



*PARLIAMENT OF NEW SOUTH WALES*  
*COMMITTEE ON THE ICAC*

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

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

*MONDAY, 09 NOVEMBER 1992*  
*PARLIAMENT HOUSE, SYDNEY*

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**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)  
The Hon S B Mutch, MLC (Lib)  
Mr P R Nagle, MP (ALP)  
Mr J H Turner, MP (Nat)  
Mr P J Zammit, MP (Lib)

***STAFF***

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

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## ***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."

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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 09 November 1992 was the third such public session the current Committee has conducted with Mr Temby.

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

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

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

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 seven which incorporates a letter the Committee received from Mr Temby correcting the record from the last public hearing on 31 March.

The Committee is currently completing work on three separate inquiries. These inquiries relate to: firstly, section 52 and legal representation before the ICAC; secondly, pecuniary interest provisions and a Code of Conduct for MPs; and thirdly, the Review of the ICAC Act. I would hope that the Committee will be in a position to report on each of these matters early in 1993.



M J Kerr MP  
Chairman

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**MR TEMBY'S  
OPENING STATEMENT:**

**CHAIRMAN:**

**Q:** I formally table the questions and answers put on notice. Is there an opening statement you would like to make, Mr Temby?

**Mr TEMBY:**

**A:** Yes, I will try to keep it quite brief. It is in two areas. First, as Committee members will have observed, a number of the questions asked are effectively answered in the Annual Report. By way of update, since what is contained in that Report, there has been further work done on the prosecution front—see the answer to question 1.4 in our written answers. Two recent investigations have led to charges being laid and a number of other matters are working their way through the criminal justice process, not as rapidly as one would wish. There has been one further project completed on the corruption prevention front relating to police and secondary employment which is a matter of importance. I am informed it has been well received, I think it is true to say, both by the Police Service and by the union and its members. Since the Annual Report we have commenced one further investigation which means the total number of investigations approved from the outset now numbers 55.

We are deliberately keeping the new investigative work low because a lot of resources are being devoted to what we call Operation Milloo which commences public hearings on Monday next. That hearings will proceed by way of segments, each segment dealing with particular cases and conduct, and at a later stage we will hear evidence in one or more segments dealing with policy issues. I hope in some of those cases we will do so after the issue of discussion papers. The terms of reference of the investigation are before the Committee and it will be noted that the investigation is not exclusively into allegations made to the Commission by certain known criminals, as some have contended. It also seems appropriate to say on this public occasion that those who are inclined to be critical of the use of criminal informers need not think that we are unaware of the need for scrupulous care in so doing. That is really by way of general update.

I should like now to come to the particular matter of strategic intelligence, which has been raised here on one or two prior occasions. It was first raised, as I understand it, by the Committee as a result of some work said to have been done by the National Crime Authority to give an overview of organised crime in



Australia. At or about the same time the Committee's project officer delivered a paper to the Fifth International Anti-Corruption Conference. That paper contended that the Commission's work was narrowly focused on local government and land development, contracts and tendering. That focus was said to relate to some personal bias of mine. The paper stated that the Commission should be requested and, if necessary, formally required to prepare and publish a strategic assessment of corruption in New South Wales akin to that which was spoken of by the NCA so far as organised crime was concerned. So far as I am aware, that assessment by the NCA has never been published; I do not know if it has been done.

In this year's Annual Report we published an analysis of formal investigations and corruption prevention projects to date and you will find that at pages 32 and 33. That analysis was conducted in terms of issues considered, types of organisations dealt with and types of persons dealt with in published reports. The figures produced show that the spread of work is appropriately wide; indeed it may be thought significantly wide. That analysis shows the Amsterdam paper to have been unsound. The allegation of personal bias is not made out and should be withdrawn. I note that, to add insult to injury, it was delivered before an international audience. The figures taken out by our corruption prevention people, which appear in the Annual Report, show that so far as issues raised are concerned about 20 per cent of them relate to tendering and land development; so far as organisations are concerned 25 per cent of the reports relate to local government. The basic difficulty encountered by the author of the Amsterdam paper was that in a most rudimentary analysis he combined issues and types of organisations and thus came up with an inaccurate picture.

I have now come to the firm conclusion that to publish the results of strategic analysis work would be wrong. The reasons are, first, practical and, second, principle. As to the practical, any such publication would simply warn off the ungodly. As to principle, to publish such reports would be tantamount to group or individual libel and would be grossly unfair. Let me give you an example: suppose the Commission conducted a strategic intelligence exercise which led to the conclusion that there was a grave corruption problem in relation to produce marketing—and I give that example because it is presently notional. If, as a result of a strategic intelligence exercise, we reach that conclusion, should we publish that fact? The answer must be no. If we reach that conclusion we should do something about it. If we did that, if we did tackle the problem area, we would obviously not want to signal or telegraph our punches in advance and at the end of the day we would publish a report which went beyond mere intelligence and stated conclusions based upon evidence. If we did not for any reason decide to pursue the matter, to publish the intelligence report would serve no useful purpose; it would simply excite the general populace to no good end.

The basic reason is that intelligence, by definition, is unreliable. Its level of unreliability may be variable; some of it is highly unreliable tending towards mere gossip, speculation and rumour. Some of it tends towards a fair degree of reliability but it must never be confused with proof and that which is published should be proven fact. To publish intelligence reports is also grossly unfair to individuals named in them. If there were any doubt about that, if that were thought to be theoretical, could I refer the Committee to the Report on Gaming Machine Concerns and Regulations, published by the Criminal Justice Commission in May 1990, one of the first reports it published. As I understand it, the Queensland Government required the Commission to provide a report; the report became public. The report states that it is based in part on intelligence material and that is very clear when one goes through it. There is a lot in the report which is unproven.

It reached conclusions concerning individuals and in particular reached conclusions concerning a Mr Ainsworth and companies associated with him and he was never heard. It is wholly unsurprising that the High Court should have struck down that report and should have been critical of the Criminal Justice Commission and the Queensland situation generally by reason of that report. That makes perfectly clear the dangers that flow from the publication of intelligence material. We do not know of anywhere where intelligence material is published to the general public. It is absolutely wrong in both principle and practice and, having reached a concluded view, I thought it should be stated. The head of the Commission's intelligence section, who is a man of considerable experience not just with the Commission but previously, would be happy to provide Committee members with a briefing as to intelligence methodology and I would be happy to make him available for that purpose. I would ask that he not be requested to reveal actual intelligence material, but he would be very happy to talk about methodology.

While proffering invitations could I mention the mooted meeting between this Committee and our Operations Review Committee. The ORC last met on Friday afternoon and authorised me to suggest a meeting between the two Committees on Friday, 4th December, at about mid morning. That is something we will come back to you about and check about availability. There is an anxiety that the meeting should take place. It is probably better that it take place this year and not next year, and that is a date we are suggesting in the hope that it will suit the majority of members of this Committee.

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## **GENERAL BRIEFINGS/UP DATES**

### 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:** Informers - Public hearings have been completed, submissions are still being received from time to time in respect of particular individuals and issues, the report is partially complete and is expected to be published by the end of the year.

Trackfast - Plant Hire in the Northern Region - A report on the Trackfast part of this investigation was published in September 1992 and the report on the plant hire in the northern region part of the investigation is expected to be published by the end of the year.

The Metherell Appointment - An issues paper in respect of the appointment of former Members of Parliament to the public service and related issues has been published, submissions invited by the end of November, a hearing on the issues scheduled for 16-18 December, and a report expected to be published in early 1993.

**Q: 1.2 the Commission's Corruption prevention work;**

**A:** The 1992 Annual Report contains a comprehensive report on corruption prevention work during the year to June 1992. The following expands that information and brings it up to date.

### Additional completed projects

Project No. 7, published August 1992, reviewed policy and practice affecting NSW police officers engaging in outside (secondary) jobs. The report discussed types of job, industry, and employer with the potential to create a conflict with police responsibilities which could undermine public confidence in the integrity of the police service. The report recommended significant changes in policy and procedures and attracted wide public interest. A Police Service working party has been established to advise on the recommendations to the State Executive, and monitoring of implementation will commence following the working party's report.

**Additional projects in progress**

- Project No. 15: Review of the Commission's code of conduct.
- Project No. 17: Principles for sponsorship of government agencies and services by the private sector.
- Project No. 18: Monitoring of Corruption Prevention Project No. 1 on Driver Licensing.
- Project No. 19: Monitoring of Corruption Prevention Project No. 2 on Housing Maintenance Contracts.
- Project No. 20: Monitoring of Corruption Prevention Project No. 4 on Council Vehicles.
- This monitoring project is being conducted by way of a questionnaire to all agencies involved in purchasing vehicles to which the report was addressed originally. The questionnaire sought information on implementation of the recommendations and on the usefulness of the report itself. The response rate was very high and the results will be published in a monitoring report at the end of the year.
- Project No. 21: Monitoring of Corruption Prevention Project No. 5 on Allocation of Boat Moorings.

**Publication of project reports**

Following the public release of corruption prevention reports on boat moorings, council vehicles, cash handling and police outside employment, feedback indicated that the findings and recommendations were of value to a wide cross-section of the public sector and the community. Multiple copies of several reports have been requested by government agencies for training purposes.

**Codes and guidelines**

Since July 1991 the Corruption Prevention Department has advised and assisted the following agencies with codes of conduct on an individual basis, in addition to the seminars held jointly with the Office of Public Management (attended by about 60 organisations):

Casino Control Authority  
Chief Secretary's Department

Department of Consumer Affairs  
Department of Corrective Services  
Department of Courts Administration  
Department of Health  
Department of Housing  
Department of School Education  
Department of Water Resources  
Maritime Services Board  
Mudgee Shire Council  
Narrabri Shire Council  
National Parks & Wildlife Service  
Sydney Opera House Trust

Following the report of the Royal Commission into Productivity in the Building Industry, a considerable amount of work was done by the Corruption Prevention Department with various working parties established to develop codes of practice related to construction contracting. This included work on:

- . Public Works Department selective tendering system
- . Government-wide procedures for calling tenders and letting contracts under \$50,000
- . NSW Code of Practice between Government Agencies and the Construction Industry
- . Construction Industry Code of Tendering

**Q: 1.3 the Commission's Public Education work;**

**A:** The Education Unit's focus this year has been on two areas - curriculum development and community awareness raising.

#### **Curriculum Development**

The NSW Board of Studies has given its support for the development of appropriate curricula and education materials for the secondary school Legal Studies subject, with a view to extension to other areas at a later date.

A special project officer will be employed at the Commission on a limited term basis to undertake the following tasks:

- . curriculum development
- . design and production of education resources
- . in service training for teachers

As a shorter term measure, the Commission has been making staff available to speak to schools. Visits to country areas have centred around schools. Between

February and June 1992, the Education Unit visited more than 30 schools and spoke to almost 2,000 students. The level of interest amongst both teachers and students to these visits has been most encouraging.

In March, this year, the Commission sponsored Youth Week. A special 'Corruption-free-zone' education kit was offered to all schools and youth groups in the state. The response was encouragingly high, with more than 300 kits being requested.

The Commission's Issues Booklet, titled "In Whose Interest" was sent in June this year to all secondary school librarians, with a reading list on corruption topics. It was intended the booklet be used in the classroom as a resource for discussion. To help, the Commission made copies of the booklet available in all public libraries. Feedback from libraries to the Education Unit confirmed some teachers set classroom exercises.

In August, as part of its involvement in Law Week, the Commission sent an information kit to all secondary schools in the state.

### Community Awareness

Community awareness has been nurtured through extensive travel to country areas and an increase in the number of speaking engagements to groups.

A total of 62 speaking engagements have been conducted since March 1992.

Since March, the Education Unit has visited 34 centres on country trips:

North Tablelands:   Armidale  
                              Tamworth  
                              Gunnedah  
                              Narrabri  
                              Coonabarabran

South Coast:         Wollongong  
                              Goulbourn  
                              Nowra  
                              Ulladulla  
                              Bateman's Bay  
                              Moruya

Far West:             Broken Hill  
                              Wentworth  
                              Balranald

	Hay
	Deniliquin
Central West:	Dubbo
	Cobar
	Nyngan
	Bourke
North West:	Moree
	Tenterfield
	Glen Innes
	Inverell
	Warialda
North Coast:	Tweed Heads
	Murwillumbah
	Ballina
	Lismore
	Casino
	Kyogle
	Mullumbimby
	Byron Bay
	Alstonville

A number of other country centres have been visited for specific purposes e.g. Queanbeyan, Grafton.

Special seminars have been arranged with key community groups, such as the State Aboriginal Land Council and the Labor Council of New South Wales, to explain the Commission's work, and to provide opportunities for feedback and discussion on particular issues of concern.

Exhibitions have continued to form a part of the Commission's public education program. Participation in the Law Week exhibition in the Downing Centre, in August, and the Lifestyle Expo at Wollongong, in October, have provided opportunities for general public awareness raising for the Commission. The cost of such exhibitions is high, however, and the Commission will continue to review their effectiveness.

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

**A:** Chapter 3 of the Commission's Annual Report to 30 June 1992 (particularly pp36-41) contains details of the prosecutions which have arisen from Commission investigations during the last reporting year.

Since 30 June 1992, the following prosecutions have been initiated by the Commission, arising from two investigations not involving hearings.

- (i) 2 x s249B Crimes Act - solicit and receive bribe - For plea/mention on 18 November 1992.
- (ii) 3 x s302 Crimes Act - control of false instrument; 3 x accessory before the fact to false certification of birth certificate; 4 x s296 Crimes Act - falsify certified birth certificate; 1 x s156 Crimes Act - larceny as a servant; 1 x s159 Crimes Act - larceny as a public servant; 1 x s10 Drugs Misuse & Trafficking Act - possess prohibited drug. In respect of all charges, guilty pleas entered and committed for sentencing in the District Court.

The public official and his spouse, referred to in the 1992 Annual Report in Investigation 12 on p36, have been committed for trial on all charges.

Arising out of the North Coast Land Development investigation, Messrs Cassell, Ross and Hogan pleaded guilty to 4, 2 and 1 charges respectively under s87 ICAC Act and were sentenced to terms of imprisonment of 8 months, 6 months and 6 months respectively. All have appealed to the District Court.

The trial of Messrs Lynn and Poulos on charges of bribery ended in directed verdicts of not guilty.

Gregory Abel appealed against his sentence of 4 months periodic detention for making a harassing telephone call to Mr Azzopardi (see p40 1992 Annual Report). That sentence was quashed and replaced with a sentence of 4 months' imprisonment suspended upon Mr Abel entering a 3 year recognisance to be of good behaviour.

Kylie Williams (see p40 1992 Annual Report) was sentenced to perform 80 hours of community service in respect of each offence against s87 ICAC Act, and for the offence of inciting a harassing telephone call was sentenced to 4 months imprisonment suspended upon her entering a 3 year good behaviour bond and fined \$4,500.

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

**A:** The Research Unit presently comprises two positions, Research Manager and Research Officer. Since August 1992 the Unit has come under the supervision of the Director of Administration and Education. It is independent of the Commission's corporate services and provides a service for the Commission's corruption prevention, education and operational work.



The current projects of the Research Unit include an analysis of Commission reports with the Corruption Prevention Department, focusing on issues, agencies and persons dealt with in Commission reports; developing a mechanism by which to analyse recommendations made in Commission reports and to measure their implementation; analyses of public attitude survey results; research assistance for investigations and co-ordination of the corporate planning process.

The study of public sector employees' views of corruption has been deferred due to the likely skewing of results in light of recent events involving the Commission. The study will probably be conducted in early 1993.

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

**A:** Advice and comments provided by the Commission on proposed legislation are dealt with in the Commission's 1992 Annual Report at pages 69 - 71. Principally advice and comments were made in respect of the Service and Execution of Process Bill 1992 (Cth) and the Telecommunications (Interception) Act (Cth). The Commission also provided an issues paper and comment to the Cabinet Office in respect of proposed whistleblower protection legislation.

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

<b>A: <u>Expenditure</u></b>	<b><u>YTD September</u></b> \$'000
Employee payments	1,753
Maintenance and working	580
Fees to legal practitioners	116
Capital	—
	2,449
	=====

**Staffing**

As at end September - 128

Recruitment campaigns for investigation staff and support officers are nearing completion.

**Q: 1.8 a description in general terms of the matters dealt with by the Operations Review Committee (ORC) over the past year, including any matters on which the ORC disagreed with the Commission's recommendations.**

**A:** The ORC receives the following categories of reports:

**Report Concerning Non Commencement of Investigation**

This report relates to a complaint (s10) of possible corrupt conduct, where it is proposed not to formally investigate the complaint. The major headings of this report are:

- \* Details of Allegations - This section of the report summarises the essence and seriousness of the allegation, so that the Committee is properly informed of the nature of the complaint.
- \* Inquiries/Action taken - Inquiries made or action taken in relation to the complaint are outlined briefly. These reflect the work of Commission officers in the matter and represent the foundation for the author's assessment contained in the report.
- \* Assessment - The assessment part of the report traverses the results of inquiries undertaken, and the factor/s contributing to the recommendation.
- \* Recommendation - The recommendation will generally be that the complaint not be investigated, and may also recommend referral of the matter or information to another authority for information or investigation.

**Further Report Concerning Non Commencement of Investigation**

The Further Report is the means by which further material is placed before the ORC in accordance with their advice, usually a request for further inquiries to be made. These reports are presented to the ORC immediately upon completion of the further inquiries requested. The previous advice of the ORC, and the date on which it was given, is recorded so that the purpose of the further report is clear.

**Report On Investigation**

This report relates to a formal investigation by the Commission and is generally provided on a quarterly basis. This is the primary means by which the ORC is kept informed of the progress of Commission investigations. When a final report is presented, one of the

recommendations is to discontinue the investigation. The major headings of this report are:

- \* Terms of Reference of the Investigation
- \* Background - This informs the Committee of events which led to the investigation.
- \* Current Position/Proposed Action - Information about the current position and proposed action is provided so that the Committee is aware of the intended direction of the investigation.
- \* Resources Required for the Investigation - Details of Commission resources required for each investigation are provided.

### Status Reports

As a result of views expressed at the previous meeting between the Parliamentary Committee and the ORC and the Commissioner's desire to create a "fail safe" system of ensuring that all matters are dealt with in a timely fashion, an additional reporting system was introduced by the Commission earlier this year. Status Reports ensure that no opportunity exists to "cover up" matters by not referring them to the ORC or less than diligent action on a complaint.

This system requires that any complaint still being examined 18 months after receipt must be reported to the ORC by way of Status Report. This report must outline the issues, identify steps taken and to be taken, and make recommendations including a time frame for finalisation.

If a matter remains active after two years, Status Reports must be submitted to the ORC on a monthly basis.

It is the intention of the Commission and the ORC to reduce the time frame for the mandatory reporting from 18 to 12 months during the next year. The major headings of this report are:

- \* Details of Allegations
- \* Current Position - The purpose of this report is to provide sufficient information to enable Committee members to understand the current position of the matter with reference to reasons for the file remaining active.

- \* Recommendations Regarding Future Action - A firm indication is given of the likely direction of the matter and the ultimate outcome. An anticipated time frame for completion of the matter is also included.

In the last Annual Reporting year the Operations Review Committee considered 671 reports. Since 30 June 1992 the Operations Review Committee has considered a further 270 reports. Commission staff advise that, in very broad terms, the Committee has considered reports in the past year which concerned local government, police and public authorities with large client bases. Common themes were pecuniary interests, conflicts of interest, partiality, tendering processes, misuse of powers, criminal activities, recruitment and promotion procedures, maladministration or mismanagement.

In the past year the Committee has ultimately disagreed once with recommendations made by Commission officers. The Committee disagreed with a recommendation that a matter not be investigated and requested that a further, fuller report be submitted to them. Two further reports were submitted with the same recommendation, that the matter not be investigated. The Committee still did not accept this recommendation and advised that the matter should be made the subject of a formal investigation. The Commissioner accepted that advice.

On average up to 10% of recommendations by Commission officers are, at any given meeting, either adopted with variations or referred back for further consideration or the provision of further information.

**Questions Without Notice**

**CHAIRMAN:**

**Q:** The first section, General Briefings, at 1.4 on page six: "The trial of Messrs Lynn and Poulos on charges of bribery ended in directed verdicts of not guilty". What was the basis for the direction?

**A:** I think it has been mentioned before this Committee before now. Yes, there has been discussion at the level of this Committee as to a provision we wanted inserted in the law, which would give our transcripts evidentiary standing before courts. That is a recommendation which I think the Committee felt itself unable to go along with. In any event, it was certainly not enacted into law. At the hearing of the criminal charge, there were difficulties in proving certain tapes of the Commission hearing, which had to be proved in the absence of the transcript having evidentiary standing. As I am informed, those difficulties could not be overcome and the Crown case could not be made out.

**Mr GAY:**

**Q:** Just following on from that, was that to do with the technical side of the recording?

**A:** I think it was. It had to do with turning over tapes. We are now doing it differently and we should not encounter the same difficulty—although I have to say it is a terribly tedious business to have to prove tapes. It is awfully difficult, in any event. All I can say is that I understand we have changed our procedures and we should not strike just that difficulty again but it is always an area of great difficulty, and enormous tedium you will understand. How a jury sits through it, I cannot imagine.

**Mr GAUDRY:**

**Q:** In terms of the Operations Review Committee, at 1.8 of the questions there is some indication that there is going to be a shortening of the time of status reports. I just wonder, within that whole process of bringing matters back before the ORC, whether there is any argument put forward in terms of the scarce resources within the ICAC, in terms of carrying through investigations; whether or not something should be revisited in that matter, or whether it is purely on the merits of the case itself?

**A:** We are presently examining whether there should be some supplementation of the resources in the Assessments area. The general picture, as I am informed, is that

we are eating into the backlog but what might be called a frontlog is building up, in the sense that we are not processing the newly received stuff fully as quickly as we might, and accordingly some additional modest amount of resources may be called for. It would be easy to say that we have not got the resources necessary to do all that could usefully be done—and that is true enough—but scarcity of resources is a thoroughly good thing and I am certainly not seeking more. We will make do with what we have by reordering. I do not want a bigger organisation. If we start growing, where does the process stop? It is best that we should impose the discipline on ourselves, by saying we will make do with what we have got and we will reorder priorities as necessary.

**Q:** I cannot refer to it particularly, but the Operations Review Committee seems to have taken a more stringent approach, perhaps, in terms of its review of the matters before it.

**A:** Perhaps a little more, although it would be incremental. But, perhaps a little more. We are trying to improve the way we service them all the time, with statistics and so on, I think with some success.

**Q:** Does that mean a streamlining of matters coming before it? I notice you aggregate some particular areas.

**A:** In that respect some small improvement, but also with respect to briefings, statistics and overview. I would not want to say there is anything dramatic but we are still in the course of getting things a little better on a half-year by half-year basis. That might continue forever.

**Q:** There has been a recent change, I think in March last year, in the makeup of the ORC. Were the new members given a particular induction, in terms of the responsibility and role they would need to perform, or was that a matter of coming on stream in the Committee sense?

**A:** No. They were given an induction. I spoke to them at some length and answered questions in advance of them attending a meeting; and at an earlier meeting or meetings, we gave presentations as to the assessment process and, perhaps, one or two cognate matters. So, there was an induction process.

**Mr TURNER:**

**Q:** Was there any relationship between Miss Carolyn Davenport and Mr Davenport who was on the ORC?

**A:** If so, it was never revealed to me. I do not think so, no.

**Ms BURNSWOODS:**

**Q:** Still on the ORC, Mr Temby. The section on status reports, and the rule about doing those if something is still being examined 18 months after receipt, and you had to drop that—is it possible to say whether matters still outstanding 18 months later are more important or more trivial, given the backlog you referred to earlier?

**A:** I could not say that confidently. There is a range of reasons why matters are not dealt with as quickly as we would hope; there is a range of reasons why matters hang around. It may be that they are of significant size and the ICAC preliminary examination process becomes protracted—that sometimes happens; it may be, and I think this is more typical, that we are waiting for a report back from somebody else before deciding on ultimate disposition, so that is almost accidental.

**Q:** Is it possible to quantify that sort of thing?

**A:** No, I cannot do so, but if I could request that you give us a reminder before next I come here, I can certainly come armed with figures on the next occasion, by which time it should be that the period has been reduced, because we are working to reduce that period. I suppose it would be fair to say that the matters outstanding for a significant period are unlikely to be the most trivial but not necessarily confined to the most important. Does that provide an answer?

**Q:** Yes. I know it is probably hard to say. Further on the ORC and the matter you referred to where the Committee disagreed with the recommendation and persisted with that disagreement, is it possible for you to provide more information about that matter?

**A:** Yes, it is—although I would like to do so in a way that does not identify it, but I can talk about the process without difficulty. We received information from another organisation, and a complaint of serious criminal misconduct on the part of public sector officials. We tackled it quickly and vigorously. The conclusion Commission officers reached was that a hearing was unlikely to get closer to the truth than they had been able to get. A recommendation was made to the ORC not to investigate; they referred it back; I think it was discussed in total on three occasions; ultimately, and still contrary to the view of Commission officers, they said that we should conduct a formal investigation. The matter is one of complexity and their viewpoint is sensibly available. I decided to accede to that recommendation, because it is important the ORC should not become a rubber stamp body.

During the time that I was away, the Acting Commissioner, Mr McClellan, invited Mr Stretton—who is one of the Commission's General Counsel—to examine the matter with a view to preparing terms of reference—which is the necessary next

step, because we have to have terms of reference so that we know exactly what we are investigating. Mr Stretton prepared a minute which has again cast in doubt the question whether this investigation can be pursued with prospects of success and without the risk of failure which will entrench people who may be corrupt. The matter was discussed again at the ORC meeting on Friday last. I have made available to them the Stretton paper, and it has been agreed it should be discussed further on 4th December when next we meet. I have made it clear to the Committee that if they remain of the view that we should carry through with the investigation, I will do so but I thought it was proper to provide them with this updated material.

The only other thing that need be said is that the matter is one of difficulty and the discussions have at all times been highly positive and co-operative. I would not want to give the impression that there is any sense of crisis abroad, but there are some differing views felt. I have expressed my views, which happen to agree with the views that the Commission officers have put—that is by no means always the case, but it happened in this case. I just do not think it is a winner. If they hold to their present view, we will carry it through and, of course, give it our best shot.

**Q:** In that context, when you refer to further investigation and also to a hearing, are they more or less synonymous? Is it not possible, for instance, to resolve that difference by means of further investigation?

**A:** No. There is nothing more we can do. There is nothing more I can think of which can be done with prospects of clarification, short of a hearing. They are not quite synonymous because sometimes we conduct investigations which do not involve hearings. Particularly sometimes we commence formal investigations so we can exercise our coercive powers. To take an example, bank records may be produced under compulsion, interviews conducted and a criminal charge might be laid. That could happen. It is not typical, but sometimes has happened. More often than not, a formal investigation means hearings, but they are not synonymous.

**Mr GAY:**

**Q:** As a follow-up to that, if ultimately the Operational Review Committee has its way, this is pursued and there are hearings culminating in a report, in that report would there be comments that that was the situation? Have you addressed that situation?

**A:** I think the answer is probably yes because I see no reason why that should not be the case. I would not say that critically because I say that the majority view on the Committee is one which can be respectfully held. I just have a pragmatic view that it is not a matter we will get far with.



**Q:** Also we could probably deduce from this that all the investigations so far have been with the concurrence of the ORC.

**A:** This is not the first time that there has been an ultimate difference between a staff recommendation and an ORC recommendation to me, although much more often than not matters are referred back and ultimately there is no disagreement. There was one occasion when I did not agree with the Committee recommendations, so it does not rubber stamp what it gets and I do not feel absolutely bound to accept its recommendations. I do not remember the detail of that other matter. The difference between us was small. It was a fairly insignificant matter. This is an important matter. I cannot say dogmatically that I am right, and therefore I think I should listen to the Committee.

**Mr HATTON:**

**Q:** I would like to try to get to this point: is the ORC equipped to take on, if it needed to, the ICAC? In other words, to what extent is the ORC an independent audit and equipped to be an independent audit of the ICAC?

**A:** In a general sense, the ORC does not have an auditing function and would not be equipped to do it.

**Q:** No, the audit I refer to is audit in terms of its requirement under the Act, that is, in operations and—

**A:** I have no doubt that the Committee could effectively audit the performance of the Commission's functions so far as complaint handling is concerned, which is its area of responsibility, and I have no doubt that the Committee would do so if it saw a need.

**Q:** But how well equipped is it? It is similar to the Police Board trying to audit the police department. You have the all the facts, as it were. What powers are there in terms of withdrawing the facts from your organisation, evaluating them, staff support and independent consultancy if necessary? What are the Committee's resources?

**A:** One of the best ways of finding out what has happened in a matter and whether it has been satisfactorily handled is to read the file. On at least two occasions in the last three months or so, in relation to major matters two separate members of the Committee have called for the files. They have been made available; they have been gone through; and questions have been asked and answered.

**Q:** Do they ever consult the complainant directly? Does the complainant come before the ORC?

- A: There is no instance in which a complainant has been before the ORC.
- Q: It may be a function of the fact that the Commission is doing an outstanding job, but in the last Annual Report the Operational Review Committee considered 671 reports. There is no comment there as to how many times it disagreed. However, it just says that since 30th June this year of the 270 reports it has considered up to now it only disagreed with one, which was what Jan was talking about.
- A: That is an ultimate disagreement. The Committee often expresses disagreement with initial recommendations. It refers matters back in about 10 per cent of cases. It is far from being a rubber stamp.
- Q: You have mentioned 10 per cent of the cases. In relation to this should you, as Commissioner, be a member of the ORC? In other words, should the ORC be separate, like this Committee, and when it wants to talk to Mr Temby should it ask Mr Temby to attend?
- A: That would be a matter you should probably take up with the Committee. It would be presumptuous of me to express a view on that. I cannot see anything wrong in principle with the Commissioner being a member of it.
- Q: Does that apply to the Police Commissioner? any disadvantages? For example, if it wants/ed to review matters of inquiry in the police force, would it be a disadvantage to have the Police Commissioner sitting there while considering that matter and should the Police Commissioner not be sitting there if they are considering this matter?
- A: Again, it is a question you should ask the citizen members of the Committee, if I could so describe them. There are some advantages in having Mr Lauer present in the sense that he can ascertain progress with respect to matters within his own service that are coming before us and he can give matters a kick along. There are certain practical advantages. As a lot of the complaints we get relate to police, there is room for the view that it is not on balance the most convenient course to have the Commissioner present. I do not hold that view, but I can understand that there is room for that view. But there are practical advantages. The key membership group comprises the four citizen members, to which you add an ICAC Commissioner, an ICAC Assistant Commissioner, a Police Commissioner and a nominee of the Attorney-General. The key group is those four.
- Q: I intend to pursue that matter with the ORC, but I also would like your view on that because I think it is important that it is well equipped, well resourced and completely independent because it is one of the mechanisms of accountability on which the citizen relies. We cannot look at operational matters. That is the last and only port of call.

**A:** So far as resources are concerned, the great resource the ORC has is an absolute willingness on our part to make files available, to answer questions and so on. There is no separate secretariat. If you were contemplating perfect independence, you would need a separate secretariat, a standing body housed separately, and that would seem to be somewhat excessive. After all, you cannot find parallels with our Operational Review Committee and other organisations in the State. There is nothing of that sort with the Ombudsman, for example.

**Q:** That does not necessarily say that it is not a good thing. When you invest organisations with very wide reaching, great powers, as your organisation is vested, you must have a couple of levels of accountability. We have the principles, as it were, looked at by this Committee and the day-to-day operations looked at by the ORC, which should be seen to be independent and well resourced to do so.

**Mr GAUDRY:**

**Q:** Following on from that, where the ORC disagrees, does it then call for a report in some structured way and does it have the advantage of perhaps bringing the principal investigator before it who is associated with that particular investigation, or is it a more distanced review?

**A:** Typically, if the ORC is not satisfied with a report and recommendation it receives, the matter will be referred back and there will be a further report forthcoming. That is dealt with in the last part of page 8 following. That relates to a further report. As to the second part of your question, it has not been the practice of the Committee to call staff members before it. I would not resist such a request if it were forthcoming, but it has not been forthcoming.

**Q:** So they deal with them by direct reference to reports.

**A:** But they ask as many questions as they like and get answers until they are satisfied.

**Mr GAY:**

**Q:** Has there ever been an instance of bringing complainants in to speak to the ORC? We have a lot of correspondence from complainants who quite wrongly come to us. As a matter of course, we refer them across. We certainly have a lingering concern about whether complaints are being addressed properly.

**A:** We have outlined, I think before now, the procedure we follow when we get a further approach from the complainant, whether direct or through this Committee. It is examined closely to see whether it contains fresh material. If it contains fresh material, the matter is resuscitated. If it does not contain fresh material, we might or might not, depending upon circumstances, enter into some

further correspondence with the person. But we do not resuscitate the matter unless something new has been put forward. I do not want to sound unsympathetic because I do understand that from their viewpoint typically it is the most important thing around, but numbers of complainants have a different view than we are able to accord their matter as to its importance.

**Q:** Is it a definite policy of the ORC not to call in people and just to rely on the evidence, or is the situation that so far it has been seen to be unnecessary?

**A:** I am not sure that I know the answer to that. If and to the extent it is a policy, it is certainly not one I have laid down. It may be a policy that has developed within the Committee over three and a half years now. It may be that at some stage earlier on we talked about it. I cannot remember. I am sorry I cannot be more definite. It is certainly internally generated. It is not something the Commission has set to impose. I would not stand in the way of it. I can see inconvenient consequences if it became habitual, but we are as far from that as you could imagine.

**Q:** It is not a definite policy that is laid down, but you are not sure how the principle has evolved.

**A:** It is not a definite policy that has been imposed. Whether it has just grown up or whether there has been debate about it, I cannot now remember. For my part, if one or two Committee members saw reason to bring in a complainant I would not say no to that.

**Mr TURNER:**

**Q:** The Greiner-Moore matter was your first parliamentary reference. Where does that sit in the Act as far as the ICAC's role in relation to references from Parliament?

**A:** It is not the business of the ORC to deal with parliamentary references, and it cannot be because we are obliged to do them. I can however say that I briefed the ORC as a matter of courtesy upon that matter I think on each occasion we met during the course of—

**Q:** On page 8 you have set out what the procedure is. In the questions and answers in your report you mention that you report to the ORC on a quarterly basis on those matters which are proceeded with. On a short matter, it would be feasible to commence and finish before you would report to the ORC. Would that be right if you started it a short time after the quarter had started?

**A:** I think not because the practice that is followed is to report to the first ORC meeting after the matter is commenced and then at least quarterly thereafter. So

the first mention should be within a month at most after the matter has been commenced. I cannot think of any occasion when I have failed to do that. I would be very surprised if one could be found. So it should be one month only. We would never finish anything in a month. It may be that with a short matter the Committee may hear of the commencement of a matter and next hear of it a couple of months later when we recommend discontinuance on the basis that we have laid charges and there is nothing more to do. That has probably happened a couple of times. But, as you know, we tend not to take on that relatively straightforward work.

**Ms BURNSWOODS:**

**Q:** On the corruption prevention area, in relation to co-operation with the working party set up following the Royal Commission into the Building Industry, how does that sort of work come about? What kind of structure is in place to co-ordinate that work with those working parties? Are there any other examples?

**A:** Yes, I can certainly help, although I have not been involved in the discussions. The work we have done has fallen into a couple of areas at least. One is in relation to matters such as tendering codes, concerning which the Task Force has sought, and we have provided, assistance and advice as to the process best undertaken for preparation of documents of that sort and practices of that sort, the sort of consultation that is appropriate, and I think probably a certain amount of advice as to content, at least in the sense of certain areas that need to be covered. We have done quite a lot of work in that area with other organisations.

**Q:** Is that the basis of it, that because you have previously done work in those areas it is not a project started from scratch?

**A:** No, and we do not call it a project so far as I am aware. It is not one of our formal projects; it is advice and assistance. As a matter of practical certainty it is at the advice and assistance level, not at project level so far as the Commission is concerned. We became concerned about the adequacy of standing arrangements to ensure integrity when ad hoc bodies such as Commissions of inquiry and task forces were established, typically at short notice. We have been doing work which has certainly touched and concerned the previous Royal Commission and the Task Force. That work is being done perhaps more with the Premier's Department than with the Task Force into the development of a standard set of procedures to be followed in order to enhance integrity when these ad hoc bodies come into existence—the sorts of rules that should apply with respect to interest disclosures, recruitment procedures to be followed with particular reference to security and matters of that sort. So we have done some follow up work on the Royal Commission in that area as well.

**Q:** Will that sort of material be made public?

A: I do not know, I am sorry. If it can be, it will be.

Q: It would be interesting to see. Certainly in that area concerns were expressed about some of the matters raised.

A: I do not want to give the impression that I have the view that the Royal Commission into the Building Industry did that badly, because I have no real impression either way. It might have done it well. But its operations brought the need for some standing arrangements to light and we have been doing a deal of work in that area.

***SPECIFIC QUESTIONS RELATED TO  
GENERAL BREIFINGS***

***Questions on Notice***

**Q: 2.1** Could the Commission provide some information on the progress of the current inquiry into police corruption (eg. terms of reference, timetable for hearings, likely reporting date)?

**A:** The terms of reference of the Commission's current inquiry into possible police corruption are:

"The Commission is investigating the extent of the association and the nature of the relationship between police (especially past and present detectives) and criminals, and the effect and outcomes of that relationship, after January 1975.

This will be done with particular reference to defined areas of criminality, including armed robberies and illegal gambling.

The investigation will be conducted with a view to determining the matters referred to in s13(2) of the Independent Commission Against Corruption Act 1988 (as amended).

At the conclusion of the investigation a report will be prepared. Information will be passed to other authorities as appropriate."

Public hearings will commence on 16 November 1992 and continue until about mid-December (when the hearing dealing with issues related to appointments of former Members of Parliament to the public service is scheduled to take place). The public hearing will resume in late January 1993. Public hearings may well continue throughout most of 1993. The report of the investigation is likely to be published towards the end of the current Commissioner's term. This is a major investigation to which the Commission will devote much of its energies over the next 12 or 18 months.

**Q: 2.2** What is the budget of the Commission's Public Education unit? What proportion of this is spent on salaries, including overtime payments?

**A:** During the 1991/92 period, approximately \$330,000 was spent on public education, as follows:

Salaries	\$160,000.00
Overtime	\$8,000.00
Operating expenses	\$120,000.00
Advertising	\$40,000.00
Total	<u>\$328,000.00</u>

For the 1992/93 period, a total expenditure of about \$375,000.00 is expected due to the employment of the special project officer to work on curriculum development.

**Q: 2.3 Is there a liaison group or special liaison mechanism between the ICAC and the Office of the Director of Public Prosecutions on a needs basis, such as in relation to prosecutions arising from major Commission investigations?**

**A:** Liaison between the Commission and the Office of the Director of Public Prosecutions has been between the Solicitor to the Commission and the Solicitor for Public Prosecutions, his deputies and the solicitor in charge of the Special Crime Unit of the DPP, which does most of the prosecution work arising from Commission investigations. Such meetings or contact occurs on an as needs basis, in relation to issues. Contact in respect of particular matters occurs between the Commission officers and DPP lawyers having conduct of the matters.



*Questions Without Notice*

**Mr GAY:**

**Q:** You mentioned earlier that the terms of reference of your current inquiry will not be exclusive to the matters brought up by the informant. Could you elaborate on what areas may influence your inquiry and whether you will consider matters brought up in other inquiries?

**A:** It would be fair to say that the genesis or, if you like, the precipitating cause of the current investigation was complaints of the utmost seriousness made to us by the man Smith, initially as a complainant and then as somebody who started talking to us. Other sources of information and material have included other law enforcement agencies, State and Federal, that had volunteered material or, more typically, that have been approached by us for assistance. We have had a wealth of material and some allegations from such bodies. We have gone back through all our holdings to see what we have by way of complaint, even formally written off complaints, which could be viewed as related to the allegations we had otherwise received. I could not tell you how many of them have been resuscitated as a result of that but I think it is true to say some have been. As a result of interviews with individuals we have obtained some admissions and we have obtained some allegations against others, all of which have been absorbed into the current inquiry. I hope that with the passage of time and as it becomes clear to all that we are serious about this matter there will be more information coming, because I have no doubt there is a great deal more information out there than that which has been received to date. We of course remain anxious to receive such information as can be provided to us in good faith. I am sure more will be received.

As to areas, I would not want to go further than saying that we are actively interested in allegations concerning armed robberies. Our level of interest in the other specific area mentioned in the terms of reference is presently somewhat lower. We are actively interested in what is called in the trade blues fixing, which is perverting the course of justice. That is an area concerning which we have several allegations which have been pursued to a considerable extent. Certainly not all of them go back to the man Smith.

**Q:** I have not heard of blues fixing. Could you elaborate on that? Also, what is the significance of the date of January 1975?

**A:** That date was selected having regard to the allegations made by the man whose name I have mentioned. It is very clear that this is a matter in which, if there is substance in the allegations, you have to go back in history to make sense of what has happened since. A series of continuing relationships are at the heart of these

allegations. Let me stress that I do not know how true they are but that is the nature of the allegations. The illegal gambling area is mentioned. To make sense of the current situation one has to go back in time to see how things have developed over a period. It is inevitable that in part it becomes serious historical research. I am no precise expert as to where the term blues fixing comes from but I think to receive a summons is to receive a blue—because of the colour of the paper on which they used to be put out. You fix a blue when you get rid of the charge in some way. The ways of doing that can be to—

**CHAIRMAN:**

**Q:** That explains the term.

**Mr MUTCH:**

**Q:** You say that the report is likely to be published towards the end of the present Commissioner's term. Are you committed to seeing the whole exercise through or, if your term expires before you finish the job, will you seek an extension or do you have somebody who is an understudy.

**A:** There is no room for an extension because the Act precludes that.

**Q:** In relation to the one inquiry?

**A:** If it became necessary to do so in order to pursue all those matters that ought to be pursued, I would approach government to have an Assistant Commissioner appointed. It is certainly my hope that we can see it through by that time, whether or not an Assistant Commissioner is appointed. There is a lot to be said for having to do jobs by particular times. I suppose all else that needs be said is that while I will be anxious to complete the job and go off and do something else, you cannot conduct hearings or exercise coercive powers unless you are a duly appointed commissioner or assistant commissioner, but the same does not apply so far as report writing is concerned. If it was absolutely necessary in order to do the job thoroughly for me to stick around for a month or two after my term had finished to complete writing the report, I would feel obliged to do that. I do not want to do that but I suppose I am saying that there are ways in which the report might be dated May or June, not March. But my term cannot be extended, and even if it could be, I would not want an extension.

**Mr GAUDRY:**

**Q:** Surely that would raise some matters about the legality of the report written by you after—

- A: No, we are satisfied it would not, because they are Commission reports. There must be a Commission; there must be a Commissioner. It is not a royal Commission.
- Q: But would you not have to be reinstated as an Assistant Commissioner in order to have validity—
- A: No, I am satisfied that I would not. The report is put out by the Commission not by the individual author. That is the key distinction. But all that is rather notional. If we go well, we will finish the evidence next year, perhaps comfortably before the end of the year. That will give me plenty of time to write the report. If that is so, that will be good.
- Q: Given the nature of this particular area of interest, and in view of the Royal Commission in Western Australia or the black deaths in custody inquiry, surely what will occur is that, if things go as you say, in the process a plethora of evidence will come forward which might extend the time considerably.
- A: This is more narrowly focused than the examples that you have just given and we are at pains to stress that this is not another Fitzgerald or Costigan or whatever you like. This is not in any sense a ]]] Royal Commission into the Police Service, far less a royal Commission into the Police Service and its relation to government. The allegations are not confined to but they centre upon a particular squad and individuals who have passed through that squad. I do not want to simplify it by saying it is some sort of commission of inquiry into that squad. It is broader than that. The terms of reference are deliberately drawn so we can examine relationships which I think to be not just enormously interesting but potentially of very great importance. But it is much more focused than what has been happening in Perth or in Queensland. I do not think there are compelling reasons for our not getting through it in 18 months. If we cannot do the job in that time, we will have to find some other way of doing it. We will get lots of allegations. We want lots of allegations. But by now I think we are fairly good at sorting out the pure ore from the dross. That is what we have to do. We had an awful lot of material to get through in the prison informants inquiry. We managed to do that in nine segments. That could have blown out enormously if we had allowed it to. I express optimism and all expressions of good luck are gratefully received.

**ISSUES ARISING FROM  
PREVIOUS HEARINGS**

Questions on Notice

**Q: 3.1 What progress has been made on the Commission's study of the inquisitorial system of criminal justice and its application to the Commission's work?**

**A:** The Commission's research and field work in its study of inquisitorial systems of criminal justice and its application to the Commission's work has now been completed. That included study tours by the Commissioner to California in August 1991 and France and Italy in September 1992, and a study tour by two senior Commission officers to France, Germany and Italy in June 1992. The Commission also engaged Mr Bron McKillop, Senior Lecturer at the University of Sydney Faculty of Law, an expert on European inquisitorial systems, to provide a research paper. The Commission will prepare a report when time permits.

**Q: 3.2 What progress has been made on the development of the Commission's Corporate Plan and performance indicators?**

**A:** Following consultation with staff a working copy of the corporate plan including reference to performance indicators, was distributed throughout the Commission. Staff have been given until mid-November to make any further comments, after which necessary amendments will be made. The plan will be released publicly next year.

**Q: 3.3 In relation to the appointment of Assistant Commissioners for particular inquiries, what sort of training material is provided to Assistant Commissioners about the Commission's inquiry process? Has any sort of manual been prepared for Assistant Commissioners? What sort of briefings are provided to Assistant Commissioners prior to the commencement of hearings?**

**A:** Assistant Commissioners are provided with:

- . a copy of the Act,
- . a copy of the Commission's hearing procedures,

- . copies of Commission reports which address procedural matters such as the standard of proof in Commission hearings, the right of objection in s37 and the effects which flow from that, the Commission's approach to accepting evidence and the general requirement for independent supporting evidence in the nature of corroboration when witnesses have been involved in the conduct under investigation, and factors in favour of public or private hearings,
- . the Commission's key issues publications so that Assistant Commissioners are aware that the Commission's investigation function is not a narrow one but has corruption prevention and education ramifications.

Assistant Commissioners are briefed by the Commissioner about the conduct of investigations and hearings and about the Commission generally prior to the commencement of hearings. The Commissioner maintains contact with Assistant Commissioners during hearings and the report writing phase of the investigation in order to deal with issues as they arise.

- Q: 3.4 At the public hearing with the Committee on 31 March 1992 Mr Temby took a number of questions on notice about Strategic Intelligence and the preparation of an overview of corruption. What is the Commission's considered response to these questions, which are attached?**

**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?**

The Strategic Intelligence's Research Group has been principally engaged in work in respect of the Commission's investigation into possible police corruption. Due to the sensitivity of the material it is not possible to report on that material to the Committee. At least some of the material produced as a result of the SIRG work will be used in the Commission's investigation including the hearings.

- 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?**

Because the work of the Strategic Intelligence Research Group has been concentrated in one area the Commission does not have a basis to refer to other areas of corruption in New South Wales, other than the areas disclosed through Commission investigation reports to date.

- 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.**

The Commission is aware of the views about the links between organised crime and institutional corruption, although to some extent they remain untested in Australia. The Commission accepts that organised crime could not be as effective were it not for assistance provided by corrupt public officials - that is practically axiomatic. The Commission does not have any basis for making any reliable statements about the association between institutional corruption and organised crime in New South Wales. If the Commission were to discover any such information in the course of its investigations, and was in a position to disclose it publicly then it would likely do so. If it discovered information which had to be provided confidentially to law enforcement agencies in order to facilitate investigations by such agencies then the public interest would require that the material be used in that way.

- 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 of NSW, in particular by reason of**

- (a) lack of legislative or other power;**
- (b) staff consideration;**
- (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?**

The Commission does not lack legislative power to gather strategic intelligence and provide an overview of corruption in the public sector of New South Wales. The Commission does not have presently sufficient resources to conduct its investigative program as well as provide an overview of corruption in the public sector. Analytical resources are fully

deployed on current investigations, particularly the current police investigation. People experienced and able in intelligence analysis and particularly in strategic analysis are not a plentiful occupational group.

Lastly the overview of which the Committee speaks cannot be done in reliance upon complaints received from the public but requires significant pro-active work, including the exercise of powers to obtain warrants for the use of listening devices and telephone intercepts.

The Commission has the power to apply for warrants for the use of listening devices but such applications require a fair degree of reliable information before the application can be made and a warrant granted. As to telephone interception powers the Commission is legislatively able to apply for a warrant for such, but the offences in the Telecommunications (Interception) Act in respect of which such warrants may be sought does not include corruption related offences and therefore the Commission does not in reality have full benefit of this power at present. The Commission has made submissions to the Attorney General's Department in the course of a review of the Telecommunications (Interception) Act but the legislative reform process is proceeding slowly and those reforms will not occur this year.

**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?**

Obviously the value of an overview of corruption in the State, if it could be done so that the result would be considered reliable and comprehensive, could be use by the Commission as a management tool in deciding how to focus its investigative, corruption prevention and education work. The overview would have to be kept up-to-date and reliable if it was to be useful in that regard and that would be a demanding task.

However there are reasons why an intelligence overview of corruption should not be published.

Intelligence is an investigative and management tool. According to the Commission's intelligence experts, no intelligence agency around the world publishes its intelligence reports. Intelligence does not contain proof, but indicators which suggest where investigative work could be concentrated. Intelligence is not reliable, and therefore publication of intelligence reports could be dangerous, and would most likely be unfair to individuals named in intelligence.

The Commission's investigative work is in significant part directed to producing strategic intelligence. The Commission's investigation reports

are in the nature of strategic intelligence reports of a high level of reliability.

**Q: 3.5(a) When is the joint meeting of the Parliamentary Joint Committee and Operations Review Committee to take place?**

**A:** This is a matter for the Operations Review Committee to settle with the Parliamentary Joint Committee. The Commission will raise this matter at the next Operations Review Committee meeting which is to be held on 6 November 1992, or alternatively the Committee can approach members of the Operations Review Committee.

**Q: 3.5(b) Have there been any changes in the procedures and/or style of ORC meetings since the appointment of the new members this year?**

There have been no changes in the procedures or style of the ORC meetings since the appointment of the two new members earlier this year. However, since the new appointments, Commission officers have conducted a presentation and prepare regular briefing papers which are designed to provide information to Committee members about the way in which the Commission performs its work. These have included detailed explanations about the investigative process, jurisdiction and complaint handling.

For some time now the Commission has used a "standard letter" format to advise complainants of the outcome of their matter, in those cases where the Commissioner, on the advice of the ORC, has decided not to investigate a complaint. As a result of discussions among ORC members the Commission has produced an improved form of correspondence which is more readable, and more informative. In addition, a pamphlet has been prepared which is designed to provide more information to complainants about the ORC and its role. Both the revised letter and the pamphlet have been produced to complement the recently designed brochure on the assessment process of the Commission which will also be forwarded to complainants.

In response to questions from the ORC the Commission has developed more informative statistics on matters received by the Commission and matters dealt with by the Committee.

**3.6 Please outline any changes which have been implemented recently to the Commission's procedure at public hearings, including the hearing of closing submissions in private.**

The Commission's latest hearing procedure document is published in the 1992 Annual Report at pages 82 - 86. The Commission has also since decided to hear closing submissions generally in private, although it will hear submissions on that



subject if interested parties or their counsel want to make such. The reasons for the decision are set out on page 68 of the Commission's 1992 Annual Report.

**Questions Without Notice**

**Mr TURNER:**

**Q:** You state in your submission that the assistant Commissioner should be provided, inter alia, with a standard of proof at Commission hearings. What do you mean by "a standard of proof"?

**A:** The standard of proof in Commission hearings is what is called the Briginshaw standard of proof, that is to say, proof on a balance of probabilities. We always have to bear in mind that that which will be looked upon as a sufficiency of proof will tend to vary depending upon the seriousness of the allegations concerned. The allegations with which we are concerned are at a high level of seriousness. Accordingly, one is not easily satisfied, even on a balance of probabilities. That is the standard of proof. But we do provide a document which accompanies a series of material. Accompanying that document are two or three prior Commission reports which deal with this question of the standard of proof.

**Mr GAUDRY:**

**Q:** You refer on page 17 of your submission to the ORC. Is it possible for you to provide the Committee with a copy of the standard letter you send out to complainants? I understand a pamphlet accompanies this letter. It might be of some advantage to the Committee to look at the standard letters the ORC uses.

**A:** We will provide what can be provided. I am not sure whether a pamphlet exists at this moment. I last saw a mock-up, but I do not know whether it is being utilised.

## **RESPONSE TO COMMITTEE REPORTS**

### **Questions on Notice**

**Q: 4.1 What is the Commission's response to the findings and recommendations contained in the Committee's Report on the Operations Review Committee and Assistant/Deputy Commissioners, dated July 1992.**

**A:** The Commission has formed preliminary views on the Committee's Report on the Operations Review Committee. These views have been provided to members of the Operations Review Committee and are still under consideration by them. A response will be communicated to the Committee in this regard at a later date.

As to the part of the report dealing with Assistant/Deputy Commissioners the Commission is pleased that the Committee accepted the Commission's views and made findings in accordance with them and that the Committee is prepared to give appropriate weight and credence to the views and experience of the Commission in matters concerning the operations of the Commission.

**Q: 4.2 What is the Commission's response to the Key/Relevant Issues for NSW identified in the Report on the Fifth International Anti-Corruption Conference and Hong Kong Study Tour. The Committee is particularly interested in the Commission's response to the material included under the following headings:**

- (a) **Complaints Committee (p.125);**
- (b) **Advisory Committees (pp. 125-6);**
- (c) **Professional Advisory Panels (p. 126);**
- (d) **Staff Training (pp. 126-7);**
- (e) **Education: Strategies (pp. 127-8); and**
- (f) **Education: Competition with other Government Agencies (p.128).**

**A:** The Commission's international experience of corruption and anti-corruption initiatives, both from Commission travel and attendance at overseas conferences and from overseas visitors to the Commission, is that corruption can only be successfully tackled by anti-corruption organisations when political, economic and social situations are settled. The Commission, operating as it does in an advanced

democratic society, is at the forefront of anti-corruption work in the international context and its experience and expertise is sought when the Commissioner meets with people in other countries interested in anti-corruption organisations.

As to the part of the report dealing with the Committee's study tour of the Hong Kong ICAC the Commission would urge caution in seeking to apply methods and procedures used in Hong Kong to this Commission, given that the Hong Kong ICAC is a quite different organisation from the New South Wales ICAC, and operates in a different social and political environment, with a narrower focus in one sense in that it concentrates particularly on bribery and a wider focus in another sense in that its priority is the private business sector.

The Commission would have been pleased to have been consulted by the Committee about its impressions of the Hong Kong ICAC and the applicability of Hong Kong ICAC procedures and methods to the New South Wales ICAC before the Committee published its report containing recommendations.

As to the particular matters:

- (a) The Commission is of the view that the Parliamentary Committee should continue to be the forum for complaints against the Commission. The Commission has some views about fine tuning the current procedure for dealing with complaints. It may be better that those aspects be dealt with other than in the public session, but the Committee could perhaps scrutinise complaints more precisely before forwarding them to the Commission and perhaps particularise the issues in complaints to which it seeks the Commission's response, rather than seeking a general response. The Commission receives no feedback from the Committee when it responds to complaints, other than when further correspondence from dissatisfied complainants is forwarded to the Commission. When that is done the Commission receives no indication from the Committee of its view of the further correspondence.

Because the number of complaints against the Commission remains low there seems no justification for setting up a separate mechanism for dealing with them, particularly since the Committee would probably have to be informed of the complaints or the issues arising therefrom in any case. If a complaint were to arise against the Commission which required special treatment different from the present scheme then that would have to be done. The Commission suggests that at present there is no warrant for establishing a different system.

- (b&c) In the Education area, consideration is being given to an internal Community Relations Working Group, as an extension of the government's customer service strategy as it affects the Commission. If established the

working group will be asked to consider mechanisms for feedback from the public generally, and those with whom the Commission has dealings.

The working group could also be asked to consider whether the Commission should establish an external group to help facilitate the feedback process and provide information and advice on how the Commission can maintain effective working relations with the community.

Consideration could be given to possible membership of the external group including representatives from key professional and constituent areas affected by the Commission's work and those on whom the Commission relies for support in its work, such as legal professionals, public sector personnel, business and commerce bodies, community sector peak associations, academics, and ethnic groups.

The Commission enlists the services of experts in its investigations where necessary.

- (d) This financial year \$110,000 has been ear-marked for staff training.

The majority of investigation training is on-the-job and is supplemented by attendance at external programmes.

There are a variety of courses available to investigative staff. Courses attended include:

- . Investigators Course, Australian Federal Police College, ACT
- . Advanced Investigators Course, Australian Federal Police College, ACT
- . Analysts Course, Australian Federal Police College, ACT
- . Computer Crime Course, Australian Taxation Office, ACT
- . National Strategic Intelligence Analysts Course, National Crime Authority, Australian Police Staff College, Manly
- . Internal Analysts Course, ICAC
- . Senior Police Executive Officers Programme, Australian Police Staff College, Manly
- . Investigators Seminar, Police Academy, Goulburn

- . Fraud, Ethics and Accountability, RIPAA
- . Asia Pacific Police Technology Conference, Australian Institute of Criminology
- . Computer Skills Courses at Beginner, Intermediate and Advanced levels

These courses have been attended by permanent and seconded staff at the Commission's expense.

A skills audit is to be conducted in 1993 to assist in developing appropriate training for investigators and other staff in the Commission.

The need for attendance at training courses available through the Hong Kong ICAC has not yet arisen.

- (e) The Education Unit is keen to work on joint venture type activities which see the introduction of corruption prevention materials and education kits in business or community organisations.

Sometimes, the Education Unit has been asked to comment on proposed educational strategies for public sector organisations, for example: the Roads and Traffic Authority, and some local councils.

As awareness of the ICAC's Education Unit increases, the chances of joint venture activities will be enhanced.

The knowledge gained from curriculum development work in schools may assist with the design of education resources for other applications.

Training on corruption and 'public duty' topics can be linked to existing training mechanisms for public sector staff. It is more efficient to utilise existing resources and opportunities than attempt to create new ones. Already, liaison has been undertaken with the Ethnic Affairs Commission, to start work on public duty training for interpreters; liaison with the police academy in Goulburn has also occurred, to explore corruption prevention training opportunities for new cadets.

The academic arena is another where the opportunities for training exist. Commission staff have given presentations to tertiary students in town planning and law. This is an area where more work could be done. Tertiary study is effectively a training ground for many professionals who will then work in the public sector. Changes to course content, to include topics of corruption and public duty, would be desirable.

- (f) The Education Unit has had a strategy from its inception not to try to set up alternative and competing programs to any which are currently in existence. A staff of four people demands that it works in this way.

The school curriculum work is being arranged with input from the Board of Studies and Department of School Education, as well as relevant teacher organisations.

This strategy will ensure the Commission does not compete with others seeking to introduce education programs to schools, but, rather, seeks to make permanent changes to the subject matter taught by teachers themselves.

There would not seem to be a need for the establishment of a co-ordinating group on 'citizenship' issues for schools. The Board of Studies has state-wide responsibility for co-ordinating and setting school curriculum, and it would seem to be the appropriate body to ensure consistency of approach is achieved amongst a number of program initiatives.

Questions Without Notice

**Mr GAUDRY:**

**Q:** You refer on page 19 of your submission to the way in which the Committee views its role in regard to complaints. You were somewhat critical of the Committee's approach. Could you expand on that? You did not have any favourable views of a recent letter sent out by the Committee. You seem to have a different view of the role of the Committee.

**A:** I do not know that I do have. I believe there is room for enhancement of procedures in order to give rise to more satisfactory outcomes than we are presently achieving. I believe it would be useful if the Committee examined critically submissions it received both from complainants and from the Commission in order to distil them. At the moment the impression I have is that what the Committee receives is simply passed on to us. We provide a response which again is simply passed on. The ball goes backwards and forwards with no resolution being achieved. If we are not careful there could be increasing acrimony, with no good being done to either end of the process. Essentially, this Committee is playing no positive role. I might be overstating the case. I am not the one who has most of the dealings. But that is the impression I have, at worst, of how the process presently works. It seems to me that there is room for this Committee to be more critical, for example, in its identification of issues. As I understand it, Mr Blunt and Ms Sweeney have been having discussions along these lines. I am not pessimistic as to the prospects of change on that. To send us a seven-page letter and to say, "Respond to this", without telling us what is really of concern is not a useful way to do it.

**Q:** It appears to me that the seven-page letter is addressed more to the Commission than it is to the Committee. The Commission might have more direct contact with complainants than the Committee.

**A:** That is fine. In those circumstances, if the Committee wanted to pass on a complaint to us and suggest that we respond directly to the complainant and let the Committee know when we have done so, that would take the Committee out of the loop. From our viewpoint, that is simple. With respect, it seems to me that this Committee should have a continuing involvement only if there are matters of concern as to the functioning of the Commission, rather than whether a decision not to investigate is essential.

**Mr HATTON:**

**Q:** This Committee is not an operational review Committee. We take the view that we have no role in operational matters and complaints other than to refer them



to the Commission or to the ORC and await a response. In different matters, such as the dispute over whether an applicant for a job got a fair go, or whether someone had to leave the Commission under proper circumstances, that is a bit difficult for the Committee in view of its role. I would have thought that, by handing the correspondence to you, the nature of your response would leap out of that correspondence. You should be able to respond to a matter accordingly, knowing our role in that regard. The Committee might distil the issues. Another aspect that we have to worry about is that the issues may not be the same as the issues as those referred to by the complainant. As you would know, sometimes complainants write us long letters. Sometimes they write us very short letters—usually after the long letters.

- A:** I am reminded that, as the Committee has, by statute, no function in considering whether or not to investigate a matter, when complainants are complaining of that and nothing more that is a good example of what we should be given with a request to deal with them direct. There is no role for the Committee and we should not be responding to the Committee. We do so as a matter of courtesy, but it is inappropriate. It would be much better if we got a request to deal direct with a complainant.
- Q:** If a complainant writes to the Committee and you respond to that complainant, should a carbon copy of that letter be sent to the Committee?
- A:** We have not got to that point. We would need to sort that out.
- Q:** What I am trying to do is to add some sophistication.
- A:** In principle the answer is no. We should let you know when we have written to the complainant. But, in principle, it is none of your business. We probably should not send you a copy of the letter.
- Q:** We see it as being none of our business, but that is not the way a complainant sees it. That is the big problem for us. Without singling anyone out, let us say that a member of the Committee has a constituent who writes to him. That member refers the matter to the chairman of the Committee and says, "I want you to take up this matter", not knowing what is the role of the Committee. Are you suggesting that we should respond by saying that we have no role in this matter and that the avenues of response are the ORC or Mr Temby direct?
- A:** I do not have a fresh view on that. The statute is there and we are all bound by it. We got ourselves into a degree of difficulty by being accommodating in the early days. We should have talked these matters through with the Committee. We should have sought to achieve a situation where we simply did not respond because there is nothing we can do.

**Mr GAY:**

**Q:** Both you and I understand that, but members of the public who write to us do not know of the delineation between this Committee and the Operational Review Committee. Effectively, we act as a post-box in those situations. Members of the community have certain aspirations when they write to us. I think the current approach is the only way of doing it.

**Mr TURNER:**

**Q:** When you receive a complaint from a complainant you must send something to that complainant in response. In the early stages could you include a simple paragraph in your response detailing the role of the parliamentary Committee in regard to operational matters?

**A:** It is worth thinking about.

**Q:** I appreciate that complainants probably would not read it and, if they did, they probably would not understand it.

**A:** I would be a bit shy about doing something that would discourage them from approaching a local member, for example.

**Mr GAY:**

**Q:** Even though the present system seems ridiculous it is probably the best way to go.

**A:** That may be.

**Mr HATTON:**

**Q:** Let us say for argument's sake that this Committee does not believe it should act as a post-box. Individual members might well raise matters in the House, or other members of Parliament who seek to bring matters to the attention of this Committee might raise them in the House. That might involve you in more angst than it would if we simply acted as a post-box.

**A:** I think you know the answer to that question.

**Q:** I am suggesting we should no longer act as a post-box.

**A:** You know the answer to that rhetorical question. Of course it would raise more angst. Naturally, that is a prospect we would not enjoy.

**Q:** So it might be worth a bit of thought on both sides?

**A:** Of course. You will understand that this has been worded in a very restrained fashion. We are simply asking for more thought to be given by both sides. It is not for us to dictate to the Committee how it performs its functions.

**Mr GAUDRY:**

**Q:** Earlier you were rather restrained when you gave us your impression of the workings of the Hong Kong ICAC. I take it you were somewhat critical?

**A:** If the Committee had seen fit to talk to us before it published its report it might well have published a more useful report.

**Q:** You do not see it as being useful?

**A:** Some aspects of it are.

**Q:** We are not talking about a parallel organisation.

**A:** Some aspects are and some are not. Some would have been more useful if there had been a full understanding of the critical differences between this Commission and the Commission in Hong Kong.

**Q:** Do you not think this Committee could distil that information?

**A:** I do not. I may be wrong. You could have produced a more satisfactory report if there had been consultation. We would have welcomed that. After all, we have to give everyone a hearing. It sticks in the gullet slightly when reports are handed down and we have not been given a hearing.

**Mr TURNER:**

**Q:** This Committee conducted a study trip to Hong Kong, which was quite independent from anything you were doing.

**A:** It seems to me that a lot of the recommendations do not make perfect good sense because there is not a proper appreciation of those differences. To take the most critical difference, the Hong Kong ICAC is, at base, an alternative police service. We are not. That has to be realised because most significant consequences flow.

**Q:** That was clearly spelt out. To be fair to the people in Hong Kong, they prefaced a lot of their remarks by saying, "Ours is an entirely different organisation".

**Mr MUTCH:**

**Q:** On one of our trips last week to Queensland I learned of something of which I was unaware. The Criminal Justice Commission Act requires the Commissioners to complete a declaration of pecuniary interests and political associations. I questioned a couple of the officers involved there as well, so this might be directed to Simon Stretton and Deborah Sweeney. They said they would not be loath to complete such a declaration. In view of some of the speculation that goes around and also in view of the huge powers of the ICAC and the potential in any organisation such as that to possibly develop a culture or an agenda, do you think your officers would object to making a declaration of political associations, which might be more interesting in some respects than the pecuniary declaration?

**A:** I do not know. I would need to think about it. Can I say that Commission officers do complete declarations as to financial and other interests, and they are very thorough. Queensland came to us to seek advice as to how far they should go, and I would be surprised if they have gone further than we have, and to the extent that they have got something, I think it may be more or less based upon ours. There is no obligation upon me to make such declarations, by statute, but I thought it was appropriate to do so, as I require everyone around me to do so. So I have made two such declarations to the Operations Review Committee, the most recent within the past few months, in order to ensure that there is no rational ground for criticism in that respect.

So far as political affiliations are concerned, I am aware of certain past political affiliations of a small handful of staff members. I mentioned two earlier who worked for Ministers, one on either side of the political divide, and there may be two or three others. I am inclined to think that you would get more negative than positive consequences from requiring formal declarations, because it might be that you would thereby send out the unintended message that you wanted staff who were entirely uninvolved and uninterested in the political process. It seems to me that is not what you want. Of course you want people who are capable of perfect dispassion, but experience shows that you can achieve perfect dispassion despite past political allegiances, even I would think current political associations. It may depend upon where the person is working. I do not know if I have members of staff who belong to political parties. I should think the numbers would be small, but I would not faint with shock if I found that they did.

The final point, and it is one that I made this morning, is that the ultimate decision as to whether we commence investigations, the key decision is always made by myself, and I trust there would be satisfaction that I am politically dispassionate as well as uninvolved. I imagine it would always be the case that the Commissioner would reserve that key decision to himself or herself.

**Mr HATTON:**

**Q:** If we did weed out people with any party-political associations, it would have the satisfactory conclusion that none of them could deal with Independent members.

**A:** I do not know. You will understand that I have not had a chance to think about that. I am always wary of unintended consequences, and I wonder whether there might not be some unintended consequences from requiring such declarations. I would be concerned if I knew I was heading a Commission all of whom had a particular political philosophy; but I know that I am not, because I know that I have got some people on both sides of a broad political divide, and I know I have got numbers who do not care. It is one of those things you need to keep an eye on in a general sense.

**Ms BURNSWOODS:**

**Q:** I notice your code of conduct calls on people to make it known if an inquiry or investigation involves people, if the employee is either a member of a political party or an opposing political party. I do not know where that leaves the Independents.

**A:** I can say that on a couple of occasions that come to mind I have had discussions with staff members, or prospective staff members, in this general area in order to satisfy myself that they are capable of putting past beliefs or allegiances behind them.

**Q:** Or present?

**A:** Or present.

**Q:** Your code of conduct is in the present tense.

**A:** Yes. Thank you for reminding me of that. It is something we did think about. I am all for neutrality, but I am not sure that people who are neutered, in the sense we are talking about, represent the best bet.

**Mr MUTCH:**

**Q:** I do not think that was what was required. It was something I picked up on because I thought it was interesting. I saw the pecuniary interests but then the political associations jumped out at me.

**A:** I agree it is interesting. Mr Stretton reminds me, and I do not think there is any reason why I should not mention it, that he was counsel assisting in what we call the Blackmore matter. I talked to him in particular about any present or past

political Associations he may have had before I appointed him to that role, as I did with the assistant Commissioner who was appointed, because they are delicate matters and if it was thought that somebody might have an axe to grind, even the appearance of that would be most unhappy. But a great deal of the work we do does not give rise to such concerns.

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**EARLY ACCESS TO  
COMMISSION REPORTS**

Questions on Notice

**Preamble:** The GREAT decision in the matter of *Bogeholz vs. the Water Board* reveals that the Water Board had access to an advance copy of the ICAC's Report on Investigation into the Sydney Water Board and Sludge Tendering during the week prior to the tabling of the report. Representatives of the Water Board confirmed this in evidence before the Committee on 12 October 1992.

**Q: 5.1** Was the Report on Investigation into the Sydney Water Board and Sludge Tendering made available to all interested parties or only to the Manager Director and Manager, Human Resources, of the Water Board?

**A:** The Commission's Report on its Investigation into the Sydney Water Board and Sludge Tendering was made public on Monday 18 May 1992. A copy of the Report was delivered to Mr Wilson, the Managing Director of the Water Board, on an embargoed basis, on Thursday 14 May.

**Q: 5.2** How do the Commission's actions in providing prior access to this report stand up against Mr Temby's answer to the Committee on 27 March 1991 in response to a suggestion from Mr Azzopardi that complainants been given prior access to reports before tabling (p. 41 of Collation of Evidence)?

**A:** The Commission did not regard the Water Board as a complainant in that particular investigation, even though the Board referred the matter to the Commission pursuant to s11 of the ICAC Act. The Commission was communicating the results of its investigation to the public authority concerned, in accordance with its functions in ss13(1)(c) and 14(2) of the ICAC Act, in respect of a million dollar tendering process. The Commission considered that the most convenient way of communicating those matters to the Board, was in the form in which the results had been prepared by the Assistant Commissioner who conducted the investigation, which was the form of a report to be furnished to the Parliament, on a confidential basis. The Commission formed the view that the Board had a legitimate interest in knowing the Commission's views about the tender process, which legitimate interest exceeded that of any other party.

The Commission has done likewise at least once before. The Driver Licensing Report was made available early to the Hon Minister for Roads and to the Chief Executive of the RTA.



*Questions Without Notice*

**Mr GAUDRY:**

**Q:** You mentioned section 13(1)(c) and section 14(2) of the Independent Commission Against Corruption Act. Is there any particular hierarchy of release of your reports and hearings?

**A:** No. I can say that the occasions upon which we have provided what was called here early access have been few, and they have been seen to be justified because of the nature of the particular inquiry. To illustrate that, in the Driver Licensing matter we were anxious to get as much active co-operation from the Roads and Traffic Authority as we could, or putting it more precisely, we were anxious to continue the active co-operation that we had been receiving. We were anxious also that the responsible Minister would have a chance to absorb the report so that anything he chose to say about it would be considered and we hoped positive. Putting those matters together it seemed to us best to make an advance copy available to the honourable Minister and to the organisation concerned. And I think that was right.

**Q:** That would happen in parallel?

**A:** To the two of them, yes. We could have given it to either with more than one copy and known that it would have been passed over. In fact we approached both of them. It seemed calculated to produce good results and it seemed to be a proper courtesy. The reasons for making a copy available to the Water Board were not dissimilar. They had a very large, pressing tender process which had been held up. There was at least some room for the view that it had been held up in part because of the work we had been doing. We wanted them to know what we were saying about that process so that they could start thinking about what they could do in order to revive it—whether they had to go back three steps or back only one step, or start again entirely—a whole series of decisions that had to be taken. It was for that purpose that I passed a copy to the manager of the Water Board in advance, because it seemed to me that was likely to minimise delay. I am sure Committee members realise that the allegation that we made a draft copy available in order to get their responses was completely wrong and absolutely irresponsible. It has since been corrected. Unhappily the author of that allegation did not have the grace to withdraw it and apologise for it, but it has been corrected.

**Q:** There is no negative connotation that you can see to having those reports out before you actually publicly make a statement?

**A:** It has been made available on an embargoed basis at the insistence of the Presiding Officers. We did the same thing with respect to the key political figures involved in the Greiner and Moore matter.

**Mr HATTON:**

**Q:** I think it was raised by somebody at this Committee that it would be a courteous thing for those people involved in reports to receive a copy of the report prior to it becoming public, so that when the thing hit the deck at least they would know what they were responding to and would not be responding simply to a 10 second clip on television.

**A:** There is a difficulty with that because at least once we have had grave fears of litigation, and we have not wanted to promote that prospect you will understand.

**CHAIRMAN:**

**Q:** I think Mr Hatton's point is right. It was discussed.

**Mr HATTON:**

**Q:** It was raised at this meeting.

**A:** It has been raised.

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**STAFF MATTERS**

Questions on Notice

**Q: 6.1** Could you please provide information on the rate of turnover and average length of stay of Commission staff in the following categories?

- (a) investigators seconded from the NSW Police Service;
- (b) other investigators;
- (c) lawyers;
- (d) analysts;
- (e) support staff; and
- (f) others.

**A:** Figures are not kept on the turnover rate of staff in the categories specified by the Committee. However, turnover for the Commission as a whole is:

1989	20%
1990	28%
1991	22%
1992 (to Sept)	23%

The average length of employment of current staff across the Commission is 22 months. By Department:

Operations (including investigators and analysts)	19 months
Corruption Prevention	17 months
Legal	30 months
Administration & Education	24 months

The average length of employment of staff who have left the Commission is 12 months. By Department:

Operations (including investigators and analysts)	13 months
Corruption Prevention	13 months
Legal	9 months
Administration & Education	10 months

**Q: 6.2 What is the proportion of seconded police and ex-police amongst the Commission's investigative staff? What is the background of the Commission's other investigative staff?**

**A:** As at 2 November 1992 the Commission employed 22 investigators (including Chief Investigator, Senior Investigator, Investigators and Surveillance Officers). Of these 5 were on secondment from the New South Wales Police Service and 17 were ex-police. Two positions for investigators-in-training, entitled Assistant Investigators, have been filled by two officers on secondment from the New South Wales Public Service.

**Q: 6.3 What action, if any, has been taken in relation to the grievances identified by ICAC investigators at their seminar at the Goulburn Police Academy in November 1991?**

**A:** The Director of Investigations advises that there were no grievances identified at the Goulburn Seminar. There was a discussion period at which a number of constructive comments were made by course participants in respect of areas of interest that might be improved, such as training courses and staff development, communications, investigative processes and resource requirements. Follow-up action in respect to a number of matters was taken, S.O.P.'s were introduced and modified where applicable, and many of the comments made are being covered in the Commission's Corporate Plan.

**Q: 6.4 Have you always followed the practice you advocated in your Metherell report for merit recruitment, namely advertising vacancies and holding interviews, for ICAC senior management positions?**

**A:** Comments in the Metherell report about merit selection were made in the context of the statutory requirements of the Public Sector Management Act 1988, particularly s26 which requires merit selection in respect of public service positions other than Department Heads. The ICAC Act (s104(10)) provides that the Public Sector Management Act does not apply to the appointment of staff to the Commission. Nevertheless the Commission generally observes the principles of merit selection.

Persons appointed to senior management in the Commission have been recruited in a number of ways. Initially, when the Commission was being established, the process involved some recruitment of persons known to the Commissioner through prior professional contact. They were hand-picked to ensure the establishment and operation of the Commission occurred quickly and effectively. More recently, selections have followed merit selection principles except in one case. The individual concerned is responsible, amongst other matters, for security.

In addition, one of the Commission's two General Counsel is a Crown Prosecutor from the Office of the Director of Public Prosecutions, selected on the basis of convenience to the DPP, individual Crown Prosecutors and the Commission.

**Q: 6.5 Are there any circumstances where you would see it as appropriate not to follow advertising and interview processes and what would be the relevant factors?**

**A:** As noted previously, the requirements for advertising and interview in the Public Sector Management Act do not apply to the recruitment of Commission staff, but the Commission generally observes them. Circumstances in which it is not appropriate to conduct open advertisements for the recruitment of staff include in particular, secondment of police officers, selection of officers for surveillance work and where particular work of a sensitive nature must be undertaken.

Limited advertising might also be undertaken - for example, in the New South Wales Police Newsletter - for the secondment of New South Wales Police officers.

**Q: 6.6 Do you use "secondments" into ICAC and if so what procedures do you follow to see merit applies?**

**A:** The Commission generally advertises vacancies either within the organisation and/or in the press and New South Wales Public Service Notices. Successful applicants chosen through the advertising and interview process may be seconded from the New South Wales Public Service if employed there.

**Q: 6.7 Do you appoint people permanently to your organisation. If not, why not?**

**A:** The Commission's view has been that staff involved directly in investigations and corruption prevention work should not be permanently employed by the Commission, as an anti-corruption strategy. While that view is generally sound, it is being reviewed currently in light of Commission experience to date and the in-house corruption prevention strategies which can and might operate.

*Questions Without Notice*

**CHAIRMAN:**

**Q:** Let us move on to staff matters.

**Ms BURNSWOODS:**

**Q:** The turnover rate seems fairly high.

**A:** I do not think it is. It is lower than in the last organisation I ran, considerably lower.

**Mr GAY:**

**Q:** What comfort is that?

**A:** That was perhaps a bit flippant. Let me say these things. It depends what you compare it with. You have to remember that we do not employ people as public servants, which means there is no expectation of permanency, and as a matter of positive policy we do not seek to encourage people to stay for as long as possible, because sometimes for people to move on and become, so to speak, standard bearers elsewhere can be a very positive thing.

**Ms BURNSWOODS:**

**Q:** But the other side of that would be that the Commission would be losing experience?

**A:** Yes, loss of experience. Balances are struck. I do not mind saying that in some areas I have concerns, in particular which are typical in operations. The operational people who have left had been with us for disappointingly short periods, and that is an area of some concern.

**Mr HATTON:**

**Q:** Is that because they do not have promotional prospects? The organisation is not designed to give them promotional prospects, is it not?

**A:** I think most of them would say that. I am not absolutely certain that is the real reason. Some have difficulty in adjusting to doing things in an ICAC way, and that is the class I talked about before. There are some who think that policing at base is the locking up of criminals; it does not have to do with community

relations and it does not have anything to do with the major fraud work, which is broadly the sort of work we do. Some people who come with that sort of background cannot get used to a different culture and choose to move on.

**Q:** Is the position of chief investigator in your view a satisfying career prospect?

**A:** I think the position of chief investigator is not just a very important job but a very satisfying job, and it is pretty well paid. I do not remember the figures but they are quite well paid by police standards; about \$60,000, and that is good money by police standards.

**Q:** You see the point of my question, without putting too much of a point on it. Let us stick to the general. Obviously it is important to have your top two investigating officers of the highest calibre possible and not to lose their expertise in too short a time, which is one of the things that Ms Burnswoods mentioned. Is there anything that can be done or that we can do to assist you in that regard? You might like to take that on notice.

**A:** We will think about that. I do not think there is anything this Committee can usefully do. If I think of a solution to which the Committee could contribute, please be assured I will be the first to ask for that help.

**Q:** A supplementary question on that is that for people who come from the police force and go back to the police force is the police force of sufficient maturity to see that that is of great advantage to the police force and to the career structures of the people involved? Or is there some problem?

**A:** Attitudes on that vary. Some do not have that level of maturity, but some do.

**Q:** What about the police department itself? We were pursuing this in the Ombudsman's Committee. Does the police department see it as an enhancement to career prospects for somebody to be on secondment to ICAC, or do they see it as a disadvantage?

**A:** I think I can say confidently, on the basis of a fairly recent discussion, that the Chairman of the Police Board sees it as being an advantage and a positively useful experience. I do not think there is any Police Service view to the contrary. There is not formally to my knowledge, and I do not think there is such an informal view at top level. However, when it comes down to selection Committees, as always there are varying views just as there will be varying views at selection Committee level on questions of race and community policing and so on. That is just how it is and I have no doubt there are some on selection Committees who feel the ICAC work is not proper policing and accordingly it is considered that the officer has just been marking time.

**Q:** Is there a different culture in the ICAC than there is in the police, if we understand anything by the term "culture"?

**A:** I would certainly hope so.

**Q:** Consequently, this is a fairly subjective question, it should perhaps enhance their prospects of promotion because it does, as the former Minister for Police pointed out—that is part of another inquiry—look at this question of getting people out of the police culture, putting them somewhere else for a while, then bringing them back.

**A:** I understand that. Perhaps one comment may be permitted and it is at least related. There are some officers who have served with the ICAC who return to the Police Service—and I do not want to exaggerate the numbers, which I think are small—of whom I am aware go back to the Police Service giving the ICAC a terrible bagging and I think that is because they perceive a need to indicate to the fellows to whom they are returning that they have not been taken over by this foreign culture. It is sad when one hears that but I think that is the typical reason. Do you know what I am saying?

**Q:** Yes, I think so.

**Ms BURNSWOODS:**

**Q:** The next question, dealing with the 22 investigators it says that five were seconded from the New South Wales Police Service and 17 were ex-police. Were those 17 predominantly New South Wales ex-police?

**A:** No. I do not know about predominantly but certainly not all of them. We have or had police from England, Hong Kong and at least two other Australian States and a number from the Australian Federal Police.

**Q:** And further on in this group of questions when you say that the two positions for investigators in training have been filled by officers on secondment from the New South Wales public service, is that a specific attempt to go beyond the Police Service?

**A:** No. I am not sure we put that as well we might. I am not sure that is the key point. The key point is that these are not people with a police background; they are general staff. They happen to be secondees from the New South Wales public service, but the point is they are non-police.

**Q:** And that is the specific reason for doing that?



- A:** Yes, it is to give something of a career structure so far as those who are support officers are concerned. We try and not keep people in streams that never mix. Accordingly, not long ago, an assessment officer became a corruption prevention officer and I was delighted—a senior corruption prevention officer indeed. We have had other shifts between streams within the Commission and that is important, as it is important that people should feel they have somewhere to move.
- Q:** What kind of career path could there be if someone is an investigator in training and on secondment? They are likely to be with the Commission a fairly short time.
- A:** No, because typically, except with the Police Service, seconding organisations do not much mind how long people are with us. We have two officers who have been with us from the beginning and I would not be surprised if they are with us for years.
- Q:** They may have a problem of where to return, as their expertise as investigators grows.
- A:** They might, but they might have the corresponding virtue of not having to return anywhere. They might go through the ranks and become chief investigators. There are two outstanding female members of staff who have risen from the ranks of support officers, are now taking on this more professional role and it will take time, but they are on their way. It is terrific.

**Mr GAY:**

- Q:** Did you mention that they were serving police officers?
- A:** No, they are not.
- Q:** If you had someone on secondment for a long period of time, who was promoted within your organisation, their pay scales depend on their seniority and promotion within the police force as such. Do you do a recommendation back to the police force? How would someone stand?
- A:** That is no longer correct and I will be corrected if I am wrong. There was a time when what you say was right but we now pay all the seconded people according to our pay scales and they, having been seconded to us, can seek a promotion within the Commission. Typically they are better paid with us than they would be with the Police Service. The only thing that happens during the time they are with us is that they do not move in a rank structure, to which we have to say, "Well, at your age you have a long career in front of you. Breadth of experience is good. It should not do you harm and may do you good so far as career is

concerned. It certainly ought to do you good as a human being".

**CHAIRMAN:**

**Q:** I notice in answer to question 6.3 there is a reference to the Director of Investigators. Is that the same as a Director of Operations?

**A:** No, the Director of Operations took up a position with the National Crime Authority. We have decided, at least for the time being, not to fill that position. His two deputy directors have assumed newly titled positions and they became members of senior management.

**Q:** I had not heard the term before. Having had the experience of three years, should the Commission be covered by the Public Sector Management Act or are there reasons it should not be?

**A:** I would need to think about that, but let me try and give you an answer. I do not know why we are not. I suspect we are probably kept out of that because of the importance that was attached to not making us an organisation that appeared to be unduly close to government or too greatly a part of the public sector we were supposed to scrutinise. I think that was the rationale. From where I sit the benefit is rather different and it has more to do with atmospherics than anything else. I am very anxious to keep the Commission fairly small, active and as best I can non-bureaucratic. I tend to discourage anything that would make it feel like another public service organisation. That is all a question of atmospherics. If you wanted the matter taken further I would need to get down to levels of detail, if that were necessary. In most respects we do follow the requirements that are otherwise imposed because we take the idea of being a model agency fairly seriously; so I am not sure it would have practical consequences if we were caught by the Act.

**Q:** I would like a considered answer in relation to any benefits or disadvantages.

**A:** We can provide that, but we will provide that without detracting from what I have said today, which is the larger question.

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- 7 -  
**MISCELLANEOUS**

Questions on Notice

**Q: 7.1 In view of the fact you have instituted a hearing concerning the NSW Police on the advice of a police informer and that you are requiring information from up to 17 years ago, why did you say to Mr Gary Sturgess, then of the Cabinet Office, that the ... number of matters raised by him were too old to investigate?**

**A:** In response to questions that the March 1992 hearing of the Committee about Mr Sturgess' "67 matters" the Commissioner said (at page 13 of the collation) that if it was necessary to go back into history to make sense of current events he would do so, and that age can make a matter more difficult to investigate effectively, as can previous investigation of a matter. As to the particular operational decisions in respect of the "67 matters" and the investigation involving police, it is best to not elaborate further on the reasons for those decisions. The reasons for examining some historical events in the police investigation will hopefully become clear to observers during the hearing.

**Q: 7.2 Does the Commission use experts in matters other than the law to assist the Commission? If so in what hearings were they used and what were their fields of expertise?**

**A:** The Commission consulted experts as follows in the following investigations:

- An urban and regional planning expert in the Stait, Dainford and Waverley Council investigation, in respect of consents to development applications.
- Financial analysis experts in the Homfray Carpets and Department of Housing, and the State Rail Authority Trackfast Division, investigations.
- Handwriting and document examination experts in various investigation, including the Unauthorised Release of Government Information Investigation.
- A voice analysis expert in the Azzopardi investigation.
- Members of Parliament in the Mochalski and Neal investigations.

**Q: 7.3 In the Kyogle Inquiry why didn't the Commission use experts in Council administration accounting and engineering to assist the Inquiry?**

**Q: 7.4 What level of expertise in Council administration and engineering did the Commissioner and Counsel Assisting the Commissioner in the Kyogle case have?**

**Q: 7.5 In the Kyogle Inquiry why were only selected Councillors interviewed in relation to the allegations which involved decisions of the whole Council?**

**A:** The Commission understands that the Committee will notify the Commission of questions and issues it requires to be addressed arising from a hearing conducted by the Committee, about the Commission investigation concerning Road Works in the Shire of Kyogle. The Commission would prefer to respond to these questions in the context of that exercise.

**Questions Without Notice**

**CHAIRMAN:**

**Q:** That is right. If we could move on to answers to supplementary questions. I appreciate what you said about Kyogle and that is certainly the view of the Committee so we will try and get something to you in that regard. Is there anything arising from that? Last time the Committee met Mr Mutch asked some questions in relation to Mr Sturgess. [Mr Temby has since written to the Committee to correct what was said on that occasion.] Is there any problem in that letter being tabled to correct the record?

**A:** No, there is not.

**Q:** I will table that letter from Mr Temby in relation to Mr Sturgess. Are there any further questions by Committee members?



## INDEPENDENT COMMISSION AGAINST CORRUPTION

15 October 1992

Mr Malcolm Kerr MP  
Chairman  
Parliamentary Committee on the ICAC  
Parliament House  
SYDNEY NSW 2000

My dear Chairman

I refer to evidence I gave when I appeared before the Committee on 31 March, concerning the various matters on which Government provided information to the Commission, and which the Commission worked on after July 1990.

Mr Gary Sturgess has taken exception to some of that evidence, which he sees as suggesting delay and dereliction of duty on his part.

That was certainly not my intention. Indeed I have nothing but praise for the way in which Mr Greiner, Mr Sturgess, and indeed Government Ministers and advisers generally, have behaved in referring matters to the Commission. There have been some suggestions that matters might be taken up, but at no time has pressure been applied.


However in fairness to Mr Sturgess I must take the matter further. When I gave evidence before the Committee, my clear recollection was that I had on a couple of occasions suggested that Mr Sturgess provide the information, and he had not responded. However after discussions and further examination of available records on both sides, I am now satisfied that my recollection was inaccurate. I now accept that at an early stage Mr Sturgess proffered the material, and I requested he hold off until the Commission had staff and a capacity to go through a substantial quantity of material. I further accept that on subsequent occasions Mr Sturgess proffered the material, and it was due to the Commission's work pressures and priorities that I did not send Commission officers to talk to Mr Sturgess until the time mentioned above.

Except as to who was pressing whom, my evidence was accurate. Specifically, when the material was received it was examined

in detail, and decisions taken with respect to it on the same criteria as with a complaint from a member of the public or an s11 report. Indeed to enable proper consideration of the various matters, I retained the services of Mr V Anderson as a consultant after he retired from the position of Director of Operations. There was also substantial involvement by Mr K Zervos, the then General Counsel to the Commission. Some of the matters have been considered as an aspect of certain formal Commission investigations, and some of it remains of potential interest and value.

I ask that this letter be circulated to Committee members. I am sending a copy of it to Mr Sturgess.

Yours faithfully



Ian Temby QC  
Commissioner

**Ms BURNSWOODS:**

**Q:** I have a question relating to the Annual Report, which we received too late for the questions on notice, unfortunately.

**A:** We got it out as quickly as the Auditor-General would let us, I should say. We were a little held up by that process.

**Q:** Page 20 shows a table on the Commission's use of its statutory powers. Search warrants and listening devices appear overwhelmingly under the heading "Other". I just wondered if you could tell us more about what "Other" means?

**A:** "Other" is everything not dealt with previously and what was dealt with previously were matters that have been reported upon.

**Q:** So it would deal with inquiries that are under way?

**A:** And most significantly I am certain at least in that sense what we call Milloo, which is the police matter.

**Q:** I assumed that was the case.

**A:** There has certainly been a large number of search warrants and a number of listening device warrants obtained in relation to that matter.

**Q:** All listening devices and warrants there appear under "Other".

**A:** I am not certain they are all Milloo, a couple were not; I am not sure of the precise figures but most of the search warrants are Milloo and some of the listening device warrants are Milloo. I do not think that table includes renewal of warrants. I am reminded there has been a lot of activity in the listening devices area since the end of the year. I do not have a precise updated figure but there have been a number since 30th June. We are very active in the field at the moment.