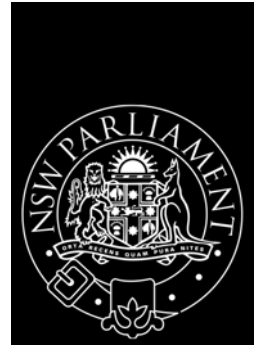


PARLIAMENT OF NEW SOUTH WALES



Committee on the Independent Commission Against Corruption

Review of the 2008-2009 Annual Report of the Independent
Commission Against Corruption

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Functions of the Committee

Independent Commission Against Corruption Act 1988

64 Functions

- (1) The functions of the Joint Committee are as follows:
 - (a) to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions,
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector 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 of the Inspector 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 and the Inspector,
 - (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.

Chair's foreword

This is the Committee's final annual report review with the ICAC for this Parliament. As part of the review, we examined issues including: a request by the Commission for additional funding, new policies adopted by the Commission and improvements to the handling of prosecutions arising from ICAC investigations.

Prosecutions arising out of ICAC investigations is an area that the Committee has monitored on an ongoing basis. The Committee was pleased to note that the Commission and the Office of the Director of Public Prosecutions have continued to improve their results in this area. Delays in the commencement of prosecutions have largely been overcome through improved liaison between the ICAC and the DPP and through a focus by the ICAC on assembling admissible evidence. The Committee heard that the ICAC has made further efforts to improve the quality and timeliness of briefs of evidence by arranging the secondment of a DPP lawyer to assist the Commission with its brief preparation processes. The Committee congratulates the ICAC on its success in reducing delays and improving the quality of its briefs.

Another area considered by the Committee is changes to Commission policies, including a move to hold corruption prevention based investigations that focus on systemic issues, in addition to the usual practice of investigating specific corruption allegations. This year's investigation into corruption risks associated with lobbying is the first investigation of this kind and the Committee was interested to hear of the procedures that ICAC has adopted in relation to issues such as the use of its coercive powers in investigating systemic issues. The Committee has noted that the lobbying investigation generated a significant amount of stakeholder and public participation both in terms of submissions and witnesses at the public inquiry. The Commission has recently tabled the investigation report, containing recommendations for a new scheme to manage lobbying in NSW.

During the review, the Commission provided the Committee with a copy of its submission to NSW Treasury, requesting a \$2.3 million recurrent funding supplementation and \$3.858 million in additional capital funding for upgrades to information and communications technology systems. In its submission, the Commission pointed to an increase in its investigative workload, including public inquiries and preliminary investigations, as well as a rise in matters that are not being investigated due to limited resources. The Committee has written to the Premier and Treasurer to express its support for a funding level that ensures the Commission is able to perform its important investigative, educative and corruption prevention work.

The Committee has been greatly assisted in its work by the co-operation and assistance shown by Commissioner Ipp and Commission staff, both throughout the review and the current Parliament.

I thank my fellow Committee members for their work on the Committee, and also acknowledge the contribution of the former Chair, Mr Frank Terenzini, and other members who served on the Committee during the current Parliament. I also wish to thank the staff of the Committee secretariat for their support.



The Hon Richard Amery MP
Chair

Commentary

Introduction

- 1.1 The functions of the Committee on the Independent Commission Against Corruption include examining each annual report and other report of the Commission and reporting to both Houses of Parliament on any matter appearing in, or arising out of, such reports.
- 1.2 The Committee's review of the ICAC's 2008-2009 Annual Report is the first review it has conducted with the Hon David Ipp AO QC as Commissioner of the ICAC. Commissioner Ipp commenced his five year term in November 2009.
- 1.3 As part of the review, the Committee held a public hearing on 27 August 2010 with the Commissioner and senior members of the ICAC executive. Prior to the hearing, the Commission was provided with questions on notice on matters arising out of the Annual Report. ICAC's answers to questions on notice and the transcript of evidence from the public hearing are reproduced as Appendices to this report.
- 1.4 The Committee's review has focussed on the following issues:
 - The Commission's request for additional recurrent funding to meet its workload and capital funding to upgrade its information and communications technology equipment.
 - The increase in the Commission's workload during the reporting year.
 - Changes to ICAC policies and practices, including in relation to investigations and public inquiries, prosecution referrals and corruption prevention recommendations.
 - Prosecutions arising out of ICAC investigations.

Commission's request for further additional recurrent funding

- 1.5 During the Committee's review of the ICAC's previous Annual Report, the then Commissioner tabled a request for additional recurrent funding. The request stated that the Commission's Investigation Division required an increase of at least eight full-time equivalent positions to enable it to function adequately and effectively. The Commission estimated that additional recurrent funding of \$850,000 would be required to enable extra investigators be recruited.¹ The Committee supported the request and wrote to the then Premier to advise of its support for the requested \$850,000 supplementation to the Commission's budget.
- 1.6 In answers to questions on notice, the ICAC advised that its request for additional funding had been granted on a recurrent basis, allowing for the recruitment of additional staff to its Investigation Division:

The Commission did receive extra funding in 2009–10, comprising an \$850,000- budget supplementation payment. This was made recurrent as “maintenance of effort” funding in 2010–2011. This extra funding has enabled the Division to increase the Full time Employee (FTE) positions to the 2007–2008 level of 43.²

¹ Committee on the ICAC, *Review of the 2007-2008 Annual Report of the Independent Commission Against Corruption*, report 9/54, May 2010, p 2

² ICAC, Answers to questions on notice, question 6, p 3. As at 30 June 2009, the Division had 39 staff.

Commentary

- 1.7 During the current review the ICAC indicated that notwithstanding the additional funding granted, funding levels remain inadequate to meet an increase in the Commission's workload: 'The Investigation Division is still under-resourced for the amount of investigation work undertaken.'³ During the public hearing, the Commissioner told the Committee that a further request for funding was being prepared for submission to Treasury.
- 1.8 In October 2010, the Commissioner wrote to the Committee seeking its support for a request, submitted to NSW Treasury, for a \$2.3 million recurrent funding supplementation and \$3.858 million in additional capital funding. The Commissioner stated that 'the supplementary funding will enable ICAC, in light of significant increases to its work, to effectively carry out its functions and modernise its information, communications and technology equipment.'⁴ The Commission also provided the Committee with the submission and report that it submitted to Treasury in support of its funding requests.
- 1.9 The Commission's request states that it is seeking a funding supplementation due to the following factors:
1. increased work reflected in higher number of important matters being investigated and resultant increased duration and complexity;
 2. increased number of public hearings;
 3. increasing number of referrals to agencies under ss 53/54;
 4. increased number of matters not being investigated (due to lack of resources).⁵
- 1.10 The Committee examines the main points raised in the Commission's request below.

Increase in investigations and public inquiries

- 1.11 During the public hearing, the Commissioner told the Committee that there had been a significant increase in the ICAC's workload and that a lack of resources has affected the Commission's ability to investigate matters:
- Since February this year the work of the Commission has increased to a significant extent; indeed, exponentially. We are very busy. We have reached a point where we are not investigating matters to which we would have directed attention had we had greater resources. ...⁶
- 1.12 According to the Commissioner, the increased workload is apparent in a considerable increase in the number of preliminary investigations and the number and complexity of public inquiries conducted during the reporting year:
- There has been a marked increase in the number of preliminary investigations referred to the investigation division—from 57 matters in 2008-09 to 133 in 2009-10. This is an increase of more than 100 per cent. For the financial year 2008-09 we held seven public inquiries. For the financial year 2009-10 we held 12 public inquiries. Some of the public inquiries we held in the 2010 financial year have been particularly complex, and that has made them longer.⁷

³ ICAC, Answers to questions on notice, question 6, p 3

⁴ ICAC, Requests for additional recurrent and capital funding, 13 October 2010

⁵ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, p 6

⁶ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, pp 1-2

⁷ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, pp 1-2

1.13 In addition to the rise in public inquiries, compulsory examinations increased from 33 in 2008-2009 to 124 in 2009-2010.⁸

1.14 The number of full investigations doubled from 8 to 16, and five investigations were carried over from the previous year, meaning that the Commission conducted 21 full investigations during the year.⁹ The Commission's funding request illustrates the complex and resource intensive nature of its investigations:

A full investigation will always require considerable resources, as the full powers of the ICAC as well as other statutory powers are generally used in these matters. These investigations may involve both covert and overt phases as well as the use of electronic surveillance. Many of these operations incorporate the interception of telecommunications. This requires a substantial allocation of personnel for monitoring purposes, which can be to the detriment of other investigations.

...

Operation Cicero was an investigation into allegations a prison officer (Wade) was smuggling contraband into a prison. This matter incorporated surveillance, telephone intercepts, interviewing a number of persons, executing search warrants, compulsory examinations and a public inquiry. The number of investigators varied from 8 to 16 depending on the phase of the investigation. The total time taken for this investigation was 3400 hours (486 days) taking into account all of the hours spent by the individual investigators.¹⁰

1.15 During the public hearing with the Committee, the Commissioner addressed the reasons for the increase in the number of matters being investigated. According to the Commissioner, several factors may have led to the increase, including an improvement in the quality of information being received, economic factors, and public exposure of the Commission's work through public inquiries:

The increase in inquiries is due not so much to the actual number of cases referred to us but to the potential seriousness or importance of those cases; that is, there has been a marked increase in the number of cases that we have decided to investigate. ... It is difficult to discern the cause of this phenomenon. It may be that the economic climate has had an influence. It may be that persons now have greater confidence that referring serious cases to ICAC will bring about desired results.

In addition, the quality of the information received from the public has improved, not least because the assessment division of the Commission has tailored the online complaint form for use by the public to ensure that mandatory details of alleged corruption are provided. All these causes probably play a role. In addition, we have made a deliberate decision to increase the number of public inquiries. ...¹¹

1.16 In regard to a perceived increase in the seriousness of the matters being investigated by the Commission, the Committee heard that substantial amounts of money are often involved:

... I can certainly say that a lot of the recent cases do seem to involve very high levels of money and that might be an indication of how much procurement is worth these days or, as the Commissioner said, how much a planning approval is worth. But, yes, the amounts involved—and you can get some indication of it from some of the referrals to the Crime Commission. We are having the Crime Commission seize back \$900,000 from people. That is the sort of money that they can get through bribes or through

⁸ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, pp 3-4

⁹ ICAC, Answers to questions on notice, question 5, p 3

¹⁰ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, p 4

¹¹ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 2

contracts being put to their companies. I can just say in general terms, yes, the money seems to be getting higher. It has always been the case that the people we investigate tend to be middle management or above because obviously they are the people who have the power to make the decisions. So yes, we are getting people at relatively high levels. We are getting high levels of money and some of it, as the Commissioner referred to, is systemic involving a broad-ranging, inter-related set of entities.¹²

1.17 It is relevant to note that the criteria the Commission uses to determine whether to escalate a matter from a preliminary investigation to an investigation provides that the following conditions must be met:

1. That matter discloses evidence or reliable information sufficient to suggest the occurrence of corrupt conduct justifying further investigation.

AND

2. One or more of the following criteria is also met:

- seriousness of the alleged conduct for example, dollar value involved, seniority of public official or officials involved
- evidence of bribery or some other serious criminal offence
- systemic nature of the established conduct and/or there is evidence which suggests possibility of corrupt network
- the matter involves/will involve significant cross-divisional use of ICAC resources (nominate resources or level of resources)
- compulsory examinations or public inquiry likely to be held
- complexity of matter, for example, financial, forensic, large number of interconnected transactions
- covert methodologies are being used requiring exercise of formal powers, for example, surveillance devices, telephone intercepts, controlled operation.¹³

1.18 The Committee heard evidence of the possible flow-on effects of the increase in the ICAC's investigative workload. According to the Commissioner, the time taken to investigate matters is increasing due to ICAC's increased work and limited resources. This trend may impact on investigations, as the Commissioner noted: 'as time goes by, memories fade, witnesses are more difficult to trace, evidence disappears, the sting tends to go out of the case'¹⁴

1.19 The Commissioner also told the Committee that ICAC is seeking to prioritise more serious matters for investigation, with the likelihood that matters which should be investigated by the Commission will not be investigated, due to limited resources:

We are being ruthless in selecting the more important matters to investigate. The reasonable possibility of discovering evidence that can be obtained to support a finding of corrupt conduct is a major factor. Our assessment division is receiving some 50 to 60 complaints a week. Only a very small percentage of these complaints can proceed to investigation and only a proportion of the matters under preliminary investigation can proceed to full investigation.

¹² Theresa Hamilton, Deputy Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 13

¹³ ICAC, Answers to questions on notice, question 9, pp 5-6

¹⁴ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 3

It follows inevitably that there are a number of matters involving corrupt conduct that will slip under the radar but we can only use our resources to their optimum effect in an attempt to investigate the more serious cases.¹⁵

- 1.20 The Commission argues that there is a danger of negative public perceptions developing due to perceived or actual delays in responding to corruption:

Corruption fighting must be continuous and relentless to prevent the rise of perceptions of delays or lack of capacity to investigate important matters due to lack of appropriate resources. The Commission considers that there is indeed a high risk of such adverse perceptions being generated amongst the public if it is unable to promptly investigate important cases.¹⁶

- 1.21 The Commission's submission to Treasury outlines the potentially serious nature of preliminary investigations that are currently on hold due to a lack of resources: 'Some of the 71 preliminary investigations that had to be carried over from 2009-10 relate to serious allegations of tender manipulation and corruption within major government agencies and councils, as well as corruption allegations against present and former political figures.'¹⁷

- 1.22 Delays in preliminary investigations are also identified as a corruption minimisation risk:

... The Commission is also very concerned about the potential for serious preliminary matters not being investigated because of lack of resources. This is viewed as a potential high risk to corruption minimisation, as the mitigating control processes do not eliminate such a risk but merely reduce it, albeit to a still unsatisfactory level.¹⁸

- 1.23 During the public hearing with the Committee, the Commissioner spoke of the impact of the Commission's workload on its staff, with investigators working overtime and forfeiting leave in an effort to meet their increasing workload:

I would like to give you an example of the increased demands placed on the Commission staff and the level of commitment that has been shown. The four chief investigators, by working excess hours and for that reason not taking all their entitled flex leave, have forfeited an aggregate 108 days of leave during the 2010 financial year. This equates to approximately \$38,000. Others have also forfeited their flex leave in order to try and reduce the backlog. I do draw your attention to this level of commitment amongst the Commission staff.¹⁹

Increase in legal costs

- 1.24 The Commission's submission to Treasury states that further funding is required to meet increases in legal expenses, primarily consisting of fees paid to legal counsel, which have increased due to the rise in public inquiries: 'the Commission estimates that *additional* supplementation of \$600,000, on a current financial year *and* recurrent basis, is required for legal expenses to enable it to conduct its public hearings.'²⁰ (original emphasis)

- 1.25 According to the ICAC, its legal expenses for 2010-2011 are expected to reach around \$430,000, which will substantially exceed the budgeted amount of \$290,000,

¹⁵ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, pp 2-3

¹⁶ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, p 9

¹⁷ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, pp 9-11

¹⁸ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, p 11

¹⁹ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 2

²⁰ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, pp 16-7

due to the number of public inquiries that are expected to be held. The funding request notes that, although they are increasing, counsel fees are lower than in previous years as the Commission has sought to reduce its costs by using in house counsel where possible:

... The amounts spent on counsel's fees are not historically high. For example, between 1 July 1995 and 30 June 2000 annual expenditure on legal fees ranged between \$827,368 and \$495,872 with an annual average of approximately \$625,000 incurred over the five-year period.²¹

- 1.26 The Commission also notes that the legal fees it pays to counsel are lower than the commercial rate and the rate paid by other government agencies: 'It is likely the Commission will need to increase rates in order to be able to continue to attract suitable senior counsel.'²²

Section 53/54 referrals to other agencies

- 1.27 Under sections 53 and 54 of the ICAC Act, the Commission may refer a matter to an appropriate agency or person for investigation or other action, either before or after it investigates the matter. It may recommend that the body/person take action in relation to the matter within a certain time frame,²³ and may also require the body to submit a report to ICAC in relation to the matter, including any action taken.

- 1.28 The number of matters referred to agencies has increased from 26 in 2007-2008 to 39 in 2009-2010, with the Commission stating that 'given resourcing issues in the Commission's Investigation Division, we will continue to refer as many matters as possible to other agencies.'²⁴

- 1.29 In answers to questions on notice, the Commission provided examples of matters that would not be appropriate for referral to an agency:

... matters where:

- it is necessary to obtain financial records or compel witnesses to answer questions, as other agencies usually do not have the power to do this;
- where the agency concerned does not have the necessary resources; and
- where the management of the agency is implicated in the allegations.²⁵

- 1.30 The Commission also noted that preparing material for an agency referral, overlooking the investigation and reviewing the resulting report is 'a resource-intensive process in itself, and requires the involvement of senior staff of the Commission's Assessments Section.'²⁶

- 1.31 In its request for funding, the Commission makes the following points regarding section 53/54 referrals to agencies:

- The rise in referrals to agencies is largely a result of 'insufficient resources to investigate these matters' and is also indicative of ICAC's rigorous approach to selecting matters for investigation.

²¹ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, pp 15-7

²² ICAC, Requests for additional recurrent and capital funding, 13 October 2010, p 16

²³ Section 53(2) of the Act provides that the Commission shall not refer a matter to a person or body except after appropriate consultation with the person or body and after taking into consideration the views of the person or body.

²⁴ ICAC, Answers to questions taken on notice at 27 August public hearing, question 1, p 1

²⁵ ICAC, Answers to questions taken on notice at 27 August public hearing, question 1, p 1

²⁶ ICAC, Answers to questions taken on notice at 27 August public hearing, question 1, p 1

- The potential for delay in investigating a matter is an important consideration in determining whether to refer it to an agency (or reject it). The longer an investigation is delayed, the more possible it is that evidence may be destroyed and witnesses may not be able to give accurate information: 'This impact obviously increases as time passes, so it is appropriate to refer the matters to a relevant agency to deal with.'
 - Some referred matters may relate to serious corruption, which the Commission would be better placed to investigate through the use of its coercive powers: 'such potential 'missed' cases represent a real risk for effective corruption fighting'.
 - If an agency investigation reveals systemic corruption, ICAC is informed immediately and takes control of the matter, however due to limited resourcing, it may not give such matters its 'immediate attention'.²⁷
- 1.32 In terms of matters referred to agencies, the ICAC indicated that it is finalising a protocol for its staff, which will cover the types of matters that are appropriate to recommend for referral,²⁸ oversight of agency investigations (including investigation plans and progress reports) and assessing the adequacy of an agency's investigation and report. The Commission stated that its staff would be trained in the protocol, and that a copy would be provided to the Committee.²⁹
- 1.33 In answers to questions on notice, the Commission also provided further detail on policies aimed at providing greater oversight of referred matters by the Assessments Section:

The Assessments Section is in the process of introducing an enhanced oversight arrangement under which agencies will be requested to provide investigation plans at the outset of any ss.53/54 referral, and to provide at least one progress report during the course of their investigation. In order to oversee referred investigations as effectively as possible, it will be necessary to ensure that the most experienced Assessment Officers have carriage of those matters, and that their workloads are reasonable so that they can assess with necessary rigour, the adequacy of investigation plans, progress reports and final investigation reports.

In conclusion, whilst there may continue to be an increase in ss. 53/54 referrals, this represents in substance a transfer of resourcing requirements from the Investigation Division to the Assessments Section, as opposed to a reduction or outsourcing of resource requirements.³⁰ (original emphasis)

ICAC's proposed action

- 1.34 The Commission's request for funding contains a plan for the allocation of the requested additional funding, including a proposed organisational structure. In summary, the Commission proposes to increase full time equivalent positions by a total of 12 to manage its current and future workload, with:
- at least 8 additional staff for the Investigation Division, including 3 investigators, 2 senior financial investigators and 2 analysts

²⁷ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, pp 11-2

²⁸ The Commission's Assessment Panel considers matters and makes decisions based on reports compiled by the Assessments Section, which contain recommendations for action, including referral to an agency pursuant to section 53 of the Act: see ICAC, *Annual Report 2008-2009*, pp 31-3

²⁹ ICAC, Answers to questions on notice, question 4, p 2

³⁰ ICAC, Answers to questions taken on notice at 27 August public hearing, question 1, p 1

Commentary

- 2 new investigators allocated to a new preliminary investigations team within the Division, to progress preliminary investigations and allow the two primary investigation teams to focus on major investigations
- a new position that will prepare performance reports and statistical information for the Executive Director of the Investigation Division³¹
- an additional Principal Lawyer (Prosecution Briefs) to assist with and oversee the preparation of briefs of evidence and improve their quality.³²

1.35 The Commission states that it aims to use the proposed increase in staff to enable it to investigate matters that 'should be investigated but for a lack of resources'. The ICAC observes that it expects the impact of increased funding to be most significant in terms of preliminary investigations:

The greatest impact will be in the area of preliminary investigations. The establishment of the preliminary investigation team will allow the ICAC to make sure that it is identifying the important matters that it should be investigating in a timely and effective way. This will allow a decision to be made about upgrading to a full investigation or closing a matter more quickly than is currently occurring. It will also allow a greater exposure of corruption utilising the public inquiry process, as more matters will be identified for full investigation.³³

Capital funding request

1.36 The Commission also made a request for additional capital funding, to update its information technology, communications and technology equipment. A detailed business case outlining the need for \$3.858million capital funding was developed by ICAC, based on the recommendations of an independent review of its information and communications technology systems. The business case details shortcomings of the current systems, and the benefits of the proposed new systems as well as providing a project work plan for the implementation of the infrastructure upgrades.

Committee comment

- 1.37 The Committee heard evidence of an increase in the Commission's workload, with the number of investigations and preliminary investigations rising substantially during the current year. The Commission told the Committee that investigations are an extremely resource intensive, complex process with the use of coercive powers requiring a significant number of staff for monitoring work. Public inquiries also involve a substantial amount of work for Commission staff.
- 1.38 The Committee recognises other impacts of an increased workload, including the potential for delays and the availability and quality of evidence being diminished as a result of investigations being placed on hold. The Committee also heard of the trend for investigations to take longer to complete due to increasing complexity and resourcing. The Committee notes the Commission's evidence that allegations of corruption that would otherwise have been investigated may not be investigated due to limitations imposed by resourcing.
- 1.39 The Committee was particularly concerned to hear about the effects of the increased workload on Commission staff, with evidence from the Commissioner regarding Investigation Division staff not taking leave and sacrificing leave entitlements due to

³¹ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, pp 13-4

³² ICAC, Requests for additional recurrent and capital funding, 13 October 2010, p 15

³³ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, p 13

their workload. In the Committee's view, this is not sustainable in the long term. The Committee notes that the Commission carefully considers the matters it escalates to a full investigation and that investigations may suffer due to staff being overworked. The Committee encourages the Commission to consider strategies to manage the impact of an increased workload on its staff.

- 1.40 In terms of section 53 and 54 referrals to agencies, the Committee notes that ICAC has developed a protocol to provide guidance to staff on matters that are appropriate for referral to an agency, and the subsequent oversight of referred matters. Given the increase in referrals to agencies, the Committee is pleased that the ICAC has developed methods of enhancing its oversight of agency investigations. Clearer policies in relation to agency referrals will help to ensure that only appropriate matters are referred and that agency investigations are monitored by the Commission. The Committee has confidence in the ICAC's criteria for determining matters for referral, and notes that the Commission will assume responsibility for investigating matters that relate to systemic issues, which are more effectively investigated using the Commission's powers. The Committee will continue to monitor trends in relation to referrals to other agencies and the management and oversight of agency investigations by the Commission.
- 1.41 The Commission has compiled a detailed submission to Treasury requesting additional recurrent funding, which outlines the need for recurrent funding to employ additional staff and meet rising legal costs, as well as the need for funding to upgrade the ICAC's information and communication technology and infrastructure.
- 1.42 The Committee recognises that inadequate funding and resources have the potential to impact on the Commission's ability to perform its statutory functions, which may have a resulting impact on public perceptions of corruption in NSW. This is particularly relevant given the increase in the number of investigations and public inquiries being conducted by the ICAC: a key part of the Commission's functions. The Committee notes that the ICAC has sought to reduce costs where possible, including through using in house counsel for compulsory examinations.
- 1.43 During the previous annual report review, the Committee expressed its support for a level of resourcing that allows the Commission to undertake its functions in a timely manner. The Committee has written to the Premier and the Treasurer advising that, although it is not able to examine the current request in detail, the Committee reiterates its support for a funding level that enables ICAC to effectively investigate, expose and prevent corruption and will continue to monitor the funds and resources available to the Commission to perform its functions.

Prosecutions arising out of investigations

- 1.44 The Committee has examined the issue of delays in the prosecution of matters arising out of ICAC investigations during several annual report reviews. There have been recent improvements in the timeliness of prosecutions, due to factors including a focus by the ICAC on assembling admissible evidence and improved liaison between the ICAC and the Office of the Director of Public Prosecutions, both during and after the investigation process.
- 1.45 The Committee notes that the Commission's answers to questions on notice show a continuing improvement in the time taken to submit briefs of evidence to the DPP

following the tabling of an investigation report.³⁴ Prosecutions recently finalised have resulted in convictions. For example, during 2009-2010, prosecutions arising from a 2006 investigation into the case management and administration of community service orders resulted in convictions for seven persons for various criminal offences and offences under the ICAC Act.³⁵

1.46 During the review, the Committee heard of further efforts by the ICAC to improve the quality and timeliness of briefs of evidence, through arranging for a DPP lawyer to be seconded to ICAC:

... There have been delays on our part in briefing the DPP. We are conscious of our shortcomings in this regard and steps are being taken to remedy this. One of those steps has been to obtain the secondment of a lawyer from the DPP during this year and she has been a great help to us in advising us of the DPP's requirements and how to brief the DPP more efficiently. We have learned much from her as to the practical requirements of the DPP. We would like to have someone with her experience permanently on our staff but this is likely to depend on the outcome of the application we will make to Treasury for additional funds.³⁶

1.47 The Committee notes that the Commission's 2009-2010 Annual Report provides further details on the work of the seconded DPP lawyer. According to the Annual Report, the secondment was undertaken with the following aims:

- review the Commission's criminal prosecution brief preparation procedures, identify areas for improvement, and set the new procedures as best practice in order to ensure the briefs meet relevant DPP and evidentiary requirements
- review and assist in developing the prosecution brief handling section of the Commission's MOCCA (Management of Cases, Complaints and Assessments) case management system
- identify and undertake any training requirements to ensure that Commission officers responsible for preparing criminal prosecution briefs understand and meet relevant DPP and evidentiary requirements
- assist with and oversee preparation of criminal briefs of evidence for submission to the DPP.

By the end of 2009–10, the relevant procedures had been reviewed and the prosecution brief-handling section of the Commission's MOCCA system had been completed. Training has been undertaken and is scheduled to continue. The preparation of all recent briefs of evidence has been overseen to ensure that all evidentiary matters have been appropriately addressed.³⁷

1.48 However, the potential difficulties with balancing the timely preparation of briefs of evidence with investigation work are outlined by the Commission in answers to questions on notice:

The current process is to allocate the primary investigator in a matter as the brief officer with the responsibility to prepare and submit the material. However, there may be instances where this person is required to assist in an investigation. It is always a matter of balancing the overall priorities.

³⁴ ICAC, Answers to questions on notice, Attachment A, p 23

³⁵ CAC, Answers to questions on notice, question 14, pp 9-10

³⁶ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, pp 3-4

³⁷ ICAC, *Annual Report 2009-2010*, p 65

This process is designed to reduce the time frames for brief preparation but it does come at the cost of having an investigator unavailable (unless authorised) for other duties.³⁸

1.49 The ICAC's request for additional funding also notes that the rise in investigations has had an impact on the preparation of briefs of evidence: 'It has required investigators to concentrate on the preparation of this material to the exclusion of other activities resulting in less time being available for general investigation duties.'³⁹ The Committee notes that the funding request proposes the recruitment of an additional lawyer to assist with and oversee the preparation of briefs of evidence.

1.50 In terms of determining whether to refer matters to the DPP, the Commission indicated that it was planning to be more selective, and would refer more serious matters that are more likely to result in convictions.⁴⁰ In evidence to the Committee, the Commissioner explained the reasons for the change in approach:

It is a truism that the more time spent in taking statements for the DPP and in briefing the DPP means less time available to investigate corruption. Unsuccessful prosecutions result in a negative use of the Commission's resources. In order to reduce this waste of effort the Commission is focusing on recommending only those offences for prosecution which, in the Commission's opinion, have a good chance of success, and in not recommending trivial or duplicated charges. ...⁴¹

1.51 Finally, the Committee acknowledges the Commissioner's view that it is of 'particular importance' that the number of successful prosecutions resulting from ICAC investigations should not be used as an indicator of ICAC's performance, as prosecutions are conducted by the DPP. The Commissioner also observed that the successful exposure of corruption through public inquiries may not always result in a recommendation for criminal prosecution:

... Firstly, evidence that supports a finding of corrupt conduct is almost always inadmissible in a criminal prosecution. Thus different evidence, often of a far less cogent quality, has to be used in a criminal prosecution. Secondly, the prosecution is entirely in the hands of and controlled by the DPP. The Commission therefore can have no responsibility for the outcome.

Thirdly, there are very many public inquiries where the Commission does not recommend a criminal prosecution but nevertheless the purpose of the public inquiry has been achieved. Sometimes the Commission may establish compelling evidence of corrupt conduct but that evidence, being inadmissible in criminal proceedings, cannot be used in the prosecution so no recommendation for a prosecution is then made. Nevertheless, the Commission has fulfilled its function in exposing corrupt conduct. McGurk and the lobbying inquiry are further examples of the Commission dealing properly with perceptions of corruption without recommending prosecution.⁴²

Committee comment

1.52 The prosecution of matters arising out of ICAC investigations has been an issue of ongoing concern to the Committee. The Committee is pleased with the significant improvements in the timeliness of the Commission's referrals to the DPP and the resulting prosecutions. The Commission is clearly continuing to focus on preparing

³⁸ ICAC, Answers to questions on notice, question 10b, p 7

³⁹ ICAC, Requests for additional recurrent and capital funding, 13 October 2010, p 7

⁴⁰ ICAC, Answers to questions on notice, question 12b, p 8

⁴¹ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 4

⁴² The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 4

briefs in a timely way, despite its growing investigative workload. The Committee commends ICAC's efforts in balancing increasingly complex investigations and an increase in public inquiries and preliminary investigations with the need for investigators to manage the timely assembling of briefs of evidence.

- 1.53 The problem of prosecutions taking several years to commence appears to have been overcome. Both the ICAC and the DPP have contributed to the changes in practices that have led to the improvement, for example, through improvements to the terms of the MoU between the ICAC and the DPP, regular meetings between the agencies, and a focus by ICAC on assembling briefs during investigations.
- 1.54 The Committee heard evidence of further initiatives to improve outcomes in this area: the secondment of a DPP lawyer to improve the Commission's practices in terms of assembling briefs and a change in policy to ensure that only serious matters more likely to result in a successful prosecution are referred to the DPP.
- 1.55 It is important to note the Commissioner's evidence that prosecution outcomes should not be interpreted as reflecting success or failure on the Commission's part. Although the Commission has an important role in terms of assembling briefs of evidence for the DPP's consideration, it does not play a part in the prosecution itself. Prosecutions also do not reflect the Commission's important corruption prevention and exposure work, which are part of its principal statutory functions.
- 1.56 The Committee is satisfied that the processes and initiatives outlined above should ensure that significant delays do not reoccur. However, the Committee notes that factors such as funding may also play a part in producing delays, for example, further increases in the Investigation Division's workload may impact on its ability to assemble briefs. The Committee commends the strategies taken by the ICAC to minimise prosecution delays and will continue to monitor this issue during future annual report reviews.

Changes to Commission policies and practices

Investigating systemic issues

- 1.57 The Committee has noted the substantial increase in the number of public inquiries held by the ICAC, with inquiries being held on 70 days during 2009-2010, up from 28 days in the previous financial year.⁴³ According to the Commissioner, the increase is partly due to a decision on the Commission's part to undertake more inquiries:
- ... In addition, we have made a deliberate decision to increase the number of public inquiries. Public inquiries are the sharp end of the Commission and we have attempted to make that sharp end sharper and more effective.⁴⁴
- 1.58 The Commission has also recently begun holding public inquiries to examine systemic issues, whereas inquiries have previously been limited to examining specific allegations of corrupt conduct. In August 2010, the ICAC held a public inquiry as part of its investigation into the lobbying of public officials and public authorities - its 'first major corruption prevention-based investigation for many years ... [which] examined the corruption risks associated with lobbying, with a view to determining what changes should be made to the NSW regulatory system in order to address those risks, and improve transparency and integrity.'⁴⁵

⁴³ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, pp 1-2

⁴⁴ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 2

⁴⁵ ICAC, *Annual Report 2009-2010*, p 5

- 1.59 The public inquiry, which followed the release of an issues paper, was the first time the ICAC has investigated systemic issues by conducting a public inquiry:

This investigation is the first of its kind in which the Commission will hold a public inquiry looking at systems issues rather than specific allegations of corrupt conduct. Submissions to help inform the investigation and public inquiry are sought in response to the ICAC's Lobbying in NSW – An issues paper on the nature and management of lobbying in NSW, which was released today.⁴⁶

- 1.60 The recently tabled investigation report outlines the conduct and aims of the investigation:

The Commission commenced the investigation on its own initiative in December 2009. The investigation was carried out primarily by staff of the Commission's Corruption Prevention, Education and Research (CPER) Division. A deliberate decision was taken to avoid the formal exploration of specific allegations of corrupt conduct, and, instead, to focus on identifying any systemic weaknesses that would allow, encourage or cause corrupt conduct and to identify necessary changes to address these weaknesses.⁴⁷

- 1.61 According to the report, the Commission received over 60 submissions in response to its issues paper. The investigation also involved 'voluntary, informal interviews with academics, journalists, individual lobbyists and representatives of lobbying entities, such as peak bodies, corporations and unions', and 'current and former public officials, including former premiers, ministers, members of parliament, chiefs of staff, and departmental heads', as well as the voluntary participation of 48 witnesses in the public inquiry.⁴⁸

- 1.62 The Committee was interested in the Commission's decision to investigate systemic issues, and the policies and practices that the Commission would develop in relation to the conduct of such investigations. In particular, the Committee sought further detail from ICAC on the process for determining the systemic issues that would be appropriate for full investigation, including a public inquiry; how specific allegations of corruption raised during an investigation into broad systemic issues would be dealt with; and ICAC's use of its coercive powers during investigations into systemic issues.

- 1.63 In terms of considering whether to hold a public inquiry, the Commission advised that the systemic issue must be assessed by the ICAC executive as involving both 'significant risks that serious corruption may occur, and ... significant public concern.'⁴⁹ The Commission went on to illustrate how it would assess the public interest in holding a public inquiry, with reference to its work on the risk areas of procurement and lobbying:

A further relevant factor may be a balancing of significant costs and benefits if reforms are made involving the issue concerned. In the case of procurement the costs of reducing risk by limiting one-person negotiation with contractors, for example, is small and the benefit high and therefore the decision is somewhat self-evident.

In lobbying, restricting access to government to reduce the risk of corruption would have a high cost because it would limit legitimate access to elected representatives. Because the negatives associated with reducing corruption are potentially high, the issue warrants a public examination of the benefits and problems associated with any

⁴⁶ ICAC, 'ICAC calls for submissions on NSW lobbying', Media release, 18 May 2010, <<http://www.icac.nsw.gov.au/investigations/current-investigations/article/3629>> accessed 26 October 2010

⁴⁷ ICAC, *Investigation into corruption risks involved in lobbying*, November 2010, p 15

⁴⁸ ICAC, *Investigation into corruption risks involved in lobbying*, November 2010, pp 15-6

⁴⁹ ICAC, Answers to questions taken on notice at 27 August public hearing, question 5, p 6

Commentary

action designed to reduce corruption. It is in the public interest for all sides of the debate to be heard.⁵⁰

- 1.64 With regard to dealing with specific allegations raised during an investigation into systemic issues (for example during a public inquiry), the Commission advised that, consistent with the normal assessment process, such allegations be compiled in a separate report and the Assessments Panel would determine whether to refer the alleged conduct to the Investigations Division or deal with it in another way.⁵¹
- 1.65 The Commission also stated that, under the ICAC Act, it may use its coercive powers to investigate systemic issues, as well as specific corruption allegations:

The Commission is not limited to investigating allegations of corrupt conduct. The Commission may conduct an investigation into circumstances which, in the Commission's opinion, imply that conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur. In the case of such an investigation, it is open to the Commission to exercise its coercive powers under the ICAC Act.⁵²

- 1.66 The Commission illustrated the use of its coercive powers as part of an investigation into systemic corruption by citing its recent lobbying investigation:

The Commission's current investigation into lobbying of public officials is an example of this kind of investigation. During the course of this investigation, the Commission issued a number of notices under section 21 of the ICAC Act requiring public officials to provide a statement of information. Notices under section 22 of the ICAC Act, requiring production of documents, were also issued. A public inquiry has been conducted and an investigation report will be produced.⁵³

- 1.67 In terms of the criteria for determining whether to use coercive powers, the Commission again used the example of the public inquiry held as part of the lobbying investigation. Factors taken into consideration included the issues being investigated and the appropriateness of compelling witnesses to appear in view of the nature of these issues:

... in deciding which, if any, coercive powers to exercise, the Commission took into account the nature of the issues under investigation and the relevance of the information being sought. In the case of the public inquiry, it was decided to invite witnesses to attend rather than to summons them. This was done as it was not considered appropriate, given the nature of the matter being investigated and the general willingness of witnesses to give evidence, to formally compel attendance by way of summons.

Such decisions will be made on a case-by-case basis, depending on the nature of the issues under investigation and the willingness of witnesses whose evidence is important to the investigation to attend for the purpose of giving evidence.⁵⁴

Agencies' senior management to attend public inquiries

- 1.68 In a further change to its policies relating to public inquiries, the Commission told the Committee that it intends to broaden its focus by questioning members of an agency's senior management at public inquiries into allegations of systemic

⁵⁰ ICAC, Answers to questions taken on notice at 27 August public hearing, question 5, pp 6-7

⁵¹ ICAC, Answers to questions taken on notice at 27 August public hearing, question 6, p 7

⁵² ICAC, Answers to questions taken on notice at 27 August public hearing, question 7, pp 7-8

⁵³ ICAC, Answers to questions taken on notice at 27 August public hearing, question 7, pp 7-8

⁵⁴ ICAC, Answers to questions taken on notice at 27 August public hearing, question 7, p 8

corruption within that agency. While the Commission has previously focused on public officials who are alleged to have engaged in corruption, now it 'will also direct its attention to those members of the executive or management of the agency concerned whose neglect or mismanagement has allowed the corruption to occur.'⁵⁵

- 1.69 The Commissioner clarified this policy shift by stating that ICAC would be seeking to give management an opportunity to respond as part of ICAC's investigation into how the corruption occurred, as well as exploring management's role in preventing corruption:

... Where the management has done everything that is appropriate it will not be an issue, but in many of the cases management has been characterised by a lack of management and in the past it is the foot soldier who has been sanctioned. ...

But where there has been no management and where there has been obvious neglect in areas that have allowed corruption to flourish we think that it is appropriate to ask the managers responsible to attend at the public inquiry so that for the sake of procedural fairness they can answer the points made against them and so that in our report we can make recommendations for changes, and we inevitably make criticisms of management. Those criticisms cannot be made unless the managers have had a chance to answer them. The best place for them to answer those criticisms, as far as I am concerned, is in the public inquiry and not in private.⁵⁶

Committee comment

- 1.70 The Committee is interested to note the recent changes to ICAC policies in relation to public inquiries. The ICAC told the Committee that it was conducting broader, corruption prevention focussed investigations that target systemic corruption risks, in addition to its investigations of specific cases of alleged corruption.
- 1.71 The current investigation into lobbying practices is an example of such an investigation. As part of this investigation, an issues paper on the existing scheme for regulating lobbying was published and submissions in response were sought, followed by a public inquiry held over several days. The investigation report has recently been tabled. The investigation illustrates a new approach by ICAC in using public inquiries to expose vulnerable areas of the public sector, and to promote stakeholder and public participation in developing strategies to mitigate corruption risks.
- 1.72 The practice of conducting investigations into systemic issues, including through public inquiries, raised the issue of the way in which ICAC would use its coercive powers during an investigation that does not examine specific corruption allegations. The Commission told the Committee that it considers factors including the issue under investigation in weighing up whether and which of its coercive powers it should use. The Commission also noted that any specific corruption allegations arising during such an inquiry would be considered by its Assessments Panel for separate investigation. The Committee notes that the use of coercive powers, for example to compel witnesses to appear or produce documents, may not be appropriate in cases where no corruption allegations are under investigation and the focus of the investigation is on developing corruption prevention strategies for systemic corruption risk areas. The Committee agrees with the Commission's point that various factors should be taken into account in assessing the appropriateness of using coercive powers during such investigations.

⁵⁵ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 3

⁵⁶ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 15

Commentary

- 1.73 The recent lobbying investigation report indicates that the Commission has sought to examine systemic issues with the voluntary participation of experts and stakeholders. The Committee notes that the investigation generated a significant number of issues paper submissions and involved a large number of witnesses taking part in a public inquiry. Nevertheless, the Committee will monitor any trends in the Commission's use of its powers that may arise out of investigations into systemic corruption issues.
- 1.74 The Committee also notes the Commission's intention to seek evidence from agency management during a public inquiry into alleged corruption within an agency. In the Committee's view, senior management should have the opportunity, and the responsibility, to publicly state their response to systemic corruption alleged to be occurring within their agency. The Commission may then make its findings having considered management's evidence regarding attempts they may have made to manage corruption risks.

Corruption prevention

Training and education services

- 1.75 Training and educating public officials and agencies on preventing corrupt conduct is an important part of the Commission's functions. The Commission performs this function through activities including: responding to requests for corruption-related advice from agencies and the public, conducting workshops and hosting outreach visits to regional NSW and producing corruption prevention resources for public sector agencies and public officials. According to the Commission's Annual Report, during 2008-2009 there was an increase in demand for face to face training, with 87 corruption prevention workshops being held on topics such as managing protected disclosures and corruption prevention for managers.⁵⁷
- 1.76 During the public hearing held as part of the review, the Commissioner told the Committee that ICAC planned to start offering training and education services to agencies and local councils free of charge, as part of a move to 'refocus its marketing strategy to train public sector agencies'.⁵⁸ The Commissioner gave the following reasons for this policy change:
- Making training and education more accessible and affordable for agencies, including smaller agencies with lower budgets: 'The theory we are now adopting is that training and education should be for those who need it, not those who can afford it.'⁵⁹
 - Increasing participation to boost public sector awareness of corruption prevention issues and strategies to prevent corruption.
 - Addressing a recent reduction in agencies' response to ICAC's training facilities: 'The Commission considers that the charging of fees for such courses may act as a deterrent for officers of smaller agencies and local authorities, due to financial constraints.'⁶⁰
- 1.77 In evidence to the Committee, the Commissioner also noted that the change in policy would give the ICAC an opportunity to target education and training to vulnerable areas of the public sector, for example local government:

⁵⁷ ICAC, *Annual Report 2008-2009*, pp 54-6

⁵⁸ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 3

⁵⁹ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 3

⁶⁰ ICAC, *Requests for additional recurrent and capital funding*, 13 October 2010, p 17

If I may add to that, local government matters, ... are probably the greatest source of complaints that are made to us. ... one of the reasons for us deciding not to charge for education and training is to enable us to really direct our education and training facilities to local councils, because when they do not have to pay they are much more ready to receive our people for training and education.⁶¹

- 1.78 The Commission estimates that the change in policy would mean that it would lose approximately \$100,000 of its budgeted income, while noting that this loss would be offset overall by the gain to agencies that no longer have to pay for ICAC's training services:

... Of course, the agencies which are not charged will benefit proportionately. As far as the Commission is concerned, it will have to seek an appropriate adjustment from New South Wales Treasury. That, as I am sure you appreciate, will not affect Treasury's overall financial position.⁶²

Implementation of corruption prevention recommendations

- 1.79 The issue of delays in agencies' implementation of corruption prevention recommendations arising from ICAC investigations was initially raised with the Committee by the previous Commissioner, the Hon Jerrold Cripps QC.⁶³ During the review of the Commission's previous Annual Report, the Committee considered the issue and, while noting that agency responses had improved, the Committee sought a response from the Premier to its previous recommendation that the ICAC Act be amended to require agencies to provide implementation plans and progress reports to the Commission in response to recommendations arising from its investigations. The Committee had also recommended that the ICAC include in its annual reports details of those agencies and departments that fail to comply with the proposed statutory requirement.⁶⁴

- 1.80 The Committee notes that the Commission has indicated that it is satisfied with agencies' implementation of corruption prevention recommendations in 2009-2010:
Final reports received in 2009-10 indicate that agencies had fully implemented 87% of recommendations. A further 11% had been partially implemented or implemented in a different way so as to meet the intention of the recommendation. The Commission is satisfied with this level of implementation.⁶⁵

- 1.81 ICAC has indicated that it is adopting a more flexible approach to the timing of implementation of corruption prevention recommendations. According to its most recent Annual Report, the Commission will work with individual agencies to determine the appropriate timing for implementation:

In the past, the Commission has requested that an implementation plan be submitted three months after the publication of the investigation report, followed by a progress report at 12 months and a final report at 24 months.

In 2009-10, the Commission moved towards a more flexible approach, in recognition that some recommendations can be implemented quite quickly while others can take many years to implement. The time taken to develop an implementation plan, and the timing of the progress and final reports are now determined in consultation with the

⁶¹ The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 3

⁶² The Hon David Ipp AO QC, Commissioner, ICAC, *Transcript of evidence*, 27 August 2010, p 3

⁶³ Committee on the ICAC, *Review of the 2006-2007 Annual Report of the Independent Commission Against Corruption*, report 3/54, October 2008, p 10

⁶⁴ Committee on the ICAC, *Review of the 2007-2008 Annual Report of the Independent Commission Against Corruption*, report 9/54, May 2009, pp 25-6

⁶⁵ ICAC, Answers to questions on notice, question 24, p 15

relevant agency, and based on factors such as the complexity of the changes required and the history of corruption.⁶⁶

- 1.82 In answers to questions on notice, the Commission advised that its reporting on the implementation of its recommendations would not be affected by this change in policy:

The flexibility in the ICAC's approach refers only to the timing. The Commission will continue to report which recommendations were fully or partially implemented, and whether the implementation plans, progress and final reports were delivered to the agreed timetable.⁶⁷

Committee comment

- 1.83 The Commission's training and education services are a key part of its corruption prevention work. The ICAC's decision to offer corruption prevention training and education free of charge represents a significant change in terms of this important statutory function. The Committee notes ICAC's evidence that it is seeking to broaden the appeal and impact of its educative work, so that smaller agencies with more limited budgets are able to access these services. Although the policy will result in a cut to ICAC's income at a time when funding is under pressure, the Commission has pointed out that it would be offset by corresponding savings for public sector agencies.
- 1.84 The Committee did not have the opportunity to fully examine the details of this change in the Commission's provision of education and training, and its plan to refocus its marketing strategy to train agencies. Nevertheless, the Committee supports the change in principle. The Committee intends to monitor the effect of this change and any potential impact on ICAC's resourcing and operations. For example, the Committee will be interested in how it affects ICAC's provision of training and education services, including whether more agencies are accessing these services. The Committee will also monitor the impact on the Corruption Prevention, Education and Research Division's ability to meet a possible increase in demand for training and education, given the Commission's limited resources.
- 1.85 The Commission has also indicated that it is taking a flexible approach to agency implementation of its corruption prevention recommendations, in that it will work with agencies in relation to the timing of implementation. The Committee notes that previous problems with delays in implementation appear to have been resolved, with the Commission expressing its satisfaction with implementation rates. The Committee supports the Commission's approach to working with agencies in regard to implementation. The Committee acknowledges the value of working with agencies to work out a suitable implementation timetable which reflects factors including the complexity of the changes recommended. The Committee also notes ICAC's advice that its reporting on the implementation of recommendations will not be affected by this change in policy. The Committee will continue to monitor agency implementation of ICAC's recommendations through its reviews of the Commission's annual reporting on agency implementation rates.

⁶⁶ ICAC, *Annual Report 2009-2010*, p 137

⁶⁷ ICAC, Answers to questions taken on notice at 27 August public hearing, question 8, p 8

Appendix One – Questions on notice

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

QUESTIONS ON NOTICE

ICAC ANNUAL REPORT 2008-2009

ASSESSING MATTERS

- 1. According to the Annual Report, although the Assessments Section experienced staff shortages in 2008-2009, performance measures showed significant improvements, for example, finalisation rates for matters received were reduced by 14% (pp. 22-3). What strategies has the Commission used to achieve these improvements with fewer staff?**

Assessments has utilised a number of strategies, including the two team leaders meeting on a monthly basis with each Assessment Officer within their team to discuss the status of current matters so that team leaders can assist staff in prioritising their work more effectively than had previously been the case. In addition, on a twice-yearly basis, Assessments conducts a finalisation drive to ensure that matters open for more than five-to-six months are targeted and any outstanding work is carried out, such as completing post-Assessment Panel assessment enquiries.

- 2. What factors does the Commission take into account in determining performance targets for work or activity that is within its control, for example, the average time taken to deal with complaints? How frequently does the Commission review performance targets and are there particular areas where the Commission considers benchmarking to be useful?**

The performance targets were established in the 2007-08 year to monitor the nature of the work done by Assessments staff during the life of a complaint. They include:

- The time taken to register a new matter from the date of receipt by the Commission (seven calendar days).
- The time taken to report a straightforward matter to the Assessment Panel (21 calendar days from receipt by the Commission).
- The time taken to report a moderate/complex matter to the Assessment Panel, for example, where pre-Panel enquiries need to be undertaken or where the nature of the complaint is complex and/or involves the review of substantial material – generally more than 20 pages (42 days from receipt by the Commission).
- The time taken to re-report a matter to the Assessment Panel upon receipt of a section 54 report (28 calendar days from the date of the report's receipt).
- The average time taken to finalise all matters (60 calendar days from the date of receipt by the Commission).

The targets were established by reference to the actual times taken for certain tasks by the majority of Assessment Officers and then shortened so that they constituted "stretch targets". The Manager Assessments reviews individual figures for Assessment Officers on a quarterly basis to gauge their levels of compliance with these targets, and regularly assesses the appropriateness of these targets in consultation with the two team leaders.

Regarding external benchmarking, while it is difficult to compare directly the Commission's performance with similar bodies, in the past the Commission has considered a useful benchmark to be the ratio of Assessments staff (or their equivalents in similar agencies) to the number of **general** public sector matters received. As noted on page 22 of the Annual Report, the Commission compares favourably in this regard to both the Queensland Crime and Misconduct Commission (CMC) and Western Australia's Corruption and Crime Commission (CCC).

- 3. One challenge reported for the Assessments Section was the referral by some agencies and members of Parliament of matters that did not involve suspected corrupt conduct. The Commission states that it addressed this issue by improving liaison with agencies and revising fact sheets outlining what should be referred to the Commission, in addition to compiling guidelines for Ministers (p. 22). Has the rate of referral of such matters to the Commission changed during the current reporting year?**

Yes, we have observed a reduction in the number of matters referred to the Commission for its "information", which do not involve allegations of corrupt conduct.

- 4. The Commission referred 27 matters to agencies for investigation during the reporting period, pursuant to ss.53 and 54 of the ICAC Act (p. 32). Was the Commission satisfied in general with the timeliness and standard of agency reports received in response to s.53 referrals?**

Yes, in general the timeliness and standard of agency reports received was satisfactory in the Commission's view. There were a number of requests for extensions of time beyond the initially agreed date. All requests for extension were granted. The reasons for the requests were most commonly the unforeseen unavailability of a key witness or forensic analysis of documents or other data taking longer than anticipated, due to unforeseen complexity.

The Commission is in the process of finalising a protocol with respect to sections 53/54 referrals. This will give more focused guidance to staff than currently exists as to what types of matters would be appropriate for recommendation to the Assessment Panel for sections 53/54 referral; how to better oversight such investigations, including requesting an investigation plan at the outset and a progress report, so that any difficulties can be addressed at earlier stages; and, upon receipt of the section 54 report, what factors must be considered in assessing the adequacy or otherwise of the investigation and resultant report. This protocol will be rolled out to staff in conjunction with training and a copy will, in due course, be provided to the Parliamentary Committee on the ICAC.

INVESTIGATING CORRUPTION

- 5. During the Committee's review of the ICAC's previous annual report, the Commission sought support for additional recurrent funding, stating that allocated funding for 2008-2009 had resulted in a reduction of funding for the Investigation Division.¹ However, the 2008-2009 Annual Report (p. 39) states that funding for the Division was \$5,503,728 up from \$5,269,095 as reported in 2007-2008 (p. 37). Did the Commission receive additional funding and is it satisfied with the existing level of funding for the Division?**

¹ Tabled document (11 August 2009 public hearing), *ICAC request for additional recurrent funding*, p. 7.

Committee on the ICAC

Questions on Notice

ICAC Annual Report 2008-2009

The Commission did receive extra funding in 2009–10, comprising an \$850,000- budget supplementation payment. This was made recurrent as “maintenance of effort” funding in 2010–2011. This extra funding has enabled the Division to increase the Full time Employee (FTE) positions to the 2007–2008 level of 43.

The Investigation Division is still under-resourced for the amount of investigation work undertaken. There was a 133% increase in the number of preliminary investigations referred to the Division in 2009–2010 (from 57 in the previous year to 133). In addition to the matters referred to the Division in this period there was also a need to continue the preliminary investigation into 32 matters carried over from the previous period – leading to a total of 170 preliminary investigations in this period.

There was also a corresponding increase in the number of full investigations (operations). In this instance the matters under full investigation increased by 100% from eight to 16. In addition, there was a need to investigate five operations carried over from the previous period. This resulted in 21 full investigations.

The existing level of funding restricts the number of investigators. This restriction, coupled with the escalating numbers of investigations, obviously impacts on the ability of the Investigation Division to provide an appropriate and timely response to these matters.

The increase in investigative activity also has a flow-on impact on other areas of the Commission, particularly the Legal Division and the Corruption Prevention, Education and Research Division.

6. **The Commission also stated that a reduction in funding for the Investigation Division resulted in a drop in full-time equivalent positions from 43 to 39² or 38 as reported in the Annual Report. In the previous reporting year, the Commission reported that it employed 45 full-time staff in the Division on a budget of \$5,269,095. Funding for 2008-2009 was reported at \$5,503,728 and there appears to have been a net increase of 1.5% for employee related expenses.³ What factors impacted on staff numbers in the Investigation Division during 2008-2009?**

The percentage budgetary increase for the Investigation Division between 2007–08 and 2008–09 was 4.45%. The 1.5% referred to above relates to the funding variation between the 4% award increase provided to staff and the 2.5% funding increase provided by NSW Treasury.

The Investigation Division was funded for 43.5 FTE positions during 2007-08 and 43.3 FTE positions for 2008–09- a small reduction. The reduction in staff numbers from 43 to 39 relates to the 2009–10 financial year. The factors which impacted on the staff numbers in the Investigation Division *during 2009–10* include the actual staffing levels for the Division as at 30 June 2009 (39 FTE), known number of pending investigations, the assessed impact of the efficiency dividend as mandated by NSW Treasury and the degree of realisation of efficiency savings required to fund the 4% award increase.

² Tabled document (11 August 2009 public hearing), *ICAC request for additional recurrent funding*, p. 7.

³ Tabled document (11 August 2009 public hearing), *ICAC request for additional recurrent funding*, p. 1.

- 7. The Annual Report states that as a result of a need to prepare briefs to the DPP on possible criminal offences uncovered during inquiries conducted in 2007-08 (including the RailCorp and Wollongong City Council investigations) and the number of public inquiries and preparation of investigation reports in 2008-09, 32 preliminary investigations were carried over to the 2009-10 reporting period (p. 44).**

- 7a Has the Commission concluded the preliminary investigations that were carried over?**

In the course of implementing the MOCCA case management system, a review was conducted on the number of Preliminary Investigations carried over. The implementation of the MOCCA system required the transfer of material from the former ICAC Corporate System (ICS) into the new system. In the course this transfer, MOCCA checked various dates relating to the closure of matters. It would appear the ICS system had not recognised some of the dates correctly resulting in the figure of 32 in the Annual Report.

MOCCA, after the transfer of data, identified 35 matters carried over. The Investigation Division completed all of the matters carried over, as well as 55 other preliminary investigations in this period (total of 90 preliminary investigations). Three matters from the previous period (2007/08) are still outstanding. One of these matters is linked to a current operation. The other two have been progressed in the course of this period. Information has been obtained recently which will allow these matters to be finalised within the next three months.

- 7b How many matters under preliminary investigation are currently on hold?**

As at 12 August 2010, there are 26 matters on hold.

- 7c In the Commission's view, what effect does putting preliminary investigations on hold have on the results of investigations?**

Putting investigations on hold can have a detrimental effect on those investigations. Delay leads to the possibility that material evidence may be disposed of and the recollection of witnesses can be affected by an extended time frame. This can decrease the likelihood of substantiating that corrupt conduct has occurred. The Commission does its best to minimise the risks involved by reviewing matters on hold to ensure that documentary or other relevant evidence will not be lost due to delay.

- 7d Has the number of carried over preliminary investigations had any implications for the Commission's capacity to investigate new instances of serious and systemic corruption in 2009-10?**

Yes. Thirty-five matters were carried over to 2009-10, and had to be investigated in conjunction with the 133 new matters referred to the Division in 2009-10. There were 261 working days in 2009-10, so 133 matters being referred means that a new matter is being referred to the Division every two days. This level of new work, combined with investigations carried over from the previous year, necessarily impedes some matters being dealt with in a timely way.

- 8. The Annual Report states that there was a reduction from 78 to 57 in the number of investigations undertaken compared with the previous year, as a result of brief preparation and court attendances. (p. 40). The Committee understands that matters**

are assessed and referred for investigation by the Assessment Panel, if the Panel deems that an investigation is warranted, and that 57 matters were referred to the Division during the reporting period.

8a Can you provide further details as to how brief preparation and court commitments impacted on the number of investigations commenced?

In 2008–09 the investigators spent approximately 21% of their working time on brief preparation. In 2009–10, this figure was 19%. It is clear that if the investigators were not spending time on this aspect, more time would be spent on investigations, allowing a greater number to be completed.

8b To what extent does the Assessment Panel consider the workload of the Investigation Division in deciding whether to refer a matter to the Division, or to act upon the matter in another way, for example, referral to an agency?

The Assessment Panel is acutely aware of the workload within the Investigation Division, and the Division's Executive Director is a member of the Panel. The existing workload is taken into account when considering what action should be taken in relation to a matter. Some matters require the utilisation of powers under the ICAC Act so they cannot be referred to another agency.

It may be appropriate for other matters to be referred back to an agency under sections 53/54 of the ICAC Act. In this instance, the Commission provides guidelines for the agency to follow in order to obtain appropriate information to enable further assessment as to whether the matter should be referred to the Investigation Division. The targeted use of the sections 53/54 process can assist in obtaining relevant information so a further decision can be made as to what action should be taken.

9. During 2008-2009, 8 matters were escalated to full investigations, compared with 12 for the previous reporting year (p. 40). What factors are taken into account in determining whether to escalate matters to a full investigation?

There is a set procedure contained within the Charter of the Strategic Investigation Group (SIG) relating to the upgrade of a matter from a preliminary investigation. The Investigation Division must prepare a formal request to upgrade the investigation from a preliminary investigation to a full investigation.

The Charter states:

Criteria for escalation of a matter

To escalate a matter from preliminary investigation to investigation, two criteria must be satisfied:

1. That matter discloses evidence or reliable information sufficient to suggest the occurrence of corrupt conduct justifying further investigation.

AND

2. One or more of the following criteria is also met:

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- seriousness of the alleged conduct for example, dollar value involved, seniority of public official or officials involved
- evidence of bribery or some other serious criminal offence
- systemic nature of the established conduct and/or there is evidence which suggests possibility of corrupt network
- the matter involves/will involve significant cross-divisional use of ICAC resources (nominate resources or level of resources)
- compulsory examinations or public inquiry likely to be held
- complexity of matter, for example, financial, forensic, large number of interconnected transactions
- covert methodologies are being used requiring exercise of formal powers, for example, surveillance devices, telephone intercepts, controlled operation.

The number of matters upgraded depends upon the nature, seriousness and reliability of the information received by the Commission in a particular year. In 2009–10, 16 matters were upgraded to full investigations using these criteria.

Brief Preparation

10. The Commission states that brief preparation work increased during the year, to the detriment of time available for investigations (p. 40). The Commission has previously advised that it is seeking to prepare briefs during investigations to reduce delays in the provision of briefs⁴ and the Office of the DPP also holds the view that the Commission should focus more on assembling admissible evidence for briefs during investigations, to prevent delays in the provision of the brief to the Office and minimise the need for requisitions.⁵

10a To what extent has brief preparation impacted on the Commission's investigation capacity – how many investigations does the Commission consider that it may have been able to undertake if it had not been for the brief preparation work?

The percentage of time spent on brief preparation has been previously outlined. It is difficult to quantify "how many investigations" could have been undertaken if the investigators were not involved in brief preparation as the time of investigations varies according to the complexity of the matters.

However, it is clear that more investigations could have been undertaken if the investigators were not involved in this type of work.

Commission investigators do, where appropriate, gather relevant and admissible evidence for criminal offences in the course of an investigation. Gathering this material at

⁴ Committee on the ICAC, *Review of the 2006-2007 Annual Report of the Independent Commission Against Corruption*, report 3/54, October 2008, p. 4.

⁵ Ms Marianne Carey, Managing Lawyer, Group 6, ODPP, *Transcript of evidence*, 4 May 2009, p. 31.

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the same time as preparations for the public inquiry are being made has assisted in preparing these briefs in timely manner and reducing the time spent on this task.

The process of brief preparation is continually under review in an effort to reduce the time involved to allow investigators to resume their core duties. The current process is to allocate an investigator this responsibility exclusive of other duties unless specifically approved by the Executive Director. This dedicated approach, while removing an investigator from involvement in investigative work, has resulted in a faster return rate for the submission of criminal briefs.

10b How does the Commission balance brief preparation and investigative work and set priorities in these areas?

This is a decision made by the Executive Director in consultation with the Chief Investigators who have a responsibility for the investigations. The current process is to allocate the primary investigator in a matter as the brief officer with the responsibility to prepare and submit the material. However, there may be instances where this person is required to assist in an investigation. It is always a matter of balancing the overall priorities.

This process is designed to reduce the time frames for brief preparation but it does come at the cost of having an investigator unavailable (unless authorised) for other duties.

11. The Commission indicated in answers to questions on notice during the Committee's previous review that implementation of the new complaints handling and case-management system, MOCCA, was expected to result in improvements to the Commission's operations, including brief preparation functionality to assist in the preparation of briefs.⁶ Please provide details of the improvements resulting from the MOCCA system.

The brief of evidence functionality in MOCCA is designed to assist in the compilation of briefs during the course of investigations. Once the investigation team forms the view that an offence has been committed on which advice may be sought from the DPP, a new brief of evidence can be created by selecting the offence from a master list. That list contains information relating to commonly encountered offences and will be added to as required.

A list of evidence items is automatically generated to provide a guide to the evidence required to prove each element of the offence. This list will assist in planning tasks for the investigation so that the requirements for briefs are addressed at an early stage. This will reduce the time between the publication of a report and the delivery of briefs to the DPP, as brief preparation will be well advanced before the report is published.

MOCCA was implemented without this feature being fully functional. The work on compiling evidence items for the master offence list is well advanced. There will also be a facility for generating an evidence summary by a way of a "mail merge" of data entered in respect of each evidence item.

⁶ ICAC, Answers to questions on notice, 4 May 2009, question 20b, p. 16.

The brief of evidence functionality can also be used to track progress on the preparation of briefs from commencement, through review processes and until final advice is received from the DPP. If the DPP advises that a prosecution should be commenced a corresponding prosecution module will be created and used to monitor progress until the prosecution is finalised.

Prosecutions and other action arising from ICAC investigations

12. The Commission recommended that the DPP consider prosecuting 51 persons for various offences in 2008–2009, compared with 23 for the previous year and 16 for 2006–2007 (pp. 38, 47).

12a In the Commission’s view, what factors have led to this increase?

The number of people who are the subject of statements under section 74A(2)(a) of the ICAC Act will depend on the number of public inquiries conducted, the nature of the conduct exposed as a result of each public inquiry, the number of people who potentially engaged in criminal activity and the extent to which there is sufficient evidence that would be admissible in a criminal court to justify making a recommendation. The number of recommendations will accordingly vary from year to year.

In 2008–09 the Commission published 13 investigation reports. These included seven reports dealing with corrupt conduct arising from the investigation into bribery and fraud at RailCorp (Operation Monto) and the main investigation report into corruption allegations affecting Wollongong City Council (Operation Atlas). These accounted for the majority of recommendations made under section 74A(2)(a) (33 people and 11 people respectively).

12b What strategies has the Commission adopted to manage the workload associated with this increase?

The identification of criminal offences and offenders occurs in the course of the investigation. Part of the investigation process is to identify relevant and admissible evidence for these offences. This takes place in the course of the investigation.

This process has increased the importance of the gathering of evidence in the course of the investigation. This has enabled the preparation and delivery of briefs to the Office of the Director of Public Prosecutions in shorter time frames. The Commission has decided to adopt a more selective approach in referring matters to the ODPP. Consideration will now be given to matters which are more serious in nature with a strong likelihood of conviction. This may result in a reduction in matters referred.

13. Please provide a table, similar to that provided to the committee during its previous review⁷, detailing the period of time that has elapsed between ICAC’s provision of briefs of evidence to the Office of the DPP and the Office’s decision on each matter, for matters current during the 2009-2010 reporting period (to date). Please include the date of all requisitions received from the Office of the DPP with respect to each matter.

Answer - Please see Attachment A

14. Please provide the Committee with an update on the progress of prosecutions for the following investigations:

- **Operation Cassowary (December 2005)**
- **Operation Ambrosia (December 2005)**
- **Operation Cadmus (September 2006)**
- **Operation Berna (December 2007)**
- **Operation Greenway (January 2008)**
- **Operation Monto (August-November 2008)**
- **Operation Atlas (October 2008)**
- **Operation Mirna (December 2008)**

CASSOWARY

The Commission's investigation report was published in December 2005. The section 74A(2)(a) statements contained recommendations affecting 18 people. Briefs were sent to the DPP in December 2007. The Commission is waiting on advice from the DPP. The DPP's office recently advised that a detailed report has been prepared in relation to this matter, and is currently under consideration in the Director's office.

AMBROSIA

The Commission's investigation report was published in December 2004. The section 74A(2)(a) statements contained recommendations affecting 35 people. Briefs were sent to the DPP in March 2007.

To date, DPP advice has been received with respect to 14 people. Of these 14, two were convicted and sentenced prior to June 2009. The prosecution in one matter ceased due to the death of the defendant and the prosecution in another did not proceed because of the death of the main potential witness (the defendant in the previous matter). Advice in relation to the other 10 people was received in June 2009. Eight of these people are currently being prosecuted. One person could not be located to serve a court attendance notice on and the prosecution of the remaining person has been completed with a conviction.

The Commission is waiting on the advice of the DPP with respect to the remaining 21 people. The DPP's office recently advised that a report in relation to 17 of these people has been prepared and is under consideration in the Director's office.

CADMUS

All prosecutions in Operation Cadmus have now been completed.

On 27 November 2009, Michael Ishaq was sentenced to 28 months imprisonment with an 18 month non-parole period for an offence of perverting the course of justice (section 319 Crimes Act) and an offence of giving false evidence to the Commission (section 87 ICAC Act).

On 27 November 2009, John Tourni was sentenced to 18 months imprisonment with a 16 month non-parole period for an offence of perverting the course of justice (section 319 Crimes Act) and an offence of giving false evidence to the Commission (section 87 ICAC Act).

On 27 November 2009, Brian Khouzane was sentenced to 18 months imprisonment with a non-parole period of 14 months for an offence of perverting the course of justice (section 319 Crimes Act) and an offence of giving false evidence to the Commission (section 87 ICAC Act).

On 27 November 2009, Mariam Tourni was given a 9-month suspended sentence for an offence of perverting the course of justice (section 319 Crimes Act) and an offence of giving false evidence to the Commission (section 87 ICAC Act).

On 16 October 2009, Albert Bullen was given a 2-year suspended sentence and fined \$1,300 in relation to offences of soliciting and receiving a corrupt reward (section 249B Crimes Act).

On 26 March 2010, Elias Khoury was sentenced to 30 months imprisonment with a non-parole period of 20 months for two offences of perverting the course of justice (section 319 Crimes Act) and one offence of giving false evidence to the Commission (section 87 ICAC Act).

On 20 May 2010, Hammurabi Barhy was sentenced to 3 years periodic detention and fined \$10,500 for one offence of obtaining a financial advantage by deception (section 178BA Crimes Act) and one offence of providing a false and misleading document (section 307C Crimes Act).

BERNA

Acting on advice received from the DPP, the Commission served court attendance notices on Lou Tasich on 19 November 2009 for an offence of offering a corrupt reward (section 249B Crimes Act) and three offences of giving false evidence to the Commission (section 87 ICAC Act). These matters are currently before the court.

GREENWAY

The Commission's investigation report was published in January 2008. The section 74A(2)(a) statements contained recommendations affecting five people. Briefs were sent to the DPP in October 2008. Subsequently one person died. Of the remaining four people, DPP advice has been received with respect to three people (in May, June and July 2010).

Prosecutions have commenced against the three people for whom DPP advice has been received.

MONTO

The Commission's seven investigation reports were published between August and November 2008. The section 74A(2)(a) statements contained recommendations affecting 33 people. Briefs were sent to the DPP between October 2008 and November 2009. The Commission is waiting on advice from the DPP in relation to all matters. The DPP's office has recently advised that reports in relation to Monto B, Monto J, Monto D and Monto E will be finalised within the next few weeks.

ATLAS

The Commission's investigation report was published in October 2008. The section 74A(2)(a) statements contained recommendations affecting 11 people. Briefs were sent to the DPP between October 2008 and July 2009.

To date, the DPP has provided final advice with respect to Kiril Jonovski and Zeki Esen and provided advice with respect to some of the offences affecting Frank Gigliotti and Glen Tabak.

Messrs Jonovski and Esen were prosecuted for offences of furnishing false or misleading information to the Commission (section 82(b) ICAC Act) and giving false or misleading evidence to the Commission (section 87 ICAC Act). Both were found not guilty on 2 July 2010.

Mr Gigliotti was prosecuted for an offence of furnishing false or misleading information to the Commission (section 82(b) ICAC Act) and an offence of giving false or misleading evidence to the Commission (section 87 ICAC Act). The section 82(b) offence was subsequently withdrawn by the DPP and the section 87 offence was dismissed by the court.

Mr Gigliotti was also prosecuted for two other offences of giving false or misleading evidence to the Commission (section 87 ICAC Act) and an offence of misleading a Commission officer (section 80(c) ICAC Act). He was convicted on the section 87 offences and is to be sentenced in November 2010. The section 80(c) offence is to go to hearing this November.

Mr Tabak was prosecuted for two offences of misleading a Commission officer (section 80(c) ICAC Act). On 6 July 2010 he was convicted of one offence (the other being taken into account on sentencing) and placed on a 2-year good behaviour bond and fined \$2,500.

The Commission is waiting on advice from the DPP in relation to all outstanding matters.

MIRNA

The Commission's investigation report was published in December 2008. The section 74A(2)(a) statements contained recommendations affecting five people. Briefs were sent to the DPP in January 2009. The Commission is waiting on advice from the DPP in relation to all matters. The DPP's office recently advised that the report in this matter would be finalised within the next few weeks.

15. Did the three individuals who are awaiting sentence arising out of Operation Aztec enter guilty pleas?

Yes. Graham Wade was sentenced to 15 months periodic detention. John Ashe was given a 12-month suspended sentence and Ken Williams was placed on a 12-month good behaviour bond.

Referrals to the NSW Crime Commission

- 16. According to the Annual Report (p. 12), four matters were referred to the NSW Crime Commission for consideration of assets restraint or forfeiture for amounts totalling \$2,634,000. What is the current status of these referrals?**

The NSW Crime Commission has advised that orders of confiscation/forfeiture have now been made in five matters referred by the ICAC, in the following amounts:

- \$534,000
- \$50,000
- \$273,000
- \$412,000
- \$952,000

- 17. The Annual Report states that the ICAC will focus on identifying appropriate matters for referral to the NSW Crime Commission for action to forfeit illegally obtained assets (p. 49).**

- 17a What factors does the Investigation Division take into account in identifying such matters?**

The NSW Crime Commission acts under specific legislation in relation to confiscation of assets. The ICAC advises the Crime Commission if it is apparent an asset (including money) has been obtained as a result of corrupt conduct. If this asset is “tainted”, then the Crime Commission will make an independent decision as to whether it will take action. The same applies to property items obtained through corrupt conduct.

- 17b In general, at what stage of an investigation are matters referred to the Crime Commission?**

This depends on the nature of the asset and whether it is likely to be disposed of (even though there is the ability for the Crime Commission to take action in such cases). If there is evidence of substantial assets which may be subject to forfeiture, the Crime Commission is advised so it can consider what action is to be taken. Generally such advice will occur when the investigation is overt and there may be some potential for asset disposal.

- 17c How many matters have been identified for referral in the current financial year to date?**

Restraining orders were made against Ahmed Moosani and Roshan Moosani (Operation Columba) for the sum of \$425,000 each (\$850,000 total).

- 18. Please outline to the Committee the terms of the Division's protocol in relation to matters being referred to the NSW Crime Commission, as referred to in the Commission's funding request tabled with the Committee on 11 August 2009.⁷**

There is no written protocol, but it is the Commission's standard procedure to identify in any investigation undertaken any matters that may fall within the province of the Asset Forfeiture Section within the NSW Crime Commission, taking into account the terms of the statute under which it operates. Once this is done, depending on the stage of the investigation, contact is made with this area to alert it of the potential for action. There is then ongoing liaison with the Crime Commission as required.

CORRUPTION PREVENTION (CPER)

- 19. Table 2 of the Annual Report shows that the number of external visitors to the Commission's website fell from 568,170 in 2007-08 to 372,782 in 2008-09.**

- 19a. In the Commission's view what factors have led to this decrease?**

During 2007-08, the Commission conducted two high-profile public enquiries (Wollongong City Council and RailCorp) that attracted strong public and media interest. The period when these public enquiries were held correlates with a spike in website visits. That these public enquiries raised awareness of the ICAC was also reflected in a spike in training requests.

- 19b. In what ways does the ICAC promote its website?**

The website is promoted in correspondence, training, media releases and publications. When new products (such as research papers and tip sheets) are uploaded onto the website it is generally promoted through electronic networks such as the corruption prevention network, internal auditors network and the local government auditors network.

Once an investigation report has been furnished to Parliament and made public, it is also placed on the website and promoted via a media release which also draws attention to its availability on the web. The same also applies if media liaison is undertaken to promote research reports, outreach visits and other activities.

- 20. Has the Commission sought feedback from external stakeholders on its new website?**

Focus group input from external stakeholders (both the community and public sector) was used in the design of the new site. User feedback is invited on an ongoing basis via a feedback link in the home page footer.

- 21. The Commission stated in answers to questions on notice during the Committee's previous review that the implementation of MOCCA was expected to result in improvements to the Commission's operations, including improved corruption prevention capabilities. In what way has the adoption of MOCCA improved ICAC's corruption prevention capabilities?**

⁷ Tabled document (11 August 2009 public hearing), *ICAC request for additional recurrent funding*, p. 8.

MOCCA has provided several benefits to CPER. The enhanced search capability of MOCCA has increased the capacity of CPER to conduct background research. MOCCA allows CPER recommendations to be entered in a searchable form, which aids both the development of new recommendations and the monitoring of recommendation implementation. MOCCA makes it easier to locate advice previously provided by CPER officers, which can be very useful background information for agency visits or advice requests.

- 22. The Annual Report states that the Division is participating in a major research project with the Australian New Zealand School of Government (ANZSOG), aimed at developing ways to assess the effectiveness of corruption prevention activities (p.63). Is it the intention of the ICAC to publish the findings of the project in conjunction with the ANZSOG?**

The report represents a substantive piece of work by ANZSOG students towards their Masters degrees. Where students have conducted such research it is customary in universities for the students to attempt to publish the work under their own names, or with their supervisor, in as prestigious a journal as possible. Rather than the Commission publishing this report, we believe it would be more appropriate to follow this custom and for the students to publish their work under their names.

- 23. According to the Commission, in 2008-2009 there were no significant delays in agency reports on implementation of corruption prevention recommendations arising from investigations (p.55). Have there been any delays in the receipt of agency responses during the current financial year to date?**

There have been no significant delays in receiving agency reports during 2009–10.

Previously, the Commission requested an implementation plan three months after the publication of the investigation report, followed by a progress report at 12 months and a final report 24 months later.

During 2009–10, CPER moved towards a more flexible approach in recognition that some recommendations can be implemented quite quickly whereas others may take many years to implement. The time taken to develop an implementation plan and the timing of the progress and final reports are now determined in consultation with the relevant agency and based on factors such as the complexity of the changes required and the history of the agency.

- 24. In terms of final implementation reports received from agencies, the Department of Corrective Services (DCS) fully implemented 69% of the corruption prevention recommendations arising from Operation Inca and the Attorney-General's Department (AGD) fully implemented 50% of the recommendations relating to Operation Hunter. DCS and AGD did not agree with 3 and 2 of the Commission's recommendations respectively (p.146). According to the Annual Report, the 12-month progress report received from the Department of Housing in February 2009 indicated it had implemented 11% of the recommendations arising from Operation Greenway.**

Generally is the Commission satisfied with the level of implementation of its corruption prevention recommendations?

Final reports received in 2009–10 indicate that agencies had fully implemented 87% of recommendations. A further 11% had been partially implemented or implemented in a different way so as to meet the intention of the recommendation. The Commission is satisfied with this level of implementation.

Specifically in relation to Operation Greenway, a further progress report received in March 2010 indicated that 72% of the recommendations had either been fully or partially implemented. Four of the five remaining recommendations are contingent on Housing NSW's implementation of its "HOMES" database. Additionally, completion of most of the partially implemented recommendations is also contingent on the commissioning of this database. Housing NSW will provide the Commission with a final report once HOMES has been rolled out.

25. The Annual Report states that the Commission will focus on the high risk represented by undeveloped land held by Aboriginal Land Councils (p.62). What strategies has the Division developed to target potential corruption in relation to Local Aboriginal Land Councils land?

The possibility of obtaining and developing high-value land can be an incentive for corrupt behaviour. Local Aboriginal Land Councils (LALCs) in NSW own and manage large tracts of land. The land can have cultural value for Aboriginal people. It can also provide opportunities for economic development by Aboriginal communities. Local Aboriginal Land Councils may also decide to develop, sell or lease portions of this land. The risks for LALCs in land dealings are exacerbated by the increasing scarcity of other large land holdings on the NSW coastal area with potential for development.

Over the last 12 months, CPER has met with Indigenous governance researchers, Indigenous organisations, and public sector agencies from NSW and other jurisdictions. The meetings assisted the Commission in the development of practical resources for NSW Aboriginal communities. A primary contact with the NSW Aboriginal community has been through the NSW Aboriginal Land Council by way of meetings, presentations, workshops and forums.

In February 2010 the Commission released a guide for LALC staff, board members and Zone directors on "Minimising corruption risks in land dealings". The advice in the guide includes that LALCs:

- Obtain an independent valuation of the land prior to considering any land dealing.
- Consider their options in relation to a land holding, and test the market.
- Have appropriate policies and procedures in place in regard to gifts and benefits and managing conflicts of interest.
- Be alert to "grooming" by developers, including the risks in accepting incremental, and apparently innocuous, gifts and benefits.

The Commission also prepared a training workshop to support the advice in the guide. The workshop included references to amendments to the *Aboriginal Land Rights Act 1983*, gazetted in March 2010, which clarified and strengthened the approval processes LALCs are required to follow in their land dealings.

Due to the comparative commercial value of LALC land on the eastern seaboard, the ICAC held its first round of workshops for LALCs on or close to the coast.

Due to the comparative commercial value of LALC land on the eastern seaboard, the ICAC held its first round of workshops for LALCs on or close to the coast, with 11 workshops held in locations from Ballina in the north to Eden in the south. A further two workshops were held in Central Western NSW as part of the Commission's twice yearly rural and regional outreach program.

Fifty of the LALCs on the eastern seaboard were invited to the workshops and, in all, representatives from 39 of the LALCs attended. Some LALCs were unable to attend because of other commitments and these remaining LALCs will be followed up in the coming months.

The ICAC also delivered workshops to staff at three of the four Zone offices.

Participants gave positive evaluations of the workshops and also provided valuable feedback about the future training and other resources they would like the ICAC to develop for the land council network. The training also provided the opportunity for ICAC officers to remind LALCs about the ICAC's corruption prevention advice service and this has since been utilised by participants.

Further workshops will be held in 2010-2011 with the aim of reaching representatives from the majority of the LALCs in NSW.

26. The Commission also identifies the 'revolving door for corrupt individuals' in the public sector as a high risk area (p.62), stating that public sector employees faced with misconduct allegations are being permitted to resign and are then re-employed by other agencies 'with adverse results'. The Annual Report states that agencies may accept resignations due to factors such as the costs associated with investigating alleged misconduct and the perception that disciplinary action will be overturned on review (p.62).

26a. Can the Commission provide the Committee with further details on this issue, i.e. the number of incidents involved and whether they occurred following an ICAC investigation or an internal agency investigation?

The Commission generally does not track or investigate cases of the "revolving door" as they do not tend to involve specific allegations of corruption. However, the ICAC does have experience of cases where investigations were not completed or selection was not rigorous which indicates the probability of a "revolving door" is high.

For example, in Operation Torrens, a council employee was investigated by the council in relation to irregularities in contracting and disciplinary action was recommended. The employee resigned and then secured employment at another nearby council, before any disciplinary action was taken.

In 2002, the Commission was notified that a doctor employed by an area health service entered into a consultancy agreement without authority on behalf of his employer, and corruptly received a benefit of \$9,300 for the services applicable to the agreement. The doctor resigned the day after being spoken to about the matter but was later reemployed

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by a hospital within the same area health service, where he came under notice in 2009 for accessing pornographic sites on hospital computers. Again the doctor resigned before any action was taken to investigate the conduct.

KPMG's *Fraud Survey 2008* found that "3 per cent of employees involved in fraudulent conduct during the survey period had a history of dishonesty with a previous employer that was known to the current employer" and that "Twelve percent of employees who were involved in fraudulent conduct during the survey period were subsequently found to have had a prior history of dishonesty".

Information about the incidence of resume falsification arose during the Commission's Operation Avoca, which featured councils that failed to properly check the background of an applicant who had a history of falsifying his resume. Evidence gathered by the Commission during that investigation suggests that resume falsification occurs in approximately one-quarter of NSW public sector applications.

26b. In the Commission's experience, how frequently is disciplinary action resulting from a misconduct investigation overturned on review?

The Commission's experience is limited to recommendations it makes in its reports that consideration should be given to the taking of disciplinary action. The action taken as a result of these recommendations is published in the Commission's annual reports. The Commission does not otherwise monitor the taking of disciplinary action by public sector agencies.

26c. What corruption prevention activities has the Division undertaken in relation to this issue?

The Commission has produced a paper on selection screening and the need to investigate, even if the employee resigns. The Commission's release of this paper was postponed when it decided in 2009 to undertake Operation Avoca (see response to question 26a above).

When the Commission finalises the Operation Avoca investigation report in August 2010, our advisory publication will be released simultaneously to achieve maximum reach.

Following the release of the Operation Avoca report the Commission will also write to all public agencies in NSW about this issue, and include a copy of the new advisory publication.

27. According to the Annual Report, a staff survey undertaken by the Commission indicates that, although agencies have adopted corruption prevention procedures such as codes of conduct, 'operational officers are much less aware of prevention mechanisms... there may have been the adoption of these mechanisms on paper, but... there is a substantial gap in the practical application' (p.62).

27a. In the Commission's view, how can agencies promote the practical application of corruption prevention mechanisms?

Ultimately the responsibility sits with the senior executive team of an agency. Changes must be implemented, not only in the policy and procedures, but also in the culture and

the practices of the staff. The Commission's experience is that corruption prevention initiatives that are introduced solely as a reaction to uncovered corruption, rather than as a genuine commitment to integrity, can encourage cynicism and non-compliance among an organisation's staff.

This issue is one of change management and should be addressed by the senior executive team as such.

27b. What initiatives has the Division taken to assist/support agencies to properly implement corruption prevention strategies?

The Commission continues to provide advice, manager training and advisory/resource publications when needed and to develop new approaches when opportunities arise. During 2009–10 a senior executive workshop was developed which works through the corruption risks inherent in the structures, processes and culture of an agency and examines the organisational changes needed to reduce corruption. This half-day/full-day workshop resembles a strategic retreat or planning day, rather than traditional training.

In addition, the new online corruption risk management toolkit can be used to develop a comprehensive approach to corruption prevention. A total of 46 units have been published on the website, including 28 that address specific corruption risks (for example, secondary employment, cash handling and joint ventures). The remaining 18 units focus on developing and implementing an organisational corruption prevention strategy.

COMPLIANCE AND ACCOUNTABILITY

28. The Commission states that staff training presentations during the reporting year dropped due to operational matter (sic) and the development of the new case management system, and that in the year ahead it will seek to increase the number of internal training presentations to staff in relation to existing and new legislative requirements (pp. 76-8). Has the Commission succeeded in conducting more training presentations in the reporting year to date?

The ICAC has previously developed training presentations for Commission staff on the use of various statutory powers. These were designed to complement the comprehensive procedures for the exercise of statutory powers set out in the Commission's *Operations Manual*. Each presentation takes about an hour and requires the attendance of the presenter and a sufficient number of Commission officers to make it worthwhile. Commitments to operational work meant that there has been insufficient available time to conduct or attend these presentations. To overcome this problem the Commission's Legal Division has developed webcast training sessions in relation to:

- the ICAC Act
- obtaining and executing search warrants
- obtaining and executing warrants under the *Telecommunications (Interception and Access) Act 1979*

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- protected disclosures
- obtaining and executing warrants and record-keeping under the *Surveillance Devices Act 2008*.

A webcast is a web-based seminar or presentation that is transmitted over the web. In the Commission's case, this is done via the ICAC Intranet. The advantage of a webcast is that an individual can access it for training purposes when the individual needs training or updating on a topic, rather than having to wait for a formal training session. The Commission also requires new staff to view relevant webcasts as part of their induction process.

Between the inception of the webcasts in November 2009 and 30 June 2010, the ICAC Act webcast was accessed 44 times, the search warrant webcast was accessed 18 times, the telecommunications interception webcast was accessed 16 times, the protected disclosures webcast was accessed 25 times and the surveillance device webcast was accessed 17 times.

One training session was conducted in the 2009–10 financial year on criminal brief preparation and the use of the Commission's case management system (MOCCA) to assist with brief preparation.

29. The Annual Report states that during 2008-2009 five complaints were made against Commission officers - three from external sources and two from internal sources. In terms of the internal complaints, one of the matters related to the failure by two officers to seek authorisation for secondary employment, which was subsequently sought and granted (p. 75).

a. What factors does the Commission take into account in deciding whether to grant approval for secondary employment?

The factors taken into account when assessing an employee's request for approval to undertake secondary employment are detailed in the Secondary Employment Policy and are as follows:

- The work must not arise from, nor be associated with, the officer's official knowledge and duties although approval will be considered in cases where technical or professional expertise may be involved
- the work is to be undertaken in the officer's own time
- the work must not involve a conflict of interest with the officer's Commission duties
- the approved arrangements will not be varied without submission of a further approval and
- the Commission will be formally notified of any significant change in the employee's financial circumstances arising from the secondary employment.

b. How does the Commission manage the risks associated with employees' secondary employment?

A member of the senior executive management group assesses the employee's application for secondary employment and approves or declines the application. Where approved, the maximum period of approval is 12 months. Details of the secondary

employment are then forwarded to Human Resources and Administration. Human Resources and Administration retain the supporting documentation on the employee's personnel file and send a reminder to the executive director and employee one month prior to the 12-month period falling due to update/re-submit for any further secondary employment.

c. What training does the Commission undertake to inform its employees about policies and procedures relevant to secondary employment?

New starters are issued with a copy of the Commission's Code of Conduct, which advises them that permission is needed for secondary employment. The Security and Risk Management Officer also explains this to them during their induction.

d. Has the Commission amended any of its policies or training in light of the complaints referred to above?

The Secondary Employment Policy was last reviewed and updated in 2007, prior to the complaints in 2008-2009. The Commission continues to advise new staff of the rules around secondary employment at the ICAC. The Commissioner has recently considered several requests for secondary employment, which in themselves have raised various issues. As a consequence, the ICAC will review the Secondary Employment Policy and its application. This will include consideration of the policy factors and forms of permanent, part-time and contract employment.

30. The investigation into the remaining internal complaint found that the officer who was the subject of the complaint had engaged in misconduct. The officer resigned during the investigation and a record of the finding was placed on their personnel file (p. 75).

30a. In terms of the misconduct matter, in general terms, what was the nature of the misconduct concerned?

The misconduct principally involved falsely representing that entries in the officer's official work journal were made contemporaneously. The officer was required to keep an official work journal to record day-by-day work events. The officer failed to make day-to-day entries but instead reconstructed entries in a new book which the officer then presented to a supervisor on the basis that it contained contemporaneous entries.

30b. What measures does the Commission have in place to prevent such misconduct recurring in future and has there been any need to review relevant policies and procedures in light of this particular investigation?

Since at least 1991 the Commission has required certain classes of officers to keep an accurate record of their official duties in a work journal or diary. Supervisors compare entries in the work journal or diary with entries made on timesheets in order to confirm times claimed to have been worked. Written Commission policy requires senior officers to review journals kept by relevant staff on a quarterly basis.

It was through this process that the possibility was first identified that the officer had reconstructed entries. The Commission is satisfied current procedures for checking

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journals and diaries are appropriate. The investigation did not identify any need for changes to Commission policies or procedures.

30c. Does the commission notify the ICAC Inspector of internal misconduct investigations?

Yes. The ICAC contacts the ICAC Inspector in accordance with our memorandum of understanding to advise him when any allegation of misconduct has been made, and obtains the Inspector's approval to conduct an internal investigation. If the Inspector wishes to investigate a matter himself, the matter would be referred to him for action.

OUR ORGANISATION

31. The Annual Report states that the implementation of ICAC's new complaints-handling and case management system (MOCCA) was delayed due to significant technical issues that arose during final testing of data migration from the old case management system (p. 84). Has MOCCA been fully implemented?

MOCCA went live on 9 November 2009. Further system enhancements have been developed and are currently under testing.

32. The Commission established a new Communications and Media Section within its Executive Unit, transferring staff from the Corruption Prevention, Education and Research Division to staff the Section (p. 84). Please outline to the Committee the nature of the work undertaken by the new Section, highlighting key projects and initiatives.

The Communications and Media Section manages the Commission's internal and external communications functions. Bringing together staff from the CPER Division with existing Executive Unit staff has consolidated these functions into the one area and enabled it to work effectively to provide services to all divisions and sections across the Commission.

These services and functions include media liaison and management at public inquiries. The section also manages all Commission publishing work including the editing, design and print-production management of corporate publications, investigation reports, corruption prevention resources, research reports, education materials and information brochures. The section assumed responsibility for the content management of the new website once it went live in November 2009.

Communications and Media also provides internal advice on preparing print and web materials, and managing pro- and reactive media liaison. It also works with the media to promote the Commission's investigation work via public inquiries and reports, and to promote the Commission's corruption prevention work including the rural and regional outreach program, and research activities.

While the work of the section is ongoing, key projects in the 12 months to 30 June 2010 included project management of the annual report, and the production of more than 50 print and electronic publications including all investigation reports, research reports, discussion papers, education materials and corporate publications. Communications and Media has promoted the Commission's work via generating media interest and coverage of all Commission public inquiries and reports, two regional outreach visits to the

Illawarra/South Coast and Central West, and managed numerous inquiries from the media on a 24-hour, seven-day-per-week basis.

The section also produces the Commission's stakeholder newsletter, *Corruption Matters*, twice a year, and the internal staff newsletter, *ICAC Matters*, each second month.

Communications and Media has also, in conjunction with the Information Management and Technology Unit, completed the redesign, development and commissioning of the Commission's Intranet site to improve its use and value as a major internal communications tool.

- 33. According to the Annual Report, during the year an existing staff secondment was extended, a secondment was approved and a staff member was granted leave without pay to work with the United Nations (p. 86). Was the Commission able to fill the resulting temporary vacancies?**

In terms of secondments the staff member working for the United Nations has had his leave without pay extended until April 2011. Similarly the staff member on secondment has had her secondment extended until 31 December 2010. Both positions have been backfilled on a temporary basis.

- 34. The Commission entered into a shared corporate services arrangement with the Health Care Complaints Commission in 2004–05, which was reviewed in March 2009. Due to significant workload increases, it was determined that in order to improve the operation and effectiveness of the agreement, the financial accounting work for the HCCC would no longer be undertaken by ICAC staff, but would be provided by an in-house HCCC officer from the 2009–10 financial year (p. 91).**

- a. Has this new arrangement improved the operation and effectiveness of the agreement?**

The operation and effectiveness of the shared services agreement has improved following the recruitment of a financial accountant by the HCCC. The HCCC's management is better able to obtain in-house assistance and advice on various financial/accounting issues. The workload for the HCCC is more evenly distributed thus providing relief to the ICAC's Finance Unit.

- b. Does the arrangement allow ICAC to cover its full costs of providing services to the HCCC?**

The agreement allows the ICAC to recover its costs of providing administrative services to the HCCC. The current annual fees recoverable from the HCCC are at \$330,000, which are included in the Commission's Net Cost of Service budget allocation from NSW Treasury. This means that the Treasury makes an adjustment to the Commission's budget so that the Commission is not able to use the \$330,000 as additional funding.

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ATTACHMENT A**PROSECUTION TIMESCALES FOR MATTERS CURRENT FROM
1 JULY 2009 TO 31 JULY 2010**

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AGNELLI							
Lawrence	28/8/03	1/3/04	186	25/10/04, 25/8/06 & 27/2/07	Various.	11/02/08	1442
Fitzgerald	28/8/03	1/3/04	186			11/02/08	1442
UNICORN							
Smith (1)	1/4/05	3/11/05	216	Various	Various	13/6/08	953
Smith (2)	1/4/05	3/11/05	216			6/8/09	1372
Perkins	1/4/05	3/11/05	216			6/8/09	1372
Scott	1/4/05	3/11/05	216			6/8/09	1372
Wilson	1/4/05	3/11/05	216			6/8/09	1372
Holt	1/4/05	3/11/05	216			6/8/09	1372
Griffen	1/4/05	3/11/05	216			13/6/08	953
Bailey	1/4/05	3/11/05	216			13/6/08	953
CORDOBA							
Abi-Saab	23/6/05	28/9/05	96	Nil	Nil	21/11/06	419

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CASSOWARY							
Whitcher	14/12/05	14/12/07	730	4/8/09 & 13/8/09	13/9/09 & 11/9/09		
Whaanga	14/12/05	14/12/07	730				
Fraser	14/12/05	14/12/07	730				
Ratkovic	14/12/05	14/12/07	730				
Browning	14/12/05	14/12/07	730				
Gomez	14/12/05	14/12/07	730				
Mohammad	14/12/05	14/12/07	730				
Abboud	14/12/05	14/12/07	730				
Leon	14/12/05	14/12/07	730				
Noel	14/12/05	14/12/07	730				
Ritchie	14/12/05	14/12/07	730				
Kalland	14/12/05	14/12/07	730				
Burton	14/12/05	14/12/07	730				
Bacon	14/12/05	14/12/07	730				
Bishop	14/12/05	14/12/07	730				
McAndrew	14/12/05	14/12/07	730				
Atkins	14/12/05	14/12/07	730				
McMaster	14/12/05	14/12/07	730				
Moya	14/12/05	14/12/07	730				
Senior	14/12/05	14/12/07	730				

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AMBROSIA							
Williams	21/12/05	16/3/07	450				
More	21/12/05	16/3/07	450				
Younis	21/12/05	16/3/07	450				
Kayrouz	21/12/05	16/3/07	450				
Aboulhosn	21/12/05	16/3/07	450				
Sleiman	21/12/05	16/3/07	450				
Karam	21/12/05	16/3/07	450				
Bazouni	21/12/05	16/3/07	450				
Tannous	21/12/05	16/3/07	450				
Makdessi	21/12/05	16/3/07	450				
Nader	21/12/05	16/3/07	450				
Ben	21/12/05	16/3/07	450				
Dib	21/12/05	16/3/07	450				
Punz	21/12/05	16/3/07	450				
Borovina	21/12/05	16/3/07	450				
Akiki	21/12/05	16/3/07	450				
Ayoub	21/12/05	16/3/07	450				
Harb, B	21/12/05	16/3/07	450				
Allem	21/12/05	18/9/07	636				
Megas	21/12/05	22/4/08	853				
Constantin	21/12/05	18/9/07	636				
Nehme, J	21/12/05	24/5/06	154	Nil	N/A	31/1/08	617
Massoud	21/12/05	22/5/08	883	Nil	N/A	5/6/09	378
Zaïter	21/12/05	24/5/06	154	Nil	N/A	5/6/09	1108
Barrakat	21/12/05	17/3/08	817				
Sabra	21/12/05	5/9/08	988	Nil	N/A	5/6/09	273

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...AMBROSIA							
Nguyen	21/12/05	17/3/08	817	Nil	N/A	5/6/09	445
Boumelhem	21/12/05	5/9/08	988	Nil	N/A	5/6/09	273
Nehme, N	21/12/05	28/4/08	859	Nil	N/A	5/6/09	403
Nakhoul	21/12/05	22/4/08	853	Nil	N/A	5/6/09	409
Daoud	21/12/05	22/4/08	853	Nil	N/A	5/6/09	409
Haidar	21/12/05	14/4/08	845	Nil	N/A	5/6/09	417
Mouwad	21/12/05	17/3/08	817	Nil	N/A	5/6/09	445
CADMUS							
Ishaq	20/9/06	18/7/07	301	Nil.	N/A	10/6/08	327
Tourni	20/9/06	18/7/07	301	Nil.	N/A	10/6/08	327
Khoury	20/9/06	18/7/07	301	Nil.	N/A	10/6/08	327
Khouzame	20/9/06	18/7/07	301	Nil.	N/A	10/6/08	327
Hilal	20/9/06	18/7/07	301	Nil.	N/A	10/6/08	327
Bullen	20/9/06	18/7/07	301	Nil.	N/A	8/7/09	720
Barhy	20/9/06	18/7/07	301	Nil.	N/A	4/9/09	778
M.Tourni	20/9/06	18/7/07	301	Nil.	N/A	10/6/08	327
AZTEC							
Wade	26/10/06	10/8/07	288	Nil	N/A	21/11/08	469
Williams	26/10/06	10/8/07	288	Nil	N/A	21/11/08	469
Ashe	26/10/06	10/8/07	288	Nil	N/A	21/11/08	469
QUILLA							
Stepito	21/12/06	21/4/08	487	Nil	N/A	19/06/09	424
Job	21/12/06	21/4/08	487	Nil	N/A	19/06/09	424
PERSIS							
S. Marcos	18/06/07	3/4/08	290	Nil	N/A	5/3/09	309
B. Marcos	18/06/07	3/4/08	290	Nil	N/A	5/3/09	309
Mourched	18/06/07	3/4/08	290	Nil	N/A	5/3/09	309
Mikhail	18/06/07	3/4/08	290	Nil	N/A	5/3/09	309

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PELION							
Fryar	22/08/07	13/6/08	296	N/A	N/A	18/11/08	158
Huang	22/08/07	13/6/08	296	N/A	N/A	18/11/08	158
Lu	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
Srijan	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
Innes	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
Kuang	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
Tina	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
Song	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
Shan	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
Xu	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
Carle	22/08/07	13/6/08	296	N/A	N/A	20/04/09	318
SIRONA							
McPherson	20/09/07	5/5/08	230	Nil	N/A	16/03/09	283
Phomsavanh	20/09/07	5/5/08	230	Nil	N/A	16/03/09	283
Jaturawong	20/09/07	5/5/08	230	Nil	N/A	16/03/09	283
BERNA							
Tasich	20/12/07	20/10/08	305	30/7/09		30/7/09	274
GREENWAY							
Norris Murray	31/1/08	30/9/08	243	Nil	N/A	26/7/10	664
Peters	31/1/08	30/9/08	243	6/2/09	29/06/09		
Nolan	31/1/08	30/9/08	243	6/2/09	29/06/09	7/5/10	584
	31/1/08	30/9/08	243	Nil	N/A	2/6/10	610

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MONTO F							
Blackstock	13/8/08	14/10/08	62	12/03/09	24/8/09		
Madrajat	13/8/08	14/10/08	62	12/03/09	24/8/09		
Ward	13/8/08	14/10/08	62	12/03/09	24/8/09		
Chambers	13/8/08	14/10/08	62	Nil	N/A		
Clarke	13/8/08	14/10/08	62	Nil	N/A		
MONTO C							
Hughes	13/8/08	31/10/08	79	28/5/09	16/06/09		
Kuipers, W	13/8/08	31/10/08	79	28/5/09	16/06/09		
Kuipers, K	13/8/08	31/10/08	79	28/5/09	16/06/09		
MONTO B							
Walker	8/9/08	22/04/09	226				
Azzopardi	8/9/08	22/04/09	226				
Kuipers, W	8/9/08	22/04/09	226				
Napier, Michael	8/9/08	22/04/09	226				
Napier, Matt	8/9/08	22/04/09	226				
Dulhunty	8/9/08	22/04/09	226				
MONTO D							
Stanic	8/9/08	7/7/09	302				
Szoboszlay	8/9/08	7/7/09	302				
Kouraos	8/9/08	7/7/09	302				
Palombo	8/9/08	7/7/09	302				
MONTO A							
Hetman	25/9/08	14/10/09	384				
Murdocca, D	25/9/08	14/10/09	384				
Murdocca, S	25/9/08	14/10/09	384				
Murdocca, P	25/9/08	14/10/09	384				

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MONTO E							
Akkawi	25/9/08	23/04/09	210				
ATLAS							
Morgan	8/10/08	17/7/09	282				
Vellar	8/10/08	6/7/09	271				
Zanotto	8/10/08	6/7/09	271				
Gigliotti (1)	8/10/08	13/7/09	278				
Younan	8/10/08	13/7/09	278				
Carroll	8/10/08	13/7/09	278				
Tasich	8/10/08	13/7/09	278				
Tabak (1)	8/10/08	29/04/09	203				
Scimone	8/10/08	7/04/09	181				
Gigliotti (2 & 3)	8/10/08	31/03/09	174	Nil	N/A	14/9/09	166
Jonovski	8/10/08	31/03/09	174	Nil	N/A	14/9/09	166
Esen	8/10/08	31/03/09	174	Nil	N/A	14/9/09	166
Tabak (2)	8/10/08	29/4/09	203	Nil	N/A	11/5/10	377
MIRNA							
Sanhueza	18/12/08	8/1/09	21				
C. Taylor	18/12/08	8/1/09	21				
A Taylor	18/12/08	8/1/09	21				
Xuereb	18/12/08	8/1/09	21				

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MONTO G H J & MINERVA							
Laidlaw	19/11/08	25/11/09	371				
Kotevski	19/11/08	25/11/09	371				
Hansen	19/11/08	25/11/09	371				
Araldi	19/11/08	25/11/09	371				
Hili	19/11/08	25/11/09	371				
Schliebs	19/11/08	25/11/09	371				
Severino	19/11/08	25/11/09	371				
Petrovski	19/11/08	25/11/09	371				
Affleck	19/11/08	25/11/09	371				
Penny	19/11/08	25/11/09	371				
Skinner	19/11/09	25/11/09	371				
Dulhunty	19/11/09	25/11/09	371				
BELLIN							
Pei	12/2/09	16/2/09	4	Nil	N/A	22/5/09	95
Lu	12/2/09	16/2/09	4	Nil	N/A	22/5/09	95
CAPELLA							
Huang	26/2/09	10/3/09	12	Nil	N/A	6/8/09	149
BAUER							
Chen	30/06/09	14/7/09	14	25/8/09 & 1/9/09	27/8/09 & 7/10/09	17/11/09	126
Sun	30/06/09	14/7/09	14			17/11/09	126
TAMBO							
Pevec. G	9/9/09	8/2/10	152				
Murdocca	9/9/09	11/2/10	155				
Pevec. L	9/9/09	11/2/10	155				

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CHAUCER							
Khan. W	23/9/09	29/9/09	6				
Ali	23/9/09	29/9/09	6				
Khan. T	23/9/09	29/9/09	6				
ARGYLE							
Smith	4/11/09						
Rossello	4/11/09						
COLUMBA							
Merchant	9/12/09	24/5/10	166				
Hyland	9/12/09	24/5/10	166				
Moosani	9/12/09	24/5/10	166				
Camilleri	9/12/09	24/5/10	166				
Alqudsi	9/12/09	24/5/10	166				
Shipway	9/12/09	24/5/10	166				
Raghavan	9/12/09	24/5/10	166				
Brandusoiu	9/12/09	24/5/10	166				
Wheeler	9/12/09	24/5/10	166				
SEGOMO							
Hart	15/3/10						
Paul	15/3/10						
Kelly	15/3/10						
Trinder	15/3/10						
Nankivell	15/3/10						
CENTURION							
Pyo	13/5/10	13/5/10	0				
CORAL							
Garzaniti	2/6/10	18/6/10	16				

Committee on the ICAC

Questions on Notice

ICAC Annual Report 2008-2009

REPORT	DATE OF REPORT	DATE BRIEF TO DPP	DAYS FROM REPORT TO BRIEF TO DPP	DATE OF DPP REQUISITIONS	DATE OF ICAC FINAL RESPONSE TO DPP REQUISITIONS	DATE OF FINAL DPP ADVICE	DAYS BETWEEN DELIVERY OF BRIEF AND FINAL DPP ADVICE
CORSAIR Cooper	10/6/10	25/5/10	(-15)				
CORINTH Paluzzano	13/7/10	19/7/10	6				
CICERO Wade	27/7/10	TBA					

Appendix Two – Questions without notice

This appendix contains a transcript of evidence taken at a public hearing held by the Committee on 27 August 2010. Page references cited in the commentary relate to the numbering of the original transcript, as found on the Committee's website.

CHAIR: I thank everybody for attending this morning, in particular the Commissioner and team from the Independent Commission Against Corruption who are present to answer questions on the annual report and other reports of the Commission. I take this opportunity of welcoming new members who joined the Committee since we last met—the member for Ryde, Victor Dominello, and the member for Campbelltown, the Hon. Graham West—and I hope they find membership of this Committee very beneficial.

It is the function of the Committee on the Independent Commission Against Corruption to examine each annual and other report of the Commission and the Inspector and report to both Houses of Parliament in accordance with section 64(1)(c) of the Independent Commission Against Corruption Act. The Committee welcomes the Commissioner of the Independent Commission Against Corruption, the team from ICAC and other members of the executive who attend for the purpose of giving evidence on matters relating to the Commission's annual report 2008-09. On behalf of all the Committee, I thank them for their presence today.

I also thank the Commissioner and the executive for welcoming me and other members of the Committee on the Independent Commission Against Corruption on the two occasions we visited the Commission since our last hearing. The first occasion was to witness a hearing and the second occasion was to have an informal roundtable discussion. Having spoken to members of the Committee, I am able to say that we found the visits most beneficial. I hope that trend will continue in the future between formal parliamentary hearings.

DAVID ANDREW IPP, Commissioner, Independent Commission Against Corruption, Level 21, 133 Castlereagh Street, Sydney, 2000, and

ROBERT WILLIAM WALDERSEE, Executive Director, Corruption Prevention Education and Research, Independent Commission Against Corruption, Level 21, 133 Castlereagh Street, Sydney, 2000, affirmed and examined:

THERESA JUNE HAMILTON, Deputy Commissioner, Independent Commission Against Corruption, Level 21, 133 Castlereagh Street, Sydney, 2000

ROY ALFRED WALDON, Solicitor, Independent Commission Against Corruption, Level 21, 133 Castlereagh Street, Sydney, 2000

MICHAEL DOUGLAS SYMONS, Executive Director, Investigation Division, Independent Commission Against Corruption, Level 21, 133 Castlereagh Street, Sydney, 2000, and

ANDREW KYRIACOU KOUREAS, Executive Director, Corporate Services, Independent Commission Against Corruption, Level 21, 133 Castlereagh Street, Sydney, 2000, sworn and examined:

CHAIR: The Committee has received a submission from the ICAC in response to a number of questions on notice related to the annual report for 2008-09. Commissioner, do you wish the submission to form part of the evidence given today?

Mr IPP: Yes.

CHAIR: I now invite you to make an opening statement before members of the Committee ask questions related to the annual report.

Mr IPP: Thank you for providing me with the opportunity to make an opening statement. Some of what I propose to say is similar to what I said to those members of the Committee who visited the Commission in July. I hope they will forgive the repetition, but these matters are of considerable importance to the Commission. For that reason, I wish to bring them to the attention of the entire Committee.

Since February this year the work of the Commission has increased to a significant extent; indeed, exponentially. We are very busy. We have reached a point where we are not investigating matters to which we would have directed attention had we had greater resources. The following figures tell their own story.

There has been a marked increase in the number of preliminary investigations referred to the investigation division—from 57 matters in 2008-09 to 133 in 2009-10. This is an increase of more than 100 per cent. For the financial year 2008-09 we held seven public inquiries. For the financial year 2009-10 we held 12 public inquiries. Some of the public inquiries we held in the 2010 financial year have been particularly complex, and that has made them longer.

Public inquiries held in the financial year 2008-09 took 28 days. Public inquiries held in the 2010 financial year took 70 days. Thus by June this year we had almost doubled the number of public inquiries we held last year and the rate of increase is growing. This trend is demonstrated by the fact that in the seven months since February 2010 we have held 12 public inquiries over 68 days.

Again, a useful comparison is the seven public inquiries held over 28 days in the whole of the 2008-09 financial year. Regard must also be had to the fact that in the 2008-09 financial year, 33 compulsory examinations were held whereas in the 12 months from 1 July 2009 we have conducted 124 compulsory examinations. The continuing increase has demonstrated that in the eight months since January 2010 we have already held 126 compulsory examinations. There has been an increase of more than 400 per cent, and the number of compulsory examinations is growing.

I would add that we propose to hold at least one public inquiry a month until December this year and the next calendar year looks similar to 2010. The increase in inquiries is due not so much to the actual number of cases referred to us but to the potential seriousness or importance of those cases; that is, there has been a marked increase in the number of cases that we have decided to investigate. This has led inevitably to a marked increase in the number of public inquiries. It is difficult to discern the cause of this phenomenon. It may be that the economic climate has had an influence. It may be that persons now have greater confidence that referring serious cases to ICAC will bring about desired results.

In addition, the quality of the information received from the public has improved, not least because the assessment division of the Commission has tailored the online complaint form for use by the public to ensure that mandatory details of alleged corruption are provided. All these causes probably play a role. In addition, we have made a deliberate decision to increase the number of public inquiries. Public inquiries are the sharp end of the Commission and we have attempted to make that sharp end sharper and more effective.

The increase in public inquiries and compulsory investigations has brought about a significantly heavier workload for most of the Commission staff, in particular, the investigative, legal and corruption prevention divisions. There is no doubt that presently the Commission is working at a degree of considerable intensity. To support this increased output we are making our processes more efficient. For example, we are introducing a more detailed and informative process of time costing. We have asked our internal auditors, Deloitte, to advise us on how best to collect the

information produced from the time sheets and other sources and how to present that information to management in a way that will facilitate management decisions.

A program has been recommended which will gradually be introduced. We have made several other procedural changes that are intended to enable us to use our resources to their optimum extent. An important example is the processes in the investigative division which have been changed to give them greater focus. Mr Symons, the head of this division, is available to answer any questions you may have on this aspect. In 2010 we were assisted by additional funding that enabled us to increase our staff by some seven full-time equivalents [FTE]s. This funding increase has been made permanent and is a real assistance. It is, however, inadequate to enable the Commission to deal with the increased workload.

I would like to give you an example of the increased demands placed on the Commission staff and the level of commitment that has been shown. The four chief investigators, by working excess hours and for that reason not taking all their entitled flex leave, have forfeited an aggregate 108 days of leave during the 2010 financial year. This equates to approximately \$38,000. Others have also forfeited their flex leave in order to try and reduce the backlog. I do draw your attention to this level of commitment amongst the Commission staff.

The current position is that there are nine full-scale operations underway, 41 preliminary investigations are being conducted and there are 28 matters on hold awaiting completion of preliminary investigations. We are being ruthless in selecting the more important matters to investigate. The reasonable possibility of discovering evidence that can be obtained to support a finding of corrupt conduct is a major factor. Our assessment division is receiving some 50 to 60 complaints a week. Only a very small percentage of these complaints can proceed to investigation and only a proportion of the matters under preliminary investigation can proceed to full investigation.

It follows inevitably that there are a number of matters involving corrupt conduct that will slip under the radar but we can only use our resources to their optimum effect in an attempt to investigate the more serious cases. The lack of resources caused by the increase in work during the last financial year has also caused the time taken to investigate matters to become longer. This is not a good thing because, as time goes by, memories fade, witnesses are more difficult to trace, evidence disappears, the sting tends to go out of the case, but again we can only attempt to use our resources to their optimum effect.

An ongoing difficulty with resources is the mandatory budget cut of 1 per cent becoming 1.5 per cent in 2012 and 2013 imposed as an efficiency dividend on all government agencies. The ICAC is a small agency and there comes a time when no more efficiency cuts can be made. The only way to comply with this mandatory budget cut is to reduce staff. That time, in reality, has arrived for the Commission. This is a serious issue for the Commission. For these reasons, the ICAC will be requesting Treasury for more funds for the coming year's allocation and forward estimates. I respectfully ask for this Committee's support in this request. The Committee's support is also sought for the Commission's capital funding business case. This is currently being developed for New South Wales Treasury's consideration as part of the forward estimates budgeting process.

A highly reputed firm of information technology consultants has recently conducted a review of the Commission's information communications and technology infrastructure. This infrastructure has been built up over time on an ad hoc basis and is not optimally integrated. Some of the equipment is more than 10 years old and is way past its technological use-by date. The Commission's capital funding request will total \$4 million over four years from 2011-2012, that is, \$1 million a year. I need to place on record that I have not previously asked the Government for more funds. I deliberately decided not to make any requests of this kind until I had familiarised myself with the work of the Commission. I am now satisfied that that time has now arrived and the Commission, for the first time under my stewardship, will be seeking additional resources for the reasons I have expressed.

I need to inform the Committee of two policy changes the Commission has made. The first concerns public inquiries. In the past the Commission has focused on persons against whom allegations of corrupt conduct have been made. The Commission has now resolved that while that focus will continue, the Commission will also direct its attention to those members of the executive or management of the agency concerned whose neglect or mismanagement has allowed the corruption to occur.

Secondly, the Commission has resolved to offer its training and education services to other government agencies and departments and also local councils free of charge. The Commission regards its training and education functions as extremely important. It is about to refocus its marketing strategy to train public sector agencies. It hopes to make training and education a more attractive and accessible proposition for those who need this kind of assistance. The theory we are now adopting is that training and education should be for those who need it, not those who can afford it. By this change in policy we are making training and education available to small agencies and agencies which have tight budgets. Stopping charging other agencies will reduce the budgeted income of the Commission by some \$102,000. Of course, the agencies which are not charged will benefit proportionately. As far as the Commission is concerned, it will have to seek an appropriate adjustment from New South Wales Treasury. That, as I am sure you appreciate, will not affect Treasury's overall financial position.

This year has also illustrated the importance of holding public inquiries to remove from the public arena false perceptions of corruption. The pervading belief that public officers are guilty of corruption when they are not is harmful to our system of government. The McGurk inquiry was important in this context. One of the aims of the lobbying inquiry which the Commission is presently undertaking is to recommend practical and effective systems that will make lobbying more transparent so as to combat the perceptions of corruption that are attached to the practice of lobbying government officers.

The questions on notice include several questions concerning the Commission's relations with the Director of Public Prosecutions [DPP] and brief preparation. The Commission is working well with the DPP although neither the Commission nor the DPP has fully complied with the memorandum of understanding [MOU] between us. There have been delays on our part in briefing the DPP. We are conscious of our shortcomings in this regard and steps are being taken to remedy this. One of those steps has been to obtain the secondment of a lawyer from the DPP during this year and she has been a great help to us in advising us of the DPP's requirements and how to brief the DPP more efficiently. We have learned much from her as to the practical requirements of the DPP. We would like to have someone with her experience permanently on our staff but this is likely to depend on the outcome of the application we will make to Treasury for additional funds.

There have been delays on the part of the DPP in prosecuting cases. We make no complaint about this, not being in a position to do so until we comply with our own obligations. It goes without saying, of course, that delays in prosecutions bring problems in proving the case and in persuading the court to impose an appropriate sentence. They should be avoided. These comments are not intended to detract from the fact that both the Commission and the DPP have improved their performance. Meetings occur every two months between the Deputy Commissioner and a senior representative of the DPP, and through this channel ideas are exchanged, reports are made and improvements are suggested. There has indeed been an overall improvement.

It is a truism that the more time spent in taking statements for the DPP and in briefing the DPP means less time available to investigate corruption. Unsuccessful prosecutions result in a negative use of the Commission's resources. In order to reduce this waste of effort the Commission is focusing on recommending only those offences for prosecution which, in the Commission's opinion, have a good chance of success, and in not recommending trivial or duplicated charges. The effort the Commission is now making to comply with the MOU is also designed to ensure that the

Commission does not have to go back to investigate old cases and thereby have to spend time in refreshing memories and in repeating work. This is time that would otherwise be more usefully directed elsewhere.

These comments lead me to another issue that I regard as of particular importance. That is that the Commission's performance should not be judged by reference to the number of convictions obtained by the DPP. There are a number of reasons for this. Firstly, evidence that supports a finding of corrupt conduct is almost always inadmissible in a criminal prosecution. Thus different evidence, often of a far less cogent quality, has to be used in a criminal prosecution. Secondly, the prosecution is entirely in the hands of and controlled by the DPP. The Commission therefore can have no responsibility for the outcome.

Thirdly, there are very many public inquiries where the Commission does not recommend a criminal prosecution but nevertheless the purpose of the public inquiry has been achieved. Sometimes the Commission may establish compelling evidence of corrupt conduct but that evidence, being inadmissible in criminal proceedings, cannot be used in the prosecution so no recommendation for a prosecution is then made. Nevertheless, the Commission has fulfilled its function in exposing corrupt conduct. McGurk and the lobbying inquiry are further examples of the Commission dealing properly with perceptions of corruption without recommending prosecution. The questions on notice, if I may say so, are far-reaching in their scope and cover all important aspects of the Commission's work. We hope to give you a full picture of the Commission's operation in answering them and any other questions that you may pose to us.

CHAIR: Thank you, Commissioner, for those very comprehensive opening comments. There may be some questions about the budget very shortly. Looking at the annual report, which I found a very comprehensive document, you go through a number of issues you have addressed here this morning in relation to corruption prevention. I was particularly impressed by the statistic that since the inquiry into Wollongong Council the Commission has done presentations and seminars to something like 1,100 councillors, managers, planners and personnel in local government. Was that just in response to Wollongong or is this continual work with the local government sector an ongoing process? Backing up where I am coming from, in your annual report you also list the number of complaints and categories of organisations that are the subject of complaints. I understand 37 per cent of them come from the local government sector. They also top the top five when it comes to protected disclosure allegations by the government sector. The annual report addresses this aspect. Is this part of an ongoing process or was it more of a reaction to the Wollongong situation?

Mr IPP: Dr Waldersee is best able to answer that.

Dr WALDERSEE: One of the ways corruption prevention has its effect is to get a message to people when they are thinking about the issue, so Wollongong raised the issue of corruption within planning in local government. It was opportunistic to move quickly while people were paying attention to that to talk to all the local governments in the high-risk areas, which was essentially the eastern seaboard where the land is valuable. That is what we did. We do have ongoing work with local government but there are just so many times you can go and talk to the same people before you lose the effect, so we have to keep moving to different approaches.

CHAIR: But is it ongoing as far as other issues are concerned? Are you taking up some aspects of the allegations coming through and looking at preventing them in the future? Obviously that is a fairly heavily weighted statistic in your annual report.

Dr WALDERSEE: It is. Going forward from here we are looking at the governance structure of local government too in terms of how audit works, the risk management systems, et cetera. Again, we have a local government area and that is the sort of work we do.

Mr IPP: If I may add to that, local government matters, as you rightly point out, are probably the greatest source of complaints that are made to us. In your letter to us you asked about trends. It is difficult to say that there is more from local government, but certainly it is maintaining its leading role in corruption. On the question you asked, Mr Chairman, one of the reasons for us deciding not to charge for education and training is to enable us to really direct our education and training facilities to local councils, because when they do not have to pay they are much more ready to receive our people for training and education.

Mr PAUL PEARCE: Following up on the local government matter, unlike the Chair I do not have quite the same cynicism about local government.

CHAIR: No, I was just reading the annual report.

Mr PAUL PEARCE: Part of the issue you identified there was the fairly steady and relatively high rate of complaint in relation to local government matters. Are you finding that is indicative of problems in local government in terms of corrupt conduct or poor governance and poor auditing and the like or is it because the complexity of the planning laws causes people to believe something dodgy has gone on when in fact it is simply a consequence of those planning laws?

Mr IPP: I think all of us here would have views on this. As far as I am concerned I have not noticed the complexity of the planning laws being in themselves a cause of corruption.

Mr PAUL PEARCE: I am not suggesting it is a cause of corruption.

Mr IPP: Or enable corrupt—

Mr PAUL PEARCE: I am suggesting rather that the complaints from members of the public in relation to local government, because they invariably relate to planning decisions and a belief in the public mind that certain planning decisions have been arrived at because of corrupt conduct—is that due to the public's lack of understanding of the complexities of the planning laws or is it because in your view there is a real nub of a problem in local government in terms of corrupt conduct?

Mr IPP: I do not think it is the first. If it is a problem with government in relation to planning, I suppose it is just a human phenomenon. The thing about planning is that it deals with property, the status of which can be changed to result in people making a great deal of money, so naturally it attracts some people who want to make money at any cost, so there is more temptation put in the way of planning officials than other officials. I certainly do not regard planning officials as being more corrupt than any other officials or particularly corrupt. One does get a lot of planning complaints but I do not think that is a reflection on the individuals. It is more a reflection of the nature of the activity. I should also say that we get very many procurement complaints in local authorities.

Mr PAUL PEARCE: In relation to procurement, a number of councils are forming groups of councils for purchasing across a region. Has any analysis been done of whether those groups of councils and centralised procurement have improved the situation or is there no particular measure yet? Some councils still procure their road equipment, asphalt, paper et cetera individually. Others such as the regional organisation councils do centralised procurement. Is one indicating a better model than the other?

Mr IPP: The Commission has investigated procurement to a considerable extent. Dr Waldersee should be able to answer that question.

Dr WALDERSEE: We currently have a procurement discussion paper out—the extension is closing this week—and the issue of how procurement works across the whole State and the risks, the nature of markets, the skills, systems, panels and so on are all part of that discussion paper. We are waiting for submissions to come in. We have a second survey of suppliers out so we are getting

that perspective too. We have some thousand responses from suppliers to government to go through. That discussion paper will be put together into either a position paper or a report, probably within a six months period. We have not done a specific analysis of this issue yet, but we are in the middle of a procurement exercise.

Reverend the Hon. FRED NILE: Commissioner, you mentioned that you have 50 to 60 complaints per week, and indicated the pressure on your staff. You said that many complaints cannot be investigated. Do you publish a list of those complaints that are not investigated? Or would it help the Committee to have a list of those complaints to establish the need for the Commission to have additional funds, for us to lobby on behalf of the Commission?

Mr IPP: All complainants are informed of the result of their complaint. Anyone who complains will be told whether we are not investigating pretty soon. If we are investigating, the complainant will eventually be advised—not necessarily immediately, because it is our policy to not reveal what we are investigating. There is a danger in publishing the complaints because many of the complaints are unfounded and can be unfairly harmful to the reputation of people against whom complaints are made. So, while I would like to do anything to be able to persuade you to support us to get more resources, I have to say that I do not think it is appropriate to publish the lists of details of the complaints for the reasons that I have explained.

Reverend the Hon. FRED NILE: I was not thinking of every complaint. However, you indicated that some complaints may have some basis, but because of the lack of staff you cannot investigate them?

Mr IPP: No.

Reverend the Hon. FRED NILE: If you had a priority—

Mr IPP: I should explain that better. Whenever we think there is a real basis for corrupt conduct, we will investigate; we will at least have a preliminary investigation. Our experience has been that in the initial stages it is often difficult to work out the depth of the corruption, whether there is serious corruption of the kind that we are required by our Act to investigate. And it is only by investigation that we discover this. We do not have the time to investigate all of these. All I am really trying to convey is that in the nature of the figures, and in the nature of our experience, we probably miss cases because we are not investigating when we look at them and think that there is nothing there.

Reverend the Hon. FRED NILE: On another matter, you indicated that sometimes you have to make a decision to not refer a case to the DPP, because you believe it will not be successful. The Commission itself makes that judgement?

Mr IPP: Yes.

Reverend the Hon. FRED NILE: Do you feel you have the expertise to make that judgement? Or should it be made by the DPP?

Mr IPP: I have had only 50 years in the profession, Mr Nile.

Reverend the Hon. FRED NILE: Yes, I know, that is you, personally.

Mr IPP: And no decision is made without me being involved.

Reverend the Hon. FRED NILE: You personally make that decision?

Mr IPP: I personally make that decision.

Reverend the Hon. FRED NILE: Good. You probably could advise the DPP.

The Hon. TREVOR KHAN: Commissioner, you have given the Committee some raw figures in terms of the increase in the number of hearing days that the Commission is now experiencing. You also told us that there has been a significant increase in the number of compulsory examinations undertaken. Are you able to indicate the number of, if it be the appropriate term, sitting days that the compulsory examinations have increased by in the same way as you have with actual sitting days of public hearings?

Mr IPP: I am not sure what you mean by "sitting days".

The Hon. TREVOR KHAN: I am interested in identifying this: The Committee has a raw number of the increase in the amount of public hearing days. Plainly there is a lot of back work, work that leads up to the holding of the public hearing in terms of compulsory examinations with investigation work.

Mr IPP: That is correct.

The Hon. TREVOR KHAN: And whether it is capable to get a clearer picture of the increase in man days that are expended because of the increase in the number of actual sitting days.

Mr IPP: Do you mean what is the average number of compulsory examination days for each public hearing?

The Hon. TREVOR KHAN: That would be a start, Commissioner.

Mr IPP: I cannot give that to you. That is not a figure that we have taken out. I think it just needs a bit of arithmetic.

CHAIR: You can take that question on notice.

Mr IPP: We just need to divide the figures I have given you—they are all there. I am not sure how helpful that will be. In some cases there are not many days of compulsory examinations because they are just not required; the issues are pretty simple or the investigators have been able to get from the witnesses all information necessary to have a public inquiry. Sometimes, when we are not certain of the veracity of the witnesses, and the witnesses are not forthcoming, we have a compulsory examination to try to get the evidence out. It is a pretty ad hoc situation.

The number of compulsory examinations is not necessarily indicative of the importance of the public inquiry, although, because of our present situation, we are paying a great deal of heed to the cost of the Commission of having a public inquiry on a particular issue. For example, if we have an issue where there seems to be corruption of a certain degree, and to prove it will involve the whole Commission for several months in investigation, we probably will not do that because it means excluding us from other inquiries that are as or more important, and more of them. That is the kind of judgement that we have to make all the time now. I am quite happy to let you have the average figure of compulsory examinations to public inquiries that you asked for and any other information in this regard that you seek, Mr Khan. I am not quite sure, though, what other information you would like.

The Hon. TREVOR KHAN: I suppose it will lead on to this: You have referred to what I took to be the introduction of some form of what I would have called in the old days some sort of time-costing program?

Mr IPP: Yes, that is correct.

The Hon. TREVOR KHAN: Is that Locus, or one of the commercially available systems that you are looking to introduce?

Mr IPP: Mr Koureas will explain that.

Mr KOUREAS: It is Aurion time-keeper module.

The Hon. TREVOR KHAN: So, it is just one of the off-the-shelf programs, and that is not to belittle it?

Mr KOUREAS: It is an additional module in the current data system that we have.

Mr IPP: It is off-the-shelf, but it has taken a lot of time for them to adapt to our requirements, I can tell you. Although off the shelf, it is customised to what we want. We are not really after how much it costs us in terms of dollars; we are after how much it costs us in terms of time.

The Hon. TREVOR KHAN: I understand your objective. Commissioner, I understand from what you have said that you indicated that the supplementation payment of \$850,000 that you received is now, in a sense, a permanent addition to your budget?

Mr IPP: That is correct.

The Hon. TREVOR KHAN: Do I take it that in addition to the \$850,000 supplementation payment you are now looking at a further increase over and above?

Mr IPP: Oh, yes. Getting six FTEs does not double the staff of the Commission, but we have doubled our work.

The Hon. TREVOR KHAN: On that basis, what is the further increase you seek this Committee to become enthusiastic about?

Mr IPP: Well, Mr Khan, you will forgive me for saying that we are working on it!

The Hon. GREG DONNELLY: Commissioner, you might delegate my question to others. In the annual report there is the comment that there is increased challenge associated with the complexity of matters and also the demands of supporting those matters in the court process. Could you explain what is meant by the "complexity of matters" and the additional support required to deal with such matters?

Mr IPP: I can best explain this by reference to a notional example based to a degree on fact.

The Hon. GREG DONNELLY: Is this something with which the Committee members would be familiar?

Mr IPP: No. A disappointed tenderer to a local council complains to us that the person getting the contract has paid the council officer. We go and investigate; The council officer says, "Oh, there is nothing wrong with this. This happens all the time. It happens at A, B, C, D, E, F and G councils." We say, "Tell us who it is", and he replies, "No, I don't know who it is. But that is just the talk". This is rife. What then happens, we then have to go to A, B, C, D, E, F and G councils and do some investigations there. We may then find one or two people who will tell us what is happening there, or say that nothing is happening there but something is happening at another council that he knows about.

Once we have identified the people who have been said to have obtained bribes, we then have to get what we call the "financials"; we have to get their bank statements and their credit card statements, all unbeknown to them. That requires a considerable amount of investigation. That investigation may show that they are receiving money not only from the people who we suspect they are receiving money from but also from others. That means we have to investigate those others. When we investigate those others we find that they are paying not only this council but also a lot of other councils—new ones which we have not looked at yet. Off we go to find them. Do you want me to stop now, or do you follow?

The Hon. GREG DONNELLY: I think we get your drift, yes.

Mr IPP: That is something that is happening.

CHAIR: So, the time factor is involved with that?

Mr IPP: For us to deal with that, you can ask Mr Symons. He is better able to deal with this. We have only a limited number of investigators. If we put them all on this case, we have no-one for anything else. But you can see a case like this can demand the time of investigators, not only people who take statements but also people who understand financial accounts, people who understand IT. If they are all focused on this, it is to the detriment of other matters. Therefore, we have to be very careful about what cases we take on. It is better to get one done properly than a few half-baked.

Mr PAUL PEARCE: Is there an assessment? When you are looking at that hypothetical situation, where essentially you chase a whole lot of rabbits down different holes, is there an assessment of the initial complaint as to the actual seriousness in dollar terms or impact?

Mr IPP: There is no investigation in dollar terms in writing, but there is a written assessment that is made and a report made to a committee of the executive every two weeks on every ongoing preliminary investigation, and an assessment is made at that point. That is the most important meeting we have. At that meeting, an assessment is made as to what investigation has been done in the last fortnight; what are the results; what needs to be done in future; how many people have to be involved in it; what does it mean to the rest of the investigation that we are doing; does it mean that the results are good enough to warrant carrying on with this number; does it mean that if we are going to do this properly we will have to take too many people off others, so, therefore, should we stop it?

Every two weeks, on every single full investigation that we are doing, we have that kind of meeting. We have our full investigations, as I have mentioned. We have nine going on now. When I first came I thought a figure like nine was small. But, if you think about it, in the kind of scenario that I have given you with the number of investigators that we have, they have to give up their holidays to do the job properly.

The Hon. GREG DONNELLY: Commissioner, the matter of the MOU with the DPP has a long history associated with it. Long-term members of this Committee are aware of the history. Have you formed a view about the MOU? Do you believe it needs to be refined further or re-examined to enhance the way it operates? Do you believe there are other issues that are the cause of the matters you referred to in your opening statement?

Mr IPP: I would ask the Deputy Commissioner to speak to that because she has taken the briefs under her wing. I should only say as far as I am concerned, and I do not know enough about this as she does, that the MOU is okay. The fact that we have not complied with it is our fault. We are trying to do better. I will ask the Deputy Commissioner to speak to it.

Ms HAMILTON: In general terms the MOU is a good document. You will recall that we recently changed it last year to put a time limit on ourselves. A lot of the MOU was directed towards

what the DPP would do. We have now put in the MOU that we will get briefs to the DPP within three months of the end of an inquiry. That is one of the elements that the Commissioner referred to that we are not always meeting. That is simply a matter of resources, staff—other priorities. It is worth having it in there as the goal and we are meeting it on many occasions, but we are not always meeting it. The MOU is working and it is focusing both the DPP and us on what needs to be done. We just need to get better at fully complying with it.

The Hon. GREG DONNELLY: In your view it is fundamentally sound?

Ms HAMILTON: Yes. The obligations on both parties are good and fundamentally sound.

Mr IPP: That is my view as well. You will understand that when you have all these things hopping around, people, corrupt conduct that we are investigating, there is a temptation to press with the corrupt finding cases on operation and not to the briefs. Once we have got a corrupt finding made and a report made to Parliament this is the end of the exercise for us. That is why, in some respects—I am not saying it is the only reason—this period has dragged on. But we are really trying to get back to what it should be as far as we can.

Mr JONATHAN O'DEA: Commissioner, I have three issues. The first relates to the funding request. It is good to see that you are perhaps not as shy as your predecessor in putting your hand out. The Committee has been supportive, and I personally have been supportive of pushing for more resources for the Commission. This Committee strongly supported the \$850,000 which has now been made permanent. I give credit to the Premier's Department for concurring with our recommendation and request in that regard. We have heard your comments on the increased need for resources and the increased workload, particularly over one year. In assessing the need for resources and putting forward a solid submission, I ask that some regard be given to trends over a longer time frame, including projections going forward. The doubling of workload that you have referred to may not be permanent, particularly if you put increased resources and increased availability into training, education and prevention and making that more easily accessible. I ask for a longer-term projection and, likewise, to look back over a longer term so we can justify or support any request for increased resources, which I am inclined to do. That is a question or a request.

Mr IPP: Would you like me to reply to it?

Mr JONATHAN O'DEA: If you wish.

Mr IPP: I accept the sentiments behind the question. We are not asking for resources that will double our staff, even though our workload may have doubled. That is probably for the very reason that you mentioned. It is very difficult to make forecasts as to the level of corruption that will continue. All I can say is that it looks as if it will continue this way until the end of next year.

Mr JONATHAN O'DEA: Is that until March next year?

Mr IPP: Until the end of 2011. We can make that assessment by reference to the number of preliminary investigations we have and ones we have put into the refrigerator. If 12 public inquiries a year extend us and we have 60 or so preliminary investigations, of which, say, 48 are good, we have enough work now for four years with our staff as it is with the preliminary investigations and having public inquiries in four years' time. If that is a good idea, then let us keep our resources as they are. That does not mean to say that we will not be modest in our requests. The people on the executive have been involved in dealing with government and Treasury and in their own work for a long enough time to understand the realities of life.

We will put in a request. We are working on it now. That is why I was not able to answer Mr Khan properly because I cannot nominate a figure. We are working towards justifying the figure. The systems we put in place to establish the amount of hours being spent will be a very important key to

this. It is only going to start working properly in October and our budget submission will have to be in October. It will not be in place properly to help us but we are going to do our best to justify our request by facts and not make excessive demands. We hope to be able to put up a figure that you will be able to support.

Mr JONATHAN O'DEA: The second issue relates to the Commission's dealings with the New South Wales Crime Commission. In the same way you have put in place the MOU with the DPP, which seems to have been a successful and positive step, I note in your response to the question on protocol in relation to matters referred to the New South Wales Crime Commission that there is no written protocol. Is it your view that there should be a written protocol or a MOU, even in a preventative sense, to make sure that no problems arise?

Mr IPP: This is a matter for the Deputy Commissioner.

Ms HAMILTON: There probably is validity in our entering into a MOU or a protocol with the Crime Commission. Our relationship is fairly straightforward in one way in that any matter where we feel there are proceeds to be seized we will refer it to the Crime Commission. It is always helpful for both parties to know what their responsibilities are. We will certainly work on that.

Mr JONATHAN O'DEA: The third and final issue is in relation to training programs. Again, Commissioner, you may wish to refer this but I will direct the question to you. There is an increased use of web cast training programs and technology-based or computer-based training, which is a good thing. However, inherent in that is the risk that the training is not verified or assessed for competency unless there is a tracking mechanism or an appropriate assessment tool that is used in tandem with the web cast or whatever the often remote delivery of technology allows. To what extent have you built in those sorts of controls within your training, particularly when you have local governments that might want to be seen to be doing the training but may not actually do it effectively?

Dr WALDERSEE: You can either have breadth without depth or you can have depth without breadth. It is very hard to get depth and breadth and volume all in the one. So to some extent what is done electronically et cetera, and those approaches, will have breadth as you get the volume of a lot of people but you cannot assume it would have the same impact as a week long course such as the ANU program that is run for senior executives—we sponsor senior executives—that has less volume and more depth. The other one has more breadth, more volume, less depth. So one is a bit sheep dip the other is very intense. They are different products for different purposes. We cannot be sure that people who would proceed down in some form of e-learning would ever take it back to their workplace. I do not know that you can ever do anything about that. There is no way that a small group of trainers can ensure that 360,000 public servants have learned what they were supposed to learn and take it away and have implemented it.

Mr JONATHAN O'DEA: You can have tests or assessments at the end of the training and my question was directed in that regard.

Dr WALDERSEE: In terms of e-learning we are currently developing an e-learning system that will have those checks in place. They are self-checks. You check yourself. If you did not answer the questions it will either give you the correct answer or send you back to do it again. But we are not going to be looking for who failed and then following that up. We would not do that.

Mr NINOS KHOSHABA: How does the Commission determine which cases are appropriate for full investigation involving a public inquiry? Is it fair to say that the ICAC through its investigations is confident of finding corrupt behaviour before making a case into a public inquiry or is it more about the nature of the complaint and its seriousness?

Mr IPP: We do not have a public inquiry where the aim of the public inquiry is to find corrupt conduct without coming to the view that we have strong prospects of success in establishing corrupt conduct. We will not put somebody through a public inquiry, with all that entails and all the publicity that that entails, without coming to the firm view that there is corrupt conduct.

The Hon. TREVOR KHAN: Although McGurk was an exception?

Mr IPP: That is not a public inquiry where the aim was to find corruption. That was a public inquiry to show that there was no corruption and that the perceptions were false.

Mr NINOS KHOSHABA: What is the average cost of investigating cases, especially those that later become an inquiry? As you said earlier, many hours are spent on such cases.

Mr IPP: We have no mechanism of working out the average cost. To do that would make us spend a lot more money.

CHAIR: We do not want you to do that.

Mr IPP: It is an entirely valid question, if I may say so. It is one that I have thought about myself and raised. I have come to the conclusion that it is not worth working out. There are a number of problems with it, one of which is that we can spend months investigating a case and then decide not to have a public inquiry. In fact, we are about to can two in the next two weeks which have required about four investigators working full-time for three months. That does not show up in our end-of-year figures. You might see that we have done 12 inquiries but we have spent three months working flat-out on two where we have come to a decision that our evidence does not warrant putting these people up and making a public show of them. Whatever figure one comes up with is not a reliable indication of how we spend our money so that is why I thought "What is the point?"

Mr NINOS KHOSHABA: I asked that question because most people, including myself until today, do not know how much time and effort is put into investigating these cases.

Mr IPP: Knowing how much time and effort is spent in investigating the cases is an extremely important aspect of the work. That is what I asked Deloitte to do. Deloitte have provided us with a program which will be implemented at the beginning of October, which is coupled with the new time recording Aurion program, which is designed to do that very thing. We need it as a management tool as far as I am concerned because without knowing how much time and effort has been spent on a particular investigation it is often difficult to know whether to go on with it or to stop it. Obviously if you have spent a great deal on a matter it is worth going on to finish it. Also it is very helpful to decide how many investigators need to be put on to a particular job and then afterwards to see if we have made a mistake and put too many on it if it has been wasted, what lessons can we learn from it? It is a very important management tool that we do not have. I hope that when I speak to you again we will have it and it will be working.

Mr GRAHAM WEST: I am new to the Committee and I base my questions on your evidence today. You said about 50 to 60 complaints a week arrive at the ICAC so that is about 2,500 to 3,000 complaints. You also said about 133 move to preliminary investigations, so about 5 per cent of the complaints move to investigations?

Mr IPP: That is right.

Mr GRAHAM WEST: Does that suggest, leaving aside your budgetary issues, there are a lot of, for want of a better word, false complaints made?

Mr IPP: Yes.

Mr GRAHAM WEST: Is that because people do not understand the role of the Commission and what is corruption or is it because there are political or malicious motives at play? Do you have a body of evidence around that?

Mr IPP: I think all of the above. I will give you two extremes. The first, neighbour gets a DA approved. That can only be corruption. Off you go to ICAC. The second, a politician gets a complaint from a constituent. What do you do with it?

Mr GRAHAM WEST: Write to you.

Mr IPP: Send it to ICAC.

CHAIR: And put out a press release.

Mr IPP: Exactly. You decide into which category those two fall.

Mr GRAHAM WEST: Related to that though, except for those two—and I will admit to passing constituent complaints to you—there is the education role. I imagine that a lot of people that you find corrupt findings against are tertiary educated either through TAFE or university. Have you had discussions with our tertiary institutions—some of which run ethics and some do not—around what constitutes corruption and what steps to take, both from the point of actually making sure people do not cross the line into corruption, and also to reduce those false complaints that are made by people by understanding what is corruption?

Dr WALDERSEE: We do almost always following an investigation, working with the institutional body and provide training on: What is corruption? What should you look out for? How do you put in place preventative measures, systems and so on? That has involved universities, the TAFE system.

Mr GRAHAM WEST: My understanding is that those are related to where you have found corruption in those institutions?

Dr WALDERSEE: They are.

Mr GRAHAM WEST: My question is more around, have you actually thought of getting incorporated into their training courses—degrees, diplomas and certificates—an actual corruption hardening process.

Dr WALDERSEE: No, you are not talking about the staff of universities?

Mr GRAHAM WEST: I am talking about educating the students, using the opportunity that we have got them as a captive audience to educate them long before it gets to the stage of corruption.

Dr WALDERSEE: We only do a small amount. Our education officer speaks particularly in TAFEs to English classes for non-English speaking new immigrants because they, we believe, are a particular risk if they come from certain countries not to understand what "corruption" is in this country, and about our tolerance or intolerance of corruption. We have a proposal in high schools. We are looking at the new curriculum in schools, particularly in legal studies, and we are awaiting them coming back to us. Other than that we have not focussed on that area. We have limited resources, as the Commissioner has made fairly clear. We have, in fact, a grand total of two trainers.

Mr GRAHAM WEST: You said you were going to increase them. Do you plan to make part of your course a registered training module under the national framework and, therefore, would allow it to be incorporated in those facilities?

Dr WALDERSEE: We had not thought of that but we will definitely consider that now that you have raised it.

Mr GRAHAM WEST: Mr Koureas, you talked about moving to Aurion. Did the Commission go through a process to consider moving to an open source type of environment rather than a proprietary system, given that you have said that you have had to do a lot of work to modify that particular program to meet your needs. Therefore, in the future, I imagine that means a lot of cost. Did you consider going open source?

Mr KOUREAS: No, let me outline the situation. The program is a module within the Aurion Human Resources Management System. It is an integrated human resources management system as such. The timekeeper module is just one of a number of modules that the system contains. It is built in within the system so the Commission has not considered going open source, it would just create additional problems with the integration issues, and interfaces et cetera. It is built within Aurion so there are no issues of matching tables, data et cetera. It is designed specifically for job costing or time costing. The Commission is planning to use it to ascertain information on the number of hours expended on various projects or activities within the Commission. For example, on a particular investigation it would be able to record the types of tasks we have captured under that investigation or project-related work. We will be able to look into a more detailed level of activities within the Commission to be able to deploy our resources more effectively and efficiently by reviewing the data that is collected on an ongoing basis.

Mr VICTOR DOMINELLO: You indicated that compulsory examinations increased in 2008-09 from 33 to 124 in 2009-10. Is that right?

Mr IPP: Yes.

Mr VICTOR DOMINELLO: It is a significant increase.

Mr IPP: Yes.

Mr VICTOR DOMINELLO: You also indicated that in your observation there was a marked increase in the seriousness of the matters being investigated?

Mr IPP: Yes.

Mr VICTOR DOMINELLO: Based on what you have seen thus far is that seriousness related to the systemic nature of the corruption? Is the seriousness related to the level of the official involved or the quantum of money involved?

Mr IPP: All of that. I am not saying that everyone has got all of that but the more serious ones have one of those elements in them.

Mr VICTOR DOMINELLO: Do you believe some of these investigations are skewing one way. For example, there is a disproportionately high amount of money involved and investigated these days compared with previous years?

Mr IPP: I am not qualified to answer that because I have only been there nine months.

Mr VICTOR DOMINELLO: Would the Deputy Commissioner know?

Ms HAMILTON: Not in any definitive way but I can certainly say that a lot of the recent cases do seem to involve very high levels of money and that might be an indication of how much procurement is worth these days or, as the Commissioner said, how much a planning approval is worth. But, yes, the amounts involved—and you can get some indication of it from some of the

referrals to the Crime Commission. We are having the Crime Commission seize back \$900,000 from people. That is the sort of money that they can get through bribes or through contracts being put to their companies. I can just say in general terms, yes, the money seems to be getting higher. It has always been the case that the people we investigate tend to be middle management or above because obviously they are the people who have the power to make the decisions. So yes, we are getting people at relatively high levels. We are getting high levels of money and some of it, as the Commissioner referred to, is systemic involving a broad-ranging, inter-related set of entities.

Mr VICTOR DOMINELLO: Procurement seems to be a large source of concern. Are there any legislative reforms that you would see that we would need to consider in order to correct some of those issues?

Ms HAMILTON: I think as Dr Waldersee indicated, we are presently doing a big project on procurement and at the end of that I expect there will be recommendations made about issues which could include a legislative amendment or at least policy changes to how procurement happens within the public sector.

Mr VICTOR DOMINELLO: Do you know when will that be released?

Dr WALDERSEE: No, we do not. We have had requests for submissions to come in much later than we expected so we are extending that date. So we have not even got to looking at the submissions. They may well raise a whole series of new issues rather than answer questions so I do not want to be overly firm in committing, but hopefully towards the end of this year or, not the Christmas period, but straight after.

Mr VICTOR DOMINELLO: What are your views as to whether an authority should be entitled to use evidence obtained from the Commission in relation to the unexplained wealth provisions?

Mr IPP: That is a personal view. I think so, yes.

Mr PAUL PEARCE: Dr Waldersee, you may be aware that the police are currently looking at an early intervention system which essentially will work amongst junior officers and raises an orange flag, if you like, of an officer whose behaviour or contacts are likely to lead him/her up a dangerous path in the future. Has the Commission considered that sort of approach? My question dovetails with the question from Mr West amongst junior planners, people who are just starting off in the industry and are just beginning to start in the procurement side. Corruption by its nature requires at least two parties, so how do you propose to get those types of ideas into the private sector that is often the beneficiaries, if you like, of the corruption. One is a personal benefit and the other is a sort of corporate benefit.

Dr WALDERSEE: The issue of active intervention with junior staff who may be throwing up red flags is not something we have pushed normally. However, in the case of the Corrective Services report that was released very recently one of the recommendations there was that the Commissioner has the power for such intervention where staff show signs but have not actually crossed the line. That is a significant change in the power of management because it is acting on a suspicion—a very vague suspicion, some indicators. To actively intervene on staff across the public sector on such a basis I think would be a very significant change, but it would require a change I think, probably to the Act.

Mr PAUL PEARCE: But from the number of complaints coming through, in a sense you would have identified certain areas where that risk is higher than other areas. Obviously, if you are looking at local government—I know the chairperson likes local government—clearly the procurement area are the ones where there is a high level of issues arising more so than the library and the park supervisor?

Dr WALDERSEE: Oh yes.

Mr PAUL PEARCE: So you could narrow that down. You would not be looking at 360,000 public sector workers.

Dr WALDERSEE: No. We go talk, we visit, we train, we put out publications, they are in the areas of planning, they are in procurement and one would hope that the agencies—the amount of times we have talked to them—understand that planning and procurement are two of the big areas and that they should watch what is happening; they should ensure the systems are tight, watch their staff, watch the friendships. But again, it is a giant leap from there to suggesting—I do not know if you are suggesting—almost an active management of people showing early warning signs.

Mr PAUL PEARCE: That is certainly where the New South Wales Police are looking at the early intervention system.

Dr WALDERSEE: Yes, that is what the police do.

Mr PAUL PEARCE: Do you see some merit in that sort of approach?

Dr WALDERSEE: I think there is merit in managers acting early in terms of if they noticed a planner is having coffee or something with a developer that they act early and say, "You really should not do that", or, if it is against the code, say, "Look, that is against the code. Don't do it." But to go beyond that and to give that power that the Police Commissioner has to actively intervene on warning signs would be an enormous shift in the way the public sector is managed. You could not just give it to planning departments and procurement departments, for example; there would have to be a fundamental shift in the way the public sector is managed.

Your second question was about the private sector. The private sector of course is not under our jurisdiction until it does something against the public sector. So, all we can do is work with the public sector in trying to get more and more into the contracts that if you offer gifts, if you violate the terms of the contract, then this contract will be cancelled without question. So those sorts of clauses we are interested in, in getting the message out. Where we can, we talk to the private sector. I have given addresses myself, for example, to EnergyAustralia's suppliers, saying, "You cannot offer this sort of hospitality", et cetera. I have given talks when the Metro was up and running to all of their staff. They were a particular risk area because they were contracted in from the private sector.

Mr PAUL PEARCE: They were a risk area in a number of ways.

Dr WALDERSEE: It was the fact that they were on contract and coming from the private sector. I talked to all of them saying, "You cannot take hospitality and you must tell your suppliers that". Other than that there are limits to what we can do.

Mr PAUL PEARCE: Just a further question to Mr Ipp. You mentioned, if I heard it correctly, two policy changes you were looking at. The second one related to training services free of charge, et cetera, which I think has got a lot of merit in it, quite frankly. The first one you referred to the nature of the public inquiry, that you would still be obviously pursuing individuals whose names are coming up, but you also would be looking to direct some of the inquiry towards the management level who allowed this to occur. Firstly, how do you propose to do that given the nature of corruption is often very hidden, it is not apparent, and the objective of the corrupt individual is clearly to disguise their activity not only from their colleagues but also from their supervisors, managers, town clerks or whoever? Also, how would that sort of approach relate to your powers under the Act, because I am not sure that the fact that a manager has not picked something up would actually be corrupt conduct under the terms of the Act?

Mr IPP: I am not suggesting that it is. That is not what I mean at all. Under the Act, where you have a power our powers include taking steps to avoid corruption. When we focus on management it is not to suggest that the management was corrupt at all, it is to explore how this situation was allowed to occur. Where the management has done everything that is appropriate it will not be an issue, but in many of the cases management has been characterised by a lack of management and in the past it is the foot soldier who has been sanctioned. We have got no sanction and we do not intend to sanction management.

But where there has been no management and where there has been obvious neglect in areas that have allowed corruption to flourish we think that it is appropriate to ask the managers responsible to attend at the public inquiry so that for the sake of procedural fairness they can answer the points made against them and so that in our report we can make recommendations for changes, and we inevitably make criticisms of management. Those criticisms cannot be made unless the managers have had a chance to answer them. The best place for them to answer those criticisms, as far as I am concerned, is in the public inquiry and not in private.

The Hon. TREVOR KHAN: I suppose I am looking at the more punitive end as opposed to the educative end. I have three questions which I think can be bundled together and they arise in part out of certain matters that have occurred in recent times. Do you consider that the penalties for giving misleading evidence before the Commission are adequate? Secondly, should the offences of the nature of giving misleading evidence be strictly indictable? Finally, would you consider it appropriate to make a recommendation for there to be a standard non-parole period specified for offences under the Act?

Mr IPP: The first question, yes I think the sentences are appropriate as laid down, but I certainly do not think that the courts give appropriate sentences very often. We had a very recent case where a suspended sentence was given for someone who had lied to us. I regard that as very serious and I think that the person who gave a suspended sentence really just does not understand what that means. One of our major tools is the fact that people are obliged to tell us the truth. If people can lie to us and get a suspended sentence it makes our life very difficult and it makes us much less effective. I personally am in despair at times when I see the kind of sentences that are handed down, especially, if I may say so, in the Magistrate's Court, when people who have committed egregious lies get suspended sentences. That question I answered with a degree of passion that has caused me to forget the other two questions.

The Hon. TREVOR KHAN: You might have half answered them already, although I suspected that might have been your response. The second question was do you consider that offences in the nature of giving misleading evidence before the Commission should be strictly indictable? Finally, do you consider it appropriate that there be a standard non-parole period specified with respect to the offences?

Mr IPP: My answer to both is no. I am quite content with the present system as laid down by the law as long as the judicial officers concerned deal with them appropriately. I was too long a judge to agree to any such thing as mandatory non-parole sentences.

The Hon. TREVOR KHAN: I was not putting that. I would not go that far.

CHAIR: I am conscious of the time. Mr West would like to say something.

Mr GRAHAM WEST: Rather than a question I just wanted to say that Mr Symons and your investigation team previously joked about referring people to ICAC from my office, but I recently had a case where a constituent had someone using their identity to go and try and pretend to invite corruption. They were writing to people saying, "Give me a job and I will give you \$10,000". Through the involvement of ICAC, which we initiated, that constituent no longer has that problem. The Independent Commission Against Corruption coming down and getting involved convinced those

people that it was not a good idea. I wanted to thank the investigators for their professionalism in that result. I know they often do not get those thanks, but the sensitivity they showed in the entire situation made what was a very distressful situation for a constituent an excellent outcome. If you could pass that on?

Mr IPP: Mr Chairman, may I mention one other thing? I am conscious of the time. You gave us some indicative questions concerning reporting by the Inspector. I have spoken to the Inspector and we are in agreement, so I am quite content to let him answer those questions. But there is one matter that has occurred to us too late to discuss with the Inspector. If I may have an opportunity to mention it now?

CHAIR: Go ahead, Commissioner.

Mr IPP: It concerns the publication of a report by the Inspector of the ICAC and I draw attention to the fact that in the report of 22 April 2010 of the Committee on the Office of the Ombudsman and the Police Integrity Commission the Committee suggested that the PIC Act be amended so that where the PIC disagrees with an adverse comment in the Inspector's complaint report the PIC's response to that comment is included in the report. That Committee considered that the Commission's view should be available to a reader of the Inspector's report. This Commission endorses those views and submits that a like provision should be included in any amendment of the ICAC Act. Otherwise, the Inspector and I are in complete agreement and I am quite content for him to explain the position when his turn comes.

CHAIR: Thank you for that. We will be moving to the Inspector. Before so doing can I say to everybody from the ICAC, Commissioner and all of you, thank you very much for being involved in the Committee here this morning and answering virtually all of the questions today, although a number will be taken on notice. We also have a couple of other questions that we have not had time to ask. If we could send them to you as questions on notice? Once again, thank you very much, and I look forward to visiting the ICAC—of course, in an informal way—in the not too distant future.

(The witnesses withdrew)

(The Committee concluded at 12.35 p.m.)

Appendix Three – Answers to questions taken on notice during public hearing

1. **Given resourcing and funding issues, is it likely that ICAC may seek to refer more matters to other agencies for investigation (under s53/54 of the ICAC Act)?**

The referral of matters to other agencies to investigate under ss.53/54 of the ICAC Act is used in a relatively small number of cases, and there will always be certain categories of allegations that cannot be referred back to agencies to investigate. These include matters where:

- it is necessary to obtain financial records or compel witnesses to answer questions, as other agencies usually do not have the power to do this;
- where the agency concerned does not have the necessary resources; and
- where the management of the agency is implicated in the allegations.

Another reason why referrals under ss.53/54 are not used more often is that preparing a referral, overseeing the investigation by the other agency and reviewing the investigation report is a resource-intensive process in itself, and requires the involvement of senior staff of the Commission's Assessments Section.

However, the ICAC will continue to refer any suitable matters to agencies for investigation. In addition, allegations will be referred when, during the course of a preliminary investigation, it becomes apparent that another agency (most commonly the agency that is the subject of the allegations) could pursue an investigation and report back.

The number of matters being referred under ss. 53/54 has been increasing over the past few years (from 26 in 2007–08 to 39 in 2009–10), and given resourcing issues in the Commission's Investigation Division, we will continue to refer as many matters as possible to other agencies.

The Assessments Section is in the process of introducing an enhanced oversight arrangement under which agencies will be requested to provide investigation plans at the outset of any ss.53/54 referral, and to provide at least one progress report during the course of their investigation. In order to oversee referred investigations as effectively as possible, it will be necessary to ensure that the most experienced Assessment Officers have carriage of those matters, and that their workloads are reasonable so that they can assess with necessary rigour, the adequacy of investigation plans, progress reports and final investigation reports.

In conclusion, whilst there may continue to be an increase in ss. 53/54 referrals, this represents in substance a transfer of resourcing requirements from the Investigation Division to the Assessments Section, as opposed to a reduction or outsourcing of resource requirements.

2. **Is there any further comment you wish to make concerning recent trends or changes in the nature of corrupt conduct and how these have impacted on the operations of the ICAC?**

Periodically since 1993, the Commission has conducted surveys to measure changes and trends in community awareness, and attitudes to the Commission and to public sector corruption in NSW. Results from a 2009 survey indicated that while the public evaluates the ICAC positively, there was an increase in the number of respondents that perceived that corruption in NSW was a major problem.

This type of perception is of concern to the Commission and has, in part, led to the recent systemic inquiry into lobbying practices in NSW.

Another continuing trend of concern to the ICAC is corruption in public sector procurement practices which, based on the results of many recent ICAC public inquiries, is potentially costing the NSW public millions of dollars each year.

In the last five years a substantial number of ICAC public inquiries have involved allegations that public officers have misused procurement processes to generate significant financial gain for themselves or others.

All of the seven reports issued by the ICAC in 2008 in relation to its RailCorp public inquiries (Operations Monto A-J) involved allegations that RailCorp officers had manipulated procurement processes for substantial financial gain.

Findings in these reports included:

- A RailCorp officer and his associate received \$1.3 million and \$1.1 million respectively through RailCorp contracts awarded to a company with which they were connected (First Monto Report, April 2008).
- A RailCorp employee entered in a dishonest arrangement with a RailCorp contractor to obtain \$509,638 from RailCorp (Second Monto Report, August 2008).
- A RailCorp officer received payments of over \$120,000 in connection with the awarding of contracts worth \$2.9million (Third Monto Report, September 2008).
- A RailCorp officer was paid in excess of \$500,000 in connection with his role in falsifying plant hire dockets in the amount of \$1.5 million for various companies (Fourth Monto Report, September 2008).
- A RailCorp officer received \$110,000 in connection with RailCorp contracts worth \$3.7 million (Fifth Monto Report, September 2008).
- RailCorp cleaning contracts worth \$1 million were awarded to a company associated with a RailCorp employee (Sixth Monto Report, September 2008).
- Companies connected with two RailCorp employees received contract work from RailCorp worth \$438,000 and \$377,000 (Seventh Monto Report, November 2008).

An earlier operation concerning RailCorp (Operation Persis, June 2007) found that two businesses controlled by a RailCorp employee had received over \$710,000 from RailCorp contractors.

Operation Mirna (December 2008) involved allegations that two project managers for the NSW Fire Brigades manipulated the procurement process to obtain payments of over \$2.3 million through companies contested by one of with them.

Operation Chaucer (September 2009) again involved a RailCorp employee, and the report found that he had solicited payments of \$200,000 to award a RailCorp contract for security guard auditing services.

In Operation Coral (June 2010), the report found that a Department of Housing officer failed to declare an interest in contracts awarded to companies in which he and a friend and business associate had interests. Over a number of years, the contracts were worth \$5.3 million.

Most recently, in Operation Kanda (September 2010), the report found that a cleaning manager at the University of Sydney awarded contracts worth over \$350,000 to a company which she jointly owned with her husband.

Corruption in procurement processes obviously remains a significant risk for the public sector and, apart from conducting the public inquiries referred to above, the Commission has implemented the following strategies to deal with this risk:

1. The increasing complexity of the matters being investigated in the Investigation Division, particularly those involving substantial financial transactions, has highlighted a need to monitor the balance of disciplines within the Division, with consideration being given to an increase in the number of financial investigators. Financial investigation is particularly relevant to corrupt conduct associated with public sector procurement.

2. The Corruption Prevention Education and Research division has developed a new full-day workshop called “Corruption Prevention for Procurement Officers”. This workshop is being offered in NSW and will be presented by the ICAC in November 2011 at the Australian Public Sector Anti-Corruption Conference in Perth.
3. In July 2010, the Commission issued a discussion paper called “Corruption Risks in the NSW Public Sector Procurement”. The paper stated that, in view of the prevalence of procurement in matters reported to and investigated by the ICAC, this project was initiated to examine the corruption risks associated with procurement and to provide assistance to agencies in managing them.
4. All suitable matters involving corruption in procurement are referred to the NSW Crime Commission for consideration of action to seize proceeds of crime. For example, in the case of Operation Mirna, the NSW Fire Brigades matter referred to above, a proceeds assessment order of \$950,000 was made against one of the former employees involved and a forfeiture order was made against the other over a farm property he owned. Several of the RailCorp procurement matters have also been referred to the NSW Crime Commission. As our 2008-09 Annual Report noted, over \$2.6 million had been restrained or forfeited through matters referred in that reporting period.

3. How have the practices and procedures relating to assessments and investigations changed over time to take account of evolving technology and new forms of corrupt conduct?

Whilst practices and procedures in the Assessments Section have not changed significantly, some Assessments staff have undergone training in computer forensics and cyber crime and more such training will be arranged in the future.

The Investigation Division has utilised various computer programs leading to an increase in technical and electronic capacity and specialisation within the Division. In addition, the Surveillance and Technical Unit (STU) within the Division is, among other things, required to ensure that the Investigation Division remains current in terms of technology related to both physical and technical surveillance and computer forensics.

To achieve this end, STU maintains a rigorous research and development (R&D) program, which includes bench and field testing of new technology, liaison with similar units in other agencies, attendance at trade shows, membership of technical committees and the maintenance of an in-house production facility.

The R&D program is a necessity, as more and more ICAC targets are becoming aware of the use of technology due to the exposure of techniques and capabilities through the internet and television programs.

Most current criminal activity involving corruption utilises either physical or electronic communication and/or the use or manipulation of electronic databases. Therefore, computer forensic tools and processing power have to keep pace with industry standards. The increase in storage capacity in computers has impacted on the ability of the Investigation Division to search computers necessitating new software and hardware.

Radio frequency (RF) technology was once the standard used to stream audio product from one place to another. This presented a plethora of problems, including the size of kit required (hard to hide), how to power it, and the general unstable nature of RF. The Commission is now well advanced in the use of both IP (Internet Protocol) and GSM (Global System for Mobile Communications) technology to achieve the same ends for both audio and video.

4. What do you consider to be the key challenges for the ICAC over the next 5 years?

- (a) A key challenge for the ICAC over the next 5 years will be having the ability to investigate all the matters referred to the Commission that should be investigated. We are being hard pressed to complete 12 public inquiries a year; whether we will achieve this figure next year is open to doubt. As the Commissioner told the Parliamentary Committee at the public

hearing, there are now nine full-scale operations under way, 41 preliminary investigations are being conducted, and there are 28 matters on hold, awaiting completion of preliminary investigations. This means that there 69 matters at preliminary investigation stage. If, say, 36 of the 69 warrant a public inquiry (and that is a pretty conservative estimate) and we do complete 12 public inquiries a year, we will finish our current stock of serious matters to inquire into in three years time. This is an optimistic estimate. When regard is had to the fact that the Assessments Section is receiving some 50-60 complaints a week (of which about 5% go to preliminary investigation), the challenge to manage and investigate the serious matters in a timely manner is enormous (even if we succeed in getting a budget increase).

ICAC will certainly face resourcing issues unless both the recurrent and capital funding requests being developed are favourably considered by the Budget Estimates Committee. Even if the outcome is positive, with continuous “efficiency savings dividends” being imposed by NSW Treasury, it is likely there would be financial pressures in recurrent funding towards the end of the five-year period.

Adequate funding is relevant not only to how many staff can be employed but also to the ability to attract staff of the necessary quality and expertise, and retain those of proven quality and expertise.

- (b) As part of the challenge mentioned in (a), the Commission, and particularly its Investigation Division, will have to focus more sharply on the management of the matters being investigated. This focus will involve being more selective in the issues chosen to be investigated, and more selective in the issues to be presented at public inquiries. There will be a need to reduce the issues raised in public inquiries (to the most important), and a need to reduce the time taken to investigate matters generally.
- (c) Another key challenge for the Commission is to get smarter about developing our high performers and providing opportunities for them to progress within the organisation rather than train them up only to lose them. Specifically for our Assessment Officers, with the right nurturing, training and secondment opportunities, there are certain staff members who have the clear potential to become analysts (or even investigators) or corruption prevention officers. We need to better utilise our internal trainers to develop our own staff and make a commitment to staff development through collaborative means across Divisions; for example, mentoring arrangements across Divisions. Similar opportunities should be provided for high performers in the Legal, Corruption Prevention, Education and Research (CPER), and Investigation Divisions.
- (d) While managing the expectations of those who report corrupt conduct to us, and the expectations of the community at large, has always been an issue for the ICAC, in the age of social media it is of particular importance, given the power and reach of the internet.

Disgruntled stakeholders are no longer restricted to sharing their dissatisfaction with their family and friends; in the age of the internet and social media, they can share it with the world.

There are real reputational risks for the Commission associated with how we manage certain complainants, particularly disaffected whistleblowers.

To address this issue, “frontline” staff in the Assessments Section have all undergone training in best practice complaint handling techniques, including dealing with unreasonable complainant behaviour. In 2010-11, the Manager, Assessments will be reviewing how the Commission manages its relationships with those who make protected disclosures and making recommendations to the Executive about any necessary changes to policies or training.

- (e) The ICAC also faces the challenge of keeping abreast of technological developments and ensuring we have sufficient staff trained in those developments. There are continuing technological changes that may impact on our ability to gather and analyse evidence.

Telecommunications interception is one such area, as is the ability to effectively retrieve and read information from computer systems (including encrypted information). As technology changes, there is a need for us to increase our technical awareness and abilities so as to ensure that we are able to effectively gather evidence. It is also important that legislation is updated as appropriate to allow us and other relevant agencies to get access to information derived from new technologies.

A recent independent review of the Commission's Information, Communication and Technology (ICT) infrastructure has found that upgrades are required in many areas, and the Commission is currently developing a capital funding request to implement the recommended improvements to our ICT systems.

- (f) Another key issue over the next five years concerns the negotiation of a new accommodation lease, as the ICAC's current lease expires on 14 October 2014. The Commission will need to consider strategic and logistical issues in deciding whether and where to relocate at that time.

5. The Commission's current investigation into lobbying is examining systemic issues, rather than specific allegations of corrupt conduct. How does the Commission determine which systemic issues are appropriate for a full investigation involving a public inquiry?

To be considered for a public inquiry (rather than a position paper or report), a systemic issue must be considered by the Executive to involve:

1. significant risks that serious corruption may occur, and
2. significant public concern.

A further relevant factor may be a balancing of significant costs and benefits if reforms are made involving the issue concerned. In the case of procurement the costs of reducing risk by limiting one-person negotiation with contractors, for example, is small and the benefit high and therefore the decision is somewhat self-evident.

In lobbying, restricting access to government to reduce the risk of corruption would have a high cost because it would limit legitimate access to elected representatives. Because the negatives associated with reducing corruption are potentially high, the issue warrants a public examination of the benefits and problems associated with any action designed to reduce corruption. It is in the public interest for all sides of the debate to be heard.

The public interest criteria in holding a public inquiry into lobbying were outlined in the Commissioner's opening statement at the lobbying inquiry as follows:

The public interest criteria in holding this inquiry are as follows. Concerns over some lobbying practices and demands for transparency in decision-making by public officials have led to the inference that inadequate regulatory systems for lobbyists and the lobbied may allow, encourage or cause the occurrence of corrupt conduct or conduct connected with corrupt conduct. It is in the public interest to ascertain whether there are gaps or flaws in the current New South Wales regulatory system that might allow, encourage or cause the occurrence of corrupt conduct and if so to identify ways of addressing those gaps or flaws. Public exposure of gaps or flaws in the regulatory system is necessary to encourage public agencies to engage actively in reform and to establish public understanding of why change is necessary. Conducting a public inquiry will promote debate of the relevant issues and may cause others with relevant concerns and opinions to come forward.

6. How would the Commission deal with any specific allegations of corrupt conduct that may arise during these types of investigations (for instance, in submissions or by witnesses at public hearings)?

The normal process would apply in that the matter would be extracted to form a separate report (self-initiated) to the Assessment Panel in relation to suspected or alleged corrupt conduct. The

Panel would then determine whether the material should be referred to the Investigation Division or dealt with in another way.

7. What does the Commission consider to be an appropriate use of its coercive powers during investigations that examine systemic issues rather than specific allegations of corrupt conduct?

The Commission is not limited to investigating allegations of corrupt conduct. The Commission may conduct an investigation into circumstances which, in the Commission's opinion, imply that conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur. In the case of such an investigation, it is open to the Commission to exercise its coercive powers under the ICAC Act.

The Commission's current investigation into lobbying of public officials is an example of this kind of investigation. During the course of this investigation, the Commission issued a number of notices under section 21 of the ICAC Act requiring public officials to provide a statement of information. Notices under section 22 of the ICAC Act, requiring production of documents, were also issued. A public inquiry has been conducted and an investigation report will be produced.

As with all matters investigated by the Commission, in deciding which, if any, coercive powers to exercise, the Commission took into account the nature of the issues under investigation and the relevance of the information being sought. In the case of the public inquiry, it was decided to invite witnesses to attend rather than to summons them. This was done as it was not considered appropriate, given the nature of the matter being investigated and the general willingness of witnesses to give evidence, to formally compel attendance by way of summons.

Such decisions will be made on a case-by-case basis, depending on the nature of the issues under investigation and the willingness of witnesses whose evidence is important to the investigation to attend for the purpose of giving evidence.

8. In answers to questions on notice, you indicated that you have adopted a more flexible approach to corruption prevention recommendations which provides for the timing of implementation to be negotiated between the ICAC and agency. How will the ICAC's change in approach to corruption prevention recommendations be reflected in its reporting on the implementation of its recommendations by agencies?

The flexibility in the ICAC's approach refers only to the timing. The Commission will continue to report which recommendations were fully or partially implemented, and whether the implementation plans, progress and final reports were delivered to the agreed timetable.

9. (Question from Mr Khan) Are you able to indicate the number of, if it be the appropriate term, sitting days that the compulsory examinations have increased by in the same way as you have with actual sitting days of public hearings?

In the financial year 2008–09, the Commission conducted 33 compulsory examinations. These were conducted over 21 days.

In the financial year 2009–10, the Commission conducted 124 compulsory examinations. These were conducted over 57 days. In many instances, more than one compulsory examination was conducted on a single day.

Appendix Four – Minutes

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 36)

Friday, 27 August at 10.40 am
Room 814-815, Parliament House

1. Attendance

Members present

Mr Amery, (Chair) Mr Pearce (Deputy Chair), Mr Donnelly, Mr Dominello, Mr Khan, Mr Khoshaba, Revd Nile, Mr O’Dea, Mr West.

Apologies, Ms Beamer, Mr Stokes

In attendance Helen Minnican, Carly Sheen, Dora Oravec and Mohini Mehta.

2. Public hearing: Review of the 2008-2009 Annual Report of the Independent Commission Against Corruption; Review of the 2008-2009 Annual Report of the Inspector of the Independent Commission Against Corruption

The press and the public were admitted. The Chair opened the public hearing and, after welcoming the witnesses, gave a short opening address.

The Hon David Andrew Ipp AO QC, Commissioner of the ICAC, and Mr Robert William Waldersee, Executive Director of Corruption Prevention, Education and Research affirmed and examined.

Ms Theresa June Hamilton, Deputy Commissioner of the ICAC, Mr Michael Douglas Symons, Executive Director of the Investigation Division, and Mr Roy Alfred Waldon, Executive Director of Legal Division, and Mr Andrew Kyriacou Koureas, Executive Director of Corporate Services, all sworn and examined.

The Commission’s answers to question on notice in relation to the ICAC Annual Report for 2008-2009 were included as part of the witnesses’ evidence.
The Commissioner made an opening statement.

The Chair commenced questioning the witnesses, followed by other members of the Committee.

Evidence concluded, the Chair thanked the witnesses for their attendance. The witnesses withdrew.

The Committee took a short adjournment at 12.16pm and resumed the public hearing at 12.29pm.

Mr Harvey Leslie Cooper, Inspector, Office of the Independent Commission Against Corruption, sworn and examined.

Also in attendance, Ms Felicity Cannon, Office Manager/Executive Assistant to the Inspector of the Independent Commission Against Corruption.

The Inspector’s answers to question on notice in relation to the Office of the Inspector of the ICAC’s Annual Report for 2008-2009 were included as part of his evidence.

The Inspector made a brief opening statement.

The Chair commenced questioning of the witness followed by other members of the Committee. Questioning concluded, the Chair thanked the witness and the witness withdrew.

The public hearing concluded at 12.47pm.

3. Deliberative meeting (12.51pm)

a. Minutes

Resolved, on the motion of Revd Nile, seconded Mr Pearce, that the minutes of the deliberative meeting of 3 June 2010 be confirmed.

b. Membership changes

The Chair announced that:

- Victor Michael Dominello had been appointed to serve on the Committee in place of Gregory Eugene Smith, discharged (Legislative Assembly, Votes and Proceedings, 9 June 2010).
- Graham James West had been appointed to serve on the Committee in place of Gerard Francis Martin, discharged (Legislative Assembly, Votes and Proceedings, 24 June 2010).

The Chair welcomed the new members of the Committee.

c. Publication orders

Resolved on the motion of Mr Khoshaba, seconded Mr Pearce, that the corrected transcript of evidence given today be authorised for publication and uploaded on the Committee's website.

Resolved on the motion of Mr Donnelly, seconded Mr Pearce, that the answers to questions on notice from the ICAC, received 13 August 2010, be authorised for publication and uploaded on the Committee's website.

Resolved on the motion of Mr Pearce, seconded Mr Khoshaba, that the answers to questions on notice from the Inspector of the ICAC, received 2 August 2010, and the answers to indicative questions, received 24 August, be authorised for publication and uploaded on the Committee's website.

4. General business

There being no items of general business, the deliberations concluded at 12.58pm and the Committee adjourned until Thursday, 2 September 2010 at 10.00am.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 38)

Wednesday, 8 September at 10.08 am

Speaker's Dining Room, Parliament House

1. Attendance

Members present

Mr Amery, (Chair) Mr Pearce (Deputy Chair), Mr Donnelly, Mr Dominello, Mr Khan, Mr Khoshaba, Mr O'Dea, Mr Stokes, Mr West.

Apologies: Ms Beamer, Revd Nile

Appendix Four – Minutes

In attendance Helen Minnican, Dora Oravec, Emma Wood, Vanessa Pop, Amy Bauder.

Deliberations

2. Minutes

Resolved, on the motion of Mr Donnelly, seconded Mr Khoshaba, that the minutes of the deliberative meeting of 2 September 2010, previously circulated, be confirmed.

3. ***

4. Business arising from the minutes

The Committee considered two items of business arising from proceedings on 27 August 2010, briefing note previously circulated, consideration deferred from 2 September:

- a. *Proposed amendments to the reporting provisions of the ICAC Act, concerning the Inspector of the ICAC and the proposed response to the Premier (relates to earlier correspondence from Paul Miller, Department of Premier and Cabinet, dated 16 June 2010)*

Resolved on the motion of Mr Amery that the Chair write to the Premier in the terms suggested in the briefing note distributed on 2 September, copy of draft letter attached and circulated prior to the meeting (copy attached).

- b. *Amendment to the MoU between the ICAC and the Inspector - Recent agreement between the Inspector and the Commissioner of the ICAC in relation to disclosure of matters concerning the workings of the ICAC in the Inspector's correspondence with complainants and interested parties.*

Resolved on the motion of Mr Amery that the Committee note the agreement and monitor its application.

5. ***

6. Correspondence Group Membership – deferred from the previous meeting.

The Committee agreed that Mr Dominello be a member of the correspondence group, in addition to the present membership, that is, the Chair, Ms Beamer and Mr Stokes.

7. General Business

There being no items of general business, the deliberations concluded at 11.01am and the Committee adjourned sine die.

Minutes of Proceedings of the Committee on the Independent Commission Against Corruption (no. 40)

Thursday, 25 November at 10.03 am

Room 1136, Parliament House

1. Attendance

Mr Amery (Chair), Mr Pearce (Deputy Chair), Ms Beamer, Mr Donnelly, Mr Dominello, Mr Khan, Mr Khoshaba, Revd Nile, Mr O'Dea, Mr Stokes, Mr West

Committee staff: Carly Sheen, Dora Oravec, Amy Bauder

2. Minutes

Resolved, on the motion of Revd Nile, seconded Mr Donnelly, that the minutes of the meeting of 11 November 2010 be confirmed.

3. ***

4. Consideration of Chair's draft report: Review of the 2008-2009 Annual Report of the ICAC

The Chair spoke to the draft report, previously circulated.

Resolved on the motion of Mr Pearce, seconded Revd Nile, that:

- i. The draft report be the Report of the Committee and that it be signed by the Chair and presented to the House.
- ii. The Chair, the Committee Manager and the Senior Committee Officer be permitted to correct stylistic, typographical and grammatical errors.

5. ***

Deliberations concluded at 10.20am and the Committee adjourned sine die.