

# Table of Contents

Committee Membership .....	1
Committee Functions .....	2
Chairman's Foreword.....	3
Commentary.....	4

1. Complaint Statistics .....	8
2. Investigations & Hearings.....	10
3. Use of Commission's Powers.....	20
4. Research Section .....	21
5. Corruption Prevention Unit .....	31
6. Education Section.....	44
7. Operations Review Committee.....	52
8. Management Issues .....	54
9. Other Matters.....	59
10. Supplementary Questions Taken on Notice.....	60
11. Transcript of Proceedings.....	67

## Appendices

Appendix 1	Questions Taken on Notice from meeting on 27 Nov 2000...	118
Appendix 2	ICAC Operational Strategy.....	127
Appendix 3	Minutes of public hearing held on Monday 27 Nov 2000 .....	130
	Minutes of meeting held on Tuesday 20 Feb 2001 .....	131
Appendix 4	Chairman's report on Institutional & Organisational Mechanisms of Governmental Anti-Corruption Initiatives: Regional Conference Budapest, 8-9 Dec 2000 .....	132

Blank Page

# Committee Membership

## Legislative Council

The Hon J Hatzistergos MLC  
**Chairperson**

The Hon D Oldfield MLC

The Hon G Pearce MLC

## Legislative Assembly

Mr J Price MP  
**Vice-Chairperson**

Mr M Brown MP

Mr A Fraser MP

Mr K Hickey MP

Dr E A Kernohan MP

Mr G Martin MP

Ms A Megarrity MP

Mr M Richardson MP

### **Secretariat**

Ms H Minnican - Committee Manager

Ms T van den Bosch - Project Officer

Ms H Parker - Committee Officer

Ms N O'Connor - Assistant Committee Officer

Ms P Adam - Assistant Committee Officer

# Committee Functions

## *Independent Commission Against Corruption Act 1988*

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

# Chairman's Foreword

On 27 November 2000, the Committee held its first General Meeting with Commissioner Irene Moss and her senior managers at the Independent Commission Against Corruption. This continues the Committee's practice of meeting regularly in public with the Commissioner of the ICAC in order to fulfill the Committee's statutory role of monitoring and reviewing the functioning of the Commission. As detailed in section 64 of the *ICAC Act*, the Committee's functions are limited to a general review function that excludes the reconsideration of the Commission's investigative decisions, findings and recommendations.

Commissioner Moss and her staff were forthcoming and open in the details supplied on matters the subject of the Committee's consideration, both with regard to the answers to the questions on notice and the information supplied in response to questions asked at the hearing. This enabled the Committee to obtain a great deal of useful information about the activities and management of the Commission, which I am pleased to place on the public record in this report.

Several matters were of particular interest to the Committee, including the Commission's performance reporting, corruption prevention, investigative outcomes, the ICAC's budget, and protected disclosures. These are addressed in the commentary section of the report.

The success of the meeting depended on the involvement of many people. I would like to thank the Commission for its co-operative approach to the meeting and the large amount of information made available to the Committee. My thanks also for the contribution of Committee Members, and the assistance of the Secretariat.

The Hon John Hatzistergos MLC  
Chairperson

# Commentary

The Committee's first General Meeting with Commissioner Irene Moss took place on 27 November 2000. As with previous General Meetings, the Committee forwarded Commissioner Moss a series of Questions on Notice prior to the meeting, and the answers were tabled at the public hearing. Further questions were asked of the Commissioner on the day.

A number of key issues arose from the General Meeting that the Committee considered warranted comment and recommendations where appropriate. These are outlined below.

- **Performance reporting**

Previous Committee reports this year have raised the need for improved performance reporting by the ICAC. The Committee's last General Meeting report (No. 1/52) found the Commission's key performance indicators (KPIs) unsatisfactory, and recommended that they be reviewed by the Commission. The Committee is pleased to note the progress made by Commissioner Moss in improving the ICAC's performance measurement. The Commission has drafted new KPIs, and in the past six months, it has met twice with representatives of the Committee, the Ombudsman's Office, and the Audit Office to discuss the drafts and obtain feedback. Commissioner Moss advised the Committee that she anticipates having a final draft of the new performance indicators ready early in the New Year.

Pending finalisation of the new key performance indicators, the Commissioner has made improvements to the way in which the ICAC reports its performance in its Annual Report. The Committee commends the Commission on the level of detail provided in this year's Annual Report, and its focus on the Commission's achievements in terms of its objectives and newly developed strategic plan.

Commissioner Moss also advised the Committee that she has arranged for aspects of the Commission's performance to be reviewed. In particular, the Commission's investigative capabilities and its functions are to be externally assessed. This Committee has previously indicated that it intends conducting its own audit of the Commission's management and performance, as outlined in recommendations in Report No 2/52 (*Accounting for Extraordinary Powers*). However, as the Commission's reviews have the potential to overlap with that of the Committee, the Committee has determined to defer its audit of the ICAC until the results of the Commission's reviews are available, thus avoiding any duplication of effort. The Committee will then be in a position to evaluate the findings of the external reviews commissioned by the ICAC before finalising its own audit approach.

Formal performance management of individual Commission officers was also raised at the General Meeting. The Committee welcomes the fact that the Commission provided details about senior managers' salary packages, including performance bonus information. The Committee notes with concern the previous Commissioner's apparent failure to document a formal performance evaluation prior to awarding significant performance bonuses to the ICAC's senior management. The amounts

---

granted were close to the maximum permissible awards. In the circumstances, the Committee is unable to conclude that the bonuses were paid in accordance with the Premier's guidelines, which required a full performance review to be conducted to ascertain whether a manager's performance merits the payment of a bonus.

While performance bonuses are no longer permitted under the Premier's guidelines, the Committee is of the opinion that it would be valuable for a formal performance review process to be implemented at the Commission. The Commissioner gave evidence that the Commission's performance management system is being internally reviewed, and the Committee will be monitoring the progress made by the ICAC in implementing an improved performance management process.

**Recommendation 1:**

The Committee recommends that the Commissioner regularly report to the Committee on progress made in implementing an improved performance management system at the ICAC.

• **Corruption Prevention**

The Committee is impressed by the high-quality corruption prevention work undertaken by the Commission since the last meeting. In addition to continuing its work on developing systemic reform recommendations, the Corruption Prevention section has undertaken activities in new areas.

Commissioner Moss has instituted multi-disciplinary teams whereby Corruption Prevention, Legal and Investigation staff collaborate in preliminary enquiries to ensure that there is a focus on both evidentiary and policy reform matters. The Committee will follow this up with interest at subsequent meetings.

Corruption Resistance Reviews are a further initiative of the Corruption Prevention section. Such Reviews involve a detailed assessment of an agency's systems and their resistance to corruption. The Committee notes that the first Corruption Resistance Review, conducted into the Registry of Births, Deaths and Marriages, is underway. The Section is also working on the development of corruption resistance tools that are widely applicable across the public sector. The Committee will seek further information about the success of these projects in the future.

• **Investigations and investigative outcomes**

The Committee is pleased to observe that the Commission's investigation reports now include detailed information about the Commission's decision making relating to investigations, its use of powers and investigative course, as was recommended in the Committee's previous General Meeting Report. The *Report on Investigation into Conduct of Officers of the Greyhound Racing Authority* incorporates valuable information that is useful for the Committee to gain an understanding of the reasoning behind the exercise of the Commissioner's discretionary powers. Both the decision to investigate and the investigative course have been well explained in the report.

The Committee was encouraged by evidence obtained at the public hearing that revealed a greater emphasis at the Commission on investigative outcomes. A project that aims to track and report on agencies' adoption of systemic reform

---

recommendations has commenced, and the Commission plans to use its website to publish up-to-date information concerning implementation of the ICAC's recommendations. The Research Section has also begun a research project seeking to gauge the impact of ICAC investigations by assessing the effect on management and staff of agencies subject to ICAC investigations.

In relation to prosecutions arising from ICAC investigations, the Commission has sought to enhance evidence collection procedures so that there is a new focus on gathering evidence that will be admissible in subsequent criminal and disciplinary proceedings. Staff have attended in-house training seminars to increase awareness of the need to collect evidence in an admissible form. The Committee is supportive of this emphasis by the ICAC on investigative outcomes and the gathering of admissible evidence.

- **Protected Disclosures**

Implementation of the *Protected Disclosures Act* remains a source of concern to the Committee. While there have been some recent improvements, the ICAC's research has indicated on-going problems with agencies' and councils' understanding and application of the *Protected Disclosures Act*. The Committee notes that progress has been made arising out of initiatives of the Protected Disclosures Steering Committee (of which the ICAC is a member) and Commission activities such as workshops for managing protected disclosures and complaint handling. Further work is to be undertaken by the Commission focusing on needs identified through its research, surveys and complaints, and the Committee intends following up on this issue at its next General Meeting.

In terms of the ICAC's own internal reporting system, Commissioner Moss acknowledged that the existing procedures for dealing with protected disclosures from Commission staff had been deficient, and were under review as a result of staff concerns. It is the Committee's opinion that, as one of the key agencies with a responsibility for investigating protected disclosures, the ICAC's internal reporting procedures should be transparent, faultless and understood by all staff. The Committee notes that these issues arose under the former Commissioner, and that Commissioner Moss has undertaken to engender greater trust in the internal reporting system at the Commission. The Committee considers such trust to be essential to ensuring the credibility of the ICAC's internal reporting system, and will examine this issue again in future General Meetings.

- **Budget**

The ICAC's budget was discussed, and the Commissioner raised concerns that salary increases already agreed to by the Government could not be met by the Commission unless substantial savings were made. Commissioner Moss indicated that there is only a limited potential for savings to be made from discretionary non-salaried areas of the ICAC budget, so savings would have to be found from salaries. The Committee shares the Commissioner's concern that any savings should not reduce the Commission's investigative capacity or its effectiveness, and intends to monitor the situation.

Travel by the previous Commissioner and Commission officers was raised in the context of the budget. In response to questions about the benefits arising from travel



---

undertaken by the previous Commissioner, the Commission was unable to provide the Committee with formal reports detailing information gained during overseas travel by Commissioner O'Keefe or other officers of the Commission during 1999/2000. Travel by the Commissioner and staff is important to the overall functioning and development of the ICAC. However it is important that where undertaken there should be value for the organisation as a whole arising from any overseas trips. In these particular instances it is significant that a large number of trips were undertaken (particularly by the former Commissioner) for which the Commission was unable to identify any ongoing benefit to the organisation as a whole. The Committee is concerned that there should be value for the organisation as a whole arising from any overseas trips. The Committee therefore considers that it would be appropriate that formal reports and briefings be prepared following overseas travel to enable the knowledge gained to be conveyed throughout the Commission, and notes that Commissioner Moss has required formal briefings following travel by Commission staff.

- **Operations Review Committee**

Commissioner Moss advised the Committee that there had been no changes to the nature of the work performed by the ORC since she began her term. Since becoming Commissioner, Ms Moss has found value in the existence of the ORC, and she considers it to be a useful external accountability body.

- **Matters arising from General Meeting Report No 1/52**

Recommendation 1 of this report requested the Commission provide the Committee, on a confidential basis, with a copy of its Operational Strategy. In response, Commissioner Moss wrote to the Committee advising that the Commission's operational strategy was not defined in a single document. The Commissioner provided the Committee with the criteria by which the ICAC decides to investigate a matter. This document is attached at Appendix 2. A copy of the Commission's internal reporting policy was also provided to the Committee, as requested.

# 1. Complaint Statistics

## 1.1 How many matters were received by the Commission in 1999-2000, and in what categories were they?

A total of 1609 matters were received in the 1999-2000 financial year. These were categorised as:

Section 10 complaint	574
Protected disclosure	138
Section 11 report	430
Information	288
Dissemination	7
Referrals from Parliament	0
Own initiative	3
Enquiries	33
Outside jurisdiction	136
<b>Total</b>	<b>1609</b>

## 1.2 What public authorities were the subject of complaint?

The Commission received a total of 712 complaints, comprising 574 complaints and 138 protected disclosures, involving 376 different public sector agencies. The Greyhound Racing Authority was the agency that we received the most complaints about in 1999-2000 (36 complaints). No doubt this, and the 33 informations also received concerning the GRA in the same period, was a result of the Commission's investigation into the conduct of the Chief Steward and related matters. In previous years (between 1995-1999) the GRA was the subject of a total of only 7 complaints.

The Department of Corrective Services was the next most frequently complained about organisation. The Commission received a total of 41 complaints about DCS; 15 of these were classified as protected disclosures.

Other agencies the Commission received complaints about include;

- Local Government (comprising 89 separate councils) **(219 complaints; 33 Protected Disclosures)**
- RTA **(22 complaints; 2 Protected Disclosures)**
- Department of Community Services **(22 complaints; 4 Protected Disclosures)**
- NSW Aboriginal Land Council **(20 complaints; 7 Protected Disclosures)**
- NSW Police Service **(15 complaints; 1 Protected Disclosure)**
- Office of the Commissioners of Inquiry for the Environment **(15 complaints)**
- State Rail Authority **(11 complaints; 4 Protected Disclosures)**

**1.3 Could you provide a statistical breakdown of the percentage and number of complaints that were: investigated; subject to preliminary investigation; referred; declined; otherwise dealt with.**

66 matters, or 4.1 per cent of the total matters received, were referred to the Investigations Unit for investigation. 42 of these matters were complaints (39) or protected disclosures (3).

Preliminary investigations were conducted in relation to 229 matters, or 14.2 per cent of the total matters received. 158 of these were complaints (112) or protected disclosures (46).

80 matters, or 4.5 per cent, were referred for the attention of the Corruption Prevention & Education unit. This figure includes 50 complaints (35) or protected disclosures (15).

374 matters, or 23.5 per cent, were referred to external agencies. 40 were referred pursuant to s.53 & s.54 of the ICAC Act, requiring those agencies to investigate the issues raised and furnish a report to the ICAC. The remainder were referred for the agency's information, or for their information with a request for advice on the matter to be provided to the Commission.

860 matters (53.5%) were declined at the initial stages. These matters include complaints about conduct that is not within the Commission's jurisdiction or is otherwise unlikely to involve corruption, reports from public sector agencies and reports or information from non-NSW agencies where the Commission is satisfied that appropriate action is being taken by the reporting agency or another agency.

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

A total of 1609 matters were received in 1999-2000, compared with 1747 matters received in the preceding 12 months. This represents a 7.9 per cent decrease in matters received overall. In 1998-1999, 909 complaints and protected disclosures were received. 712 complaints and protected disclosures were received for the 1999-2000 period (a 21.6 per cent decrease).

The majority of complaints continue to concern local government, predominantly those relating to development applications, as well as law enforcement, tendering, contracting and the procurement and disposal of public assets. The Commission is careful not to make comment or generalise about these matters, however, and remain mindful that until investigated and proved or disproved these constitute only untested allegations.

Other trends and issues arising from the complaints received by the Commission are dealt with at Questions 1.2, 1.3 and 10.1.

## 2. Investigations & Hearings

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

In the period 1 July 1999 to 30 June 2000 public hearings were held in three investigations over 50 days:

Investigation into former and serving officers of the Roads and Traffic Authority (Operation Jommelli) - 38 days

Investigation into officials of the Greyhound Racing Authority (Operation Muffat) - 9 days

Investigation into officers of the former Illawarra Regional Development Board (Operation Besa) - 3 days

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

Private hearings were held in 10 investigations over 62 days:

Investigation into former and serving officers of the Roads and Traffic Authority (Operation Jommelli) - 34 days

Investigation into officials of the Greyhound Racing Authority (Operation Muffat) - 6 days

Investigation into the Department of Corrective Services (Operation Cadix) – 2 days

Investigation into conduct of officers of South Sydney Council (Operation Balle) - 8 days

Investigation into Parliamentary Travel (Operation Holborne) - 6 days

Operation Merula - 2 days

Operation Dufay - 1 day

Operation Cavalli - 1 day

Operation Usper - 1 day

Operation Weckmann - 1 day

**2.3 Having completed your first investigation involving public hearings since becoming Commissioner, can you provide the Committee with your impressions of the advantages and disadvantages of public hearings?**

The ICAC Act provides the Commission may conduct hearings in public or in private. Section 31(3) of the ICAC Act provides that in deciding whether a hearing should be held in public or in private the Commission is obliged to have regard to any matters that it considers to be related to the public interest.

Accordingly, on each occasion in which a hearing is held the presiding Commissioner must consider whether it is in the public interest to hold the hearing in private, in public or partly private and partly in public.

I believe that, as far as possible, public hearings should occur only where the evidence obtained to that point, whether by way of investigation or private hearings, indicates that it is sufficiently in the public interest to hold public hearings. I also take into account the following considerations:

- The integrity of the investigation (it may be prejudicial to the investigation to publicly divulge the fact the Commission is conducting an investigation, to identify the witnesses or make known the extent of evidence obtained);
- Protection of reputation from anticipated but untested or unverified evidence;
- Whether information is being sought at a preliminary stage for the purposes of determining whether further investigative effort is required. In this regard if it is ultimately decided not to proceed further there is no requirement for the Commission to prepare a report in relation to the matter (see s.74(3) of the ICAC Act);
- The need to protect the identity of a witness or an informant;
- The requirements of s.18(2) of the ICAC Act which requires that where there are proceedings for an indictable offence conducted by or on behalf of the Crown, in order to ensure that the accused's right to a fair trial is not prejudiced, the Commission must, to the extent it thinks necessary, ensure that, as far as practicable, any hearings are conducted in private during the currency of the proceedings;
- Any application made by, or on behalf of those appearing before the Commission that it is in the public interest for the hearing to be conducted in private; and
- Whether the hearing involves closing submissions. Section 31(2) of the ICAC Act provides that the Commission may decide to hear closing submissions in private.

There may be advantages in holding hearings in public if it has been decided that it is in the public interest to do so, and I believe some of these have been apparent in the matters I have presided over. These advantages include:

- Public hearings allow a wide exposure of corrupt conduct;
- Public hearings are an important mechanism for educating the public about corruption;
- Public hearings provide a mechanism for public officials to be publicly accountable for their actions;
- Public hearings can be an important deterrent to corrupt conduct. If people know their conduct may be subject to public exposure they may be less likely to engage in corrupt activity; and
- Public hearings sometimes encourage others to come forward with information, including information relevant to the investigation.

By way of contrast, however, I have noticed that private hearings are sometimes more likely to allow the detection of inconsistencies in evidence given by different parties, as witnesses give their evidence not aware of what else might have been said by other parties. This is particularly the case where the investigation plan involves hearing from key individuals towards the end of a hearing to test their evidence against that provided by other witnesses earlier in the proceedings.

I have also noticed that, on occasions, witnesses give much more full and frank evidence in private than they do when they are recalled to give evidence in public hearings. This may be due to concern or trepidation about having their evidence exposed to colleagues and associates by way of a public forum. Some witnesses at public hearings seem to play up to the media or the public gallery.

Public hearings also often have the consequence of attracting complaints and information about the authority under examination. Occasionally, these may be worth pursuing, but often, these additional allegations do not eventuate to much, meaning additional resources devoted to working on matters that are of little or no relevance or value to the Commission.

I am also mindful that hearings are merely one tool in the investigative repertoire for the Commission. Those who argue that the Commission should operate like a court, and conduct hearings in public, do not make the distinction that the Commission's hearings are part of the investigative process, and that a court only hears matters at the conclusion of an investigation. As an investigative tool, it will not always be appropriate for the Commission to conduct hearings in public.

Ultimately, presiding Commissioners have to be mindful of the public interest, and take into account these various considerations in favour of or against public hearings before deciding on an appropriate course of action.

**2.3 What is the implementation status of the recommendations arising from the following investigation reports: Visual (Officer of Department of Gaming and Racing); Sturt (Fairfield City Councillor); Encina (Parliamentary Travel 2); Zack (Aboriginal Land Councils); Anshutz (Waste Depot Weighbridges)?**

### **Visual**

No recommendations were made that consideration be given to the taking of prosecution or disciplinary action. The Department of Gaming and Racing Senior Inspector had been dismissed prior to publication of the report.

### **Sturt**

Recommendations were made that consideration be given to the prosecution of six persons. To date the DPP has provided final advice in relation to only two of these matters. In one case it recommended against prosecution, which recommendation has been accepted. In the other the DPP recommended prosecution proceed. The offence was a contravention of s.112 of the ICAC Act. The DPP ultimately discontinued this prosecution for reasons not associated with the merit of the prosecution. The remaining matters are awaiting final consideration by the DPP. No recommendations were made that consideration be given to the taking of disciplinary action.

### **Encina**

In November 1999 the ICAC released its third report on parliamentary and electorate travel. This was a monitoring report on the implementation of the 63 recommendations made in the Commission's second report.

No recommendations were made that consideration be given to the taking of prosecution or disciplinary action.

Of the 63 recommendations, 19 are dependent on the forthcoming determination of the Parliamentary Remuneration Tribunal (PRT) which is due on 1st December 2000. 29 were fully or partially implemented, 3 will not be implemented and 12 require further consideration by Parliament.

The ICAC considers that the progress made to date is encouraging, although more needs to be done to bring about permanent reform of practices and attitudes. Parliament has shown it has such intentions but, to be successful, continued leadership and a commitment of further resources must support these intentions. The ICAC will continue working with the Parliament and others and to report on further implementation of the recommendations. Parliament advises that it has been encumbered in its ability to implement many of the recommendations due to delays with the release of the PRT's determination and lack of additional resources from Treasury. With respect to funding, Parliament indicates that it will be seeking further funds from Treasury in the next financial year to help implement the recommendations.

The Speaker of the Legislative Assembly and the President of the Legislative Council have advised the Commission that they intend to make arrangements for details of progress made towards implementing the recommendations to be reported in the respective annual reports of each House for the year ending 30 June 2000.

### **Zack**

In 1994 the ICAC commenced an investigation into allegations of corrupt conduct in Aboriginal land councils. Since that time 4 reports have been

released. The first report published in April 1998 was the *Report on Investigation into Aboriginal Land Councils in New South Wales – Corruption Prevention and Research Volume*, and sets out 26 recommendations for change in the Aboriginal land council system to assist in minimising corruption. The second and third reports published in June 1999 and October 1999 examined specific incidents of corruption explored at Commission hearings.

The final report examined the progress made by various agencies including the NSW Aboriginal Land Council, the Department of Aboriginal Affairs (DAA) and the Office of the Registrar of the Aboriginal Land Rights Act, in implementing the 26 recommendations. This final report identified several areas where the pace of reform was slow, particularly in relation to the NSW Aboriginal Land Council (NSW ALC). However, it can now be reported that the pace of progress since that time has improved.

In all, recommendations have been made that consideration be given to the prosecution of eight persons. Of these the DPP has provided final advice in two matters, one in which prosecution was recommended and one in which prosecution was not recommended. The former relates to an offence under s.80(c) of the ICAC Act. The defendant pleaded not guilty on 2 December 1999 and the matter is currently awaiting hearing.

Recommendations were made that consideration be given to the taking of action against Wayne Griffiths, Thomas Winters and William Charles Murray with a view to each ceasing to be a Councillor of the NSW ALC. No action was taken.

Implementation of the 26 recommendations contained in the April 1998 report continues to be a priority.

In December 1999 the New South Wales Aboriginal Land Council (NSWALC) elections were held. The election saw nine of the previous Councillors re-elected and the emergence of four new Councillors. The new Council has taken steps to strengthen their relationships with Government generally, and the DAA, the NSW Audit Office, the NSW Ombudsman and the ICAC in particular. They have also made a very strong commitment to increased accountability and transparency, and to improving relations between the NSWALC and local Aboriginal land councils (LALCs).

Commissioner Moss met, at their invitation, with the members of the NSWALC Council to discuss the way ahead for both agencies. The meeting was a positive one and the Council discussed the means by which they, with the assistance of the ICAC and other agencies, will be able to advance the recommendations provided in the April 1998 Report.

Since that discussion, a number of other meetings have been held and undertakings given. At NSWALC's invitation, Commission staff conducted an information session to outline the recommendations made in the April 1998 report. During the meeting Council identified six recommendations that they



have commenced work on. During the workshop Councillors also agreed that NSWALC would advance the recommendations but indicated they would need ICAC support, advice and assistance in areas such as: complaint handling, reviewing the Code of Conduct, reviewing internal procedures and the development of corruption resistance training for Aboriginal land councils.

PricewaterhouseCoopers and the NSW Audit Office have been engaged to provide expert advice and assistance in the development of a standardised budget and audit format for Aboriginal land councils.

During May 2000, the Commission presented information to participants at the NSWALC statewide meeting in Dubbo. The presentations included information about the ICAC, its powers and statutory functions.

The DAA has released a Discussion Paper on the Review of the NSW Aboriginal Land Rights Act 1983. Submissions closed in July 2000.

The Registrar is continuing with its work on the Model Rules project (Recommendation One) and will report on the results.

The NSWALC Council has decided to restructure the NSWALC administration to increase effectiveness and accountability.

The ICAC Introduction to Internal Investigations Course was adapted to suit the needs of the NSWALC and presented to Councillors and staff of the NSWALC on 24/25 Aug 2000.

During September Commission officers closely supervised, advised and where necessary assisted NSWALC investigation staff in conducting inquiries and preparing s.54 reports. It is planned that this liaison, albeit less closely, will continue for a period of 6 months. There are 59 preliminary enquiries currently active and being tracked.

Commission staff have commenced planning for a corruption resistance review with the NSWALC.

A further progress report is planned for publication in the 4<sup>th</sup> Quarter of FY2000-2001.

### **Anschutz**

Recommendations were made that consideration be given to the prosecution of nine persons. The DPP has provided final advice in relation to three persons, in each case recommending prosecution proceed. In each case the defendant was prosecuted for offences under s.249B(1) of the Crimes Act. Each defendant pleaded guilty. Each was convicted, placed on a good behaviour bond for two years and fined.

Findings of corrupt conduct were made against three former employees of Sydney Council. As they had ceased employment prior to publication of the

report no recommendations were made that consideration be given to the taking of disciplinary or dismissal action.

A feature of this investigation was the involvement of the Commission's corruption prevention unit during the course of proceedings. This meant that a large number of the corruption prevention recommendations were already adopted by the time the investigation report was released.

**2.4 Over the past year (1999-2000) how many recommendations for 'consideration of prosecution or disciplinary action' have there been?**

**2.4.1 How many, and which, of these recommendations have been adopted by the relevant agencies?**

**2.4.2 What have been the outcomes?**

**Investigation into the Department of Corrective Services (fourth and fifth reports) (Operation Cadix)** – Consideration of prosecution was recommended against one person (Leslie Kelly) and the taking of disciplinary action was recommended in relation to two persons (Peter Townsend and Leslie Kelly).

A brief of evidence in relation to Mr Kelly is being prepared for the DPP.

In relation to disciplinary proceedings Mr Kelly was dismissed on 24 March 2000. His appeal against dismissal was dismissed. Mr Peter Townsend was counselled. The Commission regards these actions as appropriate.

**Investigation into the conduct of Mr Sam Masri, former Purchasing Officer of Liverpool City Council (Operation Benda)** – recommendations were made that consideration be given to the prosecution of Mr Sam Masri and Mr Roger Rogerson. As Mr Masri had been dismissed prior to publication of the report, no recommendations were made that consideration be given to the taking of disciplinary or dismissal action against him.

Two preliminary briefs of evidence have been forwarded to the DPP for consideration. Final advice is awaited from the DPP.

**Investigation into the conduct of an officer of the EPA (Operation Negri)** – a recommendation was made that consideration be given to the prosecution of Raymond Smith. No recommendations were made that consideration be given to the taking of disciplinary or dismissal action.

A brief of evidence has been forwarded to the DPP.

**Investigation into Aboriginal Land Councils - Travel Allowance and Expense Claims (third report) (Operation Zack)** – recommendations were made that consideration be given to the prosecution and taking of action with a view to dismissal as Councillors of NSW ALC against Wayne Griffiths, Thomas Winters and William Charles Murray.

Prosecution briefs have been forwarded to the DPP for consideration. A final advice is awaited in each matter.

No dismissal action was taken against Messrs Griffiths, Winters or Murray. Subsequent to the Commission's report being released ALC elections were held and Messrs Griffiths and Murray were re-elected. Mr Winters did not stand for re-election due to ill health.

**Investigation into the disposition of funds remaining in the accounts of the former Illawarra Development Board (Operation Besa)** – a recommendation was made that consideration be given to the prosecution of Graham Neville.

A brief of evidence has been forwarded to the DPP.

## **2.5 Has the rate of adoption of ICAC recommendations generally been satisfactory?**

The adoption of recommendations by agencies is an important aspect of the success, or otherwise, of the Commission's work. This is why the adoption rate for Commission recommendations will be a key performance indicator for the organisation. In particular, the Commission will look at using the Annual Report to report on the percentage of recommendations adopted each year by affected agencies.

The Commission is currently engaged in a project to track and report in detail on the adoption of systemic or reform recommendations. More information is provided on this project at Question 5.1, relating to the Corruption Prevention unit. In particular, this project capitalises on the fact that we will be in a position to use our website to more accurately report the adoption of systemic recommendations, as this will be able to provide up to date information, and allow prompt additions and alterations as necessary. By the occasion of the next meeting with the Committee, the first results of this project should be reported on the website.

I am advised that the Commission has previously considered the possibility of preparing progress reports for Parliament on the adoption of systemic recommendations, similar to the annual reporting of the progress of recommendations relating to consideration of prosecution and disciplinary proceedings. However, the lead in times necessary to prepare and print these reports created a risk that the agency may have acted upon some or all of the applicable recommendations by the time the report was tabled. Using the website in the way proposed will cut down the lead time, and will also allow the agency concerned to provide additional advice that may be posted on the site very soon after it is provided to the Commission.

As to adoption of recommendations, the performance is variable, often depending on the agency concerned. This can be attributed to a number of factors, including the willingness and capacity of the agency to implement change, the nature of the recommendations, and the processes needed to be

undertaken to implement the recommendations. For instance, recommendations that require legislative change are obviously more complex than changes that can be made internally by administrative means.

Our experience has been that where we work with the agencies to develop recommendations these are more likely to be implemented. This is a factor that has been identified by the Committee in the past, and we are well aware of the benefits of this approach. Our research work on the impact of investigations on affected agencies and like agencies will assist us to determine if relevant recommendations are being picked up beyond the agency the subject of investigation.

In general, while we are generally satisfied with either the adoption of recommendations or the renewed willingness of some agencies to re-examine standing recommendations, we will be using our recommendations project to report on the adoption and implementation of recommendations, and to make agencies aware that they will be publicly accountable for this. We will also be using the adoption of recommendations as a performance indicator to report on the value of our work in addressing and remedying corruption risks.

**2.6 How have the investigations undertaken contributed to the objective of exposing and preventing corruption in NSW? What indications are there that the Commission has been successful in meeting its objectives?**

The Commission undertakes its task of exposing and preventing corruption partly through its investigative function (not all investigations result in hearings) and partly through its corruption prevention and education work. Often corruption prevention work arises out of, and is conducted during the course of, investigations. Investigative work primarily focuses on exposing corrupt conduct. However many investigations, including those where no corrupt conduct is found, identify systems weaknesses which could give rise to or encourage corrupt conduct.

Recent Commission investigation and corruption prevention work has highlighted the need for improved corruption resistance and systems for preventing and detecting corruption.

These issues have been highlighted in the reports on ticketing at Sydney Ferries, tendering at Liverpool City Council, environmental regulation at the Environment Protection Authority, the conduct of officers of the Department of Corrective Services and expenditure by the former Illawarra Development Board. Other investigation reports have examined the progress towards addressing corruption prevention issues in Aboriginal Land Councils and in the NSW Parliament. A recent investigation into the Greyhound Racing Authority revealed significant corruption involving the former Chief Steward. The investigation resulted in a number of corruption prevention recommendations being made. The Commission's most recent report into the rebirthing of stolen motor vehicles uncovered significant corruption. This investigation has resulted in the RTA committing itself to a wide range of initiatives to address corruption risks highlighted by the investigation.

It has always been the Commission's practice to use its investigative powers to expose corrupt conduct with a view to securing improvements in public sector management, policies and practices. Similarly, a range of corruption prevention reports has been published with the same objectives and, on a daily basis, advice is given to public officials about ways to prevent corruption. The Commission is committed to the process of regular review of its work to ensure that its investigation and corruption prevention recommendations for systemic change are effective, practical and useful. Feedback received to date suggests that generally this is the case and the Commission is consistently seeking new ways to improve its effectiveness.

The effectiveness of the Commission's work is measured through the exposure of corrupt conduct, the nature and extent of the corrupt conduct exposed and the identification of the need for systems review and change by public sector agencies. An important indicator of the success of the Commission is the increase in agencies adopting a strategic approach to corruption prevention, seeking advice at appropriate times, and the ongoing commitment of the public sector to the improved practice and promotion of ethical behaviour.

The *Impact of ICAC Investigations* research project currently being undertaken by the Research Section will assist the ICAC in assessing how successful it has been in meeting these objectives. The purpose of this project is to explore a number of issues in organisations that have previously been the subject of an ICAC investigation. More specifically these are:

- management and staff understanding of and knowledge about the ICAC investigation that has been previously conducted in their workplace;
- what workplace changes that have occurred, if any, that they understand to have come about as the result of an ICAC investigation;
- the key issues that have 'stayed in their minds' about the reasons for the investigation;
- what people feel have been the main 'lessons learnt' from the investigation and the way it was handled; and
- any changes that are identified as being a direct result of the investigation and what effect they are having.

As part of the performance measurement and reporting project, the Commission is also developing indicators to better track and report the impact of the Commission's activities on complaints received and matters notified to the Commission.

## 3. Use of Commission's Powers

### 3.1 Since the last General Meeting, what use has the Commission made of its powers under section 21 (obtaining information), s.22 (obtaining documents or other things) and s.23 (entering premises)?

In the period 1 July 1999 to 30 June 2000 the Commission issued seven s.21 notices, ninety two s.22 notices and three s.23 notices.

### 3.2 How many listening device warrants, telecommunication intercept warrants, and search warrants have been obtained and executed in 1999 – 2000?

During the relevant period the Commission obtained sixteen listening device warrants, seven telecommunication intercept warrants and twenty four search warrants.

### 3.3 How many controlled operations has the Commission undertaken in the past year?

In the period 1 July 1999 to 30 June 2000 the Commission authorised two controlled operations.

### 3.4 Has the Commission experienced any difficulties relating to the exercise of its powers, that it wishes to bring to the Committee's attention?

The Commission has previously brought to the attention of the Committee a number of issues in response to which it has proposed amendment to the ICAC Act or other legislation. The Committee has previously considered these matters, and made recommendations. The Commission will work with the Committee on those relevant areas identified in the report, *"Consideration of Proposed Powers"*.

Apart from these matters already raised the Commission has identified one other area that requires further examination. The Commission is currently reviewing issues associated with establishing controlled operations as part of investigations. Further advice will be provided to the Committee on this issue as it becomes available.

## 4. Research Section

### 4.1 What new activities have been undertaken by the Research Section since our last meeting?

During the period under review, the Research Section:

- finalised work on one major public sector survey (*Ethical Culture Survey*)
- continued work on another major public sector survey (*Unravelling Corruption II*)
- commenced two major new projects (*Local Government Corruption Prevention Profile* and *Impact of ICAC Investigations*)
- developed a research proposal concerning *Integrity Testing*, and
- continued to play a leading role in the *Strategic Capacity Project*.

#### **Ethical Culture Survey**

Ethical tone or culture has traditionally been considered a difficult aspect of an organisation to understand or measure. To assist organisations measure aspects of their organisation which impact upon its ethical practices the ICAC has developed a survey based on findings in the organisational research literature (as outlined in the ICAC publication *Ethics - The Key to Good Management*). The primary aim of the survey is to create a tool that can help managers identify where the key challenges may lie in creating a strong ethical culture in their organisations.

The ICAC conducted the survey with a sample of NSW public sector organisations in June - August 1999. The survey was distributed to a random selection of 1314 public sector employees from eight state agencies and seven local councils. In total 915 questionnaires were returned, a 70% response rate. The results of this survey are summarised in the research report *What is an ethical culture? Key issues to consider in building an ethical culture*. Members of the Parliamentary Committee would have received a copy of this research report last month.

To assist public sector organisations to conduct the Ethical Culture Survey in their own agencies, the ICAC has produced an *Ethical Culture Survey Kit*.

#### **Unravelling Corruption II**

This work is discussed in response to Question 4.4 (see below).

### **Local Government Corruption Prevention Profile**

During the year the ICAC commenced development of a profile of existing corruption prevention strategies and potential risk areas in local city, shire and municipal councils. Local councils are of particular interest because:

- the ICAC consistently receives a large number of complaints about local government (possibly because 'local government' encompasses more than 174 different organisations and because council decisions have a direct impact on individuals)
- local councils exercise a lot of discretionary powers, and
- local councils are organisations that have concerns and functions in common with each other, meaning that the work of the Commission can have widespread application across these concerns and functions.

The study seeks to examine the culture of councils, and the presence or absence of corruption risk factors, by asking staff and managers how they felt their councils functioned, and whether or not they had policies and procedures about how they *should* function.

The project design incorporates three phases:

1. a questionnaire sent to all General Managers
2. a questionnaire sent to a random selection of staff, and
3. structured interviews with a random selection of Councillors, General Managers and Audit Managers.

The first and second phases of this research are underway. As part of Phase 1, questionnaires were sent to all General Managers in May 2000. A 90% response rate was achieved with 156 General Managers returning completed questionnaires. The questionnaire covered the following areas in regard to corruption resistance in local councils:

- codes of conduct
- gifts and benefits
- recruitment
- protected disclosures
- procurement and contracting
- audit
- corruption and fraud prevention
- implementation of ICAC recommendations, and
- council's role as an entrepreneur.

It is currently intended to present the findings as a suite of discrete reports on each of the above topics. The first report on procurement and contracting is in the final stages of being drafted. The data concerning procurement and contracting were analysed first in order to assist the ICAC strategic focus on procurement in local government. The reports on auditing, council's role as an entrepreneur and protected disclosures are currently being drafted and will be followed by reports on the remaining topic areas.

Preliminary findings show that in regard to corruption resistance in procurement practices, local councils were strong in the following areas:



- The vast majority of councils said they had resources on hand which outline ethical principles and corruption resistant methods of contracting.
- Schedules of rates were selected predominantly by advertising for services required (81%). Advertising is more likely to produce the best price and value available and opens the field up for all to participate.
- The most common procedure for urgent (30%) and minor (22%) works was to use the schedule of rates.
- The most common procedure for contracts under \$100k was to obtain quotes (3 written or an unspecified number and/or type of quotes). Tenders were more likely to be sought for the larger amounts under \$100k.
- Nearly all councils (95%) said they kept a continuous record of expenditure on each contract let. This makes the process more accountable and transparent for potential audits.
- Although directly negotiating with contractors is not a recommended corruption resistance strategy, councils that did directly negotiate with contractors were also more likely to send out information on ethical standards to contractors. Establishing ethical expectations as well as the differences between accepted behaviour in the public and private sectors is likely to assist corruption resistance.
- Councils that did directly negotiate with contractors were also more likely to include in their codes of conduct staff/councillor interaction and declaration of non-pecuniary interest. These are two key areas for avoiding inappropriate access to information and conflicts of interest.
- Councils that did directly negotiate with contractors were also more likely to have an audit plan, an internal audit charter, to say that internal audit was “essential” or “very important” and to have a corruption and/or fraud prevention plan. This suggests that these councils are aware of the importance of, or need for, audit and corruption resistance.

The preliminary results show that weaknesses exist in corruption resistance by local councils procurement practices in the following areas:

- Four councils said they did *not* keep a record of contracts they issue. This means that no possible audit can occur for contracts issued by these councils.
- One-fifth said they did *not* record how council authorises contract variations and period contract payments. This means that the contract variations and payments are not transparent nor accountable.
- Contracts for amounts of less than \$20k were selected using methods which included officer discretion or delegated authority. These methods of contract selection are not corruption resistant and leave the officers involved in potentially vulnerable situations.
- One-third of councils (34%) said they had used extenuating circumstances on at least one occasion when tendering for services in the past 5 years.
- One-third of councils (33%) also said they had used direct negotiations for tender amounts over \$100k in the past 4 years.

- The councils that used extenuating circumstances were more likely than other councils to also have used direct negotiations in the past 4 years. Therefore these councils are using two methods of contracting that are not corruption resistant.
- Less than half of councils (45%) said they included a commitment to acting ethically as a standard term for contracts issued.
- Over three-quarters (80%) of councils said they did *not* send out information to contractors about the ethical standards of councils or expected standards of contractors.

The questionnaires to council staff for the second phase have been sent to General Managers for their information and will be distributed to a random sample of 300 council staff later this month. The third phase is due to be undertaken after the second phase is well underway.

### **Impact of ICAC Investigations**

Formal investigations with hearings and published reports are one of the ICAC's main tools for exposing corruption and providing a catalyst for prevention. Given the importance of our investigations, a research project is currently being conducted to explore the impact of investigations, using a case study methodology. It is the first time the impact of the investigations has been explored in this way.

The purpose of the project is to explore the legacy of previous ICAC investigations on those organisations that were the subject of an investigation, and on other agencies or organisations that may have been affected by the investigation, but were not the focus of it. That is, the extent of the impact will be looked at in two ways:

1. vertically within the agency where the corrupt conduct had occurred, that is, up through management and down through the staff to gain an understanding of how far-reaching the impact of the inquiry has been and what management/staff understanding is about what has happened in their organisation as a result, and
2. horizontally out from the agency to other agencies or organisations that have been involved or had the capacity to be affected in some way by the investigation.

To date 39 face-to-face interviews have been conducted, approximately 250 questionnaires administered, and 7 focus groups held.

The ICAC will use the results to help identify strategies for broadening the impact of future investigations. For example, one of the key objectives of the ICAC's Corruption Prevention work with organisations under investigation is to assist them to think more broadly about their operations and the ethical climate that is promoted by management. Thus it is hoped to foster a broader learning experience for the organisation that will not only prevent a recurrence of the same corrupt conduct, but will endure beyond the immediate problems.

### **Integrity Testing Research Proposal**

A research proposal has been prepared to explore the viability of integrity testing as a proactive method for exposing and preventing corruption for the ICAC by accumulating information which will facilitate debate in an informed and objective manner. This proposal provides an overview of the existing literature and outlines a research project that will seek the views of relevant experts in the area of Integrity Testing. Work will continue on this project as resources allow.

### **Strategic Capacity Project**

The Research Section has continued to play a lead role in this Commission-wide project. Some of the recent outputs of this project have been:

- the production and promotion of revised s11 reporting guidelines (updated from original 1994 guidelines)
- s11 forums for senior public sector staff
- revised s11 correspondence
- s54 guidelines produced for the first time
- improved corporate information system, known as ICAC Corporate System (or ICS)
- range of new ICS reports and searches developed
- periodic analysis of aggregated complaints information.

**4.2 At our last General Meeting, Commissioner O’Keefe indicated that the Research Section had been involved in the work of the Protected Disclosures Steering Committee. The March 1999 survey of NSW agencies and local councils had been undertaken, but the final report and findings were at draft stage.**

***4.2.2 Has the final report been completed? If so, could the Committee be provided with a copy of the full report?***

***4.2.3 What were the major findings?***

***4.2.4 What action has been, or will be, taken as a result of the findings?***

The Protected Disclosures Co-ordinator Survey was jointly drafted, conducted, analysed and reported by an ICAC Education Officer and NSW Ombudsman Project Officer. Both these officers are Steering Committee members.

The survey was intended to:

- identify the needs of Co-ordinators, particularly in the areas of resources and training
- plan the Steering Committee’s future work program
- educate Co-ordinators of the Steering Committee’s purpose and work
- promote the resources available through the Steering Committee to agencies and councils to enhance management of protected disclosures

The survey was despatched on 29 March 1999 with a requested return date of 18 June 1999 to the NSW Ombudsman.

#### **4.2.5 Final Report**

Analysis of the data collected from survey respondents was completed in October 1999. This information was included in *1998-99 Report to the Premier of NSW*. Copies of the report were forwarded to the PJC Chair on 11 November 1999.

The report on the research is contained in Section 3 of the *Report to the Premier of NSW - Analysis of the 1999 Protected Disclosures Co-ordinators Survey*, p.10–15. A copy is attached as Appendix 1.

#### **4.2.6 Major Findings**

As at 18 June 1999, 175 surveys had been completed and returned. This represents a return rate of 48% with the majority of surveys completed by regional councils. Of the co-ordinators who responded to the survey, 135 (or 77%) had not dealt with any disclosures during their term as protected disclosure co-ordinator.

The major findings are outlined below:

- Use of resources  
Responses indicated the most commonly used resource as the *Ombudsman's Protected Disclosures Guidelines* 122 (70%), followed by the *ICAC's Introduction to Internal Investigations Booklet* 81 (46%) and the *Better Management of Protected Disclosures Workshop* 51 (29%).
- Number of resources used
  - no resources: 36 (21%)
  - one resource: 55 (31%)
  - two resources: 3 (30%)
  - three resources: 31 (18%)

Overall, protected disclosure co-ordinators working for councils have a higher use of resources than co-ordinators for state agencies. Co-ordinators least likely to use resources are from metropolitan-based state agencies. Not unexpectedly, the longer the co-ordinator had held the position; the more likely they were to have used more resources.

- Co-ordinators noted the following challenges:
  - staff understanding of the provisions: 102 (58%)
  - resources available to communicate with staff: 43 (25%)
  - my understanding of the provisions: 38 (22%)
  - management commitment to the aims of the Act: 16 (9%)
  - other: 45 (26%)

On average, those co-ordinators nominating 'my understanding of the provisions' as the greatest challenge to implementing the Act have dealt

with less disclosures, been co-ordinator for a shorter period of time and used less resources.

- Some further challenges to implementing the Act identified in the 'other' category:
  - co-ordinators maintaining their own awareness of the issues presented by the Act
  - maintaining staff awareness of the Act
  - overcoming staff reluctance to use the Act
  - staff apathy or indifference
  - staff confidence in the processes established through the Act or in the overall capacity of the Act to achieve its objectives
  - the time factor involved in dealing with disclosures, and
  - management understanding of the Act.
- Co-ordinators provided a range of suggestions regarding resources that could be provided:
  - case studies and information about developments in other agencies, posters and plain English resources
  - examples of maladministration and substantial waste for staff training/workshops
  - committee provided education officers to assist in staff training
  - checklist/summary/leaflet of main provisions
  - ongoing newsletter information sheet, circulars, booklets
  - directory of co-ordinators for local government network purposes
  - concise material 'essential points' checklist within Ombudsman's guidelines
  - tips on addressing the negative perceptions of whistleblowers and staff suspicion/scepticism
  - material that links protected disclosures to fraud prevention strategy
  - advice hotline and more practical advice
  - software tracking system to record and monitor the status of investigation.

Some (6) co-ordinators responded that there was already sufficient (or according to one co-ordinator excessive) material available to meet their needs.

- The principal themes emerging from the co-ordinator's feedback were:
  - their organisation's commitment to the Act and its objectives
  - the general lack of experience in dealing with protected disclosures
  - the insignificant, or limited significance of protected disclosure as an issue of concern to their organisation due to its size or nature
  - difficult situations encountered when managing a protected disclosure
  - staff reluctance to make disclosures
  - concern about ability to guarantee confidentiality and protection to staff.

One respondent suggested expansion of the committee to give higher level of investigative advice to organisations.

- Barriers to the effective implementation of the Act as revealed by the feedback are primarily perceived as:
  - the co-ordinators lack of experience in dealing with protected disclosures and the practical application of the legislation, particularly by smaller and/or single purpose organisations:
  - it was alarming that three co-ordinators were unaware that they were the designated co-ordinator until the survey was referred to them for completion.
  - the reluctance of staff to make disclosures or support those who do. It was suggested by co-ordinators that this reluctance was either a lack of confidence in the processes of the Act and/or the negative cultural perceptions towards staff who make protected disclosures:

Conversely, the majority of co-ordinators cited policy and educational initiatives undertaken at induction and on an ongoing basis to alert staff to the provisions of the Act and the process of making a protected disclosure. Their responses illustrated their commitment to the intent of the Act and their efforts to promote it.

#### **4.2.7 Action by the Steering Committee**

Feedback of survey results was despatched to Co-ordinators in February 2000 in a summary document. Co-ordinators were advised the Steering Committee has taken co-ordinator responses and suggestions into account in developing the 1999-2000 and now the 2000-2001 work plan.

The following initiatives have continued and are being initiated by the Steering Committee to enhance agency and council capabilities to manage protected disclosures effectively, efficiently and ethically:

- Pilot Protected Disclosures E-mail Information Line (NSW Ombudsman for Steering Committee)
- Better Management of Protected Disclosures Workshops (Steering Committee)
- Internal Investigation Workshops (ICAC)
- Practical Ethics and Public Duty Training (ICAC)
- Complaint Handling Workshops (NSW Ombudsman)

### **4.3 What conclusions have been drawn from the Research Section's research on public sector organisations and s.10 complaints, s.11 reports and protected disclosures? This project was underway at our last General Meeting.**

#### **4.3.1 What action has been, or will be, taken as a result of the findings?**

**Public sector organisations, s10 complaints, s.11 reports and protected disclosures**

This research project is currently on hold, awaiting further development of the ICAC Corporate System's (ICS's) capacity. Some preliminary findings were presented in the Commission's 1999-2000 Annual Report:

*A research study is in progress that explores whether or not there are any differences between those NSW public authorities that do and those that do not come to the attention of the ICAC via the main reporting channels (section 10 complaints, protected disclosures, and section 11 reports). This study will assist in planning corruption prevention and education work.*

*The study compared 689 NSW public authorities regarding number of employees, location, jurisdiction, and type of organisations (councils, departments, boards etc). Though the study is ongoing, some preliminary, albeit cautious, observations can be made. For example, as shown in Table 4.3.1, three-fifths of all public authorities have never made a section 11 report (i.e. reports from principal officers of authorities), and that the ICAC received more of these reports from larger organisations.*

**Table 4.3.1: Section 11 reports according to size of agencies**

Number of employees	Received section 11 reports 1989–1998		Total number of agencies
	Yes	No	
0*	1 (4%)	25 (96%)	26 (4%)
1 to 15	23 (9%)	220 (91%)	243 (35%)
16 to 100	67 (36%)	117 (64%)	184 (27%)
101 to 500	101 (73%)	37 (27%)	138 (20%)
501+	91 (93%)	7 (7%)	98 (14%)
<b>Total</b>	<b>284 (41%)</b>	<b>405 (59%)</b>	<b>689 (100%)</b>

\* Agencies without any employees are trusts, boards and committees consisting of people employed elsewhere in the public sector.

*It was also found that NSW local councils and agency regional offices were the most likely types of organisations to make section 11 reports. County councils and boards, trusts and committees were the least likely groups of organisations to report potential corruption.*

**4.4 Could the Committee be provided with a copy of the full report arising from the data collected for the Unravelling Corruption II survey? What conclusions have been drawn and what action will be or has been taken?**

Members of the Parliamentary Committee will be provided with a copy of the full report arising from the data collected for the *Unravelling Corruption II* survey when that report is finalised.

A summary of some of the major findings of this survey were presented in the Commission's 1999-2000 Annual Report:

*Comparing 1993 and 1999 reveals some significant changes as well as some important similarities. All of the changes are indicative of the NSW public sector becoming more corruption-resistant than it was six years ago. It was found that employees in 1999, compared to those in 1993, were even more likely to believe that it was worth reporting corruption, because something can and will be done about it, and were more likely to believe that they knew where to report corruption.*

*One clear finding is that responses to the statement, 'People who report corruption are likely to suffer for it', stand apart from the others. In 1993 almost three-quarters of the respondents agreed with this statement, but significantly fewer agreed with this statement in 1999. However, the substantial number still agreeing with this statement means that work remains for public sector managers to create organisational cultures in which employees feel safe to report corruption.*

*It is also interesting that the views of male and female respondents, which were quite divergent in 1993, are now much closer. Similarly, there is less difference between the views of supervisors and non-supervisors than there was in 1993.*

*A feature of the 1999 survey, not included in the 1993 survey, was an examination of the effect of experience in a particular area of work (such as recruitment selection or tender selection) on both understanding of corruption and willingness to take action. A positive finding was that those with experience in particular areas of work (such as tendering or recruitment) are more likely to say that they would report corrupt behaviour within their organisation. Of more concern is that experience in a particular area of work does not seem to affect perceptions of whether the scenarios are corrupt. For example, more than one-third of those who regularly participate in recruitment selection considered that it was not corrupt to use one's position to get a friend a job.*



## 5. Corruption Prevention Unit

### 5.1 What activities have been undertaken by the Corruption Prevention Unit since the previous meeting?

The activities of the Corruption Prevention Section can be grouped into five broad categories:

1. Corruption Resistance Reviews.
2. Providing advice on specific corruption issues (largely agency and topic specific),
3. Developing sector-wide corruption resistance tools in targeted areas of public administration (largely topic specific), and
4. Developing and pursuing reforms which arise out of Commission investigations and preliminary enquiries (largely agency specific).
5. Conducting training and seminars.

#### **1. Corruption Resistance Reviews**

This initiative is dealt with in response to a specific question, at Question 5.4

#### **2. Providing advice on specific corruption issues**

During the 1999-2000 reporting year, we gave advice on over 340 matters. Almost 30% of these matters related to procurement and disposal of assets by government agencies and local councils, particularly tendering.

Conflicts of interest were the subject of 15 per cent of enquiries. In relation to local councils, much of the advice centred on the responsibilities of local councillors who must make decisions that sometimes may appear to favour one group of constituents at the expense of another.

Employment practices were raised in 13 per cent of enquiries. Some of these matters involved post-separation employment, that is, the employment of former public officials whose previous role in office had a material impact on the new employer (e.g. the official letting a government contract to a private company and then taking up a position of employment with the company).

Almost 8 per cent of enquiries were concerned with gifts and benefits. Examples of enquiries include how agencies should deal with situations where staff win prizes in competitions conducted by suppliers and the appropriateness of keeping gifts offered by other organisations.

Other matters dealt with included:

- direct negotiations - for example, when it is appropriate for an agency or a local council to enter into direct negotiations with one party for the sale or disposal of assets or the acquisition of goods and services

- election funding - for example, how local councillors should deal with offers of funding for their election campaigns by developers
- employment practices - for example, the circumstances in which secondary employment can be approved, the need to test the market in all instances when staff are being recruited, and restrictions on the employment of former staff by agencies
- sponsorship and whether it is appropriate for government agencies to endorse products
- codes of conduct and corruption prevention plans that are being developed by government agencies and local councils.

**Table 5.1.1 - Type of matters raised for advice by the ICAC, 1999-2000**

(Source)

Matter raised	Public agency	Local government	Private sector	Other agencies	Individuals	Total
Codes of conduct	10	4	1			15
Conflict of interest	16	31			5	52
Election issues		5				5
Employment issues/practices	35	8			2	45
Gifts and benefits	17	6	2	1	1	27
Government grants	4					4
Maladministration	7					7
Misappropriation/ misuse of public resources	13	2				15
Procurement and disposal	61	36	2	3	2	104
Protected disclosures	2				1	3
Public/private interface	6	2			1	9
Sponsorship	6	2		3		11
Other	23	14	2	5	8	52
<b>Totals</b>	<b>200</b>	<b>110</b>	<b>7</b>	<b>12</b>	<b>20</b>	<b>349</b>

### Self-guided advice

A new website was launched in November 2000. Development of an advice component for that site is underway. Focus group feedback used to inform the development of the site indicated that public servants would like to easily and anonymously obtain information about possible problems. The website advice section is intended to satisfy this need.

### **3. Developing sector-wide corruption resistance tools in targeted areas of public administration**

#### **E-Corruption Project**

Use of the intranet/internet, e-commerce and e-procurement are examples of initiatives involving emerging technology. These measures are, on balance, highly desirable and should result in increased public sector efficiency and effectiveness. However, in changing the way that Government does business, such emerging technology can provide new corruption opportunities. While some types of traditional corrupt conduct will become more difficult to perpetrate as new technologies are adopted, new risks areas emerge as a result of the re-engineering of established control, accountability structures and management systems and the replacement of paper-based internal mechanisms by electronic commerce.

The ICAC intends to take a leading role in assisting the NSW public sector to appreciate the corruption risks as well as the undoubted benefits of embracing new technologies in the way they serve the community. Work in this area will continue in the new year.

#### **Local Government Procurement Project**

Recent ICAC investigations and research into local government have highlighted a number of corruption risks in the areas of procurement and contract administration.

The project aim is for the ICAC to provide guidance on local government procurement and contract administration policies, procedures and practices with a view to making councils more corruption resistant in the areas of procurement and contract administration and more closely aligned with the standards of contract management and procurement that apply to State government agencies.

#### **Corruption Prevention Network**

The Commission has been involved, in an ex-officio capacity, with a NSW network of key public sector officials interested in corruption prevention. This year the network changed its name from the NSW Public Sector Corruption Prevention Committee Inc. to the Corruption Prevention Network.

During the financial year the Corruption Prevention Network:

- Established an internet email network
- Developed and introduced an internet home page, with links to be developed with firms involved in corruption prevention and relevant internet sites
- Introduced a Corruption Prevention Forum. This is an email list based network of practitioners and others interested in fraud and corruption prevention. Its theme is *inclusive networking*
- Circulated a March 2000 newsletter to members
- Organised an evening presentation for 23<sup>rd</sup> September 1999. The presentation was made by The Hon. Barry O'Keefe AM QC, summing up his observations on 'the ICAC-Retrospect and Prospect' at the State Parliament House Theatre

- Met with Transparency International and St James Ethics Centre to establish strategic alliances for mutual benefit
- Hosted a one-day conference on 28<sup>th</sup> June 2000, concerning E-business. The ICAC assisted with the mail-out, advertising and formulation of the event and participated with a Trade Display.

### **Monitoring of Recommendations Project**

Background - For some years it has been proposed within the Commission that it should follow up its Investigation Reports with published progress reports that provide information on the implementation of recommendations for systemic change. Recommendations for prosecutions are already tracked by the Legal Unit and reported on in the Commission's annual report.

A number of published reports have already reported on recommendations for systemic change, for example, the *Third Report on the Investigation into Parliamentary and Electorate Travel*, 1999, and the *Report on Investigation into Aboriginal Land Councils in New South Wales: Implementation Progress Report*, 1999. However, not all reports have been followed up in this way.

In addition, the Education section of the Commission has carried out research into what the public wants to get from the ICAC's internet site and found that users wanted to have access to items of interest arising from investigation reports, in a user-friendly form.

The Commission's website provides a new opportunity to publish status reports on systemic change on an ongoing basis and in a cost-effective way. The publishing of status reports on Commission investigations provides the public and the public sector with information about the consequences of investigations and encourages public accountability by agencies in implementing corruption prevention strategies.

Current situation – The following new material for inclusion on the web site has been prepared.

- A summary of the investigation and issues raised
- Evidence
- Findings
- Recommendations – Legal, Systemic, Prosecutions

The Corruption Prevention Section will provide information collected from agencies on the implementation of recommendations.

A number of reports have been prioritised according to several criteria, including public interest, age of the report and ongoing corruption resistance issues for the public sector. The reports have been grouped into three priority categories based on these criteria.

The first reports selected are:

- *A Major Investigation into Corruption in the former State Rail Authority of NSW 1998*

- *Report on Conduct of Mr Sam Masri, Purchasing Officer, Liverpool City Council 1999*
- *Investigation into Parliamentary and Electorate Travel: Analysis of Administrative Systems and Recommendations for Reform three reports during 1998 and 1999*
- *Integrity in Public Sector Recruitment 1993*
- *Report on the Charter of Aircraft by the Police Air Wing 1996*

The systemic recommendations have been extracted from each report and prepared in the format of a table which each agency will be requested to complete.

Reports in priority grouping two will be prepared for similar contact to be made with the relevant agencies early in 2001.

### **Building Organisational Integrity project**

The Building Organisational Integrity project grew out of the findings outlined in the publication ***Ethics: The Key to Good Management***, which the ICAC released during 1998-99. It also builds on the ICAC's current approach to corruption prevention, which acknowledges the strong links between an organisation's ethical culture and its resistance to corruption.

Work was done in 1999-2000 to provide guidance on enhancing organisations' corruption resistance by integrating ethical standards and corruption prevention strategies into all its operations.

As part of the project, Corruption Prevention has produced two sets of guidelines. ***Organisational Integrity – Key Areas to Consider in Building an Ethical Workplace*** was published in October 2000, as part of the ***Ethical Culture Survey Kit***, as a practical guide to assist organisations respond to their own survey outcomes. ***Organisational Integrity – The Importance of Leadership to Ethical Performance and Corruption Resistance***, due to be published in late November 2000, considers the links between ethics, leadership, organisational effectiveness and corruption prevention. It suggests practical strategies for CEOs and senior managers seeking to create an ethical organisational culture that has a positive impact on:

- corruption resistance
- efficiency and effectiveness
- decision-making processes
- staff commitment and job satisfaction
- staff stress and turnover
- organisational reputation and competitiveness.

### **Codes of conduct project**

It is the Commission's experience that despite the widespread existence of codes of conduct in the NSW public sector, many codes do not effectively influence ethical behaviour. The Corruption Prevention Section has revisited codes of conduct to help rectify this situation. The aim of the project is to:

- examine the purpose and usefulness of codes of conduct in the NSW public sector
- assist NSW government agencies and local councils in developing, reviewing and implementing successful codes of conduct
- provide guidance on the continual integration of codes of conduct into workplace cultures.

#### **4. Developing and pursuing reforms which arise out of Commission Investigations and preliminary enquiries**

Corruption Prevention has been involved in developing and pursuing policy and systemic changes arising from Commission investigations and preliminary enquiries. In addition to Operations Encina, Zack, Anshutz, and Muffat, which are dealt with in other questions, Corruption Prevention was involved in reform issues arising from the following investigations:

##### ***Operation Benda***

The Corruption Prevention Section has been involved in assisting Liverpool Council with a number of reviews arising out of Operation Benda. For example, an extensive review was carried out into Liverpool Council's procurement and capital works programmes. The Corruption Prevention Section has also been involved in reviewing Liverpool Council's internal reporting system, internal audit programme and conflicts of interest policy. A number of cultural change initiatives have also been undertaken with the assistance of the Corruption Prevention Section. For instance, the Section recently participated in the development and implementation of an ethical training programme for senior management at Liverpool Council.

##### ***Operation Berdan***

Corruption Prevention prepared the relevant sections of the Investigation report and conducted the underlying reform work with Sydney Ferries referred to in the Report.

##### ***Operation Besa***

Corruption Prevention prepared the relevant section of the Investigation report and conducted the underlying reform work with the Department of State and Regional Development referred to in the Report.

##### ***Operation Cadix***

A final summary report was provided on a confidential basis to the Commissioner for Corrective Services and the Minister for Corrective Services in September 2000. The ICAC Commissioner has subsequently met with them to discuss their approach to the recommendations.

##### ***Operation Jomelli***

The investigation report was released on 8 November 2000. The Corruption Prevention Section has liaised with the RTA on reforms that they are undertaking. The unit will offer advice as required and seek a report from the RTA on implementation within 12 months.

### ***Operation Negri***

In November 1999, the ICAC published its report on an investigation into the relationships an EPA officer, Mr Raymond Smith, had developed with a number of individuals and companies carrying on business in areas that concerned Smith in the course of carrying out his duties.

The investigation highlighted the special corruption risks regulatory staff can be exposed to by the nature of their work and the need for organisations to manage those risks effectively. Risks included high level of autonomy, regulatory capture (by those he dealt with over a long period of time), conflicts of interest (especially associated with inappropriate secondary employment and close relationships with those he was supposed to be regulating) and misuse of confidential information (used to favour individuals and companies with whom he had developed special relationships).

Throughout the investigation the Commission worked closely and co-operatively with the EPA. CP provided advice on strategies to ensure high ethical standards and better management of corruption risks and supervision and support of staff. Even prior to the investigation the EPA was taking steps to enhance its overall ethical performance. In September 1998, it introduced an ethics package, which the Commission had provided advice on, as a preventative measure which aims to affirm expected standards of behaviour and to minimise opportunities for unethical practice within the organisation. In response to the investigation (and as a result of 1997 structural changes), the EPA has introduced a number of strategies to enhance ethical standards and performance. These include a focus on building ethical performance into leadership and management accountability, training, management of inspectors, support for staff (eg facilities enabling staff to raise ethical concerns), recruitment, performance measurement, general decision making, internal reporting and complaints management.

The Commission recommended that the EPA assess these strategies and the effectiveness of the EPA Ethics Package. The Commission will monitor the uptake of these recommendations through the *Monitoring of Recommendations Project* described above.

### ***Preliminary Enquiries (triggered by s.10, s.11 or s.20 matters)***

The Corruption Prevention Section has undertaken a number of preliminary enquiries where the principal objective for the Commission (identified by the Assessment Panel) has been the securing of preventative reforms in the agency concerned.

This approach sees Legal, Investigations and Corruption Prevention staff collaborating to ensure information is gathered in a way which simultaneously serves both evidentiary and policy reform considerations. In contrast to previous, less inter-disciplinary approaches to preliminary enquiries, evidence which needs

to be preserved for possible criminal or disciplinary proceedings is obtained contemporaneously with material useful for informing corruption resistance reforms. The results of this dual track information gathering are then entered into the Operations Review Committee process for consideration and determination.

Notwithstanding the fact that preventing future abuse is the primary objective in undertaking enquiries of this kind, serious criminal or disciplinary conduct should not be ignored if found. A traditional corruption prevention data gathering approach seldom satisfies evidentiary requirements, so that where serious offences have been previously revealed in the information gathered, it then becomes necessary to revisit matters with an evidence gathering objective. However, often the first corruption prevention data gathering pass can “muddy the waters” for a subsequent evidence gathering pass, so this newly adopted process of combining the two through inter-disciplinary methods serves both the reform and enforcement outcomes more effectively.

An example of this approach in action is an allegation that a public official was receiving free overseas travel in return for organising such travel by others on excursions auspiced by a NSW government department. There was clear scope for reform in the Department’s policies and procedures relating to travel, however, there was the possibility that the official complained of had committed criminal or disciplinary offences. The inter-disciplinary approach allowed corruption prevention initiatives to be developed early on to assist the Department without compromising or adversely affecting the evidence of interest to the investigations area.



## 5. Conducting Training & Seminars

The following training sessions and seminars were delivered by corruption prevention officers during the past year:

Topic	Date	Agency
Anti-corruption issues	March 2000	Public Works & Services Department, presentation to the Chinese Ministry of Supervision Officials
Codes of conduct	February 2000	IIR Conference on fraud, ethics and accountability in public sector
Conduct becoming	October 1999	Chief Minister's Office, Canberra
Conduct becoming	November 1999	Training session
Conduct becoming	May 2000	Train-the-Trainer
Conduct becoming	October 1999	Wagga Wagga -1 day conference for General Managers & other senior people from regional local councils
Conduct becoming	November 1999	Ethnic Affairs Commission, Ashfield
Conflicts of interest	September 1999	Liverpool City Council, 15 elected members of Council
Conflicts of interest	November 1999	University of NSW Planning Law and Practice short course for planning graduates most from local councils
Conflicts of interest	March 2000	Department of Juvenile Justice, Youth Justice Conferencing - 2 sessions
Conflicts of interest and public duty	May 2000	Cobham Juvenile Justice Centre
Corruption and anti-corruption course	August 1999	Australian National University, Canberra in partnership with National Centre for Developmental Studies, ANU
Corruption awareness session	October 1999	Leichhardt Council
Corruption prevention and the role of unions	April 2000	Labor Council Public Sector unions seminar on the ICAC
Corruption prevention in regulatory agencies	November 1999	Symposium on organised crime; New Zealand Combined Law Agencies Group
Corruption prevention issues in recruitment	February 2000	Department of Health
Corruption prevention: methodology (organisational integrity)	October 1999	Sydney University, Faculty of Commerce
Creating an ethical culture	August 1999	Department of Health
Elements of a good code of conduct	July 1999	Sheriff's Office
Ethical management for	July 1999	Attorney General's Department

**Corruption Prevention Unit**

human resource managers		
Ethical management for NSW senior management	July 1999	Sheriff's Office
Ethical management for senior management	April 2000	Department of Mineral Resources
Ethical management for Senior Managers and principal officers	October 1999	Attorney General's Department
Ethical sponsoring of government agencies and programs	March 2000	IRR Sponsorship 2000 Conference
Ethical sponsorship of government agencies	September 1999	Sponsorship Summit
Ethics - The key to good management	February 2000	Office of Protective Commissioner and Public Guardian
Ethics and management	April 2000	Liverpool City Council senior managers
Ethics and management	October 1999	Department of Corrective Services
Evaluating the effectiveness of corruption prevention strategies - what works, what doesn't	September 1999	8 <sup>th</sup> International Police Internal Affairs Conference
Gifts and benefits	September 1999	HR Professional Standards Council NSW Police Service
Grant administration	October 1999	Department of Community Services
ICAC and its approach to corruption prevention	October 1999	Industrial Supplies Office Conference
ICAC - functions and operations	September 1999	Ministers and Ministerial staff
Investigation of corruption	October 1999	Manila, Philippines. ICAC in collaboration with International Development Law Institute.
Investigation of corruption	May 2000	National Centre for Development Studies, Australian National University.
Maintaining ethical operations	September 1999	Senior Executive, Department of State & Regional Development
Overview of ICAC, pitfalls and benefits of agencies gaining assistance from ICAC	November 1999	Industrial Supplies Office, Drummoyne
Pecuniary, other conflicts of interests and the code of conduct	March 2000	Canterbury Council _ presentation to elected members
Preventing bribery	June 2000	IIR Corporate Fraud Conference

Promoting a code of ethics in the workplace that supports the highest standards in corporate governance	September 1999	IIR Conference - Corporate Governance in the Public Sector
Public Sector Accountability and Ethics	April 2000	SES and Senior Officers Induction Program
Short course on corruption and anti-corruption	June 2000	Australian National University, Canberra
The ICAC and corruption prevention	March 1999	DOCS, Parramatta
The ICAC and public duty	December 1999	Victoria University of Technology (Public Officials participating in an ethics in government seminar)
The ICAC and the importance of records to our operations	October 1999	Records Management Association of Australia
The importance of public duty	July 1999	Canterbury Council
The role and function of the ICAC	May 2000	Chinese Ministry of Finance Study Tour
Understanding the ICAC and public Duty - 6 training seminars	November 1999	Bega Shire Council

An initiative finalised since the last PJC meeting is the delivery of high level Anti-Corruption training for senior public sector managers. This is a post-graduate degree level course to be delivered in partnership with the Australian National University and has been in development since 1998. At least 5 candidates from NSW State and local government organisations will have priority access to the annual offering of the course each year from May 2001.

**5.2 Has the Unit liaised with unions, as planned, to assist them in providing help to union members about matters relating to corrupt conduct? If so, what outcomes have been achieved?**

Unions play a significant role in promoting ethical conduct among public sector employees in New South Wales. This has been highlighted in a number of the ICAC's investigations. Positive outcomes in the form of changes in management practices and the development of systems to minimise corruption opportunities, as well as providing appropriate protection for workers, have been achieved with the assistance of unions.

As reported in the latest Annual Report, the Commission held a series of consultations with unions with significant coverage of NSW public sector employees. Information about the ICAC was provided and union officials were

asked what sort of information they and their members needed about the ICAC's work. ICAC staff presented seminars at a range of union events, including in-house briefing sessions and state conferences. The most recent presentation in April 2000 was organised by the NSW Labor Council. This session attracted a variety of union representatives and was very well received.

The Commission developed articles on topics such as protected disclosures and secondary employment for use by unions in their publications. The Commission's recent acquisition of e-mail will assist in the distribution of further corruption-related material to unions. Unions will be assisted further in providing help to members in the coming financial year.

**5.3 What is the status of the Commission's examination of forced medical retirements of public sector employees?**

Following a number of complaints in 1998 from public sector employees or ex-employees who were dissatisfied with the way in which they were allegedly forced into early retirement on medical grounds, the Corruption Prevention Unit commenced an examination of the procedures used by agencies in referring employees for retirement. The Ombudsman's Office had a range of similar complaints and, after consultations with the Commission, agreed to examine the procedures used by Healthquest in assessing fitness to continue employment.

This work was, however, overtaken by an independent review of Healthquest commissioned by the Department of Health. The report of that review, presented in March 2000, was considered by a Working Party, on which the Commission and the Ombudsman's Office were represented. The report presented thirty-five recommendations, which together satisfied the concerns of both watchdog bodies. The Deputy Director-General of Health informed the Commissioner in July 2000 of good progress in the implementation of the recommendations. The Commission is not currently doing any work on this issue.

**5.4 Have any corruption resistance reviews been undertaken, as foreshadowed in the June hearing? If so, what results can be reported to the Committee?**

Work is well underway with the Registry of Births, Deaths and Marriages to identify corruption risks and provide advice on addressing those risks. It is anticipated that a draft report will be developed in the next two months in consultation with the Registrar.

Ongoing consultation has been held with the NSW Police Service about corruption risks at the Police Academy. A new Principal has now been appointed and commences duties in the New Year. In the meantime, discussions are being held with both the Acting and new Principals about the areas in which the Commission can most usefully provide advice.

The Corruption Resistance Review team has begun planning for a review of the NSW Aboriginal Land Council.

Development work is continuing on a common topic, such as travel, to be examined across a sample of universities.

## 6. Education Section

### 6.1 What activities have been undertaken by the Education Section since the previous General Meeting?

During 1999-2000 the Education Section worked to educate and communicate about corruption to the public sector and the NSW community. Much of this work involved working collaboratively with other sections of the Commission and was directed to:

1. Improving the quality of information received by the Commission - both complaints under section 10 and reports by principal officers under section 11
2. Developing the public sector's investigative capacity to enable agencies to undertake their own investigation of corruption allegations
3. Influencing the public sector by participating in working groups
4. Providing information and training to the NSW public sector to develop a climate that is resistant to corruption
5. Providing communication support to the Commission

#### 1. Work to improve reports and complaints about corruption

##### *Assisting principal officers to improve section 11 reporting*

In order to obtain better information from principal officers of public authorities, the ICAC has worked to communicate more effectively with them about section 11 reporting. During the year the Education Section together with the Assessments and others in the Commission:

- revised the guidelines for reporting corrupt conduct, sending copies to 450 principal officers, and distributing around 1,400 copies overall. The guidelines were also promoted in relevant journals and newsletters to reach the target audience of public officials.
- held information forums with senior public officials in Sydney and Parramatta, involving over 70 agencies. Of the participants, 100% rated the sessions as 'very good' or 'good' in covering the basics of reporting corrupt conduct, and 94% rated it 'very good' or 'good' concerning how helpful it would be to their work. The forum was also run as an in-house training activity for the Ambulance Service of NSW, with 27 managers in attendance. Further forums will be run in the new financial year to satisfy the high level of interest generated, including requests to run forums in regional areas.
- assisted the revision of correspondence used by ICAC staff to respond to reports of corruption under section 11 is being revised in line with the new guidelines.

### **Guidance to members of the public in reporting corruption to the ICAC**

The ICAC values the fact that members of the public come to it with their concerns about corruption. However, a substantial amount of information received from members of the public does not relate to corrupt conduct.

This appears to occur for a number of reasons to do with a lack of knowledge or understanding about what corrupt conduct is, the role of the ICAC and what it can do, and what can be expected from the public sector agencies people deal with. Ultimately this means that many complaints must be referred to other agencies or cannot be pursued at all.

Improving the quality of information from the public is very difficult, particularly compared with the public sector. This is because we do not know who is likely to make a complaint, whereas with the public sector we have an identifiable group of people we can reach with education programs.

Despite this, the Education Section has worked with the Assessments area to inform members of the public about making complaints through:

- the ICAC website publications and
- Section 10 correspondence/brochure.

#### *ICAC website*

The ICAC aims to broaden the availability of information and advice to the public sector and the wider community via its website, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au). During 1999-2000, a new website was developed, and was launched at the beginning of November 2000.

The website re-development was informed by focus group testing. The proposed site contains a section designed to assist people to report information and complaints. It also has details on how information is handled and what to expect from the ICAC. Members of the public, and public servants as well, will be able to complete and electronically submit a form for reporting information to the ICAC.

#### *Section 10 brochure*

In 1998–1999 the Education Section developed a trial information brochure to be used by the ICAC to explain to members of the public how the ICAC assesses the information it receives, and what information people can expect by way of correspondence and from officers themselves.

In 1999–2000, this brochure was evaluated by focus group testing with members of the public. This showed that the general public has two distinct information needs in relation to reporting corruption:

1. General information about why and how to report.
2. Advice and feedback about what the Commission does in response to their complaint.

A brochure detailing what the Commission does with the complaints it receives, and the information they contain, is currently being finalised. The purpose of this brochure is to provide complainants with an understanding of what the Commission does with the information it receives from members of the public, and to establish appropriate expectations regarding further contact and advice on the progress of their particular complaint.

The ICAC will continue to develop its resources for the general public in the coming year.

## **2. Work to develop the NSW public sector's investigative capacity**

Not all investigations and reports by other agencies are found to be satisfactory. This is often due to lack of knowledge and investigative expertise. Because of this, the ICAC has worked during the year to assist agencies improve the quality of investigations and reports.

### *Better information for agencies*

The Education Section assisted in the production of new section 54 report guidelines on what to include in a report. This is a significant initiative because the ICAC did not previously provide guidance on preparing reports. The Section also assisted in the review of the pro-forma letters the ICAC sends to agencies.

### *Internal Investigation Workshops*

To improve the quality of investigations and reports the ICAC continued a program of interactive workshops. Five workshops were conducted for over 120 public officials whose task it was to perform internal investigations. These were held at:

- Port Macquarie North Coast Institute of TAFE (July 1999)
- Parramatta Homecare (October 1999)
- Central Sydney Area Health Service (December 1999)
- Institute of Public Administration of Australia (March 2000)
- Illawarra Area Health Service (June 2000)

Participants were generally positive about the workshops, saying the courses were relevant to their needs and provided increased knowledge and practical understanding of procedural fairness, protected disclosures, investigation planning, handling and assessing evidence, and conducting interviews.

The ICAC intends to review the content of workshops and will again offer metropolitan and regional workshops in the coming year.

### *National investigations conference*

In conjunction with the NSW Ombudsman and the Institute of Public Administration Australia (IPAA), the ICAC hosted the third National



Investigation Symposium in November 2000. The conference explored how to improve investigations, with a focus on investigation techniques and skills, using technology, planning and managing investigations, and ethics and self-management.

### **3. Work to influence the public sector as a whole**

#### *Ethics Working Party*

The Ethics Working Party promotes the inclusion of ethics in public sector policy, management and initiatives. The ICAC continues to be involved in the activities of the working party and the introduction of new initiatives. In December 1999 the Premier launched the NSW Ethics Website, [www.ethic.gov.au](http://www.ethic.gov.au). The site was created to provide easy access to information about government ethics standards, practices and policies.

While the site is owned and managed by the Premier's Department of NSW, its development was financially supported by member agencies of the working party, and has contributors from throughout the public sector. The ICAC was active in contractor selection and website content, and will continue to contribute to the site.

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

This committee was established in 1996 to increase public sector awareness of protected disclosures legislation and help agencies manage complaints received. The ways agencies are to deal with protected disclosures are provided for under the *Protected Disclosures Act*.

In government agencies, considerable responsibility for protected disclosures falls on people designated as protected disclosures co-ordinators. The committee's plan for 1999–2000 was guided by a survey which assessed co-ordinators' needs for resources, training and advice. The popular *Better Management of Protected Disclosures* workshop was reviewed and then run for public sector agencies and councils in metropolitan and regional NSW.

Other initiatives included the development of a group email system for protected disclosure co-ordinators, and a proposal for the management of complaints to be considered within the proposed Premier's Department Work Related Stress Policy.

In 1999 the ICAC made a submission to a Parliamentary Committee on the NSW Ombudsman and Police Integrity Commission concerning the review of the *Protected Disclosures Act*, as did all members of the committee.

#### 4. Providing Information and Training

An important part of creating a climate of corruption prevention in NSW is providing information in various forms and conducting training sessions. These are aimed primarily at public sector employees but also at other organisations in NSW and the general public.

##### *Corruption Matters newspaper*

*Corruption Matters* is a newspaper published by the ICAC and distributed mainly to the NSW public sector and various media. It is aimed at improving public sector corruption resistance by publicising the lessons learned from ICAC investigations and promoting preventive measures. It also provides concise, easy-to-read summaries of events, ICAC accomplishments, and advances in anti-corruption and ethics.

This year *Corruption Matters* was published three times, with a print run of 13,000 for each edition.

The themes addressed were:

- Investigations and their effects – October/November 1999
- Creating an ethical culture – March/April 2000
- Helping agencies to help themselves – June/July 2000.

The newspaper also gave an opportunity to other regulatory agencies, such as the Ombudsman and the Audit Office, to add their points of view to the ICAC themes.

A reader evaluation was included in the June/July 2000 issue. This will help inform the direction of the newspaper.

##### *Training kits and training sessions*

The ICAC recognises that improving corporate culture increases corruption resistance among public sector agencies and councils. Developing and distributing training resources is an important part of fostering a corruption-resistant culture.

During the year, the training kit *Practical Ethics and Public Duty - Conduct Becoming* was updated and improved. It now comprises a video, overheads, a PowerPoint presentation, worksheets, a facilitator's guide and case studies.

There was a focus on distributing this and other kits, and conducting train-the-trainer and information sessions for key public sector staff:

- 162 councils and 309 agencies in NSW received one or more copies of the updated kit.
- Fourteen train-the-trainer and information sessions were held throughout metropolitan and regional NSW, involving 224 participants ranging from general managers of councils in some regional areas, to trainers, managers, protected disclosure co-ordinators and auditors. The sessions were held in Sydney, Canberra, Wagga Wagga, Gosford, Coffs Harbour, Tamworth, Orange, Nowra and Newcastle.

The sessions attracted notice from local newspapers, such as the *Parramatta Advertiser*, the *Central Coast Express* and the *Daily Advertiser* in Wagga Wagga, and radio stations 2KPTR in Coffs Harbour and 2NU (ABC) in Tamworth.

Evaluations of these sessions showed that most participants found them very useful.

#### *Working with individual agencies*

Training courses in ethics and corruption awareness were undertaken in the following agencies:

- Liverpool City Council
- Sydney Harbour Foreshore Authority
- Department of Land and Water Conservation, Newcastle
- Department of Corrective Services - Investigators training course
- Department of Mineral Resources
- Office of the Protective Commissioner
- Bega Valley Council
- Leichhardt Council
- Office of Waste Management
- Canterbury City Council.

Ethics and code of conduct training advice was also provided to the Ambulance Service of NSW and the South-East Sydney Area Health Service.

#### *Liaising with unions*

The work of the Education area in liaising with unions is addressed at Question 5.2.

#### *Informing the media about what the Commission does*

To improve the media's understanding of the ICAC's role and operations, we organised meetings with senior staff and trainee journalists from major Sydney metropolitan news organisations.

As the media tend to concentrate on the ICAC's public hearings, the emphasis in these meetings was on giving trainee journalists an idea of our efforts in corruption prevention, education and research.

#### *Assistance to those whose first language is not English*

During 1999–2000, a range of materials was issued in a number of community languages. Specific information was released to 19 community-language newspapers that highlighted ICAC's work with ethnic communities in promoting the "bribery = crime" message. Two mailouts were made to public sector and community organisations as a specific follow-up to the promotion

of ICAC's brochures in 11 community languages. The new Commissioner also issued a media release, translated into 11 languages, that warned of the potential dangers of inadvertently acting corruptly when dealing with public officials.

Outcomes to be achieved during 2000-2001 include:

- continue to inform ethnic communities about significant developments by translating media releases into major community languages
- continue to provide interpreters for hearings as required
- increase accessibility to ICAC's website by placing translated material on it
- develop an internal directory of staff who speak languages other than English to assist with informal or emergency situations, and
- continue to assist all NSW public sector agencies with significant numbers of clients who do not speak English well.

### **5. Providing communication support to the Commission Internet**

This financial year also saw substantial progress on our Electronic Service Delivery (ESD) Plan. The Education Section worked closely with Information Technology on the redevelopment of our existing website, Work will progress on this plan, with particular attention to enhancing information exchange between various agencies.

Commission services to be provided on the redeveloped website are:

- *On line publications*

All ICAC publications will be provided in both HTML and PDF formats. A search facility via report summaries will assist users locate required reports

- *On- line complaint lodgement*

The proposed site contains a section designed to assist people to report information and make complaints. It has details on how information is handled and what to expect from the ICAC. Members of the public, and public servants as well, will be able to complete and electronically submit a form for reporting information to the ICAC.

- *Self-help advice on the Internet*

Development of an advice component for that site is underway. Focus group feedback used to inform the development of the site indicated that public servants would like to easily and anonymously obtain information about possible problems. The website advice section is intended to satisfy this need.

- *Enhanced ICAC information*

Information including tender information, job vacancies will be electronically available.

*Publications*

The Education Section provided print production services. Ten reports were produced during the financial year.

*Assistance in implementing recommendations*

Communication resources are developed to communicate guidance information and help bring about the behaviour change needed achieve reform. For example electronic resources developed to help assist local government communicate with clients about health and building surveyors were favourably evaluated during the year

## 7. Operations Review Committee

### 7.1 What is the current membership of the Operations Review Committee?

The ORC currently comprises the ICAC Commissioner, the Police Commissioner, Mr Laurie Glanfield (appointed by the Governor on the recommendation of the Attorney General) and 4 community representatives, being Ms Yvonne Grant, Ms Suzanne Jamieson, Ms Merrilyn Walton and the Rev. Harry Herbert.

### 7.2 How many matters did the ORC consider in the last 12 months?

In the period 1 July 1999 to 30 June 2000 the ORC considered 988 matters.

### 7.3 How many meetings were held in the past 12 months? Were any meetings postponed due to a lack of quorum?

Ten meetings were held in the period 1 July 1999 to 30 June 2000. One meeting only was cancelled due to a lack of a quorum.

### 7.4 In how many instances did the ORC seek to amend the proposed course of action on matters under its consideration?

Of the 988 matters considered, the ORC made specific comment or alteration to the recommendation before accepting the report in 153 matters and did not accept the recommendation, but sought further information and required further reports to be prepared for 43 matters.

### 7.5 Did the Commission continue its practice of auditing the classification and reporting of complaints to the ORC?

#### ***7.5.1 If so, who conducted the audit?***

#### ***7.5.2 What conclusions were drawn by the auditors about the ICAC's compliance with its reporting requirements?***

#### ***7.5.3 Were any breaches detected, and if so, what were the nature of the breaches.***

In the past the Commission has conducted internal and external audits on reports submitted to the ORC and associated files.

During the year the Commission's internal audit examined 86 ORC reports. All were found to be adequate and accurately reflected the nature of the allegations and assessment of the matter. The results of this audit indicate that the quality of information presented to the ORC is satisfactory.

The Audit Office of NSW conducts the external audit of Commission reports to the ORC. The audit for 1999-2000 was deferred due to events beyond the control of the Commission.

The issue of audits is also addressed at Question 10.6.

**7.6 Have there been any changes to the nature of the work of the Operations Review Committee?**

There have been no changes to the nature of the work of the ORC.

## 8. Management Issues

### 8.1 What progress has been made in the review of the Commission's Key Performance Indicators, as recommended in the Committee's last General Meeting Report (Report No 1/52)?

Following the recommendations in the Committee's last General Meeting Report, and in the report *"Accounting for Extraordinary Powers"*, the Commission has undertaken an extensive review of its Key Performance Indicators. Drawing on the substantial commentary offered by the Committee, and the work of the Audit Office in this area, the Commission has significantly revised its performance indicators.

Around the time of the release of *"Accounting for Extraordinary Powers"*, a set of draft performance indicators was prepared and circulated for comment amongst representatives of the Committee, the Audit Office and the Ombudsman's Office. A meeting was held in May 2000 to discuss this draft, and additional feedback was obtained from the Audit Office and the Ombudsman's Office.

Based on these comments, a substantially revised set of performance indicators was prepared and circulated to the representatives of the Committee, the Audit Office and the Ombudsman's Office in September 2000. A further meeting to discuss this draft was held in October 2000. Based on the feedback obtained from this group, another draft of the performance indicators is being finalised, with the intention of securing agreement on the indicators by the end of 2000.

In the meantime, the Commission has started to report performance against proposed outcomes set out in the Commission's Strategic and Operational Plan for 2000-2001. This plan has been used to establish targets and performance reporting in the Commission's Annual Report for 1999-2000.

The Commission is also planning to integrate the Performance Indicators project with reporting against the Strategic and Operational Plan, and with a benchmarking project currently being conducted with comparable agencies, including the Police Integrity Commission and the Criminal Justice Commission (Queensland).

### 8.2 Are there any matters relating to management of the Commission that the Commissioner wishes to bring to the attention of the Committee?

At our last meeting in June, I addressed a number of management changes that I had instituted following my appointment as Commissioner. To recap, these included:

- The establishment, for the first time, of a full time position of Deputy Commissioner;



- The establishment of an Operations Management Committee to consider significant investigation activities and provide a strategic focus to the work of the Commission;
- The creation of standing multi-disciplinary operations teams, which comprise a mix of investigation officers, legal officers and analysts; and
- The establishment of a special team to focus on matters requiring a quick response, particularly in country areas.

Since our last meeting in June, a number of new senior management appointments have been made. Mr Michael Woodhouse has been appointed as Director, Investigations; Ms Lynne Chester has been appointed as Director, Corporate Services; while Mr Grant Poulton has recently taken up the position of Director, Corruption Prevention and Education.

Mr John Feneley, who was appointed as Deputy Commissioner in February of this year, was released from service in October to take up a secondment opportunity with the Attorney General's Department. As his contract with the Commission expires in February 2001, recruitment action has commenced with respect to the position of Deputy Commissioner.

In light of my observations and experience over the first year, I have defined the prospective role of the Deputy Commissioner to include lead responsibility for the strategic management of the Commission's day to day operations, including investigations; lead responsibility for corporate and strategic planning and performance reporting; and shared responsibility for the management and implementation of change within the organisation.

The role of the Deputy Commissioner will be comparable to that assumed by the Deputy Ombudsman and the Assistant Commissioner of the Police Integrity Commission respectively. From my own experience as Ombudsman, I am aware of the value of a senior management team that is able to coordinate and manage the volume of work so that responsibility and workload is shared throughout the organisation. I am also conscious of the risk that without the high-level management support of a Deputy Commissioner, I may be in a position where I am simply too busy to attend to the proper management of the Commission.

I will be looking to the Deputy Commissioner to provide day to day oversight of the management of workloads and work flows across all sections within the Commission, as well as assessing, managing and reporting on potential risks and problems arising from the Commission's operations and activities. The Deputy Commissioner will also be able to assist by conducting hearings, attending public functions and events where a high level presence from the Commission is required, and providing high level management support in such areas as corporate and strategic planning, benchmarking and performance reporting – a role that will provide considerable support to my role as hearing Commissioner and CEO.

The need for high level management support is evident in the challenges facing the Commission. In the course of this first year, I have been presented

with a number of management challenges, particularly with respect to establishing priorities, settling on an appropriate mix of positions and skills, and budget management, particularly in relation to imminent salary increases to which the Commission is committed. It has been necessary to await the appointment of a number of the new senior management team before being able to tackle these issues in a coordinated and effective manner.

I have stated that my priorities as Commissioner will be to deal with emerging corruption risks; enhance corruption resistance in the NSW public sector; and carry out effective and proactive operations to identify and deal with corrupt conduct. These priorities can be pursued while ensuring that the management of the organisation is as efficient and effective as possible, which is one of fundamental objectives. These management objectives need to be informed by reviews of the Commission's functions, management and performance.

Some of these questions will also be the subject of three reviews that have been foreshadowed for the organisation. These reviews are the Committee's Performance and Management Review, as well as an Investigative Capacity Review, to be conducted by the Special Crime and Internal Affairs Command of the NSW Police Service, and a functions review that I have established, which is currently being put to tender.

The Commission has been in operation for eleven years now. While the legislation governing the Commission, and in particular, its capacity to make findings and recommendations in relation to corrupt conduct, has been reviewed on a number of occasions since that time, the Commission has not yet been the subject of any systemic external review of its functions, performance or management.

I believe that, individually and collectively, the proposed reviews afford the Commission an unprecedented opportunity to subject its management, processes and operational capacity to rigorous external scrutiny and review, and assist the organisation to be more efficient, effective and accountable.

I have also made it clear that to achieve my priorities as Commissioner, I will need to undertake some structural change and additional recruitment. However, I believe that I cannot lock in this structure or these staffing positions to such an extent that I restrain or hamper future Commissioners from developing and implementing their own priorities.

I also take the view that I cannot recruit new members of staff on a permanent basis knowing full well that the Commission is unable, on present figures, to meet the cost of foreshadowed salary increases for staff of the Commission. I am committed to matching the increases agreed to by the Government and the unions in the broader public sector, but I must be able to identify savings in future years to meet the cost of the unfunded component of these increases, the cost of which has been assessed as being up to nearly \$600 000, based on current staffing levels. This cost, as part of the arrangements agreed to by the Government and public sector unions, cannot be funded by

Treasury and must be met by savings and efficiency gains from within the Commission.

I have examined the potential for savings within the organisation, and I have indicated that I am willing to consider suggestions from staff regarding this issue. Presently, approximately seventy five percent of the Commission's budget goes towards salary and related costs. Of the remaining costs, over half of these are non-discretionary, including rent, telephones, maintenance, and cleaning.

However, a current assessment indicates that realistically, potential savings from discretionary non-salaried areas are either insufficient or relate to areas such as travel for investigators or hearings, where savings would only have the effect of reducing the Commission's ability to investigate matters outside of Sydney or reduce the number of hearings. Accordingly, on current figures, the undeniable position facing the Commission is that the majority of savings must be found from salaries, and related costs, if we are to meet the cost of future salary increases.

I have made it clear that any savings in this area must not compromise the operational integrity and effectiveness of the Commission. I am currently in discussions with staff, and the Public Sector Association, in relation to options for permitting flexibility in the composition and skill mix of the staffing establishment, and enabling savings to be made to pay for future salary increases. I am working towards a prompt resolution of these matters to provide for certainty in the Commission's employment relations, and for flexibility in the allocation of resources towards the Commission's operational activities.

- 8.3 At the public hearing in June this year, the Committee was informed of recent structural changes, including the establishment of a full-time Assistant Commissioner position, the creation of an Operations Management Committee, and multi-disciplinary operation teams.**

***What are the early indications of the success of these changes?***

As was stated at the meeting in June, the intent of these changes was to enhance the coordination and strategic management of the Commission, and its activities. These initiatives have resulted in significant improvements in the provision of information to senior management, in the coordination and integration of Commission operations and activities, and in a better flow of information between units within the Commission. The Commission will continue to evaluate these initiatives as part of an ongoing review of the Commission's structure, functions and activities, and report back to the Committee on the continuing impact of these changes.

- 8.4 Has the Commission prepared a privacy management plan? If so, could a copy be provided to the Committee?**

The Commission prepared a privacy management plan for commencement on 1 July 2000, consistent with the requirements of the *Privacy and Personal Information Protection Act 1988*. A copy of the plan is attached at Appendix 2.

## 9. Other Matters

- 9.1 **In the Greyhound report, most recommendations were for reviews and examinations to take place of various Greyhound Racing Authority policies and procedures.**

***What role will the ICAC play in such reviews and examinations?***

Where they are recommended in ICAC reports, reviews are conducted by the agencies to which they are directed, or are commissioned by those agencies. The ICAC assists where possible by offering advice as to approaches and expanding on the recommendations where this is requested. The ICAC also follows up on the recommendations in order to assess the degree of implementation and their efficacy.

In relation to the Greyhound Report, the Commission made a series of recommendations arising from an investigation into the conduct of the Chief Steward, Mr Rodney Potter. The recommendations for reviews of the Authority's policies and procedures came out of the specific circumstances and situations outlined in the investigation report.

Having made the case for such reviews and examinations in the past, the Commission finds that it is more appropriate and helpful for it to be available to provide advice as required and requested by the agency, rather than to direct or manage the conduct of the reviews. The Commission cannot assume the role of directing or managing these reviews as it would be an abrogation of the role and responsibilities of the management of the Greyhound Racing Authority, and the ICAC does not "manage" the Authority.

Accordingly, the Commission will follow the practice of providing support and advice as required from time to time by the Greyhound Racing Authority's in the course of it reviewing its policies and procedures.

It should be noted, however, that the Commission made it clear at the time of the release of the report that it would be taking an active interest in monitoring the progress of the Authority's review of its policies and procedures.

## 10. Supplementary Questions on Notice

- 10.1 On page 20 of the 1999 – 2000 Annual Report there is a table detailing the classification of matters raised. As the table reveals there has been a higher than usual number of matters classified as ‘information’, and fewer Section 10 complaints, protected disclosures and section 11 reports.**

**Has there been any change to the way in which matters are categorised that might account for these differences?**

The change in the Commission’s approach to classifying matters is the result of gradual changes in the Commission’s overall approach to corruption matters, including the assessment and classification of complaints received by the Commission. In particular, the Commission has adopted a more rigorous approach to classifying matters by applying the provisions of ss.8, 9 & 10 of the ICAC Act more stringently.

Section 10 complaints are complaints from members of the public that “concerns or may concern corrupt conduct”. Matters that are treated by the Commission as “informations” are those complaints involving public authorities or public officials that do not allege corrupt conduct. These matters may be of interest to the Commission, and may be followed up, if they appear to be part of a pattern of conduct that may involve corruption.

Previously, all matters received from members of the public would be counted as complaints, whether or not the subject matter dealt with potential corrupt conduct. This had the effect of inflating the complaint numbers, where, in fact, upon further analysis, the nature of the information contained did not warrant being recorded as a complaint concerning corrupt conduct. In some instances, complaints from the public related to unsatisfactory or unreasonable conduct of or treatment by public officials that may or may not have been specifically attributed to corrupt conduct.

The generous application of the legislative threshold was adopted primarily to ensure that all matters were at least subject to some examination to determine whether there was the possibility of corrupt conduct. This approach had the effect of treating some matters as complaints instead of ‘information’. We now categorise as complaints only those matters that specifically relate to corrupt conduct.

It should be noted that the move to more careful classification has not lead to a decrease in work by the Commission. Where a matter alleging unreasonable or unsatisfactory conduct is received, without necessarily alleging corrupt conduct, Commission officers assume a more proactive role in exploring, jointly with complainants, the basis of their suspicions that led them to notify the Commission of the conduct.

An increase in matters treated as “informations” can often be attributed to publicity given to the conduct of particular Commission investigations. For

example, investigations that have recently generated a good deal of public interest and comment include greyhound racing and car-rebirthing. Whilst the Commission's focus and interest in these investigations is corrupt conduct, some members of the public see our interest in the particular authority as an opportunity to canvas broader concerns relating to the management or conduct of the authority.

Changes have also been made in the way the Commission assesses and classifies protected disclosures. The threshold for a matter to amount to a complaint under s.10 of the ICAC Act is that it 'concerns or may concern corrupt conduct', while for a matter to be considered a protected disclosure the threshold is much higher, as it must 'show or tend to show corrupt conduct'.

Previously, blanket coverage of the PD Act was applied to any matter brought to our attention by a public official. This approach, whilst conforming to the spirit of the legislation and encouraging public officials to report suspected corruption, also held out (the illusion of) protections to individuals that may have been unrealistic if complainants had to rely on them in court. Matters that cannot be treated as protected disclosures because they do not meet the legislative threshold tests are nevertheless assessed as if it were a complaint made under s.10 of the ICAC Act.

There has been a reduction in the number of matters reported by public sector agencies under s.11 of the ICAC Act, however, no attendant change in classification has occurred in relation to s.11 reports. The lower number of matters reported may be an indication that agencies, too, are tending to report the more serious matters, in line with the definition of corrupt conduct contained in the Act.

**10.2 Page 116 of the Annual Report notes that in the reporting period all senior managers were awarded performance bonuses for superior or most satisfactory performance outcomes, with a total cost of \$32,300.**

**Could you provide a breakdown of the bonuses and details as to the procedures for determining to award these bonuses? Were formal performance reviews undertaken?**

Guy Slater, Director of Investigations, was paid a performance bonus of \$8775.00.

Peter Gifford, Director, Corruption Prevention and Education, was paid a performance bonus of \$8000.00.

Margaret Brodie, Director, Corporate Services, was paid a performance bonus of \$6750.00.

John Feneley, Solicitor to the Commission, was paid a performance bonus of \$8775.00.

The determinations were made as part of the annual Senior Management Salary Reviews, arising from the determination of the Statutory and Other Offices Remuneration Tribunal. The previous Commissioner made the recommendations for performance payments in line with the provision of the SOORT determination allowing for discretionary performance lump sum payments. The previous Commissioner made this determination on 29 September 1999, for the payments to be made between 1 January and 30 June 2000. There is no separate documentation to indicate whether or not the previous Commissioner undertook a formal performance review.

**10.3 With regard to the overseas travel listed in appendix 10, could you provide information as to the benefits to the organisation arising from the trips, any relevant documentation, and further details of the duration of each trip?**

A revised schedule of the travel reported in Appendix 10 is provided below, including details of the duration of each trip. It should be noted that the month given for the travel undertaken by Mr Tony Mitchell was reported incorrectly in the Annual Report. It has been corrected for the purposes of this table.

<b>Traveller</b>	<b>When</b>	<b>Countries visited</b>	<b>Purpose</b>	<b>Cost</b>
Commissioner O'Keefe	14 - 21 July 1999	Thailand	Participate as moderator in Senior Criminal Justice Executive Program on Anti-Corruption Strategies	\$1,814 (Airmiles not paid by ICAC)
Commissioner O'Keefe	3 - 7 August 1999	London	Attend meeting as member of 'Commonwealth Expert Group on Good Governance and the Elimination of Corruption in Economic Management'	\$4,312 (Airmiles not paid by ICAC)
Peter Gifford	1 - 15 August 1999	Papua New Guinea	AusAID project for the strengthening of the Papua New Guinea Ombudsman Commission. Visits involved assisting in developing an External Relations Plan	Nil
John Feneley	11 - 16 September 1999	Cambodia	Participate in 'National Workshop to Draft a National Anti-Corruption Plan for Cambodia'. ICAC in collaboration with International Development Law Institute (IDLI) and Centre for Democratic Institutions (CDI), Australian National University	Nil
Commissioner O'Keefe	28 September - 15 October 1999	Philippines, Hong Kong, South Africa	Attend Asia Development Bank/OECD Workshop, Meeting with Hong Kong ICAC, attend 9 <sup>th</sup> International Anti-Corruption Conference in Durban	\$22,573
Guy Slater	4 - 16 October 1999	South Africa	Attend 9 <sup>th</sup> International Anti-Corruption Conference in Durban	\$9,174
Grant McKay	3 - 9 October 1999	Philippines	Workshop to develop national anti-corruption action plan. ICAC in collaboration with International IDLI and CDI, ANU	\$1,541 (Airmiles not paid by ICAC)
Catherine Boardman	3 - 9 October 1999	Philippines		\$1,532 (Airmiles not paid by ICAC)
Commissioner O'Keefe	2 - 8 November 1999	Singapore, New Delhi, Bangkok	43 <sup>rd</sup> Congress of the Union International des Avocats in Delhi-session on the fight against corruption and its relationship to attorney/client privilege	\$9,861
Peter Gifford	28 November - 11 December 1999	Papua New Guinea	AusAID project for the strengthening of the Papua New Guinea Ombudsman Commission. Visits involved assisting in developing an External Relations Plan	Nil



Traveller	When	Countries visited	Purpose	Cost
Tony Mitchell	11 – 28 January 2000	Canada	To attend Computer search and evidence recovery course hosted by Canada Customs & Revenue Agency	\$3,004

To determine the benefit to the organisation from the trips undertaken in the past year, I have sought advice from those staff members who undertook the travel.

Grant McKay and Catherine Boardman delivered presentations on the investigation and prevention of corruption to senior anti-corruption stakeholders from the Philippines. These persons included, *inter alia*, the Ombudsman of the Philippines and influential judges from the *Sandiganbayan*. They also acted as resource persons for the thirty or forty participants who were tasked during the week with drafting a national anti-corruption strategy. The project organisers wrote to the previous Commissioner offering considerable praise for their contribution to the project.

Mr McKay and Ms Boardman are of the view that participation in this event provided them with significant opportunities for career and skills development, and enhanced both their skills and their approach to their work at the Commission. They are also of the view that the project increased the Commission's profile in the eyes of the aid organisations involved program, who may seek to contract with the Commission's proposed business unit in the future.

Tony Mitchell attended a "Computer Search and Evidence Recovery" course sponsored by Revenue Canada. At the time of attending, no comparable course was offered in Australia. Revenue Canada met the cost of the course, while the Commission met the cost of airfares, incidentals and software. The course was highly recommended by a number of agencies here in Australia, including the NSW Police Service and the Australian Federal Police.

As a result of the course, Mr Mitchell now has accreditation in the area of computer forensics, an area for which he is primarily responsible at the Commission. Consequently, Mr Mitchell is now sufficiently qualified to offer expert evidence on computer search and evidence recovery. A substantial amount of course material was also obtained, and contact was made with experts across the world, providing the Commission with an ongoing resource.

The remaining overseas travel was undertaken by Commissioner O'Keefe, John Feneley, Guy Slater, and Peter Gifford. As they are no longer with the Commission, their views regarding the value to the Commission of their travel were not sought.

Copies of available relevant documentation have been provided separately.

**10.4 Have there been any reviews by the Ombudsman of ICAC determinations on FOI applications? If so, what have been the outcomes?**

Prior to 1 July 1992, the Commission was exempt from the FOI Act and, accordingly the issue of review did not arise.

There was one ICAC determination reviewed by the Ombudsman in the period 1 July 1997 to 30 June 1998. As a result of the review certain Commission documents were provided to the applicant by the Ombudsman with the agreement of the Commission.

Currently one matter is under review.

**10.5 Could the Committee be provided with a copy of the advice prepared by Dr Peter Crawford, regarding the ICAC's management structure and organisational priorities?**

Dr Peter Crawford was engaged to facilitate and contribute to discussions and planning in one meeting involving the Commissioner and the Deputy Commissioner, and a further meeting over two days involving the Commissioner, as well as a number of subsequent telephone conferences with the Commissioner regarding the ICAC's management structure and organisational priorities. As such, Dr Crawford was not engaged to formulate or provide papers regarding these issues.

The discussions and planning facilitated by Dr Crawford examined such issues as risk assessment, problem solving methodologies, strategic planning of investigations, internal and external reporting, as well as the structure and skills mix for the Commission. To inform the discussions and planning, Dr Crawford was provided with substantial documentation concerning the management of the Commission, which he was required to consider and assess prior to the meetings.

The results of these discussions have been factored into subsequent planning and management of the Commission in such areas as senior management, performance reporting, corporate services, and corruption prevention and education. Given the timing of these discussions, early in my term as Commissioner, the information that could be given to Dr Crawford largely consisted of observations and impressions. However, these discussions confirmed the need for a systemic review of the Commission's structure and management, which is now being addressed by the PJC's Performance and Management Review, and the reviews of the Commission's functions and investigative capacity.

**10.6 Has the annual Audit Office audit, deferred until October, been completed? If so, what were the results of the audit of the ORC reports?**

The 1999-00 internal audit program (and the external audit of ORC) was to be undertaken by the Auditor-General's office. The Commission has

subsequently been advised that the Auditor-General's office will no longer be undertaking this type of audit activity.

The Commission is seeking advice from the Internal Audit Bureau (IAB) on the requirements of a best practice internal audit program. In addition, the Commission is proposing to engage the Internal Audit Bureau to immediately undertake the 1999-00 internal audit program.

With respect to future years, the Commission upon receipt of the IAB's advice on best practice and prior to tender, is intending to commence formal discussions with comparable agencies about a shared services agreement for respective internal audit programs.

Consideration is being given to alternative arrangements for the audit of the ORC reports.

**10.7 In relation to the statistics on the use of the Commission's powers, what explanation can be provided for the reduction in the use of the powers?**

The Commission has a number of formal powers that are important investigative tools for obtaining evidence of corruption. Because of the nature of these powers the Commission is careful to only exercise them when there is a demonstrated necessity to do so in the public interest.

The exercise of formal powers will vary depending upon the nature of the investigations being conducted by the Commission from time to time. For example, some investigations may require the issuing of a large number of s.22 notices in order to obtain relevant documentation. Other investigations may involve a large number of witnesses, each of whom may require a summons under s.35 of the ICAC Act. The nature of some investigations means it will be appropriate to consider obtaining telecommunication interception and listening device warrants. Other investigations may involve comparatively little need for the use of formal powers. The use of formal powers will depend on the nature of the investigation being conducted, and requires an assessment that all other reasonable avenues have been exhausted before resorting to the use of those powers.

I would also like to make the point that the effective and efficient use of the Commission's formal powers was behind our proposals earlier this year, that were the subject of the Committee's report "*Consideration of Proposed Powers*". I have indicated that, as a result of the Committee's determinations concerning the proposed powers, I would look to work with the Committee to identify alternative strategies for bringing about similar outcomes. I believe the efficient and effective use of the Commission's existing formal powers should be taken into account in these discussions concerning any future proposals for changes to the application and operation of the Commission's powers.