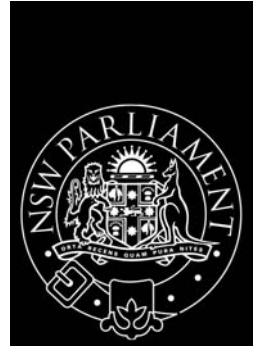


PARLIAMENT OF NEW SOUTH WALES



Committee on the Independent Commission Against Corruption

EXAMINATION OF THE 2001 - 2002 ANNUAL REPORT OF
THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Incorporating edited transcripts of evidence

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Assembly. Committee on the Independent Commission Against Corruption

Report on Examination of the 2001 - 2002 Annual Report of the Independent Commission Against Corruption, Committee on the Independent Commission Against Corruption, Parliament NSW Legislative Assembly. [Sydney, NSW] : The Committee, 2004, 160p. ; 30cm

Chair: Hon. Kim Yeadon MP

“September 2004”

ISBN 0 7313 5185 1

1. ICAC Committee—New South Wales
 2. Report on Examination of the 2001 - 2002 Annual Report of the Independent Commission Against Corruption (September 2004)
- I Title.
- II Series: New South Wales. Parliament. Legislative Assembly. Committee on the Independent Commission Against Corruption Report; no. 2/53

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Terms of Reference

The Committee on the Independent Commission Against Corruption is required under section 64(1)(c) of the Independent Commission Against Corruption Act 1988 to examine each annual and other report of the Commission and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.

Chairman's Foreword

One of the functions of the Parliamentary Joint Committee on the Independent Commission Against Corruption is to examine each annual report of the Independent Commission Against Corruption and to report to both Houses of Parliament on any matter arising in, or arising out of that report. It is not the Committee's task to recapitulate the content of the annual report but to examine and to seek information on issues that the Committee feels require further elaboration in the public interest.

This report documents an examination of the annual report of the Independent Commission Against Corruption for 2001-2002. The approach adopted by the Committee was to review the annual report and forward a series of questions on notice to the Commission. After receiving written replies from the Commission to these questions on notice, the Committee then conducted a public examination of Commissioner Moss and her senior staff regarding matters appearing in the annual report. Finally, the Committee forwarded a series of supplementary questions to the Commission to finalise any matters arising from the public examination.

The Committee derived useful and candid information from Commissioner Moss and her staff through the written replies to questions asked, and in oral evidence. The Committee records that Commissioner Moss and her staff provided the Committee with the utmost assistance in clarifying many matters presented to them.

The Independent Commission Against Corruption's annual report for 2001-2002 conceded that the Commission needs to work harder, be smarter, and acquire new tools and techniques if it is to remain effective in an era of sophisticated corruption. The Commission's report sets out the substantial actions it took to meet this challenge during the period under review.

The Commissioner in her evidence said the year was a productive one for the Independent Commission Against Corruption in which it received and assessed 1,505 complaints, completed 159 investigations and dealt with 201 matters through the corruption prevention unit. In her Foreword to the Annual Report the Commissioner said one of the outstanding achievements of the year was the completion of *Operation Trophy*, which investigated corrupt conduct by councillors on Rockdale City Council. The investigation is said to have enabled the Independent Commission Against Corruption to make optimal use of skills and experience across every unit in the organisation. The Commissioner said this resulted in the comprehensive exposure of significant corruption.

It is also significant that although the Commission tabled that report in Parliament in July 2002 it did not in the succeeding 12 months result in a single prosecution by the Director of Public Prosecutions.

A similar picture presents itself in relation to the dearth of prosecution proceedings during 2001-2002 arising from other investigation reports in which findings of corrupt conduct have been made. Appendix 3 of the annual report lists 17 instances where cases did not proceed because of insufficient evidence. Sixteen more are listed as "awaiting outcome", that is, awaiting a decision by DPP on whether to proceed.

One report referred to in this Appendix is that relating to the investigation into the conduct of officers of the Department of Corrective Services, which was tabled in February 1998. That report has had a sixth anniversary without any decision by DPP on the Commission's recommendations.

The situation revealed by these facts may be a recurrent one present in other years. It may arise from a combination of insufficient admissible evidence and the civil standard of proof, which is applied by the Independent Commission Against Corruption. The Joint Parliamentary Committee will at a subsequent time examine the matter in detail to determine the reasons for it and its consequences and whether it is compromising the effectiveness of the Independent Commission Against Corruption.

The Committee in the course of its examination looked at the adequacy of the Independent Commission Against Corruption's performance as measured against the work planned for the 2001-2002 FY. For this purpose it obtained a professional assessment of the Independent Commission Against Corruption's Corporate Strategic Direction Document that was applicable to the period under review.

The assessment identified the following major shortcomings in the planning document:

The planning document is a combination of a Strategic Plan and an annual Business Plan but some of the key elements for these two plans are absent. More work needs to be done to further strengthen the existing planning document. This is detailed in the Committee's report.

The descriptions for the objectives for each of the four key result areas in the planning document do not correspond with the ways the objectives are specified in the 2001-2002 annual reports.

The prescriptions for some of the projects and initiatives earmarked for completion in 2001-2002 (as shown in the planning document) do not correspond with those stated in the Table on pages 7-9 of the annual report. This Table outlines the commitments given in the previous year's annual report and what has been done to deliver on those commitments. Given the discrepancies, it would be difficult for the readers of the report to properly determine the extent of the Independent Commission Against Corruption's success in delivering on the planned projects and initiatives identified for 2001-2002.

Although a number of methods to be used to demonstrate effectiveness have been identified in the planning document, the Independent Commission Against Corruption still had not yet developed the necessary quantitative performance measures and targets by the end of the 2001-2002 year.

The assessment also identified in relation to the annual report, the following specific deficiencies in the Independent Commission Against Corruption's approach to performance reporting:

A clear linkage does not exist between the Corporate Strategic Direction document and the annual report. By way of examples, the vision and corporate values shown in the planning

document have not flowed through to the annual report. More significantly the prescriptions in the planning document for the objectives and the performance measures and targets of the organisation do not closely correspond with the prescriptions for those items in the annual report. This has made it difficult to undertake a proper assessment of the achievements against what was planned.

The annual report acknowledges (on pages 61 and 62) that the accountability reporting for 2001-2002 by the Independent Commission Against Corruption was only of a qualitative nature because quantitative key performance indicators about the efficiency and effectiveness of the organisation had not been developed. The reporting of the performance using such indicators is one of the specific requirements of the Annual Reports (Departments) Regulation.

The Independent Commission Against Corruption operates, from time to time, in collaboration with other agencies such as the NSW Police, the NSW Crime Commission, the Australian Federal Police and the National Crime Authority. The report has not provided any comments on the shared responsibilities for cross-agency performance issues and also on the Commission's contribution to the outcomes. Further, an attempt has not been made in the report to benchmark the Commission's performance against the performance results achieved by similar agencies in the other Australian jurisdictions.

There are a number of concerns with the 'Results for 2001-2002' section of the report (pages 7-9). This section outlines the commitments given in the 2000-2001 report and describes what has been done to deliver on the commitments. The first concern is that the details of the commitments do not fully correspond with the 2001-2002 targets as shown in the Corporate Strategic Direction document nor the initiatives identified in the 'The Year Ahead' sections in the previous year's report. The commitments for 2001-2002 should be sourced from the planning documents. The second concern is that some of the commitments have been described in a non-specific way, which makes it difficult to determine whether, in fact, the Commission had achieved what was planned. The third concern is that the commitments and the details of 'actions to further improve' are not accompanied by any target dates or timelines for those cases where they can be appropriately set.

Apart from the lack of information on quantitative key performance indicators, the review has found that the 2001-2002 annual report has complied with all of the other legislative requirements as specified in the Annual Reports (Departments) Act and the Annual Reports (Departments) Regulation except for the disclosure in relation to the 'NSW Government Action Plan for Women'. The report only contains a single statement that "The Independent Commission Against Corruption's EEO Management Plan encompasses all activities in relation to women". The Regulation, however, specifically requires a statement setting out certain particulars.

In the area of corruption prevention the Independent Commission Against Corruption conducted a further eight corruption resistance reviews and two more visits as part of its rural and regional outreach strategy program. The annual report shows that the Commission focused much of its prevention work in the area of local government and university.

The Commissioner reported that during the review period the organisational change program was drawing to completion and had resulted in many benefits to the divisions and had promoted the multi-disciplinary team concept. The program has also introduced new skill sets such as specialist financial analysts and intelligence analysts.

Overall, the Independent Commission Against Corruption views the 2001-2002 as a year of consolidation and the finalisation of the extensive change management program. The Committee will be particularly interested to examine in future years the degree to which these changes have added to the effectiveness of the Commission.

The Hon. Kim Yeadon MP
Chair
Committee on the Independent Commission Against Corruption

List of Recommendations

RECOMMENDATION NO 1:

Improved Performance Reporting

The Committee recommends that the Commission prepare a comprehensive set of planning documents to provide a framework to allow the Commission to meaningfully report on its performance outcomes. The performance information presented in the annual report should enable the public to:

- gain a ‘snapshot’ view of the overall performance during the year;
- undertake a detailed analysis and assessment of what the Commission has achieved against the objectives and targets set out in the plans and the reasons for instances of under-performance;
- track the performance of the Commission over time and against its peers; and
- make judgements about the likely performance of the Commission in the future.

The existing performance reporting structure of the Commission needs to be substantially strengthened to incorporate the following key elements:

- Details of completed projects and initiatives in comparison with those set out in the Business Plan (including explanations for any delays and details of revised target dates).
- A comprehensive set of quantitative key performance indicators for the current year covering all major aspects of the Commission’s operations.
- Adequate explanations to assist readers’ interpretation and understanding of the key performance indicators.
- Adequate explanations for instances of under and over-performance (including details of actions taken to improve future performance in the light of the lessons learned).
- Use of evaluation findings (e.g. results of program reviews) to demonstrate what the activities and programs have achieved and how they have contributed to performance outcomes.
- Key performance indicators for the previous years (i.e. trend data) as well as the following year.
- A commentary on the shared responsibilities for cross-agency performance issues and on the Commission’s contribution to the outcomes.

RECOMMENDATION NO 1 (CONTINUED)

- A benchmarking comparison with the performance results achieved by similar agencies in the other Australian jurisdictions.
- Discussions and analyses on setbacks, problems and issues.

RECOMMENDATION NO 2

The Committee recommends that the Commission prepare a comprehensive list of all its previous recommendations relating to the consideration of criminal or disciplinary proceedings and document the outcome of those recommendations. The Committee also recommends that in the appendix to each annual report detailing prosecutions and disciplinary actions that the details include the date of the particular investigation report. This will serve as a guide to the age of the matter.

RECOMMENDATION NO 3

During 2001-2002 the Independent Commission Against Corruption published at least twelve corruption prevention publications. This no doubt is an ongoing practice. It has not been the past practice of the Commission to test the effectiveness of the publications by carrying out periodical cost benefit studies of the impact of the publications in achieving their objectives. The Committee recommends that this be done.

RECOMMENDATION NO 4

The Committee recommends that section 59(1)(a) of the Independent Commission Against Corruption Act be amended to remove the ambiguity of the current provision so as to clearly provide that the Commission can commence an investigation without first consulting the Operations Review Committee. The ICAC supports this change which endorses its current practice

CHAPTER ONE - INTRODUCTORY REMARKS

- 1.1 It is a function of the Joint Parliamentary Committee on the Independent Commission Against Corruption (the ICAC Committee) to carry out an examination of each annual report of the Independent Commission Against Corruption and report to Parliament upon it in accordance with section 64(1)(c) of the Independent Commission Against Corruption Act.
- 1.2 This report provides a record of the examination of the annual report of the Independent Commission Against Corruption for the 2001-2002 financial year. This annual report was tabled in late 2002.
- 1.3 To assist in this task, the ICAC Committee obtained independent advice from Mr John Chan-Sew¹, a specialist financial and economic consultant who worked previously with the New South Wales Treasury and who has a particular knowledge of the guidelines for annual reporting in the public sector. Mr Chan-Sew provide a advice concerning the compliance of the 2001-2002 annual report of the Independent Commission Against Corruption with statutory requirements and assessed the adequacy of the performance of the Independent Commission Against Corruption as measured against the Commission's strategic plan covering that period.
- 1.4 The ICAC Committee also had the benefit of a detailed and careful submission from the ICAC in response to a number of questions on notice relating to the 2001 – 2002 annual report. Many of these written responses were the subject of further questioning by Committee members in the course of the Committee's public examination of the annual report, or in a series of supplementary questions forwarded to the Independent Commission Against Corruption for further comment and advice.
- 1.5 This report comprises an edited record of the written documentation forwarded by the Independent Commission Against Corruption and the examination of witnesses representing the Commission at a public hearing on Thursday 18 September 2003.

¹ John Chan-Sew, B.Econ., FCA, FCPA, FCIS

CHAPTER TWO – COMPLIANCE WITH ANNUAL REPORTING AND PERFORMANCE OF ICAC IN TERMS OF ITS STRATEGIC PLAN

As noted in Paragraph 1.3, the ICAC Committee sought specialist advice from Mr John Chan Sew regarding the compliance of the 2001-2002 annual report of the Independent Commission Against Corruption with statutory requirements, and the adequacy of the performance of the Independent Commission Against Corruption as measured against its published strategic plan.

Specifically, the ICAC Committee reviewed the 2001-2002 annual report of the Independent Commission Against Corruption regarding:

- The adequacy of the Commission's performance reporting with reference to the work planned for the 2001-2002 financial year (in terms of the Strategic Plan covering that period and any statements made in the Commission's annual reports for 2000-2001 and 2001-2002);
- Compliance with the statutory requirements as set out in the Annual Reports (Departments) Act and Regulation; and
- The identification of any deficiencies found in reporting (with recommendations to improve future reporting).

Before conducting a review of the 2001-2002 annual report, the Corporate Strategic Direction document of the Independent Commission Against Corruption for the 2001-2006 period was examined. Within the context of the performance management and accountability cycle, the role of the planning document is to provide a framework for each agency to report on its achievements against the objectives and the performance targets set. Therefore, if the objectives and the performance measures and targets within the plans are deficient, it will have an adverse flow-on effect for ex-post accountability through the annual reports.

This chapter has been divided into three sections presenting:

- the findings of a review of the Corporate Strategic Direction document of the Commission;
- the findings of a review of the 2001-2002 annual report with a special focus on the adequacy of performance reporting and compliance with statutory requirements; and
- a set of recommendations to further improve the preparation of the planning documents and the annual reports in the future.

Review of Corporate Strategic Direction Document

Planning provides a strategic direction for an organisation. In pursuing that direction, objectives are set together with strategies and actions to indicate how the objectives are to be achieved. Plans form an important basis for accountability in that the performance measures and targets specified in the plans are used to account for the performance outcomes achieved in agencies' annual reports.

The common practice in the public sector is to prepare a Strategic Plan for the medium term (3-5 years) and an annual Business Plan for each financial year. The key elements of a Strategic Plan include the vision, mission, objectives, priorities and strategies of the organisation. The Plan should also provide an analysis of the operating environment (including challenges faced by the organisation) and those factors that are critical to the achievement of objectives and priorities (i.e. the critical success factors). The annual Business Plan normally focuses on the services and initiatives (i.e. outputs) to be delivered in the next 12 months and a specification of the resources and budget funding required as well as the quantitative and qualitative performance measures and targets prescribed for that period.

The following matters are covered in the Commission's Corporate Strategic Direction document:

- The vision, objectives, priorities and strategies of the organisation.
- A statement of the key corporate values.
- Methods to be used to demonstrate the organisation's effectiveness.
- Qualitative performance measures and targets set for 2001-2002 and 2005-2006.
- An outline of the planning assumptions (including references to some of the major challenges faced by the Commission).

The review has identified the following major shortcomings in the planning document:

- The planning document is a combination of a Strategic Plan and an annual Business Plan but some of the key elements for these two plans (as indicated above) are absent. More work needs to be done to further strengthen the existing planning document. In future, both a Strategic Plan (covering a 5 year period) and an annual Business Plan should be prepared. The medium term priority initiatives can be highlighted in the Strategic Plan. Those initiatives that are earmarked for a particular year should be specified in the Business Plan together with the quantitative key performance indicators that have been chosen to demonstrate the effectiveness of the organisation.
- The descriptions for the objectives for each of the four key result areas in the planning document do not correspond with the ways the objectives are specified in the 2001-2002 annual report (pages 7-9).
- Generally, the key performance measures and targets specified in the planning document are not adequate to measure the extent of the achievement of the Commission's objectives. A majority of the performance measures and targets are process-oriented in that they are related only to specific projects or initiatives but not performance outcomes. Some examples of the performance measures are:

Compliance with Annual reporting requirements and performance of ICAC in terms of its strategic plan

- Operational resources assigned to intelligence – initiated investigations and integrity testing
- Range of tailored approaches developed
- Workforce plans emphasising development and performance management.

Quantitative targets measuring performance outcomes can be developed for some of the performance measures referred to in the planning document but they have not been done. Instead, the key targets chosen are only related to the completion of specific projects. The following are some examples:

Performance Measures	Key Targets	Suggested Quantitative Targets
Take-up rate (for corruption resistance strategy) across the NSW Public Sector	<i>Develop pilots for a range of agencies</i>	Target take-up rate
Relevant and timely corruption prevention advice provided	<i>Establish quality checks</i>	Target satisfaction rating given by recipients of advice
Safe working environment. Information systems efficiently and effectively supporting business processes	<i>No serious injuries. Information strategy implemented</i>	Target satisfaction ratings given by managers and staff Target rates for different types of workplace injuries
Assessment by the Operations Review Committee and the Parliamentary Joint Committee of the timeliness, accuracy and relevance of reporting by the Commission	<i>Meet our obligations</i>	Target satisfaction ratings given by ORC and the Parliamentary Joint Committee

- The prescriptions for some of the projects and initiatives earmarked for completion in 2001-2002 (as shown in the planning document) do not correspond with those stated in the Table on pages 7-9 of the annual report. This Table outlines the commitments given in the previous year's annual report and what have been done to deliver on those commitments. In fact, there are more commitments shown in the annual report than are disclosed in the planning document. Given the discrepancies, it would be difficult for the readers of the report to properly determine the extent of the Commission's success in delivering on the planned projects and initiatives identified for 2001-2002.
- Although a number of methods to be used to demonstrate effectiveness have been identified in the planning document, the Commission still had not yet developed the necessary quantitative performance measures and targets by the end of the 2001-2002 year. The following are some of the methods referred to:
 - Evaluate the extent to which the Commission's services, products and advice are used in and beyond NSW.

Compliance with Annual reporting requirements and performance of ICAC in terms of its strategic plan

- Monitor and report on community perceptions of the Commission and its effectiveness.
- Identify and recognise agencies that develop products and processes to inform their staff and clients of their anti-corruption strategies.

Most of the methods chosen by the Commission are valid measures of effectiveness. The only concern is that they are confined to the key result areas of 'exposing corruption' and 'preventing corruption'. The other two key result areas (identified in the planning document) i.e. 'Accountability' and 'Our Organisation' also need to be covered in reporting on the effectiveness of the Commission.

Review of Annual Report

The 2001-2002 annual report provides the readers with a comprehensive coverage of the year's activities. It appears to attempt to be both an instrument of accountability and an information document. As a result, there is a vast amount of low-level detail on both major and minor projects and initiatives and ongoing functions. A significant part of these details should be provided to the stakeholders by other communication means (but not in the annual report) e.g. the Commission's website and information brochures. In addition, all of the case studies should be transferred to the Appendices Section with only the major issues relating to the studies being discussed in the main body of the report. This is to avoid an unnecessary distraction from the performance focus of the report.

In tracing from the Corporate Strategic Direction document and the 2000-2001 annual report to the 2001-2002 annual report, it appears that the Commission was successful, to a large extent, in delivering on the planned initiatives and projects. However, it is difficult to be conclusive because of the different ways in which the projects and initiatives are described in the various documents. The following three major initiatives planned for completion in 2001-2002 seem to be still in progress at year end:

- Establish evaluation approach and benchmarks
- Develop a management plan for protected disclosures
- Implement information strategy

A review of the annual report has identified the following specific deficiencies in the Commission's approach to performance reporting:

- A clear linkage does not exist between the Corporate Strategic Direction document and the annual report. By way of examples, the vision and corporate values shown in the planning document have not flowed through to the annual report. More significantly, as indicated earlier, the prescriptions in the planning document for the objectives and the performance measures and targets of the organisation do not closely correspond with the prescriptions for those items in the annual report. This has made it difficult to undertake a proper assessment of the achievements against what was planned.

- The annual report acknowledges (on pages 61 and 62) that the accountability reporting for 2001-2002 was only of a qualitative nature because quantitative key performance indicators about the efficiency and effectiveness of the organisation had not been developed. The reporting of performance using such indicators is one of the specific requirements of the Annual Reports (Departments) Regulation. The report indicates that a set of projected performance targets was planned to be included in the 2002-2003 annual report with full performance reporting commencing for the 2003-2004 year. According to the report, a set of draft key performance indicators had previously been developed in conjunction with the Parliamentary Joint Committee on the ICAC but they were subsequently found to be no longer valid following changes to the Commission's functions and management information systems.
- The Commission operates, from time to time, in collaboration with other agencies such as the NSW Police, the NSW Crime Commission, the Australian Federal Police and the National Crime Authority. The report has not provided any comments on the shared responsibilities for cross-agency performance issues and also on the Commission's contribution to the outcomes. Further, an attempt has not been made in the report to benchmark the Commission's performance against the performance results achieved by similar agencies in the other Australian jurisdictions. (Presumably the reason such evaluation and benchmarking was not done was because of the non-availability of quantitative performance indicators).
- The inclusion of evaluative findings to demonstrate the Commission's performance in relation to aspects of its operations is a positive feature of the report. During the 2001-2002 year, an evaluation was conducted on the provision of corruption prevention advice. Details of the findings have been included in the report. However, there is insufficient information given on actions taken to address the major issues identified by the evaluation in order to further improve services.
- There are a number of concerns with the 'Results for 2001-2002' section of the report (pages 7-9). This section outlines the commitments given in the 2000-2001 report and describes what has been done to deliver on the commitments. The first concern is that the details of the commitments do not fully correspond with the 2001-2002 targets as shown in the Corporate Strategic Direction document nor the initiatives identified in the 'The Year Ahead' sections in the previous year's report. In fact, the divergence between the commitments and the 2001-2002 targets is quite significant. The commitments for 2001-2002 should be sourced from the planning documents. The second concern is that some of the commitments have been described in a non-specific way, which makes it difficult to determine whether, in fact, the Commission had achieved what was planned. Two examples of the commitments are: 'Develop improved liaison relationships between the Assessments Unit and public sector agencies' and 'Develop strategic risk management capability to enhance investigation selection and planning'. The third concern is that the commitments and the details of 'actions to further improve' are not accompanied by any target dates or timelines for those cases where they can be appropriately set.

Apart from the lack of information on quantitative key performance indicators, the review has found that the 2001-2002 annual report has complied with all of the other legislative requirements as specified in the Annual Reports (Departments) Act and the Annual Reports (Departments) Regulation except for the disclosure in relation to the 'NSW Government Action Plan for Women'. The report only contains a single statement that 'The Independent Commission Against Corruption EEO Management Plan encompasses all activities in relation to women'. The Regulation, however, specifically requires a statement setting out the following matters:

- A brief description of the Government's philosophy in relation to women and the whole-of-government approach to addressing women's issues and concerns.
- Government policy orientations in relation to women's interests in the specific areas in which the Department operates.
- The key objectives, as stated in the Action Plan for Women, under which the Department took action during the reporting year.
- The specific goals and strategies, as stated in the Action Plan for Women, that the Department has committed to and the actual outcome for women achieved during the reporting year through the implementation of those strategies.
- Reference to sources of further information in relation to the Department's strategies regarding women.

It is not clear whether the statutory disclosure requirements in relation to the use of consultants have been met. In the 2001-2002 report (page 62), there is a reference to the engagement of KPMG Consulting to undertake a business process redesign study and the final report was completed in March 2002. However, the details of the terms of engagement of KPMG and the total fee paid cannot be found in the 'Consultancies' section in Appendix 23.

Recommendations

To achieve an overall improvement in the standard of the Commission's performance reporting in the future, there are two essential prerequisites. Firstly, a comprehensive set of planning documents needs to be prepared. The plans will provide a framework to allow the Commission to meaningfully report on its performance outcomes. Secondly, the performance information presented in the annual report must contain a number of important elements so that the readers can:

- gain a 'snapshot' view of the overall performance during the year;
- undertake a detailed analysis and assessment of what the Commission has achieved against the objectives and targets set out in the plans and the reasons for instances of under-performance;

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- track the performance of the Commission over time and against its peers; and
- make judgements about the likely performance of the Commission in the future.

Strategic and Business Plans

The existing Corporate Strategic Direction document of the Commission should be split into two documents. A number of additional matters will need to be included. The first document is a Strategic Plan to cover the medium term (say 5 years) and it should set out:

- the vision, mission, objectives, key priorities and strategies of the organisation;
- the corporate values of the organisation and details of its stakeholders;
- an analysis of the operating environment including challenges faced by the Commission and the intended responses to those challenges;
- those factors that are critical to the achievement of the objectives and priorities; and
- a commentary on the financial outlook together with a set of summarised projected financial and budget statements.

The second document is an annual Business Plan and it should contain the following key elements:

- The services and initiatives (i.e. outputs) to be delivered in the next 12 months.
- A specification of the resources and budget funding required.
- A specification of the performance measures and targets (both quantitative and qualitative).
- A set of projected financial and budget statements together with a commentary on the short term outlook.

It is critical for all the key elements of both the Strategic and Business Plans to flow through to the annual report. It was not the case with the 2001-2002 annual report of the Commission.

Performance Reporting

The existing performance reporting structure of the Commission needs to be substantially strengthened to incorporate the following key elements:

- Details of completed projects and initiatives in comparison with those set out in the Business Plan (including explanations for any delays and details of revised target dates).
- A comprehensive set of quantitative key performance indicators for the current year covering all major aspects of the Commission's operations.
- Adequate explanations to assist readers' interpretation and understanding of the key performance indicators.
- Adequate explanations for instances of under and over-performance (including details of actions taken to improve future performance in the light of the lessons learned).
- Use of evaluation findings (e.g. results of program reviews) to demonstrate what the activities and programs have achieved and how they have contributed to performance outcomes.
- Key performance indicators for the previous years (i.e. trend data) as well as the following year.
- A commentary on the shared responsibilities for cross-agency performance issues and on the Commission's contribution to the outcomes.
- A benchmarking comparison with the performance results achieved by similar agencies in the other Australian jurisdictions.
- Discussions and analyses on setbacks, problems and issues.

To assist the readers in obtaining a 'snapshot' view of overall performance and an insight into future directions and developments, the following additional information should also be incorporated in the annual report:

- An "Overview" or "Executive Summary" section at the beginning of the report commenting briefly on:
 - significant issues and developments which had an impact on the performance during the year and future directions and outlook for the following year (including both positive and negative factors);
 - key performance targets and results achieved (including explanations for any major variances);
 - trend data relating to the performance of the key result areas;

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- significant projects/initiatives completed against plans as well as key projects/initiatives identified for the following year; and
 - financial results and position for the current year as compared to budgets and past trends.
- A separate section on “Future Directions and Developments” providing forward-looking information and comments such as:
 - a discussion of the future outlook for the Commission including issues and events that are likely to have a significant impact on the following year’s performance;
 - details of expected future changes and trends within the Commission’s operating environment; and
 - an outline of what the Commission aims to achieve in future years (particularly the next 12 months) e.g. planned key projects and initiatives and quantitative measures of performance.

It is further recommended that a ‘Financial Management’ section be included to provide a clear link between the financial statements and the ‘Review of Operations’ section of the report. This section should present a set of summarised Statements of Financial Position, Statements of Financial Performance, Statements of Cash Flows over a five year period and a detailed commentary on all major variances from last year and budgets as well as on significant changes over time. The discussion and analysis should also cover all important financial management and accounting issues faced by the Commission during the year

CHAPTER THREE – GENERAL MEETING WITH THE COMMISSIONER TO EXAMINE THE 2001 – 2002 ANNUAL REPORT

(This chapter contains relevant edited transcript of the general meeting with the Commissioner and the text of replies to 'Questions on Notice').

1. *Positive events during 2001-2002*

Question: What were the positive events – perhaps better described as the memorable events – of 2001-2002 regarding corrupt activity and corruption prevention in New South Wales?

Response: As highlighted in the Annual Report 2001-2002 there were a number of positive events that relate to the corruption work undertaken by the Independent Commission Against Corruption (ICAC). Undoubtedly, one of our most outstanding achievements in 2001-2002 was the completion of *Operation Trophy*, which investigated corrupt conduct by councillors on Rockdale City Council. This investigation effectively demonstrated our renewed capacity for taking on serious and substantial corruption. We brought new techniques to bear in this investigation, and it resulted in the comprehensive exposure of significant corruption. It also highlighted the work of our Corruption Prevention area, which had done extensive work on corruption risks in the development approvals process in the 2000-2001. That work led to legislative reform and will inform further recommendations for changes to the planning system.

Apart from its outcomes, one of the most pleasing aspects of *Operation Trophy* was the way in which officers from throughout the Independent Commission Against Corruption were involved. We were able to make optimal use of skills and experience right across every unit in the organisation. We also made use of the opportunities it provided for further enhancing our overall investigative capacity.

Operation Trophy also confirmed the direction of an extensive change management program that has been commenced at the Independent Commission Against Corruption during 2000-2001. The change program brought new skills and techniques, improved ways of working, and greater efficiencies to the Independent Commission Against Corruption. We are now better placed to confront more sophisticated forms of corruption.

During 2001-2002, we formally established the Strategic Operations Division and the Strategic Risk Assessment Unit to provide a new focus to our investigation and intelligence activities. Also in 2001-2002 we commenced a new recruitment program for individuals with different investigative techniques, particularly in the area of financial investigations. These skills have been of great benefit in our investigative work.

Away from the spotlight of public hearings, we carried out other investigations into a variety of matters. In the 2001-2002 Annual Report, we highlighted some of those and following are a few examples:

- Investigation into allegations that a security guard had stolen up to \$18,000 worth of computer equipment from a hospital (p. 31). It was also alleged the guard was assisted by another guard. The result was the DPP laid charges of break, enter and steal and larceny against one of the guards and charges of receiving stolen goods and goods in custody against the other.
- Investigation into allegations that a driver who had been disqualified from holding a licence approached two RTA officers offering \$15,000 to obtain a false driver's licence (p. 32). The investigation resulted in ten serious charges being laid against the driver.
- Investigation into an allegation that a Council Officer used standover tactics on a sex worker (p. 29). Inquiries established improper conduct and conflict of interest on the part of the Council Officer and referred the matter to the General Manager of the Council for further action. The Australian Tax Office was also advised of the undeclared income received by the Council Officer from a consultancy business he was operating.
- Investigation into an allegation that a private sector company had an arrangement with a senior officer of a large public sector agency and a consultant whereby company employees would submit bogus quotes from supposed competitors for contracts from the agency. These quotes were submitted along with a genuine quote from the company, who would then ultimately be awarded the work. Although no finding of corrupt conduct was made, material was referred to the agency to enable disciplinary proceedings. The senior officer subsequently resigned.

Our Assessments Unit was revamped in 2001-2002, with a renewed focus on responsiveness and timeliness. Wherever possible, we are providing more detailed information and reasons in replying to people who make complaints to the Independent Commission Against Corruption.

Our corruption prevention function continued to target key sectors. In former years, much of our corruption prevention work was either intended for the widest possible audience or linked to individual investigations or cases. Now that many of the fundamentals of corruption prevention have been absorbed by the public sector we continued moving our work toward targeting key sectors where we can develop advice and guides that are specific to the issues unique to the sector. From a "one size fits all" approach we continued our move to tailoring solutions for key sectors.

During 2001-2002, we targeted our work to deal with issues in key specific sectors (such as Local Government), sectors that had not traditionally been exposed to corruption prevention (such as universities), and specific corruption issues across the public sector (such as fraud). These corruption prevention initiatives have built on our expertise, but equally importantly, have made use of the knowledge and experience of stakeholders in these areas.

We continued our Rural and Regional Outreach Strategy (RAROS) in 2001-2002, with visits to Lismore and the Hunter Region during the year. These visits involve a significant investment of time and resources to delivering a range of corruption prevention and investigation training to public officials in non-metropolitan New South Wales. We appreciate that the issues facing rural and regional New South Wales differ from those in the larger centres. Our RAROS activities undertaken in 2001-2002 typify our commitment to continue delivering these services to communities and the public sector right across the State.

During the public hearing on Monday 18 September 2003, Commissioner Moss commented further in her opening remarks.

Commissioner MOSS: If I can make a very short statement, the year 2001-2002 was a productive year for the Independent Commission Against Corruption. As outlined in the annual report, we received and assessed 1,505 complaints, completed 159 investigations and dealt with 201 matters through the corruption prevention unit.

We profiled our investigation into the corrupt conduct of councillors of the Rockdale City Council. During that operation we obtained 34 telephone intercept warrants, 53 listening device warrants, 12 search warrants and issued 74 notices to produce. We also intercepted SMS text messages.

We also conducted many other investigations in 2001-2002 and some have been presented as case studies throughout the annual report. We did this because it is important for our stakeholders to know how Independent Commission Against Corruption resources have been used. We highlighted a number of investigations where we worked with our strategic partners, such as the NSW Police service, and we also profiled some of our work that does not otherwise come to the attention of the public.

I emphasised in that report that the Independent Commission Against Corruption can expend a great deal of effort investigating serious allegations that do not reach the threshold for a finding of corrupt conduct; however, this work often serves to clear the air in a particular workplace or community.

In the area of corruption prevention we conducted a further eight corruption resistance reviews and two more visits as part of our rural and regional outreach strategy program. We focused much of our prevention work in the area of local government and university as highlighted in the report. Our work resulted in legislative changes in respect of local government.

In 2001-2002 was the first annual report where we provided to our stakeholders extensive examples of the diverse investigative work we have done. We also emphasised our continuing work on the development of effective performance measures.

Finally, the organisational change program that was drawing to completion has resulted in many benefits to the organisation. We have greater integration between the divisions and we have promoted the multi-disciplinary team concept. We balanced and changed the mix of staff skills and strategy and introduced new skill sets such as specialist financial analysts and intelligence analysts. We also changed business processes, including the use of hearings. In the past we have tended to rely on hearings as the primary investigative

strategy. In 2001-2002 we started moving towards considering hearings as part of a suite of investigative tools. For each matter we consider what combination of which order of investigative strategy will most effectively and productively investigate it. We place greater importance on obtaining admissible evidence, and it is important to recognise that you lose admissible evidence if you rely solely on the hearing process. As highlighted by the Rockdale investigation, we have moved towards aiming for multiple achievements for our investigations. We aim for both investigative and corruption resistance outcomes.

2001-2002 was a year of consolidation and the finalisation of the extensive change management program. Like any change management process, it has not been easy but, as I believe the results of the year show, it has been worthwhile and there have been many clear benefits for the organisation. Thank you.

2. *Low points during 2001-2002*

Question: What were the low points during 2001-2002 regarding corrupt activity and corruption prevention in New South Wales?

Response: As highlighted in the preceding question, 2001-2002 was a year characterised by many high points for the Independent Commission Against Corruption. However, the low point for the Independent Commission Against Corruption was the unsurprising consequence of organisational change. Leading into and during 2001-2002 there was significant organisational change and restructure, this involved the reclassification of positions and a number of staff accepted voluntary redundancies. Inherently, the process involved some conflict and significant strains on management and staff.

During the public hearing on Monday 18 September 2003, the Committee questioned Commissioner Moss on this matter.

The Hon. KIM YEADON MP (CHAIRMAN): In your response to questions on notice, and as you have indicated today, you listed only one real low point for 2001-2002. That concerned the conflict and management stresses that were produced by organisational change within the Independent Commission Against Corruption. Was that the only important problem area for the year?

Commissioner MOSS: For the organisation I thought that that was a difficult change process, and as with any change management program, particularly a fairly large one, it did involve tough decisions and it did involve upskilling our staff. That probably meant that some of the staff thought that the staff development was not necessarily going to succeed in getting to the skill level that was desired for the organisation. As a result of that there were some conflicts, and we dealt with that, but I feel that we have got over the most difficult challenges it has presented.

The Hon. KIM YEADON MP (CHAIRMAN): I suppose at the other end of the equation there are highlights that you raise with the work on Rockdale City Council, but I note that there is a failure by the Director of Public Prosecutions (DPP) to proceed with so many prosecutions for want of sufficient evidence that that would have been a low point or an issue of concern for the

commission. In Appendix 3 of the annual report I noted that at least 18 prosecutions and disciplinary actions arising from investigation reports did not proceed because of insufficient evidence. There may be considerably more for the year 2001-2002 because many of the entries just say "awaiting outcome". Do previous years reflect a similar pattern in relation to prosecutions and what is the view of the Commission in terms of a low point in not seeing that subsequent action undertaken?

Commissioner MOSS: We would obviously prefer the matters to be prosecuted and dealt with as soon as possible. Having said that, I am not privy to the resource level or workloads or priorities of the DPP, so I cannot really make strong conclusions about how that has been going.

The Hon. KIM YEADON MP (CHAIRMAN): Does the Commission have an ongoing role in relation to the work of the DPP? In other words, once you have reported, do you then hand over all of your material to the DPP for them to subsequently examine and do further investigation if that is required or does the Independent Commission Against Corruption remain a participant in that process, either by its own direction or by direction from the DPP?

Commissioner MOSS: We actually do most, if not really all, of the work in terms of gathering admissible evidence for the DPP, and we liaise with them to get the brief to a point where they can actually use it to decide whether they will proceed with charges or not. I am not too sure how involved we get after we have handed the brief over, but I am sure actually that --

Mr PRITCHARD: There are some complications sometimes in that while we collect evidence under compulsive powers, the prosecution -

The Hon. KIM YEADON MP (CHAIRMAN): Can I just clarify if you are now talking in the lead up to your initial report or is this subsequent to reporting and then the process of looking at criminal prosecutions?

Mr PRITCHARD: We try and collect evidence as we go along in an admissible form on the basis that when a brief is served it is in a form already that will comply with the requirements of the court. One of the problems we face, and one of the problems we have had in the Rockdale matter in particular, is that while we may be able to put a person in the witness box and get them to answer questions, we cannot force them to sign a statement. The court requirements for a prosecution brief, it is all done by way of papers in the early stages of a brief of evidence, witnesses have to sign statements. We cannot force a person to sign a statement. If they choose not to sign a statement, that creates some difficulties in trying to get that person's evidence in through some other means.

In the Rockdale matter at the moment there are a couple of major witnesses who assisted us during the commission who for one reason or another have decided that they will not sign statements. That is not insurmountable, but we therefore have to find other means in conjunction with the DPP about turning that evidence into some admissible form so it can be included in the prosecution brief and will be admissible in evidence in any event.

We have had some discussions with the DPP this week specifically in relation to Rockdale. Rockdale has been different because there are six defendants, some of them involved in different matters, some of them not involved in others, and we worked out a way to go

forward so that we can overcome the problem of witnesses who otherwise may help us but hopping in the witness box in a criminal trial they are not overly keen about.

The Hon. KIM YEADON MP (CHAIRMAN): What resource implications are there for the Independent Commission Against Corruption in that subsequent investigation following a report or the like? Does that in some way deflect resources from other investigations that you are undertaking or does the DPP just have a view that you have unlimited resources to undertake that sort of activity?

Mr PRITCHARD: No, they understand that - I mean, they are very keen on their demarcation between we investigate, they prosecute. So if further evidence is required, if further material is required, if the DPP wants to do a prosecution, then it is up to us to obtain it. That may require further statements, obtaining further evidence. We have to do that. That means making resources available to comply with their requisitions. We have liaison there with the DPP. They have points of contact with us where we may have to obtain further statements. At the end of the day, we have to obtain it. In most cases we can usually do that, sometimes with a delay in the DPP perhaps getting back to its witnesses if they have moved on or cannot be found, things of that nature.

Commissioner MOSS: We have changed our practices with respect to investigators and others who work on a particular matter. Previously, once the matter had finished and gone to either a private or public hearing, investigators basically relinquished responsibility for the matter, and as a result of that we had a bit of a backlog, so that briefs were not being completed as quickly as we would like.

Now we have a practice where nobody relinquishes a particular matter until the briefs are properly completed and handed over. So despite the fact that the exciting part of the work might be over, the investigation, the hearings, et cetera, they hold onto that file and they will complete that file and the responsibility will remain with those officers until the brief to the DPP has been completed and handed across.

3. Major political, research and social issues debated in the public sector 2001-2002

Question: Based on monitoring of literature and policy development activities in Australia and overseas, could the Independent Commission Against Corruption indicate what were the major political, research, and social issues concerning corrupt activity and corruption prevention involving the public sector that were debated during 2001-2002?

Response: The following outlines the main issues concerning or relating to corruption activity and corruption prevention during 2001-2002.

Governance and Prevention

There continued to be both national and international interest in the issues of corporate governance and accountability. These issues have gained greater prominence following the collapse of a number of global and domestic corporations, for example, One Tel, Ansett, HIH, Enron, and WorldCom. They also highlighted that misconduct on the part of individuals

holding positions of authority extends well beyond the public sector and into the private sector.

Since the 1996 World Bank Annual General Meeting the Bank has undertaken more than 600 specific anti-corruption programs and governance initiatives in 95 borrower countries. Recent examples of anti-corruption projects include tax administration in Latvia; judicial reform in Albania, Guatemala and Morocco; administrative and civil service reform in Bolivia and Ghana; regulatory reform in Georgia; and support for the Ombudsman in Peru. The Bank's Comprehensive Development Framework underpins these projects and ties Bank lending to the overall governance capacity in borrower countries. This approach (sometimes referred to as "conditionality") was endorsed by an international meeting of 50 nations, the International Monetary Fund, the World Trade Organization, private sector and civil society representatives at the International Conference on Financing and Development in Monterrey in 2002.

These issues, as well as a general increase in the globalisation of capital and industry, prompted consideration of international cooperation in preventing corruption. Instruments such as the OECD Bribery Convention continued to be promulgated throughout OECD member and non-member countries and the United Nations began negotiations on a draft Convention Against Corruption.

Threats to international and national security

Policy instruments and international cooperative mechanisms (such as the United Nations Security Council Resolutions 1267 and 1373 to implement uniform counter-terrorism measures) that were agreed in response to the terrorist attacks of 11 September 2001 recognise the possibility of links between corruption and threats to security particularly in the possible use of money laundering to finance terrorist organisations. During 2002 and 2003 the relevant Australian provisions were passed in a package of terrorism statutes that includes the *Suppression of the Financing of Terrorism Act 2003*.

Transparent Government

At national and sub-national levels corruption prevention policy development and implementation is evolutionary and the pace of development varies widely between jurisdictions. The common themes that emerged in this period largely carried over from those seen in recent years but in more refined forms. For example, establishing and enhancing accountability mechanisms to deliver transparent government was identified as a priority in many jurisdictions.

An OECD survey *Trust in Government: Ethics Measures in OECD Countries* (OECD 2000) identified the search for better transparency mechanisms in all areas of government as a priority for OECD member country governments. This view was endorsed by Transparency International's *Global Corruption Report 2003* (covering the period 2001-02), which has access to information as its key topic. Subsequent OECD work during 2001-02 developed transparency tools for governments to use including materials for budget preparation, a handbook and principles for increasing citizen participation in policymaking, and a major project on managing conflicts of interest.

Transparency initiatives included:

- many jurisdictions were still considering implementation of public access to government information (eg United Kingdom and Switzerland),
- public interest disclosure regimes were still being developed (eg Victoria),
- the promulgation of codes of conduct and guidelines for ministers, members of parliament and ministerial advisers (eg United Kingdom, Canada, South Australia).

At the domestic national and sub-national level, the issue of transparency in Government has been subject of public comment. Public perceptions of a culture of public servants not properly informing Ministers and the Government of important events and suggestions that this is the result of Governments not wanting to know go to the heart of the importance of transparency in Government. The perception that there has been a blurring of responsibility for major public decisions between the Government and the bureaucrats further highlights the importance of both governance and transparency.

The Independent Commission Against Corruption has experienced in New South Wales, a common misunderstanding of the difference between unethical conduct and corrupt conduct. The threshold for a finding of corrupt conduct is high and a persons misconduct can still be quite serious but not meet this threshold – although this places the matter outside of the jurisdiction of the Independent Commission Against Corruption in an investigative sense, it should still prompt action by the organisation concerned. Transparency and accountability in Government also requires public sector organisations to take action when a risk is identified and/or exposed as oppose to awaiting a finding of corruption conduct as defined in the Independent Commission Against Corruption Act.

Public-private interface

In jurisdictions where transparency mechanisms are more established other challenges were identified. The corruption risks that arise from the increased interaction of the public and private sectors through privatisation, government contracting and contracted service delivery all continued to attract attention. In particular, investigations by the Auditor General of Canada, the Australia National Audit Office, the Senate Standing Committee on Finance and Public Administration, the Metropolitan Ambulance Service Royal Commission (Victoria) considered the accountability of new forms of governance that involve arms length or third party service delivery are as accountable as direct delivery.

New policy perspectives

New perspectives on optimal corruption prevention policy continued to consolidate during this period. Several common policy themes emerged in conferences and meetings on corruption, such as the Global Forum II on Fighting Corruption and Safeguarding Integrity (May 2001), the International Anti-Corruption Conference X (October 2001) and a series of OECD Forums, and publications, such as the World Bank strategy document *Reforming Public Institutions and Strengthening Governance* (November 2000) included:

- Recognition that commitment at the political level is critical to any strategy for minimising corruption.

- Acknowledgement that an ethical organisational culture is a critical mechanism for corruption prevention.
- A view that building capacity for good governance, whether institutional or sectoral, is more effective than imposing standards in a regulatory way or relying on investigative approaches alone.
- The need to coordinate and integrate anti-corruption strategies to maximise their effectiveness within an institutional or sectoral framework.
- Discussion about the extent and nature of “e-corruption” and consideration of measures to minimise it.

During the proceedings on 18 September 2003, further questions on this subject were asked.

Mr O'FARRELL (ICAC COMMITTEE): Commissioner, question on notice number 3 provides, amongst other things, information on new policy perspective, which indicates that a number of common policy themes were emerging and the first amongst them was a recognition that commitment at the political level was critical in the strategy for minimising corruption. Do you believe you have that commitment in New South Wales?

Commissioner MOSS: I do. I think the fact that ICAC exists is a big thing. I think the fact that there is such an organisation is an important statement in itself. Of course, there is always room for improvement. There are not that many other jurisdictions in Australia that have such a body. There is only Queensland, Western Australia and New South Wales, and I think that in itself is an important statement. I think that our observation from looking at the profiling project is that there are more corruption prevention strategies that are being put in place. There is still in some areas a way to go and it is never ending I suppose, a never ending aspiration to do better in this area.

Mr O'FARRELL (ICAC COMMITTEE): Commissioner, is there any other way for you to measure what you assess to be the political commitment to ICAC or corruption prevention strategies besides the fact that the Government has arrived, ICAC exists, it is probably too hard to get rid of it? For instance, how hard do you have to battle for your budget each year? Ian Temby apparently understood and had an agreement with the Premier who established the ICAC that whatever resources he needed would be provided. In terms of budgetary support as a level of political commitment, how supportive is the Treasurer in determining your budget allocation?

Commissioner MOSS: I believe at the moment our budget is sufficient for us to fulfil our statutory functions. Quite obviously, if we had more money, we could always do more. I mean there is no doubt about it. Any agency would say with more money you would be able to do more, but I think at the moment we are able to fulfil our statutory role and we have been successful in the last round of our budget negotiations to obtain some extra money for, I think, the technology in the investigations area, and I am conscious of the fact that we would have to put in our bids like any other agency and the Government would need to assess all the priorities that were before them.

Mr O'FARRELL (ICAC COMMITTEE): Commissioner, in relation to Operation Trophy, reference was made to the full and extensive use of all of ICAC's powers and that clearly is always working out of the investigative arm of ICAC. I think reference was made in response to questions previously about how costly those procedures are if you embark upon them. In determining whether you approach an inquiry from an investigative or any other method, do budgetary considerations come into play?

Commissioner MOSS: I am advised that yes, we do actually look at that as an aspect when we handle investigations and in these matters we have a process called the investigations management group where, when we move the investigations to certain levels, they come before this group, which consists of all the key directors of all the areas and we talk about how those particular matters are going. I am advised that yes, budget considerations in terms of what we can commit to it, the number of investigators, the type of technology available, those things are taken into account.

Mr OUTRAM: Yes, we look at obviously the seriousness of the matter, we weigh up the likely impact on our resources, our investigators, if we have to go to other agencies, are we going to get the support we need to do the investigation, can we rely on other divisions of management or what have you. There is no simple equation that we have. We certainly would look at the costs and benefits and that would be really about the seriousness of the matter and the likelihood of us getting good evidence through employing the resources in that way.

Commissioner MOSS: I suppose where it can be a difficulty is when we want to, say, deploy officers with specialist expertise into certain types of operations and we have not got that expertise. Certainly, there would be areas where only, say, the Police Service or the Federal Police could give us that help. Obviously, if we had more money we would try and develop that capacity ourselves, and so there would be certain areas where we would be lacking in that regard. We have actually thought that perhaps we would not be able to make out a case for an enhancement because we may not need that capacity on a regular basis and that it might be more efficient to try to get assistance, come to an agreement with another agency for those sort of resources and pay for them when we need it. We can actually see that, in some operations in the future, that might be the case.

Mr O'FARRELL (ICAC COMMITTEE): So there is no arrangement with either the Premier or the Treasurer for one-off supplementations as required because an additional inquiry which was not budgeted for is needed?

Commissioner MOSS: I do not think we have got that arrangement, no.

Mr O'FARRELL (ICAC COMMITTEE): And it has never occurred; you have never had to go cap in hand? I am trying to test here commitment at a political level to an anti-corruption body.

Mr PEHM: We went to the Treasury for a special allocation in order to fund the restructure and that was committed to, there were no problems there, so that is really the only special allocation we have asked for. We have been through a big restructure process and in a sense we have to bed things in before we know where we need to grow in the future, and I think we are just at that point now and probably in the next budget process we will be taking some more things to Treasury.

Mr O'FARRELL (ICAC COMMITTEE): So, in determining whether a matter proceeds through to further investigation, budgetary considerations are not an issue?

Mr PEHM: They are always an issue in the sense that you have a limited cake and you have a certain number of matters and you have to cut the cloth to meet the matters, but it would still be an issue if you had a larger budget, you would simply give more resources but you would still have to divide your resources amongst a number of matters, so naturally you make classifications as to level of seriousness and so on, which we do. I do not think we would say - and I will be corrected if I am wrong - that we have insufficient resources to pursue what we believe to be serious issues of corruption.

Mr O'FARRELL (ICAC COMMITTEE): So no serious issue of corruption has not been investigated or not been progressed?

Mr PEHM: For lack of resources? I would say not.

Ms KENEALLY (ICAC COMMITTEE): I was actually going to ask that exact question: You have never not investigated a serious matter because of budgetary restraints?

Commissioner MOSS: I would say not, but quite obviously if we had a bigger budget you would feel more comfortable in allocating more resources to it.

Mr PRICE (ICAC COMMITTEE): That is the plea of every departmental head.

Ms KENEALLY (ICAC COMMITTEE): Yes, my electorate would like more money as well.

Commissioner MOSS: Yes.

The Hon. KIM YEADON (CHAIRMAN): But I think the operative word was "serious", a serious investigation.

Commissioner MOSS: Yes.

Ms KENEALLY (ICAC COMMITTEE): It has never been locked away due to a budgetary restraint.

Ms MOSS: No, we would just not do that, so we would struggle on no matter what.

The Hon. KIM YEADON (CHAIRMAN): And one would assume, if that situation arose, that would have provoked a situation where you would have gone to seek more resources from the Government and, as you indicated earlier, you have not done that on any occasion.

Mr PEHM: No, we have not had to, and we certainly could and would, I think, if that situation arose.

Reverend the Hon. FRED NILE (ICAC COMMITTEE): The point there would be that you just adjust your own internal budget obviously and you would have to do less education or something.

Commissioner MOSS: Yes, that is the sort of prioritising that we would be doing.

Mr O'FARRELL (ICAC COMMITTEE): On Reverend Nile's point, presumably, though, that does have impact upon your corruption prevention activities if your educative role has to be wound back because of budgetary concerns?

Commissioner MOSS: It possibly might have, and I mean if we felt for a particular year more resources were needed to go into, say, investigations, and inevitably if you did that you might have to up the level of funding in the legal unit as well because that acts as a support, one might very well have to wind back activity in another area, but it is worked on a year by year basis where you toss the balls up in the air and you work out how you should do that allocation.

Ms KENEALLY (ICAC COMMITTEE): Given your earlier comments in answer to Mr O'Farrell's question about the efficacy of investigative activity, would you feel that that reallocation of resources away from prevention and education to investigation is worthwhile?

Mr O'FARRELL (ICAC COMMITTEE): Presumably it would not be made unless it was.

The Hon. KIM YEADON (CHAIRMAN): We will let the commissioner answer.

Commissioner MOSS: We feel that it has been worthwhile and we feel that it is important to keep the investigative branch as best resourced as possible because that is the most difficult area of the organisation. I mean that is the area which is the most, I suppose, sensitive in the sense that if you do not do an investigation properly that is detrimental. If one of our objectives is to find corruption and expose it, it is important that you have a division that is as skilled as you can possibly make it, and that is why we had to take some quite tough decisions in that area in upskilling that branch, and I use the term "best practice" in terms of comparing it to other investigative agencies that were up to date in those sorts of investigative techniques and the technology of it all, the skills. We think that is the area of highest risk and obviously that is an area of probably greatest focus.

Reverend the Hon. FRED NILE (ICAC COMMITTEE): When you are conducting a hearing and witnesses have a lawyer present, or a person who may be accused, are the lawyer and the witness allowed to interact in the hearing?

Commissioner MOSS: Yes, they are.

Reverend the Hon. FRED NILE (ICAC COMMITTEE): They sit next to each other?

Commissioner MOSS: They sit next to each other and they certainly are allowed to interact and they are certainly allowed to cross-examine witnesses.

The Hon. KIM YEADON (CHAIRMAN): Any further questions?

Mr O'FARRELL (ICAC COMMITTEE): In relation to question on notice number 3, you talk about the need for transparency and accountability in government requiring public sector organisations to take action. I want to touch on an issue that is related to your most recent report but is not about your most recent report. Are you satisfied, for the reporting year we are talking about, that the departments of Parliament fulfilling the role of public sector

organisations were active enough in pursuing the twin objectives of transparency and accountability?

Commissioner MOSS: I am not too sure - departments of Parliament?

Mr O'FARRELL (ICAC COMMITTEE): The Legislative Council, The Legislative Assembly, the clerks that administer the departments and the presiding officers who preside over them.

Commissioner MOSS: I would like to take that on notice, I am just not too sure what the answer is at this point.

Mr O'FARRELL (ICAC COMMITTEE): I have a follow-up question which goes to the heart of a number of the questions on notice as to whether the Commission is regarded as proactive enough or whether it is regarded as reactive. For the financial year in question, at least one member of the Upper House was required on a number of occasions to correct his pecuniary interest register. When looking at the issues raised in your most recent report, had you had occasion to visit that issue of the way in which the Parliament administered pecuniary interest registers previously?

The Hon. KIM YEADON (CHAIRMAN): Mr O'Farrell, could I just make the point that the episode that you make reference to actually occurred subsequent to this annual report. So therefore it would be addressed--

Mr O'FARRELL (ICAC COMMITTEE): No, Mr Outram said it affected the pecuniary interest register three years successively.

The Hon. KIM YEADON (CHAIRMAN): That may be the case, but the public hearing of that matter was subsequent to this annual report.

Mr O'FARRELL (ICAC COMMITTEE): No, it was actually occurring in the newspapers, and certainly -

The Hon. KIM YEADON (CHAIRMAN): During the period of this annual report.

Mr O'FARRELL (ICAC COMMITTEE): - during the period of this annual report, and I made that point clear. Commissioner, I suppose what I am getting at is you have delivered a major report in relation to pecuniary interest registers which has recommended certain changes and I do not want to discuss that report, because it is not related to this period, and it would be inappropriate to discuss the report, but what I am interested in is where you have had occasions in the past where pecuniary interest has been the subject of public discussion, where members have been seen to fail to comply with it, was the Commission ever asked to look at the issue previously and did the Commission, in doing its most recent report, believe when these issues have been raised in the past the Parliament has dealt with them appropriately?

Commissioner MOSS: From my recollection that matter was dealt with in Parliament, was it not? The thing is I don't think it would be appropriate for me to go into individual cases because of the prohibition set out in 64(2). Suffice to say that should the Commission become aware of matters that we believe can be properly investigated, we would do so.

Mr O'FARRELL (ICAC COMMITTEE): Those matters would have to be brought to your attention?

Commissioner MOSS: Not necessarily, but there would be other factors that would come into play where some matters would be brought to our attention, some matters may not be, but it all depends on whether we have enough information at hand to intelligently pursue the matter in a proper investigative way.

Michael, would you like to elaborate on how we actually would deal with matters which both come to our attention and which we might want to investigate ourselves?

Mr OUTRAM: In selecting, obviously, investigations it is an area that every agency thinks over long and hard and every agency has got different criteria. We go through the assessment process in the first place looking at jurisdiction and then we look at issues such as the seriousness, and that might be the gravity, the impact, the dollar value, et cetera, is it systemic, how recent is the conduct, is it ongoing and likely to be repeated and are there clear lines of inquiry. A preliminary inquiry may be undertaken actually just to establish the commission of an offence. Obviously, in normal major law enforcement you have got to have an offence committed and that is a given. So you can always drop into an investigation in which you try to establish the likelihood of an offence or that a corrupt action has actually been committed, and at that stage we can then draw hypotheses from which we come up the investigation plans. That is pretty much the process we go through.

These are quite formalised processes as well, the assessment section: first of all draw up an assessment and make recommendations to the assessment panel, which consists of members of the executive. If it is recommended for a preliminary inquiry or an investigation, it then comes to my division and we report every two weeks to the investigation management group. We have escalation criteria as well to escalate from preliminary inquiry to category 2 or category 1 and so forth.

Mr O'FARRELL (ICAC COMMITTEE): Thank you for that. Commissioner, does the Commission, or did the Commission during the period which we are discussing, give particular priority to looking at issues of transparency and accountability and corruption prevention in relation to the Parliament, or do we simply wait our turn until there is a crisis and then you launch an investigation? How do you assess where your corruption prevention activities are directed?

Commissioner MOSS: Well, we did not have a particular project.

Mr PEHM: Not in each particular year but the Commission gave a great deal of attention to Parliament some time ago during travel.

Mr O'FARRELL (ICAC COMMITTEE): That is my point I suppose, should we wait until a crisis comes along or is there ongoing work with the Parliament to improve transparency?

Mr PEHM: We work with the Parliament as well. We have worked with the Parliament to look at the information that is provided to new members of Parliament and those sorts of issues, but from their nature they are not high profile, so there is probably not much heard about them.

Crisis management is the wrong term to use. Issues are heightened when there are complaints with high profiles and they tend to focus our minds as well as the public's minds on them.

Our general approach to all public sector agencies is to encourage them to deal with issues themselves, to deal with them internally. If Parliament can do that satisfactorily through a Committee process of looking at the issue and reach a determination, then that is a good thing. It will encourage Parliament to deal with these issues internally.

The Hon. KIM YEADON (CHAIRMAN): Perhaps the member for Ku-ring-gai would like a standing investigation of every member of the Parliament in an ongoing way.

Mr O'FARRELL (ICAC COMMITTEE): I would certainly like more transparency and accountability. My point is that you have just produced a report which makes a major recommendation in relation to the pecuniary register. My point is that in the year with which we are concerned this evening, at least one member, and I do not want to get into the details of that member - issues relating to that register were raised publicly and within the Parliament. On that test and on the test of your September 2003 report, nothing was done to the register to improve it. So I suggest that perhaps to some extent Parliamentary departments cannot be expected to be as proactive as some other public sector agencies, and I suppose I am just surprised that given that we sit at the top, we are the people that go biggest if it goes bad, that we are left to our own to that extent.

Commissioner MOSS: We would welcome assisting -

Mr O'FARRELL (ICAC COMMITTEE): My original point is proactivity versus reactivity, and are you happy with your level of proactive work with the Parliament in relation to transparency, accountability and anti-corruption practices?

Commissioner MOSS: I believe it is the appropriate level of assistance that we give. Quite obviously, if at any particular time greater assistance is sought from the commission, we would be more than happy to assist, but we have our priorities as well. We have our investigation matters that we have to get on with, and, quite obviously, if any particular assistance is required at any particular point of time we would try to assist at the appropriate level. I do not know how parliamentarians would react if we were on your doorstep every day insisting on looking at your practices and recommending changes.

Mr O'FARRELL (ICAC COMMITTEE): That is not the test you applied to Rockdale council.

Commissioner MOSS: That was as a result of information we received which had us launch into a very big case, and if information arrived at our door, if we become aware of it or if we are able to obtain intelligent leads that require us to do that in any other area, we would do so.

Mr O'FARRELL (ICAC COMMITTEE): What relationship do you have with peer organisations in Western Australia and Queensland in relation to this issue? Do you actually discuss the level of proactivity and liaison and include what is received at a parliamentary level?

Commissioner MOSS: In my discussions with the investigations branch, yes, we do, and, Michael, you might like to talk about that.

Mr OUTRAM: I have actually spoken to the Crime and Misconduct Commission in Queensland, not particularly about the parliamentary issue, but generally about proactivity, intelligence, how do we strategically pick the issues or investigations which are going to have the maximum impact and which are the most important. The Crime and Misconduct Commission and ourselves met for a day and never got the hard and fast answers. In fact, a lot of agencies struggle, again, with this issue you term strategic intelligence, what is the best way of predicting, if you like, emerging issues, the issues coming over the horizon or selecting one investigation over another, because at the end it is going to be more productive, and of course it is sometimes impossible as an exact science, but yes, we have spoken with the Crime and Misconduct Commission in Queensland about that.

I have also spoken with colleagues in what was the anti-corruption commission in Western Australia, about the same thing, intelligence generally and how they have developed intelligence, how they select and find targets, emerging corruption prevention issues that might be targeted as areas for appropriate focus for investigation and such like, and we are building at the commission, within the strategic risk assessment unit in the intelligence area, the strategic capacity to do that hopefully.

The way we are doing that is off the back of the umbrella project, there is obviously some prioritisation of work taking place in terms of the risks of corruption in the public sector, and if we can quickly identify the levels of inherent risk within agencies, obviously some are more inherently risky than others for corruption, then we can hopefully add to that the daily picture of the trends, complaints coming in, the intelligence that is coming in, it may be the issues we report to the media and work out the risk to date, so that if a matter is reported to us, we can say, yes, we have got to go on that, that is really important, that is a really high risk area, and that is where we are aspiring to go to but we are not there yet.

Mr O'FARRELL (ICAC COMMITTEE): So there has been no discussion with other particularly Australian agencies about whether ICAC's dealings with parliamentary transparency, accountability, corruption prevention procedures, is inferior, superior or equivalent with other States?

Mr PEHM: No, that is not an issue we have benchmarked. The systems are all different. The Western Australian Anti-Corruption Commission conducts everything in private, it has no public exposure at all.

Mr O'FARRELL (ICAC COMMITTEE): But there are still common features across all three Parliaments, aren't there? We all have to fill out pecuniary interest returns, otherwise I am in the wrong State.

The Hon. KIM YEADON (CHAIRMAN): They vary from State to State.

Mr O'FARRELL (ICAC COMMITTEE): But there are still common features of what operates around the Parliament. What you are saying is that there have been no discussions about whether we are inferior, superior or equivalent.

Mr PEHM: No

4. Research projects 2001-2002

Question: What were the research projects commenced, completed or otherwise in progress in 2001-2002 commissioned by or involving the Independent Commission Against Corruption which concerned issues of corrupt conduct or which had major implications for corruption investigation or corruption prevention, organised under subcategories of

- the terms of reference of the research project;
- brief background notes to inform the Independent Commission Against Corruption Committee of the information or events which led to the research project;
- a status report of the current position and any proposed actions so that the Independent Commission Against Corruption Committee is aware of the intended direction of the research project;
- the resources required for the research project

the project manager, and consultant (if any)

Response: The details of the research projects underway in the Commission in 2001-2002 are included in the following table.

Terms of reference	Rationale	Status report	Resources required	Project manager
<i>Profiling the NSW Public Sector: Functions, Risks and Corruption Resistance Strategies</i>				
<p>The objectives of the research project were to:</p> <ul style="list-style-type: none"> • have public sector organisations indicate what corruption risks they believe they face and detail the prevention strategies they have in place • identify differences among public sector organisations in respect of the risks they face and the prevention strategies they have in place • assist the ICAC in developing sector-specific advice for dealing with corruption risks. • promote discussion of the corruption risks facing NSW public sector organisations 	<ul style="list-style-type: none"> • Much of previous efforts of the ICAC was reactive: responding to complaints, impressions or anecdotal suggestions about where to intervene. • The research project aimed to provide reliable information on which to take a proactive approach to building corruption resistance. • In 2000-2001 the ICAC conducted research to identify corruption risks and corruption resistance strategies in local government. • This research project aimed to build on this local government research to identify corruption risks and prevention strategies in state agencies. 	<ul style="list-style-type: none"> • The research commenced in September 2001. • Data collection was finalised in February 2002. • The final report of the project was released in January 2003. • The data from this research project is now being used to current activities within the Commission. 	<ul style="list-style-type: none"> • The ICAC project manager and a research officer worked on this project. • In 2001-2002 the ICAC spent \$15,612 on this research. 	<ul style="list-style-type: none"> • The project manager was the ICAC Research Manager. • Taverner Research Company was engaged to collect survey responses.

Terms of reference	Rationale	Status report	Resources required	Project manager
<ul style="list-style-type: none"> provide information to individual organisations to assist them in targeting areas where the development of further prevention strategies is warranted. 	<ul style="list-style-type: none"> This was the first such research of its type in Australia. 			

<i>E</i>Corruption: <i>e</i>Crime Vulnerabilities in the NSW Public Sector				
<p>The research was commissioned to assess the nature and extent of eCorruption risks and how they are perceived, understood and acted on by senior NSW public sector managers.</p>	<ul style="list-style-type: none"> There has been a significant increase in the use of eCommerce, and in the public sector, eGovernment. This has brought significant advantages in terms of the ability of individuals to access services. Together with these advantages are a number of corruption risks. The Commission was receiving an increasing number of matters that reflected the risks in this area. 	<ul style="list-style-type: none"> The research project commenced in January 2001. The results were used to inform a symposium on eCorruption and unmanaged risk in May 2001. The final summary report of the research project was published in September 2001. 	<ul style="list-style-type: none"> A consultant was engaged to conduct the research. Four ICAC research, corruption prevention and education staff were involved in the project. In 2001-2002 the ICAC spent \$12,359 on the research. 	<ul style="list-style-type: none"> The research was conducted by the Centre for Applied Philosophy and Public Ethics, Charles Sturt University.

<i>Obstacles to Reporting Suspected Public Sector Corruption in non-English Speaking Communities (NESB)</i>				
<p>The research was commissioned to gain a better understanding of the barriers to reporting corruption experienced by communities with a non-English speaking background (NESB).</p>	<p>A review of complaints received by the ICAC found that few were made by people from NESB communities. Almost no complaints were from people with poor English skills as indicated by the use of the telephone interpreter service.</p>	<p>This research was finalised in June 2001. A discussion paper was prepared in November 2001 summarising the results and requesting feedback on strategies to increase awareness and reporting. This feedback has led to an expanded NESB strategy that is currently being implemented.</p>	<p>A consultant was engaged to conduct the research. One ICAC staff member was involved in the project. In 2001-2002 the ICAC spent \$9,126 on the project.</p>	<p>The research was conducted by Cultural Partners Australia.</p>

<i>Waste management in NSW: A Strategic Assessment</i>				
<p>The Commission undertook a strategic assessment to of the waste management industry in NSW to identify: the key public and private stakeholders in the industry the major corruption risks these stakeholders perceive that they face in the industry possible solutions to these corruption risks.</p>	<p>Evidence from other agencies identified a number of problems in the waste industry that suggested higher risks of corruption, including: that the waste industry in NSW was perceived as “semi-criminal” the industry is disaggregated and ad hoc in focus and management a lack of transparency in processes and decision making that it is a lucrative and competitive industry.</p>	<p>The project commenced in May 2001. Based on the results of this research a discussion paper was prepared in April 2002. The discussion paper identified a number of factors generating risk in the waste sector. Based on feedback from stakeholders guidelines on managing corruption risks in the waste sector were published in November 2002.</p>	<p>Three ICAC staff from Research, Corruption Prevention and Education worked on the original research project. Two ICAC staff from Corruption Prevention developed the discussion paper and guidelines. In 2001-2002 the ICAC spent \$7,872 on the project.</p>	<p>The research project was managed by, the ICAC Research Manager. The development of the discussion paper and guidelines was managed a Corruption Prevention Manager.</p>

<i>Degrees of Risk: A Corruption Risk Profile of the NSW University Sector</i>				
<p>The aim of this project was to identify corruption risks in the university sector and develop strategies to foster corruption resistance</p>	<ul style="list-style-type: none"> Concerns about the accountability of universities arose in the course of the investigation into the conduct of staff and students at the University of Technology, Sydney. 	<ul style="list-style-type: none"> The project commenced in October 2001. In August 2002 the findings of the project were published and a forum was held with universities to discuss the results. 	<ul style="list-style-type: none"> A Research Officer worked on this project. In 2001-2002 the ICAC spent \$500 on the project. 	<ul style="list-style-type: none"> A Research Officer conducted the project.

5. *Bibliographic details of Independent Commission Against Corruption documents published in 2001-2002*

Question: Please provide the bibliographic details of monographs, reports, chapters, journal articles, or pamphlets on corrupt conduct, or which had major implications for corruption investigation or corruption prevention, that were written by officers of the Independent Commission Against Corruption or consultants contracted to the Independent Commission Against Corruption that were published in 2001-2002.

Response: The following publications were released by the Commission in 2001-2002.

Investigation reports

- *Report on investigation into matters concerning John Kite and the National Parks and Wildlife Service* (December 2001)
- *Report on investigation into matters arising from a Ministerial Statement to the Legislative Assembly on 10 April* (August 2001)
- *Garbage drains and other things: An examination of conduct of two Liverpool City Council workers* (July 2001)

Corruption Prevention publications

- *No excuse for misuse: Preventing the misuse of council resources* (May 2002)
- *Taking the devil out of development: Exploring corruption risks in local government administration of development applications. Interim report* (May 2002)
- *Fact-Finder: A 20-step guide to conducting an enquiry in your organisation* (May 2002)
- *Responding to fraud: An Independent Commission Against Corruption Discussion Paper* (April 2002)
- *Taking the whiff out of waste: Identifying the potential corruption risks in the waste sector* (April 2002)
- *Do-It-Yourself Corruption Resistance Review* (March 2002)
- *Codes of conduct: The next stage* (March 2002)
- *Recruitment and selection: navigating the best course of action* (March 2002)
- *Taking the devil out of development: Exploring corruption risks in administration of development applications by local councils. Discussion paper* (November 2001)
- *Preserving paradise: Good governance guidance for small communities - Lord Howe Island* (November 2001)
- *Members of non-English speaking background communities: Obstacles to reporting corrupt conduct. Discussion paper.* (November 2001)
- *eCorruption: eCrime vulnerabilities in the NSW public sector. Summary report* (September 2001)
- *Managing risk: Reducing corruption risk in local government. Guidelines 1. Taking the con out of contracting* (September 2001)

Corruption Matters

- *Corruption Matters* No 20 April 2002
- *Corruption Matters* No 19 November 2001

Book chapters

Poulton, G. (2002) Independence in investigation and prevention: The role of the NSW Government's Independent Commission Against Corruption. In Fijnaut, C. & Huberts, L. (eds) *Corruption, Integrity and Law Enforcement*, Kluwer Law International: The Hague.

6. *Independent Commission Against Corruption presentations 2001-2002*

Question: Please provide details of papers, seminars and speeches delivered by officers employed by the Independent Commission Against Corruption or consultants contracted to the Independent Commission Against Corruption in 2001-2002 that addressed topics of corrupt conduct.

Response: ICAC staff made the following presentations in 2001-2002.

DATE	ORGANISATION	SPEAKER	SUBJECT	VENUE
25-Jul	Local Government Rangers - Annual seminar	Stephanie Cooke	Roles of the ICAC and the local government research	Sunnybrook Convention Centre, Warwick Farm
2-Aug	Professor Sung-Don Hwang Hankuk University of Foreign Studies, Seoul, Korea	Angela Gorta Bronwen Dalton	Presentation on the ICAC, its role, functions and research	ICAC
13-Aug	Korean Parliamentary visitors	Grant Poulton	Overview on role and functions of CPER Division and the Commission's organisation and functions	ICAC
14-Aug	Supervision Office of State Family Planning Committee of China	Grant Poulton Yvonne Miles Stephen Osborne	ICAC overview on role and functions and briefing on investigative processes	ICAC
24-Aug	ICAC Forum with Local Government Stakeholders	Irene Moss	Research, Risk Management and (tailored) Responses: ICAC and the new three R's of Local Government.	Sydney
31-Aug	Criminal Justice Commission, Queensland	Grant Poulton	Managing the Impact of an investigation - panel session	CJC, Brisbane
12-Sep	Heads of Criminal Intelligence Agencies Conference	Mal Brammer	Panel Discussions	Canberra
26-Sep	Public Sector Quality Network Conference	Grant Poulton	Knowledge Management - the real meaning behind the buzz	The Blaxland Hotel, Ryde College of TAFE, Ryde
9-Oct	10 th International Anti-Corruption Conference	Angela Gorta	Four ICAC Tools for Measuring Corruption Resistance	Prague, Czech Republic
11-Oct	Convocation University of Sydney	Commissioner Irene Moss	"Integrity and the Enterprise University"	Parliament House, Sydney
17-Oct	Office of Inspector General, East Timor	Mal Brammer Yvonne Miles	Welcome, overview and briefing session on the Commission's functions, role and organisation	ICAC
25-Oct	Hunter Region Organisation of Councils General Managers Advisory Committee , Singleton	Grant Poulton, Stephanie Cooke	Presentation on the work being conducted by Corruption Prevention Education and Research Division	Singleton
26-Oct	Centre for Research and Training in Civics, University of Sydney	Angela Gorta	Understanding Corruption: Its Nature, Ongoing Problems and Approaches to Control	University of Sydney
29-Oct	Australian Federal Police Officers	Jock Lang John Pritchard	Pre-embarkation briefing prior to overseas posting	ICAC
30-Oct	Indonesian delegation, Local Autonomy Bureau, Jakarta	Jock Lang Grant Poulton	ICAC overview on role and functions and briefing on investigative processes	ICAC

ICAC Committee

General Meeting with the Commissioner to examine the 2001 – 2002 Annual Report

DATE	ORGANISATION	SPEAKER	SUBJECT	VENUE
19-Nov	CEOs of Small Agencies Forum	Commissioner Irene Moss	"Managing Change in a Challenging Environment"	Sydney
28-Nov	Mr Park Won-Soon, Secretary-General, People's Solidarity for Participatory Democracy, Korea	Yvonne Miles Jock Lang Jay Lawrence	Presentation on the ICAC and its role and functions	ICAC
10-Dec	Executive and Senior Management Workshop, SRA	Commissioner Irene Moss	Ethical Leadership	Sydney
12-Dec	Chinese delegation, Taizhou Supervisory Bureau	Yvonne Miles, Mike Enders, John Pritchard	Presentation on the ICAC and its role and functions	ICAC
20-Dec	Chinese delegation, Hubei Province Procuratorial Bureau	Ray Kent, John Warburton John Pritchard	Welcome, overview and briefing session on the Commission's functions, role and organisation	ICAC
22-Jan	Australian Federal Police Officer	Steve Osborne, Roy Waldon	Pre-embarkation briefing to officer prior to overseas posting	ICAC
11/12-Feb	Australian Federal Police Officers	Steve Osborne, John Pritchard	Pre-embarkation briefing to eight officers prior to overseas postings	ICAC

7. *Corruption awareness activities 2001-2002*

Question: Please provide a general summary of corruption awareness activities undertaken by officers employed by the Independent Commission Against Corruption, or consultants contracted to the Independent Commission Against Corruption, during 2001-2002.

Response: There are number of ways that the Independent Commission Against Corruption undertakes its role to raise awareness of corruption and corruption prevention. These awareness-raising activities cover a range of topics, locations and target audiences. The activities undertaken in 2001-2002 are listed below.

Rural and Regional Outreach Strategy (RAROS)

The RAROS program is an important corruption awareness activity that involves events targeted at the community, public and private sectors. It is aligned with other key Independent Commission Against Corruption programs such as corruption resistance reviews and the local government strategy.

Two visits were conducted in 2001-2002: Northern Rivers (Lismore) in November 2001 and Hunter (Maitland) in May 2002. Programs included in these RAROS visits included:

- training workshops for public officials
- the launch of products developed as part of the local government strategy
- meetings and discussions with regional managers/directors and general managers of councils
- visits to agencies to discuss corruption resistance reviews
- schools visits and community meetings
- radio, TV and print interviews and stories.

One hundred and thirteen public officials participated in the workshops held as part of the Northern Rivers RAROS, and 158 participated in Hunter RAROS.

During the public hearing on 18 September 2003 the following exchanges took place on the RAROS program.

Mr PRICE (ICAC COMMITTEE): I would like to go to the educative side, if I could. The RAROS - there have been, if I recall, four educative programs, one in Lismore, one in Maitland, one in Wagga Wagga and one in Dubbo, since we last met and I would like to know what Mr Poulton's feeling was, because I think he conducted them, in terms of the reaction of those who attended, and also has there been any follow-up on the Lord Howe Island reports. You have had the discussion paper and the guidelines. Is there any further advice on the Lord Howe Island issue and, if so, when is it likely to come forward?

Mr POULTON: I can deal with the Lord Howe Island issue. As part of the Commission's recommendations on the web project we take out the recommendations over the last 10 or so years in relation to all ranges of reports and we publish responses on the web. In relation to the

Lord Howe Island matter we had, at the end of the financial year just finished, written to all of the major players with responsibility to implement recommendations in Lord Howe asking for an update. I am aware that we have two of those updates and we are in the process of analysing those updates for whether or not there has been a satisfactory level of compliance, so we would hope, subject to the Commissioner approving the documentation in the next month or so, for those to be made publicly available via the web site around about early November, so there will be a comprehensive update on the Lord Howe Island process.

In terms of the RAROS programs, as part of the delivery of training and other educative options, as part of RAROS programs we ask all attendees to provide to us feedback on whether they found the experience and the training valuable, et cetera, and we consistently score, in terms of the feedback from seminar or workshop attendees, good levels of satisfaction in terms of course content and that it actually added to their knowledge.

We also introduced a new aspect of the RAROS we did in June when we went to the central west and focused on Orange, which was to take a stakeholder partner in the RAROS program by picking one of the largest public sector employers in the area and doing tailored work with that large public sector organisation. I think that added a new dimension to the RAROS program because we were able to deliver three different types of assessment and training, a corruption management workshop, a corruption resistance review and an executive briefing, where we were able to bring all of those aspects to bear, so the organisation was thoroughly and comprehensively undertaken.

The theory behind choosing a large partner organisation is that when you go to these regional areas most public officials have formal networks and if you can get the message across comprehensively to the largest public sector employer in the region the chances are that when these people are meeting socially, taking kids to sport and those sorts of things, there will be opportunities for the messages - or just the fact of our having been there and awareness having been raised - to be talked about amongst the various ranges of public officials.

We are off to New England in November for our next RAROS program where we have identified two stakeholder agencies to work with - the area health service and the University of New England - so we will be able to really focus on the New England region with the area health service headquarters in Tamworth and the university headquarters in Armidale.

Mr O'FARRELL (ICAC COMMITTEE): In relation to Lord Howe Island reports, as I recall them, essentially names were removed to avoid embarrassment, which is a common practice of the ICAC, so I read the "not so local" councillor story in the 2001-2002 report and wonder which council, out of all those many councils across New South Wales, it is. I cannot identify it. Are you aware of concerns in relation to Lord Howe Island reports that, despite your best intentions, it is very obvious who those people are and the impact that it has had upon them in a small and isolated community? I confess that I was not aware until last week that the Lord Howe Island project actually started because you wanted to explore governance issues facing small and isolated communities and, quite frankly, given my knowledge of some of the consequences of people being able to be identified, it seems to me, if you have not picked it up, that the Commission may have missed one of the bigger lessons, which is that it is very hard in isolated communities to simply take out the names and not expect them to be identified.

Commissioner MOSS: I take what you say on board. I am not too sure how we could have handled that better, but I take on board what you say.

Non-English Speaking Background project

In early 2001 the Commission began to look at the reporting of corruption in Non-English speaking background (NESB) communities. The project was initiated because of concerns that communities may be experiencing or hearing about corruption and not reporting it. In 2001-2002 a discussion paper about obstacles to reporting corruption was prepared based on research commissioned by the Commission. The purpose of this research was to gain input from community groups regarding strategies for raising awareness of the Independent Commission Against Corruption. In addition, meetings were held with representatives from relevant groups to discuss strategies to raise awareness. Twenty-three press releases about the Independent Commission Against Corruption were also issued to community radio stations and newspapers.

Advice meetings

Organisations often contact the Commission seeking corruption prevention advice about specific issues. In some cases the Commission responds in writing to the request, and in some cases meetings are held to discuss the issues involved. These advice meetings provide a good opportunity to raise awareness about corruption and corruption prevention strategies. In 2001-2002 records indicate that 23 advice meetings were held with agencies such as local councils, government departments and statutory authorities.

Corruption Matters

Corruption Matters, the Independent Commission Against Corruption's newspaper is distributed to about 12,000 readers across the NSW public sector. Two editions were published in 2001-2002. An evaluation of the newspaper's effectiveness found that each copy was read by an average of six people, suggesting a total public sector readership of 72,000.

ANU/ICAC Corruption and Anti Corruption Course

For the past five years, the Independent Commission Against Corruption has worked in partnership with the Australian National University (ANU) to deliver a postgraduate course unit in Corruption and Anti Corruption. This successful and internationally recognised course is designed for middle and senior managers from public sector agencies around the world. It aims to help participants to devise strategies to make organisations and countries more resistant to corruption. A key element of the Independent Commission Against Corruption approach is to assist the senior management of public sector organisations to understand the causes of corruption and the measures that they can adopt to prevent it. From our perspective, its value is its practical focus and the participation of managers who, upon completion of the course, can incorporate these insights into their day-to-day work. The unit

can also count towards a Masters Degree at the ANU's Asia Pacific School of Economics and Management. In 2001-2002 the Independent Commission Against Corruption continued its program of scholarships for senior NSW public officials to attend the course. The Independent Commission Against Corruption received a large number of applications for scholarships. Priority was given to senior employees of NSW State and Local Government sectors. Two of the five scholarships were targeted at employees from rural and regional NSW.

Fact-Finders workshops

The Fact-Finders workshop was introduced in March 2002. The Fact-Finders workshop replaces the Internal Investigation Workshop that has been held for the past five years by the Independent Commission Against Corruption. The new workshop is more in step with the needs of agencies and is based on holding an inquiry rather than an investigation. Independent Commission Against Corruption officers held the final Internal Investigation Workshop as part of the Northern Rivers RAROS on 29-30 November 2001.

Four new Fact-Finders' workshops were held in 2001-2002 as in-house training and as part of the Hunter region RAROS:

- 1 March - Illawarra Area Health Service
- 29 May - Illawarra Area Health Service
- 4 - 6 June (two workshops) RAROS Hunter region.

8. *Provision of formal legislative advice 2001-2002*

Question: Please provide general summary details of the circumstances where officers of the Independent Commission Against Corruption have provided formal advice on proposed legislation (including regulations), discussion papers, etc., during 2001-2002.

Response: In 2001-2002 the Independent Commission Against Corruption provided advice on the following legislation.

Police Integrity Commission Act 1996

The Commission made a submission to the Police Ministry as part of its review of the Police Integrity Commission as provided for under the *Police Integrity Commission Act 1996*. As part of its submission the Commission provided advice (in response to a request from the Police Ministry) on the issues of;

- Legal professional privilege in the context of the PIC's formal powers (the relevant sections of the PIC Act mirror Independent Commission Against Corruption's);
- the respective merits of an ORC type/Inspector oversight arrangement;
- PIC responsibility or jurisdiction over all NSW Police employees including both sworn and non-sworn officers.

Crimes Amendment (Police and other law enforcement officers) Act 2002

In June 2002 the Commission provided advice to the NSW Police in relation to amendments to the *Crimes Amendment (Police and other law enforcement officers) Act 2002* insofar as it affected Independent Commission Against Corruption officers.

Greyhound Racing Act 2002 and Harness Racing Act 2002

In August 2000 the Commission released *The Greyhound Report - Investigation into aspects of the greyhound racing industry*. This investigation revealed serious corrupt conduct in the greyhound industry. The report also contained a number of recommendations. Some of those recommendations were for legislative change.

The Commission makes corruption prevention recommendations in investigation reports to address systemic issues. The implementation of these recommendations is a key measure of the impact of our investigations. So we were pleased when we were asked by the responsible agency to review two pieces of draft legislation to ensure that they implemented the legislative changes we recommended.

The draft legislation was intended to bring about major changes in the Greyhound Racing Authority and the Harness Racing Authority. The Commission was asked to look at the bills and to make any suggestions for improvements. The Commission advised that the bills needed strengthening in two areas. First, the Commission suggested strengthening the pecuniary interest provisions to ensure that the members of the governing boards of the new bodies did not participate in decisions in which they or their associates had a financial interest. Second, the Commission suggested that each body should develop and regularly review a code of conduct. The Commission suggested that the relevant Minister should approve the codes and any changes to them. The legislation passed through the Parliament in June 2002.

Local Government Amendment (Anti-Corruption) Act 2002

The investigation of Rockdale Council in 2002 by the Independent Commission Against Corruption identified a number of issues about the actions of councillors and issues around the actions that should be taken when serious corrupt conduct occurs. The Independent Commission Against Corruption provided advice on the Local Government Amendment (Anti-Corruption) Act regarding these issues. The Act now provides for:

- the Governor to declare all civic offices in relation to a council to be vacant if the Independent Commission Against Corruption recommends consideration be given to this because of systemic corruption in the council
- the Governor to dismiss a councillor and disqualify him or her from holding civic office for a period of up to five years if recommended by the Independent Commission Against Corruption for serious corrupt conduct and the Minister has suspended the councillor and the Minister advises the Governor that the dismissal is necessary to protect the standing of the council and the proper exercise of its functions
- the Minister to suspend a councillor for serious corrupt conduct on recommendation of the Independent Commission Against Corruption or if criminal proceedings are

- commenced for serious corrupt conduct or if the person makes an admission of serious corrupt conduct
- the General Manager to suspend staff for serious corrupt conduct on recommendation of the Independent Commission Against Corruption or if criminal proceedings are commenced for serious corrupt conduct or if the person makes an admission of serious corrupt conduct.

Environmental Planning and Assessment (Anti-Corruption) Act 2002

The Independent Commission Against Corruption provided input to changes to the Environmental Planning and Assessment Act. Broadly, the Act now provides for:

- the power for the Director-General of the Department of Planning to request the Director-General of the Department of Local Government to authorise an investigation under s.430 of the Local Government Act of any aspect of a council's performance of its environmental planning functions
- the Minister to appoint a planning administrator to a council on recommendation of the Independent Commission Against Corruption because of serious corrupt conduct on the part of councillors
- the Minister to suspend a development consent tainted by corrupt conduct that is not substantially commenced
- the court with the discretion to revoke a development consent tainted by corrupt conduct that is not substantially commenced.

Confirmation of wording for the Crimes Amendment Regulations (No 3) 2002 for the definition of "authorising persons" for the purposes of s15XA of the Commonwealth Crimes Act 1914

The Act allows for the acquisition and use of assumed identities under Commonwealth legislation. This allows state agencies such as the Independent Commission Against Corruption to acquire evidence of identity from Commonwealth agencies and use assumed identities without becoming liable for offences under Commonwealth legislation. It complements the state legislation. The Act allows a "class of persons" to be prescribed in the regulation as "authorising persons" for each participating agency in addition to the head of the agency. In the case of the Independent Commission Against Corruption that class of persons is "Assistant Commissioners" as authorised by the Commissioner. In practice this is limited to the present Deputy Commissioner.

Comments on draft Telecommunications (Interception) Legislation Amendment Bill 2001

This Bill included proposals for amendments to clarify the operation of s48 warrants (requiring entry into premises). It also provided for the definition of "certifying officer" to be expanded to include a person holding a position equivalent to and SES position who is authorised by the Commissioner. In addition, the Independent Commission Against Corruption requested an amendment to s68 of the Act to facilitate the communication of information relevant to the Independent Commission Against Corruption's functions before an investigation had been commenced. Although this Bill, as proposed, lapsed when Parliament

was prorogued, similar legislation was enacted during the following year. It commenced operation in July 2002.

Comments on Review of the Financial Transaction Reports Act 1988

The Commission raised an issue in relation to s24 of the Act, which prohibited the opening of bank accounts in assumed identities. This difficulty was overcome by Schedule 2 of the *Measures to Combat Serious and Organised Crime Act 2001* which amended the *Crimes Act 1914* to allow state agencies including Independent Commission Against Corruption to acquire and use assumed identities under Commonwealth legislation without being liable for breaches of Commonwealth legislation such as the Financial Transaction Reports Act.

Request for amendment of Law Enforcement and National Security (Assumed Identities) Regulation 1999 - re delegation under s16 of the Act

The regulation was amended to provide that the Commissioner's functions could be delegated by her to an Assistant Commissioner, instead of the Director, Investigations. This brought this legislation into line with the delegations for the similar Commonwealth legislation and the legislation in relation to controlled operations.

9. Submissions to public and Parliamentary inquiries 2001-2002

Question: Can the Independent Commission Against Corruption provide, where publicly available, copies of submissions made by the Commission to public and Parliamentary inquiries during 2001-2002?

Response: The Independent Commission Against Corruption made only one submission, which was to the Joint Select Committee on The Quality of Buildings. This submission has not been made publicly available by the Joint Select Committee although reference is made to the Independent Commission Against Corruption's submission in the Committee's public report (*Report Upon the Quality of Buildings*, July 2002).

10. Operating budget 2001-2002

Question: What was the Independent Commission Against Corruption's 2001-2002 operating budget, organised in terms of investigation and corruption prevention functions?

Response: In 2001-02 the operating budget of the Independent Commission Against Corruption was structured on the basis of a business unit's direct financial management responsibilities. The budget model also included the grouping of Commission-wide costs under a separate business cost centre that comprised salary on-costs such as superannuation, long service leave and workers compensation and indirect expenses that

supported all organisation activities such as office and equipment rental, computer leases and maintenance, audit fees, training costs, postage & freight, insurances, general stores, contract security, etc. The total 2001-02 budget for Commission-wide costs was \$4.26 million.

The following operating budget for 2001-02 for investigations related to the direct costs controlled by that function and comprises the three business unit cost centres of Strategic Operations, Complaint Handling and Assessments and Legal Services

	Salaries \$	Operating \$	Total \$
Strategic Operations	3,600,500	459,500	4,060,000
Complaint Handling & Assessments	686,000	17,000	703,000
Legal Services	<u>956,100</u>	<u>666,250</u>	<u>1,622,350</u>
	5,242,600	1,142,750	6,385,350

Corruption prevention functions covers the advisory, education, research and corruption prevention initiatives and strategies delivered by the Commission. Similar to Investigations, the Corruption Prevention budget only comprises the direct costs controlled by that function.

	Salaries \$	Operating \$	Total \$
Corruption Prevention	1,858,200	477,250	2,335,450

11. Advertising, publicity and community relations budget 2001-2002

Question: What was the Independent Commission Against Corruption's 2001-2002 budget for advertising, publicity and community relations activities?

Response: The 2001-2002 budgets for advertising, publicity and community relations' activities were as follows:

Advertising and Publicity	\$76,000
Community Relations Activities	\$33,450

12. Operations Review Committee 2001-2002

Question: The Committee requests the Independent Commission Against Corruption to provide the agenda papers and minutes for the 2001-2002 meetings of the Operations Review Committee.

Response: The work of the ORC requires consideration of confidential information relating to particular complaints and the ORC operates on the assumption that the meetings of the committee are private and confidential. Furthermore the identity of complainants and the individuals and/or organisations that are subject of a complaint is also confidential information.

In answer to the question, the Independent Commission Against Corruption has provided in Appendix A, a copy of the ORC agenda and the ORC minutes for the meeting of 12 October 2001. The identifying details or comments have been deleted but the format of the agenda and the minutes sets out the standard format of each ORC meeting.

To also assist in understanding how the ORC operates, the Independent Commission Against Corruption has included in Appendix B a copy of the procedures for reporting to the ORC. In summary the policy sets out what should be reported to the ORC and what information should be incorporated into which reports.

The policy makes it clear that “there must be sufficient information within the report to enable Committee members to make an informed judgement without the benefit of reference to the file or the original complaint. The report must accurately summarise the basics of the complaint, outline clearly the inquiries made, and provide an assessment to justify the recommendation(s)” for reports concerning the non-commencement of investigation. Similar requirements apply to the other reports submitted to the ORC.

To allow sufficient time for ORC Members to consider the meeting papers, papers are distributed on average, ten days prior to the meeting.

As shown on the following page, ORC meetings were well attended in 2001-2002.

Finally it is worth noting that as set out in the policy provided in Appendix B under section 10 “review of reports”, there are a number of review mechanisms in place to ensure the accuracy and quality of reports, including quarterly random audits.

	6 July 2001	3 Aug 2001	7 Sept 2001	12 Oct 2001	2 Nov 2001	7 Dec 2001	1 Feb 2002	1 Mar 2002	5 April 2002	10 May 2002	7 June 2002	Number of attendances
Irene Moss	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	10 of 11
Kieran Pehm	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	10 of 11
Harry Herbert	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	11 of 11
Laurie Glanfield	✓	✓	✓		✓	✓	✓	✓		✓	✓	9 of 11
Yvonne Grant	✓		✓	✓	✓		✓	✓	✓	✓	✓	9 of 11
Suzanne Jamieson		✓	✓		✓	✓	✓	✓	✓	✓		8 of 11
NSW Police Commissioner *												0 of 11
Merrilyn Walton	✓	✓	✓	✓	✓			✓	✓		✓	8 of 11

* Peter Ryan for meetings 6 July 2001 – 5 April 2002.

Ken Moroney from 10 May 2002.

During 2002-2003, the Police Commissioner (or his approved representative) attended 4 of the 6 meetings.

Note: From 2002-2003, ORC meetings have been convened every 2 months

13. Consultation with non-government organisations

Question: What mechanisms have been put in place by the Independent Commission Against Corruption to provide for consultation with non-government organisations?

Response: In our local government work we seek collaborative on-going working relationships with the Local Government and Shires Associations and the Local Government Managers Association. Formal consultations are often arranged with these groups as part of the development of our local government discussion papers and guidelines. As part of the development of our *Taking the devil out of development* the Commission received submissions from the Planning Institute of Australia and in our future work relating to the planning system we will continue to consult with PIA.

The Commission maintained an on-going involvement in the work of the Corruption Prevention Network with an Independent Commission Against Corruption officer attending CPN committee meetings and Independent Commission Against Corruption staff making presentations at CPN seminars and other events.

Consultation also occurred with a range of community groups representing the needs of communities from non-English speaking backgrounds as part of our NESB project. We met with representatives from the Australian Arabic Communities Council, Chinese Australian Services Society, Croatian Australian Welfare Centre, Greek Welfare Centre, CoAsIt (Italian Committee for Assistance), Australia-Korean Welfare Association, Russian Ethnic Community Council of NSW, Serbian Orthodox Welfare Association, Spanish and Latin American Association for Social Assistance, Turkish Welfare Association and the Vietnamese Community Association. Consultation with such NGOs occurs on an as-needs basis rather than as part of a specific consultative mechanism.

14. *Findings and recommendations of the Investigative and Functional Reviews: Operation Trophy*

Question: In your Foreword to the 2001-2002 Annual Report you referred to Operation Trophy as an investigation that demonstrated the Independent Commission Against Corruption's renewed capacity for confronting serious corruption. Would you please outline the extent to which that investigation benefited from the findings and recommendations of the Investigative and Functional Reviews?

Response: *Operation Trophy* utilised risk and project management methodology in planning and managing the investigation, including the production of investigation plans, update reports, operational plans and the use of an IT based case management tool. Also, during *Operation Trophy*, Corruption Prevention staff took part in the planning and progress meetings, ensuring the identification of a broader range of issues and thus maximising the impact of the investigation.

To achieve success, *Operation Trophy* required an increase in the Commissions capacity to undertake telephone interception and to deploy listening devices. This increase in the use of technology also led to greater involvement of technical staff during investigation planning processes and to closer collaboration between the Independent Commission Against Corruption and other agencies.

Improving the use of risk management and project management within investigations, improving the interdiction between investigation and corruption prevention, improving the use made of technology and building the relationship with the New South Wales Crime Commission were all recommendations of the Investigative Review. Furthermore, some of the recommendations of the Functional Review were reflected in certain key features of *Operation Trophy*. In broad terms the strategies and suggestions that can be drawn from the relevant recommendations of the Functional Review are as follows:

1. Closer working relationships with other agencies to share expertise and resources.
2. Adaptive technical support.
3. New techniques and skills.
4. Multidisciplinary Team approaches.
5. Hands-on involvement by top Executive management.
6. Strategically tailoring investigative efforts towards Local Councils.

Operation Trophy reflected the above approaches in the following ways:

1. There were a number of technical and covert opportunities identified, some of which were not realisable through using in-house capabilities. Where gaps exist within the Independent Commission Against Corruption's capabilities, expertise and resources were acquired from other agencies.
2. The investigation utilised a large number of telephone intercepts and listening devices, leading to the inclusion of technical staff in the planning processes of the investigation. In time the technical capacity of the Commission was enhanced through further development of its own capabilities and also through developing external relationships.
3. Newly recruited Financial Investigators were utilised during *Operation Trophy*, as were newly acquired computer forensic imaging techniques and technology. The case management methodology included daily briefings, update reporting, risk management, project planning as well as IT based task lists.
4. *Operation Trophy* regularly drew together expertise from across the Commission, including the executive, investigators, lawyers, corruption prevention staff, surveillance staff and technical staff. This proved to be the precursor for the arrangements currently in place for category 1 (high priority) investigations.
5. The Deputy Commissioner and Executive Director Strategic Operations provided hands on leadership during the Operation, through monitoring progress and attending investigation meetings and briefings.
6. Through the inclusion of corruption prevention staff in the investigation, a tailored approach to tackling local government corruption was achieved and apart from helping to publicly expose systemic corruption issues during public hearings, this also informed the publication *Taking The Devil Out Of Development*.

15. *Implementation of Operation Trophy recommendations*

Question: Operation Trophy recommended that the DPP consider charges against 6 individuals arising out of findings of corrupt conduct. Have any proceedings been instituted against those persons?

Response: No proceedings have been instituted to date. The Independent Commission Against Corruption has supplied the DPP with all the necessary briefs.

Committee Comment: On 23 October 2003 the Director of Public Prosecutions advised that as recently as 1 October 2003 further material had been provided to his office by the Independent Commission Against Corruption. Mr Cowdery anticipated that his advice as to the sufficiency of evidence to prosecute would be provided by December 2003.

16. *Links with peer agencies*

Question: The Annual Report discusses the closer working relationship that has been developed with peer agencies such as New South Wales Police, the Australian Federal Police, the National Crime Authority and the New South Wales Crime Commission. These closer links, say the report, have added immensely to your investigative capacity. Would you explain how the closer arrangements work in practice and whether there are areas where significant savings could be achieved by reducing the duplication in resources?

Response: Some gaps remain within the Independent Commission Against Corruption's capacity to deploy the full range of investigative options available to large law enforcement agencies. This is not unusual and some agencies also possess particular areas of expertise or equipment, which others do not. Thus agencies seek to supplement their own capabilities, where gaps exist, by negotiating assistance from another agency. This was demonstrated during *Operation Trophy* whereby, through negotiating technical assistance from other agencies, the Independent Commission Against Corruption's capacity for the interception of telecommunications expanded significantly, the benefits of which are still being realised.

The Independent Commission Against Corruption is a relatively small agency in the context of law enforcement and the need occasionally exists to access specialist skills and resources of other agencies. Gaining access to such resources is at times difficult due to the agencies own work loads and demands. Some agencies seek to recover the full costs of providing assistance due to the burden being placed upon their own resources. The Commission has worked hard to improve its relationships with these agencies at various stakeholder levels. Where a duplication of resources does exist between agencies this is due to the internal demands of each agency, there being no clear opportunities to achieve significant savings without undermining operational capabilities.

The Independent Commission Against Corruption also receives and disseminates, where appropriate, information and intelligence on a regular basis. Such transactions, undertaken utilising data or hardcopy, assist agencies in the efficient and effective tasking and coordination of investigative resources and minimises the chances of opportunities being lost. Closer relationships have proved to be beneficial through participation in partner agency

training, educational programs, liaison forums and committees. However, whilst many different agencies provide assistance for each other, each operates under differing regulatory and legislative frameworks and each will have its own area of primary interest.

The issue of duplication of resources was considered further during the public examination of the annual report on 18 September 2003.

Ms KENEALLY MP: In your response to question 16 on notice you said there were no clear opportunities to reduce duplication of resources between agencies without undermining your operational capabilities. Is that an opinion based on a specific study of that issue?

Commissioner MOSS: We have not actually done a specific study, but over the years we have, I suppose, developed working relationships with the other bodies and in some instances we have developed memoranda of understanding to work out how we could access each other's resources. I suppose when I look at our relationship with these various bodies, I would have to say we probably use their resources more so than the other way around. Occasionally we might find that where there is a run in say our covert surveillance work, we might be able to lend that to other agencies to assist them, but more often than not we are really looking more to the unique, specific expertise of those other agencies.

We have had, I guess, enormous support from federal agencies, Australian Federal Police, NCA, or the APC now. In fact, there would be some matters where their assistance was actually really key and where our staff would not have had the expertise to carry out some of that work. We are trying to access certain divisions of the New South Wales Police and we are talking further about those capacities. New South Wales Crime Commission we are in contact with a great deal, and, indeed again, we access their support a great deal.

I do not see that there is a - and we would repeat that there would not be a great deal of duplication, so to speak, without it affecting the operational capacity of the respective agencies. On the whole, we would use others more than the other way around.

Ms KENEALLY MP: What sort of use would you make of those other agencies for example?

Mr OUTRAM: We would use them for the highly technical and covert kinds of - I suppose very very sensitive investigations, but obviously the bigger agencies have a lot more resources. They are able to build covert teams which are far more sophisticated than we ever could. We simply could not justify spending that sort of money on the basis of cost and benefit. We would not use it enough for ourselves. So we would always seek to access certain services from other bigger agencies, and sometimes we would exchange information of course. We do seek to exchange, where it is appropriate, intelligence or information. We may stumble across information relating to a crime for example, so we pass that to the appropriate agency. Vice versa, we are trying to encourage the other agencies to pass intelligence relating to corruption to us so that we can act on that, but generally what we are talking about here is the really expensive, covert, technical areas.

Ms KENEALLY MP: Does that include telephone interception?

Mr OUTRAM: It is that kind of thing, intrusive surveillance, if I can call it, the generic term of intrusive surveillance.

17. *Strategic Operations Division and Strategic Risk Assessment Unit*

Question: The Annual Report refers to the establishment of the Strategic Operations Division and the Strategic Risk Assessment Unit. How successful has the Independent Commission Against Corruption been in recruiting people with high-level skills in specialist fields to support this division and unit?

Response: The Strategic Operations Division is composed of two investigation teams and the Strategic Risk Assessment Unit, and has recently undertaken the design and recruitment of a number of new positions. The Independent Commission Against Corruption's experience has been that the recruitment and retention of high quality specialised staff is quite difficult to achieve, given the competition from other agencies and organisations who demand similar skills. However, the Independent Commission Against Corruption has been relatively successful in attracting high quality and specialised staff with the Strategic Operations Division.

Each investigation team now has a complement of criminal investigators, fraud investigators and financial investigators, providing the skills to unravel complex financial transactions, undertake complex fraud investigations and effectively utilise covert methodologies. In addition, the Commission has dedicated significant resources to training investigators in the area of computer forensic analysis and acquired the technical infrastructure and technology to undertake this work. The Division has also recruited a specialist Forensic Auditor to identify, expose and review systemic issues of evidentiary value, to further expand or evaluate investigative options and to maximise the impact of evidence gathered.

Important for the change process was the design of the new Manager Strategic Risk Assessment Unit position. A position holder was recruited from the London Metropolitan Police, bringing high-level management, investigations, risk management and policing skills and extensive experience in the detection and prevention of police corruption. The Manager then established the Strategic Risk Assessment Unit and recruited other key staff, including a Deputy Manager with a background in professional services and risk management. The Strategic Risk Assessment Unit is composed of three teams: Intelligence, Surveillance and Product Management. The Intelligence section is responsible for the collection and analysis of information from a range of sources as well as utilising pro-active methodologies to gather relevant and reliable product from electronic and human sources. The Surveillance section is responsible for the conduct of physical surveillance and the Product Management section is responsible for the collection, management and storage of technical product for subsequent use as evidence or intelligence. The Commission has sourced Intelligence Analysts with a broader range of skills and backgrounds, including forensic psychology, operational and strategic intelligence and has provided them with enhanced analytical tools.

A new Product Manager (Intelligence) position has also been created, bringing extensive information technology, networking and database development experience to the area to co-ordinate the technological and administrative activities surrounding the acquisition of 'product' from a range of covert technical sources. Finally, an Education and Training Officer position has been created to ensure that the knowledge and skills obtained via recruitment are developed and enhanced through training to remain contemporary and relevant. In totality the knowledge, skills and experience of these staff mean the Independent

Commission Against Corruption is well placed to continue the momentum towards a greater strategic focus to its activities.

18. *Project management at the Independent Commission Against Corruption*

Question: To what extent has the Independent Commission Against Corruption incorporated the principles of project management into its activities? That was one of the recommendations of the Investigative Capacity Review.

Response: The Independent Commission Against Corruption has adopted a project management approach in the operational areas. Two internal management committees deal with all operational matters. The Investigations Management Group (IMG) that has oversight responsibility for all investigations and hearings. The Operations Management Committee (OMC) has oversight responsibility for all work, including projects, arising out of the corruption prevention, education and research (CPER) area.

For each investigation and CPER project, a project plan must be submitted to the relevant oversight committee for endorsement. For investigations, teams must report back to the IMG against project timeframes every two weeks. For CPER projects, project managers must report against timeframes set out in the original plan.

Also for investigations, operational orders are produced prior to field operations, providing a framework for effective planning, briefing, risk management, resource management, risk management articulation of objectives and de-briefing. The template used is based upon project management methodology.

19. *The use of admissible evidence*

Question: The Annual Report speaks of the difficulty of obtaining admissible evidence when investigations rely primarily on hearings where much of the admissions cannot be used in subsequent prosecutions. This seems borne out by the cases where recommendations to the DPP remain unacted. The Independent Commission Against Corruption says it has increased its focus on obtaining evidence away from hearings to compensate for this problem. The Committee is interested in the Independent Commission Against Corruption's views on whether the objectives of the Independent Commission Against Corruption Act are being realised by provisions that compel people to answer questions and produce documents when that evidence cannot subsequently be used in criminal or disciplinary proceedings.

Response: The principal functions of the Commission are detailed in section 13 of the Independent Commission Against Corruption Act. As the section makes clear that the primary objectives of the Commission are investigating corruption, corruption prevention and education and other matters necessarily associated with carrying out those functions.

Section 14 of the Act also provides for “other functions of the Commission” and in particular sub section (1)(a) provides for the assembling of evidence that may be admissible in the prosecution of a person in connection with corrupt conduct and to furnish evidence in support to the DPP. In short, the Commission is first and foremost an investigative agency.

While the Commission has increased its focus on obtaining evidence in such form as to be admissible in later prosecution proceedings as section 13 provides the principal functions or objectives remain in the area of investigating corrupt conduct or as a fact finding body. The power to compel witnesses to answer questions when summonsed to appear before a Commission hearing regardless of whether the answers will tend to incriminate the witness but on the basis that their answers are not admissible against them in any later civil or criminal proceedings (see section 37 of the Act) is also a reflection of this ordering of Commission objectives or functions.

Clearly the Commission’s ability to assemble admissible evidence for later prosecution proceedings would be greater if evidence it received under compulsion such as answers to questions during hearings could be used in later criminal proceedings. The history of the development of the criminal law however is such that the privilege against self-incrimination and the requirement that admissions and confessions be made voluntarily are not principles to be lightly overridden. The provisions of section 13 of the Independent Commission Against Corruption Act recognizes the primary objective of the Commission as a corruption investigation agency directed at unearthing facts as having primacy over collecting admissible evidence for use in later criminal proceedings.

To this extent the Commission does not consider that its objectives or primary functions under the Independent Commission Against Corruption Act are being thwarted or frustrated by being prevented from relying on evidence or information it obtains under its powers of compulsion. In this regard it is like any other investigative agency that collects information or evidence with a view to supporting prosecution action. The Commission also has available to it other extensive means for collecting admissible evidence in later prosecution proceedings such as powers under the *Listening Devices Act 1984* (NSW), the *Telecommunications (Interception) Act 1979* and search warrant powers under the Independent Commission Against Corruption Act.

During the public proceedings on 18 September 2003, committee members examined the issue of admissible evidence in further detail.

Mr PEARCE (ICAC COMMITTEE): I would like to ask specifically about Operation Trophy. In Operation Trophy, the Rockdale City Council investigation, you were able to make optimum use of skills and experience across every unit in the organisation. The annual report said that this resulted in the comprehensive exposure of significant corruption, yet more than a year has passed since you tabled that report and not a single prosecution has been commenced in response to your recommendations and findings. Doesn't this make questionable the Commission's unstinting praise of this operation?

Commissioner MOSS: I think the main objective of that operation was carried out and that was the exposure of the corrupt activity. We have completed our work on preparing the briefs for prosecutions and they are now with the DPP and we look forward to the DPP taking it to the next stage. These things do take time. I do believe that it was an extremely vigorous

investigation that did expose important behaviour for exposure and I think, to that end, that main objective was achieved. As we said before, we also are conscious of the need that when we collect evidence it is as admissible for a criminal prosecution as possible, that that is achieved, and I believe we have done that as well.

Mr PEARCE (ICAC COMMITTEE): I recall that particular hearing, and I am in no sense defending the two parties in particular who were identified in that, but can I say that the media circus surrounding that hearing I think was inappropriate for what was potentially going to lead to criminal action. How do you address the issue of what I would describe as collateral damage where you have various parties who are ultimately cleared in your report but who are, as far as the public mind is concerned, corrupt and guilty?

Commissioner MOSS: It is always a balance.

Mr PEARCE (ICAC COMMITTEE): Well, just before you answer that, that is the issue of the circus that surrounded that particular hearing. Do you feel that you struck the right balance to protect those who ultimately were not going to have a finding of corrupt conduct made against them?

Commissioner MOSS: Well, those who were the main targets, so to speak, results were actually obtained against them, so in that sense for most of the witnesses who gave evidence I do not believe there was collateral damage. It is in the nature of the beast that when--

Mr PEARCE (ICAC COMMITTEE): I am not sure the former mayor would agree with you.

Commissioner MOSS: When you have public hearings in this area there is media interest. We certainly cannot control the manner in which the press report the matters. On the whole, I thought that the reporting was fair, and that is inevitably the case when one has a public hearing. These issues were discussed at length previously. I see the difficulty of balancing private hearings as against public hearings, I am very conscious of the fact of damage to reputation, and for that reason we do exercise those decisions with a high degree of care, but at the same time we also are conscious of the fact that there are certain issues that are in the public interest and that it is in the public interest to hold those hearings in public, that it does have a deterrent effect and it does send an educative message to the public. What we do is always a balancing act. We do not take this evidence lightly. It is a serious area. To investigate matters of corrupt conduct is a very serious thing, we are very conscious of that, but we also usually do not go public unless we do have some pretty strong evidence that we believe would sustain some corrupt conduct findings.

Mr PEARCE (ICAC COMMITTEE): What I am particularly focusing on is those whose reputations are injured who ultimately were not found to have engaged in corrupt conduct, who were not even the primary targets of investigation, as occurred in Rockdale.

Commissioner MOSS: Well, the prosecutions have not occurred yet.

Mr PEARCE (ICAC COMMITTEE): I am basing it on the report that came out in relation to Rockdale. There appeared to be two primary targets.

Commissioner MOSS: Well, there were two councillors involved, but there were findings made about six parties.

Mr PEARCE (ICAC COMMITTEE): Yes, I was referring to the councillors.

Commissioner MOSS: Those matters are before the DPP.

Reverend the Hon. FRED NILE (ICAC COMMITTEE): The point was made that there have not been prosecutions at this stage and earlier Mr Pritchard indicated that there were two witnesses who would not sign statements. Without going into details, is there some way that those witnesses could have immunity or is there some fear that they may be in some way involved and that is delaying their cooperation, or how can you get their cooperation or can we give you some more power to get their co-operation?

Mr PRITCHARD: No. Without going into too much detail about it, there are other ways that their evidence can be presented in an admissible form for use in court as a result of things that we have done and we have had some discussions with the DPP about overcoming that and we are confident that there is a means by which that can be overcome, so it is not going to present itself as an insurmountable problem.

I think, as we referred to in one of the questions on notice, question 19, the issue arose as to using evidence that is obtained under compulsion in criminal proceedings. There is certainly no doubt that we would have a much more effective prosecution rate if evidence and material we obtained under compulsion was then admissible in later criminal proceedings, but, as we indicated there, it is going to be very unlikely that the law will ever change to allow admissions and confessions that are obtained under compulsion to be admissible in a criminal court, for obviously very good reasons which we do not need to go into here.

It is not an insurmountable problem, but it is often a problem that does arise where people may assist us, for whatever reason, and we can have suppression orders for their names and so on and effectively write them out of a hearing, but when it comes to a prosecution and everything has to be put to strict proof and elements of an offence have to be proved it is not as easy to convert what you can do in a hearing context to a criminal trial. I think, as a result of some discussions we have had with the DPP, we will be able to overcome those and the proceedings will go ahead as we have recommended.

The Hon. KIM YEADON (CHAIRMAN): One of the things that interests me is that in the period, or the stage if you like, subsequent to the Commission reporting and then a possible proceeding occurring in the courts, and Mr Outram indicated this earlier, the fact is that it is often easier to gather evidence when the subject of the inquiry is unaware of your activity. The work that is done by the ICAC after it publicly reports and then prepares a brief for the DPP, is that work in any way compromised as a result of the report put out by ICAC? I suppose as a preamble, it is my understanding the onus of proof for the finding of corrupt conduct is different to that that would be applied in the court, where it is beyond reasonable doubt. Therefore, is it evident that after you have reported for the process of a prosecution, it is simply a mopping up exercise or are you out trying to find additional evidence, and if that latter is the case, then have you not perhaps compromised your own investigation a little bit by your report being out there and signalling very much to those who were participants what you know already and therefore it compromises your further investigations to the DPP? I am just interested in that process.

Commissioner MOSS: By the time we do a report, from what I have observed, most of our investigative work would be done by then. The publishing of the report should not have compromised the evidence. Once a decision is made to present that evidence to a hearing, particularly a public hearing, not so much a private hearing where we can still explore the issues, but once it goes public, by our past standards we should be fairly confident that we would have enough evidence to put together a brief, if those matters are criminal matters and there is enough evidence to present a decent brief.

In some instances there might be some additional mopping up to get, say, further statements signed or whatever, but it is of a mopping up nature, and by that time the practice would be you would have got most of your evidence, but evidence also hopefully that was obtained outside of a hearing process because, as you know, most people seek an order under section 38 which means that whatever evidence is obtained at a hearing cannot be used elsewhere. So we work hard at trying to get evidence outside of that hearing process.

The Hon. KIM YEADON (CHAIRMAN): Subsequent to you reporting initially or do you do it simultaneously?

Commissioner MOSS: We try and do it actually before the reporting stage.

Mr OUTRAM: I agree. You are right, we compromise possibly some investigative tactics that we might be using. So we try and manage that.

Mr O'FARRELL (ICAC COMMITTEE): I have two questions related to the process, Mr Chairman, but I would just like to raise an issue out of your preamble, your question and the Commissioner's response. You referred to the different tests that apply in terms of corrupt conduct and the Commissioner talked about evidence being obtained from investigations not being able to be used. Does the Commission have a view about whether those matters ought to be regularised?

Commissioner MOSS: Regularised in the sense of –

Mr O'FARRELL (ICAC COMMITTEE): That the test that you apply in relation to corrupt conduct should be beyond reasonable doubt, so that your findings are more easily subject to prosecution, and to reflect or endorse Councillor Pearce's concerns about collateral damage, I would assume that you would get a -

Mr PEARCE (ICAC COMMITTEE): I am the member for Coogee you know.

Mr O'FARRELL (ICAC COMMITTEE): But you are also a councillor, I understand. I assume that a public inquiry that was still based on the test of beyond reasonable doubt would still send a strong message across, for instance, to the local government community about those people who were engaging in practices that may not cross the line but that were capable of crossing the line?

Commissioner MOSS: It certainly does send that message and that is our experience. That is a problem. Here we are, we are basically a civil tribunal. It is not a criminal court and we cannot make findings of criminality in that regard. That is still left to the courts. Having

said that, where corrupt conduct concerns criminal conduct, we are very conscious of the fact that the evidence that we collect probably should meet that standard of beyond reasonable doubt. That is what makes collecting evidence quite difficult, because the thing is, although the standard of proof as such is a little bit less than beyond reasonable doubt in a criminal sphere, if we are talking about criminal matters, we are conscious of the fact that it would not look good if, having succeeded in a case of exposing corrupt conduct, making the corrupt conduct finding and then having it fail subsequently in court. So that has probably changed our practices at the commission considerably, that we do try to collect that evidence and it is not easy.

Mr O'FARRELL (ICAC COMMITTEE): I suppose my concern reflects what is found on page 90 of the report, which is a whole series of matters where the DPP advised there was insufficient evidence. It is not a criticism of the Commission. I am simply saying that as long as that appears in your reports, that is going to be a bone of contention, both I suspect between the PJC and the Commission, as well as those in the community who do not support the Commission.

Commissioner MOSS: Well, that is right.

Mr O'FARRELL (ICAC COMMITTEE): And shouldn't we be seeking to remove the problem? If you want to take it on notice, that is fine.

Commissioner MOSS: It is a difficult question and I would have to say -

Mr O'FARRELL (ICAC COMMITTEE): And it has plagued successive Commissions. Well, maybe not plagued but-

Commissioner MOSS: If it is possible, I actually would like to take it on notice, because I hear what you are saying. It is a difficult issue.

20. *Feedback to complainants*

Question: How successful has the Independent Commission Against Corruption been in providing complainants with better information about the outcome of complaints and the reasons for any action taken or not taken?

Response: The Independent Commission Against Corruption is of the view that we have successfully implemented a system of responding to complainants after Independent Commission Against Corruption inquiries have been conducted.

When we write to complainants advising them that it is proposed to take no action, we provide the following information:

- A brief summary of their complaint.
- An explanation of the nature of "corrupt conduct" as it is defined under the *Independent Commission Against Corruption Act 1998*.

- The reasons explaining why their complaint does not meet definition of “corrupt conduct” and/or why their matter is not able to be pursued.
- A statement indicating that their complaint and our recommendations as to how the matter be dealt with are being submitted to the Operations Review Committee (ORC) for advice.

If the ORC does not agree with the proposal and suggests that some further action be undertaken, we write to the complainant and advise of this outcome.

When we acknowledge receipt of a person’s complaint, we also include with that letter an information sheet (Appendix C) which sets out general information about reporting corruption to the Independent Commission Against Corruption. When we send the final letter notifying of the outcome of our inquiries, we include another information sheet (Appendix D) which briefly sets out our procedure of notifying complainants of Independent Commission Against Corruption decisions.

For those matters that are referred for investigation, at the conclusion of the matter, we write to the complainant and provide the following information:

- A brief summary of their complaint.
- An explanation of the nature of “corrupt conduct” as it is defined under the *Independent Commission Against Corruption Act 1998*.
- The fact that enquiries have been conducted and an outline may be provided of the enquiries conducted (this varies depending upon individual circumstances).
- Brief reasons for discontinuing the investigation i.e. a lack of corroborative evidence or the outcome of the finalised investigation.
- A statement indicating that their complaint and our recommendations as to how the matter be dealt with are being submitted to the Operations Review Committee for advice.
- A statement regarding the usefulness of information, which is retained by the Commission, for possible future investigations.

However, it should be noted that the exact detail of information provided to complainants where an investigation has been conducted, has to be considered on a case-by-case basis. Limiting factors on the provision of information such as privacy and the protection of confidential informants and sources must be recognised. However, the Independent Commission Against Corruption always aims to provide sufficient detail so that complainants can understand the rationale for the decision and/or action taken by the Independent Commission Against Corruption.

21. Risk assessment capability

Question: In the 2000-2001 Annual report the Independent Commission Against Corruption undertook to develop a risk assessment capability to enhance investigation selection and planning. When will this capability become operational?

Response: Two distinct areas of risk assessment have been developed, dealing with risk at the strategic and the operational levels respectively.

The establishment of the Strategic Risk Assessment Unit (SRAU) in 2002 underpinned the Commission's ability to identify areas within the public sector where the risk of systemic or serious corruption is high. The SRAU has recruited analysts with the ability to undertake strategic intelligence analysis and to produce actionable intelligence. However, Intelligence Analysts have primarily been supporting ongoing investigations both tactically and operationally. Conducting strategic intelligence analysis is an exhaustive process requiring the further development of current systems and the creation of additional analytical capacity from existing resources, which are primary objectives of the SRAU for the coming year.

Intelligence Assessments now form the nucleus of Preliminary Enquiries undertaken by the SRAU and are used to inform the Commission's Investigations Management Group (IMG) in making decisions. In this way the Commission is developing intelligence led methodology for its tasking and co-ordination of investigative resources at the strategic level.

At an operational level, risk assessments are routinely undertaken during the preliminary assessment, planning and conduct of investigations. The current risk assessment framework is being extended to improve the management of critical decisions and the use of covert resources. Risk is managed in accordance with the AS/NZ Standard *Risk Management 4360:1999*, qualitative analysis being used to rate likelihood and consequence, controls being identified and risks treated accordingly. Risk assessment is an integral part of the Strategic Investigation Plan, used for all high priority investigations, and is included in a less exacting format within Investigation Plans for lower priority investigations. All Investigation plans are submitted to the IMG for consideration and approval before an investigation is commenced. Risks are constantly monitored and evaluated during the conduct of investigations and critical decisions recorded.

All Divisional Managers have completed the Diploma in Risk Assessment that is based upon the AS/NZ Standard 4360. All investigators and some investigation managers have commenced either the Certificate IV or Diploma in Fraud Investigations a component of which is risk assessment

22. *Protected disclosures*

Question: In the 2001-2002 Annual Report there was mention of the concerns of whistleblowers about the tendency of the Independent Commission Against Corruption to refer their disclosures back to the whistleblower's organisation for investigation (on the ground that agencies should be able to deal with many of their own problems). How many of the 154 protected disclosures listed in the annual report were referred back to the organisation without the consent of the person who made the protected disclosure? Was this only done in those cases where the Protected Disclosure Implementation Steering Committee was satisfied the organisation had equitable procedures and policies in place to handle the matter?

Response: In the 2001-2002 year, 43 out of the 154 protected disclosures received were referred back to a public authority without the complainants' consent. Of the 43 so referred,

29 protected disclosures were anonymous complaints. Of the remaining 14 matters referred without consent, eight were referred to the public authority the subject of the complaint while 6 were referred to other authorities with an investigation role over the public authority the subject of complaint such as the Department of Local Government.

Referral of protected disclosures where there is no consent from the complainant is governed by section 22 of the *Protected Disclosure Act 1994*. This requires an assessment by Independent Commission Against Corruption as to whether referral of any identifying information is necessary to properly investigate the matter or is otherwise in the public interest. When Independent Commission Against Corruption refers protected disclosures to public authority it takes care not to provide any information that may identify a complainant. If the person making a protected disclosure does not consent, the determination as to whether the matter should be referred to another public authority is made by the Deputy Commissioner under section 22 of the Protected Disclosures Act.

Finally, in respect to the last question, it is not the role of the Protected Disclosures Implementation Steering Committee to consider whether an organisation has equitable procedures and policies in place to handle a matter. This is a factor that may be relevant to obtaining the complainant's consent to refer a matter to that organisation.

23. *Steering Committee actions under the Protected Disclosures Act*

Question: The ICAC Committee would like to ask about the current work of the Steering Committee under the Protected Disclosures Act. The Independent Commission Against Corruption participates in the work of that committee. What are the problems they have been trying to address and what strategies have they suggested?

Response: The two major issues the Committee has been trying to address are awareness levels of the Act and its implementation. The problems associated with these two issues that are of concern to the Committee are less than desirable awareness levels, and ineffective implementation of the requirements of the Act.

Two groups have been targeted for awareness training. The first group is public sector managers who have a duty to protect and encourage officials who make disclosures in good faith. The second group is public officials who may be thinking about making disclosures. The Committee uses a variety of methods to promote awareness of the Act and these are described in more detail below.

Effective implementation of the Act has focused on ensuring organisations have internal reporting systems in place and that organisations take steps to inform staff about their systems. It has also involved seeking an attitude change amongst public sector managers to get them to see protected disclosures as a potentially valuable source of information about corruption, waste and maladministration. The Committee has run a significant number of workshops over the last seven years to equip managers with the skills necessary to manage the investigation of a protected disclosure.

Recently, at the Independent Commission Against Corruption's initiative the Steering Committee developed a Strategic Plan for 2002-2005 (p. 77) and a work plan for 2003-2004 (p.79). A copy of both documents is attached in Appendix E. The strategic plan has four key result areas: improving awareness; providing information; monitoring legislation and providing an annual report.

Improving awareness

The indicators in this key result area are:

- level of staff, protected disclosure coordinators and management knowledge of the legislation and systems such as internal reporting systems
- the take-up rate of resources and training offered by members of the Committee
- reach of communication strategies.

The plan provided for the establishment of benchmarks* for these indicators in 2002-2003, the establishment, implementation and monitoring of strategies for performance measures by 31 December 2003 and the following benchmarks for by June 2005:

- 95% of organisations (which is defined as those organisations listed in schedule 1, Public Sector Employment and Management Act, as well as those whose CEOs are listed in Part 2 of Schedule 2 of the PSEM Act, Area Health Services listed in the Health Services Act, general purpose local councils and public universities) are aware of the PD Act
- 100% of organisations have implemented an internal reporting system
- 60% of organisations have implemented education strategies
- 15% have accessed PD training
- 85% of staff in organisations have awareness of their organisation's internal reporting system
- 85% of staff know to whom to make a disclosure.

The Independent Commission Against Corruption has begun following up on respondents to the profiling the NSW public sector that indicated they did not currently have an internal reporting system so as to increase the number of organisations with internal reporting systems. The NSW Premier's Department is, with respect to the NSW public sector, developing a template setting out minimum standards that a staff awareness/education should meet in order for agencies to measure against whether they have implemented an education strategy. The Department of Local Government is doing the same thing in respect of general-purpose local councils.

The Committee continues to be the coordinating body for the provision of multi-agency (Ombudsman, Independent Commission Against Corruption and Auditor General for state public sector and Ombudsman, Independent Commission Against Corruption and DLG for local councils) training on protected disclosures and internal reporting systems. Additionally, the Independent Commission Against Corruption includes a session on protected disclosures

* Previous ICAC research, namely the local government research (June 2001) and the profiling the NSW public sector (January 2003) have informed the setting of the June 2005 benchmarks.

and internal reporting systems in its corruption risk workshops delivered as part of the Independent Commission Against Corruption's RAROS programs.

Providing information

In 2002-2003 the Committee developed a promotional brochure aimed at staff called *Thinking about blowing the whistle?* The brochures were printed in two formats, one for the state public sector and one for local government and branded with the Premier's Department and DLG logos respectively. The purpose of this brochure was that all of the investigating agencies under the Act would be able to use a common brochure to provide information about 'blowing the whistle' rather than each agency having its own approach. This would assist in consistent messages being provided and extend the reach of the common brochure. Copies of the brochures can be provided to Committee Members.

The Committee has established an email contact network of approximately 700 PD coordinators to facilitate communication and promotion. The email network was recently used by the Committee to poll coordinators about a possible change to the name of the Act. A majority of respondents were against a change.

Monitoring Legislation

Recent legislative change achieved by the Committee includes:

- extending the statute of limitation to 2 years for the offence of detrimental action
- permitting complaints about serious and substantial waste in local councils to be made to the DLG
- amendments to the Act and the Local Government Act to remove inconsistencies between provisions
- permitting a public official to make a PD to the head of their own public sector agency about the conduct of a public official from another public sector agency (these situations can arise where public officials from different agencies are working together, e.g. police and corrections officers).

Each legislative change that is made is accompanied by an education campaign by the Committee via the email hotline, letters and amendments to the Ombudsman's protected disclosures guidelines.

The Committee is proposing an amendment to the legislation to extend the periodic review of the Act to every 5 years. The Committee has not reached agreement on any proposal to change the name of the Act.

Providing an annual report

The Chair of the Committee, The Deputy Ombudsman, is currently drafting a copy of the Committee's annual report.

24. *Complaints about the ICAC*

Question: The Annual Report states that four complaints about the Independent Commission Against Corruption were received during 2001-2002 from persons outside the organisation. The report says these were all dealt with internally, by the Solicitor to the Commission. Does the complainant get any opportunity to address the internal report that goes to the Commissioner? How does the Independent Commission Against Corruption ensure transparency and procedural fairness under this procedure?

Response: Consistent with its obligation to at all times seek to act in a proper and lawful manner the Commission, like other similar agencies, has developed internal policies for handling and investigating both internal and external complaints of misconduct against its staff (see Appendix F for the procedure relating to the handling of complaints of misconduct against staff). Under the policy misconduct is defined as including corrupt conduct as that term is defined under the *Independent Commission Against Corruption Act 1988*.

The circumstances of each particular complaint will determine how it is dealt with including whether the complainant is to be afforded an opportunity to address any final investigation report that is referred to the Commissioner. If the complaint involves serious allegations of misconduct consideration will also be given to whether a person external to the Commission should conduct the investigation. In all cases where they are identified the complainant will be advised of the outcome of the investigation. If there is material in support of the allegation which amounts to or involves corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* the complaint is referred to the Operations Review Committee.

In relation to the four complaints for the 2001-02 year, one complainant was anonymous and another subsequently withdrew the complaint before the investigation was concluded. In relation to the remaining two complaints neither complainant alleged they were the subject or 'victim' of the alleged misconduct and were advised of the outcome of the investigation of their complaint.

25. *Implementation of investigation recommendations*

Question: The annual report, at page 56, says implementation of the Independent Commission Against Corruption's recommendations is a key measure of the impact of the investigations. It would be helpful for the purposes of this examination if the Commission could prepare a list of the recommendations that it made following investigations during 2001-2002 and the current situation regarding their implementation. At a later time a comprehensive inventory of all previous recommendations of ICAC and the fate of them would be most instructive. I wonder if this work could be set entrain?

Response: The Commission has established a program entitled *Recos on the Web*. It is a part of the Commission's continuing program of monitoring and reporting on developments in building corruption resistance in the NSW public sector. The project is intended to identify

the extent to which recommendations made in Independent Commission Against Corruption investigation reports have been implemented and to publicise the results. In publishing these results, it is the Commission's intention to advise the community of progress with the implementation of the recommendations and to alert other agencies to the continuing need for vigilance in reviewing and implementing corruption resistance strategies.

In 2001-2002 only one of the investigation reports publicly released by the Commission contained recommendations. The status of these recommendations is summarised in the following table. In addition, recommendations were made in another report provided under s14 of the Independent Commission Against Corruption Act.

1. Garbage, drains and other things – An examination of conduct of two Liverpool City Council contractors

Recommendations	Status as at June 2003
<p>1. Local councils should require, as part of a contract, regular and up-to-date lists of vehicles assigned to collection of domestic waste. These lists of approved vehicles should be provided to the landfill operator of the council. No changes to any lists of approved vehicles should be permitted without the specific consent of the council which pays the account.</p>	<p>Both Waste Services and the current Contractor have been directed that only the vehicles listed on Council's official authorised list be permitted to tip waste on Council's account. When changes are required, these can only be made by Council.</p>
<p>2. Only vehicles used solely for collection of domestic waste should be included on such lists.</p>	<p>Whilst the contract provision is quite specific with regards to the recommendation, as part of the administration of the contract, periodic checks are made on the vehicles, both with and without the Contractor's prior knowledge.</p>
<p>3. If a contractor wishes to use another vehicle for temporary collection of domestic waste, that vehicle should be notified to the council together with the period it will be engaged in collection of domestic waste. Council should notify the landfill operator.</p>	<p>Procedures have been implemented to ensure prompt notification by the Contractor of use and details of the standby vehicle or other temporary vehicle and the period. Waste Services are immediately informed by Council.</p>
<p>4. The contract for the collection and disposal of waste should require that, where there has been a change in use or disposal of a vehicle, this fact must be promptly notified to the council. Council in turn should promptly notify the landfill operator.</p>	<p>Refer to response 3 above.</p>
<p>5. The contract for the collection and disposal of waste should require that contract drivers tipping on the council's waste account must nominate the account to which tipping fees are to be charged on each occasion they enter a waste facility to tip waste. In the event of error on the part of the contractor, the contractor should bear the cost.</p>	<p>Arrangements have been put in place such that contract drivers tipping Council waste can only do so from approved vehicles and by nominating the appropriate account number to which fees can be charged.</p>
<p>6. Councils should make periodic checks that only authorised trucks are tipping on council's account with the landfill operator by comparing the invoices received from the landfill operator, which show the registration details of the trucks tipping on the</p>	<p>Council has, with the assistance of Waste Services and the Contractor, implemented a system whereby Waste Services e-mail an excel spreadsheet to Council, and the Contractor forwards the weighbridge documents. The spreadsheet details:</p> <ul style="list-style-type: none"> • Date and Time

Recommendations	Status as at June 2003
<p>council’s account, against the approved list of vehicles referred to in 1 above.</p>	<ul style="list-style-type: none"> • Weighbridge Docket No. • Registration No. • Quantity (tonnage) • Rate per tonne • Cost of each delivery • Product numerical classification • Unit of measurement • Costing breakdown. <p>Council reconciles:</p> <ul style="list-style-type: none"> • weighbridge docket registration numbers to authorised list. • weighbridge docket no, registration no, date, and tonnage from weighbridge docket to excel spreadsheets. Costing details, i.e. calculations are no longer checked after being verified for approximately 11 months to a separate Council developed spreadsheet, with only minor variation due to rounding up of GST. Additionally, at the same time, Council monitors the weight of the trucks for overloading. Where this has been identified as regularly occurring the Contractor has reduced the number of properties collected prior to tipping to bring the weight down. <p>The Waste Services program for the excel spreadsheet is the same program that produces Waste Services’ invoice. The invoice is verified against the spreadsheet.</p>
<p>7. Responsible council officers should make occasional spot checks of the kind of waste being dumped. Regularly visit those land fill sites where council waste is being dumped to observe the type of waste being dumped, and, through such inspections, forge closer contacts with landfill operators to ensure appropriate controls, as detailed above, are in place.</p>	<p>This area is very difficult to police for a number of reasons:</p> <ul style="list-style-type: none"> • Identifying domestic and commercial waste, often the only distinguishing factor is the building the waste is collected from, some domestic waste could be considered commercial and vice versa. • Frequently waste is sealed in bags, rendering it impossible to view unless bags are opened, then its difficult to trace the origin. • OH&S issues at tips. • However, during our periodic inspection of the service, i.e. following the trucks, the premises putting domestic waste out are checked, as is some contents of bins (this again is difficult as we cannot open bins and inspect contents as this is a privacy matter).

2. *Report into allegations concerning Dubbo City Council*

The investigation report and recommendations were provided to Dubbo Council in March 2002. Council reported back on the status of the implementation of the recommendations in May 2002. At that time the Commission was satisfied that Council had satisfactorily addressed the matters raised in the report and no further status reports were required.

Recommendations	Status as at May 2002
1. It is recommended that Council ensure that Councillors and senior staff are fully aware of their obligations under the <i>Local Government Act 1993</i> in relation to pecuniary interests.	Council has adopted a code of conduct as required by s440 of the Local Government Act. The code is provided to councillors and relevant staff at least annually.
2. Over-familiarity with contractors can be a difficult problem for councils, especially in regional areas. For this reason, staff should be provided with clear guidelines about the standard of behaviour that is expected when dealing with contractors.	These issues are addressed in Council's code of conduct. Council has also developed a statement of business ethics that informs external organisations about the standards expected by Council. Council has amended their tender procedures to require all prospective tenderers to inform themselves of Council's business ethics.
3. Council staff should be prohibited from recommending private sector companies to members of the public. Staff should not offer incentives for members of the public to use particular companies.	
4. It is also important that Council inform contractors about its expectations of contractors. Issues that should be raised with contractors include the offering of gifts and benefits, what they should expect from tender processes and the requirement that Council officers are impartial.	Council staff have been informed that they should not recommend private sector companies to the public. Council will no longer be maintaining a list of service providers. The code of conduct will be reviewed and updated.
5. The procurement policy should be amended to remove any ambiguity. It should require a competitive selection process for all expenditure within the \$40,000 - \$100,000 range except in specifically defined circumstances. Council should also establish a clear protocol for dealing with emergency orders. The circumstances that constitute an emergency should also be defined and examples provided.	Procurement procedures have been reviewed and updated. The revised procedures have removed any ambiguity and require a competitive selection process for all expenditure from \$30,000-\$100,000.
6. For purchases under \$40,000 Council should set a monetary limit on expenditure that can be incurred without first obtaining quotations.	
7. Council should provide guidance on when the different methods for obtaining quotations should be used. For example, it may be more appropriate to advertise for quotations when the market is not well known. Potential community sensitivity about a selection process is also another situation where it would be advisable to advertise for quotations. Factors such as the amount of expenditure involved also justify a more vigorous competitive selection	The revised procedure now requires calling for open quotations or call for expressions of interest through advertisements in local newspaper. The only exception is where a preferred supplier can be justified and this required the approval of the general manager.

Recommendations	Status as at May 2002
process.	
8. Council should specify the number of quotations required for different monetary thresholds under \$100,000 when a decision has been made not to advertise.	The revised procedure now requires a minimum of two quotations to be obtained for expenditure between \$5,000 and \$30,000. As advertising is required for expenditure between \$30,000 and \$100,000 there is no need to specify the number of quotations required. Where the required number of quotations cannot be obtained or there is an emergency the “preferred supplier” provision of the procedure can be used.
9. A procedure should be put in place to deal with circumstances where it is not possible to obtain the number of quotations required under the policy for a particular monetary threshold.	
10. Council should randomly assess the authenticity of quotations by checking with suppliers.	The internal audit program will include a random check of the purchase order data recorded as part of each purchase order.
11. Council should undertake a risk assessment of major functions, particularly procurement practices, to identify major corruption risks. These risks should form the basis of an audit plan or an internal control program.	A risk assessment has been conducted as part of the review and updating of procedures. Council currently has in place an internal audit function. The program has been updated include testing of compliance with the updated procedures. Council also has an audit committee and it is now proposed to include the external auditor as a member of that committee.
<p>12. An effective audit program should also incorporate:</p> <ul style="list-style-type: none"> • an audit charter which outlines the jurisdiction and authority of the auditor. It should also explain the audit framework operating within Council • an audit committee comprising council staff, councillors and an independent member. The purpose of the committee is to receive and review reports from the auditor and help implement audit recommendations • periodic and random sampling of risk areas in procurement such as: <ul style="list-style-type: none"> • reasons for emergency ordering • the frequency at which contracts are awarded to particular companies • the authenticity of quotations. <p>If Council does not have the resources to support an internal audit function it could pool resources with another Council. As an alternative, it could also consider extending the use of external audit services to include performance audits of identified high-risk areas.</p>	
13. Council should develop strategies to minimise post separation employment corruption risks. For example, guidelines should be developed for staff to clarify their responsibilities when dealing with former colleagues. The guidelines should emphasis Council officers’ duty to act impartially. The guidelines should also discourage non-routine contact with former colleagues during work time. Requests from former colleagues for access to information that is not publicly available should also be reported to a supervisor.	It is intended to include guidelines for staff to clarify their responsibilities when dealing with former colleagues in the revised code of conduct.

26. Number of matters investigated by the ICAC

Question: What percentage of matters received by the Independent Commission Against Corruption are subject to investigation? Is it still as low as 1%, which is the figure given in the Investigative Capacity Review?

Response: The figure of 1% probably refers to the number of 'formal' investigations conducted during the year. Formal investigations generally involve public or private hearings. In the 2001-2002 reporting year 17 formal investigations were commenced. There were a total of 1505 matters received so formal investigations amount to about 1% of the total.

It is wrong to assume, however, that the number of formal investigations represents the full extent of Independent Commission Against Corruption's investigatory work. A significant amount of investigatory work occurred through the conduct of preliminary inquiries and investigations that did not necessarily develop into formal investigations. Such matters can also involve the use of the Commission's coercive powers. The following table taken from the Annual Report 2001-2002 (p. 22) shows the decision taken by the Independent Commission Against Corruption to deal with matters referred to it (including a comparison from the previous two years).

Action Taken by the ICAC in response to matters received	Total		
	1999-2000	2000-2001	2001-2002
Immediate referral or no action taken by the ICAC	863 (76%)	762 (73%)	1063 (74%)
Matters acted upon by the ICAC			
Referred to Assessments Unit for further inquiries	51	28	163
Referred to Corruption Prevention Unit for further action	68	94	140
Referred to Strategic Operations Division and/or Legal Division for further inquiries and/or investigation	161	165	80
Total number of matters acted upon by the	280 (24%)	287	383 (26%)

ICAC		(27%)	
Total number of matters*	1143	1049	1446

Based on the above information, the Independent Commission Against Corruption conducts some form of investigation into about 25% of the matters received.

What is also evident from the above table is the decline in the number of matters being referred to SOD and/or the Legal Division for further inquiries and investigation, and the increase in the number of matters referred to the Assessment Unit and the Corruption Prevention Unit for investigation. These changes reflect a conscious decision by the Independent Commission Against Corruption to focus its intensive investigative resources on the most serious matters.

It is also important to note that the Commission has improved communication and flexibility between the various sections of Independent Commission Against Corruption and matters are commonly transferred between areas depending on the outcome of inquiries. The figures in the table above record the initial decision as to how the matter should be handled and do not reflect subsequent re-allocation.

27. *Investigative Training Program*

Question: Does the Independent Commission Against Corruption now have a training program for its investigators? The Investigative Review drew attention to the need for such a program.

Response: In 2002 the Commission created a new position to facilitate and co-ordinate training for investigators and other staff within the Strategic Operations Division. Upon commencement, the Education and Training Officer undertook a skills audit, drawing upon previous similar audits, and the following training has since been provided for staff.

- Diploma and Certificate IV in Government Fraud Control Investigation. (1 officer is currently undertaking the Advanced Diploma in Fraud Control, 9 undertaking the Diploma in Fraud Control and 15 the Certificate IV in Fraud Control).
- Certificate IV in Assessing and Workplace Training (6 staff currently undertaking).
- Managers and supervisors have all received accredited training in risk management.
- Managers have received training in effective performance management.
- Workcover approved Senior First Aid training. (31 staff have attended).
- Computer Forensic (En-case) training. (16 staff).

* The total figures will be less than the figures for matters received during the year. This table records *decisions* made during the reporting year. Some matters received towards the end of a reporting year will not be assessed until the beginning of the next reporting year. The figures also exclude matters classed as information or outside jurisdiction from the outset.

- Police advanced driver training. (All Surveillance staff).
- Charles Sturt University - Commercial crime course (6 Staff).
- Australian Bureau of Criminal Intelligence/ Charles Sturt University - National Strategic intelligence Course (4 Analysts).
- Watson Data Mining & Callrunner (Call Charge Record Analysis) software – All intelligence Analysts.
- Australian Customs Service – Tactical Intelligence analysis (1 Intelligence Analyst).
- The delivery of conflict de-escalation and search warrant training has been negotiated with the NSW Police Service and it is anticipated this will be conducted before the end of 2003.
- In house training has been developed in relation to covert investigative techniques and telephone Interception.

28. *The impact of legal changes 2001-2002*

Question: Would the Commissioner indicate, in general terms, any significant legal changes affecting or concerning corrupt activity and corruption prevention involving the public sector in New South Wales during 2001-2002, organised in terms of state and commonwealth statutes and regulations?

Response: The NSW Parliament passed two important anti-corruption measures in 2001-2002. These were:

- *Local Government Amendment (Anti-Corruption) Act 2002* and the
- *Environmental Planning and Assessment (Anti-Corruption) Act 2002*.

The *Local Government Amendment (Anti-Corruption) Act 2002* made amendments to the *Local Government Act 1993* (LG Act) and the *Independent Commission Against Corruption Act 1988* (Independent Commission Against Corruption Act). In broad terms, the amendments to the LG Act provided for:

- The Governor to declare all civic offices in relation to a council to be vacant if the Independent Commission Against Corruption recommends consideration be given to this because of systemic corruption within the council.
- The Governor to dismiss a councillor and disqualify them from holding civic office for a period up to 5 years if recommended by the Independent Commission Against Corruption for serious corrupt conduct and the Minister has suspended the councillor and the Minister advises the Governor that the dismissal is necessary to protect the standing of the council and the proper exercise of its functions.
- The Minister to suspend a councillor for serious corrupt conduct on recommendation of the Independent Commission Against Corruption or if criminal proceedings are

commenced for serious corrupt conduct or if the person makes an admission of serious corrupt conduct.

- The General Manager to suspend staff for serious corrupt conduct on recommendation of the Independent Commission Against Corruption or if criminal proceedings are commenced for serious corrupt conduct or if the person makes an admission of serious corrupt conduct.

The amendments to the Independent Commission Against Corruption Act provided that the Independent Commission Against Corruption could include in a report the recommendations leading to the possible exercise of the powers of the Governor, Minister and General Manager referred to above.

The *Environmental Planning and Assessment (Anti-Corruption) Act 2002* made amendments to the Environmental Planning and Assessment Act 1979 (EP&A Act) and the Independent Commission Against Corruption Act. In broad terms, the amendments to the EP&A Act provided for:

- The power for the Director-General of the Department of Planning to request the Director-General of the Department of Local Government to authorise an investigation under s.430 of the LG Act into any aspect of a council's performance of its environmental planning functions.
- The Minister to appoint a planning administrator to a council on recommendation of the Independent Commission Against Corruption because of serious corrupt conduct on the part of councillors.
- The Minister to suspend a development consent tainted by corrupt conduct that is not substantially commenced.
- The Court with the discretion to revoke a development consent tainted by corrupt conduct that is not substantially commenced.

The amendments to the Independent Commission Against Corruption Act provided that the Independent Commission Against Corruption could include in a report recommendations leading to the possible appointment of a planning administrator and the suspension of a development consent.

29. *Implementation of Functional and Investigative Capacity Review recommendations*

Question: Could the Independent Commission Against Corruption provide details, as against each recommendation of the Functional and Investigative Capacity Reviews, of the action taken in response to them?

Response: The Independent Commission Against Corruption can report that all recommendations from the Functional and Investigative Capacity Reviews have been actioned. For some recommendations implementation has varied from the intention of the original recommendation, in these circumstances it is generally because some aspect of the Commission's structure or business has changed from when the recommendation was originally made.

The Functional and Investigative Reviews were internal reviews that were not made publicly available. The recommendations include the identification of areas of public administration that should be made the target of Independent Commission Against Corruption approaches. In the past when the Independent Commission Against Corruption has reported to the Parliamentary Committee, it has been done in private.

Attached at Appendix G is a copy of the latest table, which details the implementation of the recommendations of both the Reviews. It is requested that the Parliamentary Joint Committee treat Appendix G as a confidential document under section 70 of the Independent Commission Against Corruption Act.

Note: The Committee agreed with this request and Appendix G does not form part of this report.

30. *Links with interstate and international anti-corruption agencies*

Question: The Functional Review of the Independent Commission Against Corruption stressed the importance of close contact with other interstate or overseas corruption investigation and prevention bodies so as to develop common approaches against corruption that work. To what extent have these links been developed, who have they been developed with, and have these links proved useful?

Response: The Commission deals with a range of agencies, both locally and overseas, which have a mandate to investigate and prevent corruption. In addition to the various New South Wales agencies with whom we interact regularly, links also exist with the following interstate/overseas agencies: -

- (1) Crime and Misconduct Commission (CMC), Queensland
- (2) Anti-Corruption Commission, Western Australia
- (3) Royal Commission into whether there has been any corrupt or criminal conduct by Western Australian Police Officers
- (4) Professional Standards Division, London Metropolitan Police
- (5) Victorian Police

(6) the then Royal Commission into the Building and Construction Industry

The links with the Crime and Misconduct Commission have included benchmarking exercises, for example in relation to the use of strategic intelligence, and also the exchange of information and intelligence

Communication has occurred between the Independent Commission Against Corruption and the Anti-Corruption Commission, Western Australia in relation intelligence processes and also in relation to vetting processes for recruitment.

The Royal Commission into whether there has been any corrupt or criminal conduct by Western Australian Police Officers sought the advice of the Independent Commission Against Corruption in relation to integrity testing methodology.

Due to the senior contacts maintained by the Executive Director Strategic Operations with the Professional Standards Directorate of the London Metropolitan Police, information regarding current practices and developments in policy and methodology, relating to police corruption, has been made available to Commission officers.

Recently the Independent Commission Against Corruption was invited to attend the Ethical Standards Department of the Victoria Police, where an informal liaison was established between the Independent Committee Against Corruption Strategic Operations Division and the Integrity Testing Unit of that Department.

These links exist at a senior as well as a practitioner level and provide valuable opportunities to exchange/disseminate information and intelligence, share advice on operational policies and procedures as well as changes in legislation, network with respect to contemporary investigation techniques and emerging technology and enable the mutual conduct of necessary interstate inquiries to support investigations by the respective agencies.

Close links were fostered between the Independent Commission Against Corruption and the Crime and Misconduct Commission during 2001-2002. In August 2001, the Executive Director, CPER travelled to Queensland to speak at the launch of a Crime and Misconduct Commission guideline based on the Independent Commission Against Corruption's *How to handle the effects of an ICAC investigation: a guide for public sector managers*. This visit led to the revision of the Independent Commission Against Corruption's publication, and a new document, *Managing an organisation through an Independent Commission Against Corruption investigation*, was issued in August 2002. Additionally, the Independent Commission Against Corruption hosted a visit by the Chairperson of the Crime and Misconduct Commission in early 2002 and senior officers from the Crime and Misconduct Commission research and prevention area attended the CPER planning day in June 2002. As a result of these links, the Crime and Misconduct Commission adapted the Independent Commission Against Corruption's corruption risk profile research methodology to carry out a similar study in the Queensland public sector and the Independent Commission Against Corruption adapted the Crime and Misconduct Commission's work in the area of disposal of scrap material to inform the Independent Commission Against Corruption's *No excuse for misuse* guidelines for councils on misuse of resources issues. Further collaborative

opportunities are actively explored between the organisations with the most recent being a joint project on conflicts of interest that will be completed in 2004.

Also during 2001-2002, the Independent Commission Against Corruption entered into a Memorandum of Understanding (MOU) with the then Royal Commission into the Building and Construction Industry concerning cooperative operational and administrative arrangements. The MOU facilitated information exchange between the organisations where it was relevant to their respective jurisdiction.

31. Strategic directions for the ICAC

Question: In the Functional Review, the Independent Commission Against Corruption was criticised for its reactive rather than strategic approach. To what extent since the year 2000 has the Commission been able to develop clear strategic directions so as to become less response driven to particular complaints?

Response: In conducting the Functional Review, the authors consulted with a number of stakeholders. It was noted in the Functional Review Report that criticism was raised by some of those stakeholders about the strategic focus of the Commission.

While the Commission accepts that these criticisms were made, it should nevertheless be recognised that the Commission is a complaints receiving organisation and to this extent, a significant part of the Commission's output will be reactive to complaints received. However, the most recent Strategic Plan 2003-2007 sets out the strategic directions and objectives of the Independent Commission Against Corruption for the next few years. In particular the Strategic Plan states that we investigate corruption by "targeting serious and systemic corruption and corruption opportunities in the NSW public sector" and our supporting objective is to "take a proactive approach to detecting and investigating corrupt conduct". To support our strategic directions we have implemented the following operational initiatives to ensure a strategic focus to a greater proportion of the Independent Commission Against Corruption's work.

Firstly, the Independent Commission Against Corruption has established the Strategic Risk Assessment Unit (SRAU) with the objectives of proactively developing matters for investigation and to monitor trends in intelligence data so as to alert the Commission of problematic areas or issues within the New South Wales Public Sector. The Unit is a recent initiative with its full staffing complement only recently being achieved, along with the recent acquisition and development of necessary systems and methodology to underpin the extraction and collation of information and intelligence for strategic analysis. As outlined in our answer to Question On Notice 17, recruiting and retaining staff in these highly specialised disciplines is difficult – the necessary skills are commonly sought after by many organisations in both the private and public sector. The identification of opportunities for proactive intervention is time consuming and resource intensive. Now that the establishment of the Unit is complete, the Independent Commission Against Corruption anticipates that over the next 12 months, this Unit will produce a number of strategic and proactive projects.

Secondly, the Independent Commission Against Corruption conducted the research project to profile risks and corruption prevention initiatives undertaken by the New South Wales Public Sector (described in our answer to Question On Notice 4). The results of this research are now being used to strategically develop part of the Corruption Prevention Program for the next financial year. The results also provide information to public sector organisations as to potential areas of risk so that they may take proactive initiatives to implement procedures and systems to address these risks before being the subject of an Independent Commission Against Corruption investigation.

Thirdly, in dealing with complaints where inquiries do not result in a finding of corrupt conduct, the Independent Commission Against Corruption does not simply close the matter, we consider whether there is a system or procedural issue which could be addressed to minimise future opportunities for corrupt conduct to occur. For these matters the Corruption Prevention, Education and Research Division (CPE&R) provides advice and/or recommendations to proactively deal with the problem. The close links developed between CPE&R and SRAU ensures that information and advice acquired and provided feeds into the strategic approach to investigations and risk assessment.

Lastly, in determining whether the outcome of an investigation should be made public, one factor that may be considered is whether public sector organisations other than the organisation subject of the report, may benefit from being made aware of the corrupt conduct that has occurred, the risk management deficiencies that created the opportunity for such conduct to occur, and the systemic and procedural issues identified in the hearing and/or report. Corruption prevention recommendations made in public reports address the issues identified for the subject organisation, however often these recommendations can be equally applied to other public sector organisations.

32. *Law enforcement exchange program*

Question: One recommendation in the reviews was the need to consider an exchange program with other law enforcement agencies to expose officers to different ways of thinking, methodologies, practices and technology. Has this suggestion been progressed in any way, and if so, how?

Response: This proposal has not been progressed. However, in light of recent difficulties in recruiting investigators with the requisite skills and experience, and given the specific nature of the Commissions work, approaches to the New South Wales Police and Australian Federal Police are currently being considered. Apart from exchange programs, consideration is also being given to making available short term (12 month) secondments for high calibre investigators from other agencies and seeking out opportunities for specialist Independent Commission Against Corruption staff, such as technical officers, to improve their skills through working with other agencies.

33. *Corruption Resistance Review program*

Question: During 2000-2001, the Independent Commission Against Corruption conducted Corruption Resistance Reviews – these were programs that assessed the strengths and weaknesses of corruption strategies of particular organisations and suggested changes, where appropriate. The Annual report says this initiative has been most successful. Would you provide details of the impact of this initiative on the organisations involved?

Response: The Commission's Corruption Resistance Review (CRR) program commenced in 2000. On its own initiative or at the request of an agency, the ICAC conducts an assessment of the strength of an agency's key corruption resistance measures and suggests ways to fill gaps or improve performance. The CRR looks at features of the organisation that help to prevent corruption including:

- corruption risk management
- corruption prevention strategies
- internal audit
- code of conduct
- conflicts of interest
- gifts benefits and bribes
- secondary employment
- internal reporting
- performance management
- staff development
- complaint and grievance management
- specialised risk management (such as procurement and disposal).

Even when the CRR occurs at the initiation of the Independent Commission Against Corruption, the agency is involved in identifying the primary areas of focus for the CRR. A meeting between the agency and the Commission is often held. The purpose of this meeting is to discuss the key corruption risks they face so that the questionnaires can be adapted to best reflect the needs of the agencies involved. Agencies report back to the Independent Commission Against Corruption on a regular basis regarding their implementation of the recommendations made in the CRR report. In 2001-2002 11 agencies were involved in a CRR. Their details are included in the table below.

Agency	Initiation (ICAC initiated, self initiated, RAROS, other?)	Date of final report	Most recent status report	Number of recommendations made	Proportion of recommendations implemented	Comments
University of Wollongong	ICAC	June 2001	June 2002	30	100%	The University has commented "Participation in the CRR has provided us with useful information which will assist us in strengthening the corruption resistant culture within the University."
Broken Hill City Council	RAROS	June 2001	October 2002	31	32% (others in progress)	The next report was due 11 August 2003, and is being followed up. It is anticipated that this will be the final progress report. The Acting General Manager of the Council has said that although the process of the CRR was resource intensive and somewhat onerous, overall the outcome was positive for the Council.
NSW Registry of Births, Deaths and Marriages	Self initiated	June 2001	September 2002	28	43% (others in progress)	
Ambulance Service of NSW	Ambulance Service sought assistance after Auditor General's Performance Report, ICAC suggested CRR	December 2001	May 2002	20	100%	The Ambulance Service has advised the Commission that they are very happy with the CRR process and results, and are looking for other collaborative opportunities.

Agency	Initiation (ICAC initiated, self initiated, RAROS, other?)	Date of final report	Most recent status report	Number of recommendations made	Proportion of recommendations implemented	Comments
Workcover NSW	ICAC	December 2001	May 2003	32	Approximately five recommendations have been implemented so far.	
Ballina Shire Council	RAROS	December 2001	No status report has been received	27	N/A	A progress report has been requested from the Council.
Southern Cross University	ICAC initiated	January 2002	June 2003	27	All recommendations have been implemented or are in progress	
NSW Sheriff's Office	Self initiated	June 2002	August 2002	28	N/A	Not yet reported on the status of each recommendation. However, a detailed implementation report has been requested and is now overdue. This may be related to departure of Bruce Kelly and new Sheriff coming on board. Actions to date include: <ul style="list-style-type: none"> • Conduct of ethical culture survey involving 80% of all staff • Inclusion of recommendations in Sheriff's Office business plan
Maitland City Council	RAROS	June 2002	March 2003	22	36%	

34. *Financial management at the Independent Commission Against Corruption*

Question: In the Functional Review, the Independent Commission Against Corruption was criticised as having a traditional public sector approach to financial management, “a spend it or lose it approach.” Was this criticism accepted? Has the approach changed?

Response: In the context of the Government financial framework within which we operate, the ICAC is of the view that this criticism is not justified. Although we cannot comment on the approach that may have been taken by former Commissioners, the current Commissioner adopted a financial management approach that is in accordance with the prescribed Government financial framework. The Independent Commission Against Corruption is a Budget Dependent Government Sector Agency and is subject to the same funding limitations and Government financial strategies of other agencies that receive their funding by means of an annual Consolidated Fund Appropriation. The level of funding provided to the Commission is determined by the Treasurer’s four year forward budget estimates and the Commission must compete with other priority areas of Government, such as health and education, in seeking additional funding to implement major enhancements to operational capabilities. In addition, under Section 23 of the Public Finance and Audit Act any unspent appropriations at the end of the financial year lapse and must be repaid.

With the current approach, the ICAC plans and manages its operations and sets its business goals and targets within the context of this financial framework. This requires the Commission to closely and responsibly manage its budget to gain maximum value and utilisations from its limited resources in performing its role of identifying systemic and individual corruption risks, investigating corrupt conduct and delivering corruption prevention initiatives. The Commission is continually looking for ways to stretch its funding to ensure that all priority activities are adequately resourced. Indeed, the restructuring of the Commission in 2001-2002 enabled a reallocation of resources to operational activities from efficiencies achieved in corporate support services.

The end result of this financial structure is that the Commission will generally fully utilise the funds provided by Government to the most efficient and effective means in the performance of its functions.

35. *Financial, strategic and business planning*

Question: The Functional Review said the Independent Commission Against Corruption’s budget process was entirely separated from strategic and business planning and that the budget program concentrated on inelastic items such as rent, staffing, etc. What is the situation with regard to moves to better integrate financial planning with strategic and business planning?

Response: The Independent Commission Against Corruption has moved to an integrated strategic business planning and budget approach that links strategic corporate planning with the development of annual business unit business plans and budgets which are then reflected in individual staff performance agreements.

While a large proportion of the 2001-02 budget was comprised of salary costs (67%) and committed expenditure (20%) such as rent, insurances, equipment leases, computer costs, telecommunications, contract security, etc., the allocation of resources are planned and organised in line with the corporate strategy directions and key business activities and initiatives. Moreover, the major structural changes in 2001-02 recommended by the Functional Review emanated from the subsequent corporate strategic planning process. The resultant business planning reshaped the Commission's business structures, staff levels and related skill requirements and the budget estimates developed reflected the commitment and investment of staff resources and funding towards the new operational focus upon strategic intelligence and risk assessments, the acquisition of higher level investigative skills, particularly in relation to fraud and financial corruption investigations, and the targeting of corruption prevention and education work at a more strategic level.

The planning process followed for developing the Business Plans and Budgets for 2003-04 involved the following steps:

- Determination by the Commission's Executive of the Commission's strategic direction, corporate priorities and annual business planning and budget parameters;
- Detailed guidelines were issued and workshops held with managers on developing and preparing business plans and budgets to ensure a consistent approach is applied across the Commission;
- Each Division held planning sessions to determine business unit objectives, business assumptions, responsibilities for corporate key result areas, key business risks and exposures, business unit performance targets and measures and the staffing and financial resources required for each area to deliver their business outcomes;
- Business unit business plans and budgets were reviewed and endorsed by Commission Executive
- Individual performance agreements prepared for 2003-04 have been based on the agreed business plan outcomes

36. *Activity-based costings for operations*

Question: Does the Independent Commission Against Corruption carry out activity-based costings for operations? This was to be introduced from 2002 (The Functional Review said this was planned as a feature of financial management from 2002 but that it had not been "attempted" up to 2001).

Response: The Independent Commission Against Corruption has not implemented activity-based costing for operations at this stage. Before progressing its introduction it was necessary to complete the restructure and bed down new positions in the Strategic Operations Division including the establishment of the Strategic Risk Assessment Unit. The implementation of activity based costing is a resource intensive administrative process that needs to be introduced in a practical and cost effective manner to ensure it does not become an administrative burden on operational resources. The business objective in applying the system will be to provide an ongoing assessment of the investment and cost effectiveness of the investigatory and corruption prevention strategies of the Commission. However, in

relation to our peer agencies, we understand that activity based costing is not a feature of their financial management systems.

It is planned for 2003-2004 to develop a working activity costing model and its related business rules using live accounting data and simulated activity information. A pilot program will then be undertaken to clarify the required accounting procedures and identify and process issues. An evaluation of the costs and benefits of the results will be carried out at the completion of the project.

37. *Financial delegations at the Independent Commission Against Corruption*

Question: What is the current arrangement in the Independent Commission Against Corruption regarding financial delegations? In the past, according to the Functional Review, these were apparently over-restrictive leading to a waste of senior management's time to gain minor approvals.

Response: The Independent Commission Against Corruption's financial delegations were revised in 2001 in line with the recommendations of the Functional Review to provide a more decentralised approach to financial management. These delegations allow "direct reports" (business unit managers) or "project managers" to incur expenditure from funds formally committed to their respective areas of responsibility to a limit of \$20,000 on any one item or period contract. Prior to this change financial delegations were limited to senior executives and some corporate services' positions. Also more recently the petty cash limit has been increased to improve the efficiency of processing minor expense items.

However, up until the recent 2003-04 budget allocations the control over funds was generally retained by Executive Directors. Business plans and budgets have now been set at business unit level and managers are accountable for managing their funds to deliver agreed business outcomes and performance targets.

38. *Further significant matters of relevance to corruption in the NSW public sector*

Question: Are there further significant matters relevant to corruption involving the New South Wales public sector that have not been addressed in previous questions? If so, please discuss.

Response: The issues relating to corruption and the NSW public sector for the reporting period 2001-2002 have been adequately covered in the above questions and in the Independent Commission Against Corruption's Annual Report. The Independent Commission Against Corruption has nothing further to discuss in this respect.

39. Local Government

Mr PRICE (ICAC COMMITTEE): Have you had occasion to refine your method of inquiring into corrupt practices in local councils? For instance, if one developer suddenly seemed to win all the development approvals in a particular area or certain planning officers were perhaps pre-eminent in their recommendations for a particular person, do you have a mechanism for checking that out quietly from time to time council to council or do you rely on other people coming forward or verballing people to undertake those inquiries?

Commissioner MOSS: We are trying in that area. It is not easy getting good solid hard evidence of corrupt conduct. There is a threshold that has to be reached. That is one reason actually why we did set up the strategic risk assessment unit and restructure it quite significantly, so that the people who work in that area would be able to try and collect evidence - and I hesitate to use the word, because it is a difficult word to define - to use that evidence a bit more proactively so to speak.

At the end of the day, we are still very much a complaint handling body and we are very much complaint driven and responsive to what comes to us from outside. Having said that, we are very receptive also of information that comes in, albeit anonymously. So we rely very heavily on people who are prepared to come to us and give us that evidence in no matter what form, but we need to have some sort of evidence, we need leads, so that we can actually take it to the next step.

What we have tried to do over the last couple of years is to upskill the staff, and that has meant trying to get on board people who are more comfortable with computers, people who are more comfortable reading financial statements, financial analysts, financial investigators, we have on board a forensic auditor. People in this particular unit would be able to analyse evidence over time. Even when you do have very strong leading evidence, sometimes it is that threshold of getting you over the barrier to be able to feel in your bones that that is corrupt conduct which would then allow you maybe to go and get listening devices or that sort of thing.

It is actually quite a high threshold. Yes, we have had situations where we have been quite suspicious of a particular council, suspicious of why a certain lot of people seem to get more development applications through, but to take it to the next step is the most difficult thing.

I actually think there would be some benefit in my director of operations, Michael Outram, who actually set up the new unit, outlining those issues, particularly as they relate to local councils.

Mr OUTRAM: The strategic risk assessment unit comprises of three parts or components. There is the intelligence unit, which is where the analysts sit, and the analysts are really assessing matters that come in for opportunities. Ultimately we are looking for opportunities, of course, and what we are trying to be, when you hear phrases like being intelligence led and proactive, is a bit more aggressive, which really means that we prefer to take a covert approach to investigation where we can, over and above an overt approach, because obviously with an overt approach the persons of interest are aware of the existence of our investigation and evidence can go missing and witnesses can prepare their answers and such like. That is, of

course, not always easy because there is an evidential threshold that we have to get over to get warrants and such like.

The analysts are supported by a surveillance team. We have a covert surveillance team which we try to use now far more for building the intelligence picture. Of course, when we get a matter in, there are gaps in the information and evidence and we decide how to fill the gaps, and sometimes you can get information from open sources, information from the internet perhaps or from the media, and sometimes closed sources, and another area we are looking to exploit is very much the identification and recruitment of confidential contacts within organisations who can give us the eyes and ears, if you like, on the ground, covertly. They are very hard, firstly, to identify and, secondly, to recruit in a covert way, so there are risks inherent in doing that, but that is an approach that we are looking very much to adopt along with a lot of other agencies in similar positions.

We have the product management unit which is an area where we covertly acquire product, if you like, from eavesdropping or such like, intrusive surveillance. We manage all our product from listening devices or telephone interception or from computer hard disk drive images, we acquire it, we gather it, we use it all together in one IT platform and try to manage it all together because there are varying regulatory issues around those different types of products.

So that really is what strategic risk assessment is about, it is about information management and trying to identify proactive opportunities because, at the end of the day, there is more cost benefit in them. If you catch somebody with their hand in the cookie jar, the evidence is normally a lot better than having to try to prove that something occurred in the past, so that is the way we are trying to move.

Mr PRICE (ICAC COMMITTEE): Given that, and that sounds great, firstly, would there be a benefit in any change of the format of local government reporting mechanisms, vis a vis their annual report, that would assist you in identification and, secondly, there have been problems with protected disclosures in the past. Have the protected disclosure mechanisms been refined to the point where you are getting some value from them or is it still difficult and, if it is still difficult, do you think you can solve the problem?

Commissioner MOSS: If I can leave the protected disclosure answer to some of my colleagues who have actually been working closely with that issue, generally speaking on whether the reporting format can be improved, the section 11 obligation that principal officers should report to us does actually apply to local governments, so strictly speaking they should report their suspicions, if appropriately held, to us. Now I am not too sure how--

Mr PRICE (ICAC COMMITTEE): I was thinking more of councils' annual reports. Are they structured sufficiently to give you information that your officers may in fact need to pick up any peculiarities?

Mr PEHM: I cannot say we have considered them a good source of intelligence information for investigation purposes. What we rely primarily on are their reports under section 11 of the Act, which they are obliged to provide to us. We have had meetings and a series of programs with a number of government agencies, including Department of Local Government, and we have refined the way that they have reported to us.

Protected disclosure is a very important source of complaint for us. The Commission had some problems a few years ago with the Whistleblowers Association and the relationship was a bit tense. I think we were sort of blackballed in whistleblowers' minds, and I am not sure what all the history behind that was, but we have gone to a lot of trouble since. I have addressed whistleblower forums and that sort of thing and, although they were slightly up in the report you are looking at, the numbers are up a great deal in the next reporting year. We are taking a lot more care with the way we treat them as well. We are consulting them much more about how their complaint should be handled, keeping them confidential wherever possible, and so we are working much more with protected disclosures than we had been and I think the results are yet to be seen.

Mr PRICE (ICAC COMMITTEE): But your view is that things are improving in that area?

Mr PEHM: Yes, I think there is potential there.

40. Primary Role of ICAC

The Hon. PETER PRIMROSE (ICAC COMMITTEE): I would like to ask a brief question about the ICAC's role, looking at the primary role of the Independent Commission Against Corruption. Just by way of background, when the Commission was first set up, the Premier at that stage, at the second reading debate in the Legislative Assembly on 26 May 1988, said that the primary role for the Commission in the long term was to become more and more one of advising departments and authorities on strategies, practices and procedures to enhance administrative integrity. This fits in with the view of the Police Royal Commission in 1994 when it said that historically the Independent Commission Against Corruption has given more prominence to education and corruption prevention than to detection. However, the authors of the functional review of the Independent Commission Against Corruption hold a different opinion. At page 22 of their report they state that the educative and preventative role will never be more important than its investigative role. They see high profile public hearings and the conviction and dismissal from office of public sector officials as critical for the maintenance of the Commission as a visible threat to corruption. Can I ask, please, what is the Commission's view on that?

Commissioner MOSS: Well, I believe that the investigations function probably still has to be the most important function of the Commission simply because, with respect to corruption prevention, advice, education, yes, they are very important issues, but those particular roles or that function actually can be shared with other agencies. What the public sector relies heavily on the ICAC to do is to be able to, where it can, get that evidence of corruption where it exists, where it is appropriate for the ICAC to do investigations. I think the public still expects that we are the only body that can go in and get that evidence, we are the only organisation that has those quite extraordinary powers to do that. No other organisation has those specific powers that we have to do that job, so I think that still has to be our main role.

Having said that, I think we should still provide a strong corruption prevention and education role and I believe that we are doing that still and I do believe that our record for the last year and the previous year shows that we have been very active in that field as well, but my main

concern has been to have an investigation role that is best practice because one thing that the functional review stated after it did the review of the Commission was that we were falling behind in terms of our skills and investigations, that many of our systems were outdated, that we required basically an upskilling of that particular area, and that is what we have been trying to do these last few years. I guess my view is that the investigative role still has to be a key, if not the most key, role.

The Hon. PETER PRIMROSE (ICAC COMMITTEE): May I just follow-up? So am I correct that what you have just been saying is that the view of the Commission at the moment of its primary role is different to that which was proposed by the Parliament when it was established?

Commissioner MOSS: I don't know that it is at odds with what was proposed. My view is that what was said then was that it was a comment of aspiration that the organisation, having been in existence for so long, would actually reach a point where the public sector would have improved immeasurably and that after a while a large part of its work would be corruption prevention advice, but I really think that nevertheless in terms of focus the investigative functions must always be at the fore. I don't know. I am not quite sure.

The Hon. PETER PRIMROSE (ICAC COMMITTEE): No, that is fine, thank you. Further on that point, I was one of the original appointments to the Committee some years ago, and I got off and then back on again. I recall that the education function was a strong point in its creation. I recall there was a philosophy that we called the Hong Kong component. Leaving aside the draconian investigative proceedings that they have over there, much effort was on the education in Hong Kong. I was one of the members who went over to look at it and was very pleased with it. I have a fairly clear recollection that that was as a result of, as you have just said, that the Commissioner has decided to change the investigation area. You said earlier on that you had a shared responsibility for education. I think you said that you have been active in the education area. Can you give us a summary of where you have been active and how you share your education responsibility?

Commissioner MOSS: I think what we have done in the last few years is to try and specifically tailor our corruption prevention initiatives, so that when we look at the information that comes out of the investigations and we see, for example, that local government might be an area of concern, we would want to tailor our corruption prevention program to make sure that that is a focus of the work we do, and that is indeed what we have done. We have actually published quite a number of papers that look at things like, for example, misuse of official resources in the local government area, waste, handling waste in local government, fraud issues, et cetera. So we have actually committed a great deal of our effort to tailoring the work. Universities was another area which we felt had come out from our investigative work as requiring some attention, and so, again, we took that to the corruption prevention area and said, right, we need to do more focussed educative work there.

We have maintained our interests in what is called corruption resistance reviews, which is going into an organisation and assisting with fairly detailed audits of how the organisation can be better risk averse on corruption prevention issues. We have focussed a great deal on our rural visits to ensure that the ICAC is not just a city focussed organisation but people in regional areas also appreciate what we do. I think our publications list would give you a fairly full picture of the work that we have done in this educative area.

Mr POULTON: In terms of some of the specifics of training, of education and training that you were asking about, we have four main training modules or workshop presentations which we give. We have a generic set and as well we tailor them to organisations we work with. We have fact finder, we call them internal investigations, which is basically to give them the capacity to handle internal inquiries themselves. We have a workshop on risk management, one on conflict of interests and a fourth one on managing protective disclosures.

More recently in the current year we are seeking to change and develop our training opportunities to align them with the public sector competency standards in terms of managing fraud control and conflicts of interest, so as to bring a new level of rigour and alignment with the general AQF Public Sector Management Training Standards, and we hope to have that work finished during the course of this year, which will substantially increase the availability and the range and diversity of those training programs.

During the course of the year we actually had RAROS visits where we conducted those workshops and fact finding and corruption risk management. We normally get 25 to 30 at any of those workshops. We do those workshops twice in regional and rural New South Wales. We also have requests from time to time from agencies and we got a significant request to provide a corruption risk management workshop, which was a whole day workshop, for the entire complement of an agency that was numbering 380. We have been doing some work with another service providing agencies who cycle through most of the stream of management. In any given year we will probably face-to-face directly arrange for training or workshops for between four and five hundred public officials. We also try to use those occasions of training to develop competencies for the agencies themselves, the train the trainer model, so they can start picking up with those modules and run with them and spread them even further.

Commissioner MOSS: To add to what Mr Poulton says, I think the most important aspect about corruption prevention and advice to them is actually the involvement of corruption prevention with each investigation. So as we move say to a more formal investigative stage of a particular matter, what we have found to be really important is involving the corruption prevention people right at the outset.

What we have found is that sometimes in trying to sell messages about corruption prevention, you could do that until the cows come home and you do not get as much attention as if you have done a good investigation, and then with that we make quite a number of recommendations on the corruption prevention front. So what we have determined to do is with each investigation, where we can and where there are systemic issues, we actually put a lot of effort into that separate component of describing how the system can be improved.

Mr PEARCE (ICAC COMMITTEE): I would like to ask a follow-up question on the ICAC's primary role. Firstly, I was of the view that the educative role and the prevention role were the primary roles of the ICAC. We heard from Mr Outram there about the pro-active covert activity. Can I say very clearly I find that extraordinarily distasteful as an approach. Why do you think this balance between the educative role and the investigative role seems to have moved and is it a conscious policy of the ICAC?

Commissioner MOSS: I don't know so much that it has moved. I feel that the investigative role has to always be a primary role of an organisation such as ICAC because, if ICAC was not set up to do both sorts of things, there would be no other organisation in the public sector to do it. As I said, we take our corruption prevention and educative role very seriously and I do believe that we carry that out properly, but there would be somewhat of an emptiness about an organisation with our charter if we did not have a strong investigative focus to carry out our work.

The investigative aspect of it is probably the most difficult; it is the most sensitive. We are very conscious of not abusing our powers in that regard, and to that end we have accepted the recommendations of the functional review which specifically stated that with these sorts of investigations it was very important that the lawyers ensured that there was not an overstepping of the mark. Since that particular review, we have also very consciously reviewed the investigative role to make sure that it is best practice.

Mr PEARCE (ICAC COMMITTEE): How do you define "best practice" in this regard? It can be best practice to nail somebody under any circumstances or it can be best practice to adhere to a reasonable respect of civil rights.

Mr OUTRAM: Absolutely. There is a balance to be struck in proportionalities that is the key here. These resources are very expensive and we certainly seek to try not to use a sledgehammer to crack a nut. Some corruption is clearly more serious than others and we would not use the coercive powers and the full weight of all our powers in order to chase after a small fry job if you like. Some corruption is more deep rooted, linked to possibly crime and may involve serious crime itself, and certainly when we apply for warrants we have the same standards apply to us as any other law enforcement agency. We cannot simply flout people's civil rights. Of course, privacy is intrinsic within the application processes, through the legal process, and we have to account for that. We have to account for the necessity of the actual taking, the proportionality of the actual proposing to take. There is that and the regimes which exist around the use of those powers, such as we have to report to the Federal Attorney General on the use of some of the powers, we get inspected by the Ombudsman every six months on the use of those powers, and so we are not blase about the use of them, and certainly it would be wrong for me to give you the impression that we use those covert proactive means in every case, and that is certainly from my knowledge of cases in which they have been used. Sometimes they are simply not available or not feasible.

Mr O'FARRELL (ICAC COMMITTEE): If you did not use investigative powers, how could you do your job and how would you have assessed corruption at Rockdale City Council without investigative powers?

Commissioner MOSS: We would have failed miserably if we did not use our investigative powers well in that matter. That was actually an example where we were able to use all the skills that we thought we would try to bring ourselves up to a point to do, and we used telephone intercepts at - I think it was the highest number we had used for any matter. We were in a position to examine the SMS text. For the first time we actually used a method of case management that we had not implemented I suppose to the degree that we did in that one. That was an example where, without the investigative powers, we would not have got the result that we did.

Reverend the Hon. FRED NILE (ICAC COMMITTEE): Commissioner, you did mention the powers that you have in this debate about education versus investigation. From my recollection there was a debate about ICAC. The reason you were given the powers was so you could conduct investigations. So that was a strong arm, if not the primary arm, of the ICAC.

Commissioner MOSS: Indeed. I appreciate the contrary views given, but I still hold the view that that is what the public expects us to do and that is the very role that really only the ICAC can do, and if the ICAC did not do it, there would not be another organisation that could do those sorts of investigations.

Reverend the Hon. FRED NILE (ICAC COMMITTEE): The point I was making was that the Parliament itself gave you that power.

Commissioner MOSS: Indeed.

Reverend the Hon. FRED NILE (ICAC COMMITTEE): For that purpose.

Commissioner MOSS: Indeed, for that purpose

41. Telephone Intercept Procedures

Mr O'FARRELL (ICAC COMMITTEE): I want to canvass Operation Trophy, but that may come later, Mr Chairman, but I assume that in relation to telephone intercepts and other forms of investigative work there are procedures that have to be gone through. One of the questions I have arising from a question on notice is: What procedures do you go through before telephone intercepts are approved?

Commissioner MOSS: It is quite rigorous.

Mr O'FARRELL (ICAC COMMITTEE): Rigorous in the sense that it looks at people's rights and liberties as well as the greater public good?

Commissioner MOSS: Yes. I think we probably should run through them.

Mr PRITCHARD: There is a threshold under each Act, depending on whether it is a telephone intercept or listening device, an evidentiary threshold that has to be met before you get it, and bear in mind that listening devices must be approved by a Supreme Court judge - they are not granted lightly by Supreme Court judges - and telephone intercepts have to be approved by a member of the Administrative Appeals Tribunal. There is an evidentiary threshold that you have to reach. You can't just rock along and say, "We think something is happening, can we fish around?" There are evidentiary barriers and they go through assessment, through the investigators, through the lawyers, before they are approved and the application can be made, so there are certainly definite levels that have to be met. There are reported cases of Supreme Court judges knocking back listening device warrants and so on because information has been insufficient. Thankfully, that has not happened to us, but they are not straightforward. You must have something to go on before they can be granted and certainly within our internal processes the investigators and the lawyers work on those jointly,

they are assessed by lawyers after investigators compile material, to ascertain if they meet the legislative requirements to be granted and then the application is made to the relevant tribunal which will then decide whether it will be granted or not.

Mr O'FARRELL (ICAC COMMITTEE): Is it possible or has it be done that you have assessed the various means of corruption prevention, the most traumatic of course, which is investigation, revelation and corruption prevention by example. Has the Commission ever tried to do that?

Commissioner MOSS: I do not quite understand.

Mr O'FARRELL (ICAC COMMITTEE): The effectiveness of approach. Mr Pearce is arguing, I suppose, that you would be better off with education and prevention as opposed to the investigative approach. Is it possible to assess which of the two is more effective or is that a flight of fancy by civil libertarians?

Commissioner MOSS: Well, I actually feel that nothing sends the message better than a case where you have been able to actually succeed in getting that evidence and then you can show an example of corrupt conduct.

Mr O'FARRELL (ICAC COMMITTEE): And the consequences that flow?

Commissioner MOSS: And the consequences that flow from that, so at the end of the day, as I said, sometimes you can have all the corruption prevention education programs in the world and they sometimes just fall on deaf ears, but if you succeed in getting a good case up it speaks volumes, and that is the experience that I have had.

Mr POULTON: Can I just add from the corruption point of view that there are three main limbs to corruption prevention. One is that you reduce the opportunity, which is a systems business process thing; second, you work on people's motivation, which is the ethics education and training, but the third limb, and overwhelmingly what all the criminology literature establishes as the most important limb, is the credible threat of detection. A risk reward equation going on in the part of someone's mind and a credible threat of detection is in fact one of the most powerful planks in any corruption prevention strategy. You do not have just one, but that is clearly one of the most important, that is all the evidence, and the criminology literature would suggest that you have to have that credible threat of detection, which is the investigative capacity to investigate matters and have misconduct uncovered and discovered.

Mr O'FARRELL (ICAC COMMITTEE): So fear of the threat of detection cannot exist absent an investigative capacity?

Mr POULTON: Precisely.

Mr PEARCE (ICAC COMMITTEE): Mr Pritchard identified the requirements which had to be met in relation to listening devices, interceptions, et cetera. Mr Outram previously mentioned that one of the tactics used is to, if possible, get an inside source. Now, to some extent, having that inside source you are circumventing the protections which exist through listening devices and other electronic means to acquire evidence.

Mr OUTRAM: It depends on the use of the source. Sources come in all different shapes and sizes. Some may be simply where somebody makes a protected disclosure as a witness, if there is a potential witness who is going to give evidence of something that has happened in the past. Another source may be somebody who works in an organisation who can give us intelligence not directly relating to the conduct of a person, so they are observing them, but perhaps we may want to conduct an operation and we simply want to know what shift that person is on and, rather than spending a lot of money preparing for an operation and a person, say, going on holiday the day that we are going to deploy our resources, we would know about that in advance. Of course, we need to be able to get that sort of intelligence covertly, so if we can speak to somebody on the inside of an organisation - normally it would be a senior level we would try to approach first - then that helps us in planning what we are going to do and how we are going to gather evidence and intelligence. If we use a source to gather evidence for us, that person would have to give evidence about that and that would put them sometimes in a difficult position, so we would not do that without going through the appropriate legal and other planning mechanisms beforehand, risk assessments and such like.

42. *Changes in corrupt conduct*

Mr ROBERTS (ICAC COMMITTEE): First of all, can I say, Commissioner, to you and your staff, thank you for the frankness and openness with which you have answered the questions to date. I would like to ask a question in relation to changes in corrupt conduct within New South Wales. As a result of the investigations conducted by the ICAC over the 2001 period, have you been able to identify any forensic changes in corrupt conduct or practices?

Commissioner MOSS: The statistics have remained pretty much similar over the last five years. I think the best indicator of trends probably is that it is through the profiling of the New South Wales public sector report, where we actually tried to get some specific information about, firstly, the agencies and their staffs' perception of risk, and then, secondly, there were a whole range of indicators that we sought information about, whether they had gift registries, whether they had proper codes of conduct, whether they had a decent kind of protected disclosures regime in place. So that other half, we actually looked at what strategies agencies had in place, and on the whole there seemed to be an improvement along that score, although there is still room for improvement in the various aspects that we asked them about. But I think over the years, when we looked at those sorts of surveys, you could probably see a greater awareness, certainly, by the public sector and I think that is quite clear.

43. *Completion of major ICAC Projects*

The Hon. JENNIFER GARDINER (ICAC COMMITTEE): Commissioner, it appears from the annual report that the Commission was largely successful in delivering and planning projects for the year 2001-2002, but it is unclear from the report whether the three major projects were completed, namely, (1) to establish the valuation benchmarks, (2) to develop a management plan for protected disclosures, and (3) to implement information strategies. Can you tell us what the status of those matters was at the end of the review period?

Mr PEHM: I will deal with that, if that is all right. The benchmarking and performance indicators project, we reached some draft performance indicators which we reported to the previous Committee. Going through the restructured process, we have changed the way the commission works in lots of areas. So the applicability of those procedures was not as relevant as it may have been at the time they were formulated.

This year we have gone through an exhaustive process, and a much more organic process with all of the staff, where they have all contributed ideas about any performance that should be measured, so it is a much more comprehensive process than what was a top down performance measurement system. The management committee approved implementation of the new system in about April this year. The first three monthly reporting period against those performance measures will be in September this year. So we will be in a position to report on that much more fully. The other problem with that was the information technology infrastructure did not allow us to report on some of the previous measures that were agreed on.

We did a little bit of benchmarking with the Queensland Criminal Justice Commission, but these agencies are all very specific and different and they have grown up in different ways historically, they handle things differently. So that was not a very comprehensive process; it was more just a quick comparison.

The protected disclosures management plan, we have reviewed all of our procedures on handling protected disclosures and integrated them into the assessments section's procedures manual. The assessments section is the initial receipt point of all incoming complaints, and the sorts of things I mentioned before about consulting more with persons making protected disclosures and keeping their identity confidential wherever possible are all integrated into those procedures now. I do not think we have a document that is a specific management plan, it has been integrated into procedures, but I will have a further look at that.

The third one was an information strategic plan. What did we commit to there that we have not done?

The Hon. JENNIFER GARDINER (ICAC COMMITTEE): To complete them for the year 2001-2002, but it is not clear that they have in fact been completed.

Mr FAVELLE: We did have an information strategic plan and we do have an information strategic planning committee. It meets on a regular basis and there are projects that we undertake as part of that plan that we have been progressing certainly since I have been with the Commission, so that is in place in fact.

CHAPTER FOUR - ANSWERS OF COMMISSIONER TO QUESTIONS TAKEN ON NOTICE AND TO SUPPLEMENTARY QUESTIONS

SUPPLEMENTARY QUESTIONS FROM THE HON. KIM YEADON MP

44. Sub-committee of the Operations Review Committee

Question: In July 1992 the Joint Committee expressed serious concerns about the workload of the Operations Review Committee. It calculated that if the reports considered by the Operations Committee were averaged out, it was spending about two minutes on each matter coming before it. The Committee at that time said that it didn't see how the Operations Review Committee could effectively scrutinize matters to which it should attend in such a brief time. When you look at the figures presented in the 2001-2002 annual report the situation doesn't seem to have changed. Did the Operations Review Committee act on the Committee's recommendation regarding the establishment of a sub-committee of the Operations Review Committee to relieve it of the initial consideration of minor complaints, and if not, why not?
(The ICAC Committee's 1992 recommendation was based on the successful use of a sub-committee to perform this function by the Hong Kong ICAC)

Response: The Commission cannot answer for the Operations Review Committee (ORC) in 1992 when the Committee made its recommendation. The current ORC has raised no concerns about the workload and appears capable of appropriately dealing with the matters put before it.

The comments made by the former PJC assume that ORC members do not consider the papers until the ORC meeting. It should be noted that the ORC operates by exception, that is, the ORC members receive the ORC papers at least two weeks before the meeting so they can thoroughly examine them. At the meeting, each Member indicates queries or concerns regarding particular matters. Consequently, it is misleading to simply divide the number of matters considered by the duration of the meeting and present that figure as the time taken to consider each matter.

In any event, the establishment of a sub-Committee would probably require statutory amendment as the current Act requires a quorum of five members for the ORC to effectively discharge its functions. Any sub-committee of the ORC would need to consist of the same number of members if it were to discharge the ORC's functions. A sub-committee of less than five members would have to report to a properly constituted ORC which would have to demonstrate that it had appropriately considered each matter. There are also potential problems in distinguishing between serious and minor complaints.

Finally, caution should be taken in comparing the ICAC with the Hong Kong ICAC. The Hong Kong ICAC has wider jurisdiction (including police and the private sector) and is a

significantly larger organisation (the Annual Report 2002 shows the staffing level to be 966 and number of investigations to be 4989 in addition to receiving 4,385 complaints). Therefore the necessity for a sub-committee to support the Hong Kong ICAC ORC is much more compelling than is the case for the NSW ICAC.

45. *Annual reporting of the Operations Review Committee function*

Question: The ICAC Committee in its 1992 report considered that the Operations Review Committee should be making an annual report to Parliament detailing its activities. This apparently was never acted upon. The annual report of the Independent Commission Against Corruption contains 2 pages concerning the performance of the oversight functions of the Operations Review Committee, which are mostly taken up with details of the membership of the Operations Review Committee and a description of its statutory functions. The description of the work that the Operations Review Committee performed during 2001-2002 merely lists the number of matters brought by the Independent Commission Against Corruption to the Operations Review Committee. Is this adequate in view of the importance of the statutory role of the Operations Review Committee. Can you comment?

Response: The ICAC is of the view that there is adequate reporting on the Operations Review Committee (ORC) contained within the ICAC Annual Report. It should be noted that the 2001-2002 report lists, in addition to the matters brought before the ORC, the decisions of the ORC (see p. 63 of the Annual Report).

The importance of the ORC cannot be measured by the amount of text assigned to it in the Annual Report. The function of the ORC is to advise the Commission whether investigations should be discontinued as well as some additional matters. The number of matters going before the ORC and the decisions of the ORC gives an estimation of the work performed. The only other area of possible reporting would be to include details of its discussions and advice on particular matters and this is not considered to be appropriate.

46. *Public reaction to the results of ICAC inquiries*

Question: In the annual report at page 38, you mentioned that the Rockdale City Council hearings had given rise to reports of council staff being subject to abuse from members of the public. Has this occurred in the case of any other inquiries or investigations conducted by the Independent Commission Against Corruption?

Response: The Commission is not aware of any other cases related to ICAC investigations where staff of a public authority was subject to abuse.

47. *Communication with non-English speaking background communities*

Question: I refer to page 12 of the annual report. As a result of the research you commissioned with Cultural Partners Australia, what strategies have you put in place to remove barriers to reporting corruption experienced by communities with a non-English speaking background?

Response: The Commission has undertaken an extensive advertising program, targeting both members of NESB communities and the ethnic media, to communicate the message that *corruption is wrong* and to inform those communities of what corruption is and how to report it.

The program has included the development of a postcard and poster display (in 12 different languages) which is currently being piloted in 35 public sector agencies and which will be subsequently evaluated. The ICAC Commissioner and ICAC staff also held a meeting with the ethnic media to provide information about the ICAC and to promote good relations and ongoing communication between the ICAC and ethnic media outlets. The event resulted in a number of reports in Spanish, Thai, Korean and Chinese community newspapers, including a feature story in the *Australian Chinese Daily's* weekly magazine supplement. A radio campaign was also run in 25 community languages, along with the distribution of brochures and posters on corruption and crime throughout the state. Further details of these initiatives are in the Annual Report for 2002-2003 which is to be tabled on 31 October 2003.

It is also worth noting that in handling complaints the Commission uses the services of interpreters and translators as required.

48. Use of professional cost benefit studies to measure publication impact

Question: During 2001-2002 the Independent Commission Against Corruption published at least twelve (12) corruption prevention publications. This no doubt is an ongoing practice. Has the Commission ever carried out a professionally designed cost benefit study to measure the impact and public benefit arising from these publications?

Response: The Commission has not undertaken a professionally designed cost benefit study as described.

The Commission does, however, conduct evaluations in different ways to assess its work. For example, evaluation sheets are included in every hard copy prevention publication released. The ICAC also assesses the effectiveness of other corruption prevention activities such as the Regional and Rural Outreach Strategy (RAROS). For each RAROS, the ICAC collects feedback from participants attending training sessions and other activities via feedback forms and post tour interviews. These data are collated into an evaluation report for each RAROS tour.

The ICAC is currently considering some market research with public sector organisations to ascertain how our publications are distributed within and used by public sector organisations and whether they could be made more helpful in form or content.

49. *Improvement of corruption management systems*

Question: Where the Commission makes a finding of corrupt conduct in relation to the officers of an organisation is it then your practice to examine the adequacy of the plans to manage corruption in that organisation?

Response: Generally yes but this depends on the nature of the findings. The systems and measures of a public authority to manage corruption will be considered as part of the investigation. Where deficiencies are identified, recommendations are made for improvement. The implementation of corruption prevention recommendations is monitored and the status of implementation is published on the ICAC website.

SUPPLEMENTARY WRITTEN QUESTIONS FROM MR BARRY O'FARRELL MP

50. *Parliamentary Committee examination of 2001/02 annual report*

Question: Is the Commission concerned that examination of the 2001/02 annual report occurred in 2003 and not in the year the report was tabled?

Response: This question relates to a decision of the former Committee. The Commission respects the Committee's decisions.

51. *PJC annual hearings*

Question: Does the ICAC regard its annual general hearings with the PJC as a key public accountability measure?

Response: Hearings with the PJC are an important part of the Commission's accountability measures.

52. *Political commitment to the ICAC*

Question: By what measures or benchmarks does the Commission judge the political commitment of the (i) Parliament or (ii) Government to the ICAC?

Response: There are no formal measures in place to judge such matters.

53. *Performance measurement of political commitment*

Question: Has the Commission considered including a performance indicator assessing political commitment to fighting corruption in its annual report?

Response: No. The degree of political commitment is an inherently subjective matter and open to differing interpretations. It does not appear to be amenable to performance measurement.

54. *Requests from NSW Parliament for ICAC advice*

Question: Did officers of the NSW Parliament (ie Presiding officers, Clerks or others) seek ICAC advice during the year? If so on how many occasions?

Response: Officers of the NSW Parliament sought advice from ICAC on three occasions during the year.

55. *Parliamentary Ethics Commissioner*

Question: Did the Parliamentary Ethics Commissioner seek advice or otherwise contact the ICAC during the year? If so, on how many occasions?

Response: The Parliamentary Ethics Adviser did not seek advice from the ICAC during 2001-2002.

56. *Complaints concerning MPs*

Question: How many complaints concerning MPs were received during the year?

Response: Approximately fifteen complaints concerning MPs were received during the year.

57. *Complaints concerning Ministers and Parliamentary Secretaries*

Question: How many complaints concerning Ministers or Parliamentary Secretaries were received during the year?

Response: Approximately eight complaints received during the year concerned Ministers or Parliamentary Secretaries.

58. *Complaints concerning MPs Code of Conduct and Pecuniary Interests Register*

Question: Were any complaints or queries received by the ICAC during the year in relation to either the MPs Code of Conduct or Pecuniary Interests Register? If so how many (for each)?

Response: No complaints or queries identified related to breaches of the pecuniary interests register.

Determining how many complaints or queries related to breaches of the MPs Code of Conduct is difficult. Potentially all complaints relating to Members' conduct as MPs could come within the scope of the Code of Conduct. None of the complaints or queries, following assessment and/or investigation resulted in a finding of corrupt conduct as defined by sections 8 and 9 of the ICAC Act.

59. Effectiveness of MPs Code of Conduct and Pecuniary Interests Register

Question: Did the ICAC have any occasion to assess or review the effectiveness or appropriateness of either the MPs Code of Conduct or Pecuniary Interests Register during the Year?

Response: No.

60. ICAC contact with NSW Parliament

Question: Did the ICAC initiate any contact with the NSW Parliament during the year in pursuit of its anti-corruption role or in relation to accountability or transparency generally? If so, on how many occasions?

Response: No.

61. NSW Parliament and Freedom of Information laws

Question: Does the ICAC view the exemption of the NSW Parliament from the State's Freedom of Information laws as consistent with its commitment to transparency and accountability as a means of corruption prevention?

Response: The regulation of Parliament is a matter for the Parliament and the Commission does not presume to comment on the appropriateness of such regulation outside of a specific investigation or project involving a detailed and careful study.

62. ICAC staff - personal particulars and financial interests

Question: In view of section 3 of the ICAC's Code of Conduct and Ethics, September 2002, can the Commission advise:

- whether a register is kept of the personal particulars and financial and other interests of staff
- how often staff are required to update their particulars
- whether the register is kept electronically or in hard copy
- who is entitled to access the register
- whether consideration has been given to making the register accessible via the ICAC's website?

Response: Staff are required by statute to make extensive disclosure of their personal and financial interests as well as their involvement in private activities that could give rise to a conflict of interest. Staff are required to update their particulars where there is a substantial change in their status. The full disclosures are kept in hard copy although the Risk Management Adviser does make electronic records of salient disclosures which can be electronically searched. The details are accessible by the Risk Management Adviser and his staff and are available to the Commissioner but not generally within the Commission. The privacy clause in the security vetting forms completed by staff sets out the undertaking given to staff regarding their private and personal information:

In conducting the probity assessment, the Commission collects information about you to determine your suitability for a probity clearance. This information may be obtained from you or other parties. There are laws to protect the privacy of individuals in relation to this information and to keep the information confidential.

All information and documentation requested will be held in strict confidence and used only for the purpose of the current probity assessment process. Your information is only available to a small number of ICAC staff whose official duties include performing vetting functions or approving your probity assessment.

In addition there is a rigorous disclosure of conflict of interest regime in place.

Consequently, no consideration has been given to public electronic access to the material – the disclosures are extensive and contain private and confidential details.

63. ICAC staff - political activities

Question: Does the register include any political involvement by Commission staff?

Response: As indicated in item 19 above, staff are required to disclose their involvement in private activities that could give rise to a conflict of interest. This would include membership of a political party.

64. ICAC staff – drug and alcohol policy

Question: Does the ICAC have a policy in relation to illegal drug use or alcohol abuse by staff? Are staff subject to random drug or alcohol tests?

Response: The Commission's Code of Conduct sets out behaviour principles for employees to uphold, and prescribes specific conduct and behaviours in areas considered central to the exercise of the Commission's functions. It presumes that employees will act in a lawful manner and Clause 6 of the Code specifically states that employees have an obligation to ensure that personal use of alcohol or other legal drugs does not affect their performance or safety or the performance or safety of others. Employees should be aware that the consumption of alcohol or other drugs can adversely affect the image of the Commission in its dealings with others.

A policy on Managing Alcohol and Other Drugs has recently been drafted and is currently under consideration by the Executive.

At this stage the ICAC has not formally considered nor implemented random drug or alcohol testing of staff. It should be noted that unlike police, ICAC officers do not routinely carry weapons nor are they able to engage in high-speed vehicle pursuits.

65. Area Health Services – work with the ICAC

Question: Pages 51 and 52 of the 2001/02 annual report refer to ICAC's work with Area Health Services:

- what progress has been made in working with Area Health Services
- have the number of complaints or reports of corrupt conduct fallen from the 85 noted in the report
- have the areas covered by these complaints or reports of corrupt conducted changed from those reported.

Response: An update on the progress of this project will be included in 2002-2003 Annual Report to be tabled on 31 October. During 2002-2003 we have been planning the project with the Department of Health and the project has now commenced. While the project was being planned we have continued to work with individual area health services to deal with reports or complaints of suspected corrupt conduct and to provide advice about a range of issues.

Since the figures reported in the 2001-2002 Annual Report we have obtained more accurate data about the number of complaints or reports received by the ICAC about area health services and hospitals. This has occurred because we have reviewed all of these complaints and reports as part of the establishment of the health project. The number of complaints and reports about area health services and hospitals for the last five years are included in the table below.

Financial year	Number of health complaints and reports	Proportion of total number of complaints / reports received by the ICAC
1998-1999	136	7.8%
1999-2000	111	6.9%
2000-2001	108	7.2%
2001-2002	97	6.4%
2002-2003	119	6.3%

The most common types of corrupt conduct associated with the allegations included in these reports or complaints of corrupt conduct are included in the table below for the last three years.

2000-2001	2001-2002	2002-2003
Misuse of public resources (31.3% of total allegations for 2000-2001))	Misuse of public resources (31.2%)	Misuse of public resources (31.2%)
Fraud (12.5%)	Harassment/victimisation (10.6%)	Harassment/victimisation (10.6%)
Harassment/victimisation (10.4%)	Favouritism (10.6%)	Breach of policy or procedure (10.6%)
Favouritism (7.3%)	Fraud (9.2%)	Favouritism (9.5%)
Failure to take action (7.3%)	Breach of policy or procedure (5.0%)	Fraud (7.9%)
Breach of policy or procedure (7.3%)	Improper use of information (5.0%)	Conflict of interest (5.3%)

The most common types of workplace activity associated with these allegations are included in the table below for the last three years.

2000-2001	2001-2002	2002-2003
Provision of consumer care (20.8% of total allegations for 2000-2001)	Provision of consumer care (13.5%)	Purchase of goods and services (10.1%)
Use of public resources – materials / equipment (7.8%)	Purchase of goods and services / tendering (12.8%)	Staff management (10.1%)
Cash handling (7.3%)	Treatment of co-workers (7.8%)	Cash handling (9.0%)
Staff management (5.7%)	Use of public resources – materials / equipment (7.1%)	Provision of consumer care (7.4%)
Treatment of co-workers (5.7%)	Use of public resources – time (5.7%)	Other (7.4%)

2000-2001	2001-2002	2002-2003
Use of information (5.7%)	Use of public resources – vehicles (5.7%)	Treatment of co-workers (6.3%)
Use of public resources – accounts (5.7%)	-	-

66. Area Health Services - protocols for complaints

Question: Is the Commission satisfied that Area Health Services have appropriate protocols for dealing with complaints received from staff or whistleblowers?

Response: Policies and procedures for dealing with protected disclosures and workplace grievances in area health services are set down by the Department of Health. The Department of Health has issued a number of relevant circulars that specify the policies area health services are required to put in place, and provide guidelines about the development and implementation of such policies. These circulars include:

- principles and guidelines for the development of protected disclosures procedures in health services (Circular 98/101)
- policy framework and best practice guidelines for the development of health service grievance management systems (Circular 99/45).

The Department of Health circular on the development of policies to deal with protected disclosures is comprehensive. It is in accordance with the guidelines from the Ombudsman and ICAC. This includes nominated reporting channels, protection against detrimental action, and communicating and implementing relevant procedures.

While the Department specifies these policies, and requires area health services to put in place systems for dealing with protected disclosures and workplace grievances, it is up to individual area health services to implement these systems.

67. Appendix 3 of the 2001/02 annual report

Question: In view of the large number of notations reading 'awaiting outcome', can the Commission provide an update to Appendix 3 of its 2001/02 annual report?

Response: A full update will be provided as an appendix to the 2002-2003 Annual Report which is currently scheduled to be released on 31 October 2003.

68. Effectiveness of Corruption Matters

Question: By what means did the Commission evaluate the 'effectiveness' of *Corruption Matters* (cf answer to question on notice 7)?

Response: The evaluation was conducted by distributing a one page questionnaire to 300 recipients of the newspaper. These recipients were selected from across the ICAC mailing lists. One hundred and five responses were received (response rate = 35%). One of the questions asked respondents about approximately how many people within their organisation read *Corruption Matters*. The 105 respondents stated that 635 people read the newspaper. This was an average of six readers per copy sent to each respondent.

69. Anonymous complaints

Question: The answer of question on notice 24 seems to draw a distinction between signed and anonymous complaints. Are anonymous complaints treated differently by Commission staff?

Response: Question 24 concerned the handling of protected disclosures and, in particular, the provision of information which might identify the complainant when the complaint was sent to the public authority the subject of the complaint to investigate. When a person making a protected disclosure identifies themselves, the *Protected Disclosures Act 1994* requires ICAC to obtain the written consent of the complainant before referring the complaint to another agency. Obviously, where the complainant is anonymous, there is no way their written consent can be obtained.

Finally, all complaints, regardless of whether the source is identified or not, are subject to the same procedures for assessment. Anonymous complaints are assessed against the same criteria applied to those where the complainant is identified.

70. ICAC report recommendations

Question: The answer to question on notice 25, in relation to recommendation 7 Liverpool CC, implementation is described as '...very difficult to police...'. Does the ICAC have regard to practicality of recommendations when making a report? Should it?

Response: We always consider the practicalities of recommendations when providing corruption prevention recommendations in an investigation report. Recommendations are informed by the existing policies, procedures and systems of the organisation, as well as the specific circumstances of the investigation.

The response from Liverpool City Council that waste dumping is a difficult area to police does not imply that the recommendation of spot checks is impractical. We recognised that

problem and suggested a way to address it. Liverpool City Council also report that they are conducting periodic checks of their waste dumping services.

71. *Dubbo City Council guidelines*

Question: In relation to recommendation 13 Dubbo City Council, have the guidelines been clarified?

Response: Recommendation 13 concerns the need for guidelines regarding post-separation employment. Dubbo Council report that they are planning to include guidelines on post-separation employment in a revised code of conduct. We reviewed a draft code of conduct from Dubbo Council in September 2002. This draft includes provisions about post-separation employment, including not using positions to further future employment opportunities, relationships with former colleagues, and not being influenced by former colleagues.

72. *Activity-based costings*

Question: When will the Commission introduce activity-based costings for operations?

Response: As advised in answer to question 36 on notice, the ICAC intends to undertake a pilot project to assess the implications of introducing activity based costing. There are serious questions around the efficiencies of ICAC officers recording the time spent on individual matters and the systems required to capture this information. These issues will be explored before any decision to introduce activity based costing.

SUPPLEMENTARY WRITTEN QUESTION FROM MR JOHN MILLS MP

73. *Other Operating Expenses*

Question: In the Statement of Financial Performance at page 72 of the Annual Report for 2001-2002 the budget for employee related expenses was 4.4 million but the actual expenses were 6.9 million dollars. Will you please explain the reason for the difference.

Response: The amounts referred to concern the 'Other Operating Expenses' item for 2001-2002 of \$6.9m compared to the budget of \$4.4m. The difference of \$2.5m, largely relates to the following additional expenditures:

- cost of relocation from Redfern premises to Castlereagh Street, Sydney of \$1.426m
- a loss provision for the lower than anticipated three year sub-lease rental of the Redfern premises of \$643,000

- rental paid in advance for the Redfern premises of \$204,000 that related to a proposed rental incentive for the new Redfern tenant
- higher than budgeted outgoings for rented accommodation of \$148,000
- higher recruitment advertising costs of \$64,000 to fill newly created or vacant positions following the restructure of the Commission.

QUESTIONS ON NOTICE

QUESTIONS TAKEN ON NOTICE FROM MR BARRY O'FARRELL MP

74. Standard of proof

Question: By reference to the prosecution schedule in last year's report if the Commission were to require the same standard of proof necessary to make a finding of corrupt conduct as that necessary to establish the guilt or otherwise of a person for criminal offence then there wouldn't be as many notations in the schedule noting advice back from the DPP of "insufficient evidence".

The relevant transcript is as follows:

Mr O'Farrell MP: I am simply saying that as long as that appears in your reports, that is going to be a bone of contention, both I suspect between the PJC and the commission, as well as those in the community who do not support the commission ... and shouldn't we be seeking to remove the problem? If you want to take it on notice, that is fine.

Response: In Australia there are traditionally two standards of proof: one relating to criminal matters, the other to civil matters.

ICAC investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the ICAC is similar in standing to a royal commission and its investigations and hearings have most of the characteristics associated with a royal commission. The standard of proof in royal commissions is known as a state of 'reasonable satisfaction'.

This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. This is the standard which has been applied consistently in the ICAC. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

'... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters `reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.' (at 362)

These comments together with later case law dealing with the subject make it clear that the so-called 'Briginshaw' test as an evidentiary standard remains an onerous one. The degree of reasonable satisfaction referred to is also necessarily linked to the circumstances of the particular subject matter under consideration.

As was indicated in its answer to question 19 on notice the ICAC is first and foremost an investigative body. This is reflected in the ordering of the primacy of its functions as set out in section 13 and 14 of the ICAC Act and as referred to in answer to Question 19.

It has also often been stressed that bodies like the ICAC are inquisitorial in nature and are specifically precluded from making findings of guilt for criminal offences against persons. Indeed section 74B of the ICAC Act specifically prevents the ICAC from including in its reports findings of this kind and section 74B(2) makes it clear that a finding that a person has engaged in corrupt conduct is not a finding that the person is guilty of a criminal offence.

For the Commission to change its standard of proof to that required for establishing a criminal offence would not only put it out of step with other like bodies and (perhaps arguably) offend section 74B but also give rise to the (undesirable) perception that the ICAC does make findings of guilt for criminal conduct against persons it investigates.

It is also worthy of note that when considering whether there is sufficient evidence to support prosecution action the prosecution policy of the DPP also does not require that the evidence establishes the particular offence to a standard of proof beyond a reasonable doubt (see paragraph 5 of the DPP, NSW Prosecution Policy)

There are also sound policy reasons why bodies such as the ICAC have a differing standard of proof for the purpose of findings it makes as opposed to that applicable in a criminal court, in particular:

- the nature of the proceedings for an inquisitorial body such as the Commission compared to the traditional adversarial nature of court proceedings
- the range of possible sanctions that may be imposed flowing from each body's respective findings
- differing rules of admissibility of evidence.

In relation to the latter point a change in the evidentiary standard of proof required by the ICAC without a corresponding change in the rules dealing with the admissibility of the evidence to make those findings would be of little practical value. Section 17 of the ICAC Act, which provides that the ICAC is not bound by the rules of evidence, also makes it clear that the primary role of the ICAC is as an investigative body.

To the extent that there has been inconsistency in recommendations by the ICAC for prosecution action and DPP advice on those recommendations the ICAC considers that this is best addressed by its changed focus to collecting admissible evidence to sustain prosecution proceedings arising from its investigations but as a separate issue from the standard to be applied in the conduct of its hearings. It is envisaged that this will be reflected in the outcomes for prosecution recommendations as per the schedule for the 2002-03 reporting year.

It should also be noted that disciplinary proceedings arising from ICAC investigations do not require the criminal standard of proof.

75. *Transparency and accountability*

Question: Taken from page 23 of the public hearing transcript. Are you satisfied, for the reporting year [2001-2002] we are talking about, that the departments of Parliament fulfilling the role of public sector organisations were active enough in pursuing the twin objectives of transparency and accountability?

Response: During the reporting year 2001-2002, the Commission did not have the occasion to examine the conduct of the departments of Parliament in relation to their activities in pursuing transparency and accountability. In these circumstances, it would not be appropriate to venture an opinion.

QUESTION TAKEN ON NOTICE FROM MS KRISTINA KENEALLY MP

76. *Compliance with Action Plan for Women*

Question: Taken from page 18 of the public hearing transcript. The annual report does not seem to comply with legislative requirements in relation to the New South Wales Government Action Plan for Women. I am curious as why that is the case and what steps you might take next year to ensure that that happens?

Response: The Commission's research to date into community awareness of corruption prevention reporting and the role of the ICAC has only identified community members from a non-English speaking background as a group requiring the ICAC to develop separate strategies or initiatives relating to corruption prevention reporting.

Consequently for 2001-2002 the Commission had no strategies or initiatives that specifically targeted the needs of women as complainants or clients for submission as an Action Plan for Women to the Department of Women. Accordingly, there was no Action Plan for Women to report upon in the 2002 Annual Report.

As indicated on page 109 of the Annual Report, our strategies relating to female staff are covered in the Commission's EEO Plan which included the promotion of workplaces that are safe, equitable and responsive to all aspects of women's lives by adopting flexible work practices such as flexible working hours, part-time and job sharing arrangements and leave for family and carers' responsibilities. Also the Commission's 'Working from Home' policy enables applications from staff to work from home due to carers' responsibilities. Although this policy applies to all Commission staff, it will enable the Commission's female staff who were the major users of leave specifically for carer's responsibilities, to have greater flexibility to balance work and family commitments.

For 2002-2003 the Commission's Annual Report will include a separate section on activities and initiatives in relation to women.

QUESTION TAKEN ON NOTICE FROM THE HON. KIM YEADON MP

77. Advice from Mr Sully QC regarding the ORC

Question: Taken from page 19 of the public hearing transcript. Was it not the case that advice was sought from Mr Sully QC in relation to two provisions of the [ICAC] Act that when read together could have been ambiguous and he came down with an opinion in relation to that ambiguity but beyond that it has never really been tested in the courts. If it was tested in the courts, what would be the result if those proceedings found that the commencement or continuing conduct of an investigation required the approval of the ORC?

Response: The Committee in its *Report on the Operations Review Committee and Assistant/Deputy Commissioners* published in July 1992 previously considered the issue of the interpretation of section 59(1) of the ICAC Act.

At paragraph 2.4.2 of that Report the Committee noted that advice had been sought from Mr Sully QC (now Justice Sully of the Supreme Court) on the interpretation of section 59(1)(a) of the ICAC Act. Mr Sully's advice, as the Report noted was that when read with ss10 and 20(4) of the ICAC Act, s59(1)(a) should not be interpreted as requiring the ICAC to consult the ORC before commencing an investigation.

A copy of that advice was included in the Appendix to that Report and further copy is provided with these answers.

At paragraphs 2.4.3-2.4.4 (p. 12) the Committee made the following comments based on that advice;

The Committee does not dispute Mr Sully's advice of 13 March 1989. Indeed it would be unduly cumbersome if the ICAC had to consult the ORC before commencing all investigations. In many cases there will be a need for the Commissioner to make a quick decision to authorise an investigation - a delay in such action until the next ORC meeting could result in serious consequences for a potential investigation. Furthermore, the ICAC has developed what would appear to be appropriate procedures to ensure the ORC is advised at the earliest opportunity of newly commenced investigations and thereafter kept informed of progress on a three monthly-basis. The ORC retains its power to recommend discontinuance in respect of these investigations.

However the Committee is concerned that s59(1)(a) is ambiguous. The Committee is of the view that it is not acceptable for the section of the Act which sets out the functions of one of the key accountability mechanisms to require the opinion of a QC to be properly construed...

Based on these observations the Committee concluded at paragraph 2.5.2 (p. 13) of the Report that:

...section 59(1)(a) be amended to clearly state the functions of the ORC and provide for an orderly manner in which investigations can commence.

The ICAC endorses those observations which apply equally to its work today. The ICAC would also support an amendment to section 59(1)(a) as recommended by the Committee in 1992. Any interpretation of the Act requiring the ORC to approve the commencement of an investigation would be cumbersome to the extent of being unworkable.

APPENDIX A EXAMPLE OF THE OPERATIONS REVIEW COMMITTEE AGENDA AND MINUTES

MEETING PAPERS – 12 October, 2001

1. Consideration of Matters of Meeting of 7 September, 2001

The draft Minutes of the previous meeting is included as Attachment 1.

2. List of Formal Scope and Purpose for Current Investigations

The number of approved formal scope and purpose investigations stand at 164. A list of current investigations is included in Attachment 2.

3. Reports on Formal Scope and Purpose Investigations

Attachment 3 provides progress reports of Formal Scope and Purpose Investigations.

4. Schedule of Matters Considered by Assessment Panel (Concerning Non Commencement of Investigation)

The purpose of the Assessment Panel is to examine individual matters received by the Commission which convey of attempt to convey information about corrupt conduct for the purpose of making an initial assessment. This initial assessment will recommend whether a matter:

- warrants preliminary inquiry from investigative or preventative perspective;
- is or appears to be outside jurisdiction;
- is within jurisdiction but does not warrant attention by the Commission; or
- should be the subject of some initial enquiries before a determination can be made.

5. Reports concerning Non Commencement of Investigation

Before deciding not to commence an investigation of a complaint the Commission must consult the Committee in relation to the matter.

Details of the complaints which the Commission does not propose to commence an investigation are set out ion Attachment 5.

6. Status Reports on Section 10 Complaints

Status Reports in relation to s10 complaints are located at Attachment 6.

7. Schedule of Outstanding Matters Older than 6 Months

Attachment 7 provides details of matters where reports concerning non-commencement of investigation remain outstanding. This schedule will be updated for each meeting.

8. Schedule of Outstanding Further Reports Requested by the ORC Concerning Non Commencement of Investigation

Attachment 8 provides details of matters where further reports remain outstanding. This schedule will be updated for each meeting.

9. Further Reports Requested by the ORC Concerning Non Commencement of Investigation

In accordance with the advice of the Committee, Further Reports are submitted in relation to the complaints described in Attachment 9.

10. Schedule of Matters Classified as Information

Matters received by the Commission which are classified as information only are reported as Attachment 10.

11. Graphs of Monthly Stats & Special Reports & General Action Items

The statistics are located in Attachment 11.

EXAMPLE OF ORC MINUTES

MINUTES OF THE 134th MEETING OF THE OPERATIONS REVIEW COMMITTEE HELD ON 12 OCTOBER, 2001 AT THE OFFICES OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION, 191 CLEVELAND STREET, REDFERN, NSW

Meeting commenced at 2.25 pm

Attendance:

[NAMES]

Apologies:

[NAMES]

1. Confirmation of Minutes of Meeting held on 7 September, 2001

The minutes were confirmed as a true and accurate record.

2. Scope and Purpose Investigations of the Commission

The Committee noted the list of current formal investigations.

The Committee considered the following Progress Reports on Investigations and accepted the recommendations made without alteration.

1. Operation [x] (No.148) – recommendation to continue investigation
2. Operation [x] (No.160) - recommendation to continue investigation
3. Operation [x] (No. 161) – recommendation to continue investigation
4. Operation [x] (No. 162) – recommendation to continue investigation
5. Operation [x] (No. 163) – recommendation to discontinue investigation

3. Schedule of Matters Considered by Assessment Panel concerning Non Commencement of Investigation

The Committee considered the following Assessment Panel Schedule:

1. E01/0380
2. E01/0385,
E01/0386,
E01/0425,
E01/0427
3. E01/0540,
E01/0784
4. E01/0543
5. E01/0597
6. E01/0607
7. E01/0749
8. E01/0755
9. E01/0777
10. E01/0785
11. E01/0827
12. E01/0835
13. E01/0839
14. E01/0878
15. E01/0881
16. E01/0883
17. E01/0886
18. E01/0891
19. E01/0894
20. E01/0899
21. E01/0900

Appendix A

22.E01/0902
23.E01/0905
24.E01/0910
25.E01/0911
26.E01/0915
27.E01/0924
28.E01/0925
29.E01/0927
30.E01/0934
31.E01/0938
32.E01/0939
33.E01/0942
34.E01/0943
35.E01/0951
36.E01/0952
37.E01/0955
38.E01/0956
39.E01/0959
40.E01/0961
41.E01/0963
42.E01/0966
43.E01/0968
44.E01/0971
45.E01/0972
46.E01/0974
47.E01/0978
48.E01/0981
49.E01/0986
50.E01/0988
51.E01/0997
52.E01/0998
53.E01/1001
54.E01/1003
55.E01/1019

The Committee accepted the recommendations made subject to the following:

- In relation to Complaint Nos. E01/0385, E01/0386, E01/0425, E01/0427 the Committee accepted the recommendation but requested that the matter be forwarded to the [ORGANISATION] for information.
- In relation to Complaint No. E01/0540 and E01/0784 the Committee accepted the recommendation but requested that the matter also be forwarded to the [ORGANISATION] for information.
- In relation to Complaint No. E01/0755 [MEMBER] declared a conflict of interest in relation to the matter and this made an insufficient quorum at the meeting. The matter will be considered at the November meeting.

- In relation to Complaint No. E01/0910 the Committee accepted recommendations 1 and 2 but requested that the matter be referred to the [ORGANISATION] pursuant to Section 53/54.

4. Reports Concerning Non-commencement of Investigation

The Committee considered the following Reports Concerning Non-commencement:

1. E00/0705
2. E00/1033
3. E00/1240
4. E00/1254
5. E00/1255
6. E00/1449
7. E01/0119
8. E01/0205
9. E01/0256
10. E01/0301,
E01/0306,
E01/0593
11. E01/0339
12. E01/0370,
E01/0373,
E01/0375
13. E01/0522
14. E01/0526
15. E01/0666,
E01/0675,
E01/0763,
E01/0698,
E01/0699
16. E01/0736
17. E01/0874
18. E01/0880

The Committee accepted the recommendations made subject without alteration in respect of the following:-

- In relation to Complaint No. E00/1033 the matter was withdrawn and the Committee requested that it be resubmitted for the November meeting.
- In relation to Complaint No. E01/0526 the Committee accepted the recommendation but requested that it be forwarded to Corruption Prevention Education & Research for their consideration of the systemic issues arising from this matter.

Section 10 Status Reports

The Committee noted the following Status Reports.

1. E00/0555
2. E00/0687
3. E00/1140
4. E00/1164
5. E00/1261
6. E00/1412,
E01/0114
7. E00/1433
8. E01/0017
9. E01/0107
10. E01/0166
11. E01/0196
12. E01/0210
13. E01/0214
14. E01/0233
15. E01/0348
16. E01/0379,
E01/0702
17. E01/0414
18. E01/0482,
E01/0483
19. E01/0567
20. E01/0574

5. Schedule of Outstanding Matters Older than 6 Months

The Committee accepted the recommendation for the one Outstanding Matter Older than 6 Months without alteration.

1. E01/0584

6. Schedule of Outstanding Further Reports Requested by ORC (Concerning Non Commencement of Investigation)

No reports received

7. Further Reports Requested by ORC Concerning Non Commencement of Investigation

The Committee considered the following Further Reports Concerning Non Commencement of Investigation and accepted the recommendations without alteration.

1. E00/1256, E00/1356
2. E00/1304

8. Schedule of Matters Classified as Information

The Committee noted the following Schedule of Information:

- | | | |
|-------------|--------------|--------------|
| 1. E01/0743 | 8. E01/0817 | 15. E01/0896 |
| 2. E01/0751 | 9. E01/0821 | 16. E01/0903 |
| 3. E01/0759 | 10. E01/0844 | 17. E01/0904 |
| 4. E01/0762 | 11. E01/0861 | 18. E01/0908 |
| 5. E01/0770 | 12. E01/0868 | 19. E01/0909 |
| 6. E01/0809 | 13. E01/0882 | |
| 7. E01/0810 | 14. E01/0889 | |

9. Special Reports and General Business

- [MEMBER] brought to the attention of the Committee that she has been receiving on a number of occasions correspondence from complainant, [NAME]. The Committee agreed that the Commission will respond to [NAME] advising all correspondence received will be dealt with by the Commission and all information forwarded by [NAME] will be presented to the ORC meeting on 2 November, 2001.

The meeting concluded at 4.15pm.

APPENDIX B REPORTING TO THE OPERATIONS REVIEW COMMITTEE

PROCEDURE NO. 9

01 **PURPOSE**

The purpose of this document is to define the procedure for reporting matters to the Operations Review Committee “the ORC”.

02 **LEGISLATIVE PROVISIONS**

Section 58 of the Independent Commission Against Corruption Act 1988 ("the Act") constitutes an Operations Review Committee. Sections 59 and 60 of the Act provide for functions and membership. These sections are reproduced below:

2.1 Functions

Section 59

- (a) *The functions of the Operations Review Committee are as follows:*
- (i) *to advise the Commissioner whether the Commission should investigate a complaint made under this Act or discontinue an investigation of such a complaint; and*
 - (ii) *to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.*
- (b) *The Commissioner shall consult with the Committee on a regular basis, and at least once every 3 months.*

2.2 Membership

Section 60

The Operations Review Committee shall consist of 8 members, being the following:

- (a) *the Commissioner, who shall be Chairperson of the Committee;*
- (b) *an Assistant Commissioner, nominated by the Commissioner;*
- (c) *the Commissioner of Police;*
- (d) *a person appointed by the Governor on the recommendation of the Attorney-General and with the concurrence of the Commissioner; and*

- (e) *4 persons appointed by the Governor on the recommendation of the Minister and with the concurrence of the Commissioner, to represent community views.*

03 TERMS OF REFERENCE OF THE OPERATIONS REVIEW COMMITTEE

The Terms of Reference, as agreed by the Commissioner and the Committee, are:

- (a) to advise the Commissioner whether the Commission should discontinue or not commence an investigation of a complaint;
- (b) to advise the Commissioner at least every three months whether the Commission should continue an investigation;
- (c) to advise the Commissioner whether the Commission should discontinue an investigation conducted on its own initiative or on a report made to it;
- (d) to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee, and
- (e) to bring to the attention of the Commissioner any matters relating to the Operations of the Commission which the Committee considers important.

Quite apart from the fact that the Committee has a legislative role, the Commission views the Committee as playing an important role in assisting the Commission to ensure the integrity of its investigative functions consistent with the relevant provisions of the Act.

04. SECRETARIAT SUPPORT TO THE OPERATIONS REVIEW COMMITTEE

The responsibilities for secretarial and administrative support to the ORC are shared jointly between the Secretary/Project officer to the Director of Legal and the Personal Assistant to the Commissioner/Deputy Commissioner. The shared responsibility reflects the importance the Commission ascribes to the work of the Committee and ensures preparation for Committee meetings will not be jeopardised by the absence or unavailability of either officer.

The joint responsibilities of these positions are as follows:

- . the collation and co-ordination of monthly meeting papers for the Committee including the taking of minutes at the monthly meetings;
- . liaison with the Commission's Executive in relation to the adequacy of Commission policies and procedures regarding the servicing and support of the Committee;
- . maintaining awareness and keeping Commission staff constantly informed of the reporting requirements and standards of the Committee;

- . assisting the Director of Legal in conducting quarterly audits of all reports submitted to the Committee and their associated files and any external audits;
- . preparing relevant briefing papers, special reports and statistical information;
- . providing feedback to Commission staff of comments made by the Committee in relation to reports submitted.

05 CATEGORIES OF REPORTS

Eight categories of reports are presented to the ORC and existing templates have been reviewed to ensure each provides consistency and clarity. The templates are located on the ICS under the “ORC Reports” option.

The categories are:

Matters Recommended for Non-Commencement of Investigation by the Assessment Panel;
Report concerning Non-commencement of Investigation;
Further Report requested by ORC concerning Non-commencement of Investigation;
Status Report concerning Section 10 Complaints (including protected disclosures);
Status Schedule concerning Section 10 Complaints (including protected disclosures).
Report on Formal Scope and Purpose Investigation;
Brief Report on Formal Scope and Purpose Investigation
Schedule of Matters Classified as Information;

5.1 Matters Considered by the Assessment Panel

Matters, which have been identified as not warranting the Commission’s attention, are reported by way of a “**Matters Recommended for Non-Commencement of Investigation by the Assessment Panel**”. These reports are prepared by the Assessments Section and are located at Tab 4 of the monthly papers.

5.2 Report concerning Non-commencement of Investigation

This report relates to a section 10 complaint of possible corrupt conduct where the matter proceeded to preliminary enquiry before the decision not to investigate was made.

These reports are located at tab 5 of the monthly ORC papers.

There must be sufficient information within the report to enable Committee members to make an informed judgement without the benefit of reference to the file or the original complaint. The report must accurately summarise the basics of the complaint, outline clearly the inquiries made, and provide an assessment to justify the recommendation(s). (See 07 “**Report Format Requirements**” below)

5.3 Further Report requested by ORC concerning Non-commencement of Investigation

The report should be prepared immediately upon completion of the further enquiries requested.

The report is located at tab 9 of the monthly ORC papers.

Matters raised by the Committee should be fully investigated promptly with a view to presenting the further report at the next available meeting.

When writing the further report the following directions may assist:

- (a) reference should be made to the initial report and if appropriate provide a copy of the initial report, otherwise the report must summarise the gist of the complaint and underline its seriousness;
- (b) the further enquiries requested by the Committee must be fully completed and detail the extent of the work carried out by Commission staff;
- (c) the assessment should traverse the additional investigations conducted and the conclusion that the matter not be investigated should be supported by adequate reasons; and

the recommendations should be clear and concise.

5.4 Status Report concerning Section 10 Complaints (including protected disclosures)

This report relates to a section 10 complaint of possible corrupt conduct where the complaint has been with the Commission for a period of six months, or 3 months in the case of a protected disclosure, and the matter has not been discontinued.

It is important to bear in mind that the purpose of this report is to provide sufficient information to enable the Committee members to understand the current position of the matter with reference to reasons for the file remaining active together with an explanation as to the Commission's need for the file to remain open.

Proposed future action should give some firm indication of the likely direction of the matter and the ultimate outcome. An anticipated timeframe for completion of the matter should also be included. Following the initial Status Report updated Status Reports should be submitted to each monthly ORC meeting until the matter is finalised.

This report is located at Tab 6 of the ORC monthly papers

5.5 Schedule of Outstanding Matters older than six months (s10 Complaints and protected disclosures)

This schedule reports exceptional cases where no Status Report has been submitted.

This schedule is located at tab 7 of the monthly ORC papers.

The schedule is intended to be brief and to the point.

Secretarial support to the ORC will advise the file holder or their supervisor where such a report is required.

It must be stressed that the Status schedule is **not** a substitute for a **"Report concerning Non-commencement of Investigation"** nor should it hinder progress of a matter to "formal" investigation, thus requiring a **"Report on Formal Scope and Purpose Investigation"**. The most appropriate category of report is to be presented to the ORC at all times. The Status schedule has been introduced as a "fail safe" method of ensuring that all complaints are dealt with in a timely fashion. Ideally this schedule should be blank as all reports should be submitted under item 5.4 above.

5.6 List of Formal Scope and Purpose Investigations.

This lists formal investigations and the dates of prior reports. In an effort to avoid preparation of duplicate **"Reports on Formal Scope and Purpose Investigation"** for subsequent ORC meetings, in cases where there have not been any significant changes to the progress of the "formal" investigation since the last report, a **"Brief Report on Formal Scope and Purpose Investigation"** need only be submitted. The report should outline the changes, if any, to the status of the "formal" investigation.

Details of the exercise of formal powers since the last report to the Committee should also be included in the report.

This report is located at Tab 2 of the Monthly ORC papers.

Note: All file numbers relating to the matters which have been incorporated into the "formal" investigation must be listed in the reports.

5.7 Report on Formal Scope and Purpose Investigation

This report is prepared in relation to a "formal" investigation, undertaken by the Commission, which is subject to a "Scope and Purpose" document. The report is prepared on a quarterly basis by the Investigator during the "investigative" phase of the "formal" investigation, and counter signed by the Team Lawyer. Responsibility for the preparation of the report rests with both the Team Investigator and Team Lawyer where a lawyer has been allocated to the matter.

The report is located behind tab 3 of the monthly ORC papers.

The sub-headings of this report are self-explanatory. The 'BACKGROUND' should encompass a resume of the events that led to the investigation and the investigation conducted and the results obtained to date. This summary should lead comfortably to the 'CURRENT POSITION/PROPOSED ACTION' portion of the report, to 'RESOURCES REQUIRED FOR INVESTIGATION' and finally the 'RECOMMENDATIONS'.

The 'CURRENT POSITION/PROPOSED ACTION' portion of the report should include a note of whether or not formal powers have been used during the period since the last 'Report on Formal Scope and Purpose Investigation' and details of any such powers.

When a final "Report on Formal Scope and Purpose Investigation" is presented with respect to a particular "formal" investigation, the recommendation should be to discontinue the investigation.

5.8 Schedule of Matters Classified as Information

This is merely a schedule of matters referred to the Commission which do not involve allegations of corrupt conduct but may be worthy of note. The schedule is in the form of short summary of each matter and is prepared by the Manager Assessments.

06 PREPARATION OF REPORTS

Responsibility to prepare reports for the Committee rests with the file holder who has carriage of the matter. Where, for example, an Investigator has conducted preliminary enquiries and so has a detailed knowledge of the conduct of the complaint to date, it will be his/her responsibility to prepare the report; similarly in the case of an Assessment Officer, Analyst, Lawyer or Corruption Prevention Officer. In the absence of a case officer his/her supervisor will be responsible for providing a summary report

07 REPORT FORMAT REQUIREMENTS

The following is an explanation of each of the major sub-headings used in preparing a "Report concerning non-commencement of investigation".

7.1 "Details of Allegations"

Under the "Details of Allegations" sub-heading, the report shall outline the gist of the complaint and allegation so that the Committee is left in no doubt as to the nature of the complaint.

The complainant's allegations should not be edited in any way. Simply articulate the allegation/s in the terms used by the complainant. Often this is a good means of providing relevant information about the complainant.

7.2 "Enquiries/Action Taken"

Under the 'Enquiries/Action Taken' sub-heading the enquiries made or action taken in relation to the complaint should be outlined briefly and should represent the basis of the author's assessment of the complaint.

Note: In the case of matters reported by schedule sub-headings 7.1 and 7.2 above are incorporated into the sub-heading "Summary".

7.3 “Assessment”

Under the "Assessment" sub-heading the assessment of the complaint should traverse the entire investigation undertaken in an easily readable form which should flow logically to reach the conclusion "that the matter not be investigated". The specific factor/s contributing to the conclusion should be highlighted so that the reader can, at a glance, understand the author's reasoning of the matter under review.

Where a matter is reported to the Commission which is of the type that falls within the ambit of another agency, the Commission will generally, in the absence of other factors, defer to those agencies.

7.4 “Recommendations”

The purpose of making recommendations is two-fold. First, to recommend that the matter not be investigated by the Commission. Secondly, to suggest any other course of action appropriate which may include referral to another agency. Care should be exercised in identifying the appropriate agency to which a matter is to be referred. It may also be the case that whilst the Commission does not intend to investigate the matter it should at least ensure that some other agency is made aware of it and pursues it if necessary.

It is desirable that there is an element of consistency in the way recommendations are formulated. This helps develop clear communications with the ORC and external agencies. However this should not prevent framing particular recommendations if justified by the circumstances of a specific matter.

For matters which are **not to be investigated** and do not require any other form of action the recommendation should be:

"That the matter not be investigated".

If it is thought appropriate to refer the matter for the attention of **another agency** then the recommendation would be two-fold.

- "1. That the matter not be investigated.**
- 2. That the matter be referred to for information".**

In this case the Commission does not require any further report.

Sometimes matters which are not to be investigated by the Commission have some interest or connection to our work. In these circumstances it may be worthwhile requesting the agency to whom the matter is referred to **advise the Commission** of any decision they make regarding the matter. In this instance the recommendation will again be two-fold.

- "1. That the matter not be investigated.**
- 2. That the matter be referred for information and that the Commission be advised of the outcome".**

In this case the agency should be requested to advise the Commission what action, if any, it takes.

Under s.53 of the Act the Commission may refer matters for investigation or other action, to agencies or organisations. This requires the approval of the Deputy Commissioner and prior consultation with the organisation. The use of s.53 imposes a statutory obligation on the organisation to conduct a particular investigation and report back to the Commission by a particular time. Matters of importance which are clearly the responsibility of other organisations to pursue may be suitable for a s.53 referral. Section 53 referral need not be reported to the ORC until the investigation by the agency has been received and assessed and it is determined that no further investigation is warranted. At that stage the matter should be reported to the ORC under paragraph 5.2. If the investigation takes longer than 6 months or 3 months in the case of protected disclosures a Status Report under paragraph 5.4 should be submitted.

08 SOME MATTERS TO CONSIDER

8.1 Complainants as sources of information

It is not up to complainants to provide a conclusive case. Section 10 of the Act only requires that the complaint "concerns or may concern corrupt conduct". The Commission has a responsibility to satisfy itself as to the accuracy of the complaint by making appropriate inquiries, and should not necessarily dismiss it simply because the complainant has not supplied specific evidence in support of the complaint. Thus the report should be clear on precisely what inquiries have been made and with what result, and accurately reflect the work that has been put into this initial stage.

8.2 What to consider when recommending the non-commencement of investigation

There should be supporting arguments to enable the conclusion to be reached that the matter not be investigated. For example, factors to be considered for recommending the non-commencement or discontinuance of preliminary enquiries may include;

- the subject of the complaint is remote in time;
- the complaint is frivolous, vexatious or not made in good faith, or;
- that the complaint would be more properly handled by another agency.

Refer to Procedure 4 in the Commission's Operations Manual entitled '**Guidelines for Recommending the Commencement or Discontinuance of Preliminary Enquiries**' for a full discussion on this subject.

09 COMPLAINTS INCORPORATED INTO A "FORMAL" INVESTIGATION

If a complaint is incorporated into a "formal" investigation a separate report need not be prepared. Such complaints will be covered by the "**Report on Investigations**".

An example of where a complaint is incorporated into a "formal" investigation would include the following cases:

- (a) the complainant/provider of the information is interviewed, which leads to further action being taken, or a decision is made to take the matter further;
- (b) people named by the complainant or the subject of the complaint are interviewed or are the subject of some other investigative work; or
- (c) the complainant and/or the subject of the complaint are called to give evidence which may result in further investigative work.

An example of where a complaint **is not** incorporated into a "formal" investigation would be where it was sent to the Investigation team, but returned with the comment that:

- (i) the complaint does not fall within the scope and purpose of the "formal" investigation; or
- (ii) the complaint falls within the scope and purpose of the "formal" investigation but the Investigation team has decided not to pursue it (for whatever reason).

In these instances a separate report must be prepared in relation to the complaint.

10 REVIEW OF REPORTS

Reports prepared by Investigators and Analysts shall be submitted through their Chief Investigator for review. Reports prepared by Assessment Officers shall be submitted through Senior Assessment Officers. Reports prepared by Senior Assessment Officers shall be submitted through Manager Assessment. Reports prepared by Manager Assessment, Chief Investigators or the Chief Analyst are to be reviewed by the Director of Investigations.

In the case of Lawyers, reports must be approved by the Director of Legal. In the Corruption Prevention and Education Unit reports are reviewed by the Director or by Principal Corruption Prevention Officers.

The reviewing officer should ensure that the final report satisfies each of the matters outlined in these procedures.

As part of the internal audit process, commencing March 2002 all ORC reports and ORC meeting papers generally will be reviewed by a lawyer prior to their submission to the ORC to ensure they contain no anomalies requiring correction. On a quarterly basis a random audit will be conducted on all papers and reports submitted for the preceding three meetings. Twenty reports spread amongst each of the various reporting categories will be selected from the previous three meetings and the original file or source material will be referred back to in order to ensure that the contents of the report reflect the primary information contained on the file. The number of reports selected for random audit will also take into account the total number submitted over the preceding three meetings and the break up of each reporting category so as to provide a true and accurate sample from each. At the conclusion of this quarterly process a report of the results will be prepared for consideration by the Executive and senior management and submitted to the next

meeting of the ORC. Matters to be considered as part of this process will include, amongst other things, whether the reports chosen comply with the “Report Format Requirements” as set out in paragraph 7 above.

Note: Files are to be retained by the file holder, but should be made available on the day of the relevant ORC meeting, if requested.

11. TIME OF SUBMISSION OF REPORTS

Reports are to be submitted to the ORC Secretariat by close of business on the Tuesday of the week proceeding the meeting of the Committee to enable the agenda to be circulated and the monthly reviewing process outlined above to be properly undertaken (unless advised otherwise by the secretariat).

12. POST ORC CORRESPONDENCE

When a recommendation has been accepted by the Committee certain correspondence must be attended to before a file can be closed. For example, a letter to the complainant or to any public authorities that provided information. Such letters outline the Committee's recommendation and the Commission's position on the matter. For detailed information on correspondence see procedure 8 in the Operations Manual titled "**Correspondence in relation to Enquiry Files**".

APPENDIX C INFORMATION SHEET 1 – REPORTING CORRUPTION TO THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Reporting corruption

The Independent Commission Against Corruption gathers information from a variety of sources about corruption that may be occurring in the NSW public sector. Anybody can provide information about suspected corrupt conduct to the Independent Commission Against Corruption: members of the public, public officials and the heads of NSW government agencies, including local councils.

Information about possible corruption can be provided in writing by mail, email or fax. You can also provide information by telephone, or by arranging an interview with an Independent Commission Against Corruption Officer. If you are unsure of whether a matter should be reported to the Independent Commission Against Corruption you can seek advice from an Independent Commission Against Corruption Assessment Officer over the phone.

What is corrupt conduct?

In order for conduct to be considered corrupt by the Independent Commission Against Corruption, it must satisfy ALL of the following criteria:

1. the conduct must involve a NSW public official or NSW public agency; and
2. the conduct must amount to the dishonest or partial exercise of public official functions; and
3. the conduct must be serious enough to constitute a criminal or disciplinary offence or be grounds for dismissal.

A public official is a person employed by a NSW public sector agency or an elected official. People working in the Parliament, government departments, statutory authorities and local councils in NSW, as well as NSW magistrates, judges, local councillors and politicians are all public officials. Public officials do not include private individuals, solicitors, barristers or bank employees.

Some examples of corrupt conduct include:

- A public official awards contracts to his relatives and friends
- A councillor receives financial benefit for voting in favour of development applications
- A public official bypasses recruitment procedures to employ a family member.

What information should be included?

If your concerns meet criteria 1-3 listed above, you can complain to the ICAC by providing the following information:

- A summary of the allegations of corrupt conduct, including why you believe it occurred
- The name of the NSW public sector agency involved
- The names and titles of public official/s involved if you know them
- The date or time frame that the conduct occurred
- The names of any witnesses or anybody else who could provide additional information
- An indication of how you became aware of the matter
- Information about where there may be evidence to support your allegations

Appendix C

- The details of any other agency with which you have raised the matter
- Your name, address and daytime telephone number
- The name of your employer and your position title (only if you are a NSW public official).

Does the Independent Commission Against Corruption need to know your identity?

You can provide information anonymously. However as further details cannot be obtained from you, it may make it difficult for us to take action.

Will anyone else have to know you contacted the ICAC?

In some cases your complaint may be referred to the agency about which you complained. This may occur if the issues you raise can be more appropriately investigated or dealt with by that agency.

How does the Independent Commission Against Corruption use the information you provide?

The Independent Commission Against Corruption aims to protect the public interest, prevent breaches of public trust and guide the conduct of public officials. Your information may assist our work in:

- exposing corrupt conduct through our investigations which can include public hearing
- preventing corruption by giving advice and developing resistance to corrupt practices in public sector organisations
- educating the public sector and the community about corruption and the role of the Independent Commission Against Corruption.

What happens next?

If you provide information to the Independent Commission Against Corruption this will be acknowledged in writing.

We will write to you again to inform you of the Independent Commission Against Corruption assessment of your matter, with reasons for our decision. It is not possible to tell you exactly how long that might take as each matter is different.

Do you need more information or assistance?

If you need more information about the work of the Independent Commission Against Corruption please go to our web site at www.icac.nsw.gov.au

If you need further advice or assistance about providing information to the Independent Commission Against Corruption please contact the Assessments Section on 02 8281 5999.

Contact details

THE INDEPENDENT COMMISSION AGAINST CORRUPTION
LEVEL 21
133 CASTLEREAGH STREET
SYDNEY NSW 200

POSTAL:
GPO Box 500
SYDNEY NSW 2001

PHONE: (02) 8281 5999 OR
TOLL FREE 1800 463909
FAX: (02) 9264 5364
WEBSITE: www.icac.nsw.gov.au
EMAIL: icac@icac.nsw.gov.au

A FORM FOR REPORTING POSSIBLE CORRUPT CONDUCT IS ALSO PROVIDED ON THE ICAC WEB SITE AT
www.icac.nsw.gov.au

DECEMBER 2001

APPENDIX D INFORMATION SHEET 2 – NOTIFYING YOU OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION'S DECISION

How does the Independent Commission Against Corruption decide which matters to investigate?

All information provided to the Independent Commission Against Corruption is analysed to help us understand the nature and extent of actual and potential corruption within the NSW public sector.

Broadly, the Independent Commission Against Corruption considers information to decide whether corrupt conduct may have occurred, or whether the information may indicate a weakness in the way a NSW government agency works. We also consider how serious the information is – for example, does it involve large sums of public money. All information is considered in light of other relevant details on the same people, agencies or similar types of conduct. Investigation efforts are targeted at matters which will have the greatest benefit for the public sector and complainants.

Your information may not necessarily result in an investigation, but will be retained and may assist with other matters of current or future interest to the Independent Commission Against Corruption. Your matter may be the subject of enquiries we conduct with the agency concerned, or we may refer the matter to that (or another) agency to follow up or investigate. Your information may help inform a corruption prevention project, an education program or a combination of these approaches.

Why bother reporting?

The Independent Commission Against Corruption uses the information it receives to improve its understanding of the nature and scope of corruption in the NSW public sector. Whether or not information is significant in its own right, its collection with other matters may help to identify corruption in systems. This helps us to target all our work and better inform the public sector and the people of NSW about corruption related issues.

Accountability for decisions

The Independent Commission Against Corruption operates independently of the NSW Government, however the Independent Commission Against Corruption is accountable to the people of NSW through the Parliamentary Joint Committee on the Independent Commission Against Corruption and the Operations Review Committee (ORC).

It is the ORC that ensures accountability of the Independent Commission Against Corruption's decisions about whether to investigate complaints. Where the Commission decides not to investigate a matter it must be reported to the ORC.

The ORC provides an independent review of every matter that is reported by members of the public. ORC members are given written reports outlining the allegations, the extent of Independent Commission Against Corruption enquiries and recommendations for how each matter should be handled. The ORC may accept the report presented, request more information or that further action be taken.

Appendix D

The main role of the ORC is to advise the Independent Commission Against Corruption Commissioner about whether a particular matter should be investigated, finalised or should be subject to some other course of action.

The Commissioner meets with the ORC every two months. The ORC is made up of members of the community and representatives from key government agencies. Its members are appointed by the NSW Governor. Under the *Independent Commission Against Corruption Act 1988*, the Commissioner of Police is a member of the ORC.

Do you need more information or assistance?

If you need more information about the work of the Independent Commission Against Corruption please go to our web site at www.icac.nsw.gov.au

If you need further advice or assistance please contact the Assessments Section on 02 8281 5999.

Contact details

THE INDEPENDENT COMMISSION AGAINST CORRUPTION

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133 CASTLEREAGH STREET
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DECEMBER 200

**APPENDIX E PROTECTED DISCLOSURES ACT
IMPLEMENTATION STEERING COMMITTEE – DRAFT
STRATEGIC PLAN 2002-5 (P. 77) AND ANNUAL WORK
PLAN (P.79)**

Mission: Effective implementation of the *Protected Disclosures Act 1994* in NSW through the provision of advice to the NSW government regarding improvements to the Act.

Objective: To encourage and facilitate the disclosure of corrupt conduct, maladministration and serious and substantial waste in the public sector by enhancing and augmenting established procedures for making disclosures concerning such matters.

Key Result Area	Indicators	Key Targets 2002 – 3	Key Targets 2003 – 4	Key Targets 2004 – 5
<p>1. Improving Awareness:</p> <p>Increase public sector awareness of the legislation, reporting options and procedures:</p> <ul style="list-style-type: none"> • Staff • PD Co-ordinator • Management 	<p>Level of staff, PD co-ordinators and management knowledge of:</p> <ul style="list-style-type: none"> • Legislation • Systems eg IRS <p>Take-up rate of resources / training.</p> <p>Reach of communication strategies of the PD Committee to audiences.</p>	<p>Establish benchmarks for all performance measures by 30 June 2003.</p>	<p>Establish, implement and monitor strategies for all performance measures and capturing benchmarks by 31 December 2003.</p>	<p>Evaluate strategy against benchmarks by 30 June 2005.</p> <p>By June 2005 (organisations²):</p> <ul style="list-style-type: none"> • 95% awareness of the Act • 100% implementation of IRS • 60% have implemented education strategies • 15% have accessed PD training <p>By June 2005 (staff of those organisations):</p> <ul style="list-style-type: none"> • 85 % awareness of IRS • 85% know to whom to report.

² Specified organisations include those listed in Schedule 1, PSEM Act, as well as those whose CEOs are listed in Part 2, Schedule 2, *Public Sector Employment and Management Act*, Area Health Services listed in the *Health Services Act*, General Purpose Local Councils and public Universities

<p>2. Providing Information:</p> <p>Provide information and guidance concerning the operation of the legislation to:</p> <ul style="list-style-type: none"> • Staff • PD Co-ordinator • Management 	<p>Seek out information needs of:</p> <ul style="list-style-type: none"> • Staff • PD Co-ordinator • Management <p>Develop and provide resources to manage and investigate complaints.</p>	<p>Establish benchmarks by 30 June 2003.</p> <p>Complete plan for resource production, rollout schedule and performance indicators by 31 December 2003.</p>	<p>Ongoing monitoring.</p> <p>Implementation ongoing according to plan.</p>	<p>Evaluate by 30 June 2005.</p> <p>Evaluate response to effectiveness of resources by 30 June 2005.</p>
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Key Result Area	Indicators	Key Targets 2002 – 3	Key Targets 2003 – 4	Key Targets 2004 – 5
<p>3. Monitoring Legislation:</p> <ul style="list-style-type: none"> • Identify structural problems arising from legislation and recommend solutions. • Provide advice to Parliamentary reviews of the legislation. 	<p>Provision of quality advice to Parliamentary Committee and The Cabinet Office.</p>	<p>Determine necessary legislative reform by ongoing review of:</p> <ul style="list-style-type: none"> • Complaints • Requests for advice 	<p>Ongoing examination of complaints to determine necessary legislative reforms.</p>	<p>90% of Committee recommendations endorsed by Parliamentary Committee, and</p> <p>80% of Committee recommendations adopted by NSW Government.</p>
<p>4. Providing Annual Report</p> <p>Report to the Premier to ensure:</p> <ul style="list-style-type: none"> • Accountability of the PD Committee • Prominence of the legislation and reporting systems 	<p>Acceptance of the report by the Premier.</p> <p>Endorsement of recommendation regarding the continuance of the PD Committee.</p>	<p>Establish evaluation plan for review of the PD Committee's work and effectiveness against benchmarks and reporting.</p>	<p>Ongoing review of the PD Committee's work and effectiveness against benchmarks and reporting.</p>	<p>Recommendation regarding future of PDAISC submitted to the Premier June 2005.</p>

Protected Disclosures Act Implementation Steering Committee – 2003-2004 Work Plan

A. Improving Awareness / B. Providing Information				
Increase public sector awareness of the legislation, reporting options and procedures AND provide information and guidance concerning the operation of the legislation to: <ul style="list-style-type: none"> • Public officials • PD Co-ordinators • Management 				
Strategies	Time frames 2003-04	Performance Indicators	Performance Measures	Members tasked
1. Awareness Review current levels of awareness of the legislation, reporting options and procedures	Jul: ICAC review awareness levels captured in ICAC research reports.	All available information is captured in the assessment.	Profile is endorsed by the committee and is the benchmark for comparing future profiles.	ICAC: create profile for research Committee: review and endorse ICAC profile report
2. Training: Committee to identify and evaluate those agencies and councils that need to improve management of PDs and reporting systems. Review current training programs for improvements. Provide training as requested to agencies and councils.	Jun – Jul: select agencies & councils for training. Jul – Aug: complete review of program. Jul – Jun: evaluate resources on each occasion	Participation levels and evaluations of workshop delegates from agencies and councils selected. Workshop delegates rank content as highly relevant in workshop evaluations. Workshop delegates rank content as highly relevant in workshop evaluations.	80% participation rate of approached agencies and councils. 90% of workshop delegates rank content as satisfactory 90% of workshop delegates rank content as satisfactory	ICAC, DLG Ombudsman Audit Office ICAC, DLG Ombudsman Audit Office ICAC, DLG Ombudsman Audit Office

<p>3. Promotion:</p> <p>Promote availability of PD brochures and their use through electronic versions, customising and access through web sites, in in-house agency and council staff newsletters.</p>	<p>Jul: source publications for articles, draft range of articles with case studies and contact editors for reproduction of stories.</p> <p>Aug – Dec: PD article published in Corruption Matters.</p>	<p>Number of publications that run articles.</p> <p>Number of agencies and councils that contact NSW Ombudsman for brochures and advice on customising as a result of the article.</p>	<p>Responses by editors to articles are positive.</p>	<p>ICAC, DLG Ombudsman</p> <p>Ombudsman</p>
<p>4. Title of the Act to raise understanding of the object of the Act</p> <p>Explore the feasibility and positive outcomes for staff, management and PD co-ordinators from changing the title of the Act to the Public Interest Disclosures Act.</p>	<p>Jul – Aug: further consultations conducted.</p> <p>Sept: analysis</p> <p>Oct: CEOs of PDAISC member organisations consider findings of consultations and committee recommendation.</p> <p>Oct: contact Parliamentary Committee re: PDAISC recommendation for name change</p>	<p>Analysis of consultations shows:</p> <ul style="list-style-type: none"> • Response to name change • Increased understanding of matters to report • Support for name change <p>Committee recommendation is endorsed by respective CEOs.</p> <p>Proposal is considered by Parliamentary Committee.</p>	<p>Committee must collect views of stakeholders</p> <p>75% - 85% of respondents agree on appropriate and beneficial appropriate title for PD Act</p> <p>100% endorsement of PDAISC recommendations</p> <p>Recommendation is accepted by Parliamentary Committee and referred to The Cabinet Office.</p>	<p>ICAC & Ombudsman</p> <p>ICAC, Ombudsman & DLG undertake research / consultations and analysis of findings</p> <p>Committee members</p> <p>PDAISC Chair – assisted by committee members</p>

C. Monitoring Legislation:				
<ul style="list-style-type: none"> Identify structural problems arising from legislation and recommend solutions. Provide advice to Parliamentary Committee to be considered in its next review of the legislation. 				
Strategies	Time frames 2003-04	Performance Indicators	Performance Measures	Members tasked
1. Consultation with Committee members	July-September	Responses obtained from Committee members	Structural problems are identified	Chair, PDSAIC
2. Consider feedback from questions asked by PD Co-ordinators				
D. Providing Annual Report				
Report to the Premier to ensure:				
<ul style="list-style-type: none"> Accountability of the PD Committee Prominence of the legislation and reporting systems 				
Strategies	Time frames 2003-04	Performance Indicators	Performance Measures	Members tasked
1. Annual Report is drafted by NSW Ombudsman and submitted to Premier by 31 October 2004	Aug: first draft prepared	Report drafted by August 2004	Report includes an accurate account of activities conducted by the Committee	Ombudsman
	Sept: members review and give comments to Ombudsman	Members participation in review	All members sign off on final version of report.	Committee
	Oct: Report completed and approved by Committee.	Completion of report and content that includes work of the committee		
	Oct: Report presented to Premier.	Report to Premier by end of October 2004.	Premier accepts the report.	Ombudsman

APPENDIX F PROCEDURE RELATING TO THE HANDLING OF COMPLAINTS OF MISCONDUCT AGAINST ICAC STAFF

PROCEDURE NO. 2

The Independent Commission Against Corruption is concerned to ensure that it maintains equitable personnel practices while being accountable to the Parliament and the community and responsive to their needs. While Commission officers at all times strive to act in a proper, lawful and principled way, some complaints against staff must be expected.

The following procedures have been drafted to ensure the Commission is accountable for the conduct of staff while at all times acting fairly.

These procedures are to be read in conjunction with the Grievance Mediation Policy No. 37 and the Guarantee of Service.

1. Any person, including a Commission officer, who wishes to make a complaint that a Commission officer or person closely associated with the Commission, such as a counsel assisting or a consultant, has engaged in misconduct is encouraged to do so, preferably in writing to the Director of Legal Services.
2. Misconduct includes criminal behaviour, neglect, carelessness, conflict of interest, discrimination and sexual harassment.
3. If a Commission officer receives an oral complaint alleging misconduct, he or she must put it in writing and forward it to the Director of Legal Services.
4. The Director of Legal Services will advise the Commissioner of the complaint and recommend a course of action.
5. If the complaint is against the Director of Legal Services, it should be made known to the Commissioner directly.

If the complaint is against the Commissioner, it should be made known to the Director of Legal Services who, in consultation with the Director of Corporate Services & Research will have the matter investigated in accordance with the procedure described below. If the complaint is serious, the Parliamentary Joint Committee will be advised.

6. If the Commissioner decides that investigation of the complaint is necessary and if the complaint involves a serious allegation, the Commissioner will direct that a person external to the Commission, with appropriate experience be engaged to conduct an investigation and report to the Commissioner.
7. If the Commissioner decides that investigation of the complaint is necessary and the allegation is less serious, the Commissioner will assign the investigation to a member of Senior Management.

Appendix F

8. A report will be provided to the Commissioner concerning the investigation as soon as practicable and in any event within one month.
9. All complaints against Commission officers which could constitute corrupt conduct will be referred to the Operations Review Committee for advice following the completion of the investigation.
10. All other complaints may be referred to the Operations Review Committee for advice.
11. The Director of Legal Services is responsible for ensuring that every complaint is the subject of both an interim reply and, later, a substantive reply.