



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*

*FRIDAY, 15 OCTOBER 1993
PARLIAMENT HOUSE, SYDNEY*

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

MEMBERS

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The Hon J C Burnswoods, MLC (ALP)
Mr B J Gaudry, MP (ALP)
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The Hon S B Mutch, MLC (Lib)
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Mr J H Turner, MP (Nat)

STAFF

Ms R Miller, Clerk to the Committee
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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."

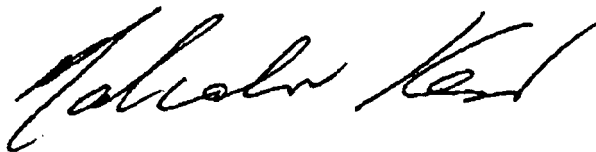
CHAIRMAN'S FOREWORD

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 15 October 1993 was the fifth 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.



Malcolm J Kerr MP
Chairman

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CHAIRMAN'S OPENING STATEMENT

CHAIRMAN:

I hereby declare these proceedings of the Parliamentary Joint Committee on the Independent Commission Against Corruption open. Before we commence the proceedings I would like to say a few words by way of introduction. Firstly, today's hearing is one of a series of six-monthly public hearings which the Committee conducts with the Commissioner pursuant to its function under the ICAC Act to monitor and review the exercise by the ICAC of its functions.

Secondly, as with previous hearings, written questions on notice were forwarded to the ICAC some three weeks ago. The ICAC has provided written answers to those questions on notice. I would now like to table those written questions and answers. The issues covered in those questions and answers include:

- 1 General Updates/briefings
- 2 Issues Arising from Previous Hearings
- 3 Prosecutions and Convictions
- 4 Conduct of ICAC Staff
- 5 Accountability
- 6 Off-the-record Media Briefings
- 7 The Operations Review Committee
- 8 Police Service section 11 Reporting
- 9 Public Hearings
- 10 Corruption Prevention and Public Education
- 11 Financial Assistance for Legal Representation and
- 12 Party Political Associations.

The procedure will be that the written questions and answers will be taken as read. I will go through each topic in order, identifying the member who asked the questions and giving them the first opportunity to ask follow up questions. Other Committee members will then be given an opportunity to ask questions on that topic, before we move to the next topic. After the twelve topics identified in the written questions and answers have been dealt with, there will be some questions arising from the ICAC's annual report which was tabled earlier this week.

Finally, there will be an opportunity for Committee members to ask questions on other issues of concern. Mr Temby, before we begin the questions, is there anything you would like to say by way of an opening statement?

MR TEMBY'S OPENING STATEMENT

Mr TEMBY:

Thank you Mr Chairman. I could perhaps note that this is the second last occasion that I will have the opportunity to come before the Committee to give an account of the workings of the Commission. Our annual report was tabled in the Parliament this week and I am sure all members have seen a copy. You will have noted that considerable changes have been introduced to make the document more accessible and informative. It has been structured to follow the Commission's corporate plan in order to allow a better assessment of progress made.

This year the Commission has produced no fewer than 19 reports of investigations and corruption prevention projects. Some particularly noteworthy reports were in respect of the release of confidential information and the use of prison informers. I note that the prison informers report was published in January 1993. I must say it seems a lot longer ago that we were getting that report out. Pitfalls or Probity, which is a series of case studies on tendering and purchasing has been a particularly successful corruption prevention initiative. We are about to go into a third print run.

An extensive public education campaign has been conducted which has included outdoor billboard advertising and a film and video competition which is now under way. Judging takes place in about a month.

The Commission's Research Unit has undertaken the first large scale survey of attitudes to corruption in Australia using a randomly selected sample of 2,000 public sector employees. The study aims to explore where legal and social definitions of corruption meet or diverge. The data has been collected. We had a good response rate and some preliminary analysis has been conducted.

I would like to table a paper which was presented at a conference here in Sydney at the end of September. It should be stressed that it contains no more than preliminary analyses. There is a lot of work to do but what is in there may be found to be of some interest. Please treat what is there cautiously because of its preliminary nature.

The Commission has issued two discussion papers this year to facilitate consideration of issues in the investigation of the relationship between police and criminals. The discussion paper on the nature and management of the relationship between police and criminals was produced in May 1993. It has been followed up by a number of discussion groups with police and other interested people. The other discussion paper, which will be published in about ten days, deals with the management of the criminal investigation process and will be accompanied by a video which is to be distributed widely, including one to each of the patrols in the state. These projects and, in particular the second of them have been conducted with close assistance and cooperation from the Police Service.

We are hopeful of highly positive outcomes from the work generally, but in particular, what is being done in those discussion papers.

In previous meetings with the Committee there has been some discussion on complaints and the timeliness of dealing with them. The project for eliminating both the backlog and what we came to call the "front log" has been entirely successful. Internal reporting has been tightened up considerably and the figures show that we are now in a better position than we have ever been and in about as good a position as one could imagine. That has occurred despite a 25 percent increase in all matters received by the Commission. Most of that increase reflects better s11 reporting, rather than any increase in complaints from the public. There is no reason to believe it reflects a resurgence of corruption. Rather, it reflects better responsiveness from the public sector agencies and I think some improvement in the way we have gone about achieving that improved responsiveness.

When the Committee last met I noted the number of complaints received from the public had dropped considerably when the Milloo hearings were held in private and I was then asked to provide more details. We have compared corresponding months of 1992-93 with 1991-92. When the Milloo hearings were held in public in late 1992 there was a 40 percent increase in complaints compared to the previous year. This was consistent with the trend in which we had complaints increasing by 14 percent in the last six months of 1992 compared with the last six months of 1991. In February and March of 1993 complaints were 30 percent lower than the corresponding period of the previous year and that was when we were, by court decision, driven behind closed doors. Hearings were then resumed in public and the drop in the figures was gradually reduced. There may have been other factors but it is clear to me that the major operative factor was the private hearings.

It would be wrong if I did not make some mention of the Court of Appeal decision following the first Metherill report. Clearly the Commission's legislation is in need of amendment following that decision and the report of this Committee. I might signal my disappointment that some 14 months after that decision little has changed. Problems with the legislation remain in relation to Ministers and other constitutional office holders. It remains to be seen whether there will be serious problems arising in relation to the matter recently referred by the Parliament.

Finally, could I say that I was somewhat surprised by the questions on notice given to the Commission by the Committee on this occasion. Some of them required Commission staff to spend a great deal of time examining records. More importantly, however, I was disturbed by the highly interrogative style of many of the questions. This seems to be a departure from previous practice and could lead one to the conclusion that the Committee considers it is dealing with an adversary. I trust that is not the case. Certainly, the Commission seeks to approach its dealings with the Committee in an open and cooperative fashion, as I hope will be absolutely clear when we finish this hearing today.

-1-
GENERAL UPDATES/BRIEFINGS

Questions on Notice

The Committee would appreciate general updates/briefings on:

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

A: The Commission expects to complete its hearings in its investigation into the relationship between police and criminals by 3 November 1993. It is anticipated that two reports will be published. The first, concerning the factual segments is expected to be published in late January 1994. The second Report will deal with policy matters and will be published within two months thereafter.

In the Commission's investigation into the conduct of former Councillor Zouch of Coffs Harbour City Council, private and public hearings have been held between March and October this year. The report should be published within four weeks.

Q: 1.2 the Commission's corruption prevention work;

A: Projects completed in the last six months:

- ICAC Code of Conduct Review
- Pitfalls or Probity: Tendering and Purchasing case studies
- Private use of TAFE teaching equipment

New projects approved:

- Corruption Prevention Strategies
- Post-Separation Employment

Projects near to completion or achieving major milestones

- Management of Criminal Investigations - a discussion paper produced after joint work with the NSW Police Service, presenting findings and recommendations for consideration and leading to development of action plans; the discussion paper will be published in October.

- Sponsorship Guidelines - a discussion paper based on consultation with private and public sector organisations including significant input from the Office of Public Management, was circulated in September; the final Guidelines document will be published within a month.
- Other projects to be completed in next three months:
 - accountability for government grants
 - systems for travel payments
 - monitoring cash handling in hospitals

The regional seminar series commenced with a pilot in Armidale earlier this year and planning is proceeding for seminars at four or five centres during the remainder of this financial year.

Presentations to seminars/conferences and agency specific workshops on fifteen occasions in the last six months.

Q: 1.3 the Commission's public education work;

A: The Commission's education activities have followed the strategies previously outlined to the Committee. There is now, however, a stronger emphasis on public sector education activities and the linking of education with corruption prevention programmes.

◇ **Country Trips** - 3 country trips have been undertaken since March. These have completed a programme during which Commission officers visited 90% of the State. On three trips 23 towns were visited, 535 adults were addressed including 116 police at 10 stations and 971 students were visited at 33 high schools. The areas covered were the North Coast, South Coast and South West NSW. During these trips 4 public meetings were held and presentations were also made to community based groups.

◇ **Billboards** - The "Corruption Costs" theme was promoted through a billboard campaign in June featuring two advertisements. This mass medium was chosen for its popular nature and cost efficiency. The campaign received some positive attention from the media as well as the public.

◇ **Speaking engagements** - Commission staff undertook a number of speaking engagements. These included the Property Services Group, RIPAA Conference on Whistleblowing, NSW Aboriginal Land Council, Griffith University Conference on Police Education, Economic and Commercial Teachers Association and various metropolitan high schools. The Commission also participated in training courses at the Goulburn Police Academy.

◇ **Book Fair** - The Commission attended the 1993 Australian Book Fair at Darling Harbour. The stand display kept to the "Corruption Costs" theme using the 'back-hander' billboard as a backdrop. It attracted attention from industry and general public attendees.

◇ **Publications** - Since March seven Commission publications have been distributed. **Pitfalls or Probity** was a particularly significant publication. A breakfast briefing was held at the State Office Block on June 25th and was attended by Chief Executive Officers from many government departments. 12,500 copies of the booklet have been printed. A copy of the booklet has been sent to every public sector organisation and in many cases requests for further copies have been received. With the help of the Commercial Services Group copies have been distributed to more than 3,200 private sector organisations who do business with the state government.

A video is being produced to accompany the project on the management of criminal investigations. The video is aimed at achieving greater interest and acceptance of the Discussion Paper.

The Commission will attend the Australian National Field Days in Orange in November. Commission staff will be available to talk to visitors and distribute Commission publications.

Two Commission officers in the Education Unit have recently resigned. A recruitment campaign is under way for a replacement for one of them. Their departures may impact on some education activities this year.

Q: 1.4 the work of the Commission's Research Unit;

A: The unit's major project has been the study, "Public Sector Employees' Understanding of Corruption". Data collection has been completed. Of the sample of 2000 public sector employees, over 1300 responded. The data is presently being analysed and a full report is due for release early in the new year. A paper, describing the study and a few *preliminary* results was delivered at the 9th Annual Conference of the Australian and New Zealand Society of Criminology.

The review of the readership of Commission investigation reports has been completed. The review, which included a survey of approximately 400 recipients of Commission reports, sought feedback on the effectiveness of reports in meeting their information needs and identified information most commonly sought and used by report readers. Recommendations for improvements have been made.

As part of the police and criminals investigation, a literature review and discussion paper about the use and handling of police informants was prepared by the

Research Unit, together with a Senior Lawyer. A series of discussion groups are under way with NSW detectives, NSW informant registrars and other interested parties (e.g. academics, those from other criminal justice agencies and other police forces).

Other current projects include:

- opinion surveys about the general public's knowledge and beliefs about corruption and of their knowledge of and attitudes to the ICAC, and
- continued support for others within the Commission undertaking research or evaluation work.

Q: 1.5 any advice the Commission has provided on proposed legislation/discussion papers etc.;

A; The Commission has provided comment on the Whistleblower's Protection Bill (No. 2) dealing with the protection of internal complainants, on the Local Government Bill, on the use of telephone interception and on amendments to the Archives Act. It has also provided advice to the Privacy Committee concerning the retention of investigation records.

Q: 1.6 the Commission's current budget and staffing position; and

A: OPERATING STATEMENT	<u>ACTUAL</u>	<u>BUDGET</u>	<u>BUDGET</u>
	1992/93 \$000's	1992/93 \$000's	1993/94 \$000's
Expenses			
Employee related	7,935	8,231	8,442
Other operating expenses	4,191	4,402	4,201
Depreciation	1,264	1,200	1,300
Fees to legal practitioners	860	700	700
	————	————	————
	14,250	14,533	14,643
	====	====	====

	<u>ACTUAL</u> 1992/93 \$000's	<u>BUDGET</u> 1992/93 \$000's	<u>BUDGET</u> 1993/94 \$000's
Revenue	38	53	50
Net loss on disposal of equipment	(16)	-	-
	-----	-----	-----
Net Cost of Services	14,228 ===	14,480 ===	14,593 ===
Consolidated Fund Recurrent Appropriation	12,573	12,706	12,743

INVESTING STATEMENT

Capital	760 ===	760 ===	200 ===
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STAFFING

As at end September 1993 - 135

Q: 1.7 the work of the Operations Review Committee.

A: The Operations Review Committee (ORC) has been required to deal with a steady increase in the number of reports submitted to it for consideration. For instance, in the reporting year of July 1991 to June 1992, 671 reports were considered by the Committee which represented 717 complaints being finalised. For the reporting year of July 1992 to June 1993, 1038 reports were considered, representing 1292 complaints being finalised. This latter figure is necessarily affected by the "special meeting" of the ORC convened in February 1993 to deal with complaint files which had been processed by Commission investigators. The circumstances leading to that meeting were addressed in the Questions on Notice (Q: 3.1) from the PJC on 26 March 1993.

The disparity in figures relating to "reports considered" and "complaints finalised" is due to the fact that complaints detailing similar or identical allegations may be dealt with in the one report. Alternately, where a number of complaints have lead

to preliminary inquiries which have ultimately been discontinued, one report may be prepared which deals with the separate complaints in tandem.

In relation to the composition of the ORC, Mr Nutter's appointment expired in March 1993, at which time Mr John Bragg, an accountant, was appointed to the Committee. Re-appointed to the Committee were Mr Brezniak, Ms Niland, and Reverend Ballantine-Jones. The composition of the Committee is currently as follows:

Mr Ian Temby, QC	Commissioner
Mr Peter McClellan, QC	Assistant Commissioner
Mr Tony Lauer, APM	Commissioner of Police
Mr Laurie Glanfield	Director-General Attorney-Generals Dept.

The balance of the Committee comprises 4 persons appointed by the Governor to represent community views:

Rev Bruce Ballantine-Jones	Clergyman
Mr Daniel Brezniak	Lawyer
Ms Carmel Niland, AM	Management Consultant Former President, Anti-Discrimination Board
Mr John Bragg	Chartered Accountant

In August 1993, an "Issues Paper" was prepared by the Commission entitled *Composition of the Operations Review Committee & Reporting by the Committee on its Activities*. The paper was provided to Committee members, it has been discussed, and the views of the ORC will be finalised in December. They will then be communicated to the Parliamentary Committee.

Questions Without Notice

CHAIRMAN:

Q: Perhaps if I could take you, Mr Temby, to 1.6. It was of interest that object five of the ICAC corporate plan is ensuring effective corporate management and one of the strategies you identify is to reform budgetary and accounting systems to enable wider delegation of financial responsibility. Does the ICAC intend to introduce program budgeting?

A: Could I ask Mr Seshold to answer that question. I think he could do so with a lot more authority than I can.

Mr SESHOLD:

A: The issues that the Commission faces with the way it conducts its budgeting processes result in it being pulled in a couple of different directions. We are a small organisation. We are in a single site. We work closely together and that gives rise to an optimum form of accounting within the Commission. That does not always suit planned program budgeting. But what we are looking at doing is a variety of different programs within the Commission for increasing both the effectiveness of our internal reporting and also changing the way in which we delegate expenditure within the Commission, but at this stage we have got no plans to do what you are suggesting.

Mr GAUDRY:

Q: In question 1.7, Commissioner, in terms of the "Issues Paper" prepared by the Commission which I understand has gone to the Operations Review Committee, within that was there any form of appraisal of the work or was it just dealing with issues apart from appraisal of work of the Operations Review Committee?

A: It concentrated upon questions of composition and structure rather than upon questions of efficacy. The discussion paper was considered by the ORC. The Commission staff were asked to do more work on a couple of areas and I would rather the Committee got the ORC's view rather than a Commission view, or my view on these topics.

ISSUES ARISING FROM PREVIOUS HEARINGS

Questions on Notice

Q: 2.1 What progress has been made on the study of the inquisitorial system of criminal justice and its application to Commission proceedings?

A: In June 1992 two senior Commission officers interviewed judges, prosecutors, police and professors in France, Italy and Germany and observed some trials. The Commissioner undertook a study tour of France and Italy in September 1992 in conjunction with his invitation to participate in a conference in Czechoslovakia. He also examined the Californian Grand Jury System while speaking at a conference of the American Grand Jury Foundation in California in August 1991. The Commission engaged Senior Lecturer Bron McKillop with the Faculty of Law at the University of Sydney to provide a report based on a review of the available literature and his own observations and studies of continental inquisitorial systems of criminal justice.

A report of the Commission's study of non-adversarial systems is currently being drafted. As advised to the Committee in March this year, the Report is unlikely to be completed before late 1993.

Questions Without Notice

Mr HATTON:

Q: I have got a particular interest in the inquisitorial method of running hearings. I think, first of all, I strongly agree that in the Court system and legal and justice system the adversarial system has failed to contain organised crime and corruption, and your system is a unique model of a mix between the two. Do you see - and we have quite properly made the decision to afford people representation before the Commission - that the Commission increasingly is taken over by lawyers and becoming more and more expensive, and in fact becomes so captive that it becomes as ineffectual as the Court system, particularly in dealing with corruption and its association with organised crime. Does it warrant a movement away from that and, if so, how do you see the future of the Commission after your years of experience?

A: There is no risk the Commission will be taken over by lawyers in the way you have just mentioned because our determination to ensure that the number of lawyers be kept down, remains as it was. We have got at all levels 12 or 15 lawyers which would be considered, I think, a pretty small proportion for an organisation of about 140 people. There is no intention to change that.

If I could broaden the discussion somewhat, the study on the inquisitorial system is likely to be more of theoretical interest than practical application. I say that for two reasons. Firstly, while the statute requires us to eschew an adversarial approach, in terms it does that, there are other factors within it which makes it practically impossible for the Commission, at least in the hearing context, to move very far away from that approach. Accordingly, if you were going to try to achieve something closer to the pure inquisitorial model you would certainly need statutory change. Now, I am not advocating that. We have not finished the study yet and and I have got no idea of its findings. That is one reason why it can be more theoretical than practical because what emerges from it - what we learn from it - may not be capable of much application given the present statute.

Secondly, this is really looking far ahead. If it was decided by the Parliament that there should be a move in that direction and there should be some change in the statute, then you have got to accustom the courts to a new way of doing things and that is not always an easily achieved objective.

Q: Finally on that question, Mr Chairman, with the move towards a united Europe, did you see in Europe pressure for change as it were, on the English system - the English adversarial system. Did you see (particularly the in view of the unprecedented speaking out of certain judges, albeit on their retirement, of the failings of the present system) any recognition of advantage in the inquisitorial

system? Do you see that there will be perhaps a major change forced on the British system, first of all in Europe and perhaps spreading across to Australia because of cost and efficiency?

A: It is quite some time since I visited Great Britain. I have done so in the past and have generally not been able to find out much that is useful in our particular field of work. In the trips that have been taken to help with this study we have not addressed that question and I am unable to provide any competent answer to it. I would not be giving you, I think, any more information than what you could get elsewhere. I just don't know.

Q: There is one other question, and that is, this question about the antitrust laws in the United States, do you perceive it to be a disadvantage where you cannot look at the pattern of behaviour of a milieu or individual in terms of looking at the effective action with our adversarial system and do you perceive that we might need antitrust laws where we can actually see a pattern of behaviour and be more speculative in looking at the problems of organised crime?

A: You would be aware, as all of the committee will, that the Commission is very much interested in patterns of behaviour in measuring problems and in suggesting systemic solutions. It may be that the introduction of RICO legislation or antitrust laws or treble damages provisions or class action provisions might enable the courts to be a more effective mechanism for disclosure of problem areas. But in the end the courts are required to adjudicate between competing parties. They do not have the responsibility for suggesting systemic improvements and they are never going to have that function - it is foreign to the function of the court. So the best you could hope for, if you introduce those changes would be some better capacity for exposure. However you will understand that these are very large topics which one would have to study considerably before expressing any views as to whether they would be a good thing.

Mr NAGLE:

Q: For example, the area of class action. Class action is an area where maybe the courts and the Parliament should be looking to give people wider access in regard to situations that are common amongst a great deal of people, but that would take a concerted rethinking of the court system and its structure. That would be one area and as you say there would be an enormous amount of investigation to see whether or not the system in Europe as it stands as opposed to the adversarial system as we understand it would be of benefit. To that extent I agree with you; but Mr Temby, have you ever heard of an organisation called Transparency International?

- A: I do not know if I know of that organisation, but I know of organisations with at least similar names and I think I am aware of the area with which they are concerned.
- Q: Transparency International is an organisation in Asia, the USA and parts of Central America dealing with corruption from an academic point of view and I have a paper on it which I might refer you to, and you might refer it on to your people. Perhaps ICAC should get in contact with this organisation as another venue of looking at ideas that they have got in combatting corruption?
- A: I would be very pleased to see it and to the extent that they can give us some suggestions, we would be happy to look at them. I do not think I flatter myself in saying in most respects our society is a long way ahead of theirs when it comes to seeking to tackle corruption problems.
- Q: They may be able to learn from you; maybe, you will be able to pick up something from them.

PROSECUTIONS AND CONVICTIONS

Questions on Notice

Q: 3.1 The Committee would like a detailed breakdown of the outcome of findings made under the provisions of section 74A(2) of the ICAC Act concerning prosecution, disciplinary action or dismissal in each public report on an investigation. Information is requested on decisions of the DPP whether or not to prosecute, and the heads of public authorities whether or not to take disciplinary or dismissal action. In cases where prosecutions have taken place, information is requested on the outcomes including the convictions recorded.

The Committee would appreciate it if this information could be provided in tabular form. (By way of example a table from a report of the Parliamentary Joint Committee on the National Crime Authority is attached which presents the sort of information required in a helpful format.) In the case of the RTA and TAMBA reports, where there were large numbers of persons about whom findings were made under s.74A(2) the information could be provided in summary form, without the need to identify each individual.

The Committee acknowledges that this could be a large task. If possible, it would be appreciated if this information could be provided in time for the hearing on 15 October. However, if this is not possible, the Committee would like to receive this information in time to include in the Collation of Evidence from this hearing.

A: [See tables on following pages]

Q: 3.2 Has the DPP ever been unable to effectively launch a successful prosecution because of the publicity from a public hearing?

A: Not to the Commission's knowledge.

S74(5) AND S74A(2) FINDINGS RECOMMENDING CONSIDERATION OF PROSECUTIONS

Entries under the heading "finding" indicate only that the Commission made a statement pursuant to s74(5) or s74A(2) recommending consideration of the prosecution of a person for one or more specified criminal offences, as required by statute.

Up to and including the Azzopardi report a statement under s74(5) was as to "whether there is or was any evidence or sufficient evidence warranting consideration" of such action. Following the amendments to the Act in December 1990 a statement under s74A(2) was as to "whether or not in all the circumstances the Commission is of the opinion that consideration should be given" to such action.

NAME	FINDING	DPP DECISION	RESULT
Park Plaza Report			
Taylor	s87 ICAC Act (give false evidence) - Commission recommended that no action be taken. s86(c) ICAC Act - Commission doubted that prosecution was necessary.	Not applicable.	
Hakim Report (nil)			
Silverwater Report (nil)			
North Coast Report			
5 individuals	Offence(s) under s87 of the ICAC Act and/or conspiracy to give false evidence (s89 of the ICAC Act).	Prosecutions commenced against 3 individuals. Two not to be prosecuted.	One pleaded guilty to 4 offences under s87 - convicted and sentenced to 8 months imprisonment; appealed. Two pleaded guilty to 1 offence each under s87 - convicted and sentenced to 6 months imprisonment; one has had sentence reduced to 200 hours community service order on appeal; the second appeal is pending.

NAME	FINDING	DPP DECISION	RESULT
16 individuals	<p>Bribery offences (including common law bribery, statutory offences under s249B of the Crimes Act and s101 of the Local Government Act , and conspiracies).</p> <p>In his report Assistant Commissioner Roden expressed the view that there were "special reasons that had been stated which might be regarded as militating against prosecution" of seven of these persons.</p>	<p>Four persons charged with total of five charges of bribery .</p> <p>Two persons charged in respect of each of two conspiracies to bribe.</p> <p>Nine persons are not to be prosecuted (including seven referred to by Assistant Commissioner Roden).</p> <p>One person is deceased.</p>	<p>One person discharged at committal on two counts of bribery - DPP filed ex-officio indictment which was subsequently quashed - DPP to appeal.</p> <p>Two persons found not guilty. No bill filed in respect of one person.</p> <p>One person committed for trial on one charge; ex-officio indictment filed in relation to the other person.</p> <p>Charges in relation to the second conspiracy charge have been withdrawn after new evidence was obtained - a fresh charge may be laid.</p>
One individual	Offences under s178BB of the Crimes Act (obtain benefit by false statement.)	Two charges under s178BB.	Not yet finalised.
One individual	Offence under s97 of the Election Funding Act.	One charge under s97 of Election Funding Act.	Offence proved - no conviction recorded (s556A Crimes Act).
One individual	Offence under s84 of the ICAC Act - Circumstances militating against prosecution.	DPP concurred - no charge.	
One individual	Offences under s96 of the Local Government Act.	Did not proceed.	

NAME	FINDING	DPP DECISION	RESULT
Land Titles Report (nil)			
TAFE Report (nil)			
Housing Report			
Kevin Wyles	Offence against s249B(2).	No prosecution - key witness died after delivery of brief to DPP.	
Susan Patricia Wyles	Offence against s249B(2).	As above.	
Jack Lionel Williams	Offence against 249B(2).	As above.	
John Alexander Goodall	Offence against s249B(1).	No prosecution - deceased.	
Marc Paul Darrell Kelly	Offence against s249B(1).	No prosecution - key witness died after delivery of brief to DPP.	
John Patrick Burt	Offence against s249B(1).	As above.	
Walsh Bay Report (nil)			

NAME	FINDING	DPP DECISION	RESULT
RTA Report			
13 individuals	Offence(s) against s87 of the ICAC Act	<p>Prosecutions of 10 individuals for a total of 27 offences commenced.</p> <p>Remaining three persons not to be prosecuted.</p>	<p>Six individuals pleaded guilty in the local court to a total of 13 offences and were convicted. Penalties varied - fines from \$750 to \$1,500 or, community service orders from 60 to 100 hours per count. In two cases a bond was also required.</p> <p>One person was committed for trial and then pleaded guilty on arraignment to three counts - to be sentenced.</p> <p>One other person was committed for trial and pleaded guilty in relation to two out of five counts - to be sentenced.</p> <p>Prosecutions against two individuals for a total of six counts were dismissed.</p>
Mario Cataldo	Offences relating to payments of money to examiners	Evidence forwarded with brief on s87 offences - no further action. He has pleaded guilty to two s87 offences - see above.	

NAME	FINDING	DPP DECISION	RESULT
Azzopardi Report			
Kylie Williams	Offence under s85ZE of the Crimes Act (Cth). Offence under s7A of the Crimes Act (Cth). Offences under s87 of the ICAC Act.	One charge under s7A of inciting an offence under s85ZA of the Crimes Act(Cth). Six charges under s87.	Convicted on all counts. Fined \$4,500 on the s85ZA count and placed on a 3 year good behaviour bond. Sentenced to a total of 480 hours community service.
Gregory Abel	Offences under s85ZE of the Crimes Act (Cth). Offence against s80(c) of the ICAC Act.	One charge under s85ZE. 3 charges under s80(c).	Plead guilty to charge under s85ZE. Convicted and sentenced to 4 months periodic detention. Plead guilty to to one charge under s80(c). Convicted, fined \$5,000 and sentenced to 200 hours community service. The remaining two charges were scheduled (taken into account).
Peter Brown	Offence under s85ZE of the Crimes Act (Cth). Offence against s6 of the Crimes Act (Cth). Offences against s87 of the ICAC Act.	Two charges under s87. Commonwealth DPP decided not to proceed on other matters.	Convicted and sentenced to a total of 100 hours community service; has appealed.
Waverley Report			
Tibor Balog	Two offences against s249B(2) of the Crimes Act	Alternative charges in relation to two offences against s249F and s249B(2) - aid and abet corruptly giving a benefit.	Committed for trial - fixed for 14 February 1994.

NAME	FINDING	DPP DECISION	RESULT
Donald George Stait	Two offences against s249B(1) of the Crimes Act	Alternative charges in relation to two offences against s249B(1) - corruptly receiving benefit.	Committed for trial - fixed for 14 February 1994.
Sutherland Report			
David William Oliveri	One or more offences or receiving a bribe.	Not proceeding due to unavailability of witness.	
Neal and Mochalski (nil)			
Tow Truck Repairs (nil)			
Vinyl Report (nil)			
Helicopter Report (nil)			
South Sydney Report (nil)			
Kyogle Report			
Harold John Standfield	Two offences - s87 ICAC Act	Two offences - s87 ICAC Act.	Not yet heard
Earl Desmond Moss	One offence - s178BA or s178BB Crimes Act	No action (additional exculpatory evidence obtained before brief sent to DPP).	
Film Corporation Report (nil)			
Conflict of Interest Report (nil)			
Sludge Report (nil)			
Metherell Reports I and II (nil)			
Blackmore Report (nil)			

NAME	FINDING	DPP DECISION	RESULT
Tamha Report (* findings in relation to more than one category of offence made against some individuals)			
80 individuals*	Offence(s) of bribery (includes common law bribery and statutory offences under s249B of the Crimes Act).	Prosecution commenced against one person. Nine persons are not to be prosecuted as statements could not be obtained in admissible form. Other matters not yet considered.	
34 individuals*	Aiding and abetting unlawful computer access (s309 Crimes Act).	Not yet considered.	
31 individuals*	Offences(s) of unlawful computer access (s309 Crimes Act).	Two persons are not to be prosecuted as statements could not be obtained in admissible form. Other matters not yet considered .	
6 individuals*	Offences of conspiracy to bribe or substantive offences.	Not yet considered.	
1 individual*	Aid and abet bribery.	Not yet considered.	
34 individuals*	Offence(s) against s87 of the ICAC Act (giving false or misleading evidence).	Prosecutions commenced against 8 persons for total of 9 offences. Two persons are not to be prosecuted as statements could not be obtained in admissible form. Other matters not yet considered.	One person has been convicted. Case dismissed in one other instance. Balance pending.

NAME	FINDING	DPP DECISION	RESULT
12 individuals*	Offence(s) against s88 of the ICAC Act (interfering with documents).	One prosecution commenced. DPP decided not to prosecute one person following submissions to that effect by ICAC. Two persons are not to be prosecuted as statements could not be obtained in admissible form. Other matters not yet considered.	
1 individual*	Offence(s) against s89 of the ICAC Act (procuring false testimony).	Not yet considered.	
Trackfast Report (nil)			
KOA Report (Informers)			
Barry Wentworth Dunn	Two offences under s5(1) of the Listening Devices Act.	Not to be prosecuted.	
SRA - Northern Region			
10 individuals	Various offences.	Not yet considered.	
Landa Report (nil)			

Entries under the heading "finding" indicate only that the Commission made a statement pursuant to s74(5) or s74A(2) recommending consideration of the prosecution of a person for one or more specified criminal offences, as required by statute.

Up to and including the Azzopardi report a statement under s74(5) was as to "whether there is or was any evidence or sufficient evidence warranting consideration" of such action. Following the amendments to the Act in December 1990 a statement under s74A(2) was as to "whether or not in all the circumstances the Commission is of the opinion that consideration should be given" to such action.

S74(5) AND S74A(2) FINDINGS - CONSIDERATION OF DISCIPLINARY ACTION / DISMISSAL

Entries under the heading "finding" indicate only that the Commission made a statement pursuant to s74(5) or s74A(2) recommending consideration of disciplinary action or the taking of action with a view to dismissal (or otherwise terminating the services) of a public official or both, as required by statute.

Up to and including the Azzopardi report a statement under s74(5) was as to "whether there is or was any evidence or sufficient evidence warranting consideration" of such action. Following the amendments to the Act in December 1990 a statement under s74A(2) was as to "whether or not in all the circumstances the Commission is of the opinion that consideration should be given" to such action.

NAME	FINDING	HEAD OF AUTHORITY DECISION	COMMENTS
Park Plaza Report (nil)			
Hakim Report (nil)			
Silverwater Report (nil)			
North Coast Report			
Richard Denis Curran	Disciplinary offence - s66(f) of Public Sector Management Act	Police Service has no record of any disciplinary action being taken - still employed.	
Noel Richard Mercer	Disciplinary offence - s66(b), (e) or (f) of Public Sector Management Act	Demoted.	
Land Titles Report (nil)			
TAFE Report (nil)			
Housing Report			
Eric McBeth	Disciplinary action - s66(e) of Public Sector Management Act	Reprimanded	
Walsh Bay Report			
Les MacDonald	Disciplinary action or dismissal	MacDonald resigned from Public Service prior to publication of report	

NAME	FINDING	HEAD OF AUTHORITY DECISION	COMMENTS
RTA Report			
14 employees of Roads and Traffic Authority (RTA)	Dismissal	All dismissed	Two persons appealed to GREAT - appeals dismissed. Five persons appealed to Industrial Commission; two appeals withdrawn and the other three have been stood out of the list generally.
23 driving instructors	Taking of action concerning a driving instructor's licence - referred to RTA	Licences of 19 persons cancelled. One person had licence suspended for 6 months. No action taken against one person. RTA monitoring activities of one person. One person died before action taken.	12 appealed; 8 appeals dismissed; 3 withdrawn; one appeal resulted in a variation of order to suspension for 3 years. Of those whose appeals were dismissed one has taken further action in Supreme Court. Licence of one other person cancelled prior to report
Azzopardi Report			
Kylie Williams	Disciplinary action	Suspended; resigned.	
Gregory Abel	Disciplinary action	Suspended; resigned	
Peter Brown	Disciplinary action	Dismissed	
Craig Hall	Disciplinary action	Suspended; charged departmentally with misconduct. Reinstated with 2 years loss of seniority and subject to performance watch	

NAME	FINDING	HEAD OF AUTHORITY DECISION	COMMENTS
Waverley Report (nil)			
Sutherland Report (nil)			
Neal and Mochalski (nil)			
Tow Truck Repairs			
"B"	Dismissal from Police Service	Dismissed	
Desmond Edward Ross	Dismissal / disciplinary proceedings - Police Service	Appeared before Police Tribunal - no action taken other than to transfer him to other duties	
Peter John Schonberg	Dismissal/ disciplinary proceedings - Police Service	No action taken	
Vinyl Report (nil)			
Helicopter Report			
Barry Edward Jones	Dismissal		Resignation tendered on last day of hearing
South Sydney Report			
Nicholas Horiotopolous	Dismissal - Council of City of South Sydney	Dismissed	Reinstated by Industrial Relations Commission - Council appealed but was unsuccessful.
Kyogle Report			
Stanley Lex Moss	Dismissal - Kyogle Shire Council (KSC)	Demoted	
Wayne Keith Albert	Dismissal (KSC)	No action	
Patrick Vincent Knight	Disciplinary action (KSC)	Formally admonished	
Film Corporation Report (nil)			

NAME	FINDING	HEAD OF AUTHORITY DECISION	COMMENTS
Conflict of Interest Report (nil)			
Sludge Report			
Sergio Bogeholz	Disciplinary action / dismissal - Sydney Water Board	Dismissed	Reinstated by GREAT
Metherell Report (nil)			
Blackmore Report (nil)			
Tamba Report			
12 employees of Roads and Traffic Authority	Common law discipline/dismissal (discipline only recommended for one)	10 employees dismissed for misconduct. Two were reprimanded and transferred to non-sensitive work locations	Two other employees who gave evidence at the Commission were dismissed.
7 members of Police Service	Police discipline only	Disciplinary action taken against all. 6 counselled; 1 reprimanded	
10 members of Police Service	Police discipline or dismissal	5 officers suspended; resignation of each accepted 2 officers suspended; restored and reprimanded 2 officers under departmental investigation 1 officer - outcome not yet known	
Lorraine Gail Wark	Public sector discipline	No action taken	
Trackfast Report			
Gary Frederick Camp	Action with view to termination of his contract	Contract terminated	
Anthony John Wilson	Disciplinary proceedings for misconduct	Dismissed prior to publication of report	Appealed to Transport Appeals Board

NAME	FINDING	HEAD OF AUTHORITY DECISION	COMMENTS
KOA Report (Informers)			
Ronald G Woodham	Action in relation to two disciplinary offences under s85(f) of the Public Service Act	No action taken	Findings set aside by Supreme Court
SRA - Northern Region			
Jan Aleksander Czapla	Disciplinary proceedings	Dismissed prior to publication of Report	Appeal to Transport Appeals Board pending
Geoffrey Samuel Elms	Disciplinary proceedings in relation to each of three matters	Dismissed prior to publication of Report	Appeal to Transport Appeals Board pending.
Landa Report (nil)			

Entries under the heading "finding" indicate only that the Commission made a statement pursuant to s74(5) or s74A(2) recommending consideration of disciplinary action or the taking of action with a view to dismissal (or otherwise terminating the services) of a public official or both, as required by statute.

Up to and including the Azzopardi report a statement under s74(5) was as to "whether there is or was any evidence or sufficient evidence warranting consideration" of such action. Following the amendments to the Act in December 1990 a statement under s74A(2) was as to "whether or not in all the circumstances the Commission is of the opinion that consideration should be given" to such action.

Questions without Notice

Ms BURNSWOODS:

Q: Mr Temby, how is the flow of briefs from the ICAC to the DPP proceeding, and specifically, can you give us any idea how long it is taking on average to get a brief to DPP following an inquiry and whether there is any particular reason why there would be a delay in actually getting a brief?

A: I cannot give you any confident indication as to an average. I can say that we and the DPP are both working far more effectively now than was the case, say, three years ago. The periods involved in brief preparation and brief consideration are distinctly shorter than they were then. For example, a lot of briefs arising out of the operation we call Tamba have gone across. That is practically finished. And we are now tending to do brief preparation work in parallel with the concluding stages of investigations rather than in series upon concluding those stages. So things are a good deal better than they were and I would be negligent if I tried to give you an average, but there is clear improvement.

Q: Are there any outside external constraints on the process or is it mostly a matter of the Commission and the DPP working out a system?

A: The only particular external constraint is the question of the use of transcript which we thrashed out here in the past. My views remain as they were. They have not met with general approbation.

CONDUCT OF ICAC STAFF

Questions on Notice

Q: 4.1 According to media reports the Commissioner on 20 September seemed to reveal that some ICAC staff had been dismissed for lying. The Committee would like more information on this issue.

A: The Commission has about 140 staff. It is to be expected that not all will perform perfectly and that not all will be suited to do the particular work done by the Commission. Having said that, the Commission has a good record in personnel matters and in no sense of the word has any employee been dismissed for corrupt conduct.

Thirteen people have been dismissed from the Commission, or have resigned in circumstances where dismissal was likely, over the past four and a half years. The overwhelming reason in the majority of cases has been poor work performance.

One officer was less than truthful with the Commission in that he provided false information to the Commission concerning his professional qualifications and in addition, there were discrepancies in leave he had taken. He resigned. That officer was not dishonest in the performance of his duties. Nor did his conduct in any way threaten the operations and functions of the Commission.

Another person had been offered a position subject to satisfactory security vetting and then during the process of security vetting it became clear that he had failed to disclose a prior conviction. The offer was consequently withdrawn.

These are the only two cases where staff have been dismissed or not employed on the basis that they were not truthful.

Q: 4.2 The corruption prevention project on the review of the Commission's code of conduct states that 9% of respondents perceived a conflict between the code of conduct and other requirements (such as professional standards) by which they were bound (p.10). Could the Commission provide more information about the sort of conflicts perceived to exist and any strategies which have been adopted to resolve these?

A: The review of the Commission's Code of Conduct was carried out by survey, the questionnaire being completed on a voluntary and anonymous basis. In order to prevent the potential for individuals to be identified findings can only be reported in general terms.

The Commission's Code of Conduct, security vetting and secrecy provisions necessarily confront staff with more explicit conduct requirements than might be called for in other public sector work. It is intended that these requirements should actively encourage staff to identify opportunities for conflicts to arise while conducting their work and to monitor their own conduct. Management was encouraged to find that, in this context, the vast majority of respondents perceived no conflict between the code and other requirements by which they are bound. The number of staff who did perceive a conflict, five, is too small to subject to statistical analysis. A recent review of the specific comments made by respondents found that they are accurately described in the following statement from the report:

. "... comments on the question were mainly about personal issues - religion, loyalty, stress. It may be that the responses indicate issues people have difficulty with, rather than any real conflict between one set of rules and another."

One objective of the review was to raise awareness among staff about the content and role of the code. All staff who perceived a conflict indicated that their participation in the survey had increased their awareness of the code.

The Commission has taken measures to increase the visibility and understanding of the code among newly appointed staff by:

- including a copy with all offers of employment
- providing the opportunity for discussion of the code in the staff induction program

The increased visibility of the code raises the awareness of all staff about the opportunities that exist to discuss its content with colleagues and supervisors.

Questions Without Notice

CHAIRMAN:

Q: Is the ICAC concerned about the number of staff (13) who have been dismissed from the Commission, or have resigned in circumstances where dismissal was likely, over the past four and a half years?

A: I am not at all concerned, Mr Chairman. If there had been none, I would be very gravely concerned.

ACCOUNTABILITY

Questions on Notice

Q: 5.1 The Commissioner in his 1989 Spann Oration responded to criticism of the ICAC model contained in the Fitzgerald report, with particular reference to the accountability of the ICAC. With the benefit of four and a half years experience does the Commission have anything to add to the Commissioner's comments on that occasion in relation to the ICAC's accountability?

A: In the four years since the Spann Oration, the ICAC has demonstrated that it is an accountable body. The three statutory provisions designed to ensure accountability, the Operations Review Committee, the Joint Parliamentary Committee and the requirement of reports to Parliament remain intact. Your committee has exercised its functions of monitoring and reviewing by publishing a number of reports. The Commission has published 35 reports or papers which have been tabled in Parliament and 17 others which have been publicly released.

The response to the criticism of the ICAC model contained in the Fitzgerald Report remains an accurate statement of the operation of the ICAC. Most hearings are held in public although of course the legislation has been amended since 1989. The Commission is still to an increasing extent using directly employed investigators rather than secondees from the New South Wales Police Force. Four years on, no Commissioner has exercised the power to issue a search warrant under the legislation.

Finally, it is very clear that we are not immune from judicial scrutiny. Action has been taken against the Commission on a number of occasions. The Commission has never sought to be immune from judicial scrutiny and acknowledges the rights of others to take proper issue with reviewable decisions made by the Commission. The ICAC remains as accountable as it was in 1989, if anything its accountability has been enhanced over the past four years.

OFF-THE-RECORD MEDIA BRIEFINGS

Questions on Notice

Q: 6A.1 Since the ICAC's inception in 1989 have you given any off-the-record, background or not-for-attribution briefings to any journalist or journalists?

Q: 6A.3 Since the ICAC inception in 1989 has anybody else at the ICAC given any off-the-record, background or not-for-attribution briefings to any journalist or journalists?

A: Yes, but infrequently.

Q: 6A.2 If so, in relation to each such briefing:

- when was it given?
- where was it given?
- to whom was it given?
- what topic or topics were covered?
- in what circumstances was it given?
- as between you and the person or persons receiving the briefing what were the terms, conditions, understandings or undertakings upon which the briefing proceeded?

And as to 6A.4, who gave it?

A: The Commission receives several media inquiries daily, and does not maintain a set of records dealing with such inquiries and how they are handled. To do so would be a wasteful use of resources. Accordingly chapter and verse on such briefings cannot be provided.

Briefings have been held from time to time with one or more journalists in order to ensure they are properly informed and to try and ensure that the stories published are accurate. The use of names of individuals is avoided in such briefings. Generally the Commissioner would be present, with one or two other Commission officers. So for example the briefing on 9 October 1992 was attended by the Commissioner and Gail Furness and Roberta Baker, respectively then a principal lawyer and the media manager.

There were two briefings conducted in relation to the investigation into Local Government and Conflicts of Interest. The purpose of one was to explain the Commission's approach to a policy-based investigation, and provide background

information about the Discussion Paper which had been issued. The purpose of the other was to explain issues and recommendations, in a matter of some policy complexity. Neither records nor memory exist to state who was present.

There was one briefing conducted in relation to the Metherell matter, attended by a large number of journalists. It was conducted by the Commissioner. According to the best recollection, it was held when the Commission's second report was tabled, in order to explain and clarify the Commission's position.

To the best recollection of all concerned there has not been a discussion with any journalist in the past twelve months concerning which the Commission sought to impose a condition of confidentiality. This gives some indication of infrequency.

Q: 6A.5 Why does the ICAC need to give such briefings?

A: The most important reason is to correct misunderstandings held by journalists which may give rise to inaccurate reporting of potentially important issues.

The Commission believes that the public interest is best served by reporting being accurate. Accordingly, if the Commission becomes aware that a journalist intends to report on a matter concerning the Commission and that the reporting is likely to be inaccurate, then depending upon the nature of the matter, it may well be appropriate for the Commission to confidentially brief the journalist. The same process may be adopted after a misleading report. Off-the-record briefings also allow the opportunity for complex matters to be explained in a more informal manner than would be possible in a formal media conference.

Generally if a media conference is held the ICAC becomes the story, rather than the important issues in question.

The Commission can also on occasions obtain valuable information from off-the-record briefings, both from the questions which are asked, and the information that may be imparted by the journalist.

Q: 6A.6 Why should the ICAC's briefings to the press not be totally transparent?

A: See above. It should be added that one rule is followed. The information conveyed is always true and accurate.

Q: 6A.7 What are the ramifications of the Cornwall matter on such briefings?

A: The matter in question is before the courts and may best not be discussed. However false analogies must be avoided. The Commission imparts truth, whereas the judge held that the information imparted to the journalist was false. Further, the Commission acknowledges its obligations to answer questions about its dealings with journalists, whether asked by the courts or by this Committee.

Q: 6A.8 What is the ICAC's justification for conducting such press briefings in secret?

See above.

Q: 6B.1 Who attended the media briefing that was held on 9 October 1992? What criteria were used in selecting the journalists invited to attend the briefing?

A: Deborah Cornwall and Sandra Harvey from The Sydney Morning Herald, Wayne Miller from The Telegraph Mirror, Mark Whittaker from The Australian and Murray Hogarth from The 7.30 Report. They and the media which employed them had shown an interest in the issues raised in the investigation.

Q: 6B.2 If the Commission had concerns about Deborah Cornwall's article of 12 June 1992 why was she taken into the ICAC's confidence by being invited to attend this briefing?

A: The Commission was not aware of the identity of the informant in the Grogan murder or of the circumstances surrounding the provision of that information until early this year. Accordingly, its level of concern at the article in August was, while extant, considerably less than when further information was obtained.

Q: 6B.3 Were reports following the briefing accurate in stating that those who gave the briefing had said that a number of police officers had made admissions and "rolled over" and that only one or two accused police had held out? If so, was the information provided at the briefing accurate?

A: Attached are the notes followed by the Commissioner in the media briefing, and copies of articles which appeared on 10 October 1992.

One such report was not an accurate reflection of the information provided by the Commissioner. There may, of course, have been other sources.

Q: 6B.4 How does the Commission's action in conducting this briefing sit with the statement in the 1989 annual report that "the Commission does not use the media to achieve operational ends in an indirect way" (p.37)?

A: There had been considerable media speculation in the months following the Commission's issuing and serving notices on various police officers to produce information. Much of that speculation was inaccurate. The purpose of the briefing was to provide general information and correct inaccuracies. The Commission did not have any concluded views on the matters likely to be considered by the investigation. It believed that a public media conference would give the impression that it may have had such views. Given the Commissioner's very limited objectives of correcting apprehended misconceptions, a media conference would not have been appropriate. The media was not used to achieve operational ends in an indirect way.

Q: 6B.5 Was information provided to journalists at this briefing which had been covered by suppression orders made at earlier private hearings? If so, did the Commission breach its own suppression orders in revealing this information?

A: No.

ML/11
OPERATION MILLOO

MEDIA BRIEFING

9 October 1992

This a briefing and not a media conference. The Commission does not have anything like a concluded view as to the matters under investigation. The purpose of the investigation and the public hearings is to get to the truth. This is an important investigation and the Commission actively encourages those with relevant information to come forward.

The Commission is commencing public hearings on Monday, 16 November 1992 at 10.00 a.m. in aid of its investigation into the association and relationship between New South Wales police and criminals.

The Commission has appointed three counsel to assist it in this investigation. Barry Toomey QC, Stephen Rushton and Peter Neil. Counsel assisting will deliver his opening address on November 16 and applications for leave to appear and other matters will be heard. Evidence will then immediately follow. The hearings will continue for one month and then recommence in late January 1993.

We have received information from a number of sources that some senior officers of the New South Wales Police Service have organised and facilitated major crimes, in particular armed robberies. It is also alleged that some officers have interfered with the investigation and prosecution of these and other crimes.

At this stage the Commission is concentrating on police involvement in armed robberies and fixing prosecutions. However, it is unlikely that the investigation and hearings will be confined to these areas. There are other matters which the Commission is pursuing and indeed considerable field work is being done in one area at the moment. Because the investigation is continuing I cannot disclose those other areas at this time and I would urge you not to speculate on what those might be.

How long are the hearings likely to run?

It is anticipated that hearings will run for some 12 months or the best part of the remainder of my term as Commissioner. They will not be held continuously as there will need to be some breaks to assess new material and the direction of the hearings. It is difficult to anticipate at this stage how many segments will be run in hearings but between 12 and 20 would be realistic.

It should be emphasised that Arthur Stanley Smith ("Neddy") and Graham Henry are not the only sources of information to the Commission about the Police Service. Others, including former and serving police officers have also talked to us. Some

have made significant disclosures and/or serious allegations.

There has been some publicity of late concerning Smith's willingness to take part in any public hearings. The Commission is, of course, aware of Smith's particular problems and needs in this regard. I would like to say that if for any reason Smith is not a witness in the hearings, this would be a significant development but not a disaster. The hearings and investigation will proceed at the same pace.

You will note that Smith and Henry are the only names that have been mentioned by me today. The Commission is acutely conscious of ensuring that police officers and other against whom allegations are made are treated fairly.

The information given to the Commission is very serious. While I have formed no views as to its substance or accuracy, I can say that the investigative work that has been undertaken suggests that there is a real need for the Commission to continue its work in this area.

The police informant relationship is a significant component of this investigation. I have recently returned from overseas where I made numerous inquiries concerning other methods of dealing with informants. While this issue has been considered in the police informers investigation completed this year, I expect it will feature strongly in the current investigation.

During this investigation the Commission has received excellent co-operation from other agencies. In particular the National Crime Authority and the Australian Federal Police have provided us with valuable information but we have not confined our requests to these agencies alone.

This is an important and difficult investigation and the Commission urges those who have information which may be of assistance to contact us confidentially.

Corrupt police confess to ICAC

POLICE OFFENCES

By DEBORAH CORNWALL

The unprecedented ICAC inquiry into NSW police corruption, due to begin public hearings next month, has already prompted a number of confessions by police, senior legal sources said yesterday.

The inquiry will cover a wide range of allegations, including claims of police involvement in court-fixing rackets and armed robberies.

Codenamed Task Force Milloo, it was launched in secret 18 months ago following allegations against some 70 police by Arthur "Neddy" Smith and his sometime bodyguard Graham "Abo" Henry.

Smith is a convicted murderer and Henry lost his appeal this week against an eight-year sentence for stabbing a police prosecutor in December 1988. Both men have been granted indemnities.

The inquiry has gone well beyond the claims by Smith and Henry of police involvement in court-fixing and at least 14 unsolved armed robberies, the legal sources said.

Backed by intelligence and tapes from listening devices from the National Crime Authority and the Australian Federal Police, the



inquiry is now expected to extend to up to 20 lines of investigation.

These include allegations of police protection rackets involving at least two lawyers, and police involvement in SP gambling, drugs and extortion.

It is understood that the ICAC is also reinvestigating the alleged involvement of a group of up to 20 former and serving detectives in some of the State's most notorious unsolved crimes, including murders.

Senior legal sources said yesterday

that ICAC investigators had been astounded by the number of admissions which had already been made by police under questioning.

Some of the officers had made admissions in an attempt to "roll over" to avoid prosecution.

In other cases, police had approached the ICAC themselves for fear that they might later become a target of the inquiry if they did not come forward.

One legal source said: "The thin blue line of police solidarity seems to have collapsed. Only one or two [of the accused police] have really held out [on us]."

Announcing details of the inquiry for the first time yesterday, the ICAC said the transcripts of the private hearings with police will be released publicly during the inquiry.

The investigation is expected to run from November 16 this year to March 1994, when the term of the ICAC Commissioner, Mr Ian Temby, QC, expires.

One source close to the ICAC said that the terms of reference effectively allowed the ICAC to tackle the perennial "urban myth" of entrenched police corruption which had abounded in NSW for decades.

The inquiry, said the source,

would not emulate Queensland's Fitzgerald Inquiry - it was not a "fighting expedition" into allegations of corruption in past or serving governments - nor was it expected to implicate the present senior management of the Police Service.

A number of the specific allegations against police, however - including several senior detectives - suggested that the inquiry might find levels of corruption in the force in the "deepest way imaginable".

One inside source said that the ICAC was negotiating two more indemnities, one of which involved a police officer.

While Mr Temby has issued a directive that indemnities were to be offered only in cases where the evidence was exceptional and could be backed with documented material, the source said there was "still room in the queue" for anyone else who wanted to come forward.

The Police Commissioner, Mr Tony Lauer, said in a statement yesterday that he welcomed the inquiry, "which is aimed at determining the truth".

He said officers had been co-operating with the ICAC over the past few months and he hoped this process would continue.

ICAC to probe claims of senior police conspiracy

⁽²⁾
POLICE OFFENCES
By MARK WHITTAKER

ALLEGATIONS a group of senior NSW police officers conspired with criminals to commit armed robberies and fix prosecutions are to be investigated in public hearings by the Independent Commission Against Corruption, starting next month.

The case is the biggest investigation undertaken by ICAC and if the allegations prove correct will implicate high-ranking officers, although apparently not those in the very senior echelons.

ICAC is also understood to be investigating other police conspiracies, the details of which are unknown. There have, however, been media suggestions the inquiry will look at police organising the murder of criminals.

Commission staff have been investigating the relationship between police and informers for 18 months in the lead-up to yesterday's announcement that hearings would be held in public from November 16.

They are expected to last for most of next year — the only deadline being that the tenure of the ICAC commissioner, Mr Ian Temby QC, expires in March 1994.

The investigation was sparked by allegations made by convicted rap-

ist and murderer Arthur "Neddy" Smith, who has reportedly implicated himself in a number of armed robberies as part of his evidence.

He is serving a life sentence for the 1988 stabbing murder of a tow-truck driver. He has reportedly been granted immunity from prosecution and the prospect of release by the turn of the century in exchange for his evidence.

ICAC is understood to have information both corroborating and "going well beyond" the initial allegations made by Smith. The National Crime Authority and the Australian Federal Police have supplied intelligence to the inquiry.

The president of the NSW Police Association, Mr Tony Day, said he did not know how many of his members were involved.

"It somewhat surprises me and perplexes me that ICAC would want to go public in the hearings against police when in the past their total failure in looking into alleged police corruption has done nothing but drag the names of innocent police and their families through the public wash," he said.

The NSW police commissioner, Mr Tony Lauer, welcomed the announcement of the public hearings yesterday, saying it was important not to lose sight of the fact that no conclusions had yet been reached.

ICAC TARGETS POLICE CRIME

Senior officers ⁽²⁾ accused

POLICE OFFENCES

By WAYNE MILLER

THE biggest probe into police corruption in the history of NSW will investigate allegations that senior police officers have been involved in major crimes.

The Independent Commission Against Corruption, which has already heard evidence in private, yesterday announced the inquiry would begin public hearings on November 16.

It is expected to last until the end of next year.

ICAC has been told police have been involved in armed robberies and case fixing.

The allegations implicate senior officers, but not those at the highest levels of the force.

They also fit in with police intelligence indicating corruption has been going on for years.

ICAC commissioner Ian Temby QC, said yesterday no conclusions had been drawn from allegations.

However it is understood some police have admitted complicity in corrupt activities in private hearings earlier this year.

The National Crime Authority and the Federal Police have also provided

ICAC inquiry targets police

ICAC with information. And some police officers from the Professional Integrity Branch have been working with ICAC teams for the past year, conducting interviews and doing field work.

The public inquiry has drawn support from Police Minister Tony Griffiths and Police Commissioner Tony Lauer but has been criticised by the NSW Police Association.

"The investigation, which is aimed at determining the truth, is welcome," Mr Lauer said last night.

Officers had been co-operating with ICAC over the past few months and he hoped this process would continue.

ICAC began the inquiry in private 18 months ago, examining the relationship between police

mainly detectives, and their informants.

The armed robbery and case-fixing allegations have become the major areas of investigation.

But other major crimes have been mentioned.

Mr Lauer agreed with the ICAC's statement yesterday that the investigation "has the potential to improve the integrity of the NSW Police Service, and thus to benefit the public".

But NSW Police Association President Tony Day was furious.

"It seems a shame to me that the ICAC, with its proven track record for failure, particularly in police matters, would wish to go public," Mr Day said.

He said union members called before the ICAC were accompanied by association lawyers.

Questions without Notice

Mr TINK:

Q: These are my questions and I think they may be of the highly interrogative style the Commissioner was referring to in his opening as disturbing him. I just want to say this, when the Commissioner was before this Committee on 9th November last year he did make some comment about some positive things that I had to say about the ICAC in relation to information exchange. However, my questions today are going to be very pointed. I have spoken before about the question of off-the-record briefings by ICAC to the Press and I might say I have had a lot of concern expressed to me by members of the public about the fact that the ICAC gives such briefings. This is so particularly since Mr Norrington's recent Sydney Morning Herald article relating to an affidavit that Deborah Cornwall had affirmed which indicated that such off-the-record briefings occurred. I just want to say it is a matter of great concern to me and I have to do what I have to do. Mr Chairman, first of all, I would like to ask that a short tape be played.

CHAIRMAN:

Q: What is this tape about?

Mr TINK:

A: It is a tape of an interview between the Commissioner and Jim Maher of Channel 7, which I believe took place following a launch of a police anti-corruption campaign strategy a few weeks ago.

(There was then a short delay before the video was shown during which the following questions were asked)

Q: In your written answers to questions relating to off-the-record media briefings you referred to briefings being "off-the-record" or "of a confidential nature conducted with journalists". What do you understand are the rules? What are the sort of terms in which the invitations are given to journalists? On what basis are they asked to come in?

A: Well, the best example is perhaps that relating to the briefing on the 9th October 1992 concerning which there is a contemporaneous record in which it was stated at the outset that this was a briefing, not a media conference. Then certain information was imparted without names being used. I do not know that we have descended to a greater level of particularity than that. That is, in that case, how a briefing as opposed to a media conference was set up.

Q: So that it can be used but not attributed to you?

A: Well, I suppose that is right. Journalists may be better people to ask than I am.

Q: In your mind, then, is there some confusion as to the rules on which these briefings are given. Is there perhaps some doubt in the mind of the Commission, do you think, about the rules that apply?

A: No, I do not think so. What emerged from that particular briefing was satisfactory. At least in the sense of the way it was handled by the journalists who were present. Nobody talked about a secret briefing. They simply used the information that they were given with whatever else they had to write accurate stories. One of the stories was less accurate than others but it was perhaps the case that that journalist had other sources.

Q: Can you indicate which story that was?

A: The story in the Herald contained more information, some of which certainly did not come from us, than did others.

[The video was then shown.]

*20 September 1993 - Doorstop Interview with Ian Temby -
by Jim Maher of Channel 7*

Journalist:

Q: Are times changing, are relations better between the police service and the ICAC now?

Mr Temby:

A: They are actually, yes. It is quite pleasing. Yes, alright, I think I'll go.

Q: Mr Temby, about a year ago I attended an off-the-record "you were never here" briefing with several other journalists, in your office.

A: Yes.

Q: As they are now prosecuting journalists who won't reveal their sources are you going to end that practice of off-the-record briefings?

A: I don't think there was anything we did on that occasion which departed from proper methodology.

Q: Don't you see your inconsistency?

A: There is none. There is precisely none - no.

Q: What if I were to report it?

A: You could do anything you wanted my friend. Do anything you want to.

Q: If it was demanded that I reveal my source?

A: You have got to answer the questions that are asked of you, that is obvious, we wouldn't say otherwise.

Q: Where would I stand with ICAC?

A: You would have no difficulty with us.

Q: So off-the-record briefings by you are no longer off-the-record?

A: Well, I don't take that view. If you go back we decided to get in a few journalists to try to ensure that the announcement that we were about to make wasn't beaten up. If I had held a formal press conference it would have been beaten up and that effort was, as you know, very largely successful. That is all we were doing. It is perfectly proper practice. Thank you.

(conclusion of interview)

Mr TINK:

Q: I just have a couple of questions arising out of that video. Do you know whether your staff might invite journalists to the ICAC to put things to them in terms of "this is off-the-record, this never happened?"

A: I do not believe so.

Q: You do not know so?

A: How could I know what people say when I am not present. I do not know.

Q: Do you have any instructions on how they should invite journalists down?

A: I have given no instructions about that. They are professional but I have no reason to believe that that terminology is used.

Q: One thing that troubles me about the video is that at least it seems from Mr Maher's point of view, he was invited down on the basis that the briefing would be off-the-record, but when he put to you a hypothetical question: "what would happen if he was called to give evidence about whether or not this briefing occurred?" you said to him, "Of course, you would have to indicate the facts". I put it to you that that is the essential difficulty with off-the-record briefings in those circumstances, that people can be invited down on one basis and then put in a different position where the rules no longer apply. I further put it to you that that is a very difficult position for the ICAC to be in; to invite people down on one basis where everybody turns up on a particular understanding that it is off-the-record but where, if somebody is later called into court to testify about a story, the rules then change retrospectively because it is now on the record. Isn't that something to be avoided by the ICAC in its dealings with the press?

A: Well, I would say two things. The first is that I do not understand why it is thought to be a particular difficulty so far as we are concerned. I do not see why it is any different insofar as every politician in the state is concerned, and insofar as every other organisation, public and private, is concerned. I do not see why it is a special difficulty for us. Secondly, the rule, as you are putting it, properly understood, is that unless under legal compulsion you will not attribute the information which is conveyed by the Commission; the Commission having chosen to impart information otherwise than by means of a public media conference. Now, any notion that we do this more frequently than others, for example, or in a different way than others, is simply wrong. We do it very infrequently.

Q: Can I put it to you that as ICAC is a quasi-judicial body and you are personally, I would think, a quasi-judicial officer, particularly in relation to the off-the-record briefing of 9th October where I understand the published press release was headed

up "ICAC Begins Hearing" so public hearings were in immediate contemplation, it is not right to be giving off-the-record briefings. This is especially so when you, as a quasi-judicial officer are about to go into public hearings on the same subject. I further put it to you that whilst political people's conduct in this area might leave something to be desired, it leaves me most uncomfortable that you make that analogy to justify your position?

A: Let us try to work it out. What would have happened had we not gone as we did. I believed then and I still believe that had that effort not been put in, the stories run would have been imbued with a tone of breathless excitement. There would have been parallels drawn with the Fitzgerald Commission. There would have been speculation that the exposures would go to the very top. All sorts of uninformed speculation would have found its way into print. We did not want to see public expectations heightened by means of the printing of misinformed speculation. That is the justification. Now, you do not have to like it, but that is why we did it.

Q: I might put this to you. In the group of journalists who report ICAC matters, would you agree with me that Mr Murphy is one of the more colourful of those, in the context of the way in which he writes up ICAC material?

A: I am not sure that I particularly look at Mr Murphy as a journalist. He is a columnist.

Q: He is somebody who writes in a mass circulation newspaper and he writes on ICAC matters regularly, and he writes, would you agree with me, extremely strong prose about ICAC?

A: I have seen some, yes.

Q: If the main aim of this briefing was to keep the media reporting within bounds, why was not Mr Murphy invited to this briefing?

A: His interest seemed to be more spasmodic than that of those who were invited.

Q: As I understand it, Mr Murphy was the first person - well, I will put it this way, at least according to him he was the first person to make the link between "Neddy" Smith and the ICAC. I am putting to you that his interest in the "Neddy" Smith matter is a matter of record as I have gone back and looked at it and his interest was longstanding and he was onto that issue before anybody else. I am putting to you in terms of your criteria for selecting journalists for the briefing based on their level of interest that his interest was strong. It was obvious that in terms of the way he wrote ICAC copy, he would be someone who would be at the top of the invitation list in terms of criteria you just put up?

A: Well, he was not.

- Q: And you know that subsequently he expressed again in his column great consternation about that?
- A: Yes.
- Q: I would just like to go for a moment to the electronic media. According to your written answers Murray Hogarth from The 7.30 Report was present at the 9th October briefing. There was nobody present from any other channel, is that correct?
- A: I think that is right, yes.
- Q: And my understanding is that nobody from any other channel was invited. Do you agree with that?
- A: I think that is right.
- Q: Are you suggesting in terms of your criteria for selecting journalists for such briefings based on their level of interest that the other channels would not have been interested in this story?
- A: No, I am not suggesting that for a moment. You just have to make a selection because you cannot do this exercise with 20 people present. You cannot do it.
- Q: In terms of correcting inaccuracies, which is the other issue that you raised in your written answers as being one of your prime concerns when inviting journalists to off-the-record briefings, was this the reason Mr Hogarth got an invitation where channels 9, 10 and 7 did not receive one?
- A: Again, so far as memory serves me, the strategy worked well enough.
- Q: I put it to you that Mr Barrett, who was then a Channel 9 reporter, put some questions in writing to Roberta Baker, on the issues that were subsequently discussed at that briefing to which he still has not received a reply. In those circumstances Mr Barrett has expressed utter astonishment to me that he was not invited to the 9th October briefing. Indeed he tells me that he put it to you in a discussion he had with you on the 5th November that he was greatly surprised that he had not been invited, that you were going to follow-up with him and that he is still waiting to hear back from you. Can I put it to you that what you are doing in this wittingly or unwittingly sorry, there is one other point I want to put to you - what I understand Mr Barrett put to you when he talked to you on the 5th was that if one of your aims with off-the-record briefings was to avoid a media scrum, then it would be very easy to have one person go along and represent all the TV channels to get footage, if that is appropriate and that the question of logistics would not be a problem?

A: There was no question of footage.

Q: Well, the question of even somebody representing others?

A: You could do that. I do not think that it works very well but it could be done.

Q: Can I put it to you that in giving the off-the-record briefing to The 7.30 report and not to the other channels, when compared to the print media where there was a good spread present - there was representation there from The Australian, The Herald and The Telegraph - that there was a perception, rather than an intention - that ICAC was being partial in relation to the 7.30 Report when compared to the other channels. Would you agree that a reasonable observer could reach that conclusion?

A: No, I would not. I would make two points. The first is that I accepted advice as to who should be there based on the level of interest that had been demonstrated. Secondly, it was The 7.30 Report that was most likely to give the announcement which was then being made by means of public advertisement some sort of extensive treatment because of their long standing interest in police corruption issues, which was much higher. The other channels were always likely to play it as a straight news item. The likelihood that they would go wrong in playing a straight news item was not, we thought, high. It was the objective that was sought to be achieved that justified the choice of who was present.

Q: Can you understand from somebody looking at it from the outside that there could be a totally different interpretation put on all this?

A: Well, not now. Perhaps yesterday, but not now.

Q: You would agree with me that the material that was provided in the off-the-record briefing section went well beyond anything that was in the public arena that had been put out by ICAC in relation to the inquiry?

A: Yes, necessarily.

Q: I understand there was a media release on the 9th October, and the confidential briefing went a lot further than that?

A: As I said, yes, necessarily. I do not know about "a lot" but it certainly went further. There would be no point in having it otherwise.

Q: Would you agree that one of the key things that appeared to emerge from the confidential briefing was that it appeared to be said for the first time that not only had police officers talked but they had made significant disclosures or serious allegations. Would you agree that that is a significant piece of information that was

not available to the media generally at that time but was available, only through the off-the-record briefing?

A: I am not sure. I think that is right but I am not sure.

Q: Have you got the off-the-record note?

A: Yes.

Q: Can I show you the press release of the same date?

A: I have got no doubt there was a difference between those two documents. You are asking me whether the information you have just adverted to had not appeared anywhere previously. I cannot answer that. I do not know. I would have to check records extensively. You are probably right but I do not know.

Q: In relation to that extra information which duly appeared in Deborah Cornwall's story and also in the Telegraph story?

A: In very different ways, I might say.

Q: I accept that in the Telegraph it is different and is in the following terms: "However it is understood some police have admitted complicity in corrupt activities in private hearings earlier this year". I don't understand how that information being new and in my opinion being very significant information appearing like that corrects an inaccuracy to use your criteria. I just put it to you bluntly, it seems to me that that information is something that is meant to send a signal?

A: That is wrong. The reason that was done was because the word was around that several police officers had, as they say "rolled over", that is to say, changed sides, come clean and told us everything. That was not right. The information we were imparting was precise, accurate and designed to correct a misconception that we knew was abroad. There was all sort of talk going on in police circles which were spreading out in journalistic circles, that I think 3 cops had "rolled over". It was not true. We were correcting that.

Q: In that case, put aside the Herald article and the reference to "roll over" for the moment. The Telegraph article of the 10th October is still wrong?

A: That may be but there is the note as to what was said.

Q: I am putting to you in terms of that notice that it in fact is signalling that police had "rolled over" by these words "Some have made significant disclosures and/or serious allegations", isn't that so close to the concept of "rolling over"?

A: Not unless you treat language as being so broad as to be almost meaningless. No it is not.

Q: Well, it seems then that in both the Herald and the Telegraph the story was taken up and I quote from the Telegraph because it is one that you on your written answers appeared not to have a problem with. "It is understood some police have admitted complicity in corrupt activities in private hearings earlier this year". Now, do those words suggest to you that the police had "rolled over"?

A: They do not to me, no. It is a statement of admissions, not a willingness to testify against others. They are horses of entirely different colours.

Q: Why can this not be said on the record. Why can this not be attributed to you?

A: Because had we done all this on the record, the story would have been the media briefing, not the forthcoming investigation. There would have been a great scrum and all of the stuff you customarily see of camera people taking shots of each other. There is no point in any of that. There is no point in a media event. We wanted to have stories written that were sober discussions of what was to come.

Q: Can I suggest this, that what you could have done, and forget the media scrum, was had people in the briefing in a way that was controlled. It would not be a scrum or a circus but on the record. In other words, you could have gone through the media briefing in precisely the way you did, but on the record?

A: Which means you would have had to do it 20 times, if you were not going to have a media conference with a scrum confusion, which you seem to agree is undesirable.

Q: You could have had a group of people in a room like this and run it with them, and kept the cameras out?

A: You may have had a great deal more experience with the media than I have.

Q: I am sure that is not true.

A: I do not know that, but if I try to do that, experience tells me it gives rise to difficulties. You say - Here is a media conference, but you cannot have tape recorders, and you cannot have cameras. You are causing the greatest imaginable offence to two thirds of the industry who would be interested. It is not as simple as you say.

Q: What really bothers me about this is that it is behind closed doors. It is not transparent. It is not on the record and it seems to me, in terms of what you said, in terms of the essence of the problem which seems to be logistical, that there is

no great secret here. It is just - it just seems to me that it is something which could be transparent, and if it were I would have no problem?

A: Fine, let me give you an example which goes away from the 9th October and which goes away from the operation we call "Milloo". Let it be supposed, as is the case, that we are not conducting an investigation into and have no current level of interest in the Wollongong City Council, and I stress we do not have. It is a perfectly notional example I am putting up. We have got no current investigation and no current interest. A journalist rings up - and this happens with some frequency - and says to the media manager who handles these things, "My information is that you people are conducting a formal investigation into the Wollongong City Council. There are hearings planned and heads are going to roll".

Our response to that would be to say, first probably, "I will check and I will ring you back" and then "No, that is entirely inaccurate" - having imposed the condition that the mere denial would not be used. Now, you would say that lacks transparency, but we did it for this reason. Experience shows that if you do not impose that condition, there is a real risk of a story which says "ICAC Denies Wollongong Probe" and you have got something like the problem you were seeking to avoid in the first place. Now, that is absolutely justifiable and we do it. I could not tell you how often but it has certainly been done more than once.

Q: I just do not accept that and I could say for a lot of people there is a lot of concern that ICAC gives off-the-record briefings. A lot of people have said to me they do not think that that is something that you should do as a quasi-judicial officer?

A: Can I say that I note the concerns expressed on behalf of others. I accept the sincerity of what you say. It behoves us in those circumstances to think about what you say because I hope we never have been guilty of the arrogant assumption that we are always right, and it behoves us to think about it.

Q: I worry about that too, and it is not without some trepidation that I thought about raising these issues today but I think I must. Can I raise another matter on this same topic and it is this, and I am sorry but it stands out to me in terms of your written answers, and that is on page 13. Under 6A.5, "the Commission can also on occasions obtain valuable information from off-the-record briefings both from questions which are asked and the information that may be imparted by the journalist". Now, looking just bluntly, it seems to me that that amounts to an exchange. I mean, it is an exchange of information?

A: No, it is not.

Q: That is the danger, I put it to you, of this type of thing. It is the danger of inviting one channel down to the ICAC as opposed to others. It is the perception of the danger that one person is getting something that somebody else is not?

A: That is not speaking about exchanging information and it cannot responsibly be read as exchanging information. Sometimes in discussions you get but do not give. That is what is being spoken about there. It happens.

Q: I am sorry, what do you mean?

A: You get somebody in. They seek information. You give them nothing. Through the questions they ask, you can obtain information, sometimes. It might not be sound information, but some straws in the wind can be quite useful.

Q: There is one direct question I would like to ask in relation to Deborah Cornwall's story on 10th October. Have you got a copy of that?

A: No - yes, I am sorry. It is pointed out I do have it.

Q: Could you just go to the third column there from the left. The fourth paragraph. It says there, "One legal source said: 'the thin blue line of police solidarity seems to have collapsed'. Only one or two (of the accused said police) have really held out (on us)". Apart from the words in parentheses, in the opening words, did you say words to that effect or those words to Miss Cornwall?

A: I am not sure.

Q: You cannot recall?

A: That is the best I can do. I am just not sure. I cannot claim to be sure when I am not sure.

Q: Can I just go to a more general issue now. In relation to your written answers again, there is an answer on page 12 that keeping records of media enquiries is a wasteful use of ICAC's resources. Can I just put this to you, that if the ICAC is going to continue to do off-the-record briefings, and I certainly hope it does not, but if it is, that it is just absolutely imperative that some record be kept of those briefings, as a matter of course, as a matter of practice?

A: I think that is a point fairly made and I say this, in case there is any wrong impression afoot, the answers need to be closely studied from the point of view of frequency. The last one we did was on the 9th October of 1992. They are infrequent.

Q: Just finally, and I do not mean to be flippant about this, there is something that has bothered me a lot. I just think it may characterise what may have been at one time in some quarters of the ICAC an attitude towards media briefings, so I will raise it. It is a piece in the Telegraph/Mirror by Michael Coleman of the 17th November 1992 and he refers, I think, to the commencement of the public hearings I would

assume in relation to the "Neddy" Smith matter the day before, on the 16th. He writes that people were assembled at ICAC and "the proceedings began with the showing of an old Kirk Douglas movie"; a 1951 movie called the Big Carnival which is the story of a down on his luck newspaper reporter who turns an accident where a child stumbles down a mine shaft into a major media event.

I just say from my own private view in relation to the sort of problems that I have got with the way ICAC handles the media where I have expressed concern before on this sort of thing, that if Coleman's report is right, and I understand it is, it just does absolutely nothing for the credibility of the Commission, particularly in the context of the sort of comments I have been getting from the public about what has been written about off-the-record briefings. This is just so damaging and in my mind gives rise to all sorts of thoughts about what is going on in relation to media management at the ICAC. It does prompt me, when at times I worry about whether to go into this exercise to pursue it because the movie just sends out entirely the wrong signals. These things seem to my mind to be so damn serious and underline everything that I think is wrong with ICAC's media management?

A: Subject to exaggeration, like "underlining everything that is wrong", I note what you say and I would not disagree with it, that that did not work terribly well. I would not describe it as being one of our master strokes.

Q: One other issue on this is Section 111 of the ICAC Act, which of course, I am just reading here from one of the ICAC Annual Reports, of 1991 at page 92 "provides severe penalties for those at ICAC who disclose information other than for statutory purposes". Do not get me wrong, I am not suggesting as far as you are concerned there is any problem in relation to s111. Can I say though, that to the extent to which the written answers indicate that very occasionally people other than yourself do speak to the media, off-the-record, then in the context of internal audit and keeping an idea of what is going on, whether on an individual basis or continuing basis, where there might be problems as far as they are concerned with s111 - that it is imperative to keep some sort of record. So that from a management point of view, and an auditing point of view, particularly with broad scope audits, there is some handle on any potential s111 problems from a management point of view?

A: I understand that and as I said, the last time we did it we kept a record and I think that is a good practice.

Q: I will stop now. I just say, my view is that there is just no reason for off-the-record briefings?

A: I do understand your viewpoint.

CHAIRMAN:

Q: I think you have emphasised, Mr Temby, that off-the-record briefings are quite infrequent. The last one was last October. Having regard to that I put it to you that it would not be a "wasteful use of resources" to keep written records of those briefings?

A: I agree.

Q: This is a question which you may take on notice, as Mr Tink has identified, an issue that is a matter of concern to him, would the ICAC be prepared to keep a detailed record and provide such record to the Committee. You may wish to take that on notice.

Mr TINK:

Q: I do not think it is necessary to provide a record to the Committee. I believe there is some internal audit done by the Auditor-General?

A: Yes.

Q: The point I am making is that the record be there for internal audit just in the ordinary course. It is a matter for the Committee but I just want to clarify it. I do not personally think that we have to see the briefing.

Mr NAGLE:

Q: Mr Temby, first, I would like to say in regard to Mr Tink who talked very long and hard about what the situation is and is quite concerned as there is concern to members of the Committee. What is meant by "wasteful use of resources"? Is it meant to reflect upon yourself or ICAC generally? In regard to the Debra Cornwall article and the statement read by yourself, I think you said words to the effect - well, would it be correct to say if any journalist actually wrote something which you had not told them, you would have taken steps to rectify the record?

A: Yes, but I am said to have told her that?

Q: But, if any journalist said that you had said something which you had not said, or if you had said something but it had been misrepresented, you would attempt to rectify the record?

A: We are likely to, yes.

Q: On page 13 you said "off-the-record briefings also allow the opportunity for complex matters to be explained in a more informal manner than would be possible

in a formal media conference". That is basically, I think, the crux of why you have had the informal briefings because people are affected by the inquiry. But these people do not have the same opportunity to have informal briefings to discuss these stories. They are either stopped from it by virtue of the inquiry itself from saying anything and - what they have said is in the inquiry and is reported, or the most sensational part of it, is there any way in which a person would have rights - is there any particular reason that you could think of for a person affected to be able to give a statement to the media within the inquiry about what they have said or are about to say?

A: Thank you for that question. I have heard from time to time of briefings of the sort for which we are now being criticised in which there are - shock/horror - names named; just you wait; wait until the truth comes out; X, Y and Z and the rest of it. I know that sort of thing is going on. I hear it. We do not do anything of that sort. We do not name names. I think it is true to say the only names which were uttered in the course of the 9th October briefing were the names of Smith and Henry which were known in any event. We did not talk about a single policeman because we decided it would be improper to do so. We do not do that.

We gave briefings once or twice when the report was being done concerning the local government conflict matter. Now that was because it was an issue based matter. It adopted a somewhat unusual approach. We attempted to explain that approach. Even on the basis of the report discussing what was disclosed concerning this mayor, that town clerk or this town planner - we are talking about issues not people. The trouble is that always the media's emphasis is upon personalities, not issues and we are always trying to get to the issues, not the personalities.

Just as, if I could speak from my viewpoint for a moment, when the stories are written - which are not about particular matters but about the Commission - we want them to be about the Commission. The journalist wants to make it all controversial, so they want to write about me. It is a constant struggle. We are continually saying "No, write about the Commission". It is hard but we try hard because it is the Commission that matters, not the individual. It is the issues that matter, not the personality.

Mr HATTON:

Q: Is it not true that you are in a Catch 22 situation, if in fact you did not have an off-the-record or an internal media briefing - I will talk about how I make that distinction in a moment - then in fact, the Police Service in this case or some other organisation, in fact can be prejudiced simply because the issue gets picked up by the wrong end and runs away, and in an effort to try and stop that happening, and contain it, and put it within the bounds of accuracy, you have to talk to somebody in an informal way, but the logistics - it is a Catch 22, if we go down the track of having no informal as opposed to off-the-record briefings, you cannot do that, but

if you have a briefing that is on the record, you have a media scrum where you cannot sit down and talk with people. How do you consider you overcome that problem. Is that not the nature of what we are talking about, or is it?

A: Yes, I think it is. Also, when we do something which is significant on the investigation side, it may have a large impact. It is certainly the case that those who are concerned to prevent us from achieving our end work the media hard. It is getting slightly away from the point, but it seems unfortunate that one should be fighting with one and a half hands tied behind the back when those whom you are interested in certainly do not do so. I take Mr Tink's point, conceivably on examination the conclusion which should be drawn is that what makes an absolute difference is that we are not just a statutory body but a quasi-judicial body.

Mr TINK:

Q: Can I say there I accept without reservation that you have a public education function and it is entirely proper for you to have dealings with the media. I have no problem with that by way of press release, media conference, talking to the media - my problem is when it is not transparent, that is all?

A: We would be the only organisation in the state, I think, that had absolutely transparent dealings with the media. You cannot say the courts do, when you think about it. Maybe they should, but you cannot say they do.

Q: They absolutely should, and it should be a matter for the ICAC, but it goes on.

Mr GAUDRY :

Q: I am concerned about what appears to be the partiality of the relationship with the press in this process that there are some members not there or some major news media not there at that informal discussion and therefore, just in terms of access, it seems to me quite an inequitable process that is operating. I wonder if you would not continue with the process of just having a briefing of certain media representatives rather than perhaps somebody from each of the major outlets?

A: Well, if you were going to do that, you would either have to devote a great deal of time in doing it in small groups or you would have to abandon the exercise. I will have to think about future practice on the basis of the concerns that are here being expressed. I would not want to take it any further than that.

Mr NAGLE :

Q: Mr Temby, one of the reasons why you got the media in on that briefing was because of the rumours around that police "rolled" et cetera. It just seems to me that it is the best way because the whole media were going to be involved. It would

have been far better in hindsight to have had the whole media there even though it may have been a media circus or an impractical way of doing it, because it was such an important issue and I understand what you have said about it, but I do think that that is the way to do this. I might just say, for your information, that some of the police officers who have assisted you have seen me. At least two of them are suffering (out there) because of the information they have given to you. That is a matter I would like to talk to you about at a later time?

A: I can understand that. I would be happy to talk to you about it, if you are talking about those we call internal complainants or informants, I agree, all history and experience shows that their situation will never be an enviable one. By all means let us have a talk.

Q: On page 15 at the bottom you said, "The media was not used to achieve operational ends in an indirect way". In terms of putting to rest the rumour, I would like to clarify that. Just so that you might give us a view as to whether or not what you said to Mr Tink and us here that in the end it was an operational activity?

A: No, I do not. Even on the basis of this discussion, in hindsight I do not believe there is any qualification upon that.

Mr TINK:

Q: Firstly I do not resile for a second from my view that you should not conduct off-the-record briefings. If, however, there was a case where you did give an off-the-record briefing or where the ICAC did, and I hope it doesn't, then can I make the suggestion that, in the context of the briefings of the 9th October last year, where public hearings were then one month off into the matters that were also the subject of the briefing, that somebody other than yourself should have given the briefing. Indeed there ought to be a way in which you and that other person could agree on the parameters of what would be said, so that there was some control on it, and some distance between the Commission and the person hearing the matter the subject of the briefing.

A: That is a useful suggestion. I did it on that occasion and have on a couple of other occasions because it was thought that the matter was so important that my presence would stress the importance we attached to the information we were imparting being accepted, but I note what you say. It is worthy of some consideration.

Q: One final question that I would like you to take on notice, involves four articles I will leave with you: two by Steve Warnock, one of the 20th September 1992, one of the 14th June, 1992 and two by Quentin Dempster, 9 August 1992 and 9th May 1993. You can come back to us when you have had a chance to check them and let us know whether or not any part of those articles was consequential upon a briefing to those people?

A: Sure. The Committee members might perhaps bear in mind - and I am not speaking at all in the context of these articles, and these journalists are reputable, or reputable so far as I know, it is not unknown -.

Q: I am not suggesting otherwise?

A: I am not talking about these articles, it is a rather a more general proposition. It is not unknown for an article to be written in which a source is simply made up. It is of course grossly unethical but it is not unknown. It happens.

Mr HATTON:

Q: We are all shocked.

Mr TINK:

Q: The question now is whether or not -?

A: Yes, I understand. We will provide an answer.

Q: And if we can see if Mr Barrett can be answered?

A: I do not know if there is much point now, is there? I can't provide a better explanation than I have. He has had today as much as I can usefully give, but we will certainly provide a response about the articles.

CHAIRMAN:

Q: Before we move on, Mr Tink, you have a question?

Mr TINK:

Q: Just one further question on the Deborah Cornwall article on the 10th October. In relation to that paragraph I read out to you where you said you could not recall whether or not you were the source, as far as you are concerned, would you have any problem with Deborah Cornwall revealing her source on that?

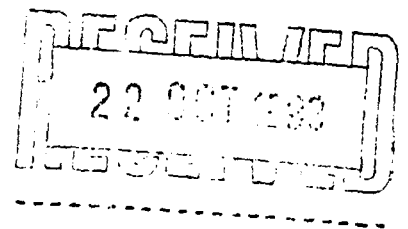
A: If the Committee chooses to ask her that question, she will be obliged to answer it. That is my understanding.



INDEPENDENT COMMISSION AGAINST CORRUPTION.

19 October 1993

Mr Malcolm Kerr MP
Chairman
Parliamentary Joint Committee on the ICAC
Room 925
Parliament House
Macquarie Street
SYDNEY NSW 2000



Dear Mr Kerr

At the Parliamentary Joint Committee meeting on 15 October 1993, I was asked to advise whether the Commission had engaged in any off-the-record briefings to assist journalists in the preparation of certain newspaper articles. Those articles are attached. The answer to the question is no.

I take the opportunity to make these points:

- . the ICAC has a statutory charter to inform the public;
- . one of the ways is doing that through the media;
- . there can hardly be a public institution in the country, or indeed a politician, which or who does not deal with the media in a range of ways, one of them being a public statement, others being less transparent;
- . unlike some, the Commission has never used the less transparent methods either to spread misinformation or to harm reputations.

ITEMBY\215

It is acknowledged, on the basis of recent experience, that if off-the-record briefings are conducted, then a record of them should be kept. This is said because such a record proved so useful when I appeared before the Committee on Friday last. The Commission will, as advised to the Committee, reconsider the infrequent practice of holding such briefings. We now know that they are of concern to some members of the Committee.

However, on the basis of the points made above, I cannot see how the dealings we have had with journalists can be subjected to criticism.

Yours faithfully



Support for crooked Police offences ③ police allegations

A SYDNEY barrister and a former policeman have allegedly corroborated some crime and corruption allegations by two convicted criminals against NSW police.

Convicted murderer
 Arthur "Neddy" Smith and Graham "Abo" Henry, jailed for stabbing a Sydney police prosecutor, have been making crime claims against police to the Independent Commission Against Corruption.

The allegations by Smith include accusations that more than 20 senior police have been involved in organising armed robberies and murders in the past 17 years.

The Sun-Herald believes some of the police named have been involved in many of the State's biggest drug and

By STEVE WARNOCK

robbery investigations.

However insiders also claimed yesterday that, as convicted criminals, Smith and Henry would appear to present easy pickings for lawyers at any ICAC-launched inquiry into their allegations.

But *The Sun-Herald* understands the lawyer and the former policeman have now supported at least some of the claims by Smith and Henry.

Smith, jailed for life in 1988 for the knife murder of a tow truck driver, and Henry, sentenced last year to eight years' jail for stabbing Crown prosecutor Senior Sergeant Mal Spence, are trying to bargain for early release.

Neddy Smith is understood to want to be paroled in six years, to be

given a licence to carry a handgun on release and to be provided with safe passage to a new lifestyle.

Smith, understandably, fears for his life outside jail and wants an assurance from authorities he could be legally armed if given a release before 2000.

Henry, too, wants an early release and is appealing against his sentence on the stabbing of Sergeant Mal Spence.

When Sydney Supreme Court judge, Mr Justice Badgery-Parker, sentenced Henry in March last year he suggested authorities examine Sergeant Spence's activities.

Mr Justice Badgery-Parker said Henry's seven-day trial had shown Sergeant Spence had a "very questionable association with persons of a criminal nature".

Media reports last week

said Smith told the ICAC he could name more than 20 crooked police he had worked with in the past 17 years.

He alleged three of the officers organised hit-men to bump off troublesome criminals—gangsters like Christopher Dale "Mr Rent A Kill" Flannery.

Other allegations against police are that they organised criminals to do armed robberies, with the proceeds of the crime to be split among officers and the hold-up men.

If a criminal, according to allegations, did not want to be part of an organised hold-up plan he was threatened with a "load-up"—a police verbal which would put him behind bars for a crime he did not commit.

Police case starts to boil over

It looks like it's on. There's a secret inquiry under way in NSW with the potential to turn into a Fitzgerald-style unravelling of historic and institutionalised criminality. It's not just graft, palm greasing and bribery in return for non-policing of illegal activities.

What is being investigated is police organisation of armed robberies through their criminal associates. On indications so far, it seems to be confined but if the coercive powers are successfully applied, the flow chart of police and criminal connections could lead to evidence of drug importation and distribution.

There is talk that some senior police have "rolled over" - admitted criminal associations and offences in which they have been involved in return for indemnity from prosecution.

There is no official confirmation of roll-overs. The status of this information falls into the category of unconfirmed reports from sources.

The next step for the Independent Commission Against Corruption could be to announce a decision for a full public inquiry arising from its so far in camera investigation.

The ICAC will not comment on its intention, but the document printed here, together with reports in June of ICAC orders on 20 NSW detectives, indicates the enormity of the investigation the anti-corruption body has taken on.

Investigation No 39 into the "nature of the relationship" between police and criminals covering armed robberies and illegal gambling is still under way.

The early leads reportedly came from convicted murderer and hardened criminal Neddy Smith but are now said to have broadened to more reliable sources.

The ICAC, using powers under its Act, has imposed suppression orders on media identification of any in-camera evidence which has already been taken.

There are no bulletin updates on this one, only the occasional rumour which sweeps the 12,000-strong NSW Police Force and particularly the ranks of its plainclothes detectives.

Neddy Smith already has been publicly bagged and bucketed on the question of unreliability.

boil over

QUENTIN DEMPSTER

The Commission is investigating the extent of the association and the nature of the relationship between police, especially post and present detectives and criminals, and the effect and outcomes of that relationship, after January 1978.

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 nature referred to in a 1978 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.

Issued by reference to a press

Quentin Dempster
20 July 92
Commissioner

20 March 1992

But June reports that the NSW Attorney-General had granted him an indemnity from prosecution for 14 armed robberies have not been denied by either the government or the ICAC. We can properly assume, therefore, that the ICAC and the NSW Government have taken his information seriously.

The ICAC has the power to recommend indemnity and, as this column reported last June, Commissioner in Temby, QC, is well aware of the dangers to the ICAC if Smith's evidence does not check out.

Presumably the indemnity would be withdrawn and Smith's hope of concessions and special treatment from the Crown would be destroyed.

The ICAC has become understandably tactical in its handling of the investigation. There have been no leaks. Police under investigation, in spite of repeated media requests, also understandably have not shown themselves.

Many reportedly have been into the ICAC's Redfern offices with available evidence of their personal assets and incomes going back 17 years, as demanded by the ICAC order.

The Police Association publicly objected to the use of the ICAC powers, arguing that even the Tax Office only required receipts going back seven years for its random tax audits.

Nevertheless, the ICAC order has stood.

If the ICAC does turn Investigation No 39 into a full-scale public inquiry, it is almost certain to put into the witness box, as a first tactical strike, any police officer who has been coerced into rolling over. Neddy Smith might not be used at all as a public witness.

This is what coercive powers are all about.

The carrot of indemnity goes out to police, starting with those who may have been peripherally involved in any criminality. If they roll, they have to spell out names, dates and places of the offences and all those involved.

It may be some time before we see any decision on a public hearing. Meanwhile, the atmosphere within the NSW police service is tense, to say the least.

To crack the police code of silence, now identified in most police forces as part of the culture, the ICAC will have to get lucky. It will depend on the skill of its investigators.

In the Fitzgerald inquiry into high-level police and political corruption in Queensland, the first breakthrough came when a lowly licensing branch sergeant,

leaving being made a scapegoat, rolled over and named his superior as a distributor of bribes.

The superior turned out to be Graeme Parker, by then Assistant Commissioner (crime and services). Parker in turn sought an indemnity and then named the Commissioner, Sir Terence Lewis.

Indemnities properly used can be a devastating weapon in uncovering the truth. The Crown must be prepared to withdraw the indemnity if the witness does not play ball.

In Queensland, the famous bagman, Jack Herbert, had to earn his indemnity by giving evidence in many trials arising from the Fitzgerald inquiry. When Herbert's testimony was coupled with other evidence, many convictions were recorded.

With the Fitzgerald experience on the public record, it is to be hoped that the ICAC makes any of its roll-overs through Investigation No 39 honour the terms of their indemnities.

What a vital challenge for the fledgling ICAC.

Quentin Dempster is presenter of ABC TV's 7.30 Report in NSW

I - C. A C

Police threatened family

CONVICTED (murderer and informant Arthur) 'Neddy' Smith has threatened to withhold evidence from the ICAC inquiry into police corruption because of threats to his family.

Smith, whose allegations are the crux of the ICAC probe into crooked police, fears for the safety of his wife Debra, daughter Jaimie and son Darren.

An angry Smith, serving life in Long Bay Jail for murder, has written to State Labor MP Paul Gibson, claiming his family's lives are at risk because of his involvement with the ICAC.

"I have foolishly put the lives of my wife and children in grave danger going to the ICAC in the first place," Smith said in a typed letter.

Smith, 47, said he had lost faith in the ICAC because of alleged "lies and deception" to him and his family.

He claimed his family had been harassed by police "first with phone messages threatening their lives".

"Then," Smith continued, "being approached on a bus stop by two detectives and threatened with physical harm if they didn't stop me giving evidence to ICAC."

Smith said other threats made to his family led to them receiving Federal Police protection.

In one incident, Smith claimed his family was being escorted by Federal Police in cars from Long Bay Jail when NSW police in another car gave chase and pulled them over.

He is angry about what he perceives to be a lack of protection for his family from the ICAC.

"Now you [Mr Gibson] can understand why I am refusing to endanger my life and the lives of my family," Smith said.

Smith told Mr Gibson he had provided the ICAC with evidence that almost 70 NSW



ARTHUR 'NEDDY' SMITH

police have been involved in "massive organised crime and corruption within the force".

"I gave them positive proof of the involvement of these police — not just the names of the officers concerned."

Smith, who has been involved in crime since the age of 11, said he had also provided the ICAC with damaging documentary material and photographic evidence.

He said he had told the ICAC he was prepared to go to court to back his allegations as well as take the stand at the ICAC.

But he was now considering "throwing in the towel" and dumping the ICAC.

The ICAC is believed to have been told by informants that NSW police have been involved in armed robberies, blackmail and murder for the past 20 years.

Most of Smith's evidence on its own would not stand up but it is believed much of it has been corroborated by a police officer and a lawyer.

The Sun-Herald understands a former top NSW policeman has also been questioned by the ICAC for the past few weeks.

Smith offered to provide Mr Gibson with documents and asked him to visit him in jail.

Smith, who has served time for rape and armed robbery, was sentenced to life in jail in March 1990 for stabbing a man to death in a traffic row at Coogee in October 1987.

Smith, who suffers from Parkinson's Disease, signed the letter in a shaky hand.

Mr Gibson said yesterday he would write to Attorney-General John Hannaford to demand a royal commission into corruption in NSW.

"I've been pushing for a long time to get a royal commission into corruption into NSW and that includes police corruption," he said.

"This is just another saga. There have been serious charges laid and this is a big piece of evidence to support my push.

"It's not a matter of whether the claims are true. Justice has to be seen to be done as well as to be done."

Mr Gibson said of Smith's threat to the ICAC inquiry: "His evidence would be an important part of the whole case."

—STEVE WARNOCK
and JANE SOUTHWARD

I.C.A.C.

N.S.W. Parliamentary Library

SUN HERALD

9 MAY 1993

Wanted: one game ICAC linchpin

SOFTLY, softly, catchee monkey ... (old cop expression). Ian Temby QC's slow progress and heavy weather inquiry into Neddy Smith's allegations of a deeply entrenched association between criminals and certain police (some still in the force at senior rank) is about to take a new turn. With something of an audible sigh of relief, Temby has flagged that the next segment in Operation Milloo is of recent origin and does not rely on Smith at all. The most startling ICAC revelation so far this year has been the apparent case with which Neddy Smith is alleged to have got off a serious assault charge on a doorman at the City of Sydney RSL Club.

After Smith slashed at the doorman's throat with a knife and then beat him up in front of a foyer full of witnesses, the records show he was never charged. He apparently bragged at the pub later that it cost him \$20,000 to have the charge pulled. If he had killed the doorman it would have cost \$80,000 to subvert a murder charge.

It remains to be seen if the ICAC can conclusively establish that money did in fact change hands between Smith and any police.

If true, this one incident would indicate the blatant and outrageous influence one of this country's most dangerous criminals had over the police. It would also indicate either the incompetence or unbelievable negligence of those in supervision of policing.

The City of Sydney RSL Club incident is the ninth segment of Milloo. Temby will have to make findings on police behaviour in relation to it affecting the careers of a number of still-serving police. If the findings are adverse, Temby can be expected to recommend that the Director of Public Prosecutions consider charges in the event of alleged criminality or disciplinary charges in the event of misconduct or breaches of the police rules.

Each segment is an attempt to build a bigger picture. Temby is out to demonstrate a pattern of behaviour in the relationships between crooks and cops. He will be out to demonstrate that the case histories he is exposing do not rely solely on the evidence of Smith or his associate, Graham Abo Henry.

Police careers are hanging in the balance.

Segment 1 concerned evidence of a meeting between disgraced former detective Roger Rogerson, Smith and a senior investigating police officer at the Doyalson RSL Club on June 10, 1987.

Temby already has noted that the formation of a task force to examine a spate of armed robberies solved none of the cases. Smith and Rogerson were reported to be the targets for these unsolved robberies but nothing happened. The issues at stake, according to Temby, are the adequacy of controls over police-informer relationships, internal inquiries concerning investigating police and keeping of police records.

Segment 2 - The Bellamy bag snatch. In September 1984 solicitor Val Bellamy allegedly was the victim of a daylight robbery in the city. Smith has claimed that he (Smith) enlisted the assistance of a police officer and that the three men shared the substantial amount of money in the bag. Bellamy has denied all the allegations against him.

Temby had to make findings of the evidence and denials before him, particularly the testimony of the police officer who filed a report on the alleged robbery.

Segment 3 - Did Smith pay \$3,000 to a police prosecutor to doctor his driving-offence record when, on February 9, 1983, he faced Magistrate Riedel in the Court of Petty Sessions on a drink-driving charge?

The broader issues at stake for Temby are the accuracy of criminal and other records presented to the courts.

Segment 4 - The Golden Sheaf Hotel, Double Bay, incident. On July 25, 1977, Smith was charged with assault occasioning actual bodily harm when he threw a public telephone cabinet at a patron. The charge was dropped when the magistrate was told, allegedly inaccurately, that key witnesses refused to attend court. Smith gave evidence that he paid \$12,000 to get off the charge. Police have denied receipt of any money or any impropriety.

Temby wants to know if it is usual for detectives to hold documents in cases they have investigated.

Segment 5 - The Fielders Bakery attempted robbery. Charges against Smith over this attempted payroll job (October 20, 1976) were dismissed in the committal stage.

Again Smith alleged that he paid police \$20,000 to beat the robbery charge. Rogerson, then a serving detective, gave evidence in Smith's defence on another charge that Smith was in possession of an unlicensed pistol.

Segment 6 - The Deborah Cornwall case. This has been canvassed in a recent column following the citing of Sydney Morning Herald journalist Deborah Cornwall for contempt of the ICAC. The Supreme Court has reserved its judgment. Cornwall refused to name the source (a police officer) of information the ICAC asserts was designed to harm or warn off Neddy Smith. The ICAC stated that the information was demonstrably false and that Cornwall was used by her source. She contested the ICAC's assertions, saying that she was not satisfied she had deliberately been misinformed and for ethical reasons could not divulge her source.

Segment 7 - The Domican, Bayeh, Cole, Day lunch last year in which three bottles of white wine were consumed as a tape recorder in the pocket of Assistant Commissioner Col Cole recorded proceedings. Luis Bayeh was said to have sought the meeting involving Police Association president Tony Day, Tom Domican and Cole because of a fear that he would be murdered by certain police. Bayeh's evidence to the ICAC was *in camera* and the names of police allegedly involved are not on the public record. Temby has stressed there is no suggestion of corruption by either Day or Cole in this matter.

Segment 8 - Gaming. Hearings will start next month. Last November the ICAC raided the gaming

COMMENT

QUENTIN DEMPSTER

squad and took possession of instruments of gaming and records. At this stage we do not know the nature of any allegations to be made.

Next week the ICAC will examine particular instances of complaints made by police against other police officers. These should go to the heart of the now acknowledged failure of internal investigations.

Brick by brick a pattern may be taking shape. But no breakthrough in the form of a police officer "rolling over", confessing to corruption, seeking an indemnity from prosecution and naming other higher-ranking police involved.

Police adversely named are entitled to the presumption of innocence, of course.

But if any corrupt officer has any conscience at all it would greatly assist the restoration of confidence in the force if the roll-over option was embraced.

The Attorney-General is ready, willing and able to indemnify you.

In the public interest, please step forward.

Quentin Dempster is presenter of ABC TV's 7.30 Report in NSW.

OPERATIONS REVIEW COMMITTEE

Questions on Notice

Q: 7A.1 Do you think the ORC is functioning as a true independent mechanism of review?

A: The role of the ORC as defined by the ICAC Act is to advise the Commissioner on whether a complaint should be investigated or if such an investigation is commenced, whether it should be discontinued. The Act permits the Commissioner to seek the advice of the Committee on other such matters as he may wish.

The ORC functions well as an independent source of advice based upon the very considerable expertise and experience of its members, four of whom are appointed to represent community views. Whilst their deliberations are usually grounded in reports by Commission officers, the Committee requests and receives further information, examines original files and asks for additional enquiries to be conducted.

The advice provided by the Committee is more broadly based, and formulated upon different grounds, than that which receive from Commission staff. This is useful. Whilst the Committee is not a review mechanism in the sense of being able to direct outcomes, it is able to provide independent and efficacious advice which makes it an important review and accountability mechanism. Another effect of the Committee's rigorous approach to its work is that Commission staff are required to deal with public complaints in a proper and principled manner to the satisfaction of the ORC. This results in a high standard being set and maintained.

Q: 7A.2 Are you satisfied that the ORC is sufficiently at "arms length" from ICAC to perform its oversight role?

A: The nexus between the ORC and the Commission is in three areas. The Committee is serviced by Commission staff, it meets at the Commission's premises and its membership includes the ICAC Commissioner (the Committee Chairman) and Assistant Commissioner. The issue of the Commissioner's membership of the Operations Review Committee and the question of a separate ORC Secretariat is presently being considered by the ORC. It is unlikely that the fact of the ORC meeting at Commission premises has any great significance. Some current and past members of the ORC Committee have expressed views to the effect that they feel free to discuss issues, make criticism and suggest alternatives. Certainly there is no evidence to date to suggest that the ORC feels in any way too close to the Commission to continue to provide independent advice. The Commission therefore is satisfied as to the appropriateness of its relationship with the ORC.

Q: 7A.3 Will the employment of a project officer by ICAC to support the ORC (as indicated by newspaper ads) enhance or diminish the independence of the ORC from ICAC?

A: The servicing of the Operations Review Committee is the responsibility of the Department of Operational Services. Within that department there has been a position of project officer for more than two years and one of the principal functions of that position is the provision of secretariat support to the Committee. Earlier this year it was decided to refocus the position away from general project work within the Department and more aligned to servicing the Operations Review Committee. As the Committee's work load has increased so has the task of providing support.

Q: 7A.4 Would it be better for the ORC to have its own staff not employed by ICAC and housed outside ICAC headquarters?

A: Given the Committee's current role and effectiveness it is difficult to see how this would serve any worthwhile purpose. The reports presented to the ORC are by necessity written by Commission staff involved in the assessment or investigation of the particular matters. It is hard to imagine that staff employed by the Committee would add significant value to this process. The cost would be considerable.

Q: 7A.5 How could such an arrangement be put into effect?

A: There is no statutory provision within the ICAC Act 1988 for the ORC to directly engage staff. If it was not acceptable to utilise staff employed by the ICAC then the Parliament or the Government would need to take the appropriate action.

Q: 7A.6 What is the value to an independent review committee such as the ORC of having the Commissioner of the ICAC as a member? Would it not be better for the Commissioner to appear by invitation only?

Q: 7A.7 What is the value of an independent review committee such as the ORC of having the Commissioner of Police as a member?

These matters will be further dealt with when the views of the ORC have been finalised - see 1.7 above - and advice will be conveyed to the PJC.

Q: 7A.8 How many times in the past two years has the committee made recommendations contrary to the recommendations or actions of ICAC?

A: The ORC may at times alter the recommendations of the Commission. Such alterations may amount to a material change, such as recommending a formal investigation where the recommendation was for a matter not to be investigated, or it may alter the recommendation in a less significant manner so as not to affect

the outcome of the report. An example of the latter would be for the ORC to accept the recommendation that a matter not be investigated, but advise that it be referred to another agency.

Material or significant changes to Commission recommendations as described above have been made in relation to 43 reports considered by the Committee in the last two years. Minor changes have been recommended on 347 occasions and the recommendations accepted in 1963 cases.

Q: 7A.9 How many times in the past two years has the Committee sent matters back to ICAC for further investigation?

A: The Committee has recommended further enquiries/investigation be undertaken a total of 34 times.

Q: 7A.10 How useful do you find the advice coming from the ORC regarding the initiation or continuance of investigation of a complaint?

A: The advice provided by the Committee is particularly valuable as it incorporates:

- community views;
- forensic expertise;
- an understanding of the public sector;
- views expressed by individuals of considerable experience and achievement who are not in any way involved in the matter, that is they are neither the complainant, assessor or investigating officer;
- sensitivity to issues of equity, consistency and public responsibility.

Questions on Notice

Q: 7B.1 How many matters were dealt with by the ORC last year and the year before?

A: Refer to response to question 1.7.

Q: 7B.2 How many hours did the Committee sit last year and the year before?

A: The Committee sat for 11 half days (ie up to four hours duration) in the period June 1991 to July 1992 and 11 half days in the period July 1992 to June 1993.

Q: 7B.3 What preparation was done by whom for these meetings (other than the members).

A: Preparation for ORC meetings includes the following tasks:

- Preparation of reports and briefing notes by Commission officers;
- Preparation of an agenda for the meeting, including statistical and special reports (usually carried out by the Project Officer/ Secretary to the ORC);
- Photocopying and collation of reports in numerical order (usually performed by a support officer);
- Delivery of the reports by Commission drivers one week in advance of meeting.

Q: 7B.4 What administrative support was provided by ICAC?

A: As outlined in response to question 7B.3.

Q: 7B.5 What has been the attendance record of the Committee?

A: At a meeting of the Operations Review Committee, a quorum is constituted by 5 members, one of which must be a Commissioner or an Assistant Commissioner. In the last two reporting years a quorum has been obtained on each occasion the Committee has met.

Commission staff, such as the ORC Secretary, attend the meetings to record minutes, etc. Occasionally other staff may attend to observe the functioning of the Committee.

Attendance record for period 1 July 1991 to 30 June 1993:

Member	Number of meetings	Total number of meetings possible
Mr Ian Temby QC	18	23
Mr Peter McClellan, QC	2	15
Mr A Roden QC	4	20
Mr Tony Lauer, APM	13	23
Mr Laurie Glanfield	18	23
Rev Bruce Ballantine-Jones	13	15
Mr Daniel Brezniak	20	23
Ms Carmel Niland, AM	10	15
Mr Nutter	19	20
Mr John Bragg	3	3
Sister Mc Govern	6	8
Mr J N Davenport	7	8

Questions Without Notice

CHAIRMAN:

Q: At the hearing on the 9th October 1992 you spoke in general terms about a matter which the ORC recommended on a number of occasions should be investigated contrary to ICAC's views. At that stage the matter was still to be considered at the next ICAC meeting on 12th December 1992. I wonder if it would be possible to say what is happening in relation to that particular matter and whether the ICAC has commenced an investigation, and if so can any information be provided about the subject matter of the investigation?

A: I would need to take the question on notice, Mr Chairman.

Mr HATTON:

Q: I have a number of concerns about the Operations Review Committee. It says here in the answer to question 7A.1 that "The ORC functions well as an independent source of advice based upon the very considerable expertise and experience of its members" but then it is a bit circulatory in that if you look at the next two paragraphs it is quite clear and please correct me if I am wrong, but the vast majority of the material that is provided to the ORC comes from the Commission and you chair it, and there is a Deputy Commissioner there, and do they call for information from the informant and from the complainant and in the absence of that, is it not a sort of an incestuous organisation?

A: There are two, probably unimportant, corrections. Typically there is myself or an Assistant Commissioner present. It is very rarely the case that both are present. The Committee is chaired by myself or an Assistant Commissioner. Secondly, it is true to say that the prime source of information is the responsible Commission officer. As I have said previously, with very rare exception, I do not see the material until it comes forward. That is to say I know no more about it than other Committee members do, and if they want more information and they seek it, it is provided.

Q: But they seek it through you, do they normally seek it through the complainant?

A: No.

Q: If they do not seek it from the complainant, how is the complainant to know that and how is the Committee to know that the complainant's position is being accurately presented to the Committee?

- A: I do not know that anyone can know that. You have got to remember the function, however. The function is to work out which matters are of such weight and importance to warrant the use of the full investigative powers.
- Q: If it is an important matter to this Committee it is because there are people who appear to fall between stools, and that is they come to us and we say it is a matter for the Operations Review Committee and we refer it back to you and you may report to us or the ORC may look at it. The person concerned, and one particular person is one I have in mind with a very short name, he probably will never give up, but I must confess that I have some concerns because I wonder whether there are people who do not get a fair go in the system because they are dependent entirely on the Commission to refer their circumstances to the ORC and it is chaired by a Commission person and the information is supplied by the Commission. Now, how can it be at arms-length from the Commission?
- A: Well, they may be legitimate concerns. The ORC of course acts precisely in the manner mandated by the statute. We are a statutory body. We do exactly what it tells us.
- Q: Would you consider then making a recommendation to the Commission because it appears from this that you are particularly satisfied as to how the Committee works?
- A: You want to change its function. I am asked if it functions properly and answered it does the job it is being given to do. Of course Parliament can change its function.
- Q: No, I am saying that when a person feels that they have not been given a fair go, or their case should be investigated, they complain to this Parliamentary Committee and we refer the matter back to the Commission, but we are really powerless as a Committee to do a great deal about that. We cannot get involved in the operational side. Individual members of the Committee may raise it in Parliament, and we may, if it comes under the heading of treatment of witnesses before the Commissioner, may wish it as an issue in our report, but generally speaking it is a matter for the ORC. Now, if there is a circulatory operation within the ORC, I would like to break that circle "cut in" in some way and I would be very interested in any suggestions that you might have to assist in that. Have you any comment on that?
- A: Well, we can give thought to that but I really think that the question is a contemplated change of the Commission, so that it becomes another grievance resolution body as the courts are, and as, by and large, the Ombudsman is. The Committee is not by its statute such a body. The way we work is to carefully select a small number of cases which we will examine intensely in order to achieve

principled change. Of course nearly all complainants reckon it is a bad thing that we do not investigate their matter.

I am quite sure that if we had done three times as many investigations as we have done, that is to say a couple of hundred rather than 66, we would have done them half as effectively. We are highly selective. Of course Parliament can make us a grievance resolution body but at the moment we are not. We receive the complaints. We work out the ones that provide the best opportunity to achieve principled change, and they are the ones that are pursued.

- Q:** I have never suggested and my question is not predicated upon the fact that the ORC is to be a grievance resolution body in the way that you have put it. I simply say that if a person has a matter which the Commission decides after it has been dealt with by the ORC, therefore the ORC has agreed that it should not be investigated, and if that decision is based only on the information supplied by the Commission, then there is a circulatory nature that worries me. Circulating, you know, incestuous relationship that concerns me. Now, I now move to, in conjunction with that question, to page 18, 7A.4 where you say "The reports presented to the ORC are by necessity written by Commission staff involved in the assessment or investigation of the particular matters. It is hard to imagine that staff employed by the Committee would add significant value to this process. The cost would be considerable".

Now, why I strongly disagree with that is for excellent reasons you have given and with which I thoroughly agree, if you tried to investigate every complaint ICAC would be so diluted that you would get nowhere, but the Commission never runs its agenda for its own reasons, different often from the agenda, if you like, that the complainant has. The complainant says, "I do not care how important these other things are, mine is important and I want it examined". That complainant is knocked out of the game for the Commission's reasons of priority, right, now -

- A:** Just one comment. Normally if a matter has substance it is referred to an appropriate agency, you understand, but knocked out of the ORC's game. We use our referral powers very extensively indeed.

- Q:** Then the quote goes on, "It is hard to imagine that staff employed by the Committee would add significant value to this process". Now, why I am suggesting that that would be a good idea for us to consider, Mr Chairman, whether there should be, say, one project officer attached to that Committee. I am not suggesting a large staff, the ORC are private citizens, they do not meet very often, they have a lot of work to do and it would be good to have a "gofer", somebody who is close to hand. There to do a bit of independent research and perhaps contact the complainants and put a truly independent view. If they are entirely dependent on the staff of the ICAC, then they are severely limited by their time and their personal occupation. Would you have any comment on that?

A: That could be done and it might be useful, if it was considered critical to have an independent person put their viewpoint. Then it is not just the salary of one person. You would have to house that person away from the Commission, otherwise independence would quickly be lost. It is not cheap. I do not think one person would suffice.

Q: Let me cite the example - I have a research officer. That person is absolutely invaluable to me trying to deal with complex situations. The salary is not so high, and the accommodation is not so high. I am not talking about a very high budget here, and I would like it to be considered.

Mr TINK:

Q: Part of what I understand Mr Hatton is talking about is akin to a broad based internal audit type concept. It is something that you would do, and to some extent goes on already, I would have thought?

A: That is true. It does go on to an extent already, and we have proposals to increase the extent of that. At the moment, our auditing practices are good so far as keeping track of matters is concerned, but from an audit viewpoint, less satisfactory so far as quality is concerned.

Q: The effectiveness part of ORC?

A: Yes, the effectiveness part. We have well in planning a proposal whereby reports to the ORC will be independently checked against complaints in order to ascertain whether the report fairly, accurately and properly reflects the complaints. If it does not, then we would have to take some remedial steps. When put in place, that would not answer all of Mr Hatton's concerns. It will go some distance though. Let me add we are not doing it in a systematic way. It is done more or less on an ad hoc basis. The audit would not be, of course, of every matter.

There is one other point which should be made. It ought not be imagined that we automatically get what the complainants give us, examine it in a sceptically critical fashion with a view to shooting holes in it and then put it up to the ORC and say, "There you are, knock it out". I hope Committee members understand that the formal investigations are full. Matters are examined in a preliminary way in order to make a proper judgment and recommendation. Lots of work is done in order to ensure that we are properly informed, with the ORC performing a check role.

Mr HATTON:

Q: Does it ever occur as in the case of a high level police informant, for example, if it is felt the matter was to be investigated or there was a problem that the ORC needed to look at it, that the Police Commissioner should not be present. Has that ever occurred?

- A: I can bring to mind occasions when Mr Lauer has declared an interest and left. I cannot bring to mind an occasion just such as that which you are postulating, that is to say a complaint from a high level police informant who comes forward. If it happened, I would consider that to be a matter that required the taking of special measures. I had on one occasion distributed material separately from the general meeting papers in a matter of high sensitivity, in order to increase the likelihood that those who ought not know did not know.
- Q: When you talk about referring matters to an agency, you would obviously be meaning an ombudsman or some other impartial source - that also includes back to the department concerned?
- A: Sometimes we refer matters which come to us as complaints to the Police Service because they are criminal in nature and there is no particular reason why we should do them. We have referred material to the Ombudsman and to the Local Government Department, concerning councils, and we refer some back to the department concerned. There is a question of judgment as to whether that referral should or should not be made and the ORC makes considerable contribution in that respect.
- Q: Earlier and in regard to this you mentioned about whistleblowers. Have you got a particular concern that you would like to put to this Committee now or later as to what whistleblower legislation should embrace to try and protect those people. In particular in relation to the answer you have just given you do refer matters back to the department, of necessity, either because of the need or because of the circumstances. You just cannot investigate everything yourself?
- A: I would want it to be understood that when I talk about referring matters back to a department, I am not talking about matters which come by way of complaints from somebody working within the department. The great mass are complaints from outside. The number of complaints that we get that are internal complainants are, I do not know what the proportion is, relatively low.

The Commission's views on the protection of the internal complainants have been made known in various public ways. Most notably I suppose to the Parliamentary Committee that considered that question. Our views were largely adopted and the scheme which is now in contemplation is a worthwhile one. We thought in a particular respect that the scheme should go further and this is a matter of the public record.

The view we have expressed was that in particular in limited circumstances there should be protection afforded to those who ultimately went outside and that is a view that has not found favour with the government. I do not pretend it is an easy issue. There has to be a lot of work done yet, in relation to developing effective internal reporting systems. The existence of the ICAC and the urging we have

given on that topic in the context of s11 of the Act has led to a lot of improvement in relation to internal reporting systems. The new Act is going to require better systems again, and we have just a week or two ago decided to run a corruption prevention project on internal reporting aimed at achieving enhancement. The final point is it does not matter what is done, the lot of internal informants will rarely be an easy or enviable one. You try and improve their lot. It is very hard.

Q: But all agencies must work to that end?

A: That is right.

A: Recognising that not all of them are well motivated and public spirited citizens, some of them are disgruntled and malcontent and it is not easy to work out what motivates them. Sometimes you have got to be mature about that too.

Q: The situation in Sweden is that the source is not important. The quality of the information is?

A: I agree with that. And we say that as an article of faith. We get material from some individuals weekly and you could probably, if you thought about it guess a name or two. We do not have a blacklist. We look at everything we receive, on the basis that just because they are disaffected does not mean they are wrong.

Q: No, I have never said that?

A: No, I am agreeing with you.

Q: The final question on this matter and I apologise because I was not present when this Committee met with the ORC. It was taken up and that is the standard of reply received by the complainant from the ORC and to what extent has that now been modified in terms of additional information given to them as to why their complaint was not further investigated et cetera?

A: The practices that are followed when the Commission responds to complaints are now better than they have ever been. It is an area in which constant scrutiny is necessary to try and work out where there is room for further improvement.

Q: On the attendance record on page 21 I do not understand what is meant by the "number of meetings possible" to attend. Everybody is, I take it, invited to every meeting and if there were 23 meetings and someone only was able to attend three or four - could you explain what that means?

A: Mr John Bragg was appointed in March. Mr Adrian Roden was an Assistant Commissioner and entitled by statute to attend for all of that period, save the last three meetings.

Q: I now know what is meant by that. In other words it is attached to the time they were appointed?

A: Yes, the attendance of the Police Commissioner looks low but those figures do not include attendances by his alternate. The Police Service is there at nearly all meetings. The Deputy Commissioner has normally been the Police Commissioner's alternate. I suppose more strictly speaking, the Acting Commissioner.

Ms BURNSWOODS:

Q: Two questions. Firstly, whenever we have discussed the ORC, two different sorts of issues seem to get, if not mixed up, at least talked about simultaneously. There is the function of the ORC, let us call it an initial decision to investigate or not investigate. What is always less clear to me, and I think other members of the Committee, is the role the ORC plays in reviewing complaints that come further down the track. Mr Hatton referred before to some complaints we get again and again. For instance, where they are complaining either about the way something was handled, the action the Commissioner took. The response it got and so on. Would you just enlighten us further on how much a part of the ORC's role that function is, whether it is growing, and how you addressed the sort of problems that, I guess are closer to the work of this Committee?

A: Further consideration may be appropriate in one of two circumstances. One is where the ORC seeks further information, and occasionally that happens, meeting after meeting for perhaps several months in relation to particularly difficult matters. Another is where the complainant either directly or, for example, through this Committee or through a member of Parliament seeks a reconsideration. In circumstances where a reconsideration is sought a reconsideration is always given. If the request for reconsideration involves provision of any further information, which could not in the nature of things change the decision already made, then it is treated as a fresh matter and it goes back to the ORC. I could not give you any confident idea as to a number. It happens not infrequently.

Q: Does this mean therefore that the ORC is privy to criticisms of the Commission for not investigating something or not investigating properly or some other affect that the complainant is concerned about that has arisen perhaps well down the track?

A: The ORC is certainly privy to some criticisms both of the Commission work and of the ORC work. It does not mean that we see it as necessary to bring forward to the ORC every piece of criticism. It is quite common for a complainant to write back and in a measured or occasionally abusive fashion criticise the decision. That is unsurprising. Certainly the ORC does not carry them forward. Certainly the ORC does from time to time receive letters of that sort.

Q: What I am getting at, is the ORC as conscious as, for instance, this Committee would be of dissatisfied customers. The critical people out there?

A: The ORC is at least as conscious as this Committee is as to that question although not necessarily as to the same people. The number of letters this Committee gets from disgruntled complainants, I would have thought, is fairly low, given the number of matters we deal with. It is a handful, annually. We get more than that, as you would imagine.

Q: My other question was in relation to 7A.7 where you have responded that you wanted to deal with that later when the ORC's views were finalised, but I am interested in your views as to those two questions?

A: Mr Chairman, I could provide my views but if I did provide my views I feel that it would be felt that I am driving the process and I am trying to ensure that it is the ORC, so if I could be freed from the obligation to answer that question, I would be obliged. You will find the report interesting, and you should not imagine that it is necessarily going to staunchly defend the status quo.

CHAIRMAN :

Q: I will free you from that obligation.

Mr MUTCH:

Q: You might recall that I have been following up at various meetings the Sturgess matters. The last thing I had read on this was in your report, Collation of Evidence Report, in March when you said that you were going to take the various matters in the schedule and the bulk of papers to the ORC for them to consider. Can you report on what the outcome of that was?

A: Thank you. That was done. The Committee considered the report which was as you would imagine quite lengthy. It called for further information with respect to a particular matter, as memory serves me only one particular matter. We provided that information and the report we were able to provide showed that a lot of work had been done. The Committee was then satisfied. So, the process has now been carried through and might I say that we do learn and it does now seem to me that it would have been better had I embarked on that process at a much earlier stage. It has now all been done and in a manner with which the ORC was entirely satisfied.

Q: Are you in a position to say whether Mr Sturgess is satisfied with the procedure?

A: I am sorry, I am not. I think there has been discussion.

Q: Probably consulted?

A: I think there has been discussion with him but I wouldn't want to put it higher than that. It has now been done and I am conceding that it is a pity that I did not do it earlier.

Mr TINK:

Q: On the question of whistleblowers. The public accounts committee did a report on internal audit. In trying to explain something of what it is about, I have just come up with the short point that if internal audit works effectively and if there are people charged internally with looking in conjunction with management at problem areas to bring them to management earlier, then there is less likely to be an environment in which whistleblowers legislation is necessary. I mean, I characterise it this way, in an ideal world if an internal audit is working, ideally, you would not need whistleblowers legislation. I am just asking you to comment on that?

A: I nearly agree but I broaden it somewhat. An aspect of modern good management is to respect your people and listen to your people. If management, of which internal audit is merely a part, is working properly, then there would not be any such need. If you like you could put it this way: making some allowance for cranks, whose conduct it is difficult to prophesy about, some measure of the health of an organisation can be divined from the frequency with which people within it see the need to go outside. I would not have thought that we have fallen from grace if a couple of people within the Commission did something like that within the next six months but you can never tell. It is rudimentary but it provides something of a mirror.

Interestingly enough I heard on the radio the other morning a gentleman from Boeing being interviewed. They have just run off their one-thousandth 747 and the interviewer, having heard about whistleblower protection from what was in the media here, asked a question about it. This seemed to stray away from the topic of the one-thousandth plane, but he gave, I suppose a stock response but the right response. "What do you do to prevent this happening, that is, to solve the problem". "We listen to our people". "What about when they have gone outside". "We still listen to them". Now, that is the right attitude. It is not always the easiest thing to do but you have got to try awfully hard. I am sorry that was a bit longwinded. I am agreeing with you but I take it beyond the internal audit. It is really a management thing.

Mr GAUDRY :

Q: Does the Commission have what you might consider a parking area for matters that perhaps come up in association with hearings which might later go to an investigation stage?

A: Yes.

Q: What mechanism exists for a review of those matters?

A: The obvious example is Milloo. Everything which was police related historically and currently was run past the Milloo team to see if they had an interest in it. Some they took on board, some they wished to pend, so to speak, and that is, if you like, your parking area. There has been something like continual review, as to how far we should take matters and what should be pursued. At the moment a lot of effort is going in to preparing reports to the ORC with respect to these matters and they will all get to the ORC.

Q: So in the particular instance that I have asked, a matter where a complainant has said to me that his matter came up as part of an investigation in fact during part of a hearing, and that it was so parked, that there has not been any response back to him, so that would come up in the normal process of going before the ORC as a piece of potential investigation and then a reply?

A: Well, it should be, although his view that we have not dealt with it in the report may not be a view that we share. That is the only qualification that I can place on that. If you want to tell me what the matter was, I can look at it.

Q: I will do that outside?

A: Sure.

Mr TINK:

Q: On p 21 of the written replies I just notice there that Mr Roden attended four meetings of the total possible of 20. Did he retire early or is there some reason for that?

A: No, it was simply as I tried to explain earlier. The general practice followed, I think partly because we do not want the ORC to be overloaded with Commission people, is that I go or the appropriate Assistant Commissioner goes, but not both. I can remember I think two meetings at which Mr Roden was present when I was there, for all or part of those meetings, but generally he stood in when I was away because we do not want to become an oppressive presence. It does not indicate mere lackadaisical interest on his part at all. It would also be fair to say he was concentrating on the particular jobs he was doing.

POLICE SERVICE SECTION 11 REPORTING

Questions on Notice

Q: 8.1 Are you happy with the s11 reporting by the Police Service?

Q: 8.2 Did the breakdown in the reporting structure as revealed by the Police Committee bring about any changes? Please give details.

A: In May this year a Working Group of Commission officers was convened with the aim of developing strategies to improve compliance with the reporting requirements of s11 of the Act.

One of the strategies arising from that Working Group was to meet with selected organisations on a one-to-one basis to discuss s11 requirements, reporting arrangements and related issues. This particular strategy was to be utilised for those organisations where the Commission has "high volume contact" and it is considered crucial that timely, accurate information is received.

At the same time contact had already been made with the Police Service to review the s11 reporting processes that had been established in May 1989, in order to ensure that the needs of both organisations were being met. As this process was under way, the Working Group determined that the one-to-one strategy identified above should be "trialled" with the Police Service.

A number of meetings have now been held with both the Office of Professional Responsibility and the Internal Affairs Branch of the Police Service.

Previously the Police Service had reported matters under s11 by way of a monthly schedule and individual report. It is our understanding that the monthly schedule had to be manually compiled from a computer data base.

In April the Internal Affairs Branch introduced a new Complaints Information System for the recording and monitoring of complaints made about police officers. In the discussions between the Police Service and the Commission it was suggested and agreed that nominated Commission officers should have direct on-line access to that data base. This would ensure that immediately a complaint was registered the details would be available to the Commission. In addition, the new system generates regular reports of matters registered, which are forwarded to the Commission, replacing the previous, manually prepared schedules.

In the past there have undoubtedly been some failures. This includes an occasion earlier this year when it became evident that a matter of some significance had not

been reported to the Commission by the Police Service. I believe that this matter was identified by the "Police Committee". This matter was raised by Commission officers at a meeting with Assistant Commissioner Jarratt and has since been rectified. However, the present situation is that the Police Service appears to be making a conscientious effort to improve s11 reporting and has extended full co-operation to the Commission in this regard. The Commission is satisfied with this effort to date.

Q: 8.3 Does it cover areas other than complaints which are reported to the Ombudsman?

A: The Commission does not analyse whether matters reported by the Police Service are reported to the Ombudsman. The Commission takes the view that s11 covers a much wider field including the reporting of suspected corrupt conduct by public officials other than police officers, than the requirements under the PRAM Act.

Q: 8.4 How many s11 reports have there been from the Police in the last two years?

	1991 - 92	1992 - 93
Number of matters reported individually	18	22
Number of matters reported by schedule	2043	3005

Q: 8.5 How many of these resulted in investigations by ICAC and what flowed from these investigations?

A: Five formal investigations have resulted from Police s11 reports. It should be noted that on a number of occasions, the Commission received complaints and s11 reports from various sources, relating to the same matter. Relevant investigations and outcomes are as follows:

- Operation Seagull, the investigation into allegations concerning Richard Mochalski, the report of which was published in April 1991.
- Operation Ita, the investigation into driver licensing, the report of which was published in December 1990.
- Operation Tamba, the investigation into the release of unauthorised government information, the report of which was published in September 1992.

- Operation Wallow, the investigation into the harassment of Edgar Azzopardi, the report of which was published in December 1990.
- Operation Kirra in which the investigation was discontinued and reported to the ORC in December 1991.

In addition, it should be pointed out that in the course of two major formal investigations, Operations Koa and Milloo, the NSW Police Service provided the Commission with access to files and investigation reports having bearing on the Commission's work.

Q: 8.6 How many of these had their origin in complaints against Police?

A: As set out in the answer to question 8.3 above, the Commission does not examine matters reported by the Police Service in terms of whether those matters were also reported or reportable to the Ombudsman. Such information would not be relevant for our purposes.

Q: 8.7 How many s11 reports from the Police concerned corruption matters that were not complaints and resulted in investigations by ICAC?

A: As for question 8.6 above, the information is not relevant to the Commission and is not recorded.

Questions Without Notice

Mr HATTON:

Q: I have very serious concerns about this matter. The Police Committee has now shown quite clearly that the police can lose records when it is appropriate for them to lose records, and a huge number of records disappear, and I am talking about over 400 items off the Police Commissioner's computer. I am talking about note books. I am talking about notes, a whole range of things could not be produced which was detailed in the first report yet when I wrote to the Independent Commission Against Corruption and I asked them how does the Police Department address their obligation to report matters involving corruption, and I am told that they are to discharge this obligation, and yet from a letter of 27th May which is detailed at the end of my report, "To discharge this obligation the Police Service forward to the Commission a monthly summary of complaints and allegations against police. These summaries may contain anything up to 300 matters. The Commission examines these and takes whatever follow-up action it considers necessary. This may range from seeking further information to incorporating a particular matter into a new or existing investigation. The summaries we receive are in hard copy form and are not entered into the Commission's computer system. If and when we require such information to be electronically searched we make those requests of the Police Service".

I want the Commissioner to think about that, and members of the Commission to think about that, because it was our experience, I am talking about unanimous agreement of an all-party Committee that significant computer records were lost, and significant paperwork was lost and this department, ICAC, is relying on the Police Service advice to supply them, and in this case when they want computer back up and only involving complaints and allegations against police. Now, I put the situation to you that we now have, for 12 months, up to a period of 12 months and at various times, eleven police officers knew about drug related circumstances of a shooting of a police officer, during a time a Parliamentary Committee was sitting. That included two Assistant Commissioners, two Senior Superintendents and other officers.

There are things I cannot reveal but you would know about from the reports which are extremely worrying. There are five situation reports about the loss of marijuana, and in one case about the loss of an exhibit which was replaced as far as we are aware. The allegation is from bushland nearby, a policeman who was able to go out and pick a bit of marijuana and replace the exhibit and there are a lot of other worrying things that happen there, and the disappearance of I think of that exhibit on the second occasion, and there are some matters of at least that importance. Now, during all of that period of time, nobody - none of those eleven

police officers reported to the ICAC. There were two separate lines of reporting to the Commissioner, both failed, according to the Commissioner. There were three audits. The Commissioner said he did not know. There were five situation reports. The Commissioner said he did not know. We are told and we cannot test it and neither can you or anybody else, that Mr Cole knew, and that he did not tell the Commission.

I cannot tell you how extraordinarily concerned I am in the failure of the ICAC in this matter when in fact in 1989 the Police Service had reported matters. You have got at the middle of 8.2 on page 22, "At the same time contact had already been made with the Police Service to review the s11 reporting processes that had been established in May 1989...". Now I cannot understand how especially with the Police Force above all other government agencies, they have an obligation to report, how a situation can be allowed to develop when you are relying totally on their records, and whereby arrangement, according to Mr Lauer, if the officer at the top of the pyramid in the line of reporting or in the chain of command does not report it, there is no obligation on the officer below him to report it. Now is that the situation?

- A:** Well, I do not readily understand why it is thought that criticism of the Commission is appropriate, but in any event the position is now very different from that which then prevailed. As our answers make clear the arrangements have changed, we have now got on-line access so we are tapping straight into the Police Service data base. Also, as I mentioned earlier, we have commenced a Corruption Prevention Project, a formal project into improving internal reporting systems which should lead to further improvement. But, it is not easy for me to see how we can achieve a situation in which we can warrant that an organisation as large as the Police Service with such extensive s11 reporting obligations does that perfectly well, at all times, in relation to all matters. It would probably take all of our resources. The best we can do is improve the system. The system is now better than it was. In particular I'd expect there to be further improvements when we have done this project and got the recommendations in place.
- Q:** I understand that there is some logic, if it were your answer, that because of the volume of matters you should not have all officers reporting directly to ICAC. Is that a reason why the Head of the Department is against the responsibility rather than individual officers or am I reflecting the situation incorrectly?
- A:** I do not know because the statute is not of course ours. I suppose s11 which imposes obligations on the Chief Executive Officer or Board, assumes effective internal arrangement. If that is the assumption, it is of course a false one, because often they are not effective. We are about to help organisations improve them. In fairness to the Police Service I should say that granting something less than perfection in what you say about the particular matter, they are now being

cooperative and their performance in respect of s11 is at least a good deal better than it once was.

Q: From the letters of recent date it would appear to me that you really do not have any way of knowing just how good those reports are and how many crimes are committed within the Police Force of which you can have no knowledge, now?

A: That is right. In the same way I do not know when I am being lied to. I can make people give evidence but not speak the truth.

Q: What I want to get to is let us take the case of Mr Cole, and it is well known he is, in his absence, carrying the can for not reporting it to the Commissioner. That is what we are asked to believe. Therefore, s11 for the whole of the Department is responsible for internal security and intelligence and so on within the force, dependent on one officer, reporting it to you. Or even a Commissioner does not know, according to the Commissioner, how do you sensibly improve such a structure and is that satisfactory?

A: You can sensibly improve such a structure or we all can by getting internal reporting up to world best practice standards. That is what we will be aiming to do.

Q: But would not despite the fact that it would possibly create duplication which can be solved by a computer mechanism I would suggest, in the case of the Police Department should not the obligation be at least on every officer or on officers of sergeant or inspector level rather than departmental heads only, because, knowing what we do know, about the climate that occurs in some sections of the Police Force, there is every reason why the head of the Department may well not want to report?

A: You could do that, and I suppose it is worth considering. The obvious difficulty is that it is likely to lead to a lot of duplication. There is already heavy duplication with the Police Service reports and the Ombudsman reports. Whether we want to add another wheel on the bicycle which is reports from individual officers would be a matter requiring careful thought.

Q: In the answer to a letter it says "obligation to report when a summary of some complaints and allegations against police". Would you not concede that in a situation we will say at a place like Frenchs Forest where exhibits disappear, but the allegation was not against police officers, there should be some mechanism whereby at least the disappearance of the exhibits in this case or some other circumstance which does not involve actual reporting, and therefore gives the officer concerned an out, he could say - I do have to report that because there is no complaint against the police officer, but he knows, that exhibits disappeared on a couple of occasions?

A: That is one of the points we are making in our response. The obligation to report under s11 is a different obligation than the obligation to report under the PRAM Act or its modern version because the latter is based upon there being documents that answer the relevant description. The obligation under s11 is based upon existing circumstances which gives rise to a reasonable suspicion, it is not document driven. It is in that sense broader. This is exactly as it should be, because there is some artificiality so far as the Police Complaints Scheme is concerned.

Q: So what is the current system. That it is the head of the Department that has to respond?

A: That is the statutory obligation. The Head of the Department can of course delegate that and has effectively delegated it within the Police Service because it is Professional Responsibility that we deal with.

Q: The number of matters reported individually as statistics referred to on page 23 were, in 1991-92, 18 and in 1992-93, 22, and the number of matters reported by Schedule were in the first year cited 2043 and in the second year cited 3005. Is it fair to say that the number of matters individually reported are so extraordinarily low within a force of 16000 officers. Perhaps because of the pyramidal system and maybe an indication that the system is not working because these officers are not encouraged by the system or by the obligation and in fact on my direct experience, punished unmercifully by their colleagues if they do blow the whistle?

A: I think you are drawing a distinction as if the small number comes from individuals and the great number from the Police Service. That is not right. The Police Service generally reports by schedule. It also sometimes brings us matters separately. You may assume matters which are thought to be of particular significance all come from the Police Service.

Q: Yes, I understand - not from individual police?

A: No.

Q: No, you do not get any from -?

A: We did but they are not included in these figures. Some police bring us complaints personally. I am not certain that is a practice that the Police Service would encourage, but we will take it from where ever it comes and we get anonymous complaints which no doubt come from police officers. We do not knock them back simply because they are public servants who do not come through their CEO.

Q: In regard to s11, has the report of the Parliamentary Committee focussed attention and caused interest or extreme interest within the ICAC, and what sort of responses do you expect to come from that or what have you set in train and in how - if you

would like to confine it to s11 or any other area you wish to cover, we see we do not have much time?

A: The whole question of police record keeping is going to loom large in the second Milloo report. I do not think I am guilty of any impropriety or prejudgment when I say that much of the evidence we have heard as to at least past practices, is alarming in the extreme. So that is a matter of grave concern and we will be pursuing it actively. So far as s11 is concerned, we have changed practices and procedures since the letters to which you have drawn attention. I mention again the projects on internal reporting systems which should help. I do not think I am able to say that the most recent report of the Parliamentary Committee which is of course only of a few days age has been fully considered, but certainly the general topic is of interest to us.

Q: Just one last question. How many investigations - in 8.5 - how many of the s11 reports from police did result in investigations by ICAC, and what flowed from these investigations, and you listed those as Operation Seagull, Operation Ita, Operation Tamba, Operation Wallow and Operation Kirra. Was any of those or a significant number of those involving drugs?

A: No.

Q: Is that significant, do you think?

A: We have not to this stage, and so far as is publicly known, been active in that area. It is an area the difficulty of which is notorious, as was demonstrated recently by "Raindrop". It is an area in which in my view we need to work with the appropriate part of the Police Service in order to obtain results because it is an area where work certainly has to be done.

Q: Would you agree that very little inroads have been made by ICAC and this is not a criticism because I really admire the work that ICAC is doing and the fact that it is a pioneering body but would you agree that in the area of drugs and in particular in the light of the first report of the Parliamentary Committee where we have highlighted so many difficulties that there has been a singular lack of activity and could that be directly related to the reporting of s11?

A: I do not think it has got to do with s11. It needs to be remembered that the Commission does not have the charter as the drug busting body because the prime responsibility rests with the Police Service and also to a significant extent to the State Crime Commission. It is true to say that there has not been a lot of activity, in particular public activity, by the Commission in this area. It is an area to which we are going to give some attention. I said a moment ago it is my belief that that will best be done by working in combination with the appropriate body of the Police Service.

Q: But is it not true that because drugs are a public market that corruption has to be involved in drugs, in terms of lack of effectiveness in police action. Therefore, it is an area directly involving ICAC?

A: I do not dispute that for a moment. I do not dispute that to the extent that there is police corruption in relation to drug dealing, that is an area which should be and is of concern to us. I also concede that it is an area in which we have not to this stage done much by way of effective work. I think we need to do more but I do not think it is going to be effectively done by us rushing around and becoming in some sense another Police Service. It is going to take a more structured approach and it is going to have to be done cooperatively.

Q: I completely agree but it also has to be done in two ways and would you agree, firstly, by an effective internal reporting system within the Police Force to ensure that when those small numbers, in my view, bring discredit on the force with their illicit activity, with drugs, that that works, but secondly, that you are not wholly reliant on the Police Department to ensure that information does get out of the containment that it is in at the moment?

A: I think that this topic, police and drugs, has a good deal less to do with s11 than what you are now talking about. In the nature of things, the great part of the police drugs problem such as it is, and I do not quarrel with you when you say it is a problem, probably concerns a small number of officers. A great part of them would not be the subject of any complaints in any event.

Q: Why is that?

A: Because there will be contentment on both sides. That is the nature of corruption. When a bribe is paid you do not get a complaint unless somebody finds God or there is a renegeing on the deal, or unbeknown there is a witness. The parties are happy. That is why corruption is so tough. In most corruption transactions there is contentment. It might be surly contentment, but there is contentment because they both get what they want.

Q: This ignores the police working together, and if we are a group of police here, and some number of our colleagues are known to be involved, we have an obligation to report and the fact that we are involved in the police culture and we do not means that s11 is not working?

Q: I agree with that. It is still the case that you tend not to get the information. It is still the case that no matter how a s11 regime is constructed, you are not likely to find it solves this problem. You have got to do it in other ways. Can I just add one other thing on s11. Can we look at the doughnut and not the hole. Of course there are problems in s11 reporting and in the areas we are talking about, but

thank goodness it is there. It is probably the most useful provision in the Act because most of the formal investigative work has in fact come out of s11 reports.

Mr TINK :

Q: Coming back to the PAC's internal audit report, I think it is relevant to the section on complaints and how they are taken. When the PAC was looking at internal audit in the Police Service it disturbed us that the internal auditor was reporting to the Assistant Commissioner for Professional Responsibility. S11 of the Public Finance and Audit Act says there should be a reporting line to the CEO. In fairness to the police I think the audit manager did have access to the Commissioner but the reporting line of the annual report was clear. It was to the Assistant Commissioner for Professional Responsibility and very soon after we saw him, he was before the ICAC on the basis that it was suggested that matters that should have gone to the ombudsman were not reported by the Assistant Commissioner to him.

We actually made a strong suggestion that the Police internal audit reporting line ought be clarified, and that the Commissioner personally must be and must be seen to be responsible for the internal audit unit. I get comfort from the fact that the internal audit unit is civilian. However, most importantly we believe that because the Police Force has a Board of civilians external to service, they can form an audit Committee such that if the internal auditor has a problem with the Commissioner he can go to the audit committee. In that sense, you develop some level of comfort, with external oversight. The relevance is that it comes back to Mr Hatton's point about s11 complaints under the ICAC Act in relation to the Commissioner's responsibility to report complaints to ICAC which ought to be a priority item for internal audit.

If there are any problems anywhere they will hopefully be found by one of the three levels of cross checking up to a civilian board of hopefully reasonably independent people. Just on that point, we found that the auditing of police complaints on the internal audit schedule of things to do in the Police Service was in fact a low priority and that bothers us in the whole context of the problems we have just been talking about. But I would just like your views on that, whether or not that is any sort of suggestion for some change that might help to give more comfort to s11 complaints under your Act?

A: Speaking not about the Police Service but more broadly, it is desirable that the internal audit reporting should be not only to the CEO. What is critical is that internal audit should have the capacity to go either to the chief executive or elsewhere. The elsewhere being important if the chief executive is off.

Q: That is why we say the external civilian boards?

A: I understand that. I cannot otherwise comment. What you say seems to make general sense.

Q: When you say chief executive, do you identify Commissioner or the Head of Ministry?

A: The Commisioner is the chief executive of the Police Service.

- 9 -
PUBLIC HEARINGS

Questions on Notice

Q: 9.1 After five years do you agree that the end of ICAC as an effective anti-corruption organisation more probably than not, rests on its public inquiry powers? If not, why and if yes, why?

A: The ICAC performs its function of minimising corruption in the New South Wales public sector by advising on corruption prevention strategies, educating the community and investigating and exposing corrupt conduct. While the public hearings held in aid of its investigation function often receive the most publicity, its effectiveness is achieved through the three approaches mentioned. Exposure is important in both informing the community and encouraging those with information to come forward. Of equal significance to the long term fight against corruption is educating the community and putting in place systems which minimise the opportunity for corruption. It remains the case that public exposure of corrupt activity is, in itself, a significant deterrent.

Q: 9.2 Do you agree that a more effective method of attaining ICAC's goals and objectives would be to adopt the Queensland CJC and/or the Hong Kong models and use the investigatory and private inquiring methods and only a public inquiry when the issue is of great public importance or when Parliament makes a reference to ICAC for such an inquiry? If not, why and if yes, why?

A: The Commission has received over 15,000 and to date it has formally investigated only sixty-six of those. Public hearings were held in aid of most but not all of those investigations. It is clear from these figures that the Commission does not undertake investigations or public hearings lightly. Before any public hearing is conducted, the matter has generally been extensively investigated. Public hearings are an important tool in exposing corruption and are only held when the matter under investigation warrants it. The use of public hearings to date has been an effective method of achieving the Commission's objectives.

Q: 9.3 Do you agree that the methods in question 9.2 would utilise ICAC's financial resources more effectively and efficiently than the distribution of such money to outside lawyers and support staff for the current public inquiry system? If not, why and if yes, why?

A: Hearings are costly. However, the establishment costs of a royal commission are avoided time and time again by the Commission being a standing body. While it may be cheaper in the short term to not hold hearings, whether they be public or private, costs cannot be the only factor taken into account. The value in exposing

corruption to the public and the associated benefits of education and obtaining further information makes public hearings an effective tool. In addition, the Commission employs general counsel and lawyers who conduct or assist in many of the hearings held. Public hearings also bring issues to the public's attention. The Commission has been materially assisted on a number of occasions by witnesses coming forward as a result of public hearings being held. The Commission experienced a considerable drop in matters brought to its attention when the Milloo hearing became private.

Q: 9.4 In the fight against corruption and corrupt conduct have public inquiries been useful or have their toll on innocent people's reputations out stripped their effect and/or been a deterrent to success? If so why and if not, why not?

A: Public hearings are essential to expose corruption and also generate a valuable source of information for the Commission. The Commission has in place measures to minimise the effect of a public hearing on people's reputations. It has been largely successful in this regard. There is no suggestion that the publicity attaching to people in ICAC investigations has been any more or less harmful to reputation than the publicity attending litigation, Royal Commissions, or other tribunal hearings and inquiries. It is generally only people about whom adverse findings are made to whom attaches any continuing bad publicity. That will occur in any forum where adverse findings are made.

Q: 9.5 For a more effective result in a public inquiry would the use of the rules of evidence and the normal criminal court practice and procedure assist to gain a prima facie level without hearsay prejudice? If not, why not and if so, why?

A: The ICAC was established because the criminal courts were perceived to be unable to effectively deal with corruption. Accordingly the Commission is not bound by rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate. In practice, its reception of hearsay evidence is extremely limited. The Commission almost never receives hearsay evidence of a nature that may cause damage to a person's reputation. It occasionally will allow hearsay evidence to be called where it is of some real evidentiary weight and may lead to the obtaining of further witnesses or other evidence.

Hearings are conducted in accordance with the principles of natural justice that have been developed by the courts over many decades. Commission hearings are subject to judicial review by the Supreme Court which will act to prevent any departure from the rules of natural justice or any departure from or misuse of the Commission's powers. So whilst the rules of evidence and normal criminal court practice and procedure do not apply strictly, the practices and procedures adopted at the Commission adopt many of the customary legal safeguards, are conducted

fairly in accordance with the rules of natural justice, and are subject to judicial review to ensure same.

The use of the rules of evidence and the practice and procedure followed by the criminal courts would likely result in a significant reduction of the effectiveness of the ICAC. It would become in effect another criminal court, and it was the limitations attendant upon such courts that were one of the reasons for the creation of the Commission.

Q: 9.6 What percentage of the ICAC budget went into the public inquiries including time and office costs by ICAC officers in the preparation and the conduct of such inquiries?

A: In 1992-93 close to 40% of the ICAC budget was spent or allocated to public inquiries. Since the Commission commenced operations on 13 March 1989 a similar proportion of recurrent operating funds have gone to public inquiries. However, accounting changes during the period result in some difficulties in making inter-period comparisons. Accordingly this figure should be regarded as approximate. The percentages include employee related and other operating costs, counsel fees and an apportionment of the general overhead costs associated with running the Commission.

Q: 9.7 Would not public inquiries be more cost effective if the full information of the allegations and/or evidence against the person affected be given to them so that they know what they have to face and so they have answers in their defence? If not, why not?

A: Corruption is by its very nature hidden and difficult to uncover. There is rarely an individual victim who is prepared to speak out. When conducting public hearings, the Commission's aim is to find out the truth and expose any corrupt conduct. It is not a court and does not find people guilty and proceed to convict and punish them. The courts have this function and accordingly it is appropriate that persons appearing before courts are aware of the charge against them.

As the Commission conducts investigations in order to discover the truth, it is often necessary to disclose little about the nature of the allegations prior to the person giving evidence. It is not unknown in the Commission's experience for witnesses to "put their heads together" or collude when they are aware of the detail of the allegations to be put to them in a hearing. It is doubtful whether hearings would in fact be shorter if all available information was put to a witness before giving evidence, but it is undoubtedly true that the Commission would be impeded in getting to the truth of a matter. When an investigation would not be prejudiced by disclosing details of the allegations before a hearing, this is done. Of course persons affected in any given inquiry are given notice of the general nature of the material to be adduced against them firstly by way of the terms of reference which

are usually attached to any summons requiring their attendance to give evidence, and secondly by the scope and purpose of the investigation being announced before evidence is called.

Questions Without Notice

Mr NAGLE :

Q: At 9.2 it says, "the Commission has received over 15,000". Does that mean 15,000 complaints?

Mr TEMBY:

A: Yes.

Q: Of which only 66 of those have been formally investigated?

A: That does not mean complaints. It means matters and includes s11.

Q: In 9.1 it reads, "It remains the case that public exposure of corrupt activity is, in itself, a significant deterrent". Is there any evidence of that statement? How does it come about? That is a bold statement?

A: I suppose the evidence is anecdotal but I think it is undoubted. It is not a particularly happy prospect to be involved, as a mere witness, in an ICAC hearing and when we become active in a new area, even from where we sit, you can feel the waves flowing out and the messages being conveyed.

Q: So that being so you say that acts as a deterrent even though, as you say in 9.3 hearings are costly?

A: Yes.

Q: And 40 percent of course goes in hearings?

A: 40 percent goes in formal investigations is more precisely what we are saying, not all go to hearings.

Q: How much actually goes on hearings?

A: I don't have that figure and it would involve guesstimation - perhaps 30 percent.

Q: Take it at 30 percent. It being 30 percent of the total budget, we are talking about nearly up to \$4 million, would it not be better for that money to be spent in regard to employing more investigators, using more telephone tapping, more enquiries, more money put into education, and that type of prevention is better than public enquiries?

- A: We do not think so. We are at this moment using resource intensive electronic surveillance methods in relation to a matter which is forthcoming, so we do that. We have got an investigative force which is not large but which is now highly effective. There are matters of judgment involved as to the resource balance, and it remains my view that in the long run corruption prevention and education will be seen to be of increasing significance, but I do not imagine there is going to be a great deal of change in the balance. The fact is that the detection of corruption and the identification of possible corruption is a very, very difficult business, and we cannot possibly go back to the days when it was seen as being a police prosecution and court function.
- Q: You agree with me that the Hong Kong ICAC on which basically your organisation is based, and the CJC does not hold public enquiries on the regular basis that you do, but the CJC does, on matters of high public importance hold public enquiries. I think since their inception they have only had two and one is progressing now, and they seem to be very effective, in trying to achieve its aims and objectives and yet of course to my knowledge and from talking with people around the world from various countries, it seems that NSW is the only state that has a public inquiry mechanism?
- A: First of all the ICAC in Hong Kong is not like us. It is best considered as a Super-Police Force. It really is for these purposes quite a different organisation. The CJC is somewhat similar. It is an organisation that has done useful work but I believe if it did more work in public it would have greater public confidence which is of such extreme importance. I can remember a report the CJC put out. It was a public report. It dealt with some funny business between the mayor of a council and a relative of his concerning a contract for mowing verges. We were told what happened but we were not told which council or who the individuals were. At the end of the day I was very anxious to know, and I cannot imagine what justification there would be for the public not knowing.

The CJC is also the organisation, it is worth bearing in mind, which decided to publish a report about abuses of a travel allowance scheme by Parliamentarians but not to name them. Now that was and is a ludicrous approach which of course failed, as history shows. It just does not work. Among other things if you try and do it in private, I mean one consequence is that the public do not know what you are doing so they do not feel you belong to them, so they do not have faith in you. The cry is "star chamber". The other consequence is that the responsible individuals do not become publicly identified which causes extraordinary speculation. It has been put to me that we should have done Milloo in private. Now that would have suited some people. It would have been easy from our viewpoint. However the effect upon the Police Service as rumour and speculation, much of it misinformation, roared around at great speed and with the fervour at which it would have, would have been severe. So far at least now everyone knows

that we are interested only in some discreet areas and a limited number of individual officers. It is known what we were doing. I think that is worthwhile.

Q: People have said some of your public inquiries have been the equivalent to show trials in the Soviet Union in the 1930s?

A: Why don't you tell me who they are and I will talk to them, because that sounds to me like group libel. You are better than that.

Q: People have said -?

A: Indeed!

Q: They have views?

A: Of course people have views and they may be wrong.

Q: Let me give you an example of a police officer that went up before you and you went through all his financial documents and all the rest of it and you brought him up and had him examined based on information from "Neddy" Smith and Henry and he came to this place and he told me about the situation with his family. His 13 year old son was having fights at school because his mates were saying his dad was a crooked cop. There was no evidence this man has done anything wrong whatsoever?

A: This is a matter of sincere regret. Whenever collateral damage is done it is a matter of genuine regret but it is no worse than what happens when somebody is charged by the police with a criminal offence of which they are objectively not guilty and for which they are acquitted.

Q: Continuing, on television I saw footage of Val Bellamy walking with "Neddy" Smith that gave the impression that he was walking up to the ICAC with "Neddy" Smith. For people who do not understand the situation, it should have indicated TV file footage. It didn't. It just had him going there, every time walking with "Neddy" Smith which was an actual court case some two or three years before that. That of course gave a false impression as to what the real situation was and as you said earlier, you cannot control what other people do, even though you try to. That is a problem, such as the situation with the Greiner affair. There were a lot of people who were extremely worried about the personal effect - and the financial effect. As I said to you once here some years ago, if you do not get them nor the jury, the bankruptcy court will. If a lot of people have been financially ruined and yet have been cleared but by the end of the day they have nothing left and there is a real concern by those people who will put themselves in a position that may bring themselves one day before ICAC, including politicians, including journalists,

including the public generally. It is a major personal and financial concern. It worries a lot of people?

A: I can understand that and it will be a fine day when we have a system whereby there is no room for such concerns, but there is no distinction you can sensibly draw between us and the criminal courts in that respect.

Q: You were not set up because criminal courts could not deal with a situation, just that the police did not seem to be able to deal with the situation and the courts can only deal with that which is brought by the police. Of course that may play an important part because you allow hearsay far in excess of what we call the Res gestae rule. The rights of persons to be heard in their own defence is paramount and is above the public right to know, but has anyone ever done a survey as to what happens to these people after they have been brought in, interrogated and publicly investigated, as to how they are now feeling about it?

A: No, we have not done such a survey. It would be difficult for us to do such a survey or anyone to do so. You hope for unbiased results. If you were going to do it you would have to do it by comparison with some other organisation, for example, the District Court in relation to criminal trials.

Q: Or Royal Commission?

A: That is right, please understand I do not pretend it is fun for the individuals concerned, particularly with respect to those who are called as witnesses but who have done nothing wrong, and of course there are some such. I do not pretend that there is not, on occasion, collateral damage. It is a matter of seeing what compensating benefits there are for those undoubted detriments. I have always said that.

Q: Only time will tell, ultimately?

A: I would like to think that even when one takes due regard of the unjustified hurt to individuals. You have to say that because a number of individuals who have been hurt, have been hurt because they have been corrupt, and very often they have admitted their corruption out of their own mouths. Now, to hear them complain about exposure is a bit odd. I would like to think that if you weighed up against the benefits the unjustified hurt, you could say confidently, yes, it is worth while. I have never understood this Committee to say otherwise. You have to see whether changes have been achieved as a result of our work. Now, the list is a very long one.

Q: The reasons that questions such as these are being asked is that you have been there for four and a half years, and are now being given an opportunity to express

views so that we can compare them at a later stage and I think that is an important part of the process.

Mr GAUDRY:

Q: Just on that, you said that it is very difficult to get an accurate statistical analysis of that matter of public exposure of corrupt activity and its deterrent effect. I am just wondering about your Public Sector Employees Survey. There were no questions on that concerning public hearings?

A: No, there were not.

Q: Is there perhaps any thought of looking at the matter of public hearings and their impact in a statistical way?

A: No, there would be no point in asking the public generally what they thought about public hearings because the answers you get would be impressionistic. You would have to ask those who had been involved. We could not conduct a survey and get a proper result. You would have to do it comparatively.

Q: Really, you are saying the deterrent effect of the public education figure is a matter of just an emotive response to the hearings?

A: No, I am sorry we are at cross purposes. It is not emotive. It is to an extent anecdotal. I come back to what I said before.

Q: I am not talking about yourself?

A: Of course not. It is the institution that matters, and the issues that matter. We will be starting a new investigation in a month or two. You will then find out what it is into, as will everyone. You may make your own judgment as to whether that has an effect beyond a sharp intake of breath in the functional areas in which we will be concerned.

Q: A matter of determining what fear we are introducing on people and a better understanding of corruption?

A: Probably a bit of both and you should not say, just because fear is a word with negative connotations, that it is necessarily useless. It is fear of gaol which is one of the reasons why what we commonly call "white collar" prosecutions are highly effective.

Q: In terms of 9.4 on page 26, you talk about "the Commission has in place measures to minimise the effect of a public hearing on people's reputations". Do those measures take into account the impact of such a hearing as such has occurred in

the Kyogle area where people were exposed at that stage perhaps to a process that they did not really understand and, arising from the Kyogle case, I know you have been all around the state, as part of the education process, is that going to likely lessen the impact of such an inquiry, were it to occur again in that area?

A: No, to the second question. I do not think it covers enough people. As to the first question, the lesson that I would draw from the Kyogle experience is that hearings away from Sydney, while valuable, are better held at large centres.

CORRUPTION PREVENTION AND PUBLIC EDUCATION

Questions on Notice

10.1 Do you agree that in its preventative function that ICAC should call upon the community to be an integral part of its organisation through community consultative advisory and public relations committees, similar to those that are effectively used by the Hong Kong ICAC? If not, why and if yes, why?

A: The Commission is aware that the Hong Kong ICAC has a Corruption Prevention Advisory Committee. The Committee reads reports of project work and acts as an accountability mechanism.

The work of the Corruption Prevention Department in the Hong Kong ICAC is undertaken in secret and its reports are made available only to the organisation to which they relate.

The general practice of the NSW ICAC is to publish its corruption prevention reports and make them freely available to the public. In finalising those reports the Commission consults with the relevant agencies to ensure findings are soundly based and recommendations are practical and capable of implementation. Internal (to the Commission) review ensures quality, reasonableness and integration of the Commission functions.

Formal monitoring of the outcomes and impacts of the corruption prevention project work serve both the interests of the relevant agency(ies) and accountability.

More broadly the Commission has recognised the government's policy enunciated in 1992 to re-orient NSW public sector agencies towards the public as customer. That policy had two main components:

- statements or guarantees of service setting out the services the customer may expect to receive and at what typical standard - the Commission published its first guarantee of service in August 1993, a copy of which can be provided.
- ensure all agencies have regularly operating and meaningful feedback mechanisms to allow input from customers - the establishment of such external feedback mechanisms is a priority in the Education Unit's 1993-94 plan.

Q: 10.2 Will television and radio commercials be produced to illustrate the problems and the solutions for corruption? If not, why not?

A: The Commission has no plans to produce television or radio commercials. The Commission considered the advantages and disadvantages of electronic advertising prior to embarking on its recent billboard campaign. The cost of mounting an effective electronic advertising campaign which would need to include significant follow-up activities, to achieve lasting benefit, is prohibitive in the light of the Commission's budget. The resources which were devoted to the recent poster campaign would not have been usefully spent if they had been devoted to the electronic media.

The Commission undertook some very limited regional radio advertising in October 1992. This was a benefit derived from participating in the Wollongong Lifestyle Expo.

Q: 10.3 **Is corruption in the public sector interwoven with private sector corruption, if so, should not Government formulate policies about combating corruption in the private sector? Could this be done through a broadening of ICAC which is properly financed? If not, why not and if so, why?**

A: Some corruption in the public sector is interwoven with private sector corruption.

The Commission's investigation and corruption prevention work has identified examples of and opportunities for corruption in the inter-actions between the two sectors. Examples include purchasing, tendering, contracting, the engagement of consultants, contracting-out, privatisation and infrastructure development.

The education and preventive work has, and will continue to assist relevant private sector individuals and organisations to understand better and respond appropriately to corruption and its effects.

Some relevant activities include:

- distribution of more than 3,000 copies of "Pitfalls or Probity; Tendering and Purchasing Case Studies" to private sector organisations which do business regularly with the government through the Commercial Services Group
- presentations to industry, professional and commercially organised conferences on corruption prevention and ethical issues in relevant subject areas
- direct involvement of private sector organisations in development of guidelines/principles related to the public/private sector interaction, e.g. Sponsorship Principles and forthcoming work on infrastructure development (as recommended by the Public Accounts Committee)

A broadening of the ICAC's areas of interest to combat corruption generally in the private sector would need to recognise the vast array of existing regulatory bodies operating at state and federal levels with general and industry specific charters. The Commission considers that it would be inappropriate for it to initiate any such broadening.

Q: 10.4 What percentage of the ICAC budget goes to corruption prevention and education of the public about corruption?

A: About 25%, including direct costs and an allocation of corporate overheads.

Q: 10.5 Has ICAC conducted any public opinion polls to gauge:

- (i) knowledge of ICAC's operation and its prevention and education function;**
- (ii) its success;**
- (iii) public understanding of ICAC's function;**
- (iv) its continuance;**
- (v) any other relevant matters.**

If so, what were the results, and if not, why not?

A: Eight rounds of public attitude surveys using telephone interviews were conducted on behalf of the Commission between February 1989 and October 1992.

Findings were reported in the 1992 Annual Report. Since that time, there were only small changes in the attitudes expressed towards corruption and levels of awareness of the Commission.

Questions Without Notice:

Mr NAGLE:

Q: I would like to say about Corruption Prevention and Public Education, I understand the cost of television and radio but it could not possibly hurt if you get the cost out for this to try and run some ads?

A: We simply cannot afford it. We would have to be given an extra amount - measured in millions not thousands, to do anything effective.

Q: I was in Hong Kong just recently and spent two days with the Hong Kong ICAC. They have an ad on where it has a young man, late 20's, with a smile, contented and a happy face and suddenly the face changes into a crocodile as he becomes corrupt. It is a very effective ad?

A: They have done good ads. There is the rotten apple with the worm ad. There is the ad where the cell door clangs shut. They are useful but they have got ten times our budget.

Q: They have a substantial budget because they go past your brief. They look into private corruption as well as public corruption. That is the only question.

Q: There was one other question. Taking you up on that issue of private corruption. Do you think there is a need through appropriate funding perhaps for a Serious Fraud Office in the State of New South Wales?

A: That is a pretty large question to handle on the run. Let me respond...

Q: Maybe you can take it on notice?

A: Let me respond to it now. I do have some views. I think the way in which this country handles major fraud is quite good by world standards but not nearly as good as it could be if some different methods and structures were put in place. Given that, a Serious Fraud Office is certainly worth thinking about.

Q: In that case can I put you on notice for the next time you are here, do you think you can give us your views on how we might go about doing that?

A: Sure.

- 11 -

**FINANCIAL ASSISTANCE FOR LEGAL
REPRESENTATION**

Questions on Notice

Q: 11.1 In the current Police inquiry did Arthur Neddy Smith and Abo Henry receive financial assistance for legal representation? If so, who granted the financial assistance for legal representation and what did it cost the taxpayers of New South Wales?

Q: 11.2 If the answer to question 11.1 is "yes",

(i) why is it necessary for two convicted felons to have legal aid; and

(ii) why could not the QC or the counsel assisting ICAC have protected them from cross-examination by lawyers representing Police Officers and other people so affected? And why has no other persons so affected in an inquiry been granted such aid?

A: Coode Scott & Corry, solicitors provided legal advice to Arthur Stanley Smith and Graham John Henry throughout the investigation. The Commission paid for a partner of that firm to provide legal advice to Smith and Henry prior to hearings being held. The sum of \$39,079 was paid to that firm of solicitors by the Commission covering the period March 1991 to March 1992.

The Commission granted this financial assistance for legal advice because of the serious and widespread nature of the allegations made by Smith and Henry against police officers and others. It believed that the public interest was served by investigating those allegations and that independent advice to them was necessary in order to facilitate fair investigations.

In addition, the Commission's interest in investigating and reporting on the allegations is of a different nature to the interests of Smith and Henry. We want to get to the truth, they want to make sure their positions are protected. It would be inappropriate for the Commission to seek to protect the position of Smith and Henry as informers in the hearing as that might result in a conflict between its legitimate interest of getting to the truth and the personal interests of Smith and Henry.

For example, Smith and Henry were concerned to understand and confine themselves to giving evidence within the terms of the indemnity, a matter on which

they needed legal advice. In addition, their solicitor advised them and liaised with the Commission on their behalf concerning issues of personal security.

The circumstances surrounding the Commission providing financial assistance for legal advice to Smith and Henry have not arisen previously.

Smith and Henry were granted assistance by the Attorney-General pursuant to s52 ICAC Act. The amounts paid are not known. The way in which the Attorney-General reached his decision under statute is a matter for him.

It is not known to whom else "legal aid" has been granted by the Attorney-General.

Questions Without Notice

CHAIRMAN:

Q: In relation to that next section, that relates to payments made for the legal expenses of Smith and Henry. I am just wondering on what authority were those payments of \$39,000 made?

A: I suppose they were simply investigation expenses. I think there can be no doubt as to our statutory capacity to make those payments. We can do all things necessary to perform our function. The fact is that Smith and Henry said they were prepared to talk to us but before they did they wanted legal advice. They had to be provided. We had to pay for it. It was necessary.

Q: So there was a statutory provision that allows that?

A: I think there can be no doubt as to our statutory standing to do everything necessary to perform our function.

Mr NAGLE:

Q: It is under - I forget what section that says that but - it is s52?

A: We were not granting the assistance under s52.

Q: So did the Attorney-General grant that assistance?

A: No, we made that payment. We were at the point where the Attorney-General wasn't involved because there was no hearing in prospect.

Mr GAUDRY:

Q: You were in pursuit of the investigation?

A: That is right. We tried to explain in this response, we did not have the same aims as Smith and Henry. We wanted far more than what they, as it turned out, wanted to give us.

Mr NAGLE:

Q: I misunderstood the answer.

A: We did that.

Q: That would have been under section 19, Incidental Powers, and still it is nearly \$40,000 out of your budget?

A: Yes.

Q: And your budget is \$12.7 million I am not overly convinced that your own senior counsel assisting you, if it was a senior counsel, could not have protected their interests?

A: I would have had the gravest concern about propriety had we done that. The only condition we imposed was that the lawyer they chose had to be acceptable to us because discretion was most important at the time. In the end we suggested a lawyer but he became their lawyer. He could not be our lawyer because inevitably down the track there would be allegations we had abused the process in our dealings with them. As we know that has now happened. That was always going to happen. It would have been much worse if we had been trying to give them legal advice.

Ms BURNSWOODS:

Q: Do you see any problems, actual or potential, that as you have just explained, the Commission has paid for legal advice for Smith and Henry and had some say in who they used and then on p 33 you mention, presumably later, the assistance they gained from the Attorney-General pursuant to s 52?

A: My answer is I do not know how else we could have done it.

Q: I was not thinking about that, but the situation where you and the Attorney-General are in ignorance, if you like, of what the other is doing in relation to legal advice for the same people, over an extended period of time?

A: That is not really right. When there was going to be a hearing, we were involved in the matter being passed over to the Attorney-General because then he should step in. So it is not the case that there were two hands not knowing what the other was doing.

Q: It is more than one?

A: They were sequential steps.

Q: Six months before the hearing was actually started?

A: Twelve months before hearings they talked to us. We wanted statements. They said, "Hold hard, before we sign up we are going to have to be looked after".

Approximately twelve months after, there is a hearing in progress. Then it is a matter for the Attorney-General.

Q: In your last sentence you say, "It is not known to whom else 'legal aid' has been granted by the Attorney-General". That situation of ignorance would apply to you in relation to other matters besides Milloo?

A: Yes.

Q: It sounds as if it is saying that the government looked at the s52 prepared by this Commission because it involved the Attorney-General at least seeking some information from you before the decision is made.

Mr NAGLE:

Q: I will read you something and if it is quite obviously wrong I withdraw it but I just want to get your view on it "Legal aid is granted by the Legal Aid Commission of NSW under the provisions of the Legal Aid Commission Act. The Attorney-General does not therefore grant legal aid to any person". That cannot be right, if that is the situation under s52?

A: Well, if you go to p 33, in the last sentence we put "legal aid" in quotes because that is the way the question was asked, as I recollect it, "to convicted felons". We simply followed that question. If you want to consider Legal Aid as that which the Legal Aid Commission gives, and s52 assistance as being just that granted by the Attorney-General then I have got no difficulty with that. The Legal Aid Commission could grant aid but as far as I know has not done so. The Attorney-General has on a number of occasions granted aid but we do not know to whom and how much he has paid in these cases.

Q: When you use the word "granted assistance by the Attorney-General" you mean that what it means is that they were given some type of legal grant for legal costs, that is Smith and Henry, to assist them during the inquiry by having legal representation?

A: As I understand it, he did grant assistance. Sometimes, because the Attorney-General comes to us seeking a spot of information we have an idea as to who might be getting legal aid, but we do not always know. Sorry, even that is not quite right. On occasions people from the Attorney-General's Department come to us seeking a spot of information about when lawyers have been in Commission hearings. That information must be predicated on there having been a s52 grant but we do not in any sense have a catalogue of those who have got it.

Ms BURNSWOODS:

Q: When you mentioned the Attorney-General seeking information from you, does the Attorney-General seek information about the nature of a hearing, or its extent, the level of complexity, or those kinds?

A: He has on occasion done so, yes, and we have provided such information as seems proper, but falling short of expressing our views, because of course we should not be involved in that process.

Q: Of making the decision, yes?

A: We provide some information on request in relation to some matters.

Q: Has the Attorney-General sought information of that kind in relation to the Collins matter?

A: Not so far as I am aware.

- 12 -
PARTY POLITICAL ASSOCIATIONS

Questions on Notice

Q: 12.1 At the hearing on 9 November 1992 Mr Mutch asked a question about the possible declaration of political associations by ICAC staff (see pp. 45-47 of the collation of Evidence). Has the Commission given any further thought to this issue since that hearing and developed any views as to whether such declarations should be made?

A: The security vetting process to date has proved adequate in protecting the Commission's interests. The Commission has not developed any further views.

Q: 12.2 Should the integrity and the credibility of ICAC be based primarily, if not totally, on its independence from outside influences? If so, why and if not, why not?

A: The Commission needs to be independent from political pressures and indeed from the government of the day. It requires independence from outside influences which might otherwise detract from the Commission's impartiality, integrity and objectivity. The Commission does not however operate in a vacuum and it, as well as its staff, as members of society are of course subject to impressions and influences derived from their backgrounds and everyday experiences. The Commission however believes that such effects are neutralised by the processes and procedures that it follows, the checks and balances within its operations, its staff selection and training programmes and the presence of accountability mechanisms. It is and should be accountable to the Parliament, and through it to the people of New South Wales.

Q: 12.3 Would it be proper, correct, fair and indeed ethical for an ICAC officer to use their position in the organisation to advance a particular political cause, be it, philosophical or ideological? If so, why and if not, why not?

A: It would be improper for an ICAC officer or indeed any public official to use their position in a public sector agency to advance a particular political cause. That would represent a clear conflict between that person's duty to his or her employer and his or her personal interests.

In addition, the Commission and its staff are required by statute to act in the public interest.

The Commission's code of conduct makes particular reference to the obligations of each officer to ensure that they do not improperly use the name of the Commission or their role with the organisation either in their personal lives or alternatively by pursuing their personal philosophies or ideologies through their Commission activities.

Q: 12.4 Are there any members of political parties employed within the ICAC? If so, are these people politically active within their party organisation?

A: The Commission's vetting process is managed within the Commission's security section. All information provided by prospective applicants in support of the vetting process is done so on a confidential basis. Other than the information contained in vetting packages the Commission does not record and does not propose to record membership of political parties. Given the importance of confidentiality in the vetting process it would not be appropriate for the Commission to examine vetting documents in order to provide further information on this issue.

Q: 12.5 **If ICAC is to be independent should it be totally divorced from all political parties and other community organisations and, in particular, the bureaucracy and Parliament (except through Statute)? If not, why not?**

A: The Commission cannot effectively do its work if it is "totally divorced" from all organisations. An important function of the Commission is to advise and assist public authorities on changes in practices and procedures compatible with the effective exercise of their functions, on ways in which corrupt conduct may be eliminated and to co-operate with those authorities with a view to reducing the likelihood of the occurrence of corrupt conduct. In addition its function is to educate, advise and disseminate information to the public.

The Commission believes that for it to function effectively its staff should in fact not be atypical members of society. That is, the Commission benefits from having members of staff with a variety of different backgrounds, professionally, socially and in other ways. It is difficult to imagine how staff could be totally divorced from all such influences or memberships. Furthermore, it would be an even greater imposition than those that are already imposed upon staff.

Q: 12.6 **If a member of the committee privately and exclusively sought the view of ICAC on matters under consideration by the ICAC Parliamentary Committee would that person be given such a briefing or would ICAC refer that member to the committee of the whole for such discussions?**

A: See answer to 12.8.

Q: 12.7 **Has any officer of ICAC ever given (in person or by telephone) a private**

and/or exclusive briefing or instruction, or advice in relation to matters to be, or which were being, discussed by the Parliamentary ICAC Committee, if so, please advise the following:

- (i) who was it;
- (ii) when was it done;
- (iii) what topics were discussed;
- (iv) what advice, instructions or material supplied and what was said;
- (v) what was the purpose behind the private briefing etc.;
- (vi) why was not the same opportunity offered to other members of the committee?

A: Not so far as is known.

Q: 12.8 If an officer had given such a private briefing, instructions or discussions etc., would such a private briefing etc., be viewed by ICAC as an improper attempt to influence that Parliamentary member in their deliberations and therefore would be improper conduct? If not, why not?

A: The Commission believes that the Parliamentary Joint Committee plays an important role in ensuring the Commission's accountability to Parliament and the community. It has always strived to assist the Committee in carrying out its functions, by providing information and, where requested, advice. The Commission would also endeavour to assist members of the Committee if information or advice were requested.

The Commission would not encourage its staff to provide private briefings to members of the Committee. However, this should be distinguished from answering questions concerning factual matters, which happens from time to time.

Questions Without Notice

Mr NAGLE:

Q: On 12.2 it says the Commission needs objectivity. If that is the same, and the objectivity, it would be wrong, would it not, that a person who belongs to a political party and indeed who is very active within that political party becomes an important officer in the work that you do, there has to be a conflict of interest, surely?

A: I don't think "has to" is right because it may depend on the work the Commission officer does. Yes, that is my response. I would dispute "has to".

Q: Many years ago I applied for a position with the Department of Supplies as a security officer, when I was with the Commonwealth Public Service, and they asked me was I a member of a political party and I said "Yes, I was". It was only to do with security in the Department of Supplies, and I got the job on the condition that I resign from the party, which I refused to do. The fact of the matter is that your organisation is much more sensitive politically?

A: I must say that I find their condition to be a surprising one and I would be surprised if it would be imposed as a matter of course or at all today. I really would. Of course, we are more sensitive. Can I say this. Within the Commission there is, I am sure, a range of political views. I could not tell you how the majority of our people vote at elections. I just do not know, and I do not want to know. I am sure there is a range of political views and political attitudes and some who are not politically aligned in any way. But if anyone within the Commission said to a colleague, "We ought to do this because it will help the Liberal Party or the Labor Party", they would be slaughtered. It is so far from Commission ethos that they simply would not get away with it. There are internal checks and balances that apply simply because of the dynamics of the place. It is part of our approach to be fair, dispassionate and apolitical. And you just would not get away with it. I would not get away with it - if it was thought that you were driven by some agenda particularly a party political agenda, you would get slaughtered.

Q: Those questions do not relate to people, as to how they vote or their political philosophies - it relates to membership of various political parties and their activities. You have dealt with the matter relating to the former Premier of the State. You have an inquiry in regard to the Treasurer. It does seem that you have got to be seen - and you must be - impartial, and the assessment of having political activists in your organisation could cause your own credibility to be damaged?

A: You say that. I do not know that that is right. If you want to give me a name, later, I am prepared to look at that, of course.

Q: I intend to do that.

A: You say that. I do not know that it is right, but let me say this, that it depends very much on where the individual works, and I do not think I kid myself when I say that the public has a high degree of confidence in us as an impartial body.

Q: Two names were given to me, one person, the evidence is nil as far as I am concerned, and that person will not be named. The other person, the evidence is at least prima facie and so much so that there is a booklet that has been credited to this person - - that credits this person in a 17 page document about the Enmore conspiracy. The matter of Harrison and those people in the Enmore conspiracy, and the person that is supposed to be an ICAC officer who is supposed to be an employee of your organisation. I do not know that, so I am told.

Mr HATTON:

Q: Point of order. I do not think this is the place to really canvass "So I am told", "This might be", and so on.

Mr MUTCH:

Q: Since my name appears on the first question I just want to make it known that I was not associated with the drafting of the remainder of the questions. My concern at the time, as I read the initial question about declaration of pecuniary interest in political associations was really to look at assistance procedures, ways that we can improve the conception and perception in the public mind of the ICAC. When I was up in Queensland I asked whether the senior officers had to make that same declaration as the CJC Commissioners about their political association and they said they did not but they would not mind. That is why I put this question really to senior officers of the ICAC. I feel it would probably be appropriate for senior officers but particularly those who are involved in staff selection and appointments, and secondly, those involved in relation to advising you who would be an appropriate officer for a particular investigation. I would have thought that it would probably improve the perception of the ICAC if those officers just at that level gave a similar declaration as to the CJC Commissioners in Queensland?

A: That would be a very large undertaking because the number of officers involved in staff selection is deliberately kept wide. A third of the Commission - easily a third of the Commission - has sat on Selection Committees. If we had the same little clique of four people doing the staff selection, you would have something to worry about. You broaden who does the selecting and you consciously try to draw in as wide a pool as possible to lessen the risk. That risk is pretty low. No that might be misconstrued. It is precisely zero. It could not happen, and has not happened. Let me indicate in case there be any doubt we are a staunchly apolitical organisation, and I believe the public know that.

Mr GAUDRY:

Q: That is in operation. People may have obviously political philosophies which do not carry through, necessarily, in the operations of the ICAC. You would not say that the people in there did not have political philosophies?

A: I am talking about the organisation, there may well be those who have views. The point we are trying to make is we should not be atypical. We aren't meant to be atypical. We are meant to serve the people.

- 13 -
ICAC ANNUAL REPORT 1993

CHAIRMAN:

- Q:** I want to ask a few questions about the Annual Report. It might not be necessary to go to the reference but I will refer to the page numbers. Page 2, are summary reports under consideration?
- A:** Yes, summary reports are under consideration. In relation to Milloo we might decide to present a summary report.
- Q:** Page 4, does the ICAC intend to have seminars on future reports?
- A:** Where necessary yes, but I cannot say it will be done always or even most of the time.
- Q:** Only when appropriate?
- A:** Yes, it was a useful exercise in that case. Incidentally I and another Commission officer have been asked to give talks about Tamba, as we call it, in numbers of places including an international conference and it aroused extraordinary interest. It has never happened before. They all know it is happening everywhere in the world. One of our people is going to New Zealand to give a talk. I gave a talk a month ago in Queensland. The report has been sent world wide. There has been tremendous interest in it.
- Q:** Page 19, reference is made to two cases in addition to the Cornwall matter. Could more information be provided on those cases and transcript made available?
- A:** I can do it now. The matters were Aristedemou in which there was a judgment adverse to the individual, and Moppett, which was resolved by way of withdrawal or apology, or both. They are the two matters. You know about them. We talked about them before now.
- Q:** Page 38, reference is made to Mr McLellan's appointment as an Assistant Commissioner for one year. Is there currently an Assistant Commissioner in place who can deputise for you?
- A:** Arrangements as appropriate are made on occasions when I am not here. I am going to be away for nine days, I think six working days, at the end of November. Mr Holland is on the premises and he has a general delegation, so he can cover that absence, otherwise I am covered by Mr McLellan. Mr Holland and Mr

McLellan have got the widest delegations and can, if necessary, use them otherwise than in relation to matters they are respectively handling.

Q: On page 41 reference is made to a number of changes in senior management during 1991-93. I am just wondering if you are concerned about the number of senior managers who have left?

A: No, I think that is really a result of the maturing process. At a certain stage it was time for them to move on. It happened to be after three or four years. We have got a solid team now and I expect one change in the next six months, and one change in the following six months. There will be some turnover.

Q: So the next annual report will not reflect such?

A: I think it is unlikely to.

Q: Page 44, reference is made to recommendations by the Auditor-General for improving internal audit controls. What was the the nature of these recommendations made by the Auditor-General?

A: I would have to take it on notice. But I can say that they were - I am sure they were by any standards minor matters. Having said that, does the Committee want to know more?

Q: I do not think so. If they are minor matters. Page 45 similar reference to an internal audit of the ICAC?

A: Exactly the same comment, Mr Chairman. Minor matters I am assured, by any standard.

Q: I also note on page 68 the organisational chart notes that the position of Operations Director is vacant. Is it intended that that position be filled?

A: No, I think it is more likely we will get rid of it.

Q: If I could go back to the question that I asked in relation to page 19 and I should perhaps have gone to the reference because I think we are at cross purposes. The reference there "the Commission issued 2 summonses against 2 individuals under s100 of the ICAC Act. The individuals and a third person were called upon to show cause as to why they should not be dealt with for contempt of the Commission. One, the Cornwall matter proceeded to a hearing before the Supreme Court. The other two matters did not proceed after the individuals explanations to the Commission". ?

A: I am sorry, we were at cross purposes. The fault is mine. I should have read the report. Those two other matters were witnesses in Milloo, who it appeared had misbehaved themselves. I could, if the Committee wished, provide more information. The matters were not taken further. You might think on that basis it did not matter greatly. It did not go to the Supreme Court.

Q: There would be a transcript of the record?

A: There is certainly a transcript.

Mr NAGLE:

Q: You have made a number of speeches to various people, may the Committee just have a copy of those speeches that you have made over the last 12 months?

A: We can provide copies of speeches or speech notes.

- 14 -
MISCELLANEOUS

Mr NAGLE:

Q: I put it to you that it would be improper, would it not, for an officer of your organisation who in one way was not able to obtain a document to say to a person "I know you cannot give me the document and I know I cannot get it this way so what we will do is for you to leave the document on the table and we will get a warrant and raid you, take the documents off your desk". Now, is that a proper way, if it did occur, for an officer of ICAC to get hold of documentation. There seems to be ways and means to get documentation rather than that type of method?

A: I don't know. I am not sure. I would need to have articulated what is thought to be improper. I just do not know.

Q: It is not the usual way your organisation would work, is it?

A: I do not know that either. I do not think so, but I do not know.

* * * * *

Mr HATTON:

Q: In the Court of Appeal in the Metherell matter the ICAC counsel presented two written submissions to the Court of Appeal. Part 12 of the primary submission clarified that no attempt was made to carry out proper merit selection. If that is so, then the Public Sector Management Act had been broken. Did the ICAC counsel make that submission to the court, and did it do so with ICAC's instructions and if so, what is ICAC's view now and follow-up action?

A: Mr Chairman, this topic has been the subject of quite considerable correspondence between Mr Hatton and the Commission. As he will well understand, I could not possibly give any sort of responsible reply on the run. If the Committee, and I might stress, if the Committee wants this matter pursued, as a Committee, then I am happy to answer such questions as the Committee sees fit to put to me. I do not think, as I said to Mr Hatton, it is a matter which is going to, if pursued, produce any fruitful results. But of course, subject to the considered views of the Committee, if you want more from us, we would provide it, but I could not do it from here.

Q: I just want to correct one thing which is of no consequence to me but maybe to others. That is the questions were made on behalf of a private individual, Mr Hilton Jones, who happens to be a volunteer researcher for me, but also acting entirely on his own behalf?

A: I said correspondence between Mr Hatton and the Commission. It may have been with Mr Hilton Jones.

Q: I just want to clarify that point, but it is of some significance?

A: If the Committee wanted to pursue it, it could get the correspondence from Mr Hatton. I have got a strong view it is not a matter which, if pursued, would lead to a fruitful result, but if the Committee wishes an answer we will provide them.

Q: I accept that.

* * * * *

Mr HATTON:

Q: Would you like to express your views - seeing you will be leaving early next year, on whether it would be useful for the government to appoint your successor with a change over period of say a month or something so that that person can familiarise himself with the job, or give him some other guidance in that regard?

A: I think it would be desirable there should be a period when we are both on the premises. I think it is probably desirable that the period not be too long, two-headed beasts do not work too well. I do not know if a month is right, but something like that.

Q: Would you like to give further consideration to that and make it known, not through this Committee. It is probably one of the most crucial appointments that will ever be made. This Commission will be involved tangentially but it is a matter between you and the government but it is an important matter?

A: You may be assured that aspect will be discussed with the government.