are working with. If you are anxious to get co-operation from agencies—I am not just talking about the Parliament, I am talking about any agency—you should, in relation to recommendations, consult with that agency to ensure that they are practical, that they are not put out just as a discussion paper, unless you get to a situation where you are not getting co-operation, as I think you may have been with the Aboriginal Lands Council, to some extent, and that may be more of an appropriate kind. But I think there should be some formal process of consultation. That was one thing that I picked up in Hong Kong. They work very closely with the agency, and get its co-operation. Otherwise, if things are going out publicly,

you may get some agencies which are less inclined to co-operate with you.

The Hon. B. S. J. O'KEEFE: The consultative process is normally pretty full and extensive. We do not have a lot of trouble with agencies refusing to co-operate. There is the odd one, but by and large, not. It is in our interests, since we are going to be helping with the implementation process, to make sure that the recommendations are practical. My recollection is that in respect of the Parliament, there were differing views within the administration, and there were differing views between the administration and the ICAC as to the practicability of some of the recommendations. Now, one of them that I recall was about the lower House, Legislative Assembly, adopting the same principle as the Legislative Council. That was said to be impractical. I must say, I accept what has been said. We will now approach that a different way. I still have some difficulty in understanding why. But I take your point.

CHAIR: I just think if you have the process, with the agency, then everybody would be a lot happier. There will be practical recommendations and they can be easily implemented, instead of getting into a discussion phase about whether the recommendations are practical or not, and just move on.

The Hon. B. S. J. O'KEEFE: Can I say this however, as I said this morning, and as I said when the report was launched, Speaker Murray and President Burgmann have been extremely co-operative. When I was talking to them in relation to the report, only yesterday, each of them is anxious to get on with it and get it finished. And the work that has been done, for instance, in the Members' Handbook, for the Assembly, would have put to rest all the arguments that are going to be put in the Court of Appeal, if it had been in the original handbooks. And Dr Burgmann has indicated that it is her proposal that the rewritten Legislative Council handbook will have cognate provisions in it. All I can say is, that whatever may have been the disappointment about the extent of consultation, that is no longer true.

CHAIR: I think the thing is that the second report did not—I know you say that you treated it as a discussion report, but quite frankly, it did not read as that to me, and your preface to that report did not read to me as though it was a discussion paper, it appeared to me to be recommendations from down high, this is what you should do. But leaving that aside, after the last Committee hearing, involving yourself, I accept that the commission did work co-operatively with the Parliament, in terms of the final report, that there were discussions that took place about the various recommendations, concessions were made where it was appropriate on both sides, and what I am saying is that that process should be brought about as a formal consultation process, before recommendations are handed down by the commission, wherever possible.

The Hon. B. S. J. O'KEEFE: Thank you, Chairman. Before I go, there are a couple of things, very shortly, I—

Mr RICHARDSON: Can I just ask one question about that particular report, just while we are on that?

The Hon. B. S. J. O'KEEFE: This is the second, or the third?

Mr RICHARDSON: It is the third and the second, it is on both of them. In your third report, you have stated:

As members of Parliament are not required to give reasons for travel they undertake, it is not readily discernible from the travel records that travel resources were not actually expended for private travel. In the absence of transparency about the use of travel entitlements, the perception may be created that these entitlements are being used for private purposes.

Wasn't it actually the case that it was your second report, regarding travel of members of Parliament, that created the perception that MPs were using their travel warrants for private purposes?

The Hon. B. S. J. O'KEEFE: No. You make the assumption that people do not—

Mr RICHARDSON: I read the newspaper headlines and stories.

The Hon. B. S. J. O'KEEFE: I understand that, but you do not read what comes to us. The number of complaints that we get about Parliamentarians and their apparent use of entitlements cannot be ignored. I am not talking about perceptions created by that report. I am talking about the perceptions that gave rise to the investigation itself in the first place, and they had nothing to do with the second report. They had to do with what we perceived to be a community perception.

Mr RICHARDSON: I do not know that there was a community perception that members of Parliament were actually using their travel warrants for private purposes, and you have uncovered no evidence of that. It was a perception that members of Parliament were getting benefits that were not available to everyone else. People think that State members of Parliament get the same travel entitlements as Federal members of Parliament and they do not distinguish between the two of them.

The Hon. B. S. J. O'KEEFE: That destroys your case. I can tell you, the belief in the community is that Federal and State Parliamentarians swan around the place and swan overseas at public expense without any public benefit. My view is that in the overwhelming majority of cases, that is just not so. But perceptions and facts bear no necessary relationship, and I think you have an excessively rosy view of what the community actually thinks. You and I differ on that, but I have got a lot more detail and a lot more matters covered by section 111 than you have.

Chairman, today will be the last occasion that I come before this Committee as commissioner, and I want to just say something about the organisation that I have headed for five years. It is an essentially different organisation from that which I went to on 14 November 1994. Our methods of dealing with things, the way in which we combine corruption prevention and educative processes with our investigations at the earliest stage, is the most fundamental of those changes.

The second is, you would go a long way to find an organisation in which you had better dedication and higher morale amongst the staff. It is easier to produce good quality material, and lots of it, when you have people like we have in the organisation, who forget their flex days, who work their overtime, often beyond what they charge for,

because they are committed to the objectives of the organisation, and loyal to those objectives. Secondly, the ICAC is now recognised nationally, and internationally, as being at the cutting edge. Not just in our corruption prevention and education. Our products are sought from around the world. The latest was even from little Ecuador. Ethiopia. They want help, and they see the ICAC in New South Wales as the paradigm.

But as well as that, the recognition comes from government, and the benefits to this State. The public sector is undoubtedly cleaner, more transparent, than it was when the ICAC was first formed. And the approach of co-operation with departments and their heads has meant that instead of pulling down the shutters when we go there, there is an openness and a desire to solve a problem, rather than to say, you are going to cut my legs off. That is a very fundamental change. Undoubtedly, the benefit of that in terms of investment confidence in this State has increased markedly.

Thirdly, the importance of transparency and openness. I have tried, throughout my time as commissioner, except in respect of operational matters, to be as open and as frank and as forthcoming with this Committee as I can be. I regard it as being an important part of the balance and checks, that we be able to justify—or if not able to justify, to rectify—what we have done. I would see it as being very unfortunate if either the processes of this Committee were not open, or alternatively, if our own processes were not open, and I include hearings. I do not want to expand upon that. The fourth thing is, the health of the organisation. It is sound. The hand-over to the new commissioner should be seamless and smooth. I am confident that it will be, and that she will have a very sound, forward moving, well-organised organisation into which to come. Thank you.

CHAIR: On behalf of the Committee, I would like to thank you for your service to the community, and the assurance that you have given us that government departments and bodies with which the ICAC deals are now more aware of corruption and the subtle ways in which it can become entrenched. The commission has sought to root out existing corruption and to prevent corruption at its source by educating public sector employees and management, so that attitudes and systems change in a way that actively discourages temptation for people to misuse their positions to seek personal gain at the expense of the public purse, or individuals. Ethics is not just a theory, but a way of behaving, and the needs, guidelines and examples which employees can follow, and in many practical ways the commission has helped organisations to set those guidelines and examples. These activities can only foster a fairer and healthier society, and I believe the State can be proud of the standards that the ICAC has encouraged in the public sector, particularly during your period of office.

I congratulate you on your participation and involvement in it, and I wish you on behalf of the Committee and Parliament, a satisfactory return to the Supreme Court of New South Wales on Monday, and look forward to having you back here for the formal farewell on 14 December, and at subsequent hearings relating to the review of the operation of the ICAC. The Committee looks forward to working with the ICAC staff and your successor in further improving the organisation and fighting public sector corruption.

The Hon. B. S. J. O'KEEFE: I thank you and I thank the members of the Committee.
