



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**

MONDAY 15 OCTOBER 1990

PARLIAMENT HOUSE, SYDNEY

TOGETHER WITH AN ACCOUNT OF MEETINGS
WITH RELEVANT AGENCY HEADS

COMMITTEE ON THE
INDEPENDENT COMMISSION AGAINST CORRUPTION

MEMBERS

Mr M J Kerr, MP (Chairman)
The Hon D J Gay, MLC (Vice- Chairman)
Mr J E Hatton, MP
Ms S C Nori, MP
Mr A A Tink, MP
Mr J H Turner, MP
Mr P F P Whelan, MP
The Hon R D Dyer, MLC
The Hon S B Mutch, MLC

STAFF

Mr L E Gönye, Clerk to the Committee
Mr D M Blunt, Project Officer
Miss G Penrose, Stenographer

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."

FOREWORD

As part of its role in monitoring and reviewing the exercise by the Commission of its functions, the Committee has established a regular pattern of public hearings with the Commissioner of the ICAC, Mr Ian Temby QC. 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 Commissioner's evidence, the Committee hopes to assist in informing the debate on the ICAC.

The first of these public hearings with the Commissioner was held on 30 March 1990. The second, the subject of this collation, was held on 15 October 1990. It is likely that Mr Temby will next appear before the Committee in early 1991.

Prior to the hearing on 15 October Mr Temby was provided with a series of questions on notice. During the hearing these questions were generally referred to by number to save time. Where this occurred they are reproduced in full in the appropriate place. It should also be noted that the order in which the questions were put has been altered to enable the answers to be categorised under appropriate subject headings, for easy reference.

The first set of questions deals with issues arising from a series of meetings conducted by a delegation of the Committee with the heads of relevant agencies in August. To place these questions in proper context, a brief account of these meetings appears as an appendix to the collation.



M J Kerr MP
Chairman

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ISSUES ARISING FROM MEETINGS
WITH AGENCY HEADS

CHAIRMAN:

Q: As you are aware a delegation of the Committee conducted a series of meetings in August with the heads of a number of agencies. These meetings covered a number of topics including the relationships between the various agencies and the ICAC, trends and changes in corrupt conduct and corruption prevention.

A number of issues arose from these meetings, issues upon which I would like to question you this morning.

1.1 Complaints Not Investigated

A number of those the delegation met expressed the view that, partly as a result of s.11 of the ICAC Act, the Commission must be collecting a considerable amount of intelligence about corrupt conduct. However, the Committee has noted recent statements in which you have made it clear that the Commission has to be very selective in determining which complaints it will investigate and that only a small proportion of complaints are able to be investigated. On page 22 of the Commission's 1990 Annual Report it was noted that only 2% of complaints within jurisdiction were made the subject of formal investigation during the 1989-90 reporting year.

The Chairman of the State Drug Crime Commission expressed concern about the potential danger of the ICAC becoming a "dumping ground" for complaints about possible corrupt conduct. People could absolve their consciences by forwarding complaints or reporting matters to the ICAC but the Commission would never be able to investigate more than a handful of these matters. What is your response to this concern?

A: Could I ask to have tabled the letter that was written on 18th September in response to a letter you wrote on 12th September, which provides what I hope is a thorough answer.



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COMMITTEE ON THE ICAC

12 September 1990

Mr Ian Temby QC
Commissioner
Independent Commission
Against Corruption
GPO Box 500
SYDNEY NSW 2001

Dear Mr Temby

I am writing to advise you of a series of meetings conducted by a delegation of the Committee last month with the heads of a number of agencies and to seek your advice on a number of matters arising from these meetings.

These meetings had a number of purposes and achieved a number of goals. Firstly, they enabled Committee members to establish a link with these agencies. Secondly, they enabled Committee members to receive briefings on the functions and operations of these agencies and to gain an appreciation of the relationships between these agencies and the ICAC. This provided Committee members with a better understanding of where the ICAC fits into the wider scheme of investigative, enforcement and prosecuting agencies, as well as those charged with management responsibilities.

The agencies whose heads the delegation met were: the Ombudsman; Auditor General; State Drug Crime Commission; National Crime Authority; Bureau of Crime Statistics and Research; Office of Public Management; Director of Public Prosecutions; and Cash Transactions Reports Agency. A meeting has also been sought with the Commissioner of Police but no reply has yet been received.

Each meeting began with the head of the agency outlining the functions and operations of the agency. Questions and discussion followed. The head of the agency was then asked to describe the relationship between his agency and the ICAC. Trends and changes in corrupt conduct were discussed and finally comments were sought on the Committee's reports to date and the ICAC's Corruption Prevention Strategy. In most cases the meetings were held at Parliament House. However, in the case of the National Crime Authority and the State Drug Crime Commission, Committee members went to the agency's premises and the meeting included a tour of inspection of those premises.

A number of issues arose from these meetings, upon which the Committee would like your advice. These are set out below.

Q: 2.1 Limitations on Role of the ORC

The Committee noted from this material that the ORC has a limited role, in that it does not provide advice to the ICAC on two sorts of complaints about possible corrupt conduct. These are:

- (i) Reports of possible corrupt conduct from principal officers of public authorities made pursuant to s.11 of the ICAC Act, which the Commission does not propose to investigate; and
- (ii) Complaints which the Commission determines to not be within jurisdiction.

It is noted that the Commission has carefully studied the ICAC Act in developing its relationship with the ORC. Do you perceive any deficiencies in the statute in this regard? That is, do you believe the role of the ORC should be expanded to enable it to provide advice on complaints received under s.11?

A: That (statment) provides most of this information as sought. As to s.11 reports, which are of course something different from complaints, the Parliament presumably intended they should be dealt with differently, and we have no difficulty with the present position. We do not need to go to the ORC before deciding not to pursue a s.11 reference or report but could do so and I think would do so if we thought one was very finely balanced or closely linked with other things they have looked at.

They do get progress reports in relation to s.11 reports that have turned into formal investigations. I think putting those two factors together the present position is satisfactory.

Q: 2.2 Determinations that Complaints are not within Jurisdiction

In view of the fact that the ORC does not provide advice on complaints that the Commission determines are not within jurisdiction, the Committee requested further advice regarding Commission procedures for determining whether complaints are within jurisdiction. Could you please outline these procedures, or table some written material on this issue?

A: The information sought in 2.2 was provided by letter dated 3rd August 1990, which I seek leave to table. There is nothing more to say about that.

19. It will be noted that -

- . A wide range of Commission officers are required to prepare reports which are presented to the ORC. This means that the work of the ORC affects every Commission officer involved in operational duty
- . The Commission Secretary has general responsibility to maintain the standard of reporting
- . Pro forma documentation has been designed to achieve consistency and relevance in reporting
- . Deadlines are imposed to ensure that members of the ORC receive papers sufficiently in advance of meetings to allow proper consideration of material.

20. Commission files, in relation to reports under consideration by the ORC, are always available for examination.

21. The ORC has considered 480 reports concerning complaints which the Commission does not propose to investigate. In most instances the ORC has advised the Commissioner to accept the recommendations of Commission officers. On other occasions, the ORC has advised the Commission to conduct further inquiries and report back. In every instance, the Commissioner had accepted the advice of the ORC in deciding a matter.

Protests Against Commission Decisions

22. Attachment 3 sets out the Commission's policy regarding the handling of protests against Commission decisions. If the Commission's decision was made following receipt of advice from the ORC, and the complainant produces information which affects materially the basis upon which the matter was previously considered by the ORC, its further advice is sought.

11. The Assistant Commissioner nominated by the Commissioner is Mr Adrian Roden QC.
12. The members initially appointed on 15 March 1989 were -
 - . Mr W Robinson, Director, Legal Aid Commission (as he then was) appointed on the recommendation of the Attorney General and with the concurrence of the Commissioner.
 - . Major General R Grey, Mr J M Davenport, Sister M McGovern and Professor B Fisse, to represent community views.
13. Under Clause 3 of Schedule 2 to the Act an appointed member cannot be appointed for a period exceeding 12 months but is eligible for reappointment. On 28 March 1990, the terms of Mr Davenport and Sister McGovern were renewed for a further 12 months. At the same time the following persons were appointed -
 - . Mr L Glanfield, a senior officer of the Attorney General's Department, on the recommendation of the Attorney General.
 - . Mr G Nutter and Mr D Brezniak, to represent community views.
14. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine (Clause 5 of Schedule 2 to the Act). The rates which the Premier has determined generally in relation to part-time members of boards apply.

Meetings

15. Section 59(2) of the Act states that the Commissioner shall consult with the Committee on a regular basis and at least once every three months. In practice the Commission meets on the first Friday of each month (except during the Christmas/New Year holiday period).
16. The Committee has met on 14 occasions. Of those meetings, 10 have been chaired by the Commissioner, the balance by Mr Roden.

Work

17. The Committee is serviced by officers of the Commission. A senior Commission officer attends meetings to take minutes.
18. Attachment 2 is a Commission document which sets out requirements regarding the preparation of reports for consideration by the Committee.

6. The only matters in respect of which the Committee, in the normal course, does not provide advice are -
 - . Complaints which do not concern possible corrupt conduct
 - . Reports of possible corrupt conduct from principal officers of public authorities made pursuant to Section 11 of the Independent Commission Against Corruption Act which the Commission does not propose to investigate.
7. It would be contrary to the statutory scheme for the ORC to provide advice in relation to complaints which do not concern possible corrupt conduct. So far as Section 11 reports are concerned, there is no statutory requirement for the advice of the ORC to be obtained in relation to those matters. Presumably the Legislature considered the relationship of principal officers to the Commission did not need to be oversighted in the same manner as the relationship between citizen, as complainant and the Commission, as a public organisation.
8. The provisions of Section 59(1) of the Act need to be read along with Section 20(4) which states -

Before deciding whether to discontinue or not to commence an investigation of a complaint, the Commission must consult the Operations Review Committee in relation to the matter.
9. Counsel's advice was sought as to the proper interpretation of these provisions, in particular, whether an investigation of a complaint can be conducted without prior reference to the ORC. The answer to this question was yes. The opinion of Mr Sully QC (as he then was) is attached (Attachment 1).

Membership

10. Section 60 of the Act provides that the Committee shall consist of 8 members, being the following:
 - . The Commissioner, who shall be Chairperson of the Committee
 - . An Assistant Commissioner, nominated by the Commissioner
 - . The Commissioner of Police
 - . A person appointed by the Governor on the recommendation of the Attorney General and with the concurrence of the Commissioner
 - . 4 persons appointed by the Governor on the recommendation of the Minister and with the concurrence of the Commissioner, to represent community views.

Constitution of the Operations Review Committee

1. Part 6 of the Independent Commission Against Corruption Act ("the Act") deals with the constitution and functions of the Operations Review Committee (ORC). The Act commenced on 13 March 1989. The ORC was constituted in a practical sense on 15 March 1989 when the Governor appointed the first "appointed members".

Functions

2. The functions of the ORC are set out in Section 59 (1) of the Act as follows -
 - . To advise the Commissioner whether the Commission should investigate a complaint made under this Act or discontinue an investigation of such a complaint
 - . To advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.
3. The ORC, at a meeting held on 5 May 1989, resolved that its terms of reference be as follows -
 - . To advise the Commissioner whether the Commission should discontinue or not commence an investigation of a complaint
 - . To advise the Commissioner at least every 3 months whether the Commission should continue an investigation
 - . To advise the Commissioner whether the Commission should discontinue an investigation conducted on its own initiative or on a report made to it
 - . To receive from the Commissioner a report relating to the completion of an investigation
 - . To advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee
 - . To bring to the attention of the Commissioner any matters relating to the operations of the Commission which the Committee considers important.
4. On 4 August 1989, the Committee resolved that it be provided with statistical reports relating to the handling of complaints by the Commission.
5. It will be noted that the Commissioner seeks advice from the Committee in relation to matters where he is not required to do so. For example, he seeks advice in relation to the continuance of formal investigations where they have been commenced as a result of a Section 11 report, the Commission's own initiative (or a parliamentary reference).

ICAC

INDEPENDENT COMMISSION AGAINST CORRUPTION

STATEMENT TO THE COMMITTEE ON THE ICAC CONCERNING

THE RELATIONS BETWEEN THE COMMISSION

AND THE OPERATIONS REVIEW COMMITTEE

June 1990

OPERATIONS REVIEW COMMITTEE

CHAIRMAN:

Q: The Operations Review Committee is a fairly technical area, and while the information is important in terms of the public record it should be put out with the assistance of both our secretaries?

A: I can cover it fairly quickly. I provided earlier this year a statement concerning the function and the operations of the review committee, which I would like to have tabled.

Q: That can be tabled.

I mentioned, but in a different direction. I hope we will be approaching not the Committee as such but I certainly intend to approach among others individual members of the Committee in the hope that they can provide some feedback, because it is more their business than ours in the end.

MR WHELAN:

Q: Did I understand you to say that you would be writing to members of Parliament or discussing with members of this Committee a code of conduct?

A: It is not quite a code of conduct. I would not be so presumptuous. We are conducting an investigation which is being done privately for reasons that I think most understand. An issue that will arise is the proper relationship between members of Parliament and particular constituents, or rather what constraints are there upon that relationship.

CHAIRMAN:

Q: I think you mentioned in your annual report that there was an investigation between a member of Parliament and a constituent?

A: Yes. We will be seeking to express views as to constraints thereupon, in the hope that it will be useful, and we will be seeking to consult not every member of this Parliament, but at least members of this Committee as individuals, and I imagine some others, to try to get some views in that regard. We hope that the end result of that will be of some utility.

MS NORI:

Q: And some protection?

A: Yes, some protection I suppose. We have not drafted it yet, so I do not yet know what it will say.

Q: As an MP, and I am sure everyone here is the same, we get calls from all sorts of strange bods and I feel duty bound to offer at least an interview with anyone who seeks it. One hates to think who some of them are.

I certainly will not be going to OPM for that purpose. You go to whoever can give you the most useful advice.

While we are on this topic, there is a question that asks why we did not consult OPM about our corruption prevention strategy, and should that strategy be made into guidelines for departments and agencies. That strategy document has to be understood for what it is and for what its purpose is, which is to provide us with guidance as to what we are doing. We lay down for ourselves what we are going to do. That is the first step, and that is the critical step.

The second step is to publish it, because people are entitled to know what we are doing, unless there are reasons to the contrary. So in the spirit of openness it gets published. It is our document. We had a lot of input into that. We wrote to 45 carefully selected foreign countries to get input as to what they were doing about corruption prevention. We wrote to all Ministers asking what they were doing. There was a lot of material providing input into that document. The document will doubtless be changed with the passage of time. But there was no need for us to consult everybody around town who might be able to provide an input, in circumstances where it is an internal document which we make public. And then the proposition is, that it should be converted into guidelines. That just shows a lamentable lack of understanding. I know it is not your suggestion.

It is suggested, as I understand it by OPM, 'Why not make it into guidelines?' It just shows a lamentable lack of understanding of what corruption prevention is about and how complex it is. It is like saying 'Why not some guidelines to good management?' Corruption prevention is a smaller topic than the general topic of management, but what you need to do in a particular corruption prevention exercise depends on a whole series of factors. It depends upon the institutional climate, the statutory background, the nature and the gravity of the problem, and so I could go on. Everything we do has to be purpose-built. To put out guidelines which would effectively say 'If you do this, chaps, you will probably solve your problem' would be actively misleading. It is certainly not the way to go.

MR TINK:

Q: I just want to clarify it. I am not suggesting that you should go to OPM in every case, or anything like that. It was because in the cases under consideration it was something they might have a relevant input on?

A: With respect, I am not saying anything against the notion of consultation and trying to get properly informed, and as I say I think I am more aware of the need to do that than I was when I started. We will be doing it in that case that

Q: 1.3 Corruption Prevention

Most of those the delegation met with endorsed the approach taken in the Commission's Corruption Prevention Strategy. However, it was put to the Committee that for the strategy to be effective it needed to be developed into guidelines for public sector managers. What is the function of the Commission's Corruption Prevention Strategy? Do you think it should be developed into guidelines for public sector managers?

MR TINK:

Q: I have a question that follows on, and it is to do with the Office of Public Management. I read somewhere that there are some ongoing dealings between the Commission and the Office of Public Management in relation to discussions of things like corruption prevention strategy and so forth. I must say I was a little bit surprised when Dr Hunt spoke to us a couple of months ago and said that at that point he had not had any communications directly with you or any of the assistant commissioners. It occurs to me, and I appreciate that it is for the Commissioner or an assistant commissioner as the case may be who is responsible for the end product of a report, they and nobody else, and I also appreciate that you have been in effect the permanent head of a department in Canberra and have considerable administrative experience. But it seems to me that in the context of considering some of these more general principles that get drawn out of a report, as opposed to the facts and the conclusions based on the facts themselves, that running some of those things past the Office of Public Management for comment would not be a bad thing.

A: I have had extensive dealings with Mr Humphry, who is the department head to whom Dr Hunt works, and Anne Reed who is our director of corruption prevention has had extensive dealings with Dr Hunt and with his predecessor Mr Baxter, and they are appropriate lines of communication. I do not say that I would not talk to Dr Hunt. That would be a silly and pompous thing to say; nevertheless the thing has been done in a perfectly sensible and orderly way.

We do consult with respect to matters of the sort you have mentioned, and I am conscious - more conscious now than I was when I started - of the desirability of that happening. But I certainly do not see OPM as being a first port of call as a group we should ordinarily consult with on matters of general importance. You have to pick the one that is appropriate. For example, we are bringing forward a report, down the track a bit when we are able to do it, which will touch among other things on the proper relationship between elected members and constituents. So far as that matter is concerned I propose to consult, and I will be looking to members of Parliament to provide advice in that context, and

us to look in these three places. I think nobody could expect us to do less than that, and we will keep doing that, and I do not say that we will never gather intelligence, because we might do so, but I do not imagine the gathering of intelligence of itself rather than as a consequence of other things we do will ever be a significant part of what the Commission is about.

MR HATTON:

Q: Do you get co-operation from the BCI, the State Drugs Crime Commission and the NCA as a matter of course, as a resource? At some time you could provide them with some information that would assist them, but generally speaking they are set up at great taxpayers' expense to do that job?

A: We have had information provided to us on request by each of the SDCC, the ABCI, and the NCA. I am not sure about the State BCI; I do not know - probably but I am not certain - and certainly with the AFP. I think it would be true to say that we have on request supplied information to each of them. I would not be absolutely certain as to that as I sit here.

The reality is that most law enforcement agencies view the information they hold as power or reflecting power, and it is naive to imagine that information flows between different agencies will ever be perfect. It just does not happen. I think the information flows between us and the various other agencies are really very good, and I think the reason for that is that we do not seek to carve out any exclusive territory, so nobody thinks that if they give us something we are going to take it off them and deprive them of work and accordingly of staff and resources and so on. We on our side say that if others are able to do the job properly and are willing to do the job we hope they will get on with it. We are very ready to give information in proper circumstances. There seems to be a better willingness for them to give us information than anecdotal evidence indicates always happens as between them.

Q: You are not considered as a threat or a rival?

A: I do not think we are. We are trying not to be seen as such. We have talked to the NCA and I have just recently received a paper which gives me more information in relation to it. It is not the case that all the intelligence work we do is of a technical nature. We do strategic intelligence work. It is not necessarily always done by people designated as analysts. Apart from saying that it may be that we can benefit from their experience, I would want to make no further comment at the moment because it is too early to say.

Q: 1.2 Intelligence

During the meeting with the National Crime Authority there was considerable discussion about the role of the NCA's newly established Strategic Intelligence Unit. The purpose of this unit seems to be to provide for an overview and strategic analysis of the intelligence collected by the Authority, in addition to the more specific, tactical analysis conducted by investigative teams.

The delegation was impressed by the rationale behind this new unit and felt the application of such a unit to the ICAC might be worthy of consideration. How do you see the Commission's intelligence role developing and do you see any value in the Commission establishing some sort of Strategic Intelligence Unit?

A: As to 1.2 and the question of intelligence, could I again quote from that letter, which I take it is to be tabled?

A: The question of intelligence has been there adverted to, and in brief what was being said was that the NCA has a statutory function and we do not have, and therefore it is to be expected that they will do more than we do. Secondly, I am sceptical about the benefits of developing a large intelligence data base and I am a bit concerned about the way in which the Commission would be viewed if we had holdings on most people in the State. I do not think the public want that, and I do not want it either.

MR TINK:

Q: It seems to me that one of the central roles of ICAC is to have public hearings, to make reports, and with respect to particular matters under investigation to come to some sort of finality about them, to the extent that arising out of a hearing you keep a lot of material and actively cross-checking it with other things. It tends to get away from that function although it may not be inconsistent with others. On the other hand the NCA, as best I can understand it, seems to be centrally directing itself through its charter to gathering intelligence for use in prosecutions which will ultimately be done in the courts. It is much more central in its function. It seems to me that to that extent there are different tasks set out in the legislation for each, and that leads to different results in regard to the type of information kept?

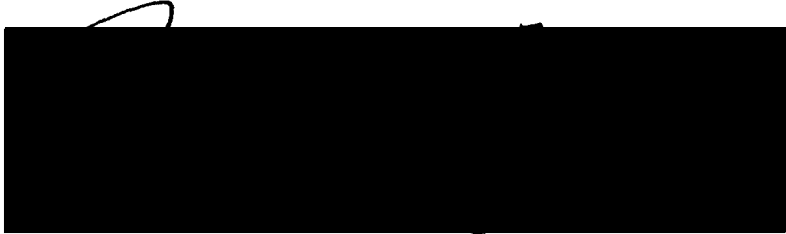
A: I agree. with respect, entirely. It is a question of proper understanding of functions. Having said those things, and I agree if I might adopt what you have said, which is entirely right, that is not to say that we do not do intelligence work. We do. We are developing a simple names data base which enables us to know where we should go to look for information we might have about X. It might tell

especially the Office of Public Management, but must reserve to itself the final decision as to how it will carry out its strategies.

I trust that you find this response constructive. It is meant to be and in that sense, mirrors the outcomes of the Committee's programme of discussions as stated in your letter.

I note with some disappointment that the Commission was not informed that the Committee was embarking upon the series of meetings. It would have been more satisfactory to have obtained that information early in the piece rather than receive ad hoc feedback from agencies to which the Committee delegation spoke.

Yours sincerely



Ian Temby QC
Commissioner

Commission, the Ombudsman, the Department of Local Government and other agencies such as the State Rail Authority, the Roads and Traffic Authority, the Department of Family and Community Services and the Department of School Education that, having reported matters to the Commission, they continue with such action as they consider appropriate until advised otherwise by the Commission.

If a matter is considered inappropriate for pursuit by the Commission, but is one that cannot be allowed to remain as it is, the Commission makes that clear to the body or bodies that should attend to it, whether by reference under s.53 of the Independent Commission Against Corruption Act or otherwise.

It is true that the Commission has commenced formal investigations in only a fraction of the matters brought to its attention. This is not to say that all matters are not given careful consideration. I have informed the Committee previously of the procedures followed which may lead to a decision not to investigate a complaint or report of possible corrupt conduct.

Intelligence

The first thing to say is that the National Crime Authority has an express statutory function to collect, analyse and disseminate criminal information and intelligence (s.11 (1)(a) National Crime Authority Act). The Commission does not. It believes however it can gather intelligence as incidental to its investigative function.

I am not comfortable with the notion of the Commission developing a large data base on individuals who come to its notice. I have said so publicly. The current position is that the Commission is defining its intelligence role in conjunction with implementation of its information technology strategy. I will be able, by the end of the year, to inform you and other Committee members fully of the Commission's decisions in this area of activity.

Statistics

The Commission's forthcoming Annual Report will contain limited statistical information relating to complaints and reports of possible corrupt conduct. I intend that, over time, the Commission will publish more statistical information than it has to date. However, I am firmly of the view that the information published must be accurate and useful. I would be concerned if published information were used for evaluative purposes when no valid criteria had been established.

Corruption Prevention Strategy

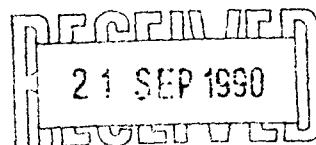
The corruption prevention strategy is essentially for internal use, and made available to others for information. Obviously, Dr Hunt does not understand this. It is a pity he did not talk to us before conveying views to others. Corruption prevention is too complex to pursue simply by means of the issue of guidelines. The Commission is happy to work with other agencies,

ICAC

INDEPENDENT COMMISSION AGAINST CORRUPTION

18 September 1990

Mr M J Kerr MP
Chairman
Committee on the ICAC
121 Macquarie Street
Sydney
NSW 2000



Dear Mr Kerr

I write in response to your letter dated 12 September 1990 which sought advice in relation to a number of issues which arose from your recent meetings with various agency heads.

I deal with the issues in the order they appear in your letter.

Guidelines

Guidelines will be issued under s.11 (3) of the Independent Commission Against Corruption Act within the next few days. The guidelines will be accompanied by a paper which highlights matters relevant to the design of systems to enhance the capacity of principal officers of public authorities to report possible corrupt conduct to the Commission.

Complaints Not Investigated

I do not think it is realistic to fear that the Commission will become a "dumping ground" for material concerning possible corrupt conduct.

First, I have stated repeatedly that, although the Commission has the pre-eminent role in tackling public sector corruption, it does not have sole responsibility. Other investigative agencies, management of public authorities and all right thinking members of the community have a role to play. The Commission has taken steps to give practical force to what I have said.

The major concern seems to have arisen in relation to reporting by public authorities to the Commission of possible corrupt conduct. The Commission has stated that reporting to it of possible corrupt conduct involving criminality is no substitute to reporting the matter to the police. The Commission has firm understandings with the Police Service, the State Drug Crime

Mr Temby

The delegation was impressed by the rationale behind this new unit and felt the application of such a unit to the ICAC might be worthy of consideration. The Committee would be pleased to receive your views on this issue.

Statistics

Under s.76(2)(a) of the ICAC Act the Commission is required to provide in its Annual Reports "a description of the matters that were referred to the Commission". During the meeting with the Director of the Bureau of Crime Statistics and Research it was agreed that it would be helpful if the Commission could go further and provide detailed statistics on the number of complaints about possible corrupt conduct received, together with a breakdown of these complaints by the department or agency to which they relate. The Committee has noted that such statistics are provided in the Annual Reports of the Hong Kong ICAC. The Committee would like to know whether it is intended to publish these sort of statistics in the Commission's Annual Reports or elsewhere.


Corruption Prevention Strategy

Most of those the delegation met with endorsed the approach taken in the Commission's Corruption Prevention Strategy. However, the General Manager of the Office of Public Management, Dr Blair Hunt, whilst supporting the principles outlined in the strategy said that for the strategy to be effective it needed to be developed into guidelines for public sector managers. Dr Hunt subsequently wrote to the Committee, expanding on these comments. I believe you have received a copy of Dr Hunt's letter of 15 August. The Committee would like to receive your views in response to Dr Hunt's letter.

The Committee has also written to the Premier seeking his advice on any progress which has been made in discussions with the Commonwealth on the question of the ICAC becoming an eligible authority under the CTRA Act.

I trust this information is of assistance to you and look forward to receiving your advice.

Yours sincerely



M J Kerr MP
Chairman

Mr Temby
12 September 1990

Guidelines

A number of the heads of agencies which the delegation met with are, by virtue of s.11 of the ICAC Act, under a duty to report to the Commission "any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct". It was pointed out to the Committee that, although s.11(3) provides that the Commission "may issue guidelines as to what matters need or need not be reported", no such guidelines have been issued as yet.

The Committee has also noted that in your letter to public authorities dated 5 December 1988, which appeared as appendix VI in the Commission's 1989 Annual Report, you said that you envisaged issuing such guidelines at "a later stage" after the Commission had a "better idea as to the nature and extent of the information which will be furnished".

A number of those the delegation met with said that such guidelines would be helpful. The Committee would like to know what the Commission's present intentions are regarding the issuing of such guidelines.

Complaints not Investigated

A number of those the delegation met expressed the view that, partly as a result of s.11, the Commission must be collecting a considerable amount of intelligence about corrupt conduct. However, the Committee has noted recent statements in which you have made it clear that the Commission has to be very selective in determining which complaints it will investigate and that only a small proportion of complaints are able to be investigated.

The Chairman of the State Drug Crime Commission expressed concern about the potential danger of the ICAC becoming a "dumping ground" for complaints about possible corrupt conduct. People could absolve their consciences by forwarding complaints or reporting matters to the ICAC but the Commission would never be able to investigate more than a handful of these matters. The Committee would be pleased to receive your response to this concern.

Intelligence

During the meeting with the National Crime Authority there was considerable discussion about the role of the NCA's newly established Strategic Intelligence Unit. The purpose of this unit seems to be to provide for an overview and strategic analysis of the intelligence collected by the Authority, in addition to the more specific, tactical analysis conducted by investigative terms.



INDEPENDENT COMMISSION AGAINST CORRUPTION

3 August 1990

Mr M J Kerr MP
Chairman
Committee on the ICAC
121 Macquarie Street
SYDNEY NSW 2000

Dear Mr Kerr

I am responding to your letter dated 20 July 1990 which seeks advice regarding procedures for determining whether complaints are within the jurisdiction of the Commission.

In light of the material provided previously to the Committee, I do not consider it necessary to explain the legal requirements concerning determination of jurisdiction. Briefly, experience suggests that in most cases the decision is straightforward. For example, if a person complains about persons in the private sector or the Commonwealth Government, the complaint is outside jurisdiction. The position may not be so clear if the complaint concerns the conduct of a New South Wales public official and the complainant does not allege specifically that the person's conduct is corrupt.

It is necessary, however, to explain how complaints are received by the Commission and which staff deal with them.

Assessment of complaints is the responsibility of Legal and Secretariat. This department, for which the Commission Secretary is responsible, consists of the Legal Group and the Assessment Section. The Legal Group consists of barristers and solicitors. The Assessment Section, which is headed by a lawyer, designated, Senior Lawyer (Assessments), consists of officers who have good communication and analytical skills.

Complaints may be received by mail, telephone or at interview. It is the responsibility of Assessment Officers to receive complaints by telephone and at interview. Obviously, in that situation, an Assessment Officer must form some view as to whether a complaint concerns possible corrupt conduct. Immediately after the complaint is received, the Assessment Officer prepares and places on file a report which is considered by the Senior Lawyer (Assessments). His consideration of the matter includes an examination of the jurisdictional question.

Complaints received by mail are first seen by the Commission Secretary. Most of these complaints are sent to the Senior Lawyer (Assessments) for necessary action. Complaints are allocated to Assessment Officers whose first task is to determine whether each is within jurisdiction. A submission is prepared on this and other relevant matters and considered by the Senior Lawyer (Assessments). This officer makes a determination whether the matter is within jurisdiction. Sometimes there is insufficient information to make a determination and the complainant is requested to provide further information. Cases of difficulty are referred to the Commission Secretary, who is also the Commission's Solicitor.

Sometimes the Commission Secretary directs a complaint initially to a lawyer for provision of an opinion as to whether it is within jurisdiction. This opinion is reviewed by him.

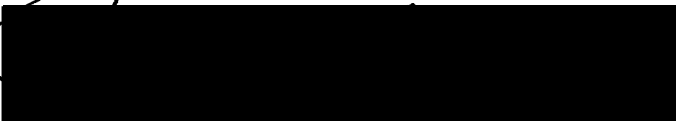
Assessment Officers receive on the job training including instruction regarding the jurisdiction of the Commission. All Commission lawyers are familiar with the requirements of the Independent Commission Against Corruption Act. The general rule is that if there is genuine doubt whether a complaint is within jurisdiction, it should be regarded as within jurisdiction and dealt with on that basis.

It can be seen from the procedures outlined above that no decision is made that a complaint is outside jurisdiction without the matter having been considered by more than one person. It should be remembered that complaint handling is high volume work and streamlined systems are necessary to ensure work that is both of good quality and timely. Review systems cannot be cumbersome.

I consider current procedures regarding whether a complaint is within jurisdiction are adequate.

I understand that Dr Trau has requested a copy of the Statement on the Relations between the Commission and the Operations Review Committee which I forwarded to you together with my letter dated 25 June 1990. I have no objection to the document being made available to him. I do however, object, at this stage, to him being given two of the attachments to that Statement. These attachments are the confidential legal opinion of Mr Sully QC and the internal Commission document relating to the preparation of ORC reports.

Yours faithfully



Ian Temby QC
Commissioner

RECORDED
3 AUG 1990
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CORRUPTION PREVENTION

CHAIRMAN:

Q: 3.1 To what extent have officers of the Commission consulted with officers in relevant agencies in developing the Commission's corruption prevention strategy? To what extent does the Commission consult with officers with primary responsibility for corruption prevention within agencies in developing strategies or making observations which affect these agencies?

A: I think this has been pretty well covered already. Really I have nothing to add except to say that in addition to the consultation that I mentioned earlier, we talked to, corresponded with and visited Hong Kong, which was pretty important, because their corruption prevention work and ours are reasonably close each to the other.

As to consultation with respect to particular jobs, talking now about the strategy rather than the particular job, that is extensive and at various levels. We are ready to talk at departmental head level and we are ready to talk at the level of the sub-head of a branch that is responsible for some small part of the system. It is really quite extensive. We take very seriously the idea, particularly in corruption prevention, that imposed solutions will not work. You have to work out solutions in consultation, or even better help them find their own solutions, and that means talking to them a lot.

Q: 3.2 What is the link between the Commission's function in terms of receiving complaints and its prevention strategy?

A: As to 3.2, complaints are one source of work for the corruption prevention unit, but only one, and I think that is made clear from the corruption prevention strategy, a new document which when you received it of course post-dated this question. We have mechanisms in place to try to ensure that both corruption prevention and investigation operations each know what the other is doing. Incoming material is considered daily by representatives at senior level from both areas, just a skirmish through the material to make sure that it is being appropriately attended to and directed. The director of corruption prevention sits on the investigations committee so she knows what is going on there. She provides the corruption prevention status report fortnightly and assessment officers are strongly encouraged to look for corruption prevention work or aspects. Also the operations review committee is very aware of this, and not

infrequently we who sit on the ORC will suggest that something might have some useful corruption prevention aspects to it. Those mechanisms are well capable of reaching the desired end. If anything we are overdoing it at the moment because we are in early days. We will probably do rather less as times goes on, I think.

It should also be said that we do quite a lot of work in the prevention area that has nothing at all to do with complaints, either on request because somebody comes to us wanting help, or of our own motion. To give a mundane example, I noticed a month or two ago that all those red vehicles you see in the suburbs bear number plates in NSWFB and they do not have any identifying number plate. It seems to me that that is a situation which is fraught with difficulty. To take again a mundane example, if one of those vehicles jumps a red light the camera is not going to help much. For my part I do not understand why they should be in some special category when nothing else is. So I raised it and we have talked to them and are told that the problem is being addressed and a solution should be found fairly soon, and we are keeping an eye on it. That is just us seeing something. Sometimes we even think of things and start floating ideas.

That I think is 3.2.

Q: 3.3 How does the Commission target areas for:

- formal corruption prevention exercises;
- provision of corruption prevention advice; and/or
- the establishment of corruption prevention "working groups"?

A: As to 3.3, the major corruption prevention exercises that we are undertaking have to date arisen in a broad sense out of formal investigations. We are very much involved in tendering. We are very much involved in driver licensing, we are doing work so far as conflicts of interest are concerned.

Another which is not yet embarked upon but which I think we are likely to take up formally is the question of post-separation employment. It might be a detailed corruption prevention exercise: it might be handled slightly differently by way of preparation of a discussion paper and dissemination thereof and getting responses to it. That would arise not out of a formal investigation but as a result of a number of cases that have come to our attention which have caused us concern as a result of the assessment of complaints.

It does not necessarily follow that all corruption prevention exercises will have to arise out of our formal investigations or indeed out of complaints, but it has tended to and that may continue. It is too early to say.

MR TINK:

Q: What is an example of that sort of thing? People taking property or what?

A: This is not a real example, but I am talking about someone handling tenders on behalf of a big government department for computer acquisition, and the next day working for one of the major computer suppliers. If there is a middle step, a contract has been steered in the direction of the supplier, you have problems. It is the problem in America of admirals going off to the defence suppliers.

MR HATTON:

Q: Last year there were guidelines laid down in Canada which may be of great use in this regard with senior public servants. We might have to look at that legislation?

A: There are guidelines from place to place within the public sector, but I do not think it can be said that the position is yet satisfactory and the capacity for abuse or conduct conducive to corrupt conduct is fairly strong. Perhaps almost as bad, even if there has been nothing done which is in any sense wrong, the appearance of the thing can be very unsettling indeed. It is a very difficult area. I am putting all the negatives, the arguments for fairly tight control. There is a positive side to it. People with skills should be able to utilise those skills. It may be said particularly in this country at this moment you do not want to make people put their skills on the shelf for a couple of years. So it is not a simple problem, and it is not the case that the only viewpoint is a restrictive viewpoint. But I do not think we have yet got it right in the State of New South Wales. I think that more work has to be done.

Corruption prevention advice is mostly responsive. That is to say, we are generally approached and asked to advise in relation to some ticklish situation, and so long as we do not think we are just being used to green-light something we do not know enough about, we are often happy to give that advice. As to working groups, there has only been a handful. Once or twice we have suggested them and on a lot of occasions they have been suggested to us. There is no clear answer.

Q: 3.4 What are the dynamics of these exercises and working groups?

A: As to 3.4, starting with these working groups, the dynamics depends on how they are set up by the parent organisation. We provide an input but we do not steer the course they take. On exercises you cannot generalise, for reasons I sought to put earlier. Each depends on the problem and each

is unique. In relation to driver licensing two of our officers have now visited nine registries, not all of which were registries examined in the course of the formal investigation. They spent a full day there observing and talking and seeing what is happening, and trying to work out just what the problems are. That is just a way of doing it; there will be other ways of doing other cases. It is very difficult to generalise. Always, however, we are co-operative: that is, we are always trying to work with people and always dynamic in the sense that we are actively trying to produce solutions which will be up to the minute at the time they are produced, rather than viewing a position at a fixed historical point and then solving that problem. If you do that you do not produce a solution and six months later you will find that events will have moved away from you.

Q: Might I say that for the first time in ten years to my certain knowledge your actions are having a real effect in the driver examiner area. There is a real effect there?

A: Thank you for that. It has to be said that there is more to do.

Q: It is having a real effect. I was wondering, in terms of getting the message across, as to the sort of things you are doing and intending to do. The Justinians are probably a good way to get a formal article into print. *The Justinian* would be widely read and it may correct some of the criticisms that you get based on lack of knowledge. Just a passing comment?

A: That is a possibility. We are looking at this. We should be doing more in getting those messages across. There are various quite important information bulletins and news sheets that go around the public sector. There is some sort of information bulletin for senior managers, which is a quite decent quality publication. We will be putting some stuff in there. But my strong feeling is that the corruption prevention work we are doing is starting to be quite well accepted. That is to say, senior managers and departmental heads and others are showing a quite strong inclination to come to us with problems. They are no longer wary, if they ever were, and I think they probably were earlier on. This stuff is going quite well.

MR DYER:

Q: Are you seeking similar co-operation at local government levels?

A: No, because we have not done much corruption prevention work there except for the code of conduct. I remind Committee members of the high degree of acceptance of that code, but also of the other comments that I made in relation to it. So far as corruption prevention work at local government

level is concerned, we probably have to do it council by council. To pick a problem that is not atypical and do it with some intensity in a particular council and then try to spread it from there - you generally cannot do corruption prevention work by going from the general to the particular. It does not work like that. You have to look at the system as it operates.

Q: It is a big exercise with some 200 or more councils?

A: Yes, a big exercise. We are doing work in relation to tendering at the moment in a couple of departments. They have been chosen for their willingness and because of the spread of their work. If they can with our assistance improve their position, we will have some messages we can take elsewhere. There is no compelling reason why we cannot do something similar in local government, although I am conscious that the city of Liverpool and a small rural shire with a population of 5,000 people do not have a great deal to do with each other: there are strong dissimilarities.

MR HATTON:

Q: My comment was really aimed at getting what you are doing and what you propose to do, so that you will get feedback and they will get information and not make uneducated comments as it were - we have received some in this Committee - to local government bulletins and professional magazines covering engineers and health inspectors and that sort of thing. Just the one article or two or three articles would disseminate it widely and would cover a lot of area?

A: It is a good suggestion. We are conscious of that need and we should be doing more than we are doing. There is a fair bit of work involved.

Q: 3.5 Has the Commission addressed the need to counter the financial attractiveness of corruption in its corruption prevention work?

A: As to question 3.5, I take it the question is referring to greed as a causative factor in corruption. Understanding that that is so informs all of the work we do. My working hypothesis is that if there is an imperfection in a system which is capable of being exploited for material gain, it will be; and the only question is when and by whom. Therefore you have to improve systems. So, yes, it underpins all we do.

PUBLIC EDUCATION

MR TEMBY:

A: The Committee received late last week the public affairs strategy of the Commission, and if I can I would like to have tabled the public affairs strategy.

**INDEPENDENT
COMMISSION AGAINST
CORRUPTION**

PUBLIC AFFAIRS

STRATEGY

October 1990

PUBLIC AFFAIRS STRATEGY

THE LEGAL CONTEXT

The principal functions of the New South Wales Independent Commission Against Corruption in relation to public education are contained in sections 13(h),(i) and (j) of the ICAC Act 1988. They are as follows:

- “13.(h) to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct;
- (i) to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration;
- (j) to enlist and foster public support in combating corrupt conduct.”

THE PRINCIPLES

The Commission seeks to enlighten and educate the community about the detrimental effects of corruption and the ways in which the community can do something about it. The strategy to achieve this is based on three principles.

- **Knowledge Empowers**

It is only when people are aware of issues and understand their rights and responsibilities that they will be able to assist the Commission effectively with its aim of minimising corruption.

- **Collective Responsibility**

Minimising corruption is the responsibility of every citizen of the State. The more who contribute, and the more they contribute, the more will be done.

- **Permanent Change**

Permanent improvement can be brought about only through changed attitudes, which will lead to changed behaviour.

THE WORK

From time to time matters will arise out of the overall work of the Commission which may require specific public affairs attention. The strategy will therefore focus not only on the general but also the specific.

The work will come about in the following ways:

- As part of the overall work of the Commission to raise public awareness about the detrimental effects of corruption and what can be done about it.
- As a result of the work of the Corruption Prevention Department of the Commission when the emphasis passes from the remedial to the educative.
- As a result of investigations by the Commission which highlight a general trend or area of concern.
- From information provided to the Commission which, while not requiring the attention of either the Commission's investigative or corruption prevention arms, indicates that useful public education work can be done.
- Through feedback from public attitude surveys.
- Through feedback from the public in response to elements of the public education programme.
- By regular liaison with appropriate bodies in both the public and private sectors.
- Requests from interested bodies which are judged to be of particular value.

THE PROCESS

Public education work will be done in the following ways:

- **Hearings**

One of the major ways in which the Commission can enlighten and educate the public is through open hearings. Hearings are the visible work of the Commission and the foundation on which reports are produced.

- **Reports**

The Commission is answerable to the public of New South Wales. The Commission should therefore report widely, and in detail.

The Commission produces reports in relation to investigations. It also produces an Annual Report.

Investigation reports outline the purpose of the investigation, its conduct and outcome. Quite often reports recommend change.

The Annual Report provides a summary of the Commission's activities over a twelve month period. It highlights the major achievements of the year and initiatives undertaken and strategies for the future.

Reports are widely disseminated and are made available, free of charge, to anyone who asks.

- **The Young**

Ethical values are set in the formative years. Children should be exposed to a range of values and standards from which they can draw to determine their own behaviour.

The Commission will consider ways in which this can be done, in a positive manner, so as to instil integrity and discourage corrupt practices..

- **Minority Groups**

Some groups in the community have special needs. This includes, but is not limited to, people from overseas who are not fluent in both spoken and written English. From time to time special programmes which focus on such groups will be undertaken by the Commission.

- **Community Speakers**

Various groups within the community may have particular areas of interest or concern. In order to clarify such issues and meet general levels of interest, the Commission will provide community speakers.

Speakers will speak at community functions of appropriate size, in schools, at seminars and meetings generally.

- **Country Trips**

The Commission works for all the people of the State equally. For this reason a rolling programme of country trips is undertaken. The trips will gather complaints of corrupt conduct, but will also publicise the work of the Commission by offering speakers to interested groups.

- **Media Liaison**

The media have a vital role to play in publicising the work of the Commission.

The Commission will therefore maintain effective liaison with the media to ensure that the work of the Commission is publicised throughout the State.

- **Special Events**

Special events such as launches will be held if appropriate to publicise a particular message or project. Occasional "Open Days" at the Commission premises may also be worthwhile.

- **Community Announcements**

The Commission's message imparted in all these ways needs to be reinforced continually.

The Commission will develop a series of posters, pamphlets, leaflets, information kits and produce advertisement-type announcements to do this work.

CONCLUSION

The Commission will only achieve its aims through the co-operation, involvement and commitment of the people of New South Wales. The Public Education Strategy seeks to engender this co-operative spirit.

A: The public education function has not been ignored to date but henceforth it will receive more emphasis. The next step is a programme which will centre upon but not be restricted to immigrant communities. That has been in liaison and co-operation with the Ethnic Affairs Commission. It will get under way very soon and run for a couple of months until about Christmas time. We have decided that work in that area is necessary because of a perception that many non-English-speaking people have difficulty so far as concerns access to services and the equitable receipt of services, as against members of the mono-lingual Australian community.

MR TURNER:

Q: 4.1 Why did the Commission consider it necessary to instigate the recent public opinion surveys about perceptions of corruption?

A: The public attitude surveys were not recent, because they were embarked upon at about the time the Commission got under way. I think they were adverted to in the first annual report and then have been reported on *in extenso* in the recent annual report. The principal object of the exercise was to help the Commission in its work by understanding the public's perception of corruption and attitudes on methods of dealing with it. It should also provide us with some basis for measuring progress, although I think that basis will be somewhat imperfect. But you can probably get some feel by comparing figures. For example, the shift in public attitude as between those who are apathetic and those who are resolute about tackling corruption has moved in favour of the resolute, which I think is a significant shift. I look on it as a vote of confidence in the Commission. That is an example of the comparative use of figures.

In asking where members of the public thought corruption was to be found, we were not simply asking that question so that we could go there and find it. You are talking of course about attitudes, not knowledge; and attitudes are not always precisely accurate. In some respects I think it is fair to say that attitudes are pretty clearly inaccurate. For example, the perception that there is a significant corruption problem amongst the judiciary is one that would surprise most and certainly surprised me. It seems to me that is simply wrong. Nonetheless, to ask those questions provides us with public perceptions, which provide some input into deciding where we should be strategically positioned. Obviously the choice of where we can be from time to time is one which requires careful consideration. Of greater importance than this is the incidence of complaints received and the apparent cogency of those complaints. Nevertheless it is a weighty factor that can be taken into account.

There have been three attitude surveys, and I expect we will do more although it will be a fresh series.

MR HATTON:

Q: I have a couple of questions on public education. I know from our previous discussions that you have been undertaking these matters but I want to get down to some specifics. Has your department on public education yet spoken with the Board of School Studies, for example, on where specifics can be put into the secondary school curriculum in terms of civic or social studies or even personal development?

A: No, we have not, and we are not likely to for many months. The most fundamental reason is that we do not even have a unit at the moment. In terms of physical manifestations, she who represents public education sits on my right and it is a single individual. We are recruiting at the moment. We do not have anybody on board so we do not have a unit. We have a strategy, we know how we are going to tackle the problem, we are recruiting, and we have made some selections I am informed, but there is no-one on deck yet. I think it is realistic to say that curriculum development, and even more important, input by the Commission into the formal schools education process, is not likely to be looked upon as a matter of urgency. It will take careful handling and it will be fairly resource-intensive, so I do think that you should not be looking for action on it before that is done.

Q: What I am thinking is in fact it may be very cost-effective for your education staff when they are appointed to be looking specifically at getting people to address that issue for you, so that they can develop courses in TAFE, in the commercial studies areas, and in the local government clerks' course, in private management and managerial studies courses, where they can develop the things for you, and in consultation with you, so that we can get a broad front push?

A: Thank you for that suggestion. So put, I understand it and I think it is useful, and I think it is something we are likely to come to. I have to say that it will not happen next Tuesday week; it will be some time before we get there. As put it is, with respect, a worthwhile suggestion.

MEDIA RELATIONS

MR GAY:

Q: 5.1 Would the Commissioner be prepared to follow the Fitzgerald model by immediately taking action to correct patently incorrect media reports?

A: As far as 5.1 is concerned, we have talked in the annual report and today about various efforts made in relation to assisting the noble cause of fair and accurate reporting. When a member of the media gets it wrong, as happens sometimes, the Commission considers scope for action, recognising that it cannot control the media save through suppression orders. If it decides that action should be taken, then what can be done has ranged from the media manager talking to the reporters concerned to request a correction. We had an example of that in the last couple of weeks - an astonishing one-inch potted story suggesting that we had urged the sacking of a council or some such absolute nonsense. I do not know where they got it from. We made contact and there was a correction item run the next day. There is, sometimes, less often, a critical communication to senior level of the media, editorial level or similar, or a statement from the bench. The Commission is always willing to take what it considers to be appropriate action. It would for reasons I adverted to earlier very rarely be looking at contempt action, and I gather the mood of the Committee is not to the contrary of that. So we do take immediate action as appropriate, but that is not done as per the Fitzgerald model, at least to the extent that I do not deliver myself of what he was fond of calling 'homilies', because that is something I do not feel comfortable with.

Q: How extensively do you monitor? You said that when you were operating in Murwillumbah you were able to check the local press there. Since then you have not been able to notice the banner headlines that may have been used?

A: We get hold of everything. We have a media monitoring service, and we get a couple of copies of clips each day, and we get advised of the radio and television stuff which we can get copies of as appropriate. It is looked at, and when we see something that is wrong we take steps in relation to it. We keep a fairly close eye on it. I hope Committee members understand, that we do not accept lightly misreporting of what we do. We have to make a judgment as to whether the way something has been put is so far from the ideal that you are going to do something about it. There are always judgments to be made. We keep a pretty close

eye on it.

Q: 5.2 Does the Commission have any concerns about persons making public statements to the effect that they have made a complaint about possible corrupt conduct to the ICAC? Where a person threatens to make a complaint to the ICAC about another person, without a reasonable belief that the person is engaged in corrupt conduct and in order to gain leverage over that other person, does such behaviour constitute a form of corrupt conduct?

A: As to 5.2, the answer is, as to the first part, whether there are concerns about people making public statements to the effect that they have made a complaint to the Commission, yes, we certainly are concerned. What I am about to say is also relevant to s.11 reports. At our suggestion the Premier has written to heads of departments suggesting that in relation to s.11 reports they should be kept confidential, and by and large that has been honoured. We have said before now in the guidelines concerning s.11 reports, which are an appendix to the 1990 Annual report, that they should be made without publicity, and I have also said in regard to complaints when I addressed the Shires Association annual meeting some months ago that it is highly undesirable that there should be a statement made at the time when something is sent to the Commission. That forum was picked because local government elected officials seem to be particularly prone to this conduct.

The reasons are, I suppose, obvious enough. If somebody sends us something and at the same time announces it publicly, it can forewarn the ungodly, and perhaps even less desirably it can be something done with a view to attaining political advantage, which we do not view with any favour at all. We have indeed on occasions written to complainants expressing disquiet as to the public revelation that a complaint has been made.

As to the second part of the question, as to whether conduct of that sort could amount to corrupt conduct, I think the answer in terms of the Act probably would be no, but I do not doubt that it is morally wrong conduct to make such an announcement for that sort of political end. If it amounted to a threat it could attract action under the Act. Generally what I have said has not been as serious as that. I do not know that I can say much more. We look on it with disfavour.

I have thought about whether confidentiality should be made mandatory, which of course would be an option. But I think the answer to that is probably in the negative. People have the right to talk until they are stopped from doing so. If people are unhappy you have to expect that they will talk. The right should not lightly be taken away. It may be a

difficult thing to work out whether they are acting genuinely or otherwise, and in the general sense we have probably too much, not too little, legislation. So having thought of it I would say that on the whole it is not worth doing. We just have to continue, as at present, to discourage, which we have done fairly actively.

MR DYER:

Q: Earlier this year I put to you without naming the local government body in question, the fact that within a particular council there appeared to be a consistent course of conduct where one member of that council was virtually waging a vendetta against another, and each time the matter was referred to the Commission a public statement to that effect was made. Could you tell me whether the guidelines to which you referred in the answer you have just given, and the address you gave to the Shires Association, appear to be having a salutary effect - not necessarily as far as that particular council is concerned, but in a general sense?

A: The guidelines are very recent, so there has not been time for them to have effect. I have not sought to measure the effect that that address might have had.

I really do not know the answers. The problem is a continuing one. I think it is likely to continue to be so. I think as it fades in one area it is likely to grow up in another. That is being as realistic as I can. If there was an answer for the Parliament, it would lie in legislation of the sort I have mentioned. The answer that I give is no dogmatic one. I am inclined to think that on balance, the situation is one in which what is called free speech ought to prevail, and perhaps you just have to 'cop it' so far as the rest of these things are concerned.

You can imagine a case in which conduct of this sort was followed by a formal investigation in which the proposition was put to someone who had been behaving in that way. They had been behaving badly for patent reasons, and a report was distinctly critical because of that ground amongst others. If such an opportunity arose one would not be reluctant to take it up.

Q: It could be that regarding a particular matter it would never mature into either a public or a private inquiry?

A: That is likely.

Q: The particular contestant would continue with that conduct and cause damage to one or more persons?

A: I agree entirely. I can think of a council concerning which we have had to date I think 17 complaints, of which ten have come from the former shire president, who is no longer occupying that seat.

Q: We are speaking of the same council.

A: I do not view those figures with any sense of ease or comfort at all. That is not as it should be. But the choice lies between saying there is nothing we can do, which we are disinclined to do, or trying but knowing that the effort will not be entirely successful, or going all the way and legislating.

Q: Or saying that people cannot do it within 48 hours?

5.3 What sort of briefings are provided for the media by the Commission's media unit or Counsel assisting during the course of hearings? How are the media notified when significant witnesses are due to appear?

Should guidelines be established to cover these briefings?

A: Finally as to this question I am asked about media briefings. The annual report contains a statement of policy and practice which covers a deal of the ground. As I have said on prior occasions, we do not provide briefings, confidentially or otherwise, with respect to current operations that are not in the public domain, and I think in that respect we have been successful. I am not aware of any occasion when information that ought to be confidential to the Commission has emanated from the Commission.

In relation to hearings, the main function of the media manager is to provide transcripts and exhibits on request. The media are generally present at the hearing and can make their own judgments, as they do, as to what should be reported and what should not be, and we leave that to them. The media manager will, and occasionally counsel assisting will, provide information on request as to factual matters, and that is mundane stuff like how do you spell so-and-so's name, or how often has this witness been here? Is this his first time or has he been here before? Can you give me an address and a rough age so I can put in the customary things to avoid defamation? - or things of that sort. Such information is provided on request. It is mostly public record information, or otherwise non-contentious information. It is exceptional for counsel assisting to deal with the media save at that mundane level, and I do not think it is happening at all now. Certainly it is one thing that I am keen to discourage.

As to what the question calls significant witnesses, whatever precisely that means, we do when contacted by the media, which sometimes happens daily, let them know as to a hearing in progress who is going to be called the next day, although that is really just to give a run-down as to scheduling, because typically counsel assisting from time to time makes statements as to the likely order of witnesses

over the next week or so, giving a dozen names. If the media asks we will tell them that the order of this witness and that witness has been reversed, or something of this sort, but again that is pretty mundane stuff.

As to the guidelines concerning media briefings, I think we have gone a long way and much further than most others, and I am reluctant to go further until I see a clear need.

MR TINK:

Q: You gave four examples of things that the Commission might do if there was a problem with the media - contacting the particular person who wrote the story, or contacting a senior person in the media outfit, and a statement from the bench and the contemplation of a contempt action. Are they options on which from time to time you would entertain submissions from the bar table? Can that come into play in the course of the hearing as a result of something said in the media?

A: Not quite that range of things, but sometimes counsel will get up and make reference to a report that morning and suggest that it is wide of the mark and very unfortunate. I have to say that sometimes those statements are mere show, sometimes a cheap show for the client, and sometimes a bit of sabre-rattling with no content at all. It will be treated on the perceived merits, like 'Yes Mr X, I well understand what you are saying. I had thought for my part that this was a less than fair and balanced report and one would hope for better.' The range of responses is quite wide. You do sometimes get counsel ? raise ? things. Counsel have before now raised the suggestion of contempt action, I can recollect. You let them have their say and respond as seems appropriate.

MR HATTON:

Q: What is your experience rather than your view, on voice-over use in television, where they can give the emphasis on the words that appear in the transcript, with a photograph of the witness?

A: Voice-over is the technique that they use because they cannot get access to the Commission product. That is how it is going to continue to be. I do not think there is any point in being troubled by it. That is the nature of that particular medium. One thing that does trouble me is that so often you see those words that are printed on the screen in quotes, and they are not precise quotes. I must say that I am perhaps pedantic, but I think if somebody puts words in quotation marks they ought to be quoting directly. The press do it, television do it, they all do it. They re-write your words as they think appropriate and run them as a direct quote. It drives me mad.

MR TINK:

Q: That is not a fair report, is it?

A: It might be fair, but it is not accurate.

Q: It would tend to follow that it is not fair?

CHAIRMAN:

Q: It is unfair in a different sense?

A: Being fair and accurate gives you protection against defamation. We are not talking about context. I am saying more broadly that we would hope for a bit more precision. When I see my words quoted and it has been edited, I must say the blood boils, but it is a very common practice.

MR TURNER:

Q: On page 73 you refer to a briefing that you had with the editorial staff and journalists in February 1990 when I raised this at another time with you. Can you tell us why at that time, in view of the controversy surrounding the Tweed inquiry, the North Coast media were not involved who were running, as we have heard earlier today, fairly sensational headlines, and there are a deal of outlets up there. Can you tell us what was the content of that discussion with the editorial staff?

A: The reason why we did not ask the country media was that we did not think of it. I would need to remind myself of the history of events to be able to reach a view as to the extent to which what was happening in the media up there was then of concern. I think the headlines that were referred to were considerably earlier, but I am not quite certain about that. I think that is right.

Q: I use that as an example.

A: That is one point. Most of the country media use AAP copy, and they do not have their own reporters covering things, at least if they are happening in Sydney. At Murwillumbah they did not represent a concern such as they would have at the time we were up there. As to the meeting, we set up the meeting. We invited editorial and other senior staff to come along and exchange views with us in order to increase their understanding of what the Commission did and to increase the professionalism of the job that they were required to do. I am very much working from memory as to what was covered, but certainly I laid considerable stress upon the function of the counsel assisting, as you heard me do earlier today. We certainly talked about the need for them to watch the identification of hearsay evidence. We certainly sought to establish a situation in which it was accepted that there was a shared responsibility to be

watchful with respect to tricky areas like that. That is to say, we should be helping them but the mere fact that we did not do what might be done was not, we were urging, sufficient to acquit them of responsibility to be careful. That gives you the flavour of the meeting. There was more to it than that, but I do not remember just what else we talked about.

Q: I go to page 168, item 2. You give an example. If the media contacted you in relation to an investigation where you executed a search warrant or used coercive powers to enter public premises, you would give a response to the media confirming the action taken. I take it that the request might include whose premises?

A: No. Our position is that we do not want to say more than we effectively have to about current operations. Experience tells one that dealing with the media a bland 'No comment' or 'It's none of your business' doesn't work, and generally makes things worse. Accordingly we do not volunteer it, but if asked we say things like 'It is the case that there were today executed three search warrants, one on the council offices of the shire of Waverley and two on the premises of private individuals'. That is an actual example of what we had to do. I think that is the best way to do it. We do not ever give details.

Q: At page 73, following what we have spoken about today, there is rightly or wrongly a perception that people who appear before ICAC may have something to answer or have done a wrong thing, when in fact it is a witness helping the inquiry. What has the Commission done or what does it intend to do to ensure actively to assure people's minds that persons who appear before ICAC are not necessarily wrongdoers or people who have erred or are under investigation?

A: I do not have any ideas in mind but I will take on notice what I take to be a suggestion and see what we can think about it. I am pessimistic as to the prospects of getting that into the forefront of the public imagination.

CONDUCT OF HEARINGS

MR DYER:

Q: 6.1 In view of s.17 of the ICAC Act, what steps are being taken to make Commission hearings more informal and less adversarial?

A: The difficulty that is encountered was adverted to when last I appeared before the Committee, and I have not a lot to add to it. It is easy to say that proceedings should not be adversarial, and that informality is desirable. We try hard to give those provisions content, but the Act says that witnesses or SDIs are entitled to legal representation. The law says that natural justice must be accorded to people. Accordingly, whether you like it or not, the Commission is at least sometimes very lawyer-ridden. Indeed you could say it is excessively lawyer-ridden when you see the well of the hearing room chockfull of lawyers, some of whom do not perform any useful function as far as I can see; but you cannot prevent that, it is a matter of statutory right.

Once you have a roomful of lawyers you are going to have a fair degree of formality and the thing is going to be run in a manner which is not far distant from the way the courts are typically run. In some respects we can do it better because we are not bound by the best evidence rule, which is very important. But given other provisions of the Act, it is a very difficult matter to give as much content to s.17(2) as I would like to, despite best efforts. But I also say in relation to written submissions, I take that provision seriously. It is cast in mandatory terms. I do frequently call for written submissions; presumably the idea is that this will save time and expense. In relation to two major hearings which have come to a close recently, the driver licence hearing and the Sutherland licensing police hearing, the written submissions from some parties are very badly out of time. By that I mean we have been waiting for them for weeks beyond the time stipulated. There is not much one can do about it. I can proceed to write a report which ignores submissions that are late, but that would be seen by most to be playing hardball, and I am disinclined to do that. Then what do you do about it?

Q: Because they are lawyers?

A: These people just will not perform, and that is holding up the work the Commission has got to do. It seems to me it is a very unsatisfactory state of affairs. The written submissions are presumably to save time and save expense. Instead in some cases they cause a great deal of time to be

wasted and you say 'What's the point, why not just listen to them'.

Q: From the Commission's point of view you are saying that you are endeavouring to give this provision for written submissions full force and effect?

A: I am trying to, but with the absence of greater co-operation from some members of the legal profession it gets more and more difficult. We have to get on with the job.

Q: Are you saying that the legal profession is frustrating you?

A: No. In fairness I have no reason to think that because these submissions are being held up, the profession or any part of it is trying to frustrate us. I am not saying that. They are busy and have other things to do. They know that a substantial report is going to take some time to write and I suppose they make their own judgment about priorities. It is frustrating from my end of the process, that is all.

Q: Flowing from what you are saying, would it be useful to have statutory power to convene a directions hearing and to give directions as to the furnishing of written submissions within a given period of time?

A: No, because I can get them back if I want to and read the Riot Act to them. I say, after consultation, 'Alright, now I think we can do this by written submissions; what do you say?' and they all respond. 'How does this timetable sound? Counsel assisting, three weeks from tomorrow, others a week or ten days thereafter. If anybody thinks that it is desperately essential to speak to the written submission you have to tell me within a given time.' Everybody says 'That's fine', so I say 'I will so order', but they do not perform. I do not know that we could do much more. I could get them back and read the Riot Act, but then they say 'Sorry, we are busy, I am doing a murder trial that went for an extra two weeks.' Some of these people are very busy indeed. Some of it is waffle but most of them have a better excuse than just inactivity. That I think is all I can usefully say about 6.1.

Q: In that case Mr Commissioner, can I put question 6.2?

6.2 In view of the Commissioner's comments that persons against whom allegations are made will be given an opportunity to respond to those allegations, what is the Commission's view on the calling of witnesses? That is, what criteria are applied when determining an application by a person against whom allegations have been made to have witnesses called or evidence presented in support of their case?

A: The criteria which are taken into account include the connection of the allegation of matters under examination, circumstances surrounding the raising of the allegation, and alternative means of disposition. More specifically the primary test to be applied to any witness, whether he or she is called at the behest of counsel assisting or on the request of counsel for an SDI, is 'Can the witness give evidence which is relevant to the real issues the subject of the hearing?' That is a matter, as so many matters are, for judgment.

I have been disinclined to have witnesses called who go solely to credit, for the same sort of reasons as the courts are disinclined to allow questions of pure credit to be pursued to the nth degree, because one needs to get to an end of the hearing. But anyone has the right to suggest to counsel assisting that a particular witness should be called, and generally that is something which is adverted to from the bench, in my case almost always with some frequency. If anybody could suggest anybody who can help, please tell us, because we want to do the job as thoroughly as possible.

COMMISSION REPORTS

CHAIRMAN:

Q: Mr Temby, you have been forwarded two questions in relation to the Commission's reports. Could you respond to the first one?

7.1 In relation to Commission reports under s.74(3) which follow a public hearing, to what extent should the conclusions or findings be limited to the facts emerging from evidence at that hearing?

A: Yes. I now have on my right hand Mrs Stela Walker, who is the Commission's director of administration and public affairs, and David Catt who will be returning shortly.

As to question 7.1, with respect to any matters that have been or may be controverted, there is really no proper option but to limit the conclusions and findings to material that has been adduced at a hearing, or by way of perhaps small qualification material concerning which interested parties have a chance to comment.

There will be material that in the nature of things cannot be controverted, or simply does not matter much, concerning which you do not have to go to those lengths. For example in the driver licence matter there will be some historical material included. There is a draft chapter called "A Short History of Driver Licensing in New South Wales". So far as that is concerned, I have not bothered taking a lot of evidence in the hearing context, and I look on myself as being free to advise myself as I will, including making contact with the Roads and Traffic Authority and getting information from them. It is not controversial stuff.

As far as anything that I would look on as a conclusion or finding, that is to say anything which is of a controversial nature actually or potentially, I do not think there is any proper option but to make those judgements on the basis of evidence received.

MR TINK:

Q: I agree with what you have just said, Mr Temby. I am as you know a little concerned about some of the conclusions which were made in the Silverwater filling matter which we discussed on another occasion. They were some more general comments relating to the role of Ministers. But more particularly now comments made by Mr Roden in his North Coast report, which you reproduced at page 95 of the annual report.

(7.2 Andrew Tink's question on the three simple rules contained in chapter 33 of the North Coast report, with particular reference to "lavish entertainment". (As discussed during the private meeting at the Commission premises on 18 July.))

We also discussed particularly,

"3 The appearance of impartiality should be respected and maintained, as well as impartiality in fact. Lavish entertainment by any person with whom a public official deals in the course of her duty, ought not to occur."

It seems to me that the difficulty with a statement like that is that it is so broad as to lead, in the minds of some and in my mind possibly unjustifiably, to some absurd conclusions. The example I have given is where you and I went to the Bar Association for drinks and we had some open salmon sandwiches and champagne and that sort of thing, and we were dealing with people whom both of us have dealings with in the course of our duties. On that basis we were doing something that seems to be arguably falling within that test, and yet that result in a sense is potential leading to some absurdities. Can I get your comments on that in the first instance?

A: Certainly, and thank you for the opportunity. The three simple rules as they are described have to be understood in context, and there are two important contexts. One is that they are not rules at all in the sense of prescriptive statements made by the Commission which bind anybody, and that is quite clear from what is said in relation to them. They are proffered as something which, if followed, would avoid difficulties. That is consistent with our general approach, which is not to lay down how people must behave, but to put the responsibility on them and see if they wish to take the matter up or otherwise. So the local government code of conduct is recommended, not imposed. It was we who said that it should be recommended, not imposed. So it is they who have to decide what proper standards are, and whether to adopt it or vary it or do nothing in relation to it.

Similarly here it is not for the Commission to prescribe. We are not a legislative body. We do not have rights of command, and that I think is clear from what is said in the report - three simple rules which if adopted would have beneficial consequences.

Second, the report itself contains examples of conduct of the sort which may be thought to be unacceptable and that is to be found at 10.1 under the heading "Hospitality, Gifts and Payments", at 10.4, in relation to Mr Gregg, and at 15.3 in relation to certain Parliamentary members. Their examples of conduct are put forward which in the view of the

author of the report could not be approbated and it seems to me that they give content to the notion of lavish entertainment which precludes a case such as you instance coming, in anybody's views, under unfavourable scrutiny.

Q: The question that the Chairman asked you a few minutes ago was one on my mind, and I think it is relevant to what we have just been talking about. It seems to me that some of the confusion - and I think it is not only in my mind because Mr McClellan told us on Friday that again, speaking of people he gets instructions from, there is a tendency for these general principles for better or worse to be taken as the law. In fact it might even be made out that there may be a tendency for them to be given even more importance than the words in an Act of Parliament because of the source from which they emanate and the perceptions that people have of the importance of the source. It seems to me, given all that, and saying it with the utmost respect, that the utmost care has to be given to putting those sorts of conclusions clearly and unambiguously in a context that gives some nexus between the facts and the general principles. It seems to me that putting them in an annual report, and/or in the context of referring to them in a particular report itself, it would be of immense benefit, and would greatly clarify a lot of things in a lot of people's minds that are affected by this, if the factual examples upon which the general principle can be drawn are referred to in summary form in the same area as the general principles, and it seems to me that that would go a long way to clarifying things and putting things in context, dispelling a lot of misapprehension, and in fact strengthening the work of the Commission. the reality is that a lot of people who should read the report do not, but they will go to the conclusions and if they are out of context they cause confusion and to that extent I think they tend to be counterproductive.

A: Thank you; might I say that I accept the comment. It may well be an area in which there is room for improvement. I am aware of the fact that things we say are sometimes taken beyond their sensible scope and purpose. A good example of that is the Silverwater report. It contains certain basic comments in relation to the tendering process and there have been a couple of examples that I am aware of, of it being asserted that the ICAC has said that you always have to call public tenders. The report says nothing of the sort. I am aware of that difficulty. Having said that, I think it is important that the Commission should take the opportunities which present themselves, in a proper and careful manner, to make comments of this general sort.

The Silverwater report is probably the most important and useful we have produced to date, although it arose out of no very protracted hearing, because of what it said about public tendering, which has had a very great impact and is continuing to do so. So I do not understand you as saying "Don't dare say these things", but rather "Be careful as to

how they are said".

MR GAY:

Q: In the Silverwater report I think it was, the statement as on ministerial conduct, where Ministers should not occupy themselves with small matters of relative inconsequence. This particular one fits right in the line Andrew was talking about, because that broad statement fails to take into consideration that Ministers are not appointed as Ministers from nowhere. They first of all have to become an elected member of Parliament and remain an elected member of Parliament. To remain an elected member of Parliament they have to address the minute issues in their electorate?

A: I understand that and again the comment is accepted.

CHAIRMAN:

Q: Are there any other questions on Commission reports, and we could extend that to issues arising in regard to meeting with agency heads?

MR GAY:

Q: I had a question about the North Coast report. What was the circulation and distribution of that report?

A: We send all the reports to all members of Parliament, which is a consequence of tabling, and to all departments and agencies, all secondary schools, all public libraries.

Q: What about public libraries and schools? Do you send it to all of them?

A: I think we send it to all secondary schools but not primary schools. I think most of our stuff is a bit beyond the average primary school.

Q: What about witnesses? I had one person who was listed as an SDI in the Tweed inquiry, who has not had contact or been sent a copy of the report?

A: He should have been. We went to enormous lengths to do that. We may be remiss, or we could not find the person. If we can have the name we will fix it. We go to extraordinary lengths to get the stuff out to them.

Q: I will give you the name off the record.

A: I am sorry to hear that, but I am also surprised because it happens so very rarely. We put out I think about 1700. They are all distributed very widely indeed.

CHAIRMAN:

- Q:** Perhaps in ten years' time somebody going to a public library or school library may see a number of adverse findings in relation to X, Y and Z, and the Director of Public Prosecutions has recommended that there be no proceedings, or there may have been a criminal trial and a Not Guilty verdict. After the topicality is lost, that information may be misleading. I am wondering if you see that as a problem?
- A:** Yes, in an ideal world you would have information so readily available that people could easily immediately key up that information. Maybe we are getting close to that point. Of course that is desirable.
- Q:** In terms of practicality, if there were consequences, restricting it to criminal activities, where they were adverse reports, would the Commission compile a document as to the consequences of what happened at those findings?
- A:** I think you can imagine the situation that a complete series of ICAC reports should tell that story. I would think it appropriate to do that in an annual report. Whether we could do it perfectly, again I have to qualify it. But it should happen in annual reports.

MR TURNER:

- Q:** On page 49 of your Annual report you refer to the Balog and Stait case, and the interpretation of s.74. Without going into it fully, the High Court found that pursuant to s.74 the Commission was not entitled to include a statement of any finding by it that the parties may have been guilty of a criminal offence or corrupt conduct, other than a statement made under s.74(5). In the Tweed inquiry concerning two individuals there was a comment made by the assistant commissioner that they may have created a climate conducive to corrupt conduct. Is this a preemptive challenge to the High Court's interpretation?
- A:** No, certainly not. We made every effort to bring the report into conformity with the High Court decision. I do not think that the use of the phrase you advert to was inconsistent with that decision, but if it was, it was certainly not deliberately so.

CHAIRMAN:

- Q:** I think the phrase is used in the Act itself?
- A:** Yes, it is, s.13(1)(b). It empowers the Commission to investigate conduct which in the opinion of the Commission is or was connected with or conducive to corrupt conduct. You do not find the climate, but the notion of being conducive to corrupt conduct is in the Act. Getting away

from the Act, it could be said that that is what the corruption prevention function is really about - seeking to change systems so as to reduce the incidence of circumstances which are conducive to corrupt conduct, which may led to corrupt conduct occurring. The answer to the simple question you asked is a simple No. There was no such attempt made. We tried very hard to get it right: I think we did.

- A: Could I mention also one other matter that is receiving attention. We have made significant progress towards establishing an acceptable accounting method for costing completed investigations, which we think is a useful control mechanism both internal and external. In a method proposed, substantial indirect costs and overheads are apportioned to specific investigations with a formula and added to direct costs which can be clearly identified with those investigations. Before the costings are accepted I intend asking an independent consultant to check the methodology so that we can feel satisfied that what we are doing is a sensible approach. The accounting method will be available for discussion in March, assuming the Committee wishes to have me appear before it then, and costings for all completed investigations will be included in each future annual report. That is something we are doing, which I think is an important control mechanism.

SECONDED POLICE

MR DYER:

Q: 8.1 How many seconded Police investigators are working in the operations department? How does this compare with the number of Commission legal officers involved in the Commission's investigative work?

A: We have nine seconded Police officers and seven contract investigators, and there probably has to be added to that the analysts of whom there are about ten. That last figure is not precise; they are all non-lawyers, very much involved in the investigative process. The number of lawyers is nine. That excludes senior management, commissioners, general counsel and Commission secretary, but includes one who works exclusively in assessments, so I suppose the appropriate figure is effectively eight. We are seeking to increase the number of investigators. We have made offers to some and are advertising for others. We are looking to increase that number.

It is likely that the increase in the number of investigators and analysts would be rather greater in terms of raw numbers than the increase in the number of lawyers, and probably proportionately too. I do not think we are over-staffed legally but I think we are understaffed on the operations side.

Q: 8.2 Is it true tensions have arisen within the operations department between seconded Police investigators and the Commission's legal staff? If so, why and how is the problem to be addressed?

A: Question 8.2 asks about the possibility of tensions within the seconded Police and the Commission's legal staff. The answer is no, certainly so far as I am aware, not currently, and I have taken steps which I shall shortly describe to try to ensure that I am well informed. My comment, unaided by discussion with lawyers or investigators, would have been that relations are good. It is notoriously difficult to set up and run inter-disciplinary teams successfully, and most efforts have been in my judgment substantially unsuccessful. I think we have been at least substantially successful, although it has taken some time to get to that point.

I think the main reason we have been substantially successful is that we have put investigators in charge of investigations and made the lawyers be a resource which is available to them. In most other cases I am aware of

lawyers have been formally or effectively put in charge and I do not think that tends to work best. It has to be remembered that police and lawyers have different functions, and therefore different viewpoints. It is not true just within the Commission; it is true anywhere you look. I am not talking about defence lawyers, whose function is by definition different, but police and prosecution lawyers have different functions and different viewpoints.

It is also necessarily the case that in a lively organisation there will be exchanges of views, and sometimes they will be vigorous, and that is as it should be. But my comment, unaided by the query, would have been that within the ICAC sides are not taken on a group basis. That is to say, you are as likely to get a difference of opinion, accompanied occasionally by raised voices, between a couple of chief investigators or between one of them and a lawyer, or between an analyst and a senior investigator. It does not work on a group or class basis.

Because I was not sure and because this was a matter of some concern, I raised the matter at a staff meeting, one of the weekly staff meetings we have, on Friday morning last. I asked anybody who was aware of difficulties to bring them forward, in case my understanding was wrong, and I said that if necessary I was prepared to receive information on an anonymous basis. I did not ask that anything more be done, but the seconded Police met of their own volition and a deputation consisting of the three chief investigators and the seconded Police came to me shortly afterwards to tell me that there is nothing in it, and that in particular they look upon the availability of legal advice from above as being an enormous plus.

Q: 8.3 How do Police Officers seconded to the Commission find it affects:

(a) their career path; and

(b) their acceptance when they return to the Police Force?

A: If I might move on to 8.3, as to the effect of Commission service on the career paths and acceptance back in the Police force of seconded Police, I cannot speak with quite the same degree of confidence. I think that to be taken out of the main stream may have an effect on career path, simply because you cannot go and seek a promotion or some particular position that falls vacant. A number of Commission investigators have gone back to the Police force. More often than not they have gone back to higher rank or to some position they have actively sought, so it has done them no harm. It may well be that service with the Commission affects career but does not lower the rank to which a given officer is likely to attain, because it is a notorious fact that policing is a stressful occupation, and

police burn-out is a great problem.

To take Police off sideways to do something different can help to get over a burn-out problem, and while our seconded Police work very hard, a lot harder than most Police do, they almost all say that it is very different work and they find it refreshing. So it may be that a senior sergeant who comes to work for us will not get to inspector level as quickly as he or she would have done while working in stations and so on, but it may be that person will go on and get that promotion a little later, but then move upwards more rapidly or perhaps stay in the police force longer. I am not sure about that, but again I have talked to the chief investigators about that. A couple of them were inclined to say it does not have any effect on a career. One was inclined to say it does have an effect on career, 'but we are all volunteers on this and we cannot be heard to complain; we can go back if we want to; I am happy here and I want to stay'. But one of them said 'Yes, it does have an effect upon career', but he appeared to be content to recognise this line that I have been running. He seemed to say 'Yes, there is probably content in that'.

Finally as to acceptance back, their view is that there is no effect. A number have gone back and have been accepted. They say that the police force now has such a high proportion of officers of very short experience that the bad old days are behind us when if you went to internal affairs you were damned to perdition, and that in any event service with the Commission is not seen like service with the internal affairs branch or the IPSB. If we did more work in relation to the Police I suppose that might change, but I am pretty confident that even among the die-hards going to work with the Commission is not like going to be a featherfoot, as they say. I hope that has covered it adequately. It is a matter of importance to us.

Q: I would have thought that the Commission's experience is of insufficient length to be completely confident as to what the position will be?

A: I hope in what I have said I have not sounded unduly or at all dogmatic. I do not really know.

MR HATTON:

Q: Because there are only a small number of Police and investigators, is there a career path within the ICAC and would you consider people within the ICAC when senior vacancies become available, or do you like as a matter of principle to recruit from outside?

A: We do not seek as a matter of principle to recruit only from outside. The difficulty with an internal career path, particularly with seconded investigators, is that current arrangements have them paid on their substantive rank plus

ten per cent, and therefore while not long ago we made a senior investigator into a chief investigator, it did not carry any more money. It was a promotion and that person has added responsibilities and I suppose added status in that promoted position, but it is not a promotion in the proper and full sense.

We have been trying for quite a long time to improve secondment arrangements as between the Commission and each of the New South Wales police force and the AFP, but to date unsuccessfully. It is a difficult matter. Union considerations arose. You have to work out when to push and when to be a bit patient. It may be that we have been a bit too patient, I just do not know. We are still trying, and these problems are adverted to in the annual report. I would rather have all the investigators including seconded Police employed pursuant to standard terms and conditions, standard public service holidays, standard pay. At the moment we have two groups working side by side on different terms and conditions, and that is messy. We are trying hard to sort it all out: it is fairly difficult. If we can do that, then there would likely be more promotion internally.

Q: The next question may not be appropriate. It is up to you then to bring it to this Committee if you think there is any way we can assist, and that would not be, I think, legislatively, but it may be some other way?

A: Thank you for that suggestion.

MR TURNER:

Q: With the seconded Police you just mentioned, one went to chief investigator. Do they follow their rank? Could you put a constable as chief investigator and have a sergeant working under him?

A: We could, but it is messy, and not likely to happen. We do not have any cases where an inferior officer within Police force ranks is a superior within Commission ranks, nor do we have a rule however that all the sergeants are senior investigators and all the inspectors are chief investigators. There is nothing automatic like that. We do a bit of ranking for ourselves but we do not skew the thing as entirely as against the Police hierarchy.

MR TINK:

Q: On a slightly different area but still on staffing, the director of corruption prevention Ann Reed is referred to in the appendix as being a consultant. Is that the same person and if so did the consultancy precede the employment?

A: It is the same person. She was chosen for the job, but at the time she was still working elsewhere. We asked her to help us with staff selection. It was appropriate that we

pay her for that. I do not remember the amount.

Q: That is as far as you need go.

A: It is quite simple.

LEGISLATIVE AMENDMENTS

MR TURNER:

Q: 9.1 What progress has been made in negotiations with the Government concerning recommendations made by the Commission for amendments to the ICAC Act, with particular reference to the Commission's reporting powers?

A: I have said already that we are working with government at the level of discussion between officers as to amendments. We certainly hope that they will be introduced in satisfactory form and carried in the current session. If members of the Committee can be of assistance in that respect we will be grateful.

Q: 9.2 On page 100 of the 1990 Annual Report it is suggested that Part 5 of the ICAC Act, concerning the referral of matters to other agencies, requires amendment to overcome practical difficulties described earlier in the report in relation to the Ombudsman's Office and Judicial Commission (pp 38 & 39). These difficulties contrast with the successful resolution of a number of matters in co-operation with agencies such as the Departments of TAFE, School Education and Health described on pages 31-35. Do the problems described reflect a problem with Part 5 of the ICAC Act, or rather difficulties in the Commission's relationship with some other investigative agencies?

A: I think that the difficulties to which you referred are ? really a product of the particular make-up of the Commission on the one hand and of bodies such as the Ombudsman and the Judicial Commission on the other hand. That is to say, they are ? Part 5 difficulties. As the annual report makes clear, in terms of the statutes under which they operate, they have to be activated in a particular way, which is not contemplated with respect to our referral powers. That has given rise to difficulties in practice. I do not think there are attitudinal difficulties between us on the one hand or either the Ombudsman or the Judicial Commission on the other. While they have to be actuated in a particular way, whereas to all the other bodies you mentioned, TAFE, Schools Education, and so on, we can make a simple reference. It is not so pressing that we are seeking change to Part 5, but it was proper to flag it as a problem which if it gets significantly worse will have to be tackled. That is the point of that part of the annual report.

MR WHELAN:

Q: I find very useful the Commissioner's recommendations in a variety of reports commencing in September 1989, when he recommended that Parliament take cognisance of proposed changes. Do you think if you had that on your word processor you could extract them? I would like one copy of the recommendations. I would like to ask you to give me a copy of the submissions you have discussed with the Government but I know that would be out of the question, so therefore I would ask you to let me have a copy of the various recommendations you have suggested to take place in your annual report. I would find it useful?

A: Just recently I caused to be prepared a consolidated statement of the recommendations and issues that arise out of the Commission's various investigation reports, and that document is receiving further attention and we will be looking to a means whereby the Committee and others can be further informed in relation to it. I would prefer, if I might, not to undertake to Mr Whelan that we will provide that, but rather say that we are looking at how it might best be done. That is likely to take a while but I think it is worth waiting so that we can do it well rather than on the run.

Q: Do I understand Mr Temby to be saying that he cannot provide this for the Committee until March? Is it possible that someone could extract the recommendations?

A: It may be possible to do it earlier, but I would like to do it properly. It will not take us until March to provide something like what you have asked for.

Q: I am concerned also that people are frustrating the Commission's attempt in court by what I might say is a bogus court action. Parliament is not doing anything. I understand the Parliament's position. Parliament wants to consider the amendments in totality. At the same while we can be seen not to be doing anything, we could be doing something, and I think that pressure should be brought to bear to introduce the legislation to curb this problem the Commission now has?

A: Mr Chairman, could I say that we will provide information in the most useful manner possible and as soon as it is practicable, but I do not want just to press a button and turn something out next Tuesday. We can do it better than that: it might take a while.

The possibility is that we will produce for public dissemination a consolidated set of issues and recommendations with discussions thereon, so that they are available in a particular form, but maybe we can provide the members of the Committee with something before that time.

LISTENING DEVICES

MR TINK:

Q: On page 18 of the annual report, I have a question about telephone tapping and listening devices. There is a commentary made in the report with a brief reference to s.19. It seems to me that the way that the power to tap phones is dealt with when compared with the way search warrants are dealt with, s.40 is slightly different. I might be misunderstanding this, but s.40 seems to be purpose-designed for the Commission itself for the particular task at hand, that is the Commission has wide powers in relation to search warrants. The listening devices section seems to be almost an afterthought, and is dependent upon the Listening Devices Act itself, which seems to be talking in terms of prescribed offences. In other words, the essence of part 4 of the Listening Devices Act is that it talks about warrants upon complaint made by a person who first suspects ... prescribed offences. It seems to me that that is a much narrower power. Has there been any problem with that, or is it an issue that has not arisen? Is it one you would want to look at, perhaps to bring the powers relating to telephone interception more into line with the powers you have on search warrants? Is there anything in that?

A: I have to confess that I have not thought of it, though others might have. You are absolutely right. In s.40 the search warrant power is purpose-built, and that is useful, and accordingly to have an analogous purpose-built provision so far as concerns listening devices is likely to be useful. I do not know that it has given rise to actual difficulties. It is an easier thing to obtain and execute a search warrant than it is to obtain a warrant under the Listening Devices Act to install listening devices or otherwise utilise one. That might be a contributing factor. You are actually right. S.19 and s.40 are inconsistent in their thrust, and the case for some amendment of the former is there, certainly.

Q: It is not a problem that has arisen thus far?

A: No particular problem has arisen, but that might be because we have not thought about it. I have not thought about it. It had not occurred to me. You are right.

CONTEMPT

MR HATTON:

Q: There is no other place I can raise this matter, but it is mentioned about contempt in the annual report. I might preface this by saying that I am not having a shot at anybody because I am a non-lawyer, and this may be regarded as a radical view, but I tend to this view, that the courts are too protective, and I thought that the action against Mr Moppett was going over the top. I understand that there are two points here - first of all whether in fact it is designed to bring the court into contempt. We are not necessarily talking about Mr Moppett's case but any case. Second does it have a prejudicial effect on a hearing or an inquiry or a matter before a court or a commission. I did not see Mr Moppett's comments in the general sense in the same way as the commission saw them, that it did have those two effects or either of those two effects. I thought it might have been wiser - and therefore I am asking for comment on this - as a Parliamentarian and as a community representative to rebut the comments perhaps, and leave it at that, rather than take contempt proceedings. I would like some comment on that?

A: I do not want to embark upon a replay of a matter which has been before the court, so I will confine myself to a couple of general comments. The key reason why we thought those proceedings were called for was that the statements were in our judgment - and as I recollect it avowedly - designed to reduce the standing and authority that the forthcoming report would have. That is to say, in the context of a particular investigation, they were calculated to do harm to the report which had not yet been brought down.

That is a very different thing from discussion, perhaps even vigorous discussion, with respect to a report when it has been brought down, which is a proper thing. It is a very different thing from discussion, even vigorous discussion, with respect to the Commission and what it is doing. We accept that vigorous discussion and we do not even expect that it will always be soundly factually based. But it is very like that species of contempt which is designed to affect current litigation. There was a hearing under way, and it was in the context of that hearing that the statements were made, as opposed to contempt of courts in a general sense or criticism of judgments after they have been made. We thought that the timing and purpose of what was said added a particularly troubling characteristic.

Q: I did not share that view. I wondered why?

A: That is the rationale fairly briefly expressed, and it is worth mentioning and it is obvious from the annual report that it is not as if we are strongly inclined to commence litigation or to protect ourselves against any criticism. We have brought only two sets of contempt proceedings. Others have been proposed from time to time but I think the proceeding has to be taken with a specially compelling case. We thought that was. You are entitled to the contrary view; I do not doubt that.

MR WHELAN:

Q: I find the question of contempt very interesting in view of the court of appeal's decision last week in relation to the television and newspaper stories, and I think there is a nice parallel with what happened to Mr Moppett in those circumstances, and I think everyone should remember that the legislation does not provide that the Commission can commence proceedings and the court will be the one to adjudicate on guilt or innocence or otherwise. My memory is pretty certain that that matter went to court and was resolved very quickly by an apology. It certainly was not settled?

Q: It went before Mr Justice Matthews.

A: It was resolved without the court having to make a formal ruling, on the basis that there was a withdrawal and an apology and Mr Moppett consented to pay costs. If he had been prepared to take that position earlier there would not have been contempt proceedings?

Q: Yes, sure.

RIGHTS OF WITNESSES

MR WHELAN:

Q: On these questions we are dealing with now, I have a real concern about people being represented, whether they are in contempt or not in contempt, before the Independent Commission, who are not legally advised before they go in. It is all right to say that anyone can go to a solicitor or a barrister, but not everybody who has appeared before the Commission can do so and has been able to afford it. Certainly the latter, they have not been able to afford it. I want Mr Temby's view on the possibility of arranging for independent legal advice to enable people to be properly legally advised before they go in to the Commission for examination, and even before the hearing takes place, in the early stage, so that members of the public who appear are given that legal entitlement.

CHAIRMAN:

Q: I think Mr Temby prepared for the Committee, and it was distributed, a paper on witnesses?

A: That is right. Well, it is not quite a paper; it is the newest version of our information sheet to witnesses, which I think has been distributed to Committee members, and that will be made available to witnesses whenever they are served with a summons.



INDEPENDENT COMMISSION AGAINST CORRUPTION

Information for Witnesses

YOUR OBLIGATIONS

In relation to prospective witnesses before the ICAC, there are two obligations that matter.

One is to answer questions, and to do so truthfully. That will help the Commission in the fight against corruption. If a witness fails to tell the truth, there can be serious consequences. The other is to obey each and every provision of any summons that is served upon you.

YOUR RIGHTS

Legal Representation

The Commission may permit witnesses to be represented by a lawyer. That permission has always been granted, to the extent necessary. The Commission may also permit people who are "substantially and directly interested" in the subject matter of a hearing to be represented by a lawyer.

Those who want to be represented by a lawyer must make their own arrangements, and do so in time. Witnesses are asked questions by a lawyer assisting the Commission, and may be asked questions by lawyers appearing for other people, and also the witness's lawyer, if the witness is represented.

Commission Reports

After all public hearings, and sometimes after private hearings, the Commission prepares Reports which are provided to Parliament, and made public. The Commission is required to include findings concerning all persons substantially and directly interested in the subject matter of the hearing, which includes some but not all witnesses, as to whether criminal or disciplinary proceedings should be considered. This also means that those about whom such a statement must be made, and who deserve exculpation, will receive it.

Legal and Financial Assistance

The ICAC Act provides that any witness may make application to the Attorney-General for legal and financial assistance, in circumstances of substantial hardship or special circumstances. Consult your lawyer or the Attorney-General's Department if you want to make such an application.

Reimbursement of Expenses

As a witness before the ICAC you are entitled to payment or reimbursement of expenses. See Attachment 1.

GIVING EVIDENCE

The Commission has power to summons witnesses to appear at hearings to give evidence or produce documents. A person served with a summons who fails to attend commits an offence, and a warrant for the person's arrest may be issued. You have been served with a summons; read it carefully. If you have any questions contact the Commission officer named in the summons or your lawyer.

Time for Attendance

The summons which has been served on you requires you to attend a hearing at the ICAC on a particular date. In many cases that date is the first day of the hearing.

Not all witnesses can or will be called on the first day of the hearing. Unless you are specifically told that you are required on the first day of the hearing, you need not attend on that day.

As far as is possible, the ICAC wants to minimise inconvenience to witnesses incurred by having you attend when you are not required to give evidence. An officer of the ICAC will contact you to advise you when you will be required.

As much as possible the ICAC aims to avoid inconvenience to people's business or private arrangements. You may need to arrange for someone to attend to your business while you are at the ICAC, or you may have arranged and paid for a holiday. This does not mean that you do not have to give evidence, but if you have any such arrangements, which may affect your ability to attend as a witness on a particular day, or if you have any questions at all about the summons which has been served on you, please discuss them with the contact person named in the summons. Do this as soon as possible.

Procedural

Witnesses are required to give evidence on oath or affirmation. Witnesses must answer questions asked of them; failure to do so

is an offence. Witnesses must answer questions or produce documents when required to do so, even if the answer may tend to incriminate them, but if they object to answering a question or producing something on that basis, they may make that objection, and then the evidence cannot be used against them in any court or disciplinary proceedings. If you think that situation applies to you, you should ask your lawyers, or, if you do not have a lawyer representing you, you may ask the Commissioner at the hearing.

Protection of Witnesses

The Commission has power to make arrangements to protect witnesses from intimidation, harassment or threats to safety. Such situations rarely occur but if something happens consult your lawyer or the Commission.

Offences by and against Witnesses

The ICAC Act contains provisions which make it an offence for a witness to disrupt a hearing, give false or misleading evidence, or destroy or damage documents relevant to investigations, or for other people to make a witness give false evidence, bribe a witness, prevent a witness from answering a summons, dismiss a witness from employment or cause injury or loss to a witness.

Recording Evidence of Witnesses

The evidence of witnesses before the ICAC is sound-recorded and a transcript made. The ICAC has decided to record on videotape part of the evidence of most witnesses and to retain a short portion of the videotape, which will be used to assist the Commissioner's recollection when a report is written after the hearing. The videotape will not be shown outside the ICAC. The camera will not be obvious and should not distract you in giving your evidence.

ABOUT THE COMMISSION

The ICAC was established by the Independent Commission Against Corruption Act 1988, and commenced operation on 13 March 1989.

The Commission's charter is to deal with corrupt conduct, by public officials or by private persons who seek to affect the exercise of a public official's duties. Public officials are defined in the ICAC Act to include politicians, public servants and some others in the State and Local Government spheres.

Corrupt conduct is also defined in the Act. It includes behaviour traditionally thought of as corruption, such as bribery and secret commissions, and also dishonesty or partiality in the exercise of powers, misuse of official information obtained in the course of official duties, and other specified conduct including fraud, theft, and perverting the course of justice provided that behaviour may adversely affect the exercise of

official functions by any public official, and also constitutes a criminal or disciplinary offence or reasonable grounds for dismissing a public official.

The Commission's Functions

In exercising its functions the Commission is required to regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns.

The Commission's principal functions are:

- * investigations - to investigate alleged corrupt conduct or conduct which is connected with or conducive to corrupt conduct;
- * corruption prevention - to advise public authorities and officials about their laws, practices and procedures to reduce the likelihood of corrupt conduct occurring;
- * public education - to educate public authorities and officials and the public about the importance of maintaining the integrity of public administration, the detrimental effects of corrupt conduct and strategies to combat corrupt conduct.

Investigations and Hearings

The Commission may conduct investigations, and may hold hearings for the purposes of an investigation. Hearings may be held in public or private, but are more commonly held in public, because that is what the ICAC Act requires. Hearings are conducted by the Commissioner or an Assistant Commissioner.

In hearings the Commission is not bound by the formal rules of evidence.

ATTACHMENT 1 - REIMBURSEMENT OF EXPENSES

Loss of Income

Witnesses may claim reimbursement for the loss of wages, salary or income for the time spent in conferences or hearings at the ICAC. The claim form must be signed by your employer when you claim reimbursement of wages or salary. Self employed or professional people must provide details of the methods used to calculate loss of income and may be required to provide evidence of the actual loss. A maximum daily rate, which will be revised from time to time, applies to all claims for loss of income.

Please note: If payment is made to you by the ICAC you must include the amount in your next tax return.

Fares

The ICAC will pay for the cost of you getting to and from the ICAC on days that you are asked or required to attend to be interviewed or to give evidence. This includes bus, train, ferry or taxi fares, as well as an allowance for kilometres travelled if your private vehicle is used. The ICAC will pay for travel by taxi in the inner metropolitan area (within a 10 kilometre radius of the GPO) and for travel by a combination of train/bus/ferry and taxi for the outer metropolitan area. Receipts must be submitted for taxi fares claimed.

For country and interstate witnesses, travel by air is the normal means of transport. This can be arranged for you by the services section of the ICAC on the telephone numbers below. Transport to and from the airport and between accommodation and the ICAC is the same as for local travel.

Meals

Witnesses are eligible to be reimbursed for reasonable costs of lunch if their appearance at the ICAC or related travel extends beyond the lunch period. Other meals may be reimbursed if the circumstances prevent the witness having the meal at home or making normal arrangements for such meals. The ICAC will not pay for alcohol, either with meals or purchased separately.

Breakfast and evening meals taken at the accommodation provided and included in the motel bill will be paid directly by the ICAC. Reasonable costs may be reimbursed for meals taken elsewhere, subject to production of receipts.

Accommodation

The services section of the ICAC will arrange accommodation for country or interstate witnesses if an overnight stay is necessary. If you choose to make other arrangements, reimbursement will not exceed normal accommodation costs, and the production of receipts will be necessary.

Submissions of Claims

Claim should be made on the attached form and forwarded to:

Independent Commission Against Corruption
GPO Box 500
SYDNEY NSW 2001.
Telephone numbers: switchboard 318-5999 and
direct 318-5764

LOSS OF INCOME - SELF EMPLOYED/PROFESSIONAL PERSONS

I certify that I will lose/have lost income amounting to \$ _____ in connection with assistance given by me to the ICAC. This amount is calculated as follows:

GROSS AMOUNT

<u>Date(s):</u>	Daily Rate \$	x	days	= \$
	Hourly Rate \$	x	hours	= \$
			Total	= \$ -----

Signature

Business Name:

EXPENSES

<u>Claim for Fares:</u>	Train	\$	
	Bus	\$	
	Taxi (please attach receipts)	\$	
	Other (if a private vehicle was used, please state the number of kilometres travelled)	\$	
			Total:\$

<u>Claim for Meals:</u> (Please attach receipts)	Date(s):	
	Time(s):	
	Amount(s): \$	Total: \$

<u>Any other Expenses:</u>	Description:	
	Amount(s): \$	Total: \$

Total Expenses Claimed: \$ -----

TOTAL AMOUNT CLAIMED: \$

I certify that the above particulars are true and correct.

Signature of Witness

Date

Please note: If payment is made direct to you for loss of income, this amount must be included in your next income tax return.

A: Those who are giving evidence before the Commission will or should receive this document, and it lays considerable stress upon rights, not just obligations but rights, including that of legal representation. It includes the right of witnesses to object to answering questions, and it talks about their entitlement to witness expenses and so on. The summons includes the names of contact officers with whom any prospective witness can raise queries.

We are being very frank in dealing with witnesses as to what their rights and obligations and duties and responsibilities are. I think this is a considerable step forward. It says that they are entitled to object to answering questions. The reality is that while SDIs as they are called may well need legal representation, and if so there is a statutory provision for application to be made to the Attorney General and that has happened, and applications have been made successfully, they may need representation in order for there to be a satisfactory outcome. We have indeed on occasions held the view that the need is so strong that we should give such an application assistance. We did so in Mr Azzopardi's case.

But having said that, the extent to which a lawyer can help a witness is limited. A lawyer can advise the witness as to the right to object, and that can be useful. It is done in this document. It may be that a lawyer can underline that. A lawyer can raise objections as to lack of relevance, but that happens very rarely because if some counsel wants to ask a question that is considered to be irrelevant we stop him anyway. It is not easy for me to see the justification for legal representation across the board for witnesses, necessarily I suppose at State expense, when the contribution that lawyers can make is somewhat limited. That is the difficulty I have.

MR WHELAN:

Q: I am talking about legal representation as a matter of right. You are talking about acquainting people with their rights. You have your view and I have mine. I do not think that is adequate in the circumstances. I think that the general public who would be summonsed to appear before the Independent Commission against Corruption live in fear, are somewhat confused, and go there and oftentimes may tend to disadvantage themselves. I appreciate what you have done. I am talking about a different matter: I am talking about legal representation as a matter of right, and I think it is very important that this Committee should look at it. You can have a dozen statements in complicated legal terminology advising people of their rights, but I think, Mr Temby, that not everybody who appears there is a lawyer or is of sufficient intellectual capacity to be able to understand what the Commission will be deliberating on about

them or even more particularly how they can disadvantage themselves by not having their legal rights known to themselves?

A: Can I make a supplementary comment?

CHAIRMAN:

Q: All we are doing is expressing opinions.

A: We have tried to make this information pamphlet accessible, and we have tried to avoid legalese. I hope we have done so successfully. The next step may be to put it in brochure form and have it re-written by a non-lawyer, but I think it is pretty good in terms of accessibility. I understand the proposition that ideally all witnesses would have legal representation, but you tend to achieve the ideal only in circumstances where the justification is sufficiently strong, unless it is the case that resources are unlimited, and we well know that they are not. I am saying that the extent to which a lawyer can help a witness is limited. There is not much they can do. I have them appear before me, and I observe them typically as not being able to make much of a contribution. I am not critical of the statutory provisions. Let them be there by all means. But it would be difficult to justify the expense involved, given the limited contribution they can make.

MR TINK:

Q: On this question of obtaining statements from people and their rights to decline to give them, the position in relation to people who appear in the Commission in open hearings, it seems to be pretty plain that they can object. The position though where people are providing information to the Commission in the investigatory stage before it gets to a hearing, is that a case where they are under an affirmative duty to provide information?

A: No. The only affirmative duty apart from that which arises with respect to a summoned witness, which is the duty to answer questions subject to a right of objection, and we know about that, is under s.11 where people have to provide reports.

Q: I am looking at s.21 and wondering what the effect of that is?

A: There is a right of objection there too. We can make them provide some information in certain cases, but there can be objections raised. So there is no part that is left untouched. When we go to interview people, they do sometimes courteously ask us to go somewhere else, and we do. If we do not warn them, then the statement we take cannot be used against them in criminal proceedings, and sometimes we do not because we do not want it to be used in

such circumstances because we want them to be witnesses for our purposes. But you are right, that is the law you are looking at.

CHAIRMAN:

- Q:** Is there any right for them to be provided with a copy of their statement?
- A:** There is no such right, but we will ordinarily make one available on request. I say 'ordinarily', because there can be exceptional circumstances in which to provide the statement will in our judgment lead almost immediately and almost inevitably to undesirable consequences, which is to say that the thing starts being waved around and everybody is tipped off prematurely. The police do the same thing. As a general rule the police will provide copies of statements, but it is not an invariable rule by any means.
- Q:** You would be happy if the Commission acted on all fours with police procedure?
- A:** As to statements? As to everything I can presently think of but I would want to think about it some more before being fixed with that answer. I do not know.

APPENDIX

AN ACCOUNT OF MEETINGS WITH RELEVANT AGENCY HEADS

BACKGROUND

During August a delegation of the Committee held a number of meetings with the heads of agencies which work closely with the ICAC. These meetings provided an opportunity for the Committee to establish a link with these agencies. They also enabled Committee members to gain an appreciation of the role of each of these agencies and their relationship with the ICAC. This provided a picture of where the ICAC fits into the wider scheme of investigative, enforcement and prosecuting agencies, as well as those charged with management responsibilities.

Each meeting began with the head of the agency outlining the functions and operations of the agency. Questions and discussion followed. The head of the agency was then asked to describe the relationship between his agency and the ICAC. Trends and changes in corrupt conduct were discussed and finally comments were sought on the Committee's reports to date and the ICAC's Corruption Prevention Strategy. In most cases the meetings were held at Parliament House. However, in the case of the National Crime Authority and the State Drug Crime Commission the Committee went to the agency's premises and the meeting included a tour of inspection of those premises.

Ombudsman

9.30 am Tuesday 7 August, Parliament House

Present: Mr D Landa (Ombudsman), Mr J Pinnock (Deputy Ombudsman)

Mr Kerr, Mr Dyer, Mr Gay, Mr Tink, Mr Turner, Project Officer

A number of issues of general interest were discussed in relation to the functions and operations of the Ombudsman's Office. These included the question of the investigation of anonymous complaints, the release of provisional reports and the secrecy provisions of the Ombudsman Act. Committee members questioned Mr Landa in some depth about the nature of his hearings held under the Ombudsman Act. These were compared with ICAC hearings and Mr Landa indicated he was content to conduct his hearings in private.

In terms of the relationship between the Ombudsman's Office and the ICAC Mr Landa was questioned about a number of references in his 1989 Annual Report which suggested some conflict between the two bodies. The Ombudsman's role under the Telecommunications (Interception) Act was also discussed. Mr Landa did not express any views about trends and changes in corrupt conduct. In relation to corruption prevention he indicated that he thought the ICAC's most valuable role would be in gathering intelligence about corrupt conduct.

Auditor-General

11.00 am Tuesday 7 August, Parliament House

Present: Mr K Robson (Auditor-General), Mr K Fell (Deputy Auditor-General)

Mr Kerr, Mr Dyer, Mr Turner, Project Officer and Clerk

Mr Robson provided the Committee with a thorough briefing on both the functions and operations of the Auditor-General's Office and the role of auditors generally in relation to corruption and fraud control. In line with the ICAC's Corruption Prevention Strategy, he emphasised that corruption prevention was a management function. He indicated that the Auditor-General's Office had a good working relationship with the ICAC. A number of matters had been referred to the ICAC and there was a continual liaison between senior officers (Mr Fell being the contact person at the Auditor-General's end). Mr Robson said the Auditor-General's Office had assisted the ICAC to establish its internal audit unit. He emphasised that there was a high level of co-operation between the Auditor-General's Office and the ICAC and that there was consultation on how to deal with complex matters. Mr Robson did indicate, though, that the ICAC had not yet issued guidelines about what matters needed to be referred to the Commission and suggested that such guidelines would assist agencies such as his and the Ombudsman's Office.

State Drug Crime Commission

2.30 pm Tuesday 7 August, SDCC premises

Present: Judge B Thorley (Chairman), Mr C Briese and
Mr P Bradley (Members)

Mr Kerr, Mr Gay, Mr Tink, Mr Turner and Project Officer

In outlining the functions and operations of the SDCC Judge Thorley made it clear that the SDCC was a very different agency from the ICAC: a policing rather than investigative body. On the relationship between the two bodies he said that monthly meetings were held between the Secretaries of the ICAC and the SDCC. He also said that Mr Temby was automatically advised of any investigations into Police by the SDCC. On the subject of corruption prevention Judge Thorley said that leadership, management and supervision were the key elements. He described, as an example, the strict rules applied by the SDCC in relation to the management of informers. Judge Thorley expressed concern about the amount of complaints about possible corrupt conduct being forwarded to the ICAC but never being investigated - he said he was concerned about the ICAC becoming a "dumping ground" where people sent complaints (thereby absolving their consciences about the corruption problem) but which would never be able to investigate more than a handful of these complaints.

This meeting concluded with a tour of inspection of the SDCC premises including the telecommunications interception unit, the computer analysis section, an interview room and a hearing room.



**STATE DRUG CRIME COMMISSION
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Mr. MJ Kerr MP
Chairman
Committee on the ICAC
121 Macquarie Street
SYDNEY 2000

Dear Mr. Kerr,

Thank you for the opportunity to peruse the summary of our meeting on 7/8/90. My only problem with it is in the content of the sentence which concerns my comments about the amount of complaints. I do not think that really reflects the totality of my views.

When this Commission (and I imagine the N.S.W. Police Service also) receives information which gives reasonable grounds for suspicion of corrupt conduct, it is desirable that that information be investigated in a timely way. Whilst the issue has to be reported to I.C.A.C. - and I do not quarrel with that - the issue simply cannot await a decision by I.C.A.C. as to whether it will or will not investigate. A prompt and immediate reaction is very often necessary. So either this Commission will itself investigate if the matter falls within its area or will report to I.P.S.U. - in addition to informing I.C.A.C.

That does not present with difficulty although it is resource consuming particularly when one adds in the role of the Ombudsman.

What does concern me is the situation when I.C.A.C. itself receives information. The risk exists that it may keep that information to itself or be tardy in sharing it. If that were the fact, timely investigation could suffer and other internal procedures (e.g. promotion) may be affected.

The other feature of complaints (whether to I.C.A.C., to the Ombudsman, to this Commission, to parliamentary members or whatever) which concerns me is that, quite clearly, some can be seen to be simply tactical moves by or on behalf of those who are themselves being charged or under investigation. This is particularly so in the illicit drug trade where the stakes are high.

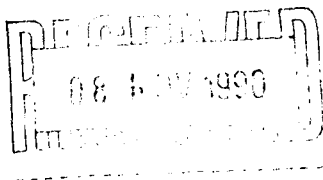
I personally support I.C.A.C. and applaud its efforts but I think its limitations have to be recognised.

I hope these comments will be of use to you.

Yours sincerely,

B.R. Thorley,
Chairman.

31st October, 1990



National Crime Authority

2.45 pm Wednesday 8 August, NCA Sydney premises

Present: Mr J Leckie (Acting Chairman), Mr G Cusack and Mr G Dempsey (Members), Mr D Lennihan (Chief Executive Officer)

Mr Kerr, Mr Dyer, Mr Tink, Mr Turner and Project Officer

This meeting commenced with a tour of inspection of the NCA's Sydney premises. This included a hearing room, the telecommunications interception unit and the executive offices. The Committee also met the head of the Authority's Strategic Intelligence Unit. Following the tour, Mr Leckie briefed the Committee on the functions and operations of the NCA. Much discussion followed on the nature of the Authority's private hearings and public sittings, specifically the usefulness of public sittings in ensuring the media focussed on a particular principle or trend rather than individuals the subject of investigation. There was also a good deal of discussion about the rationale behind the Strategic Intelligence Unit and the role which it played.

Bureau of Crime Statistics and Research

9.30 am Monday 13 August, Parliament House

Present: Dr D Weatherburn (Director)

Mr Kerr, Mr Dyer, Mr Turner and Project Officer

This was a fairly short meeting. Most discussion centred on the usefulness and availability of statistics relating to corruption. It was agreed that as corruption is a secret crime the available statistics would be limited. Dr Weatherburn did indicate, however, that he thought it would be very useful for the ICAC to provide data in its Annual Reports on the number of complaints about possible corrupt conduct received and a breakdown by department or agency. He said there would be some value in reviewing the number of convictions for criminal offences defined in the ICAC Act as constituting corrupt conduct and undertook to provide this information to the Committee. In relation to corruption prevention he said it would be useful to identify the "constellation of attitudes" within bureaucracies which made them open to corrupt conduct or otherwise.

Office of Public Management

11.00 am Monday 13 August, Parliament House

Present Dr B L Hunt, (General Manager), Mr V Prasad (Director)

Mr Kerr, Mr Gay, Mr Tink, Mr Turner, Project Officer,
and Clerk

Dr Hunt commenced by outlining the functions and operations of the OPM. On the OPM's relationship with the ICAC Dr Hunt indicated that although he had not personally met Mr Temby, the two agencies had developed a relationship. Dr Hunt said the OPM is provided with copies of ICAC reports and that issues arising from those reports are discussed with ICAC officers as necessary. He said the OPM and ICAC were working together on the Working Party on Integrity in the Public Sector, chaired by the Cabinet Office.

In response to comments from Mr Tink on the North Coast and Silverwater Reports Dr Hunt said the OPM could potentially provide assistance to the ICAC by advising on practices in existence if requested, but that the ICAC must have unfettered discretion in arriving at its own conclusions. He also commented that the OPM was keen to liaise with ICAC regarding constraints which may inhibit managers in the performance of their duties. In this regard he said that "risk management strategies" were important - minimising the risk of fraud/corruption etc without constraining managers performance.

On trends and changes in corrupt conduct Dr Hunt said he thought that increased awareness of the problems had probably been brought about by heightened media attention. On the ICAC's Corruption Prevention Strategy, Dr Hunt said that guidelines or codes of conduct needed to be developed for this strategy to be of any real benefit. He also noted that the current draft strategy appeared to be predicated on the assumption that corruption was already widespread, which may or may not be the case. He undertook to provide the Committee with further written comments on this strategy. (This advice has subsequently been received.)

Director of Public Prosecutions

9.30 am Monday 27 August, Parliament House

Present: Mr R Blanch QC (Director of Public Prosecutions)

Mr Kerr, Mr Dyer, Mr Turner, Project Officer and Clerk

In outlining the functions and operations of the Office of the DPP Mr Blanch mentioned that his office is presently taking over the prosecution of committal proceedings from Police prosecutors. He also said that his office had no problems in attracting high calibre staff, with ten to twenty lawyers applying for most vacancies.

On the relationship between the DPP and the ICAC Mr Blanch emphasised the need for the distinction to be preserved between investigations and prosecutions. However, he indicated that there was a co-operative relationship with the ICAC. A Crown Prosecutor, Ian Lloyd QC, has been hired out to the ICAC. This brought budgetary benefits to the ICAC and benefits to both bodies in terms of experience gained.

On the North Coast report, Mr Blanch said that a solicitor from his office had been briefed on the report before its release. Mr Blanch said that he himself had made the decisions whether or not to prosecute those named in the report. In each case the decision was based on his reading of the report, although there was some minimal investigation by the Office of the DPP to check that "formal requirements" had been met. In some cases he had consulted the Assistant Commissioner about whether there was any relevant evidence not referred to in the report. He said that the decisions on these matters had been made within the normal time frame and that he had felt under no outside pressure to expedite these matters further. In relation to the matters where decisions had yet to be made, further investigations were being conducted by the Police. These were complex matters, involving alleged conspiracies and potentially very serious crimes.

In comparing the relationship between his office and the ICAC with the relationship with other agencies, Mr Blanch said the relationship was very similar with both the SDCC and the NCA. However, he said that evidence from the SDCC had to be carefully sifted as it was sometimes inadmissible. With regard to the Police Mr Blanch said the Police Force was a larger, less sophisticated organisation than the ICAC, NCA or SDCC, and that the relationship therefore varied according to which section of the Force was being dealt with.

Mr Blanch made some interesting comments on trends and changes in corrupt conduct. As a Crown Advocate in 1984 Mr Blanch gave advice to the Police Force on an anti-corruption strategy. He said there had been perceptible, significant changes in the Police Force, particularly during the years 1984-1986.

Corruption was now on the defensive in the NSW Police Force. He also identified the creation of the Office of the DPP and the establishment of the ICAC as important steps in the fight against corruption.

Mr Blanch also provided a briefing on prosecutions for perjury. Mr Blanch said that although there had been a greater incidence of prosecutions for perjury in recent years, this remains a very technical offence which is difficult to prove. The Crimes (Public Justice) Act which is presently passing through the Parliament makes some changes regarding the offence of perjury and false swearing, but corroboration of the offence is still required and materiality remains an element of the offence, that is the lie that was told by a witness must be material to the matter at issue in the case. The main problem in regard to perjury is to prove that the statement was wilfully false and there is commonly a wait of between 6 and 12 months for the results of a police investigation of a perjury complaint to become available.

Mr Blanch concluded with some remarks about the High Court decision. He said it would be most inappropriate for the ICAC to be able to make findings that an individual had committed a criminal offence. It would also be inappropriate for the ICAC to be able to find that a prosecution should be launched, as this would place unacceptable public pressure on the DPP leading to potential conflict with the ICAC. Mr Blanch also expressed concern about the possibility of publicity from public hearings prejudicing the right of an accused to a fair trial at any subsequent proceedings. He said his instinct was to worry about such publicity. Finally he added that he thought the ICAC's Corruption Prevention Strategy was a useful document.

Cash Transaction Reports Agency

11.00 am Monday 27 August, Parliament House

Present: Mr W Coad (Director) and Mr R Power

Mr Kerr, Mr Dyer, Mr Turner, Project Officer and Clerk

In outlining the functions and operations of the CTRA Mr Coad noted that the ICAC was not yet a client able to gain access to the intelligence gathered by the CTRA. For the ICAC to gain such access the CTRA Act would need to be amended and the ICAC listed in the Act as an eligible authority. Although this matter was under discussion between the State and Commonwealth Governments, there could be some reluctance to amend the Act because of the ICAC's position as an investigative rather than law enforcement agency. (The Act specifies that the CTRA can provide data to eligible "taxation" and "enforcement" agencies.) If the ICAC was to become an eligible authority, on-line access may not be necessary as the needs of the ICAC could probably be met with more limited access.

On trends and changes in corrupt conduct Mr Coad said that NSW was at the forefront in changes in law enforcement techniques. Recent legislation concerning the seizure of assets represented a new approach to the problem and it would be up to the Police and other law enforcement agencies to come to terms with this new approach. In conclusion, Mr Coad endorsed the ICAC's Corruption Prevention Strategy as a very positive approach.