



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*

*TUESDAY, 31 MARCH 1992
PARLIAMENT HOUSE, SYDNEY*

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

Tabling of Collation of Evidence
of the Commissioner of the ICAC, Mr Ian Temby QC
31 March 1992

Legislative Assembly, Thursday, May 07 1992

MR KERR to say:

MR SPEAKER -

I bring up and lay upon the table of the House a Collation of Evidence of the Commissioner of the Independent Commission Against Corruption, Mr Ian Temby QC, on General Aspects of the Commission's Operations, before the Parliamentary Joint Committee on the ICAC on Tuesday 31 March 1992.

I move that the document be printed

(Ordered to be printed)

MR SPEAKER -

I seek leave to make a brief statement in relation to this Report.

CHAIRMAN'S STATEMENT TO THE HOUSE

The document I have just tabled is a Collation of Evidence from the most recent hearing of the Parliamentary Joint Committee on the Independent Commission Against Corruption with the Commissioner of the ICAC, Mr Ian Temby QC, on 31 March 1992.

This hearing was conducted pursuant to the Committee's function under s.64(1)(a) of the ICAC Act to monitor and review the exercise by the Commission of its functions.

I would draw the attention of honourable members to the questions and answers contained in chapter four on Strategic Intelligence, which the Committee believes are most important.

Before the hearing on 31 March the Committee drew Mr Temby's attention to the fact that the National Crime Authority is now working towards the preparation of an overview of organised crime in Australia. The Parliamentary Joint Committee on the NCA has commented that this overview will then form a benchmark against which the NCA's target selection and impact upon organised criminal activity will be able to be assessed.

The Committee asked whether the ICAC would see value in the preparation of a similar overview of corrupt conduct in NSW and whether the ICAC would undertake to prepare such an overview. The written answers received from the ICAC indicated that the ICAC sees value in the development of such an overview. Furthermore it was stated that the ICAC's Strategic Intelligence Unit has the ability but not presently the capacity to conduct such an overview.

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The matter was discussed further with Mr Temby on 31 March and the questions and answers appear in the Collation. A number of detailed questions were taken on notice by Mr Temby. Unfortunately, the ICAC was not able to provide written answers to these questions in time for them to be included in this Collation of Evidence.

As the Committee believes these questions are of fundamental importance to the work of the ICAC and the fight against corruption generally, I undertake to table before the House the ICAC's written answers to these questions as soon as they are received.

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CHAIRMAN'S FOREWORD

As part of its role in monitoring and reviewing the exercise by the Commission of its functions, the former Committee established a regular pattern of public hearings with the Commissioner of the ICAC, Mr Ian Temby QC. The hearing on 31 March 1992 was the second such public session the current Committee has conducted with Mr Temby.

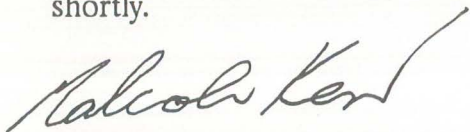
These hearings enable Committee members to question the Commissioner about matters of concern, issues arising from Commission reports and general aspects of the Commission's operations. By conducting these hearings in public and subsequently producing a Collation of the questions and answers, the Committee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

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

It should be noted that this Collation represents an edited version of the minutes of evidence of the hearing. In some cases the order in which questions were asked has been altered to enable the questions and answers to be categorised under appropriate subject headings, for easy reference. Furthermore, there have been some deletions from the text and some further written advice from the ICAC has been incorporated where appropriate.

As with previous Collations of Evidence from these hearings the questions and answers cover a wide range of issues. I would particularly draw attention to chapter four on Strategic Intelligence. Included are a number of questions which were taken on notice by Mr Temby at the hearing. Unfortunately, the ICAC was not able to provide written answers to these questions in time for this Collation to be tabled before the end of the Autumn 1992 session of Parliament. As soon as these written answers are received they will be tabled in Parliament.

Chapters eight and nine deal with the Operations Review Committee and Assistant/Deputy Commissioners. These issues had been the subject of hearings in February 1992 and it is anticipated that a report will be finalised on these issues shortly.



M J Kerr MP
Chairman

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."

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

MEMBERS

Mr M J Kerr, MP (Chairman) (Lib)
The Hon D J Gay, MLC (Vice - Chairman) (Nat)
The Hon J C Burnswoods, MLC (ALP)
Mr B J Gaudry, MP (ALP)
Mr J E Hatton, MP (Ind)
Mr A A Tink, MP (Lib)
Mr J H Turner, MP (Nat)
Mr P R Nagle, MP (ALP)
The Hon S B Mutch, MLC (Lib)

STAFF

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

CHAIRMAN'S OPENING STATEMENT:

CHAIRMAN:

Q: This morning's hearing serves two purposes. First, as one of the Committee's regular six-monthly public hearings with Mr Temby, it will enable the Committee to do a number of things which are the Committee's concern. It is an important part of the Committee's function to monitor and review the exercise by ICAC of its functions. Second, today's hearing might enable the Committee to obtain Mr Temby's views on two issues which have been examined by the Committee over the past few months. These are the Operations Review Committee and Mr Roden's proposal concerning deputy/assistant commissioners. I propose to deal with the general issues first and to defer all questions about the Operations Review Committee and the deputy/assistant commissioner until later when Mr Hatton is present, as those matters are of particular concern to him.

In relation to the general matters to discuss, I take it you have no objection to the tabling of the written questions and your responses, Mr Temby?

MR TEMBY:

A: No.

Q: They have been put on notice and they can be incorporated into the *Hansard* record and made available. Referring to those written answers, it is pleasing to see the progress which has been made in the development of the Commission's corporate plan and performance indicators. I was most interested in the answer to question 4 on the Committee's Strategic Intelligence Unit and the proposal that the ICAC develop an overview of corruption in New South Wales. I see this as a most significant matter, and I propose to seek further details on Mr Temby's view in this morning's hearing. I invite Mr Temby to make an opening statement if he so wishes?

**MR TEMBY'S
OPENING STATEMENT:**

MR TEMBY:

A: I can keep quite brief what I want to say in opening, and would wish to limit it to recent events. As Committee members are probably aware, the Commission is in a distinctly productive phase of its existence. Last week the report on Local Government and conflict of interest was tabled and made public. It has been well received both by the Minister and by local government generally, so far as we are aware.

In the previous week our Corruption Prevention project report on boat moorings was made public, and it again has been well received.

The second Issues booklet will come back from the printer today or tomorrow and distribution of it will commence immediately. Committee members will recollect that it was in March last year that we put out the first Issues booklet, which was titled *Nineteen Key Issues*. This follows twelve months later, and is of comparable length, which provides a general indication that the amount of work we did in the past twelve months was comparable with the amount we did in the first two years of the Commission's existence. Committee members and all members of Parliament will be early recipients of that booklet, and I know you will be interested in it.

On the education side we were the principal sponsors of Youth Week, and that was a very worthwhile initiative which was well received. During late February we had a stand at the Newcastle Show, and we will be going to the shows at Wollongong and Wagga Wagga in October.

One other small point I should make in opening is effectively a correction after the event of something that was said in the written answers. It concerns the hearing into the release and sale of confidential government information which Commissioner Roden is presiding over. The written answer said that hearings were complete. There are some further hearings of limited scope, frequency and duration that are being held in relation to that matter. They are private hearings and I think can be described as no more than mopping up matters which necessitated a little more hearing time.

CHAIRMAN:

Q: Could I have a reference to that question and answer?

A: Yes. It is question 1. We said that hearings had been completed. It was accurate when stated, but it is not accurate today. The true position is as I have stated it.

- 1 -
GENERAL BRIEFINGS

Questions on Notice

The Committee would like general briefings/updates on the following:

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

A: The public hearings in the investigation into the use of prison informers finished in the last week of February 1992. The report is likely to be published by July.

The hearings in the investigation into the misuse of confidential government information have been completed. The report is likely to be published in May or June.

The report of the investigation into particular tender processes in the Water Board, the hearings of which were conducted by Assistant Commissioner Beazley, should be published in April.

The public hearings in the investigation into certain contracts in the State Rail Authority are currently being conducted by Assistant Commissioner Sackville and will be held throughout March and April. A report should be ready in June.

Q: 1.2 General briefings/updates on the Commission's Corruption Prevention work.

A: Since the Commissioner last briefed the Committee:

- A report about processes for the sale of council vehicles has been published. Eight councils plus the Local Government and Shires Association have advised the Commission that they concur with, or have implemented, the recommendations in the report.
- A report about the allocation of boat moorings has been published, after a period of consultation with the Waterways Authority.
- Three projects: cash handling in hospitals, police secondary employment and criminal records, are nearing completion.
- The second "Key Issues" booklet has been completed.

- Fifteen seminars for public authorities have been conducted between July 1991 and March 1992, as well as advice provided to individual authorities on codes of conduct, corruption prevention strategies and issues such as tendering.

Q: 1.3 General briefings/updates on the Commission's Public Education work.

A: The Commission has developed an education strategy for the 1992 calendar year and drawn up a calendar of events (both attached).

Over the coming year the work of the Education Unit will focus on two main areas: curriculum development and community awareness raising. Commission representatives are meeting with the sub-committee of the Board of Studies on 9 April to further consider the development and introduction of corruption studies within the high school syllabus.

On 13 March the Commission held a media briefing to celebrate its third anniversary. This briefing emphasised the Commission's corruption prevention and education work. A list of Commission achievements was made available to the media. A copy is attached.

Q: 1.4 General briefings/updates on prosecutions arising from Commission investigations, and convictions.

A: There are currently 95 charges against 19 people before the courts.

More than 20 charges, against 13 people, have been finalised. The results included imprisonment, fines and bonds. Two people were discharged at committal. The DPP has recently advised in 2 matters of its decision to not commence prosecutions because of unavailability of material witnesses.

Q: 1.5 General briefings/updates on the work of the Commission's Research Unit.

A: Currently the Research Unit consists of two officers. The current projects of the Research Unit are to assist the Corruption Prevention Department with a review of the Commission's Code of Conduct and a project on private sponsorship of public authorities; a project being conducted jointly by the Commission and the Bureau of Crime Statistics and Research on public servants' views about corruption; and to develop a project with the Commission's Education Unit for "public opinion" research about corruption and the Commission.

Q: 1.6 General briefings/updates on any advice the Commission has provided on proposed legislation/discussion papers.

A: The Commission responded to a request from the Cabinet Office for comment on proposed amendments to the Freedom of Information Act in respect of the

Commission. In doing so the Commission noted that the dichotomy in the Commission's affairs is not simply between operations and administration. For example there is the corruption prevention function, during the performance of which the Commission may obtain information about defects in systems giving rise to corruption opportunities. It would not be in the public interest that this be disclosed. The Commission also expressed the view that if the Commission's recruitment processes were amenable to Freedom of Information legislation then that might impede the Commission's ability to obtain frank information from referees, people interviewed in the security process and applicants for positions or employees, which could create a potential security risk for the Commission.

The Commission has also prepared an issues paper about "whistleblowers", in respect of the proposed legislation. This paper has been provided to the Cabinet Office, with which there has been some liaison.

Q: 1.7 General briefings/updates on the Commission's current budget and staffing position.

A: <u>EXPENDITURE</u>	<u>YTD FEBRUARY</u>
Employee payment	4,700
Maintenance and working	2,943
Fees to legal practitioners	933
Capital	<u>904</u>
	<u>9,480</u>

STAFFING

As at end February - 154

Questions Without Notice

MS BURNSWOODS:

Q: I have a question that arises out of the statement on ICAC achievements, where you say that 51 formal investigations have been commenced and 36 have been completed. What are the 15 — the difference between them? Are they normally in progress? I wondered whether most of them are in progress?

A: The 15 are by definition matters that were current at the time when that document was prepared. A number of them have been effectively dropped in the sense that there is no more work we think we can usefully do on them, and we go to the Operations Review Committee with a recommendation that they be not taken further. There are others that are current, in the sense that they are in the writing phase.

For example, I am now actively involved in writing the report on the Prison Informants matter. Mr Roden has made substantial progress in writing the report on the Confidential Government Information matter. Miss Beasley has made substantial progress in writing a report on the Water Board sludge matter. So there are some at that stage. There are some matters that are very much current, in the sense that field and other investigations are going on at this moment.

Role of the ICAC

MR GAUDRY:

Q: Taken overall, with your three arms, and the direction that ICAC has gone in, do you feel that there is an inadequate understanding among the public of the role of ICAC on those three particular matters?

A: I do not have any positive perception whether there is any lack of understanding. There are of course some members of the public who do not know we exist, and doubtless there are some others who know we exist but they could not give a confident rundown on what we are there for. Doubtless the extent of the understanding is variable, but I dare say you would say the same about much longer standing institutions of comparable importance, like the Court of Criminal Appeal.

We are actively involved as part of our education programme in providing information about the Commission, and as Committee members know, we are far more positive and forthcoming in that respect than numbers of generally similar institutions have been.

Q: Continuing on that, there is in the public mind a big bang theory about ICAC, and therefore to me that would imply a lack of understanding of the role of ICAC. Rather than seeing its impact on institutionalized corruption, the public is looking for it to be throwing up major corrupt figures and perhaps the prosecution of those.

CHAIRMAN:

Q: I think there was an article in the *Bulletin* by Trevor Sykes last week, and perhaps you had in mind the last paragraph of that, and Mr Mutch could read it. It probably encapsulated what you are saying.

MR MUTCH:

Q: 'If there is no grand corruption, does New South Wales need ICAC at all? While it has been very useful, if continued it can only be justified if it comes up with a big one.'

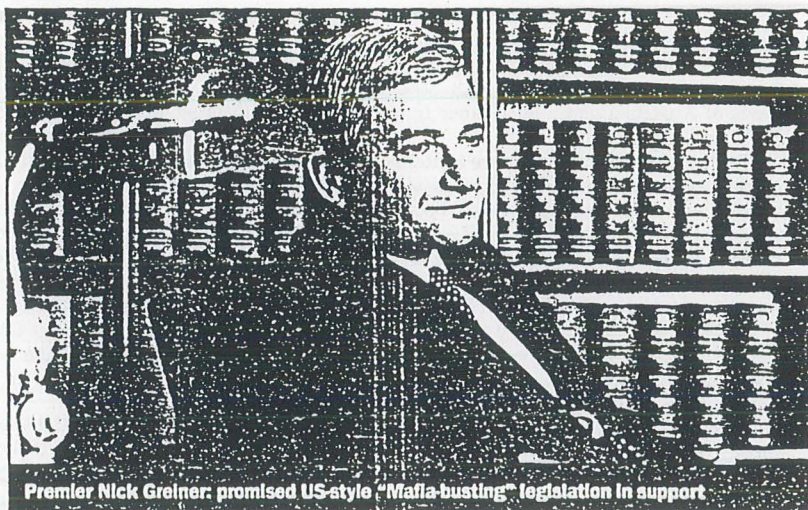
Still looking for a real live Mr Big

ICAC was founded as a scourge of high-level corruption but in practice it became a useful reformer of the low-level variety. Trevor Sykes reports

When the Independent Commission Against Corruption was first mooted in NSW, it was touted as a legal Hound of the Baskervilles that would scourge corruption from high places. It has turned out to be more of a kelpie, however, shepherding lower levels of government and business onto ethical paths and nipping a few on the ankle. If ICAC is to survive in its present form, it needs to expose a big corruption issue.

Plans: ICAC celebrated its third birthday this month. It was a political creation but has never been used for political ends. It should be remembered that corruption was the burning issue of the day in early 1988. The Fitzgerald inquiry in Queensland had exposed widespread corruption in the Queensland Police Force. In NSW, the media – particularly the Fairfax press and the Australian Broadcasting Corporation – had been running stories for years alleging highly-placed corruption in that state as well. The Liberal opposition attacked the Wran and then the Unsworth governments on the issue and allegations of corruption were probably the main factor in the overthrow of the NSW Labor Party in the 1988 election.

Opposition leader Nick Greiner unveiled plans for ICAC in January 1988, saying: "The Premier [Barrie Unsworth] clearly has no idea of the extent of the corruption in his government." Greiner said a Liberal-National Party coalition government would introduce US-style Mafia-busting legislation to support ICAC. He also produced a list of 74 alleged instances of corruption (on a recount, there were 67) to be referred to ICAC for investigation. Two Labor scandals known as the "Enmore conspiracy" and "Love Boat" af-



Premier Nick Greiner: promised US-style "Mafia-busting" legislation in support

fair were said to be at the top of the list which had been compiled by an advisor, former BULLETIN staffer Gary Sturgess.

Powers: The Enmore matter concerned alleged stacking of a Labor Party branch through forgery of hundreds of signatures. Charges against the alleged principals had been dismissed in 1982 by Bruce Brown, SM, who said he believed factors were working to undermine the prosecution and there should be a further investigation. In the Love Boat affair, prostitute Virginia Perger – one of the six charged over Enmore – claimed she had been photographed nude with prominent Labor politicians for blackmail purposes.

The ICAC legislation was introduced only two months after Greiner's election. ICAC got wide powers of arrest, search and interrogation, including the right to

enter the offices of a public authority and seize documents without a search warrant. Civil libertarians were concerned that a witch-hunt was about to explode.

It never happened. There have been almost no probes of Labor Party scandals and no significant political skeletons have been raked up. No senior public servants or major criminals have been exposed. The great NSW corruption network was never uncovered, raising doubts about how substantial it was in the first place.

Philosophy: The former Federal Director of Public Prosecutions, Ian Temby, QC, was appointed as Commissioner in October 1988. His first statement on the subject was that he saw little point investigating affairs of years ago where little result was likely. This immediately torpedoed several of Greiner's cases. The Enmore stackings dated to the late 1970s. As they concerned the internal affairs of a political party, they were probably outside ICAC's brief which was to investigate corruption in the public sector of the state.

The Love Boat scandal seems to have occurred in the early 1980s (one of the most suspicious aspects of the stories told – and subsequently denied – by Perger is that no date was ever specified) and was being handled in the courts, anyway. "We did go through the list and some matters in it were subsumed within investigations," says Temby. But he has always maintained that ICAC should be interested in current matters rather than "ancient history", particularly because of the difficulty of ascertaining the truth in a matter already been investigated with "the field ... muddied by size 10 boots".

Contrary to much of the conventional media wisdom, Temby believes that NSW today is fairly clean at the political level. He dismisses as "nonsensical" accusations that ICAC is "avoiding the big guys". He



Former premier Neville Wran: no Lear jets

points out that senior public servants and cabinet ministers have been examined during its inquiries. Temby believes NSW is "pretty clean" compared with other parts of Australia and a lot cleaner than most parts of the world.

Temby concentrated on more contemporary issues, which proved to be considerably less dramatic. ICAC soon boomeranged on Greiner because the first substantial investigation was into property developments involving National Party members on the north coast of NSW.

Findings: This long inquiry concentrated on what favours or donations developers had made to public servants or politicians. The main findings concerned a shire councillor, a federal public servant, a former ministerial staff member and a private consultant. Various prosecutions have been launched.

The NSW Labor Party was naturally delighted that ICAC's first big inquiry had embarrassed its creators. But it said something about the levels of corruption in NSW that its first big inquiry was essentially about the affairs of shire councils. How ICAC developed can best be shown by summarising some of its investigation reports.

Park Plaza: A public relations consultant to Kumagai Gumi said he was approached by a man offering quick approval by Sydney City Council for \$2 million. ICAC found he had fabricated the story.

Hakim: Convicted drug dealer Frank Hakim said police had "loaded" him with drugs when he was arrested. ICAC found that the allegations lacked substance.

Silverwater: ICAC found partiality had been shown by then Corrective Services minister Rex Jackson in letting a contract

to fill land next to Silverwater Prison but bribery could not be established. Several prosecutions were suggested.

Walsh Bay: It was alleged the responsible minister had interfered in the tendering process for a very large development project. The report found no corrupt conduct.

Drivers' licences: ICAC found corruption endemic in key Sydney motor registries where driving instructors and clerks were illegally supplying tests with answers. Prosecutions were suggested, chiefly for giving false evidence to ICAC.

Trucks: Police in the eastern Riverina were said to be accepting "spotters' fees" from repairers for reporting vehicles which had broken down. The ICAC recommended dismissal or disciplinary action against two police officers.

Helicopters: An officer of the Maritime Services Board was found to have disguised his interest in a helicopter company which successfully tendered for a surveillance contract for the MSB. The employee was dismissed.

This is a fair flavour of the territory ICAC has covered - not grand corruption but the petty variety. ICAC has been quietly and usefully cleaning up government departments and local councils.

Note that in three of the cases (Park Plaza, Hakim and Walsh Bay) the complaint was found to be fabricated or unsubstantiated.

This raises the issue of whistleblowers - people who break the rules of their organisation to expose what they perceive as wrongdoing. Some are courageous public-spirited people who perform a valuable service. Others are paranoids, delusionaries or outright liars. Investigating their allegations and proving them wrong can cost a great deal of time and money, most of all to the person they falsely accuse. The ICAC findings could serve as a warning against the fashion for extending legal protection to whistleblowers.

Praise: Sturgess, largely responsible for formation of ICAC and the recruitment of Temby, says: "Temby has been fabulous.

"He has gone about his job in an intelligent, professional way. I am per-

sonally disappointed that they have not looked at a number of things we referred to them. Some of the material is still relevant and there is very strong evidence. But we set it up so it would be independent and it has been. They have decided - for reasons I have to respect - that other matters have a higher priority."

While allegations of high-level corruption in the Labor Party may well have been either untrue or irrelevant today, the other notable factor is the omission of any significant inquiry into links between the NSW Police and organised crime. The rumours and allegations in this area have been rife for years and should be cleaned up one way or the other.

Temby points out that nearly every ICAC inquiry has resulted in changes to the system of government. "The driver licensing inquiry - as a result of our efforts and the efforts of the Road Traffic Authority - led to a licensing system which for the first time in many decades is free of systematic corruption. It is profoundly important because, if people know there is endemic corruption at a level like that, they are bound to have an automatic mistrust of the whole public sector."

Hopeful: "Following the North Coast inquiry, there is every reason to believe by the end of this year this state will have the first effective political disclosure laws the country has seen and that will be a most notable achievement." Temby says: "It is a very useful thing to have an institution to which complaints can be directed and everyone can have confidence in the outcome."

Former premier Neville Wran, against whom allegations were directly or indirectly targeted, says: "ICAC hasn't found anything in high places because there wasn't anything in high places. The rumours used to be that you could get my mob for a Chinese feed and a couple of bottles of wine. But there were no people in the Labor government who had horse studs or country properties. All we finished up with were our bloody pensions.

"I made a lot of money before I went into parliament and a bit since, which I've worked for, but nobody in our party got a Lear jet." Wran believes ICAC should be abolished although it has done him no harm and, if anything, has cleared his name.

But, if there is no grand corruption, does NSW need ICAC at all? While it has been very useful its continued existence can only be justified if it comes up with a big one. ■



Gary Sturgess: adviser

MR GAUDRY:

Q: I am more interested in the perception whether that arises from a lack of understanding, both in the community and in fact also in some political circles, as to what is the real role of ICAC?

A: Perhaps a lack of understanding of that sort. We have done a lot to try to ensure that people have a proper understanding. For example, at about Christmas time we prepared a series of three articles concerning corruption prevention type issues, which were not hot news but were sent out and got a fair run in some of the rural and suburban press. We have taken on Nigel Powell in order to have more visibility so far as education is concerned. So we are constantly striving to get across the idea that we are not just a vengeance mechanism.

It is, I think, a fair perception that the general public, who view what we are doing from a distance, generally have a love for punishment of others. How realistic that is in the circumstances where we are an alternative to ordinary mechanisms, to wit the police and the courts, I do not know. I do not think it is terribly realistic. It is not easy to see how much more we could do: if you have any suggestions I would be very pleased to receive them.

Q: They may be forthcoming.

MR TINK:

Q: To take up from what Mr Gaudry was putting a minute ago, it seems to me that the answer to the question that Trevor Sykes and others may be asking is in section 8 of the ICAC Act. Section 8 defines corrupt conduct, which among other things is something that affects adversely the honest or impartial exercise of an official functions by a public official. It seems to me that that type of test covers a host of allegations which may at times involve big fish but may also involve small fish.

It seems that the question Mr Sykes has to ask himself is whether there is a fixation about big fish, and there is some suggestion that the smaller matters should not be attended to. Is he suggesting that there should be some amendment of the ICAC Act in some way to narrow down that test of the honest or impartial exercise of official functions by a public official? It seems that the question has only to be asked, for the answer that is inferentially suggested by Mr Sykes to be soundly rejected?

A: You can understand that I would have no difficulty with that. The question that might be asked is the extent to which people like Sykes love the drama that accompanies major hearings and revelations.

I do not decry the importance of major hearings and revelations, but if you view it objectively there has been much done in the three years we have been there. But I, as Committee members know, reject the proposition that that is a sufficient approach. If you do not fix up systems you will get nowhere. All you do is reveal for the public titillation and guarantee a repeat, if not next year then the year after. It is absolutely absurd if you do not fix up the system...

MR MUTCH:

Q: I was reading this article by Trevor Sykes. In the list of allegations referred to ICAC by the Liberal Party, there were 67 of those, and the article discusses them. I was interested to know whether you had received advice in relation to each and every one of those complaints?

A: There is a general impression that when we ultimately got that list of matters, well after the Commission was established, we simply put it away somewhere. That is not the case. All of the matters were looked at, and some of them were pursued generally as parts of other investigations. We did not take them to the Operations Review Committee because they were not complaints within the meaning of the Act — they were rather the provision of pieces of information and they were being put before us as matters we ought to consider pursuing.

Q: Would not that give you a certain amount of protection? In the same article for instance Gary Sturgess is quoted as saying 'I am personally disappointed that they have not looked at a number of things we referred to them. Some of the material is relevant, and there is very strong evidence.' You probably did not make the decision unilaterally whether to proceed with a particular matter, but it would have been done internally in the Commission?

A: I certainly did not make the decision unilaterally. I instructed the proper officers, principally Vic Anderson the former Director of Operations, who was kept on as a consultant after the event to carry through this process, to do all that was necessary and to make recommendations. Kevin Zervos was very much involved in that process. Some matters were pursued, generally as part of other matters. Some are alive, and there were others that we felt we could not usefully pursue. In some cases we have given reasons for that.

The role of the Operations Review Committee is prescribed by statute, and it is to give advice before a decision is taken whether or not to pursue a complaint. While the role of the committee can be expanded as a result of discussions between myself and it, I am not inclined to do that except in a quite structured way. They need to know what their brief is, and I cannot just use them as some sort of repository to whom occasionally I throw a curly one.

Q: I was interested in what the article says about what you called 'ancient history'. Maybe you can make a distinction between matters involving general corruption or police matter, in the area for example of tendering and contracting. I would

have thought that a good way to get to the bottom of corruption over a period of time would be to take a historical look and get statistical evidence and use computers and so forth to find out where contracts are going — to get a bead on people. I would have thought that taking a historical approach might prove to be the most effective of all approaches?

A: That may sometimes be the case, and it is definitely one that has never been rejected. I have said on more than one prior occasion that if it was necessary to go back into history in order to make sense of the current state of play, I would not hesitate to do so, and I can say that we have done that and are doing that, in at least one particular large matter.

Q: It seems to me that systems can come and go and can be changed, and some systems are better than others. It seems to me that the integrity of the people who are operating within those systems is far more important than the system they are operating in. If you find evidence of a corrupt public official, and it goes back ten years, it is likely that the person is still in the system or has influence within the system. I would have thought it important to try to take that person out of having influence within the system?

A: Of course it is, but it has to be recognized that it is more difficult to investigate something that happened ten years ago than it is to investigate something that happened ten months ago. It becomes even more difficult if the matter that is said to have happened ten years ago has already been investigated on a couple of prior occasions, which is typical of a lot of matters we are urged to take on and boldly solve.

It is easy to say, 'Why do you not go back and solve the Enmore conspiracy?' There are a couple of answers. The first answer is that it is very old, and it has been investigated more than once previously, where everyone trudged around it and did what they could with it. The second is that it is not easy to see what it has to do with public sector corruption. The ALP is not the public sector. That is one example, but it is one we keep getting thrown — 'What are you going to do about the Enmore conspiracy?' It is not our work, and it is as old as the hills, and it has been investigated. There is nothing now that you can usefully do about it.

Even if was in our charter I would be very loath to take it on. I hate going through the motions, which you would be doing in anything like that, and so with a whole lot of these matters. I do not doubt the use of going back in history if you need to do that to make sense of current matters, and I do not doubt that a corrupt individual is likely to continue to be so. If we can take out corrupt individuals it is important. We have some slight difficulty with the proposition that the individuals within the system matter more than the system does, and I say that because experience tells me that if there is a system which can be rorted, then inevitably it will be. That is a comment upon human nature. You can

speculate about who will report it and when and in precisely what manner, but if it is available to be reported it will be. Somebody is going to report it.

MR GAUDRY:

Q: To me this is very relevant. To my understanding you are the Independent Commissioner Against Corruption and as such you are answerable to this Committee and not to the executive government. Yet it would appear very much to me that when the Director-General of the Cabinet office publicly makes a statement such as you have there, there is an attempt to re-direct the initiatives of the ICAC rather than to allow it to follow the process of reporting to this Committee?

A: I cannot say that I have felt in recent times or at any time that Mr Sturgess or anyone else involved with executive government has tried to direct our efforts in any particular way. If he had been trying to set the agenda for us, you will understand it is something we would resist. If anyone tried to set the agenda for us we have to resist, because that is the end of independence. I imagined he would have been on our doorstep on day one saying 'Here are 67 matters fellows, get stuck into it'. In fact we got that list in July of 1990, fifteen months after I said to him from time to time 'There keeps on being talk about this famous list. Perhaps at some time you had better let us see it', and ultimately it came.

But there was never any pressure, and I do not feel pressured by what Sturgess did. He has a slightly different viewpoint from mine. I think it is a slightly more political viewpoint than my own. Perhaps on occasions he and others have forgotten the constraints under which we operate — that is to say, it is public sector corruption with which we are concerned. But I accept there would be a slight difference of approach as between myself and individual members of this Committee. There is nothing wrong with that, except to say that in the end you have to have the strategic direction set by and within the Commission because it cannot be set from elsewhere. The short answer is that I have not felt pressure. If I did feel pressure I would not hesitate to say so, because I think that would not be not only unacceptable but also potentially dangerous. If they pressured me, I would wish to contend that I would always resist the pressure and not succumb to it, but if any government would pressure me then they would be prepared to pressure others. I cannot say how they would respond. So it seems to me to be an important issue.

MR TINK:

Q: Something you said earlier troubled me: it related to the Enmore conspiracy as not being part of your brief. I have the view that there should be forward thinking rather than backward thinking. If I am right in assuming first of all that the Enmore conspiracy encompasses the bashing of Mr Baldwin, and if I am further right in assuming that at the relevant time he was a member of the Upper House, then it seems to me that, as night follows day, if there is an allegation that

someone has banged up a member of the New South Wales Upper House, and there the remotest suggestion that it has something to do with his office, a threat to kill, particularly if it happened again now, would be a matter for the ICAC. I was a little troubled by what you said?

A: The point you make is a fair one. I did not say that there was absolutely nothing upon which we could hang our coats in relation to that matter. I have never said that. On the basis that the allegations have to do with activities within a political party, and a political party is not part of the public sector as defined in our Act, then it certainly is not central to our brief. However, the point you make now is a legitimate one.

[Refer also to questions without notice on Operations Review Committee pp 61 - 62]

MR HATTON:

Q: [In relation to] the article in *The Bulletin* I would like to suggest that we have a special session with the Commission on this whole question. I cannot get over my frustration that my perception is that we have very significant organized crime in some ethnic groups, and in the good old-fashioned third or fourth generation Australian groups. There is a significant drug problem and there is a lot of corruption involved with marijuana. We do not seem to be able to get to those big ticket items. I would like to see some paper as to how the ICAC could tackle those if it feels that it is its job.

I voice my frustration that I spent all that time in the Winchester inquiry, and there was that major scandal in my view to do with Operation Seville. At the time this organization would not handle it because it was a joint federal operation. The inquest certainly skirted around it, in my view, and did not get to the core of it. We have problems with drugs in Chinatown and among Vietnamese and Japanese groups and so on. The NCA does not appear to be getting at the problem. It does not appear to be the appropriate structure.

I feel this pent-up frustration because I have been involved in this thing for fourteen or fifteen years, and I really think that somehow we have to sit down and discuss how we are going to get to this problem. I think that with the ICAC we have a structure in New South Wales where we could tackle the problem. It may be that we ought to be looking at the methodology and the structure of the investigative arm of our police force, and perhaps we ought to be able to look at one particular area of operation. Maybe you would choose Chinatown, or maybe the marijuana industry in general, or whatever: I do not know. I want to vent that frustration. I do not know whether other members of the Committee share that with me.

CHAIRMAN:

Q: ... I would think that Mr Temby and myself, and yourself and any members of the Committee, could be available to look at it. I do not think that now is the time to do it. I think it would be best done *in camera*?

A: Certainly not at this hearing, I would say.

Q: It has to be done privately.

A: One understands Mr Hatton's expressed frustration, and if I might say anyone would sympathize with it. The area he refers to is not one that we are walking away from, but despite the fact that we have a quite considerable capacity, we are only 150 people. The police service in this State is 12,000 sworn officers, probably more. There is a State Crime Commission, the charter of which is far closer to what you are talking about than ours. There is an NCA. By all means let us have it looked at, but while one can be flattered by the suggestion, if it is being made, that we are the only people who can do anything about this problem, how much can be done by an organisation of this size, despite its capacities? We are talking about a big problem area. Specifically how much we could do, given our size, while at the same time processing complaints — which has to be done, and we have been talking about it for the past half hour — and doing various other things that need to be done? I do not think it is realistic to see us as being the solution. But by all means let us talk about it some more.

MR HATTON:

Q: I have never suggested, and I do not believe you think I did, that this is the only organization. Earlier in that paper, and of course it is well recognized, organized crime cannot flourish without corruption of public officials. That is the heart of what the ICAC is all about. If it is true that the marijuana industry or the heroin industry flourishes because there is corruption in official circles, should that not be a high target? It does not appear to me as if the State Drugs Crime Commission is getting into the question. I may be wrong, but I am not wrong about the NCA. It is a matter I would like to spend a lot of time on and if necessary put a whole session aside for that.

CHAIRMAN:

Q: I refer Mr Hatton to some questions put on notice today which Mr Temby has undertaken to give us some strategic information about. [See chapter four.]

MR TINK:

Q: I think the role of the State Drug Crime Commission has been very important in this area. My understanding is that they have done some excellent work. Looking

at section 8 of the ICAC Act, I do not believe that there is one allegation put to ICAC for investigation that is outside that section of the Act. I am wondering therefore whether this leads us to a situation where to follow through Mr Hatton's interest, the idea might not be for a few people to get together, perhaps with the Crime Commission, and people from the Committee, to throw around a few ideas.

MR NAGLE:

Q: In reality it is a matter of financial capacity and staffing capacity to be able to get involved in such an enormous area. That would be one of the major problems you would have to consider...

CHAIRMAN:

Q: Given your earlier evidence that this is the biggest and most prosperous State, you still would not want to duplicate what is done by other agencies?

A: Certainly not. One of the advantages we have is that I think we are recognized as not being territorial. We say, 'Would everyone please get on with it, and we will do the stuff that other people cannot do or will not do'. What you say about size is right, but it should not be understood that I am pressing for an increase in size, because the organization as we have it is manageable, and as soon as you double and then double again you have another police force, and you have terrible problems. There is all sorts of international experience for that — all sorts of problems. We would have a difficulty there. At the moment we are a niche operator without territorial claims, and that means we can get on with other agencies very well indeed. We are not plagued by jealousies, which have plagued nearly everyone else involved in pure law enforcement. I have been in it: it is a terrible problem.

Trivial and Vexatious Complaints

MR TINK:

Q: In relation to the achievements of ICAC, I notice that there have been over 3,500 complaints. We have had evidence from somebody at the Queensland Criminal Justice Commission that a disproportionate amount of their time has been taken up looking at trivial and vexatious complaints. I am wondering whether that is a significant problem for the ICAC. Does that involve significant resources?

A: Yes, it does, and some change may be desirable. We are using our referral powers somewhat more frequently now than we were twelve or eighteen months ago, and I think that is a move in the right direction. It is quite a burden to have to process those complaints, and it would be ever so much more burdensome if we had to do as some have suggested, that is give a detailed and persuasive

account to each complainant as to the reason why their complaint was not pursued.

I am not pressing for change at the moment, because it is the public we serve, and the complaints provide us with useful information as to what are the areas of concern as perceived by the public, and that is a useful guide in circumstances where guides are hard to find. We should be seen to be decently responsive. Even if there were no statutory provisions about the handling of complaints it would be incumbent upon us to be properly responsive. So I am certainly not pressing for change at the moment.

CHAIRMAN:

Q: Mr Tink mentioned those 3,000 complaints, and you have referred to your relationship with the complainants. Of some concern to the Honourable Ron Dyer and the previous Committee and this Committee was when complaints were made with a degree of fanfare in a local council, when someone said 'I am going to report X', which guaranteed a headline in the local paper, and it was found to be groundless: there is no doubt there have been instances of that. Is X notified or given some clearance? What happens in those circumstances?

A: As you know, we took steps to discourage that practice, with some success. It may be that we shall have to take such steps from time to time. It may be that recently there has been a bit of an upsurge: I am not sure but there may have been.

Q: I was more direct than that?

A: I understand. I was just trying to think of a precisely accurate answer to the question, and I cannot answer it with that sort of confidence. I believe that happens but I cannot say with confidence that it happens invariably.

Q: What I was getting at was that X is in a position where publicly he has had a complaint made?

A: If he is the subject of one of these beaten-up complaints, publicized complaints and, we decided not to take the matter further, I believe we do generally [notify him], I cannot say whether we do so invariably, because I am not certain that to say we invariably do would be an accurate answer. I know that we do so with some frequency because I know I have taken steps to see that we do with some frequency. Ms Sweeney points out that occasionally we do not get a complaint, and if we do not get a complaint there is not much we can do, except that if we were asked we could say that we have not even had a complaint.

Q: If the complaint was made with some degree of publicity, would your organization take it upon itself to contact the complainant to see whether he was going to come forward with a complaint?

A: We have done that, certainly.

Q: You say it is not invariable, but you say it is groundless. Are there any reasons for not doing that?

A: It may be that we always do, but I cannot say confidently that we always do.

Q: Are there any reasons why you should not?

A: I cannot think of any reasons why we should not, no.

Nigel Powell

MR GAY:

Q: You referred to Nigel Powell. Can you give us some background on that?

A: Yes. Mr Powell was a police officer in England and then in Queensland. He worked in the now notorious Licensing Branch, and was one of the honest officers there. There were a number of dishonest officers there, and his revelations were of prime importance in the establishment and success of the Fitzgerald Commission. His career has not since prospered, and we have employed him as one of our senior education officers. He has been with us since some time in December and it is intended that he will be doing a good deal of public speaking work on behalf of the Commission. He is what is colloquially known as a whistleblower, of considerable distinction, and as somebody who knows about corruption and the consequences of revelation of it. He can tell stories at other than a theoretical level.

- 2 -

**ISSUES ARISING FROM
PREVIOUS HEARINGS**

Questions on Notice

Q: 2.1 What progress has been made on the proposal put forward in the last Annual Report that Commission transcript be able to be used in the prosecution process?

A: In December 1991 the Premier advised the Commission that the Government was unable to support the Commission's proposal concerning the admissibility of Commission hearing transcript in committal proceedings.

Q: 2.2 What action has been taken in relation to the problem identified in the last Annual Report of some authorities providing too few s11 reports?

A: In a couple of instances of public authorities providing too few s11 reports or providing them too late the Commission has engaged in individual discussions. Shortly a letter will be sent to the agencies which the Commission feels are not providing sufficient reports or not providing them sufficiently early, encouraging better compliance with the statutory obligation in s11. The Commission is also considering requesting an amendment to s11 in respect of timeliness of s11 reports, in an effort to have reports made when the principal officer of a public authority first becomes aware of a matter, so that the Commission can make proper decisions, rather than after an agency has completed an investigation of the matter.

Q: 2.3 What progress has been made by the Research Unit in its research into the application to the Commission's work of aspects of the inquisitorial system of criminal justice?

A: The Research Unit does not have conduct of this project. The Commission commissioned Bron McKillop, a senior lecturer in the Faculty of Law at the University of Sydney, who is an expert on the subject of European inquisitorial systems of criminal justice to perform some research on the topic. Mr McKillop provided a research paper and bibliography of good quality in late 1991 and the Commission's senior management recently had a briefing from Mr McKillop.

The Commissioner travelled to California in August 1991 to examine the Californian Grand Jury which performs its investigative function by an inquisitorial process.

Two senior Commission officers are attending the International Anti-Corruption Conference in Amsterdam in March 1992 and during their period overseas will obtain information from participants in the European criminal justice systems.

It is proposed that a Commission officer will travel to Europe to examine particular jurisdictions and interview participants in some European criminal justice systems. The Commissioner may follow up later in the year.

All of this will be done with the focus of what the Commission can learn, for its own procedures, from the European systems.

Questions Without Notice

MS BURNSWOODS:

Q: There are a couple of questions relating to 2.2. Problems with telling us which departments are particularly slow in giving you any reports, I know that we had considerable discussion about this last time. The second part of my question therefore is, are the same departments or authorities still so backward that there may come a point where it would be worth while naming them?

A: In answer to the second part of the question, I do not know, because I have not taken out figures lately. To answer the first part, we would prefer to move incrementally and try to solve the problems by sweet reason rather than the bludgeon of naming. We are in the course of writing to the institutions that we see as possibly failing in the performance of their statutory duties. You will understand that we cannot say with confidence that it is so, but it seems to us that they might not understand their obligations properly. The time may well come when the correct thing to do is to name the institutions, but I do not think that time has come yet.

Q: I know there is a problem. Where you guess they are not reporting there may not be any corruption connected with the authority at all, but I notice you also make a point about their not providing information to you, and presumably that is something where you would be able to move much more directly and say 'If you had done this kind of thing before we would have done this or that, and why is it that we are getting the report so late?'?

A: They might be able to, but more importantly if we are not told until after the thing has been thoroughly investigated by them, then probably the trail has gone cold. We need timely reports so that we can get on with the job, if it is a job for us. It may be that the time will come — and it might come sooner than later — when a small amendment is required so that the Act states that the report must be provided as soon as it is practical. We might well be coming forward with that suggestion.

MR GAUDRY:

Q: Is there an inference there that perhaps there is some housekeeping done, and then a report comes to you?

A: That is something that happens, but it is something that is not welcomed.

Q: Going back to 2.1, which was the Premier advising about your suggestion about admissibility of Commission transcripts, was there any particular reason why that was not thought to be a satisfactory approach, given the fact that it would be only sections of the transcript that were able to be taken with the concurrence of the witness as support details?

A: I do not recollect what reasons were provided, and certainly the response did not descend to the level of detail. As I recollect it, there was a mood in this Committee which was generally adverse, and that may have been relevant.

CHAIRMAN:

Q: I think you were questioned for some time by Mr Nagle, who expressed concern about that?

A: I had hoped that by the time it was finished the Commission's position was comprehended, and that when comprehended it was devoid of all danger, but I am not sure that that hope was realised.

MS BURNSWOODS:

Q: Perhaps the Committee could get a copy of the Premier's letter. Would you be happy to forward to us a copy?

A: I will look at that. I do not have any objection in principle, unless there is something in it that would preclude that. We have to have some dealings with the government that are not available for scrutiny. I think there is no difficulty about that, but I would like to think about it.

MR TINK:

Q: In relation to 2.3, am I right in assuming that the funding for things like travel and everything else you do is part of a global budget, so that it involves personal expense such as counsels' fees?

A: Correct.



INDEPENDENT COMMISSION AGAINST CORRUPTION

Mr David Blunt
Project Officer
Committee on the ICAC
121 Macquarie Street
SYDNEY NSW 2001

1 April 1992

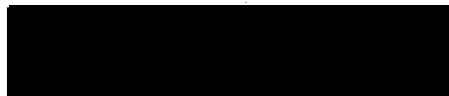
Dear Mr Blunt,

When the Commissioner appeared before the Committee on 31 March 1992 he was asked whether the Commission would advise the Committee of the Premier's reasons for not supporting the Commission's proposal regarding the use of transcripts from Commission hearings in committal proceedings.

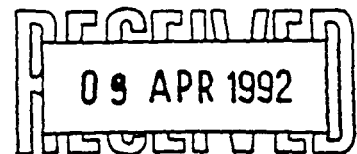
The Premier's expressed reasons were as follows:

- . because the Commission's purposes are quite different from a court's, and given the Commission's powers to compel witnesses to give evidence, evidence obtained by compulsion should not be admissible in subsequent criminal proceedings, even against persons other than the witness;
- . a person who is prepared to assist a Commission enquiry may not be prepared to give the same evidence to assist a prosecution, and should be permitted the opportunity to consider that new purpose; and
- . evidence given in Commission hearings may include material which would be inadmissible in criminal proceedings and editing of transcript to delete such material may distort evidence, to the disadvantage of the accused.

Yours faithfully,



Deborah Sweeney
Solicitor to the Commission



LET. 148

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PERFORMANCE INDICATORS

Questions on Notice

Q: 3.1 What progress has been made in the development of the Commission's Corporate Plan?

A: The development of the Commission's corporate plan has commenced. As a first step the Commission obtained the views of approximately 35% of its staff. Senior management have also attended a two day workshop to refine objectives in the short, medium and long terms. A draft of the corporate plan will be completed by the end of April. This plan will then be circulated widely throughout the Commission, and should be finalised by the middle of the year.

Q: 3.2 What progress has been made in the development of performance indicators for the Commission?

A: A series of workshops will be held over the coming weeks to devise formal performance indicators for the Commission.

Q: 3.3 Will these performance indicators be in place and available for use by the Committee in its proposed comprehensive evaluation of the Commission to be conducted in 1993?

A: Yes.

STRATEGIC INTELLIGENCE

Questions on Notice

- Q: 4** The Committee draws attention to the attached extract from the recent report of the Joint Committee on the NCA on its Evaluation of the National Crime Authority. In this extract the former Chairman of the NCA, Justice Phillips, is quoted as stating that the NCA's work in the Strategic Intelligence area "is directed towards being able to give (the Joint Parliamentary) Committee and, through it, the Australian Parliament and people an overview of organised crime in Australia". The Committee then comments that this overview will then form a benchmark against which the NCA's target selection and impact upon organised criminal activity will be able to be assessed.
- Q: 4.1** Does the Commission see value in the development of an overview of corrupt conduct in the NSW public sector?
- Q: 4.2** Is the Commission's Strategic Intelligence work directed at the provision of such an overview? If not, what is it aimed at?
- Q: 4.3** Would the Commission undertake to prepare such an overview for:
- (a)** This Committee?
 - (b)** The Parliament and, through it, the people of NSW?
- A:** The Commission sees value in the development of an overview of corrupt conduct in the New South Wales public sector. That is easy to say but less easy to do, given the covert nature of corruption and the intensive resources required over a lengthy period of time to produce a worthwhile product. It involves the application of techniques such as telephone interception and listening devices, surveillance and research, all of which are resource intensive. There is a dearth of adequate, considered and reliable research of this kind of which the Commission can avail itself to produce an overview.

The Commission's Strategic Intelligence Unit has the ability but not presently the capacity to conduct such an overview; it has the capacity to concentrate on segments of the public sector, which it is doing. The strategy for choosing topics for strategic intelligence research is that priority should be given to examining the areas or organisations reputed to give rise to systematic or institutionalised corruption or to areas of the public sector where corruption could have a more

serious and deleterious impact. Strategies include an analysis of the work done by the Commission and an examination of overseas literature on corruption with a view to determining whether the corruption climates are different or whether there are subject areas to which the Commission should give attention.

The purpose of the Commission's strategic intelligence work at present is to inform, direct and target the Commission's work. This will contribute to developing a picture of corruption at least in segments of the public sector.

Questions Without Notice

MR GAY:

Q: Do you see Question 4 as a highly important role for the Commission, to develop this overview? Can you see any difficulties in doing that in relation to the Commission's Act, in requiring you to move outside public corruption and take on a complete view of corrupt conduct?

A: As presently advised I do not apprehend statutory difficulty. I think that there is useful work for the Commission to do in this area. I think that the practical difficulties will be very great, and I do not want to be understood as having said to the Committee that we can, by any given time, provide a reliable overall view of corruption in New South Wales. It is a problem of considerable dimensions to do so. The reasons are obvious: people do not advertise the fact that they are taking or giving bribes, or exhibiting gross favouritism, or any of these things. They are all done in a covert fashion.

You can measure crime, particularly crime where there is a perpetrator and a victim, although even there the difficulties are not inconsiderable, as we all know if we follow the statistics. You can perhaps, as the NCA say they are going to do, measure organized crime, though I have my doubts as to how well that can be done, because I think it is much easier said than done. Measuring and making confident statements about the incidence and type of corruption in the public or private sector is of a much greater order of difficulty. Useful work has been done, and useful work is being done.

In deciding what it will take on and where it will concentrate its efforts, the Commission takes account of particular complaints because to a considerable extent we are complaint-driven. It takes account of the general mass of complaints. That gives us an indication that this geographic area or that might be of particular significance. We obtain information elsewhere. We take the view of our intelligence people from time to time when appropriate, and we rely upon the perceptions of people within the Commission, particularly senior people, whose perceptions are intelligence or something close to it, trying to ensure all the time that we are above the level of mere guesswork. That is the sort of process that we undertake, and with the passage of time the extent to which that decision-making process will be influenced by intelligence input will probably tend to increase, but will only increase somewhat. Committee members should not think that intelligence is fact, or that it is easily gathered, or that it is generally reliable, because none of those propositions is true. Therefore it is only an aid.

If we can do some useful work, it may be that we can provide the public with an overview at some stage, which will be a useful guide, but it has to be approached with extraordinary caution because otherwise you are turning supposition into fact and you are doing disgraceful things, things that we have seen done elsewhere —

stories that the Mafia are Public Enemy Number One, and so on, which amounts to little more than a group libel very often. You can find countless examples in history of the abuse of so-called intelligence.

When you get into intelligence, it ranges from stuff that is apparently reliable and looks useful, down to scuttlebutt, rumour and innuendo, which has to be sifted through with extraordinary care, and it has to be sifted through by people who are not involved in the intelligence industry, because they tend to give it a standing greater than it deserves. Intelligence is tiger territory. It is quite useful as a tool, but if it stops being a tool and becomes a weapon that we use or is used against us, in the sense of 'How does your agenda for the time being relate to what intelligence tells you?' it is nonsensical.

Q: So you see it as diverting ICAC?

A: If it is not handled with scrupulous care that is bound to happen. We do use intelligence. With the passage of time we would like to be using it more, not less. It has to be scrutinized with extraordinary care, and if I might say so, in the hands of those who are not highly experienced in assessing intelligence it is very dangerous stuff. Finally, it may be that some good will flow from an effort to build up an overview, but it should not be thought that that would represent some sort of panacea.

CHAIRMAN:

Q: I have forwarded some further questions on strategic intelligence. The basis for those questions was that you have recently celebrated a third birthday, and the Committee and the Parliament to which it reports may take the view that ICAC has now been established to the extent where decisions by the Commission concerning its operations and its general direction and the overview by them of the Operations Review Committee, and the reporting media, and concerning amendments to the Act and the exercise under section 70, should be made not merely on repute or particular concerns about a segment, but on firmer knowledge about the ambit and segments of corruption in New South Wales. As you say, corruption is covert, it is between consenting adults, and the Costigan inquiry and the Fitzgerald inquiry started off in relation to matters and then greatly enlarged into areas that formerly were outside public and Parliamentary and other knowledge. It was the same with President Johnson's commission into organized crime?

A: The same with a fair bit of what we have done.

Q: Exactly. That is what I was getting to. Is it possible, on the picture so far revealed by the work of your Commission and the intelligence unit, to provide a report on the areas and natures of corruption so far revealed?

A: As to the questions received yesterday, I could not provide useful, confident answers today. Otherwise I can not say anything useful without repeating what I said in response to Mr Gaudry. It may be that there is some work we could usefully do in that direction. It will have to be done over quite a period, and I am not confident how useful the results would be. I am not sure how it would stand up to a cost-benefit analysis.

Questions Taken on Notice by Mr Temby

- 4.4 As to the "picture" so far revealed by the work of the Strategic Intelligence Unit and of the Commission otherwise, could the Commission provide a report on the areas and nature of corruption in the "segments" so far revealed?
- 4.5 Could the report go on to make reference to other areas of corruption in NSW, which are suspected or believed to or may exist?
- 4.6 In dealing with 4.4 and 4.5 could the Commission indicate what is known or believed to be the position of institutional corruption associated with organised crime in NSW and in particular such corruption in aid of the operation of organised crime and that in aid of its concealment or to prevent action against it?

This is raised on the basis of the view now established and accepted that organised crime is almost always dependent on institutional corruption of these kinds.

- 4.7 The Commission having the ability to do so, in what respects does the Commission at present lack the capacity to provide an overview of corruption in the public sector in NSW, in particular by reason of
- (a) lack of legislative or other power;
 - (b) staff considerations;
 - (c) financial resources; and
 - (d) other considerations.
- 4.8 So far as capacity is lacking, what precisely is considered necessary (as to nature and quantity) to giving the Commission that capacity and in particular in reference to (a) - (d) of 4.7?
- 4.9 It is noted that in its earlier reply the Commission considered there to be value in an overview. Could this answer be enlarged upon?

- 5 -
ACCOUNTABILITY

Questions on Notice

Q: 5 The Committee draws attention to the recent report of the Queensland Parliamentary Criminal Justice Committee on its review of both its own operations and the Criminal Justice Commission. This report contained a number of recommendations aimed at improving the accountability of the CJC to the Parliament. It also pointed to a number of features of the CJC which were of interest to this Committee. The Committee would appreciate the Commission's response to the following recommendations and their possible application to the ICAC:

Q: 5.1 That the limits of executive control of the CJC be institutionalised by making the Chairman of the Parliamentary Criminal Justice Committee responsible for all Parliamentary questions concerning the CJC, except those dealing with finance.

A: The Commission's view is that it is a matter for decision between the Premier and the Chairman of the Parliamentary Committee on the ICAC as to who should take responsibility for Parliamentary questions concerning the Commission.

Q: 5.2 That the Commonwealth Parliamentary Estimates Committee model should be adopted as a means of review by the Parliamentary Criminal Justice Committee of the CJC's expenditure. Under this model the CJC would provide an "expenditure plan" to the Committee and would then attempt to justify the estimates.

A: The Commission is caught by the Parliamentary Estimates Committee process. As well, the Commission provides detailed financial expenditure information in its annual reports. It also costs investigations involving public hearings, and publishes the results.

The Commission has engaged the Auditor General as its auditor, as a means of discipline.

The Commission is to a large extent demand driven. It is not always easy to predict those matters which will assume significance. It is therefore not possible to plan all work of the Commission in advance. In order for the Commission to be both flexible and responsive it must retain the ability to continually monitor its finances and amend expenditure according to priority.

The most significant component of expenditure is on operations, some of which must remain secret for significant periods. The Commission would see a requirement that the Commission provide an expenditure plan and then attempt to justify estimates as eroding the Commission's effectiveness and independence.

Q: 5.3 The fact that the CJC provides the Parliamentary Criminal Justice Committee with all practice and procedure manuals which may then be referred to on an on-going basis.

A: The Commission has published its three functional strategies, both in annual reports and to the Committee. The Commission has provided the Committee with the practice and procedures manuals which it considers suitable for publication, being the Operations Procedures contained in Part 1 of the Investigation Manual.

Q: 5.4 The fact that the CJC maintains a number of registers to record its use of its statutory powers, registers which are able to be inspected by the Parliamentary Criminal Justice Committee.

A: The Commission maintains a register of the following process issued or obtained pursuant to the Commission's statutory powers: notices under ss21, 22 and 23 of the ICAC Act, summonses issued under s35 of the ICAC Act, warrants issued under s36 of the ICAC Act, orders for the production of prisoners issued under s39 of the ICAC Act, search warrants obtained pursuant to s40 of the ICAC Act and the listening device warrants obtained pursuant to s19 of the ICAC Act.

The Commission reports on the extent of use of its statutory powers in its annual reports. The register refers to investigations not yet in the public domain, which are treated under a general heading in the annual report.

The Commission submits that the exercise of a statutory power is a decision of the Commission in relation to a particular investigation which, in the context of the current statutory scheme, is not amenable to scrutiny by the Committee. The Commission submits that the position should remain so, given that the decision as to whether the exercise of a statutory power in a particular investigation is appropriate requires a knowledge of the investigation in which the power is to be exercised.

Q: 5.5 The fact that the CJC debriefs complainants, with letters sent and, if necessary, an officer meets with a complainant to explain the CJC's decision.

A: This issue has been addressed above in the context of questions about the Operations Review Committee. The Commission sends letters to complainants which set out the Commission's statutory role and the statutory role of the Operations Review Committee. Except on rare occasions, where it is considered necessary, complainants are not given reasons for the Commission's decision.

There is some degree of personal contact between complainants and Commission officers about the outcome of their complaints, although this is more the exception than the rule, where warranted in particular cases.

Questions Without Notice

MR TINK:

- Q:** Turning to accountability, on questions 5, 5.1 to 5.5, in relation to 5.1, it seems to me as a matter of comment that the key here is that the Queensland Criminal Justice Parliamentary Committee had a slightly different role from ours. That seems to be at the heart of it. I understand that under the standing orders of this Parliament the Chairman of a Parliamentary Committee can now be asked questions about the role of the Ombudsman or the ICAC or whatever it might be. The underlying assumption here that all parliamentary questions except on finance go to the Chairman of the ICAC Committee, seems to assume certain changes to the role of the Parliamentary Committee itself, to bring it more into line with the Queensland Committee which I understand has functions that are a combination of what this Committee does, plus what the Operations Review Committee does, plus probably a bit more. That is something that I personally would have difficulty with. I would feel more comfortable with staying at arm's length from the show and looking at the wider issues?
- A:** What you say seems to me to make perfectly good sense. I have said before that I have reservations about the CJC model in regard to providing operational briefings to the Parliamentary Committee. I think, among other things, that it places members of the Parliamentary Committee in a particularly invidious position. I think you can see that that is one of the reasons things have gone wrong up there. It would be a pity if it became standard for questions concerning the ICAC, particularly in its operational role, to be asked with any frequency, and more important, answered with any frequency. You cannot do a thing like that. That is why there is a standing Parliamentary Committee which can go into these areas in some extent. But I cannot say that I would be prepared to provide the Premier, or Mr Kerr if he was the person who was going to answer, with the information sufficient to enable a detailed answer at that moment to questions that one could imagine being asked concerning operational matters. We might say we are not prepared to provide that information. Nobody can make us provide that information because there has to be in certain circumstances operational security maintained. You do not hear questions asked concerning current operations in the federal Parliament so far as the NCA is concerned, for just that sort of reason.
- Q:** I would go along with that. I suppose what is going on here is that Parliament under the Act is delegated with a more specific questioning role than this Committee. The only rider I put on that is that it absolutely must be without prejudice to the sort of questions that arose, for example, in the Bayeh matter. There are instances in which I do not think it is appropriate to be ventilated in Parliament, but it is something that is difficult to plan for, and it is a case of looking at each matter as it comes up?

A: It is of course competent for the Parliament by resolution to refer matters to us, and that is fine with us, but I think we are agreed that if it became frequent, much less habitual, for questions about current operations to be asked, you could raffle the show.

Q: I do not have a problem with it.

- 6 -

**ALLEGED ILLEGAL
BUILDING WORK**

Questions on Notice

- Q: 6** Attention is drawn to the attached article which appeared in The Eastern Herald on 06 February 1992, entitled "ICAC built illegally on premises: council".

ICAC built illegally on premises: council

COUNCILS (6)
By STEPHEN LONG

The Independent Commission Against Corruption (ICAC) has done illegal building works at its premises without applying for permission, according to South Sydney Council.

Since taking up lodgings at 187 Cleveland Street, Redfern, in 1988, the ICAC has converted a loading bay, without permission, into a media room against the council's wishes and without submitting a development application, council staff say.

The council says the ICAC also failed to ensure there was a five-year lease for car parking space on a vacant lot nearby — a major condition in the development approval for its building.

"Technically, they should not have begun operations at all," a council source told The Eastern Herald.

On February 23, 1989, the Public Works Department wrote to South Sydney Council on the ICAC's behalf, saying the ICAC had no use for a loading bay and wanted to build a media room and toilets instead.

It was told by the council that the loading bay was considered an "integral and vital part" of the premises and that removing it would undermine the amenity of the area and was against the public interest.

Despite this, the renovations went ahead and according to the council, neither the ICAC nor any other State Government authority submitted a development application for the work.

An ICAC spokeswoman said: "It's certainly an unfortunate situation. But it is one where the ICAC has had little or no control because other bodies have been doing work on our behalf."

She said the ICAC had "quickly moved to remedy" things when it discovered the problems with the work carried out on its behalf by the Public Works Department and was about to put a detailed proposal to the council.

She said the former owner of the building had been required to provide proof of a five-year lease over the vacant land, but the council had granted development consent without it.

Now, the ICAC may face further problems over car parking.

The ICAC is required to provide 32 car parking spaces for its building — 18 in the basement and 14 at 187 Cleveland Street, which was previ-

ously owned by the Roads and Traffic Authority.

But the new owner of 187 Cleveland Street, Mars Homes, has applied to erect a commercial-residential building there. If its application is approved, the ICAC will be

forced to find a new car park — or convince the council to waive the requirement for the 14 spaces.

"Obviously, negotiations [between the council and the ICAC] are going to run hot and fast if the application is approved," a council source said.

Q: 6.1 Did building work take place on the ICAC premises without development and/or building approval from South Sydney Council?

A: The article which appeared in the Eastern Herald on 6 February 1992 stated that the ICAC converted a loading bay, without permission, into a media room against the council's wishes.

The Office Accommodation Bureau arranged to lease the premises at 191 Cleveland Street, Redfern in 1989 to accommodate the Commission. The Crown entered into a lease with Othila Pty Limited for a 5 year term commencing 15 February 1989 with renewal options of 2 by 5 year terms.

A project committee was formed to manage renovations to the building for the Commission's purposes. This committee was convened by the Office Accommodation Bureau with members from the Department of Public Works, the Commission and private consultants appointed by Public Works. All building works during the relevant period were controlled by this committee.

By letter dated 21 February 1989 the project committee forwarded a sketch of the ground floor plan and sought Council's consent to incorporate a media room and lavatories as shown on the preliminary sketch. The letter also stated that the proposed Government Department had no use for a loading dock and undertook to reinstate the loading dock on terminating the lease, should Council require. A further letter dated 16 March 1989 was forwarded to advise intention to begin construction shortly.

Council's reply dated 19 April 1989 was received in May 1989. It advised that a loading dock was considered to be an integral and vital component of any office development and accordingly it was considered that it would be inappropriate to permit the deletion of this loading dock.

The project committee, working to strict deadlines, formed the opinion that Council's decision could lawfully be overridden and the building works went ahead.

Q: 6.2 If so, what action is the ICAC taking to remedy this situation?

A: Problems with the building's development application were first noticed by the Commission in May 1991. Immediately ICAC took steps to solve the problems. Negotiations are continuing with all parties including South Sydney Council. The Commission has engaged the Property Services Group and the Crown Solicitor's Office to assist with the negotiations.

Q: 6.3 Has the Commission failed to ensure there was a five-year lease for car parking space at 187 Cleveland Street?

A: It was not the Commission's responsibility to ensure there was a five-year lease for car parking at 187 Cleveland Street . This was the responsibility of Othila Pty Ltd, the developers and owners of the building until it was sold to the current owners Urban Industry Company Limited in July 1989.

Othila Pty Limited submitted a development application for the building in November 1988 which was approved by South Sydney Council subject to numerous conditions, including:

'That the use and development shall not commence until the applicant has submitted, to the satisfaction of the city solicitor, a formal lease agreement for a minimum of five years indicating that a minimum of fourteen (14) car parking spaces shall be reserved and continually reserved at the adjoining premises No 187 Cleveland Street.'

Apparently that did not happen. The fault does not lie within the Commission.

Q: 6.4 Should a development application for 187 Cleveland Street be approved, what action does the Commission propose taking to ensure the requisite number of car parking spaces is maintained?

A: The requirement for the provision of parking was originally set as a development condition for the previous owners of 191 Cleveland Street. The Commission is only a tenant of the building. While primary responsibility for parking rests with the owner, a tenant is affected because consent conditions also pertain to the use of the premises. The Commission and representatives of the owner are attempting to find alternative solutions to the parking problem. The Property Services Group have already discussed a number of options with Council.

Questions Without Notice

MR GAUDRY:

Q: One major area of concern, though it may not be of concern, is that the Commission we have set up is the tenant of another organization. I wonder whether that is the best way to go and whether the Commissioner has any comments, and whether in the terms of the lease you have exclusive right to that building and total security?

A: We did a security check on the landlord before we moved in, and I think it is true that we did one on the new landlord following sale of the building. For what it is worth, we would say it would make sense for the building to be bought. That is a proposition we put to the Government at an early stage, but I do not criticize the decision not to buy it because you have to take account of matters other than our desires, and I cannot say that it was critically important.

There have been no difficulties with the lease so far as I am aware, and certainly the landlord does not give us difficulties. He would not want to try, because we have 24-hour armed security on those premises, and if the landlord popped up to have an unheralded inspection of the premises, he would be politely told where to go. There are no difficulties that I am aware of, and I am sure I would be aware if there were any practical difficulties.

MR TINK:

Q: You are thinking that your peaceful and quiet enjoyment of clause is important?

A: Yes, I suppose you could say that. The owners are now a Japanese consortium: I am a bit vague. They work through agents in this country and we have proper professional arrangements with those agents. There is no present concern and no reason for apprehension. It is all all right.

MR GAY:

Q: Your concern that you just alluded to, is about purchase, given the amount of money, which is not inconsiderable. Looking at the renovations that were made to bring that particular building into a state that suited your operation, do you think it is a good idea to purchase it? If it is not going to be purchased, what is the length of the lease you have there to protect the investment that the ICAC and the government have made in that building?

A: We thought that it was at least a good idea to consider seriously the purchase, and that is why we made the suggestion that we did, but I do not want to be understood as complaining about the decision, which was a decision of the

Government. I cannot say it was an irresponsible decision. Fifteen years is a long time to amortize even the considerable capital cost of fitting it out.

MS BURNSWOODS:

Q: Would there be a problem if the staff were to grow?

A: Yes. If we grew significantly then we would have to outpost some people, which is never highly desirable. There is no present intention of growing. We have from time to time had a task force there. There is a bit of room to grow in the building.

MR TINK:

Q: To get some idea of the staffing complement, is it implicit that the team now with perhaps peripheral exceptions and growth is essentially in place for the central role set out for it under the Act, and it is now essentially a static staff complement? And it follows from that, that it determines what sort of matters are rejected?

A: We have about the size and the capacity, or speaking more crudely the hitting power, that we are likely to have. I do not expect growth and I do not expect growth in competence. You can always hope for a bit more of the latter but I do not think there will be much. I do not particularly like the word 'static', because I hope the organization, although it will not grow in size, will continue to be dynamic, because people come in and people go out, and I expect that with the passage of time there will be some shift between functions which may be peripheral in terms of number but will not be insignificant so far as the feel of the organization is concerned. I think we have about the size and about the capacity that we are likely to have.

Q: It is relatively static in terms of the positions, as distinct from the people who fill them?

A: Yes, that is correct, although we can play around with that at the margins as well. You cannot ever say 'We have it right now — full stop'. There is always some change between functions. You could not expect much more product or output from the Commission than you are getting now.

Q: That seems to be pretty much the way you expected it in the early days when the idea was put across that there is an ideal size beyond which your office itself tends to overwhelm the efficiency?

A: That is true enough. It is certainly my assertion that we are giving very good value for money. I do not want to get into comparisons, but some may occur to you. It certainly is my assertion. On the other hand, no one suggests it is cheap. An increase in size of 50 per cent would take us up towards being a \$20 million

per year institution, and that is a lot of money at State level, even for the biggest and most prosperous State in the country.

***SELECTION OF ASSISTANT COMMISSIONERS
AND COUNSEL ASSISTING***

Questions on Notice

Q: 7.1 Please outline the procedure adopted by the Commission in selecting and appointing Assistant Commissioners and Counsel Assisting for particular inquiries.

Q: 7.2 What criteria are important in this procedure?

A: To date the Assistant Commissioners for particular investigations as suggested to Government by the Commission have been retired judges, or senior counsel with sufficient seniority at the Bar, with relevant experience for the subject matter, complexity and difficulty of the particular investigation, regard being had to availability given the timing of particular investigations. Previous experience in commissions of inquiry, or presiding in some other jurisdiction are matters which are taken into account, although not regarded as essential qualifications. A capacity to preside over and direct a hearing and report writing ability are necessary, as is the ability to devote time to complete the matter in a timely way.

At the end of 1991 the Commissioner wrote to the President of the New South Wales Bar Association asking him to enquire amongst senior counsel for expressions of interest in appointment as an Assistant Commissioner to the Commission for short-term investigations. The Commission received about 40 responses in late 1991 and early 1992. That pool will assist in the selection of Assistant Commissioners as future needs arise.

The Commission has two in-house General Counsel, one a Crown Prosecutor on short term secondment by an arrangement with the Director of Public Prosecutions office. The Commission recently advertised to fill the position of the other General Counsel in view of the imminent departure of the occupant of that position. The Commission's in-house General Counsel act as counsel assisting in some enquiries and the Commission chooses outside counsel for other investigations, on the basis of experience in a particular jurisdiction or field relevant to the subject matter of the investigation, the characteristics of particular counsel relevant to the difficulty and complexity of particular investigations, and the availability of suitable counsel.

Questions Without Notice

CHAIRMAN:

Q: As there are no further questions arising on that, we shall move on to Question 7, Selection of Assistant Commissioners and Counsel Assisting.

MS BURNSWOODS:

Q: You mention writing to the New South Wales Bar Association. Have we had people from outside New South Wales conducting inquiries? I am thinking that experience in another State may be more relevant in some situations?

A: We have had no Assistant Commissioners from outside New South Wales, although I have from time to time considered that possibility in the context of particular matters. We have had one counsel assisting from outside the State, for reasons that appeared to be cogent at the time, and again it is a possibility that we should not rule out entirely.

MR GAUDRY:

Q: On the same level, is there any position in your organization that could be done on exchange with some of your oversea counterparts?

A: That is certainly something we could do. We have had people down here from Hong Kong. We have had people up in Hong Kong. We have never had an exchange, but as it happens there is some thought about that at the moment, probably for a very short term. It is something that might well happen. Exchanges, in my experience, work variably well. You have to make sure that the people you are selecting are volunteers, because it is not easy to go and live in Hongkong for six months. It is not an easy thing to do: you have to pick very carefully.

Q: Implicit in this answer is the idea that there is a general disposition towards hiring people for particular jobs, as opposed to taking more people on board in permanent positions. I appreciate that in putting that it is not necessarily your decision: it may be a decision of the Attorney General or the Premier as to whether they want any more permanent appointments. Is it fair to say that there is a preference on your part for bringing people on board for particular jobs? Is that the preferred way to go?

A: I would need to answer that by distinguishing between counsel assisting and assistant commissioners.

Q: Can I take out of the question the reference to counsel assisting and insert assistant commissioners?

A: Just a word about counsel assisting. I have quite a strong predilection for bringing them in mostly from outside. They bring in a new viewpoint which is useful. They have particular skills.. I think we would suffer grievously if we had not a couple of general counsel to do some of the counsel assisting work, but half a dozen of them doing all of it would be a very false economy, and we would get poor results from it. I would much rather hire people in and pay market rates and get their freshness of vision and their special skills. I am very strong about that.

As far as the Commissioners are concerned, I am not aware that the Government has any particular attitude on this question. I think if there was one I would be likely to know of it. I have no particular predilection in favour of hiring in Assistant Commissioners rather than having somebody on board for a longer period. It is no easy thing to find people who are prepared to give up lucrative work at the bar for a year or two, to come on board for a period of that sort, but if I could find somebody who I thought was suitable and would fit in well and was interested, I would not hesitate. I have no predilection in that direction. It is really a question of the practicalities of recruitment.

MS BURNSWOODS:

Q: It may be impossible, but in terms of the people you pick, retired judges or senior counsel, have you ever given any thought to whether it is possible to pick more junior people on the ground that it might provide a more diverse background?

A: I have thought about that. You will understand that most of these things are serious questions and are discussed at senior management level. The Act requires that Assistant Commissioners be lawyers of some experience, and for obvious reasons they have to be lawyers of very considerable standing. They have to satisfy integrity tests and you need competence and all the rest of it. There are a whole list of requirements. I do not say that you can find that only in the ranks of senior counsel, and I have thought from time to time about bringing on board an experienced solicitor with skills in a particular area which has to be investigated. The practical difficulty there is to find somebody who has the standing and experience to preside over a hearing and put a stamp of authority upon it. There can be some difficulties in that direction, I think.

Q: Most investigations will be conducted by late middle aged anglo-celtic men?

A: We have not made it exclusively male, and I am not sure about anglo-celtic. I cannot say that I have asked them about that. I am allowing what you say as a proposition, that those people are the dominant group in the legal profession and particularly at the Bar. That is true enough. It is changing, and thank goodness it is changing. When you look at the people who are coming out of the universities year by year, you can see that the profession is changing, and it would change more for the better if a high proportion of them did not have the conviction that the only respectable sort of law to practise is commercial law in

the big firms in Sydney. Perhaps that will change one day. I understand what you say about the profession and I do not quarrel with it. We have to face present realities rather than go off on some ideological surge of our own. The present realities are that the pool out of which one can pick people in whom one can have a good degree of confidence, while not limited to the Bar, tends to be concentrated there.

OPERATIONS REVIEW COMMITTEE

Questions on Notice

Q: 8.1 As discussed at the hearing on 07 February, there appears to be some degree of uncertainty in s59(1) of the ICAC Act. Would the Commission support the amendment of this section to clarify the role of the ORC?

A: The Commission is not of the view that s59(1) of the ICAC Act is in any way uncertain, and therefore considers an amendment of the section unnecessary. The opinion of Sully QC (as he then was) of 13 March 1989 is clear, and correct.

Q: 8.2 Michael Bersten raised concerns about what appeared to be a significant number of complaints that were not referred to the ORC in 1990/91. What is the explanation for the discrepancy between the number of complaints received and the number referred to the ORC?

A: In the 1990-1991 annual reporting year the Commission received 761 approaches from the public, of which 501 were classified as complaints, and provided 393 reports to the ORC about complaints which the Commission proposed to not investigate (Annual Report to 30 June 1991). Some reports to the ORC deal with more than one complaint.

There will always be matters which are receiving attention, or waiting to go to the ORC. The number of such matters, as will be obvious from the above, increased by 108 in the 1990-1991 period.

The Commission has recently been concentrating efforts on increasing the number of matters forwarded to the ORC. For example 54 reports recommending the non-investigation of complaints were provided to the ORC for consideration at its December meeting, 88 (dealing with 100 complaints) for the February meeting, and 102 reports (dealing with 107 complaints) for the March meeting.

Q: 8.3 Michael Bersten suggested that there should be no distinction between "complaints" and "information", that the word "complaint" should be construed widely. Should "complaint" be defined [widely] in s3 of the ICAC Act?

A: The definition of a complaint, and what constitutes a complaint, is dealt with in the Commission's guidelines for "Classification of Matters received by the Commission and the Determination of Jurisdiction", which are contained in Part 1 of the Commission's Investigation Manual, provided to the Committee during

the Committee's Inquiry into Matters raised by Paul Gibson MP. Section 10 of the ICAC Act refers to complaints "that concern or may concern corrupt conduct". A "complaint" is construed by the Commission to mean an allegation of corrupt conduct by or affecting a public official or public authority. The interpretation of "complaint" then requires resort to the definition of "corrupt conduct" in ss 7, 8 and 9 of the Act, which in turn requires resort to the definition of "public authority" or "public official" in s3 of the Act.

The decisions by Assessment Officers to characterise matters as complaints or otherwise are checked by senior officers in the Assessments Unit. If in doubt about whether a matter is a complaint, legal advice is obtained. All matters considered to be not within the Commission's statutory jurisdiction are checked by a lawyer. If doubt exists the policy is to take a broad view and, for more abundant caution, characterise a matter as a complaint, and report to the Operations Review Committee. The Commission sees no need for "complaint" to be defined in s3 of the ICAC Act, or any corresponding benefit from so doing. "Complaint" is in fact construed widely, within the parameters of the ICAC Act.

Q: 8.4 Professor Fisse suggested that there should be a "dotted-line" relationship between ICAC staff and the ORC, so that ICAC staff could take complaints about internal corruption/fraud etc. to the ORC. Does the Commission see merit in this proposal?

A: No. The proposal would place the ORC in the position properly occupied by the Commissioner and Commission senior management. There is a Commission policy in respect of complaints against Commission officers. This contemplates complaints of internal corruption, fraud and other misconduct. The complaints against staff policy was reported on in the Commission's 1989 Annual Report, at page 37, and in the 1990 Annual Report, in the Commission's Code of Conduct, at pages 163-164. If a complaint were made about the Commissioner it would be investigated by someone outside the Commission. That may turn out to be a member of the Operations Review Committee, but that would be an ad hoc situation. It is not appropriate that the ORC become the body responsible for considering complaints against the Commission or Commission staff.

Q: 8.5 A number of suggestions for reform of the ORC have been generated internally within the Committee during this inquiry. The Committee would appreciate the Commission's response to these proposals:

(a) A change of name from Operations Review Committee to Complaints Review Committee to more accurately reflect the role of the Committee.

A: The Commission considers a change of the Operations Review Committee's title to be inappropriate. The ORC has a wider brief than simply the review of the Commission's decisions about complaints, in that it considers quarterly reports

about investigations, and information about more significant s11 reports. Accordingly the suggested title of "Complaints Review Committee" would not be accurate.

- Q:** **(b) A package of reforms involving:**
- (i) the ICAC to provide reasons to complainants whose complaints are not investigated, and also advise them of their right to take a complaint to the ORC if they are dissatisfied with the ICAC's reasons for its decisions;**
 - (ii) the ORC to have its own secretariat, separate from the ICAC, to whom dissatisfied complainants can go;**
 - (iii) the ORC need only review those complaints where the complainant is dissatisfied with the ICAC's reasons for its decision;**
 - (iv) the ORC to be able to interview complainants and inspect ICAC files;**
 - (v) the ORC to report to the PJC when a problem arises, and annually in any case.**

A: To give reasons to complainants would change the Commission to a grievance resolution body, from a body with an investigative function given clear legislative power to decide what it will or will not investigate (ss10, 20). When this was discussed with the ORC the view was expressed that the ICAC was not established to be, and should not be, a grievance resolution body.

The Commission is preparing a brochure for complainants which will explain how information received from members of the public is used, for example, as the basis of an investigation, incorporated into a larger investigation, as the subject of corruption prevention work, or to provide a focus for education work.

There are some bases on which the Commission can decide to not investigate a complaint, being that the complaint is trivial, too old, frivolous, vexatious or not made in good faith, which if given to complainants would cause them dissatisfaction and would likely lead to some degree of protest and correspondence. Depending on extent, that could adversely affect the Commission's efficiency in dealing with complaints of substance or require an increase in resources.

Complainants will often not accept reasons for why their complaint is not worthy of investigation. The Commission has had complaints made about the reasons given by other agencies for not investigating their original complaint.

The Operations Review Committee, not the complainant, is better able to objectively consider whether the Commission's reasons for not investigating a complaint are proper and principled. They do that in the interests of the public of the state as a whole, not individual complainants. They have a broader perspective than individual complainants and are better able to make the required judgement.

If the ORC is satisfied that the Commission has properly examined complaints and enquiries have not revealed evidence of corrupt conduct, there should be no need for the Commission or the ORC to expend further resources trying to so satisfy individual complainants. This view is shared by the ORC.

The ORC are able to inspect files at the Commission premises at any time and have been told so. From the first meeting of the ORC the files relative to the complaints being considered by the ORC at each meeting were physically available in the meeting room so that resort could be had to them at any time if required. This occurred very rarely. Recently the procedure changed so that the files are not physically located in the meeting room but are available on request from any member of the Committee.

The ORC, or any member of the Committee, like any member of the public, could approach the Parliamentary Committee if concerned about some matter relating to the exercise by the Commission of its functions. Since this procedure is available it is unnecessary that the ORC be required to report to the PJC. The ORC would see some benefit in meeting with the Parliamentary Committee on an informal basis annually.

Each of the PJC and the ORC is an accountability mechanism. Each is most important. Their areas of responsibility differ. They should remain separate, not in a hierarchy.

Questions Without Notice

CHAIRMAN:

Q: We might move to the answers to questions on notice re the Operations Review Committee, and also the Assistant Deputy/Commissioners. It occurred to me that you may wish to make a statement in relation to these matters, including the evidence that Mr Roden gave?

A: I do not think there is really any need. The position emerges with a fair degree of clarity from the answers we have provided, and I am happy to expand upon them.

MR HATTON:

Q: [Referring question 8.2,] that is a fairly high case load. You have 54 reports in December and 88 out of 100 in February, and so on. How much time does the ORC get to spend on those? How long do they get to look at these reports prior to the meetings, and how thoroughly can they go into it?

A: The ORC meets on the first Friday of each month. They used to meet at 2.30 p.m. and the meetings used to last for up to a couple of hours. I will be suggesting to the newly constituted committee that we meet at 2.15 p.m. because I think the meetings are likely to be of greater duration than previously and I do not want anybody to feel rushed. The meeting papers are delivered to members on the preceding Friday, so they have a week to read the papers. I have not heard complaints that that is inadequate, but I think anything less would be inadequate.

MR GAY:

Q: The meeting notices with the reports of cases — how comprehensive are they? Do you have concerns about cases being outside your office for that period of time?

A: The documentation is quite extensive, and I suppose there could be some degree of embarrassment if they fell into the wrong hands. We are dealing with mature and responsible people and there have not been difficulties, I would think it a great imposition to say to these people that if they want to read the papers in advance they have to come in and read them. You could not get quality people to do that. There have been occasions when for security reasons I have not included in the papers for the meeting certain reports which have been simply tabled at the meeting. On one or two occasions I have not prepared a piece of paper: I have just told them about something. It seems to work all right.

MR HATTON:

Q: I would like to go back to the first page, item 8.2, about Michael Bersten saying that a number of complaints were not referred to the ORC. It seems to me that the words are chosen very carefully. In the second paragraph, 'In 1991 the annual report... received 761 approaches of which 501 were classified as complaints', and then we go into what is a complaint and what is not a complaint. I think one of the key points we came down to was that if a person who is a complainer, however you define it, is not satisfied with the way the Commission handles the matter, then obviously that ought to be their opportunity to take it up and tell you that they are not happy, with automatic referral and let the ORC sort out what they want and what they do not want. What is your comment on that?

A: There are two questions involved there. So far as figures are concerned, Bersten is wrong in saying that there is anything alarming about the gap between the numbers of complaints received in a given year and the number of complaints that go to the ORC for writing off in that year, because the latter are not a subset of the former. They rather represent older matters which have reached the point where they can be taken to the ORC. The difference between the two sets of numbers represents backlog which we are presently tackling.

So the Bersten proposition that there is something alarming about the figures is not sensible, assuming we are dealing with people who are numerate.

Q: Is not the Commission open to criticism if in fact there is not some sort of random sampling technique or some way in which the ORC automatically gets a look at things? How can we overcome that particular thing? Is there an automatic sampling technique by which the Operations Review Committee chairman can take a random sample from time to time?

A: On current matters?

Q: I do not know how far you can go back. It seems to me that there would have been many hundreds, according to this, accumulated over a period of time. Certainly I would hope that from here on it would be current matters?

A: I do not quite understand what is being suggested. We take matters to the Operations Review Committee when they are at the point when they can be written off. We are undertaking a major campaign to reduce the backlog, and that is being successful. You cannot do much better than 102 reports dealing with 107 complaints at a particular meeting, which is far greater than the rate at which they are received. We are knocking out the backlog. All else that needs to be done is to ensure that matters cannot simply fall through the floorboards by not receiving attention in one way or the other, and we have in hand arrangements to ensure that after a given period complaints will be taken to the ORC even if they are not complete, that being a fail-safe mechanism.

Q: Are you saying that in one way or another, because matters are referred to the ORC automatically, if they are not proceeded with, that the ORC has had an opportunity to see all matters?

A: The ORC will see every complaint but not every matter, because there is no point in taking to the ORC matters, because that would include stuff that is beyond jurisdiction. The complaint that relates exclusively to the Department of Social Security is none of our business. The papers explain how decisions in that respect are made and in marginal cases legal advice is obtained as to whether the matter is within or outside our jurisdiction.

Q: You are the one who makes the decision as to whether a matter is a complaint or just an inquiry or something else?

A: Yes. It is not made in a whimsical or subjective fashion; it is made according to criteria.

Q: I am not suggesting it is, but what I am saying is that if in fact the Commission itself determines what is a complaint and what is not a complaint, and therefore is a sieve, and I do not use that metaphor in any way to reflect on the Commission, and if according to Professor Fisse's problem staff cannot take matters direct to the ORC if they are unhappy, you have a situation where the ORC get, through whatever proper evaluating mechanism, things referred to them by the Commission, but the staff cannot go to the ORC. It looks to me as though there ought to be a structure whereby the ORC can receive complaints from staff and can on a random sample technique satisfy themselves that everything is right and proper in their view?

A: In the classification of matters into complaints and non-complaints?

Q: First they could look at the protocol as to how you classify complaints. Do they know of the protocol as to how you classify complaints?

A: They know of the protocol, it has been tabled before them.

Q: And they do a random check against that protocol?

A: They do not do a random check against that protocol, but if they wanted to I would not stand in their way. I think it would be a wasted effort, because these are really legal questions. Is this or is it not a complaint, according to a legal test, which has been published. But I do not mind if they want to do a random test. Some of these things are pretty close to ludicrous.

Q: I have no doubt that some of them are. I am looking at mechanisms of

accountability, how they may or may not operate. Would you like to comment on the second part of the question, which is: Why should not an ICAC staff be given whistle-blower status, given confidentiality and so on, if you want to put that proviso in there, as would any other organization? As you know, I have a special interest in that area, and I cannot see any reason why a person within the Commission, and I am referring to item 8.4 on page 2, could not have that status?

A: I have a special interest in that area also, not perhaps less than your own. We have no difficulty with our staff, where it is justified, blowing the whistle. If staff wanted to come here, we would not stand in the way of him or her; but you have to have an understanding of the function of the Operations Review Committee. The ORC is there for a defined statutory purpose. It is not there as a staff grievance resolution body. I do not know how they are an appropriate recipient of information from somebody who wants to blow a whistle.

Q: What I thought was interesting is that you could easily put that aside and say that they are not a staff grievance body, and that I accept, but a complaint from within the Commission would have a very real effect on how the Commission operates, and therefore is vital to the Operations Review Committee as to how the Commission functions and whether corruption has crept into the Commission or malpractice or something of that nature. There has to be some sort of safety-valve there. This dotted-line relationship suggested by Professor Fisse appealed to me for that reason?

A: I think it is a dotted-line in the wrong direction. There are dotted lines at present in place. If any staff member felt that there was criminality within the Commission, it is his or her duty to take it to the police, and nobody would ever wish to stand in the way of that. As I said before, they could come here. I do not think the Operations Review Committee is the right group to receive those complaints. One other point, coming back to complaints under our Act, it should perhaps be said that the material which the ORC receives is a report from the particular action officer who has the carriage of the matter, and on the handful of occasions when there is some difference that cannot be resolved between that action officer and some checking officer, if there are differing views, they are both taken to the ORC.

Q: Let me give you an example of something that happened, without referring to a particular matter, and I am prepared to talk about this afterwards. It has been the subject of correspondence between myself and the Commission. For example, say there is an inquiry into a particular allegation of corruption within a government structure. It is felt very strongly that all of the evidence did not get to the Commissioner at the time. In those cases you might go to the Commissioner and make that point.

On the other hand if you did not get anywhere you might, if you felt strongly enough about it, complain to the Parliamentary Committee or you might complain

to the Operations Review Committee. That would, I think, be a fair thing for a staff member to do. Everything is not the way it ought to be, in their view, on a particular inquiry. They are not in charge necessarily of the carriage of the matter, and they might have approached the person who is in charge of the carriage of the matter, and it may not get into a report, and therefore the Operations Review Committee does not know about it?

A: I think that perhaps a couple of notions are mixed up here. So far as the complainant is concerned, after a decision not to investigate has been made, they would come forward with further information and the matter will automatically be given further consideration. That is already written down, and it happens. So far as staff members are concerned, I know the case you are talking about. There were no differing internal views.

Q: They felt that all the information had been put forward?

A: Our staff felt that all the information had not been put forward?

Q: I am asking you whether. You say there were no differing views. Can you clarify that, rather than me ask the question?

A: Then it is not the instance I thought you were talking about. There has been no lack of unanimity within the Commission. There has not been a difficult matter internally. There are people outside who are unhappy, and if they have more information, let them bring it forward.

Q: And if a person inside was not happy, do you feel that the fact that they can go to the Commissioner is a satisfactory line without their having the opportunity to go to the ORC as well as the Commissioner.?

A: I think that access to me, and failing that access to either or both of the police — if it said to be a matter of criminality — or to this Committee if it is matter of illegality, suffices.

Q: For the record, I do not agree with that?

A: Then it would involve some re-casting of the role of the Operations Review Committee. I am not saying it is a ludicrous suggestion. It does not fit with their present function.

MS BURNSWOODS:

Q: Have you had this section of the questions discussed with the ORC?

A: Yes. They saw these answers in draft form, and if there have been any changes made since then they are insubstantial. This reflects their views.

- Q:** Did you say that there is a new committee?
- A:** The Committee has just been re-constituted. The old Committee went out of office on 28th March and the new Committee meets for the first time this coming Friday.
- Q:** What degree of change has there been between the two?
- A:** Two of the five appointed members are being changed.
- Q:** The old Committee had a chance to discuss this?
- A:** The old committee had a chance to discuss this. The material was tabled, there was an opportunity for discussion, after some discussion there was no dissent expressed, and I asked Committee members to go away and give me their more mature views. Two members of the Committee made subsequent contact to say that they agreed entirely. In particular, as it has been raised, I would say that there was a strong view of those two and generally, that to require the ORC to report to the PJC would be inappropriate.
- Q:** I note what has been said about not wanting a hierarchy. There are still a variety of ways in which the ORC could meet with us. I wondered what an informal basis annually really means?
- A:** I can only speak for them as I understand their position. I do not have any particular position on this. Those who were here when the ORC came here will recollect that several of them felt that the very formal structure which then prevailed was not desirable or conducive to the best despatch of business. They felt it was better to meet — perhaps I am guessing but one way of doing it would be one year here and one year at the Commission premises, where you know you are all welcome, and sit around to discuss matters, rather than have a hearing at which there is only an opportunity for questions and answers.
- Q:** So ‘informally’ in that context does not mean that you could have a coffee; it means that you do not have an agenda of matters?
- A:** There is no reason you could not have an agenda. I think their feeling is that questions and answers are appropriate here for me, but not perhaps appropriate and not necessarily conducive to the best outcomes, so far as they are concerned. A discussion on a somewhat less structured basis is more likely to be useful.
- Q:** I would agree with that, where an informal basis would cover that type of meeting.

MR GAUDRY:

Q: Given the amount of interest shown in the ORC by this Committee, would there not be room for a combination of both of those things? There are certain aspects of the operation that are of concern to the Committee, which could be pursued by way of a general discussion, but perhaps there are other matters that might be better discussed in the style of question and answer as we are doing now, particularly with their on-going function and role?

A: The Committee can only put a view to a Parliamentary Committee. As with all of us the views of the Parliamentary Committee must ultimately prevail. As to how you hold your meetings, if you want to summons anyone to a hearing you will do so.

Q: Reverting to the turnover, what has been the change in the ORC in its years of operation?

A: It has been highly stable. Members have belonged for either two-year or three-year terms. My view is that three years is long enough. Those who have served for three years have certainly agreed with that. The two who have just resigned have done three years. There will be two more next year who will have done three years, and I imagine then there will be a turnover as far as they are concerned.

Q: Who went out after two years?

A: The Premier appoints four, of whom two went out after two years. Two went out after three years, and I expect a further turnover the next time around. The Attorney General appoints one: that was originally Bill Robinson, and it is now Laurie Glanfield. The Police Commissioner is *ex officio*, and that means there has been a change there, and the other two from the Commission have remained stable. So it has been a highly stable Committee, and a very good functioning Committee, a very useful mechanism.

Q: Do you see that need for turnover because of the heavy workload? I might suggest, in my view of the ORC and our questions and answers, I found them highly involved in the culture, if I might put it that way, of the ICAC. Do you see that perhaps over that time it has been difficult?

A: That is another reason why there should be a change, a turnover. If I were there for ten years and so were they, we would all become excessively comfortable with each other. It needs somebody to come in and ask some awkward questions occasionally.

MS BURNSWOODS:

Q: Do we have a list showing the change of members?

A: It is in the annual report, but if you would like us to write and give you the details, we shall be happy to do so.

MR NAGLE:

Q: I think there have been two changes since the annual report?

A: The two retiring members are Mr Davenport and Sister McGovern. On the basis that it is through Executive Council, I think I can properly announce that the new members are to be the Rev. Bruce Ballantine-Jones and Carmel Niland.

CHAIRMAN:

Q: That brings the report up to date in terms of personnel.

MR TINK:

Q: Going to the answer to question 8.1, concerning the Operations Review Committee, all I am doing here is maintaining an ambit claim. It troubles me a little that the opinion of a QC was sought in relation to the definition of that section, and that it is proposed that the section remain as it stands, unamended. If we assume for purposes of the argument — and I think I am right in this recollection — that the essence of section 59 as interpreted by Mr Sully was that the ORC was concerned essentially with the questions of discontinuance of complaints rather than with the threshold question of whether they should be investigated in the first place. It seems to me that if his advice was sought to clarify whatever misapprehension there might have been there, that is something that ought to be spelled out in the Act, inasmuch as it is a statement of the ambit of jurisdiction of a key oversight body?

A: If that was the general view of this Parliamentary Committee, I suppose the Act should be amended. We sought advice — not as I recollect because of serious doubts as to the position, because Sully's advice came as no surprise to us — but because we had to be absolutely certain that the critical question regarding the commencement of an investigation did not go off the rails at the very first point. If we got it wrong we did not have an investigation when we thought we had one, and then you have a disaster on your hands. I do not recollect any serious doubt about that: it was rather obtaining it out of more abundant caution. But of course if there is still a thought that section 59 (1) when construed in the context of the Act is unclear, it should be clarified. We do not think it is.

MR TURNER:

Q: I notice that Mr Sully's opinion is dated March 1989. That would be, would it not, before ICAC commenced?

A: We started on the 13th.

Q: It is dated the 13th?

A: I did not even know that.

Q: It would appear that there was some degree of ambiguity in the Commission's mind as to the effect of section 59 (1), to seek an opinion. Following that, you received the opinion, and it appears that the ORC may not have been made aware of that ambiguity, in view of the fact that on 11th February of this year you wrote a letter to the Chairman saying that you would be providing a copy of Mr Sully's opinion to the ORC and discussing the matter with them.

I am concerned that perhaps it might be seen that as a matter of convenience an opinion was sought, to avoid the necessity to go to the ORC to institute an investigation following a complaint?

A: Well. I do not suppose it is for me to be insulted on behalf of somebody else, but what you just said as I heard it was very insulting to Mr Sully. The suggestion seems to be not just that we would stoop so low as to obtain a convenient opinion, but that he would sign one.

Q: That certainly was not the intent of the question. The intent of the question was, first, Why was the ORC, it would appear on the face of the documents, not informed that there was an ambiguity in their role to be able to institute an investigation, and second, Why was not the opinion made available to them at the earliest opportunity rather than at some time after 11th February 1992, nearly three years later?

A: I do not know that it was not made available at the time. I have not had cause to think about that. When I appeared here on that occasion I did not remember the opinion. We went back, and there it was, and being reminded of it, it came to mind. I cannot tell you whether it was provided to the ORC at the time or not, I just do not know. And you keep saying that there was an ambiguity. I can only keep saying that there is not. But if, because you are the lawmakers, you keep thinking there is an ambiguity, then yes, it should be done away with. I do not think there is.

Q: In your earlier reply to Mr Mutch you said that the ORC have to authorize an investigation following a complaint?

A: I did not think I said precisely that.

Q: What do you do?

A: We have to obtain their views before an investigation is not pursued, and we do advise them of investigations that have been commenced, as soon as they are commenced, but we do not obtain their views before the commencement of an investigation.

Q: In view of that comment, that you advise them as soon as practical afterwards, Mr Roden said to us in a hearing that the decision made to investigate would not go before the ORC until there was a decision to discontinue the investigation?

A: That is entirely wrong. We advise the ORC of investigations as they are commenced, then periodically according to standard arrangements at least three-monthly thereafter, and give a progress report. It certainly is not accurate to say that they are not told about it until it is ready to be written off.

MR MUTCH:

Q: What about matters that have come in to you, and you look at them and say 'Yes, it is a complaint'? In answer to one of my questions you said that there are a number of matters that had not been referred to the Operations Review Committee from Mr Sturgess. I think you also said at the end that there were some matters that were still on foot, or still around. They would not have been referred to the Operations Review Committee either, because they have not commenced. What worries me is that there could be a suggestion that there are matters sitting there in limbo that have not commenced investigations, and yet the Operations Review Committee has not heard of them?

A: We can act on four bases. One is a complaint, and those matters have to go to the ORC at some stage, and they all will. Next there are reports under section 11, next there are references by the Parliament, and next there are our own-motion investigations. That is to say, we can act as to a complaint, a report, or a reference, or on the basis of things we are told. The 67 matters are in that category — things we are told which could form the basis of an own-motion investigation if we think it is appropriate for that to happen.

Q: What I was concerned about was that there could be a lot of matters that are sitting there, classified as complaints, but you have not started investigating at this stage, and they have not been looked at?

A: There is nothing that is properly categorized as a complaint that has not been looked at, unless it was received yesterday. Every complaint is looked at immediately.

Q: It is put in a file presumably, and the Operations Review Committee would not look at it either?

A: They will all go there.

Q: Eventually?

A: They will go there, and the arrangements in place are that nothing can just simply sit there for years and years unattended. They will all go there.

Q: Even if it is just as a matter of noting the name of the case, without getting advice from them as to whether or not to proceed?

A: With respect to matters of a given age, whatever we might decide that age is, they will receive progress reports, so that matters cannot be sitting in the corner receiving no attention. That would be dangerous, because if from the inside you did not want something to proceed, there are two ways you could try to stop it proceeding. One would be to write a dishonest report to the ORC, which is a bit chancy; and the other way would be to disappear the matter. The arrangements are that everything must be reported on after a given period, so it cannot just disappear.

Q: None of those matters I referred to earlier had been before the committee?

A: They are not complaints: they are pieces of information which could justify own-motion investigation if we thought that was justified, but they are not complaints.

MR GAY:

Q: Commissioner, I think it is obvious from our questions that there seems to be, across the board, a concern which is one of perception that concerns accountability for the ICAC, which as you say has not at this moment anything big, but it is putting in place a feeling of corruption, and that is why a previous question on building permits has some importance. There is a perception that this body not only has to do the right thing but it has also to be seen to do the right thing. That is where a lot of our concern lies within the operation of the Operations Review Committee. We have concerns that it must not only not do the wrong thing but it has to be seen by the public to do the right thing.

It would be unusually corrupt for a group of parliamentarians who objected to the concept that this ultimate role should lie with us, but it should be outside our area and there should be a review and the Commission should look at it. That is why we had our suggested changes, and that is why this whole matter has been brought up. It is a genuine concern that that should be the way it operates?

A: Thank you for that. I understand that, and the questions, if I might say so, are properly and understandably raised. I cannot say that I have at any stage been presented with a proposal for change that seems to meet current actual problems. The other point I would make is that we ought to emphasize the positive. The positive is that the ICAC has an Operations Review Committee. That is to say, there is a group of people who are there to ensure that complaints from the public which should be pursued, are pursued. When you think about it, there is no such body so far as any broadly similar organization is concerned. So, emphasizing the positive, is it not a wonderful thing that is there and that it works. There is not such a thing as far as the police are concerned. Constant allegations are made that things that should have been pursued are not pursued. There is no such body as far as the Ombudsman is concerned. There is no such body so far as the NCA or like bodies are concerned. We are the only one that has such a review body. I am never one to say that any existing arrangement is incapable of improvement, but we ought to emphasize the positive. It is a wonderful thing it is there, and it is a pity there are not some like bodies in other places.

Second, with respect, we have to be very careful to define precisely what is thought to be a present problem, then make sure that it is a present problem, and then make sure that the solution is one that will work. We should not be casting around looking for some bold re-definition of the role of the ORC without some very careful thought. They are not a board of directors for the Commission, and cannot be, for they are part-time, meeting monthly. They are well aware of how the Commission works with particular reference to them, and are content with present arrangements. That does not mean that they are necessarily right, but their view that the thing works should not be lightly ignored.

Q: You said there were no suggestions. My only comment to that is to draw back to your attention questions 8.5(a) and 8.5(b). There are a number of suggestions there for a package of requirements?

A: There are.

CHAIRMAN:

Q: I take you to 8.5(b)(i). The answer to that question seems to reject the idea, giving reasons to complainants on some grounds of efficiency. Am I right in saying that that is the substance of it?

A: That is right. It has to be stressed that when people come back to us with more information the file is re-opened. I have on occasions taken complaints to the ORC when people are dissatisfied. We do not want to be placed under the obligation of having to persuade complainants that our decision not to proceed is a correct decision. With a whole lot of them you will never persuade them, and the resources that would be involved in doing that would be very considerable indeed.

Q: The purport of my question was going to be that the Criminal Justice Commission in Queensland gives reasons to complainants, and it appears to work, and it may be that giving reasons would lead to greater accountability and sensitivity to the public?

A: The accountability mechanism is the Operations Review Committee. That is a group which is representative of the community. We provide our reasons to them, and they have to be satisfied. If they are not satisfied the first time around they will send the matter back to us, and it would be a bold Commissioner who rejected their considered advice that the matter should be investigated. We have to provide reasons sufficient to persuade them. We can persuade them, because they have a broad view of the matter. It is an awfully difficult matter to persuade particular complainants, because they know what the answer is.

MR TURNER:

Q: I do not want to be seen to be attacking the manner in which you actually run ICAC in the day-to-day operations, which appear to be a reasonable practice. I am concerned that the letter of the law has been looked at. I understand that at the first meeting of the ORC a minute was taken that a procedure would be adopted for them in relation to authorizing investigation of complaints or to a lesser extent authorizing the dismissal of complaints or investigations. With Mr Sully's opinion, which is very clear and concise, and your views set out in your answer, why was it necessary to minute a procedure?

A: I do not remember whether it was at the first meeting, but at an early stage I suggested to the Committee that they should do a little more than simply advise concerning complaints, and a little more in essence is to consider periodically reports concerning current investigations, with which proposition they agreed. Second, whenever it was and it was doubtless early on, we had to work out the mechanics of the functioning of the Committee, and accordingly there was early on a minute which proposed when meetings would be held and questions like minutes and when the papers would be distributed, and all sorts of matters of that sort — housekeeping. I think that covers the full range of reasons as to why it was necessary for there to be some discussion along those lines.

Q: When you have at your earliest opportunity brought investigations before the ORC, which you have commenced, have they on any occasion recommended that you cease that investigation?

A: Not that I can recollect. I do not think so.

Q: Without upsetting you, would it be that you may be coming from a position of strength if you have already commenced an investigation and you are seeking ratification from the ORC, as against their reviewing whether you should institute proceedings? Once you have started, might there be a tacit approval that it is

under way, see how it goes?

A: There would be a great deal of content in that if the Act required the ORC's views to be obtained beforehand. I do not need their tacit approval, and I do not seek their tacit approval. I inform them.

Q: I am personally of a view in line with the legal echelons of you and Mr Sully, but my view is that the Act would say that they should authorize the investigations. This, you say, is a matter for the politicians to look at.

MR MUTCH:

Q: Or alternatively to endorse your procedure, which would appear to make for an orderly manner in which investigation is started?

A: If there is doubt it should be clarified. I just say that there is no doubt.

MR TURNER:

Q: What would be your view if one of the appointed persons to the ORC happened to be the Chairman of this Committee?

A: My immediate reaction is that it would give rise to a confusion of roles and place the individual concerned in an awkward position, because he would have information qua Chairman that he could not share with the Committee. I think it would be an impossible proposition.

MR TINK:

Q: That is the problem in Queensland, is it not?

A: Indeed.

CHAIRMAN:

Q: I think you may have put that forward, Mr Hatton, in the debates on this bill.

MR HATTON:

Q: I do not think so. I do not recall that.

A: I have not heard the suggestion before.

MR GAUDRY:

Q: I guess the Commissioner is turning upon the word 'advise' in section 59 (1) (a)

rather than 'determine'. It is an advisory role perhaps?

A: It is an advisory role.

MR MUTCH:

Q: I might have missed something in previous discussions. Did you receive an advising from anyone about what is a complaint? So who decides that or how do you define it?

A: We decide it, and it is all laid out in documents which have been published most recently in the annual report. They are in the public domain.

CHAIRMAN:

Q: And it was given in evidence?

A: The process by which we categorize complaints as being such or otherwise, has been in the public domain for a long time.

MR MUTCH:

Q: So it was not under legal advice?

A: We did not need any legal advice.

MR GAUDRY:

Q: Referring to the answer to question 8.3, even though it is a fairly convoluted method of determining a complaint, by references to sections 7, 8 and 9 and then to other parts of the Act, you feel that that broader position is better than having a narrowly defined section in section 3?

A: Much better. When there is any doubt in marginal cases we call them complaints, because we would not want to fail to do so with something that deserved that categorization.

ASSISTANT/DEPUTY COMMISSIONERS

Questions on Notice

Deputy Commissioner

- Q: 9.1.1** Does the Commissioner see any merit in Mr Roden's suggestion for the establishment of a position of Deputy Commissioner?
- Q: 9.1.2** What are the Commissioner's present intentions for the appointment of a person to such a position?
- Q: 9.1.3** Does the Commission support Mr Roden's suggested amendment of s6 of the ICAC Act (p.2 of his Statement of 25 February 1992)?
- Q: 9.1.4** Does the Commission feel that the creation of a position of Deputy Commissioner would create any problems in terms of an "expectation of succession"?
- Q: 9.1.5** What is the Commission's response to the evidence of Mark Le Grand that a general delegation to appropriate senior officers of the Commission may be a better option than the creation of a position of Deputy Commissioner?

A: It is essential that there always be an Assistant Commissioner who holds the necessary range of delegated powers. That has always been the case. Presently there are three of them appointed for specific matters. On occasions when the Commissioner has been away - they have all been relatively brief - they exercise their delegated powers in relation to matters other than those they are respectively handling, eg the issue of statutory notices. On one occasion an investigation was commenced under delegated power while the Commissioner was away. This is of course a distinctly significant step. The system has never failed to work in a proper, and effective, manner.

If, as the Chairman has indicated, the Committee is concerned about what would happen in an emergency, such as illness of the Commissioner, then present delegation of powers to Assistant Commissioner(s) is a sufficient answer. They are of course supported in every respect by senior management.

Section 107 of the ICAC Act presently provides that the powers to issue arrest warrants and search warrants, the function of making reports and the power of

delegation cannot be delegated. The inability to delegate the power to issue search warrants is immaterial to an emergency absence by the Commissioner, because the Commission always goes to outside justices for search warrants, and will continue to do so. There has only been one occasion on which the Commissioner considered it necessary to issue an arrest warrant pursuant to s36. It is unlikely that brief delay would have irretrievable consequences for an investigation. A delay in furnishing a report to Parliament would be unfortunate; it would be unusual that it would have irretrievable consequences. The risk of that happening always exists, eg with judges. Therefore, without change to s107 the Commission could continue to operate well in an emergency absence of the Commissioner.

If the Parliament were minded to amend s107 so that the powers presently not able to be delegated could be, but only used in emergency absences of the Commissioner, the Commissioner would not be opposed.

If Parliament were inclined to further amendment to permit delegation of powers below Assistant Commissioner level, the Commission would urge caution, because of the serious nature of powers to be exercised, but could not oppose the idea of delegation of powers to the most senior lawyers in the Commission, as the Criminal Justice Commission has done.

The Commission sees no need for amendment to s6 of the ICAC Act. Section 6(3) which requires that "an Assistant Commissioner shall assist the Commissioner, as the Commissioner requires" could not be broader. It allows for the Commissioner to request an Assistant Commissioner to deputise in the Commissioner's brief absence.

The Commission does not feel that the problem of "an expectation of succession" would necessarily arise with a Deputy Commissioner or Assistant Commissioner. That would depend on the people appointed to the positions.

The Commissioner does not appoint Assistant Commissioners. That is done by the Governor in Council, with the concurrence of the Commissioner. There is certainly no opposition to appointment of a suitable person as Assistant Commissioner on a full-time basis. There is no need for that person to be formally designated as Deputy Commissioner, and there is certainly no need for the ICAC Act to enable or require the appointment of a person with that title.

Finally, if the Commissioner was to be away for any significant period - say in excess of a couple of weeks - it would be necessary for an Acting Commissioner to be appointed.

Special Commissioners

Q: 9.2.1 Does the Commission see any merit in Mr Roden's proposal for the title of Assistant Commissioners to be changed to "Special Commissioner" to more accurately reflect their role?

Q: 9.2.2 Does the Commission's present practice of appointing Assistant Commissioners to conduct particular inquiries accord with the intention of s6 of the ICAC Act as it now stands?

A: The Commission does not see a need for the change of title from Assistant Commissioner to Special Commissioner. The Commission would not oppose the change of title if it were thought necessary but it is important that the title chosen does not mislead.

The Act appoints the Commissioner as the person to exercise the Commission's powers and functions, and confers on him the necessary powers to do so. The Act provides for the appointment of Assistant Commissioners, with the concurrence of the Commissioner, to assist the Commissioner as the Commissioner requires. To date, in practice, Assistant Commissioners have mostly been required to assist in the performance of the Commission's investigative function, by presiding over particular investigations.

The Commission's view is that the title Assistant Commissioner conveys the role that the statute contemplates, that is someone assisting the Commission and the Commissioner, on behalf of the Commission. The proposed title Special Commissioner has the potential to mislead, by conveying a sense of independence of the Commission which would not be appropriate, either in theory or in fact. There should be one Commission, not what could amount to several separate Commissions.

The Commission's view is that the present practice of appointing Assistant Commissioners to preside over particular investigations is precisely in accordance with the intention of s6 of the ICAC Act, which, as previously noted, is in quite broad terms. There is no warrant to read it down in any restricted way.

Reports

Q: 9.3.1 What is the present position with regard to reports prepared by Assistant Commissioners - do they have total responsibility for these reports or does he Commissioner have a hand in the final report?

Q: 9.3.2 If the Commissioner does have a hand in final reports, what has been the experience to date. Which reports have been amended, if any, and what was the nature of the amendments?

Q: 9.3.3 What is the Commission's response to the concerns raised by Mr Moffitt about the need for the ICAC to speak with one voice?

A: Assistant Commissioners have substantial responsibility for preparation of the reports of investigations over which they preside. Final responsibility rests with

the Commission, as the statute requires. In practice this means Assistant Commissioners present the reports they prepare to the Commissioner for consideration, discussion and comment.

Most, if not all, reports prepared by Assistant Commissioners have had amendments, with the consent of the authors, in the nature of editorial amendments, not to findings of fact, assessments of evidence or witnesses, or statutory findings.

In considering reports, and whether they need to "speak with one voice", one must keep in mind that the Commission has broader functions of education and corruption prevention, in the performance of which investigative reports are useful illustrative tools; the Commission is not merely a series of investigative Royal Commissions. In order to achieve the change in systems and attitudes which the Parliament requires of the Commission the Commission must sell the messages illustrated by reports. Consistency in reports is therefore desirable.

To the extent practicable the reports should speak, and be regarded as, Commission reports, not as reports by individuals.

Substantial Corruption Investigations/Functions of Commissioner

- Q: 9.4.1** Does the Commission see any merit in Mr Roden's proposal that substantial corruption investigations should be presided over by persons brought in from outside the Commission?
- Q: 9.4.2** Is it possible and/or appropriate for one person to fulfil the roles of both manager of the Commission and head of substantial corruption investigations?
- Q: 9.4.3** What is the Commission's response to the concerns raised by Mr Roden on 27 February about the dangers of the same person making a decision about whether a matter should be investigated and then also heading an investigation into that matter?
- A:** It cannot be said that substantial corruption investigation should be presided over only by persons brought in from outside the Commission or only by the Commissioner; it depends on the investigation.

It is possible for the Commissioner to both manage the Commission and head substantial corruption investigations. To do that requires reliance on, and assistance from, senior management.

It is appropriate for the Commissioner to preside over substantial corruption investigations for all the reasons advanced by the witnesses the Committee heard from on 11 February. The current Commissioner has presided over two substantial corruption investigations, in relation to driver licensing and prison

informers, and twelve smaller investigations, whilst running the Commission. It can be done. It depends on having a good senior management team and a good investigation team, and working efficiently on the investigation to get the best results from the right amount of work.

The suggestion that there is a danger that if the person who makes a decision to investigate a matter then conducts the investigation he will be tempted to make adverse findings to justify the decision to investigate, lacks substance. A reading of Commission reports will give the lie of the suggestion, since many contain findings of no corruption, or findings which differ markedly from the allegations made at the commencement of an investigation. Public hearings and public reports are accountability mechanisms to ensure that investigations are not conducted in a way to prove a predetermined view.

Questions Without Notice

CHAIRMAN:

Q: I show you a letter that Mr Roden is anxious that the Committee table, with answers to questions on assistant and deputy commissioners. It might be convenient to deal with that now.. Have you discussed the topic of special commissioners with Mr Roden at all?

A: I do not think we have discussed it.

Q: Between the two of you?

A: I do not think we have discussed the idea of having special commissioners. If we have, and we may have, the view I hold and would have expressed is that the titles do not matter much. It is important that there should be no functional gaps, but for the reasons I have put forward it is my view that there are not any and that if there are any they are easily filled.

Q: Have you seen this letter?

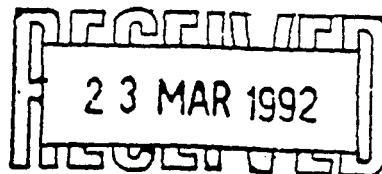
A: Yes, I have seen it.

Q: I will take you to that.

Adrian Roden
C/o Independent Commission against Corruption
191 Cleveland Street
Redfern

23 March 1992

Mr. M.J. Kerr
Chairman
Committee on the ICAC
121 Macquarie Street
Sydney



Dear Mr. Kerr,

You have probably read an article published in yesterday's Sun-Herald under the heading "Mr. Roden, control your dog!". I am most concerned that I am once again wrongly assumed to be associated with something it is said that the Commission is doing.

I enclose for your information a copy of a letter I have sent to the editor of the Sun-Herald, and to Mr. Murphy under whose name the article was published. That letter adequately expresses my reaction to the article.

The continued misunderstanding about my position adds weight to what I have said in two appearances before your Committee about the inappropriateness of the title assistant commissioner as it is currently used. Each of those currently appointed to that position, has responsibility in respect of one investigation only, and is not expected to assist the Commissioner in other ways as contemplated by s.6(3) of the Act. I now believe it is imperative that the matter be clarified by amendment to the Act to provide both for assistants and/or a deputy to the Commissioner with general responsibilities as contemplated by that subsection, and special commissioners who may be appointed for the purposes of particular investigations.

I regard both my repudiation of the article and the point I make regarding the title assistant commissioner, as of great importance, and shall be grateful if you will kindly let the members of your Committee have copies of this letter and its enclosure.

Yours sincerely,



Adrian Roden.

I now believe it is imperative that the matter be clarified by amendment to the Act to provide both for assistants and/or a deputy to the Commissioner...?

A: I now realise I have not seen that letter before. I saw a letter that Mr Roden wrote to the *Sun-Herald*. I do not think there is widespread public misapprehension as to Mr Roden's position. I do not think there is much public interest in the precise role that Mr Roden plays in the Commission. It is well known that he has presided over two very important investigations, and it is well known that he has produced one report of very high quality and will produce another of very high quality. If the public knows those things they know that he is called an Assistant Commissioner. With respect to Mr Roden, I do not think there is a high level of interest, except so far as he is concerned, in all the rest of it.

Q: What about his belief that 'it is imperative that the matter be clarified by amendment'?

A: It is a belief that I am unable to share, because I do not think there is widespread public confusion. I think there is widespread public indifference as to the precise nature of his role. I do not think the people of Sydney stand around on street corners debating whether Mr Roden is a special commissioner or assistant commissioner or deputy commissioner, or is or is not involved in the management of the Commission.

Q: Would you be opposed to the amendment being put forward, or do you want to take that on notice?

MR NAGLE:

Q: And if so, why?

A: I do not need to take anything on notice, because I think it is dealt with in the answers I have given.

CHAIRMAN:

Q: That does not cause you to change your mind?

A: No.

MR GAY:

Q: I do not think that confusion is the point in this. I think Mr Roden's point is that there is a gap in the management of ICAC because the role of a deputy has not

been properly put in. It is not so much that there is confusion that he is the deputy. What he is saying is that in the management structure of the Commission there is a gap, and that the gap would be properly fulfilled by placing a deputy. I have been Acting President of the Parliament because the President is away. There are Deputy Chairmen of Committees, but there is one person who takes on a management role and fills the management role when the President, or in your case the Commissioner, is away?

A: That is another argument, and I do not resile from what I said earlier. That is one of the points that Mr Roden has made, that there is widespread public confusion as to his role.

As far as that argument is concerned, again we have to be careful not to be trapped by titles. The key question is whether there has been an occasion or there is reason to fear an occasion, when anything will happen differently in the absence of the appointment of somebody as deputy commissioner. I say that the answer to that is no. I say that because all powers that can be delegated have been delegated to each of the Assistant Commissioners. Every power that they can enjoy has been enjoyed by each and every one of them. The only powers that cannot be delegated are mentioned here, and they include the power to issue search warrants, which we do not do; the power to publish reports, and if I were struck by lightning then that would, in the unlikely event that a report was about to be published, hold things up until there could be a new Commissioner or an Acting Commissioner appointed; the power to issue arrest warrants, which we have never had to do and it is practically impossible to see practical consequences of an adverse nature flowing. But if it is thought that practical consequences of an adverse nature might flow from any of these gaps, then by all means let the Act be amended, as we have said, so as to increase the delegation power.

The powers are all delegated, the bits that cannot be delegated do not seem to matter in any sort of practical sense, and on the occasions when I have been away, which have been infrequent and of relatively short duration, I have on each and every occasion spoken to the Assistant Commissioner or Commissioners and agreed with them that in my absence they will exercise the powers generally, and they do so. On an occasion Mr Roden approved the commencement of an investigation. He had the power to do that. It is a power he would not ordinarily exercise if I was present, but on the basis that I was away he exercised the power, which was what I had asked him to do. There is no present gap.

If I were away for any longer period than a week or two at a time, which is all I have taken off to this stage, then it would be necessary for an Acting Commissioner to be appointed, and we would be looking for somebody who had experience with the Commission, not necessarily as Commissioner, who could adequately fill the gap. I do not doubt that such a person could be found to fill the gap for a few weeks at a time.

Finally I repeat that I am not opposed to the appointment of a Deputy Commissioner, although I would say it should be an Assistant Commissioner who would effectively act as Deputy. I think it is quite a good idea. But I am completely opposed to a statutory amendment which says that there has to be a Deputy Commissioner, because you can take it from me that the finding of somebody who is prepared to come in and do the job has not been and will not be an easy matter, and it is essential that we have people who are of high calibre and can work with us. I am not against the idea of its being an Assistant Commissioner to be effectively my deputy. As I have said in a letter I wrote to the Committee on 15th November last, on one occasion we went close to getting one; but it did not work out, for reasons that I will not dwell upon.

I would be somewhat surprised and a little bit disappointed if we could not do something along those lines over the next couple of years, but it is no good saying that we have to have a Deputy Commissioner. With respect, your analogy is of limited value because it assumes a group of people who are available for appointment or election, all of whom are keen to do it. You do not have people who are available, suitable, and keen to do work of this sort. They have to be very carefully chosen.

Q: I do not know. If I can add without recounting exactly what Mr Roden said, I think we should be casting our net to have someone who is sitting in in that situation. You quite rightly say that it is not easy to find someone to take on that role, and that makes it more imperative that we start looking now for someone to fill that role. The fact that the person who has been acting in the deputy's role feels that there is a gap in the management structure is also significant. I guess it does not invite answer: it is re-stating something?

A: Perhaps that is of some significance. I think it is a largely theoretical point, because I contend, and challenge anyone to establish the contrary, that no undesirable consequences have flowed from the present arrangement. There is no occasion when the supposed gap has led to any shortcoming. I know it is suggested by some that the Bayeh case instanced that, but it is not true. I was not there. Mr Roden, who was, was told of what was going on, and he did just as I would have done, which is to note the information received and leave it to the professionalism of the officers concerned. I do not rush around telling the investigative staff how to handle operations.

Q: While the Bayeh case might not have, it went awfully close?

A: I do not think it did, with respect. I cannot understand how it did. Why did it go close?

CHAIRMAN:

Q: That was the concern in that particular one, where the people who were coming in to fulfil your role were or may not have been properly briefed. There was a

chance that it could have gone off the rails, and that is where the concern is?

A: All I can say is that Mr Roden was told of what was going on, as I would have been if I had been there, and he left it to the professional officers concerned as I would have, had I been there. It made no difference.

MS BURNSWOODS:

Q: To clarify something at the end of the first paragraph, are you saying that the three who are now appointed to specific matters, each have all of the powers that could be delegated, or that each of them has some of the powers?

A: They all have all the powers all the time. The expectation is that ordinarily they will exercise those powers only in relation to the particular investigations over which they are presiding, that being the manner of the assistance in terms of section 6 (3) that they are providing to the Commission. When I go away the extent of delegated powers remains what it has always been, but the expectation is that they will be exercised not just in relation to those matters, but more generally.

Q: All three of them have equal power in your absence?

A: Yes. In like manner, Mr Roden handles a particular large matter, on occasions when he might be away I will be approached, and having satisfied myself that it is appropriate to do so, will exercise the powers that I enjoy in relation to that matter. There is no difficulty in relation to that.

Q: There could be a difficulty presumably if there was a major item coming up and a need for someone to speak on behalf of the Commission. There would be no distinction between the three of them in that case, as to who would do it? They would work it out between them?

A: I suppose they would. You have behind them an entire experienced and capable organization. If it were necessary for something to be done, senior management would meet and form a view and make recommendations including who should do something. I do not want to give the impression that the Assistant Commissioners are collectively the managers of the Commission. They are not. I am saying there is no gap at the moment.

Q: An Acting Commissioner would be appointed by the Governor?

A: Yes, the Act so provides.

MR GAUDRY:

Q: Without the transcript in front of me, I had a fairly clear impression that Mr

Roden felt some lack of clarity as to whether or not he had a full delegation of powers, in particular in relation to activating the Bayeh matter. That may just be a problem of the transcript or my understanding of it?

A: There were no statutory powers to be exercised in relation to that matter.

Q: He seemed to indicate that people approached him at that time and he was somewhat standing away from the full role of being the Assistant Commissioner, if my understanding is correct?

A: I do not know that that reflects the reality of what happened at the time. I say again that he did what I would have done.

Q: Do you see any particular merit in the concept that rather than it being an Assistant Commissioner, who I would understand would be fully involved in hearings, and may be distant somewhat from the day-to-day operations of the Commission, rather than perhaps a senior counsel or someone of that nature being given an automatic delegation, particularly in relation to the commencement of operations and the ongoing management?

A: I am not opposed to that suggestion. It might well be a useful statutory amendment; we say so here: 'If Parliament were.... as the CJC has done'. You can take it for granted I would not be exercising that delegation power broadly, but if the Act were amended I would exercise it.

Q: Do you see some advantage in that operation?

A: I think there is an advantage in that. I have to say that I think it is a bit notional because I know the system works all right, but I have no difficulty at all with that proposition.

Q: Your enterprise agreements must be very constrained if you have taken such a short amount of time off?

A: They are not terribly frequent and I suppose I am a bit behind. I take holidays: I am not obsessive about it. They tend to be a week or two at a time and not three months at a time.

- 10 -
COMMISSION REPORTS

Report on Local Government Conflicts of Interest

MR TURNER:

Q: I have not read the local government report that you brought down. I received it only when I was heading out of the door to go home. Have you assessed how much that inquiry cost?

A: No, or there has been an assessment but I cannot provide the figure. I am pretty certain one has not been done. We ordinarily publish in the annual report, and it will be there.

Q: I will reserve that until I see the annual report.

MR GAUDRY:

Q: In relation to the local government report, I was speaking yesterday to a prominent business person in Newcastle who has some contact with the local council through his workers. In discussing with council officers matters of development one of his workers made the suggestion that the council officer might like to enjoy a visit to the football with them in their box at the weekend, and that council officer refused and explained that he thought it was most inappropriate in the circumstance that he was dealing with matters of some importance in the business. Perhaps after they were concluded he would be free to go. To me that was an indication of the penetration of the report on the operation of the Department of Local Government, particularly in terms of the public service concepts of what constitutes possible corruption?

A: Thank you for that comment. I am bold enough to think that four years ago the invitation would have been accepted by most.

MR TINK:

Q: That is precisely the sort of thing, to my mind, that arises under section 8, in relation to a whole range of things that have been going on in the past three years?

A: We hear a lot of anecdotes of that general sort which are very heartening.

MR GAUDRY:

Q: That person related to me that he was quite surprised to know that ICAC was a body that investigated public corruption, and also that the practice which he was quoting was in his view within the private sector normal business operation?

A: The private sector is not free of corrupt influences either. I heard someone suggesting recently that they could understand that gifts of hospitality should be refused during the course of a tendering process up until the time when the tenders were received, but surely once the tenders were in it would be all right — as if the assessment process was not of absolutely critical importance. It sounds as if people imagine that we live in caves, and the lowest complying tender will be accepted. Most of that went out with the ark.

MR TURNER:

Q: Your Commission has done an extensive amount of work in local government. Do you think that your role in that area is now completed or have you a mechanism to monitor it for a time as far as your inquiries have gone?

A: We do not have any specific monitoring mechanism, and I do not have local government very high on my list of priorities at the moment, but I cannot say what will come through the door tomorrow. As soon as we said we would not do any more local government for two years —

Q: I am talking globally about local government?

A: I cannot think off-hand of any current investigation unannounced that relates to local government. I do not think there is one. It is not particularly high on my list of priorities at the moment, but we have to reserve our rights.

Report on NSW Film Corporation

MR GAY:

Q: On the report on the Australian Film Commission you started the habit of using just surnames, and to my mind it became confusing when you had a matter that was referred to by an Attorney General called Collins, and a leading person in it called Collins as well. I think it is perhaps better in that instance not just to persist in using surnames?

A: You might well be right. That case it was somewhat unusual, in that we sent the report in draft form to all concerned, including Mr Peter Collins the Attorney General, and without derogating from your point, which might well have content, it was certainly not a point that he made. He saw it and he was content with it.

APPENDICES

**BACKGROUND TO
QUESTIONS ON NOTICE**

APPENDIX ONE

CHAPTER 4

STRATEGIC INTELLIGENCE

Extract from Report of Parliamentary Joint Committee
on the National Crime Authority, dated November
1991, concerning the NCA's strategic intelligence work.



PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

WHO IS TO GUARD THE GUARDS?

AN EVALUATION OF THE
NATIONAL CRIME AUTHORITY

Report by the Parliamentary Joint Committee on the
National Crime Authority

November 1991

emphasis may heighten concerns. The new emphasis involves greater attention to the intelligence-gathering role and greater openness in disseminating intelligence to other law enforcement agencies. This clearly increases privacy concerns.⁹⁵

5.75 Overall, therefore, the adoption of Future Directions and other changes should reduce the basis of the current widespread public concern about the Authority's accountability. There is, however, a continuing need for Authority secrecy and its special powers, and hence for special measures to ensure the accountability of the Authority. The new emphasis has not been accompanied by any suggestion from the Authority, the IGC or the Attorney-General that the NCA Act should now be amended to remove those of the Authority's special powers which are of particular concern to civil libertarians.

5.76 On the contrary, the Authority still anticipates a need to rely on these powers. The Authority argues the fact that it has such powers is a reason for other agencies to cooperate with it.⁹⁶ Only time will reveal the extent which the powers are actually used in the future. Moreover, the Authority will still need to retain a large measure of secrecy vis-a-vis the public in relation to operational matters, albeit it is now more open with other law enforcement agencies.

5.77 As already noted, the Corporate Plan will help in assessing the Authority's efficiency and effectiveness in the future. Difficulties will however remain. In 1988, the *Initial Evaluation* observed:

The Authority freely admits that it does not as yet have an overall strategic view of organised crime in Australia. Its selection of targets to become the subject of references is not animated by some grand plan which will result in the progressive suppression of organised crime in this country.⁹⁷

95. See paras. 6.83 - 6.84 below.

96. e.g. see NCA Corporate Plan, p. 5.

97. para. 3.9.

5.78 The Committee considers that this is still valid.⁹⁸ The mechanisms put in place under Justice Phillips avoid duplication of investigative effort. They also reinforce existing measures to ensure the Authority does not undertake matters able to be dealt with by other agencies. In other words, they identify what matters the Authority should not undertake. The measures do not, however, identify in a positive, rigorous way what targets the Authority should pursue.

5.79 Justice Phillips told the Committee on 29 July 1991:

I report that the National Crime Authority has commissioned Dr Grant Wardlaw to design a course for the training of senior intelligence officers in strategic intelligence. The term 'strategic intelligence' is used in contradistinction to the term 'operational intelligence'. It connotes a broad overview of intelligence matters. This commissioning, together with the series of intelligence conferences I have described, is directed towards being able to give this Committee and, through it, the Australian Parliament and people an overview of organised crime in Australia.⁹⁹

98. e.g. see Evidence, p. 517 (Mr Chris Eaton, Police Federation of Australia and New Zealand): 'There has to be a strategic overview of crime in Australia, which does not exist at present, clearly. We have not seen the National Crime Authority provide, to my knowledge anyway, this Committee or any other jurisdiction, or any other government, a strategic overview of organised crime in this country.'

99. Evidence, p. 1659. See Grant Wardlaw, 'Conceptual Frameworks of Organised Crime - Useful Tools or Academic Irrelevancies?', paper delivered at the Australian Institute of Criminology Conference: *Organised Crime*: 5-7 September 1989, Canberra. In this paper Dr Wardlaw noted the difficulty caused by lack of an agreed definition of organised crime, and how law enforcement agencies have proceeded without one (pp. 2-3). He commented:

The difficulty with this attitude is that 'getting on with the job' necessarily involves either an idiosyncratic approach to the problem or little more than 'target-of-opportunity' enforcement, there being no strategic vision to guide the development and implementation of

(continued...)

5.80 The Committee comments that assessment of the Authority's target selection and impact on organised criminal activity will only be possible when this overview is available to provide a benchmark.¹⁰⁰ Without this overview, the Authority will not be able to demonstrate that in choosing to pursue target X rather than Y it has made the right choice - that X is more important in Australian organised crime than Y. An Authority investigation may result in the target suspect being convicted. The benchmark provides a way of assessing the impact of this conviction on organised criminal activity. It also provides a means of addressing the more general question of what inroads the Authority's activities have made on the level of organised criminal activity.

5.81 The question whether hard data such as numbers of arrests and conviction rates are a viable means of assessing Authority performance has been controversial.¹⁰¹ Provision of such data for performance assessment will be difficult for many areas of Authority activity which receive increased emphasis under Future Directions.

99.(...continued)

empirically-based strategies. The result is a running series of sniping attacks between one enforcement agency and another (especially between traditional police forces and new investigative agencies established primarily on the basis of the perceived need for novel means of combating organised crime), an emphasis on arrests for arrest's sake (primarily a response by investigative agencies to the absurd pressure they are placed under to 'prove' their worth), and an over-emphasis on enforcement strategies to the detriment of serious consideration of economic, political and social strategies designed to impact on the conditions which allow organised crime to develop and prosper. (p. 3)

Mr Russell Hogg, who teaches at Macquarie University, made a broadly similar argument to the Committee on 25 March 1991: Evidence, pp. 1499-1502, 1504-05.

100. cf. the conclusion in the *Initial Evaluation*, para. 4.3 that the lack of a statistical base made it impossible to say whether the work of the National Crime Authority had led to a discernible diminution in the extent of criminal activity.

101. See footnote 13 in chapter 2 for references to some of the differing views.

APPENDIX TWO

CHAPTER 5

ACCOUNTABILITY

Extracts from Report of the Queensland Parliamentary Criminal Justice Committee, dated 03 December 1991, concerning the accountability of the Criminal Justice Commission.



LEGISLATIVE ASSEMBLY OF QUEENSLAND

PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE

Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission

Part B - Analysis and Recommendations

Laid on the Table of the Parliament and Ordered to be Printed
Report No. 13
3 December 1991

3.2 The Fitzgerald View

Introduction

The *Report of a Commission of Inquiry Pursuant to Orders in Council* (the Report, 1989) provides an interpretation of the theoretical system outlined above. The Report considers that Parliament is the appropriate forum to test the necessity and worth of new laws. It is in Parliament that persons of differing views can come together to debate in a rational manner the direction that society should take. The combining together of these opinions through the Parliamentary process is the best way of achieving good for society.

However, the Report recognises that the present structures and resources of Parliament in Queensland are inadequate to deal with modern practices in politics. It observed:

The operation of the party system in an unicameral assembly, the continuing growth in the scale and extent of Government activity, and the complexities of policy making affect the ability of Parliament to review the Government's legislative activity or public administration. (Report, 1989:124)

One of the remedies that Fitzgerald proposed is the introduction of "a comprehensive system of Parliamentary Committees to enhance the ability of Parliament to monitor the efficiency of Government" (Report, 1989:124). This system is noted to have enhanced the effectiveness of Parliament where it has elsewhere been established. Fitzgerald had in mind both the Federal Parliament in Australia and the House of Commons in the United Kingdom. Fitzgerald believed that the benefits such a system would provide are: a source of information and aid to Parliamentary debate; enhancement to the skills of backbenchers; an increase in the chance that misconduct, incompetence or inefficiency in the public sector will be exposed; and allowing the investigation of complex issues which Parliament does not have the time nor resources to consider itself. (Report, 1989:124-5)

The Report generally considered that Parliamentary Committees were desirable and made specific recommendations for the establishment of two specialised committees to monitor the operations of the Criminal Justice Commission and the Electoral and Administrative Review Commission. The Committee's focus is centred only on the former Commission and its respective committee.

The Criminal Justice Committee

Fitzgerald's reasons for recommending that a parliamentary committee be established to monitor the Criminal Justice Commission are clear and forceful.

The administration of criminal justice should be independent of Executive controls. It is an apolitical, vital public function. Such administration must be accountable for its activities and should be open to public review and accountable to the Parliament. (Report, 1989:307)

The only possible body that could achieve such aims is a parliamentary committee.

The establishment of such a parliamentary committee to oversee the activities of the CJC is not unique. However, there are few precedents which offer only minor elucidation on the problems that such a committee faces. Other committees in a similar role are: the NSW Joint Committee on the Independent Commission against Corruption (ICAC); the Federal

Joint committee on the National Crime Authority (NCA); and the Federal Committee on Australian Security and Intelligence Operation (ASIO). Analysis of the operations of these committees is very scarce (some of these agencies are examined in Chapter 7 of this report).

Some of the unique considerations that this Committee must confront are: the relationship between the Committee, Parliament, the Executive and the Commission; maintaining the Commission's independence while at the same time upholding its accountability; and balancing the requirements of confidentiality and openness. These considerations cannot be reconciled absolutely into a perfect system. This was clearly recognised by Fitzgerald. Any system established must be fluid in its operation, continually responding to the requirements of justice in a particular case; but be institutionally stable through the universal requirements of justice.

The framework for this system is alluded to by Fitzgerald in the Report. The system is to be democratic. The Committee guarantees the Commission's responsibility to the people. Particular aspects of the administration of criminal justice should be independent of executive controls. The charging of a parliamentary committee with the sole responsibility for the overseeing of the operations of the CJC protects this independence. The CJC is to be responsible to the Committee; the Committee to Parliament and the Parliament to the people. Fitzgerald allows Executive authority and control over the CJC in only one way. The Executive is to be responsible for the financing of the CJC. On many other matters the CJC is to report to the Parliamentary Committee. This does not exclude the fact, however, that the Committee also has a role in monitoring the Commission's finances. The CJC and the Committee have devised an ongoing process of oversight of the CJC through written reports, meetings in private and public, briefings and the viewing of documents. The process is detailed in Chapter 8 of this report. It provides the window to the operations of the CJC.

5.1 The framework clearly defines the limits of Executive control on the CJC. However at present these limits have not been institutionalised. There is a confusion under the current Standing Orders about how questions will be answered in the House, whether by the Minister or the Chairman of the Committee. This confusion is clearly contrary to the philosophy underpinning the recommendations of the Fitzgerald Report. It has been submitted to the Committee by the National Party in Queensland that the Standing Orders of the House be amended to make the Chairman of the Committee the person responsible to answer questions on the operations of the CJC. This proposal is consistent with the philosophy of Fitzgerald except on one point. It fails to distinguish between questions that relate to the operations of the CJC that concern criminal justice and those which relate to the CJC's finances. On the former the Chairman of the Committee is responsible; the latter the Minister (the Premier). This procedure has been endorsed by Dr Ross Fitzgerald on behalf of the Queensland Watchdog Committee in his submission to the Criminal Justice Committee (Report No.9 Vol.2(a),13.6.1991:26). The Standing Orders should be amended accordingly.

RECOMMENDATION 1:

The Committee recommends that the Standing Rules and Orders of the Legislative Assembly of Queensland be amended so that future Chairmen of the Criminal Justice Committee be responsible for all questions concerning the

operations of the Criminal Justice Commission, except those that relate to its financing, for which the appropriate Minister is responsible. The questions to the Chairman should be on notice.

Whether the operation of the Committee and its relationship to the CJC follows the Fitzgerald philosophy in other ways, can only be determined by a consideration of the structure, functions, and powers provided to the Committee by the *Criminal Justice Act 1989-1991* (the Act). This process replaces individual ministerial responsibility with a system of responsibility which envisages that the Committee will put in place a broad ranging and debated system of accountability particularly responsive to the nature of criminal justice. The Westminster system is not a perfect system and it must be able to respond to the changing nature of society.

3.3 Structure

The specific structure of the Committee is established by the Act. One of the objects of the Act is to provide for the establishment and maintenance of a parliamentary body to inform the Legislative Assembly on the activities of the Criminal Justice Commission and other pertinent matters (s.1.3(b)).

The role of the Criminal Justice Commission is to advise, investigate and report upon all aspects of crime and the criminal justice system in Queensland and to take action with respect to official misconduct where appropriate.

Part IV of the Act specifically provides for the establishment of the Committee and determines its constitution, composition, term, functions and some of its powers (others were granted by the establishing motion - discussed in section 3.5).

The appointment of members to the Committee is to be governed by the Act and the normal practices of Parliament (s.4.1).

The composition of the Committee is to reflect the balance of power in the Parliament. There are to be seven Members of the Legislative Assembly appointed. Four are to be nominated by the Leader of the House. Two are to be appointed by the Leader of the Opposition. The remaining member is to come from a third party in the House with at least five members and is to be appointed by the leader of that party. No Minister of the Crown shall be a member of the Committee.

The term of the Committee is to be contemporaneous with the term of the Legislative Assembly (see Chapter 4 of this report for the Committee's recommendation in relation to this).

The functions and powers of the Committee are set out in Division 2 of Part IV of the Act. Both these matters will be explained respectively below.

3.4 Functions

The principle function of the Committee is to monitor and review the discharge of the functions of the Criminal Justice Commission as a whole and of the Official Misconduct Division in particular. Complementing this monitoring and reviewing task is its duty to

It should be noted that the 1990-1991 year saw the establishment of the Commission. Recruitment occurred throughout the entire year with many staff not commencing until very late in the financial year.

The Commission's budget has been the subject of some public and political comment and it is important that a budgetary process be determined which is satisfactory both to the Parliament and to the spirit of the process intended by Fitzgerald.

In terms of the "review" responsibility of the Committee, it is fair to conclude that that does not imply "direct", or "control". The Act provides for a balance of independent agency initiative on the one hand and Ministerial and Parliamentary supervision on the other.

The CJC's executive independence is balanced by Ministerial responsibilities for raising and prioritising public expenditure and the Parliamentary responsibility for the CJC's continued public trust and accountability.

The community rightly expects that the CJC will exercise its independent professional judgement in using public funds, but the legislative regime denies the CJC automatic access to public funds which have to be raised by the executive government, and provides that the CJC's performance shall be subject to public account by reviews conducted by the Committee.

While the amount of the budget should be determined by executive government, the CJC and the Committee should go through a process to ensure that the amount is appropriately being spent and an appropriate amount is being sought.

This does not mean the Committee will interfere in the final determination of the amount allocated by the Government, but it does mean that the Committee should ensure that the appropriate amount of money is sought by the Commission and that it is spent appropriately. The Committee believes that the Commonwealth Parliamentary Estimates Committee provides a useful model for the Committee to oversee CJC budgeting.

RECOMMENDATION 35:

The Committee recommends that the Commonwealth Parliamentary Estimates Committee model should be adopted as a means of review by this Committee of the Criminal Justice Commission's expenditure. Under this model the Commission would provide an "expenditure plan" to the Committee and would then attempt to justify the estimates by reference to past performance. The Committee would then be better able to monitor the financial performance of the Commission and make recommendations in relation to the expenditure plan.

8.6 Random access to files

The Committee has put in place a mechanism for review under which it attends at the office of the Commission and obtains access to Commission files on a random basis. This is done in two ways. The Commission keeps a computer list of all files that are opened in its office. This list is in numerical order. The Committee chooses files from this list and then peruses those files. The purpose of the perusal is not to examine the merits or otherwise of the Commission's work but to ensure that the Commission Register and file-keeping

CJC's activities and then other Commissioners or CJC officers speak on matters within their responsibilities. Members of the Committee question the Commission in detail on matters arising in the written reports, on matters that have come up in the verbal report, and on other matters that have not been raised.

In this way, the Committee has first hand information on the Commission's activities and operations.

From time to time, the Committee has referred to the transcripts of these hearings to follow up on matters and to assist it with an assessment of an issue that has been discussed over a number of hearings.

It should also be stated that the Hansard record is confidential and the reporters of it are bound to confidentiality.

Because the hearings are held in private and because the Committee is bound by the same rules of confidentiality as the CJC, the hearings are full and frank. The Commission has briefed the Committee on most of the substantial matters that it has dealt with.

The Committee is of the view that this hearing process is valuable and indispensable to its monitoring and reviewing role.

8.4 Public hearings with the Commission

On a number of occasions (see Appendix A), the Committee and the Commission have replicated the above hearings, but have held them in public. The purpose of doing so is to enable the public to see one part of the process of accountability. The matters discussed have been no different from the usual private hearings, except that the names of persons and operations are deleted to protect individual privacy and the integrity of the Commission's current operations. The Commission provides a detailed verbal report to the Committee after which the Committee members have the opportunity to question the Commissioners and officers present on any issues arising from the hearing or any other matters of concern.

The private hearings are designed so that the Committee can fulfil its oversight role. The public hearings are designed to show the public that it is fulfilling this role. However, the public hearings also assist in publicising the Commission's activities and informing the public about the agenda and priorities of the CJC. These hearings have been reported widely in the media. The public hearings also permit the public to have an input into the issues under consideration by inviting comment from the public on the issues that are raised.

8.5 Financial accountability

The budget for the Criminal Justice Commission for 1991-1992 is \$17.54M based on a \$12M allocation from consolidated revenue and \$5.4M from the opening bank balance in receipt of interest and other incomes.

Expenditure by the Commission during the 1990-1991 financial year totalled \$17M out of the \$20M appropriated by Parliament. The result was achieved by strictly monitoring expenditure via internal management reporting.

Committee has not reported to Parliament. Such reports include the report on the Corrective Services Commission allegations and also the report on allegations in relation to Local Government. Again under s4.8(1)(c) of the Criminal Justice Act, the Committee may report to Parliament in relation to these reports but has chosen not to do so to date. It has made this decision on the basis that it does not have the resources to properly review them. Notwithstanding the Committee's inability to review the substance of the reports it does have some things to say about the style and format of the Commission's reports generally.

There are two questions of format that the Committee would like to see addressed.

1. The Committee believes that the format of all public reports whether they be formal reports or issues papers should be standardised. Each report should contain a list of all previous reports published by the Commission and the report should commence with a summary of all the Commission's findings and recommendations.
2. All Commission discussion papers should provide for a standard procedure for public consultation. Where a published report does not go through the discussion paper stage, such as the local government report, the Commission should invite the public to comment upon the report within a certain time period. Its status as a final report does not exclude the need for on-going public consultation and review of such issues.

The Committee suggests that when the Commission undertakes a major investigation and reports upon it to the public, the report should state the cost of carrying out that investigation or review and reporting process.

The Committee also suggests that where the Commission intends to conduct a major investigation or review, it should publish the source and the details of their terms of reference for public comment.

8.12 Guidelines and general reports

5.3 The Commission has prepared guidelines in relation to most of its practices and procedures and has provided copies of those guidelines (and updates) to the Committee. The Committee consults these guidelines frequently and is of the view that they are a well-organised and thorough compendium of the Commissioners procedures.

8.13 Corporate and Strategic plans

The Committee has had the opportunity of considering the Commission's draft Corporate Plan for 1991/93. In preparing the Plan, the Executive Management group, together with the part-time Commissioner's attended a workshop to review Commission operations and to plan for the year ahead.

The Corporate Plan will set out a number of corporate goals, that is, the goals set for the whole organisation, and the strategies proposed to achieve each of those goals. At this stage it is not appropriate to comment on the content of the Plan since it is in the draft stage only.

processes are accurate and working and that the procedures followed in the file for examination of the complaint and dealing with the complaint are carried out in compliance with Commission guidelines.

The Committee also seeks access to files using a name search for a file that has been opened by the Committee. Again this is done to ensure that the Committee has been fully briefed and that the process followed by the Commission is in accordance with the Commission's own practices and guidelines. The Committee is satisfied that the Commission has in place procedures that ensure the safe tracking of files and appropriate file management.

8.7 Registers of powers search

The Report noted:

the undesirability of granting permanent bodies which must perform such tasks, extensive powers, especially a mixture of investigative and quasi-judicial powers and functions which are not sufficiently subject to external control involving not only subsequent scrutiny to ensure compliance with the law and all policy directions, but also prior independent authorisation. (Report, 1989:302)

Q. 5.4

The Commission compiles a number of registers to record the exercise of powers with which it is invested by the Criminal Justice Act. The Committee scrutinises these registers to ensure that the powers are exercised in compliance with the Act. These registers include:

1. Notice to Produce register (section 3.1)
2. Notice to Furnish Statement register (section 3.1)
3. Summons to Witness register (section 3.6)
4. Direction to Produce a Prisoner register (section 3.13)
5. Authority to Enter Public Premises register (section 3.2)
6. Application for Search Warrant register (section 3.3)
7. Application to use a Listening Device register (section 3.14)
8. Arrest register (section 3.11)

The sections referred to above provide the authority for the use of the powers that are recorded in the Register.

Summons to a witness and notice to produce

Where an officer of team leader level or above has need to obtain documents or to summons a witness etc. a form is completed which must justify the need for the exercise of the power. The form of summons is then completed and passed on to the Chairman of the Commission for signature by him upon being satisfied that the power should be exercised. In the absence of the Chairman, and only in his absence, this responsibility is delegated to the Director of the Official Misconduct Division. If the Chairman signs the Summons or

8.14 Reports on complaints and other files

From commencement until 14 November 1991, the Committee has opened 222 files. 63 of these concern the CJC and 36 of those are complaints against the CJC. The Committee has adopted a process, in consultation with the CJC, whereby the Committee seeks from the CJC a report about a complaint raised with the Committee.

In some cases the Committee's involvement in these matters has been substantial. The Committee has sought further clarification and reasons from the Commission and in several cases the Committee has requested that the CJC adopt a different approach from that previously taken by it. In some of these cases the Committee itself has taken action to investigate the matter. However in most cases the Committee has affirmed the CJC's decision. Many of the complaints against the Commission were outside of its jurisdiction and were thus rejected by the Commission. The complainant then complained to the Committee because of a misunderstanding of the reasons for the Commission's decision not to investigate their grievance. Complainants often do not have a clear understanding of the CJC's role nor that there are limits to its jurisdiction.

The Committee has some reservations about its role with respect to the handling of complaints against the CJC. The Committee has asked itself whether it is the appropriate body to review complaints against the Commission given the Committee's resources and overall functions.

In Chapter 3 of this report the general philosophy underlying the Committee operations is discussed. The Committee has accepted that its role is more one of oversight to ensure that the Commission's systems are operating effectively. However, the Committee finds that its assessment of complaints is useful in carrying out its system's review. Having received a large number of complaints which have been outside the jurisdiction of the Commission has enabled the Committee to recommend to the CJC that its statutory limits need to be better explained to complainants.

5.5 | The CJC does debrief complainants. Explanatory letters are sent and if necessary the Complaints Officer meets with the complainant to explain the CJC's reasons for its decision. No matter how much the statutory jurisdiction of the Commission is explained, some complainants are unable to accept that the Commission does not have a role to play in solving their complaint. This situation is unavoidable.

Because the Commission commenced with such fanfare and is fulfilling a much needed role, it is likely that many people will continue to go to the Commission with complaints about many and varied matters which are outside of its jurisdiction. For example, the Commission has received a number of complaints that are purely civil in character.

In relation to the complaints handling role of the Committee, the Committee has discussed other avenues which may be better able to deal with complaints, such as the Ombudsman. However, the Committee believes that it does have a role in receiving complaints against the CJC, and that this role could properly be fulfilled if the Committee had sufficient resources as recommended in Chapter 3 of this report.

Information in relation to the files opened by the Committee (in relation to the complaints received by it) is set out below: