



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

**COLLATION OF EVIDENCE
OF THE COMMISSIONER OF THE ICAC
MR IAN TEMBY QC**

**ON GENERAL ASPECTS OF
THE COMMISSION'S OPERATIONS**

**FRIDAY, 26 MARCH 1993
PARLIAMENT HOUSE, SYDNEY**

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FRIDAY, 26 MARCH 1993
PARLIAMENT HOUSE, SYDNEY

***COMMITTEE ON THE
INDEPENDENT COMMISSION AGAINST CORRUPTION***

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Mr B J Gaudry, MP (ALP)
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STAFF

Ms R Miller, Clerk to the Committee
Mr D M Blunt, Project Officer
Ms G C Penrose, Assistant Committee Officer

FUNCTIONS OF THE COMMITTEE

Independent Commission Against Corruption Act 1988

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

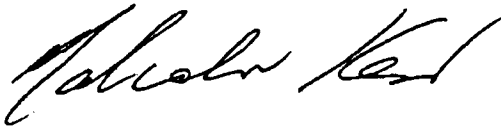
CHAIRMAN'S FOREWORD

As part of its role in monitoring and reviewing the exercise by the Commission of its functions, the former Committee established a regular pattern of public hearings with the Commissioner of the ICAC, Mr Ian Temby QC. The hearing on 26 March 1993 was the fourth such public session the current Committee has conducted with Mr Temby.

These hearings enable Committee members to question the Commissioner about matters of concern, issues arising from Commission reports and general aspects of the Commission's operations. By conducting these hearings in public and subsequently producing a Collation of the questions and answers, the Committee hopes to assist in informing the public about the ICAC.

As with previous public hearings conducted by the Committee with Mr Temby, the ICAC was provided with a series of questions on notice. The Committee received written answers to these questions in advance of the hearing. These written answers were tabled at the hearing and Committee members had the opportunity to ask questions without notice.

It should be noted that this Collation represents an edited version of the minutes of evidence of the hearing. In some cases the order in which questions were asked has been altered to enable the questions and answers to be categorised under appropriate subject headings, for easy reference. Furthermore, there have been some minor changes to the text to enable it to read more easily.



Malcolm J Kerr MP
Chairman

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CHAIRMAN'S OPENING STATEMENT:

CHAIRMAN:

The Parliamentary Joint Committee on the Independent Commission Against Corruption has a statutory function under the Independent Commission Against Corruption Act to monitor and report on the exercise by the Commission of its functions. One of the ways in which the Committee performs this function is by public hearings, such as this one, which are held every six months. The purpose of the hearing is to enable the Committee to receive a briefing from Mr Temby on the work of the Independent Commission Against Corruption over the past six months and to offer an opportunity to the Committee to raise issues about the workings of the Commission. As with previous hearings, the Committee sent the ICAC a list of questions, and the Commission has responded to those questions in writing. I table those written questions and answers, if no objection is taken to that course.

I would invite Mr Temby to make an opening statement to the Committee. In his opening statement Mr Temby might like to cover one matter that raised some concern, that is an article about an armed robbery that appeared in the *Sunday Telegraph* on 21st March. I might table that article, if there is no objection, so that Committee members and the public may be aware of its context.

AUSTRALIA'S BIGGEST SELLING NEWSPAPER

THE Sunday Telegraph

March 21, 1993

\$1 Airfreight extra Registered by Australia Post - Publication No. 1099630

FREE for every reader

LEAGUE STICKERS

Ask your newsagent

\$60,000
*Total prize pool

\$\$\$ BINGO \$\$\$

New game today **PAGE 37**



Shooter Allan Jones gets a dawn start at Lake Cowal yesterday for the opening of the duck season

Duck shooters in Lake Cowal showdown

Full story P7

ARMED ROBBERY - BOOKIE ACCUSES ICAC



Geoff Landry: robbery claim

NSW detectives are investigating the alleged involvement of a member of the Independent Commission Against Corruption in an armed robbery of a leading Sydney bookmaker.

Bookmaker Geoff Landry claims he was robbed by two men who identified themselves

as ICAC staffers at his Strathfield home.

One of those men has already been interrogated by ICAC officers and has been identified in a special police line-up.

Mr Landry has criticised the ICAC for withholding vital information about the alleged crime from case officers, detectives from the south-west region armed hold-up squad.

Full report: page 5

\$5 Fly Australia

HOTEL OFFERS: P129



Page 157

Growing Younger



Jack Thompson and son

Page 7

ICAC man accused of armed robbery

DETECTIVES are investigating the alleged involvement of a staff member of the Independent Commission Against Corruption in an armed robbery of a leading Sydney bookmaker.

The ICAC staffer has already been interrogated by ICAC officers and has been identified in a police line-up.

The bookmaker, Geoff Landry, has criticised the ICAC and accused it of withholding vital information about the crime from case officers, detectives from the south-west region armed hold up squad.

Landry claims he was approached by two men who identified themselves as ICAC staffers at his Strathfield home about 8:30pm last December 3.

The bookie had just finished two days of fielding at the Hawkesbury Gold Cup. He won on both days.

Landry says his wife Toni opened the side gates and he drove to the back of his house where he was approached by two men.

"They claimed they were from the ICAC and they wanted to look at our records," Landry told *The Sunday Telegraph*.

"They asked for co-operation quite aggressively, threatening that if we didn't co-operate they could subpoena us and so on."

"At this stage I asked to see the ID, I walked under the security light with one man. My wife went down to shut the side gate."

"While she was shutting the gate, the guy said to me 'We're here to rob you. Do you want to do it the easy way or the hard way?'"

"He then showed me the stock of a gun inside his shirt or vest."

The smaller of the two men then followed Mrs Landry inside the house and grabbed a bag containing \$33,000.

Landry said he always put his money into the security van at the track but it was a fluke he was

EXCLUSIVE



SPECIAL REPORT
by STEVE BARRETT

targeted for a robbery that day.

He was fleeing on another race in Brisbane and because there was no daylight saving up north, he had to wait around, missing the security van.

On December 15, a Detective Sergeant John Jansen from the Australian Federal Police in Canberra noticed a police sketch of the robbery suspect published in *The Daily Telegraph Mirror*.

He claimed the suspect bore a striking resemblance to a staff member within ICAC.

Suspicious

The federal policeman sent a two-page letter dated December 23 to the NSW police hierarchy outlining his suspicions about the ICAC staffer.

But NSW police headquarters passed the letter on to the ICAC instead of the south-west armed hold-up unit.

It wasn't until almost a month later, on January 19, that the armed hold-up detectives learned of the Jansen letter.

ICAC informed them they had spoken to the "suspect" ICAC staffer but he denied robbing the bookmaker.

NSW detectives say the first they knew about the letter was after making contact with Jansen

who wanted to know why NSW police had not responded to it.

He then supplied them with a duplicate of the letter.

Angry armed hold-up police then organised a line-up using 13 men and the suspect at the Sydney Police Centre on February 26. The procedure was video-taped.

Mrs Landry immediately identified the ICAC suspect; her husband also selected him after some early hesitation.

No charges have yet been laid but armed hold-up police say their inquiries are continuing.

Mr Landry has lashed out at the ICAC for failing to pass on the important Jansen letter to the police investigating the attack on him and his family.

"It doesn't matter whether the ICAC man is guilty or not guilty, I'm absolutely cranky that ICAC frustrates the police investigation. It's the armed hold-up squad investigating our robbery, not the ICAC."

Mrs Landry said: "How can you tell your kids to trust the police or law enforcement people when they sit on vital information, regardless of who they work for? I think that's sad."

The bookmaker accuses the ICAC of with-



Robbed bookie Geoff Landry: 'Do you want to do it the easy way or the hard way?'

holding information, adding that NSW police were often criticised when they investigate allegations of corruption within their own ranks.

"Everyone wants the Ombudsman to investigate police; why should it be any different for the ICAC?"

Mr Landry, a successful bookmaker for the past 17 years who now enjoys a turnover of about \$30 million, has supplied NSW detectives with a sketch of the LD badges worn by the robbers.

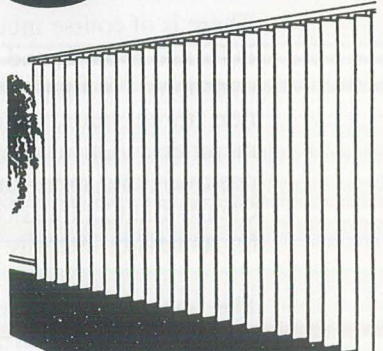
Police are still seeking information on the second robber.

75% SAY US

In a recent survey *75% of our buyers said our price was the best. All suburbs phone now for a free factory direct daytime or evening quotation. Ask about our 5 day fitting and 3 month payment plan.

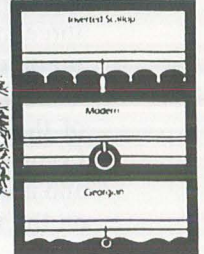
VERTICAL DRAPES

Go modern with beautiful vertical drapes. Over 200 colours in plains, berbers, fibreglass, polyester, acrylic and suede. Ask about our peimets, decorative tracks, and new season's fabrics.



HOLLAND, VENETIAN, PLEATED BLINDS

Holland selections in plain, shantung, boucle, lightban and pattern prints. Venetians in micro, slimline, 35mm and 50mm systems. Timber venetians in designer colours. Pleated shades (duette) for special windows.



Landry family live in fear and distrust of the authorities

THESE days, the Landry family's life is one of fear and paranoia. Every move they make is governed by a secret code: you need a code to get in the front door, no matter who you are, and one to get out.

Even putting out the garbage involves an intricate series of security measures.

With four young children, Landry's occupation and the shock of being robbed in his own home, the high security.

The bookmaker and his wife are more than sympathetic towards brothers of the profession who have suffered similar traumas. The late Lloyd Timarah and Charles Skarret immediately came to mind, both murdered in their homes. There are those who say bookmaking is a dying trade.

The Hawkesbury Gold Cup was a prosperous two-day carnival for the leading ralls bookie.

Landry arrived home about 7pm and went straight out for late night shopping. His mind was fixed on a bike for his son's sixth birthday; it quickly changed to saving his family when he arrived home an hour and a half later to be confronted by two robbers identifying themselves as members of the anti-corruption commission.

Toni Landry, mother of four, says the robbery has placed an incredible strain on her family.

"Just because of the whole situation of who the robbers said they were," she said.

"My trust is gone. I can't even let a Telecom person who we've arranged to come here, to come to the door now without ringing up and making sure who he is."

"I'm frightened to let my children walk to school. My daughter won't even go into the backyard now. She's been under a psychologist and this (robbery) has set her back months."

"How can you tell your children who to trust when you don't know who to trust yourself?"

Mr Landry says the NSW police have been fantastic and have bent over backwards to help them. He's been deeply hurt, he says, by ICAC's secrecy.

"As a former school teacher, I'd

stand them in the corner. And that's a very mild way of expressing the anger which I feel about the scant regard they've held for our personal feelings."

Mr Landry believes the robbers were not typical crooks because of the manner in which the robbery was carried out. Professional crooks, he says, would have probably roused him up.

The bookmaker says he's always been security-conscious but he is more so now. His only regret is that his schnauzer dog was locked in the laundry because it had been misbehaving; the dog had earlier bitten a passer by in the street.

"If he was outside he would have taken a piece of them," Mr Landry says.

The Landry family will continue their extraordinary security measures until those responsible are brought to justice.

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Weekends: Sunday only

MR TEMBY'S OPENING STATEMENT:

Mr TEMBY:

Mr Seshold, who is with me today, is the Commission's new Executive Director. I might want to refer some questions on matters of administration and so on to him, if the Committee does not mind. Mr Chairman and members of the Committee, the Commission has now been operating for just over four years. One measure of its achievement is the Commission's output. To date just under 40 reports on investigations and corruption prevention projects have been published. That indicates that the Commission is a most productive organisation. Although the publication of reports is not the end of the process or in and of itself highly valuable, what really matters is the extent to which beneficial changes flow as a result of Commission work. As I think Committee members are well aware, there have been many beneficial changes which have resulted from Commission reports—too many, indeed, to deal with extensively.

To give just one example, you will have seen in the press, particularly the suburban and rural press of recent times, reports showing that the work we did in relation to council cars has led to changed practices in a very large number of local councils. That is a good if somewhat mundane example of the sort of results we are always seeking to achieve. And in respect of other reports there are changes which are now under contemplation.

There is of course much work done by the Commission other than that which is reflected in formal reports, and some of those matters are reflected in answers to the Committee's questions. In that general context I mention the Commission's corporate plan for the next three years, which has now been published and made available to Committee members. On a related note, it was pleasing for the Commission to be mentioned positively and more than once in the Governor's Speech at the opening of Parliament. Clearly the Commission is regarded by government as a valuable and valued mechanism for achieving integrity in the public sector.

The only other matter I want to take up before coming to the newspaper article you mentioned, Mr Chairman, arises from the meeting that this Committee had with the Operations Review Committee of the Commission on 5th February. There were then three matters raised for follow-up action. The first was the Commission's offer to prepare a draft brochure, similar to the one that we have prepared concerning the ORC, dealing with the work of this Committee. I have just now provided to Mr Blunt a draft of that brochure. I do not suggest that it be tabled because it may well be that the Committee will want to do some work on it, but I just report the fact that you have it, and it is designed to perform the same sort of function as the brochure we have prepared on the ORC, which we are now using as a matter of course.

The second matter flagged was the possible reduction of the timeframe of status reports about complaints to the ORC. I am pleased to be able to report that the timeframe has now been reduced to six months, which represents a very marked improvement. As soon as complaints are six months old a status report will be provided and the matter will then remain on the agenda of the ORC until it is finally disposed of. As I said, that represents a considerable improvement. Thirdly, I promised to provide the Committee with a paper expressing the Commission's view about the Committee's ability to do follow-up work with respect to Commission reports. That paper has been prepared and I would like to make it available with a view to it being tabled and copies made available to Committee members. It is a very short report and it expresses the Commission's view as to what more could sensibly be done. It is of course put forward with all deference and obviously it is no more than a suggestion because we cannot tell this Committee what it ought to do, and we do not seek to do so.

PARLIAMENTARY COMMITTEE ON THE ICAC
FOLLOW-UP ACTION ON COMMISSION REPORTS

The Commission and the Committee have had discussions about how the Committee could contribute to effective consideration and implementation of recommendations in Commission reports.

The Committee has proposed (in its Discussion Paper on the Review of the ICAC Act, September 1992) a requirement for the relevant Minister to report to Parliament on his or her response to the Commission's report within six months of the report being tabled. This initiative, if implemented, would be markedly useful.

Of course, as the Committee's discussion paper notes, the Parliament and Government can consider and reject recommendations in Commission reports. However the Commission's work may be more effectively frustrated by the failure or refusal to consider its recommendations.

The Commission suggests a more pro-active role is available to the Committee and may achieve even more effective results. It is based on the proposition that whatever a Minister decides must be actioned. It is not unknown for bureaucratic delay or deviation to frustrate reform programs.

One of the Committee's functions as prescribed by the Independent Commission Against Corruption Act is "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" (s64(1)(c)).

The Committee has power to summons witnesses to give evidence (ss69 and 71 of the ICAC Act, the Parliamentary Evidence Act).

The Committee could therefore require relevant public officials of relevant public authorities to appear before it and explain what action had been taken in consideration of Commission recommendations or, if no action had been taken and no consideration given to the Commission's report, why that was so. This would not require the Committee to engage in a reconsideration of the Commission's recommendations. It would amount to examination of a matter "arising out of" an ICAC report, even after a Ministerial statement.

The Committee's role would be simply to examine the public authority's response to the recommendations, and (if necessary) report to the Parliament on the adequacy or otherwise of the response.

This action would likely have the effect of encouraging appropriate consideration of, and action in respect of, recommendations in Commission reports.

That is all I wish to put by way of an opening except to respond to what you raised concerning this newspaper article. There are various respects in which the story of last Sunday was wrong. I want to concentrate on three of them, although others could be raised. The first is the statement or suggestion contained in the story that the Commission frustrated the police investigation. As to that, nothing could be further from the truth. We have at all times urged early completion, and we have provided investigating detectives with much information and assistance. Specifically, the AFP memorandum of 22nd December, which the story clearly infers we sat on for a month, reached the New South Wales police early in January, was not sent to us until either late on 14th January or early on 15th January, and was responded to on the next working day, which was Monday 18th January. It was not until 22nd February that investigating police interviewed the ICAC officer. To say that the Independent Commission Against Corruption failed to act on the AFP letter is therefore as wrong as it could be.

Secondly, the headline is wrong. No ICAC officer has ever been accused of the robbery, whether by the victim or by police. I may be permitted to comment that it would be profoundly stupid for an ICAC officer to use ICAC identification in the course of committing a robbery. I should say that I have complete faith in the officer concerned who, it is said, has some facial similarity to one of the alleged robbers. I can assure the Committee that the matter has been handled properly and quickly at all times, at least at the ICAC end. Thirdly, New South Wales police have advised the Commission by fax that there was no positive identification at the lineup of our man, who attended on a voluntary basis.

The worst aspect of all this is that the reporter did not make any attempt to check any part of the story with that Commission. Somebody else—we think a subeditor—rang the Commission's premises late on the afternoon of Saturday last and, not surprisingly, there was nobody available to provide any useful input. But the reporter made no attempt to contact us at any stage. I should mention that another reporter did contact us about the matter at an earlier stage—a reporter from another newspaper. He was given certain accurate information and decided not to run with the story.

I have been kept advised of this matter from the outset. After the story was written I instructed one of the Commission's general counsel to prepare a minute which details all that the Commission has done in relation to the matter. I have that minute here, and if the Committee wanted it after due deliberation, I would be prepared to provide it but, of course, only on a confidential basis. Finally, could I say that if the Committee would like to see the file or go further and investigate the matter, we would welcome that. There has been a grave insinuation against an ICAC officer. If the Committee wants to get involved as to how the matter has been handled at the ICAC end, that would be just fine so far as we are concerned. This would not be to get into operational matters, which by statute we are bound to resist, because this is an allegation—or something close to it; allegation is probably too strong because it has all been done by way of insinuation—against an ICAC officer. I do not, of course, seek any response immediately, but the invitation is certainly there.

CHAIRMAN:

Those matters should be dealt with by the Committee in a deliberative meeting. There may be some questions arising from that by the Committee, but it is a matter for Committee members.

- 1 -
GENERAL UPDATES/BRIEFINGS

Questions on Notice

The Committee would appreciate general updates/briefings on:

Q: 1.1 the status of current investigations which have been the subject of public hearings and forthcoming reports;

A: By the time of the Committee's hearing it is likely that the report on the Northern Region part of the State Rail Authority investigation will have been published and the publication of the report on the second and third terms of reference of the Metherell investigation will be imminent.

Hearings in aid of Operation Milloo, which were held in public at the end of 1992, have been held in private since the decision of Mr Justice Cole in *Chaffey & Ors v ICAC* delivered on 29 January 1993. This has resulted in a diminution of public awareness of the Commission's work and a reduction in the flow of information to the Commission relative to the investigation. Some hearings in that investigation will be heard in public, and depending on the decision of the Court of Appeal in *Chaffey* the hearing may more generally resume in public. It would be unwise in respect of that matter to forecast when the hearings will be completed and the report published.

Q: 1.2 the Commission's corruption prevention work;

A: The following updates the briefing to the Committee in November 1992.

Additional completed projects

Project No.9 on Plant Hire (Heavy Machinery) was completed and published in December 1992. The report examined plant hire systems in three local government councils and the RTA, and made recommendations for all public sector agencies hiring road plant, on the basis of these case studies. Recommendations focussed on three main areas: first, selection and hiring of contractors; second, management of the plant hire contracts, and third, accountability of managers. The project will be followed up in some months' time by a monitoring survey to establish the extent of changes brought about by the report's recommendations.

Project No.27 involved the conduct of a public seminar in October 1992 on issues arising from the Commission's Investigation into the Unauthorised Release of Government Information, and publication of the seminar proceedings in

February 1993.

Project No.19 is a monitoring project on the outcomes of Project No.2 which examined the Department of Housing's systems for maintenance of public housing (February 1991). The monitoring project will be completed in early April with the publication of the full report of Project No.2 (originally provided to the Department in confidence), together with information on the implementation of the earlier report's recommendations. The majority have been successfully implemented.

Project No.20 is a monitoring project on the recommendations of Project No.4 on Purchase and Sale of Local Government Vehicles (December 1991). A questionnaire to all 216 local government councils and county councils and 40 State government agencies involved in buying and selling vehicles achieved a very high (66%) response rate. The monitoring report, published on 17 March 1993, summarised changes made in line with the report's recommendations and feedback on the quality of the original report.

New projects in progress

Project No 14: Systems for payment of travel claims.

Project No.23: Tendering booklet - based on case studies drawn from investigation reports and corruption prevention advice.

Project No.18: Monitoring of the CP project on Driver Licensing (Project No.1)

Project No.21: Monitoring of the CP project on Allocation of Boat Moorings (Project No.5)

Project No.22: Selected government agencies: code of conduct reviews

This project will select five or six government agencies according to a range of parameters and assist with the review of existing codes of conduct.

Project No.25: Police corruption

This project addresses issues arising from the Commission's current investigation in a systemic way, focusing on the structures, policies and procedures supporting criminal investigations.

Project No.26: Monitoring of the CP project on Cash Handling in Public Hospitals (Project No.3)

Project No.28: A series of regional seminars.

Q: 1.3 the Commission's public education work;

A: The Education Unit's focus has continued on the two strategies of curriculum development at secondary and tertiary levels, and community awareness.

It is intended that the theme "**Corruption Costs**" will be integrated into all Education activities for the next 12 to 18 months. This theme aims to stress the consequences of corruption in social, economic and personal terms.

Community Awareness

Trips to Country Areas

10 trips are planned this year incorporating visits to schools, government, business organisations, and community audiences. The next three trips complete a program which will see 90% of rural New South Wales visited within 18 months.

Metropolitan Visits

A structured program of visits to metropolitan schools and community centres is being developed for 1993.

Speaking Engagements

82 speaking engagements have been undertaken since June 1992 (exclusive of country trips) to government, community, business and professional audiences. Speaking engagements will continue through 1993.

The Commission is considering the development of radio and poster advertisements and visual resources to increase community awareness and convey messages in a timely and cost effective way.

The Commission is sponsoring a competition for tertiary communications students for film or video projects which address the general theme of corruption in society. Entries will be judged in November 1993.

The Commission will have an exhibition at the Book Fair, to be held at Darling Harbour in June 1993. The high cost and limited educational benefit of attending fairs and community events has resulted in a decrease in the Commission's involvement in these activities.

Ethics Training

The Education Unit provides advice to public sector organisations on the implementation of ethics training and corruption awareness raising courses for staff to facilitate organisational culture changes. Special training projects are being developed with the Ethnic Affairs Commission (for interpreters), the Property Services Group (for managers), and the Health Department (for managers).

Police Education

The Education Unit intends to further its contact with the Police Academy during 1993 to offer assistance with the introduction of corruption topics into existing course outlines, and will present a speaker at the National Conference for Police Educators in Brisbane, in April.

Q: 1.4 prosecutions arising from Commission investigations, and convictions;

A: Presently there are 176 charges against 30 people before the courts. Some of those matters are due for hearing, or sentence following pleas of guilty, within the next few months. Others are due for hearing later in the year or not yet listed for hearing.

Since November 1992:

- ◇ One person pleaded guilty to ten charges and a three year good behaviour bond was imposed, taking account of mitigating circumstances. He will give evidence against his co-accused later this year.
- ◇ Two persons were discharged at committal.
- ◇ Mr Mills, co-accused of Messrs Lynn and Poulos, was not billed by the DPP.
- ◇ The appeal of Mr Ross against the severity of the sentence imposed for two offences against s87 ICAC Act has been disposed of and a sentence of 200 hours of community service imposed. The appeals of Messrs Hogan and Cassell, against their convictions, following pleas of guilty to one and four charges respectively under s87, have not yet been heard.

Q: 1.5 the work of the Commission's Research Unit;

A: A new Research Manager commenced with the Commission on 16 November 1992. The number of staff in the Unit remains at two. The Unit is responsible for conducting the Commission's research activities as well as providing

professional advice and assistance to other Commission departments undertaking research.

The Unit's current projects are:

- ◇ A review of the readership of Commission investigation reports. The review includes a survey of 400 recipients of Commission reports, seeking feedback on the effectiveness of reports in meeting their information needs and to identify information most commonly sought and used by report readers;
- ◇ A proposed study into public sector employees' understanding of corruption. The research proposal is being redrafted following a pilot study and further examination of the literature. It is anticipated that data will be collected during the first half of 1993;
- ◇ Preparation of a literature review and draft discussion paper about the use and handling of police informants (in connection with the Milloo investigation).

Q: 1.6 any advice the Commission has provided on proposed legislation/discussion papers etc.;

A: The Commission has provided comment on the Crimes (Corruption) Amendment Bill dealing with bribery and extortion offences, comments to the Archives Authority and the Cabinet Office in respect of a discussion paper proposing new state records legislation, a submission to the Legislation Committee considering whistleblower protection legislation, and comments to Government upon the report of the Joint Select Committee Upon the Process and Funding of the Electoral System.

Q: 1.7 the Commission's current budget and staffing position;

<u>Expenditure</u>	<u>YTD February</u> \$'000
Employee payments	4,614
Maintenance and working expenses	2,452
Fees to legal practitioners	313
Capital	<u>467</u>
	<u>7,846</u>

Staffing

As at end February 1993 - 136

Q: 1.8 the work of the Operations Review Committee.

A: Since November 1992 the Operations Review Committee has held four scheduled meetings and one additional special meeting in February 1993. At those meetings a total of 724 reports were considered by the Committee.

The Operations Review Committee met with the Committee on 5 February 1993 at the Commission's premises to discuss issues relating to the Operations Review Committee's work.

Questions Without Notice

Operation Milloo

Mr MUTCH:

Q: In respect to your answer in relation to the Milloo inquiry, you said it would be unwise to forecast when any hearings will be concluded and the report published. Would you tell us why it would be unwise. I think there is probably a general public interest and police interest to know whether it is still on track and when it will be completed.

Mr TEMBY:

A: I have a degree of reticence, simply because any estimate or indication that one gives is so easily translated into promise, which of course it cannot be. So long as it is stressed that we cannot speak confidently because we still do not know how much more might be forthcoming, I do not mind saying that the hope is that we will be substantially through the process of examining allegations of corrupt conduct and impropriety by about the middle of the year, although I imagine that we will not be through the hearings in the sense that we have done all that will be necessary in relation to examinations of systems, policy questions and so on, which loom very large in this particular matter. I cannot say when hearings entirely are likely to finish, but the hope is on present indications and assuming that the material we have does not greatly expand—and it could at any time—we will be substantially through the factual side of the hearings by about the middle of the year.

Could I just mention one other thing about Milloo because I think the update we provided is perhaps a little sparse. Before Christmas we reached the point of substantial completion so far as four segments were concerned—some of them Smith related and some of them not. Since Christmas we have been conducting hearings on a solid schedule. We have completed those four segments and we have completed also a fifth segment which relates to an early and important armed robbery. That has been done. Segment six is the Cornwall matter, which has taken a little time, and I should mention also segment seven which is now current. That involves allegations against some, but certainly not all, members of the gaming squad. The allegations relate to very recent activities. It is perhaps worth stressing that they have got nothing to do with the man Smith. The hearings are being conducted by Assistant Commissioner McClellan who has been brought in for the purpose. He has been conducting hearings in relation to gaming matters since Monday of this current week, he will be here next week, and we will probably need to bring him back at a later stage. That provides something more of an update.

Mr GAUDRY:

Q: In relation to this change that would have occurred from the public to the private hearings, you mentioned that there may be differences in flow of information and also the awareness of the Commission's work. Have you made any plans perhaps to do a research into those aspects of this particular case concerning your preventative work and education work to at least give a lead to that aspect of the Commission's work?

A: It is perfectly clear that in the particular matter a steady flow of information we were receiving has, in the space of the past month and a half or thereabouts, dried up to a mere trickle. The only reason we can identify is the fact that we are now conducting our hearings in private and there is no reason to think that the same consequences would not flow so far as other investigations are concerned. There is no reason to think that that is a situation which is unique to the Milloo investigation, and that is very telling at the end of the day, particularly when we know what the Court of Appeal decision is. Certainly we will be studying the matter to work out what broader conclusions can be reached, but it seemed proper that as the matter was raised to draw the Committee's attention to the fact that it has had an effect on information flows.

Q: Could it be put on notice to have some report made of that, as you say following upon the decision of the Court of Appeal and also the completion of the investigation?

A: Could I suggest a slight variation of that. We do not know when the decision will come down. It will take time for us to do some useful work in relation to the matter. We might be in a position to volunteer something earlier, but I think the likelihood is that it would be best raised in about six months time when I appear here and I will be happy to make some more informed comments at that time.

CHAIRMAN:

Q: The briefing does refer to Mr Justice Cole in relation to the Milloo hearing. Do you believe the Commission's investigative powers have in any way been diminished by that decision?

A: I think the short answer is no, Mr Chairman, but I would prefer not to take comment further. The matter is still before the court but I think the short answer is no. Our effectiveness may be affected, but that is a slightly different question. I do not think our powers have been affected.

Mr ZAMMIT:

Q: We have all heard of the saying, justice delayed is justice denied. This inquiry is

being conducted in several segments and one of the segments was completed just prior to the end of last year. However, the Commission has previously indicated that it will not be reporting on the inquiry until early 1994. Is there not a risk of injustice to the individuals subject to allegations in the early segments, particularly those where it is found that the allegations are unfounded due to the long time lag between the completion of the investigation and the report by the Commission? Would the Commission see advantages in reporting on each segment of the inquiry as it is completed? Has the Commission considered making interim reports during the course of this inquiry, and further, is the Commission providing information to the DPP or employers for appropriate action to be taken as each segment is completed?

- A: We have considered the possibility of interim reports. In the particular matter that is not practicable. It needs to be understood that Commission hearings are, of their nature, distant from either prosecutions or hearings before the civil courts. While we are proceeding by way of segment, it has been made abundantly clear to those involved that that is principally an aid to a disciplined, rigorous approach so we do not just wander around at large without anyone knowing what might relate to what. We have tried to do it in blocks, but it is not the case that the segments are watertight compartments. It is not the case that one can, at least with respect to most of them, simply say well that is done and now we will report in relation to it. It just cannot be done because, to take a simple example, questions of credibility may cross from segment to segment because there are witnesses who are involved in more than one segment. That is a reason but a number of other reasons could, if I had time, be provided.

I have thought about it earnestly and it is simply not practical to report segment by segment. We would be providing a series of reports that were superficial and could not be relied upon. It is my present intention, however, to provide two reports. In the particular matter I think it will be possible to report first in relation to the allegations against individuals, the factual material, if one may put it in that way, and later in relation to the other aspects. So at least we provide a report as to the evidence touching and concerning individuals as soon as practicable and do not wait for what might be a couple more months until we have done all the policy aspects. You asked whether we were providing information to the DPP. I am practically certain that no briefs to prosecute have to this stage gone forward. We normally start that work in parallel with the hearing but at a later stage of the hearing.

CHAIRMAN:

- Q: I think you said you could expand. Is that something you wanted to take on notice to provide additional material?

A: No. I have done it in the hearing. The people who were there know what the reasons are.

Q: I only mentioned that because you did say—

A: I could if necessary but I am running the hearing. I just have to say to you it cannot be done. I cannot write a satisfactory series of reports segment by segment. It is just not possible.

Public Education

Mr GAUDRY:

Q: In terms of your public education unit at the moment and the development of tertiary and secondary level studies, I am wondering what the input is into that process by educational organisations and community organisations?

A: I think Mr Seshold is probably better informed as to that than I am, although in fairness to him I should say he has been on deck only three or four weeks so he might not know all the fine detail.

Mr SESHOLD:

A: Qualified by what Mr Temby said, there has been extensive discussion with the Department of Education and the curriculum board on development of material for school curriculum matters. In addition to that, the department has undertaken a long program of addresses to schools and other institutions which has been part of the development of better internal knowledge as to what the ultimate need of the curriculum program should really be, but the simple answer is that the consultation has been extensive and very co-operative.

Q: The implementation concerns me to a degree as well. Coming from a teaching background there was a famous little poem which said it ought to be taught in schools. Whenever any new drug and alcohol, or sex education items come up, they are compartmentalised and loaded into a school program and often in an added on way, and I am wondering whether you are looking at the effectiveness of teaching something like corruption within a very diverse school curriculum?

A: I think we certainly are aware of the risk that you mentioned, which is why there has been such extensive consultation to try to allow the development of that co-operative behaviour between ourselves and the people responsible for preparing the curriculum and teaching it, and to date it would appear that the signs are very favourable for acceptance in the teaching material, so I think you are right, we accept it is a risk but the way it has been approached is thoroughly professional and consultative.

Mr GAUDRY:

Q: A kindergarten to year 12 type of view?

A: No. We are looking essentially at incorporating material in legal studies. That appears from the work that has been done to be the most appropriate place for the material to be included. We have done research which indicates the massive growth in the number of students who are taking legal studies in schools. It is a very fast-growing topic. I have some numbers here showing just how that has grown in the last few years, and it appears that that is the area where we could most easily integrate it into the program.

Mr TEMBY:

A: It seems fairly clear that you cannot do anything very effective below secondary level. You can teach good citizenship and integrity as part of good citizenship, but anything more specific than that does not seem to work at any lower level.

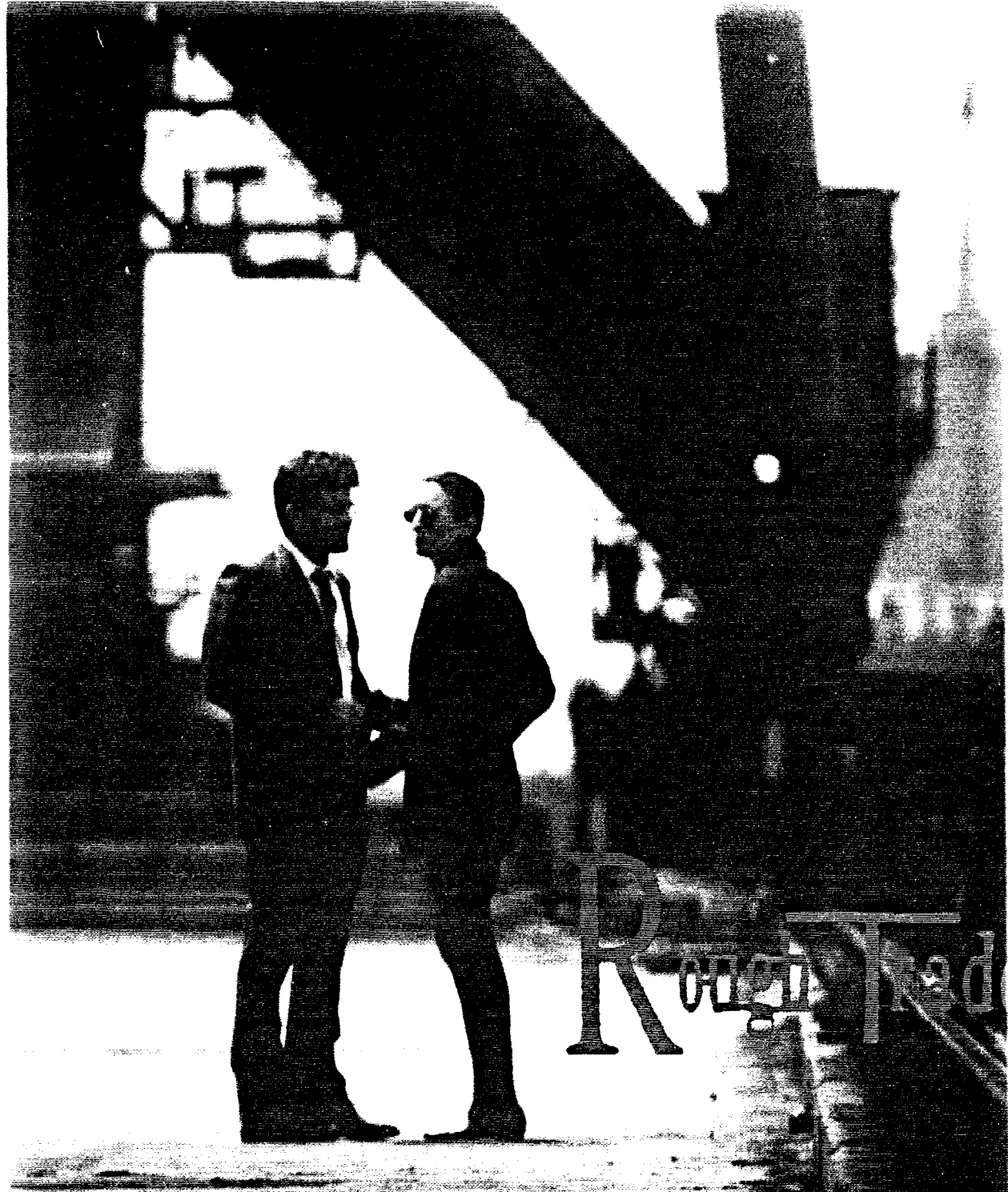
In relation to education, could I mention and table some papers in relation to something we are just undertaking. We are conducting a film and video competition amongst communications students at tertiary institutions, and what I would like to have tabled are a brochure and document calling for people to register if they want to participate in this program. There will be prize-money provided, a total of close to \$10,000 going to students and also to institutions. We are interested in what product we can get out of it.

There are really two aims. One is to see what product we can get out of it, but also communications students, as Mr Turner would know, are by their nature people who enjoy lively, inquisitive minds and a high capacity for debate of social issues. If and to the extent we can promote debate on these issues amongst that large group of tertiary students, it seems a thoroughly worthwhile thing to do. It is an initiative, and like so many initiatives, it is difficult to forecast just how well it will go, but it seems to us thoroughly worth trying, and perhaps even quite good fun.

Mr ZAMMIT:

Q: Why is it restricted to tertiary institutions? I know many high schoolers have been doing a lot of work on film and video.

A: I think the judgment made was that if we were going to have a prospect of getting product of the sort that could be used by us for teaching and similar purposes, we were more likely to get it at the higher than the lower level.



Rosewater

A FILM BY LUCIE DALVERO

Presented by ROSA DALVERO & MICHAEL DI LACCO

With TOM MANN MARCIE MARTIN BLAD MILLER JASONE GEE FRANKIE POOTI KYLE BRYAN

Directed by JASONE GEE Screenplay by BLAD MILLER Story by LUCIE DALVERO



In Association with SPECIFIC PICTURES & Cine Evoluzione and Europa Distribution



Rough Trade

WINNER

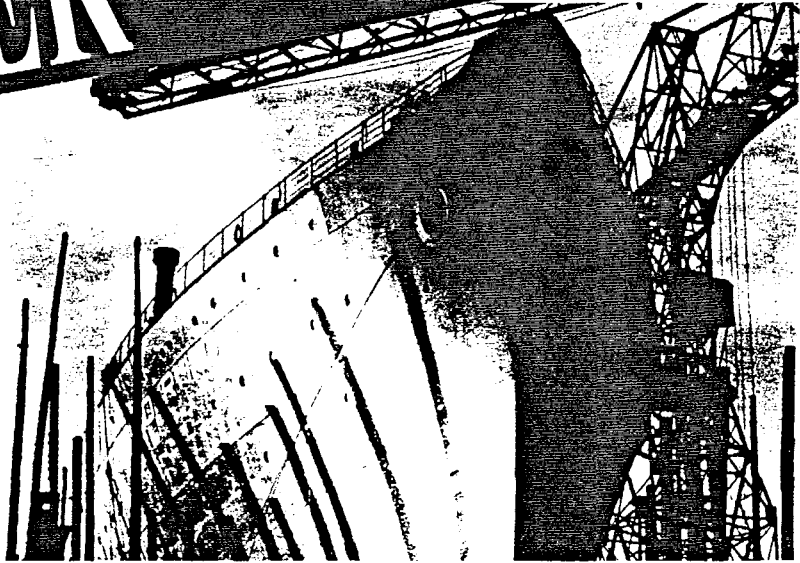
CRITIC'S CHOICE, VENICE
MERIT PRIZE, BERLIN
BEST FIRST FEATURE - BFI

1992

Rough Trade is a debut film remarkable not only for its unrelenting intensity and critical detail but also for the fact that it made it to the screen at all. This film seems to have been made in spite of the official and budgetary constraint that has muffled many an independent production. Forced to work outside the normative domain of the funding industry and seemingly turning obstruction to advantage, the producers of *Rough Trade* have rendered a tale so raw and real that it is set to become something of a landmark of its genre.

Shot on 16mm and other "reconstituted" hardware, production values help tell a tale of power, struggle and divided loyalties on Sydney's waterfront during the late 50's. Inspired by actual events that span a thirty year period on the waterfront - from the "black bans" on the Dutch fleet (on its way to suppress Indonesia's moves for independence under Sukarno in 1945) and the subsequent struggle against the notorious anti-Red Bill during the 50's, to Australia's early complicity in Vietnam and latterly East Timor - *Rough Trade* is a potent allegory on the struggle against corporate influence, government complicity and individual silence.

The setting is Kings Cross 1958, thriving and bustling against the sombre frame of the city's waterfront which has ground to a halt. The story centres on the relationship between Frank, a union organiser who is hell bent on



thwarting his country's complicity in a "police action" against an unnamed Asian neighbour struggling for independence to the north, and his sister Rosa, a young filmmaker documenting the events as the union meets the government and corporate interests head on. The government and massive corporate power seem set not only to assist a manipulative foreign power in its assault on an erstwhile ally, but in the doing, destroy the power base of a rapidly growing labour movement.

When Rosa, who is romantically involved with a government official, stumbles on suspicious activity on the docks, unwittingly capturing it on film, the scene is set for an unrelenting political thriller that to tell of would destroy the central plot twist which propels this apparently simple tale. Suffice to say that there is more to Rosa's lover than she can possibly know.

François Truffaut once observed that movies in which people tell lies require more shots than those in which they tell the truth - in *Rough Trade* the cutting does the talking and the audience no longer knows what's true and what's not. Escewing the soft, seductive tones and the measured rhyme of more mainstream renderings - precipitated no doubt by "budget neutral" production techniques and found stock - *Rough Trade* focuses its reality sharply, with a raw force and energy that speaks volumes. Deliberately challenging conventional forms of expression and perception, provoking the question rather than massaging and conforming, *Rough Trade* projects an instability that serves the central theme of corruption and political intrigue more than adequately.

Rough Trade mobilises influences as diverse as Malle's

Lift to the Scaffold and Tournier's *Out of the Past* to Iven's *Indonesia Calling* and actual footage shot by the wharfies during the 40's, pushing its critical inventory beyond the platitudes of a simple "quotation" of genres, as is now the predictable fashion. Playing at the edges of the detective genre, *Rough Trade*'s camera operates as an unreliable guide through a labyrinth of rapidly cut, elliptically shot appearances and disappearances, partial disclosures and lost leads. While noir's "smell of fear" pervades the *mis-en-scène* and documentary technique approaches a kind of direct cinema, references here are for cross-examination rather than stylisation. Formal parameters work to declare the structures at play not only in the film itself, but the social and political system against which this potent drama is set.

Realism is not, after all, a state of nature, it must be produced and reproduced and, for all its formal pretensions, *Rough Trade* is a stark and cogent piece of modern realism. It must be seen to be believed.

Call for Entries

The ICAC is running a Film & Video Competition open to all students of film/video/media/communication in NSW tertiary institutions. The Commission is offering cash prizes for productions that best explore an issue of social or institutional corruption with emphasis on its social, political and economic consequences. For more information on the 1993 ICAC Film & Video Prize call the Education Unit on (02) 3185999 or (088) 463909.





INDEPENDENT COMMISSION AGAINST CORRUPTION

ICAC Film & Video Competition

Call for Entries

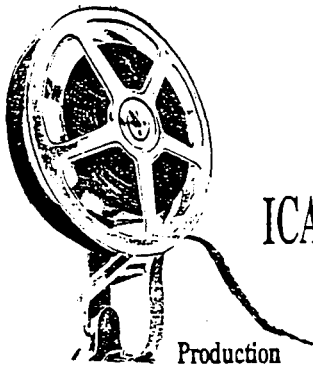
The Independent Commission Against Corruption is running a Film & Video Competition open to all students of film, video, media and communications in New South Wales tertiary institutions.

The Commission is offering cash prizes - to producers and host institutions - for productions that best explore an issue of social or institutional corruption, with emphasis on its social, political and economic consequences.

The production may take the form of a fictional narrative drama, a documentary, a docu-drama or animation. Creative approaches to the problem are welcome but attention must be given to accessibility to a wide audience.

The ICAC is committed to broad-based public education on the social, political and economic effects of corruption and it is envisaged that short-listed entries will be disseminated widely throughout NSW as part of the Commission's public education platform.

For details see guidelines attached.



ICAC Film & Video Competition

Production

There is no limit on length, though 5-30 minutes may be a fair margin of latitude. Entry forms must be submitted by 14 May 1993. Participants are requested to submit *brief* proposals or synopses with entry forms.

While producers will have to consider copyright, any genre or form may be brought to the task. The Commission takes no responsibility for copyright infringement.

The Commission reserves the right to reproduce, disseminate and display winning entries in the course of its public education work.

Three VHS video copies of finished productions must be submitted by 8 November, 1993.

Judging

Productions will be judged by high-level representatives of academia, the film and television industries, the media and the ICAC. The winning entries will be those that demonstrate the most creative yet accessible approach in the exploration of an issue of social or institutional corruption. Deadline for entries will be 8 November 1993. Judging will take place 22 November, 1993.

Prizes

Cash prizes are to be awarded to the three best productions and their host institutions.

	STUDENTS	INSTITUTIONS
FIRST PRIZE	\$3500	\$1000
SECOND PRIZE	\$2500	\$750
THIRD PRIZE	\$1500	\$500

The ICAC reserves the right not to award a prize or prizes where the judges consider entries to be of insufficient quality. A public screening of short-listed productions may be held subsequent to judging.

Commission representatives are available to visit institutions to address staff and/or their classes or workshops on request.

For more information contact Peter McCarthy on (02) 318 5999 or (008) 463 909

ICAC Film & Video Competition Registration Form

Name: _____

Address: _____

_____ Ph: _____

Institution: _____

Film

Video

Please

Production length: _____

Title/Working

Title of Production: _____

Please attach a *brief* synopsis or proposal

Send completed forms by 14 May 1993 to:

ICAC Film & Video Competition

ICAC Education Unit

GPO Box 500

Sydney 2001

Cost Benefit Analysis

Mr GAUDRY:

Q: The work of the Commission's research unit is referred to in 1.5. I notice in 1.4 you continue to give some details of the changes, and I suppose that is important in terms of the head count approach of the ICAC's work. You also say in 1.5 that your research unit is taking on a number of projects, one being a proposed study into public sector employees' understanding of corruption. In view of cost-benefit analysis, I am wondering whether the ICAC is undertaking any research into the benefit side of your corruption prevention work. I take, for example, the findings handed down in terms of State Rail in the last day and the disclosure of something in excess of \$1 million, if I recall correctly, of money lost to the State by the activities dealt with in that particular hearing. With the flow-through of that into the prevention area, is there any way of quantifying the benefit that flows from that ICAC work in terms of improved understanding of corruption by public employees and the better practices put in through both your work and the work of management in government?

Mr TEMBY:

A: Could I start by saying that we organise the work of the Commission by function and people work in particular units, but from the beginning we have tried to make clear that the responsibilities are not exclusive and there are no territorial rights. To take a simple example, we would see most of our reports as being important from the viewpoint of both corruption prevention and public education. Most of them are important from the corruption prevention viewpoint because nearly all of them concentrate upon systems, not just individuals and not just the head count which you referred to, and you know that I share your view that that is a very rudimentary measure. It is fixing up systems which is far more useful, and with very few exceptions that is what our reports are aimed to do, and the public education benefit of reports is, I suppose, self-evident.

Accordingly, I would not be particularly attracted, at least as I sit here, by studies that sought to quantify the benefits flowing from the corruption prevention department as opposed to the investigations department as opposed to the public education department, because the effects of what they do impacts elsewhere in a quite dramatic fashion. We should be doing more in the next few years than has been done to date to seek to quantify the benefits that flow from Commission work, although I think everyone understands that quantification in this area is remarkably difficult because you do not have a baseline as to how much corruption there was. It is just not readily measurable, but certainly you can measure changes in attitudes, and that is the sort of thing we will be aiming to do.

So we should be putting more effort into trying to quantify, although not I think in a way that will push Commission employees into particular pigeonholes. Finally could I say that I remain of the view — I think I have it expressed here previously — that in the medium term it is likely that the public interest will be benefited by rather more resources going into education and corruption prevention so far as people on the ground are concerned, and something of a reduction so far as investigative personnel are concerned. It may well be that we will be moving in that direction before my term is up.

CHAIRMAN:

Q: In terms of cost-benefit analysis, I do not know if you have had the opportunity of reading the evidence of Mr Timothy Robertson which he gave before this Committee, in which he was I think a little critical of the cost-benefit analysis in terms of costing inquiries. He undertook to give the Committee certain material, but we have not received it yet. Have you had an opportunity to read that transcript?

A: I do not remember it, Mr Chairman, but now that you have drawn it to my attention I will make it my business. It is available to us?

Q: The evidence was given in a public hearing. As I say, he did undertake to provide supplementary material, which I will certainly provide to you once it is here.

A: I have never said that the costing of our investigations is precise. We have always said it is done pursuant to a formula. We reckon it gives a good guide. Importantly from our viewpoint, it gives us a good comparative guide as to this one costing twice as much as that one, which is from our viewpoint about as important as whether the exact dollar figures are right. It is certainly sound on a relative basis.

Staffing

Ms BURNSWOODS:

Q: In relation to 1.7, which deals with staffing, last year you told us I think that you were broadly satisfied with the current size of the Commission and did not see it growing very much. I note that the staffing figure here is 136. I think last year it was 142, so it is staying very stable. Is that still your broad view?

A: Yes.

Q: Do you see any changes developing?

A: No, that is still my broad view. If the Commission's charter remains as it is, then the Commission is about the size it ought to be.

Q: What about the internal balance, do you see any changes there?

A: I have just said that it would not surprise me that if in the medium term there is a tendency towards a reallocation of resources in the direction of corruption prevention and public education, and away from investigations. Mind you, you can increase public education by 50 per cent and you are only talking about two people; you can increase corruption prevention by 25 per cent and you are only talking about two people; and that would add some fire power. So I am not anticipating major shifts but I think that will be the trend.

**ISSUES ARISING FROM PREVIOUS HEARINGS
AND GENERAL BRIEFINGS**

Questions on Notice

Q: 2.1 What progress has been made on the study of the inquisitorial system of criminal justice and its application to Commission proceedings?

A: Work has commenced on the preparation of a report on the Commission's study of inquisitorial systems of criminal justice and their application to Commission proceedings. Because other work must take precedence and priority that report is unlikely to be completed until late 1993.

Q: 2.2 Having completed the first segment of Operation Milloo through public hearings, can the Commission give the Committee some impression of the progress which is being made in this inquiry and the likely timetable for its completion?

A: The Committee is referred to the latter part of the answer to question 1.1.

Q: 2.3 The Committee has noted the recent appointment of Paul Seshold to the Commission. Have there been changes to the Commission's organisational structure? What will Mr Seshold's responsibilities be?

A: Paul Seshold was appointed Executive Director of the Commission on 22 February 1993. There have been no changes to the Commission's organisational structure as a result of the appointment. The position he holds has been upgraded, and was previously entitled Director, Administration and Education. Mr Seshold is responsible for the Commission functions of Finance and Services, Personnel, Information Technology, Information Services, Research, Records, Education and Media. In addition Mr Seshold, as a member of the senior management team, is responsible for providing strategic and general advice to the Commissioner and other members of senior management.

Mr Seshold has joined the Commission from the private sector where he has had many years' experience in commercial work and general management. He is expected to make a significant contribution to the Commission as it further develops its emphasis on Corruption Prevention and Education.

OPERATIONS REVIEW COMMITTEE

Questions on Notice

Q: 3.1 Could the Commission put on the public record the information provided at the recent meeting with the ORC on the steps which have been taken to deal with the backlog of old complaints?

A: At the end of 1991 the Commission initiated a project, which was called the "Assessment File Backlog Project". It was determined that any file opened prior to July 1991 would be regarded as forming the backlog and that all such matters were to be reported to the Operations Review Committee by way of status reports, thus creating a fail safe procedure which ensured that all matters were reported to the Committee. 447 files were identified as falling within the defined backlog period. At the end of 1992 76 of those matters remained as open files, some of which formed part of extant formal investigations. From then until the time of the meeting between the Committee and the Operations Review Committee 40 of those matters had been disposed of.

At the end of 1992 human resources consultants were retained to conduct a review of the Assessments Section. In conjunction with this review process a decision was made at the end of 1992 to deal with much of the current workload of the Assessments Section by having those matters considered by some investigative staff. This encompassed all matters which had been received prior to December 1992. A total of 553 files were thereafter referred to investigators. These files were not part of the backlog project but were work on hand, mostly accumulated in the second half of 1992.

The investigators assigned assessment files prepared 370 reports to the Operations Review Committee which were considered by the Committee at a specially convened extra meeting in February 1993.

On 18 January 1993 articles appeared in two Sydney daily newspapers reporting that the Commission had a backlog of 800 complaints which was said to be attributed to the Commission's inquiry into the resignation and appointment of Dr Terry Metherell. Neither fact was correct.

Q: 3.2 Could the Commission also put on the record the information provided at that meeting concerning the qualifications of assessment staff?

A: At the meeting between the Committee and the Operations Review Committee the Commissioner advised, in response to a "question without notice", that

Assessment Officers mostly have degrees, are mostly young, are from various disciplines, have a capacity for analysis, possess high quality clerical and interpersonal skills and are particularly able to deal with difficult people. They are largely trained on the job.

On a more considered basis, Assessment Officers are also assisted in performing their duties by having a knowledge of the functions of state and local government.

Q: 3.3 What is the process by which the four persons who represent community views are appointed to the ORC? What is the Commission's role in these appointments?

A: The process by which the four persons who represent community views are appointed to the ORC is that the government (in the Commission's experience the Premier or the Cabinet Office) approach people and assess their willingness and availability to serve on the Committee. The Cabinet Office seeks the Commissioner's concurrence to the appointment of the potential members, pursuant to s60 of the Independent Commission Against Corruption Act. As the Commission understands it, the appointments are then considered by Cabinet. The Act provides that the appointments are made by the Governor. Appointments are made for a one year period. Most ORC members have served for more than one term.

Q: 3.4 Does the Commission have any views on the adequacy of the current remuneration of ORC members?

A: Current remuneration for ORC members is \$71 for half day meetings up to 4 hours duration. The remuneration has increased by \$3 per half day since the Commission's inception. At that time it was envisaged that the remuneration would be reviewed after some months of experience had indicated the workload and involvement of ORC members. The review is considerably overdue. ORC membership not only involves attendance at regular meetings but the prior detailed review of all papers to be discussed at the meeting. Committee members advise that this can entail a day's work. The Commission considers the current levels of remuneration are substantially below appropriate levels, particularly if regard is had to professional rates. Even granted that membership of the Committee involves a significant degree of public service, an annual allowance of \$4,000 (representing less than \$40 per hour) would not be excessive.

Questions Without Notice

Backlog Project

Mr ZAMMIT:

Q: Of the 447 files making up the assessment file backlog project, would you know how many files are still outstanding, and how old are these matters?

Mr TEMBY:

A: When last I looked, the number was 36, and that was a while ago. It has been reduced since then but I do not have a precise number. The age of those matters would be variable from a couple of years old to rather more. I would wish to stress, however, that age should not be equated with delay. In numbers of these matters there are good reasons, for example where we have asked another department or agency to do certain work and we are waiting for them to report back to us as to what they have done.

CHAIRMAN:

Q: Why was July 1991 chosen as the date to define the assessment of the file backlog?

A: I do not remember precisely, Mr Chairman. At the time we chose it, it was a date that was some time back and, as memory serves me, we did a rough cut to work out how many files that would give us in the backlog because we wanted to know that we have a pile that could be handled. But all Committee members will understand that this is now of historical interest because we are so far ahead of where we were it is wonderful.

Q: Is the assessment file backlog project an ongoing project?

A: Well, it has changed its nature. We have dealt with that pile of matters which were somewhat old. We have done what we have come to call the frontlog project, which means we have disposed of everything up to December last that we could and we are now reducing the time for exception reporting to the ORC to six months, which means that anything more than six months old is receiving special attention. At least in that sense, yes, it is a continuing process but it is an enormously improved process.

Q: Would the date of July 1991 be reviewed in this process?

A: The date of July 1991 is now irrelevant because everything that is more than six months old will be treated as the pre-July 1991 matters used to be treated, so July

1991 has become as at today October of 1992, and by July it will be January of 1993.

Remuneration of ORC Members

Q: In dealing with the adequacy of the current level of remuneration of ORC members, the figure of \$4,000 annual allowance, I think you calculate that on a hourly basis. Is there any additional material you would like to put before the Committee on that?

A: No, except to say in fairness to the ORC that this does not come from them.

Q: No, I should make it clear it actually came from me.

A: That is right. With respect, you raised it, Mr Chairman. In providing an answer, it seemed to me that as well as the Commission saying, not the Committee, that the remuneration is presently beggarly, it might be sensible to suggest an annual figure that might be considered to be appropriate. Not that it is us, who are obviously—well, we are not the decision makers and really the suggestion is that if it is going to be pursued, it should probably be pursued by this Committee rather than by the Commission because we are a bit close to the process.

Q: Certainly I would like to take it up.

A: No, no more than that. It is a responsible job. Committee members are indicating that they spend something like a day and a half per meeting, about a day in reading time and about half a day in meeting time, and it seemed to me interesting that if you took a figure of \$40 an hour, which is a very modest figure for consultants of less eminence than the typical members of this Committee, you would arrive at a figure like \$4,000 a year. I still would not consider that especially handsome. We are not running any special line, Mr Chairman.

Q: No, I make it clear I do, and I think that people who make themselves available need to know there is an element of public service there and they are entitled not to have to make huge financial sacrifices.

A: It seems to involve in the order of 100 hours a year and that gives some sort of suggested approach.

Sturgess Matters

Mr MUTCH:

Q: I am still concerned that the question I have raised on a number of occasions about the Sturgess complaints or pieces of information has not been put to bed.

At the ORC meeting with this Committee you said that you would try to do something about finally satisfying my concerns about that. Perhaps if you would talk to Mr Sturgess and he was satisfied, well that would satisfy me because I am not privy to the information that he provided to you.

- A:** I have decided to take it a step further, following the discussions we had in early February. There has been provided to the ORC a schedule or a bundle of papers containing the list and information as to how the various matters were handled, minutes of various meetings, and so on. I am taking it to the ORC by schedule rather than by way of report on complaints and saying to them, in plain terms, that if they want more information they have only to ask. That is going out today and will receive consideration in a week's time. Whether that will be final consideration or not, I do not know. I think in that way all concerns, even of a procedural nature, should be perfectly met.

Supplementary Questions on Notice

Q: S.1 How many matters are outstanding before the ORC?

A: There are 14 matters "outstanding", in the sense that the ORC has referred them back to the Commission with requests for further information, examination or inquiries. Eleven of those matters arose from the 370 matters considered at the special meeting in February. Eight of the fourteen matters will be the subject of further reports to the ORC at its April meeting and will hopefully be resolved then. One matter has been subsumed into a formal investigation. That will leave five matters still to be resolved, plus any others raised at the April meeting.

Q: S.2 Do you supply the ORC with information on matters before it approximately one week before it meets together with recommendations on relevant items?

A: The papers for the Operations Review Committee meeting, which include reports prepared by Commission staff, are provided to the Committee a week before the meeting. The Committee read the papers and if a Committee member requires access to a file, which happens infrequently, that is arranged prior to the meeting.

Q: S.3 Is a complainant notified of the content (excluding confidential matters) of your submission to the ORC? If not, what opportunity does the complainant get to contest the submission?

A: Complainants are not notified of the content of reports by Commission staff to the ORC, except that complainants are advised in general terms that the report recommended that the complaint not be investigated. Complainants are advised of the Operations Review Committee's advice and the Commissioner's decision. If the advice and decision involves referral of the complaint to another agency, the complainant is advised and his or her consent sought to identifying the complainant to the other agency. A complainant who disagrees with the advice of the ORC or the Commission's decision can request that the ORC reconsider his/her complaint, and if he/she provides new information a further report will be made to the ORC.

Q: S.4 Does the ORC advise the complainant whether or not their complaint is taken up? If so, does it advise when the complaint is likely to be considered by the ORC?

A: The ORC does not advise complainants about the consideration of complaints by the ORC; that is done by Commission staff. In some cases, although not frequently, complainants are advised before the ORC meeting that their complaints will be considered by the ORC on a particular date; the more usual course is that complainants are advised after the ORC meeting of the

consideration of their complaints and the advice given and decisions made.

Q: S.5 Why must the Commissioner be a member of the ORC?

A: Section 60 of the ICAC Act so requires.

Q: S.6 What are the statistics of the matters under review, that is success or failure or partial failure rate, from the complainant's view point?

A: To date the Commission has received just over 5,300 "matters" (not including s11 reports received by schedule, which currently exceed 200 per month). Of those matters, approximately 3,500 have been complaints from members of the public.

The Commission has commenced just under 60 formal investigations to date, but in addition to those matters, many other complaints or reports have been the subject of much investigative work, and results or conclusions have been communicated to complainants. Some examples of this work appear at pp31-33 of the Commission's 1990 Annual Report and pp51-52 of its 1991 Annual Report. Another example is the work done by the Commission recently in response to complaints about the Shoalhaven City Council.

Many matters are referred to other agencies and investigated by them.

All of this makes it practically impossible to talk in terms of failed complaints. The Commission is not and must not allow itself to become another grievance resolution body.

Questions Without Notice

Position of Commissioner on ORC

Mr GAUDRY:

Q: At section S.5 of the questions and answers paper you state that section 60 of the ICAC Act requires you, as Commissioner, to be member of the ORC. Can you detail some advantages and disadvantages with respect to the independence of that particular committee and its deliberations on matters before the Independent Commission Against Corruption?

Mr TEMBY:

A: I can point to some advantages. I cannot bring to mind any disadvantages, although if you wanted to take it up with ORC members, they might be able to help. However, I imagine if they had difficulties they would have raised them with me because it is a harmonious committee and always has been. As to the prime

advantage—I go back a step. The short answer we gave was not meant to be disrespectful but rather to reflect the fact that we do not know what led to the provision, so we can only refer to the provision. We do not know what debate led to it because we were not involved. You are now asking a different question: "Is it useful?" I think it is useful at least in the sense that the Commissioner for the time being is in a position to advise the Committee as to what is going on within the Commission and what matters are coming up, in order that the ORC knows how a particular matter might fit into that broader structure.

Because in deciding whether a matter ought to be investigated you cannot look at it in isolation. You have to look at the work the Commission has done and the work the Commission may well be doing. Otherwise there is no strategic sense brought to bear upon the particular question, should this be fully investigated or not. Equally important, the Commissioner is in a unique position to advise the ORC as to resources. They have accepted that we should do a limited number of major matters and try to do them quickly and well. It is the Commissioner who is in the best position to let them know whether or not to take on these three matters will cause our resources to be too thinly spread such that inefficiencies or delays will tend to be built into the process.

They are the main advantages that I see. I should also say, in case there is any doubt about it, with respect to the great majority of reports to the ORC, that I see them for the first time when I get them as a member of the ORC. There are some exceptions. There are some major matters that I am told of when they are received, and I might even have been involved in the process that leads to a recommendation not to further investigate. But in a good 90 per cent of cases I come to the matter absolutely cold, as do other members of the ORC. I am at least as likely to say, "No, this is not good enough, let us refer it back and make them do it again", as any other member of the ORC.

Q: Taking all that into consideration, and with respect to your position, there is a certain potency in your own position vis-a-vis the rest of the ORC. Without having been a party to the discussions, might there be a tendency to defer to your particular position?

A: There might be, although if that tendency has manifested itself I have been unable to pick it up. It seems to me to be a body which over the years has been comprised of quite robust individuals. It is not unknown for me to be in the minority following discussion. That is not unknown. The ORC potentially involves two Commission representatives, myself and an Assistant Commissioner. As a matter of course only one of us attends, in 95 per cent of cases. So it is practically one only, and there are five others. If the Commission representatives started to behave in a bullying fashion then that would be met with resistance and ultimately we would be outvoted. That is not how it works, but at a theoretical level it is five to two.

CHAIRMAN:

- Q:** There were some supplementary questions that Mr Hatton raised on the ORC. Does anyone have any questions arising from that? That seems to complete the matters that were put on for notice.

COUNSEL ASSISTING

Questions on Notice

Q: 4.1 The Committee has noted that a new Bar Rule 57E has recently been made, concerning the role of counsel assisting before the ICAC and other commissions. Was the Commission consulted about this new rule? What is the background to the new rule?

A: The Commission was consulted about Bar Rule 57E to which it expressed no objection. The Commission is not aware of the background to this rule.

Q: 4.2 Does the Commission have a policy concerning the role of counsel assisting before it? If so, can this policy be made publicly available?

A: The role of counsel assisting in Commission hearings is in part defined by s34 of the Independent Commission Against Corruption Act. The Commission's view of the role of counsel assisting is that he/she provides the presiding Commissioner with all necessary assistance to ensure a thorough and fair investigation followed by a thorough and accurate report. Counsel assisting has responsibility for deciding the witnesses to be called and the evidence to be led, although ultimately the presiding Commissioner has control of the hearing. Counsel assisting's submissions at the end of the hearing are his/her own, not the Commission's; otherwise the Commission would not derive assistance in preparing a fair, thorough and accurate report. Counsel assisting does not participate in the preparation of the Commission's report, as is the case in some royal commissions.

Q: 4.3 Does counsel assisting appearing before the Commission have a role in protecting the rights of persons who are in jeopardy of having an adverse finding made against them?

A: In a general sense yes, by assisting the Commission to ascertain the truth and contributing to the Commission's observance of the requirements of fairness. This does not necessarily mean being "nice" or gentle to witnesses minute by minute - the courts and the Committee have recognised that sometimes evidence has to be tested in order to arrive at the truth and that may mean vigorous questioning of some witnesses (Committee's Second Report Inquiry into Commission Procedures and the Rights of Witnesses). Fairness to witnesses and persons in jeopardy of adverse findings must be ultimately observed, and counsel assisting have a role in this. However, counsel assisting do not hold briefs for individual witnesses.



Circular # 63/92

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Amendments to Bar Rules

By order of the Bar Council, the following amendments to Bar Rules are effective forthwith.

Rule 57 E

Insert the following new rule:

- 30.7.92 57 E. A barrister's function and purpose in appearing before the Independent Commission Against Corruption, the National Crime Authority, the Australian Securities Commission or any other authority, inquiry or Royal Commission having inquisitorial or investigative powers as counsel assisting that body is to assist that body fairly to arrive at the truth. He or she should fairly and impartially endeavour to ensure that that body has before it all relevant facts and all applicable law and generally to assist that body to avoid the making of findings which are erroneous as a matter of fact or law. The barrister should not:-
- (a) by language or conduct endeavour to inflame or prejudice that body;
 - (b) urge any argument of law or fact that does not carry weight in his or her mind.

Rule 25 D

- 13.8.92 After '30 June 1992' insert the words 'and who did not practise at the Bar of New South Wales on or at any time prior to 30 June 1988'.

Guideline

Insert the following guideline.

13.8.92 Guideline

1. Although rule 2(1) permits a barrister to return a brief where his or her advice as to the conduct of the proceedings has been ignored by the client, the Council has taken the view that this does not extend to advice concerning the acceptance or rejection of an offer of settlement.

Questions Without Notice

Ms BURNSWOODS:

Q: In the middle of the answer in 4.2 you refer to counsel assisting and the responsibility of counsel for deciding the witnesses to be called and the evidence to be led. Perhaps you could expand on that a bit. I am wondering whether deciding means deciding in an administrative way or whether you are suggesting that counsel assisting is a much freer agent, say, if you are conducting a hearing yourself, for instance?

Mr TEMBY:

A: Yes, I would be pleased to expand on that because the best understanding there is of how these things work, the best pleased we are. To take an example which is not quite typical, which is the Milloo investigation, because that is current. We have working on that at any given time something like 20 investigators at various levels, up to half a dozen lawyers, not all full-time—that is, Commission lawyers—and three counsel assisting, again not quite all full-time. A large part of our criminal analytical capacity is devoted to that investigation, so there is a considerable number of people involved. The chief control mechanism for the investigation is a weekly meeting which is held on Friday mornings, which is the day I do not sit. It is going on in my absence at the moment because I am here. At that meeting there are discussions between a group of the key players—about a dozen, but excluding counsel assisting—who share information and, to an extent, make decisions as to progress, direction, strategy and so on. I suppose in the final analysis that is an advisory committee to me because as the Commissioner who is presiding I have the final responsibility for the investigation. Naturally I receive information, submissions and so on with some frequency. That is the broad control of the investigation.

In the course of the conduct of it there are statements obtained and a great deal of information which is either volunteered or procured using coercive methods, all of which has to be processed. Putting it simply, the processing is done partly by investigators and partly by the analytical experts. It is then passed to lawyers for the purpose of what could be described, I suppose, as mini-briefs, that is to say they collate the material and it then goes to counsel. Counsel receive that information. To give one example, there is sometimes a desire on the part of investigators for more witnesses to be called than is necessary or can be justified and one of the jobs counsel does is to filter the information that is received and decide whether this witness need be called and whether that witness can be dispensed with. In that sense, counsel is making the decisions. Counsel can also and does suggest that this avenue be pursued and this witness be spoken to and so on, and that is done pretty well automatically.

It is ultimately counsel and myself who share the responsibility for ensuring that the investigation conducted is fair and thorough. I effectively delegate to counsel prime responsibility for deciding what witnesses will be called, for a couple of reasons: firstly, because I cannot stay on top of all the material that is coming through during the course of the investigation; and, secondly, because my role is a quasi-judicial one and, at least in my judgment, I am not going to make the most satisfactory judgments as to credibility and matters of proof if I have seen all the material that is going to be relied upon when witnesses are called, in advance of a witness being called. I occasionally see statements, but generally do not. I generally have a fair idea of what is coming up but there is no absolute requirement so far as that is concerned.

- Q:** Just on that, counsel assisting does not participate in the preparation of reports. Has that been a decision of yours taken from the beginning and has it been without exception?
- A:** There is one exception with respect to one early investigation. I tried the process of having counsel assisting prepare a draft report. I found the process an unsatisfactory one and since that time we have done the work ourselves.
- Q:** It is not to keep an arm's-length—
- A:** It is to keep an arm's-length—yes, it is.
- Q:** I wondered whether it related to the philosophy of it?
- A:** During the conduct of the hearing there is not a strict arm's-length relationship between the presiding Commissioner and counsel assisting because we are together doing an investigation and we are not in an adversarial context. Accordingly, I suppose I see counsel assisting two or three times a week outside the hearing room to have a chat about how things are going. That is perfectly proper. But at the end of the day they have to prepare the closing submissions and I do not tell them what to say to me because they have to help me write a proper report. So I do not tell them what to say to me when it comes to closing submissions and they do not tell me what to put in the final report. At that stage the relationship widens. On occasions, having written a report, I have asked counsel to look at aspects of it to satisfy themselves as to accuracy or to make any comment they might want on a particular aspect. I do not feel I am precluded from doing that, but we write the reports.

Mr ZAMMIT:

- Q:** I have a question about counsel assisting. To your memory has counsel assisting ever attended the Friday morning meetings?

A: To my memory, no, they have not.

Q: Never?

A: No.

Q: From the start of ICAC?

A: Well, those Friday meetings are actually Milloo related. At an earlier stage we had investigations committees that used to span over various matters but it is not far wrong to say that in the hearing context Milloo is all we are now doing. I certainly cannot remember an occasion when counsel have attended those meetings. If there have been occasions, they have been very rare and for a particular defined purpose, but I do not think they have occurred. Mind you, they could; there would be nothing improper about it, but I am just describing the process.

Ms BURNSWOODS:

Q: Can you explain a little more precisely the way in which the role of counsel assisting assists in ensuring fairness to witnesses, protecting people in jeopardy?

A: I do not know that I can do it much more satisfactorily than it is done in 4.3, but I can probably just recast it slightly. I do not think I am adding anything. The Commission is obliged by law, and naturally inclined, to conduct investigations and hearings which are fair. The particular fairness here identified is fairness to witnesses but there is also a public interest in ensuring that the hearings are fair and that reports are thorough and reliable. In a sense there is a fairness to the community which comes into the matter. It is that sense of fairness to the community that means that on occasions hearings have to be conducted with some vigour, as sometimes they are. But at the end of the day the key obligation is to ensure that everybody against whom a finding might be made is given an opportunity to respond and counsel assisting is a prime aid to the presiding Commissioner to ensure that that happens.

Q: Finally, on a different tack, I think once before we had some discussions about the range of counsel assisting used by the Commission. I had a particular interest in gender, for instance, but there is also an interest in the level, whether they are Q.C.s and so on. Has there been any change in that respect? Has the Commission had any more success in using a variety of people in that role?

A: There has been no change.

Q: The size of the Milloo inquiry probably affects the situation?

A: It remains the case that we are somewhat less inclined to automatically go for senior counsel than I think may have been true of broadly similar bodies in the past. Milloo is a very big matter and we are getting through with a senior counsel and two competent junior counsel who divide the work between them, senior counsel not being there at all times by any means. The gaming segment has been done entirely by one of the junior counsel, but otherwise there is no real change to what I said previously.

Mr GAUDRY:

Q: Continuing on with the matter of counsel, it is a balance in the counsel's role between the public interest and the rights of the private individual appearing. Is there a built in cautionary procedure from counsel assisting when people are entering into deep water?

A: As to the first part of what you said, it can all be subsumed within the notion of public interest. The public interest is not served by a hearing which is not fair to witnesses who appear before it. It is important to stress that counsel assisting do not carry a brief for witnesses; they cannot do so. As to cautions, we typically advise witnesses not just of the general scope and purpose of the hearing and the terms of reference but the area on which they will be asked to answer questions. If witnesses appear represented, we assume they have had competent advice. If they appear unrepresented, then often cautionary measures will be taken, most obviously advising of their rights under section 37, perhaps being more inclined to exercise a section 38 power than would otherwise be the case if they were represented, and from time to time—to give an example—telling them that the extent to which they have an exposed flank is perhaps greater than they are inclined to appreciate, and we have on occasions sent people away suggesting they get legal advice.

Mr NAGLE:

Q: You say counsel assisting does not carry a brief for the witness, but you do carry a brief to be fair, is that right?

A: That is certainly right.

Q: And that entails, does it not, not only calling evidence to be led that is relevant to the matter but also there would be obligation upon you to call evidence which is exculpatory of an allegation?

A: That is certainly true.

Q: Just recently in a couple of the inquiries can you recall that being done, to give us an example? If not, it does not matter.

- A: I cannot bring an example immediately to mind, but our obligation is one that I would see as closely analogous of a prosecutor, that is to say, presentation of all of the material. To give an example which is not precisely the one you have just raised, there was a witness before the Commission in Milloo who gave evidence which was at least potentially quite seriously damaging to police officers. That witness was a public official. We later became aware of allegations concerning that witness. We have made it our business to ensure that they are thoroughly explored and the methods used have included proactive methods. That is indicative of an approach which is very far from simply running a particular line.
- Q: You say that it is not really the function to be nice and gentle to witnesses but I have found from my own experiences that sometimes being nice and gentle gets more out and more co-operation from a witness than in browbeating them and badgering them?
- A: Yes.
- Q: But you say through rigorous questioning of some witnesses the truth must be found. It is not only the truth you are searching for, it is really the nature of what is the case, is it not? What is really happening?
- A: That is entirely true. The best example of this is probably the driver licence investigation of now a couple of years ago. The judgment made principally by Peter Hely, Q.C., senior counsel assisting in that matter, was that if we were going to get the truth of the matter as against the driving examiners and the instructors, we were going to have to cross-examine them; and we did not tell them what we had against them when we first questioned them. Typically, there were questions asked followed by the showing of videos and then further questioning often producing very different answers. The judgment made was that to do it in the way that some would see as more seemly would have led to a far less truthful end result. But I grant you, the techniques that are appropriate vary widely. I would not want this answer to be taken as indicating that raised voices are the norm—they certainly are not. I agree entirely that very often the best way is to proceed quietly and softly. That often happens.
- Q: Because most people who come before you as witnesses, whether represented or unrepresented, really have very little experience with courts, let alone the Commission of inquiry that your Commission would be operating at the time?
- A: That is true in a general sense, although a fair number of the witnesses in the current inquiry have had a lot of experience. They may be looked upon as professionals.

Mr ZAMMIT:

Q: You have emphasised today the need to attempt to maintain some distance between yourself and counsel assisting. Do you think it is preferable for you to employ an assisting counsel with whom you have had no personal business contact.

A: I do not think that at all. I need to know that I can work with these people and I expect that anyone in my position would be looking for people that they knew at least in a professional sense. You could not pick counsel assisting in some way at random. It could not be done.

CHAIRMAN:

Q: During the operation of the public hearings the counsel assisting appeared to put propositions back to witnesses based on the allegations of Smith and Henry. Does this procedure lead to an undue appearance of credibility to those allegations?

A: I do not believe it does. The proper view of the matter is that it is the best way of giving the witness the opportunity to respond to that which has been said in evidence or, as we are informed, will be said in evidence down the track. They have to be given a chance to answer—and not infrequently I have explained that.

Mr NAGLE:

Q: Arising out of that question, putting an allegation to someone at the inquiry: were those allegations put to them before the inquiry or during the inquiry or both?

A: Typically in Milloo, both.

Q: Police officers were prepared for an allegation by Smith and or Henry as it was asked them?

A: Not always in the fine detail but typically they had been interviewed and a deal of material had been put forward for their comment.

Q: One of the things is that it is really an observation by the Commissioner of the demeanour of the witness as the questions are being asked and the answers given that make it a little easier on some occasions to determine the truth or otherwise of what is being said?

A: Yes.

Q: Police officers are very well trained so they have got to be watched probably a little more carefully than lay witnesses?

A: That is right. And typically they have been interviewed and allegations have been put. Typically, not all allegations have been put because to do that would have, we thought, reduced the effect of what was to come.

- 5 -

CORRUPTION PREVENTION

Questions on Notice

Q: 5.1 Late last year the former Director General of the Cabinet Office, Gary Sturgess, gave evidence to the Public Accounts Committee inquiry into the funding of infrastructure. Mr Sturgess made a number of comments about the Commission's corruption prevention work upon which the Committee would be interested in the Commission's response:

(a) that there is an undue focus on compliance with due process rather than effective outcomes;

A: The Commission's corruption prevention work is directed to improving public sector probity, accountability and work methods so that desirable outcomes can be achieved with a minimum of opportunities for corruption, and without delay and wastage. The Corruption Prevention Department aims to give practical advice which will allow desired outcomes to be achieved with probity. If the process is flawed, or perceived as flawed, it can delay the outcome, impose a high cost, and damage the agency's and the government's reputation. The objective of prevention is to identify and eliminate potential problems before they arise; this is an integral element of good management. It is not focused on compliance, but on following basic principles agreed by the majority of competent managers.

Many government organisations have requested the Commission's assistance in resolving difficult problems standing in the way of achieving a desired outcome. Over the past nine months the Corruption Prevention Department has advised on major contracts with a total value close to \$1 billion. In each case Corruption Prevention Department officers found acceptable solutions, enabling the project to proceed with enhanced certainty of completion and much reduced risk of later allegations of corruption or mismanagement.

(b) that there could be more joint work done with the Office of Public Management;

A: A considerable amount of cooperative work has been done with OPM and other central agencies. Examples include:

◇ a jointly planned and presented series of four workshops on the development of codes of conduct, attended by some sixty State

government organisations.

- ◇ the Corruption Prevention Department provided comment on OPM's Competitive Tendering and Contracting Out guidelines and presented segments at contracting out seminars organised by OPM.
- ◇ the Corruption Prevention Department approached OPM regarding joint development of sponsorship guidelines. OPM participated in a sponsorship workshop organised by the Corruption Prevention Department.
- ◇ OPM invited the Corruption Prevention Department to contribute to development of a Statement of Best Practice for Information Security Management.

Corruption prevention work takes management efficiency into account but not as the primary focus. Similarly, OPM management reviews are conscious of corruption issues but do not make them the primary target for reform. There have been, and will continue to be, opportunities for formal co-operative work and considerable informal liaison but the difference in focus is understood and appreciated on both sides.

While co-operative arrangements are welcomed when appropriate, the Commission's independence must be effectively maintained. On occasion this has meant declining an invitation to participate in a government working party where operational decisions may be involved. In such cases it is more appropriate to offer comment on the working party's output.

- (c) **that staff of the Corruption Prevention Department do not have the range of experience necessary to grapple with the sort of problems dealt with by senior managers in the public sector;**

A: The Commission's corruption prevention work is unique in Australia and deals with a range of issues and situations at many different levels in both state and local government. The expertise of its staff is in promoting integrity in public sector management. Staff are appointed at a range of levels to undertake work of differing degrees of complexity. Those called on to deal with complex problems are suitably qualified, trained and experienced, and have demonstrated their ability to provide high level advice which is both practical and meets appropriate standards of probity. Advice at all levels is reviewed by the Director of Corruption Prevention and, at the most senior level, by the Commissioner.

The frequency of requests for Corruption Prevention Department input to government procedures is a good indicator that its advice is valued. To

give an example, in the last few months the government has developed and promulgated a series of guidelines and codes relating to capital works tendering. The Commission's advice has been sought at all stages and consistently adopted.

- (d) **that the work of the Corruption Prevention Department is inconsistent - some of the work being excellent and other work being seen to be abstract and impractical;**

A: The Corruption Prevention Department is conscious of the need to maintain a high standard of work in all of its activities - public reports, advice to public sector organisations and seminars. The need to balance the requirements of integrity and practicality in recommendations is emphasised to all corruption prevention officers.

A quality control process operates on all published corruption prevention reports. Reports are fully discussed with the participating government agencies before publication, to ensure recommendations are practical and achievable. Reports are also reviewed by a panel of Commission officers. Feedback from the internal and external reviews is reported to the Commissioner who reviews the final draft.

Mr Sturgess's evidence to the Public Accounts Committee suggested that the Commission promotes the calling of open tenders on all occasions. This is incorrect. The Corruption Prevention Department has actively promoted the use of expressions of interest, selective tenders, period contracts, and registers of capable suppliers. In many situations these methods are more practical and appropriate than open public tender.

A second example given by Mr Sturgess suggested that the Corruption Prevention Department takes a "very hard quasi-legalistic" approach to codes of conduct and is opposed to flexible codes being developed internally by each organisation. The converse is true. The Corruption Prevention Department has been the leader in NSW in advocating individual agency codes tailored to specific needs, and in discouraging legalistic or regulatory codes. It has assisted numerous government organisations to develop agency-specific, plain language codes. The Corruption Prevention Department and Office of Public Management jointly conducted a series of workshops on codes of conduct development for 60 State organisations. The workshops stressed the need for code development to involve staff at all levels in an organisation, to guide by examples relevant to the agency's functions, and to be periodically reviewed so they stay relevant in a changing environment.

- (e) **that there is insufficient linkage between the ICAC's corruption prevention and investigative work.**

A: Linkages between corruption prevention and investigative work operate both formally and informally. On a formal level, Corruption Prevention staff review every complaint and report received, and identify those matters which should be pursued in terms of system-oriented work. This has promoted a greater level of understanding and contact between investigative and Corruption Prevention staff. Where investigative enquiries uncover systems problems, Investigations and Assessments staff bring relevant matters to Corruption Prevention staff attention. There is a two-way flow of informal liaison on matters which might be resolved through either investigative or preventive strategies or a combination.

Many formal investigations have involved Corruption Prevention officers from an early stage so that systems issues can be identified and addressed.

Questions Without Notice

Mr GAUDRY:

Q: In relation to topic 5, corruption prevention, I think previously reference has been made to Gary Sturgess' appearance before the Public Accounts Committee and his rather colourful language at the time saying perhaps the ICAC would lead to a public sector obsessed with arse covering and paper trails—he said it; I thought it colloquially expressed the feeling. I am wondering whether you agree or disagree with that interpretation of the ICAC and its impact? He was talking principally about the fact that in government departments there needs to be the ability to look for creative solutions and perhaps not be hidebound by very strict procedural approaches.

Mr TEMBY:

A: We have said on countless occasions and in many places statements of the same sort as I am about to utter, namely that the test of a good public servant has never been the capacity to keep a file in a neat and tidy state, which file will withstand scrutiny. To the extent there was a time when that was thought to be the test, it is a time which has long passed. There has to be a strong emphasis as to outcomes properly considered. However, the concentration upon outcomes need not exclude concentration upon process and if the material is viewed in a mature way, both are important because sufficiently serious process failures have a disastrous effect upon outcomes. If, as we have demonstrated from time to time, a tender process has gone badly wrong, then at the end of the day you have got unhappiness and mess at best, and litigation at worst.

An example of that is the Water Board and sludge tendering. If you have read that report, the process had gone completely off the rails and it had to be brought back—and our investigation was an aid to that happening. So, if process goes sufficiently badly wrong, it messes up outcomes in a spectacular fashion. There is a tendency in some quarters to assume that process and outcomes are in some way mutually exclusive. We wish to see them integrated; we deplore any concentration upon process to the exclusion of outcomes, but in like manner we would consider it unfortunate if it was not understood that if you want outcomes that have integrity, then some attention to proper process is important.

Q: And that is built into your consultative mechanisms, say, between prevention and the management side of departments?

A: Very strongly built in. It is very encouraging that the extent to which advice is sought has continued to grow. As I recollect there is a figure here somewhere as to the scope of the projects concerning which we have given advice over a recent and fairly short period. We are consulted and we provide practical advice which

is aimed at solving problems.

CHAIRMAN:

Q: At the bottom of page 17, reference is made to quality control process in relation to corruption prevention reports. Who is involved in this process and how does it operate?

A: With respect to each corruption prevention report there is convened a small review team at a late stage, typically involving three members drawn from various parts of the Commission and who have not been otherwise involved in the project. They go through the report in order to check its contents for clarity of expression and internal consistency. That generally involves some changes being made before the matter ultimately comes to me to be signed off. We also sometimes consult externally, to an extent.

Q: In relation to that external consultation, has the Commission considered establishing a corruption prevention advisory committee such as that which operates in Hong Kong and reviews draft corruption reports before they are finalised?

A: We have thought about various ways in which we might get more outside involvement. This is one of the possibilities we have looked at and at the end of the day not been satisfied that the need is so great as to provide such a body with gainful productive work to do. I think on the occasions we have looked at it we have felt that to do something like that would not amount to much more than window-dressing. I am not saying that is the position in Hong Kong because I have not studied that. I am searching back in memory, but I think that is the sort of approach we have adopted.

Q: I can see in relation to a permanent body like that, that that may be constituting an ad hoc body if you got a major corruption?

A: You could do that, although putting together an ad hoc body is a very, very time consuming process. You would need something very big indeed. But our tendency to consult is strong. For example, in the papers there is reference to a discussion paper that the research unit is doing in relation to informers and the published procedures which are adopted by a whole series of police forces inside and outside Australia. That is going to be used as a vehicle for not just seeking public response but also for discussions with people who know the area, including obviously the Police Service, or those parts of it who still want to talk to us.

Mr NAGLE:

Q: From discussions I have had with members of the bureaucracy of New South

Wales—not too many of them, I might add, but a few—some concern is starting to grow within that structure that if there are rigid codes of conduct of a legalistic and regulatory type placed upon their day to day dealings, even though I appreciate there is \$1 billion being spent on government contracts, they say that if it continues and they cannot have a bit more flexibility within their structures, that they could end up running into a process by the end of the decade where decision-making will slow right down and the bureaucracy will slow down. I raised with you some time ago the case of a senior subordinate having threatened senior staff that if they settled a particular action that had been taken against the department, he would refer it to the ICAC for an inquiry, whereupon they all pulled off and let the matter run through court. Your comment was, "ICAC is not here for that purpose, to be used as a threatening body to people who are bona fide carrying out their objectives"?

- A: Yes, but let me add to that, we believe that codes of conduct do not exist for the purpose of punishment. We believe codes of conduct exist in order to raise ethical consciousness. Accordingly, they have got to be grown from the ground up, not imposed from above. They ought to be clearly expressed but should not have a threatening tone to them. To the extent that anyone suggests that we have any other approach, they are wrong and they have always been wrong. It has always been clear to us that these things should have those characteristics, subject to perhaps the small qualification that the first one we had a hand in one was the local government code which, at least to an extent, was imposed. I now acknowledge that it would have been better if the process had been a different one, but that was the first time we had done it. Otherwise, it needs to be stressed that we do not see ourselves as rule makers because we do not run departments and agencies; we will assist on request. If things get bad and there is an investigation, we will reveal and we will cajole. There are various techniques available to us and, depending on circumstances, we are happy to use them all, but we do not make the rules.

To give you an example, a major corruption prevention project at the moment is with a view to preparing a booklet in relation to tendering. It is going to proceed on a case study approach but it is not a tendering manual, because it is not for us to prepare a tendering manual. We could provide some assistance if anybody wanted it, but we do not make the rules; departments and agencies make the rules. Our role is to use various techniques to improve integrity, and one of the best ways of doing that is to ensure that those who have the responsibility themselves make the rules and enforce them.

- Q: I think it is more a perception than a reality?

- A: Yes. If I might say so, I think it is more a perception than a reality, and one needs to be a bit careful because I have detected a tendency, when things are not going well, to wrongly blame the ICAC: "We had to do this because otherwise the

ICAC would have got us", in circumstances where some excuse has to be found.

Q: I was interested in what you had to say about your series of workshops on codes of conduct, development for 60 State organisations. Has any measuring been carried out as to the success or otherwise of those workshops?

A: We are either doing that or we are about to do that. Not quite measuring the success of the workshops, but rather a review of the code of conduct preparation process.

Q: I think basically the greater these departments and organisations understand the roles and functions of the ICAC, the less the perception will be there as a reality in their eyes.

Mr GAUDRY:

Q: On page 16 of your responses, you mention that at times the ICAC has declined an invitation to be involved in a prevention process where it is dealing with operational matters. I am perhaps taking the wrong view, but do you see in some cases that the ICAC may be asked to be involved as a method of perhaps compromising its independence?

A: Yes, certainly, and that is a reason we do not. If, as happens, a department or agency comes to us and says, "This is what happened in—" let us say "—this tender process. We are about to let the tender. Would you please examine this and tell us we can proceed?", that is what we call seeking the good housekeeping seal of approval and we courteously decline, because by then it is too late for us to add value to the process. We will not give advice of a specific sort at any stage of, say, a tendering process unless it is special, because we cannot become nannies to people who ought to know what they are doing; but sometimes tendering processes—and it is only an example—do have special difficulties, such that for us to give advice is sensible. As long as we are approached early enough, we will quite happily do so. Advice only; their process.

Q: Do you feel that in many instances departments are utilising the ICAC in a way?

A: There have been, I would guess, a few dozen cases in which a brave attempt has been made. They may now be less frequent than they once were, because perhaps there is now an understanding that we are not quite so credulous. I am speaking by way of impressions. But, yes, there has been a number of them and you cannot blame them for trying. If they can get us to sign off and say, "This has been a wonderful process", they are home free.

Q: That might be, as Mr Nagle said, an early misunderstanding of the role of the ICAC?

A: I think that is rather charitable.

Ms BURNSWOODS:

Q: I am interested in what you say about the development of sponsorship guidelines. It seems to me that a relatively new and serious threat to corruption in the State arises from the area of sponsorship. You point out that it was your corruption prevention department that approached OPM regarding development of sponsorship guidelines. I would like to hear more about that, but I would also like to know if that suggests that OPM itself had not done anything about the area of sponsorship?

A: I do not know the answer to the first question and I do not have a detailed knowledge of the entire matter. I can say a certain amount and Mr Seshold might be able to add to this, but he might not. Whether or not we started the exercise of our initiative I am not sure, and I do not know whether OPM or others have done work in the area.

Q: It might be possible to provide more information on that?

A: It may be. We became aware that there was a problem area through complaints and otherwise. I know that we have had detailed discussions with a number of departments and agencies actually or potentially heavily involved in sponsorship deals. That is about as much as I can confidently say.

Q: If it is possible to provide more information, I would certainly be interested?

A: We could provide some more information by way of at least status report.

PRISON INFORMERS REPORT

Questions on Notice

- Q: 6.1** Why did the Commission decide to require a formal report under the provisions of part five of the ICAC Act from the Department of Corrective Services concerning action to be taken against Mr Ron Woodham after the release of the Prison Informers report? Was this the first occasion on which the Commission had taken such action under the provisions of part five of the Act? If not, what were the circumstances of previous referrals?
- A:** The Commission decided to refer to the Department of Corrective Services, pursuant to s53 of the Independent Commission Against Corruption Act, and require a formal report upon, the consideration of action against Mr Woodham following the Investigation into the Use of Informers in order to specify a time frame in which the Department would conduct its consideration. The referral was preceded by consultation with the Commissioner for Corrective Services, as all referrals are preceded by consultation. Such action has been taken by the Commission previously in respect of investigations 18, 41 and 48 reported on pages 36, 38 and 39 of the Commission's 1992 Annual Report and following the Report on the Investigation into Driver Licensing, when 37 referrals pursuant to s53 were made to the Roads and Traffic Authority in respect of driving examiners and driving instructors.

USE OF CERTAIN POWERS

Questions on Notice

The Committee has recently received some material from the Queensland Parliamentary Criminal Justice Committee concerning a review it is to undertake of certain powers of the CJC. This inquiry has arisen from a recent controversy which involved the CJC issuing the Brisbane Courier Mail with a notice to produce telephone records.

A: 7.1 Does the ICAC have the power to require the production of records from the media? If so, would the ICAC contemplate the exercise of those powers in similar circumstances to the CJC's actions in relation to the Courier Mail?

A: The Commission has a power in s22 of the Independent Commission Against Corruption Act to require any person who is served with a notice in writing to produce documents or other things. In contradistinction to s21 and s23, s22 expressly applies to the persons other than public authorities and public officials. This would include the media. The Commission is unable to say whether it would contemplate the exercise of its power in s22 in similar circumstances to the Criminal Justice Commission's actions in relation to the Courier Mail, because it does not know the full circumstances of the use of the CJC's powers in relation to the Courier Mail, having only seen media reports of those events. If during the course of an investigation the Commission was aware that a media organisation had information or documents relevant to the investigation and the Commission was of the view that it was necessary to obtain that information and appropriate to exercise the power in s22 to obtain that information then that course would be followed.

Q: 7.2 Does the ICAC have the power to prevent publication in the media of a document or information leaked out from within the Commission? If so, under what circumstances would the Commission contemplate the exercise of those powers?

A: The Commission has never had to consider the situation of preventing publication of a document or information leaked from the Commission. The Commission has only had cause to consider media publications of information from sources other than the Commission, of which the Commission has only been aware after the publication. There is no apparent statutory power for the Commission to prevent media publication of a document or information other than s112, which applies only to particular circumstances.

PUBLIC SECTOR MANAGEMENT ACT

Questions on Notice

The Committee has noted Mr Temby's response to a question taken on notice at the last hearing on 09 November 1992 concerning the advantages and disadvantages of making the ICAC subject to the Public Sector Management Act. Mr Temby's comments highlighted the operational difficulties that could arise if the ICAC were to be bound by the Public Sector Management Act.

Q: 8.1 The Committee requests the Commission's comments on the possibility of the Commission being statutorily bound to observe the key public sector employment principles contained in the Act, on the basis that the Commission would not be bound by provisions that would have a demonstrably detrimental effect on Commission operations.

A: The Commission's response is predicated on the basis that by "key public sector employment principles contained in the [Public Sector Management] Act" the Committee means selection of the applicant with the greatest merit and procedures of advertising vacancies and interview by panel.

The Commission would have no objection to being required, by its own statute, to observe principles of merit selection - it does so already. Nor would the Commission object to a requirement for mandatory advertising, with provision for the Premier to approve exceptions, for example when security required. The Commission fills all vacancies by means of interview panel and written report, so requirements for that procedure, by the ICAC Act or regulation thereunder, would not be objectionable.

Questions Without Notice

Mr ZAMMIT:

Q: In regard to 8.1, the Commission has stated that it would not object to being required by its own Act to observe the principles of merit selection. What are the key employment principles in the Public Sector Management Act by which the Commission has any objection to being bound, such as perhaps the senior executive service? You might wish to take that on notice, if you prefer?

Mr TEMBY:

A: I think you will find that our general position concerning public sector recruitment, as opposed to the more narrow topic of public service recruitment, will be contained in a report that we hope to see published next week, which is the final stage of what has become known as the Metherell matter. That states what we see as being desirable in relation to public sector recruitment generally. The ICAC is not a public service organisation although numbers of public servants work within it on a secondment basis. I will not be giving away any secrets when I say we have a strong predisposition towards public advertising, towards selection on a merit basis following a panel interview process with an outsider involved, and they are certainly aspects that we could not rationally object to being reflected in our own Act. But there are good reasons why the provisions of the Public Sector Management Act should not just be carried over willy-nilly.

Ms BURNSWOODS:

Q: In the Commission's last annual report in relation to wages and salaries, there were references to the restructuring of wages paid to seconded New South Wales police officers and paying them according to Commission terms and conditions, and to the 2.5 per cent State Government wage increase. I am interested in how the Commission sets its wage levels and conditions, in the absence of the ordinary wage-setting authorities determining exactly what happens there, and in how the wage levels and conditions compare to the public sector generally?

A: We judge and meet the market as best we are able to, is about as far as I can take it. Mr Seshold might be able to take it further.

Mr SESHOLD:

A: I think that effectively summarises it. A lot of what we do is based on what does take place in the public sector generally, but a number of needs are fairly special. As Mr Temby says, we take market expectations into account.

Ms BURNSWOODS:

Q: What about ensuring that you get value for money? What about the end of the process, where you are setting your own salaries and conditions?

Mr TEMBY:

A: I believe we are a fairly demanding employer and we have, on occasions, let people go—which provides some comfort, I suppose. When I say let them go, normally that is not a crash sacking because they have normally got a home to go back to, but normally people who do not measure up do not stay there.

Mr TURNER:

Q: Referring to the first part of Ms Burnswoods' question about seconded police, are you having difficulty getting seconded police?

A: It has not been awfully easy for the last little while, for reasons that are fairly obvious, I suppose.

Q: Is there forward planning on what will happen if you lose your seconded police? Are seconded police vital to your operations?

A: Yes. We are thinking about it on a continuing basis. There is not going to be a disaster loom that we cannot meet.

Ms BURNSWOODS:

Q: Can I take up the reference to letting people go. We have previously discussed what happens when someone is dismissed, and they cannot go to GREAT. In view of what you said previously—that you would object to any such provision—would the Commission object to the establishment of some sort of specific appeal mechanism?

A: Yes.

Q: Can you tell us why?

A: Let me repeat the point I made earlier. Nearly always when, to use my phrase, we let people go, they have got somewhere to go back to.

Q: Because they are seconded?

A: Nearly always. I cannot bring to mind an occasion when that has not been the case, although there could have been one, I suppose. Secondly, because the

normal appeal rights are not available, we do a lot more than is typical to ensure that internal processes are there. You are never satisfied as an employer that you have everything right but we are conscious of the need for us to take compensating measures. But thirdly—and this is the compelling reason—as a matter of course the Commission, and most people in it, deal with remarkably sensitive information. We must have remarkably co-operative relations, when we need them, with other departments and agencies. Security needs within the Commission are extraordinarily high and we simply have to reserve to ourselves the right to bring an employment contract to an end without assigning a reason for it. If we had assigned a reason—and you have to if you are caught with appeal mechanisms—then on occasions, that is occasions that one could easily visualise, that would have led to disastrous operational consequences. You just have to deal with the sensitivity of what we do.

Mr NAGLE:

Q: Arising out of that, there is a greater obligation on you and your senior staff to ensure fairness for people before they are let go so that they are not victimised or disadvantaged because of some power struggle within the department.

A: I agree with that entirely. We do all the obvious things when people are not measuring up, like counselling them and so on. Those things are done but on a couple of occasions we have had to say to people, "We cannot keep you for reasons we cannot tell you". We have then done everything we can to see them placed elsewhere and treated as decent human beings. It is a difficult situation to be in but we have had to do it.

Mr GAUDRY:

Q: Have many of those people whom you have let go sought an unofficial appeal mechanism by perhaps raising their case outside the Independent Commission Against Corruption?

A: Yes, I can think of a couple that have done so. I can think of a couple of disgruntled former employees who have come here. I do not know whether they have come here to seek assistance in the way you have just put it but there are a couple I can think of who have come here seeking redress or perhaps even revenge.

Q: Is that a problem, though, associated with the fact that there is no mechanism?

A: Perhaps it is, but I really do not see an answer to it. I would not—I could not—give chapter and verse at a public hearing, but on some occasion I might be able to give a bit more information about a particular matter that I presently have in mind which would provide a good example of why the need arises.

Mr NAGLE:

Q: Would it be possible to set up a mediation facility through one individual or perhaps two or three so that people may be assessed for high security clearance, that is, a facility not directly connected to ICAC, though not of a general nature like the Government and Related Employees Appeal Tribunal?

A: We have one. We have an internal procedure which was established after consultation with staff within the last 12 months. His title is grievance mediator. Presently it is Mr Stretton, who happens to be present. One of the reasons he was chosen was that he, as one of the Commission's general counsel, does not have staff working to him. He is also someone who has had some experience in this area and has done a short course to fit him out. He has conducted, on at least two occasions I can bring to mind, grievance resolution processes—not quite in the context of a threatened sacking, I have to say, but nevertheless it is part of the structure. We do acknowledge that because people do not have automatic appeal rights we have to be especially solicitous in their direction. Please let me stress I am not to be understood as sitting here and saying we have got it absolutely perfectly right. I do not think you ever get these areas perfectly right, but we have the consciousness and we can take steps. The grievance mediator was no small step.

Mr GAUDRY:

Q: In your employment structure, I suppose this is taken into account to some extent by the contractual nature of employment.

A: It is, and as a general proposition we pay seconded public servants more than they would get back at base, because we are fairly demanding, and I suppose that is reflected partly in the rather special employment conditions.

MISCELLANEOUS

Questions Without Notice

Legal Assistance

Mr NAGLE:

Q: This question was not on notice, though perhaps I should have put it on notice. The Committee is trying to tackle the issue of legal aid for those who appear before the ICAC and whether certain categories of people should or should not be entitled to it. In the police inquiry that the Commission is currently conducting, have any witnesses been paid legal aid, to your knowledge, by the Independent Commission Against Corruption?

Mr TEMBY:

A: No, I am sure they have not been paid by us. We cannot pay it; we do not have statutory power to do so. A large number of the public sector officials appearing before us, I am confident, are receiving legal assistance of one sort or another. But it cannot come from us because we do not have the power.

Q: If Smith and Henry, as I assume, are receiving legal aid of some description, it is coming from Australian legal aid or New South Wales legal aid.

A: I think it is coming following on the Attorney General's fiat.

Integrity in Public Sector Recruitment Report

Mr TURNER:

Q: You said earlier that the colloquially named "Jobs for the Boys" report would be coming out next week?

A: Yes.

Q: Is that a discussion paper?

A: No, it is a report. We put out a discussion paper in October last year. A hearing was held in December and this is the final report. Its title is "Integrity in Public Sector Recruitment" and it is a formal Commission report.

Q: Because of your jurisdiction, is that restricted to New South Wales commentary?

A: It is restricted to New South Wales.

Q: Do you refer anywhere in it to other jurisdictions?

A: Yes, there is reference to legislative provisions in two other States that I can bring to mind immediately.

Q: I am concerned about a report in the *Sydney Morning Herald* of 24th March concerning Senator Tate and Dr Blewett who were stood down from ministerial positions and, as the report stated, both were tipped to be offered overseas postings, Dr Blewett tipped to be ambassador to Washington and Senator Tate to the Hague. I see a strong parallel in that comment to what gave rise to your first and subsequent inquiries. Could it be that you would have the right to make comment on a Federal issue like that?

A: If there was a need we would do so, although as a matter of comity—as I see it, there is a principle of comity between governments, not always between political parties that are central to the parliamentary process. But there is a broad principle of comity between governments. There is accordingly a broad principle of comity as between government agencies or agencies created by the various parliaments, such that a body like the ICAC ought to show some restraint in deciding the extent to which it will make comments that are necessarily gratuitous with respect to matters that are happening in other jurisdictions. In any event, the report is in the printer's hands now.

Q: I will extend it one step further, to the North Coast inquiry, where the National Party produced certain documentation which were out of jurisdiction and they formed a significant part of the report. The other two major parties involved in that did not produce their documents, but the National Party stood condemned. I am not suggesting that Senator Tate or Dr Blewett should stand condemned for accepting what will be a position, I would imagine, or to a higher emolument, but it is certainly a strong parallel case. There is one other matter in relation to Gareth Evans. As I understand from a news report, either during or just slightly before the election, five members of his personal staff have taken ambassadorial positions. I would have thought those sort of comments perhaps—

Ms BURNSWOODS:

Q: Is any of this within the Committee's brief?

CHAIRMAN:

Q: I think the answer is no, but Mr Temby is capable of answering the question.

Mr NAGLE:

Q: I think the reality of the situation is it has absolutely no parallel to the Metherell affair.

A: So far as what has come to be known as the Metherell matter is concerned, it was not merely the fact of the appointment, but more importantly, the process, which was central to concerns that were expressed. That point needs to be born in mind. Secondly, it is important not to draw parallels that are too broad, and I would suggest that a parallel between what you first raised and what we did in the North Coast report is a pretty broad one.

To take a more recent example, in the confidential government information investigation, we received a good deal of information about the conduct of Federal public servants, and to an extent we dealt with it, although not as extensively as in the State sector because of this notion of restraint. We took it in because it was of high relevance in the whole broad question, the point being that the private investigators who typically receive the information did not care where it came from, and in working out the nature of the trade it would have been most artificial for us to restrict ourselves only to the State generated information, and to an extent we went across to the federally generated information. So in the investigation context there will be occasions when it is the right thing to do, but I come back to what I said earlier: A body like the ICAC needs to be careful about making comments which are in truth gratuitous so far as other jurisdictions are concerned, and I hope we have always demonstrated that mode of restraint. I certainly attach importance to it.

Mr NAGLE:

Q: If members of Parliament, particularly the State of New South Wales, decide to retire from Parliament, you would not advocate that should never be appointed to any position within a State structure?

A: I have never advocated that. I prefer to say no more until the report is published.