

**CORRUPTION PERCEPTIONS AND THE
INDEPENDENT COMMISSION AGAINST CORRUPTION**

Paper presented by Peter Nagle MP

to

**Fifth International Anti-Corruption Conference
Amsterdam, 8 - 12 March 1992**

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Perceptions evolve around notions and ideas.

In the 17th century Dr Hale in his work "The Origin of Mankind" said that:

"By the inventions and their followers that would seem not to come short of the perceptions of the leaders - they are magnified." (1)

Under the Westminster system of government, or any other system that requires an electoral mandate to govern, that perception as to the effectiveness, efficiency, trustworthiness and honesty of government is paramount. The perception, whether real or imaginary, is the way of playing the electorate to gain and/or maintain political power. It plays a major role on the ascendancy of an Opposition and the fall of the Government.

Perceptions do not only figure in playing the electorate; but, also the leaders use it to play their colleagues. They demonstrate to their colleagues that they are winners and competent, and that have the ability to gain and retain political power.

Perception is only effective when it is directed to the nonpolarised section of the electorate: the swinging voter. These people look at the Government and Opposition leaders in respect of their own concerns, aspirations, worries, wants and needs.

Therefore, if a new and young Leader of the Opposition (1982) is seen as energetic, effective, efficient and a winner then - he has to retain that perception, because older and more experienced colleagues - "the old guard" - watch to see if the perception can be maintained.

In Australia political Oppositions do not win political power, but Governments lose power, and this turnover cannot occur unless the opposition can publicly show that the government has lost its "will" to govern.

Before 1986 in New South Wales the question was, what can Mr Greiner, a young Opposition Leader do, when the Government leader of the day (Mr Wran) has a high creditability profile and has won election after election in devastating style? The answer is simple, create the perception that the government is no longer effective and in control.

How does one do that, and the answer is to create the perception, with some help from the Government itself, that the Government is corrupt.

In New South Wales at a press conference on 3rd March 1984, the then Opposition Leader, Mr Greiner, said:

"All we have done is use the six days that parliament has say to probe matters which do require privilege and which do appropriately belong in the parliamentary forum." (2)

He was referring to a lengthy and time consuming debate on Government corruption. He went on to be reported:

"The Liberal Party would continue to run its advertisements based on the slogan: "lets clean up NSW." (3)

On 25th August 1984 the national newspaper, the Australian, reported that,

"The first week of Parliament's budget session was a rough ride for the Government as it was bombarded with claims of corruption, of attempts to influence the judiciary, and demands by the Opposition for public inquiries into a variety of corruption issues. "(4)

On 8th March 1984 the Daily Telegraph reported the Deputy Opposition Leader as saying that,

"...An unsavory stench was hanging about the Government which would remain until the rottenness was eliminated. "(5)

The Opposition Leader, Mr Greiner, told the same meeting at Grafton that,

"The return of the Wran Government would do nothing but entrench corruption for four more years." (6)

In the 1984 election "corruption" was the issue and yet, the same Wran Labor Government was returned to power in the state.

From 1984 to 1988 the fortunes of the Wran and then Unsworth Labor Governments changed, primarily on the issue of corruption. Over those years corruption took up the entire political agenda. It did not matter what the Wran Government did to rectify the perception it could not change the course of events.

On 26th May 1988, the Premier Mr Greiner, summed up the past in the ICAC Parliamentary debate when he said,

"I have made no secret of the fact that there are a number of matters that the government will bring to the attention to the

commission - matters of public concern. . .That the Wran and Unsworth Government did nothing about. But matters referred by the Government will be given no special treatment." (7)

In the same debate Mr Greiner said that,

"There is a general perception that people in high office in this state were susceptible to impropriety and corruption. In some cases that has been shown to be true." (8)

By 1988 the perception was so strong, that in the March state election the Labor Government suffered the worst defeat since the great depression (1932).

Yet, and irrespective, the Wran and Unsworth Labor Government tried desperately to change the perception "that people in high places were susceptible to impropriety and corruption." They introduced a number of important law reform initiatives to change the perception, such as:

- 1 The Police Regulation (Allegations of Misconduct) Bill was introduced by Premier Wran in september 1978. This was the first time a civilian body was given any role in the investigation of complaints against police in NSW. However, it had a limited role and a number of problems emerged.
- 2 In 1983 the then Police Minister Anderson introduced what became known as the 'discipline package'. The major feature was amendments to the Police Regulation (Allegations of Misconduct) Act to enable the Ombudsman's office to conduct its own investigations into complaints against police. Under the 1978 Act the Ombudsman merely referred complaints for investigation to police internal affairs. The 1983 Act said that following initial investigation by internal affairs, the Ombudsman may conduct his own investigation. The 1983 package also contained a significant upgrading of the role of the internal affairs branch.
- 3 The establishment of the Director of Public Prosecution's Office (the DPP) occurred when the then Attorney-General Mr Terry Sheehan introduced the Director of Public Prosecutions Bill in December 1986 and this remains a particularly significant and successful reform.

The basic feature was that the DPP was invested with the responsibility to institute and conduct proceedings for indictable offences in the higher courts, with thorough responsibility for determining such matters as "no bill" applications, ex officio indictments and considering crown appeals. Special units were also established within the DPP's office, including a drug prosecution unit with special expertise - a "no bill" means the crown does not prosecute.

4 The reforms to police force in 1984

John Avery was appointed commissioner on 7th August 1984. Some of the groundwork for Avery's reforms had been laid by the Commission of Inquiry conducted by Supreme Court Mr Justice Lusher. This included recommendations for the creation of a Police Board, involving civilians as well as the Commissioner. It also recommended the introduction of promotion on merit.

Soon after his appointment Mr Avery, together with Police Minister Mr Anderson, sought the assistance of then Crown Advocate Mr Reg Blanch QC, and the three men produced some initiatives which included:

- a) laying criminal charges against corrupt police where there was sufficient evidence;
- b) bringing corrupt police to the police tribunal where the evidence was not as strong but only needed to be proven on the balance of probabilities, and so on.

Over the same period of time there were some less successful initiatives; eg.

- 1 Special Commissions of Inquiry Act 1983 which gave the government the power to appoint commissions of inquiry into allegations of corruption. It never enjoyed the legitimacy of the ICAC due to the fact that the Government set the terms of reference of the inquiries.
- 2 The Judicial Commission, despite the degree of controversy which surrounded the establishment of this body, it has an extremely low profile, possibly because there have been few complaints against magistrates and judges.
- 3 State Drug Crime Commission (now known as NSW Crime Commission): admittedly up until 1991 the brief of the Crime Commission was limited to "serious drug crime". Yet, this organisation has also had an extremely low profile. It does appear to have made some inroads into the illegal drug trade in Sydney.

Irrespective of all these initiatives, the perception of corruption did not alter and the tide did not turn to the Labor Government and it was defeated in 1988.

When ICAC came into being some of my colleagues, (and for good reason), formed a view that the Greiner political agenda was political bashing of the defeated Labor Government.

In 1988 when introducing the bill on the Independent Commission Against Corruption (ICAC), Mr Greiner, the new Premier, used the background of the corruption in New South Wales from 1980 to 1987 as a reason for its creation - he said:

"In recent years in NSW we have seen: a Minister of the Crown gaoled for bribery; an inquiry into a second and indeed a third, for alleged corruption; the former Chief Stipendiary Magistrate gaoled for perverting the course of justice; a former Commissioner of Police charged with bribery; a series of investigations and court cases involving judicial figures including a High Court Judge; and a disturbing number of dismissals, retirements and convictions of senior police officer for offenses involving 8 corrupt conduct." (9)

As far as it goes, this is an accurate history of events from 1980-1988 and it is the sole basis for the creation of ICAC. Nevertheless, I believe that the use of these historical events were part of a secret agenda by the Liberal/National Party Government to keep the defeated Labor Government out as a future Government in New South Wales.

The aim was to use ICAC to remind the public of the past. Many examples of this initial thinking of the present government is to be found in newspaper articles and in the Hansard record of Parliamentary Debates. Eg. in a radio broadcast on 18th May 1988 and repeated on 10th June 1988 the then Liberal Attorney-General John Dowd QC said,

"The Commission will spend much time examining the workings of the Labor party". (10)

This being the defeated government.

In many of Mr Greiner's parliamentary speeches he reminded us of the past and how ICAC would investigate many allegations against the previous Government and in fact, he referred 70 matters to ICAC for examination (11). A lot of these matters related the previous Government's administration and some were investigated and the result was "nil" action.

Mr Bob Carr said in his speech to the Parliament on 31st May 1988:-

"As the detail has become apparent, so, too, have the concerns of all those in the community who recognise the very real danger of a new brand of McCarthyism; those who recognise the danger of guilt through association and the overriding of traditional rights conferred by the English legal system; those who recognise the very real threat to more civil liberties contained in the possibility of trial by media with nuggets of information being considered by the Commission leaked to the media, and people put on trial before they had any of the rights that legislation confer on them. It is the Opposition's very real fear the balance may be tipped in the proposed legislation towards those abuses, towards an authoritarian system, towards brand of McCarthyism. I do not believe the Government was given a mandate to pursue that course." (12).

The Australian newspaper noted in its editorial of 29th February 1988:

"The elimination of corruption might be poor compensation for the unjustified destruction of personal reputations or the irrational or partisan interference in the proper processes of government by an overzealous or egomaniac commissioner."

More importantly, the editorial concluded:

"Mr Greiner's objectives are admirable, but his policy is too far reaching to be endorsed without much more specific detail being known." (13)

However, to Mr Greiner's credit, and also to the strong determination of the Commissioner of ICAC, Mr Temby, and through the co-operation and foresight of the Opposition Leader, Mr Bob Carr in supporting the legislation, there was no witch hunt over the past and no forced political investigations.

In fact Mr Temby, on 16th February 1992, was reported in an interview with one of our foremost political journalists Quentin Dempster, as saying that:

"Corruption has ceased to be a political issue in NSW Nick Greiner established the Independent Commission Against Corruption on March 18, 1989..." (14).

Moreover Mr Dempster went on to say that:

"Last week Ian Temby QC reaffirmed that he had no intention of taking over "mythological" parts of political history like the Enmore conspiracy and the Botany Council Affair. He and his staff had assessed all available evidence and published reasons why a line should be drawn in arranging the Independent Commission Against Corruption's fighting priorities and the most effective use of its \$12 million-a-year budget."
(15)

Moreover, on 12th November 1991, Mr Temby was reported to have said,

"New South Wales and Sydney once "frankly something of a cesspit" are no longer Australia's prime places for scandal and corruption." (16)

He went on to say,

"Certainly it can no longer be said that NSW in general, and Sydney in particular, are the places where misconduct is most likely to be found, where abuses of the public trust are most frequently encountered and that's not a bad transformation in a period of ... 10 years." (17)

Mr Greiner said when announcing the appointment of Mr Temby that ICAC would have a

free hand to investigate any matters that they deemed appropriate and this, to Mr Temby's eternal credit, he has done. (18) The Commissioner has kept his independence and this has enhanced the credibility of ICAC on all sides of politics.

In fact, no former Labor government minister has had a public inquiry, and the reason could be that the perceptions were too highly magnified and imagined.

Conclusion

I believe that ICAC can be expanded in the future to look at organised crime and private enterprise corruption as they relate to public corruption because corruption cannot be redressed and minimised unless private enterprise corruption can also be investigated. Both these forms of corruption walk hand in hand to cost the people of this state financially, morally and politically. I hope that five years or so down the ICAC road they will examine this option, and adopt the whole of the Hong Kong model. To reinforce this view Mr Goldstock said today that organised crime can move into legitimate Government enterprises, and how corrupt tendering procedures and activities can be used by organised crime (19).

I have set out the briefest of histories of how ICAC came into existence and I now turn it over to my colleague, Malcolm Kerr MP to explain the current initiatives of ICAC

Finally I wish publicly to commend Mr Temby and his staff for the good work they do in what is a most difficult task.

Endnotes

- 1 Dr Hale "The Origin of Mankind".
- 2 Leader of the Opposition, Mr Greiner, Press Conference, 3rd March 1984.
- 3 Ibid.
- 4 The Australian Newspaper, 25th August 1984.
- 5 The Dially Telegraph, 8 March 1984.
- 6 Ibid.
- 7 The Premier, Mr N Greiner, NSW Hansard 26 May 1988.
- 8 Ibid.
- 9 Ibid.
- 10 Mr John Dowd MP, interview 2GB, 18 May 1988.
- 11 Various Hansard Speeches of the Premier, Hon N Greiner, in 1988 as to ICAC legislation.
- 12 Mr Bob Carr, Leader of the Opposition, NSW Parliamentary Debates.
- 13 The Australian Newspaper Editorial 29 February 1988.
- 14 The Sun Herald, Sydney, 16 February 1992.
- 15 Ibid.
- 16 The Sydney Morning Herald, 12 November 1991.
- 17 Ibid.
- 18 Hansard Speeches of the Premier, Hon N Greiner.
- 19 Mr R Goldstock, Director, New York State Organised Crime Task Force.