

**AGENDA SETTING  
AND THE FIGHT AGAINST CORRUPTION:**

**OBSERVATIONS FROM  
THE AUSTRALIAN EXPERIENCE**

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## Introduction

The key questions which my paper is concerned with are: firstly, who sets the agenda in the fight against corruption, and more specifically, when an anti-corruption or crime commission is established, who sets the agenda and determines which matters are to be investigated by such a commission?

Of course, the agenda of an anti-corruption or crime commission is broadly determined by the Parliament which passes the legislation establishing the commission. For instance, such establishing legislation will include a definition of a relevant offence and also the class of persons covered by the legislation.

However, within these broad parameters there is considerable scope for the selection of one particular target rather than another. It is with this discretion that I wish to deal - what, if any, are the limitations on the exercise of this discretion?

Over the last ten years there has been a proliferation of anti-corruption and crime commissions in Australia. These agencies include the National Crime Authority (NCA) established in 1984, the NSW Crime Commission (previously the State Drug Crime Commission) established in 1986, and the NSW Independent Commission Against Corruption (ICAC) established in 1988. This list is certainly not exhaustive.<sup>1</sup>

The purpose of this paper is to briefly outline the different means by which each of these agencies receive references or select matters to be investigated and the matters investigated. Some general observations are then made about agenda setting in the fight against corruption, from the Australian experience. Finally, there is a postscript which briefly discusses recent controversy concerning the agenda of the NSW Independent Commission Against Corruption.

### National Crime Authority

The National Crime Authority is a federal body. It carries out functions related to organised crime. The NCA may exercise certain coercive powers in the investigation of a matter which has been referred to it by the Inter-Governmental Committee.

The Inter-Governmental Committee consists of the Commonwealth Government Minister administering the NCA Act together with one Minister from each of the State Governments. The Inter-Governmental Committee may refer a matter to the NCA for investigation at the initiative of one of the Ministers on the Committee.

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<sup>1</sup> Other anti-corruption and crime commissions in Australia include:

- Queensland's Criminal Justice Commission (established in 1989);
- Western Australia's Official Corruption Commission (established in 1989); and
- South Australia's Anti-Corruption Unit (established in 1989).

Alternatively, the NCA may approach the Inter-Governmental Committee to request approval for a reference.

Table one summarises the references which have been granted to the NCA.

Table One

## NCA - REFERENCES

No	Date Referred	Issues Investigated
1	19 October 1984	Drug importation, Prostitution, Tax Evasion
2	19 October 1984	Drug importation and distribution
3*	12 December 1984	Drug importation, Tax Evasion, Fraud,
4	12 December 1984	Drug importation, Tax Evasion, Fraud
5	30 May 1985	Tax Evasion, Fraud, Currency violations
6	04 April 1986	Drug importation, Illegal gambling, Tax evasion
7	30 May 1986	Drug importation, Fraud, Tax evasion
8	07 December 1987	Drug importation, Fraud, Tax evasion
9*	24 November 1988	Alleged Police and political corruption
10	21 December 1989	Alleged Company law and fraud offences
11	05 December 1990	Money Laundering
12	18 April 1990	Drug importation, money laundering, tax evasion

\* **Public Report issued**

### BREAKDOWN OF ISSUES INVESTIGATED:

Drug Importation and Trafficking	-	8
Tax Evasion/Fraud	-	9*
Money Laundering	-	2
Company law violations	-	1
Police/Political corruption	-	1

(\* secondary to drug importation in 7 cases)

### NSW Crime Commission

The NSW Crime Commission, as its name suggests, is a State body. As the State Drug Crime Commission up until 1990 its functions were concerned with serious drug crime. Its functions have now been widened to include organised crime generally.

The Crime Commission may exercise certain coercive powers when investigating a matter that has been referred to it by its Management Committee. This Management Committee consists of the NSW Police Minister (Chairman), the NSW Police Commissioner, the Chairman of the Police Board of NSW, the Chairman of the Crime Commission and a nominee of the NCA.

Table two summarises the references which have been granted to the NSW Crime Commission.

*Table Two*

**NSW CRIME COMMISSION - REFERENCES**

No	Date Referred	Code Name	Issues Investigated
1	11 March 1987	Caravan	Drug distribution (by "persons primarily of Romanian origin")
2	05 December 1988	Bianco	as for "Caravan" reference
3	07 December 1987	Azure	Drug trafficking (by "persons mostly of Lebanese extraction")
4	08 December 1989	Asset	Alleged high level Police Corruption -> discontinued
5	18 April 1990	Ruby	Racing Industry - Corruption and administration of drugs to horses
6*	21 June 1990	Sheree	Money Laundering
7	30 July 1990	Brumby	Illicit drugs in transport industry
8	01 August 1990	Cedar	Alleged high level Police corruption - no evidence revealed
9	03 May 1991	Gecko	Drug trafficking (by persons of "SE Asian extraction")

\* Pilot study of technology for following the money trail

**BREAKDOWN OF ISSUES INVESTIGATED:**

Drug trafficking	-	5
Police corruption	-	2
Money Laundering	-	1
Racing Industry	-	1

## Independent Commission Against Corruption

The NSW Independent Commission Against Corruption is also a State body. Its functions are concerned with corruption in the NSW public sector. The terms corrupt conduct and public official are defined widely in the Independent Commission Against Corruption Act 1988.

The ICAC receives complaints about possible corrupt conduct from members of the public. The Chief Executive Officers of Government departments are also under a duty to report any suspected corrupt conduct to the Commission.

The ICAC may exercise a number of coercive powers in conducting investigations. It may conduct investigations upon its own initiative - matters do not have to be referred to it for investigation. In fact the Executive Government cannot require the ICAC to investigate a particular matter. The only way the ICAC can be compelled to investigate a particular matter is if it is referred by both Houses of Parliament. The ICAC has developed internal mechanisms for the formal commencement of investigations including the drafting of specific terms of reference.

However, in deciding whether to discontinue or to commence an investigation the ICAC must consult the Operations Review Committee. The Operations Review Committee consists of the Commissioner of the ICAC (Chairman), an Assistant Commissioner of the ICAC, the NSW Police Commissioner, an appointee of the NSW Attorney-General, and four community representatives appointed by the NSW Premier.

Table three summarises the matters investigated by the ICAC to date.

Table Three

### ICAC - FORMAL INVESTIGATIONS

No	Date Commenced	Name	Issues Investigated
1	15 March 1989	Waverley Council	Local Govt, Land Develpt
2	03 April 1989	North Coast Land Development	Land Develpt, political donations
3	12 April 1989	Silverwater Filling Operation	Letting of Contract by Govt Dept
4	20 April 1989	Land Titles Office	Fast-tracking systems
5	11 May 1989	Neal and Mochalski	Relationship between MP and constituent
6	26 May 1989	Raid on Frank Hakim's Office	Alleged heroin "load-up" by Police
7	08 June 1989	Driver Licensing	Bribery in Driver Licensing
8	06 July 1989	*	Local Govt, Land develpt -> discontinued
9	20 July 1989	*	Fraud in Dept of Health
10	19 July 1989	Park Plaza	Land Develpt, Local Govt
11	01 Sept 1989	Sutherland Licensing Police	Bribery of Police Officers
12	19 Sept 1989	*	Letting of Contracts
13	21 Sept 1989	Randwick TAFE	Bribery of teacher
14	21 Sept 1989	*	Letting of Contracts -> discontinued
15	01 Dec 1989	Department of Housing Carpets	Letting of Contracts, secret commissions
16	12 Dec 1989	*	Land develpt, bldg approvals -> discontinued
17	06 March 1990	Walsh Bay	Land develpt, tendering
18	12 March 1990	*	Bribery of Police officers
19	26 March 1990	*	Letting of Contracts
20	24 May 1990	Operation Tamba	Release of Confidential Govt Information
21	08 June 1990	NSW Film Corporation	Film Distribution agreements
22	12 July 1990	Sydney City Council employee	Soliciting of corrupt payments
23	27 August 1990	Police and Azzopardi	Harassing telephone calls by Police
24	06 Sept 1990	Police and Truck repairs	Payment of illegal commissions to Police
25	Sept 1990	Vinyl Floor Products	Tendering
26	18 Sept 1990	MSB and Helicopter Services	Tendering
27	06 Dec 1990	*	Local Govt, release of confidential info
28	07 Dec 1990	*	Local Govt, land develpt
29	15 January 1991	*	Local Govt
30	18 January 1991	South Sydney Council - Planning	Local Govt, land develpt
31	14 February 1991	Kyogle Shire Roadworks	Local Govt, Contracts



32	22 March 1991	*	Local Govt, Land develpt
33	28 March 1991	Local Govt Conflicts of Interest	Local Govt, Conflicts of Interest
34	10 April 1991	*	Assault and Robbery by off-duty Police Officers
35	30 April 1991	Prison Informers	Use of prison informers in investigations, prosecutions
36	09 July 1991	Sydney Market Authority	Theft by market staff
37		**	
38	11 July 1991	Water Board Sludge Tender	Tendering
39		**	
40		**	
41		**	
42		**	
43		**	
44	04 October 1991	State Rail Authority-Trackfast	Tendering and contracts
45	30 October 1991	consolidated with no.44	Tendering and contracts
46		**	
47		**	
48		**	
49		**	
50	11 February 1992	**	

\* No public report

\*\* No information publicly available

### **BREAKDOWN OF MATTERS INVESTIGATED:**

Local Government/Land Development - 13

Contracts and Tendering - 12

Police - 5

## GENERAL OBSERVATIONS

From the experience of the NCA it appears that Executive Governments in Australia believe the fight against organised crime is basically one against the illegal drug trade. Eight out of the NCA's twelve references primarily concern drug importation. This seems to be reinforced from the example of the NSW Crime Commission, where four of its eight references have concerned drugs. (However, it must be remembered that until 1990 the Crime Commission's charter was limited to drug crime.)

The ICAC has pursued a significantly different agenda, focusing on Local Government/Land development and contracts and tendering. As outlined above, the ICAC is independent of Executive Government. In selecting matters to be investigated the ICAC must consult its Operations Review Committee, which includes four community representatives.

At first glance this seems to suggest that the involvement or non-involvement of Executive Government in agenda setting is a determining factor in what matters are investigated. Executive Governments in Australia seem to see organised crime and corruption as largely a matter of drug crime.

However, I would suggest that, despite the elaborate mechanisms put in place to set the agenda for anti-corruption and crime commissions in Australia, the heads of the anti-corruption and crime commissions have personally set the agenda in the fight against corruption and organised crime in Australia. I suggest this for two principal reasons.

Firstly, the various agenda setting mechanisms are reactive rather than proactive. In the case of the NCA, the Authority has approached the Inter-Government Committee with requests for all of its references. In all cases these references have been granted.

In the case of the ICAC, investigations are often actually commenced before the Operations Review Committee is consulted. In any case the Operations Review Committee has to date endorsed every recommendation put to it by the ICAC. (In some thirty or forty cases the Operations Review Committee has sought further information from the ICAC, but in each matter has ultimately endorsed the recommendation of the Commission that a matter should either be investigated or an investigation discontinued).

Secondly, the range of matters investigated by these bodies seems to reflect the personal biases of the persons at their head. The NCA's first nine references were granted while it was under the Chairmanship of Justice Donald Stewart. Justice Stewart had presided over a number of Royal Commissions prior to his appointment with the Authority, some of which concerned illegal drugs. Of the nine references granted while he was Chairman, eight related principally to drugs.

Only one matter was referred to the NCA under the Chairmanship of Mr Peter Faris QC. This was reference number ten, concerning company law violations. This marked a significant change in direction of the Authority towards white collar crime. This new direction was a personal priority of Mr Faris.

Matters eleven and twelve were referred to the NCA under the most recent Chairman, Justice John Phillips. One of these related to money laundering. Again, this is an area that Justice Phillips personally saw as important to the future fight against organised crime.

#### POSTSCRIPT

In recent weeks there has been some controversy about the agenda being pursued by the NSW ICAC. The Director-General of the NSW Cabinet Office and principal architect of the ICAC, Gary Sturgess, recently went public with concerns about the investigative priorities of the ICAC.

When the ICAC was established in 1989 Gary Sturgess provided the ICAC with files on over 70 matters concerning corrupt activities in NSW over a period of 20 years. It is understood that some of these files related to the alleged infiltration of criminal elements into branches of a political party in inner Sydney, together with associations between political and judicial figures and criminal elements. To date none of these matters have been investigated by the ICAC.

"I think personally I am disappointed. I think there are things that went on in the previous 20 years of this State which are still relevant today," Mr Sturgess said.

"Some of these people continue to have contacts within the Police force. Some of them continue to have contacts elsewhere in public administration in this State."

"And I think there are a number which arose during those years which I would have preferred had been pursued. And I think there would have been considerable advantage if they had."

Last year in a public hearing of the ICAC's Parliamentary "watchdog" Committee, Independent MP and long time anti-corruption campaigner John Hatton questioned whether sufficient attention was being paid to serious drug crime and related corruption.

"...given the ICAC, the State Drug Crime Commission, the Judicial Commission and the reforms in the Police force we still have a major drug problem in NSW and some people would say the heavy drug capital is still Sydney...."

"This is certainly no implied criticism whatsoever of the ICAC, but it appears to me that the ICAC is not getting into those heavy areas..."

The Commissioner of the ICAC, Mr Ian Temby QC, has responded by arguing that the

ICAC is independent and is not inclined to investigate matters to please Government (or damage the political opponents of the Government as in this case). Mr Temby has also argued that the matters in question are too old for an investigation to be of any real use.

As the foregoing material demonstrates, the two areas upon which the ICAC has focussed during its first three years have been Local Government/Land development and Contracts/Tendering. The focus on Local Government/Land Development is particularly marked - one third of formal investigations about which information is publicly available have focussed on Local Government while on 20% of complaints have related to this area.

Arguments as to whether or not these are the most pressing targets are very subjective. The problem is that no-one really knows the full extent or shape of corruption in NSW. (This is not surprising as corruption is a "secret crime".)

I believe that the NCA may have shown the way forward in this area. A couple of years ago the NCA established a "strategic intelligence unit".

"Strategic intelligence" is distinct from "operational intelligence". The latter refers to intelligence of use to a specific investigation or operation. "Strategic intelligence" on the other hand connotes a broad overview, drawing together intelligence from numerous sources and investigations to build up an overall picture.

Last year the former Chairman of the NCA, Justice Phillips, told the NCA's Parliamentary "watchdog" committee that the NCA's Strategic Intelligence Unit was working towards the development of a comprehensive picture of organised crime.

"This (work in the strategic intelligence area) ... is directed towards being able to give this Committee and, through it, the Australian Parliament and people an overview of organised crime in Australia."

The Parliamentary "watchdog" Committee in its Evaluation Report of last December stated that once this overview is provided it will be a benchmark against which the NCA's target selection will be able to be objectively assessed.

The ICAC has also recently established a Strategic Intelligence Unit. If the debate over the ICAC's agenda setting and priorities is to be objectified it is essential that this Strategic Intelligence develop and publish an overview of corruption in NSW. This overview should describe the extent and nature of corrupt activity to the fullest possible extent. The overview should be made public, if necessary in a modified form.

Initially, the Parliamentary "watchdog" Committee on the ICAC should request that the ICAC prepare a strategic assessment of corruption in NSW. If the ICAC is reluctant to do this then it may be necessary for the Parliament to formally refer this matter to the ICAC under the provisions of s.73 of the ICAC Act.