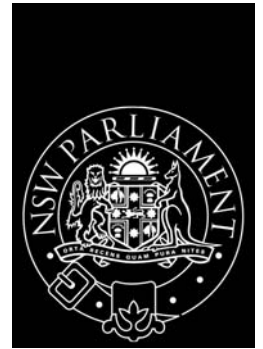


PARLIAMENT OF NEW SOUTH WALES



Committee on the Independent Commission Against Corruption

REGARDING THE PREVENTION AND INVESTIGATION OF
MISCONDUCT AND CRIMINAL WRONGDOING INVOLVING
PUBLIC OFFICIALS

Report of a visit of inspection by a delegation of the ICAC Committee
12-30 April 2004

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Membership & Staff

Chairman	Hon. Kim Yeadon MP, Member for Granville
Members	Ms Kristina Keneally MP, Member for Heffron
	Mr John Mills MP, Member for Wallsend (Chairman of Committees)
	Mr Barry O'Farrell MP, Member for Ku-ring-gai (Deputy Leader of the Opposition)
	Mr Paul Pearce MP, Member for Coogee
	Mr John Price MP, Member for Maitland (Deputy Speaker)
	Mr Anthony Roberts, Member for Lane Cove
	Mr John Turner MP, Member for Myall Lakes
	Hon. Jenny Gardiner MLC
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Terms of Reference

The terms of reference of the Joint Standing Committee on the Independent Commission against Corruption (the ICAC Committee) are specified in the Independent Commission Against Corruption Act 1988, ss.64—64A.:

64 Functions

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

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

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

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

64A Power to veto proposed appointment of Commissioner

- (1) The Minister is to refer a proposal to appoint a person as Commissioner to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.

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Chapter One - Background to the visit of inspection and review of the Independent Commission Against Corruption Act 1988

- 1.1 This report of the ICAC Committee documents activities undertaken by a delegation of the Committee who participated in a visit of inspection in April 2004 relating to the inquiry to review of the Independent Commission Against Corruption Act 1988.
- 1.2 The focus of the meetings conducted by the delegation related to gaining an understanding of approaches in different jurisdictions regarding the prevention and investigation of misconduct and criminal wrongdoing involving public officials. A noteworthy feature of the meetings was an examination of jurisdictional issues within federal systems, reflective of the Commonwealth-New South Wales relationship in Australia. The delegation examined approaches to the prevention and investigation of misconduct and criminal wrongdoing involving public officials in Europe (European Union, and England and Ireland), the United States of America (Federal institutions, and Washington State), and Canada (Federal approaches, and the Province of British Columbia). The delegations held meetings with legislators, investigation bodies (such as police, auditors, and agencies charged with examining allegations of misconduct), ethics advisory bodies, and non-government organisations involved in advocacy against misconduct and criminal wrongdoing involving public officials.

Review of the Independent Commission Against Corruption Act 1988

- 1.3 The delegation was particularly interested in examining models and practices in the prevention and investigation of misconduct and criminal wrongdoing involving public officials, in order to better inform the full ICAC Committee with regard to a review of the Independent Commission Against Corruption Act 1988.
- 1.4 On 23 February 2004, the ICAC Committee meeting in deliberative session agreed that a review of the Independent Commission Against Corruption Act 1988 was desirable, to determine:
 - (a) if the policy objectives of the Act remain valid; and
 - (b) whether the terms of the Act remain appropriate for securing those objectives.It is now commonplace for a review clause to be placed in Acts relating to statutory agencies, the Independent Commission Against Corruption Act 1988 does not have any such provision. Such reviews require the responsible Minister to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives, typically either as a review after a period of 5 years or for a shorter period as a sunset provision for new legislation.

Background to the visit of inspection and review of the Independent Commission Against Corruption Act 1988

- 1.5 The Independent Commission Against Corruption has been subject to major changes since the original enactment (e.g., the transfer of powers to investigate police officers by the Police Integrity Commission Act 1996).
- 1.6 As the Independent Commission Against Corruption has now been operating for almost 15 years, and as the current Commissioner's term will be completed by November 2004, the ICAC Committee agreed that it is now an appropriate time to conduct a review of the Independent Commission Against Corruption Act 1988.
- 1.7 In light of recent legislative changes affecting similar statutory bodies in Queensland and Western Australia, the ICAC Committee further noted that there may be some merit in the review of the Independent Commission Against Corruption Act 1988 incorporating an examination of whether any amalgamations of functions might be desirable across such New South Wales statutory agencies as the Independent Commission Against Corruption, the State Crime Commission, the Ombudsman, and the Police Integrity Commission.
- 1.8 On 10 March 2004, the ICAC Committee resolved, by majority decision, to, in the first instance, request the Premier to commission an independent judicial review of the Independent Commission Against Corruption Act 1988, rather than to conduct such a review itself. This request was forwarded to the Premier on 1 April 2004. On 22 April 2004, the Premier announced that the Government had agreed to the Committee's request.

This report

- 1.9 This report provides a brief summary of the meetings and discussions undertaken by the delegation during the visit of inspection. The delegation is continuing correspondence with individuals and organisations met during the visit regarding matters raised in discussions.
- 1.10 In this report the delegation has also provided a brief summary of some significant issues that it identified during the visit of inspection. These issues will be discussed in more detail in a later report of the ICAC Committee on the review of the Independent Commission Against Corruption Act 1988.

Chapter Two - Report of an overseas visit of inspection to Belgium, England, Ireland, the United States of America and Canada by a delegation of the ICAC Committee, 12-30 April 2004

- 2.1 This chapter documents the activities undertaken by a delegation of the ICAC Committee who participated in a visit of inspection to Belgium, England, Ireland, the United States of America and Canada over the period 12-30 April 2004, to investigate issues regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials in particular, and related public corruption issues.
- 2.2 The delegation comprised Mr John Mills MP (Chairman of Committees) and the Hon. Jennifer Gardiner MLC. Mr Ian Faulks, of the ICAC Committee secretariat, also accompanied the delegation.
- 2.3 Mr Mills and Ms Gardiner reported on the visit of inspection to the ICAC Committee at its meeting Wednesday 12 May 2004.
- 2.4 During the visit of inspection, meetings were held in Belgium, England, Ireland, the United States of America, and Canada.

BELGIUM

- 2.5 While in Belgium, the delegation held meetings in Brussels.
- 2.6 The delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:
 - Mr Charles Elsen, Director General, General Secretariat of the Council of Europe
 - Mr Guy Stessens, DG H – Division of Judicial Co-operation, General Secretariat of the Council of Europe
 - Mr Michael Vollprecht, Justice and Home Affairs Directorate-General, European Commission
 - Ms Lucinda MacMahon, National Specialist—Ireland, Justice and Home Affairs Directorate-General, European Commission
 - Mr Peter Baader, Directorate B – Investigations and Operations, and Mr Davide Quattrochi, Unit 0.2—Communication, Public Relations, Spokesman, OLAF—European Anti-Fraud Office

- Baron Jean Godeaux and Mr Rudiger Bandilla, Transparency International — Belgium

ENGLAND

2.7 While in England, the delegation held meetings in London.

2.8 The delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Mr Jeremy Carver and Ms Susan Cote-Freeman, Transparency International—United Kingdom
- Mr Tony Wilson and Mr Stephen Low, Serious Fraud Office
- Mr Daniel Glaspy and Ms Marie Gandjouan, Office of the Special Auditor for the Federation of Bosnia and Herzegovina and Republika Srpska

2.9 The delegation received papers relating to the prevention and investigation of misconduct and criminal wrongdoing by public officials from:

- Mr Phillip Aylett, Clerk of the Public Administration Select Committee, House of Commons
- Dr Robin James, Clerk of the Home Affairs Committee, House of Commons

2.10 The delegation also met with:

- Mr Brad Fitzmaurice, Trade and Investment Commissioner, New South Wales Government Office

2.11 The delegation also visited the Palace of Westminster and met with Ms Helen Haywood, Commonwealth Parliamentary Association (UK Branch)

IRELAND

2.12 While in Ireland, the delegation held meetings in Dublin.

2.13 The delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Mr Paul Appleby and Mr Ian Drennan, Office of the Director of Corporate Enforcement, and Detective Inspector Pat Collins, An Garda Síochána
- Detective Chief Superintendent Austin McNally and Detective Superintendent Eugene Gallagher, Bureau of Fraud Investigation, An Garda Síochána
- Detective Chief Superintendent Felix McKenna and Detective Inspector Patrick Byrne, Criminal Assets Bureau, An Garda Síochána

UNITED STATES OF AMERICA

- 2.14 While in the United States of America, the delegation held meetings in Washington DC, and later in Olympia (Washington State).
- 2.15 In Washington DC, the delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:
- Mr Louis Clarke, Government Accountability Project
 - Ms Kelly Tshibaka, Mr Jeffery Schanz, and Mr Bill Johnson, Office of the Inspector General, US Department of Justice
 - Mr John Vargo, Committee on Standards of Official Conduct, US House of Representatives
 - Mr Robert Walker and Mr Kenyon Brown, Select Committee on Ethics, US Senate
- 2.16 In Olympia (Washington State), the delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:
- Representative Sandra Romero (22nd District), Chair, Washington State House of Representatives Local Government Committee, and Ms Mary Anderson
 - Mr Ethan Moreno, Washington State House of Representatives Local Government Committee
 - Ms Katie Blinn, Washington State House of Representatives State Government Committee
 - Mr Shawn Newman, CLEAN—Citizens for Leaders with Ethics and Accountability Now!
 - Ms Cindy Zehnder, TVW
 - Mr Doug Ellis, Washington State Public Disclosure Commission
 - Mr William Ashbury and Mr Mike O'Connell, Washington State Legislative Ethics Board
 - Mr Brian Sonntag, Washington State Auditor
- 2.17 During the visit to Olympia, the delegation also inspected:
- hearing rooms and the Legislative Assembly buildings
 - broadcasting studios and facilities at TVW

CANADA

- 2.18 While in Canada, the delegation held meetings in Ottawa (Ontario), and later in Victoria (British Columbia).
- 2.19 In Ottawa, the delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:
- Mr Andre LeVasseur and Mr Robert Benson, Office of the Ethics Counsellor
 - Mr Pierre Martel, Public Service Integrity Office
- 2.20 During the visit to Ottawa, the delegation also visited Parliament Hill and met with Ms Carol Chafe, Commonwealth Parliamentary Association (Canada)
- 2.21 In Victoria, the delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:
- Mr Kevin Begg, Assistant Deputy Minister and Director of Police Services, Policing and Community Safety Branch, British Columbia Ministry of Public Safety and Solicitor General.
 - The Hon. H.A.D. (Bert) Oliver, British Columbia Conflict of Interest Commissioner, with specific regard to the Legislative Assembly Members' Conflict of Interest Act
 - Mr Wayne Strelloff, Auditor General of British Columbia, and Mr Bob Faulkner, Project Leader, Auditor General's office.
 - Mr Vaughan Palmer, Political Columnist, Vancouver Sun, with specific regard to media investigation and reporting of public corruption.
 - Mr Peter Bray, Legislative Comptroller, British Columbia Legislative Assembly
- 2.23 The delegation met with Members of the British Columbia Legislative Assembly, including Dr John Weisbeck MLA (Deputy Speaker), Ms Sheila Orr MLA, Ms Lynn Stephens MLA, and Mr Jeff Bray MLA.
- 2.24 The delegation met the Premier of British Columbia, the Hon. Gordon Campbell MLA.
- 2.25 The delegation, during the sitting of the House, was invited to the floor of the chamber and introduced to the Speaker and Members of the British Columbia Legislative Assembly.
- 2.26 The delegation also met with Mr George MacMinn, Clerk of the British Columbia Legislative Assembly, and Mr Craig James and Ms Kate Ryan-Lloyd, Clerk Assistants.

Chapter Three - Some significant issues identified by the delegation relating to the review of the Independent Commission Against Corruption

- 3.1 This chapter provides a brief summary of some significant issues identified by the delegation relating to the review of the Independent Commission Against Corruption Act 1988. These include issues associated with the legislation itself, as well as practices and policies derived from the legislation:
- court convictions
 - burden of proof
 - getting the money back (recouping ill gotten gains)
 - building corruption resistance
 - materiality
 - conflict of interest and codes of conduct
 - peer reviews
- 3.2 These and other issues identified by the delegation will be the subject of a later background paper aimed at assisting the review process.

Court convictions

- 3.3 Corruption is a serious crime, commonly associated with bribery, fraud and the theft or misuse of public assets. In most jurisdictions, the proof of corruption is the prosecution and conviction of the offender(s) in court, followed by sentencing by a judge.
- 3.4 It is argued that in a society based on justice and the rule of law, the community's interests are not well served unless the wrongdoers are punished.
- 3.5 In New South Wales, there is a poor record of achieving convictions in court of people identified as wrongdoers, that is, corrupt, by the Independent Commission Against Corruption. The ICAC Committee has identified that, in a sample of 69 persons who were subject to investigation and a finding of corrupt conduct by the Independent Commission Against Corruption over the period 1998-2003, 29 (42%) were subsequently convicted of an offence, 40 (58%) were not prosecuted or the prosecutions were unsuccessful (and in several cases the successful prosecution related not to alleged corrupt conduct but to an offence committed during the Commission's investigation, e.g., perjury). In contrast, in a sample of 21 persons for whom internal disciplinary action was recommended by the Independent Commission Against Corruption, 19 (90%) were subject to successful disciplinary action and only 2 (10%) had the action dismissed. The reasons for lack of successful prosecutions needs identification.

Burden of proof

- 3.6 Courts in a free society rightly require a high standard of evidence: “proof beyond reasonable doubt”; in determining guilt. In comparison, a finding or opinion by the Independent Commission Against Corruption requires only the lower standard of the Commission’s “reasonable belief” of corrupt conduct, and this, in and of itself, is expressly prohibited from being construed as a determination of guilt.
- 3.7 The issues arising are whether the “naming and shaming” (public humiliation) approach of the Independent Commission Against Corruption poisons the evidence before it gets to court, or whether the soft standard in the Commission leads to some unjustified findings or opinions.

Getting the money back (Recouping ill gotten gains)

- 3.8 Agencies fighting corruption, bribery and fraud in most jurisdictions expend extensive and clever effort in cooperation with various public and private organisations to get back the ill-gotten financial rewards of these offences, whether or not a conviction is obtained in court, and report to the public.
- 3.9 New South Wales has appropriate legislation in the *Criminal Assets Recovery Act 1990*, administered by the New South Wales Crime Commission. Other New South Wales agencies, and Federal agencies, work to achieve this secondary level of justice for wrongdoers. It would be timely for consideration to be given to the Independent Commission Against Corruption joining this effort.

Building corruption resistance

- 3.10 The Independent Commission Against Corruption is widely respected for its role and activity in corruption prevention by building corruption resistance in the New South Wales public sector. The Independent Commission Against Corruption’s role in demonstrating over the past 15 years that corruption—misconduct and criminal wrongdoing—by public officials exists, is also acknowledged.
- 3.11 Some other jurisdictions are taking up this advisory and educational anti-corruption role.

Materiality

- 3.12 A number of jurisdictions adopt the criterion of materiality in selecting those complaints and allegations to be investigated with a view to prosecution for wrongdoing and misconduct. The materiality criterion means matters need to be of significance, requiring serious consideration.

- 3.13 Matters of a petty nature, including allegations of petty theft such as paper, stamps, and ink cartridges, or matters of non-criminal maladministration, are generally referred in other jurisdictions back to either public sector management for investigation and administrative determination and penalty, or to police, or to the audit process.
- 3.14 The Independent Commission Against Corruption's Strategic Plan 2003-2007 describes its role as "targeting serious and systemic corruption and corruption opportunities in the New South Wales public sector." The reported caseload of the Independent Commission Against Corruption should be reviewed with this strategic role in mind.
- 3.15 The Independent Commission Against Corruption Act 1988 should be reviewed to examine whether the Act requires the Independent Commission Against Corruption to do work not related to this strategic role: for example, some of the definitions of corruption in Part 3, clauses 8(2) and 9 of the Act, appear not to involve an offence related to serious or systemic corruption.
- 3.16 The operating methods—practices, procedures and policies—of the Independent Commission Against Corruption could be reviewed to enable more appropriate referral of matters lacking materiality and criminal offences to police or other agencies.

Conflict of interest and Codes of Conduct

- 3.17 There are useful models in other jurisdictions, for instance, a "Public Disclosure Commission" and "Office of Ethics Commissioner," which seek proactively to assist and direct elected and appointed senior public officials through interview and advice to comply with rules and laws regarding conflict of interest and codes of conduct. A fair-warning approach is adopted for minor and petty breaches and misconduct. Public hearings apply only when warnings are ignored.
- 3.18 "We are not a 'gotcha' organisation," one commissioner said.
- 3.19 In this context an enhanced role for the Parliamentary Ethics Adviser might be examined.

Peer reviews

- 3.20 Transparency International (TI) has just published "Global Corruption 2004," in which Australia generally achieves a good report for combating corruption, including acknowledgement of the Independent Commission Against Corruption's role.
- 3.21 One of Transparency International's ideas worthy of pursuit is the international evaluation of agencies fighting corruption and official misconduct through a peer review process.

Some significant issues identified by the delegation relating to the review of the Independent Commission Against Corruption Act 1988

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Appendix One – Extracts from the Minutes of the ICAC Committee regarding the review of the Independent Commission Against Corruption Act 1988 and the visit of inspection

This appendix contains relevant extracts from the minutes of ICAC Committee meetings of:

- 23 February 2004
- 10 March 2004
- 12 May 2004

regarding the visit of inspection by the delegation of the Committee examining the prevention and investigation of misconduct and criminal wrongdoing of public officials.

PROCEEDINGS OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

2:00 P.M., MONDAY 23 FEBRUARY 2004
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Ms Gardiner
Revd Mr Nile

Legislative Assembly

Mr Yeadon
Ms Keneally
Mr Mills
Mr Price
Mr Roberts
Mr Turner
Mr O'Farrell

Also in attendance: Mr Faulks, Manager of the Committee, and Mr Jefferis, Project Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Primrose and Mr Pearce.

....

5. Review of the Independent Commission Against Corruption Act 1988

The Chairman noted that it was now commonplace for a review clause to be placed in Acts relating to statutory agencies, typically either as a review after a period of 5 years or for a shorter period as a sunset provision for new legislation. Such reviews require the responsible Minister to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The Independent Commission Against Corruption Act 1988 does not, however have any such provision. Moreover, the Commission has been subject to some major changes since the

original enactment (e.g., the transfer of powers to investigate police officers by the Police Integrity Commission Act 1996).

As the Independent Commission Against Corruption has now been operating for almost 15 years, and as the current Commissioner's term will be completed by November 2004, it is now an appropriate time to seek an independent review of the Independent Commission Against Corruption Act 1988.

The Chairman, in light of recent legislative changes affecting similar statutory bodies in Queensland and Western Australia, further noted that there may be some merit in the review of the Independent Commission Against Corruption Act 1988 incorporating an examination of whether any amalgamations of functions might be desirable across such New South Wales statutory agencies as the Independent Commission Against Corruption, the State Crime Commission, the Ombudsman, and the Police Integrity Commission.

It was agreed that the following be taken as a notice of motion for the next meeting of the Committee:

That the ICAC Committee write to the Hon. Bob Carr MP, Premier, proposing that he instigate a judicial review of the Independent Commission Against Corruption Act 1988 to determine:

- (a) if the policy objectives of the Act remain valid; and
- (b) whether the terms of the Act remain appropriate for securing those objectives.

6. Overseas visit of inspection regarding corruption investigation and corruption prevention, April 2004

The Chairman indicated that it would be appropriate for a delegation of the ICAC Committee to conduct an overseas visit of inspection in April 2004 to examine corruption investigation and corruption prevention. The delegation would comprise Mr Mills, and an Opposition Member of the Committee, accompanied by the Committee Manager.

On the motion of Mr Price, seconded Ms Keneally:

That a delegation of the ICAC Committee, accompanied by the Committee Manager, conduct an overseas visit of inspection to examine corruption investigation and corruption prevention.

Resolution passed unanimously.

....

9. General business

There being no further business, the Committee adjourned at 6:05 p.m..

Chairman

Committee Manager

PROCEEDINGS OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

5:00 P.M., WEDNESDAY 10 MARCH 2004
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr Primrose
Revd Mr Nile
Ms Gardiner

Legislative Assembly

Mr Yeadon
Ms Keneally
Mr Mills
Mr Roberts
Mr Turner
Mr O'Farrell
Mr Pearce

Also in attendance: Mr Faulks, Manager of the Committee, Mr Jefferis, Project Officer, and Ms Yeoh, Assistant Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from Mr Price.

....

4. Consideration of notice of motion requesting a judicial review of the Independent Commission Against Corruption Act 1988

The Chairman noted that it was now commonplace for a review clause to be placed in Acts relating to statutory agencies, typically either as a review after a period of 5 years or for a shorter period as a sunset provision for new legislation. Such reviews require the responsible Minister to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The Independent Commission Against Corruption Act 1988 does not, however have any such provision. Moreover, the Commission has been subject to some major changes since the original enactment (e.g., the transfer of powers to investigate police officers by the Police Integrity Commission Act 1996). The Chairman, in light of recent legislative changes affecting similar

statutory bodies in Queensland and Western Australia, further noted that there may be some merit in the review of the Independent Commission Against Corruption Act 1988 incorporating an examination of whether any amalgamations of functions might be desirable across such New South Wales statutory agencies as the Independent Commission Against Corruption, the State Crime Commission, the Ombudsman, and the Police Integrity Commission. As the Independent Commission Against Corruption has now been operating for almost 15 years, and as the current Commissioner's term will be completed by November 2004, it is now an appropriate time to seek an independent review of the Independent Commission Against Corruption Act 1988.

It was agreed that a review of the Independent Commission Against Corruption Act 1988 was necessary and desirable.

The mechanism for a review of the Independent Commission Against Corruption Act 1988 was debated.

On the motion of Mr Yeadon, seconded Mr Pearce:

That the ICAC Committee write to the Hon. Bob Carr MP, Premier, proposing that he instigate a judicial review of the Independent Commission Against Corruption Act 1988 to determine:

(a) if the policy objectives of the Act remain valid; and

(b) whether the terms of the Act remain appropriate for securing those objectives.

Passed by majority resolution: For—Mr Yeadon, Mr Pearce, Revd. Nile, Ms Keneally, Mr Mills, Mr Primrose; Against—Mr O'Farrell, Ms Gardiner, Mr Roberts, Mr Turner.

Mr O'Farrell reaffirmed that despite opposing the motion he supported the need for a review of the Independent Commission Against Corruption Act 1988.

The Chairman indicated that he would prepare a draft letter to the Premier, the Hon. Bob Carr MP, proposing that he instigate a judicial review of the Independent Commission Against Corruption Act 1988, and circulate for comment.

....

6. Overseas visit of inspection regarding corruption investigation and corruption prevention, April 2004

The Chairman indicated that Mr Mills and Ms Gardiner would form the delegation of the ICAC Committee to conduct an overseas visit of inspection in April 2004 to examine corruption investigation and corruption prevention. .

7. General business

There being no further business, the Committee adjourned at 5:30 p.m..

PROCEEDINGS OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

5:00 P.M., WEDNESDAY 12 MAY 2004
AT PARLIAMENT HOUSE, SYDNEY

MEMBERS PRESENT

Legislative Council

Mr Primrose
Ms Gardiner

Legislative Assembly

Mr Yeadon
Ms Keneally
Mr Mills
Mr Pearce
Mr Price
Mr Turner

Also in attendance: Mr Faulks, Manager of the Committee, Mr Jefferis, Project Officer, and Ms Yeoh and Ms Cyril, Assistant Committee Officer.

The Chairman presiding.

1. Apologies

Apologies were received from the Revd Mr Nile, Mr Roberts and Mr O'Farrell.

2. Previous minutes

On the motion of Ms Keaneally, seconded Mr Pearce, the minutes of 10 March 2004 were accepted as a true and accurate record.

3. Chairman's report

....

4. Review of the Independent Commission Against Corruption Act 1988

The Chairman reported that the Premier had responded positively to the ICAC Committee's request for an independent judicial review of the Independent Commission Against Corruption Act 1988. The Premier indicated that he had asked his officers for advice as to the appropriate form and terms of reference for such a review, and that he would consult with the ICAC Committee once this advice has been received.

The Chairman noted that the Premier had not agreed that there might be some merit in the review of the Independent Commission Against Corruption Act 1988 incorporating an examination of whether any amalgamations of functions might be desirable across such New South Wales statutory agencies as the Independent Commission Against Corruption, the State Crime Commission, the Ombudsman, and the Police Integrity Commission.

The Chairman noted receipt of correspondence from the Committee on the Office of the Ombudsman and Police Integrity Commission regarding the review of the Independent Commission Against Corruption Act 1988.

5. Overseas visit of inspection to Europe and North America, 12-30 April 2004

Mr Mills and Ms Gardiner briefed the ICAC Committee on the overseas visit of inspection to Europe and North America, 12-30 April 2004 relating to the inquiry to review of the Independent Commission Against Corruption Act 1988. The focus of the meetings conducted by the delegation related to gaining an understanding of approaches in different jurisdictions regarding the prevention and investigation of misconduct and criminal wrongdoing involving public officials. A noteworthy feature of the meetings was an examination of jurisdictional issues within federal systems, reflective of the Commonwealth-New South Wales relationship in Australia. The delegation examined approaches to the prevention and investigation of misconduct and criminal wrongdoing involving public officials in Europe (European Union, and England and Ireland), the United States of America (Federal institutions, and Washington State), and Canada (Federal approaches, and the Province of British Columbia). The delegations held meetings with legislators, investigation bodies (such as police, auditors, and agencies charged with examining allegations of misconduct), ethics advisory bodies, and non-government organisations involved in advocacy against misconduct and criminal wrongdoing involving public officials.

During the visit of inspection, meetings were held in Belgium, England, Ireland, the United States of America, and Canada.

While in Belgium, the delegation held meetings in Brussels.

The delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Mr Charles Elsen, Director General, General Secretariat of the Council of Europe

Extracts from the Minutes of the ICAC Committee regarding the review of the Independent Commission Against Corruption Act 1988 and the visit of inspection

- Mr Guy Stessens, DG H – Division of Judicial Co-operation, General Secretariat of the Council of Europe
- Mr Michael Vollprecht, Justice and Home Affairs Directorate-General, European Commission
- Ms Lucinda MacMahon, National Specialist—Ireland, Justice and Home Affairs Directorate-General, European Commission
- Mr Peter Baader, Directorate B – Investigations and Operations, and Mr Davide Quattrochi, Unit O.2—Communication, Public Relations, Spokesman, OLAF—European Anti-Fraud Office
- Baron Jean Godeaux and Mr Rudiger Bandilla, Transparency International—Belgium

While in England, the delegation held meetings in London.

The delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Mr Jeremy Carver and Ms Susan Cote-Freeman, Transparency International—United Kingdom
- Mr Tony Wilson and Mr Stephen Low, Serious Fraud Office
- Mr Daniel Glaspy and Ms Marie Gandjouan, Office of the Special Auditor for the Federation of Bosnia and Herzegovina and Republika Srpska

The delegation received papers relating to the prevention and investigation of misconduct and criminal wrongdoing by public officials from:

- Mr Phillip Aylett, Clerk of the Public Administration Select Committee, House of Commons
- Dr Robin James, Clerk of the Home Affairs Committee, House of Commons

The delegation also met with:

- Mr Brad Fitzmaurice, Trade and Investment Commissioner, New South Wales Government Office

The delegation also visited the Palace of Westminster and met with Ms Helen Haywood, Commonwealth Parliamentary Association (UK Branch)

While in Ireland, the delegation held meetings in Dublin.

The delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Mr Paul Appleby and Mr Ian Drennan, Office of the Director of Corporate Enforcement, and Detective Inspector Pat Collins, An Garda Siochana

- Detective Chief Superintendent Austin McNally and Detective Superintendent Eugene Gallagher, Bureau of Fraud Investigation, An Garda Siochana
- Detective Chief Superintendent Felix McKenna and Detective Inspector Patrick Byrne, Criminal Assets Bureau, An Garda Siochana

While in the United States of America, the delegation held meetings in Washington DC, and later in Olympia (Washington State).

In Washington DC, the delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Mr Louis Clarke, Government Accountability Project
- Ms Kelly Tshibaka, Mr Jeffery Schanz, and Mr Bill Johnson, Office of the Inspector General, US Department of Justice
- Mr John Vargo, Committee on Standards of Official Conduct, US House of Representatives
- Mr Robert Walker and Mr Kenyon Brown, Select Committee on Ethics, US Senate

In Olympia (Washington State), the delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Representative Sandra Romero (22nd District), Chair, Washington State House of Representatives Local Government Committee, and Ms Mary Anderson
- Mr Ethan Moreno, Washington State House of Representatives Local Government Committee
- Ms Katie Blinn, Washington State House of Representatives State Government Committee
- Mr Shawn Newman, CLEAN—Citizens for Leaders with Ethics and Accountability Now!
- Ms Cindy Zehnder, TVW
- Mr Doug Ellis, Washington State Public Disclosure Commission
- Mr William Ashbury and Mr Mike O’Connell, Washington State Legislative Ethics Board
- Mr Brian Sonntag, Washington State Auditor

During the visit to Olympia, the delegation also inspected:

- hearing rooms and the Legislative Assembly buildings
- broadcasting studios and facilities at TVW

While in Canada, the delegation held meetings in Ottawa (Ontario), and later in Victoria (British Columbia).

Extracts from the Minutes of the ICAC Committee regarding the review of the Independent Commission Against Corruption Act 1988 and the visit of inspection

In Ottawa, the delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Mr Andre LeVasseur and Mr Robert Benson, Office of the Ethics Counsellor
- Mr Pierre Martel, Public Service Integrity Office

During the visit to Ottawa, the delegation also visited Parliament Hill and met with Ms Carol Chafe, Commonwealth Parliamentary Association (Canada)

In Victoria, the delegation received briefings and held discussions in meetings with the following persons and organisations, regarding the prevention and investigation of misconduct and criminal wrongdoing by public officials:

- Mr Kevin Begg, Assistant Deputy Minister and Director of Police Services, Policing and Community Safety Branch, British Columbia Ministry of Public Safety and Solicitor General.
- The Hon. H.A.D. (Bert) Oliver, British Columbia Conflict of Interest Commissioner, with specific regard to the Legislative Assembly Members' Conflict of Interest Act
- Mr Wayne Strelloff, Auditor General of British Columbia, and Mr Bob Faulkner, Project Leader, Auditor General's office.
- Mr Vaughan Palmer, Political Columnist, Vancouver Sun, with specific regarding to media investigation and reporting of public corruption.
- Mr Peter Bray, Legislative Comptroller, British Columbia Legislative Assembly

The delegation met with Members of the British Columbia Legislative Assembly, including Dr John Weisbeck MLA (Deputy Speaker), Ms Sheila Orr MLA, Ms Lynn Stephens MLA, and Mr Jeff Bray MLA.

The delegation met the Premier of British Columbia, the Hon. Gordon Campbell MLA.

The delegation, during the sitting of the House, was invited to the floor of the chamber and introduced to the Speaker and Members of the British Columbia Legislative Assembly.

The delegation also met with Mr George MacMinn, Clerk of the British Columbia Legislative Assembly, and Mr Craig James and Ms Kate Ryan-Lloyd, Clerk Assistants.

6. Report of an overseas visit of inspection to Europe and North America, 12-30 April 2004

The Chairman presented his report "Regarding the prevention and investigation of misconduct and criminal wrongdoing involving public officials: Report of a visit of inspection by a delegation of the ICAC Committee, 12-30 April 2004". The Chairman noted that the draft report had been reviewed and amended by Mr Mills and Ms Gardiner.

The report, have been distributed previously, was accepted as being read.

The Committee proceeded to deliberate on the draft report:

Chapter One: read and agreed to.

Chapter Two: read and agreed to

Chapter Three: Ms Gardiner tabled a schedule of amendments to the draft report:

Para 3.1 (p.7): amend to read getting the money back (recouping ill-gotten gains)

Para 3.1 (p.7): INSERT New Para – “These and other issues identified by the delegation will be the subject of a later background paper aimed at assisting the review process.”

Para 3.4 (p.7): amend Line 2, “identified as wrongdoers, that is corrupt, ...

Para 3.4 (p.7): amend Line 9, “Commission’s investigation, e.g., perjury) ...

Para 3.5 (p.8): amend Line 3, “ requires only the lower standard of the ...”

Para 3.7 (p.8): amend Heading, “Getting the Money Back (Recouping Ill Gotten Gains)”

Para 3.8 (p.8): amend Line 4, “for wrongdoers. It would be timely for consideration to be given to the Independent Commission Against Corruption joining this effort.”

Para 3.10 (p.8): amend Line 1, “other jurisdictions are taking up this advisory ...”

Para 3.12 (p.9): amend Lines 1-2, “ including allegations of petty theft such as paper, stamps, ink cartridges, matters of non-criminal ...”

The amendments proposed by Ms Gardiner were read and agreed to.

Chapter Three, as amended: read and agreed to.

The Committee agreed that, once the terms of reference for the independent judicial review of the Independent Commission Against Corruption Act 1988 had been determined by the Premier, a background paper discussing legislation, practice and policy issues affecting the Commission be drafted as a report of the Committee, based upon but not limited to the issues identified in Chapter Three of the report of a visit of inspection by a delegation of the ICAC Committee, 12-30 April 2004.

On the motion of Mr Primrose, seconded Ms Keneally:

Extracts from the Minutes of the ICAC Committee regarding the review of the Independent Commission Against Corruption Act 1988 and the visit of inspection

That the draft report: "Regarding the prevention and investigation of misconduct and criminal wrongdoing involving public officials: Report of a visit of inspection by a delegation of the ICAC Committee, 12-30 April 2004", be read and agreed to.

Passed unanimously.

On the motion of Mr Primrose, seconded Ms Keneally:

That the draft report: "Regarding the prevention and investigation of misconduct and criminal wrongdoing involving public officials: Report of a visit of inspection by a delegation of the ICAC Committee, 12-30 April 2004" be accepted as a report of the ICAC Committee, and that it be signed by the Chairman and presented to the House.

Passed unanimously.

On the motion of Mr Primrose, seconded Ms Keneally:

That the Chairman provide Members with the amended report for examination, and that the Chairman and Committee Manager be permitted to correct any stylistic, typographical and grammatical errors in the report.

Passed unanimously.

Ms Gardiner and Mr Mills thanked the Committee for the opportunity to study the approaches to misconduct and criminal wrongdoing involving public officials.

7. General business

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There being no further business, the Committee adjourned at 5:30 p.m..

Chairman

Committee Manager