



Parliament of New South Wales

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1997–98

Third Session

REPORT

OF THE

COMMITTEE ON THE INDEPENDENT  
COMMISSION AGAINST CORRUPTION

ENTITLED

“COLLATION OF EVIDENCE OF THE  
COMMISSIONER OF THE ICAC,  
THE HON. B.S.J. O’KEEFE, A.M., Q.C., ON  
GENERAL ASPECTS OF THE COMMISSION’S  
OPERATIONS, TUESDAY 7 JULY 1998,  
THURSDAY 9 JULY 1998”

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*Ordered to be printed 25 November 1998*

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PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

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## Collation of Evidence

of the Commissioner of the ICAC  
The Hon. B S J O'Keefe AM QC

on General Aspects  
of the Commission's Operations

July 1998

November 1998

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**COMMITTEE MEMBERSHIP**

**Legislative Assembly**

- Mr P R Nagle MP (Chairman)
- Ms M T Andrews MP
- Mr D F Beck MP
- Mr P G Lynch MP
- Dr P A C Macdonald MP
- Ms R P Meagher MP
- Mr B R O'Farrell MP
- Mr J A Watkins MP



**Legislative Council**

- The Hon. D J Gay MLC
- The Hon. I M Macdonald MLC (Vice-Chairman)
- The Hon. B H Vaughan MLC



**Secretariat**

- Ms R Miller - Clerk to the Committee
- Ms H Minnican - Director
- Ms T Bosch - Research Officer
- Ms L Pallier - Assistant Committee Officer



Committee on the Independent Commission Against Corruption (left to right):  
Mr Peter Nagle MP (Chairman), Ms Marie Andrews MP, Mr Don Beck MP, Mr Paul Lynch MP,  
Dr Peter Macdonald MP, Ms Reba Meagher MP, Mr Barry O'Farrell MP, Mr John Watkins MP,  
The Hon. Duncan Gay MLC, The Hon. Ian Macdonald MLC, The Hon. Bryan Vaughan MLC.

## COMMITTEE FUNCTIONS

### *Independent Commission Against Corruption Act 1988*

- “64 (1) The functions of the Joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
  - (c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
  - (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission;
  - (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee -
- (a) to investigate a matter relating to particular conduct; or
  - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
  - (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.”

## 1. INVESTIGATIONS

(Note: Unless otherwise indicated, time frames in questions refer to the time between the last general meeting, namely 28 November 1997, and 1 June 1998, inclusive.)

### 1.1 How many matters have been received by the Commission and what categories do they fall under?

In the period 28 November 1997 to 1 June 1998 924 matters have been received by the Commission. This can be compared with 810 matters for the equivalent period in 1996/97, an increase of 14%.

<u>Classification</u>	1997/98 (as at 1 June 1998)	28 Nov 97 - 1 June 98
Complaints (s.10)	718	386
Protected Disclosures	214	105
s.11 Reports	467	273
Information	126	78
Inquiry	26	12
Dissemination	11	2
Referral from Parliament	Nil	Nil
Outside Jurisdiction	94	64
Own Initiative (s.20)	4	4
<b>Total</b>	<b>1660</b>	<b>924</b>

<u>Category</u>	1997/98 (as at 1 June 1998)	28 Nov 97 - 1 June 98
Preliminary Investigation	74	62
Closure (Outside Jurisdiction)	84	61
Initial Enquiry	347	195
Immediate Closure	1055	606
<b>Total</b>	<b>1660</b>	<b>924</b>

The figures above are represented in the graphs in Appendix A.

Public sector agencies may apply to the Commission to report instances of suspected corrupt conduct of a minor nature by way of a monthly or quarterly schedule. Such reporting is monitored by Commission liaison officers. The Commission presently receives schedule reports from over 30 agencies.

The schedules are circulated to designated Commission officers who may request further details about particular matters from the relevant department/agency. Following receipt of these details, the matter is registered and assessed in accordance with the usual protocols of the Commission.

**1.2 Which public authorities are most frequently the subject of complaint?**

The table below provides the percentage of matters received by the Commission between 28 November 1997 and 1 June 1998 where the listed public authorities were the subject of the complaint.

<b>Public authority</b>	<b>All Classifications**</b>	<b>Protected Disclosures</b>
Local Government*	27%	21.5%
Corrective Services	11%	9.5%
Community Services	7.5%	1%
NSW Police Service†	4%	Nil
Area Health Services	3%	3%
School Education/Education and Training	3%	9.5%
State Rail/Railway Services/State Transit	2.5%	4.75%
Aboriginal Land Councils‡	2.5%	4.75%
<b>Sub total</b>	<b>60.5%</b>	<b>54%</b>
Other public authorities	39.5%	46%
<b>Total</b>	<b>100%</b>	<b>100%</b>

\* "Local government" comprises 177 councils throughout NSW.

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

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

\*\* includes protected disclosures

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

As the graphs in Appendix B show there have been no significant changes in the number or type of complaints received by the Commission.

The table below shows the percentage distribution of matters based on their classification, and is based on the figures provided in the graph found at Appendix B.

**Percentage Distribution of Matters based on their Classification**

	<u>1993-94</u>	<u>1994-95</u>	<u>1995-96</u>	<u>1996-97</u>	<u>1997-98</u> <small>(as at 1 June 1998)</small>
s.10 Complaint	49.25%	52.80%	52.70%	46.70%	43.25%
Dissemination	0.85%	0.44%	0.35%	0.35%	0.65%
Information	11.25%	5.40%	5.50%	8.15%	7.60%
Inquiry	2.25%	1.90%	2.05%	1.90%	1.55%
Outside Jurisdiction	10.70%	7.89%	4.65%	4.55%	5.65%
Own Initiative	0.30%	0.07%	0.25%	0.25%	0.25%
Protected Disclosure†	0%	3.45%	11.65%	12.15%	12.90%
Referral (s.13)	0.15%	0%	0%	0%	0%
Report (s.11)	25.25%	28.05%	22.85%	25.95%	28.15%

† Protected Disclosures classification was introduced in March 1995.

The Commission has experienced an increase in the number of matters where the Department of Corrective Services is the subject of the complaint. This is most probably due to the Commission's ongoing investigation into the Department, the public hearings and the resulting publicity.

Matters involving local councils continue to represent a high proportion of matters received.

**1.4 On what percentage of matters received are preliminary investigations undertaken?**

Where further information is required before the complaint can be determined the matter is referred for initial enquiry. Of the 924 matters, 195 (21%) required initial enquiries to be made. Of the 924 matters received by the Commission between 28 November 1997 and 1 June 1998, 62 matters (7%) were referred for preliminary investigation.

**1.5 On what percentage of matters received are full investigations undertaken?**

The number of matters which proceed to a formal scope and purpose investigation are a small percentage of the total number of matters received by the Commission.



During the period from 28 November 1997 to 1 June 1998 two formal scope and purpose investigations were initiated.

As the statistics above show, 62 of the 924 matters received were referred for preliminary investigation. Of these, 46 (4.9% of 924) were incorporated into existing formal scope and purpose investigations (not necessarily created during this period).

The distribution of the 46 matters are as follows:

<b>Classification</b>	<b>Number</b>	<b>Percentage of Total Matters Received by the Commission</b>
Complaints (s.10)	24	2.6%
Protected Disclosures	5	0.5%
s.11 Reports	12	1.3%
Information	3	0.3%
Inquiry	Nil	Nil
Dissemination	1	0.1%
Referral from Parliament	Nil	Nil
Outside Jurisdiction	Nil	Nil
Own Initiative (s.20)	1	0.1%
<b>Total</b>	<b>46</b>	<b>4.9%</b>

The above figures do not capture all of the complaints that are referred to an investigation team dealing with a major investigation. For example, in Operation Cadix all complaints received covering Corrective Services were initially sent to the team. The decision may be made by the team to recommend closure of the complaint file but may nevertheless deal with the issue raised as part of the formal investigation. There have been 108 complaints received in the period from 28 November 1997 to 1 June 1998 concerning Corrective Services.

#### **1.6 What percentage of matters received are declined to be investigated?**

Of the 863 matters received between 28 November 1997 and 1 June 1998, which were within the Commission's jurisdiction, 606 matters (70%) were categorised for immediate closure.

The other matters were the subject of initial enquiries or preliminary investigation or became a formal scope and purpose investigation.

**1.7 What percentage of matters received are outside of the Commission's jurisdiction?**

Of the 924 matters received by the Commission between 28 November 1997 and 1 June 1998, 61 matters (7%) were categorised as outside jurisdiction.

**1.8 What percentage of matters are referred to other authorities for investigation or other action? To which authorities are matters most commonly referred?**

In respect of section 10 complaints, including protected disclosures, of the 450 matters considered by the Operations Review Committee during the period from 28 November 1997 to 1 June 1998, 198 (44%) were recommended for referral to another agency.

Of these, 34 were referred pursuant to sections 53 and 54 of the ICAC Act, 164 for information.

The matters referred pursuant to section 53 and 54 of the ICAC Act require an investigation to be undertaken by the agency and a report to be submitted to the Commission on completion of that investigation.

The table below list the public authorities to whom matters are most frequently referred.

**Public authority**

Department of Local Government  
Department of Community Services  
Department of Corrective Services  
NSW Aboriginal Land Council  
Department of Housing  
Department of Health  
Ombudsman  
NSW Police Service  
Department of Education and Training  
State Rail Authority  
Individual Local Councils

**1.9 What percentage of complaints result in findings of corruption?**

It is rare that a complaint becomes a formal scope and purpose investigation of itself. Where the Commission undertakes a formal investigation it may consist of numerous individual complaints. The Commission does not make a finding of corrupt conduct in respect of the individual complaints, but rather as a result of investigative work encompassing many issues.

**1.10 What investigations have involved public hearings and how many days of public hearings have there been?**

In the period 28 November 1997 to 1 June 1998 public hearings have been conducted in relation to Operations Becker, Becker\_E, Cadix and Zack. The number of days of public hearings are:

<b>Operation</b>	<b>Public</b>
Becker – Langton	4
Becker_E – Gibson	16
Cadix – Corrective Services	16
Zack – Aboriginal Land Councils	2
<b>Total</b>	<b>38</b>

**Protected Disclosures**

**1.11 How many protected disclosures have been received?**

During the period from 28 November 1997 to 1 June 1998 the Commission received 105 protected disclosures.

**1.12 What public authorities have been the subject of protected disclosures?**

The public authorities which have been the subject of a protected disclosure during the period from 28 November 1997 to 1 June 1998 are listed below:

**Public authority**

Local Government\*  
Corrective Services  
Aboriginal Land Councils\*\*  
Ambulance Service  
Department of Fair Trading  
Department of Housing  
Community Services  
State Rail/Railway Services/State Transit  
Roads and Traffic Authority  
Area Health Services  
School Education/Education and Training  
Workcover Authority

\* "Local government" comprises 177 councils throughout NSW.

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

**1.13 Has there been any change in the number of protected disclosures received?**

The number of protected disclosures received as a percentage of the total number of matters received by the Commission is increasing slightly each year.

	<u>1993-94</u>	<u>1994-95</u>	<u>1995-96</u>	<u>1996-97</u>	<u>1997-98</u> <small>(as at 1 June 1998)</small>
Protected Disclosure†	0%	3.45%	11.65%	12.15%	12.90%

† Protected Disclosures Act commenced from 1 March 1995.

**1.14 What percentage of protected disclosures are declined, and what are the reasons that they are declined?**

Of the 105 protected disclosures received during 28 November 1997 to 1 June 1998, 58 (55%) were categorised for immediate closure. The reasons given for these decisions are listed below.

Matters, including protected disclosures, are not investigated because they are considered:

- not to indicate a reasonable likelihood of involving significant corrupt conduct nor provide an opportunity to the Commission to advise on relevant systemic or preventative issues;
- to be too old, trivial or frivolous;
- to be more appropriately dealt with by another agency given the role, functions, resources and jurisdiction of that other agency;
- likely to be a complaint or management issue of a type which should be the responsibility of the agency complained of to deal with;
- the subject of an enquiry commenced by another agency;
- to lack specificity and thus unable to be sensibly pursued.
- to reasonably be suspected of being vexatious or not made in good faith and lacking in substance or information;
- to involve the same public sector area or type of conduct that has been dealt with in other Commission formal investigations and projects.

**1.15 What percentage of protected disclosures result in findings of corrupt conduct?**

It is rare that a protected disclosure complaint becomes a formal scope and purpose investigation of itself. Where the Commission undertakes a formal investigation it may consist of numerous individual complaints. The Commission does not make a finding of corrupt conduct in respect of the individual complaints, but rather as a result of investigative work encompassing many issues.

**1.16 Has the ICAC's survey on protected disclosures led to any initiatives or changes to Commission procedures for dealing with protected disclosures?**

The Commission undertook research into monitoring the impact of the Protected Disclosures Act 1994. As part of this research the Commission surveyed the NSW public Sector Chief Executive Officers, General managers of local councils and NSW public sector employees. As a result of the survey of the NSW public sector employees the Commission obtained insight into the attitudinal and organisational barriers which may exist to public sector employees reporting corruption.

The survey findings suggest that, in the main, NSW public sector employee attitudes to reporting corruption and the Protected Disclosures Act are positive. The focus for change needs to be with NSW public sector managers who should take steps to create organisational cultures in which employees are encouraged to report workplace corruption.

The following is a list of the recommendations made as a result of the findings of the survey of NSW public sector employees. In each case an outline of the initiatives and/or changes undertaken by the Commission in response to these recommendations is provided as a response to Section 4.0 below.

**Recommendations**

1. The central and accountability bodies should develop strategies and advice to assist organisations to create work environments which are more conducive to employees reporting corruption and other workplace wrongdoing internally.
2. The external reporting agencies (ICAC, Ombudsman, Audit Office) should inform employees about available external reporting channels and when it is appropriate to access them. Priority should be given to informing public sector employees in:
  - i. smaller organisations;
  - ii. country local councils;
  - iii. junior positions.

3. The external reporting agencies should devise strategies for assisting organisations to educate their employees about:
  - i. recognising corruption and other workplace wrongdoing;
  - ii. how serious corruption and other wrongdoing needs to be before it should be reported;
  - iii. the amount of proof which people are expected to provide when making reports.
4. The external reporting agencies should consider strategies for making the external reporting channels more accessible to NSW public sector employees in country locations.
5. Any strategies undertaken by the central accountability agencies should make country organisations and local councils a priority. Steps have already been undertaken by the Protected Disclosures Steering Committee which is conducting seminars on the better management of protected disclosures. These seminars have focussed upon informing the management of local councils in both metropolitan and country NSW. This initiative should continue and be expanded to include managers from country agencies.

## Reports and Recommendations

### 1.17 What investigations have been the subject of reports to Parliament since November 1997?

<b>Operation Codename</b>	<b>Investigation Report</b>	<b>Tabled at Parliament</b>
Cal	Report on the Conduct of: George Bertoncello of Lane Cove Council, Nazem Bechara in relation to certain Councillors of Holroyd City Council and Vittorio Fasan and Antonio Cavalloro and their dealings with Fairfield City Council.	November 1997
Cadix	Investigation into the Department of Corrective Services – First Report: The Conduct of Prison Officer Toso Lila (Josh) Sua and matters related thereto.	February 1998
Sublime	Report on the Investigation into the Glebe Morgue.	March 1998

Zack	Report on Investigation into Aboriginal Land Councils in New South Wales: Corruption Prevention and Research Volume. (Summary Report also available)*	April 1998
Becker	Investigation into Parliamentary and Electorate Travel: First Report.	April 1998
Coruna	Investigation into the Disposal of Waste and Surplus Assets in TransGrid, Pacific Power and Integral Energy	June 1998
Aroo	A Major Investigation into Corruption in the former State Rail Authority of New South Wales	June 1998

\* the Investigation Report into the Aboriginal Land Councils in New South Wales is due in September 1998

**1.18 In the reports, how many recommendations were there for:**

- consideration of prosecution or disciplinary action?
- systemic/administrative changes?
- legislative changes?

<u>Investigation Report</u>	<u>Prosecution / Disciplinary Action</u>	<u>Systemic / Administrative changes</u>	<u>Legislative changes</u>
Cal (Council Inspectors)	Prosecutions – 22 Disciplinary Action - Nil	(i)	Nil
Cadix (Corrective Services - Sua Segment)	Prosecutions – 10 Disciplinary Action - Nil	1	Nil
Sublime (Glebe Morgue)	Prosecutions - 8 persons Disciplinary Action – 12 persons cease their employment prior to the report being published.	7 areas suggested for improvement	Nil

Zack (Aboriginal Land Councils – Corruption Prevention and Research Volume)	N/A		26 recommendations dealing with both systemic/administrative and legislative changes
Becker (Parliamentary Travel)	Prosecutions – 1 Disciplinary Action – 1	(ii)	Report foreshadows need for legislative change
Coruna (TransGrid, Pacific Power and Integral Energy)	Prosecutions – 6 Disciplinary Action – Nil	(iii)	Nil
Aroo (State Rail Authority)	Prosecutions – 15 persons Disciplinary Action – 1 person	(iii)	Nil

- (i) In June 1998 the Commission published a Corruption prevention Report Accountable Health and Building Inspections - Recommendations for Local Government containing ten recommendations to assist Councils to minimise opportunities for corruption in this area.
- (ii) The report sets out the results of a preliminary corruption prevention analysis and foreshadows further work leading to recommendations for changes to reduce corruption risks.
- (iii) This report describes systemic/administrative changes introduced during or after the hearings.

## **1.19 Is the Commissioner satisfied with implementation rates for the recommendations?**

### **1.19.1 Prosecutions / Disciplinary Action**

The implementation rate in relation to Sublime and Aroo has been almost total. The implementation in relation to Zack by the NSW ALC has been high. The implementation rate in relation to Cadix and Coruna has been good. The implementation rate for Cal is reasonable and proceeding.

Due to the currency of the above listed reports, implementation of any recommendations for prosecution or disciplinary action is at the early stages. It is anticipated, based on the results of other such recommendations made by the Commission to date, that the Commission will find the decisions of the Director of Public Prosecutions and the disciplinary bodies satisfactory.

### **1.19.2 Implementation of Systemic/Administrative recommendations**

The effectiveness of the organisational and cultural change required to ensure the acceptance of the needed systemic or administrative change is not necessarily indicated by the rate. Implementation as outlined below is underway for the following reports:



*Cadix (Corrective Services - Sua segment)*: The Commission is assisting the Dept to develop a bag-searching policy to address the recommendation.

*Sublime (Glebe Morgue)*: Corruption Prevention staff commenced work during the course of the investigation to assist the Central Sydney Area Health Service in making the appropriate improvements. These had all been addressed to the satisfaction of the Commissioner by the time of the release of the report.

*Zack (Aboriginal Land Councils - Corruption Prevention and Research Volume)*: Since release of this report the Commission's Aboriginal Liaison Officer has been briefing communities on the recommendations and has begun to assist communities to implement recommendations. This program will continue over the next two years.

*Coruna (TransGrid etc.) and Aroo (State Rail)*: The Corruption Prevention staff worked during the course of the investigations with the relevant power and railways organisations to address corruption prevention issues which emerged during the hearings. For Aroo in particular, the measures taken are the initiatives of the four agencies, prompted in part by the Commission's intervention. These were presented in public hearings and the investigation report shows the range and depth of those initiatives.

### **1.19.3 Legislative Recommendations**

Due to the currency of the above listed reports, implementation of any legislative recommendations is at the early stages. The Commission will monitor the progress of any changes to ensure satisfactory outcomes. Amendments arising out of Becker are in course.

## **1.20 What involvement does the ICAC have in the implementation of its recommendations?**

### **1.20.1 Prosecutions / Disciplinary Action**

The Commission is responsible for the preparation of the briefs of evidence which are forwarded to the Director of Public Prosecutions and disciplinary bodies. The decision as to whether or not to proceed with the recommended action is made by the recipient of the brief.

### **1.20.2 Implementation of Systemic/Administrative recommendations**

As described in the answer to question 1.18, the Corruption Prevention and Education Unit are increasingly becoming involved early in investigations to assist agencies to deal with issues as they emerge during investigations. When recommendations are made in reports, the follow-up work done by the Unit often leads to further improvements being made beyond those recommended.

When investigation reports make recommendations concerning systemic, administrative or cultural changes, Corruption Prevention staff generally assist the relevant agency to the appropriate extent with devising and implementing policy or procedural changes or other changes which are required. This has been the case with Operations Coruna, Cadix, Zack, Cal, Aroo and Sublime. Where recommendations refer to education, training or communication strategies, Education staff may assist eg Cadix, Cal. (See also responses to Questions 4.2, 4.3 and 4.4)

### **1.20.3 Legislative Recommendations**

The Commission endeavours to play a role in the implementation of recommended legislative changes by providing commentary on proposed or draft legislation.

### **1.21 Have any prosecutions, convictions and disciplinary actions occurred as a result of the Commission's investigations?**

(Confidential)

## 2. POWERS

### 2.1 Since the General Meeting in November 1997, what use has the Commission made of its powers under sections 21 (obtaining information), 22 (obtaining documents or other things) and 23 (entering premises) of the Act?

The following table sets out the number of Notices issued by the Commission pursuant to ss.21, 22 and 23 of the ICAC Act from 1989 to 1 June 1998.

	S.21	S.22	S.23
1988/89	1	143	5
1989/90	25	102	1
1990/91	43	190	20
1991/92	38	229	9
1992/93	22	341	10
1993/94	10	239	2
1994/95	18	116	1
1995/96	29	223	4
1996/97	13	163	6
1997/98 (as at 1 June 1998)	26	297	21
<b>Total</b>	<b>225</b>	<b>2043</b>	<b>79</b>
28/11/97 - 1/06/98	21	181	16

**2.2 How many listening device warrants and search warrants have been obtained and executed?**

	<b>Listening Devices</b>	<b>Search Warrants</b>
1988-89	0	37
1989-90	1	44
1990-91	1	42
1991-92	20	18
1992-93	20	30
1993-94	2	36
1994-95	17	32
1995-96	3	20
1996-97	46	26
1997-98(as at 1 June 1998)	70	16
<b>Total</b>	<b>220</b>	<b>301</b>
28/11/97 - 01/06/98	44	6

**2.3 In the previous General meeting, you mentioned discussions with the Director of Public Prosecutions and the Attorney General's Department concerning the use of ICAC transcripts in evidence. Has this issue been resolved?**

The situation remains that the transcript of the evidence of witnesses before the Commission is not acceptable for inclusion in the brief of evidence to be served on a defendant pursuant to an order by a Magistrate under the provisions of s48 of the Justices Act 1902. The relevant provisions of that Act require, amongst other things, that the evidence of the witness be in statement form and signed by him or her. There are a limited number of exceptions to this requirement. Despite earlier representations by the Commission and the Police Integrity Commission to the Attorney General seeking an appropriate amendment to the legislation, it is not anticipated that there will be any such amendment.

### **3. BUDGET**

**3.1 Could you please provide the Committee with the Commission's latest Statement of Financial Performance?**

See Appendix E.

**3.2 Could the Commission provide details of the Budget allocation for each Section? Is it possible to determine what was spent on investigations? What proportion of the Commission's total expenditure is related to covert and surveillance operations?**

The Commission's budget allocation for 1997-98 financial year was as follows:

<b>Section</b>	<b>Amount \$'000</b>
Investigations	\$3,876
Legal	\$1,709
Corruption Prevention	\$1,259
Education	\$724
Research	\$297
Corporate Services	\$1,711
Executive	\$620
Commission Wide	\$4,252
<b>Total Expenses</b>	<b>\$14,448</b>

The Commission allocates less than 1% of its total expenditure to covert and surveillance operations.

**3.3 The annual report for 1996-7 notes that the Commission spent \$79,000 on books and periodicals in 1997 and \$57,000 in 1996. Could the Commission provide the Committee with a list of the books and periodicals it bought for 1996-7? What types of books and periodicals are held by the Commission?**

The Commission library is predominantly a law library, which includes legislation, case law and authorities with an emphasis on New South Wales administrative and criminal law. Other subjects covered include: corruption, bribery, government, planning, management, fraud, public administration, information technology and telecommunications, law enforcement and corrections, contracting and tendering, commissions of inquiry.

**3.4 On what was the Commission's publicity budget expended in 1996-97?**

The Commission does not have a publicity budget in the sense of self promotion but has an advertising budget to promote the Commission's corruption prevention and education products and publications. For 1996-97 the Commission spent approximately \$72,000 advertising education products, \$6,000 advertising corruption prevention publications and \$20,000 advertising Commission investigation hearings.

**3.5 The ICAC Annual Report for 1996-7 notes that the Commission spent \$683,000 (1997) and \$746,000 (1996) on fees for services, excluding external legal fees. Could the Commission provide the Committee with more information on the nature of these services?**

The Commission's fees for service expenditure were spent in the following sections as follows:

<b>Section</b>	<b>1995 - 96 \$'000</b>	<b>1996 - 97 \$'000</b>
Investigations	25	41
Legal	9	39
Corruption Prevention	97	20
Education	355	376
Research	18	23
Corporate Services	221	115
Commission Wide	21	69
<b>Total Fees for Service</b>	<b>746</b>	<b>683</b>

**3.6 Would you provide the Committee with a break-down of the expenditure on external legal fees for 1996-7?**

The Commission spent \$760,083 on external legal fees during 1996 - 97. This related to 13 investigations as follows:

*Committee on the ICAC*

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<b>Operation Name</b>	<b>Operation Description</b>	<b>Amount Spent</b>
Talisman	SRA Cleaning	500
Sturt	Fairfield City Council	31,169
Zack	Aboriginal Land Councils	79,820
Aroo	SRA	198,540
Visual	Dept Gaming and Racing	78,126
Sublime	Glebe Morgue	66,600
Yalta	Public Employment Office	32,294
Thimble	Lismore DPP	20,775
Cadix	Corrective Services	52,569
Astra		2,250
Cal	Local Councils	118,390
Coruna	TransGrid	77,250
Berdan		1,800
<b>Total Legal Fees</b>		<b>760,083</b>

**3.7 The 1996-7 State Capital Program budget paper (Number 4) has \$240,000 allocated for the Commission's computer system. Could you advise the Committee on the nature of the expenditure on the Commission's computer system?**

The capital budget of \$240,000 is for the purchase of all assets for the Commission, not just the computer system. The Commission has in fact entered into a lease arrangement for the lease of its computer system needs and the bulk of these costs are now expensed on an annual basis. The \$240,000 has therefore been spent on the following items:

<b>Description</b>	<b>Amount</b>
Digital Audio Processor	19,975
Video Projector	9,995
Portable Radios	12,436
Additional Personnel Software	2,000
Financial Software	28,500
Netmap Software	15,600
Investigative Equipment	22,185
Security System Upgrade	147,280
Miscellaneous Software	7,748
<b>Total Capital Purchases</b>	<b>265,719</b>

The Commission received a capital allocation of \$240,000 for 1996 - 97, the additional expenditure was funded by the sale of existing assets.

## 4. RESEARCH, CORRUPTION PREVENTION AND EDUCATION

### 4.1 What activities has the Research section undertaken since our last meeting?

Between November 1997 and June 1998 the Research Section has focused its efforts in the following areas:

- One member of the Research Section is working full-time with the Investigations Unit to provide research assistance on identifying areas of potential need for investigation within the public sector.
- One member of the Research Section is working 50% of her workload with the Legal Unit to develop the strategic focus of the ICAC.
- The Research Section is currently analysing data for a project looking at how the public sector is perceived by private contractors who have won contracts with the public sector. Issues explored in this research include perceptions of private contractors and consultants with regard to:
  - differences and similarities in working with private and public sector organisations;
  - differences in ethical values between the two sectors;
  - changes in emphasis on ethics over past 5 years;
  - private sector awareness of public sector rules and regulations;
  - impact of public sector rules and regulation on private contractors;
  - understanding of public duty.
- The final report of the review of the Protected Disclosures Act was released at the end of November 1997. The Research Section has since been involved in activities with the Protected Disclosures Act Implementation Steering Committee to promote the results and to generate solutions for some of the problems revealed by the research.
- The ICAC's Report on *Investigation into Aboriginal Land Councils in New South Wales: Corruption Prevention and Research Volume and the Corruption Prevention and Research Summary* were published in April 1998. The Research component of both reports was conducted and written by the Research Section.
- The Research Section is conducting an analysis of the public sector organisations from or about which the ICAC receives s.10 complaints, s.11 reports and protected disclosures compared to those organisations about which the ICAC does not receive s.10, s.11 or protected disclosures.



- Two separate literature reviews were combined and published as the ICAC research report, *Minimising corruption: Some lessons from the literature* in January 1998. These literature reviews (*Identification of corruption risk factors: An analysis of the literature, and Applying crime prevention concepts to the problem of minimising corruption*) were prepared as resources to assist those who are considering how best to minimise workplace corruption. Both of these reviews seek to contribute to the informed discussion about the nature of corruption and about the most effective methods for minimising corruption.
- The Research Section held focus groups with public sector managers from metropolitan and regional centres to identify the major corruption risk areas defined by public sector managers. Other aims of the focus groups were to discover the successful and unsuccessful strategies that public sector managers have undertaken to prevent corruption as well as the barriers to preventing corruption. Experience with the ICAC and use of ICAC products were also evaluated during the focus groups.
- A study is being conducted by the Research Section about ethical culture. The Research Section is producing a review of the research literature which outlines the advantages of emphasising ethics in the workplace. Together with the review, a survey of ethical culture is being produced which can be used by organisations to assess their own ethical cultures. The survey will also be administered and analysed by the ICAC with a number of randomly selected public sector organisations.

#### **4.2 What activities have been undertaken by the Corruption Prevention Unit since the last meeting?**

##### **4.2.1 Ongoing projects**

###### *Recruitment and selection*

Corruption Prevention staff have been working closely with the review of merit selection processes being conducted by the Director of Equal Opportunity in Public Employment and the Premier's Department to ensure that probity issues are central to the review's recommendations.

A set of case studies about recruitment is currently nearing completion and will be published early in the new financial year.

### *Local Government inspectors*

Following hearings in early 1997 into the operation of local government inspectorial functions (Operation Cal) a set of guidelines for councils has been developed on how to reduce the opportunities for inspectors to act corruptly. The report, *Accountable Health and Building Inspections*, was released in June 1998 and communication of the guideline will be undertaken early in the financial year. The Commissioner has addressed a regional conference of local government health and building inspectors on the report.

### *Organisational change - upgrading skills and tools*

Corruption prevention work - whether it be assisting with an investigation or advising public sector agencies on best practice corruption prevention strategies - is about change management. This project is designed to upgrade the skills of Corruption Prevention staff in advising organisations on planned change management.

An expert on managing change strategies was engaged to conduct three training days for staff. The skills gained in this process are being used in the Unit's advice and project work.

The complementary part of the project - to develop a package of tools or models for assisting public sector organisations - is continuing.

### *Post separation employment*

A position paper will be published early in the new financial year to follow up on the principal issues raised in the 1997 discussion paper, *Managing Post Separation Employment*. The discussion paper examined several possible strategies to minimise opportunities for corruption in the area of post separation employment. The Commission set out its initial position on how best to manage post separation employment and sought the views of chief executives and other principal officers responsible for reporting corruption to the Commission and promoting corruption prevention in their agencies.

## **4.2.2 New corruption prevention projects**

### *Assistance to the Ombudsman Commission of Papua New Guinea*

The Commission is working with Educo Pty Ltd, Project Contractor, on a project funded by AusAID, to improve the work of the staff of the Papua New Guinea Ombudsman Commission.

The Director, Corruption Prevention and Education has made several visits to Papua New Guinea to contribute to the development of a strategic plan and a project plan and to commence system and organisational re-design work.

*Monitoring of recommendations of investigation*

A project commenced to formally monitor the implementation of the recommendations made by the Commission in investigation reports since 1996. This is a follow-up to a previous project and will provide current information relevant to Question 1.18 above.

**4.2.3 Advice and corruption minimisation work**

*Advice work*

Examples of major pieces of advice work by the unit include:

- the proposed reward system for internal witnesses for the NSW Police Service;
- a proposed transport system to Jenolan Caves for the Caves Trust;
- the privatisation of the TAB;
- the sale of Axiom Funds Management Ltd;
- corruption prevention recommendations arising from the awarding of a contract to Mannings Funeral Homes for the Department of Public Works and Services;
- corruption prevention issues for the Tow Truck Industry Council of NSW;
- policy and procedures for searching correctional centre staff for the Department of Corrective Services;
- Olympic bus contracts for the Olympic Roads and Transport Authority;
- the tender for remediation of landslides at Thredbo for the National Parks and Wildlife Service;
- sale of the Eastern Creek Raceway.

*Presentations and seminars*

Corruption prevention staff and the Commissioner have conducted presentations for a variety of organisations during the past seven months. They include:

- Sessions for the Australian Institute of Police Management development course.
- A session for the Australasian Fire Authorities Council for a management development course.
- Sessions in a leadership training course for senior TransGrid managers.
- Seminar for visiting Indonesian internal auditors attending a course at the Faculty of economics at the University of Sydney.
- Seminars on ethics and leadership for senior executives in RTA, SRA, RAC, RSC and Freightcorp.

*New Masters course on Corruption and Anti-Corruption- Australian National University*

The Commission has formed a partnership with The Australian National University to teach a new unit called "Corruption and Anti-corruption" as part of a Masters degree in Development Administration, in the National Centre for Development Studies. It aims to help course participants to devise strategies to make organisations less exposed and more resistant to corruption.

Transparency International was a catalyst for the development of a course which was originally designed in response to a request for training from a non-government organisation in Indonesia. Most of the students are mid career public servants from developing countries in Australia's neighbourhood, or people working in aid agencies.

The unit will be first taught over 4 weeks in October - November 1998 and then annually. It will also be offered as a professional short course. Discussions are under way to teach shorter versions, emphasising the practical aspects of corruption prevention, in neighbouring countries.

#### **4.2.4 Commission investigations**

##### *Operation Zack*

Since the last PJC meeting the Commission has released its Corruption Prevention and Research Report containing recommendations for reform of the Aboriginal Land Council system.

The important reforms recommended include, tailoring governance models to be more responsive to local needs and contemporary cultural dynamics, training and skills development in essential areas, the co-ordination of dispute handling systems and the placing of greater emphasis on internal (rather than external) accountability mechanisms.

An Aboriginal Corruption Prevention Officer has been appointed to lead the Project in the next phase. He is facilitating the implementation of recommendations and working with communities on localised corruption prevention strategies. Since the release of the Report, the Project Leader has been conducting briefings on the content and background of the Report in communities throughout NSW and the Commissioner has visited and spoken in a number of country centres as part of this programme in an endeavour to stress the significance which the Commission places on its report on Aboriginal Land Councils in NSW.

Since November 1997 public hearings were concluded and submissions received. A second report on the investigation aspects of Operation Zack is being prepared.

*Operation Cadix*

A team comprising Corruption Prevention and Education personnel commenced extensive research and consultation process with the Department of Corrective Services in order identify and understand the management and systems issues which are emerging during the Commission's investigation into the Department. Assistance is being provided to the Department in addressing some of these issues.

*Operation Becker*

An integral component of the Commission's investigation into the actions of some members of the NSW Parliament has been a corruption prevention analysis of Members' entitlements and the systems, policies and procedures used to administer those entitlements. Commission staff have spent considerable time within the Parliament becoming familiar with the systems used to administer entitlements. Parliamentary staff were also consulted in an effort to identify problem areas and possible solutions.

The analysis initially concentrated on the use of air travel warrants in the Legislative Assembly as specified in the investigation's terms of reference. However, air travel warrants are just one component of a larger, interrelated system and the review also incorporated to a lesser extent the wide range of entitlements available to Members and revealed grounds for more general concern regarding the use and acquittance of entitlements.

Corruption Prevention and Education personnel will be working in co-operation with relevant organisations including the Premier's Department, Cabinet Office and the Council on the Cost of Government to examine appropriate systems for administration and implementation of MP's entitlements. Consideration will be given to incorporating corruption prevention strategies and initiating training and educational programs for parliamentarians and their staff.

Contributions have also been made to Commission reports for Operations Aroo (SRA), Cal (local government inspectors) and Coruna (TransGrid etc.). See also the answers to Question 1.18.

**4.3 What activities have been undertaken by the Education section since our last meeting?**

The Education Section's work aims to influence selected public sector and community audiences so that their responses to corruption and potential corruption contribute to the Commission's objectives of exposing and minimising corruption. Projects to achieve these outcomes are planned annually and are contained in the Commission's strategic plans. An outline of the projects led by the Education Section since the last meeting is summarised below.

#### 4.3.1 Public Sector Education

- (i) **Work with key central and regulatory agencies to influence the public sector on a whole of government scale to support ethics and corruption minimisation**

##### *Protected Disclosures Act Implementation Steering Committee*

The ICAC chairs the *Protected Disclosures Act Implementation Steering Committee* established by the Premier to heighten public sector awareness and response levels to provisions of the *Protected Disclosures Act*. The committee membership includes the ICAC; NSW Ombudsman's Office, Audit Office of NSW, Premiers Department, Dept of Local Government Police Integrity Commission and the Police Service. The ICAC had a lead role in the following Committee initiatives:

##### *Workshops*

Since last reporting, the committee has organised and conducted the following *Better Management of Protected Disclosures* workshops in Sydney and regional NSW:

Wednesday 18 February 1998	State Transit Authority
Friday 20 February 1998	State Transit Authority
Wednesday 15 April 1998	Dubbo
Wednesday 22 April 1998	Chatswood
Wednesday 14 May 1998	Parramatta
Monday 18 May 1998	Newcastle
Wednesday 27 May 1998	Sydney
Thursday 28 May 1998	State Transit Authority
Wednesday 3 June 1988	Sydney

Evaluation : Four more are scheduled for July 1998 (Wagga Wagga, Goulburn, Lismore and Armidale) and attendances of over 300 participants are expected. Participants have responded favourably to the workshop content, format and delivery with 82 % reporting with that the workshops are very relevant and 92% stating that their nominated key workshop outcome was met by the presenters.

##### *Focus Groups*

Education and Research staff have been conducting focus groups with general managers of councils and CEOs of state agencies to discover solutions to the findings in the ICAC research document *Monitoring the Impact of the Protected Disclosures Act 1994*.

Evaluation: Analysis of the group discussions will be undertaken and published prior to the next meeting of the PJC. Copies of the forthcoming discussion paper will be circulated to all general managers and CEOs.

*Ethics Working Party*

The Ethics Working Party is a component of the Premier's Department's public policy making structure. It works to identify ways ethics can be structured into the policy framework and helping support their implementation. The initial group (ICAC, Premier's Dept and union representatives) met on 26 May and agreed to expand the composition of the group to include agencies contributing to public sector policy, regulatory agencies and operational agencies. The expanded group met on 23 June 1998 and resolved to develop relevant projects for the forthcoming year.

Evaluation: Formal reporting the Chief Executives Committee has also been agreed and will be undertaken in the new financial year.

- (ii) **Provide information and materials so that others are equipped and better able to act in support of the Commission's objectives**

*Conduct Becoming Workshops*

In 1996 the Commission released a video-based training resource *Conduct Becoming...the personal responsibility of public duty*. It is intended to assist trainers, supervisors and managers to facilitate discussion groups of new and experienced public officials, including elected local government councillors, on the nature and ethics of public duty.

In response to requests from public sector agencies for assistance in using the resource, the Commission has, together with the Institute of Municipal Management which undertook administrative and promotional arrangements, conducted twelve full-day workshops in the period from March to May 1998 as outlined below. These followed an earlier series conducted in late 1997.

Tuesday 24 March 1998	Sydney
Thursday 26 March 1998	Sydney
Tuesday 31 March 1998	Blacktown
Tuesday 14 April 1998	Wollongong
Thursday 16 April 1998	Queanbeyan
Thursday 23 April 1998	Narrandera
Thursday 30 April 1998	Coffs Harbour
Monday 4 May 1998	Dubbo
Thursday 7 May 1998	Broken Hill
Wednesday 13 May 1998	Newcastle
Thursday 14 May 1998	Newcastle

The aims of the workshops were to:

- Facilitate and encourage the use of the resource in public sector agencies, and
- Encourage the discussion of ethics and public duty in the workplace.

Evaluation: Over 160 public officials and elected representatives from councils and state agencies participated in the workshops. 85% rated the workshops as valuable and found the content very relevant to their organisations. Higher levels of understanding were reported by participants in the following:

a)	public duty	73%
b)	corruption	76%
c)	Corruption prevention issues	86%
d)	Use of the Conduct Becoming kit	96%

Opportunities exist for the resource to be expanded by the inclusion of additional materials to guide managers and field workers. The Commission plans to initiate this project in the next financial year.

#### *Corruption Matters Newspaper*

Two more editions of the Commission's tri-annual newspaper to inform the NSW public sector about ethical and corruption-related issues and stimulate thought and discussion were published in the period.

Evaluation: A January evaluation of the newspaper involving a small test group indicated that recipients found the newspaper very useful as a source of corruption prevention information and as a motivational and training tool for staff. A large-scale evaluation is being conducted currently, and the results will inform future issues of *Corruption Matters*.

#### *Internal Investigation training*

The Education Section is managing and co-facilitating interactive workshops with Public Sector staff who have little experience or no experience in conducting internal investigations, but may be required to do so on occasion. The aim of the training is to provide practical advice on how to conduct a range of minor internal investigations competently and efficiently. The workshops, which are administratively supported by IPAA, are presently scheduled for Tuesday 14 July and Wednesday 12 August in Sydney, and more may be undertaken as required.

Evaluation: This will be through course evaluation questionnaires and follow-up contact with participants.



#### **4.3.2 Community Education**

##### **(i) Strategies to inform about the ICAC and how to take responsible against corruption**

###### *Public Outreach*

The Commissioner has made more than 30 speeches touching on the work of the Commission to various community groups, educators gatherings, public sector agencies and at various relevant conferences.

###### *ICAC Web Site*

[www.icac.nsw.gov.au](http://www.icac.nsw.gov.au) has been developed in-house over the past six months. It contains general information about the ICAC, the ICAC Act, updates on training opportunities and seminars, media releases, the *Corruption Matters* newspaper, details of what and how to report to the ICAC, links to other relevant sites and the complete text of investigation, corruption prevention and research reports. The website is updated regularly with new material (reports etc) being simultaneously published electronically.

The web site has been promoted to the public sector through advertising in specialist public sector publications and the distribution of ICAC mouse mats and flyers. Flyers promoting the web site are also being inserted into every publication mailed from the ICAC to encourage the use of this alternative point of access to ICAC information.

Evaluation: "Visits" currently number over 2,000 per week. The most frequently visited parts of the web site are new reports and the *Practical Guide to Corruption Prevention*. Use of the web site is being closely monitored and evaluated using a standard web site statistics package.

###### *Community Advisers Project*

This strategy to assist those in the community who act as advisers to better help those who come to them with corruption issues. A publication to help community advisers, the *Guide for Community Advisers* has been distributed widely including to all parliamentarians and been well received. The current phase of the project involves raising awareness of the work of the ICAC and resources available, through advertising and articles in specialist publications for various community advisers. The next phase of the project is a program of liaison with peak bodies for those who act in a community advisory role.

Evaluation: The current and succeeding phases will involve consultation, and the ensuing strategies will be based on the information so gathered, ensuring reliability.

### *NESB Project*

A brochure focussing on what constitutes bribery was developed for use in a wider communication strategy. This brochure was then tested with focus groups, and adapted in line with their recommendations.

The brochure, utilising the headline and key message "Bribery = Crime", has now been produced in a total of twelve community languages: English, Arabic, Chinese, Croatian, Greek, Italian, Korean, Russian, Serbian, Spanish, Turkish and Vietnamese. A supporting poster has also been produced.

Evaluation: As the NESB strategy is based on research findings and as the brochures have been focus group tested, the product and strategy have a high degree of reliability.

### *Regional Poster Exhibition*

Evaluation: The final exhibition of the competition finalists was completed in the last reporting period. An evaluation completed by exhibition attendees has been compiled and shows the following:

- 76% of people attending have an increased awareness of corruption.
- 66% said that the exhibition had influenced their understanding about corruption (comments stating that the exhibition highlighted the seriousness, potential widespread nature, insidiousness, pervasiveness).

With approximately 70,000 people visiting the exhibition throughout its tour of regional galleries, it has proved to be an innovative and effective tool in promoting the anti-corruption message for the community and was effective in involving young people.

## **(ii) Strategies to shape ethical attitude and behaviour through formal and professional education**

### *Promote existing resources*

The ICAC has an impressive suite of educational resources for schools. These resources include Talk of Toppsville for Science and Technology students in kindergarten and primary schools and Valuing for Work and Ethics in Design and Technology for Years 7 - 10 and HSC Design and Technology students respectively. All the resources cover content areas in the syllabi while also requiring students to make ethical decisions in answering questions.

Rather than develop more resources, the emphasis has been to increase the use of the available material. Promotion has been undertaken using a three-pronged approach: advertising in the education section of mainstream newspapers, advertising in specialist education publications and direct mailout to primary and secondary schools.

Evaluation: Awaiting finalisation of responses to ads and mailouts.

*Update of Ethics and Enterprise - The Life Cycle of a Business*

This HSC Business Studies kit was launched in 1995 and consists of a video, teacher handbook and student activity sheets. The kit helps teachers teach the life cycle of a business, while raising corruption and other ethic-related issues.

The kit has been updated and redistributed in line with recommendations made in the 1997 review by the Research section. To improve the resource, the ICAC engaged four writers - teachers, HSC markers and business people - recommended by the Board of Studies NSW. The new resource meets the needs of the teachers in a way that will ensure its continued regular use, and consequent exposure of thousands of young people throughout the state to corruption and other ethical issues, for the coming years.

Evaluation: The effectiveness of the updated kit is to be measured by the feedback from an evaluation form to be sent to teachers in mid 1999, after they have had an opportunity to use the kit in class.

**(iii) Extend media relations reach**

Much of this work is on-going in nature. Implementation of media strategy continues with briefings about the ICAC, its work and procedures for cadet journalists being given.

**(iv) Provide corporate relations services**

*Visitors*

Since November 1997 the Commission has received visitors from the following agencies and organisations:

February 1998	Visit by Mr Paul Ramasiam, Director of Personnel, Public Service Commission of Fiji
February 1998	Visit by His Excellency Cao Quingze, Minister of Supervision, People's Republic of China, accompanied by:  Mr Hou Shihua, Director General Guangxi Province Supervision Bureau

	Mr Zhang Huawei, Deputy Director, 8th Supervision Department, Ministry of Supervision
	Mr Lui Nui, Division Chief, Administration Office, Ministry of Supervision
	Mr Guo Songjiang, Deputy Division Chief, Foreign Affairs Office, Ministry of Supervision (who will interpret for the party)
June 1998	Seven delegates from the Supreme People's Procurate, People's Republic of China
June 1998	Two delegates from the Dept. of Government Ethics, Ministry of Justice, Taiwan:
	Mr Chin, Hsiang, Section Chief, Dept. of Government Ethics, Ministry of Justice
	Mr Yeh, Chien-Hua, Staff, Dept. of Government Ethics, Ministry of Justice

#### **4.4 How does the Commission evaluate the effectiveness of these programs?**

##### **4.4.1 Research**

It is an integral part of the ICAC program to evaluate ICAC products and services.

Formal evaluations have been undertaken on a number of our products. These included evaluations of the Legal Studies kit and the Business Studies kit. These evaluations involved written surveys, telephone surveys and face-to-face interviews with users of the products. Reports of these evaluations are available.

Focus groups with managers were utilised to obtain feedback about the usefulness of ICAC products and services. These were conducted in November 1997.

Recently, focus groups were held with CEOs and General Managers from NSW public sector organisations. This provided a forum for senior people in organisations to comment on their perceptions of areas in which the ICAC can improve.

##### **4.4.2 Corruption Prevention**

Evaluation of Corruption Prevention programs varies according to the type of activity. For instance, evaluation of the effectiveness of advice given to public sector and other enquirers is carried out informally as the advice is given. The recent focus groups run by the Research section confirmed that agencies have a high regard for the timeliness and usefulness of advice given.

The effectiveness of projects on particular corruption prevention issues commences from the external review process conducted even before publications are released. A panel of key agencies, including major potential users of the material, is used to review draft project reports and canvass other opinions on ICAC recommendations. After reports are released the number of requests for them and the use made of them are monitored.

The more general community and client surveys conducted from time to time by the Research Section are also used to evaluate the effectiveness of corruption prevention programs.

#### **4.4.3 Education**

Evaluation and effectiveness has been discussed wherever possible in responses to Question 4.3 and an evaluation segment has been included after each project described.

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**REPORT OF PROCEEDINGS BEFORE**

**COMMITTEE ON THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION**

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**At Sydney on Tuesday, 7 July 1998**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

The Hon. I. M. Macdonald (Acting-Chairman)

The Hon. D. J. Gay  
The Hon. B. H. Vaughan

Ms M. Andrews  
Mr D. F. C. Beck  
Mr P. G. Lynch  
Dr P. A. C. Macdonald  
Mr B. R. O'Farrell  
Mr J. A. Watkins

**BARRY STANLEY JOHN O'KEEFE, AM, QC**, Commissioner, Independent Commission Against Corruption, 191 Cleveland Street, Redfern, before the Committee:

**CHAIRMAN:** In what capacity are you appearing before the Committee?

**Mr O'KEEFE:** I appear here as Commissioner of the Independent Commission Against Corruption in accordance with the provisions of the Independent Commission Against Corruption Act at the request of the Committee and have been given this morning a summons under your hand as Vice-Chairman.

**CHAIRMAN:** You have placed a submission before us?

**Mr O'KEEFE:** Yes. The Committee sent two lots of questions to the Commission, and they have been answered *in extenso* in, I think, three documents in all.

**CHAIRMAN:** So it contains confidential material concerning prosecutions, and the Commission has requested, as I understand it, that this full submission provided to the Committee should be dealt with confidentially and an edited version will be provided to the public?

**Mr O'KEEFE:** There are some confidential matters treated in the material, and it would be undesirable that they in the public interest be made public but the residue of the material is material which we produce publicly for the Committee and for publication.

**CHAIRMAN:** On behalf of the Committee I welcome you here today and advise that as Deputy Chairman I will be chairing the hearing today. The Chairman has tendered apologies as he is overseas. Under the Independent Commission Against Corruption Act this Committee has a responsibility to monitor and review the exercise by the Independent Commission Against Corruption of its functions, and since the inception of the ICAC we have held regular public hearings with the Commissioner. At each of these hearings members can question the Commissioner about matters of concern or public interest related to general aspects of the Commission's operations or follow up issues arising from Independent Commission Against Corruption reports.

The Committee hopes that by conducting these hearings in public and tabling a collation of the Commissioner's evidence the public and members are better informed on the Independent Commission Against Corruption. The Committee has formed the view that we will ask Commissioner O'Keefe questions concerning the recent judgment by His Honour Justice Einstein in the matter of *Gibson v O'Keefe*. We are of the view that the issues raised in that judgment are of sufficient public interest to warrant examination.

Following these questions we will move on to the general review the work of the Independent Commission Against Corruption and invite the Commissioner to make his usual address to us at that time. Before we start the formal proceedings I would like to make clear that the Committee does not intend to look at the specifics of the hearings relating to the Bayeh matter as this is beyond our jurisdiction. We are interested solely

in the issues raised in the Einstein judgment. If you would not mind, Commissioner, I would put a couple of questions to you relating to this matter. What is the status of the current part-heard inquiry?

**Mr O'KEEFE:** An Assistant Commissioner was appointed by His Excellency the Governor at the Executive Council meeting on Wednesday of last week. That Assistant Commissioner is the Hon. Jeremy Badgery-Parker, Queen's Counsel, who is a recently retired Supreme Court judge. He was a member of the Common Law Division and is experienced in civil and criminal matters, sitting very frequently in criminal matters and on the Court of Criminal Appeal. He had agreed to take over the conduct of that matter, and it is anticipated that he will have a preliminary hearing in the matter in the third week, I think it is, of July. And the matter will then proceed. The manner in which it proceeds will be a matter for the Assistant Commissioner to determine.

**CHAIRMAN:** Do you have a time frame for completion of the tabling of the report?

**Mr O'KEEFE:** That, of course, will depend upon the way in which the Assistant Commissioner determines that the matter should be dealt with. It is hoped that the report in the matter would be able to be published some time in September or, at the latest, in October of this year. It is my desire as Commissioner to ensure that the report is available as quickly as possible so as not to become caught up in the pre-election flurry that tends to occur in the six months before an election. Often it is longer than that, but there is an election scheduled constitutionally in this State for late March of 1999, and it would be highly desirable to have the report out of the way—that is, tabled in the Houses—before the true campaign for elections gets under way. There is another factor as well. Since there are two members of the House who have given evidence in the matter, the outcome in relation to them would be desirably known before one ran into preselection considerations and the like, and that is why I have sought to ensure that there is a report by September. But, of course, that is not in my hands. That is in the hands of the Assistant Commissioner, who will make his own decisions as to how the matter proceeds.

**Dr MACDONALD:** As a result of the Einstein judgment you have stepped down from further hearings in the Bayeh-Gibson matter?

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** Has this prejudiced the outcome, and do you have any regrets as to your actions?

**Mr O'KEEFE:** I do not think it has prejudiced the outcome. The Assistant Commissioner who has been appointed is a man of great experience. He is a person of not only experience in the law but of life as well. I do not think that there is any prejudice arising from that. Twenty-twenty vision is what hindsight has and, looking back, I could say that it would have been better had the speech at the Town Hall not taken the form that



it did, and I regret that it took that form with the outcome that flowed from that, but beyond that I really think there was an important balance question.

The Commission has spent some \$2 million on an inquiry into Aboriginal land councils. Aboriginal land councils are recipients of very considerable sums of money from the Treasury of the State of New South Wales. An investigation indicated that that money was not being applied, in many instances, in the way in which it should. The examination of those councils which we undertook was designed with a twofold purpose: First, to expose what had happened and, secondly, to remediate the situation.

The importance of that investigation to the ICAC is very great, and the stressing of that was, and is, an important matter. It is sufficiently important that I think it appropriate that I should travel to a number of country centres. I did so in the investigative phase, and I have been doing so in the implementation phase, just to stress how important we think it is. And it was in that context that the speech at the Town Hall was made. I think in terms of the effect upon Aboriginal people of accepting that the Commission was serious, genuine and determined to ensure that its investigation would bear fruit, there was much good that came out of that. The side issue that arose was unfortunate and, as I have said, I regret that, the more so in hindsight, but what is past is past and one must look to the future.

**Dr MACDONALD:** But you are seeking to justify the Zack inquiry, the Aboriginal land councils inquiry, and I have no argument with that, but notwithstanding the importance of that and the money that was spent on it, how does that link in with the fact that you made inappropriate remarks in the Town Hall speech? You cannot fall back on an argument, surely, that because it was an important investigation you were undertaking that in some way justifies your comments?

**Mr O'KEEFE:** Dr Macdonald, one sentence was inappropriate, that is all, and one sentence in four years is not too bad. We all make mistakes. Perhaps parliamentarians do not, but ordinary bureaucrats do, and I am one. But that was a mistake, and what more than that can I say? I am not trying to justify it.

**Dr MACDONALD:** That is what you should have said, but why do you in some way seek to mitigate against that by arguing that the Aboriginal land councils inquiry was so important?

**Mr O'KEEFE:** I will go back over it. Perhaps I did not make myself clear. In order to launch the Zack report it was necessary to interrupt the hearing of the Gibson matter. Instead of starting at 10 o'clock I think I started at 9.30, so that the amount of time lost would not be great, and sat until 5.00 that day, so that in fact no time was lost. However, that break was in the context of it being suggested that breaks in the hearing were for bikkies and cheese. That might be regarded by Aboriginal people as denigrating the work that was being presented to them on that day. What I was seeking to do was stress the importance of our work, that it was not a bikkies and cheese thing, whatever anybody might say.

**Dr MACDONALD:** I am happy with that answer because it seems to go to the point of the matter. Are you concerned that the fact that you have vacated the chair so to speak in terms of the inquiry and the fact that a stand-in Commissioner, or an Assistant Commissioner, has been appointed, might lead to significant delays or court challenges that the whole things should be started again? Looking to the future I can anticipate that questions may be raised whether it is possible for a standing Commission to be able to deal with the matter without starting again from the beginning.

**Mr O'KEEFE:** I can only say what was said to the Commission and to the Supreme Court. The solicitor appearing for Mr Gibson before the Commission, that is, during the course of the hearing, when he raised the challenge to my continuance suggested at that very time that actually counsel assisting should write the report and be the Assistant Commissioner and do so on the evidence oral and documentary that had been tendered. So that did not suggest a further hearing, and it is all in the transcript.

Secondly, when the matter went to the Supreme Court Senior Counsel for Mr Gibson, Mr Littlemore, raised precisely the same matter. It went to a matter of discretion, and the suggestion was that there would be no delay; the matter could be dealt with promptly on the material that had been produced to that date. Now that material is both in written form and in visual form.

The evidence that was given by the particular witnesses and each of them was the subject of video recording as they give their evidence so that the visual impressions as well as the audible and written result of those evidences is before whoever is going to deal with it. I do not know what submissions will be made to the Assistant Commissioner, but one could hardly ignore 16 days of evidence. It has been given; that has been sworn to. What will be done over and above that is a matter for the assistant Commission, so it is neither waste nor do I think necessarily it will follow that there will be a complete new hearing. Indeed, if one were to accept the invitation made by both solicitor and counsel for Mr Gibson that would not follow at all.

**Mr WATKINS:** When did the investigation begin, perhaps the private hearings into this matter? When did they first start? When did the private hearings into this matter begin, the date?

**Mr O'KEEFE:** I am sorry, I would have to take that on notice, but I can say in general terms that they commenced some months before the public hearings commenced.

**Mr WATKINS:** And when did they begin, the public hearings? Just a general month. I do not want to pin you down.

**Mr O'KEEFE:** I think they were in April of this year, April 1998, but I will check that.

**Mr WATKINS:** You said this morning that it is unlikely to get a finalised document until September or perhaps October. How many months is that? Eight months or so?

**Mr O'KEEFE:** Six months, that is, if it goes to October; five if it goes to September, remembering that it finished in early May. We had not finished submissions at that stage and we were not going to finish submissions because of the availability of counsel, et cetera, until the end of May, so the length of time from the putative completion to September is about four months.

**Mr WATKINS:** But to the people involved who have been subject to quite rigorous questioning and damage to their reputations, that damage has continued for about six months, or one-eighth of their parliamentary term. It is a long time to be under that form of pressure, is it not?

**Mr O'KEEFE:** Well, it is, but the alternative to that, of course, is not to investigate. But when the ICAC was set up in 1988 at the forefront of the allegations that were being made and which the ICAC was set up to investigate were allegations of corruption in the political process, that is, a conjunction between organised crime and politicians. That, therefore, if you read the debates, particularly of May 1988, is very much in the forefront, not to look at such a matter when a serious allegation like that is made would be a derogation of our duties; and, secondly, not to do it properly and thoroughly would be even worse. So to do that takes time.

We had the private hearings in order first to test whether or not there was, as it were, a case to answer, and then we moved on to the public hearings, which occupied 16 days, not counting submissions. If the matter had proceeded to completion without the interruption that it has unfortunately undergone, I would have hoped to have had a report out by mid to late July. That will be postponed a couple of months now.

**Mr WATKINS:** What was the delay in appointing a new Assistant Commissioner?

**Mr O'KEEFE:** Mr Chairman, could I deal with that matter in camera, please?

**Mr WATKINS:** When will we be dealing with the in camera matters?

**CHAIRMAN:** We could either go on and deal with some other questions—I think we will do it that way—and come back and have the in camera section at the end. That makes it easier for everyone.

**Commissioner:** But might I say as part of the answer that I can give without a problem that the nomination of a person as Assistant Commissioner is a function that may be performed by government or may be performed by the Commissioner. The determination of the acceptance of that person or persons is a matter ultimately for government, not for the Commission, and the processes that are involved in assessment through the Cabinet Office, by the Cabinet and up to the Executive Council are processes which, even when expedited, still take some time, and there was not an immediacy of appointment, but there are other factors which are more significant than that.

**Mr WATKINS:** What is the title of the inquiry?

**Mr O'KEEFE:** It is an inquiry into whether or not there was a connection between members of the Parliament and Mr Louis Bayeh, or those associated with him, and whether or not members, or a member, received any benefit or advantage from such persons in the course of their parliamentary duties. That is a precis of the scope and purpose of it.

**Mr WATKINS:** My understanding—and please correct me if I am wrong—is that Ms Nori was involved as a witness assisting the Commission?

**Mr O'KEEFE:** I do not propose to discuss the evidence in the matter. I think it quite inappropriate for the committee to question me about that matter during the pendency of the inquiry, and that involves particular conduct. What finding may be made in respect of Ms Nori is a matter not for me but for the Assistant Commissioner.

**Mr WATKINS:** I am not questioning in detail; I am just trying to clear up her role in assisting the Commission.

**Mr O'KEEFE:** That, as I say, is for somebody else to determine.

**Mr WATKINS:** How can the public be assured that the final report has not been tainted by this huge controversy and the unfortunate delay?

**Mr O'KEEFE:** I do not understand what you mean by tainted. I do not accept that there has been a delay in any real sense, and what is concerning me, rather, is that questions like that may, in fact, plant the seed that is not already planted. The inquiry will continue. It will continue before a person of high integrity, considerable judicial standing, and anybody who thinks that he is tainted, and hence the report is tainted, really is not looking at the facts, and I would not accept the proposition of taint at all.

**Mr WATKINS:** You do not think that the controversy surrounding the hearing of this matter has in any way damaged its status?

**Mr O'KEEFE:** I do not.

**Mr O'FARRELL:** How many inquiries have you conducted during your term as Commissioner? A rough answer will be fine.

**Mr O'KEEFE:** A dozen.

**Mr O'FARRELL:** How many Assistant Commissioners have been appointed over that period?

**Mr O'KEEFE:** Maybe 10.

**Mr O'FARRELL:** Would you accept that that is probably fewer than was appointed under Commissioner Temby?

**Mr O'KEEFE:** I think that is right, actually. Remember I have got 15 months or 16 months to go and we would be comparing five years with three-and-a-bit years.

**Mr O'FARRELL:** I suppose I am wondering why with inquiries like the Langton inquiry, flowing into the Gibson inquiry, you felt it necessary that you as Commissioner should conduct those inquiries rather than perhaps have an Assistant Commissioner do one or the other?

**Mr O'KEEFE:** Do you want a very frank answer, Mr O'Farrell? It is inevitable when you are dealing with politicians and inquiring into their behaviour that there will be a response, generally aggressive, always public, generally personalised, directed at the person hearing the matter. That is an unfair thing to do to somebody who you bring in for a particular matter unless you cannot avoid that. Secondly, inquiries involving Members of Parliament are, in the view of the Commission and in my view, serious matters. Of their very nature they are serious that somebody would make an allegation of corruption against one of our rulers. That means that the Commission should respond by putting its best foot forward, and the Commissioner should be that best foot.

Fourthly, if you were to appoint somebody else it would be very easy for those who were on the sidelines and anxious to damage the Commission to allege that the Commissioner was squibbing it, not doing what he should be doing. If you hear it under one approach you are damned and if you do not hear it you are damned under another approach. The proper approach is you apply the usual principles.

The Commissioner, for the time being, should hear the hardest matters, the most difficult matters, and bring to bear the expertise that he or she has brought to the office from before appointment and that which is gathered during appointment. Just as I heard the inquiry into the allegations that were made against the then shadow treasurer, Mr Egan, and various other members of the Parliamentary Superannuation Committee, I thought it appropriate I should do that, so too with the Langton matter and the Gibson matter. They involved very important persons in our community and as our parliamentarians they involved persons who wielded a considerable amount of power and influence and it was appropriate that the Commissioner hear it.

**Mr O'FARRELL:** There is no budgetary imputation that you do not feel at times we can appoint Assistant Commissioners to do these duties when you are doing other things?

**Mr O'KEEFE:** No, there are budgetary considerations that have caused us, caused me, to postpone three public hearings because we just did not have the money to embark upon them in the financial year just past and which we are now considering in the order of priorities whether and when they can be held but that had nothing to do with the determination as to those matters.

**Mr O'FARRELL:** In relation to that answer how does that fit with Mr Watkins concern about the length of justice if you are being required to defer other hearings and

put off the results of inquiries because of budgetary constraints, what does that say about the way in which you are able to go about your affairs?

**Mr O'KEEFE:** Those three matters, as to two of them, the persons who are involved, if they are aware of the inquiry, would have only just become aware of it and in one case would not be aware of it. There is no question of stress imposed on that person.

Secondly, there are a limited number of things one can do with a given amount of money in a given time and that sometimes means that the process has to be more attenuated than we would like. That happens in every area of the public sector where priorities have to be reassigned according to the exigencies of the time.

**Mr O'FARRELL:** Commissioner, throughout all your inquiries that you have conducted to date, how many have degenerated into what counsel for Mr Gibson told Einstein was a "slanging match", "insult trading" and a "slanging match in a public bar"? How many of those public inquiries have been degenerated in a manner that this has been portrayed?

**Mr O'KEEFE:** You must have regard to the fact that what is alleged in the piece that you have just referred to is the high point of flourish of counsel in addressing.

Number two, if you look at the actual transcript you will find that the shouting and the histrionics came not have me but from Mr Murphy and in a couple of cases from Mr Gibson. I do not want to get into the details of it. You have asked me about that and what I say about that is that one should read the judgment of Mr Justice Einstein. When Mr Justice Einstein's judgment is read you find that what is being said by his Honour is that the sort of behaviour you have referred to was behaviour that he characterised as designed to provoke. That did not involve me.

Indeed, on a number of occasions members of the press approached me to say; how did I keep my cool when this sort of thing was going on? If I now come to the essential question, the answer is, none.

**Mr O'FARRELL:** What factors then led to the shouting and histrionics in this inquiry?

**Mr O'KEEFE:** I think that is a question I should not answer because it will involve me expressing an opinion about people and that is a matter that ought not to be on the record. It may be seen or claimed to possibly influence an Assistant Commissioner in forming a final view. When the report is over and tabled it might be an appropriate question.

**Mr O'FARRELL:** Einstein in his judgment talks about Mr Murphy's comments and conduct and talks about it could not be seen on any view as acceptable conduct, he talks about them being "calculated to enrage"; should not you have been aware of a strategy by a celebrity criminal lawyer that was designed to put you off your game?

**Mr O'KEEFE:** Yes, and I think I was. What are the alternatives? Do you withdraw his leave and leave a member of Parliament without representation? It is easy to say that when one sits in the quiet of a room like this, that is the arm chair test. The true test is what the law describes as the Bible Castle test, the agony of the moment, and you have to make a decision as to whether or not you will do something that would, in any event, be characterised adversely. For instance, withdrawing leave to appear.

**Mr O'FARRELL:** Is that the only follow up action you can take with a counsel that engages in this sort of behaviour?

**Mr O'KEEFE:** No.

**Mr O'FARRELL:** Have you or would it be considered by other Commissioners appropriate to take other action against the counsel that performs in that this matter.

**Mr O'KEEFE:** It might be.

**Mr O'FARRELL:** That might be a matter for the end of the second inquiry.

**Mr O'KEEFE:** I would prefer not to comment on that.

**Mr O'FARRELL:** Without impinging on the evidence given, we saw during the inquiry at least one Minister of the Crown and one former Premier participate in the proceedings. Both, from recollection, had very small roles in the public hearings. Why could not their roles have been better undertaken by sworn deposition or by, in one case, a hearing or private hearing?

**Mr O'KEEFE:** That is a judgment one makes at the time. Could I take Mr Whelan for instance, Mr Whelan had allegations made about his presence at a meeting by one witness. That meeting will be an important element in the report of the Commission so I do not want to go into the details of that meeting. However, Mr Whelan was very anxious that the same prominence be given to his evidence concerning the meeting as had been given to the evidence of the person who said he was there and to have a piece of paper is not the same as having a person. The impact of the denial would have been lost.

In relation to the former Premier, that evidence related to a very tangential matter and was in fact dealt with a private hearing.

**Mr O'FARRELL:** A small matter that might have well been dealt with in a sworn deposition.

**Mr O'KEEFE:** By and large the rule of the law is that the truth will out in affidavits but only when you cross-examine. They are structured documents and they do not necessarily tell you the story or create the picture which questioning and answering can do and in that case did do.

**Mr O'FARRELL:** Why do you think that it is your religion becomes such an issue in past hearings of the committee or in past instances where people have sought to have a go at you because of your religion? I did not nominate John, I am happy to.

**CHAIRMAN:** You are withdrawing it, are you?

**Mr O'FARRELL:** No. It is a legitimate question, it is on the record that John has raised these issues previously.

**Mr WATKINS:** What issues are they?

**Mr O'FARRELL:** Issues relating to the Commissioner's practice of religion.

**Mr WATKINS:** It has nothing to do with that. It has been related to the Commissioner's membership to a particular sect in the Catholic Church. I am a Catholic. I have no problem with anyone's religion here. I find it offensive that you would suggest so. That has only ever been related in the past as it has related to the Commissioner's exercise of his powers and whether he can be seen to do so without conflict of interest.

Any questions I have brought on that have been specific about particular inquiries or potential conflicts of interest that the Commission has raised. It has got nothing to do with anyone's faith and I object to that being put on the public record. I ask you to withdraw it.

**Mr O'FARRELL:** Can I pose a question to the Commissioner. In particular, Commissioner, being called a failed priest and old altar boy, surely is highly offensive?

**Mr WATKINS:** I never said that.

**Mr O'FARRELL:** I never said you did.

**CHAIRMAN:** Mr O'Farrell, if you wanted to keep religion out of this you would not have started this line of questioning. You are throwing a hand grenade into petrol.

**Mr O'FARRELL:** We have had an attack upon the Commissioner during this inquiry which related to his religion, we have had attacks, questions raised, in the very least, in these public hearings previously about the Commissioner's religion. I am just wondering why it is the Commissioner has to be subjected to this?

**Mr WATKINS:** The lie has been repeated, Mr Chairman.

**CHAIRMAN:** I would like to hear briefly from the Commissioner. I think both of you have given a full account of yourselves and I propose to go over to the honourable Mr Gay.

**Mr VAUGHAN:** We have numbers here.



**Mr O'KEEFE:** Mr Chairman, first, might I say, I am not a member of any sect of the Catholic Church. The group to which Mr Watkins referred to, and has referred on a many occasions, is an ecumenical group which is not Catholic.

Secondly, in answer to Mr O'Farrell's question, I suppose that when one believes something very strongly and is intellectually and emotionally committed to that belief there will be some who think that that is a way to get under your skin. That is my view as to why that happened.

**Mr GAY:** I was trying to remember. You might be able to help the Committee. Mr Watkins expressed concern on the length of the Gibson matter, and I was trying to remember the second case that the ICAC examined, which was the north coast inquiry, which from my memory, and also Mr Beck informs me, ran over 12 months. Is that correct?

**Mr O'KEEFE:** That was an inquiry that was conducted before my time, but the answer to that question is that I think it went well in excess of 12 months and it was probably about 18 months before the report was forthcoming.

**Mr GAY:** So a six- to eight-month inquiry is not right at the forefront in length of time?

**Mr O'KEEFE:** If one were to look at the police Royal Commission the actual hearings in that took over two years and there were a lot of people under stress in that time. That is part and parcel of the investigative process where people are involved. You either make the decision not to proceed or you make the decision to do it in a slipshod manner; I do not think either of those is appropriate. What you have to try to do is do it as expeditiously as you can. That has monetary consequences to the Commission and it has consequences to those who are participants.

**Mr GAY:** Commissioner, I was also pleased to hear you say that you will try and keep inquiries concerning people involved in politics away from elections. Can I say I am reminded of the Southern Mitchell electricity inquiry, I am wondering how that statement stacks up with what happened in that particular inquiry? Can I refresh your memory that the report on Southern Mitchell came down right in the middle of a highly charged Federal election campaign. The chairman for Southern Mitchell was a National Party candidate for the seat of Calare. That report came down right in the middle of an election campaign?

**Mr O'KEEFE:** When I was referring to elections I was talking about elections within this State. I must say there were two issues that were involved in that; one was to delay the report until after the Federal election which would have meant a very considerable delay with, again, unnecessary stress on the persons involved or acting in accordance with the usual protocol and bringing down our report as soon as we could. That, of course, was chosen.

Secondly, my recollection is that the principal persons involved in that were the general manager and another bureaucrat in the Southern Mitchell.

**Mr GAY:** Horner and Chennery?

**Mr O'KEEFE:** And they were the persons in respect of whom findings adverse were made. If I remember correctly a million plus dollars was repaid to the revenue of that organisation. The report, as I recall, was not my report but it is one that I am, as Commissioner, responsible for. It is a Commission report which was critical of procedures at meetings but I think that was the extent of it, if I recall.

**Mr GAY:** The inference has been made that the operation seems to be favouring one side and I suggest, through detail in the Southern Mitchell one, that all sides of politics have been hurt at various times. There does not appear to be any favouritism. Certainly from the National Party's point of view we were not amused by the timing or that particular report.

**Mr O'KEEFE:** Mr Gay, the Commission was criticised by the National Party over its north coast inquiry.

**Mr GAY:** And rightly so, I believe?

**Mr O'KEEFE:** That is a point of view. I do not comment on that. The Commission was criticised by the coalition parties over the Southern Mitchell report. The Commission is being criticised currently over both the Langton report and the Gibson inquiry. If one finds that one is being attacked from both sides it tends to mean you are doing your job impartially and doing it properly.

**Mr WATKINS:** Either that or you are doing a terrible job.

**Mr O'KEEFE:** That is a point of view, but it tends to say more about the commenter than the process or the outcome. It may give rise to an apprehension of bias in some.

**Mr WATKINS:** I have a few questions arising.

**Mr GAY:** We talked about the suppression facility that you used with regard to former Premier Greiner and he gave evidence and later on that was made public that he had given evidence because you deemed that that was appropriate?

**Mr O'KEEFE:** Yes.

**Mr GAY:** Mr Whelan's name was first mentioned, to my understanding, in public hearing during cross-examination of a witness and where that witness talked about the Minister, in his recollection, being present at a meeting. Why did not you place a suppression order on that statement until the Minister was given the opportunity to be told about it, to get counsel to represent him, and to appear before the Commission?

My understanding of what happened is that as soon as you would expect, in such a high profile case, as soon as the Minister's name is mentioned, within five minutes it was on the radio news that the police Commissioner had been mentioned and then the Minister had to very quickly, I understand within that afternoon, brief counsel to get down to the Commission to represent him and to make certain representations to you.

You do, do you not, have the power to, in circumstances like that, suppress the naming until some time has passed whereby the person who has been impacted upon by that has the opportunity to arrange proper legal representation?

**Mr O'KEEFE:** I think if you look at the transcript you will find I did.

**Mr GAY:** Is it correct?

**Mr O'KEEFE:** In other words I think the whole of your question is wrongly premised.

**Dr MACDONALD:** How did it become public?

**Mr O'KEEFE:** He was called as a witness.

**Mr GAY:** Why was not it done in private?

**Mr O'KEEFE:** I think it inappropriate that decisions forensically, particular decisions, that is my particular decision and conduct, be made the subject of questions. That could be seen as an attempt to influence the Commission in an inquiry that is presently part heard and to seek, on one view, in an intimidatory way, to bring about a particular course of action in relation to a particular class of witnesses, namely, members of Parliament. I think it inappropriate. I do not propose to proceed with that.

**Mr GAY:** I think part of the inquiry is about the judgment of the Commissioner: That is, what the question goes to the heart of, I think Mr Watkins is requesting some justification as to the Whelan matter and the judgment that you exercise in allowing that name to be become public: Is that not why we are here today?

**Mr O'KEEFE:** I think if you examine the transcript you will find that name was suppressed. You have all had the transcript available and the judgments available, that is my recollection, there is no point in criticising me for something I did not do. It may be spectacular but it is not in accordance with fact.

**Mr WATKINS:** That is why I was asking a question.

**Mr GAY:** Did Mr Whelan hear about his mention before you over the media?

**Mr O'KEEFE:** I do not know. I was not there. All I can say is what I did and my recollection of that.

**Mr GAY:** It is legitimate to ask questions about suppression orders because questions were asked about former Premier Greiner and I think it is legitimate.

**Dr MACDONALD:** Could I follow up on that?

**Mr GAY:** If, in fact, the Commissioner issued a suppression order on the name Whelan and it was out on the public arena within a number of hours does that concern you?

**Mr O'KEEFE:** I can not tell you how it happened, if it did happen, in a matter of hours and before the Mr Whelan came to the Commission. My recollection is he came that very day. Although one makes an order there are a number of people in the hearing room, media and non media, who may leave the hearing room, may not abide by the suppression order, we do not know who they are and what they have done, there is no way of proving that. It is very unfortunate if that occurs, but it can.

**Mr GAY:** That is a reasonable answer and it is a reasonable question on the part of Mr Watkins?

**Mr O'KEEFE:** Except that his question was premised on a wrong basis.

**Mr GAY:** You did not clarify it. You have now clarified it.

**Ms ANDREWS:** I was just wondering, Commissioner, why you decided to have a high profile female witness in the Bayeh-Gibson case give evidence during public hearings and could not the information that ICAC required be obtained just as well during private hearings?

**Mr O'KEEFE:** It was obtained during private hearings and was material to the Commissioner's consideration. There is an issue that arises in relation to that witness and a particular event that makes the totality of the material in the public interest, in my view.

**Ms ANDREWS:** If I could just ask what is the ICAC's policy in relation to media releases announcing that certain persons, particularly those of a high profile in the public arena, that they will be appearing before the Commission?

**Mr O'KEEFE:** We do not do so.

**Ms ANDREWS:** Not at all?

**Mr O'KEEFE:** No. We announce what the inquiry will be but we do not flag who the witnesses will be, that is the policy.

**Ms ANDREWS:** What value does ICAC place on the saying that a person is not guilty of a wrong doing until it is proved that they have been found to be guilty, or does the reverse apply, and that is, a person is guilty and they have to prove otherwise?

**Mr O'KEEFE:** No, the former is the situation. You will see in most chapters two or three of our reports that there is a reference to the standard of proof that must be attained. Although the standard of proof that must be attained in order to make a finding is the civil standard, that is balance of probabilities, it is appropriate to have regard to the seriousness of a finding of corrupt conduct and the possible consequences of such a finding on any individual, be that professional or family or social or whatever.

That means that in order to make a finding of corrupt conduct you have to be comfortable about that finding on the basis of the evidence before you. That is almost invariably included as part of our reports, it is a fairly standard formulation, it is the basis of onus of proof and standard of proof applied in Royal Commissions and the analogue of the ICAC is a standing Royal Commission and we apply that.

Until there is evidence that complies with that standard of proof no finding adverse to a person is made. The presumption remains that there is no corrupt conduct until it is established to that standard.

**Mr GAY:** Do you mind if I do a follow up on that particular question?

I suspect it is something that should carry on later on, given that Mrs Andrews has brought up this particular situation. Commissioner, I am not blaming you for this, I suspect it is our fault as much as anyone, it gets to the whole basis of the situation where untried evidence is aired in a public hearing. It is the only court in the country, not that it is a court, where that happens and that is the whole basis of our concern.

**Mr O'KEEFE:** Mr Gay, one, we are not a court.

**Mr GAY:** I acknowledge that, but it would not happen in a court, Commissioner?

**Mr O'KEEFE:** I will come back to that, if I may. In matters involving allegations that are likely to attract attention either because of their nature or because of the person or persons involved, the practice that I have adopted is to have some private hearings first in order to test that evidence to see whether it is uncorroborated, to see whether the person who makes the allegations and produces the primary evidence stands up to an inquisitorial process and it is only when one gets to the stage that it does that the matter goes public. In effect, what we have in that part of the inquiry is the rough equivalent of the old committal proceeding.

As you know as result of amendments made to the Justices Act by this Parliament no longer are such proceedings heard in ordinary criminal matters. They are now hand up briefs on pieces of paper, untested, and it is only by leave of the magistrate, on given grounds, that that material can be tested. It is in the public arena and may find its way into the press.

Our process is fairer than that, in that it gives the persons who are the subject of allegations an opportunity to give their own version before the matter goes public.

Sometimes you will get a clear version. That means that it is obvious that one should not go any further with the inquiry. On other occasions you will get a person against whom allegations have been made giving three or four different or inconsistent explanations. You have then got a case where you have tested the material against them, their responses are less than satisfactory, and it becomes public. That part of the process is not revealed until we go public and that evidence, then, becomes public evidence.

**Mr GAY:** I will leave the rest of my concerns on that.

**CHAIRMAN:** On page six of Justice Einstein's judgment he noted that the parties before him did not agree on "The principles of natural justice that are applied to the Commission"; could you outline what you see the rules of natural justice requiring in relation to the Commission's functions and powers and whether they should be modified?

**Mr O'KEEFE:** First, a hearing before the Commission is very different from a hearing before a judge. Before a judge the parties present their contending cases adversarially and each attacks the case of the other seeking, at the one time, to make good their own case and, at the same time, seeking to destroy the case of the opponent. The judge then adjudicates between those two areas of contention.

A hearing before the Commission does not have parties and at page six of his Honour's judgment he is talking about the parties before him in that litigation. What was being said there was that the rules that apply to a hearing in a court are different from the rules that will apply to an investigative hearing. Amongst other things an investigative hearing is inquisitorial in nature not, as a court hearing is, adversarial.

The Commission is charged with finding out what the truth is and that means the Commissioner will take a much more active role in the examination and cross-examination of witnesses than a judge would do in an ordinary court hearing. A Commission is not just a neutral filter for evidence that parties who are contending for different outcomes put before him. You may, in fact, have persons represented all of whom want to walk out squeaky clean but none of whom may, in fact, be in that situation.

You do not have a contradictor, as it were. You have to have somebody, it may be the Commissioner or those assisting, who takes an inquisitorial approach, an approach this committee has directly asked me about as an appropriate approach for ICAC hearings.

The rules of natural justice that will apply to the one as opposed to the other will be different. It is not an appropriate time for me to formulate those now on my feet, but one of the things will be that the active role of the Commissioner will be different from the role of the judge. That is what is being said there.

**CHAIRMAN:** Just bearing on that. At the previous hearing conducted on 13 April, which you attended, you said:

ICAC is not a body which makes determinations which have an ultimate effect upon the rights of any individual.

How do you reconcile that comment with the statement made by Justice Einstein:

The Commission may make findings or undertake actions in pursuance of its powers and functions under the Act which may adversely impact upon the rights or interests of a person, thereby attracting the duty to accord procedural fairness?

**Mr O'KEEFE:** He is talking about a different thing. I was talking about a determination that somebody had been guilty of something which had an effect on that person, like a conviction. He is talking about the very fact and effect of a hearing itself and findings that might come. We recognise, and I recognise, in the ICAC that procedural fairness is an appropriate part of the natural justice rules that apply to us, but the content will differ for us compared with a court, just as the content will differ for a police investigator who is interrogating a suspect. There are still rights that a suspect will have there, but they will be different from the ones that that person has before the ICAC—they will be higher in the ICAC—and different from the courts. They are much higher in the courts.

**CHAIRMAN:** So you are saying that the procedural fairness changes?

**Mr O'KEEFE:** According to circumstances and the nature of the function being fulfilled, yes. There are a number of cases that deal with greyhound racing appeal boards, harness racing and the like and gallopers, and you will find that the rules that are applied there are rules called rules of natural justice or procedural fairness, but they are quite different from the ones that will apply in a court.

**Ms ANDREWS:** Earlier you were saying that you would put a case in the public arena if you felt that people who were on trial, shall we say -

**Mr O'KEEFE:** No, I did not use that, and I would not use that.

**Ms ANDREWS:** I correct myself there. People who were under investigation, if they had a high profile in the public arena, such as members of Parliament—and you would expect members of Parliament to be aggressive and assertive, and I suppose that is part of our job, certainly to be assertive anyway, if not aggressive—and therefore you would be more inclined to put an inquiry like that into a public arena whereas another inquiry not involving people with such a high profile might be heard in private. Was I correct in thinking that?

**Mr O'KEEFE:** No. Once we get to a stage of having tested the allegations and heard what the subject of the investigations has had to say, there is a real question to be determined, whether they are high profile or not we will have a public hearing. What we do, however, is we endeavour, particularly where there are high profile people and/or serious allegations that could impact upon a person, to test that as fully as we can in private before we decide to go to a public hearing.

It is not a question of differentiating against somebody because they are high profile. That is in contradistinction, you will remember, to the taxation Commissioner when the former member for North Shore, Mr Philip Smiles, was prosecuted for his tax offences. The criterion that was taken by the taxation Commissioner was high profile. We do not do that. The criteria that we apply depend upon whether or not there is a real question to be answered, and that does not matter whether you are a public servant or a parliamentarian. The same principle is applied.

**Mr LYNCH:** Bearing in mind the answers you have given about questions related to natural justice and procedural fairness, what then are the principles of procedural fairness that are applicable to the Commission and how do they differ from the principles put forward by Mr Gibson's counsel in the Supreme Court proceedings?

**Mr O'KEEFE:** One, of course, is that you hear the other side, the *audi alteram partem* fundamental. You cannot make an adverse decision or finding in relation to someone without hearing them in relation to the subject matter of the allegation. The second thing is to give people adequate time to prepare in order to present their matter. A third matter would be to ensure that material was not suppressed, as it were, the way it is said happens in the United States with some prosecutors.

Another would be if in the mind of the person who is going to write the report there is a stream of thought that may be adverse to somebody which emerges from material and is then synthesised from that material but not expressly dealt with at the hearing, you would need to give an opportunity to that person to address that probability. That principle emerges from *Mahon v Air New Zealand*, you will recall, where no-one actually said what Justice Mahon found but it was in his mind and he did not give Air New Zealand an opportunity to deal with it. That does happen at times.

Sometimes we will finish a hearing and there will be things that emerge that cause further investigations to be conducted. Now, when that happens you have to give the person who might be adversely affected by those investigations an opportunity to deal with those matters, to call evidence or to test the evidence that you have got. The rules of natural justice do not require that the Commissioner be a sort of neutral filter. You would expect that under the rules of natural justice applying to the Commission there would be a much greater degree of intervention by the Commissioner to test matters as they go. Hard to formulate.

When you look at what the High Court said, they have given half a dozen basic principles, as I have, and then the working out of those will be a very individual matter. The High Court has deliberately, I think, left those principles fairly flexible so that they can apply to a myriad of circumstances. I cannot help you more than that, I am afraid.

**Mr VAUGHAN:** I just want to hear from you some general remarks about a particular situation. In the light of comments by Mr Justice Einstein regarding the interaction between you and Mr Gibson, would you comment on how you see the role of counsel assisting and the role of the Commissioner in the actual conduct of a hearing?



**Mr O'KEEFE:** It is an interactive role. The counsel assisting will proceed along a given line and will have lines of questioning prepared.

**Mr VAUGHAN:** Do you work that out beforehand?

**Mr O'KEEFE:** As a rule, no. As a rule, that is spontaneous, the reason for that being that if you were to engage in too much of that you may actually get yourself into a state of mind before you commence where you have a fairly firm provisional view, which you should not have, so it is better, I think—and this is the practice that I apply—to have the solicitor from the Commission, whoever that may be—not necessarily Mr Feneley, but whoever is instructing—do that instruction along lines that have been determined in the legal section.

As that unfolds there will be issues that emerge which the Commissioner may come in on, and that then tends to give this interactive role so that, as with Ms Andrews' question and Mr Gay's question, one will provoke a divergence that goes off and deals with the matter and then that is closed off and you return to mainstream. That tends to be the way in which it goes, but there is not a concerted plan of hard cop soft cop or equivalent about what you will do and what I will do. That emerges as the hearing proceeds.

**Mr VAUGHAN:** So at times you might even be surprised at what counsel assisting asks?

**Mr O'KEEFE:** I might.

**Mr VAUGHAN:** And likewise?

**Mr O'KEEFE:** Yes.

**Mr VAUGHAN:** I have had this feeling for some time that there may be a probability of ICAC developing into an American grand jury arrangement. I am rather attracted towards a grand jury. The bar probably would not have a bar of it.

**Mr LYNCH:** And they would be right.

**Mr VAUGHAN:** The Gibson-O'Keefe affair to the average person, or the man on the Clapham bus, appeared to be a terribly disgraceful affair, but it was made to appear that way because of the involvement of the media. If that had occurred in your average grand jury in the United States you might not have been provoked and Mr Gibson might not have been provoked to the extent that appeared to be the case. Temby, for example, was a pure and simple publicity hound. He loved it. He enjoyed it very much and that sort of thing. You would not like the same thing to be said about yourself?

**Mr O'KEEFE:** I certainly would not, but when I am gone I have no control over what you or anybody else says about me. When I am here, at least, Mr Watkins, you do it to my face and I have the chance to answer it, and that is natural justice.

**Mr VAUGHAN:** We know, because we had evidence from Nick Greiner, that he was very disappointed. He gave sworn evidence that he was very disappointed that he was summoned, in effect, to go to that inquiry.

**Mr GAY:** Mr Chairman, could I remind the honourable member that, whilst I was not there, that was a closed session.

**Mr VAUGHAN:** And that is precisely what happened at that closed session. I think that perhaps an ICAC Commissioner has to be more prudent in the use of the summons procedure. I think that the ICAC ought to give some thought to that. He was speechless.

**Mr O'KEEFE:** I do not know quite what the question was.

**Mr VAUGHAN:** I was making a statement.

**(Short adjournment)**

**CHAIRMAN:** Before we go any further, Commissioner O'Keefe has answers to table.

**Mr O'KEEFE:** Could I table the Commission's answers to the questions that were forwarded in advance by the Committee putting the request that those matters relating to pending prosecutions be treated as confidential?

**CHAIRMAN:** So this is the edited version or the non-edited version?

**Mr O'KEEFE:** This is the edited version. Members of the Committee already have the other version.

**CHAIRMAN:** I will make it clear. These are the answers to questions to the Commission, and these answers are for public release?

**Mr O'KEEFE:** Yes. And can I then tender later those that are the full answers for the committees alone.

**CHAIRMAN:** I think we will do that at the commencement after lunch. It has been suggested that we have the in camera session straight after lunch so that we do not have to dismantle and what have you.

**Mr WATKINS:** When someone is served, is it a summons? When they are asked to present answers to questions, present documentation, and so on, is that a summons?

**Mr O'KEEFE:** There are four processes. One is section 21, where a person, being a public official, may be required to make a statement of fact in relation to particular matters; section 22 is concerned with the production of documents and like

material; section 23 is concerned with entry upon premises and examination of material; and section 35 is concerned with an actual summons to attend to give evidence.

**Mr WATKINS:** It is public knowledge, because it has been reported in the papers, that certain members of Parliament have been served with a summons of some sort. That would come within one of those?

**Mr O'KEEFE:** If it were a summons, it would be a section 35 summons.

**Mr WATKINS:** How is that physically done? Is it through the mail?

**Mr O'KEEFE:** If it is known that the person to whom the summons is directed has a legal representative, normally arrangements are made to have service accepted by the legal representative. At times, particular people to whom summonses are directed request that that not be done and request that the summons be served personally. Then what we do is make an arrangement with that person to meet at some place nominated, and the summons is handed over. That is the normal way of doing it. Occasionally you will get someone who is trying to evade service, and that then will be a different procedure. You just have to try to find them and serve them. But that is a pretty rare sort of an occurrence.

**Mr WATKINS:** Would it ever happen that in an institution where several such summonses were noticed being distributed that they would just be given in total to the institution for the institution to hand out?

**Mr O'KEEFE:** Only if that arrangement had been made in advance or requested. I do not know of that happening, but I can envisage that that might happen.

**Mr WATKINS:** Would you look into that, because I understand that that has happened with a person wandering the halls of such an institution handing out letters from Box 500, Redfern, to people as they were seen in the building, very publicly, distributing them like a newsletter.

**Mr O'KEEFE:** I will have an inquiry made if you could let me have some details.

**Mr WATKINS:** I might do that. It is highly inappropriate.

**Mr O'KEEFE:** I do not know what arrangements were made but I have told you our normal procedure.

**Mr WATKINS:** There is a right for people to be protected when they come before you. If someone is before you giving evidence, are they sufficiently aware before they arrive of the scope of the inquiry and what they are there for?

**Mr O'KEEFE:** Generally yes. Certainly at the public inquiry stage. They may not be at the initial private inquiry stage. But there two things. Firstly, the Act itself requires

that the scope and purpose of the inquiry be made known to each witness and at the commencement of each hearing, and that is provided for in section 30, and I have been quite scrupulous about that. Secondly, a witness has a right to raise an objection to evidence that may be given. That does not mean that they do not have to answer the question. What it does mean, however, is that if they take objection either to a particular question, or class of questions, or the whole of the evidence that they may give, then that evidence cannot be used against them in any civil, criminal or disciplinary proceeding.

I have a fairly set statement that I make to them. You will find it in the transcript before each witness, and it extends over a page and a half, two pages, and they are given an opportunity to make the objection so that, having been informed of their right and the scope of the inquiry, they then make a judgment. If they are unrepresented and if they are not legal people, for instance, I tend to make a section 38 declaration, anyway, just in case somebody did not appreciate what their rights were.

**Mr WATKINS:** With a private hearing are witnesses given the opportunity, perhaps at the end of giving evidence, to make final submissions about matters that they perhaps want to be cleared up which they think have not come out in cross-examination?

**Mr O'KEEFE:** Not submissions, no. No, what we do is take evidence in private hearing. If we were to do a matter which was solely a private hearing then there would be a right of submissions. What we do is take the evidence, assess it, and sometimes the witness is asked to come back and give some further evidence and they have an opportunity at some stage during the whole process of putting what they want over and above the questions that are asked.

When that occurs there be a judgment made dependent upon the nature of the investigation and their role in the investigation.

**Mr WATKINS:** Witnesses should feel in private hearings, at the end of it, that they have been able to make clear all the matters that they think should be put on the record before a Commission.

**Mr O'KEEFE:** No, before the process is over that will be so but not necessarily at the end of the private hearing.

Experience has taught that what people think is relevant is not necessarily relevant to the inquiry. I do not think I can answer beyond that.

**Mr WATKINS:** Presumably you make judgments about private hearings and if you are satisfied with the evidence there, for example, you may not call someone to a public hearing.

**Mr O'KEEFE:** That's right.

**Mr WATKINS:** If someone wants to make clear to you matters that have not come up in cross-examination because they think it is relevant to your inquiries and they

want to give that information to you that you do not give them the facility for that to happen. Is not that a situation where a witness's rights are being disregarded?

**Mr O'KEEFE:** No. Normally what happens in that case is that they are given an opportunity to say what they want to one of the Commission staff. It is then taken down and it is assessed as to its materiality, and if they are recalled, and it is material, that material is introduced.

**Mr WATKINS:** How much of the private hearings regarding the Gibson-Nori evidence is public?

**Mr O'KEEFE:** Most of it. There are some details that I think were not in the public interest and not germane to our inquiry relating to a couple of people that I have kept suppressed.

There was an application from a number of the media, both television and newspaper, for the lifting of that suppression order and it was argued at some length before me and I delivered a judgment on it and declined to release that matter.

**Mr WATKINS:** Was Sandra Nori told that she would be able to give further evidence in private and told before the matter went further she and a legal representative would be allowed to make final statements to clear up matters or to bring extra information to the Commission that she thought was relevant to the investigation.

**Mr O'KEEFE:** I can not recall that.

**Mr WATKINS:** Was she given an opportunity?

**Mr O'KEEFE:** I can not recall that. I do not want to comment on Miss Nori's evidence or the way in which it was given or the opportunities afforded and what she did or did not say since that may involve my making some comment in relation to the witness which I think may be inappropriate, particularly as another person has to make an assessment in relation to that person.

**Mr WATKINS:** Are you aware that some witnesses before you in several hearings that I am aware of have variously described your treatment--

**Mr GAY:**— Mr Chairman, with your indulgence, Mr Watkins, do you mind if I have a follow up question on the private hearings before you move on to a different subject?

The private hearings, what's the situation if someone is called before the ICAC for the private hearings, my understanding is the instructions that are normally given are that those people are not to discuss the matters with anyone.

**Mr O'KEEFE:** Other than their legal representative.

**Mr GAY:** They are allowed to?

**Mr O'KEEFE:** Yes. They are given the opportunity before they give their evidence to get legal representation. That was not the practice under a past Commissioner but it has been the invariable practice since I have been the Commissioner.

**Mr WATKINS:** Witnesses from several hearings have variously described your treatment of them in asking questions and in the treatment that you allow from your counsel assisting, as "unfair", "intimidating" and "frightening" and they have recorded quibbling over minute details of response, very pedantic use of language, inaccurate quoting back of testimony, overly aggressive demeanour, constant interruption to interrupt the flow of thought, the mocking of witnesses; how does that sit with your view of gentleness? When you were appointed I think that you said that there had to be gentleness in the exercise of power.

**Mr O'KEEFE:** I would like to know who those people are so I can make the assessment. You often find that people who are in the wrong and who are not truthful need to be dealt with somewhat differently to people who are honest and up front. They then tend to describe the testing of their evidence in the ways you have indicated. I do not know whether the persons you are referring to fall into that category or not.

It is all very well for the innominate anonymous person to make some statement like that, I would rather see some specifics. My view is that no one has been treated in a way that is inappropriate to the importance of the matter and the likely truthfulness or otherwise of the evidence that they were giving or their attempt, as not infrequently happens in cases, to talk about irrelevancies rather than answer the question. If you can give me some specifics.

**Mr WATKINS:** You probably understand why those people would not want me to give you their names.

**Mr O'KEEFE:** Then natural justice, as Mahon v. Air New Zealand tells us, really does require that a person accused really should know who the accuser is and what the specifics of the accusation are, otherwise there can be the perception of unfairness.

**Mr WATKINS:** You have acknowledged though, that you do indulge in very vigorous and what might be seen as frightening -

**Mr O'KEEFE:** I have not acknowledged that at all.

**Mr WATKINS:** You have acknowledged that you indulge in vigorous cross-examination.

**Mr O'KEEFE:** What I have acknowledged is that as part the inquisitorial process cross-examination by me has proceeded.

**Mr WATKINS:** Is your cross-examination, could you describe it as being vigorous?

**Mr O'KEEFE:** Yes, and appropriate.

**Mr WATKINS:** Intimidating.

**Mr O'KEEFE:** I would not have thought so for anybody who is telling the truth, had nothing to conceal and comes clean with the answer in a proper manner, no.

**Mr WATKINS:** Pedantic in its use of language.

**Mr O'KEEFE:** No.

**CHAIRMAN:** We will move.

**Mr WATKINS:** This follows a train of thought.

**CHAIRMAN:** Can the train of thought be speeded up.

**Mr WATKINS:** When DPP Cowdery gave evidence to this committee he argued as a principle that investigators should be separated from prosecution. That was in relation to particularly police prosecution and he has a particular view of that. He spoke of the need to separate the independence of prosecutors from the independence of the investigatory role. Is it not a basic failing in the ICAC that these two functions are not separate, that you investigate, that you prosecute, that you drive towards a verdict and at the same time that you are the investigator, the person asking the questions, that you are also supposed to be the judicial arbiter down in the ICAC?

**Mr O'KEEFE:** I am not judicial. You will remember Mr Watkins you argued at the great length about my resignation from the Supreme Court and amendments to the act to enable me to go back there. That was so that there would be no confusion between the investigative role of the Commissioner and judicial role. That is number one.

**Mr WATKINS:** Can I interrupt that.

**Mr O'KEEFE:** Would you let me finish my answer.

Secondly, there is an absolute discrimination between investigation and prosecution. We do not prosecute. We recommend and the DPP makes the decision, we do not make the decision. When the DPP has made the decision some of our people may be called as witnesses and we will prepare a brief. We are not the prosecutor and we do not make the decision in relation to that.

The Parliament, accepting the sort of principle that Mr Cowdery was talking about, has been careful to separate those functions. I think that really deals with the substance of what you are putting.

**Mr WATKINS:** If we broaden our definitions a little. Prosecution, I mean it in a broad sense, the Commission investigates and then finds someone guilty of corrupt conduct.

**Mr O'KEEFE:** No, it does not, that is exactly what it cannot do. That is what section 74 is about. You just cannot do that, it is prohibited by the act. You are not permitted under our act to make a finding. It is not authorised to include a finding or opinion that a specific person is guilty of or has committed an offence. That is what section 74B(1)(a) says.

**Mr WATKINS:** Your reports do——

**CHAIRMAN:** Mr Watkins, I thought at the outset we were dealing with the Einstein judgment, I think we have had a fairly free wheeling situation since.

**Mr WATKINS:** We will come back to this.

**CHAIRMAN:** Dr Macdonald wants to ask some questions.

**Dr MACDONALD:** In his conclusion, on 20 May, he says inter alia:

"The plaintiff as well as the reasonable and fair minded observer with a broad knowledge of the material and objective facts would be justified in entertaining a reasonable apprehension that the defendant might not bring an impartial and unprejudiced mind to the resolution of the Commission's current investigation."

That is a very damning finding against the Commission. How do you respond to that?

**Mr O'KEEFE:** First I respond to it by saying, it is not.

Secondly, I say that if you go back in the judgment you will find that his Honour said it is a matter about which minds may differ. That is, it depends upon the experience of the person making the perception.

Thirdly, it is easy to talk in terms of perceptions. Look at the formula; the formula is that a person involved may have a reasonable perception that something might happen. You have a double possibility. It is not hard to fulfil a double possibility. The interesting thing about this aspect of the law is that whereas if you are going to make a finding of actual bias, which is a serious matter, you must, in accordance with the principles that I was discussing with Ms Andrews, find it comfortably. That is, having regard to the seriousness of the finding.

When you come to apprehended bias you do not have any such overlay. It is a very easy thing to find and it depends on a couple of mights and how somebody might see it. It is easy to make the claim. The judge in that case was himself last week the subject of an allegation of actual bias. It is an easy thing to do and minds will differ upon



it. With great respect to his Honour I happen not to agree with his conclusion. We did not proceed with appeal so that we can dispose of this matter quickly.

**Dr MACDONALD:** If in fact as you have just done and try to argue mitigation, why did you not appeal?

**Mr O'KEEFE:** If we had appealed the likelihood would have been that this matter would not have finished until we were about February, right in the middle of an election.

Number two, if we had succeeded it would have been said, you should have had this matter disposed of anyway long before this. If we had failed it would have been said you have wasted money and wasted time and this is no more than a political exercise or an exercise in justification. I do not want to go into the legal advice that we had but on balance we took account of a number of factors and took the view much better to let the matter rest and get on with the Gibson matter and dispose of it.

**Dr MACDONALD:** Why did you wait 28 days and play a sort of brinkmanship position rather than coming out clearly at the beginning if that was your view, otherwise it has delayed it a further 28 days.

**Mr O'KEEFE:** It was not a brinkmanship position. Senior counsel who was advising us is the president of the Australian Law Council and he was in south east Asia on his duties there and unable to give us the advice we wanted. It had nothing to do with brinkmanship, with great respect, at all.

**Dr MACDONALD:** In terms of delays, I would put a case it was an unnecessary delay.

**Mr O'KEEFE:** Why would you put that case, with great respect?

**Dr MACDONALD:** Why 28 days not 26 or 27 days? It was the last minute, right the last minute you announced you would not make an appeal.

**Mr O'KEEFE:** I do not organise when senior counsel go overseas and come back.

**Dr MACDONALD:** I would have thought the matter was so important that it could be dealt with in a different way. My next question is about the length of the hearing; as I understand it is to be six months from April to December or October and you argue, in fact, that is not unreasonable. I put it to you, particularly in view of the public interest in the matter and the reputations of a number of parliamentarians in the matters that it is a lengthy delay.

I draw your attention to the fact that the Greiner matter which was referred to the ICAC in 28 April 1992 was reported back in Parliament on 19 June, which was seven

weeks for a complex issue relating to some high profile politicians. How do you explain that the fact Mr Temby took seven weeks.

**Mr O'FARRELL:** And had it overturned in the Supreme Court.

**Mr O'KEEFE:** I do not know. I do know that Mr Temby did not have any private hearings. They commenced public and stayed public. I do know there was no delay as a result of Supreme Court intervention.

**Dr MACDONALD:** Another question, there is a number of aspects of the Gibson-Nori-Einstein matter that have disturbed me. One is the question of the length of time it has taken, the other question is publicity, and adverse publicity, to those who I would have thought were more tangential to the issue. How do you make your decision as to whether a matter be held in public or private and whether individuals names be suppressed? I am thinking particularly of Ms Nori.

**Mr O'KEEFE:** I make that having regard to the provisions of the act.

**Dr MACDONALD:** It gives you some discretion.

**Mr O'KEEFE:** This Parliament amended section 112, I think in 1995, expressly to include a subsection 1(a) directing the Commission not to hold its matters in private and directing there not to be suppression orders unless there was a public interest in so doing. What it then did was bring into line section 112 of the provisions of the earlier sections relating to hearings which direct, in effect, public hearings, unless there is a good reason to the contrary, once you have reached a certain stage.

So the Parliament was saying in those amendments, you should be public. For one to say that if the inquiry concerns a Parliamentarian you should reverse what the Parliament has said would be to create a perception of favouritism for parliamentarians, perhaps a bias in their favour that the act does not contemplate.

Might I say, Dr Macdonald, in respect of all the matters of public interest you will find, if you go through the transcript, that I have given my reasons for why I have done the various things, public or private, they are there as a matter of record.

**Dr MACDONALD:** In the case of Mr Gibson, I understand his name became public even before the public hearings commenced and I think even before the end of the private hearings; was that as a result of his name being released by ICAC?

**Mr O'KEEFE:** No, definitely not.

**Dr MACDONALD:** How do you view that?

**Mr O'KEEFE:** How do I view what?

**Dr MACDONALD:** That his name was about the public arena before there were hearings in the ICAC?

**Mr O'KEEFE:** It is not something we did. It is not something over which we had control. I did have a report that that matter was being discussed at the parliamentary bar long before there was a public hearing. Once it is discussed in that way, in such a place, it is almost inevitable that it will get out. It certainly did not come from us.

That report did come to me because I was concerned to ensure that the material had not come from the Commission. I am quite satisfied that that is so.

**Dr MACDONALD:** Just going back to the Whelan issue on the question of this: As I understand it there was a witness who made a claim to attending a meeting which Mr Whelan was alleged to have been at and at that point you put a suppression order on that matter.

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** Did you lift that suppression order?

**Mr O'KEEFE:** When Mr Whelan came, I did, yes.

**Dr MACDONALD:** Why did you lift the suppression order?

**Mr O'KEEFE:** Mr Chairman, with great respect, I should not be called upon to justify individual decisions that are made in the course of a hearing, that is conduct of a hearing. If a Commissioner or Assistant Commissioner has to come here and justify every forensic decision made it is really a form of this committee trying to say how investigations and hearings should be conducted and, with respect, that is not a function of the Committee.

**CHAIRMAN:** I think you have answered that.

**Dr MACDONALD:** I do not agree with that comment by the Commissioner. Here we are you talking about discretion as exercised by a Commissioner which does have an enormous impact on people's reputations.

**Mr O'KEEFE:** It has that effect whether they are politicians or not. I have conducted I think 12 hearings. It is only this one that anybody has ever sought to ask me about in this sort of detail. The fact that it is asked about an inquiry into parliamentarians itself may convey the impression to the public that parliamentarians regard there as being different rules for them compared to other people. As far as the ICAC is concerned that is not so. The law has no distinction between persons and parliamentarians are treated the same as anybody else who is the subject of investigation.

**Dr MACDONALD:** That is quite inconsistent with what you said earlier. In fact you said earlier in certain cases, particularly those involving politicians, you chose to

conduct those hearings because you recognise the sensitivity of it. That in itself is an acknowledgment that politicians and their reputations have to be dealt with in a different context than others. In fact, it is tantamount in your earlier remarks you acknowledge that. Therefore, that is why I am putting this line of questioning to you. It seems to me that there have been potentially a number of politicians that have their names released or suppression orders lifted where they become victims to the publicity that follows politicians and their reputations.

**Mr O'KEEFE:** In the Langton matter there were seven politicians, six of them had findings favourable to them; would it be suggested that those findings favourable to them should be made on the basis of what was suppressed? That would make a nonsense of the finding and undercut the value of the finding positive to them, about which I must say I had congratulatory remarks about the hearing and outcome in relation to those matters.

Secondly, once a matter is taken into the public arena the general principle is that we try and keep as much of it public as we can, at least by the end of the proceeding. Sometimes through the course of the proceeding I will suppress or somebody may suppress a name until such time as that person has an opportunity to come and deal with the allegation. So you do not have allegation on day one and three weeks later somebody coming to refute it after the allegation has been widely publicised.

Finally, the way in which we deal with matters in public and private hearing really has regard to reputation and it is for that purpose that we have the private hearings.

**Dr MACDONALD:** I find that the most strange and fractured logic that you would argue in the case of the Langton matter that six members of Parliament benefited from having a favourable finding.

**Mr O'KEEFE:** I did not say that.

**Dr MACDONALD:** Had their names released at the outset which, of course, put them in an unfavourable light and now you are arguing there was a favourable finding so we should give them all the fanfare and publicity.

**Mr O'KEEFE:** With great respect I did not say that.

**Dr MACDONALD:** That is what you implied.

**Mr O'KEEFE:** That is not what I implied, that is what you take from it, but with great respect it is not what I said and it is not what I intended. What I said was there were seven people involved, all of them were brought before the Commission, all of them gave their evidence. Six of them were found not to have engaged in corrupt conduct, there was a contrary finding against one. That is all I have said.

**Mr WATKINS:** I have to ask it now, it arose straight out of what the Commissioner was saying about the length of time between suppression order being

raised and somebody being able to speak in their defence or to address the situation: With Sandra Nori, the suppression order on Miss Nori was raised, I think, on the Thursday or Wednesday, she was not able to get in to the ICAC to clear her name for almost a full week and she was left without any cover over the weekend when she had to make a formal statement to the press as to why she had been named and why the suppression order had been lifted.

There was no way she could get into the ICAC to make a statement down there to answer the problem. You left her hanging out to dry in front the media and what they can do to people, and it happened, and she was put through a terrible week of suffering because of that.

Why did you leave such a gap of a week before she could get in there to give some evidence?

**Mr O'KEEFE:** I need to look at those circumstances.

Really, Mr Chairman, I am concerned that this is beginning to present as a pay back against the form of investigation which involved parliamentarians.

**Mr WATKINS:** It is a legitimate question.

**Mr O'KEEFE:** Let me finish. I would need to know what those dates were. My recollection is that Miss Nori's name was suppressed. I would have to check that and as to when it was that it was lifted. My recollection, untutored by reference to the transcript, is that there had been a suppression order and Miss Nori made known her name as the person involved before the suppression order was lifted. I may be wrong in that recollection and I can check it.

**Dr MACDONALD:** I think the Commissioner has made a very serious allegation against this committee. He has indicated that a member or a number of members are engaged in questions which relate to a pay back.

**Mr O'FARRELL:** Are you owning up?

**Dr MACDONALD:** You start asking some intelligent questions and we might get somewhere.

I am asking some advice from the chairman as to how we deal with it. I think that is an extremely serious allegation. He is arguing that members of the committee are acting in a biased way in terms of pay back and I would ask for explanation and clarification.

**Mr O'KEEFE:** My statement was one of perception. My statement was one of how it might be perceived.

**Dr MACDONALD:** Check the transcript.

**Mr O'FARRELL:** Commissioner, you raised a couple of times in response to Dr Macdonald and Mr Watkins about how names can come out through the inquiry. You have talked about the parliamentary bar. You talked in relation to Mr Watkins about the requirements of confidentiality upon witnesses appearing before the Commission. I notice during the Langton inquiry a number of the Labor members indicated in sworn evidence that after having received the warrant or the summons they actually spoke to colleagues about the incidents involved. Is that acceptable behaviour and if it is not acceptable behaviour what sanction does the Commission have in those cases, which clearly can lead to names and circumstances going out into the public domain?

**Mr O'KEEFE:** I looked at that and it did not seem to me to be a matter that was worthwhile taking any further. I realised what had happened. One may perhaps understand that in human terms and I did not form the view that there was any attempt to suborn witnesses or to manufacture evidence. I thought it was a natural, be it not in accordance with law, response and it should be left to lie where it was.

**Mr O'FARRELL:** Einstein on page 83 goes to the issue of perception relating to a Commissioner who finds himself in a situation where someone appearing before him may be engaging in separate legal action. Without getting into detail of that, has the Commission, since Einstein, sought to develop procedures which might have those situations handled differently in future. If a Commissioner finds himself engaged in a legal action in a separate area and someone appears before him that another course of action is pursued, I do not mean with the benefit of 20-20 hindsight, but in terms of the future operation of the Commission?

**Mr O'KEEFE:** We have considered it. This is a problem that arose in the Supreme Court where there was a particular litigant who if he thought he had a judge who might be unfavourable would defame the judge or sue the judge. The courts dealt with that and that fact, of itself, does not give rise to a need on the part of a judge to disqualify himself from a hearing. If that is true of a judge a fortiori is it true of a Commissioner. That we have considered and we have taken advice in relation to that.

**Mr WATKINS:** Just on the suppression orders again: Dr Panetta gave evidence in the Gibson inquiry. I understand he was a central figure in the inquiry, in that he knew most of the parties that were involved. Was there a suppression order placed on his name being published?

**Mr O'KEEFE:** Dr Panetta was not a central figure in the inquiry. In the public inquiry his evidence was not sufficiently relevant to call.

Secondly, there was initially a suppression order placed on his name and it was subsequently lifted.

**Mr WATKINS:** Is he a member of the order of St Lazarus of Jerusalem?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** When the media briefings take place during the course of an inquiry——

**Mr O'KEEFE:** ——I am not sure what you mean.

**Mr WATKINS:** I presume that the media constantly contact the ICAC, that the *Daily Telegraph* will ring up and say, "What is happening today? What is occurring?" and they will ask the officers of the ICAC questions. How is that dealt with?

**Mr O'KEEFE:** I do not deal with that. That is dealt with by the media officer. The schedule of witnesses for the day may be made known, whether somebody is likely to finish their evidence that day by way of assessment may be forthcoming, but that is about the extent of it.

**Mr WATKINS:** Was the media ever given information about the decisions of the ICAC before the parties involved were?

**Mr O'KEEFE:** What sort of things? I do not follow.

**Mr WATKINS:** Such as when a particular finding was going to be brought down, when a report was going to be published. Was the media ever told dates and times of that happening?

**Mr O'KEEFE:** Not to my knowledge. Amongst other things, when the matter would conclude and when the report would be written always had to be flexible. It depended how long the hearing took and when people were available for mounting their addresses and the like. I am certainly not aware of anything like that. I would be quite surprised if it happened.

**Mr WATKINS:** Councillor Peter Woods, the President of the Local Government Association gave evidence to this Committee. He said:

I was absolutely appalled by the decision relating to the naming of Sandra Nori, MP, an absolutely outrageous action on the part of the ICAC.

Later he said:

And I am yet to see the grounds of morality by that body that saw it as necessary in carrying out its investigation to engage in such a display of bad taste.

That was criticism of the ICAC by Councillor Woods. How do you view that statement by Councillor Woods?

**Mr O'KEEFE:** There are aspects of that matter that are unfinished that I would prefer not to go into, but you will notice that that statement by Councillor Woods had nothing to do with the primary matter about which he came to see this Committee. It was very much at the heel of the hunt, unrelated to the rest of his evidence, and I do not want

to go into those circumstances. But might I just add there that I have known Councillor Woods for a long time, and he is certainly not noted for his understatement.

**Mr WATKINS:** Does the ICAC offer benefits or inducements to witnesses who give evidence supporting the thrust of your investigation?

**Mr O'KEEFE:** No. Not on that basis, no.

**Mr WATKINS:** Were inducements offered to Louis Bayeh, for instance?

**Mr O'KEEFE:** That is an operational matter. I do not propose to go into that.

**Mr WATKINS:** And in the Langton matter were inducements offered to the Parliament House employee who gave evidence?

**Mr O'KEEFE:** I do not propose to go into that matter, but might I say that that particular lady who gave evidence you will read in the report my view about her, and I am disappointed that such a slur which the question itself may impose upon her should be asked particularly when it is obvious that I have to answer in the way in which I did.

**Mr WATKINS:** I am actually referring to the former Parliament House employee who took off overseas with credit cards belonging to the Parliament and has since been found guilty of crimes, and he, I understand, gave evidence to the ICAC. That is the person to whom I was referring, to clear that matter up, so I am not slurring anyone's character who has not already been slurred. Were any inducements offered to him to give evidence to the ICAC?

**Mr O'KEEFE:** That is an operational matter.

**Mr WATKINS:** Even though that matter has been dealt with and is closed?

**Mr O'KEEFE:** The way in which we deal with witnesses and informants is not a matter that is appropriate to be dealt with in this forum.

**Mr WATKINS:** It is on the public record that that gentleman's punishment was reduced because of support given to him by the ICAC?

**Mr O'KEEFE:** A letter that was publicly tendered at his sentencing was prepared by the ICAC indicating the extent of the assistance that he gave to the ICAC, and under the Sentencing Act that is a matter that a judge is entitled to take into account in sentencing defendants, namely, whether assistance has been given to a law enforcement agency.

**Mr WATKINS:** Who made that decision to provide that? The Director of Public Prosecutions or the judge? Where did it go?

**Mr O'KEEFE:** It goes to the judge.



**Mr WATKINS:** Who made that decision?

**Mr O'KEEFE:** The decision was made as a corporate decision.

**Mr WATKINS:** What was that?

**Mr O'KEEFE:** That I discuss it with senior staff, find out exactly what assistance has been given, the extent of that assistance, and then the letter is written. I did not write the letter. It was written by, I think, the solicitor for the Commission.

**Mr WATKINS:** Is it likely that Mr Bayeh will receive a letter like that from the ICAC?

**Mr O'KEEFE:** I do not propose to go into that.

**Mr WATKINS:** And when is that made clear?

**Mr O'KEEFE:** When is what made clear?

**Mr WATKINS:** When is it made clear to the person assisting the ICAC that they may get a letter from the ICAC that may assist them in any future sentencing?

**Mr O'KEEFE:** I cannot help you on that. That is a variable.

**Mr WATKINS:** So it could, in fact, occur very early in your relationship with that person?

**Mr O'KEEFE:** There are times when people come to us and say, "I have this information. If I give you this information will it benefit me?" the answer to that will be, "If the information is true on our examination of it and it is of assistance, you are entitled under the Sentencing Act to this." - that is the sort of approach that may be made to people. I do not want to go into specifics.

**Mr WATKINS:** But does not the offering of that inducement distort the evidence that is given?

**Mr O'KEEFE:** It is contemplated by the Sentencing Act. It is contemplated by the Parliament that that sort of thing may occur. The assessment of evidence, the weight that you will give to it, will vary from case to case. Even criminals tell the truth at times; even perjurers tell the truth at times. You assess their evidence against the nature of their crimes and wrongdoings and the inherent probabilities and corroborating evidence, et cetera. They are all factors to be taken into account.

The answer to your question is, if the insinuation is that we, as it were, buy false testimony, that is just not on. Nothing like that ever happens. Our function is to try to determine the truth, and getting to the truth often involves getting evidence from people who are either accomplices or are involved in some way with the wrongdoing. The very

best way to determine what is happening inside some criminal ring, particularly with a conspiracy, is to have some member of the ring give you the information.

**Mr WATKINS:** But with the situation we are talking about we are not talking about a criminal ring. There is one convicted criminal, and another person I presume will face charges, giving evidence not against a criminal ring but against parliamentarians, and the giving of that evidence has been rewarded by the ICAC giving them a get-out-of-gaol-free card virtually that they trot off to the Supreme Court or the District Court with after giving their evidence to the ICAC which is then used, not against a criminal ring but against elected members of Parliament. Do you see that that could be seen as perhaps inappropriate or a bit sleazy?

**Mr O'KEEFE:** You may see it in that way. I do not. Secondly, if the allegation is that there are links between parliamentarians and members of the underworld, one way of testing that is to get the members of the underworld to give some evidence, but then they are subject to the argument that they are members of the underworld. So you try to get the core of their evidence or the essence of the allegations that are made and seek to get corroborative evidence from other persons in relation to that. If you do not find it, the matter tends not to proceed any further. If you believe you have found it, the matter proceeds further for assessment.

**Mr WATKINS:** Do witnesses' legal representatives, witnesses, say, in the Gibson matter or the Langton matter, have the advantage of transcripts of other witnesses' statements that have been made in private hearings? When it comes to the public hearings when do they get, or do they get, transcripts of evidence given in the private hearings?

**Mr O'KEEFE:** The answer is that if they are granted representation they get transcripts of the evidence, yes.

**Mr WATKINS:** When are those transcripts made available?

**Mr O'KEEFE:** That will be a variable depending upon the nature of the evidence and the concern that there may be that evidence could be tailored to meet other material, but by the time those persons are giving their evidence they have access to those transcripts, and if they require an adjournment in order to read them and study them and thus prepare some material, that opportunity is offered to them.

**Mr WATKINS:** So they get them on the day?

**Mr O'KEEFE:** Sometimes on the day, sometimes before. It depends.

**Mr WATKINS:** In the Gibson matter did they get them on the day?

**Mr O'KEEFE:** I cannot tell you. I think it may vary from witness to witness.

**Mr WATKINS:** But that is evidence that the ICAC legal people have had often for months before, or certainly a number of weeks before, the private hearings occur?

**Mr O'KEEFE:** But that does not differ from matters that do not involve parliamentarians. If you are asserting that there should be different treatment -

**Mr WATKINS:** No, I am not at all.

**Mr O'KEEFE:** In general terms what happened in those cases is the same as has happened in other cases.

**Mr WATKINS:** I suppose I am driving to the point is it fair that witnesses appearing before the Commission have access to other evidence only at the last stage when they are facing the ICAC public hearing whereas the ICAC's very impressive legal team have had that information for months before to work up their questioning for their line of attack, whereas the person representing the witness who appears today gets it that morning and then is supposed to cobble together a defence against this very considerable team led by a very considerably experienced practitioner?

**Mr O'KEEFE:** There are three errors in that question. The first is that it is not invariable that that happens; secondly, each person is given an opportunity to prepare their defence. If they require an adjournment, they are granted that; and, thirdly, the fact that the material is in the possession of the ICAC does not give rise to any unfairness. That is a question of the ICAC having a general conspectus of the whole of the evidence in the matter.

Each of the witnesses will know from the fact that they have appeared in a private hearing what the nature of the matters being put against them are. That emerges from their cross-examination, so that well before they have the evidence of other witnesses they will know what is being put to them. There are some cases in which you may want not to give the evidence until quite late in the piece. I am not talking now about the Gibson or the Langton matters.

I am thinking of another specific where there was a very real concern that witnesses would be stood over because we had evidence of people visiting the home of one of the witnesses and threatening them, kicking down a door and threatening them with a gun. The nature of the evidence that that witness may be going to give against a particular person who may do that ought not to be revealed as a proper investigative procedure until such time as that witness has given their version of what is being said rather than being able, to use your phrase, cobble together something that was not true. Again, it is a variable.

**Mr WATKINS:** I did not say cobble together what is untrue; I said cobble together a defence?

**Mr O'KEEFE:** "Cobble together" was your phrase.

**Mr WATKINS:** What I am getting at is the fact that many witnesses coming before the ICAC feel threatened, in an unequal position, and we have talked today about procedural fairness and I believe that many witnesses feel that that does not apply to

them, but here I am talking about a very specific issue. When does a defence team get the evidence that may be used against their witness? It is invariably, I understand, very late in the proceedings, like the morning that they are fronting. Is that not a basic unfairness in the way that the ICAC operates?

**Mr O'KEEFE:** That is not correct, and two people went to the Supreme Court on this very thing, as one went to the Supreme Court in relation to the Royal Commission. The Supreme Court in all three cases pointed out that an investigation is very different from a court hearing and the investigative method involves a different approach, and what you tell a suspect before they have given their evidence may be very different there from an ordinary civil case.

In each of those cases the court refused to interfere with the exercise by the Royal Commissioner and by us of our discretion in relation to when the material was made available. I cannot say more than that. But in many instances people are given the evidence, and the whole of it, long before the hearing. In other cases some of it is not given to them until they have given their evidence or until they are about to give their evidence, and then the opportunity is afforded to them to have an adjournment to consider it.

**Mr WATKINS:** The ICAC is a new creature, not just the ICAC but others. In the last decade or so we have these investigative bodies that play a semijudicial role, and I think it is our responsibility as a committee and as a Parliament to ensure that people brought before those special Commissions are protected, and I have real misgivings as to whether witnesses are sufficiently protected when they come before the ICAC.

**Mr O'KEEFE:** The ICAC is in the nature of a standing Royal Commission. When one looks at the Royal Commission into the Police Service there was no question of witnesses who were being examined and cross-examined being apprised of the evidence that the Commission was going to use adversely to them before they had first given their evidence. If they are made aware of that at all, it was much later in the piece, and the Supreme Court said that was an appropriate way in which to approach an investigation. They said the same thing in relation to the things taken to the Supreme Court in respect of our hearings.

**Mr WATKINS:** That is why I raised earlier that issue of your demeanour and your vigour and your propensity to cross-examine from the chair, because in a normal court situation I understand one of the sacred tasks of the judicial arbiter is to protect the witnesses to ensure that their rights are fulfilled. And if the person that many witnesses would look to—that is you—for some protection is also involved in the cross-examination, often in a very vigorous manner against them, the witnesses, really, aside from a legal team that may be unprepared, are naked?

**Mr O'KEEFE:** Well, can I say this. I do not want to go into the past, but on many occasions that I have appeared before this Committee, you, Mr Watkins, have accused me of being too soft; now the argument is I am too tough. The only two people in my experience in all of the inquiries that I have held who have made the complaint that they

felt intimidated were Mr Gibson and Ms Nori. That is all I can tell you about that claim being made. If you would like to give me some names I will follow it up and I will have a look at the transcript to see what the situation is.

**Mr WATKINS:** I am trying to get you to look at the principle.

**Mr O'KEEFE:** What is the principle?

**Mr WATKINS:** Whether or not you in your semijudicial role -

**Mr O'KEEFE:** I do not agree with you. It is not a semijudicial role; it is an investigative role.

**Mr WATKINS:** But you also fulfil the role of being the judicial arbiter of what happens in your court.

**Mr O'KEEFE:** I do not. What I have to do -

**Mr WATKINS:** Who protects the witnesses if you do not?

**Mr O'KEEFE:** I am not there to protect the witnesses. I am there to get the truth.

**Mr WATKINS:** Who protects the witnesses?

**Mr O'KEEFE:** Those who are appearing for the witnesses are there to protect their rights. If they think anything is going too fast, they object. You can test the transcripts and you will find that that is a very rare occurrence, except, I might say, on the part of Mr Murphy in the Gibson matter. It did not occur in the Langton matter at all, not at all.

**Mr WATKINS:** That could be because of the legal representatives.

**Mr O'KEEFE:** I very much doubt that any of the legal representatives there would feel threatened. The principle of the bar is that they stand up for their clients' rights, and getting stuck into the person who is presiding is part of parcel of that.

**Dr MACDONALD:** After you had been served with a statement of claim in the defamation proceedings brought by Mr Gibson, you maintained that you could continue to hear the matter before you "without fear or favour, affection or ill will"?

**Mr O'KEEFE:** Yes.

**Dr MACDONALD:** What are the usual procedures when such situations arise, that is, where a person determining a matter is made a party to separate legal proceedings by the person whose case they are hearing? Can you provide the Committee with any examples?

**Mr O'KEEFE:** I have not got them in my head. There are a number of cases on that, and I adverted to them earlier. *Tectran v Raybos* I think was one of them. But there was one litigant in particular who specialised in suing judges, or threatening to sue judges, and then saying, "Because of that you have to disqualify yourself." the case law deals with that. What I said was in accordance with that case law.

**Dr MACDONALD:** Can you see the types of perceptions that may arise in situations where the adjudicator decides to continue hearing the original matter? What reasons did you have for continuing to hear the matter after the defamation action had commenced?

**Mr O'KEEFE:** You will find in the transcript the reasons that I have given. I set out a series of reasons and they are available in the transcript. I do not have them here.

**Dr MACDONALD:** What are your views on developing a protocol to cover situations where the Commissioner and a person appearing before the Commission become parties in separate proceedings, whereby the Commissioner would automatically step aside so as to prevent any potential apprehension of bias arising?

**Mr O'KEEFE:** Certainly, I would not be party to such a protocol. Consider this. If such a protocol were adopted, it would mean that anybody could start an action, however justified or unjustified, and thus knock out the Commissioner and then do the same, and the same, and the same, and the litigant I am talking about in the Supreme Court did it I think to 18 different judges. That means you never get a decision. The stratagem is quickly recognised as being one that fits within the protocol. It really is not quite as easy as that. Is a complex matter.

**Ms ANDREWS:** You did draw an analogy between a Royal Commission and the ICAC?

**Mr O'KEEFE:** Yes.

**Ms ANDREWS:** But might I suggest that there is a very big difference between the two bodies in that the ICAC is empowered to instigate an inquiry whereas a Royal Commission can do so only by authority from Parliament or legislation from Parliament?

**Mr O'KEEFE:** That determines the subject matter. However, remember that under our Act Parliament can refer matters, so that if you had such a reference the analogy would be almost complete. Secondly, the nature of the powers that the ICAC has are akin to those powers of a Royal Commission, that is, a witness can be required to incriminate him or herself, there is no legal professional privilege, et cetera. Thirdly, the powers of entry by way of search warrant or otherwise are there for both Royal Commission and the ICAC.

If you go back to the debates of 1988 when the Act was being introduced the very analogy that I have referred to was referred to in the second reading speech in the nature of a standing Royal Commission. There are differences. One of the differences is that a

Royal Commission comes in and can do things, and does do things, that if a standing body were to do them would be unacceptable. But that is the sort of short, sharp hit approach. That means that we have to be more circumspect about the way in which we have our procedures and exercise our powers.

The second difference is that a Royal Commission comes, delivers its report and it is gone. There is no mechanism in the Royal Commission situation for follow-up monitoring and the like. We do have that, and we find that a strength in ensuring that the recommendations, or a portion of them, are adopted and that the authorities to which they relate are given assistance in the implementation of those recommendations. The analogy is not complete, but it is fairly substantial if you look at the way in which the place operates and the powers that are exercised. That is what I am driving at, really.

**Ms ANDREWS:** But in making my point I feel that there is a very big difference, and it depends who the Commissioner is, and that is that they can instigate an inquiry, they have that power. I think that most Australians like to feel that people are given a fair go. I think we are renowned for that. So if you could just take off your hat as Commissioner for a moment, do you feel that the powers of the ICAC are very wide, and do you feel that they are really necessary in our society?

**Mr O'KEEFE:** I do think they are right. The more sophisticated the either crime or corruption becomes, and it becomes more sophisticated, the more you have need for such powers.

Next; the amendment of the Crimes Act so as to provide that the penalty for bribery should be lifted to seven years was a specific response to requests from agencies such as the ICAC that they should have access to the sophisticated investigative methods, listening devices and telephone intercepts. That was a recognition by Parliament, it seemed to me, of the seriousness of the matters that we were charged to look at and that as a consequence there was a recognition that we needed wide powers. That was only in 1996 that amendment took place.

If you look at the concept of determining to examine matters of our own motion that, as you will see from the other parts of our answers, is not a sort of gut feeling thing, it is quite scientifically done. We analyse complaints and reports, we look at problems and information we have been given and determine on the basis of that where it is likely that we will find or may find something.

That may not be the subject of a specific complaint but a specific complaint or specific information about a matter often is a window of opportunity that widens and widens as you look at the matter. They are the own motion type matters.

If it were not that, if you did not have that then there would be no point in having strategic analysis of the data you get, any one piece of which may not be of a great value but put together give you an indication of an area of concern at which one should look.

**Ms ANDREWS:** Just one final question, is the ICAC empowered to instigate an inquiry without receiving any complaint from anybody?

**Mr O'KEEFE:** Yes.

**Ms ANDREWS:** May I suggest that is a very very wide power.

**Mr O'KEEFE:** Yes, that is precisely what the Parliament provided. It did that, I gather, because you may not have a complaint but you may have information that comes to you that suggests that this is an area in which there is something you should look at. That is what the Parliament said and I think it is beneficial.

**Mr VAUGHAN:** Mr O'Keefe, in a matter such as the Gibson matter would you have sought the advice of the operations review committee at any time?

**Mr O'KEEFE:** In what respect?

**Mr VAUGHAN:** The conduct of the matter or how things were proceeding with the matter? Would you have discussed it at all with them? What role do you believe them to have with you?

**Mr O'KEEFE:** I did, in fact, discuss the matter with the operations review committee. I do not want to go into the details of the discussion. I did seek advice on two matters and I think one of them was not directly, but had an effect, upon that matter.

**Mr VAUGHAN:** Would you have taken their advice in an instance or you were using them as a sounding board?

**Mr O'KEEFE:** I first used them as a sounding board and asked them to consider the matter and tell me what they thought. If they happened to be of one mind I accepted that. Since I have been Commissioner there is no case in which I have rejected the advice of the operations review committee.

**Mr VAUGHAN:** I believe that to be the case. A matter occurred to me a minute ago, we received evidence from a former member.

**Mr O'KEEFE:** Mr Brezniak.

**Mr VAUGHAN:** Yes. He, of course, gave evidence to the effect that the one instance where he recalled the advice had not been accepted by the then Commissioner was in the matter of a deceased judge.

**Mr O'KEEFE:** I can not help you on that.

**Mr VAUGHAN:** He helped us a lot.



**Mr O'KEEFE:** Can I raise, Mr Chairman, we were assured at the ICAC that the evidence given before the committee in relation to the amendments to the act would be given to us so we would have an opportunity to see it and see if we need to respond. We have not received that, so I am at a disadvantage as to whether it was accurate or not or what was involved.

**Mr VAUGHAN:** I remember it made a few of us feel at the time, as you quite rightly put it a while ago that everybody is equal before the Commission, that perhaps judges are not. When the Commissioner receives that information perhaps he could remember it because I would like to ask him what he thinks of it in time.

**Mr O'KEEFE:** Since that time the judicial Commission has been constituted and we have memorandum of agreement with the judicial Commission as to the nature of the matters we will refer to them and for what purpose, but I can not help you on this.

**(Luncheon adjournment)**

**(Evidence continued in camera)**

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(Short adjournment)

**CHAIRMAN:** Commissioner, you have a short dissertation you wish to present to us. What I propose to do is that a couple of Members might have particular questions on the Einstein and other related matters but in the meantime people may ask you questions in the more general items you do not refer to in your general dissertation. At 4.15pm we would like to go into in camera to take up your offer to discuss the listening devices aspects and then we will close after that.

**Mr O'KEEFE:** Chairman, ladies and gentlemen, since the last time the committee met the Commission has been engaged in completing the Aroo inquiry, which is a major inquiry into the state rail system. Operation Zack which was concerned with Aboriginal land councils. It has continued with Operation Cadix which is concerned with the prison system which, for budgetary reasons in particular, it has segmented and is seeking to implement reforms in relation to particular areas as we proceed. Of course it has dealt with, in part, parliamentary travel and is continuing to deal with that.

The Aroo inquiry revealed major corruption in the former state rail authority. The hearings were focused not merely on corruption but provided a forum for the chief executive officers of each of the new rail organisations, SRA, RSA, RAC and Freight Corp to respond to the initial parts of our inquiry by outlining their preventative strategies and demonstrating what I believe is a genuine commitment to improving the ethical standards and standards of probity in their management strategies.

It will be easier for some of those agencies than for others. It will be harder, I think, for the SRA and for Rail Services Corporation. They are big organisations and they have inherited a lot of personnel from the past. One should not expect that the writing of a report and the adoption, and continuing adoption, of the recommendations will immediately eliminate corruption. There will still be opportunistic events and there might, I hope not, be worse than that. What is clear is that the reporting systems in those organisations, in relation to such matters, are much improved as a result of the impetus given by the inquiry and because we adopted an approach of seeking both to expose and cooperate to overcome we have not had that iron curtain pulled down repelling any attempt to change the organisation.

The implementation of the 26 recommendations in Operation Zack has been already embraced by the New South Wales Aboriginal Land Council and of our recommendations more than half are already in the course of implementation and we are assured of the implementation of almost all of the others. I think there is one that is outstanding about which there is some discussion.

The Commission has taken the view that it is important to involve the elders and local Aboriginal land councils in the implementation scheme and 26 centres have been chosen to which our Aboriginal liaison officer has been going in order to explain the report and the recommendations to the members of the local land councils. I have been going to a number of those to stress the Commission's commitment and my commitment as Commissioner to the success of that scheme. If it succeeds, as I believe it will, it should ensure that money that is presently being diverted to particular groups or individuals will be available to be expended for the benefit of all the members of the land council system.

They are, I might say, a small proportion of the total Aboriginal population of New South Wales but, nonetheless, they are a proportion to whom specific funds are allocated and as at the end of this year with the sunset provisions in relation to State funding it is important that the money be well spent.

Operation Cadix has been a difficult matter. It is very difficult to get material from either prisoners or prison officers but for reasons that we discussed this morning and with approaches that I adverted to we have had some high degree of success there. Importantly Minister Debus and his Commissioner, Dr Kellaheer, are fully committed to reforming that system and there is no doubt in my mind that that commitment is a genuine one. So that at the political level, Minister, and at the level of top administration we have won the hearts and minds.

The recommendations that are coming forward serially in each of the segments are being implemented. There are some other segments coming but the last one will be the general overview of administration and implementation of strategies to improve the situation. That will not be until next year but we will have a number of reports prior to that.

The parliamentary travel, I have adverted to that in passing and I do not want to say much more about that, except to add that the Government has, through the Premier, indicated his support for a reform process. The amendment to the Parliamentary Remuneration Tribunal Act to give extra powers to that tribunal and to implement amendments of the kind to which we refer as being necessary or appropriate in the report has already been done. I do not know whether it has been assented to yet but I understand it has passed through both houses.

If one looks at the out reach in to the community and the public sector each of the RTA, SRA, RAC, RSA, Freight Corp and TransGrid have asked assistance from the Commission in relation to seminars and presentations for their senior management. Mr Christie, who is the chief executive of the RTA, has himself identified with those and he and I have done a series of presentations in various areas. I am doing one tomorrow morning, first thing, in Newcastle about that. There is no question of the commitment of that organisation. It had a very bruising experience under my predecessor but has responded positively.

I have done the same thing with each of the railway organisations. Mr Gifford and his crew from corruption prevention have been proceeding with TransGrid and more and more we get agencies coming to us to provide teaching for their teachers and presentations for their senior executives. They are really making ethical behaviour part and parcel of their procedures and every day teaching; renewal in service training.

We have had considerable success with the surveillance unit. Other agencies, the New South Wales Police Service and the AFP, have used them when there is a gap in our use of them and I have had very high praise from the AFP and the New South Wales police about the quality of the work and their dedication to the work that they are assigned to.

In the local Government area, as the papers indicate, we have organised a series of seminars, both on protected disclosures and on matters relating to the relationship between elected persons and appointed officials and they have been very successful.

There is a thirst for knowledge about the ICAC in the general community, both in the English speaking and the non-English speaking. Our non-English speaking background out reach has been a gradual process. We now have material in 12 languages. We had a Chinese delegation visiting us recently and when they saw the Chinese ones they were keen to get hold of them. They were asking; how do you make things attractive to get people to read them? They took those.

I am constantly asked to address community groups. That is normally done of a night. I think 30 in the last period of time. It is a question of doing your after hours work but I think it is an important out reach to the community so that they will understand what we are doing and why and how the community fits in; measures in with our work.

We have formulated a new corporate plan for the years 1998-2001 which describes a more integrated application of our functions so that we do not

compartmentalise as much as used to happen in the past although, I must say, has not been happening very much over the last couple of years. That is not yet in final printed form but as soon as it is we will forward it to the committee.

There is one area that I think is of concern to me, that is, the resources question. As you will see from the papers our complement is 135.5 employees. The make up of that is as per the papers. That is, down from a nominal 156 when I joined the Commission. We did not actually have 156 but effectively, prior to Mr Temby leaving, we had had in the order of 148, I think it was. The reduction is a reflection of the reduced budget that we have had over the years. There is no question but that the staff has responded to this by working harder but there is a real question about asking too much of people over too long a time and the prospect of burn out and I have had to take steps to ensure that, so far as one can as a manager, that that does not occur. It is mirrored in people not taking leave, losing flex time and all that sort of thing.

Despite that morale is very high and that, I think, is a product of what the Commission staff see as a lot of material being produced, a lot of investigations proceeding, a lot of reports being published, a lot of corruption prevention work being done and increasing recognition, both within the Australian community and the overseas community, of the standing of the ICAC.

There is one particular matter I should mention and that for me probably was a very high point, that was the invitation to attend the meeting of the 10 experts in the expert group convened by the Commonwealth secretariat in London in May. If I live another 25 years, which is possible I suppose, it is very unlikely that I will attend a conference which was of such high level and so productive, productive in a way that is likely to impact upon Australia.

The conference was about formulating advice for the finance Ministers of the Commonwealth nations, the 54 nations, for their Ottawa conference in October, with a view then to formulating a final report for the CHOGM meeting which is to take place in 1999. The thrust of it was to find strategies that could be entered into, probably a multilateral treaty. The signatories would be then committed to implementing corruption prevention strategies in organisations in their countries.

The model of the ICAC in New South Wales was the forefront model. Our experience was an experience which was regarded as important as an input. The contribution that I was able to make was assisted very much by the staff who were back in Sydney but had done a lot of work with me before we went. I think New South Wales came out of that conference with a very high standing and that reflects itself, so the Premier tells me from time to time, in investment confidence in New South Wales. That people actually come here because they say this is a place where you have got a set of rules. It is not who you know and what party you contribute to but whether you have got a good proposal and a good price. Not only do we have those rules but we have a body whose function is, in part, to make sure the rules are adhered to. That gives investor confidence. That is a spin off of the work we do. The Premier has been using that as a selling feature as against our southern rival.

**CHAIRMAN:** I would like you to comment more on that.

**Mr O'KEEFE:** He rang me one day, there was an investment, I think he said \$200 million or \$250 million that came for the establishment of a port facility at Botany and it came here because of events that they did not like, and would not be part of, they came to New South Wales and they expressed those very reasons I have just said. They are intangibles but it is very heart warming, for a place such as ours which often has to see the sort of things that go on in the community, or the things that are complained about, that there are some positives that come out as well. The corruption prevention and education is beginning to bear fruit in the public sector very much. Certainly it is the world trend.

**Mr VAUGHAN:** Mr O'Keefe, you and I had a jocular exchange about listening devices and how you would get in to this building and I suggested you try Hospital Road.

**Mr O'KEEFE:** You did. I noted it down. But every time I have come in there has been a person there.

**Mr VAUGHAN:** He would allow you in.

**Mr O'KEEFE:** I would not know what to do with a listening device.

**Mr VAUGHAN:** You might perhaps take an instruction book along with you. A public official, of course, in the definition of the act, is a member of the legislative council or legislative assembly.

**Mr O'KEEFE:** Includes.

**Mr VAUGHAN:** I notice in section 23, the power to enter public premises, that you can enter and inspect any premises occupied or used by a public authority or a public official. I was just wondering, could you explain to me, I am really doing this in a fashion, where is the provision here that Parliament is exempted from your power of entry?

**Mr O'KEEFE:** It is not, but our practice is this.

**Mr VAUGHAN:** You have a practice?

**Mr O'KEEFE:** Oh, yes. I have a practice, and this is what the Commission applies whilst I am there. The privileges of Parliament are an important part of our system. Not all of them are written down. In fact, most of them seem not to be written down but to be understood and expressed in an understanding of how the House of Commons worked and what has been inherited here.

The House is, in my view, rightly jealous of its function and protective of its function and members. Thus, when we are looking at the question of service, or perhaps



inspecting records in a member's parliamentary office, I think you will find that that was not done at the time when the House was sitting, and that was by direction. We waited until the House had risen so there could be no suggestion that what we were doing was interfering with the ability of the member in the House.

**Mr VAUGHAN:** You would have been sprung, discovered.

**Mr O'KEEFE:** But you do this openly. You ring up and say, "How is such and such a time?" Most of the Members say, "Could you make it an hour later and I will be there?" This was the way it was always done. This was no question of picking the lock of somebody's place. The people were there, and/or their employees were there, and that was true whether it was the parliamentary office or the electoral office, as in some cases were gone to for the purpose of looking at these records.

So that whilst the Parliament is not exempt and parliamentarians are not exempt from the powers—they are expressly defined to be in them—in the exercise of those powers we are tried to respect the privileges of the parliamentarians, the privileges of the Parliament and the position of the House as the seat of the Parliament.

**Mr VAUGHAN:** It begs another question. That could probably suggest to me that if perhaps one of your officers failed to respect the unwritten rules about Parliament House, and therefore some Member was prejudiced, it would be necessary probably to get a declaration from the Supreme Court that that chap, or that person had gone beyond what is considered the unwritten privileges of Parliament.

You see some interesting things have happened in my time here. For example, this building does not pay council rates, but every Member of these two Houses is obliged to pay a parking fee because a previous Government some years ago decided when a parking levy was imposed on the central business district of Sydney that they must pay it, despite those privileges that you were speaking about and which I certainly believe in. I note that the *Daily Telegraph* yesterday referred to the prices we pay for beer as a parliamentary privilege—not in inverted commas, I might add.

You see the problem we are faced with. You have this access, that and this, and you tell me we all respect the privileges of Parliament. I want to know, if you would please help me, if you have a person employed by the ICAC who does not respect the privileges of Parliament how you could control that situation. Some of the members feel they have been bugged in this building by the ICAC, rightly or wrongly.

**Mr O'KEEFE:** I would like to know the specific details of that and I would like to know what it was that was said was done.

**Mr VAUGHAN:** The happy position is that I am asking the questions.

**Mr O'KEEFE:** I understand that, but you also added an addendum to it. Two things. First, the Parliament itself may act to deal with a person who acts in contempt of the privileges of the Parliament.

**Mr VAUGHAN:** But the damage has been done by then.

**Mr O'KEEFE:** That is always true with a wrongdoing that is being punished. You have asked me to postulate that the wrong has been committed, so I am saying that one way of dealing with it is that the Parliament deals with that person as a contempt. The second way is that if that matter were drawn to my attention and the person had disobeyed instructions and the standing proceedings in relation to that or any other such matter, then that person would face disciplinary action, but the severity of that would be different depending upon the person's service, upon a whole patina of factors.

**Mr VAUGHAN:** But the damage has been done. We have to get over it somehow or other.

**Mr O'KEEFE:** But that is always true in the case that you have asked me to postulate. How do you prevent it? One way you prevent it is by having the protocols and instructions and ensuring that people act together. That means that two people have to do it.

**Mr VAUGHAN:** An amendment to the Act is the best way.

**Mr O'KEEFE:** An amendment of the Act would involve——

**Mr VAUGHAN:** Exempting Parliament House.

**Mr O'KEEFE:** Exemption of parliamentarians——

**Mr VAUGHAN:** Parliament House.

**Mr O'KEEFE:** That is a matter for the Parliament.

**Mr VAUGHAN:** I am not suggesting it is a matter for you. I am just proffering that.

**Mr O'KEEFE:** It is not a matter on which I would comment, but I suspect that the very newspaper that you referred to would print something on it.

**Dr MACDONALD:** Did the ICAC place listening devices in Mr Gibson's office in Parliament?

**Mr O'KEEFE:** I do not propose to answer that. It is operational.

**Dr MACDONALD:** We asked for specific details.

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

**Mr WATKINS:** You did talk about how you would ring up and make arrangements with parliamentarians to pop in when it was convenient.

**Mr O'KEEFE:** That is a procedure about inspecting their records.

**Mr WATKINS:** But the ICAC has the power and, indeed, takes part in covert searches of documentation in offices?

**Mr O'KEEFE:** That is not so. That is absolutely untrue. We have a power under section 23 to enter and we have a power to obtain search warrants or to grant them. I never grant search warrants myself. We get them from a judicial officer, and, if we are going to search premises, that is the way it is done.

**Mr WATKINS:** It comes from a Supreme Court judge?

**Mr O'KEEFE:** It may come from a magistrate.

**Mr WATKINS:** It gets a search warrant but somebody has to be there?

**Mr O'KEEFE:** We invariably arrange for somebody to be there.

**Mr WATKINS:** So you do not enter into premises covertly?

**Mr O'KEEFE:** No, when we get a search warrant and when we get a section 23 notice we make arrangements to enter those premises for the purposes of making a search of the records. A search warrant entitles you to take the records away; a section 23 notice does not entitle you to take those records away; it entitles you to check them and to copy them. The process is done upfront.

**Mr WATKINS:** So whoever it was against would know you were coming specifically for that.

**Mr O'KEEFE:** Absolutely.

**Mr O'FARRELL:** Except during Becker I think we had evidence from at least one member of Parliament saying that the phone rang and as he put it down from the ICAC advising that they were on the way they were at the bottom of the stairs.

**Mr O'KEEFE:** I would like to know who that was because I doubt that to be correct. If you could give me that name—and if I had got that transcript I would have been in a position to deal with it.

**Mr O'FARRELL:** This is the transcript of the Becker inquiry, which I read at the time with great interest, but I will get you the reference later.

**Mr O'KEEFE:** I am reminded by Mr Feneley that it is possible to get a covert search warrant. It is not something we have done.

**Mr WATKINS:** So you have not done it?

**Mr O'KEEFE:** No.

**Mr WATKINS:** But with listening devices—they are a different creature—you get permission from a magistrate?

**Mr O'KEEFE:** No, under the Listening Devices Act that must come from a Supreme Court judge. If you are looking for a telephone intercept that must come from a Federal Court judge, or now a member of the Administrative Appeals Tribunal from 1 May 1998.

**Mr WATKINS:** So telephone bug, Federal judicial person; other listening device in a room a Supreme Court judge?

**Mr O'KEEFE:** Yes.

**Mr WATKINS:** And with those, obviously, the person being targeted does not know that they are in place?

**Mr O'KEEFE:** We certainly do not ring up and say, "Do not use this phone. There is a tap on it", although people do say, "Perhaps this phone could be bugged. We should not be talking on this phone", and they go ahead and talk on it.

**Mr WATKINS:** And Parliament is not exempt from listening devices, either on the phone or other listening devices being applied to a member's office?

**Mr O'KEEFE:** No.

**Mr WATKINS:** Does not that bring you into conflict with the privileges of Parliament if that listening device is on during a parliamentary sitting?

**Mr O'KEEFE:** No, but you make an assumption.

**Mr WATKINS:** Presumably if you do bug a room you might want to bug it while the member is there. Why does not it come into conflict with the privileges of the House?

**CHAIRMAN:** Is the Commissioner not saying to you that this does not happen?

**Mr O'KEEFE:** But there is a restriction under the warrants that are issued as to the material that you may use. Let us make an assumption that a Minister's office is bugged.

**Mr WATKINS:** In Parliament?

**Mr O'KEEFE:** It does not matter where it is for the moment because the same sort of restrictions apply to both listening devices and telephone intercepts. You can only

use that material that is germane to your inquiry, and the other material has to be destroyed, and we then have to report on that material when the warrant comes to an end, so you are restricted in what you can use.

**Mr WATKINS:** Who do you report to?

**Mr O'KEEFE:** The Federal Attorney-General, the State Attorney General and other authorities.

**Mr WATKINS:** So if you picked up issues not related to your inquiry, that were criminal, for example, it would be your duty to tell the Federal Attorney-General?

**Mr O'KEEFE:** Criminal matters are. I have not been through these Acts recently but on any application for a device or intercept the Attorney-General can intervene either to prevent it or to have conditions imposed. Secondly, if the material which comes from that reveals a criminal offence—it has to be an offence that bears a penalty of seven years or more—then we can disseminate that, and would disseminate that, to the appropriate police authorities, Federal or State. Other matters not germane to our inquiry are to be destroyed, and that is the protection that both parliaments have built into that legislation.

**Mr WATKINS:** That brings us to the situation of whether or not that material is destroyed. I am not saying that the ICAC does not destroy it, but information that has been gained covertly over the past 20 years, there is a history in this country of it finding its way out.

**Mr O'KEEFE:** That is always the fear, but the existence of the legislation itself tends to make that less of a fear. When things can be done in accordance with law, most people will do them in accordance with law. That is number one. Number two, my own view of that legislation is that it is doubly incumbent on a place like the Independent Commission Against Corruption to apply the law very strictly. And, finally, there is a check on these things.

The Ombudsman has the right, and exercises it regularly, to inspect our records in this respect and to go right through them, and that is done twice a year for telephone intercepts and much more frequently for the listening devices, and there is a similar provision made in the legislation that deals with controlled operations where the Ombudsman has a function there as well.

For instance, I can tell you one case that springs to mind. We were a day late for a reason I now do not remember in reporting to the Federal Attorney-General on the termination of the warrant. You can bring them to an end earlier than the time specified in the warrant. The Ombudsman was in touch with me about that. So it is not just a formalistic thing; they really perform that function with great assiduity. So that is another protection.

**CHAIRMAN:** In the course of inquiries that involve parliamentarians, if you use listening devices and other intercept devices, you would collect a lot of material that was not germane to the inquiry, political material and what have you. What happens to that? Do you destroy it?

**Mr O'KEEFE:** If that occurs, it would be incumbent on you to destroy it.

**CHAIRMAN:** But that is the policy?

**Mr O'KEEFE:** It is not only the policy; it is the law. And it is certainly the policy to apply the law.

**CHAIRMAN:** And that is for other material as well?

**Mr O'KEEFE:** Absolutely.

**CHAIRMAN:** So anything that is not germane to the inquiry gets burned?

**Mr O'KEEFE:** I am not sure how it is destroyed. I think the method of destruction is electronic and physical as well. But you also have to report what it is—did you obtain material that was germane to your inquiry and did you obtain material that was relevant to some criminal offence of that relative importance, that is seven years or more. Can I say that listening devices and telephone intercepts are expensive to maintain and it is contrary to what one sees on the television. You may listen for three and four days and finish up with two critical sentences. They may be critical, but you may also listen for three or four days and have nothing but chatter and it is destroyed, and it is about the most boring job in the Commission for those people who are monitoring that.

**Mr BECK:** I want to change a little bit of direction here and ask a couple of questions which I feel are fairly pertinent. What would you be able to tell the Committee is the total cost for preparation for the annual review to this Committee?

**Mr O'KEEFE:** The annual review or the six-monthly review?

**Mr BECK:** I will multiply it by two if you tell me six-monthly.

**Mr O'KEEFE:** The same question occurred to me when all these questions were being dealt with. The answer is could I take that on notice because it has not been compiled yet?

**Mr BECK:** I wanted to know since the ICAC has now been operating since 1988 to 1998 what variation there has been each year. Is it getting dearer and dearer as we get further down the track in the ICAC?

**Mr O'KEEFE:** I cannot answer that question. I do not have a datum against which to measure.

**Mr BECK:** Is there any way that you would feel that this could be streamlined so that we could continue to have the ICAC but get better efficiency out of the dollars and cents allocated to you by the Government of the day?

**Mr O'KEEFE:** If one is speaking in terms of reporting some things take more time and effort than others. But if one looks at the type of material in this large bundle here, most of that finds its way into annual reports, not necessarily in the form in which it is asked here. I do not know what happens in other committees, but I do not see any reason why these sorts of questions ought not to be asked and answered. That is part and parcel of the accountability that this Committee is in charge of for the ICAC. That will always be at a cost. All compliance is at a cost.

What I am trying to find out is the percentage of that. I suspect it is reasonably high. We have had six or seven people working on these answers to get them together over a period of nearly a month. I do not say that they were doing it all the time, but a good part of their time was involved, and that is a fairly substantial cost.

**Mr BECK:** Can you also take on notice and give a report to this Committee how this could be streamlined because if you look at the amount of manpower and dollars I think it needs streamlining?

**Mr O'KEEFE:** I would certainly like to take that on notice.

**Mr O'FARRELL:** Page 21 of your questions on notice refers to advice on corruption minimisation work, and listed amongst the advice work as examples of major pieces of advice you are going to take us to were the tender for the remediation of landslides at Thredbo to the National Parks and Wildlife Service and the sale of Eastern Creek Raceway, which I had not understood the Government had announced yet. When will the ICAC get out of this business and stop providing New South Wales bureaucrats with an excuse to slow things down?

**Mr O'KEEFE:** I do not propose to get out of giving advice to government agencies. Secondly, far from slowing things down these sort of advices tend to make things work more smoothly. Thirdly, it is much better in my view to draw the attention of the authorities to the principles that need to be applied before they take the step than wait until they have done it and then say, "Gotcha". Then what happens is, if there is an inquiry, particularly if there is a public hearing that really does hold things up until the public hearing is finished.

If you, for instance, look at Olympic bus contracts from the Olympic Roads and Transport Authority, that was a very big contract, several tens of millions of dollars. The questions there were questions relating to whether or not you had selected tendering, whether you had persons who had dealt with the formulation of the specification taking part in a subsequent process. The way in which the adjudication method should take place. All of those things really are systems things and I think it is valuable. There are occasions when you have to revisit the area, and if the facts have changed then you have a revisit the adviser. If you have been told that X, Y and Z are the facts and they are

nothing remotely like the facts two things flow from it: You are going to have a look at that; why were you told that? Secondly, how did the chief executive allow you to be told that. So I still think it performs a very valuable function.

**Mr O'FARRELL:** I have no doubt that overall it performs a valuable function, but my concern is that it does not operate more smoothly if time and time again the same bureaucrats and the same departments come back. I draw you to the Olympic bus contracts. What you have done in relation to the Olympic bus contracts is say that what ORTA has done with the Olympic bus contracts is no different from what the Department of Transport did six or seven years ago with private bus contracts and the Night Rider bus service.

When will you say to bureaucrats, "We have told you before the principles", you start applying those principles, and if there are problems you can rightly ride in and conduct a investigation. As you know, my concern is evidenced best in my view by Walsh Bay where the bureaucrats involved, in my view—it is a different view from yours—went window shopping to the ICAC at each stage to have it signed off. When concerns are raised the ICAC is hamstrung from investigating in my view because you are not seen to come to it with clean hands?

**Mr O'KEEFE:** But we did not sign off.

**Mr O'FARRELL:** But that is what the perception is.

**Mr O'KEEFE:** I do not care what the perception is. It may be your perception, but it is neither fact nor is there any basis in fact for such a perception. In fact, we looked at that much more because three complaints were made but from a particular source. As I have said in my answers here, I distanced myself from that matter because I knew the complainant and I did not want it to be thought that the complainant was getting special treatment because he happened to know me. But if you look at the general principle, these are a very small number. We get hundreds of calls.

**Mr O'FARRELL:** That is what worries me.

**Mr O'KEEFE:** Mr Gifford's staff say, "Look at trips and traps, our sponsorship principles, our tendering principles. I will send you out a copy of this book," et cetera. But there is a another problem that occurs, too. In authorities like those dealing with Olympics you have a breed that comes from outside the public sector who have no corporate memory, as it were, of all these things. Also in the turnover that takes place in the public sector there is an element of that. So you need to at the one time husband your resources but at the same time make sure that people are actually looking at the things that happened in the past and have been given some pointers as to how they should look.

**Mr WATKINS:** This Committee has heard from a high profile witness, and I have certainly heard it from senior bureaucrats outside, that, in fact, because of what Mr O'Farrell is saying, that tendency to send things off, and because of the perception that the ICAC is causing decision-making to slow down in government that is having an



impact, first, on government decision-making and, second, on business desirability in New South Wales, which is contrary to what you said earlier and what I have heard the Premier say, but a well-respected, high profile business person in the city has said that it has frightened business away, that there are too many hurdles to jump. The system is constipated, I think was the language that was used. Do you have a reaction to that?

**Mr O'KEEFE:** Last year, I think it was, I organised a two-part series. I addressed the Institute of Public Administration Australia about that very question, of whether or not the existence of the ICAC caused paralysis. I can send you copies of the papers. At each of those we had, I would say, more than half the public sector heads present. Our follow up to that rather dispelled the notion that we, as we are now, are causing such a problem. There is no doubt that there are some bureaucrats who will use the ICAC as a reason, if we were not there they would use something else as a reason, there are some bureaucrats that do not like making a decision, it is easier not to make a decision. You will find the turn around time in the Commonwealth is no faster than the turn around of the equivalent matters in the State of New South Wales.

Thirdly, the perception of business is, at best, individual. Some of the big contractors in particular say that there being a set of rules, they know where they are and they know how to approach them and that speeds the process up. Contracting, in particular in the building field, is one such area.

I do not know who the high profile person who gave evidence was but there is one high profile person who, over time, has constantly said, this is wrong, you should not be doing this, you should not be doing that, that was Mr Sturgess. Mr Sturgess has not had any experience of the ICAC for a long, long time.

**Mr WATKINS:** It was not Mr Sturgess.

**Mr O'KEEFE:** That was one. A high profile may not mean very much, it depends on experience.

**CHAIRMAN:** Keep going Commissioner.

**Mr O'KEEFE:** That is all.

**Mr WATKINS:** I have another question of listening devices.

**CHAIRMAN:** We are going to go in camera about that.

**Ms ANDREWS:** With the Bayeh-Gibson and the travel warrants investigations, were they instigated by the ICAC?

**Mr O'KEEFE:** You mean were they done of our own motion or pursuant to a complaint?

**Ms ANDREWS:** Or were they done of your own accord, the ICAC's own accord.

**Mr O'KEEFE:** We had information that was given to us that caused to us to do that. It was not a reference from the Parliament and it was not a section 11 report, we were given information that caused us then to look at that matter.

**Ms ANDREWS:** Just quickly, Mr Chairman, looking at page 13 of the on questions on notice, again looking at the figures, section 22.

**Mr O'KEEFE:** Yes.

**Ms ANDREWS:** I notice the highest figure under section 22, 90-92, 331.

**Mr O'KEEFE:** I have got it.

**Ms ANDREWS:** 297. Again, I think they are very high figures, could they be attributed to the Bayeh-Gibson and the travel warrants cases?

**Mr O'KEEFE:** No. 1992-93 is directly related to the Milloo inquiry that was proceeding at that time.

**Ms ANDREWS:** I notice that was a high one there.

**Mr O'KEEFE:** 1997-98? The answer your question is, no.

**Ms ANDREWS:** Can you give me some idea as what contributed to that high figure? I consider it a high figure.

**Mr O'KEEFE:** Could I deal with that in camera? I do not want to telegraph. It is an ongoing investigation.

**Ms ANDREWS:** I guess the entering premises figure, section 23, I guess the rather high figure for that goes hand in hand with the section 22, does it?

**Mr O'KEEFE:** No. There is no necessary correlation there. In fact you tend only to use section 23 if you do not get the material under section 22. Sometimes you will use section 23 because the nature of the material is such that you want to see it in situ, in the order in which it is in a file, for instance, a Government file or a departmental file, if reproduced and dismembered may not tell you as much as seeing it in the form in which it is actually in the file.

**Ms ANDREWS:** What contributed to the high figure for section 23 in this last period?

**Mr O'KEEFE:** I can not tell you that. I can not tell you a specific operation.

**Ms ANDREWS:** Am I able to put that on notice?

**CHAIRMAN:** If the Commissioner accepts it.

**Ms ANDREWS:** Would I be able to put it on notice?

**CHAIRMAN:** Or you can consider it.

**Mr O'KEEFE:** I would like to consider that. If it has occurred? It has occurred. We have been in. Of course, I can tell you. It is where we have not gone in that is the problem. I think all of those would have been cases where we have executed the notice. The answer is, yes. I will take it on notice if I may.

**Mr LYNCH:** Mr Commissioner, the reports in Aroo and the railways and transcripts that have been very positive, positive investigations, positive reports, positive results, no particular criticism of them, neither of those involved, as I understand it, public hearings.

**Mr O'KEEFE:** All of them did.

**Mr LYNCH:** Did they have public hearings?

**Mr O'KEEFE:** Absolutely. In fact in Aroo there are four separate matters each subject of a public hearing. Each one of them. The reason that they are a report to the Parliament is that we have bound under our act when we have a public hearing to report to the hearing.

**Mr LYNCH:** That stops the rest of the question.

**Dr MACDONALD:** Can I ask one esoteric question. Mr Commissioner, do members of Parliament inherently have a conflict of interest when asking questions relating to parliamentary investigations such as Langton, Gibson and Einstein? I am concerned that we are not in a position to be objective about it because there may be some inherent political prejudice that comes into it. I am not seeking a solution from it. Do you acknowledge the question?

**Mr O'KEEFE:** I understand the question. The answer to that question, which is, if I may say so, a good question, that may be so. Secondly, perhaps even more difficult to deal with is that it may be perceived to be so. When you get in to the area of perception then your judgment and my judgment and somebody else's judgment may all differ, and honestly differ, and I think that is a real problem with that area of the law. Whether it is actual or not is only known in the heart of the individual.

**CHAIRMAN:** Thanks Commissioner. If all visitors could depart we will go on to in camera for a brief period of time on listening devices.

**(Evidence continued in camera)**

**(The witness withdrew)**

**(The Committee concluded at 4.25 p.m.)**

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**REPORT OF PROCEEDINGS BEFORE**

**COMMITTEE ON THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION**

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**At Sydney on Thursday, 9 July 1998**

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**The Committee met at 2.00 p.m.**

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**PRESENT**

**The Hon. I. M. Macdonald (Chairman)**

The Hon. D. J. Gay

Ms M. Andrews  
Mr P. G. Lynch  
Dr P. A. C. Macdonald  
Mr B. R. O'Farrell  
Mr J. A. Watkins

**BARRY O'KEEFE, AM QC**, Commissioner, Independent Commission Against Corruption, GPO Box 500, Sydney, on former oath:

**(Evidence continued in camera)**

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(The witness withdrew)

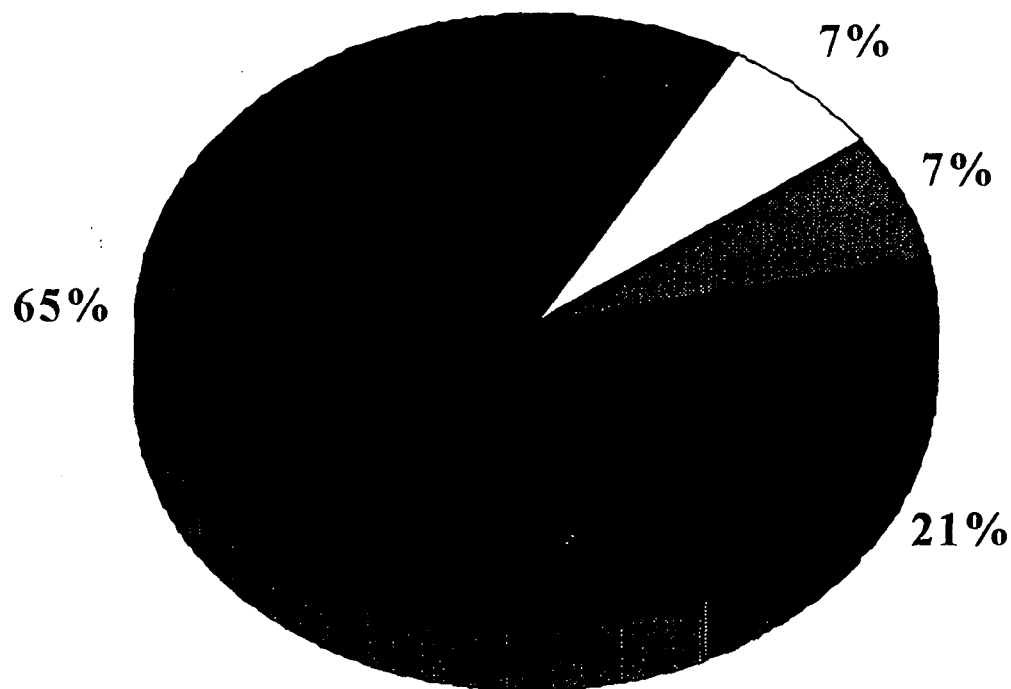
(The Committee adjourned at 4.05 p.m.)



# **Appendix A**

# CATEGORISATION OF MATTERS RECEIVED BETWEEN 28 NOVEMBER 1997 AND 1 JUNE 1998 (inclusive)

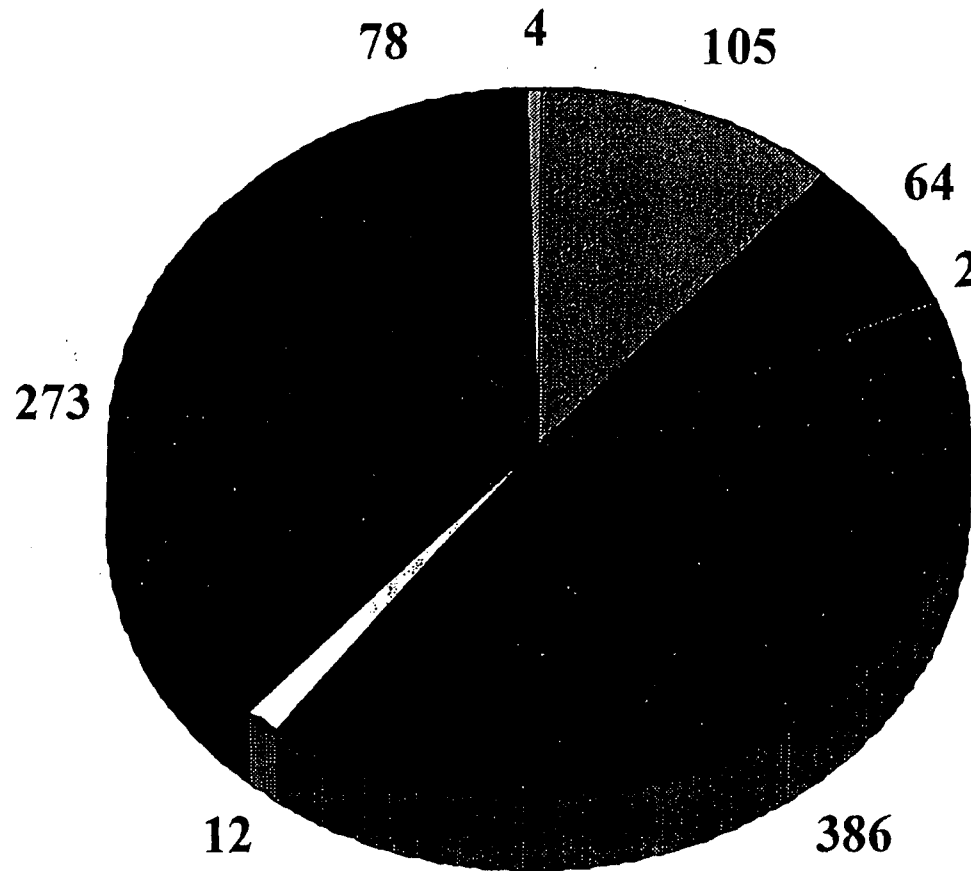
Total - 924



- **Immediate Closure:** the matter is within jurisdiction but does not warrant Commission attention because it does not indicate a reasonable likelihood of involving corrupt conduct nor provide an opportunity to the Commission to advise on relevant systemic or preventative issues.
- **Preliminary Enquiries:** enquiries are warranted by the Investigations and Corruption Prevention Units because the matter falls within or may fall within the terms of reference of a current formal investigation.
- **Outside Jurisdiction:** the matter is or appears to be outside jurisdiction.
- **Initial Enquiry:** the matter should be the subject of some initial enquiries before a determination can be made.

**CLASSIFICATION OF MATTERS RECEIVED  
BETWEEN 28 NOVEMBER 1997 AND 1 JUNE 1998  
(inclusive)**

**Total - 924**

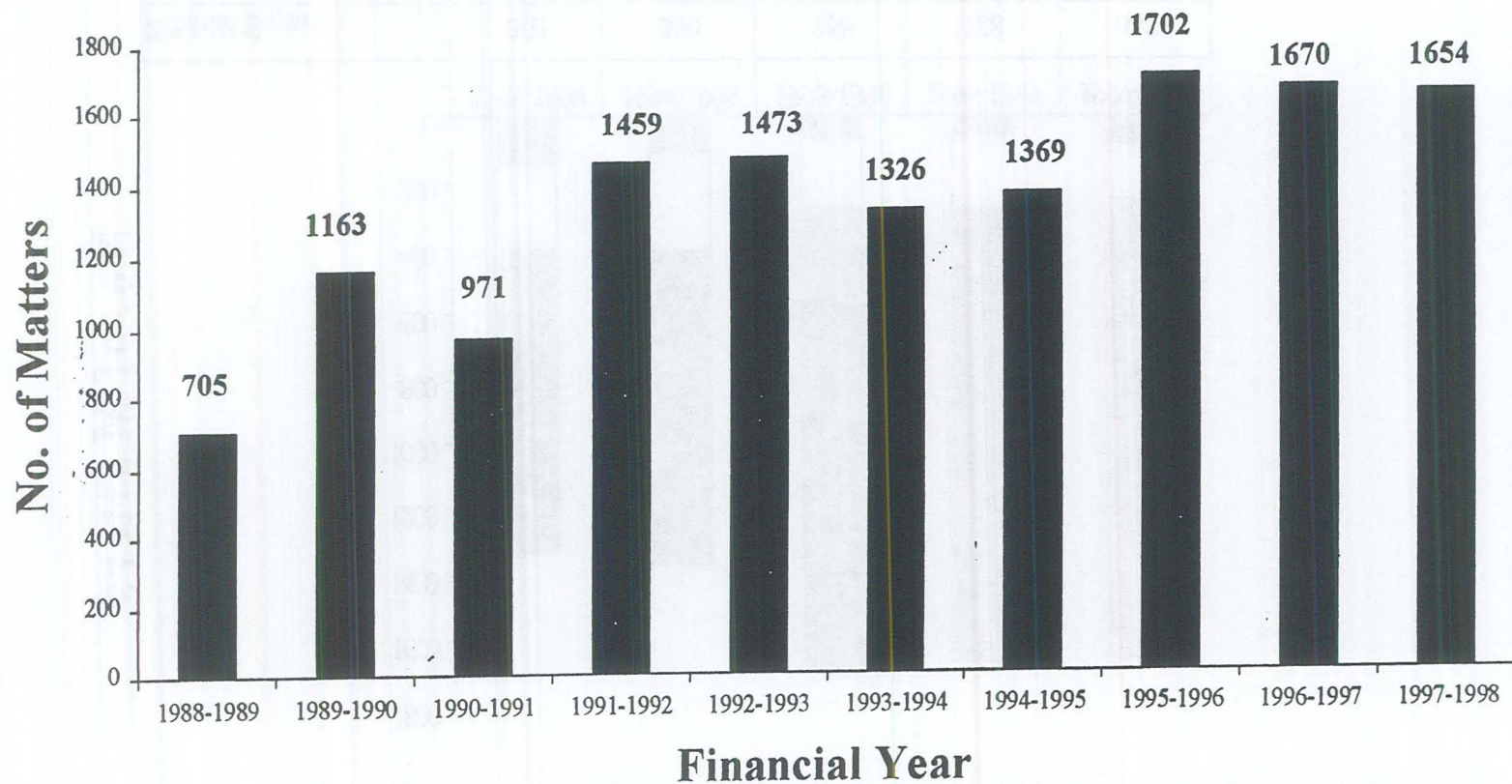


- Protected Disclosure
- Outside Jurisdiction
- Dissemination
- s.10 Complaint
- Inquiry
- s.11 Report
- Information
- s.20 Own Initiative

# **Appendix B**

# Matters Received by the ICAC

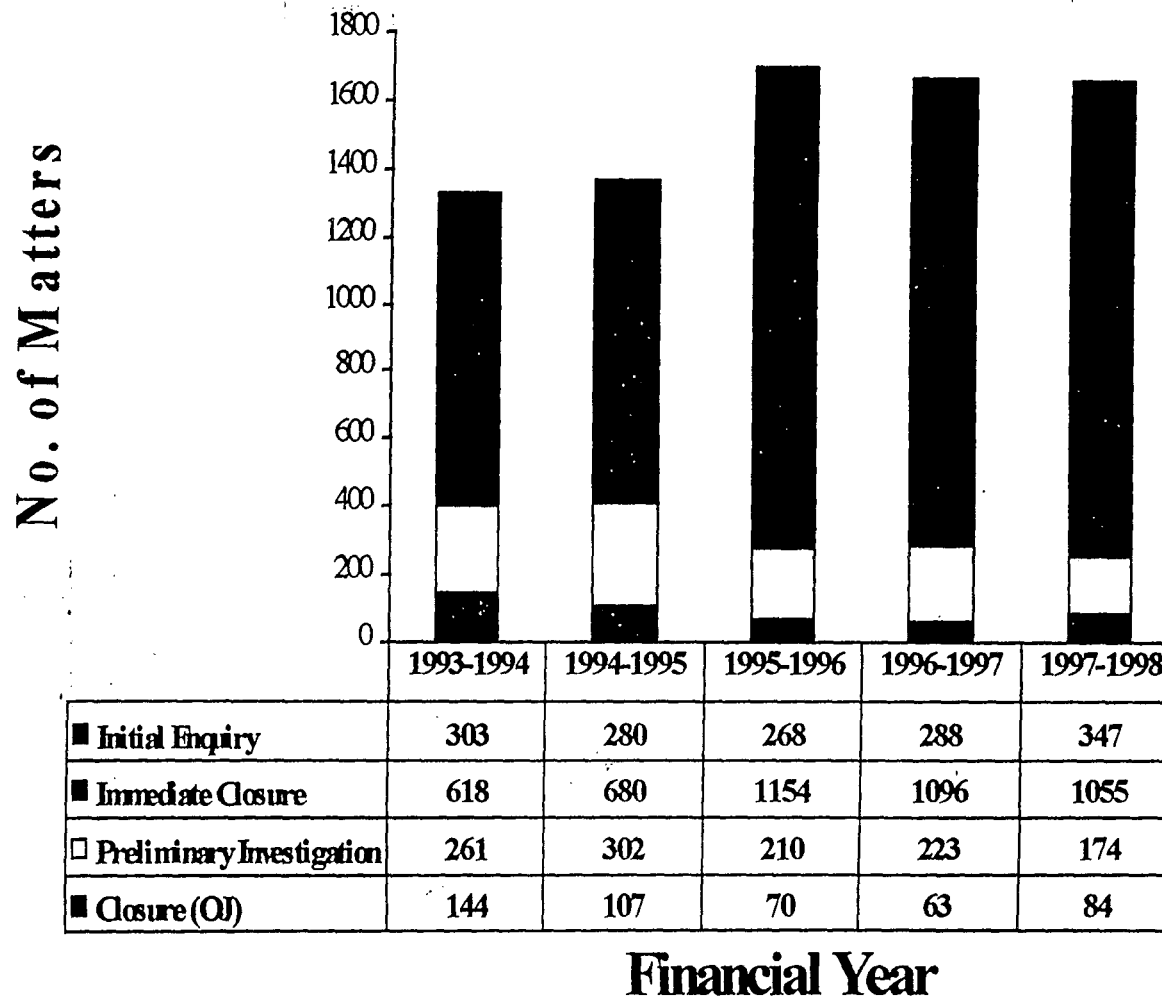
as at 1 June 1998



N.B. The figure calculated for the 1997-1998 financial year is incomplete as it does not include the number of matters to be received in June 1998.

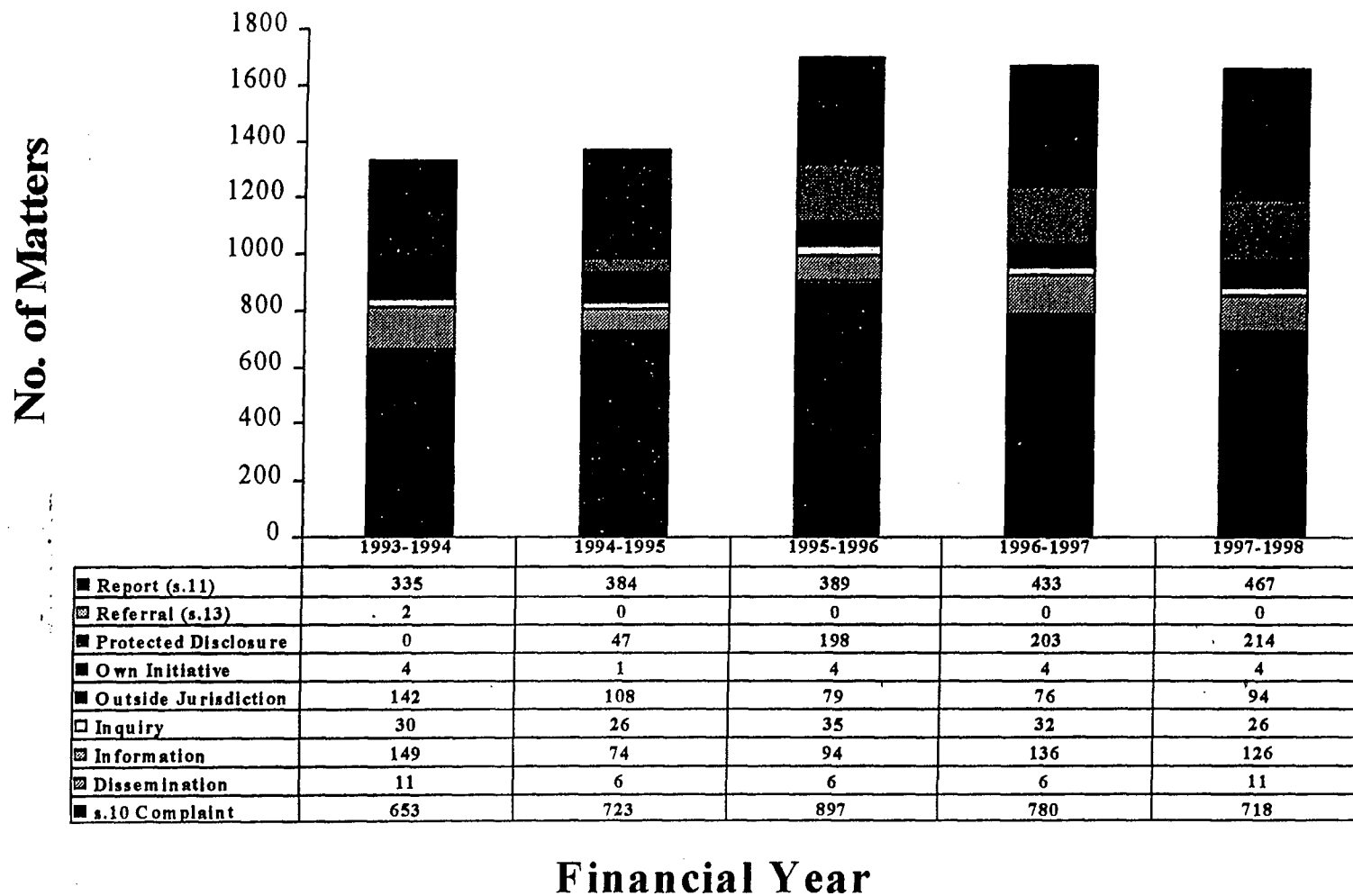


## Distribution of Categories of Matters Received by the ICAC



N.B. The figure calculated for the 1997-1998 financial year is incomplete as it does not include the number of matters to be received in June 1998.

## Distribution of Classification of Matters Received by the ICAC



N.B. The figure calculated for the 1997-1998 financial year is incomplete as it does not include the number of matters to be received in June 1998.

# **Appendix E**

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**I·C·A·C**

INDEPENDENT  
COMMISSION  
AGAINST  
CORRUPTION

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**STATEMENT**

**OF**

**FINANCIAL**

**PERFORMANCE**

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The Independent Commission Against Corruption is an organisation established by an Act of the New South Wales Parliament. It is independent of the Government of the day.

We are accountable to the people of NSW through the Operations Review Committee and the Parliamentary Joint Committee on the ICAC.

## **1. AIM, PRIORITIES AND KEY STRATEGIES**

### Aim:

We will make New South Wales a better place in which to live and do business, by:

- (a) combating corruption affecting the public sector; and
- (b) promoting the highest ethical standards.

### What We Do:

- We expose and minimise corruption in the NSW public sector.
- We focus on exposure and minimisation work that public sector agencies are either unable or unwilling to do themselves, or because it is in the public interest for the ICAC to undertake the work.

### How We Expose Corruption:

- The ICAC targets and investigates serious and systemic corruption and corruption opportunities.
- Through our investigations, the ICAC establishes what the facts are and states whether others should consider prosecution, discipline and preventative actions. We recommend changes to prevent similar corruption occurring again.
- We conduct hearings and produce reports on our investigations.

### How We Minimise Corruption

- We minimise corruption by exposing it and giving public sector agencies advice, guidance and information.
- We reinforce with each public sector agency its responsibility for minimising corruption in the way it does its work.
- We promote an ethical climate so that public sector agencies and individuals are encouraged to act against corruption.

## Our Priorities:

We will:

- Select work that brings the greatest benefit to the public sector and the people of NSW.
- Motivate public sector agencies and their employees to minimise corruption and make sure that they are capable of doing so.
- Encourage all people in NSW to support the need to combat corruption and to understand ICAC's role in this.

## Strategies:

- Carefully assess information to target serious and systemic corruption and corruption opportunities.
- Continue to develop sound relationships and work collaboratively with public sector agencies, other organisations and individuals.
- Guide and advise the public sector in ways that are practical and relevant, and that enhance the reputation of New South Wales.
- Educate selected groups so their responses to corruption and potential corruption contribute to the achievement of our aim.
- Encourage public sector agencies to communicate with their staff and clients about corruption.
- Recognise and support public sector agencies in their efforts to achieve organisational improvement.
- Continue to improve our own skills, systems and practices to advance the achievement of ICAC's priorities.
- Strengthen all our working relationships by managing expectations and promoting effective communications.

## 2. COMMISSION FUNDING AND FINANCIAL PARAMETERS

	1996-97 Actual	1997-98 Projection	1998-99 Budget
<b>FUNDING</b>	\$'000	\$'000	\$'000
Consolidated Fund Recurrent Allocation	13,071	12,936	13,372
Consolidated Fund Capital Allocation	240	240	240
<b>FINANCIAL PARAMETERS</b>			
Net Cost of Service	15,021	14,482	14,977
Capital Authorisation Limit	240	250	250

## 3. PROGRAMS

### Program:

Regulatory Program. This program relates to the exposing of corruption.

### Objectives:

The Regulatory Program of the Commission encompasses the Commission's investigations, legal and various technical areas. The objectives of the Regulatory Program are:

- Carefully assess information to target serious and systemic corruption and corruption opportunities.
- Continue to develop sound relationships and work collaboratively with public sector agencies, other organisations and individuals.
- Guide and advise the public sector in ways that are practical and relevant, and that enhance the reputation of New South Wales.
- Continue to improve our own skills, systems and practices to advance the achievement of ICAC's priorities.
- Strengthen all our working relationships by managing expectations and promoting effective communications.



**Inputs:**

	1996-97 Actual	1997-98 Projection	1998-99 Budget
Total Expenditure of Program (\$'000)	8,718	9,140	9,897
Average Staffing (No#)	79.3	79.5	86.0

**Program:**

Advisory Program. This program relates to the minimisation of corruption.

**Objectives:**

The Advisory Program comprises the Commission's corruption prevention, education and research areas. The objectives of the advisory program are:

- Carefully assess information to target serious and systemic corruption and corruption opportunities.
- Continue to develop sound relationships and work collaboratively with public sector agencies, other organisations and individuals.
- Guide and advise the public sector in ways that are practical and relevant, and that enhance the reputation of New South Wales.
- Educate selected groups so their responses to corruption and potential corruption contribute to the achievement of our aim.
- Encourage public sector agencies to communicate with their staff and clients about corruption.
- Recognise and support public sector agencies in their efforts to achieve organisational improvement.
- Continue to improve our own skills, systems and practices to advance the achievement of ICAC's priorities.
- Strengthen all our working relationships by managing expectations and promoting effective communications.

**Inputs:**

	1996-97 Actual	1997-98 Projection	1998-99 Budget
Total Expenditure of Program (\$'000)	3,883	3,153	2,987
Average Staffing (No#)	32.0	27.8	26.6

**Program:**

Corporate Services Program

**Objectives:**

The Corporate Services Program encompasses all other areas of the Commission which support the regulatory and advisory program areas. The objectives are:

- Continue to develop sound relationships and work collaboratively with public sector agencies, other organisations and individuals.
- Continue to improve our own skills, systems and practices to advance the achievement of ICAC's priorities.
- Strengthen all our working relationships by managing expectations and promoting effective communications.

**Inputs:**

	1996-97 Actual	1997-98 Projection	1998-99 Budget
Total Cost of Program (\$'000)	2,520	2,251	2,176
Average Staffing (No#)	23.5	23.3	22.9

#### **4. PERFORMANCE MEASURES**

- In our Investigation, Research and Corruption Prevention reports, and our Education products, describe and analyse corruption and corruption opportunities we have identified and addressed.
- Measure and report on the extent to which ICAC services, products and advice are used in and beyond NSW.
- Public sector agencies evaluate ICAC guidance as timely, practical and relevant.
- Community perceptions of the ICAC and its effectiveness continue at highly positive levels.
- Recognise and acknowledge, through publications, agencies that implement change strategies designed to lead to the minimisation of corruption.
- Monitor and publish examples of products and processes that agencies have developed to inform their staff and clients of their anti-corruption strategies.
- Appraise and report on our dealings with individuals and groups with whom we work and affect.

#### **5. SERVICE QUALITY STANDARDS**

The Commission will:

- Advance the public interest at all times.
- Always act ethically and with integrity.
- Be fair, impartial and accountable in all our work.
- Strive for excellence in everything we do.
- Be tenacious and professional in pursuing our aim.
- Respect each other and work collaboratively.
- Preserve the ICAC's independence.

## 6. REPORTING AND MONITORING REQUIREMENTS

The Commission has various reporting and monitoring requirements which assess funding levels, operational areas and the efficiency of the Commission. The following bodies comprise the accountability bodies of the Commission.

The Parliamentary Joint Committee (PJC) on the ICAC was established under the ICAC Act. The PJC is legislatively tasked to review and monitor Commission activities in addition to examining ICAC reports on relevant matters and trends in corrupt conduct. The Committee's role does not include reconsideration of ICAC operational decisions nor decisions relating to whether or not particular investigations or complaints should be pursued.

The Operations Review Committee was established by the ICAC Act. The Committee is responsible for advising the Commissioner whether the ICAC should discontinue or not commence investigation of a complaint.

The Treasury monitors the Commission funding on a monthly basis to assess any forecast changes in the budget result. The focus of the monthly reviews is to identify actual and anticipated variations in expenditure and revenues, the reasons for the variations and the source of funding to meet the identified variations.

## 7. RISK MANAGEMENT IDENTIFICATION AND STRATEGY

### Fraud Control

As highlighted in the Commission's code of conduct the ICAC legislation provides that officers of the Commission, in carrying out their duties, are required to "regard the protection of the public interest and the prevention of breaches of public trust as (their) paramount concerns".

The work of the Commission could be undermined if any of its officers acted or was seen to be acting in a way which the Commission itself, or right thinking members of the community, would find reprehensible in any public organisation.

The Commission relies on various formal documents, including procedures manuals and the code of conduct to provide guidance in the prevention of fraud and internal accounting and like procedures to detect it should it occur. Although these documents will continue to play an integral part in this process, the Commission is in the process of developing a comprehensive Fraud Control Policy which will more clearly identify both the internal and external fraud risks to the Commission, assess the threat of fraud and the possibility of its occurrence, and review the existing internal controls to counter these fraud risks.

## Internal Audit

In line with Treasury guidelines on "best practice internal control", the scope of the Commission's internal audit program has moved from a traditional focus on financial controls and compliance, to one which also incorporates assurance that the Commission's operations are being conducted effectively and efficiently. Internal Audit for the Commission is performed by the Auditor General.

The continued move to increasing internal audit activity to other than reviews of financial accounting systems and aspects of financial compliance has been beneficial in improving the efficiency and effectiveness of the Commission's operations.

The Internal Audit program also includes a review of the reporting to the Operational Review Committee to determine the accuracy and adequacy of the Commission's reporting requirements and compliance with the Committee's recommendations.

## **8. REVIEW**

Over the last few years through the streamlining of corporate services and the more efficient use of contracting out, the Commission has been able to reduce its corporate service costs to assist in its move towards a broader approach to combating corruption. This has involved a greater emphasis on collaboration, advice and education while still retaining a strong investigative capacity.

# APPENDIX 1

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## Additional Questions on Notice (Part 2)

7 July 1998

*Tapped B O'Keefe 7/7  
Edited public version.*

QUESTIONS ON NOTICE  
(PART TWO)

PARLIAMENTARY JOINT  
COMMITTEE  
GENERAL MEETING  
WITH THE  
ICAC COMMISSIONER

7 JULY 1998

**1. How does the ICAC monitor current affairs programme? What is the cost?**

As part of its routine work all main weekday evening Sydney television news/current affairs programs are videotaped by the ICAC and relevant items archived by the Commission. Intrastate news/current affairs television and radio programs are supplied (in tape or transcript form) as required by Media Monitors Australia Pty.Ltd.

Media Monitors may also be asked to supply videotape of relevant Sydney television weekend news items and transcripts of ICAC-related radio news/current affairs stories, especially where some response may need to be considered.

Relevant Sydney daily, suburban and country newspaper clippings are supplied by Marketrak (sic) Information Technology Pty. Ltd. each weekday.

Each monitoring company was selected after competitive tenders let in September 1997 for two years. Prices charged to the Commission are fixed for the term of each contract.

The cost of monitoring the media (both news and current affairs programmes) for 1997-98 will be approximately \$30,000.

**2. Have you reviewed the outcome of the Lismore DPP report in light of recent revelations (SMH 18 April 1998) that Detective Sergeant Peter Gallagher has had three of his cases thrown out by courts due to insufficient evidence and awarded costs totalling \$105,710 to the defendants?**

No. There was nothing in the Sydney Morning Herald article which would indicate a need for the Commission to review the investigation or the findings and recommendations contained in its report. The Commission is currently planning a general follow-up to its Lismore report.

**3. What was the cost of the Glebe Morgue investigation?**

The external costs, that is expenses apart from Commission officers salaries and on costs, of the Glebe Morgue investigation was \$76,871.

**4. Do you believe the investigation into the Glebe Morgue was worth the expenditure of that amount of money?**

Yes. The investigation into the morgue was concerned with affronts to values deeply felt and widely held in our community. Exposure of such conduct is important in itself

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and was a fact of the process of eradicating corruption in the Morgue. The investigation is already bringing about systemic changes through the work of the Central Sydney Area Health Service, which is now responsible for the Glebe Morgue's operations. This work has been monitored by the Commission.

5. **What impact does your high profile involvement in potentially sensitive campaigns such as the East Circular Quay issue and Sydney Harbour Planning controls have on your ability to appear to be objective and distant from involvement in political debate?**

I do not believe that I have had any such involvement in relation to East Circular Quay. The issues relating to Sydney Harbour foreshore lands are essentially Commonwealth issues. I do not believe any involvement on my part has been adverse to the interests of the ICAC or of probity in this State.

6. **What would be your approach if the East Circular Quay development or the Walsh Bay development came before the ICAC?**

As with all other matters. In relation to Walsh Bay, however, I have remained apart from the processes because I know a person who has been a complainant.

7. **How many meetings of the ORC took place in the past 12 months?**

Between 1 July 1997 and 30 June 1998 the Operations Review Committee met 10 times. This is one fewer than the usual number for the period. The meetings initially set down for August and September were merged and rescheduled for 29 August 1997. The reason for the rescheduling of these meetings was due to the inability of members to attend, therefore resulting in a lack of quorum.

8. **How many items have come before the ORC in the past 12 months? How many in each meeting?**

During the period from the 1 July 1997 to 30 June 1998 the Operations Review Committee considered 898 reports. The distribution of these reports is provided in the table below:

Meeting Date	Number of Matters Considered
4 July 1997	50

29 August 1997	152
3 October 1997	72
7 November 1997	89
5 December 1997	72
6 February 1998	136
6 March 1998	67
3 April 1998	76
1 May 1998	99
5 June 1998	85

**9. What are the criteria you employ for determining what constitutes public interest?**

The Commission has to regard the protection of the public interest as one of its "paramount concerns". The Independent Commission Against Corruption Act 1988 ("the Act") refers to the public interest in ss.12, 24(3)(a), 25(3), 31(3), 52(2)(c), 74(8), 111(4)(c) and 112(1A). However, nowhere in the Act is it defined, nor could it be because the public interest is a dynamic concept. The Commission in each case determines what the public interest is, based on the specific facts before it. There are many instances where the public may have a salacious interest in certain information but it would not be in the public interest to release that information

The public interest requirements vary depending on the particular section of the Act being applied and the factual circumstances of its application. In all cases the Commission balances the different factors and consequences that weigh against, and in favour of, performing a function under the Act in determining what is in the public interest.

The following is a list of factors which are considered by the Commission when deciding what the public interest requires. These factors are couched in terms of the most usual request received by the Commission in which the public interest is considered, which is a request for information or material which the Commission has in its possession (i.e. s111 of the Act) Similar factors apply when public interest is considered under different sections of the Act.)

- (i) how did the Commission receive the information? Was it given in confidence? Is it protected from further dissemination by statute, as Australian tax information is under the Taxation Act 1967?
- (ii) does the information reveal personal details about a person, eg. their sexual preference or their use of illegal or legal drugs,
- (iii) does the information affect national security?
- (iv) does the information reveal the identity of an informer?
- (v) does the information reveal the identity of a complainant to the Commission?
- (vi) does the information reveal the decision making process of the Commission or of the original supplier of the information? and if it is released is it likely to jeopardise the future decision process, i.e. by preventing full and frank future deliberations?
- (vii) does the information reveal the investigation techniques of the Commission or the supplier of the information?
- (viii) does the information reveal (or could it reveal when viewed with other publicly available material) the target of an ongoing investigation? or the identity of the target of a closed investigation which has never before become publicly known?
- (ix) who wants the information and why, i.e. is it requested by a court, is it requested to be used in a trial or disciplinary proceedings?
- (x) how old is the information requested? Is it now mostly known to the public?
- (xi) if the information becomes public will it affect the future fair trial of an accused person?
- (xii) if there are persons who may be affected by the proposed release of material, do they need to be given an opportunity to make submissions about whether or not the material should be released?

**10. Please outline how the ICAC releases information to the media regarding ICAC inquiries?**

Where the ICAC announces public hearings through press advertisements (in the Sydney Morning Herald, Daily Telegraph and where appropriate, relevant suburban regional papers) a news release is also issued on the day based on the advertisement.

In addition, on the day on which a Commission report is released there is usually a press conference. This is often followed up by requests for radio interviews about the report.

11. **What policy does the ICAC have regarding the leaking of information regarding inquiries to individual journalists and media outlets?**

The ICAC does not have such a policy. The Media Policy and Code of Conduct provide guidance about staff contact with journalists and the media.

12. **How many and which media outlets did you personally appear on or give interviews to in the days following the release of the Parliamentary Electorate Travel report?**

Apart from a media conference attended by 15 to 20 journalists on 30 April, Commissioner O'Keefe gave only 3 interviews relating to the report: Mike Carlton (2UE) and Mike Jefferies (2GB) on 30 April and Phillip Clark (2BL) on 1 May. All these were at the request of the interviewer's producers. None were solicited by the ICAC.

13. **The normal principle of judicial reserve would ensure that a report should speak for itself. Why did this report require so much assistance from you in being explained?**

The Commission is not a court or judicial body, nor does the Commissioner or an Assistant Commissioner sit as a judge or exercise judicial functions.

If the Commissioner was sitting as a judicial officer then the principle of judicial reserve might apply, although any principle that suggests that this should involve withdrawing from community activity is presently being questioned by many senior judicial officers.

The role of the Commissioner as set out in the ICAC Act is plainly different to that of a judicial officer. The Commission's functions includes educating and disseminating information to the public on the detrimental effects of corrupt conduct and the importance of maintaining the integrity of public administration and enlisting and fostering public support in combating corrupt conduct. The holding of public hearings and the publication and promotion of its reports is one of the most effective means of achieving the Commission's principal functions. The media ensure that the report and

the work of the Commission are widely disseminated at little or no cost to the taxpayers of New South Wales.

The Parliamentary Electorate Travel report did not need clarification by the Commissioner. It spoke for itself. The level of interest in the report and its findings was no doubt generated by the fact that the individual concerned was a Member of Parliament. This was not considered to be a reason for refusing requests for interviews in the ordinary way. Clearly the subject matter of the investigation was a matter of considerable public interest. To refuse such requests, when it is the Commission's usual practice to widely publicise its reports through the media, may have suggested bias in favour of or interference, by politicians.

No special effort was expended. As outlined above, no interviews were solicited and comment, when proved as outlined above, was confined to the published material.

14. **Do you believe there is any damage done to the ICAC by the effect of two judgments against you relating to bias in the hearing of matters before you, one by the Court of Appeal of NSW when you were a judge and a second by the Supreme Court of NSW in your role as ICAC Commissioner?**

No.

15. **Please outline the following details of all trips undertaken overseas or interstate since becoming ICAC Commissioner:**

- i. **Destination and purpose of trip**
  - ii. **Length of stay**
  - iii. **Official functions attended during stay**
  - iv. **Private purposes attended to during stay**
  - v. **Cost of travel**
  - vi. **Type of travel used (ie Class, etc)**
  - vii. **Cost of accommodation**
  - viii. **Location and name of accommodation used**
  - ix. **Any associated costs claimed against the ICAC**
-

- x. Amount of reimbursement to the ICAC for these costs. Date any reimbursements made
- xi. Details for any accompanying employees of the ICAC

These will be supplied separately. Compiling the information requires quite a lot of time and the information will be made available as soon as possible.

16. **What is the annual cost of external legal advice and assistance required by the ICAC? Why aren't senior in-house legal officers used for this purpose? Which external lawyers are used by the ICAC? How are they chosen?**

The annual cost varies from year to year depending on the Commission's needs. During the 1996-97 financial year the Commission spent \$760,082.56 in external legal fees. The projected expenditure for 1997-98 is \$510,000.

Commission lawyers provide a wide range of legal, policy and strategic advice to the Commission. They also act as Counsel Assisting in many of the Commission's private hearings.

The Commission from time to time seeks independent expert legal advice from private law firms on a range of specialist topics, predominantly in relation to the provision of corporate services and complexed matters where it is beyond the expertise of the Commission's lawyers, or in matters where it is considered that an independent or more objective opinion would be valuable.

A similar approach is taken to the role of Counsel in Commission hearings. The Commission's practice is to use its lawyers in private hearings whenever it is considered appropriate to do so. Appropriateness will depend on a number of factors including the expected complexity of the hearing, the witness concerned and the previous advocacy experience of the lawyer.

The Commission's practice is to brief counsel from the private Bar to act as Counsel Assisting in all public hearings. This practice reflects the seriousness with which the Commission views public hearings and is influenced by a number of factors including:

- (i) The important independent role to be played by experienced Counsel in providing advice prior to a public hearing commencing and acting as Counsel Assisting in the hearing.

- (ii) The high level of expertise which the independent Bar can provide at a cost which is related just to the time of use of such expertise.
- (iii) The fact that the Commission's legal staff is required to be multi-skilled, not experts in the field of advocacy, as is required for public hearings.
- (iv) Commission lawyers are left free to prepare matters and instruct Counsel in hearings.

Given the above, the Commission briefs a range of Counsel to act as Counsel Assisting in hearings or to advise and appear in litigation. In the past financial year the Commission has briefed 11 different barristers.

The choice of barrister is based on the person's experience and availability. This means that it is often necessary to speak to many barristers in relation to a particular matter before one is found who has the relevant experience and is available at the relevant time.

**17. Do ICAC officers witness external phone calls made by witnesses who are at the Commission to give evidence?**

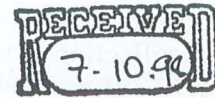
If this question is asking whether the Commission has a policy to "witness" all such calls then the answer is no. Commission officers are on occasions asked by witnesses or persons assisting the Commission to stay with them whilst they make phone calls. This would usually be for operational reasons.

# APPENDIX 2

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Responses to matters  
taken on notice  
by the Commissioner





**INDEPENDENT COMMISSION AGAINST CORRUPTION**

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06 October 1998

Mr Peter Nagle, MP  
Chairman  
Parliamentary Joint Committee on ICAC  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Our Ref: Z90/0104

Dear Mr Nagle,

**RE: QUESTIONS TAKEN ON NOTICE FROM 7 JULY 1998 MEETING**

The purpose of this letter is to provide the Committee with responses to matters taken on notice by the Commissioner during the Committee's hearing on 7 July 1998 and 9 July 1998.

1. At page 5 of the transcript Mr Watkins asked when the private hearings commenced in the hearings dealing with Mr Bayeh's allegations against Mr Gibson. Those hearings commenced on 15 December 1997.
2. At page 7 Mr O'Farrell asked how many inquiries the Commissioner has conducted during his time as Commissioner. As well as a number of inquiries which were conducted in private the Commissioner has presided over 11 hearings involving reports to Parliament. Given the Commissioner's role he has been involved in and responsible for aspects of many, if not most, of the Commission's formal investigations.
3. At page 8 Mr O'Farrell asked for a comparison in numbers between the Assistant Commissioners appointed during Commissioner O'Keefe's term and the number appointed during Ian Temby's term. Eleven have been appointed during Commissioner O'Keefe's term to date and 9 were appointed during Ian Temby's term. Two Assistant Commissioners were appointed in the gap in between the terms of Ian Temby and Commissioner O'Keefe. In addition to this three people were appointed for periods as Acting Commissioners prior to Commissioner O'Keefe's appointment.
4. At page 15 of the transcript and in other parts of the transcript the Commissioner is asked questions about references to Minister Whelan in the Bayeh inquiry and the circumstances surrounding the Minister giving evidence. The Commissioner's

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recollection at the hearing was that a suppression order was made when Mr Whelan was referred to. This is not correct. In fact, it was not considered necessary at the time to make a suppression order given that the evidence suggested nothing other than that the Minister had been at the relevant meeting.

5. At page 32 of the transcript there is a reference to the investigation into the Metherill resignation and appointment and whether there had been private hearings prior to the matter going public. There were no such private hearings.
6. At page 32 of the transcript the Commissioner refers to the effect of an amendment to s.112 of the ICAC Act. The effect of that amendment was to provide that the Commissioner should not make an order under s.112 of the ICAC Act prohibiting the publication of evidence unless he is satisfied that it is necessary or desirable in the public interest to do so. Such a directive may be made in relation to evidence given either in public or in private. Under s.31 of the ICAC Act the Commissioner may decide to hold hearings in public or private or partly in public and partly in private. In reaching that decision the Commission is also obliged to have regard to matters which it considers to be related to the public interest. Section 31 was not changed when the amendment to s.112 was enacted in 1995. The policy in s.31 and that now in s.112 militates in favour of publication of the evidence given at a public hearing.
7. At page 48 of the transcript the Commissioner, in responding to a question by Ms Andrews, refers to a 1996 amendment to the Crimes Act in relation to bribery. This was a mistake. The Commissioner was intending to refer to the amendment to the Commonwealth telephone interception legislation in 1995 which provided that bribery and corruption would be relevant offences for the purposes of obtaining telephone interception warrants. This was a significant amendment for the ICAC because it gave the Commission wider access to telephone interception in its investigations.
8. At page 49 of the transcript The Hon Brian Vaughan refers to evidence given by Mr Bresniak about his time on the Operations Review Committee and states that Mr Bresniak "... recalled the advice had not been accepted by the then Commissioner was in the matter of a deceased judge". That question appears to be based on a faulty recollection since Mr Bresniak is not recorded in the available transcript as having given evidence as quoted. In the copy of Mr Bresniak's evidence provided to the Commission, Mr Bresniak's evidence is that he could not recall the Committee's deliberations in relation to the deceased judge at all. If there is further evidence given by Mr Bresniak on this point the Commission would appreciate having the opportunity to comment on it.
9. At page 55 of the transcript Mr Watkins referred to having seen "someone - I do not know whether it was an employee of the Parliament or an employee of the ICAC - walking with bundles (of letters) under the arms through the building (meaning parliament House) and handing them out to people as they saw them. I think that was totally inappropriate of whoever was responsible for it". It is not possible for the Commissioner to comment on the appropriateness or otherwise of the circumstances described by Mr Watkins in the absence of further details of what is alleged to have

occurred. However, on the occasion on which the Commission wished to effect service on a number of members of parliament Commission officers spoke to the Clerk of the Upper House and the Clerk of the Lower House who arranged for the documents, in sealed envelopes, to be delivered to the persons concerned. There were other occasions on which contact was made directly with the parliamentarian concerned to arrange service at a convenient time and place.

10. At page 57 of the transcript The Hon Brian Vaughan asked the Commissioner to give thought to whether the ICAC ought to develop into a grand jury structure. The Commission considers that the grand jury role would not be consistent with its principal functions and would weight it towards a prosecutorial role rather than the role of exposing and minimising corruption. There may also be significant public policy issues about the appropriateness of combining such a role with the Commission's other powers.
11. At page 74 & 75 of the transcript Mr Beck asked questions concerning the total cost to the Commission of preparing for the 6 monthly hearing. This cost is difficult to calculate given the number of people who necessarily need to be involved in preparing materials for the Parliamentary Committee hearings. However, the Commission can make a number of suggestions about the way in which the questions on notice and the hearing process could be streamlined in order to reduce cost.

There would be significant savings if the Committee could regularly hold one of its 6 monthly hearings with the Commissioner in July or August and then a further hearing in February or March. This would mean the material prepared in response to the standard Committee questions on the Commission's operations could be prepared in parallel with the material for the Commission's annual report.

In the Commission's view, additional benefits would flow if more questions were provided on notice rather than during the course of the hearing. This would leave the Committee free to focus on questions about the material provided rather than opening up new areas which require the Commissioner to take the matter on notice or run the risk of providing incomplete or inaccurate answers.

12. At page 77 of the transcript in response to Mr Watkins the Commissioner suggested he could send to the Committee the papers on the two part series in which he addressed the Institute of Public Administration about the question of whether the ICAC caused business paralysis in NSW. Those papers are attached.
13. At page 79 of the transcript Ms Andrews asks questions about the number of section 23 notices and what contributed to the high figure. The nature and scope of the investigations in relation to which such notices were used was the reason for the figure. Generally, s23 notices will be used when the Commission wishes to inspect the premises or records of a public authority. Under a s.23 notice the Commission may inspect and copy records however it can not seize original records. If the latter is required then the Commission would need to use a search warrant.

## PJC Hearing 9 July 1998

1. At page 4 of the transcript Mr Watkins asked the Commissioner whether he was aware of a Public Service rule that no public servant, Minister, Judge, or Member of Parliament should be out of the state on a tax funded trip for more than 21 days. The Commission is not aware of any such rule.
2. At page 5 of the transcript Mr Watkins asked for a list of the official functions which the Commissioner attended during this trip and “private services attended to during the stay”.

The following information is provided:

- a. From 5 – 7 September (6 and 7 being a weekend) the Commissioner and John Feneley went at their own expense from Lima to Cusco prior to the conference in Lima.
- b. The Commissioner and John Feneley attended the 7 International Anti Corruption Conference held in Lima, Peru held from 8 – 12 September.
- c. On 10 September the Commissioner and John Feneley, Solicitor to the Commission, had a meeting with the New York Police department and discussed issues including witness protection, electronic surveillance, intelligence, fraud investigations and covert operations.
- d. On 11 September on the way to Canada the Commissioner and John Feneley called into Washington. Mr Feneley sat in on the Government Affairs Committee Campaign Finance hearings. He also attended a meeting with the Office of Government Ethics and discussed issues including, ethics training for politicians, contracting out of government services, and the comparative approaches of the ICAC and the Office of Government Ethics. The Commissioner had a discussion with Dr Steve Potts, Director of that office.
- e. At the invitation of the International Association of Civilian Oversight of Law Enforcement (IACOLE), the Commissioner and John Feneley attended the IACOLE conference in Ottawa on 12 & 13 September. The Commissioner presented a paper on civilian oversight agencies for law enforcement and government activity.
- f. By invitation the Commissioner and John Feneley attended the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) conference held immediately after the IACOLE conference in Ottawa. The Commissioner presented the keynote address, which related to the work being done in NSW by the ICAC and others to ensure integrity in the public sector.
- g. Following the CACOLE conference the Commissioner and John Feneley attended the annual conference of the Council of Government Ethics Law (COGEL), a professional organisation for agencies and individuals with responsibilities in

government ethics, election campaign finance, freedom of information and lobby law information. This conference was held in Edmonton from 14 –17 September.

h. Following the COGEL conference the Commissioner had a period of leave at his own expense.

3. At page 6 of the transcript Mr Watkins asks for an explanation of why the trip to Victoria on 25 July 1997, cost \$1,586.00. The Commissioner was accompanied by his wife. The costs for the trip were:

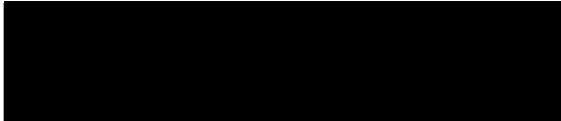
Airfare	Commissioner	649.60
	Mrs O'Keefe	649.60
Accommodation		89.00
Meals		116.00
Taxis		82.00
	<b>TOTAL</b>	<b>1586.20</b>

4. At page 12 of the transcript Mr Watkins refers to a Public Employment Office document circular number 96/9 dated February 1996 requiring public officials travelling overseas desiring to extend their visit for private purposes to obtain the Minister's support and the approval of the Commissioner for Public Employment before doing so. The Commissioner has sought the Premiers approval for all overseas travel and has received prior permission for private leave taken in conjunction with such official travel.
5. At page 21 of the transcript Mr Lynch asks about the progress on approaching the Attorney-General for a change to the admissibility of Commission transcript. The Commission believes that there is little to be gained at this time from further pursuing the admissibility of the Commission's transcript.
6. At page 22 of the transcript Mr Watkins asked questions about the evidence given by Councillor Woods in relation to the Commission's consultation on its publication "Under Careful Consideration, Key Issues for Local Government". Mr Woods' evidence in that regard was incorrect in a number of fundamental respects. This was addressed in detail by Peter Gifford, Director of Corruption Prevention and Education, in the in-camera meeting with the Committee on 11 August 1998. It will also be the subject of a separate letter from the Commissioner to the Committee.
7. At page 31 of the transcript Ms Andrews notes an error in the State Rail investigation report where at page 133 in Chapter 9 there is a reference to Colin Malcolm Kevin Williams whereas in the beginning of the chapter he is referred to as John Malcolm Kevin Williams. This error has been corrected in the Internet version of the report and in the master.
8. At page 35 of the transcript the Commissioner, in response to a question by Mr Watkins, refers to the possibility of taping a telephone call and comments that where the tape recorder is separate to the telephone it does not offend the Telephone Interception Act and also states that because one party to the conversation is consenting it does not

impact on the listening device legislation. In NSW it is necessary to have the consent of both persons to the conversation, although in Queensland it is sufficient for one person to consent.

9. At page 37 of the transcript the Chairman in response to questions be Mr Watkins asked if the Commissioner would “give some sort of correspondence” in relation to the allegation about telephone taping and monitoring. The Commissioner has since requested further details from Mr Watkins in relation to this incident however Mr Watkins has declined to provide them.
10. At page 41 of the transcript Mr Watkins asked for an update on the Hunters Hill Council matter. That matter has been considered by the Operations Review Committee and the complainant will receive written advice about this.

Yours faithfully



John Feneley  
Solicitor to the Commission

# APPENDIX 3

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PJC  
Question on Notice  
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Commissioner's Travel

**PJC Question on Notice**  
**Commissioner's overseas and interstate travel since becoming the**  
**Commissioner in 1994**

The Commission is an international leader in the field of corruption prevention, education and the investigation of corruption. To retain this position, and to share its expertise with other similar agencies, it is appropriate and necessary for the Commissioner and selected staff to travel to international and national conferences, and visit other agencies with cognate and related functions.

**For the year ended 30<sup>th</sup> June 1998:**

During the 1997 – 1998 financial year the Commissioner undertook two overseas trips and three interstate trips (including Canberra) as follows:

Between 1/9/97 and 10/10/98 the Commissioner attended the Eighth International Anti-Corruption Conference (IACC) held in Lima, Peru, at which he participated in the activities of the conference, including chairing one session and presenting an intervention on behalf of the Commission. The Commission was responsible for a half day of the total program. The Conference culminated in the Lima Declaration, designed to help bring about in the participants "vision of an era of international and national co-operation in the twenty first century in which the evil of corruption is suppressed".

Prior to the IACC Conference, the Commissioner and the Solicitor to the Commissioner stopped over in San Francisco for the purpose of meeting State officials concerned with corruption. This meeting, arranged by United States Federal authorities, fell through and both then proceeded to Peru.

Following the IACC Conference in Peru, at the invitation of the President of the International Association of Civilian Oversight of Law Enforcement (IACOLE) the Commissioner attended the IACOLE conference in Ottawa to sit on a panel with Justice Wood and the Commissioner of the AFP and who each were to present papers on civilian oversight agencies for law enforcement and government activities. At a late date Justice Wood was advised as being unable to attend. The conference was immediately followed by the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) conference at which the Commissioner presented the keynote address. It related to the work being done in NSW by the ICAC and others to ensure integrity on the public sector.

The total cost of the trip was \$30,574.63. The cost of accommodation was \$3,273.03. While away the Commissioner stayed at The Clift in San Francisco, Miraflores Cesar's Hotel in Lima, Chateau Laurier in Ottawa and the Fantasyland Hotel (the conference hotel) in Edmonton. Other associated costs of the trip include meals not included in the accommodation costs, conference registration, taxis, portorage, airport taxes, travel insurance and telephone expenses. The cost of these associated costs was \$5,807.30. There were no amounts claimed that were reimbursed to the Commission.



Between 30/4/98 and 16/5/98 the Commissioner was invited to London to participate in the first meeting of an expert group formed by the Commonwealth Secretariat to formulate advice on reforms to assist member countries in relation to combating the effects of corruption on economic management and good governance. The group was supported by high level representatives of the World Bank, IMF, OECD and UN.

At the request of the Italian Government, the Australian Embassy in Rome, organised for the Commissioner to visit Rome on the way back to Australia and hold meetings with the Special Commission of Italian Parliament into corruption in the public sector in Italy and with members of the Italian Public Service. Advice was sought in relation to the form of legislation and appropriate structures. The Vice-Chairman of the Italian Special Commission is in course of arranging to visit the ICAC to study our methodologies.

On the return journey the Commissioner met in Bangkok with the newly established Constitutional Office of the Commission of Corruption (OCC) and also discussed the new constitutional provisions and proposed subordinate legislation with the OCC and the Professor responsible for much of the drafting of the new Constitution.

The cost of attendance at the Commonwealth Secretariat was borne by the Secretariat. The remaining cost of the trip was \$12,468.87. The cost of accommodation was \$7,222.51. While away the Commissioner stayed at the Athenaeum Hotel and the St James Court Hotel in London, Hotel Eden in Rome, and The Oriental Hotel in Bangkok. Other associated costs of the trip include meals not included in the accommodation costs, taxis, portage, airport taxes, travel insurance and telephone expenses. The cost of these associated costs was \$2,626.26. There were no amounts claimed that were reimbursed to the Commission.

Between 25/7/97 and 26/7/97 the Commissioner visited the Ethical Standards Department of the Victorian Police Service. The total cost of the trip was \$1,586.20. The cost of accommodation was \$89.00 while other associated costs, such as meals not included in the accommodation costs and taxi costs were \$198. The Commissioner stayed at the Georgian Court Guest House.

Between 19/12/97 and 20/12/97 the Commissioner went to Melbourne for a meeting with an Assistant Commissioner and a Superintendent of the Victoria Police attached to the Ethical Standards Department. The total cost of the trip was \$435.13. The cost of accommodation was \$144.33 while associated costs were \$41.00. The Commissioner stayed at the Hyatt Hotel.

Between 9/3/98 and 10/3/98 the Commissioner went to Canberra to participate in a conference organised by Transparency International and the Commonwealth in relation to proposed treaty arrangements criminalising bribes to foreign officials. The Commissioner presented the Commission's view in this proposed treaty and on denying tax deductibility to such payments. The total cost of the trip was \$647.50. The cost of accommodation was \$541.00 while associated costs were \$106.50. While in Canberra the Commissioner stayed at the Hyatt Hotel. The above costs of this trip include the costs of the Commissioner's driver.

For the year ended 30<sup>th</sup> June 1997.

During the 1996 – 1997 financial year the Commissioner undertook two overseas trips and nine interstate trips (including Canberra) as follows:

Between 31/8/96 and 18/9/96 the Commissioner was invited by the Conference President and the President of the Committee on Administrative Law of the Union Internationale des Advocates (UIA) to present a paper at the Committee's Madrid Conference. The topic of the paper was "The Dichotomy Between Public and Private Law – The Vanishing Line". It dealt with the new challenges presented by the corporatisation and privatisation of government functions and services.

In the course of his return journey to Australia, the Commissioner visited the Training Academy of the New York Police Department and made an assessment as to the value of having an officer visit the Academy to assist in relation to the New South Wales Ministerial Committee of Advice in relation to police training and the Police Academy at Goulburn. The Commissioner also attended the US Office of Government Ethics in Washington DC and held discussions with the Director, Stephen Potts and his staff. Arrangements were made for the exchange of data and the establishment of links between the libraries of each organisation.

The total cost of the trip was \$31,637.67. The cost of accommodation was \$6,846.69. The Commissioner stayed at The Franklin Hotel in London, en route, Melia Castilla in Madrid (the conference hotel) and the Hotel Plaza Athenee in New York. Other associated costs of the trip include meals not included in the accommodation costs, conference registration, taxis, portorage, airport taxes, travel insurance and telephone expenses. The cost of these associated costs was \$5,021.32. There were no amounts claimed that were reimbursed to the Commission.

Between 26/2/97 and 6/3/97 at the request of Justice Wood, the Royal Commissioner in relation to the NSW Police Service, who was unable to deliver a paper at the United Nations International Conference on Global Drug Law in New Dehli, India, the Commissioner prepared and presented a paper titled "The Drug Trade and Police Corruption". A significant contribution to the cost of his attendance was provided by the United Nations.

On the way to New Delhi (i.e. via Hong Kong) the Commissioner visited the ICAC Hong Kong and had discussions regarding ICAC's (NSW) corruption prevention and education products and programs and the way in which our products were monitored.

On the return journey, the Commissioner, at the request of the Deputy Director of the Anti-Corruption Unit in the Prime Minister's Department, visited the Unit and held discussions about possible visits by Thai officials to the ICAC for training. Thai officials will in fact be attending the Commission in the near future.

The total cost of the trip was \$8,512.29. The cost of accommodation was \$6,178.25. The Commissioner stayed at The Regent in Hong Kong, The Taj Mahal Hotel in Delhi and The Oriental in Bangkok. Other associated costs of the trip include meals not included in the accommodation costs, taxis, portorage, airport taxes, travel insurance and telephone expenses.

The cost of these associated costs was \$387.49. There were no amounts claimed that were reimbursed to the Commission.

On 24/7/96 the Commissioner went to Canberra. The total cost of the trip was \$457.10. The cost of accommodation was \$320.90 while associated costs such as meals not included in the accommodation costs and taxi costs were \$136.20. While in Canberra the Commissioner stayed at the Parkroyal. The cost of this trip includes the costs of the Commissioner's driver.

Between 6/8/96 and 9/8/96 the Commissioner and other Commission staff attended the Ethics in the Public Sector Conference held in Brisbane at which he presented a paper. The total cost of the trip was \$1,726.90. The cost of accommodation was \$676.30 while associated costs were \$294.80. In Brisbane the Commissioner stayed at the Beaufort Heritage Hotel.

Between 3/8/96 and 5/8/96 the Commissioner attended the West Australian Municipal Association Local Government Week 1996 - "Who is a Councillor" where he presented the keynote address. The total cost of the trip was \$2,411.20. The cost of accommodation was \$264.50 while the cost of associated costs were \$121.00. While away the Commissioner stayed at the Hyatt Hotel.

Between 16/8/96 and 17/8/96 the Commissioner attended the "Police Training - Theory and Practical Ethical Inclusions" seminar in Melbourne. The total cost of trip was \$1,124.90. The cost of accommodation was \$314.30 while the cost of associated costs were \$165.00. The Commissioner stayed at the Hyatt Hotel.

Between 29/11/96 and 30/11/98 the Commissioner again went to Melbourne in relation to possible ICAC input into Victoria Police training. The total cost of the trip was \$1,131.10. The cost of accommodation was \$310.20 while the cost of associated costs were \$70.50. The Commissioner stayed at the Hyatt Hotel.

Between 12/1/97 and 13/1/97 the Commissioner went the Canberra for a meeting with the Attorney General's Department and the AFP Commissioner concerning the Commission's investigation into Aboriginal Land Councils (Operation Zack). The total cost of the trip was \$362.76. The cost of accommodation was \$172.50 while the costs of associated costs were \$190.26. The Commissioner stayed at the Parkroyal Hotel.

Between 29/1/97 and 30/1/97 the Commissioner went the Canberra to take part in the Commission's Investigators' Course and the Commission's Legal Unit workshop. The total cost of the trip was \$581.10. The cost of accommodation was \$459.70 while the costs of associated costs were \$121.40. While in Canberra the Commissioner stayed at the Parkroyal Hotel. The cost of this trip includes the costs of the Commissioner's driver.

Between 16/4/97 and 17/4/97 the Commissioner attended the Australian Council for Civil liberties and Caxton Legal Centre Seminar on "Public Accountability Bodies - Are They Effective - Public Sector Corruption" held in Brisbane. The total cost of the trip was \$1,421.10. The cost of accommodation was \$649.90 while the cost of associated costs were \$73.00. The Commissioner stayed at The Beaufort Heritage Hotel.

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Between 25/5/97 and 28/5/97 the Commissioner attended the National Aboriginal Reconciliation Convention in Melbourne with Aboriginal officers of the Commission for the purposes of Operation Zack. The total cost of the trip was \$2,296.55. The cost of accommodation was \$1,038.45 while the cost of associated costs were \$608.20. The Commissioner stayed at the Hyatt Hotel.

#### **For the year ended 30<sup>th</sup> June 1996**

During the 1995 – 1996 financial year the Commissioner undertook two overseas trips and five interstate trips (including Canberra) as follows:

Between 30/8/95 and 14/9/95 the Commissioner visited the Corrupt Practices Bureau in Singapore en route to the UIA Conference in London, where he had been invited to present a paper on "Fraud in Financial Markets".

The total cost of the trip was \$24,558.19. The cost of accommodation was \$6,696.55. While away the Commissioner stayed at The Four Seasons Hotel in Singapore and The Dorchester in London. Other associated costs of the trip include meals not included in the accommodation costs, conference registration, taxis, portage, airport taxes, travel insurance and telephone expenses. The cost of these associated costs was \$3903.84. There were no amounts claimed that were reimbursed to the Commission.

Between 27/9/95 and 13/10/95 the Commissioner attended the Seventh International Anti-Corruption Conference (IACC) in Beijing, where he delivered a paper on the work of the ICAC to a plenary session of the Conference. On the way to Beijing, the Commissioner attended the Annual Conference of the International Association for Civilian Oversight of Law Enforcement (IACOLE) in Vancouver, where he delivered the keynote address. Also en route, the Commissioner visited the Counter Corruption Section of the Prime Minister's Department in Bangkok.

Following the Beijing conference, the Commissioner visited the Hong Kong ICAC and consulted with the Hong Kong Director of Public Prosecutions in relation to the gathering and presentation of evidence in complicated fraud matters.

Two other ICAC staff, Research Manager Angela Gorta and Senior Corruption Prevention Officer, Leigh Elliott also attended the Beijing Conference and the ICAC Hong Kong.

The total cost of the trip was \$22,253.60. The cost of accommodation was \$8,103.13. While away the Commissioner stayed at The Clift in San Francisco, the Amari Airport Hotel and The Oriental in Bangkok, the New Century Hotel in Beijing (the conference hotel) and The Peninsula in Hong Kong. Other associated costs of the trip include meals not included in the accommodation costs, conference registration, taxis, portage, airport taxes, travel insurance and telephone expenses. The cost of these associated costs was \$2,843.07. There were no amounts claimed that were reimbursed to the Commission.

Between 14/8/95 and 15/8/95 the Commissioner went to Melbourne in conjunction with his membership of the Ministerial Committee of Advice in relation to Police Training and the

New South Wales Police Academy (Goulburn) curriculum. The total cost of the trip was \$1,096.60. The cost of accommodation was \$246.95 90 while associated costs such as meals not included in the accommodation costs and taxi costs were \$241.65. The Commissioner stayed at the Hyatt Hotel.

On 17/11/95 the Commissioner went to Brisbane to the Criminal Justice Commission. The total cost of the trip was \$761.90. There were no accommodation costs. Associated costs were \$38.70.

Between 3/3/96 and 5/3/96 the Commissioner went to Mildura via Melbourne. The total cost of the trip was \$1,268.90. The cost of accommodation was \$126 while the cost of associated costs were \$29.50. In Mildura the Commissioner stayed at the Sunland Motel.

Between 21/1/96 and 23/1/96 the Commission went to Canberra for meetings with the AFP, including Commissioner Palmer and at the Attorney-General's Department concerning aspects of the Commission's inquiry into Aboriginal Land Councils. The total cost of the trip was \$1,187.00. The cost of accommodation was \$625 while the cost of associated costs were \$562.00. The Commissioner stayed at the Parkroyal Hotel.

Between 5/2/96 and 6/2/96 the Commissioner again went the Canberra for a meeting at the Attorney General's Department again concerning aspects of the Commission's investigation into Aboriginal Land Council. The total cost of the trip was \$497.65. The cost of accommodation was \$320.00 while the cost of associated costs were \$177.65. The Commissioner stayed at the Parkroyal. The cost of this trip include the costs of the Commissioner's driver.

#### **For the year ended 30<sup>th</sup> June 1995**

During the 1994 – 1995 financial year the Commissioner undertook one overseas trip and three interstate trips as follows:

Between 12/6/95 and 6/7/95 the Commissioner visited New York to consult with Justice Mollen and a number of his staff in relation to the Mollen Report on corruption in the New York police force. The Commissioner then proceeded to London in preparation for a paper and panel discussion on fraud in financial markets to be held in later 1995. He then went on to Israel where he had been invited to present a paper in Jerusalem at a plenary session of a major international conference on public sector ethics organised by the Israeli Government.

In the course of the return trip to Australia, the Commissioner visited Beirut, Lebanon at the invitation of the Beirut Bar and addressed an assemblage of judges, government ministers, legislators, lawyers, academics and clergy on the work of the ICAC and the desire of the Government of NSW to ensure that integrity and probity are norms in the public sector of our State. He also stressed the commitment of the Government of New South Wales to provide a fair and transparent climate in which those who wish to invest and to establish and conduct business with government may do so with confidence.

The total cost of the trip was \$26,810.51. The cost of accommodation was \$10,626.10. While away the Commissioner stayed at The Clift in San Francisco, the Hotel Athenee in New

York, the Hotel Continental in Paris (overnight to connect with flight to Israel) ,the Le Meridan in London, the Atlas Hotel in Tel Aviv, the, The King David Hotel in Jerusalem, the Hotel InterContinental in Jordan, (to get from Israel to Lebanon, since those nations are at war) the Regency Palace Hotel in Beirut, the Steigenberger Avange Frankfurt Airport Hotel in Frankfurt and The Oriental Hotel in Bangkok. Other associated costs of the trip include meals not included in the accommodation costs, conference registration, taxis, portorage, airport taxes, travel insurance and telephone expenses. The cost of these associated costs was \$5,916.11. There were no amounts claimed that were reimbursed to the Commission .

Between 31/1/95 and 6/2/95 the Commissioner went to Alice Springs and Darwin to attend conferences and deliver papers about the ICAC for the opening of Law Week 1995 at the invitation of the Law Society of the Northern Territory. The total cost of the trip was \$1065.00. No separate accommodation costs are available at this time.

Between 26/3/95 and 28/3/95 the Commissioner went to Melbourne and Hobart. While in Melbourne the Commissioner visited the Victorian Police Internal Investigations Department and while in Hobart delivered a paper, by invitation, at the Auditor General's Conference. The total cost of the trip was \$2,422 70. The cost of accommodation was \$333.80 while associated costs such as meals not included in the accommodation costs and taxi costs were \$586.00. While in Melbourne the Commissioner stayed at The Windsor Hotel and while in Hobart stayed at the Sheraton Hotel. The costs of the stay in Hobart were subsidised in part by the Tasmanian Audit Office.

Between 21/7/95 and 22/7/95 the Commissioner visited the Criminal Justice Commission in Brisbane. The total cost of the trip was \$628.90. There were no accommodation costs incurred by the Commission. The Commissioner was accompanied on his visit to the Criminal Justice Commission by the then Executive Director, Mr Paul Seshold.

For all travel within and outside Australia, under the Commissioner's terms of appointment, the Commissioner is entitled to travel first class when travelling on official business.

All overseas travel was undertaken with the concurrence of the Premier. Travel costs have been the subject of audit by the Auditor-General.

Overseas travel has been reported upon in each of the Commission's Annual Reports.