



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, 04 MARCH 1994
PARLIAMENT HOUSE, SYDNEY***

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

MEMBERS

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

STAFF

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

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 04 March 1994 was the sixth such public session the current Committee has conducted with Mr Temby. As Mr Temby's term came to an end on 13 March 1994 this was the last hearing with him as Commissioner of the ICAC.

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:

Today's hearing is one of a series of six monthly public hearings that the Committee conducts with the Commissioner pursuant to its functions under the Independent Commission Against Corruption Act to monitor and review the exercise by ICAC and its functions. However, today will also be the Committee's final hearing with Mr Temby as Commissioner because his term of office will shortly end. As with previous hearings, written questions on notice were forwarded to the ICAC prior to the hearing. The ICAC has provided written answers to those questions. I table those questions and answers.

The areas covered in those questions are general updates—briefings, issues arising from previous hearings, general issues, five-year overview, the Murphy article, indemnities, the media, the ICAC's corporate plan 1993-95, Operations Review Committee, public hearings, corruption prevention and public education, the *Collins v. Ryan* report, and miscellaneous matters.

Before the proceedings commence, is there anything you would like to say?

MR TEMBY'S OPENING STATEMENT

Mr TEMBY:

Thank you. This is the last occasion on which I will have the opportunity to appear before the parliamentary Committee in my capacity as the ICAC Commissioner. I must say that it has been a privilege to fill that position, which I leave on Friday of next week. The most notable event that has occurred in the last six months is the publication of the first report on the commission's investigation into the relationships between police and criminals. That report essentially contained findings against individuals and details of the segments dealt with in the hearings. In my view, the second report will be the more important document. It should be made public before the end of March.

That report will contain discussion on policy issues raised in the investigation. I would hope that all concerned will await the publication of that report and examine it before making any further judgments concerning the Police Service and, indeed, before embarking upon any particular course of action. That investigation has been the largest and most difficult conducted by the commission. Notwithstanding that it has been, at times, painful for the Police Service, I think most would agree that it has been a successful investigation which will result in positive benefits to the service and to the community. Its success cannot be measured yet or in the course of the next few weeks or, indeed, few months. The degree of success will need to be calculated a year or two from now.

As a result of the investigation, the Police Service has implemented a series of changes, and more are to come. The most important of those in immediate prospect is the publication of a new plan for the management of criminal informants, which will represent an enormous step forward as against the quite rudimentary control methods that are presently in place. Of course, to get the plan is one thing, to see it successfully implemented is another—that is why I say it will take time to work out the measure of success. It is hoped that that plan will be published within the next week or so.

Another matter I would like to touch on is the public attitude survey recently conducted by the commission and made the subject of some comment earlier this week. To do its job properly the commission regards as vital the collation of data about the public's beliefs and attitudes about corruption and, at a secondary level, about the commission. To obtain this information we engaged the Roy Morgan Research Centre to conduct a survey—They simply carried out the survey work. The design of the survey was entirely by our research unit. There were 500 telephone interviews conducted in late November, which is a good sample. I would like to table a report of that survey, copies of which have been made available (*Appendix One*).

The survey reveals that more than 90 per cent of the community believes corruption in the New South Wales public sector is a problem, which is to say that consciousness of the problem area is high; 84 per cent disagreed that most public sector corruption is too trivial to bother reporting, which is to say it is not just a problem of which people are conscious but it is seen as being a serious problem; and 68 per cent believe that such matters should be reported because something can be done about them. Perhaps the most interesting result relates to that part of the survey which sought to identify public views as to the consequences of corruption, which is something we had not measured previously.

I found it intriguing that at the top of the list of perceived consequences were disillusionment and loss of confidence in public authorities. That was rated as the worst perceived effect of corruption, followed by financial cost, followed by the encouragement that such behaviour gives the wider community to act in a corrupt fashion. That third item is very close to the first item. Put them together and they are a very significant response and by a long way the most important of the perceived effects. Disillusionment, loss of respect in authorities, encouragement given to the general community by its leaders, if they behave badly, to the community behaving badly, and at a secondary level the financial cost aspects, are seen as being consequences. I found that intriguing. It is interesting that 59 per cent of those interviewed disagreed with the proposition that for conduct to be corrupt it must be illegal. It is of passing interest but not, I think, surprising that 95 per cent of those surveyed had heard of the ICAC. Far from despairing about the level of corruption, more than two-thirds of those surveyed believed something would be done about the problem.

The third area I want to mention concerns our guidelines to public authorities concerning reporting under section 11 of the Independent Commission Against Corruption Act (*Appendix Two*). We have prepared a fresh set of guidelines and just recently distributed them to over 300 government agencies. That is part of what will be a continuing program over a period. The guidelines have been prepared following a consultative process both within the commission and with a sample of external agencies. The purpose is not only to provide instructions regarding what type of matters should be reported, but also to suggest that organisations develop and initiate adequate internal reporting systems, without which these matters will not rise to the top and be reported.

The commission has attempted to give the guidelines an informative and instructive tone rather than one which might be described as prescriptive, and it is more client focused than previous documents. We have provided contact information and we have offered information seminars if there is a sufficient level of interest. In summary, I would say that compliance with section 11 as we perceive it is better now than it has been at any time in the past, not yet as good as it should be, and it probably never will be because there must be a natural disinclination to comply with section 11. The efforts are continuing. This is the most recent of them. It is likely to be more successful than previous efforts. Thank you, Mr Chairman. That is all I have by way of opening.

- 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 commenced public hearings on 29 November 1993 in its investigation into relationships between developers and councillors and officers of Randwick City Council. Those hearings continued until 7 December 1993 and resumed on 8 February this year. It is expected that hearings will be completed in April this year and the investigation report then prepared by Assistant Commissioner Mant.

Q: 1.2 the Commission's corruption prevention work;

A: Projects which were completed or achieved significant milestones in the last 6 months:

. Management of Criminal Investigations - a discussion paper published in October after joint work with the NSW Police Service, made recommendations for significant improvements with respect to:

- work management
- investigation priorities
- brief handling and prosecutions
- records management, and
- management and supervision

6 discussion groups were organised with police covering all regions and groups with other relevant people, and 23 submissions were received. Action plans focussed on achieving best practice in management of criminal investigations are being developed by the Police Service with assistance from the Commission to implement major changes in this area.

- . Sponsorship Guidelines - published in November.
- . "Trips and Traps" - a report on improving travel payments systems in the New South Wales public sector; published in February.

Forthcoming project reports and other project outputs include:

- . recommendations to improve accountability for government grants (to be released this month).
- . reports on work monitoring the responses to earlier corruption prevention work on
 - cash handling in hospitals; and
 - hiring of common road construction and other heavy equipment by state agencies and local government.
- . participation with the Office of Public Management (OPM) in training workshops to assist agencies implement the Auditor- General's/OPM Fraud and Corruption Prevention Manual.

Regional seminar series - see 1.3 below.

Advice work continues with a large number of agencies across a wide range of issues.

Q: 1.3 the Commission's public education work;

A: The Commission's education activities have been affected by the temporary diminution of staff resources. A recruitment campaign is under way. Activities planned have been refocussed to address identified audiences, and collaborative programs involving Education and Corruption Prevention have been developed.

Those initiatives completed in the period under review are listed below:

National Field Days

On 16 to 18 November the Commission participated in the National Field Days, an event staged at Borenore near Orange to promote the agribusiness industry. As a major regional event, the Field Days attracted the broad community attendance with government departments and educational institutions contributing. An attendance of 57,000 people was recorded and over the three days the ICAC marquee was well attended.

Regional Seminars

Three joint Education/Corruption Prevention Regional Seminar for public servants have been held. Some 71 officers representing 33 Departments attended. Three further such joint Regional Seminars are to be held in the current financial year.

Video Competition

The Commission's first video competition was judged on 24 November 1993 at the AFI Cinema Paddington with a screening of shortlisted entries and the announcement of the winning entry - Ms Niski's *Vindication*.

The competition, which engaged future film and documentary makers in an examination of the issues of corruption, was launched September 1992 and entries were canvassed from all institutions specialising in film and media. Nine entries resulted and were judged by a panel comprising Stuart Cunningham, Phillip Adams, Annette Shun-Wah, Sandra Levy and Paul Seshold.

Speaking Engagements

Commission staff undertook speaking engagements which included an SES Orientation Program, professional association events (RIPAA and CPA), IIR conferences, schools and community and special interest groups. Contributions to training sessions were conducted at the request of the Police Academy and the NSW Ombudsman.

Publications

The publications production schedule for the last six months has been very substantial. The Unit has produced and distributed six reports and three other publications.

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

A: The number of staff in the Research Unit remains at two.

The Research Unit's study of NSW public sector employees' understanding of corruption has now been completed. A report entitled "Unravelling Corruption: A Public Sector Perspective" is presently being prepared for publication in mid to late March. The report is a long and detailed document. It is expected that shorter more targeted publications based upon the results of the study will also be released, to increase the accessibility of the findings to a larger audience.

A community attitude survey was also designed by the Research Unit, in order to gauge public understanding about corruption as well as the public's knowledge of and attitudes to the ICAC. The Commission engaged Roy Morgan Research Centre to undertake a telephone survey of a random sample of adults from urban and rural New South Wales, under the supervision of the unit. A report detailing the findings of this study is being provided to the PJC today.

The Research Unit continues to support the work of others within the Commission who are undertaking their own research or evaluation projects.

Q: 1.5 prosecutions arising from Commission investigations and convictions, (ie. an update of the table provided to PJC on 15 October 1993)

A: Two tables are attached (*Appendix Three*).

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

<u>OPERATING STATEMENT</u>	<u>YTD DECEMBER</u>
	\$'000
Expenses	
Employee related	3,894
Other operating expenses	1,828
Depreciation	664
Fees to legal practitioners	390
	<hr/> 6,776
Revenue	38
	<hr/>
Net Cost of Services	<u>6,738</u>
Consolidated Fund Recurrent Appropriation	<u>6,324</u>
 <u>INVESTING STATEMENT</u>	
Capital	48
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As at end December - 134

Q: 1.7 the work of the Operations Review Committee.

A: As you will recall, the PJC recently met with the ORC and discussed several issues concerning the work of the ORC.

There are four categories of report submitted to the ORC. The categories are:

Category 1: This report relates to a s10 complaint of possible corrupt conduct where it is proposed not to undertake a formal investigation.

- Category 2: This report is a means by which further material is placed before the ORC in accordance with its previous advice, usually a request for further enquiries to be made.
- Category 3: This report relates to a formal investigation by the Commission and is prepared on a quarterly basis by the Team Lawyer.
- Category 4: This report relates to a s10 complaint of possible corrupt conduct where the complaint has been with the Commission for a period of six months and it is intended that the matter remain active.

In the period July 1993 to February 1994, the number and composition of matters considered by the ORC was as follows:

Type of Report	July 1993	August 1993	Sept 1993	Nov 1993	Dec 1993	Feb 1994
Category 1	102 (70)	97 (73)	90 (64)	113 (78)	67 (48)	131 (106)
Category 2	6 (3)	25 (8)	21 (4)	28 (10)	4	9
Category 3	7 (6)	3	1	5	4	5
Category 4	13 (10)	11 (7)	5	19 (18)	12 (10)	20 (17)

The figure appearing in parenthesis denotes the number of reports considered at each meeting. Often separate but similar complaints are dealt with by way of schedule, or more than one is dealt with in the one report. This is the reason for the two figures produced.

As illustrated by the above table, the workload of the ORC has remained relatively constant over the last six months, with the members reviewing between 70 to 150 complaints each month. Generally more complaints are finalised than are received each month.

There has been no change to the composition of the ORC, with membership due to be reviewed by the Premier and/or Attorney General in March 1994.

Questions Without Notice

(1.3) - Public Education

CHAIRMAN:

Q: I refer you, Mr Temby, to 1.3. That is in relation to the stand or tent or marquee, I think it was, that the Independent Commission Against Corruption had at a national field day. I would like to ask three questions that perhaps could be dealt with at the same time. Why did ICAC decide to participate in that event? Who decided it was an appropriate event to attend? What information was disseminated by ICAC at that event?

Mr TEMBY:

A: I will provide as much information as I can, although I do not think I can answer the question fully. The commission has from the outset been anxious that it should not be perceived as just a city organisation, as so many branches of government are seen as being. We thought it was important that we should be seen as belonging to the population generally of the State, not just of the city. Consistent with that, we have done a lot of work in the country. The decision to go to that event was consistent with that approach, and no more than that. As you know, we have also had stands at the Royal Easter Show here in Sydney and on one occasion at the National Book Fair down in Darling Harbour. So we have done some similar work in the city; we have done on other occasions work in the country. The prime purpose was to go and show the flag in the country area. I cannot describe the process whereby the decision was reached. I have no doubt that it was a decision that I approved of, and I suppose in a sense I made it on recommendation, as memory serves me, from Mr Seshold, who is our executive director, who has line responsibility for the education function. I did not visit the field day held, I think, at Gunnedah.

Q: I think it was near Orange.

A: I did not visit there, so I have to work from prior experience and reports to me. Certainly on prior occasions, and I take it on this occasion, we have had a range of literature available, we have had people there anxious to talk to those who present themselves, who wish to know more about the work of the commission and, as I was informed, a high level of interest was displayed.

Q: Would it be possible to send a copy of the range of literature to the Committee? I think Committee members would be interested in seeing what is disseminated on those sorts of stalls.

A: Yes, certainly (*Appendix Seven*).

Mr TURNER:

Q: Did you have an officer on the site who could have dealt with complaints, or was it purely educational?

A: I do not think we had a complaints officer, at least at all times. Quite long experience shows that that is not the best way to use our resources. You will remember, we started sending complaints officers round the country early on. It has more of an education focus, although it is not just education officers who go. The people who go are briefed to ensure that those who might wish to make complaints are encouraged and are provided with contact telephone numbers and so on, so we hope we do not miss them.

Mr NAGLE:

Q: In regard to the national field day, if proper funding were provided would it be of any benefit to you to open up small offices in some of the country regions to give country people some access to your organisation?

A: I think, no. You should not, as a general rule, set up a branch network unless there is a very clear demonstrated need. I suspect strongly that branch offices would not prove to have a great deal to do. I doubt the justification would be there. If we were given more resources, I think we would use them elsewhere.

(1.6) - Commission's Budget

CHAIRMAN:

Q: If I could take you to 1.6, the commission's current budget and staffing position, those figures show a loss of \$414,000. Is that correct? Take the nett cost of services away from the consolidated fund recurrent appropriation, there is a shortfall of \$414,000.

A: We will have to provide further information to you because I know that we are running well within budget (*Appendix Seven*).

Q: That was going to be the next series of questions.

A: We are running well within budget. At the moment we are a little down on staff and we are running well within budget.

Q: But you can see how it appears?

A: Yes.

CHAIRMAN:

Q: If I could take you to the amount of \$3,894,000 shown as incurred on employee-related expenses, what does that term mean and what aspects are covered by it?

A: Wages and salaries plus all matters that are related thereto, including superannuation, allowance for leave entitlements, compensation entitlements and all matters of that sort. At its core it is wages, but expanded to include everything else of a financial sort relative to that topic.

Mr NAGLE:

Q: In regard to that, there is depreciation of \$664,000. That is probably referable to the \$400,000. When you take that depreciation in, because you did say you are keeping within budget—

CHAIRMAN:

Q: In relation to that amount of \$664,000 could you identify the equipment involved in that depreciation?

A: As I understand it, and we will correct this if I am not right, we depreciate plant and equipment, as any business does, according to accounting standards and that is plant and equipment of all sorts. As it ages it loses value.

Q: What sort of plant and equipment does the ICAC have?

A: A lot of computers, a large computer network—that is probably the biggest item. We have all the transcription equipment. We have quite a lot of gear in the technical and services area, covert cameras and devices for recording conversations on warrant and stuff of that sort. We have a very impressive unit that does work in that area and quite a lot of money has been spent there. That gives you some idea of the plant and equipment.

Q: Yes, it does.

Mr NAGLE:

Q: If you take the depreciation out of the operational statement it really gives you a surplus and puts you within budget.

A: That is probably right. In any event, I assure the Committee that we are travelling well within budget; we are comfortably within budget.

CHAIRMAN:

Q: An amount of \$390 000 has been paid to legal practitioners in the financial year to date. Would it be possible to get a list of who those practitioners are?

A: Certainly (*Appendix Seven*).

Q: Is there a panel from which those lawyers are selected?

A: No, there is no panel.

Q: What is the process for the appointment of those lawyers? Are advertisements placed for them?

A: On occasion we have sought expressions of interest as to possible assistant commissioners, but not as to counsel. When a particular matter arises, there are discussions between the commission's legal staff to come up with names of people who might be suitable; there is then consultation with the commissioner who will be presiding over a particular matter. That throws up a list of people who will be approached; they are then approached and checked as to availability. There are then discussions as to fees and Mr Seshold, the executive director, plays a significant role, particularly in the last stage of that process.

Q: I suppose as a former Federal Director of Public Prosecutions there are other people you would be aware of who were former employees of the Federal DPP. Is that correct?

A: Yes.

Q: Would many of those people be on that list of people?

A: There is certainly one—Stephen Rushton has appeared as counsel assisting on more than one occasion. He is a former DPP officer.

Mr TURNER:

Q: I refer to the revenue section and the \$38,000. How is that derived?

A: I think mostly fees for the sale of transcript. I do not think we have other revenue sources—and we do sell a quite a lot of transcript. It is a partial cost recovery measure, you will understand.

(1.6) - Staffing

Mr GAUDRY:

Q: Could I go back to that particular point? You mentioned in education that there has been a downturn in staff resources and you mentioned again that you are a little down on staff. Is that an unusual turnover?

A: I think in recent times there has been a bit more turnover than is normal. I think it has to do with uncertainty surrounding the change of commissioner. That is the only area that I can identify.

Q: So there may be people who are, if I can use it that way, loyal to you in terms of the commission's operation, who are taking the chance at this time to seek other employment?

A: It may be that, and you will understand that is not something that I encourage. I stress institutional rather than personal loyalty and I think we have largely achieved that. I do not want a lot of camp followers. The point I make is a slightly different one: anyone likes certainty and predictability. At the moment there is a degree of uncertainty about the commission simply because it is not known who the new commissioner will be. Once that is known, I imagine the staff situation will settle, but there has been a little more staff movement over the past few months than we are used to, particularly over the past couple of months. I think that is the reason. Not surprisingly, Mr Gaudry, it does not astonish me.

Q: Nor me, but in terms of your research unit, which has just produced quite an interesting lot of material, is it planned to expand that beyond the existing two? It seems to me it will have more and more information to deal with.

A: I do not think so. They are two very capable people, highly productive. I do not think we will need more. If they were not so good we would need more of them, but they are very good indeed and, in a sense, the unit has been running at about two and a half people because there has been a support officer who has been helping them quite considerably. There is more impressive work coming out of the research unit, which you will see within a month or so. We have done a very big survey on public servants' attitudes towards corruption, which, I think, is a world first. It is even more interesting than the material we have published to date. They have done wonderful work, but I do not think we need to make it any bigger.

ISSUES ARISING FROM PREVIOUS HEARINGS

Questions on Notice

Q: 2.1 Has the Commission finished its study of non-adversarial systems of justice? If so, could it outline the conclusions of that study.

A: The report of the Commission's study of non-adversarial systems has been delayed because of the work involved in completing the investigation into police and criminals.

It is anticipated that the report will be completed by the end of this financial year.

Q: 2.2 At the Committee's hearing on 27 March 1991 the Commissioner was asked to provide information on an article and editorial appearing in the Sun-Herald on 17 March 1991. (Collation 27 March 1991, pp.51-54.)

At that time the Commissioner thought it appropriate to make limited comment. Could the Commissioner now make a full comment on the matters raised in this article and editorial?

A: The article appearing in the Sun-Herald on 17 March 1991 to which the question refers asserts that the Commission received a complaint by former police officer Mr Harry Blackburn and subsequently conducted a secret investigation into a major underworld plot to discredit the then newly appointed Police Commissioner Mr Tony Lauer.

On 24 January 1991 the Commission did receive a written complaint from Mr Blackburn alleging investigative inaction on the part of police into the non-fatal shooting of a man in Marrickville in April 1987. However there has been no secret investigation nor have "dozens of witnesses including senior police... been summonsed to the ICAC for questioning."

Mr Blackburn's original complaint made no mention of the possible involvement of Mr Lauer. It was simply a complaint alleging inaction.

As is the Commission's practice the matter was thoroughly assessed and some initial inquiries undertaken. Assistance was provided by the New South Wales Police Service in reviewing relevant documentation and speaking with some of those who had originally been involved in the incident. It was abundantly clear from this assessment that there was no information or evidence to suggest corrupt conduct on the part of any member of the New South Wales Police Service including Mr Lauer.

There was some anecdotal evidence to suggest that the complaint had been orchestrated by members of the criminal underworld in an attempt to discredit Mr Lauer. There were however no appropriate avenues of inquiry for pursuing this suggestion and the Commission has no concluded views on this issue.

As is required by the ICAC Act Mr Blackburn's complaint was the subject of a report to the Operations Review Committee. The Committee advised that the matter should not be the subject of a formal investigation and the Commissioner accepted that advice.

Question 2.2 (supporting material)

*Question Without Notice
Collation of Evidence 27 March 1991
page 51.*

CHAPTER FIVE

ALLEGATIONS ABOUT POLICE

CHAIRMAN:

- Q: 5.1** In view of the article and editorial in the Sun-Herald on 17 March 1991, does the Commission propose to make public the recently completed report into allegations concerning senior Police officers including the Commissioner, Mr Lauer?

Exposed: How crims plotted to finish Lauer

By KEITH GOSMAN
and SUSAN BORHAM

THE Independent Commission Against Corruption has spent the past month secretly investigating a major underworld plot to discredit new NSW Police Commissioner Tony Lauer.

Dozens of witnesses, including senior police, have been summoned to the ICAC for questioning.

ICAC Commissioner Ian Temby has now been given a completed report on the plot. It exposes how major Sydney criminals hatched a plan to blacken permanently Mr Lauer's reputation as a honest policeman.

The sensational report—described by one insider last night as "political dynamite"—was co-ordinated by ICAC director of operations Peter Lamb. Senior investigator for NSW Police Internal Affairs Len Topping also had an input into the report.

It includes strong warnings about the current level of nefarious activity within Sydney's traditional criminal element.

And it contains detailed background tabulation of the lengthy criminal careers of several of the key underworld conspirators against Mr Lauer. Among them are some of the biggest names in the Sydney underworld.

The ICAC confirmed to *The Sun-Herald* yesterday that its secret investigation "concluded that elements of organised crime set out to discredit Mr Tony Lauer."

"The commission received a complaint last month which was subjected to thorough assessment."

"The complaint lacks all substance. The commission believes there is absolutely no reason to doubt the integrity of Mr Lauer."

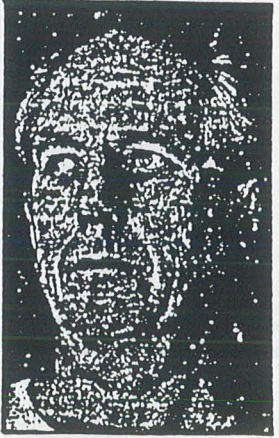
Three key events triggered the ICAC investigation:

• A visit by two NSW police to the Gold Coast late last year, during which they interviewed Sydney criminal Les Jones, one of the Mr Bigs of Australia's illegal gambling industry.

Jones boasted to them about the criminals' plan to discredit Mr Lauer. He also took the police to Jupiters Casino, where they won \$12,000. Both the money and the policemen's



SENSATIONAL REPORT: Peter Lamb.



COMPLAINT: Harry Blackburn.

records of their conversations with Jones were surrendered to authorities upon their return to Sydney.

• The activities during December-January of a Sydney lawyer.

• An official complaint to the ICAC in February by former policeman Harry "The Hat" Blackburn about Mr Lauer's role in the investigation of a Sydney underworld shooting. (Blackburn was not part of the original criminal plot.)

The ICAC report explains the relation between these three events.

Les Jones, 51, was named during the Moffitt Royal Commission as having "been to the States with the Mafia". In recent years he was also named in the NSW Parliament as a director of a company which owned premises used for illegal gambling in Baywater Road, Kings Cross.

Jones is now serving a six month jail sentence for a conspiracy to pervert the course of justice involving high-profile Lebanese community figure Frank Hakim.

The Queensland Criminal Justice Commission last year described Jones as a close associate of Sydney identity Lennie McPherson and illegal gambling boss George Freeman.

Another associate of Jones was former Marrickville alderman George Savvas—jailed in February 1990 for 18 years for his role in a heroin importation.

During the extraordinary Gold

Coast conversations, Jones told the two NSW policemen of the plan to block Mr Lauer succeeding John Avery as NSW Police Commissioner.

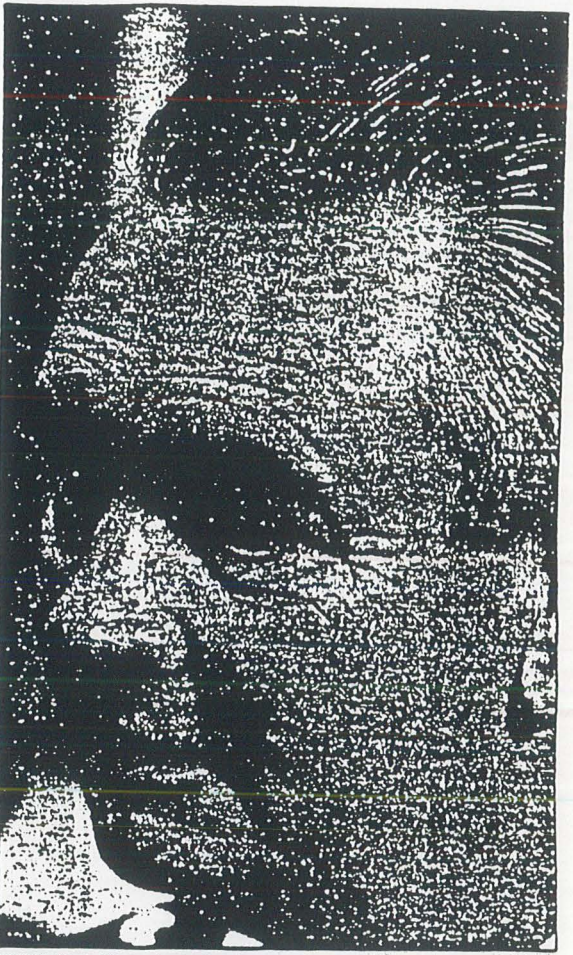
Jones allegedly revealed an attempt would be made to smear Mr Lauer over an investigation into the shooting at Marrickville in 1987 of one of Jones's key associates—a man named Bi Dinh, also known as Johnson.

THE ICAC report notes the same allegation formed the basis of the complaint made to the ICAC last month by Harry Blackburn.

However, Blackburn then subsequently refused either to co-operate with ICAC investigators or be interviewed by them—apparently because he didn't want to reveal the source of his allegations.

Johnson Bi Dinh—who was named as "Jones's principal collector" by last year's QCJC report—survived the attempt on his life outside his Marrickville club, suffering severe abdominal wounds from a gun fired from a passing car.

Among the numerous police called to the secret ICAC inquiry are: the officer-in-charge of the Bi Dinh inquiry, Detective-Senior Sergeant Neil Colefax; NSW Assistant Police Commissioner Bruce Gibson; and an



TONY LAUER: "Organised crime figures tried to prevent my appointment".



NOTED: Lennie McPherson.

Mr Blackburn was cleared in October 1989 of all 25 charges of rape and kidnap involving 10 women over 20 years. Mr Lauer eventually was cleared of subsequent departmental charges by the Police Tribunal last December.

The secret ICAC report throws further light on the activities of Les Jones and his criminal associates.

It follows last year's QCJC report, tabled in the Queensland Parliament, which noted Lennie McPherson "is believed to collect monies on a regular basis from a number of operators, Leslie Jones, Greg Melides, Angelo Duros and Redento Grissillo".

(Angelo Duros was subsequently gunned down outside the Ithaca House coffee lounge in Leichhardt last December and died in hospital 10 days later.)

The QCJC report said: "Jones is involved in the Cabramatta area of Sydney with persons involved in the 14K Triad and Vietnamese gang leaders."

"Some of the considerable violence between Vietnamese has been linked to the placement of illegal gambling machines."

"Bi Dinh, aka Johnson, is thought to be Jones's principal collector. Some of those involved at this level with the placement of gaming machines are also suspected of involvement in narcotics."

Dinh, 33, of Earlwood, denied in the Land and Environment Court last August that he was known as the "M Big" of Cabramatta.

He was in court on a successful appeal against Fairfield City Council's refusal to grant developer consent for his amusement centre, the Quoc Tien Club.

Dinh also denied knowledge of illegal gambling, dealings in stock goods and drugs at the club, situated in Cabramatta's Park Road.

Why the report must be made public:

See Editorial Page 32.

The Sun-Herald

Public's right to know

LESS than three months ago, NSW Premier Nick Greiner declared: "The Government is absolutely satisfied that it has organised crime under very much better control than it was in 1987."

Today *The Sun-Herald* has revealed that, far from being anything like "under control", major criminal figures in NSW still openly boast about — and equally brazenly attempt to put into operation — their plans to interfere in the process of law and order.

Indeed, in this case they believed they were powerful enough to influence, for their own long-term benefit, the appointment of a new NSW Police Commissioner!

That is an outrageous state of affairs.

Luckily for the citizens of NSW, the Independent Commission Against Corruption has stepped in and squashed their plot completely.

The ICAC report apparently contains strong comments about organised crime in 1991.

Commissioner Ian Temby, however, has not so far moved to make the contents public.

He should.

The ICAC was established after decades of allegations about organised crime's influence in both the government and justice system of NSW.

The secret report reveals that many of the same figures from the 1960s and 1970s are still extremely active.

It is hard to imagine a more important issue for the ICAC.

It's all very well to expose driving licence rackets and their ilk.

But at the moment Queensland's Criminal Justice Commission appears to be telling NSW citizens more about what's going on inside the NSW underworld in 1991 than this State's own law enforcement bodies.

Responsibility for election comment in this issue is taken by David Hickie, Editor, 235 James Street, Broadway, Sydney 2007.

Question Without Notice
Collation of Evidence 27 March 1991
page 54.

- A:** At the time the article was written there was no such report. Probably something will be said about the Commission's role in the forthcoming annual report. The Commission was not involved in the selection process. I was approached by the chairman of the Police Board when that body had decided what candidate should be recommended to government and expressed views on request, as was surely prudent.
- Q:** Could I simply ask in terms of the article that appeared in the *Sun-Herald* whether there was any response from the Commission?
- A:** Not until now.
- Q:** Is there any corrective action required in terms of the substance of the article?
- A:** There is nothing more that I need say to correct the article. The article was, in at least one important respect, completely wrong. There was no report.
- Q:** There was no report?
- A:** No, and I do not otherwise propose to go through it. It would be silly for the Commission to respond to all media stories written about the work it is doing or said to be doing and issue detailed corrections in all respects. It would be a wasteful exercise. It is better for us to respond only when absolutely necessary, at least at the time, and otherwise bide our time. As I said, we are likely to say something in the forthcoming annual report and, I suppose, one more comment, I have said before now that the media are useful helpmates in fighting corruption. I am not about to start unnecessary fights with the media or any part of them. It would be very foolish.
- Q:** The matter was of concern to the Committee because of the prominence of the article, and, obviously, the public interest?
- A:** There is public interest in it. I have said as much as I want to say at the moment.
- Q:** **5.2 Is there a danger that criminal elements in the community may attempt to use the ICAC to discredit senior members of the Police Service?**
- A:** The Commission is aware that such attempts may occur and will deal with such instances as they arise. Our capacity to do so cannot, I think, be doubted. It has to be said that the risk is not necessarily limited to the Police Service.

Questions Without Notice

(2.1) - Inquisitorial Report

Mr GAUDRY:

Q: You mentioned the second Milloo report. Obviously you are still involved until the production of that report. There was also a matter with respect to inquisitorial methods. Are you still producing a report on that?

A: I am afraid that I have run out of time and Ms Furness has had to take it over.

Q: So you will not have further contact with it?

A: I do not think so.

Contempt

CHAIRMAN:

Q: I turn now to issues arising from previous hearings. Mr Temby, at page 75 of the recently released first report on investigation into the relationship between police and criminals, you stated:

The purpose of the Commission's contempt proceedings against Cornwall was not to have her punished. The purpose was to use legal coercion to obtain information.

Could you give me your views on the commission's contempt powers, their nature and purpose.

A: I believe that the contempt provisions in the Act are necessary because there will be occasions when some measure of coercion will be necessary, typically against recalcitrant witnesses. I believe those powers must be exercised in a cautious and restrained manner. I contend that that has been the case, which is strongly borne out by the figures. I contend that it is a good thing that the commission can only move the Supreme Court to punish for contempt and cannot itself punish for contempt. There are many quasi judicial tribunals which can themselves punish for contempt, but I think it is a salutary safeguard that our powers are limited to moving in the Supreme Court.

Q: Perhaps it would be a good thing if the other bodies were distanced so that the operator is not the regulator.

A: Yes, it might be. I do not know whether any of those are in the State arena, but if you search around you will find some in the Federal arena.

Q: You would obviously have been thinking of some when you said that, of course.

A: Yes.

Q: So they would be more Federal tribunals?

A: Yes, some Federal tribunals have contempt powers.

Mr NAGLE:

Q: When you make a submission or complaint to the Supreme Court, is it at a prima facie level?

A: No, that is not quite right, as I read the Act. The commission is empowered to certify, and the Supreme Court is bound to accept the facts as certified. That means that the way one prepares a certificate has to be unusually careful. However, there has been no case before the Supreme Court in which there has not been further debate and there is no reason why there should not be factual debate before the Supreme Court. The certificate has not, from memory, simply carried the day on any occasion.

- 3 -
GENERAL ISSUES

Questions on Notice

Q: 3.1 Has the Government consulted you about the review of the ICAC Act? If so, what advice have you given?

A: As a result of the decision in *Greiner v ICAC*, the Commission prepared a report to the Parliament which expressed views about how the Act should be changed. The Commission also made submissions to your Committee in the course of its inquiry, which led to the report of May 1993. The position of the Commission is a matter of public record, and accordingly known to Government. However, there has been no other consultation by Government with the Commission.

It is disappointing and frustrating that 18 months after the Court of Appeal decision, and 9 months after the PJC report, the Act remains unchanged, so far as the Commission knows there has been no referral to the Law Reform Commission as recommended by the PJC, and the intentions of Government as to statutory amendment are unknown.

Q: 3.2 As you come to the end of your five-term as Commissioner, to what extent would you say that the Government or particular Ministers have frustrated the Commission's work by the failure or refusal to consider the recommendations contained in particular Commission reports?

A: On the whole the response by Government, by departments, and by agencies to Commission reports and recommendations contained in them has been positive. Most reports have led to principled change.

In some respects responses have been very slow in coming. It is frustrating that the criminal law in relation to bribery and corruption remains as it was in July 1990 when the Commission's North Coast Land Development Report identified deficiencies and urged change - see p.615 and following.

In similar manner, although the period involved is shorter, legislative change flowing from the revelations in the Unauthorised Release of Confidential Government Information Report is still awaited, 18 months after the event.

Another disappointment is that the Parliament does not appear to have acted on the suggestion in the Mochalski Report about a code of conduct for its Members. As has been said before, for that to happen, there must be an effort made to work through Members so they develop their own code, rather than a committee seeking to impose

one on them.

As against this, there have been many gratifying outcomes. Some of the more notable are:

- (a) The Roads and Traffic Authority, helped by the ICAC, has developed a driver licensing system which is first class from the viewpoints of both integrity and efficiency: decades of endemic corruption have ceased.
- (b) The new Local Government Act contains provisions for handling conflicts of interest situations, based upon the relevant ICAC Report.
- (c) As the result of various investigation reports, the booklet **Pitfalls or Probity?**, and substantial education effort by ICAC officers, tendering rules and compliance with them are much better than they were 5 years ago, in the great part of the public sector.
- (d) New arrangements requiring police to provide full information to the Director of Public Prosecutions are in place, and must enhance the integrity of the criminal justice process. These arose out of the Report on Prison Informers.
- (e) Codes of conduct, developed from the bottom up, are now commonplace in local government (as a result of the Waverley Council investigation) and elsewhere in the public sector.

Q: 3.3 Has the Government consulted you about the appointment of a new Commissioner. If so, what advice have you given?

A: Government has sought and received some advice from the Commission but only about the process of appointing a new Commissioner. A list of characteristics which should be sought was provided on request. The Commission's position is that it should play a role limited to providing assistance and information only upon request by Government.

Q: 3.4 Given the tenure of the ICAC Commissioner and the importance of the role played by the Commissioner, do you consider that adequate time has been allowed for the advertisement and selection processes associated with selecting a new Commissioner?

A: It is considered that inadequate time has been allowed for the advertisement and selection processes associated with the appointment of a new Commissioner.

- Q: 3.5** Would you propose a timetable for this selection process?
- Q: 3.6** Given the role played by the Commissioner in the management and operations of ICAC, do you consider that it would be an advantage to have a period where the incoming Commissioner could work in consultation with the existing Commissioner? If so, what length of period would be useful for an induction period?
- Q: 3.7** Are there any management or operational problems that could arise as a result of this induction process not taking place?
- A:** Had longer time been allowed, then the Commissioner-designate could have been appointed as an Assistant Commissioner and worked with the existing Commissioner for a period of perhaps a month, which would have been a useful aid to induction. Of course the new Commissioner will have his or her own approach but nonetheless to pass on accrued experience from top level would have been helpful to the new appointee. It is impossible to anticipate whether and what actual problems will or may arise as a result.

Questions Without Notice

(3.1) - Review of the ICAC Act

Ms BURNSWOODS:

Q: I am very concerned about 3.1—the process of reviewing the Act. I suppose I can only say that I agree with your comments about how disappointing and frustrating it is that getting on to two years after the Court of Appeal finding and a year after this Committee's work the Government has apparently made no action. Is there anything further that you can add to your comments here? Do you have any suggestions to speed up the process?

A: There is nothing I can add, except to say that the committee, having examined the matter, reported and put a lot of intellectual effort into the question. It is bound to wish for more rapid progress than has been achieved to date. This Committee might give consideration to what it can do by way of approach to the Government.

Q: Other than the potential problem which did not come up in the Collins matter, are there other matters that may come before the commissioner which are affected by the Government's failure to proceed with the review of the Act?

A: If there is acceptance of this Committee's expressed view that there should be no distinction drawn between what we have called constitutional officeholders and the general run of public sector employees, the answer must be yes. There must be matters which are presently beyond our reach so far as Ministers and others are concerned which, if the Act was amended as this Committee has recommended, would be brought within our reach. Yes, one has to say that there are presently practical consequences, although they are not frequently encountered.

Q: But it is a serious dimension.

A: I do not want to take the matter too far. I can confidently refer it back to the committee. This Committee has said that the constitutional officerholders should be dealt with as others. With respect, it is for the committee to decide whether it is a serious gap. At the moment that is not the case. The collective view of this Committee is more important than my view because you are a parliamentary committee and it is Parliament which will have to change the Act.

Mr NAGLE: Taking it one step further, it was a united effort by the Committee.

A: I appreciate that full well. I am carefully making no party distinctions of any sort. I appreciate that full well.

Q: That is not the point I was making. One would have thought that, because it was a united effort, the Government would have picked it up. It would not have hurt to send a referral to the Law Reform Commission, as recommended by our Committee.

CHAIRMAN:

Q: I think this line of questioning is unfair. Mr Temby has given all he can. It is a matter for the Committee.

Mr GAUDRY:

Q: Perhaps we require a more robust approach by the Committee.

(3.2) - Government response to ICAC's work

Ms BURNSWOODS:

Q: You have commented on the slow responses from Government in relation to following up recommendations. You have made particular reference to the bribery and corruption law which flowed from the North Coast report and also the revelations in the unauthorised release of confidential Government information. Is there any process of consultation which you have either initiated or thought about initiating other than through this Committee, where the commission can nudge the Government?

A: We have had a lot of dialogue with Government so far as the first of those matters is concerned. There have been proposals and we have commented upon them. There has been a deal of work done; it has just got nowhere. I simply cannot understand why. It is not very difficult. Why one would establish an ICAC and give it abundant powers, proper resources and encouragement and let it get on and do the job and not at the same time fix up the laws of bribery and corruption, or take five years to do so, it absolutely beats me. It is not very hard to do. It absolutely beats me. There are a dozen ways in which you can improve laws immeasurably on the way they now are. Of course we have expressed views but the thing just does not seem to be moving. It may be moving but its pace is close to glacial.

Mr NAGLE:

Q: As I have said, it was a united effort. It appears as though all parties would support any move by the Government.

CHAIRMAN:

Q: I do not think we, as a Committee, have looked at the bribery ordinance or laws. But it has certainly been in the public arena; it is certainly a matter of importance.

Mr HATTON:

Q: It is not the job of the Committee. It is the Government's job to take notice of what the ICAC recommends.

CHAIRMAN:

Q: It is the Parliament's job.

Mr TINK:

Q: In the examples that you give of failure or refusal to consider recommendations contained in particular commission reports you refer in particular to Mr Roden's report on the unauthorised release of confidential government information. As you know, I have had something to do with that. At the moment I have a private members' bill before the Parliament. I put it to you that one of the things that has caused delay in this matter is that the key recommendation made by Mr Roden was at variance with legislation dealing with data protection. He said:

I have suggested the term "protected information" could encompass all information held by public authorities, except information which was declared to be publicly available.

As I understand it, the New South Wales Privacy Committee is saying and has said all along that it is not achievable in practical terms. It is very strong on that. That means that the Government is left with the difficult task of trying to work on the type of bill that I have put in, just for starters. It will come to some sort of outcome, so that goes a fair way down the track which is where Mr Roden was trying to go. I think I can say this with some authority. It is not an easy exercise in the context of the parameters set by Mr Roden in his report.

A: No.

Q: I think I would be supported in that by the Privacy Committee.

A: Yes. I note what you say and have no difficulty with it. The fairly restrained language in which we speak here is quite deliberately chosen. There is no sense of anger as to the time that has passed. It would be nice to see a resolution. I am the first to concede that there is a range of reasonable resolutions that one could conceive. The commission in that report did not purport to design a scheme and dogmatically urge that this is what must be adopted, because that is not our style. There is a need for legislative change just as there is a need for administrative change. There has been quite a lot of administrative change within the Police Service and the Roads and Traffic Authority, which were the two major problem areas. Things are much tighter than they were. There ought to be matching legislative

effort. It will be a good thing when it happens. The shape it takes is something that still has to be sorted out—I agree with that.

Let me say one other thing. You will understand that I am responding to a particular question here and I am obliged to do so. I would think it unfortunate if what is said here and what I have spoken today were categorised as any stinging attack. We are given a question and we are obliged to answer it. I have sought to balance it by inserting some of the more notable, positive responses. As Committee members would know, it has always been my view that one of the great benefits of the standing commission is that you do not become *functus officio*. You can follow up and, accordingly, you tend to get results. These are only some highlights. Most of our reports have achieved results. The response from Government has been good, on the whole. There have been some disappointing exceptions to that.

CHAIRMAN:

Q: In fairness to you, you commenced the answer to the question:

On the whole, responses by Government, by departments and by agencies to the Commission to reports and recommendations have been positive. Most reports have led to principal change.

In fairness to you I would have thought that that was a long way ahead of what we see in other States and certainly in other areas of government.

A: Yes, quite.

Ms BURNSWOODS:

Q: Arising out of that, I was struck by the examples of the gratifying outcomes you gave, about the extent to which they reflect some solid and serious work within the public service and within departments. To generalise, I suppose that the Government's inaction in making law has been very dilatory, while some good work has gone on in places like the Roads and Traffic Authority and other departments. It seems as though these major changes are where the bottleneck has occurred.

A: You would have to make your own judgment as to that. It cannot be said that there has been a history of failure so far as legislative change is concerned. After all, the recommendation we made for the change in the law concerning the resolution of conflicts at local government level was enacted very quickly and just about as we had sought to prescribe.

Q: In the new Local Government Act?

A: Yes. That is a very positive legislative outcome and it is not the only one.

(3.3) - New ICAC Commissioner

Ms BURNSWOODS:

Q: My next question relates to the appointment of a new commissioner. You mentioned that you have given advice about the process. Your answers were obviously prepared a little time ago. It seems as though the delay is now becoming serious, given the way the process builds in a role for this Committee which extends over a period of about six weeks. Do you have any further information on whether the Government is close to moving on a new commissioner, or are we likely to see an acting commissioner? Do you have any information on that?

CHAIRMAN:

Q: Before you answer that question, in fairness to you, the commission's position is that it should play a limited role in providing assistance and information only upon a request by the Government.

A: I do not have much to add. I have made an approach to the Premier about the possible need for interim arrangements and perhaps that need is a likely need and I will be seeking to further those discussions because some interim arrangements will have to be made. I imagine that will be achieved without fuss or difficulty. As to the question of appointment, we have quite seriously tried to remain pretty well divorced from it because we are not the appointing authority. It will put us in a very false position if we started in any sense running a candidate. We have remained well away. I have heard some things that are being said around town without really trying to listen very hard, but I cannot vouch for them. I just do not know.

Mr GAUDRY:

Q: Following on from that, I think it is quite disgraceful that a process has not been set in train that linked the termination of your office with the appointment of a new commissioner, given the fact that it is a five-year set term and there has been plenty of lead time obviously and knowing when the changeover would occur. I am interested in how that power will be transferred. Is it a delegation under section 107 of the Act, or does the Governor have power to appoint an interim commissioner with all of your powers? How will that occur?

A: There are provisions in the Act for the appointment of acting commissioners. That power has been exercised once only; on the only occasion that I was away overseas for an extended period. On each other occasion when I have been away from the office there has been an assistant commissioner there with all the necessary delegations. As from 12 March I cease to hold the office and accordingly cannot delegate. The provisional view we take is that delegations I have made may not last beyond that period. Presumably an acting commissioner will have to be appointed

and that person will then have to issue delegations as appropriate.

Q: If that did occur before 12 April there would be a period in which there was no head of the ICAC?

A: But that will not happen.

Q: It will not happen?

A: It is inconceivable that it would happen. You could go further; there would not be a commission. But it will not happen. It simply will not happen. I am certain that interim arrangements will be made and I am confident they will be made in a sensible fashion.

Mr NAGLE:

Q: Mr Temby, would the best scenario have been to have had the commissioner appointed prior to you going so that you could both dovetail in on one another and discuss the operations and the running of ICAC?

CHAIRMAN:

Q: That is an unfair question in relation to what Mr Temby said to his limited role.

A: It has already been answered. It is really in the answer already. Again, I am responding to questions, I have to answer them. My response is that it is a pity the process was not started earlier. Yes, one imagines that some overlap period would have been desirable.

Q: My only point is it has already been answered.

Mr HATTON:

Q: And the Committee have been active in that, as you are aware. We are not happy, on a bipartisan basis, with the delay.

FIVE YEAR OVERVIEW

Questions on Notice

Q: 4.1 Is Commissioner Temby pleased with the achievements made during the last five years of the ICAC and in what area does he feel was their greatest achievement?

A: Yes. The Independent Commission Against Corruption is a world class institution in the field of minimising corruption and enhancing integrity in the public sector. It is widely recognised as such. The Commission and its staff have clearly signalled to the public that something effective can and will be done about public sector corruption. That displaces community cynicism and substitutes resolution, and an upwards spiral is thus created.

Q: 4.2 Are there any areas of its operations that the Commission would have liked to achieve more than it has? If so, what are these areas and what should be done?

A: It is likely there is significant corruption related to trading in illegal drugs. This is an area of considerable public interest and concern. The difficulty has been that it is impossible to work in that area except in combination with trusted elements of the NSW Police Service, and on a fully co-operative basis. Otherwise there would be operational conflict between the Police Service and the ICAC, with potentially chaotic results. The prospects of real co-operation in this difficult area have not been good until recently. This is an area that demands attention, and both organisations should devote significant resources to it.

Q: 4.3 Does the Commissioner believe that as a consequence of the ICAC's establishment and its work over the last five years, that the alleged corruption existing in NSW prior to the ICAC's commencement has now been brought under control? If so, would it now be more beneficial for the ICAC to concentrate on running strong educational programs in public administration and anti-corruption through the ICAC?

A: Corruption has been reduced. It will never be eradicated. There is a continuing need to conduct investigations for a number of reasons, including that serious matters do arise. Also, the remedial work - corruption prevention and education - will be seen as merely theoretical, and easily dismissed or marginalised in the absence of investigative work. For years to come there will be continuing need for a substantial program of investigative work, supported by public hearings as a general rule. The Commission is gradually increasing its capacity in relation to corruption prevention

and education, and that trend should continue.

Q: 4.4 As you come to the end of your five-year term, do you have any comments on the role played by the Joint Parliamentary Committee on the ICAC and its relations with the ICAC. Do you have any suggestions to make for the future?

A: It is unacceptable that any institution in a true democracy should be unaccountable. Because the Commission must be independent from Government, it is best made accountable to the Parliament through a Committee of the Parliament. The most valuable role of the PJC is to deny the proposition that the Commission is force and a law unto itself.

The PJC does valuable monitoring work, but little else. It could do more to help fight corruption and enhance integrity, by following up on Commission reports and otherwise.

Q: 4.5 Mr Gary Sturgess recently presented a paper entitled "Guarding the Polity: The NSW Independent Commission Against Corruption" to the Centre for Australian Public Sector Management (attached). This paper discusses the history of the establishment of the ICAC and then makes general comments on the ICAC's operations and effectiveness to date.

Could the Commission please provide a comment on this paper? (Appendix Four)

A: Gary Sturgess' paper provides a quite useful charting of events leading to the establishment of the ICAC. His principal concern is with s9 of the ICAC Act. The Commission has provided the Committee with a detailed submission on the need for legislative amendment arising out the *Greiner and Moore* decision. The Commission's views are well known and not surprisingly, it disagrees with most of what Mr Sturgess has to say on the topic of s9. It would not be particularly useful to cover that ground again.

Comment, however, is called for concerning three matters raised by the paper. First Mr Sturgess' remarks concerning staff at the Commission. It is disappointing that he did not seek confirmation or otherwise from the Commission before publishing unsourced and inaccurate remarks. For the record, the Commission has recently appointed its first Executive Director and it has abolished the position of Director of Operations. Mr Sturgess' comments about the role of lawyers within the Commission indicate his distance from the workings of the Commission. They are wrong.

Secondly, the Commission is not aware of any prosecutions which have suffered due to any inducements offered to witnesses. Of course, prosecutions are a matter for the Director of Public Prosecutions.

Finally, Mr Sturgess' reference to a Randwick City Councillor is unfortunate as he clearly does not hold all the facts in relation to that Commission investigation. That investigation is continuing and it would be inappropriate to comment further on that matter.

Questions Without Notice

(4.3) - Changing Role of the Commission

CHAIRMAN:

Q: We will now go to question 4, the five year overview. Are there are any questions arising from that?

Mr GAUDRY:

Q: Yes, I have been concerned for some time, and still am, at this continued emphasis of the ICAC moving into what is classified as a more proactive role, which means more concentration on prevention and education and perhaps moving away from the investigative role. You have made it quite clear here that there will not be a situation, in your view, where the ICAC can relinquish substantially that role. Would you expand on that in terms of a shift in emphasis; how much you think could be shifted from the investigative area productively?

A: I can do that. I can also give an example. I do not anticipate a diminution in the investigative role. I believe that through acquired experience we are now capable of conducting investigations much better than we were five, or even three years ago. Accordingly, with a given number of staff we can continue to do the amount of investigative work that we are doing while at the same time over a period gradually expanding numbers into education and corruption prevention. One could imagine each of them being, in a year from now, 50 per cent larger than they are now. That would not surprise me.

Although it is a matter for my successor, we have been gradually seeking an increase in both those areas for the last couple of years. That has been the trend. I expect that trend to continue. In my view it should not be accompanied by a diminution of investigative effort. To give an example of why I think that is important: in relation to the investigation which we call, and has come to be called, Milloo, there has been a very good reception accorded to the report. One note of criticism I heard was that it is a rather expensive management improvement exercise.

The answer to that is that at least when dealing with a large, strong, and strongly cultured organisation like the Police Service you cannot make them pay attention to improvement proposals until you have demonstrated to them and to the community that there is a real problem. Until you so demonstrate it, any proposal is seen as merely theoretical and organisations like the Police Service are not particularly attracted to merely theoretical proposals. The best technique is to demonstrate that there is a problem; once that demonstration has occurred, then everyone says it has to be fixed and you can then get on with fixing it. Do I make my point? It cannot

be done otherwise, they will not pay any attention to you.

(4.3) - Reduced Corruption

CHAIRMAN:

Q: At paragraph 4.3 you say, "Corruption has been reduced". Could I just ask the obvious question as to what gauge the commission used to say corruption has been reduced? From what level has it been reduced, and to what level?

A: I cannot talk about levels, Mr Chairman, as you must know. The evidence for the proposition that corruption has been reduced is that in a series of areas procedures have been tightened, as we know, which reduces the opportunity for misconduct and, indeed, for inefficiency, and that is a measure. There is then an extent to which one has to rely upon anecdotal evidence. The assertion one hears from the public sector is that things are now tighter than they were, that people need to behave themselves in a more careful fashion. I could go on but—

Q: You appreciate the statement that corruption has been reduced has a quantitative ring about it, does it not?

A: It is pretty hard to draw a baseline.

Q: That is why I asked about reduced from and to.

(4.4) - Parliamentary Joint Committee

Mr GAUDRY:

Q: I take it from a statement you have made in answer to questions and from a statement you made earlier that some aspects of the Committee's role in the Act are not robust. The role of the Parliamentary Joint Committee is listed as follows:

- (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.*

Do you think that section of the Act could be pursued? Perhaps the Parliamentary Joint Committee should take a more active role?

A: I have suggested before now that the Committee could do more under that head of power. I can only repeat that suggestion now. That is the head of power that I have in mind.

Ms BURNSWOODS:

Q: Mr Temby, I suppose you have been very careful in your answer to the question inviting you to comment on the role played by this Committee. It is sort of damning with faint praise, I suppose. I wondered whether, if you were advising your successor, you would have any specific sorts of suggestions to make, not only about the way in which this Committee could do more—because I think the Committee could certainly do a lot more, particularly in terms of trying to pressure government in the areas were talked about earlier—but also perhaps about ways in which the Committee, and perhaps particularly the ORC in liaising with this Committee and in co-operation with it, could make sure that commission reports do not languish and not get acted on.

A: I do not know that the ORC is of great relevance in that respect. I have said more than once, and I have said again today, that in my view there is a head of power that this Committee enjoys that it could exercise to the public benefit, and I would be encouraging my successor to try to work with this Committee to suggest ways in which that might be done. But in the end, of course, there is only so much we can do. We have got to remember our proper place in the scheme of things. You are elected members of Parliament and we are not, and therefore we can only suggest. If I can broaden my response slightly, I would urge my successor to adopt the approach that we have adopted from the outset—which is, I hope, acknowledged by the Committee—which is to be as forthcoming in our dealings as is sensibly practicable, there being an occasional fetter depending upon operational constraints. But from the outset we set out to deal with the Committee in a frank and open fashion. I think that is the only responsible way to do it and I think the dividends that have been derived are considerable.

Q: Would you, for instance, change the nature of the six-monthly meetings with you?

A: Well, seeing you asked, yes. I think that there are occasions when the Committee has behaved in my direction in an unduly suspicious fashion, seeing you asked, and I do not think that that is justified and it is certainly not enjoyable, but not otherwise. I dare say in the real world we—the Committee and the commission—have done about as well as is likely to be achieved.

Mr TINK:

Q: I suppose the comment you made to Ms Burnswoods could equally be made by some in relation to the ICAC itself. I suppose at the end of the day my view would be that these robust exchanges between us—or perhaps me particularly—and you, as between you and the people who come before the ICAC, are, if you like to use an expression you have used in the past, collateral damage. It does not make it right; it does not make it wrong particularly. There are things that have to be ventilated. It is a robust business; we have got to do it as we see it. I do not think the fact that it is not

pleasant really counts for much.

Mr GAUDRY:

Q: There has been this long-term pining from the Committee about more research into the levels of corruption, and if you look at section 64(d) of the Act, one of our charges is to examine trends and changes in corrupt practices. Therefore we can only get from yourself at the moment some qualitative concept. Is it of any value in your view to perhaps put more research towards trying to quantify in that area, perhaps to give the Committee more of a lead in terms of making changes within the Parliament?

A: If you were adopting an academic or social science approach to the commission's work, then what would have been done in early 1989 would have been to make a policy decision to do no investigative work until a confident baseline had been drawn. I mean, that is what an academic would urge. That would take a couple of years, during which time the commission would have become marginalised and then completely irrelevant and perceived as an absolute failure. The fact is we do not have a baseline. The only way of drawing a baseline, if you could do it at all, is to do nothing else but draw the baseline. Now, we decided not to do that, and you cannot go back. I am sure we were right. It would have been absurd for us not to get on with the job.

What people wanted to do was to see the corruption problem tackled. We have done that to the best of our capacity. We have also tried to place strong emphasis upon the enhancement of integrity, which is the other side of the coin. We have been significantly successful in doing that. There is probably an extent to which one can do some measuring. We have started to put more emphasis upon monitoring work, particularly arising out of our formal investigation reports. That has been done fairly recently. It is not too late to go back and to check upon outcomes to the extent they are not known to us, and in a few areas they are not competently known.

But if there is an available technique which enables levels of public sector corruption to be ascertained with absolute confidence in an intellectually rigorous fashion, it is not known to me. You can easily do it sloppily, but I just do not know the technique that enables it be done in an absolutely confident fashion. Now, with respect, there are elected representatives around this table who are in a good position to tap into public and public sector perceptions. I do not think there would be any quarrel from the members of this Committee as to the assertion that is made, but again it is hard to absolutely confidently quantify it. I really do not think there is a way out of it.

Q: You think it is an overemphasis?

A: Perhaps, yes.

(4.5) - Article by Gary Sturgess

CHAIRMAN:

Q: I refer you to paragraph 4.5, the paper by Mr Sturgess. That is on the public record and, in fairness to the ICAC, any corrections should be made. The most serious is at page 20 of that paper, where Mr Sturgess says at least one officer occupying a sensitive position was removed after it was determined that she posed a security risk, and the author is aware of other circumstances where security was compromised which perhaps should have resulted in dismissal. Is Mr Sturgess wrong in those allegations?

A: If Mr Sturgess is insinuating that there were occasions when security was compromised, there should have been dismissal and there was not, then those instances are not known to me and I cannot think that he would not have told us, so I take it that that is an unintended insinuation. I have provided the Committee previously with figures as to the small number of officers who have been required, encouraged or permitted to depart in circumstances where we have been unhappy with performance, but I would hate to leave here with there being an impression on the part of the Committee which could percolate through to the public that there have been security concerns so far as the Commission is concerned.

A measure of the ethical health of an organisation like the Commission, which deals with an enormous amount of highly sensitive material which many in the public domain—including some of those present to my right—would love to get their hands on, is whether there have been embarrassing leaks of information. There has not been one in five years. This is an ethically healthy organisation, and I do not want to descend to particulars, but if you think about other organisations in the law enforcement field I do not think you will find another with the same record of achievement in that sense.

SUN HERALD ARTICLE

Questions on Notice

Q: 5.1 An article by Chris Murphy appeared in the Sun-Herald on 13 February 1994 (attached). Could you please comment on the following points made in the article.

(i) That the ICAC "provided ... high-priced lawyers" to Smith and Henry.

A: The Committee is referred to the First Report on Police and Criminals at 281.

Smith and Henry were advised by Mr S Corry, a solicitor with extensive criminal law experience, who could not be referred to as "high priced".

Q: (ii) That Henry was not allowed to give his evidence, which differed from the evidence earlier given by Smith to the Commission.

(iv) The ICAC "silenced" Henry.

(v) That an appearance has now arisen that the ICAC "sculpts its evidence to suit its agenda."

A: The Commission's approach from the beginning of the investigation was that it would not air allegations from Smith, Henry or people like them unless there was, in its judgment, adequate corroboration. To do so without the prospect of a finding being made would be quite irresponsible. It would have also had the consequence of people named having to be called and the investigation would be greatly extended. Smith, Henry and other criminals were called to answer questions in areas which could be responsibly pursued.

The witness box could not be treated as a pulpit or soapbox, with statements made in an uncontrolled situation, which could have been entirely unfair to individuals. Henry wanted to make a statement and the Commission had no idea what he wanted to say. Accordingly he was not permitted to do so.

Attached is the transcript of the exchange between the Commissioner and Henry referred to in the article in the Sun Herald. He was informed that if he had any material to put before the Commission he should provide the Commission with a statement and that it would be happy to receive such a statement. It was reiterated that if he had anything further to say he could put it in writing. Nothing in writing has been received from Henry since that time.

This is consistent with the approach of the Commission to all public hearings. If any person has anything of relevance to say to the Commission, it is usually provided in a statement and the Commission then determines whether that matter should be the subject of evidence in public hearing.

Henry was not silenced and has been given every opportunity to provide the Commission with any written material. The Commission does not and did not sculpt evidence.

Q: (iii) That "the ICAC has promised [Henry] annual holidays, a home, living expenses, a wage and the costs of setting him up in a business."

A: When Henry is released from jail and if he wishes to participate in the witness protection scheme and that is considered appropriate, then the Commission will assess its financial commitment to him and his family.

No such specific promises have been made although the items mentioned could be elements of a witness protection package.

Q: 5.2 What were the precise terms of the indemnities offered to:

- (a) Smith
- (b) Henry

A: The indemnities granted to Smith and Henry are attached.

Q: 5.3 Were these terms

- (a) altered or
- (b) withdrawn in respect of either of them

A: (a) Not to the Commission's knowledge.
(b) Not to the Commission's knowledge.

Q: 5.4 If so when, and under what circumstances were they altered or withdrawn? What were the altered terms of the indemnities and why were these alterations made?

A: Inapplicable.

MURPHY'S LAW



Abo Henry speaks

THIS Long Bay prisoner has been marked M for Murder by the underworld. From his high-security prison cell his exclusive story was leaked to this column.

THE Independent Commission Against Corruption is about to change. After five years of famous failures as a public policeman its emphasis will shift to the prevention of corruption. As the NSW Government painstakingly selects his successor, retiring Commissioner Ian Temby is poised to deliver his swansong report into police corruption.

It follows an inquiry that began with the trademark ICAC fanfare. Orchestrated publicity promised that notorious criminal Arthur "Neddy" Smith and his henchman Graham "Abo" Henry had "rolled over" and would tell all.

Provided with high-priced lawyers by the ICAC, the two criminals were called to give evidence. Smith testified first. Described by police and prisoners as "evil personified" he had his day in court and spewed his vitriol over his enemies.

After a backlash of public outrage the ICAC quickly disowned him as a witness of truth, declaring his evidence would not be believed where it was not verified. But it let him continue his lacerating, scandalous testimony.

Then his long-term partner in crime and confidant Graham Henry entered the witness box. After brief evidence in which he denied a description of events attributed to him by commission staff in statements they prepared for the hearing he said: "I want people to know... and tried to speak but the Commissioner snapped: "On your way Henry! You'll say no more!"

He protested: "But Mr Smith's evidence was completely different than mine." He was told: "Go. Go now!" and ejected.

He claims the refusal to let him speak has endangered his life in the light of the ICAC's earlier pronouncement that he would have backed up Smith. Now we bring you Graham Henry's suppressed story.



GRAHAM HENRY: Now hates his former partner-in-crime Neddy Smith.

Home at The Bay

BOTH Smith and Henry are living in separate units in the high-security Special Purposes prison at Long Bay. Smith is serving a life sentence for the 1989 Coogee murder of tow truck driver Glen Flavell but rumours are rife that he will be released on medical grounds in March.

The ICAC has promised him annual holidays, a home, living expenses, a wage and the costs of setting him up in business.

Henry is due for release in March upon the expiry of a jail term imposed after stabbing police prosecutor Mal Spence in the neck. He was regarded as staunch in the criminal

community and had nothing to gain from appearing at the ICAC.

However, when he was first approached by ICAC officers at Long Bay he was on remand on armed robbery charges which he has since beaten. He says they were "fabricated" and that "the rumour that I heard was that I was going to be loaded with further crimes that I knew nothing about".

At that point Henry was relatively happy living in the mainstream jail population and wanted to stay there. He thought beating the robbery charges at his committal hearing proved his point and that his ICAC role was over.

Then Smith signed up with the ICAC and as Henry recounts: "They snuck Ned Smith out of the jail and

took him to the protection jail at Long Bay. When Smith got outside the main gate he refused to come in the place unless the ICAC brought me there as well.

"I was then taken into the ICAC and promised the world if I would go into the dog house with Smith. It was only because of the promises that I finally relented. Two days later when I was placed in this dog house of a place the ICAC investigators told me they never promised me a thing."

Val Bellamy

AT the ICAC hearing Smith had launched a vicious professional and personal attack on his enduring solicitor Val Bellamy who had failed to beat his unbeatable murder rap. He alleged that a bag snatch robbery of money from the solicitor in Martin Place was arranged by Bellamy, Henry and himself and that later the three of them divided the proceeds of the robbery with Detective Lance Chaffey at a city hotel.

Bellamy denied it. Chaffey denied it and swears that he has never met Henry.

Henry rejected a statement presented to the commission for him to adopt before he was tossed out of the inquiry. He now claims he had never mentioned Val Bellamy or said he had seen the detective take any money from the deal with Smith.

Henry says: "If I have not said these things about police and solicitors, it should be stated for all the world to hear and not swept under the carpet like it has been and making me look as bad as this low dog Smith."

Henry v Smith

AMONG men who live without fear of the law Henry's commitment to Smith was legendary. Henry says: "I once would have done anything for the bloke and I have done so many times."

He shared a security cell with Smith who he believed was informing on police, not criminals — a claim made publicly by the ICAC and Smith.

However Henry says that he read statements by Smith dobbing in criminals and immediately asked to be segregated from him.

Henry hates Smith.

He says: "I know this low and overrated criminal better than anyone alive and he is and always has been a shocking and compulsive liar

to the point of being treacherous.

"When this bloke hates you he will say and do anything at all to make sure you suffer just like him."

At the ICAC Smith offered information about robberies in Chinatown and at Walsh Bay. Henry said: "These are crimes he knows nothing about but he has to make himself out some big shot and claim to know who did it and who helped them get away with it."

A drug rip-off recreated on 60 Minutes based on Smith claims that police took the proceeds of a drug deal are rejected by Henry who says that the "police" who staged the actual crime were criminals posing as police.

In his autobiography Smith claims to have knocked Henry down three times in a fight in Chinatown's Covent Garden Hotel before Henry pulled a knife. Henry says hotel staff would verify "I had my back turned, he kept hitting me about five times and not once did I ever hit the deck".

He said he hit Smith with a stool and then got "something out of my car" but Smith fled.

Where now

FOR Smith, shaking with Parkinson's Disease, the ICAC was a modest triumph. The commission could not let him out of jail but will "inform authorities of his assistance".

According to Henry, Smith has now become a full-time super grass for the National Crime Authority, the latest home for unwanted informers. He is allegedly also helping the Federal Police. The road is as smooth as a human could possibly contrive to make it in adverse circumstances.

For Henry the future is bleak. He is a hard man in a hard world. He says when the day comes he will meet his enemies "face to face". Because the ICAC declared him an informer supporting Smith without allowing him the chance to deny it he will probably be killed.

The ICAC silencing of the potentially embarrassing Henry, as predicted here during the hearing, leads to an appearance that it sculpts its evidence to suit its agenda.

Maybe the new commissioner will focus on ways of preventing corruption and leave the investigation and punishment of wrongs of the past to the fair processes of the justice system.

(PS: Abo Henry is not an Aborigine.)

Transcript of the exchange
between the Commissioner and Henry
referred to in the article in the Sun Herald

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MR TOOMEY: That's right, and I would go further and say that there is cogent evidence, inferential and actual, which would suggest he couldn't have been the man.

THE COMMISSIONER: Yes, I understand that. All right. Well that, I think, should be clearly stated. There's no reason to bring him back, is there?

MR TOOMEY: Oh, no.

THE COMMISSIONER: All right.

MR TERRACINI: It should not be forgotten, Commissioner, that Mr Bellamy says that in some way Kerr-Thomson's involved in a conspiracy.

MR TOOMEY: Oh, yes.

THE COMMISSIONER: A different conspiracy.

MR TERRACINI: A different conspiracy.

MR TOOMEY: He is lying, said Mr Bellamy.

THE COMMISSIONER: That's right.

MR TERRACINI: Commissioner, as I understand it, as this will be the last time Mr Henry gives evidence before the Commission, he certainly broached this subject, that he'd like to make a very, very brief general statement, and I'd ask that leave be granted for him to make that.

THE COMMISSIONER: Can you tell me what he wants to say something about?

MR TERRACINI: Just in relation to the matters that have been raised and his part in them.

THE COMMISSIONER: Mr Toomey?

MR TERRACINI: He has given evidence, he's been questioned by me as counsel assisting, by other people in an inimical position, by Mr Terracini or someone else in a friendly position, with respect, all that Mr Henry can do it seems to me is make some sort of exculpatory or philosophical statement which couldn't be of assistance to you.

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OP/39

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THE COMMISSIONER: Or an inculpatory statement.

MR TOOMEY: Quite.

THE COMMISSIONER: No, I'm not going to accede to that, Mr Terracini, but if Mr Henry wants to say something he can say it by means of a statement which you can provide for consideration; I'll be happy to receive something of that sort.

THE WITNESS: It's in regard to my own safety, mate. That's what it's in regards to.

THE COMMISSIONER: Well, fine, Mr Henry. You can put it in writing to me. I'm not prepared to provide you with - - -

THE WITNESS: But I want the people to know the situation because the situation is this that I've had threats - - -

THE COMMISSIONER: On your way, Mr Henry, you'll say no more. Go.

THE WITNESS: But Mr Smith's evidence was completely different than mine.

THE COMMISSIONER: Go. Go now.

THE WITNESS: Right.

THE COMMISSIONER: Now if he wants to say anything in writing he can do so, Mr Terracini.

THE WITNESS WITHDREW

[3:09pm]

THE COMMISSIONER: That's all for the day?

MR TOOMEY: Yes, Commissioner.

THE COMMISSIONER: Right. We'll adjourn till Monday at 10.00 am when we hear from - remind me?

MR TOOMEY: Mr Smith.

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THE COMMISSIONER: Mr Smith, and further from Mr Duff, and that will be all in public on that day?

MR TOOMEY: That's right, Commissioner.

THE COMMISSIONER: Thank you. All right, 10.00 am Monday.

AT 3.10 PM THE MATTER WAS ADJOURNED
UNTIL 10.00 AM, MONDAY, 16 AUGUST 1993 [3:10pm]

JDT 12/8/93
OP/39

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Questions Without Notice

CHAIRMAN:

Q: I move on to section 5, Chris Murphy's article. I refer you to 5.1 of the commission's answers to questions on notice. You state:

Smith and Henry were advised by Mr S Corry, a solicitor with extensive criminal law experience, who could not be referred to as "high priced".

Could you outline the extent of Mr Corry's criminal law experience?

A: I am informed that he worked for the Commonwealth DPP for a period but I do not know how long. He has been in private practice for a period, but again I do not know how long. He is, as I am informed, a solicitor of extensive criminal law experience. I cannot help further than that.

Mr NAGLE:

Q: You do not know him at all, except for that?

A: I have known him through the hearings. I may have known him previously. I do not even know if he worked for the Commonwealth DPP when I was filling that role. He may have done so, but he was in the Sydney office, I think. I, of course, operated out of Canberra. My dealings with branch officers were mostly at senior management level. I do not know. I might have known him. I am not sure he was even there at the time. I think he probably was; I am not sure.

CHAIRMAN:

Q: Was Mr Corry selected on the basis of his criminal law experience?

A: He was selected. We did not select him, we suggested him.

Q: Who did select him?

A: We suggested him to Smith.

Q: What was the basis of the suggestion?

A: Two things: first, experience; but, second, I was informed that he was somebody who could be relied upon to deal with Smith on the basis of professional discretion. That was at the time when we made the suggestion of very high importance to us, because the operation was at a covert stage.

Q: But a lot of lawyers would have qualified for that?

A: I dare say there would be some.

Q: Was the representation offered to any other lawyers?

A: I do not know. I do not think we put forward any other names, but Smith had to choose.

Q: Was he given a panel to choose from?

A: I do not think he was. I do not think so.

Q: When you say he had to choose, there was only one choice?

A: He had to say yes or no. We could not impose.

Q: That was the choice, yes or no?

A: Yes, but if he had said no we would have gone elsewhere.

Q: Was he told that? It is important in terms of the choice he was given, as you can appreciate.

A: I do not know. I imagine he was. I was not dealing with him.

Q: Was he happy?

A: He was happy and he was well represented (*Appendix Seven*).

Q: Should Smith and Henry been given separate lawyers in the light of subsequent events?

A: I do not know. They had separate representation. That is to say that they had separate counsel.

Q: But the same instructing solicitor, I take it?

A: By that stage we were not involved. We were in it up until the time the hearing started, you understand.

Mr NAGLE:

Q: It is my understanding, from what you said on one other occasion, that Smith and Henry would not assist unless they could have legal representation?

A: Yes.

Q: I think I asked you before why one of your officers could not do it and they said, "No, no. We want our own"?

A: They insisted that they have legal representation. I would have had a sense of acute discomfort if it were suggested that one of my people could have done it.

Q: No, what I put to you on a previous occasion was that usually in a trial the Crown protects the witnesses—they were ICAC witnesses—and the response was that both Smith and Henry wanted their own legal representation and that was agreed to. I have no problem with that.

CHAIRMAN:

Q: Mr Murphy has asserted that he is high priced. I would not expect you to know his price. Could we obtain the fees, as it was public money?

A: I am informed that he was charging in the order of \$200 an hour.

Ms FURNESS:

A: Appendix 3 contains the details of the amounts paid by the commission to Mr Corry, at page 281.

CHAIRMAN:

Q: If I can take you to question 5.1(v) where the commission answers to the Committee's questions on notice, "Henry wanted to make a statement and the Commission had no idea what he wanted to say. Accordingly he was not permitted to do so." After that did the commission seek to interview and obtain a statement?

Mr TEMBY:

A: No. He had his own legal representation and we said twice in the hearing and in public that if he wanted to make a statement he was encouraged to do so, but he did not come forward with anything. The transcript has been provided.

Q: Yes, you have supplied it.

A: I would very much like the transcript to be tabled because it speaks eloquently as to what happened. The impression given by that article is completely wrong and the transcript really bears that out (*reproduced pp.42-44*).

Mr TURNER:

Q: I do not know why we are wasting our time or your time discussing articles written by that gentleman.

Mr GAUDRY:

Q: It would have been the role of his solicitor to advise him as to the importance or otherwise of making a written statement?

A: Yes.

Q: That would normally have occurred?

A: I am sure that was done—his solicitor or his counsel. He was competently represented at both solicitor and counsel level. Mr Terracini is very able counsel and looks after his client's interests very well.

Ms BURNSWOODS:

Q: This is obviously not the first article of this kind by Mr Murphy. I am wondering if you have ever responded to the paper in any way or sought corrections of fact or had any dealings with the *Sun-Herald* over that column in a general sense?

A: I think that on one or two occasions we have given some limited response. Our approach, at a certain point, was to ignore because when stuff is as erroneous as this, it is so very hard to tackle and I prefer to tackle it in a sensible forum such as this.

INDEMNITIES

Question on Notice

Q: 6.1 Section 49 of the ICAC Act provides for the Commission to make a recommendation for an indemnity to the Attorney-General.

- (i) What guidelines have been developed by the Commission in making a recommendation?
- (ii) Who decides if a recommendation should be made?
- (iii) Are any other persons or bodies consulted before the recommendation is made?
- (iv) Is the effect upon other investigations taken into account in making a recommendation to grant an indemnity?

A: The Commission has recommended to the Attorney-General that an indemnity be granted on three occasions in relation to two formal investigations. It has been granted on each occasion (*Appendix Five*). Guidelines are usually developed when consistency is required in decision making and a matter arises with some frequency. This is not the case in relation to the exercise of the power under s49 of the Act. The Commission does have regard to the guidelines prepared by the Office of the Director of Public Prosecutions.

Many factors are taken into account before the Commissioner decides whether to make a recommendation to the Attorney depending upon the circumstances of the case. If relevant and appropriate, other bodies are consulted. For example, a discussion took place with the Attorney-General before the first application was made.

Questions Without Notice

CHAIRMAN:

Q: In relation to indemnities, one of the injustices is that often crooks get off scot-free in a sense. Someone like Smith, who I think is evil, was involved in a whole range of things and may well have been involved in more criminal activity than anyone else in Milloo because he was the common denominator, gets off free because he is given an indemnity. When you give people who are dishonest an indemnity—and Mr Toomey went to great lengths, in fairness, to say that at the opening—there is a tendency that they will reduce their role in activities and enlarge the role of other people. Would you agree with those dangers?

A: The last point certainly did not happen in Smith's case.

Q: But in terms of indemnities in principle when you are dealing with people?

A: I suppose I would agree with those propositions. There is an enormous amount more one can say. I spent five years having this as one of my responsibilities. It is always a difficult function to perform. The point needs to be borne in mind that, so far as Smith is concerned. He is in prison serving a life sentence and another long-term finite sentence and he is a sick man. The prospects of his release are not high. The prospects of his release followed by further criminal activities are, one would think, quite low. It is easier to indemnify people in relation to conduct for which, in the nature of things, they are not going to be dealt with and that is true so far as this conduct is concerned. The conduct had been investigated by police. They set up task force Zig-Zag. It failed. They were not getting anywhere. The price paid was a very low price indeed because he was not going to be prosecuted for these offences.

Mr NAGLE:

Q: You made it quite clear from the outset that his evidence had to be corroborated by other evidence, and whatever weight was to be put on it was prefaced by Mr Toomey?

A: That is right, but I hope the point I am now making is appreciated. The price paid was a very low one. He was, simply, not going to be dealt with for those offences. He got off them. The trail was cold.

CHAIRMAN:

Q: I understand that.

Mr HATTON:

Q: It is almost axiomatic. If you want to find what is wrong with your car you look for someone with dirty hands. The situation is that in some types of criminal circles the only way to penetrate them is if someone is given indemnity and you have to weigh up the possible gains. In this case, exposing police involvement against the losses?

A: Yes, I would agree with that. You have to find someone who knows that someone will be either a senior criminal or a senior police officer. History shows that occasionally a senior police officer finds God and comes clean. It happened in Queensland. It did not happen here. It is a different town. I said at the outset I reckon it would happen about once per country per century and it happened in Queensland. I always thought it would probably would not happen here.

THE MEDIA

Questions on Notice

Q: 7.1 How do you discriminate between those journalists who you require to reveal their sources and those who you do not so require?

A: The Commission summons people to give evidence on the basis that their evidence may be relevant to an investigation it is conducting. The Parliament has empowered the Commission to compel witnesses to answer relevant questions. The Commission makes a decision on the basis of all the circumstances as to what, if any, action it will take in the face of a refusal to answer a relevant question. As the Committee knows, contempt proceedings have been taken with respect to two people only for failing to answer relevant questions.

Q: 7.2 Has there ever been occasions or an occasion when you have forced a journalist to reveal his or her sources even on a confidential basis?

Q: 7.3 Was the incident involving the journalist Deborah Cornwall the first occasion on which you required a journalist to reveal his or her sources? If not, what are the other occasions?

A: The Commission does not "force". It is empowered by statute to compel answers to relevant questions. If answers are not forthcoming it can cite the witness for contempt. It has not taken this action with respect to any journalist other than Ms Cornwall.

Q: 7.4 What would your attitude be if you read an article written by a journalist which alleged corrupt conduct in public administration? Would you immediately require such journalist to disclose to you the source of the information for such article or publication? If not, why not?

A: The question is too general to permit a useful answer.

It would depend upon the circumstances including whether the Commission was conducting a formal investigation or had sufficient information to commence a formal investigation and accordingly had the relevant power. Obviously the nature and extent of the allegations would be of high relevance.

Questions Without Notice

CHAIRMAN:

Q: The media, 7.1. How do you discriminate between those journalists who you require to reveal their sources and those you do not so require? You answered that the commission summonsed people to give evidence on the basis that their evidence may be relevant to an investigation that the commission is conducting. I think the Committee was really asking whether you have a criterion in terms of when journalists put things on the public record.

A: There is certainly no criteria that I can produce to you. I wish to stress the high infrequency with which we have done anything of this sort.

Q: But is there a criteria? I am not suggesting that a document is in existence, but is there something?

A: I cannot develop for you, even as I speak, a formula which will answer all circumstances.

Q: But have you developed a formula as yet?

A: No. You cannot do so.

Q: I refer to 7.4. What would your attitude be if you read an article written by a journalist which alleged corrupt conduct in public administration? Would you immediately require the journalist to disclose to you the source of information? It is said that the question is too general. The precise allegation is: there is a feature article which alleges serious corrupt conduct in public administration. What would happen then?

A: I do not know. I cannot answer in the abstract; it is just not possible to do so. We have done it once only, and that says a good deal.

Mr NAGLE:

Q: But if the allegation in the article was of a nature which concerned you, your office would at least look at it to see whether it should be taken further, would it not? I am talking about inhouse. You would not just let it go by would you?

A: We keep an eye on the papers. If we see allegations which need to be pursued, we will pursue them. We have an own motion capacity, and we use it. I am sure that our first response in the postulated situation would not be to pop the journalist in the witness box. It does not work like that. History shows that it is an unlikely

response.

CHAIRMAN:

Q: Have there ever been occasions when you have asked a journalist to disclose sources on a confidential basis—not necessarily to go on the public record with contempt proceedings, but on a confidential basis?

A: There was one other occasion on which a journalist was summonsed to appear. They were not asked who the source was, but to confirm a source. We had already received information from that source by way of self-identification.

Q: In that concrete example, if that other information was not available, would you have asked the journalist to disclose the source?

A: I do not know, I am sorry. It is a hypothetical question. I just cannot answer it.

Q: It was not hypothetical in this case.

A: Yes, it is: it did not happen, therefore it is hypothetical. I cannot answer your question. I do not know.

Mr TINK:

Q: Do you have an arrangement to do a special with Channel 9 for "Sunday" soon?

A: No. This Sunday? Any Sunday? No.

Q: I am referring to the "Sunday" program on Channel 9.

A: That question is amazing. What is your source?

Q: I take the same attitude you do, Mr Temby: I cannot recall.

A: Mind you, I would not necessarily say no, you must understand. I do not think there is anything wrong with that.

Q: I simply asked a question. I am not placing any value judgment on it at all; I simply asked a question.

A: For another week, and perhaps until the second Milloo report comes out, I am public property.

Q: I asked a question, I got an answer. I am not passing any judgment on it whatsoever.

Mr NAGLE:

Q: I think "Sunday" is an interesting program and I would be very interested to watch you on it.

Mr GAUDRY:

Q: Are newspaper articles treated somewhat in the form of informations by the commission?

A: They are more or less reliable information, you will understand.

Q: But they would normally be taken through that process—looked at by someone assessing them and then perhaps taken on from there?

A: On occasion I have read articles in the newspaper and thought, "This looks credible and worrying; we had better find out about it".

Q: And in that case would you directly contact the journalist?

A: No, probably not. We would probably go to the department concerned and ask about the position. The range of techniques is quite wide. We are quite unlikely to go to the journalist first.

Q: So you would normally go to the department?

A: Yes, or to an affected individual.

Mr TINK:

Q: After five years, do you think that your relationship with the media has been about right, or do you think that there could have been a bit more distance between you and the media, or do you think you could have been a bit closer to the media than you have been?

A: I think the dealings between the commission and the media have been about right. We have a statutory education role. One way of educating people is by using the media, and we set out to do so. I am sure that we were right in doing that. We adopted the approach of dealing with the media in a professional and truthful fashion at all times. We avoided giving them access to material which they were not entitled to, which means operational material. I think we have reaped very large dividends from doing that. The concerns that you have expressed and the occasional debates we have had are only at the fringe of that.

What I am giving is a description of the process. I think it has been about right, and I am grateful to them. I wish on occasions that they did not make mistakes, and there have been a few mistakes, some of them serious. I certainly wish on occasions that they had concentrated a bit more on issues and not personalities. They probably wish we were more forthcoming than we are because we play our cards pretty close to our chest. Having said that, the commission has derived much benefit from the coverage by the media of its activities and, without that, the corruption problem would remain hidden in murky corners. That would be very undesirable.

ICAC'S CORPORATE PLAN 1993-1995

Questions on Notice

Q: 8.1 The ICAC's Annual Report to 30 June 1991 details the Operations Strategy of the Commission (pp 9-15). However, the ICAC's Corporate Plan 1993-1995 appears to give little coverage to the operations aspect of the Commission's work. Why is this?

A: The Commission's Corporate Plan is a statement of the organisation's objectives. By its very nature it does not concentrate upon particular functions or departments. Rather, it seeks to identify the future direction of the organisation as a whole. This approach to corporate planning is founded upon and underscores the importance of the Commission's principal functions of investigation, prevention and education integrating them into a clear statement of aims, strategies and outcomes. The Operations Strategy has a different purpose and complements the Corporate Plan.

OPERATIONS REVIEW COMMITTEE

Questions on Notice

Q: 9.1 How many times has a complaint been pursued further by the complainant when reasons have been given by the Commission for not proceeding with that complaint?

A: The Commission has not kept separate records of such instances - to obtain the requested figures would necessitate examining each Commission file individually to ascertain whether the suggested scenario had in fact taken place.

As has been discussed at previous meetings with the Committee, the instances of the Commission providing reasons for non investigation is occurring more frequently.

Questions Without Notice

Ms BURNSWOODS:

Q: Is there any consultation with the Commissioner when the Premier or Attorney General are considering appointing people to the ORC? I notice that that is coming up this month.

A: There always has been, and it is required by statute.

Q: Have you been consulted yet, given that the appointments come up this month?

A: It was consultation in a sense; I initiated it. I have said to the Government, "Please bear in mind that the terms of officers are about to come to an end". I pointed out that one member of the committee has been there for three years and I suggested that it might be time for change so far as that member is concerned. The Government has not come back and said, "This is the proposed new member", as it is obliged to do. Whether that happens with me or my successor remains to be seen.

Q: They are a bit late with a number of things at the moment.

A: I am not troubled by the timing of that. It has generally happened at a relatively late stage and we have never lacked an ORC. I am sure that it will fall into place.

- 10 -
PUBLIC HEARINGS

Questions on Notice

Q: 10.1 Does Commissioner Temby feel there is value in public hearings and should they be continued?

A: Yes. Public hearings are an important tool in exposing corruption and public exposure is in itself a significant deterrent. The educative benefits of public hearings are considerable and information is invariably obtained when public hearings are held which would not otherwise have been available to the Commission. This was markedly the case in the recent investigation into Brian Zouch, formerly of Coffs Harbour City Council. In addition, the Commission experienced a considerable drop in matters brought to its attention when the police and criminals hearing became private.

Questions Without Notice

Mr NAGLE:

Q: I notice that in response to an earlier question—I am very pleased to see the answer to number 5—you said that the witness box could not be treated as a pulpit or soapbox with statements made in an uncontrolled fashion. That is one of the concerns I have had with regard to people abusing the privilege of giving evidence in an inquiry. I delivered a paper on this in Mexico recently. I ultimately came down in favour of the issue. It is a concern that people's reputations are hurt, but other considerations have to be taken into account. Would you like to comment?

A: No, I am aware of the paper. As you say, it treated both sides of the question and it came down in favour of public hearings. My position remains unchanged—you have heard it on a number of occasions.

***CORRUPTION PREVENTION AND
PUBLIC EDUCATION***

Questions on Notice

Q: 11.1 The Premier has stated that he wants a change in direction for the ICAC, making it more "pro-active" in providing advice to public authorities on combating corruption, with less emphasis on investigations. Could you provide details of the proportion of time and resources, the Commission already devotes to corruption-prevention, education and research compared with investigations?

A: Since July 1993 the Commission has enhanced its departmental accounting to allow a more accurate costing of departmental inputs. However the Commission operates in a highly multi-disciplinary fashion with substantial cross-departmental programme activity. Accordingly it would be inappropriate to rely upon departmental accounting as an indication of Commission resources devoted to different programme activities. A significant proportion of Investigations Department resources fulfil an educational and preventative role. Similarly with other departments. For example, during the police and criminals investigation the Commission simultaneously undertook a corruption prevention and research project. Some of the resources devoted to this work are costs to the Investigations Department but on an activity costing basis would be more appropriately costed to Prevention or Research. Commission publications serve an educational purpose although may be costed in the case of investigation reports to the Investigations area.

The Commission has indicated that it is devoting an increasing proportion of its resources to corruption prevention and education. However, any reduction in investigative activity would have a detrimental effect on the balance of Commission activities.

Q: 11.2 Have you been dissatisfied with the response of any Government departments to ICAC corruption-prevention project reports. If so, could you detail the problems?

A: The approach adopted in Corruption Prevention projects which focus on one or a small number of agencies involves close collaboration with the relevant organisation. This approach is designed to increase the prospect of usefulness and acceptance of the recommendations.

The Commission monitors responses to its Corruption Prevention reports to discover whether recommendations have been implemented and whether they have been effective in minimising opportunities for corruption. Generally we have found a high level of acceptance, no doubt due to the approach referred to above. In some instances where the agency concerned presents a satisfactory reason for not implementing a particular recommendation the matter is discussed between the Commission and the agency concerned. Agreement has been reached in all such cases.

Where the Corruption Prevention project is focused on a large number of agencies, or perhaps all of the public sector, a different approach to monitoring is required. For example, following the Commission's work which examined procedures for purchase and sale of cars and other light vehicles by local government councils, all local and state government agencies who had received the report were sent a questionnaire. The high overall response rate of 66% was encouraging and the responses indicated such data as:

- . 46% of local government respondents made changes in response to the reports recommendations, and
- . 21% reviewed purchase/sale procedures in other areas
- . more than 85% of local government respondents found the report clear, easy to understand and relevant while 72% said the report helped them ensure fairness and 44% said it helped them get the best deal from the market.

The Local Government and Shires Associations recently advised the Commission on the outcome of its survey of responses to the Plant Hire (Heavy Machinery) Report; it found that nearly 80% of respondents had reviewed procedures and of those more than 60% modified their procedures.

Questions Without Notice

Mr TINK:

Q: In conclusion, I want to say openly what I said to you in private correspondence. I thought the corruption prevention paper on police criminal investigations was very good. I think that is very important work and helps set the parameters for not only best practice but also getting down to the disciplinary side of things as well.

A: Thank you for that. It has been enormously interesting work. It has interested not just us, it has actually interested the Police Service. They now say, "We would not have imagined that people who have not worn the uniform could come in and look at our system and actually make some suggestions for improvement". The answer to which is that sometimes it is only those who are outside who can come in and do that. It has been very interesting at both ends of the process. I think the community is going to get big dividends from it.

Ms BURNSWOODS:

Q: Mr Temby referred at the end of his answer to the need for investigations to continue. When these statements are made, particularly in the light of what we talked about earlier with respect to the delay in reviewing the Act, I guess it sends a message to us and the media that maybe the review of the Act will take directions that this Committee has not dealt with.

A: I have to say that I was untroubled by the Premier's remark because it reflects what we are doing in any event. I did not understand the Premier to say that public hearings or any hearings should come to an end, so I was really untroubled by those remarks.

Q: We are dealing now with investigations as distinct from education and corruption prevention.

A: It is the way we are going. As it happens, it is not involving a diminution in investigations, but certainly we are placing an increasing emphasis, over a period, upon the other two functions.

Mr GAUDRY:

Q: I take it that you are also saying that the investigation of a matter leads to much more prevention and education?

A: It does. Also—this is an important point to make—we have always tried to combine the functions rather than have them dealt with in watertight compartments. We are getting much better at it. The extent to which it is being done in Milloo has been

very high indeed. The research unit has done invaluable work in preparing a discussion paper on informants. The corruption prevention people have done groundbreaking work in so far as the criminal investigation process is concerned. There has been a great deal of educative effort. It is not quite done using classic education techniques, but there has been a great deal of educative effort, persuading the Police Service that its best approach would be to work with us rather than in opposition to us. That is, to educate them.

Mr TINK:

Q: The Public Accounts Committee looked at government tendering, particularly in relation to infrastructure projects and so forth. We have come to the view, on a bipartisan basis, that a demand is placed on the private sector people and the senior government people who are involved in that to provide that type of educative function. They want it.

A: You will be interested to know that, while we have always talked to senior private sector people, we are tending to do it more, not less, now. They are interested and there are important messages that we can give to them.

Q: I believe this is something we can quantify. The pitfalls or probity document has been a great success.

A: You are right; it is in its third print run.

Q: That quantifies a level of demand and interest?

A: For those who are interested, Milloo is in heavy demand, which encourages us greatly because it is meant to inform. We have distributed from 3,000 to 3,500 copies in the space of a few days. Only half of that has gone out unsolicited; the rest has been requested. We have to reprint that as well.

Mr TURNER:

Q: If you moved more stridently into corruption prevention would you see any problem or conflict with the user-pays system to cover some of your costs in that area, particularly when you are out in the public sector?

A: There is no conflict in principle, that is to say, it is not an impossibility. It is quite difficult in practice because we seek to persuade the relevant department or departments, or agency or agencies, to work with us. It is more difficult to do if you come in uninvited, put your foot in the door, simultaneously entreat them to cooperate and give them a bill.

Q: I am talking about those occasions when they approach you to run a corruption prevention seminar.

A: Most of the approaches for project work come from our end.

Ms BURNSWOODS:

Q: I was impressed with the little booklet on sponsorship guidelines and the set of principles that were developed there. I have a query, though, in relation to the sort of sponsorship that occurs in the education area which deals with McDonalds, Kelloggs, or allowing Kelloggs to prepare a kit which then goes into schools. Obviously, in those areas there is no competitive tendering or a seeking of expressions of interest. Do you have any comment to make on likely future problems in those sorts of sponsorship areas?

A: For reasons that I am sure you will understand we avoided the policy questions as to whether sponsorship should be permitted and as to what sponsorship should be permitted. We assumed there would be some—and, as we know, it is tending to increase, not reduce—and we then examined process. I think that was the right approach. I am, therefore, not prepared, unless forced, to make comments about McDonalds, Kelloggs, or whoever.

Q: I used those as examples, obviously.

A: Sure. I need to go back to the principles to be able to answer the question really confidently, but I think the approach which we urged was that departments or agencies seeking sponsorship should do so in an open-minded and not a closed-minded fashion.

Q: But also with some emphasis on the possibility of tendering so that there was competition?

A: Yes, sure. It is desirable, when practicable, but not always practicable. Those who are involved in sponsorship will say that normally it is done by an approach from one end or the other.

COLLINS V RYAN REPORT

Questions on Notice

Q: 12.1 Did Assistant Commissioner Kevin Holland discuss with you the question of whether to hold a hearing into the Collins v Ryan matter? Do you agree with Mr Holland's decision not to hold a hearing, especially given that Peter Collins and his solicitor Kenneth Brimaud refused to be interviewed by Commission investigators?

A: Assistant Commissioner Holland had complete charge of the *Collins v Ryan* reference. On occasions he advised the Commissioner as to progress and prospects, and there was limited discussion initiated by him as to whether a hearing was necessary, and if not whether a hearing was justified. The decision in that and every other respect was his. The Commissioner did and does agree with the decision not to hold a hearing, noting that two witnesses refused to be interviewed but did provide statements. It has to be remembered that in this case, and unusually, examination of documents and statements enabled a remarkably full picture to emerge.

Questions Without Notice

Ms BURNSWOODS:

Q: Getting back to the refusal to be interviewed, by two of the witnesses, and the word "perception" which has come up, if witnesses refuse to be interviewed and there is no hearing, then I think there is a risk in terms of public perception about the way in which an inquiry has been conducted.

A: I carry no brief for any individual, you understand. But I want to say in fairness that the situation that arose is not an entirely unusual one. That is to say in the course of our work, whether it be assessment work or investigative work, people not infrequently choose not to talk to us. That is their right. It by no means follows that we immediately summons them into the witness box. That is a pretty strong reflex action.

Q: That is a very unusual case, another case of a Minister in a government and questions being asked, that was unusual.

A: Mr Holland has said in the report, and I am speaking from what I know of the matter, that, unusually it was possible, because of the abundance of documentation, to reach an entirely satisfactory and confident conclusion without a hearing. It will not often happen but it did happen in that case.

Mr NAGLE:

Q: Did any of the other people involved give statements?

A: There were many statements obtained and many interviews conducted. We talked to a range of people, everyone we thought could contribute.

Mr GAUDRY:

Q: In the case involving *Collins v. Ryan*, there was a document search, which you say was very comprehensive. Peter Collins and his solicitor refused to be interviewed about that matter. Would it not be more effective if that matter led to a hearing rather than by being dealt with in this manner?

A: First, as the answer says, we have statements, so it is not as if we were without any material from the two gentlemen you mentioned. Second, I am reluctant, for reasons you will understand, to speak for Mr Holland, whose call it was. But I never had a sense of discomfort because there was such an abundance of material. There was almost a superabundance of material because there were so many lawyers involved. As it happens, lawyers document things in a way that so many other people do not

do. Mr Holland said, "I can, with perfect confidence, work out what happened". To run a hearing, public or private, would, in those circumstances, be a waste of resources. Then you have got to get counsel assisting. The witnesses called have to have counsel. It is all at the public's expense. It is not a small expense. I thought it was the right approach. Once you start hearings they are hard to contain; that is another point of some relevance.

Q: This was a specific matter, though, was it not?

A: Yes. If we had gone into a hearing concerning that matter you would have been talking certainly about a number of days. It is just the nature of lawyers. They talk a lot. It is hard to contain.

Ms BURNSWOODS:

Q: How did Mr Holland come to be the assistant commissioner? What sort of criteria did you use in making that decision?

A: We suggested him to the Government. As you would know, it is the Government's choice. First, I decided that I could not do it, so we had to get somebody in. The only assistant commissioner on the books at the time was Mr McClellan, as memory serves me, and perhaps Mr Mant also. Mr Mant was busy, Mr McClellan was unavailable, so we needed somebody. I decided that, given the nature of the matter, a retired judge would bring to the job the authority that was necessary. Mr Holland had some relevant prior experience, having done something not dissimilar with the royal commission into the building industry here in Sydney. They were the sorts of considerations that led us to approach him.

Q: Following on from Mr Gaudry's question, I have a concern that given there was no hearing where there were conflicts of evidence. As you say, obviously there was a lot of paper but there was also conflicting evidence from different witnesses. Could Mr Holland have gone further in compelling—I suppose there are two different issues—more from Mr Collins and his solicitor, who did not give evidence and secondly, in the area of something perhaps short of a public hearing in relation to areas where there was conflict of evidence between the witnesses?

A: As to the first question, only by means of a summons to give evidence in a hearing with the disadvantages I have adverted to. As to the second question, as I am informed and as the report bears out, the degree of conflict was not great and was, except in one respect, unimportant. That respect has been dealt with in the report.

Q: Is that in relation to the file note?

A: Yes.

Q: And whether or not it was correct?

A: Yes. And it could be fairly said that was not an absolutely critical issue. Nor could it be said to be unimportant. It has been dealt with.

Q: Getting back to the refusal to be interviewed, by two of the witnesses, and the word "perception" which has come up, if witnesses refuse to be interviewed and there is no hearing, then I think there is a risk in terms of public perception about the way in which an inquiry has been conducted.

A: I carry no brief for any individual, you understand. But I want to say in fairness that the situation that arose is not an entirely unusual one. That is to say in the course of our work, whether it be assessment work or investigative work, people not infrequently choose not to talk to us. That is their right. It by no means follows that we immediately summons them into the witness box. That is a pretty strong reflex action.

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Mr NAGLE:

Q: Did any of the other people involved give statements?

A: There were many statements obtained and many interviews conducted. We talked to a range of people, everyone we thought could contribute.

- 13 -
FIRST REPORT ON POLICE

Questions Without Notice

Mr TINK:

Q: Mr Temby, I have a number of problems with the Milloo report... Mr Temby, I want to ask you first: where there is an allegation made by someone, whether hearsay or otherwise, that the police commissioner has directed a senior officer to alter a report in such a way that it does not get within the purview of the Ombudsman's office, is that in your view a serious allegation?

A: Of course it is.

Q: To my mind that is one of the most serious allegations that could possibly be made, do you agree with that?

A: I do not know that I want to rank it but it is a serious allegation.

Q: I am puzzled and perplexed by the level of the detail, if you like, in your report surrounding the conclusion you reached about the commissioner in this case. I turn to the report, on page 254 you conclude on the basis that:

Lauer gave evidence denying improper involvement, and did so in a cogent fashion. Due to ill health, Cole could not be called as a witness.

That seems to be the essence of your conclusion. The difficulty I have with that is that—

CHAIRMAN:

Q: Pause there. I think you said, "That appears to be the essence of your conclusion". In fairness to Mr Temby, that is a premise that should be either accepted or rejected.

A: I suppose that is right, although I prefer to put it in my words. We called the available witnesses, conclusions were drawn on the basis of the evidence which were forthcoming from the available witness. There is no other way of doing it.

Mr TINK:

Q: In that case I go to that chapter, because I have some problems with it. First, there seem to be two separate sources of the same allegation. There is Cook saying, and I understand you accept Cook unreservedly as a witness in all material respects, that Myatt said that Cole said—

A: I do not know that I do, do I? I say that he is truthful. Look, I have a sense of discomfort about this because I would really prefer that the report be allowed to speak for itself. I accept Cook as a truthful witness. Truthful witnesses do not necessarily have perfect recall, do not necessarily draw precisely accurate conclusions. To say that somebody is truthful is not to say that they are spot-on in every respect. They are two different propositions.

Q: I will move away from that for a minute to another aspect of this which really does trouble me. The other way the allegation arose was through Taylforth. There was evidence from Cook that Taylforth said the commissioner had told him to change the report. In your report you repeat the evidence that basically Taylforth says he cannot remember, he simply cannot remember. But then it is left hanging. There is no wrapping up by you of the conclusion that you draw in relation to Taylforth. I would have thought that was something that you would have to weave, if you like, into the conclusions in relation to the commissioner. The Myatt matter is disposed of at some length, where Myatt makes a strong denial, if I can put it that way. But Taylforth, who is said to have spoken directly to the commissioner—the evidence is much more immediate in that sense—his response is, if I can put it this way, a lot weaker than Myatt's. He simply says, "I can't remember". To my mind you do not draw any conclusion or take that anywhere. It is simply left hanging in the report, and I have to say that I am very troubled by that. It seems to me that where Taylforth is getting it allegedly firsthand from the commissioner and he says, "Well I just simply can't recall", that is fairly strong evidence which I would have thought, in the context of the conclusion you have drawn, would need to be wrapped up in some cogent fashion.

A: But it is second-hand evidence, because that is evidence as to what he is said to have said, not evidence as to what anyone is said to have said to him. Mr Tink, I have to say to you that I took the matter as far as I thought I responsibly could, and it is not for me to proudly assert that nobody could have done a better job. I do assert that it is not easy to do it better than that, and you can only take matters as far as considered judgment enables you to take them. That is what I have done in that chapter. You cannot do more. How can you do more than take matters as far as considered judgment permits?

Q: Let me put an example to you. If we can go to the Street royal commission in relation to then Premier Wran and Mr Humphreys and Mr Farquhar, the then Chief Magistrate, where the factual allegations in a very relevant sense were very similar,

it was said by—I cannot remember who now—Farquhar or Humphreys, or Humphreys to Farquhar, "The Premier is on the line". It is a very similar fact situation. Sir Laurence Street devotes half a book to it and goes through all the permutations and imputations about who said what to whom, notwithstanding that it was second-hand or third-hand hearsay, to try to get to the bottom of it.

A: But he did not have any missing witnesses. At the end of the day there is no evidence against the police commissioner as alleged. There is no evidence against him, because all the statements are second-hand. I can do nothing about that.

Q: I am not quibbling with the conclusion. I am just saying that there are a lot of questions left hanging about the roots of the conclusion. That is my problem. I am not arguing with the conclusion; I am not in a position to do so. I am just saying in relation to the Taylforth allegation, it is not wrapped up in the conclusion. If you look at Street, those things are wrapped up.

A: I cannot take it further. I note what you say.

Q: In evidence Commissioner Lauer spoke very highly of Superintendent Myatt's character. He expressed some concerns about Mr Cook in the context of the report being seen, as I understood it, as a way of being given more favourable terms of discharge. As I understand your conclusions, you must have arrived at a different view to the commissioner about Mr Myatt and a different view to the commissioner about Mr Cook, in the sense that he was seen to be an honest witness. In the context of the conclusion you reached about Commissioner Lauer, I would have thought that is another key matter that should have been addressed in the body of the report leading to that conclusion.

A: In my view, the considerations to which you draw attention do not go to the credit of the Police Commissioner, as lawyers use the term.

Q: I would have thought, given that it is a broader investigative mandate here, that it would not be out of bounds for you to comment on. It might not be something that at the end of the day leads to any useful admissible evidence in relation to something that produces a result in court, or that indeed would be relevant in court. To follow on from Mr Hatton's more general point, it seems to me that these are the precise sorts of issues that are afforded an opportunity to be ventilated and wrapped up, if you like, in a broader type of reporting format which I would have thought ICAC has the opportunity to offer.

A: I do not know that I can say much more than that we did not, having—in this and a thousand other respects—thought long, hard and carefully as to what was the proper course to follow. Part of the reason is that I was anxious to write a report that was not so long or complex as to be inaccessible. I do not think I am being unfair to others in saying that a more typical report arising from Milloo would have been 1,200

or 1,500 pages, and such reports are simply never read. Look at the Chelmsford report. I have read it. I would be surprised to meet another person who has read it from start to finish. It is simply too long; it becomes inaccessible.

Q: That leads me back to my first question to you, which was: in the hierarchy of issues of importance, what level of importance do you place on the allegations made about this report? When I say the report, I refer to the PRAM document. I would have thought in the hierarchy of issues, regardless of the length of volume 1 of the Milloo Report, it would have been a major issue.

A: I do not think it was treated as otherwise than as a major issue. It has been dealt with.

Q: There is one other issue I want to raise, and this is a perception matter. Mr Lauer, of course, is a member of the Operations Review Committee of the ICAC. As I understand it, there were meetings of the Operations Review Committee on 6 August 1993 and on 3 September 1993. As I understand it—and Michelle Huntsman says—that at both of those meetings Mr Lauer was present. Could I just put it to you that in the context of perceptions, whereas I understand that you chaired those meetings, it would have been a better thing if you had suggested that the commissioner, particularly in relation to the second meeting—he had given fairly important evidence to you just three days prior—that on that occasion he would send along a delegate, as I understand he does on other occasions when he cannot attend. In fact, from the point of view of perception of impartiality and things being seen to be done, that is not something that sends out a very good message.

A: Mr Tink you will, I am sure, know without being told that there has been no discussion of any relevance between the police commissioner and myself outside the context of the hearing. Once that is accepted, then I do not understand the assertion you make. Is the suggestion that we exchanged meaningful looks? It is silly.

Q: Can I suggest to you, Mr Temby, that in the context of the three general principles going back some years ago now, of Mr Roden's, which arose from the North Coast report which you specifically adopted in your own annual report, I think it was in 1990, you put as one of the key and important points that perceptions of impartiality are important. I accept unreservedly that nothing passed between you and the commissioner. Let us make no mistake about that. I am not suggesting otherwise. What I am suggesting is in the context of perception, where you have adopted Mr Roden's points—and I think they are important—that this was not a very good example of it.

A: I disagree with you very strongly.

Q: There are two issues that have been raised before, but they are relevant to this. They have been raised with me in another committee. One is in relation to annual

reporting and the other is in relation to internal auditing within the police. As I understand it, for all senior executive service officers level 5 and above—and there are a large number of police officers within that category—there is a requirement that under the annual reporting legislation their performance be referred to in the annual report. The Police Board reports on the Police Service and in relation to all senior officers there is, for example in the latest Police Board annual report, a notation simply that conduct was satisfactory—except in one case that we know about. It strikes me as odd that in the foreword of the same Police Board report there is clear recognition of problems, for example, with the Frenchs Forest station. It seems to me that there is a place for a more detailed level of reporting on performance targets, for example, for a particular regional commander and the actualities.

A: I do not know much about the particular question you are raising. I must say that the problem, when it comes to performance appraisal of individuals, is to get people who will do it frankly.

Q: In most SES outfits there is a certain belief that at some point you are reporting to yourself. The difference though in the police is that there is a board to do that job. It seems to me that there is an opportunity, indeed a statutory duty, to follow through.

A: I am getting to that point. In the broad, when it comes to the performance appraisal of individuals, the difficulty any manager has is in getting accurate reports. There is a great tendency for people to give everyone straight As, which is silly—I suppose that raises questions of culture. You have to try and break that down so that you are getting real reports so you can identify faults, so that you can help to rectify them. That is good for everyone concerned: good for the institution, good for the individual, but it is quite hard to do. I would have thought that requiring that all reports be made public is not likely to render more likely a high level of frankness in reporting. So, I am not sure that that is a particularly useful technique. That is as much comment as I wish to make.

Q: The other point relates to audit. I believe it is important that the chief executive officer of an organisation is seen to be clearly and directly responsible for the audit within the organisation.

A: Undoubtedly.

Q: There is some debate about that in the context of reporting lines, and there has been debate within the Police Service. It seems to me that if there is a direct and strong link to the CEO, it gets around the difficulty of allowing a situation where there is, to summarise what Mr Hatton has been talking about, room for plausible deniability by the chief executive officer—"I did not know"?

A: I think it is to be taken for granted that internal audit, whether in the public or private sector, should at least have a direct and always open channel to the chief executive

and should probably work to the chief executive. There certainly has to be a direct and open channel.

Commissioner of Police

Mr HATTON:

- Q:** Could I follow up with a general question. Are there any inadequacies, in your view, which limit the commission in investigating matters which touch upon the Commissioner of Police, considering that the commissioner is a member of the Operations Review Committee and considering that many of the investigators, if not most of them, have to return to the force and that you rely on the co-operation of the police force, through the commissioner, for your general work? Do you get access to records by bypassing the commissioner? What is your view on those matters?
- A:** There is no fetter of any sort upon our investigative capacity arising from the considerations you have mentioned. And we do not go through the commissioner to obtain documents or information. The normal channels are through the professional integrity branch. So there is no need for us to secure the co-operation of the commissioner personally in obtaining documents or information.
- Q:** Do you use Federal Police who are on secondment or former members of the Federal Police, or police from other States in order to gain access to files, to ensure the absolute clinical nature of the investigation?
- A:** The investigators that worked on Milloo over a period were quite considerable in their number. Most of them were not New South Wales police officers; some were. We carefully selected staff to ensure suitability for particular aspects of the investigation. I am quite confident that there was nothing in our approach or in the selection of personnel that got in the way of getting proper results. I am quite confident about that.
- Q:** Did you examine the report of the police committee in any way? Did your organisation do so? I know it was not a formal investigation but did your organisation examine it?
- A:** We, of course, got that report, and yes, we looked at it.
- Q:** In relation to the question I have just asked, did it not impress you that when the Committee tried to examine senior members of the police force, including the commissioner, almost without exception vital records could not be produced?
- A:** We have had a very similar experience, and it is adverted to in the report.

Q: If that is the case, where do you take it from here? Do you send police officers who are special officers of your organisation, who are, say, from Victoria, Queensland, Western Australia or the Federal Police? Do you have power and are you prepared to use that power to go straight in to internal affairs and say, "We want a thorough examination", for example on all the files to do with how you have dealt with paedophilia in New South Wales? Would that be a technique that you have used for any purpose, or could use?

A: It is a technique that we can use and it is a technique we have used, not specifically with internal affairs, but we have on a number of occasions proceeded to various police establishments, offices, with notices and have simply gone in and proceeded to search for what is there. The efficacy of so doing will depend upon the extent to which the information sought is of a widespread nature, you will understand. I mean, it will not always be the best available technique. We have exercised it often.

Q: When you speak of missing files—and I just indicate 400 items wiped off the commission's computer; Inspector Newberry lost the pink, the hard copy, the computer readable form, notebooks in the case of others, diaries were lost in the case of Commissioner Cole; Inspector Newberry was at one time a personal assistant to the commissioner and if you look at the evidence before the committee—it is detailed here and I can document it—all of those records were lost by Inspector Newberry and could not be produced. There was collusion in statements—sorry—there was coincidence in dates being the same on statements of people who worked in the media branch; there was Assistant Commissioner Cole's diary loss.

What I am saying to you—and I am not talking about John Hatton's minority report, I am talking about the police committee being totally frustrated by hundreds of records being lost, some of them so fundamental. For example, the inability of the police force to find people that we had no problem in finding, like Mr Brien, who was a media consultant and they could not find him. I am getting very disturbed. There is a problem with the ICAC in dealing with very senior officers of police. I may have a wrong perception here, but I can only tell you what I found as a member of that committee, in terms of trying to get into that organisation, finding records that disappeared and statements that you could not possibly accept that were given to us on sworn evidence. I have a real problem when a fellow like Cook is attacked by his police commissioner in evidence before ICAC, Myatt is supported by his police commissioner and yet your findings are against Myatt and for Cook.

Mr TINK:

Q: Without reasons.

Mr HATTON:

Q: I have a terrible feeling about this whole thing in terms of whether there are inadequacies and how we get around those inadequacies because, as you know, the Parliament is about to consider a reference to you on paedophilia.

A: All I can say, Mr Hatton, is that we are about the best bet you have got. The fact is that we have the powers, they are extensive powers, we exercise them and we keep going until we get as much as we can get. The other comment I would make is that record keeping practices within the Police Service have, for a long time past, been simply appalling and that will be the subject of one of the chapters in the forthcoming report. There obviously has to be very great improvement.

Q: If there were a parliamentary reference to you on paedophilia or some other thing which is extraordinarily sensitive—and I understand your response in terms of closed hearings in that regard—

A: Some call it secret hearings, you will have noticed.

Q: Would you consider, in a matter of such gravity where allegations were made by a former police Minister, amongst others, adopting practices which would ensure that the inquiry is truly clinical, that is, officers not relying on the New South Wales police force for favours in any way or not having to return to the New South Wales police force, and the best that we can get from other police forces are used solely on that investigation?

A: I am certain that if we get a parliamentary reference on that or any other topic, the matter will be pursued vigorously. It would be irresponsible of me to give any further undertakings. I am in the job for another week. Your remarks, Mr Hatton, will of course be borne in mind, but how can I give an undertaking that binds my successor. I cannot do so.

Q: That is fair enough. You have had five years experience now and—correct me if I am wrong—I think you would have preferred to arrive at Operation Milloo earlier than later?

A: Oh no, I do not say that. I reckon that if we had got to that earlier we would not have done it nearly as well. It was a very tough investigation.

Q: I was going to talk later about the possibility of examining all the files that were allegedly given to you from the Premier's Office through Gary Sturgess, or whatever, but I will come back to that. From your experience are the suggestions that John Hatton is making to you worthy of consideration that in fact—getting back to Mr Tink's point—from the point of view of perception that it has to be seen to be clinical when senior officers are involved in the police force and where something is so

sensitive that the likelihood or possibility of the service going to extreme lengths to cover up is taken into account?

A: I am sure that those things will have to be taken into account and it will be a very sensitive investigation which will require—

Q: I am not getting anywhere. Based on your five years experience, could you suggest a way such an inquiry should be handled? I am telling you that on both sides of the House there is extreme concern on this matter and we are wrestling with, whether it is a royal commission, judicial inquiry, parliamentary committee or ICAC—and all of them are imperfect as we all understand—but we have got to get the best we can, without going through each of those, that is a separate debate, given that yours could be the most effective mechanism?

A: The advantages of the commission are that we have abundant powers, we have got a track record for a robust approach. We have got very considerable acquired experience, but if I am not careful I will sound as if our desire to do this job is overwhelming, and I would not want to give that impression because we have got to approach it in a dispassionate fashion. I mean, once you start running campaigns, you will not get anywhere; in particular, you will not get to the truth of matters, and that is why in the course of the discussions we have had with political leaders we have been putting a range of considerations, stressing however that we are not making an ambit claim for this work, but one has to say that there are arguments based upon the considerations I have mentioned which would tend to favour the conclusion that the commission is about the best bet, assuming, of course, that the job the Parliament is content to see done is within the terms of our statutory powers. There would necessarily be a concentration upon public officials. Now, I think that is a sensible concentration because it seems to me that the area of the greatest concern is if public officials have failed in their duty. That is an even more important question than the larger, broader social questions. But it depends very much on the job the Parliament wants done. We are not an appropriate body to investigate paedophilia in a broad social context.

CHAIRMAN:

Q: But we are not talking about a broad social context in this one.

A: I think that is probably right.

Q: We are talking about public officials.

A: We would not be an appropriate body to receive submissions for the proposition that paedophilia should be legalised, for example. It is none of our business. We do not do that sort of work. It depends what Parliament wants done.

Q: But you can understand that if after five years the Parliament did not give it to you, the public may well think what have we set up this organisation for?

A: That is right, Mr Kerr, but it depends very much on the job Parliament wants doing.

Q: Yes, if they were within the terms of reference, subject to that.

Mr NAGLE:

Q: Is not the sum of it all that this arose out of worries and concerns about the relationship between police officers and criminals. The only way to deal with the issue and to change culture was to have this type of inquiry, to give this report. Those people who are named in this report will now go off and either have a bill of indictment filed against them by the DPP, go to court or they will be no billed and you will proceed on to do your second report, which will be to change the culture and maybe in that report to allay the fears of Mr Hatton in regards to the future behaviour of police officers.

A: I thank you for that. I make two comments. Firstly, it is easier to talk about changing culture than it is to achieve it and, in my view, outside organisations such as the ICAC or any parliamentary committee, or even, indeed, when you think about it, police Ministers, can only do so much in that respect. In the end they act as catalysts, as spurs to action. In the end the Police Service has to reform itself. It is doing so. It has to be urged to continue to do so and the best spur to action in that respect is not these catalysts—we are quite useful—the best spur to action is public expectations. The public is likely to get something like the Police Service that it demands, and one of the great values of this report is that it provides information which one hopes will lead to continued public demands for continuous improvement.

Q: Following on from that, therefore if the police do not change their culture and their ways of doing things as a result of this report, then they will have another inquiry ultimately because they will fall into the same trap again.

A: They will ultimately, yes.

Mr HATTON:

Q: Were a considerable number of files referred to you from the Premier's Department in the days of Mr Gary Sturgess, and were those files acted upon in terms of looking at corruption within the New South Wales Police Service or possible corruption within the political system?

A: I would have to take the question on notice (*Appendix Seven*).

Mr HATTON:

Q: I have one more question in that general section. As institutions are the products of history, to what extent is Milloo relevant? It is a real possibility that some senior officers in the Police Service, having grown up through the system and received promotion, are either corrupt or compromised by the system? Do you propose to examine this in your second report?

A: That is not a topic that I propose to take up in the second report. It is not a particular topic that I have examined. I understand the proposition you make but if I can put it in my words, if there are senior officers who are now behaving properly but are known to have behaved very badly when they were junior officers, then the risk of them being compromised is present. That is an undeniable proposition.

Mr TINK:

Q: In evidence Commissioner Lauer spoke very highly of Superintendent Myatt's character. He expressed some concerns about Mr Cook in the context of the report being seen, as I understood it, as a way of being given more favourable terms of discharge. As I understand your conclusions, you must have arrived at a different view to the commissioner about Mr Myatt and a different view to the commissioner about Mr Cook, in the sense that he was seen to be an honest witness. In the context of the conclusion you reached about Commissioner Lauer, I would have thought that is another key matter that should have been addressed in the body of the report leading to that conclusion.

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from start to finish. It is simply too long; it becomes inaccessible.

Q: That leads me back to my first question to you, which was: in the hierarchy of issues of importance, what level of importance do you place on the allegations made about this report? When I say the report, I refer to the PRAM document. I would have thought in the hierarchy of issues, regardless of the length of volume 1 of the Milloo Report, it would have been a major issue.

A: I do not think it was treated as otherwise than as a major issue. It has been dealt with.

Q: In the context of the matters I have just put to you?

A: Mr Tink, if you do not like the way it has been dealt with, you will have to make comment elsewhere. I am sorry I cannot help, but I have reported to the Parliament.

Q: I am simply putting those matters to you which have been on my mind for comment.

A: I do not think I can usefully comment further.

Mr HATTON:

Q: How would you answer those who want to dismiss all of Milloo or parts of Milloo as being simply history? What is their contemporaneous importance?

A: If I can come at it this way, the most encouraging aspect of the hearing was that at the end of the day counsel for the Police Service said, on instructions, "We made a mistake in absenting ourselves during the association segment. We should have been there because, yes, it is important." and agreed with my proposition: if you do not learn from history you are destined to repeat it. That is to say, at the end of the day the Police Service was acknowledging the importance of what was being done, to contemporary policing and not, as it had been at one stage during the course of the hearing, been inclined to say this is just history, we have dealt with it.

The Milloo report goes back in time, because you cannot make sense of what has happened recently without tracing some of the relationships back—in particular the Smith-Rogerson relationship. Rogerson has been an important figure in recent police history in this State but, as the report seeks to point out, it would be a grave mistake to adopt the demonology approach, which is to say that Rogerson has to be viewed as a special case, there being no prospect of repetition. As the report says, there is a prospect of repetition. I think there are other things that we will not see repeated. I think one can say, as a matter of history, that post-war in this State there have been one or two police commissioners who have been personally corrupt, that is to say have taken money from criminals.

I do not think there is any prospect of that happening again. That is to say, I think that is a risk you can put to one side because the levels of accountability, while not yet perfect, are quite high and ever increasing. The public is sceptical and observant. That sort of thing we will not see happen again. But you could imagine an officer who, through personal characteristics, came to occupy a position of great influence and power within the Police Service, although only of middle rank, and went seriously bad as Rogerson did. That is a salutary warning. The story is worth telling from that viewpoint. I could go on, Mr Hatton, but that, I suppose, gives you the essence of it.

Q: You obviously know where I am heading: those who seek to dismiss these things as not being relevant today are really ducking their responsibility.

A: Yes.

Q: Secondly, in Smith's book, for example, he was talking about it roaring along in the eighties. I know from my personal experience inquiring into police corruption in this State for 15 years that it certainly was roaring along in the late seventies and early eighties. But we are talking about something that may be less than 15 years old and therefore we get back to this question about how people received promotion, where those people are now who are either compromised or corrupt, and what is wrong with the promotion system. Do you look at those aspects in the second report?

A: Firstly, so far as Smith's book is concerned, I would urge a degree of caution because it must be assumed that there is a good deal of hyperbole in there.

CHAIRMAN:

Q: Especially in what he says about the ICAC, I take it?

A: Oh, he is entitled to his view. I suppose he always had some expectations that have not been met. Who can blame him? The man is in prison, after all.

Mr HATTON:

Q: Let us put Smith aside. Perhaps it was a bad example for me to use his book. Do you agree that it was roaring along in the eighties?

A: I do not feel comfortable with language as colourful as that and I do not particularly want to adopt language which has been used by Smith, you will understand.

Q: Yes, I can understand that.

A: To the extent that there was still a significant level of endemic corruption in the eighties, I am sure that extent diminished during the 1980s. I think there can be

absolutely no doubt about that. As I have said before, things are not yet as good as they should be. The commission has examined a particularly difficult area, which is criminal investigations, which has traditionally been steered away from because it is too tough. The emphasis in the past has tended to be on the administrative areas. We have concentrated in this more difficult area. We will be making a series of recommendations, fairly broad in their scope, a number of which are well advanced towards being acted upon. I mentioned the new informant plan, which will be of very considerable importance. The Milloo revelations, as they emerged from the hearings, I think came as a surprise to the police hierarchy. I think that even they were surprised by the extent of what was revealed. Of course, some of it is practically last Tuesday. What we were doing in relation to the gaming squad was based upon physical and electronic surveillance in the course of the investigation—and, as we know, the gaming squad has been disbanded. The part 5 material concerning police complaints against police is practically contemporaneous. So it is not all old. Much of it is new.

As to the concerns you express about the possible presence of some compromised officers, Mr Hatton, I have acknowledged that that is a possibility that has to be recognised. I would quite strongly urge that efforts, by whoever, to identify and weed them out are very likely to be fruitless and are very likely to lead to more negative consequences than possible benefits. You have to subject all these things to a cost-benefit analysis. I do not think that one would get up on a cost-benefit basis. I think that on the basis of the revelations that are there, on the basis of recommendations that we will be making, confined admittedly to the broad criminal investigation process, and some discussion about complaints and discipline, the time has probably come when the Police Service should be left to prove its capacity to achieve its own reforms, which is likely to be the most lasting and beneficial.

- Q:** I am staggered by that, absolutely staggered by that. If you have got senior officers who are the shining lights who can influence junior officers, who can influence by their behaviour, who can influence the course of investigations and who have shady pasts—and we talk about cost-benefit in weeding them out in terms of fixing the police force—I am absolutely staggered by that.
- A:** Mr Hatton, that is fine. I am saying that I do not think the techniques are there to confidently identify them. I have conceded no more than a theoretical possibility. If there are officers who misbehaved themselves and are now at senior level, even if behaving properly, there is the risk of compromise. That is a theoretical proposition which is undeniable. We do not know that is true, and if they are there I do not know the available techniques that will confidently identify them.
- Q:** I will not abuse the privilege of this hearing by naming people but if they are people who came through the internal affairs section about which there could be raised serious questions and the internal affairs section was responsible for disciplining junior officers and investigating senior officers, surely that is a cost benefit. I think

you must agree with that.

A: Of course it is, but before you start investigating you have to work out what are the prospects of a fruitful outcome. Perhaps I am tired but I think I am simply realistic. Sometimes you have to say, despite suspicion which might be justified, that the prospects of fruitful outcome are not good. What I would do is adopt a different approach. I would be putting emphasis upon higher levels of real accountability, which is to say senior officers are made directly responsible for the conduct of their inferiors such that if there is misbehaviour by the inferiors then not just they but also the superiors pay for it. We could see more of that and it would be very useful. I would put emphasis upon a more effective and principled system for dealing with complaints and discipline. I would—I believe strongly in this—be making the Police Service retain the discipline function. The idea that that should be taken away from the Police Service is disastrous because—

Mr TINK:

Q: You mean the internal affairs section?

A: No, that is a bit different. I can see that there is room for some external scrutiny of public complaints. There may even be a case to be made for some public complaints to be handled externally to the Police Service, but by and large you have to make them do the job. By and large they must take responsibility for matters of discipline. If you take it out of their hands and say, "There is the Police Service. They will do everything but discipline but we cannot trust them with discipline; we will have to have that handled elsewhere", accountability goes completely out the window.

Q: But you are not suggesting that the power the Parliament has given the Ombudsman to independently investigate serious allegations against the police from the outset is a step the wrong way?

A: No, I am not saying that. I think there are aspects of that, including the long time it takes, that need attention but I am not suggesting that there should not be some outside scrutiny. I am not suggesting that. I have heard suggestions that the whole question of discipline should be taken elsewhere. It is completely wrong-headed. You have to make them do it. That is the point.

Mr NAGLE:

Q: Ultimately someone has to supervise them to make sure they are doing it.

A: There would have to be some external examination of the process. Of course there would be. There is no lack of candidates.

Q: Mr Temby, would it not be a bit harsh to place on senior officers something that junior officers get up to that there is no way that the senior officers could know that they are doing?

A: It is a proven technique and I think we ought to be moving towards rather than away from that approach. It is the opposite of what former Commissioner Lewis in Queensland sought to propound. You will remember that before the Fitzgerald Royal Commission his approach was, in effect, "I find to my dismay that I have been presiding over a police force which is riddled with endemic corruption. Oh, dear me. I never knew". That is hopeless because that means he is either incompetent or a crook or both. He has been convicted, so I suppose we are safe enough in saying he is a crook; but if he did not know, he is incompetent. The manager's job is to know.

Mr GAUDRY:

Q: The mechanism has got to be there to allow that management and accountability to occur. Is that what you are saying?

A: Yes.

Mr TINK:

Q: There are two issues that have been raised before, but they are relevant to this. They have been raised with me in another committee. One is in relation to annual reporting and the other is in relation to internal auditing within the police. As I understand it, for all senior executive service officers level 5 and above—and there are a large number of police officers within that category—there is a requirement that under the annual reporting legislation their performance be referred to in the annual report. The Police Board reports on the Police Service and in relation to all senior officers there is, for example in the latest Police Board annual report, a notation simply that conduct was satisfactory—except in one case that we know about. It strikes me as odd that in the foreword of the same Police Board report there is clear recognition of problems, for example, with the Frenchs Forest station. It seems to me that there is a place for a more detailed level of reporting on performance targets, for example, for a particular regional commander and the actualities.

A: I do not know much about the particular question you are raising. I must say that the problem, when it comes to performance appraisal of individuals, is to get people who will do it frankly.

Q: In most SES outfits there is a certain belief that at some point you are reporting to yourself. The difference though in the police is that there is a board to do that job. It seems to me that there is an opportunity, indeed a statutory duty, to follow through.

- A:** I am getting to that point. In the broad, when it comes to the performance appraisal of individuals, the difficulty any manager has is in getting accurate reports. There is a great tendency for people to give everyone straight As, which is silly—I suppose that raises questions of culture. You have to try and break that down so that you are getting real reports so you can identify faults, so that you can help to rectify them. That is good for everyone concerned: good for the institution, good for the individual, but it is quite hard to do. I would have thought that requiring that all reports be made public is not likely to render more likely a high level of frankness in reporting. So, I am not sure that that is a particularly useful technique. That is as much comment as I wish to make.
- Q:** The other point relates to audit. I believe it is important that the chief executive officer of an organisation is seen to be clearly and directly responsible for the audit within the organisation.
- A:** Undoubtedly.
- Q:** There is some debate about that in the context of reporting lines, and there has been debate within the Police Service. It seems to me that if there is a direct and strong link to the CEO, it gets around the difficulty of allowing a situation where there is, to summarise what Mr Hatton has been talking about, room for plausible deniability by the chief executive officer—"I did not know"?
- A:** I think it is to be taken for granted that internal audit, whether in the public or private sector, should at least have a direct and always open channel to the chief executive and should probably work to the chief executive. There certainly has to be a direct and open channel.

Police Corruption

Mr TURNER:

- Q:** A few years ago you made comment to the effect that you were not going to pursue the free hamburger syndrome with the police. In view of Milloo in the second report, would that be looked at on the basis that it might be the genesis of corruption as they move along, having accepted the free hamburger at the starting point?
- A:** We have not looked at that, Mr Turner. It may be a subject of significance. It may be a subject of greater significance than when I gave that answer a few years ago, which frankly I cannot remember. I hope Committee members would understand that you have to provide some metes and bounds to the work you do. We have taken matters as far as we think we properly can in the second report. We hope it will be a useful contribution. It is not going to answer all the questions, but I cannot say that will be a particular matter that will be looked at.

Mr GAUDRY:

Q: In terms of the culture of these things over time, surely that is a starting point?

A: It may be. I have to say I can think of matters of greater significance. One advantage or one ameliorating aspect, which has just been referred to, is that at least it is known. I would be far more concerned about what was the common practice of pubs and clubs providing very generous quantities of Christmas drinks to local police stations.

Mr TURNER:

Q: I would put that in the hamburger stage.

A: Yes, but the trouble is that it is not officially sanctioned and it is not nearly as well known. That is a matter which I take a strong view about. It was referred to in the report on licensing police in Sutherland. That was one of the matters taken up in that Report. You rank these things.

Mr HATTON:

Q: Before we leave Milloo, I should like to make one comment. When you started with two unreliable witnesses who are criminals, I think you achieved a very good result. I say that because I think the perception is that because of all the flak you could not get anywhere. In all of the criticisms of Milloo, and I share the concerns of Mr tink, I still think it was a very creditable job as it turned out, and I should like to put that on the public record.

A: Thank you.

Mr NAGLE:

Q: Mr Temby, thank you very much for that. It is an area, particularly taking into account what happened in the 80s, where there were a lot of people who lost a lot of money as a consequence of fraud by people in business. I look forward to reading all that material and discussing it further with this Committee and my own party. The ultimate thing is that we do need a serious fraud office. The question is whether we should do it out of New South Wales or should it be done at a Commonwealth level?

A: I have provided the New Zealand material because it is antipodean and a recently established office. The English office is on the other side of the world where their problems are somewhat different, and it is distinctly older. I think the New Zealanders are doing useful work.

Q: I have been to the English serious fraud office and found their organisation, and the way they were conducting it, was good. They had a lot of problems but they were trying to deal with them. I have a friend who works in the serious fraud office in New Zealand, in fact you met him at the conference.

A: Yes.

Q: It was very good to be able to talk to him about it. Thank you for all that material.

- 14 -
MISCELLANEOUS

Questions on Notice

- Q: 14.1 Does NSW need a Serious Fraud Office and if so,**
- (i) who should be in charge of administering such an office,**
 - (ii) which Department should be in charge of setting up such an office and,**
 - (iii) how should such an office be organised?**

A: The question whether New South Wales should have a Serious Fraud Office is an important one. It has not been closely studied, and what follows states impressions rather than conclusions.

Broadly speaking business crime in this country is not investigated and prosecuted well. The proportion of police who are suited to investigate major fraud is low: the work is complex, difficult, laborious, often frustrating and attended by infrequent rates of arrest or conviction. The prospects are best if investigators and prosecutors work quite closely together. A model under which that can be done is the Serious Fraud Office, of which there are several examples, perhaps the most recent being that in New Zealand. It seems to have achieved significant success in a short period of time. Advice as to administrative arrangements could not be given without close study and careful consideration.

Attached is the Corporate Plan and extract of the Annual Report of the New Zealand Serious Fraud Office (*Appendix Six*).

- Q: 14.2 There have been a number of cases where public employees have been dismissed following adverse findings in ICAC reports, but have been reinstated following the order of another tribunal. How do you reconcile this conflict?**

A: The Commission's statutory power is limited to stating as to whether or not in all the circumstances consideration should be given to the taking of action against a person for a specified disciplinary offence with a view to dismissing, dispensing with them or otherwise terminating their services. It must make such a statement in relation to affected persons. It is then a matter for the public authority as to whether and what action it takes. It is also a matter for that authority as to the processes it employs in the taking of any action.

In most cases, employees will have a right to appeal against a decision that they be dismissed. That is their right and the Commission would never suggest that such appeals not be available to them. On hearing the appeal, industrial tribunals consider many factors which are not relevant to and were not considered by the Commission in its investigation. For example, the procedure used in taking the disciplinary action and other dealings between the employer and employee. In short, there is no conflict. ICAC and appeal tribunals are bodies with different powers and concerns.

Q: 14.3 Do you have any comment to make on the Supreme Court decision in Woodham v ICAC?

A: No.

Questions Without Notice

Section 11 Reporting

Mr HATTON:

Q: I believe it was in your absence that I wrote about section 11 reporting and my concerns about police being required to report corrupt or possible corrupt behaviour. I received what I thought was an amazing response from ICAC saying that it relied on police themselves to do reporting. I understand some action was taken in this regard. I preface my question because if in the case of Frenchs Forest where the commissioner said he did not know, 12 months after a police officer had been shot, the circumstances surrounding that or 18 months after the police officer had been stabbed before he was shot because Myatt did not tell him, Myatt was supposed to have told Cole and Cole did not tell him, that is obviously a most unsatisfactory mechanism for reporting under section 11.

When I asked you about this before I accepted your answer and I do so now in large measure, which is, if you had all 16,000 police officers reporting potentially under section 11, you have a chaotic situation. But have you or has ICAC taken action against police who have failed in their responsibility to report under section 11 or have you or ICAC looked again at this structure where a senior officer can escape the legal responsibility of section 11 by simply saying, "That officer below me did not report to me"?

A: As it happens, the question tends to be preceded by another question, "Did you tell the Ombudsman?", because the statutory obligation is to tell the Ombudsman forthwith. There is almost complete overlap between what the Ombudsman must be told and what we must be told. In part 5 of the Milloo report there are two glaring examples of cases where the Ombudsman was not told. So, the answer is, yes we have. And I hope you would agree that those identified as responsible have been dealt with firmly in the report.

Q: But what about the general mechanism?

A: The best you can do is to enhance internal reporting systems. While they might not yet be as good as they should be in the Police Service, they are better than in most other places, and need to be. So, an enhanced internal reporting system so you have an accurate database of the material that should be of concern and then give the outside scrutinising agencies on-line access to that database. That is about the best you can do. If we are not at the point where we have that on-line access, we are very close to it.

Ms BURNSWOODS:

Q: We have talked in the past about section 11 reporting. Is there any correlation between departments that might not respond successfully on corruption prevention areas and departments that might be a bit lax in fulfilling their responsibilities under section 11?

A: I am not conscious of any correlation. There is unlikely to be one because the incidence of departments and agencies that respond satisfactorily to corruption prevention work is very high.

Q: And it is a co-operative project.

A: The incidence of departments and agencies that do everything they should as to section 11 reporting is somewhat low. I doubt whether there is a correlation.

Sturgess Reference to ICAC

Mr HATTON:

Q: When I asked about Mr Sturgess it was drawn to my attention that, in fact, that question was asked by Mr Mutch and answered in the parliamentary Committee on the Independent Commission Against Corruption collation of evidence 31 March 1992 and in November 1992. You said you would take the question on notice today, but apparently it has been answered before and is a matter that has been raised before. What is the situation? Do you want to have a look at it?

A: No, I remember. I know in a general sense what was done. As memory serves me, this matter was entirely dealt with to the satisfaction of those then present at the last of these meetings, at which point I was able to advise the Committee—

CHAIRMAN:

Q: As you would appreciate, I cannot advise on the satisfaction of members.

A: All right. I advised the Committee that all of the Sturgess material had been taken to the Operations Review Committee and had been dealt with to its satisfaction, but that is not quite the question you are asking. You have asked a slightly different question. I mean, I know that. You have asked a slightly question, which has a different emphasis.

Mr HATTON:

Q: I was more interested in whether a heap of files were given to you and whether those files were acted upon; if they were not, why not? If they were, where did they lead to?

A: A lot of material was received. That material was all assessed. We took it to the ORC and some of the matters contained in that material have been absorbed elsewhere. But if you want further information, I will take the question on notice.

CHAIRMAN:

Q: It would be helpful if you take the question on notice and supply any other information that you believe is relevant to the Committee.

Operation Speedo

Mr HATTON:

Q: Were you happy with the role of ICAC in the Operation Speedo investigation into paedophilia?

A: Yes, remembering the task that we agreed to undertake. At the request of the then Minister I agreed to receive reports from time to time in order to ensure that the police did not protect their own, that is to say, that there was not a police cover-up. The Speedo report contained conclusions which were adverse to some police officers. We were satisfied that this was not one of those investigations that had been characterised by a tendency to cover up. That is the role we were given to do. We did not perform a general supervisory role. The then Minister was approached—

Q: Were you proactive in going in, getting and seizing files? You only took a monitoring role?

A: We did not investigate. You could not even say that we supervised. I agreed with the then Minister to receive reports from time to time as to progress because in his judgment that would be helpful in ensuring that there was not a cover-up. He apprehended there was a risk that might happen. We performed that role, in my judgment, satisfactorily. It was a very limited role.

Q: If there were a reference to you in regard to paedophiles, you would not regard it as fair to look at the way the matter was handled in Operation Speedo because it would be entirely different?

A: Handled by us?

Q: Yes.

A: If that had to be investigated we could not possibly do it. That is a judgment that will have to be made by the Parliament.

CHAIRMAN:

Q: You might be at cross-purposes. It would probably have to be looked at to see if it was effective and what could be done with the benefit of hindsight.

A: We could hardly investigate ourselves.

Q: But you can learn from what happened.

A: If I can stress two points. First, we have never made an ambit claim in relation to paedophilia. We simply provide information and assert that we could provide a useful service. Second, I wish to stress the very limited role that we played at the request of the then Minister, which in my view was discharged adequately. It was a very limited role indeed.

Mr HATTON:

Q: That is what I want to emphasise, that it was a limited role, not an investigative role, so that any reference that might be made by the Parliament will be treated in an entirely different context. I want to head off comparisons between Speedo and ICAC and what parliamentary reference could be made to ICAC on paedophilia. I re-emphasise where I started from in terms of independent and seen-to-be independent officers, going straight into this question, if necessary, by seizing and examining documents over a short period of time, for examination over a longer period of time in a pre-hearing investigative stage.

A Commonwealth ICAC

Mr TINK:

Q: In relation to your Commonwealth DPP experience and the experience you have now had in New South Wales, do you think there is a place federally for an Independent Commission Against Corruption.

A: If there is, and there may be, it would have rather different functions. Putting the matter very simply, and oversimplifying somewhat, the Commonwealth has more of a fraud problem than a corruption problem. I think there is certainly the ever-present prospect of significant fraud in the defence procurement area, as the American

experience shows. The defence department here is attacking that problem and I think not doing a bad job, but that would always be an area of concern. A lot of corruption is to be found at lower levels. A lot of big fraud is to be found at higher levels. If you are going to look at a model of this sort you would be giving them a fraud emphasis, which means you might not be concentrating exclusively upon public sector officials. That is about the best answer I can give. You would understand that one would want to study this sort of question. It is a bit discursive.

Q: You are saying that it might be more of a Hong Kong-type model? That is what I get out of your answer.

Ms BURNSWOODS:

Q: I have one question on 14.2 on that problem which arose about conflict, if that is the right word, between the ICAC findings and other tribunals reinstating public servants who have been dismissed. I had a guess that perhaps the problem is decreasing because it is recognised that the process to be followed is important. I wonder if there is enough evidence around to confirm that guess, that perhaps the different bodies are working out how to handle things properly?

A: I share that impression, but it is only an impression. I think the Water Board case, which was a glaring example of incompetence on the part of those who were seeking to dismiss, has taught some lessons. It was very, very badly handled. There has been an unhappy outcome to it.

Mr NAGLE:

Q: I thank Mr Temby for his five years and his frequent visits to us.

- 15 -
CONCLUSION

CHAIRMAN:

Perhaps I will do that formally because that does bring to an end today's hearing. Before I adjourn the proceedings I would like to put on record some words of thanks and appreciation for Mr Temby, on behalf of the Committee and the Parliament. The position Mr Temby took on five years ago was always going to be one which placed the commissioner under constant pressure, and those wishing to maintain the status quo. High levels of legal, intellectual and managerial skill were demanded from the commissioner, often with little public thanks. To Mr Temby's credit he has laid the foundations for the ICAC as a public institution of significant worth. Mr Temby, on behalf of the Committee and the Parliament I express my gratitude to you.

Mr NAGLE:

Mr Temby, there is a document called a statute and you took it and built it and here we are now five years down the track. Let us see what the future holds for it.

Mr HATTON:

I would like to add my comments to that. I think the education, corruption prevention, and awareness structures that you have established, I think the courage that you have shown in high-profile cases, is something of which you personally can be proud. I think we have an institution which I had longed to see established in New South Wales. In Mexico it was quite clear that the New South Wales institution was held in high regard by many people from around the world. In fact, your presentation at that conference was the subject of very complimentary comment by a considerable number of delegates. I pay tribute to you and your staff for the work that has been done in what is truly an Australian pioneering venture. In some areas you have made advances which, to my knowledge, have been made nowhere else in the world.

APPENDIX ONE

**Community Attitudes to Corruption and the ICAC
ICAC Public Attitude Survey, March 1994**



INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

Community Attitudes to Corruption and the ICAC

ICAC Public Attitude Survey

March 1994

SUMMARY

In order to obtain information about the public's perceptions of corruption, their understanding of the work of the Independent Commission Against Corruption (ICAC) and about their level of support for that work, in November 1993 a survey was conducted of a random sample of the NSW adult population. This report documents the responses to the questions asked of this sample of 502. Selected findings are presented below.

COMMUNITY ATTITUDES TO CORRUPTION

55% considered corruption in the NSW public sector to be a *serious problem*; 37% considered it to be a *minor problem* and only 4% considered that corruption in the NSW public sector was *not a problem*.

When asked about the effects of corruption, members of the public spontaneously described both intangible consequences (e.g., disillusionment and loss of respect for authorities) and tangible consequences of corruption on the community (e.g., financial costs).

84% disagreed or strongly disagreed that *Most corruption is too trivial to be worth reporting*.

68% disagreed or strongly disagreed that *There is no point in reporting corruption in the NSW public sector because nothing useful will be done about it*.

AWARENESS OF THE ICAC

Without any prompting 42% were able to name the Commission (using its full or one of its abbreviated names). Following prompting, only 5% said that they had not heard of the ICAC.

OPINION ABOUT THE ICAC

92% agreed or strongly agreed with the statement *Having the ICAC is a good thing for the people of NSW* (4% were unable to offer an opinion).

90% agreed or strongly agreed with the statement *The ICAC has increased public awareness about corruption in the NSW public sector* (3% were unable to offer an opinion).

82% agreed or strongly agreed with the statement *The ICAC is helping to make the NSW public sector more accountable* (8% were unable to offer an opinion).

80% considered that the Commission had been successful or very successful in *exposing some* of the corruption which has occurred in NSW (11% were unable to offer an opinion).

53% considered that the Commission had been successful or very successful in *reducing some* of the corruption which has occurred in NSW (17% were unable to offer an opinion).

INTRODUCTION

The Independent Commission Against Corruption (ICAC) was established in March 1989 to expose and minimise corruption in the NSW public sector. The ICAC's Corporate Plan 1993-1995 describes the importance, for all areas of the ICAC, of the general public's beliefs and attitudes about corruption and about the ICAC:

The values and perceptions held by the public about corruption and the role and effectiveness of the Commission will significantly affect the way they interact with the Commission. (p.4).

Objective 2 of the Corporate Plan is "Facilitating public understanding", about which it is written:

Public support is an important element in the Commission's work against corruption, and the Commission must therefore ensure that the public is kept informed about its work and about corruption as an issue. It is equally important that the public understands the charter and functions of the Commission so as to ensure that the expectations that we are trying to meet are realistic (p.8).

In order to obtain information on the public's perceptions of corruption, their understanding of the work of the ICAC and on their level of support for that work, the Commission engaged the Roy Morgan Research Centre (RMRC) to conduct a survey. The interview schedule was designed by the ICAC Research Unit¹. (Refer to Appendix 1 for a copy of the questions asked.)

Between 12 and 21 November 1993, 502 telephone interviews were conducted with a representative sample of the NSW adult (aged 18 years and over) population. The survey was administered as a separate, stand alone (rather than as part of a larger, omnibus) survey. This is the first in a new series of community attitude surveys to be conducted on behalf of the ICAC. For a profile of who responded to the survey, please refer to Appendix 2.

The results of this survey are presented in the following sections:

- 1 Attitudes to corruption in the NSW public sector;
- 2 Beliefs about the effects that corruption in the public sector has on the community;
- 3 Awareness of the existence of the ICAC;
- 4 Awareness of the functions of the ICAC;
- 5 Suggestions for changes which they think should be made to the ICAC;
- 6 Perceived success of the ICAC; and
- 7 Access to information about the ICAC.

¹ The survey was designed by Dr Angela Gorta (Research Manager) and Suzie Forell (Research Officer), and this report written with the assistance of Emma Wallhead (Research Assistant).

1 ATTITUDES TO CORRUPTION IN THE NSW PUBLIC SECTOR

The NSW general public appear to recognise corruption in the NSW public sector as a problem. More than half of the respondents considered that *for taxpayers, corruption in the NSW public sector is a serious problem* (55%), others considered it to be a *minor problem* (37%). Very few considered corruption *not to be a problem* (4%). A further 4% had no opinion.

A list of attitude statements about corruption and about reporting corruption were read to respondents (refer to Appendix 1, Q3A-Q3G for a list of the statements and to Appendix 3 for detailed responses). These statements were a subset of those asked in a survey of public sector employees' views of corruption undertaken by the ICAC Research Unit. They were included here to allow comparison between general community attitudes and those of public sector employees. Respondents in both studies were asked whether they strongly disagreed, disagreed, agreed, or strongly agreed with each of the statements. While there were differences in:

- the method of data collection (a self-completion questionnaire for public sector employees and a telephone interview for members of the general public);
- the time the surveys were administered (May-August 1993 for public sector employees and November 1993 for members of the general public); and
- the agency seen as administering the survey (the ICAC in the former and the ICAC through RMRC in the latter);

there is little reason to think that meaningful comparisons cannot be made.

ATTITUDES ABOUT DEFINING CORRUPTION

TABLE 1
Comparison of Community and Public Sector Employee Attitudes
About Defining Corruption

Attitude Statement	% who disagree or strongly disagree	
	Community sample (n=502)	Public Sector sample (n=1313)
"Conduct <i>must be</i> illegal for it to be called <i>corrupt</i> ".	58%	71%
"If something is done <i>for the right reasons</i> , it <i>cannot</i> be called <i>corrupt</i> ."	58%	73%
"You <i>can't</i> call something corrupt if <i>everyone</i> does it."	89%	92%

Three of these attitude statements concerned defining corruption. For each of these items, those who disagreed or strongly disagreed were acknowledging a broader definition of what could be called corrupt. From Table 1 it can be seen that public sector employees tend to define corruption more broadly than do members of the general community.

Responses of the community sample were examined to determine differences in attitudes between those from different demographic subgroups. It was found that those aged between 25 and 59 years (63%) were more likely to disagree with the statement that *Conduct must be illegal for it to be called corrupt* than either those younger than this (52%) or older (35%). There were no other statistically significant differences between demographic subgroups on any of these three items.

ATTITUDES ABOUT REPORTING CORRUPTION

Three of the statements concerned attitudes to reporting corruption. For each of these items, those who disagreed or strongly disagreed were acknowledging the value in reporting corruption. From Table 2 it can be seen that the patterns of responses in the two samples were similar: the majority of both groups disagreed about there being *no point in reporting corruption in the NSW public sector because nothing useful will be done about it* and that *Most corruption is too trivial to be worth reporting* and the majority of both groups agreed that *People who report corruption are likely to suffer for it*. It is interesting to note that in terms of the first two statements in the table public sector employees were more likely to disagree than members of the community. In contrast, public sector employees were more likely to *agree* with the item that *Most corruption is too trivial to be worth reporting* than were members of the community. One possible interpretation might be that public sector employees are more likely to come across a broader range of examples of behaviour labelled as "corrupt" in their workplace in addition to any examples that they and other members of the community might learn about in the media.

TABLE 2
Comparison of Community and Public Sector Employee Attitudes
About Reporting Corruption

Attitude Statement	% who disagree or strongly disagree	
	Community sample (n=502)	Public Sector sample (n=1313)
"There is <i>no point</i> in reporting corruption in the NSW public sector because <i>nothing useful will be done</i> about it."	68%	74%
"People who <i>report</i> corruption are likely to suffer for it."	21%	26%
" <i>Most</i> corruption is <i>too trivial</i> to be worth reporting."	84%	74%

In relation to the attitude differences found between demographic subgroups in the community sample, women (88%) were more likely than men (76%) to disagree with the statement that *Most corruption is too trivial to be worth reporting*.

Those from country NSW or Wollongong (both 24%) were more likely than either those from Sydney (17%) or those from Newcastle (18%) to disagree with the statement that *People who report corruption are likely to suffer for it*. There were no other statistically significant differences between different demographic groups in the community sample for any of those items concerning willingness to report corruption.

ATTITUDES ABOUT WHAT IS ACCEPTABLE

The remaining item concerned attitudes to what is acceptable behaviour. It is interesting to note that a larger proportion of public sector employees (90%) than members of the general public (81%) disagreed with the statement *The NSW Government can afford to sustain minor theft without worrying about it*.

KNOWING WHERE TO REPORT CORRUPTION

Following the attitude statements, respondents were asked *Would you know where to go to report corruption in the NSW public sector?* Fifty-seven per cent said "no", and 43% said "yes". In terms of the demographic characteristics which we measured as part of this survey, the subgroups most likely to say that they would *not know where to go to report corruption* were:

- women (62%) rather than men (54%);
- those aged between 18 and 24 years (67%) and those aged 60 years or over (68%) rather than those aged between 25 and 59 years (54%);
- those living outside Sydney (65%) rather than those living in Sydney (51%);
- those whose highest educational qualification was the Higher School Certificate or less (63%) rather than those with some post-secondary education (49%);
- those with incomes of less than \$20,000 (65%), those with incomes of between \$50,001 and \$60,000 (67%) and those who refused to state their income (62%) rather than those with incomes between \$20,001 and \$50,000 (51%) and those with incomes of more than \$60,000 (44%).

There was no statistically significant relationship between the belief that one knows where to go to report corruption and employment status, whether or not the respondent was Australian-born or whether someone in household works in the NSW public sector.

This question was adapted from the public sector employees study, the original wording being *I would not know where to go to report corruption*. Public sector employees were asked whether they strongly disagreed, disagreed, agreed, or strongly agreed with the statement as above². In the public

² It should be noted that in both studies, the question concerned the respondent's belief that he or she would know where to report corruption. For those who considered that they would know where to report corruption, no attempt was made to check the validity of their beliefs.

sector employees study 28% agreed or strongly agreed that they would not know where to go to report corruption, while 72% indicated that they would know where to go to report. Hence, as one might expect, NSW public servants expressed more certainty about knowing where to go to report corruption than did members of the general public.

2 BELIEFS ABOUT THE EFFECTS (IF ANY) THAT CORRUPTION IN THE PUBLIC SECTOR HAS ON THE COMMUNITY

The rationale for attempting to assess public opinions about the consequences of corruption was to both increase understanding of community attitudes to corruption and to collect some information to feed into the "Corruption costs" theme which was adopted by the Education Unit in 1993 to emphasise the personal, social and economic costs of corruption. When trying to obtain information on the public's understanding of the consequences of corruption, unlike previous surveys conducted for the ICAC, "open-ended" questions which do not lead the respondent in any way were used. Respondents were asked:

Do you think corruption in the New South Wales public sector has any effects on the community?

(If yes) What effects do you think it has on the community?

Nine out of every ten respondents (89%) thought that corruption in the NSW public sector does have effects on the community. Only 7% thought that it did not have effects on the community and 4% were unsure as to whether or not it has any effects.

Women (92%) were more likely to think that corruption has an effect on the community than were men (86%). Those in the 40 to 59 years age group (93%) were more likely to think it has an effect than either those who were younger (88%) or those who were older than this (84%). Neither whether or not Australian-born nor residential area were found to be (statistically) significantly related to beliefs about whether corruption had an effect on the community.

THE NATURE OF THE EFFECTS

More than three-quarters of the respondents (78%) were able to describe what they understood to be the consequences of corruption.

One would not expect a considered assessment of the range of corruption issues from respondents to a telephone interview. It is more likely that one is getting "top of the head" responses from those who were not, prior to the telephone survey, thinking about the topic of corruption. Hence the range

of consequences which respondents were able to verbalise in this interview situation provides an encouraging picture of community understanding of corruption.

More than one-third of the respondents (36%) stated that they felt that corruption in the public sector caused a loss of confidence/disillusionment/cynicism/feelings of helplessness. Some talked about these feelings in general (17%), whereas others specified that corruption causes a loss of respect, trust, or confidence:

- in politicians or government (9%),
- in the police service (5%),
- in public service departments or public servants (4%), or
- in authority, more generally (4%).

Some examples of these comments include:

Makes everyone feel despondent.
Lose faith in whole system.
Mistrust and cynicism of public sector establishments.
Demoralisation in the community through apathy, I'm all right Jack.
Demoralises society.
We can't believe that we are looked after properly by the police or politicians.
Lowering of our respect for politicians.
Makes the government look bad, disillusionment of public.
You find lack of confidence in local governments and police forces. A lot of people are disillusioned with the way things are.
Bad morale in community.
Loss of confidence in those in administration.
Lose faith in politicians. Can't depend on them.

While a substantial proportion (24%) mentioned the financial costs of corruption, it is interesting to note that fewer respondents mentioned such costs than mentioned disillusionment. The types of financial consequences which were mentioned included:

- costs/financial consequences, where their nature was unspecified (12%),
- money being wasted/diversion of funds (6%),
- need to pay higher taxes to make up for losses through corruption (3%),
- money spent holding inquiries/investigations is lost to the community (1%).

Some examples of these comments include:

When the public sector makes a corrupt mistake the ordinary person ends up paying for it.
The public misses out by money being wasted.
Costs more to run state.
Higher taxes to make up for losses through corruption.

Rates are too high due to council inefficiencies and corruption.
 It effects our pockets - I can't say for sure how but I'm sure we pay for it in the long run.
 Costs money of the community. Money spent combating is lost to the community.
 Moneywise - the taxpayers pay for all the problems.
 Costs us more money through dodgey use of public funds.
 We end up paying for the court costs whereas those funds could be used on the community.

The next most common category of effects of corruption which were mentioned was that corruption in the public sector sets a bad example and encourages the community to be corrupt, for example:

The public at large becomes more corrupt due to the bad example of the public sector.
 ... Perhaps it makes people think that they might as well be corrupt too.
 The example which is meant to be set by public sector people becomes degraded.
 The bad example of people in public life leads to corrupt actions at all levels of our community.
 Everyone thinks they can be corrupt if they see it in the public sector.
 People get blasé and come to expect it, then people say others are doing it, I'll do it too, bad example to set.

Table 3 summarises the types of effects of corruption reported by respondents.

TABLE 3
 What Effects Does Corruption Have on the Community?

Effects of corruption reported by respondents	%* (n=502)
Disillusionment/loss of faith/trust/respect	36%
Financial costs	24%
Sets a bad example/encourages community to be corrupt	9%
Not getting best person for the job/tenders not going to best company/stifles competition	5%
Creates inequities/advantaging people of influence	3%
Causes inefficiencies	2%
Truth being concealed/information not being released or biased	2%
Quality of service is lessened	1%
Don't know what are the effects of corruption	14%
Corruption does not have an effect on the community	12%

* Percentages may sum to more than 100%, as respondents were each able to nominate more than one effect of corruption.

These percentages represent the proportions of the sample who nominated these effects as an answer to the open-ended question: *What effects does corruption have on the community?* The percentages associated with each of these effects may well have been higher if respondents had been specifically asked whether they considered each of these to be effects of corruption.

3 AWARENESS OF THE EXISTENCE OF THE ICAC

Four out of every ten respondents (42%) were able to provide the full name or an abbreviation by which the Commission is known when asked: *The Government has set up a body to look into corruption in Government organisations in NSW. Can you tell me what it is called?* Almost half (47%) were not able to give a name and a further 12% supplied an incorrect name.

In terms of the demographic characteristics which we measured as part of this survey, the subgroups most likely to be able to correctly name the Commission were:

- men (50%) rather than women (33%);
- those living in Sydney (49%) or Wollongong (47%) rather than those living in Newcastle (23%) or country NSW (35%);
- those aged 39 years or less (47%) rather than those who are older (38%);
- those with some post-secondary education (55%) rather than those whose highest level of education is the Higher School Certificate or less (35%);
- those with incomes of more than \$30,000 (58%) rather than those with incomes of \$30,000 or less (36%);
- those who are employed (48%) rather than those who are not employed (32%).

When prompted, very few (5%) said that they had *not* heard of the Independent Commission Against Corruption or ICAC (pronounced either I.C.A.C. or I-cac).

When compared with previous surveys, results show an increased awareness of the ICAC. In March 1989, the month the ICAC was established, only 3% of respondents were able to correctly name the ICAC. This percentage has increased over the length of time the ICAC has been established, with the percentage being able to correctly name the ICAC doubling in the three and half years since May 1990.

TABLE 4
Comparison of the Ability to Identify the ICAC as the Body Set Up
by the Government to Look Into Corruption Over Time

Identification of the ICAC	March 1989	October 1989	May 1990	November 1993
Correct name	3%	16%	21%	42%
Incorrect name	12%	9%	14%	12%
Can't say	85%	75%	66%	47%

4 AWARENESS OF THE FUNCTIONS OF THE ICAC

The ICAC has three main statutory functions:

- i investigation* - investigating and reporting on matters with the view to exposing and deterring corrupt conduct and to having it prosecuted where appropriate;
- ii corruption prevention* - reducing opportunities for corruption by advising and working with the public sector on improvements to procedures and work systems;
- iii education* - educating the public and the public sector about the detrimental effects of corruption and the benefits which flow from action to reduce corruption.

The Commission does not have a prosecution role. (Refer to the ICAC Corporate Plan 1993-1995, p. 1.)

Before asking respondents what they thought the Commission should or should not be doing, it was considered important to ascertain what people actually thought the ICAC does. It may be that the ICAC is doing what they want it to do, but that they do not realise that this is the case. Those respondents who stated that they had heard of the ICAC were asked directly, what they thought the Commission did. The question was open ended, and they were probed for any further responses. In addition, anyone who only mentioned an investigation or prosecution role, was also asked *Well apart from investigation or prosecution, what else does ICAC do?*

As can be seen from Table 5, approximately one-quarter of the respondents said that they were not aware of any of the functions of the ICAC. In terms of the statutory functions, the investigatory function (56.3%) was recalled by a much larger proportion of the sample than either the corruption prevention (1.2%) or education (0.5%) functions. In specifying the functions, some respondents provided more detail than others. For example, with regard to investigation, a number of respondents qualified this, by saying they thought the ICAC investigates corruption:

- in the public sector (8%),
- in government/politicians (7%),
- as an independent body (5%),
- in police (4%),
- in government departments (4%),
- in state government (2%).

Some of the responses indicated misconceptions about what the ICAC does, for example:

- investigates/finds evidence of crimes (3%),
- charges/prosecutes corrupt people (3%),
- investigates corruption in the private sector (1%).

As can be seen from Table 5, the receipt of complaints and preparation of guidelines were also recognised as functions of the Commission.

TABLE 5
What does the ICAC do?

Function reported by respondents	%* (n=502)
Don't know	25%
Not aware of ICAC	5%
Mentions statutory functions	
Investigates	56%
Prevents corruption	1%
Educates	1%
Mentions other Commission functions	
Takes complaints/investigates complaints	5%
Tries to get to the bottom of/stamp out corruption	4%
Recommends charges/prosecution/cannot convict	3%
Publishes reports/guidelines	2%
Holds inquiries	2%
Misconceptions	
Investigates crime	3%
Charges/prosecutes corrupt people	3%
Investigates corruption in private sector	1%
Other	7%
Cynicism	
Not much/wastes money/etc	3%

- Percentages may sum to more than 100%, as respondents were each able to nominate more than one effect of corruption.

These percentages represent the proportions of the sample who nominated these functions as an answer to the open-ended question: *What does the ICAC do?* The percentages associated with each of these functions may well have been higher if the respondents had been specifically asked whether they considered each of these to be functions of the ICAC.

When examining community awareness of the ICAC's statutory functions over time, it becomes apparent that awareness of the corruption prevention and education functions remains low (refer to Table 6). In contrast, awareness of the Commission's investigatory function has almost doubled over the previous year. In the 1993 survey, a smaller percentage of respondents than in earlier surveys said that they did not know what the functions of the ICAC were.

TABLE 6
Comparison of Knowledge of ICAC Functions Over Time

ICAC functions	Dec 1990 (351) %	Jun 1991 (354) %	Dec 1991 (357) %	Jul 1992 (352) %	Oct 1992 (352) %	Nov 1993 (502) %
Investigation	28	22	20	28	30	56
Corruption Prevention	1	-	2	2	2	1
Education	-	-	-	-	-	1
Don't know*	40	56	51	27	33	25

* The percentages included in the "Don't know" row, for each survey, include both those who were unaware of the ICAC as well as those who could not name any of the Commission's functions.

5 SUGGESTIONS FOR CHANGES (IF ANY) WHICH THEY THINK SHOULD BE MADE TO THE ICAC

In order to provide an avenue of both determining misconceptions about the ICAC which can be redressed through public education and also a means of determining areas of dissatisfaction without actually suggesting problems to the respondent, respondents were asked:

Are there any additional things which the ICAC should do, which you think it doesn't do now?

Are there any things which the ICAC does, which you think it should not do?

Are there any changes which you think should be made to the ICAC?

The percentage of respondents who proposed changes are presented in Table 7. From this table it can be seen that more than half of the respondents could not offer an opinion about the need for change.

TABLE 7
Percentage of Respondents who Proposed Changes to the ICAC

Proposed Changes	Yes	No	Can't say
There are additional things it should do	19%	27%	54%
There are some things it does which it should not do	11%	36%	53%
There are changes which should be made	20%	21%	59%

In terms of the demographic characteristics measured as part of this survey, the subgroups most likely to suggest that there were changes which should be made to the ICAC were:

- men (27%) rather than women (13%);
- those aged between 25 and 59 years (23%) rather than those either under 25 (12%) or 60 years or over (16%);
- those from Sydney (26%) rather than those from outside the metropolitan Sydney area (14%);
- those with a degree as their highest educational qualification (41%) rather than those with less qualifications (17%);
- those employed (24%) rather than those unemployed (13%);
- those whose income is greater than \$30,000 (34%) rather than those with incomes of \$30,000 or less (14%).

The types of suggestions for change were very diverse, with very few respondents nominating any one suggestion. Some of the comments made illustrated the extent of misconceptions about the functions of the ICAC held by some respondents (e.g., "I think that they shouldn't be able to overrule the courts. They commit people the way judges are able to and I think that that is overstepping the mark.")

The additional things which respondents suggested that the ICAC should be doing ranged from increasing the emphasis on education to being given the power to prosecute. Some examples which demonstrate this range include:

They should let more people know exactly what corruption is and let the public in on more about the ICAC. Should be taught in schools what and where to look for corruption and where to report it.

Perhaps it should be a national body.

Should have bigger penalties for corruption.

Should concentrate on police a bit more.

Not just looking in to it but carry on further and find solutions.

They should focus upon all sectors.

Should have more powers to proceed further than making a decision - the power to prosecute.

The range of things that respondents said that the ICAC should *not* be doing included:

- The naming of people before the completion of investigation.
- It should not target individuals.
- There are too many big investigations that are high profile and must cost a huge amount of money, when I think there are probably a lot of smaller, but just as important, cases that need to be investigated at much less cost.
- I disagree with the use of high cost barristers.
- I don't think that they should have public hearings.

Some other suggestions for change included:

- I'd like to see people be more accountable for the accusations they make at the ICAC - they shouldn't be immune from prosecution themselves.
- A media bar on proceedings until the point where legal measures are recommended.
- It should be totally independent at all times.
- More public definition of its terms of reference.
- Should get better support from government.
- Make it so that their recommendations are actually carried through.
- Just be vigilant.

The implications of the full list of suggestions made are being considered by the Commission.

6 SUGGESTIONS FOR CHANGES (IF ANY) WHICH THEY THINK SHOULD BE MADE TO THE ICAC

Rather than letting people evaluate the Commission in terms of what they think it should be doing, respondents were asked the extent to which they think the Commission is successful in achieving its mission, i.e., how successful it is in exposing and minimising corruption.

	VS ³	S	U	VU	DK
<i>How successful do you think that the ICAC has been in exposing some of the corruption which has occurred in NSW:</i>	13%	67%	8%	1%	11%
<i>How successful do you think that the ICAC has been in reducing some of the corruption which has occurred in NSW:</i>	4%	49%	23%	7%	17%

³ VS = very successful; S = successful; U = unsuccessful; VU = very unsuccessful; DK = don't know

When the "very successful" and "successful" responses are combined it can be seen that 80% of the respondents considered that the *ICAC has been successful in exposing some of the corruption* and 53% considered it *has been successful in reducing some of the corruption in NSW*.

More women (84%) than men (77%) felt that the *ICAC had been successful in exposing some of the corruption in NSW*. However, fewer women (48%) indicated that they thought that the *ICAC has been successful in reducing some of the corruption which has occurred in NSW* than men (58%). More women (21%) than men (13%) were unable to say whether they thought the *ICAC has been successful in reducing some of the corruption* or not.

Those respondents born in Australia (56%) were more likely to think that the *ICAC has been successful in reducing some of the corruption which has occurred in NSW* than those born outside Australia (44%).

While it is not known what led to the responses of those who said that they "don't know", it is interesting to note that in the pilot testing of the interview schedule, some people made the astute observation that they could not answer the question of whether the ICAC had been successful in reducing some of the corruption because they had no baseline information: they did not know how much corruption existed prior to the establishment of the ICAC.

In order to further explore opinion about the ICAC, respondents were asked whether they agreed or disagreed with three additional statements. These statements and the associated responses are presented below.

	SA	A	D	SD	DK ⁴
<i>Having the ICAC is a good thing for the people of NSW.</i>	54%	38%	2%	1%	4%
<i>The ICAC has increased public awareness about corruption in the NSW public sector.</i>	57%	33%	6%	2%	3%
<i>The ICAC is helping to make the NSW public sector more accountable.</i>	34%	48%	8%	1%	8%

When the "strongly agree" and "agree" responses are combined it can be seen that 92% of the respondents considered that *having the ICAC is a good thing for the people of NSW*, that 90% of the respondents considered that *the ICAC has increased public awareness about corruption in the NSW public sector* and that 82% of the respondents thought that *the ICAC is helping to make the NSW public sector more accountable*.

Women (86%) were more likely than men (79%) to agree with the statement that *the ICAC is helping to make the NSW public sector more accountable*. There was no statistically significant relationship between the belief that *the ICAC is helping to make the NSW public sector more accountable* and any of the other demographic characteristics which we measured as part of this survey.

⁴ SA = strongly agree; A = tend to agree; D = tend to disagree; SD = strongly disagree; DK = don't know

7 ACCESS TO INFORMATION ABOUT THE ICAC

When asked, *Have you read, seen or heard any information about the ICAC?*, 81% replied that they had.

The most frequently recalled sources of information were:

Newspaper reports	79%
T.V. reports	78%
Radio reports	40%
Other	5%
(<i>can't say</i>)	2%

In terms of the demographic characteristics which we measured as part of this survey, the subgroups most likely to have read, seen, or heard information about the ICAC were:

- those living in Sydney (85%) or country NSW (82%) rather than those living in Newcastle (72%) or Wollongong (71%);
- those with a degree, diploma (CAE) or part of these (91%) rather than those with a qualification from TAFE or less qualifications (77%);
- those with an income greater than \$40,000 (92%) rather than those with an income of \$40,000 or less (80%);
- men (85%) rather than women (76%);
- those born in Australia (83%) rather than those born outside Australia (72%);
- those in the public sector (88%) rather than those who are either in the private sector (79%) or self-employed (81%).

When asked, *Well apart from media reports, where have you read, seen or heard about the ICAC? Anywhere else?*, the most common additional sources of information were:

Work	2.0%
In conversation	1.4%
Brochures/guidelines	1.3%
School/uni/library	1.0%
Train stations	0.8%
Personal contact with ICAC or ICAC staff	0.7%
ICAC stands/shows/displays	0.6%
Other	2.9%
Don't know	5.0%

In June 1993, the ICAC conducted an outdoor poster advertising campaign to introduce the "Corruption Costs" theme to metropolitan Sydney audiences. The campaign involved 120 posters being displayed on billboards at railway stations and major intersections. The reference to "train stations" in the list above, refers to respondents recalling seeing one of these posters.

SOME OBSERVATIONS

Based upon the results of this survey, a number of general observations may be made:

- Nine out of ten members of the public thought that corruption had effects on the community. The public appear to have considered the consequences of corruption and to be aware of the less tangible consequences such as disillusionment and loss of respect for authorities as well as the more tangible consequences such as financial costs.
- Given that more than half of the sample said that they would not know where to report corruption, attention should be paid to informing members of the public of the reporting avenues open to them.
- Despite the fact that the ICAC is less than 5 years old, it seems to have achieved a relatively high community profile.
- Since newspaper and television reports are recalled as the most frequent sources of information about the ICAC, and that investigations carried out by the ICAC receive most media coverage, it is not surprising that members of the public are more likely to be aware of the ICAC's investigatory function, rather than any other function. People continue to be largely unaware of the Commission's educative and corruption prevention work.
- Members of the public were able to suggest a range of possible changes that they would like to see made to the ICAC. The comments made indicated both areas of dissatisfaction with the Commission as well as some misunderstanding about what the ICAC does and does not do. As such, these comments provide direction for both community education and for reappraisal of the Commission's approach to its work.
- The ICAC maintains a high and controversial profile in the media. It is likely that public opinion of the ICAC varies, influenced by the media coverage at the time. In this survey, respondents expressed a very positive opinion of the ICAC.

INTERVIEW SCHEDULE

Good morning/afternoon. My name is *(say name)* from The Roy Morgan Research Centre, the people who conduct the Morgan Gallup Poll. May I please speak to the youngest male aged 18 years or over who's at home? *If no males, ..* Then may I speak to the youngest female aged 18 years or over who's at home?

If new respondent, repeat introduction and say: Today we're conducting a survey on your opinions about corruption in the NSW public sector.

(If not available, make an appointment)

(Record sex of respondent)

Corruption in the NSW public sector is something which is sometimes discussed in the media. I would like to ask you a few questions about your thoughts on corruption in the NSW public sector. Is now a convenient time?

(If yes, proceed with interview; if no, make a further appointment.)

Before we start, I'd like you to know that when I ask about "the NSW public sector" I mean all state government departments, statutory authorities, local government, members of the Parliament and the judiciary.

Q1 Firstly do you consider that, for taxpayers, corruption in the NSW public sector is:

- a serious problem**
- a minor problem**
- not a problem**
- no opinion *(don't read)***

Q2A Do you think corruption in the public sector has any effects on the community?

If corruption has any effects on community, ask: Q2B What effects do you think it has on the community? Any others? *Probe fully!* *If respondent says "it costs" or similar, ask: What exactly do you mean by that? Could you provide an example?*

I'm now going to read out a list of statements, and I'd like you to tell me whether you agree or disagree with each one. *(Q3A-3G rotated)*. Firstly:

Q3A Do you agree or disagree that: "Conduct must be illegal for it to be called corrupt"? *If agree/disagree, ask: Is that strongly agree / disagree or tend to agree / disagree?*

Q3B Do you agree or disagree that: "If something is done for the right reasons, it cannot be called corrupt"? *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q3C Do you agree or disagree that: "The NSW Government can afford to sustain minor theft without worrying about it"? *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q3D Do you agree or disagree that: "You **can't** call something corrupt if **everyone** does it"? *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q3E Do you agree or disagree that: "There is **no point** in reporting corruption in the NSW public sector because **nothing useful** will be done about it"? *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q3F Do you agree or disagree that: "People who **report** corruption are likely to suffer for it"? *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q3G Do you agree or disagree that: "Most corruption is **too trivial** to be **worth** reporting"? *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q4A Would you know **where** to go to **report** corruption in the NSW public sector?

Q4B The Government has set up a body to look into corruption in Government organisations in NSW. Can you tell me what it is called?

If gave incorrect name or can't say, ask: Q5 Have you heard of any of the following? Read out answer places. Highlight for all agreed to!

The Independent Commission Against Corruption
I.C.A.C.
Icac
None of these (don't read)

If mentioned or heard of the Independent Commission Against Corruption, say: The Independent Commission Against Corruption is sometimes called the I.C.A.C.

Q6 What does the ICAC do? What else? Anything else? *(Probe fully)* *If says "investigation" or "prosecution", ask: Well apart from investigation or prosecution, what else does the ICAC do?*

Q7A Are there any **additional things** which the ICAC should do now, which you think it doesn't do now?

If ICAC should do additional things, ask: Q7B What else do you think it should do? Anything else? (Probe fully!)

Q8A Are there any things which the ICAC does, which you think it **should not** do?

If ICAC does things it shouldn't do, ask: Q8B What things should it not do? What else? Anything else? (Probe fully!)

Q9A Are there any **changes** which you think should be made to the ICAC?

If think any changes should be made, ask: Q9B What changes do you think should be made to the ICAC. What else? Anything else? (Probe fully!)

Q10 Do you think the ICAC has been successful or unsuccessful in **exposing some** of the corruption which has occurred in New South Wales? *If successful/unsuccessful, ask: Is that very successful/unsuccessful or just successful/unsuccessful?*

Q11 And has the ICAC been successful or unsuccessful in **reducing some** of the corruption which has occurred in New South Wales? *If successful/unsuccessful, ask: Is that very successful/unsuccessful or just successful/unsuccessful?*

I'm now going to read another list of statements, and I'd like you to tell me whether you agree or disagree with each one. Firstly:

(Questions 12A-12C rotated)

Q12A Do you agree or disagree that **having the ICAC is a good thing for the people of New South Wales**? *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q12B Do you agree or disagree that **the ICAC has increased public awareness about corruption in the NSW public sector**? *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q12C Do you agree or disagree that **the ICAC is helping to make the NSW public sector more accountable**. *If agree/disagree, ask: Is that strongly agree/disagree or tend to agree/disagree?*

Q13A Have you read, seen or heard any information about the ICAC?

If read/seen/heard information about the ICAC: Q13B Where have you read, seen or heard about the ICAC? Where else? Anywhere else? *(Probe fully!)*

Q13C Well, apart from media reports, where have you read, seen or heard about the ICAC? Anywhere else? *(Probe fully!)*

To make sure we have a true cross-section of people, I'd like to ask you a few questions about yourself.

Q14 First, would you mind telling me your approximate age please? *(Age groupings were specified.)*

Q15 Are you now in paid employment? *If yes, ask: Is that full-time for 35 hours or more a week, or part-time?*

If employed, ask: Q16 Do you work in the public sector, in private industry, or are you self-employed? *If work in public sector, ask: Is that the State public sector or the Commonwealth public sector?*

If employed in Commonwealth public sector/ private industry/self-employed, ask: Q17 Are any members of your household currently employed in the New South Wales public sector?

Q18 In which country were you born?

Q19 What is the highest level of education you have reached?

Q20 Would you mind telling me your gross annual personal income, from all sources, before tax?

Thank you very much for your time and assistance.

PROFILE OF THE SAMPLE

Figure 1

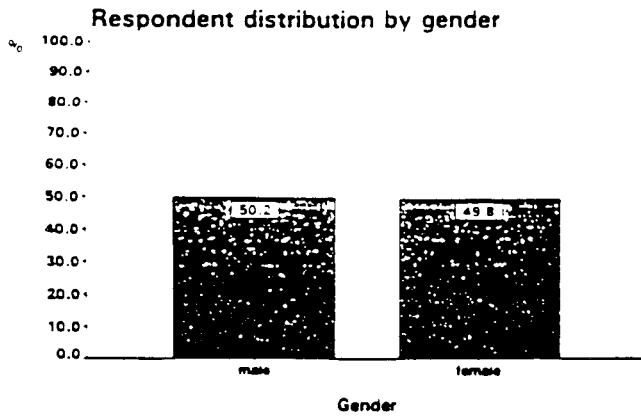


Figure 2

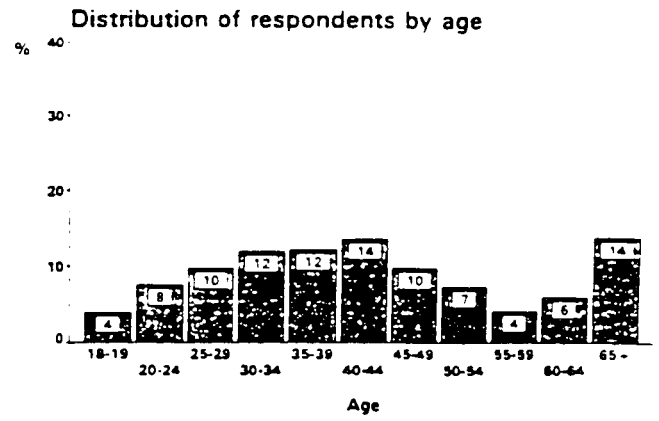


Figure 3

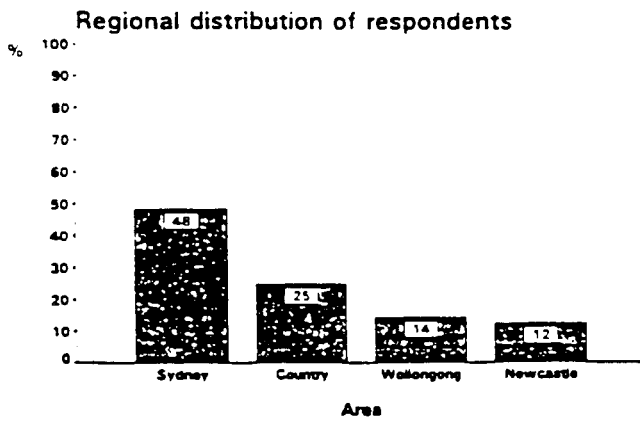


Figure 4

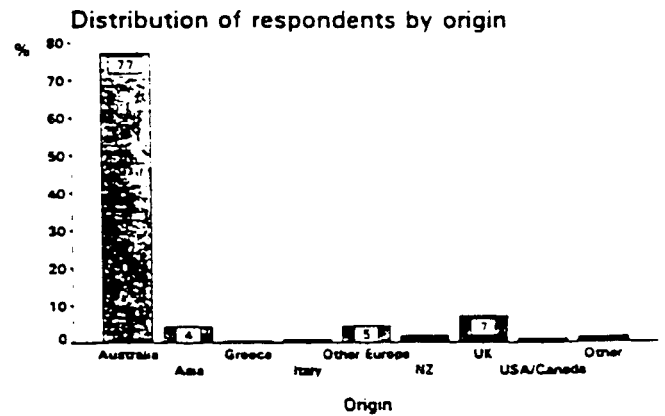


Figure 5

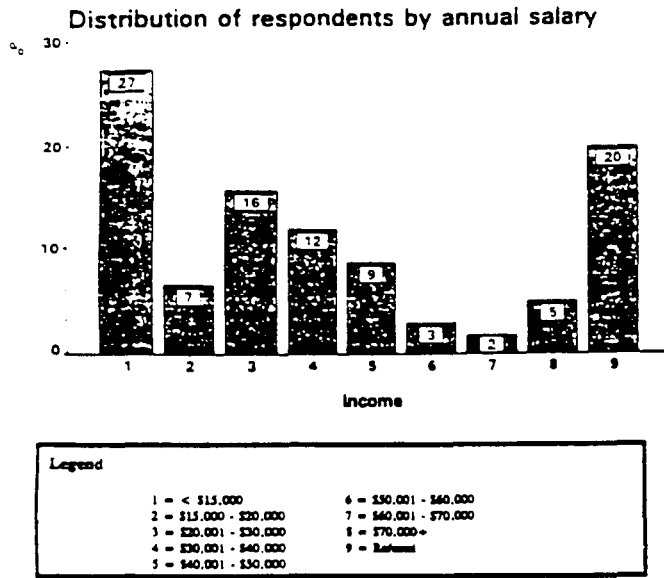


Figure 6

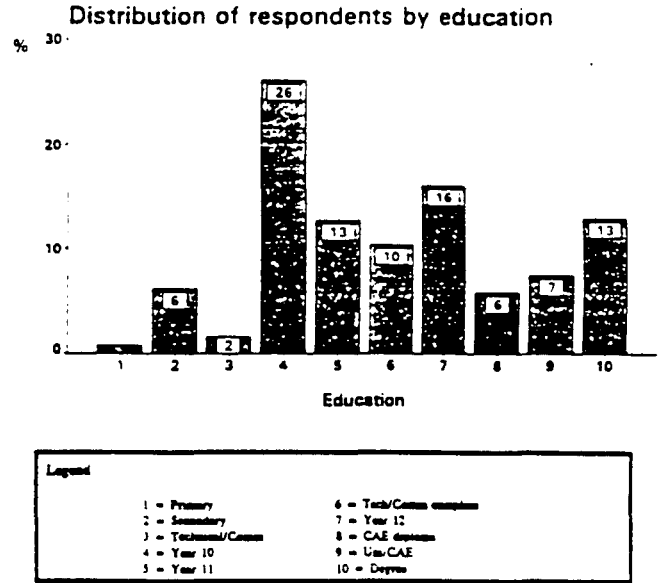


Figure 7

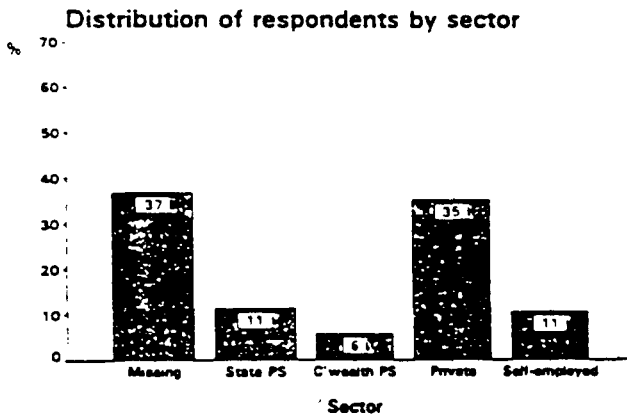
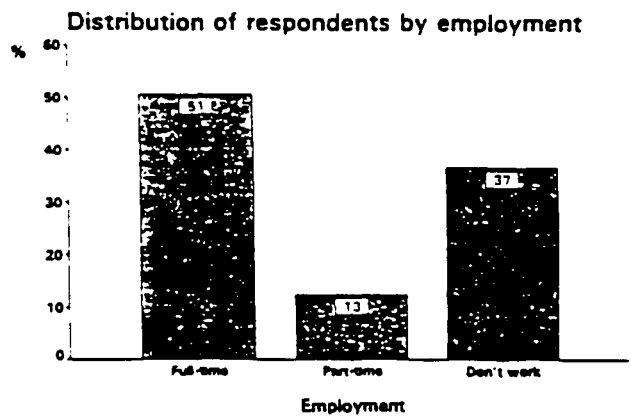


Figure 8



COMPARISON OF COMMUNITY AND PUBLIC SECTOR ATTITUDES

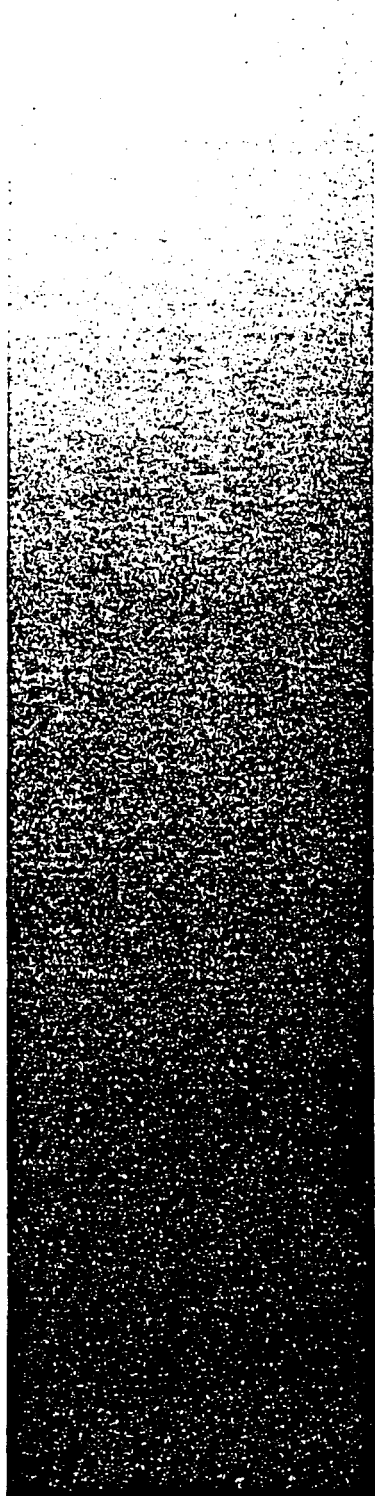
The results of the public sector employees study appear in italics underneath the results of the current public opinion survey.

Statement	S	A	AD	SD ⁵
"Conduct <i>must be</i> illegal for it to be called corrupt".	16%	25%	27%	32%
	<i>11%</i>	<i>18%</i>	<i>48%</i>	<i>24%</i>
"If something is done <i>for the right reasons</i> , it <i>cannot</i> be called corrupt."	13%	29%	30%	28%
	<i>6%</i>	<i>21%</i>	<i>51%</i>	<i>22%</i>
"The NSW Government <i>can</i> afford to sustain <i>minor</i> theft <i>without</i> worrying about it."	3%	16%	21%	61%
	<i>2%</i>	<i>9%</i>	<i>46%</i>	<i>44%</i>
"You <i>can't</i> call something corrupt if <i>everyone</i> does it."	6%	6%	18%	71%
	<i>3%</i>	<i>6%</i>	<i>37%</i>	<i>55%</i>
"There is <i>no point</i> in reporting corruption in the NSW public sector because <i>nothing useful will</i> be done about it."	13%	19%	18%	50%
	<i>8%</i>	<i>18%</i>	<i>43%</i>	<i>31%</i>
"People who <i>report</i> corruption are likely to suffer for it."	38%	41%	14%	7%
	<i>23%</i>	<i>51%</i>	<i>20%</i>	<i>6%</i>
" <i>Most</i> corruption is <i>too trivial</i> to be <i>worth</i> reporting."	4%	12%	27%	57%
	<i>3%</i>	<i>24%</i>	<i>54%</i>	<i>20%</i>

⁵ SA = strongly agree; A = agree; D = Disagree; SD = Strongly disagree

APPENDIX TWO

Guidelines for the Reporting of Corrupt Conduct



Guidelines for the Reporting of Corrupt Conduct

1 THE COMMISSION

The ICAC is established under an Act of Parliament, the Independent Commission Against Corruption Act, 1988 ("The Act"). The main purpose of the Commission is to expose and minimise corruption within and affecting the NSW public sector.

Our work is directed at improving the honesty and impartiality of the NSW public sector; including all departments, statutory authorities, local government, members of Parliament and the judiciary.

Information received at the Commission may lead to investigation and/or prevention or education work. Information gathered by the Commission may give an indication of issues confronting the NSW Public Sector, allowing the ICAC to assist organisations to improve performance.

2 OBLIGATIONS UNDER THE ICAC ACT

To effectively carry out its functions and objectives the Commission requires the assistance of the general public and of public authorities over which it has jurisdiction.

Section 11(2) of the Act requires the Ombudsman, the Commissioner of Police and principal officers of government departments and other agencies to report suspected corrupt conduct to the Commission. This enables the Commission to develop a knowledge of possible corruption in the NSW public sector and to appropriately direct its work.

While the Commission is NSW's primary anti-corruption agency it is not solely responsible for the detection, investigation and prevention of corruption. The Act does not affect obligations to report or refer matters to other bodies such as the Police, the Auditor-General or the Ombudsman or to carry out disciplinary procedures as required. Reporting criminal matters to the Commission should not delay such matters being reported to the Police Service.

Matters must be reported to the Commission regardless of any duty of secrecy or other restriction on disclosure.

3 CORRUPT CONDUCT DEFINED

Under the Act, corrupt conduct can be defined as dishonest or partial exercise of official function by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, comes within the definition. When necessary the Act can be referred to or the ICAC consulted.

4 MEETING OBLIGATIONS UNDER SECTION 11

PRINCIPAL OFFICER

The "principal officer" is the person who heads the authority, its most senior officer or the person who usually presides at its meetings. The Commission should be contacted for advice if an agency is unclear who is the "principal officer".

DUTY TO REPORT CORRUPT CONDUCT AND DELEGATION

The duty to report belongs to the principal officer and cannot be delegated. Where another person is acting as principal officer during periods of leave or other absence, the duty applies to that person.

REASONABLE GROUNDS

Section 11 requires that the principal officer report "any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct".

"Suspects on reasonable grounds" means there is a real possibility that corrupt conduct is or may be involved. Certainly, proof is not necessary. Authorities are encouraged to contact the Commission to discuss particular matters that they may be unsure about or to seek clarification on any issue of reporting corrupt conduct.

TIMELINESS

The Act contains no provision permitting delay. As soon as a reasonable suspicion is formed that corrupt conduct is or may be involved, there must be a report made to the ICAC.

INTERNAL SYSTEMS

Organisations must have adequate internal systems to enable corrupt conduct to be reported to the principal officer. Mechanisms for internal reporting are necessary for preliminary investigation and development of corruption prevention measures. Assistance and resources are available from the Commission to assist with development of internal reporting systems.

CONFIDENTIALITY

It is important that reports to the Commission be made without advising the person(s) to whom the report relates, and without publicity. Confidential handling of reports helps avoid prejudicing the investigation and unnecessary hurt or embarrassment to individuals.

Where the complaint originated from outside the department or agency, the Commission would prefer that the complainant not be advised of the referral until the Commission responds to the department or agency. Where the complaint is made from within the agency confidential advice to the employee that the matter has been referred may be warranted.

PROTECTION FROM DEFAMATION ACTION

Because a statutory duty is being performed, reports made in good faith are protected from defamation action, even if the suspicion on which it is based turns out to be groundless. See also Defamation Act 1974, s.17K.

5 SIGNIFICANCE OF MATTERS TO BE REPORTED AND METHOD OF REPORTING

SERIOUS MATTERS

Serious matters need to be reported to the Commission as soon as the authority becomes aware of them. Matters regarded as serious include corrupt conduct or possible corrupt conduct which it is suspected incorporates one or more of the following characteristics:

- serious criminal offences, including those relating to corruption offences such as bribery, the payment of secret commissions and so on;
- an organised scheme or plan;
- systematic practices occurring over time or involving a number of staff;
- public officials who hold senior or sensitive positions;
- misconduct sufficient to result in dismissal;
- persons who have obtained or expect to obtain money or other benefit or advantage which in the circumstances could not be regarded as merely token;
- matters which may commence as minor matters but subsequently change significantly in scope and nature.

The most insignificant or trivial matters are excluded from the definition of "corrupt conduct". To be corrupt, conduct must also involve:

- a criminal offence under New South Wales law or any other law which could apply in the particular circumstances; or

- a disciplinary offence which could lead to disciplinary action under any law including regulations; or
- reasonable grounds to dismiss or terminate the services of a public official.

MINOR MATTERS

Minor matters meeting the definition of corrupt conduct are also included in the reporting requirement.

With prior approval of the Commission, public authorities may arrange to report certain minor matters by way of a monthly or quarterly schedule - the format is shown below. Matters suitable for inclusion in the schedule, which can be described as **corrupt conduct**, are:

- those normally and routinely dealt with by the internal audit function of the authority and which do not require reference to an external agency other than suspected minor criminal offences being referred to the Police Service;
- minor matters of misconduct by public officials which are likely to result in a warning, counselling, transfer or demotion.

Reporting Authority	4.11 Schedule	Reporting Period	Date of Schedule	ICAC File Ref.
ABC Govt Dept		October 1992	5 November 1992	if known

NEW MATTERS

Authority Reference	Section or Location	Key Persons	Allegations	Proposed Action	Current Status	ICAC Ref if known
3456F	Moree	Pink, Paul Pink, Reg	Employment of son without competitive process	Disciplinary action	Commenced	E92/XXXX
9832G	Newcastle	Smith, Michelle Jones, Zelda Green, Elvis	Submission of false overtime claims	Internal audit investigating claims	Report due 30/11/92	E92/XXXX
8576H	Head Office	Brown, Geoff White, Evelyn	Theft of goods (foodstuff from canteen)	Referred to Police for criminal investigation	Charges laid	E92/XXXX
7584J	Wollongong	Black, Henry Bluc, Hayley	Misuse of Departmental vehicle and falsify vehicle log	Disciplinary action, employees warned	Completed	E92/XXXX
6857B	Taree	Purple, Imelda	Misuse of petty cash for personal use	Internal audit investigating	Report due 12/12/92	E92/XXXX

6 HOW MATTERS ARE DEALT WITH AT THE COMMISSION

All information received is assessed in terms of the contribution it may make to the work of the Commission.

Of the numerous matters referred to the Commission only a small number are selected for full investigation. Some form the basis of corruption prevention advice and project work, others are referred to more appropriate investigative authorities. The Commission makes decisions based on established criteria. Information about the factors taken into account in the assessment process is available from the Commission.

The reporting authorities will be informed of the Commission's interest or proposed action as soon as possible.

Contacts

For further information and assistance on reporting corrupt conduct in general, and other issues raised in this booklet, please contact:

Director of Operational Services or The Manager, Assessments Section

For corruption prevention advice on internal reporting mechanisms for corrupt conduct or improvement to procedures and work systems, please contact:

Director of Corruption Prevention

For information assistance with seminars, training and ethics awareness, publications and resource material, please contact:

The Manager, Education

INDEPENDENT COMMISSION AGAINST CORRUPTION

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APPENDIX THREE

**S.74(5) and S.74A(2) Findings:
Consideration of Prosecutions**

**S.74(5) and S.74A(2) Findings:
Consideration of Disciplinary Action/Dismissal**

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

Entries under the heading "finding" indicate only that the Commission made a statement pursuant to s74(5) or s74A(2) giving its opinion that consideration of the prosecution of a person for one or more specified criminal offences be given.

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)			

NAME	FINDING	DPP DECISION	RESULT
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. Appeal pending. 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 Roden expressed the view that there were "special reasons that had been stated which might be 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 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 appealed but was unsuccessful.</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>

NAME	FINDING	DPP DECISION	RESULT
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	
One individual	Offences under s96 of the Local Government Act	Did not proceed.	
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	

NAME	FINDING	DPP DECISION	RESULT
John Patrick Burt	Offence against s249B(1)	As above	
Walsh Bay Report (nil)			
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.</p> <p>One person was committed for trial and then pleaded guilty on arraignment to three counts - 2 months gaol.</p> <p>One other person was committed for trial and pleaded guilty in relation to two out of five counts - 200 hours community service, \$3,000 fine and 3 year good behaviour bond.</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	Charges not proceeded with.	

NAME	FINDING	DPP DECISION	RESULT
Azzopardi Report			
Kylie Williams	<p>Offence under s85ZE of the Crimes Act (Cth)</p> <p>Offence under s7A of the Crimes Act (Cth)</p> <p>Offences under s87 of the ICAC Act</p>	<p>One charge under s7A of inciting an offence under s85ZA of the Crimes Act(Cth)</p> <p>Six charges under s87</p>	<p>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.</p>
Gregory Abel	<p>Offences under s85ZE of the Crimes Act (Cth)</p> <p>Offence against s80(c) of the ICAC Act</p>	<p>One charge under s85ZE</p> <p>3 charges under s80(c)</p>	<p>Pleaded guilty to charge under s85ZE. Convicted and sentenced to 4 months periodic detention.</p> <p>Pleaded 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).</p>

NAME	FINDING	DPP DECISION	RESULT
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	Pleaded guilty after receiving sentence indication. 500 hours community service, \$10,000 fine and 3 year good behaviour bond.
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	Pleaded guilty after receiving sentence indication. 500 hours community service, \$10,000 fine and 3 year good behaviour bond.
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)			

NAME	FINDING	DPP DECISION	RESULT
Helicopter Report (nil)			
South Sydney Report (nil)			
Kyogle Report			
Harold John Standfield	Two offences - s87 ICAC Act	Two offences - s87 ICAC Act	Both charges found proved. \$250 fine and \$46 costs on one and s556A dismissal on second.
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
Tamba Report			
80 individuals	Offence(s) of bribery (includes common law bribery and statutory offences under s249B of the Crimes Act)	<p>Prosecution commenced against four persons.</p> <p>Fifteen persons are not to be prosecuted as statements could not be obtained in admissible form.</p> <p>Other matters not yet considered</p>	
34 individuals	Aiding and abetting unlawful computer access (s309 Crimes Act)	Prosecutions commenced against two persons. Awaiting advice on remainder	
31 individuals	Offences(s) of unlawful computer access (s309 Crimes Act)	<p>Two persons are not to be prosecuted as statements could not be obtained in admissible form.</p> <p>Other matters not yet considered</p>	
6 individuals	Offences of conspiracy to bribe or substantive offences	One person to be prosecuted on three counts. Awaiting advice on remainder	
1 individual	Aid and abet bribery	Not yet considered	

NAME	FINDING	DPP DECISION	RESULT
34 individuals	Offence(s) against s87 of the ICAC Act (giving false or misleading evidence)	<p>Prosecutions commenced against fourteen persons for total of sixteen offences</p> <p>Two persons are not to be prosecuted as statements could not be obtained in admissible form.</p> <p>One case does not warrant prosecution.</p> <p>Other matters not yet considered</p>	Three persons have been convicted. Cases dismissed in two instances.
12 individuals	Offence(s) against s88 of the ICAC Act (interfering with documents)	<p>Three prosecutions commenced</p> <p>DPP decided not to prosecute one person following submissions by ICAC.</p> <p>Four persons are not to be prosecuted as statements could not be obtained in admissible form.</p> <p>Other matters not yet considered</p>	
1 individual	Offence(s) against s89 of the ICAC Act (procuring false testimony)	Not yet considered	
Trackfast Report (nil)			

NAME	FINDING	DPP DECISION	RESULT
KOA Report (Informers)			
Barry Wentworth Dunn	Two offences under s5(1) of the Listening Devices Act	Not to be prosecuted	
SRA - Northern Region			
Philip George Davies	Offence of aiding,abetting or procuring the commission of an offence against s249B(2)(b) of the the Crimes Act by Earthline Constructions Offence against s178BB of Crimes Act Offence(s) of bribery <u>or</u> offence(s) against s249B(2)(a) or (b) of Crimes Act	Not yet considered	
Ian Neil Davies	Offences agaist s178BB and s300(1) of Crimes Act Offence under s249B(2)(a) or (b) of the Crimes Act	Not yet considered	

NAME	FINDING	DPP DECISION	RESULT
Michael Bruce Wearing	Offence of aiding, abetting or procuring the commission of an offence against s249B(2)(b) by Earthline Constructions.	Not yet considered	
Jan Aleksander Czapl	Offences against s249B(1)(b) of the Crimes Act	Not yet considered	
David Brian Bell	Offences pursuant to s249B(1)(a) of the Crimes Act Offence against s80(c) of the ICAC Act	Not yet considered	
Ronald Thomas Child	Offences under s178BB and s300 of the Crimes Act	Not yet considered	
Michael Christopher Gillart	Offences under s178BB and s300 of the Crimes Act Aiding, abetting or procuring the commission of an offence against s249B(2)(b) of the Crimes Act by K & M Gillart	Not yet considered Charged with 3 counts of making corrupt payments to William Ross Hay	

NAME	FINDING	DPP DECISION	RESULT
William Ross Hay	Offences against s249B(1)(b) of the Crimes Act Offences against s87 of the ICAC Act	Charged with 3 counts of receiving corrupt payments. Not yet considered	
Geoffrey Samuel Elms	Offences against s249B(1)(a(i) or s249B(1)(b) of the Crimes Act Offences against s87 of the ICAC Act	Not yet considered	
Charles Russ Fuller	Offence against s249B(2)(a)(i) or s249B(2)(b) of the Crimes Act	Not yet considered	
Landa Report (nil)			
Zouch Report			
Brian Zouch	Common Law Bribery and breaches of s249(B) of the Crimes Act	To be sent to the DPP	
Leslie Merton	Common Law Bribery and breaches of s249(B) of the Crimes Act	To be sent to the DPP	
Collins Report (nil)			

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) giving its opinion that 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 be given.

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 over issuance of new instructor's licence. This appeal is pending. 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			
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 Horiopolous	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)			
Conflict of Interest Report (nil)			

NAME	FINDING	HEAD OF AUTHORITY DECISION	COMMENTS
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 cleared after departmental investigation.	
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 but withdrew appeal.

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 Czapl	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)			
Zouch Report (nil)			
Collins Report (nil)			

APPENDIX FOUR

**Guarding the Polity: The NSW ICAC
A Paper by Gary L Sturgess**

Guarding the Polity: The NSW Independent Commission Against Corruption

A Paper by

**Gary L. Sturgess,
Sturgess Australia**

**for a conference hosted by the
Centre for Australian Public Sector Management**

**Graduate School of Management,
Griffith University,
Brisbane, QLD**

3-4 December 1993

1. Introduction

The Independent Commission Against Corruption (ICAC) was established in 1988 as a standing royal commission, following a decade of controversy about high-level corruption among public officials in the government of New South Wales. To consider the ICAC *qua* royal commission necessitates the consideration of two distinct aspects of this institution. On the one hand they are examples of a relatively new instrument of public accountability, the standing royal commission. To those of us who were schooled in English constitutional history, the very notion of a permanent institution with the powers of a royal commission is, or ought to be, repugnant. And yet, on any objective test, the ICAC has won a high level of community support precisely because of these powers and the manner in which they have been exercised against the 'great and powerful'.

But the ICAC is also a classic case study in the use of the royal commission in the pursuit of official corruption. During the 'golden age of royal commissions' in Australia, governments used this institution in much the way that they use consultants today - as an external and supposedly non-partisan instrument of fact-finding which allowed policy options to be canvassed without reflecting on the government of the day.¹ Yet for much of their history, royal commissions have been preferred as a means of holding independent investigations into politically-damaging controversies. Spann, for example, concluded that, "The most exalted form (of *ad hoc* advisory body) is the Royal Commission, but this is rarely used in Australia to advise on broad policy, rather to investigate some alleged scandal or charge of maladministration."² In New South Wales, where corruption allegations are a stock item in the political armoury of Oppositions and Governments alike, the royal commission has oft been wielded both as an offensive and as a defensive weapon. Indeed, a study of the expansion of the powers of the royal commission in New South Wales is, in many respects, a history of the corruption royal commission.

This paper considers both these characteristics of the royal commission. It is impossible to understand the ICAC and its apparent popularity in the community, without an appreciation of the history of the corruption royal commission, and the controversy which led to the creation of the ICAC.

2. The Corruption Royal Commission

Governments in New South Wales have been using the royal commission to inquire into allegations of corruption since they first became a popular instrument of public inquiry late last century. The reasons for this are obvious. Royal commissions provide a means of investigation that is, in theory at least, independent of the Executive Government, with broad fact-finding powers well-suited to exposing the secretive world of the corrupt public official. Two high water marks can be identified in the use of the corruption royal commission in NSW: in the early decades of the present

¹ Geoffrey Hawker argued that this golden age lasted until about 1930. See G.N. Hawker, *The Parliament of New South Wales, 1856-1965*, Sydney: Government Printer, 1971, p.284.

² R.N. Spann, *Public Administration in Australia*, Sydney: Government Printer, 1973, p.358.

century, and again during the 1970s and 1980s. And yet, it was only on rare occasions that they were uncontroversial.

(i) *Inadequate powers*: In spite of the very considerable powers with which royal commissioners have been invested, one of the most persistent criticisms has related to the inadequacy of these powers. Time and again, when a royal commission has been in hot pursuit of an elusive quarry, governments have been forced to go to the parliament with fresh legislation, seeking to add to the already considerable powers of the royal commissioner.

This process was evident in recent years during the Fitzgerald commission of inquiry in Queensland, but it was already apparent in New South Wales by 1905. One of the principal witnesses in the Royal Commission on Administration of the Lands Department, a Member of Parliament and sometime land agent, William Nicholas Willis, fled to South Africa to avoid examination.³ In his absence, a special Act of Parliament was passed empowering Commissioner Owens to have access to his safe deposit box (although when it was finally opened, the box was found to be empty).

The allegations of corruption in this case related to the activities of a former Lands Minister, Paddy Crick, and the government of the day, led by Joe Carruthers, was deeply embarrassed by this series of bungles. The *Evening News* ran a series of Lionel Lindsay cartoons ridiculing the government over its handling of the affair, and the Labour Party, which held the balance of power and was keeping Carruthers in office, turned up the heat in parliament. Willis later described these events in a passage which is worth quoting, because it illustrates how little the Macquarie Street Bear Pit has changed over the years:

"Parliament intervened. Mr McGowen moved a vote of censure on the Government. The life and death of the Ministry seemed set around the proposition to bring Willis back . . . Wade resisted the attack, and told the House that Parliament and the Press had got into a state of frenzy, and they wished to drag the Courts of Justice into the same arena . . .

"It was then arranged secretly and behind the scenes that Willis should be brought back by hook or by crook . . . The debate petered out. The Government won."⁴

Six months into the inquiry, in spite of having discovered payments to Willis which seemed excessively generous, the royal commission had still not found any hard evidence of corruption. So it is unsurprising that when one of the alleged 'middlemen' offered to give evidence in return for immunity from prosecution, the government rushed off to parliament with another Bill amending the Royal Commissioners Evidence Act.

³ Royal Commission on Administration of the Lands Department (1906), New South Wales, *Parliamentary Papers*, 1906, vol.2, pp.1-75; see also C. Pearl, *Wild Men of Sydney*, Melbourne: Lansdowne Press, 1965; F. Clune, *Scandals of Sydney Town*, Sydney: Angus and Robertson, 1957; and W.N. Willis, *The Life of W.P. Crick*, Sydney: W.N. Willis, (undated).

⁴ W.N. Willis, *The Life of W.P. Crick*, p.187.

In the result, Crick and Willis were found by the royal commission to have engaged in corrupt activities, although they were later acquitted by the courts. Crick showed absolutely no fear of parliament or the royal commission and repeatedly challenged the commissioner's powers in the courts. Willis later wrote a eulogy to Crick in which he savagely criticised "this Commission - this Court of Record with a power that has not been granted to a like Court for 500 years . . ." ⁵ How little these things change.

This story was to be repeated eight or nine years later, during yet another royal commission into corruption in the Lands Department. On this occasion, the government amended the Act to compel the taking of evidence from witnesses and to punish for perjury. ⁶ By the 1980s, these demands for additional powers had been moderated, in part, because a number of those individuals who were leading the attack on corruption, both in the parliament and in the media, were active civil libertarians and found themselves in a position of conflict over this issue.

And yet, during his final years as Premier, Neville Wran suffered immense political damage because of his refusal to establish a standing anti-corruption body with the full powers of a royal commission. Indeed, Wran followed the example set by the Cahill Government in the 1950s, and began using judicial inquiries as a means of suppressing whistle-blowers and investigative journalists.

In 1983, at the height of the controversy over the prisoner early release racket, Wran established a new investigative institution, the Special Commission of Inquiry. Under new legislation, rushed through parliament in the early hours of the morning, these special commissions were given extremely broad powers, wider in some respects than the royal commissions, but confined in one very important respect: the Act provided that the commissioner "shall only receive as evidence, matter that, in the opinion of the Commissioner, would be likely to be admitted into evidence in relevant criminal proceedings."

In the circumstances, the legislation was read as an attack on the Opposition and the media. There was widespread criticism of the legislation in Caucus and in the press. Former Opposition Leader and anti-corruption campaigner, John Dowd, said at the time, "The sinister intent of this legislation is to get Bob Bottom . . . to get any journalist or any other person who has the guts to raise matters . . . in an attempt to expose corruption." ⁷ And, indeed, that is precisely how the first two special commissions were to work, as an instrument for discrediting two individuals who had raised corruption allegations, Bob Bottom and Ian Sinclair.

The NSW State election in 1984 was fought largely on the corruption issue with both parties promising firm action to restore public confidence in the administration of justice. Nick Greiner, who had been Opposition Leader for less than 12 months, promised a standing royal commission into corruption, a policy which would later be refined and in 1988 implemented as the Independent Commission Against Corruption.

⁵ *ibid.*, p. 189.

⁶ Report of the Royal Commission on the Purchase by the government of the Boorabil Estate and Adjoining Improvement Leases, New South Wales, *Parliamentary Papers*, 1914-1915, vol. 5.

⁷ Quoted, R. Bottom, *Without Fear or Favour*, Melbourne: Sun Books, 1984, p. 109.

Neville Wran promised a Commissioner of Public Complaints, a promise which he implemented soon after the election, leading to the establishment of the first standing royal commission in NSW history. Unfortunately the Commissioner lacked the power to investigate those against whom corruption allegations had been made; the royal commission powers were reserved for examining those people who were foolish enough to make complaints. The Commission was widely seen as another attempt to silence the anti-corruption campaigners, and unsurprisingly, no one came forward with complaints.

(ii) *Inadequate commissioners:* Another criticism which has persisted over the years is the inadequacy or the inappropriateness of those individuals who have been chosen by the Executive Government to conduct these inquiries. In NSW those called upon to conduct corruption royal commissions have been overwhelmingly drawn from the judiciary, a practice which has tended to suppress criticism, in public at least.

Of course, the concern at the appointment of commissioners by the Executive is founded in the belief that no government will appoint a commissioner of such independence that he would bring down the ministry. For example, in 1912, the Liberal Member for Burwood, Thomas Henley, launched an attack on the recently-completed royal commission set up by the fledgling McGowen Government to inquire into alleged corruption by Arthur Griffith. The royal commissioner, a District Court judge named Walter Edmunds, sat for only two days before issuing a brief report exonerating the Minister. At the first opportunity, Henley rose in the Parliament and labelled the commission a sham "in which the commissioner was tied up and pretended to make an inquiry."⁸

In later years, Jack Lang was critical of the manner in which Mr Justice Pring conducted the royal commissions into the wheat scandals in 1919 and 1920. Lang referred to a letter that was discovered by Evatt in Bill Holman's papers, in which Holman acknowledged meeting with Pring during the course of the second royal commission. Many years later, Lang wrote:

"That a Premier should go to a Royal Commissioner, while the hearing was at an acute stage, and discuss evidence with him showed how far Holman was prepared to go. The fact that Mr Justice Pring was prepared to discuss it should have been equally disturbing."⁹

Similar concerns surfaced in NSW during the anti-corruption campaigns of the 1980s. For reasons of defamation law, it is unsafe to articulate those concerns here, and to be fair to the individuals involved, they were not usually well-founded. What is important, however, is the disquiet which existed in Opposition ranks and the media at a process whereby the government got to choose its own inquisitor. This is unsurprising, given the maxim which has been accepted on both sides of NSW politics for many years, that you don't appoint a royal commission until you know the outcome.

⁸ NSW *Parliamentary Papers*, 1912, vol.3, p.489 and NSW *Parliamentary Debates*, 22 November 1912, pp.3586-7.

⁹ J.T. Lang, *I Remember*, Sydney: Invincible Press, 1956, p.126.

Much of this apprehension has been put to rest since the establishment of corruption royal commissions in Queensland and Western Australia where the outcomes were clearly not known in advance. In both cases, the governments in question were prepared (or obliged) to appoint independent-minded commissioners who felt themselves free to make findings which ultimately brought down the government.

(iii) Narrow terms of reference: Another piece of folk wisdom in NSW politics about the establishment of royal commissions is the importance of drafting narrow terms of reference. In the end, Thomas Henley's objection to the royal commission into the public works contracts handed out by Arthur Griffith was as much about the terms of reference as it was with the interpretation placed upon them by Commissioner Edmunds. Henley had alleged 'maladministration', in essence, a breach of the ministerial duties which British Prime Minister Herbert Asquith would import into public administration the following year in the wake of the Marconi share scandal. But the terms of reference directed the commissioner to inquire as to whether Griffith had "been guilty of corrupt practices", a wording which, when narrowly interpreted, left Henley without any evidence to put before the commission.¹⁰

Of course much of the concern by governments about wide-ranging terms of reference arises from the exorbitant costs of royal commissions and a quite proper concern at avoiding expensive 'fishing expeditions'. For reasons which are generally understood, the judiciary is principally concerned with questions of justice and, as such, judges are not usually required to manage their cases according to a strict timetable or a limited budget. We should not be surprised then that when they come to undertake a royal commission, judges are unimpressed with the demands of public officials that they comply with their terms of reference and meet their budgetary deadlines.

Having managed the government's end of several royal commissions (although none of them concerned with corruption), the author can attest to the difficulty of commissioning a member of the judiciary to undertake investigations on behalf of the Executive Government. For example, during the inquiry into the Blackburn affair in 1990, the royal commissioner appeared to have regarded the reporting date laid down in his commission as entirely flexible and expressed surprise when the Premier wrote back refusing a request for a three-month extension.¹¹ Moreover, the commissioner seems to have misunderstood the capacity in which he had undertaken this investigation. In his reply to the NSW Premier, written on judicial letterhead, he wrote that he was gravely disturbed that the Premier would direct him, a Judge of the Supreme Court, to carry out his commission within a time frame chosen by the government. The responsibility to observe the terms of the royal commission were his and his alone. In the result, the government compromised and gave him a two-month extension.

In recent years, royal commissioners have taken to recommending to government an extension of their terms of reference where the initial wording is regarded as confining.

¹⁰ NSW *Parliamentary Papers*, 1912, vol.3, pp.497, 498, 503.

¹¹ It should be noted that at the time of writing, the commissioner had completed hearing evidence and only needed to hear final submissions and write the report. For this reason, there was no suggestion that the government was seeking to cut short the taking of evidence.

However unfortunate this may be from a budgetary perspective, the brute reality is that in the midst of an inquiry into (say) a politically controversial allegation of corruption, governments usually have little choice but to comply with such requests.

(iv) *Inadequate staffing*: One of the major deficiencies with an ad hoc commission of inquiry is the difficulty of recruiting experienced staff, creating an appropriate management structure and forging this assortment of individuals into an effective and cooperative team. It is a task that is well beyond the capacities of the average barrister or judge and there is, at any one time, a very small number of professional public servants qualified for such a challenge.

In the worst of cases, these ad hoc arrangements have led to the royal commission being compromised. In later years, Athol Moffitt has acknowledged that one of the police officers on whom he relied very heavily in the 1974 royal commission into *Allegations of Organized Crime in Clubs*, was compromised by his extremely close association with organised crime.¹² Several of the investigators in the Woodward royal commission into drug trafficking in 1979 were also later removed from the Police Force because of their corrupt relationships with organised crime. Indeed, one of them featured on the Age Tapes in conversations with mafia boss Robert Trimbole, one of the targets of the Woodward royal commission!¹³

(v) *Lack of follow-up*: By its very nature, one of the other limitations of the royal commission is its inability to follow up the implementation of the recommendations which have been made. While different commissioners over the years have recommended the creation of permanent institutions to carry on their work, they have usually failed to have the government embrace all of their recommendations.

One of the very few exceptions in New South Wales was the Lusher royal commission into police administration in 1981. In that case, it would seem, some middle-ranking clerk kept writing letters for the Premier to send to the Police Commissioner, year in and year out, demanding to know what had been done to implement Lusher's recommendations.¹⁴ Over time, this relentless stream of correspondence had its effect. Other royal commissions have not been as fortunate in having a champion of this kind within government.

(vi) *Pre-occupation with legal solutions*: We should be unsurprised that an institution which has been dominated by lawyers over the years should have persistently come up with legalistic solutions. Only a small proportion of the corruption problem is caused by bad people for whom the only solution is punishment or expulsion from the employ of government. The vast majority of corruption arises from weak people operating within weak systems. As a result, much of the solution to the corruption lies in systemic reform and not in criminal prosecution or in traditional law reform.

¹² Parliament of New South Wales, *Report of the Honourable Mr Justice Moffitt, Royal Commissioner, appointed to Inquire in respect of certain matters relation to Allegations of Organized Crime in Clubs*, NSW Government Printer, 1974.

¹³ The Honourable Mr Justice Woodward, *Report of the Royal Commission into Drug Trafficking*, October 1979.

¹⁴ The Honourable Mr Justice E.A. Lusher, *Report of the Commission to Inquire into New South Wales Police Administration*, April 1981.

Furthermore, because of this legal bias in the selection of senior staff, there has been a preoccupation with process, at the expense of outcomes. This is not to criticise the legal profession; it is simply to acknowledge that for a lawyer (and especially a judge) process *is* outcome. A judge is not (or ought not be) concerned with who wins and who loses a particular case; he or she is only concerned that the process of hearing the evidence has been just. Process *is* outcome. One of the consequences of this bias has been an undue emphasis on more layers of accountability mechanisms, without adequate consideration being given to the impact which this is having on the ability of the public service to deliver positive results for the people they are meant to serve.

3. The Standing Royal Commission into Corruption

This brief historical background to the corruption debate in New South Wales is important because it explains why the ICAC took the shape which it did. The ICAC did not spring forth fully grown from the mind of Gary Sturgess or John Dowd. Its origins are perhaps better explained by Topsy who, when asked who made her, replied, "Nobody, as I knows on . . . I 'spect I grow'd." The ICAC came into existence with remarkably little controversy, because it 'grewed' out of the corruption debates of the 1970s and 1980s and responded to these various concerns which had been raised over the years.

Five years down the road, there is now some controversy. On the one hand there are those - mostly the friends of organised crime and the 'great and powerful' - who argue that it has excessive powers and has inflicted unnecessary pain on innocent individuals; on the other, there are those - such as ICAC itself - who argue that the ICAC has used its powers in a benign manner and can be trusted with even more. Setting up a standing royal commission with appropriate independence and all-purpose terms of reference proved to be a challenging task for the designers of the ICAC and, despite some unintended consequences, the model seems to have performed quite well.

(1) Inadequate powers: By the 1980s, there was general agreement that the powers of the royal commission had been taken as far as they safely could, consistent with community concerns about protecting individual liberty. As noted already, the ICAC grew out of an earlier commitment by the Liberal and National Parties to establish a standing royal commission into corruption, and in terms of its powers of investigation and formal inquiry, it is little more than that.

The name was, of course, borrowed from Hong Kong, and in 1987 it seemed like the natural choice: it reinforced the message of its independence from the Executive Government, suggested its origins as a royal commission and reminded the people of NSW that it was not concerned with organised crime, but focussed on the somewhat different problem of official corruption.¹⁵ Undoubtedly, it also borrowed from the goodwill which the Hong Kong ICAC had acquired amongst international law enforcement agencies over the years.

¹⁵ In the late 1980s this was important since many of those who had campaigned on the corruption issue, such as Bob Bottom, John Dowd and John Hutton, had seen it as intimately associated with organised crime.

But there was a price to be paid for this convenient association with the Hong Kong organisation, and that was the persistent confusion as to the fundamental nature of the NSW body. Perhaps the most spectacular example of this confusion is the Fitzgerald Report which recommended that Queensland not proceed with an ICAC, based in large part on Fitzgerald's failure to understand the fundamental differences between the NSW and Hong Kong models. Consider, for instance, the following passage:

"An ICAC's powers are usually subject to fewer controls than is desirable and can be extreme. For example, on one model, people can be detained incommunicado for interrogation and investigation for long periods and without the right of appeal."¹⁶

The institution in question is the Hong Kong ICAC, an organisation which shared nothing in common with the NSW body except its name. Similar confusion was evident in the NSW Parliamentary Committee on the ICAC as recently as October this year when one of the members put it to Commissioner Temby that, "You agree with me that the Hong Kong ICAC on which basically your organisation is based . . . does not hold public enquiries on a regular basis . . ." Temby's immediate reply was: "First of all the ICAC in Hong Kong is not like us. It is best considered as a Super-Police Force."¹⁷

In one important respect, the powers of the ICAC were narrower than the royal commission: in the pursuit of contempt, the ICAC legislation obliges the commissioner to go the courts.¹⁸ Subsequently, the Attorney-General, John Dowd arranged for the Royal Commissions Act to be amended in a similar way. In September this year, when Ian Temby and the ICAC were under assault from the media over the prosecution of a *Sydney Morning Herald* journalist, Deborah Cornwall, for contempt, the wisdom of having removed this power from the commissioner was confirmed.

It might be noted that it was only in September of this year, when one of their own was under threat, that the media began to question the extent of the ICAC's powers. This was the first time in a hundred years or more that the press had paused to question whether inquisitorial bodies such as this don't have too much power. And, once again, most of what passed as informed commentary took place without any reference to the past. It was claimed, for example, that the dealings between journalists and their sources was akin to the solicitor-client relationship and should be entitled to a similar level of privilege. Anyone who can recall the raid by the Woodward Royal Commission on the offices of the corrupt North Coast lawyer Lester Brien will appreciate the weakness of relying on this particular analogy. Brien served six months

¹⁶ G.E. Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, Brisbane, July 1989, p.301.

¹⁷ 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*, Sydney, 15 October 1993, p.99.

¹⁸ This amendment was agreed between the author and the (then) new Attorney-General of NSW, John Dowd very late one evening in May 1988, strolling around the backstreets of Kowloon.

in prison for contempt of the Woodward Royal Commission, following his refusal to co-operate with the inquiry and the destruction of documents.¹⁹

Since its establishment, the powers of the ICAC have been extended several times on the recommendation of the commissioner, Ian Temby. Most significantly, in 1990 the Commission was granted limited access to telecommunications interceptions. It has also been empowered to obtain information from the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australian Taxation Office. Other amendments have been made to the reporting powers and the issue of extraterritorial summonses.

Perhaps the most controversial aspect of the commission's powers has been its ability to conduct hearings in public. Of course, this is a power which goes to the very heart of the royal commission, and it has come to be controversial largely because of the pain which the ICAC has caused prominent public figures in the course of holding such hearings. In this regard, the Criminal Justice Commission and the Hong Kong ICAC are very different institutions, conducting their inquisitorial work entirely in private, and in this very important respect, the CJC has departed from the royal commission model.

The ICAC Act, as originally drafted, placed a heavy onus on the ICAC to hold its hearings in public. Amendments made in 1991 on the recommendation of the Parliamentary Committee have given the ICAC greater discretion in this decision, but the 'collateral damage' caused to innocent people from public hearings remains a controversial issue. There is no easy answer to this question. On the one hand, private hearings lead to the charge that the commission is a 'Star Chamber', while public hearings result in talk of 'show trials'.²⁰ There is no doubt that there is an element of the 'morality play' about public hearings into official corruption and Ian Temby has acknowledged the important role which open hearings play in educating the public about corruption. Indeed, in his recent examination before the Parliamentary Committee, he mentioned this as a major factor in the decision by the ICAC to launch a formal investigation into any matter: "We work out the ones that provide the best opportunity to achieve principled change, and they are the ones that are pursued."²¹

Temby has also pointed out on a number of occasions the great benefit which public hearings provide in encouraging people to come forward with information. This was certainly true, for example, of the inquiry into North Coast Land Development.²² It was also the reason why one of the key witnesses in the recently-completed

¹⁹ Gary Sturgess, "A stiff dose of their own medicine", *Sydney Morning Herald*, 14 September 1993, p.11.

²⁰ See, for example, 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*, Sydney, 15 October 1993, pp.99-100.

²¹ *ibid.*, pp.74-75.

²² Independent Commission Against Corruption, *Report on Investigation into North Coast Land Development*, Sydney, July 1990.

Investigation into the Conduct of Brian Zouch (a former alderman on Coffs Harbour City Council) came forward.²³

Furthermore, as the ICAC commissioner has pointed out, that "public exposure of corrupt activity is, in itself, a significant deterrent."²⁴ This is, necessarily, a controversial aspect of public hearings, but nevertheless an important one. Repeatedly, throughout the corruption debates of the 1980s, Neville Wran argued that he was obliged to make his judgements as to the character of ministers and other public officials based on the criminal standard of proof. And that is largely why he introduced the Special Commissions of Inquiry Act in 1983. Of course, none of us applies this high standard of proof when we make judgements about our friends or the people whom we employ. Indeed, the very essence of the royal commission, at least when it is used as an instrument of fact-finding, is our right as a society to draw conclusions of fact and make judgements as to responsibility, 'on the balance of probabilities'. That is, after all, why royal commissioners are empowered to grant immunity to witnesses: because we consider that knowing what happened is more important than being able to prosecute in every case.

The ICAC has had only limited success in the prosecution of wrongdoers.²⁵ Indeed, in many of its investigations, the ICAC has not pursued criminal convictions, but rather has sought to expose the broad reach of the corruption involved and thus pursued systemic reform. The investigation into corruption in driver licensing by the Roads and Traffic Authority, and Operation Tamba, which inquired into the sale of government information, are the two outstanding examples. In both cases prosecutions have been launched, although the commission is having some difficulty with Tamba because of the inducements which were offered to witnesses to come forward and give evidence. But in neither case was criminal prosecution considered an important outcome of the investigation.

In all of this there is the danger of irreparable damage to the reputation of innocent individuals and perhaps even more serious consequences. Ian Temby has recently acknowledged, "I do not pretend that there is not, on occasion, collateral damage."²⁶ The suicide in late 1993 of a Randwick City councillor who had just been interviewed by the ICAC is a reminder of the stress which an ICAC investigation causes, even to those who are innocent of wrongdoing.²⁷

²³ Independent Commission Against Corruption, *Report on Investigation into the Conduct of Brian Zouch*, Sydney, November 1993, p.50.

²⁴ 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*, Sydney, 15 October 1993, p.94.

²⁵ The Parliamentary Committee recently published the status of the prosecutions and disciplinary actions recommended by the ICAC in its various investigations. These tables, prepared by the ICAC, are attached. To this should be added the conviction of a former driving examiner, Tony Aristodemou, for lying to the ICAC in relation to the RTA investigation. He was sentenced to two months jail. See *Daily Telegraph Mirror*, 11 November 1993, p.15.

²⁶ 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*, Sydney, 15 October 1993, p.101.

²⁷ *Daily Telegraph Mirror*, 22 November 1993, p.1 and 23 November 1993, p.9.

The author was a close witness to the personal and family suffering experienced by several ministers of the NSW government between 1989 and 1992 because of ICAC investigations. In each case, the individuals concerned were cleared by the ICAC (or, in the case of Nick Greiner and Tim Moore, later by the courts), but not without considerable damage to their reputations in the short-term and immense personal pain at the time. But the overwhelming impression of the NSW public, in retrospect, is that each of these men was honest and that the allegations of corruption were unfounded. Having been a party to the corruption debates of the 1980s, the author is strongly of the view that only a body as powerful as the ICAC was capable of clearing the air in this way, and that only the hearing of evidence before an open tribunal could have satisfied the public so completely.

In the immediate aftermath of the report on North Coast Land Development (which found that Deputy Premier Wal Murray and Lands Minister, Ian Causley had not engaged in corrupt conduct but had acted in a manner which was 'conducive to corruption'), the ICAC was severely criticised within government for its power to conduct public hearings. At that time, under some criticism for his role in setting up the ICAC, the author put down "Eight Reasons Why Wal Murray Is Wrong".²⁸ (Not all of these are relevant to the issue in point, so not all are recorded here):

- "1. Wal blames the ICAC for putting him through hell. What he fails to recognise is that all of what has been made public would have been exposed by the press or the ALP anyway.

If the ALP had raised all of these issues in Parliament, they would have put the worst possible interpretation on them. The Government (knowing that Wal wasn't corrupt) would have refused to spend \$5-10 million on a royal commission and both Wal and the entire government would have been left looking corrupt.

There is no doubt that if this material had been run in Parliament, the very worst light would have been cast on it . . . Thus the ICAC has protected Wal from a biased and very damaging attack in the press and in Parliament.

2. Only an inquiry as rigorous and as open as that which the ICAC conducted could have cleared Wal.

If the inquiry had been less searching, if it had been held behind closed doors, then it would always have been open to Wal's critics to say he was still under a cloud - because some corners had not been probed, or because we did not know whether all corners had been probed. Wal is now entirely free of suspicion over this matter - because the ICAC did him over so thoroughly in public . . .

3. Royal commissions have always been able to make broad findings. The ICAC is not to blame for the fact that the media latched onto a particular phrase (drawn from s. 13 of the Act) and gave it a ritualistic meaning.

²⁸ The reader must forgive the personal tone of this diary extract, which comes from the author's intimate dealings with the ministry as Secretary to Cabinet

Commissioner John Bigge found that there was no suspicion of improper motives in Lachlan Macquarie's exercise of the ticket of leave power. But he went on to find that, by departing from his own 'invariable' rules governing early releases, Macquarie had cast suspicion over the royal prerogative of mercy and permitted corruption to flourish at lower levels . . .

4. If Wal's principles are to be applied fairly, then Question Time would have to be held in camera.

Dreadful attacks are made on people's reputations in Parliament, without any protection of rights or concern for natural justice . . . It ill-behoves any Member of the NSW Legislative Assembly to speak about public inquiries and inquisitions, unless the same rules are to be applied to the Parliament . . .

7. Open hearings are essential if the ICAC is to have any credibility. The NCA proves that.

As (John) Hyde's article this weekend puts it so eloquently, politicians - especially Ministers of the Crown - live in a world beyond the law. Governments make law and, as such, they must be guided by 'humanity, reason and justice'. The people are entitled to be assured that their governors are being guided by moral and just principles - since they know that existing law does not constrain them.

This means that those who govern must be subject to an entirely different standard to the rest of the population, and where they err, or where they are suspected of erring, their private (and public) affairs must be thrown open to public gaze. That is why the ICAC - and its evidence-taking - is so well-liked by the people. That is why it was right for Terry Metherell to have resigned.²⁹

8. The North Coast Inquiry has done more to change public ethics in NSW than any other action in the last 10 years.

Not the findings. Not even the fact that the Inquiry was held. But the reporting of evidence, day in and day out, has acted as a morality play, watched by the entire State of NSW. As a result, the people of NSW, especially those in public life . . . have changed their whole attitude to lobbying, to seeking favours, to the funding of political parties.

If the Inquiry had been held in secret, there would have been no morality play, no drama, no catharsis and no change in culture."³⁰

The question of whether or not we should have an organisation with powers that are capable of causing such great harm, even when exercised in a benign way, is a decision which each community must make for itself and, one would hope, reconsider at frequent intervals. In New South Wales, there seems to be little doubt that the

²⁹ This refers to Metherell's resignation from the ministry after he was charged by the Australian Taxation Office.

³⁰ Personal diaries of Gary L. Sturgess, 29 July 1990.

community is supportive of such an institution, but it is not difficult to imagine a time, say five years hence, when the balance might have shifted. Contrary to the recommendations of the WA Inc royal commission, it is not clear that Western Australia has need of a standing royal commission to deal with its corruption problems, and, of course, Tony Fitzgerald was opposed to the establishment of an ICAC in Queensland largely for reasons associated with its powers. (It should be repeated, however, that most of what Fitzgerald had to say about the ICAC was wrong in practice.)

(ii) Independence: The ICAC Act makes it clear that the commissioner is not subject to direction by the government of the day or by any other person. The commission is free to decide what it will or will not investigate, subject only to a power in the legislation for Parliament to issue a formal direction to investigate a specific matter. Moreover, the ICAC's reports are made directly to the parliament, and tabled by the Speaker and the President, without any control whatsoever over release by the Executive Government.

As with the other semi-independent agencies of government, such as the Ombudsman and the Auditor-General, the ICAC Commissioner is appointed by the Executive Government, although under legislation which came out of the Independent MP's Charter of Reform in 1991, future appointments will need to be approved by a joint parliamentary committee. Independence is further guaranteed by a provision in the Act which prohibits the appointment of any individual for a second term (ensuring that the commissioner is not subject to influence during the latter part of his/her first term). As regards structure, staffing and finances, the ICAC has almost total freedom, subject only to the need to conform to overall budgetary constraints.

After the Metherell Affair and the adverse findings against former Premier Nick Greiner, there is little doubt as to the independence of the ICAC or its present commissioner. Of course independence is less of a problem for a standing royal commission because the government of the day is not under any immediate pressure when making the appointment. Nevertheless, in the wake of the Metherell Affair and the serious misjudgment which occurred in that case, there is a view within the government (and, one might add, the Opposition) that the decision as to Ian Temby's successor must be a 'judicious' one. There are two kinds of independence: the mere absence of external influence or control, a condition which it will be very hard for any government to compromise as long as the legislation remains in its present form, and the kind of independence which is characterised by a self-confident, strong-willed and free-thinking commissioner. It is this second kind of independence, which Ian Temby has manifest since his days as Commonwealth Director of Public Prosecutions, which may well suffer in future appointments.

The challenge in designing the ICAC, of course, was not so much to give the commission independence, but to balance it with an appropriate level of accountability. In this, NSW seems to have achieved a reasonable balance, although some concerns have begun to emerge which are deserving of mention here. As a number of recent cases have made abundantly clear, findings by the ICAC are subject to judicial review;

indeed, the courts have shown a willingness to intervene.³¹ In operational matters, the ICAC answers to an Operations Review Committee (ORC), which overviews decisions by the commission not to proceed with investigations into complaints or referrals. The ORC consists of a number of public officials, including the Commissioner of Police, who hold their position *ex officio*, as well as an additional group of laypersons.

There has been some criticism in the Parliamentary Committee at the ability of the ORC to avoid being captured by the commission. But, from the outset, the lay-members of the ICAC have been independent-minded people with substantial experience in their own right: a former Commissioner of the Federal Police, a former senior private sector manager, an academic criminologist, a former diplomat, a civil liberties lawyer, the former chairperson of the NSW Anti-Discrimination Board, and a clergyman who was active for many years in the campaign against organised crime. The ORC meets for a half-day once a month and in the past two years has recommended (and obtained) material changes in relation to 43 matters and minor changes in another 347 cases. On 34 occasions in the past two years, the ORC has sent matters back for further investigation.³²

And yet there is still disquiet on the part of complainants that their allegations are not seriously addressed. Of course, there are some complainants who will never be satisfied, short of criminal prosecution of the public official in question. But much of this disquiet arises from the brute fact that the ICAC is not, and can never be, a grievance resolution body. Whilst it can (and does) refer complaints to other agencies of government for investigation, the royal commission powers of the ICAC necessarily must be reserved for a very limited number of matters.

In terms of the broader structural and policy questions, the ICAC answers to a Parliamentary Committee which has, from time to time, subjected the commissioner and his senior staff to intense interrogation. In giving evidence before the Parliamentary Committee in October this year, for example, the commissioner objected to the manner in which he was questioned:

"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."³³

Temby was closely examined on his practice of conducting background briefings for a selected group of media organisations and, from the transcript, seemed to make significant concessions to the Committee in this regard. This tension is, of course, a

³¹ Greiner and Moore v ICAC (1992) 28 NSWLR 125 and Woodham v ICAC (25 June 1993) (unreported).

³² 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*, Sydney, 15 October 1993, p.70.

³³ *Ibid.*, p.3.

necessary feature of any functioning accountability system, and must be expected to continue as long as the ICAC continues to operate.

These accountability mechanisms are extremely crude, as inevitably they must be when any organisation is given statutory independence from the Executive Government. Similar difficulties exist with the Office of the Ombudsman and the Auditor-General and it is not easy to see how this problem can be overcome without losing the desired degree of independence.

(iii) Terms of reference: Setting terms of reference for a standing royal commission posed a number of difficult and perhaps insoluble problems which are still being debated within NSW. The ICAC's jurisdiction is limited by two sections of the Act which firstly define 'corrupt conduct' in broad terms (section 8) and then narrow its scope by providing that "conduct does not amount to corrupt conduct unless it could constitute or involve: a criminal offence, or a disciplinary offence; or reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official" (section 9). It should be said that, with one exception to which we shall return shortly, no one has criticised the 'terms of reference' of the ICAC as being too narrow.

Section 8 of the Act is very wide and defines corrupt conduct to include dishonesty and partiality, breach of public trust and misuse of official information. It also includes conduct which could involve a number of criminal offences, from official misconduct to homicide. It has been suggested that section 8 is too comprehensive and catches behaviour which is not corrupt within the ordinary meaning of that word. There is some validity to this criticism, although not so much in terms of the ICAC's jurisdiction as its reporting powers. The commission has chosen to interpret its reporting powers very formally, resulting in technical findings of corruption which have been extremely unfair. The Act has already been amended to give the commissioner greater discretion in the terms of his/her reporting. There may be a case for further change.

The importance of section 9 is that it precludes the ICAC from becoming a tribunal of morals. It was the intention of the drafting committee to confine its scope to known criminal or disciplinary offences and to prevent it judging public officials according to vague and perhaps emerging ethical standards. This is of some significance because of a proposal by the Parliamentary Committee in a report released in May 1993 to overcome perceived deficiencies in the ICAC's jurisdiction by repealing section 9. The difficulties with this section seem to be threefold: (i) the difficulty of knowing in advance where the evidence will lead and whether the facts will amount to behaviour which *could* constitute an offence, (ii) the general lack of understanding among complainants as to the limits of this section; and (iii) the exclusion of the conduct of politicians short of criminality.

(i) As for the first of these objections, it does not seem such a heavy obligation to require the ICAC, before it commences a formal investigation, to weigh the facts as alleged to determine whether it is capable of constituting of criminal or disciplinary offence known to law. There may be a case for importing some kind of reasonableness test, but the explicit purpose of this provision is to avoid the use of the commission's powers on fishing expeditions possibly unrelated to any known offence.

(ii) The ICAC's second objection is just silly, and seems to imply that the only limits to its jurisdiction should be whatever complainants consider corrupt conduct to be.

(iii) The third objection is the immediate cause for its concern about section 9 and has a great deal more merit, although scarcely as an argument for repealing the whole of section 9. It is dealt with in some detail below.

In its formal submission to the Parliamentary Committee, the ICAC put the case for the repeal of section 9 in these terms:

"It is fundamental to the independence of the ICAC that it have a discretion whether to investigate any complaint. It is accountable to the Operations Review Committee for the exercise of this discretion. Its jurisdiction should not be inhibited by artificial criteria which are difficult to apply. Section 20(3) and the inevitable limitation of resources ensure that only serious matters will ever be investigated."³⁴

In putting the case for a virtually unlimited discretion, the ICAC provides the principal argument *against* the repeal of section 9 - the fact that the commission has grown dissatisfied with its statutory role as a royal commission charged with determining breaches of established law and administrative practice. It would like to become a tribunal of morals. In effect, the commission is saying, 'Trust us', arguing that the Operations Review Committee and the 'inevitable limitation of resources' are a sufficient check on the abuse of its powers and that section 9 is unnecessary. But the criteria in section 9 are not artificial (as the ICAC suggests), at least no more so than the ICAC Act itself. They were written into the legislation quite deliberately to ensure that innocent individuals could not have their reputations destroyed by a commissioner who was, knowingly or unknowingly, creating new standards of public probity. In this sense, section 9 is not just a 'seriousness test', as the commission claims in its submission, but a defining element of the ICAC's mission. It is meant to pursue *known* wrongs, not make them up as it goes along.

It is here where the ICAC's report on the Metherell affair is most offensive: it made a finding of 'corrupt conduct' against Nick Greiner and Tim Moore based on ethical standards which are not accepted universally and have emerged, if at all, only very recently. This is the very point which Nick Greiner made in his speech to the NSW Parliament while defending himself against a censure motion, *prior* to the matter being investigated by the ICAC:

"It is possible, of course, that what the media is really trying to say is that the anti-corruption campaign which the Opposition conducted prior to 1988 has forever changed the rules of the game. That may be so. But if this is so then surely it is vital that we know just how the rules have changed. *I refuse to be judged according to a standard which has only emerged after the event and which I am assumed to have understood and agreed to. By all means, let's change the rules. But let's do so prospectively and on a known and agreed*

³⁴ *ibid* , p.18.

basis. But if this is the argument - that the rules have changed for everyone - then it is time that this Parliament and the media starting judging the Opposition according to those very same standards."³⁵

Whether we like it or not, the world of politics is a domain without clearly defined ethics, a realm where social values are allowed a great deal of free play in the pursuit of innovative policies and governing coalitions. By and large, politicians operate in a Hobbesian state of nature and, in the author's view, the only writer in the past five hundred years to have attempted an honest articulation of the ethical principles governing politics is Niccolò Machiavelli. Given the unpardonable distortions which his writings have suffered, it is perhaps unsurprising that no one since has made another attempt.

All that happened in *Greiner and Moore v ICAC* was that the Court of Appeal confirmed the meaning of section 9 which those who framed the legislation intended it to have. In doing so, the court established beyond doubt that the ICAC does not have jurisdiction to investigate allegations of corruption involving politicians (including ministers of the Crown), unless the conduct in question could involve a criminal offence. The reason for this is that there are no relevant disciplinary offences for members of parliament (because the ethical principles which govern the world of politics are so uncertain).

What has happened since the *Greiner* case is that the ICAC has refused to accept that it has no power to divine the ethical standards governing politicians in the process of exercising its royal commission powers. For example, in its submission to the Parliamentary Committee, the ICAC claimed:

"The policy behind the Act was that all public officials should be subject to the jurisdiction of the ICAC. It can hardly be otherwise. The crisis in public administration which led to the ICAC arose out of concerns with the actions of some in high places.

"There can be no confidence in an anti-corruption body which can not investigate the conduct of the 'great and powerful'. The Commission believes that there should not be any limit on the public officials within its jurisdiction."³⁶

And in his recent appearance before the Parliamentary Committee, Temby expressed concern that nothing had happened to correct this perceived deficiency in the legislation:

"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

³⁵ From the original speech notes for a speech by the Hon. N.F. Greiner, M.P. to the NSW Parliament, 28 April 1992.

³⁶ *ibid*, p. 19.

legislation remain in relation to Ministers and other constitutional officer holders."³⁷

Contrary to what the ICAC claims, the policy of the legislation was to punish for known offences, criminal or disciplinary. Since there are no disciplinary offences for politicians, the Act was quite deliberate in leaving this range of matters outside the jurisdiction of the ICAC. For this reason, it is far from clear that the legislation is in need of amendment (at least in the form suggested by the ICAC). The other aspect of the ICAC's proposed reforms, about which Ian Temby was not entirely clear about when he appeared before the Parliamentary Committee in October, is that these changes do not relate just to ministers and other constitutional office holders. They affect all Members of Parliament. In spite of the report of the Parliamentary Committee, we should be unsurprised if the NSW Parliament was keen to subject itself to the ethical judgements of the ICAC.

(iv) Staffing: One of the great benefits of a standing royal commission is that it offers the opportunity to recruit and retain experienced staff and to put in place strict integrity checks. As concerns the quality of the ICAC's staff since its inception, there is a wide range of opinions. Without doubt it has attracted some of the most experienced royal commission lawyers and criminal investigators in the country. It has also had great difficulty retaining them. The ICAC is now on its second director of administration, its third director of operations and its second director of corruption prevention. In part, this is because of the limited career path in an organisation as small as the ICAC, but the causes of this high turnover have been much deeper than this.

ICAC has a highly selective recruitment process which, by and large, has avoided the integrity problems which undermined the effectiveness of some of the corruption royal commissions. Temby advised the Parliamentary Committee in October:

"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 qualification . . . 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."³⁸

³⁷ 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*, Sydney, 15 October 1993, p.3.

³⁸ 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*, Sydney, 15 October 1993, p.30.

While not disagreeing with this assessment, as far as it goes, this does understate the security problems which the ICAC has had. At least one other officer occupying a sensitive position was removed after it was determined that she posed a security risk and the author is aware of other circumstances where security was compromised which perhaps should have resulted in dismissal.

The ICAC has suffered the usual tensions between lawyers and investigators which seem to plague most of these crime commissions. (The National Crime Authority had similar problems for some years.) While relations have improved more recently, there was a time when untimely intervention by the lawyers at the commission was interfering with the professionalism of investigations. There have been also complaints from within the ICAC about the tendency for the lawyers to dominate the staff in the corruption prevention unit. Again, there is evidence that relations have improved in recent months and that a more multi-disciplinary approach is being taken.

(v) Follow-up: One of the great benefits of a permanent institution is that it is able to follow up on its recommendations to make sure that change actually occurs. Ian Temby has always placed a premium on this audit function of the ICAC and there is little doubt that it has had a major influence in causing government agencies to persist with major structural reform.

To explain briefly how this process works: in 1990, the commission conducted an investigation into the letting of contracts by the Department of Housing for the instalment of carpets in its properties. Following this report, a corruption prevention project was undertaken, together with the Department of Housing, into its maintenance activities, resulting in a detailed confidential report to the department in February 1991 and a brief public report. In late 1992, the ICAC undertook an audit of these activities and earlier this year published the original report (which was no longer confidential), together with its monitoring report.³⁹

In another case, dealing with cash handling in public hospitals, a corruption prevention project was commenced following two separate reports of the misappropriation of substantial sums of money at two large public hospitals. The resulting survey covered twenty-one large hospitals and, by the time it reported in July 1992, had found gross deficiencies in the cash handling procedures of most of these institutions. Follow-up on this study is now underway, broadened to include similar procedures across the entire public sector.⁴⁰

In recent months, the ICAC has begun a more comprehensive program of following up the recommendations arising out of its formal investigations and, as with the cash handling project, broadening its scope to include similar procedures elsewhere in government.

³⁹ Independent Commission Against Corruption, *Corruption Prevention Project: Department of Housing, Maintenance Contracts*, Sydney, February 1991; ICAC, *Corruption Prevention Project and Monitoring Report: Department of Housing, Maintenance Contracts*, Sydney, April 1993.

⁴⁰ Independent Commission Against Corruption, *Corruption Prevention Project: Department of Health, Cash Handling in Public Hospitals*, Sydney, July 1992.

(vi) *Beyond legal solutions*: The other great advantage of the ICAC is that it is not just a royal commission. As it was constructed, the ICAC has three broad functions: the investigation and exposure of public corruption (its royal commission functions); corruption prevention (involving issues of policy, management and accounting and usually delivered in a service relationship to the client); and education. As a result, only about 40 percent of the commission's budget is spent on investigations and formal inquiries.⁴¹

Nevertheless, it is the investigative functions of the ICAC which have attracted most attention and which have had the greatest cultural impact on the NSW public sector. In many respects, this impact has been positive and there is little doubt that in its first five years of operation, ICAC has changed forever the public sector's understanding of its legal obligations. Ministers of the Crown, for example, have a broad understanding of their fiduciary duties and what constitutes a conflict of interest. But the ICAC has also reinforced this pre-occupation of the public service with process and undermined the push of recent years towards a greater focus on outcomes. It must be said that, by and large, the ICAC has not done this intentionally. Indeed, in some of its publications, the commission has gone out of its way to stress the connection between process and outcomes.⁴²

What the architects of the ICAC and the commission's senior staff underestimated was the immense conservatism which centuries of instinctive self-preservation have built into the system. That is, after all, what constitutes a bureaucracy. One of the clearest descriptions of this protective behaviour was given by James Q. Wilson in his 1989 work, *Bureaucracy*:

"Managers have a strong incentive to worry more about constraints than tasks, which means to worry more about processes than outcomes. Outcomes often are uncertain, delayed, and controversial; procedures are known, immediate, and defined by law or rule. It is hard to hold managers accountable for attaining a goal, easy to hold them accountable for conforming to the rules."⁴³

Whether it was intended or not, the ICAC has contributed to this bureaucratic retreat behind the protective walls of due process, and a much more concerted effort is needed to refocus government's efforts on delivering results for the general public.

4. The ICAC: An Assessment

The ICAC should be seen as the development of a special kind of royal commission, the corruption royal commission. More than that, it can only be understood if it is seen as the natural outgrowth of a regional sub-species of this particular institution that is, in many ways, unique to New South Wales.

⁴¹ 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*, Sydney, 15 October 1993, pp.96-8.

⁴² See, for example, Independent Commission Against Corruption, *Local Government Speaks! A Corruption Prevention Monitoring Report: Purchase and Sale of Local Government Vehicles*, Sydney, March 1993, pp.23-4.

⁴³ James Q. Wilson, *Bureaucracy*, Basic Books Inc, 1989, p.131.

And yet the difficulties faced in creating a permanent institution and in weaning it from its long and intimate association with the Crown are, no doubt, general in nature. The first of these is the need to find a balance between independence and accountability in the exercise of the considerable powers which a royal commission possesses under our system of government. In this, the ICAC seems to have satisfied the general public of NSW, if not entirely their political representatives. Significantly, this balance has been struck by making the ICAC and its commissioner directly accountable to the parliament itself, a relationship which has been strengthened recently by requiring the appointment of the commissioner to be approved by a parliamentary committee.

The second great challenge in this transition arises from the need to specify the commission's terms of reference in advance. Here the ICAC legislation has been more controversial, and perhaps inevitably so. There are no simple solutions to this dilemma. The Ombudsman in NSW is charged with investigating 'wrong conduct', a concept so broad that it is almost meaningless. The WA Inc royal commission was directed to inquire into 'improper conduct', a term much wider than 'corrupt conduct' and one which led to some very harsh judgments. It is far from clear that the ICAC's definition of 'corrupt conduct' is as badly flawed as some have suggested.

The creation of a permanent institution also offers the opportunity to move beyond the inquisitorial role into the consideration of systemic managerial and educational reform. In this regard, the ICAC is much further advanced than the CJC and provides some important insights into how these additional functions can be combined with the royal commission role.

By and large, the people of New South Wales feel that the ICAC is on their side. It has shown that it is prepared to take on the great and powerful without fear or favour. Few of them are concerned about its very considerable powers because they do not expect that they will ever have to suffer because of them. Amongst public servants, the ICAC is feared. This is not because public servants are less honest than the public-at-large, but because the duties of public officials are so complex and the expectations of the public are so great, that they feel that any one of them could be caught up in an ICAC inquiry and publicly humiliated at any time.

Politicians, it would seem, have mixed feelings about the ICAC. As representatives of the people, they understand the public's deep respect for the commission and the role which it has played in cleaning up public administration in NSW; but as public officials they also fear it. On both sides of the parliament there is fear at the consequences of the commission's findings in the Metherell Report, in part because of the uncertain limits of the ICAC's jurisdiction, but also because of a growing awareness of the fiduciary duties owed by Members of Parliament within our system of government.

It is difficult to say which of these sentiments will triumph over the next couple of years as the ICAC Act is revised and a new commissioner is appointed. It is to be hoped that, with the balance of power firmly in the hands of three Independents, parliament's sympathy for the interest of the public triumphs over the self-interest of its various members.

APPENDIX FIVE

Indemnity granted for **Smith**

Indemnity granted for **Henry**

INDEMNITY

WHEREAS the Independent Commission Against Corruption is investigating possible corrupt conduct by present and former police officers, including serious criminal activity, pursuant to the Independent Commission Against Corruption Act 1988;

AND WHEREAS one Arthur Stanley Smith has provided information to the Independent Commission Against Corruption and may be required to give evidence at a hearing to be conducted before the said Commission, to adduce all the facts known to him relative to such corrupt conduct by present and former police officers; and may be required to give similar evidence in ensuing prosecution hearings;

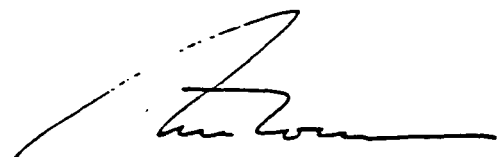
AND WHEREAS, as a consequence of giving such evidence, the said Arthur Stanley Smith may render himself liable to prosecution for an offence or offences under the law of New South Wales arising out of his actions in concert with certain police officers, including robberies, unlawful payments to police officers, and drug offences;

AND WHEREAS I, Peter Edward James Collins, Her Majesty's Attorney General for the State of New South Wales, being satisfied that for the effective conduct of the investigation now being conducted by the said Commission, and for the due administration of justice, it is necessary to have resort to the evidence of the said Arthur Stanley Smith and for that purpose, the said Arthur Stanley Smith should be indemnified as hereinafter appears;

NOW THEREFORE, I, the said, Peter Edward James Collins do hereby undertake that no criminal proceedings shall be had or taken against the said Arthur Stanley Smith, in relation to any part had by him in the commission of any offence, other than homicide, which any member of the New South Wales Police Service, past or present, aided, abetted, counselled or procured, of which the said Arthur Stanley Smith hereafter gives evidence whether before a Court or before the Independent Commission Against Corruption;

PROVIDED that the said Arthur Stanley Smith gives his active co-operation including the giving of evidence truthfully and frankly and without embellishment and withholding nothing of relevance in the proceedings aforementioned.

Dated at SYDNEY this 24 day of October, 1991.



ATTORNEY GENERAL

INDEMNITY

WHEREAS the Independent Commission Against Corruption is investigating possible corrupt conduct by present and former police officers, including serious criminal activity, pursuant to the Independent Commission Against Corruption Act 1988;

AND WHEREAS one Graham John Henry has provided information to the Independent Commission Against Corruption and may be required to give evidence at a hearing to be conducted before the said Commission, to adduce all the facts known to him relative to such corrupt conduct by present and former police officers; and may be required to give similar evidence in ensuing prosecution hearings;

AND WHEREAS, as a consequence of giving such evidence, the said Graham John Henry may render himself liable to prosecution for an offence or offences under the law of New South Wales arising out of his actions in concert with certain police officers, including robberies, unlawful payments to police officers, and drug offences;

AND WHEREAS I, Peter Edward James Collins QC, Her Majesty's Attorney General for the State of New South Wales, being satisfied that for the effective conduct of the investigation now being conducted by the said Commission, and for the due administration of justice, it is necessary to have resort to the evidence of the said Graham John Henry and for that purpose, the said Graham John Henry should be indemnified as hereinafter appears;

NOW THEREFORE, I, the said Peter Edward James Collins QC do hereby undertake that no criminal proceedings shall be had or taken against the said Graham John Henry in relation to any part had by him in the commission of any offence excepting homicide which any member of the New South Wales Police Service, past or present, aided, abetted, counselled or procured, of which the said Graham John Henry hereafter gives evidence whether before a Court or before the Independent Commission Against Corruption;

PROVIDED that the said Graham John Henry gives his active co-operation including the giving of evidence truthfully and frankly and without embellishment and withholding nothing of relevance in the proceedings aforementioned.

Dated at SYDNEY this *Eleventh* day of December 1991.



ATTORNEY GENERAL

APPENDIX SIX

**Corporate Plan and
extract of the Annual Report of the
New Zealand Serious Fraud Office**

SERIOUS FRAUD OFFICE

PART 1 : DEPARTMENTAL SCENE SETTING

PURPOSE STATEMENT

The Serious Fraud Office (SFO) is an operational department whose mission is to detect and investigate cases of serious or complex fraud offending and expeditiously prosecute offenders.

It also has the objective of deterring serious or complex fraud offending; and liaising with other agencies investigating fraudulent conduct to ensure the best available expertise in each enquiry.

OVERVIEW BY CHIEF EXECUTIVE

Serious fraud has certainly been a growth industry since the 1980's. It has wide-ranging impact on the community and presents a social threat to investors, financial institutions and commerce generally.

The year ended 30 June 1993 has been another eventful, but successful one for the SFO with a continuing high level of work, a major and highly publicised prosecution trial in the Equiticorp case and ever-increasing media and public interest in the work of the Office.

I believe that the Office is fulfilling the role for which it was established most effectively, as is self-evident in the results achieved. Implicit in these results is the determination of the Office to achieve its objective of deterring serious fraud offending.

POLICY ON ACCEPTANCE OF CASES

When a complaint is received by the SFO it is initially considered by the Directorate who form a view as to whether it is one appropriate for investigation by the SFO. In some cases further work is undertaken or information sought to enable this assessment to be made.

Although serious fraud cannot be specifically defined by statute, the SFO Act sets out factors to assist the Director in determining whether a suspected offence involves serious or complex fraud. By reference to these factors, guidelines have been developed and are found in the protocol agreed with the Police and with other relevant enforcement agencies. Briefly summarised, this protocol provides for the SFO to be notified when;

- the complaint involves an actual or potential loss in excess of \$500,000;

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- the facts, law or evidence is of great complexity; for example, the complaint could include international financial transactions or computer manipulations or other complex methods of commission;
- the complaint is of great public interest or concern and/or involves a public figure.

Frequent and regular contact is maintained with the Police and, as appropriate, with other enforcement agencies by SFO officers specifically appointed to carry out such liaison duties. This inter-departmental liaison is proving most effective.

The SFO Act empowers the Director to take the initiative in determining whether or not an investigation into the affairs of any person or organisation should be made.

If it is decided that an investigation is warranted, a team is assigned and thereafter regular case reviews are held to monitor progress. At the conclusion of the investigation and a final rigorous review, a decision on whether a prosecution will be taken is made by the Director.

POWERS

The powers of the Office under the SFO Act are the most extensive to have ever been legislated in the area of criminal investigations in this country. These powers can be briefly stated as requiring any person whose affairs are being investigated, or any other person whom the Director has reason to believe may have information or documents relevant to an investigation, to attend before him to answer question and to produce for inspection any such documents. Such powers of compulsion continue to be an essential investigative tool in this particular area of criminal offending.

These powers, authorised by the Director, are always exercised with considerable care and are effective in reducing the timetable for investigations.

COMMENT ON THE WORK UNDERTAKEN DURING THE YEAR

i) Investigations

During the year, 81 new complaints (71 in the previous year) were received bringing the total investigative caseload for the year to 117 cases. In 15 of these cases the investigations were concluded and resulted in prosecutions. Of the balance, 8 were transferred to other agencies; 50 cases were assessed and were either already being handled by other agencies or did not meet the SFO criteria; and 24 investigations were completed but did not result in prosecutions because of there being insufficient evidence to prosecute; or, no evidence of serious fraudulent offending; or, evidence of fraudulent offending but discretion

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exercised not to prosecute (e.g. jurisdictional problems as offenders and key witnesses overseas).

At the end of the year 20 cases were still at the assessment or investigation stage.

ii) *Prosecutions*

The year was also very positive in terms of completed prosecutions. A total of eleven cases were prosecuted (compared with seven in the preceding year) and all were successful, bringing the total number of prosecutions completed since the establishment of the Office to 19, with only one unsuccessful. The Equiticorp case was the highlight as it was a very complex case by any standards. This one case embodied so many examples of the highly complex, convoluted transactions, with international ramifications, of corporate fraud offending. The outcome resulted in the successful prosecution of the Executive Chairman and three Directors of the company. Furthermore, had the SFO not been pro-active the case would never have been investigated because no complaint had been received by the Office.

The case absorbed a substantial resource commitment during its investigation and prosecution stages and the six month trial involved 141 volumes of exhibits and 4,500 pages of evidence. However, a well prepared case and the use of computer technology in the courtroom to display the exhibits is estimated to have reduced the length of the trial by some three months.

This prosecution attracted considerable publicity. It should, however, not detract from the other ten prosecutions which involved substantial serious fraud offending.

It is appropriate to comment on the role of the Serious Fraud Prosecutors Panel as provided under the SFO Act. This panel consists of highly experienced barristers who conduct defended hearings on behalf on the Director. There is little doubt that the expertise of members of this panel has contributed significantly to the successful outcome of our defended prosecutions. It has also been gratifying to me to receive reports from our Senior Counsel complimenting the Office on the high standard of case preparation.

GENERAL COMMENT ON THE CASELOAD

This year opened with a further series of cases where the alleged offending dated back to the aftermath of the sharemarket crash. As resources have become available they have been utilised in these investigations.

Although these entities are no longer trading, the Office would be derelict in its duties if it failed to follow up such alleged offending. To disregard this offending would not only ignore the plight of thousands of New Zealanders who were devastated by

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the unscrupulous dealings of these criminals but it would also mean that yesterday's fraudsters would be tomorrow's problems. In other words, they would create more serious problems in the future, no doubt carrying out their reoffending with even greater confidence. The majority of this work is now under investigation.

INVESTIGATION OF CORRUPTION

A new and significant development for the Office this year, and one in which we were pro-active, was the investigation of alleged corruption. These investigations which were handled professionally, expeditiously and objectively, emanated from the allegations of corruption made in Parliament against Members of Parliament and prominent members of the community. In all cases it was established that the allegations were unfounded.

New Zealand does not have a requirement for a specific statutory agency dealing exclusively with allegations involving criminally corrupt practices. Such agencies exist in some other countries; for example, the Independent Commission Against Corruption (ICAC) in Hong Kong and in New South Wales.

The statutory powers, independence and expertise of the SFO, make it the appropriate Office to investigate any such allegations. Further, it should also be stated that all forms of criminal corruption fall within the provisions of the statutes policed by the SFO.

In this context it is pertinent to emphasise the provisions of the SFO Act relating to the independence of the Director in respect of any decision he makes to either investigate or take proceedings.

GENERAL ISSUES

The level of offending involving professionals, given the inherent position of trust and high regard such persons hold in the community, continues to be a matter of great concern. I am pleased to report that the Office has responded quickly to investigate such complaints thereby reducing, wherever possible, the period of uncertainty for the victims of such offending.

The Office has a robust, pro-active fraud policy. Notwithstanding that every law enforcement agency is primarily reactive, in a significant number of our cases (including the Equiticorp case) we have adopted a pro-active role by detecting and investigating cases where complaints had not been forthcoming; where victims were not aware they had been defrauded. We are in no way simply reacting to complaints. In this regard, I have endeavoured to send a clear message to those dishonest members of the business and professional community that no longer will they perpetrate their fraudulent offending

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with impunity. They are now in a "high risk" area of offending with a real threat of prosecution.

In the three years since its inception this Office by its results has proved to be an effective enforcement agency and has made a significant contribution towards the prevention of white collar fraud offending. Undoubtedly there will always be serious fraud offending but I am confident that we will contain and neutralise the problem.

KEY RELATIONSHIPS

There have been a number of visits from Government officials and others. The Office was particularly pleased to welcome, initially the Attorney-General and Director of Public Prosecutions, Fiji and subsequently the Prime Minister of Fiji and his accompanying officials. With the support of the Government, they were interested in observing the legal framework, structure and operations of the SFO as a model for establishing a similar agency in Fiji.

Other visitors, on operational matters, included members of the Australian and Hong Kong Securities Commissions, the National Crime Authority, Australia and the United Kingdom Serious Fraud Office. Similarly, staff from this Office were given reciprocal support and assistance with their enquiries in these countries. We have also received valuable assistance from the Commercial Crime Unit of the Commonwealth Law Secretariat, London.

Effective relationships with other agencies working in this area, particularly the Police, the Department of Justice, the Customs Department and the Audit Office have been maintained. We also contributed towards the Crime Prevention Action Group reports and recommendations.

MEDIA RELATIONS

Given the legal and ethical constraints imposed on an investigatory and prosecutory department in the dissemination of information to the public, the issue of media relations continues to be a difficult and demanding one. This is especially so in the work of the SFO.

The large number of high profile investigations and prosecutions undertaken by this Office invariably attracts an unprecedented level of media attention - between twenty to thirty telephone calls a day from the media is not uncommon.

The appointment of an Information Officer to handle media requests is not justified on economic grounds. Because of the sensitive nature of much of the work of the Office a strict policy is in force precluding all members of the staff from speaking to the media. I believe it is the Director's responsibility (or as delegated to his Personal Assistant who

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reads prepared statements) to endeavour to achieve a proper balance on matters released to the media. For those who constantly deal with the media it will be appreciated that this is not always achievable.

Notwithstanding, I believe the media overall are supportive of the aims of the Office. It is recognised that the media have, and do perform, an important function in combating this serious law and order problem of white collar crime. I believe some credit should be attributed to them for their "watchdog" role in the financial sector and for their dissemination of information and education of the public on matters relating to this pernicious form of criminal offending.

The many thousands of victims of serious fraud in New Zealand have a right to know what is being achieved by the Government in its attack on corporate crime. The only expedient and effective vehicle for the dissemination of such information is through the medium of the press.

The issue that I am required to address continually is one of balance, subject of course, to those constraints which I have already mentioned.

INFORMATION MANAGEMENT

With the growing complexity of corporate fraud offending there is an ongoing need to support investigation teams with the latest information technology. The upgrading of our existing technology is continually under assessment.

A Document Control Officer was appointed during the year and is responsible for the receipt, custody and control of all documents and potential exhibits. All documents are given a unique number and a computerised documentary control system is used to list the material in the possession of the Office. This is indeed a vital function ensuring that the statutory and legal requirements are fulfilled, that all material is identified, accessible, and readily retrievable when required.

In the Equiticorp prosecution trial, optical scanning was used to capture the text of exhibits on to a computer for later retrieval. In addition, computer assistance was used during the trial to enable text searching of the transcripts of interviews with witnesses and of the daily transcripts of the proceedings in court. It has been conservatively estimated that the use of computer technology reduced the trial by some three months.

The use of technology as an aid to simplifying and shortening trials remains important. We are investigating a number of options for enhancing our existing technology to meet the problems of capturing, controlling and analysing the vast volume of material associated with all fraud investigations.

SERIOUS FRAUD OFFICE

DEVELOPMENTS IN ORGANISATIONAL STRUCTURE AND STAFFING

The multi-disciplinary teamwork approach is the key to the success of a specialist organisation such as the SFO. To complement that structure and improve case management a number of Senior Investigating Officer appointments were made during the year. These officers will take responsibility for the day to day case control and management and this will also provide an opportunity for them to develop and extend their skills.

As the majority of the staff now have at least two years experience and are consolidating their skills and experience, we are achieving improved levels of expedition in investigations and highly skilled operational teams. It is, nonetheless, a very complex area and we cannot afford to rest on our successes. The white collar fraud offender is typically highly sophisticated, well educated and always on the alert for another scheme.

The development and acquisition of skills is a continual process for the operational staff. There is no substitute for "on-the-job" training and proper supervision as the primary source of training in this work. This includes the regular appraisal and review meetings in which all the team members participate and are challenged to test the robustness of their case which is a learning experience for all.

During the year I placed an increasing emphasis on regular "in-house" seminars and, for the first time, held a one day planning seminar with all the operational staff in attendance. Subject to the needs of the Office I have also encouraged staff to take advantage of appropriate tertiary or professional development opportunities.

Although the question of establishing an office in Wellington remains a matter still very much under consideration, there is a strong argument to remain centralised in Auckland meanwhile. This option is cost effective, does not restrict our effectiveness, enables the most efficient use of resources and allows me to exercise the level of "hands on" control essential in the discharge of my statutory obligations. Furthermore, it will come as no surprise that the largest single area of concentration of our investigations has been, and continues to be, in the greater Auckland area.

INTERNATIONAL RAMIFICATIONS OF FRAUD OFFENDING

In previous reports I have addressed the problems of dealing with the increasing internationalisation of white collar offending.

In the area of serious criminal offending and even more specifically in serious fraud offending, two of the most important pieces of legislation to have been enacted in New Zealand came into force in this year; the Proceeds of Crime Act

SERIOUS FRAUD OFFICE

(1 July 1992) and the Mutual Assistance in Criminal Matters Act (1 April 1993).

These enactments are far-reaching and represent a significant start to the tackling of the international dimension of white-collar crime.

The Proceeds of Crime Act sets out to attack the massive gains derived from drug and fraudulent offending. For the first time we now have legislative power to attack the second part of the criminal offending equation - the ill-gotten gains of criminals; the very reason or motivation for their offending in the first place. A companion of the Proceeds of Crimes Act, the Mutual Assistance Act, facilitates the provision and obtaining of evidence in other countries including, for example, the seizing of funds laundered overseas. This requires New Zealand to enter into bilateral treaties which may be a lengthy process, but positive steps are underway.

In the international arena, the SFO is playing an integral role as a member of the inter-departmental Money Laundering/ FATF Working Group. The purpose of this group is to facilitate the development of measures to deal with money laundering and the implementation of the recommendations of the Financial Action Task Force on Money Laundering (FATF). The basic purpose of FATF is to combat money laundering on an international basis. New Zealand is a member of FATF and is obliged to take steps to implement the recommendations which comprise the FATF programme.

These recommendations of FATF include the criminalisation of money laundering, the adoption of regulations to enhance the role of financial institutions and the implementation of procedures for the confiscation of proceeds of crime and mutual assistance in criminal matters. These areas are of vital importance to the Office in the investigation and prosecution of serious fraud offending which frequently involves an international component. Our commitment in these areas and our participation in the work of the inter-departmental group is significant and may ultimately require additional and specialised resources.

CONCLUSION

This year has again been a demanding one with little respite for the staff and I am grateful to them and their families for their continued commitment and dedication to the task. It has, however, been a very satisfying year; one in which the Office achieved an enviable record of prosecution successes and demonstrated positively the efficacy of such an agency.

Already there is anecdotal evidence of a growing perception in the marketplace that our strategies are working. Clients of professional practices and investors in financial and other...(end)

**SERIOUS FRAUD OFFICE
TE TARI HARA TĀWARE**



Corporate Plan 1993/94

Corporate Plan 1993/94

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FOREWORD FROM THE MINISTER

I am pleased to endorse the aims and objectives of the Serious Fraud Office for the 1993/94 financial year and I commend the Office for its dedication and achievement.

Corporate fraud, which is a major component of what is commonly referred to as white-collar crime, has crucial ramifications for not only the corporations which are plundered and their hapless shareholders, but for the economy at large. Such offending pervades society. It frequently has a devastating effect on the lives of people who may lose their life savings and in the market-place where investor confidence is undermined.

It is the balancing of investigative, legal and accounting expertise together with intensive and specialised training that creates an organisation capable of effectively combating serious fraud offending. We have such an organisation in the Serious Fraud Office.

The Government is fully committed to a crime prevention strategy in which the Serious Fraud Office has a crucial part to play. The most effective deterrent for the serious fraud offender is an effective enforcement and prosecutory agency. With its results to date the Serious Fraud Office has already established an enviable record of success. I am aware that the continuing level of the workload



is placing an extremely heavy burden on the management and staff but I am confident that the effort has been, and will continue to be, most productive. I look forward to further achievements in the year ahead.

A handwritten signature in black ink, which appears to read "Paul East". The signature is written in a cursive, flowing style.

Paul East

Attorney-General

July 1993

OUTCOME STATEMENTS

The Government's Desired Outcome for the Serious Fraud Office is the combating of serious or complex fraud offending by;

- *Expeditious detection of serious or complex fraud and the obtaining of evidence for the laying of charges.*
- *Efficient conduct of the prosecution process to final determination by a court of law.*

INTRODUCTION BY CHIEF EXECUTIVE

The 1992/93 financial year was, like the previous year, an extremely demanding but satisfying year for the Serious Fraud Office. There can be little doubt that the Office had delivered on the outcomes required to be achieved by the Government - the record of successful prosecutions evidences this. In the past financial year eleven successful prosecutions were taken. At the end of June 1993 a further twelve prosecutions were in progress and the investigative work on several other potential prosecutions was well advanced. Moreover, the number of incoming cases has not abated and this planning document, endorsed by the Minister, forecasts a continuing high level of activity for the Office.

Manifestly incorrect statements have been made that corporate crime has never been a problem until the sharemarket crash of 1987. Some commentators postulate that once the aftermath of the sharemarket crash has been dealt with this problem will cease to be a major one. Nothing could be further from the truth. Complaints of serious fraud keep 'rolling in'. Certainly, the sharemarket frenzy of the mid 1980's provides evidence in a broad spectrum of cases of fraudulent abuses involving vast sums of money. However, the deregulated economy of the 1980's was not the cause of the upsurge in fraud offending; it simply created an environment for those with fraudulent tendencies to exploit it to the full.

Corporate or white collar crime is not a new phenomenon in New Zealand and like all other developed countries it has always been with us but



the extent of such sophisticated offending has hitherto, never been detected. The sharemarket crash simply exposed, for the first time, a serious crime problem in our society.

Notwithstanding that the majority of our work concerns offending since 1988, the Office is still carrying some "baggage", the legacy of the sharemarket crash. I am confident however, that within the next three years we will have dealt with most of these cases in a positive manner. To ignore such offending would be to ignore the plight of tens of thousands of New Zealanders who were devastated by the unscrupulous dealings of these criminals. Furthermore, to disregard such offending would also mean that yesterday's fraudsters will only become tomorrow's problems.

The highly sophisticated nature and increasing complexity of corporate fraud offending demands

intensive and specialised training of those charged with investigating such crime. The multi-disciplinary teamwork approach used by the Office is proving very effective but it is absolutely vital that the motivation and skills of the staff keep pace with the requirements of the work.

Our training plans for 1993/94 recognise these continuing needs. These plans will provide for the continuation of in-house training seminars and opportunities through the case review process followed in the Office, for the enhancement of skills. Additionally, there are provisions for individual training and development through attendance at professional seminars and participation in tertiary study courses or similar relevant programmes.

The most important form of training in the environment of serious fraud investigations remains, however, in what is commonly referred to as "on the job training". This form of training requires a 'hands on' administrative approach by the directorate. It involves a high degree of constant and close supervision of the operational staff by the directorate throughout the entire course of an investigation.

Complex commercial fraud has become such a popular corporate and white-collar pastime, any combat strategies involving self regulation and new laws on the statute books, will remain, in my view, largely symbolic.

I am convinced that it is impossible to regulate for honesty. Certainly, new laws to assist the investigation process, which will also have a deterrent value, are the Proceeds of Crime Act 1992 and the Mutual Assistance in Criminal Matters Act 1993. In the area of serious fraud offending, these are two of the most important pieces of legislation to have been enacted in New Zealand in recent years.

These enactments are far-reaching and represent a significant start to the tackling of the international

dimension of white-collar crime. The Proceeds of Crime Act sets out to attack the massive gains derived from drug and fraudulent offending while the object of its companion, The Mutual Assistance Act, is to facilitate the provision and obtaining by New Zealand of international assistance in criminal matters. These acts will have an impact on the scope of the work of the Office in this and later years and appropriate training of staff is already underway.

I am in no doubt that an overwhelming amount of serious fraud which previously went uninvestigated and unprosecuted is now being effectively dealt with by the Serious Fraud Office. This Office also has a positive proactive fraud policy. A significant number of investigations have been commenced and prosecutions taken without a single complaint having first been lodged with the Office. It is in these particular cases that the optimum skills of the Serious Fraud Office are tested. I am proud to say that we have enjoyed a high rate of success in our proactive work to date. The Equiticorp prosecution was one such example. Clearly, like all forms of criminal offending we will never eradicate serious fraud offending. However, we believe that our Office has developed a coherent and dynamic strategy to ensure that we contain and neutralise the problem. I look ahead with the utmost confidence in our ability to deal effectively with all facets of corporate and white-collar crime.



Charles E Sturt

Director

July 1993

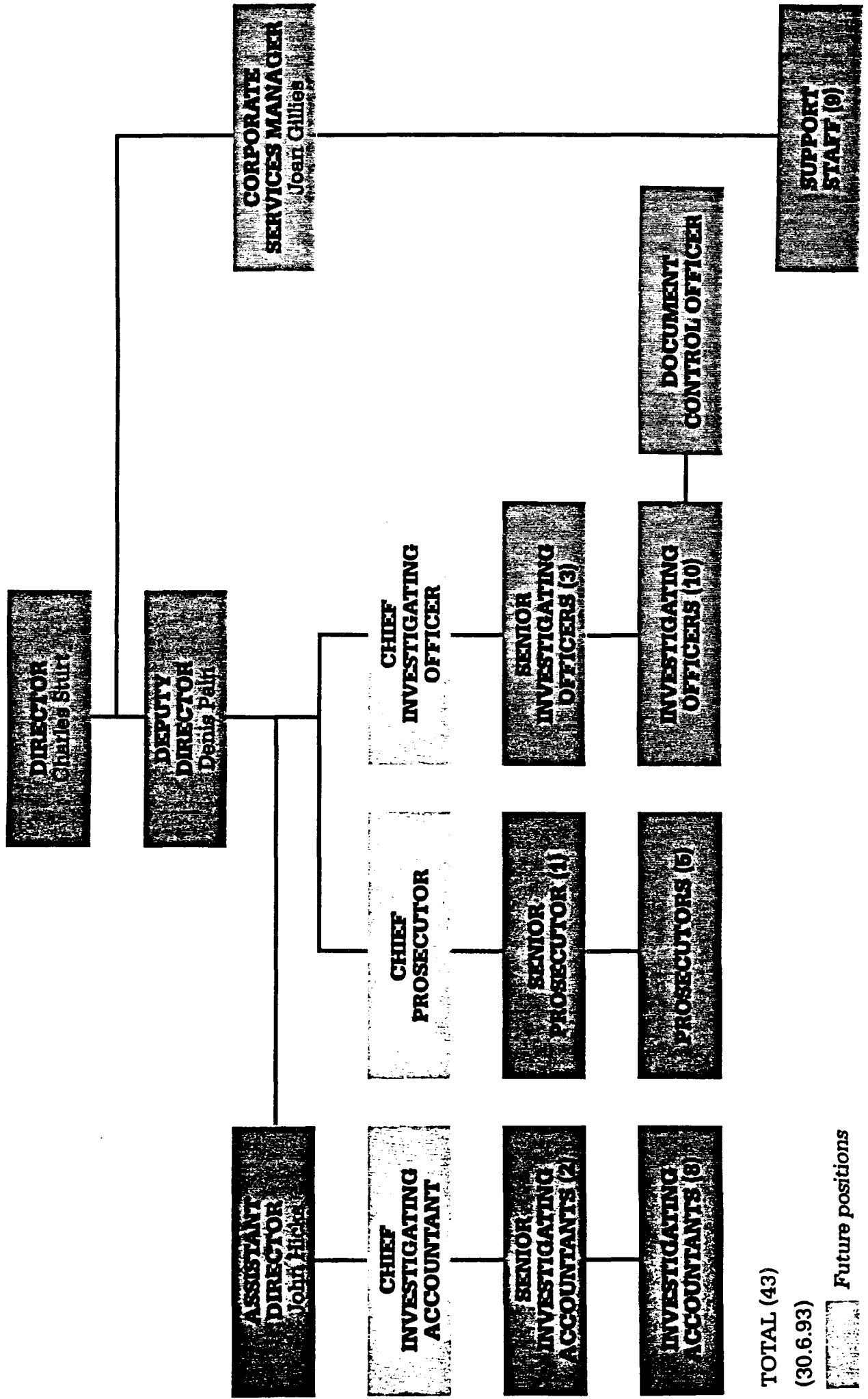
PURPOSE STATEMENT

The purpose of the Serious Fraud Office is to detect and investigate cases of serious or complex fraud offending and prosecute offenders with expedition.

SIGNIFICANT STRATEGIC ISSUES

Issues which the Office need to take into account are;

- *the jurisdictional problems associated with the investigation and prosecution of serious or complex fraud*
- *further developments in the use of information technology and computers*
- *the impact of the implementation of the Proceeds of Crime legislation*



TOTAL (43)

(30.6.93)

Future positions

INFORMATION ON THE DEPARTMENT

Notes on organisational structure

Central to the work of the Serious Fraud Office is the concept of teamwork and the use of multi-disciplinary teams of chartered accountants, investigators and lawyers in the investigation and prosecution of serious or complex fraud. Each complaint is considered and assessed by the executive team and, if it meets the criteria of the Serious Fraud Office Act, an investigation team is formed. Regular case reviews are then held to ensure that an appropriate level of resource is applied, that professional standards and disciplines are adhered to and that proper progress and direction are maintained.

Investigation teams regularly exchange information, share experience and expertise on policies and practice in order to ensure consistency. As serious or complex fraud offending usually involves convoluted dealings within an intricate

commercial framework it is important that the evidence is carefully collected and presented in a coherent form.

The Serious Fraud Office therefore aims to make efficient use of available technology to present graphic and comprehensible evidence.

The Serious Fraud Office Act provides for a panel of experienced prosecutors to be established. The Director nominates a member of this panel to conduct a particular prosecution. The Serious Fraud Office prosecutors prepare the prosecution files, brief evidence and assist in the conduct of the prosecution.

A Corporate Services team provides the support services required for the smooth running of the Office, including the recording and custody of evidential material, and contributes towards the efficient achievement of the operational goals.

OUTLINE OF THE CORPORATE VALUES

The Serious Fraud Office will have a commitment to;

- *the maintenance of high professional standards in the attainment of its objectives*
- *teamwork*
- *good employment policies and practices*
- *staff training and development to ensure skills and knowledge are kept up to date*
- *maintenance of proper standards of integrity and conduct*
- *concern for the public interest*

WORKING RELATIONSHIPS

It is expected that most working relationships will be with;

- *Overseas Enforcement Agencies*
- *Government Departments*
- *Professional Organisations*
- *Members of the Public*

CLASSES OF OUTPUTS

- *Investigation of Serious or Complex Fraud*
- *Prosecution of Persons for Serious or Complex Fraud*

The following indicates the link between Government Outcomes and Classes of Outputs.

INVESTIGATION OF SERIOUS OR COMPLEX FRAUD

COST \$2,459,000

This class of outputs is the sum of individual casework which will follow a process of;

- *receipt of complaint*
- *preliminary overview*
- *detailed investigation by assigned team*

OUTCOME

To combat serious or complex fraud offending by expeditiously investigating cases of alleged offending and obtaining the evidence for the laying of charges.

PERFORMANCE INDICATORS

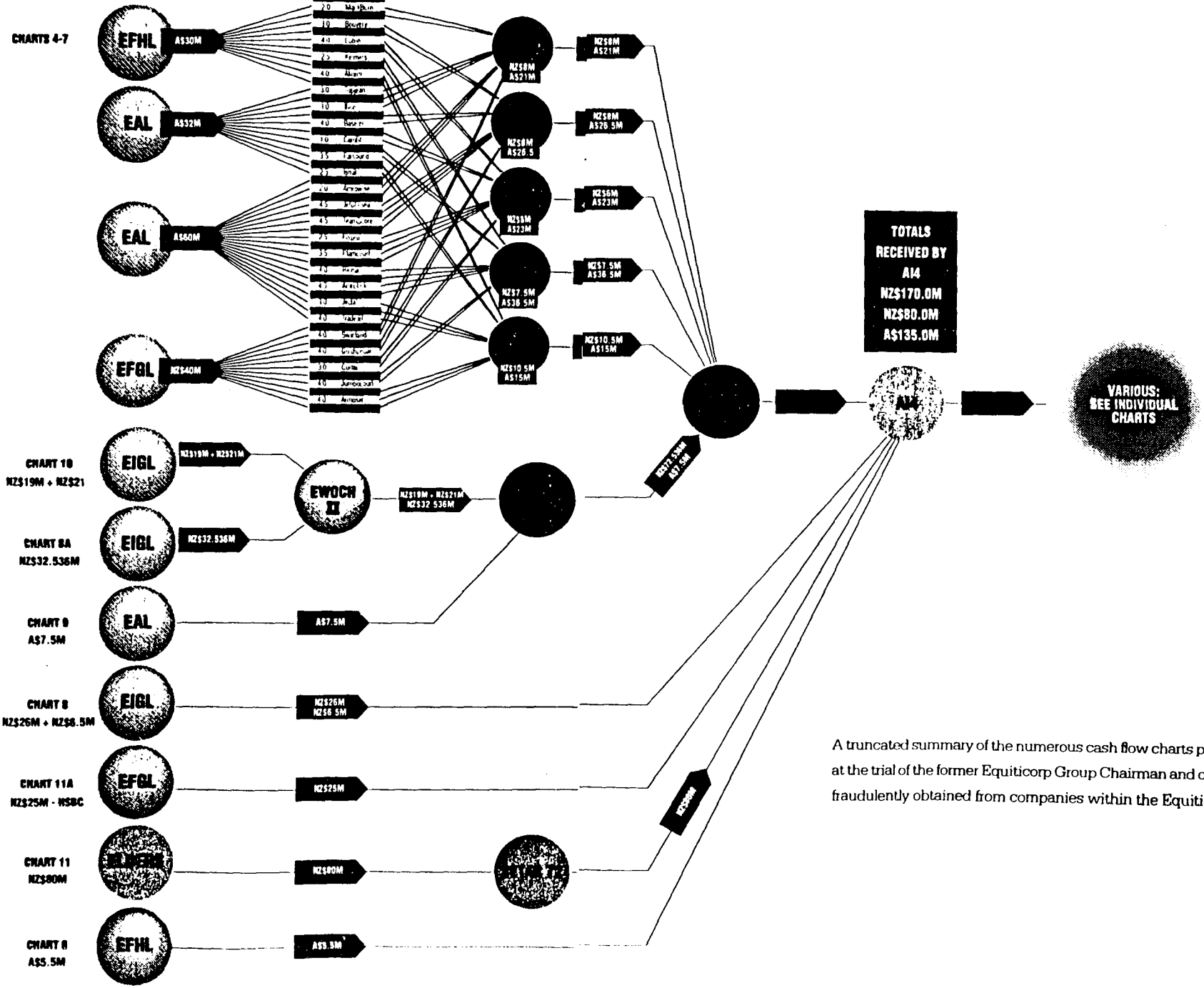
- *assessments and/or investigations will be completed within the resource allocation, the time schedule and to the standard fixed by the Director. A management control system is in place and the Director, together with his executives, review case progress at least once a month. This review is to ensure that the momentum is maintained and the resource commitment monitored, having regard to the magnitude and complexity of each investigation.*
- *provision of appropriate and timely advice to the Minister. A quality review will form part of the quarterly monitoring of performance.*
- *the class of outputs will be provided within the sum appropriated.*
- *the powers exercised in terms of the SFO Act will comply with the legal requirements. To ensure quality, all Notices are personally executed by the Director after satisfying himself the requisite grounds exist*

CHART 3

SUMMARY OF CASH FLOWS

CHARTS 4-7

NORR KONG COMPANIES **TUNKE & CAICOO COMPANIES** **VARIOUS COMPANY**



A truncated summary of the numerous cash flow charts presented in evidence at the trial of the former Equiticorp Group Chairman and others. (Tracing funds fraudulently obtained from companies within the Equiticorp group.)

PROSECUTION OF PERSONS FOR SERIOUS OR COMPLEX FRAUD

COST \$2,052,000

This class of outputs involves;

- *preparing a well researched and documented prosecution case*
- *briefing of Prosecuting Counsel*
- *appearing as Counsel at all preliminary court hearings and assisting as Junior Counsel at trial*
- *giving evidence at trial*

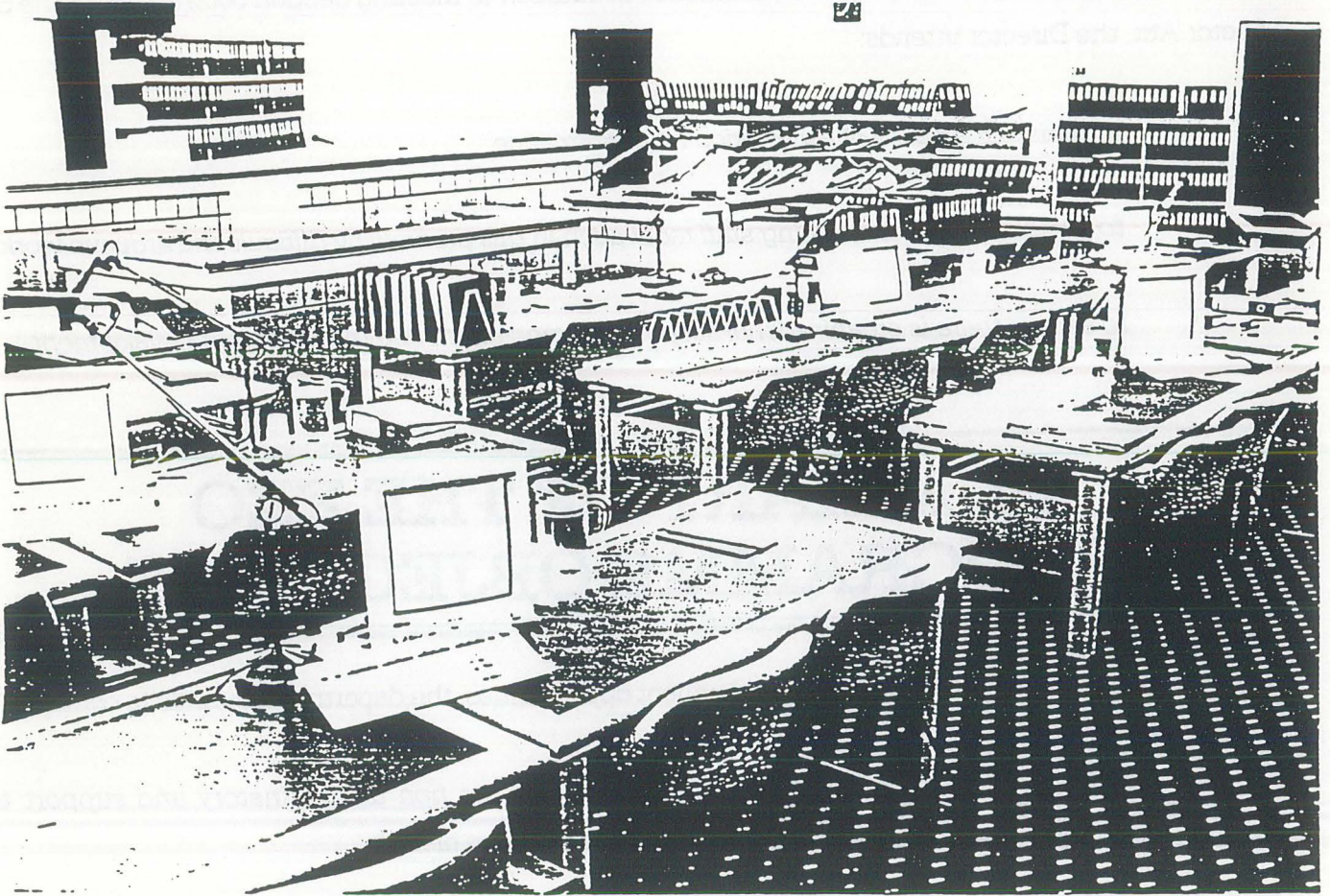
OUTCOME

To combat serious or complex fraud offending by efficiently conducting prosecutions to final determination by a Court of Law.

PERFORMANCE INDICATORS

- *this class of output will be provided within the sum appropriated*
- *the case preparation must meet the standards set by the Director*
- *dates set by the Courts met and Senior Counsel satisfied with the quality of service*

Assessment will be carried out by observation by the Director, peer review and Judicial comment. As a matter of policy and practice, at the conclusion of each case a debriefing is held to review all aspects of the case including the quality of the case investigation, preparation and presentation. This debriefing involves input from the Senior Prosecutors.



Auckland High Court courtroom prepared for the trial of Equiticorp executives. This six months trial involved 141 volumes of exhibits and 4,500 pages of evidence. The use of computer technology is estimated to have reduced the length of the trial by some three months.

GOOD EMPLOYER REQUIREMENTS

In order to meet the good employer requirements, in addition to meeting Section 56(2) and (3) of the State Sector Act, the Director intends;

- *to maintain a policy of recognition for performance*
- *to examine ways of retaining staff motivation in this particularly difficult and arduous work*
- *to ensure there is organisational scope for advancement and management development*

SUMMARY OF THE EEO PROGRAMME OBJECTIVES

In order to promote and facilitate equal employment opportunities, the department intends to continue to;

- *ensure that employment policies and practices are non discriminatory and support the recruitment and retention of the widest possible range of skills*
- *gather information to evaluate progress in EEO and assist in further planning*

The achievement of these objectives will be verified by comparing previous years staffing statistics with end of 1993/94 year staffing.

COLLECTIVE INTEREST REQUIREMENTS

The Director will ensure that the operation of the Serious Fraud Office is consistent with promoting the collective interest of Government and, in particular, that;

- *policy advice meets the Cabinet's standard for consultation, policy co-ordination and, where possible, conflict resolution*
- *high standards of service delivery and efficient departmental management responsive to the Government's fiscal strategy are maintained*
- *office accommodation will be managed in accordance with the Government's expectations*

OTHER ISSUES

There will be a number of issues likely to arise, including,

- *further expansion of the Office including the consideration of setting up branch office(s)*
- *the possible application of further technological advances and processes in the investigation and prosecution of cases*

PROJECTED FINANCIAL PERFORMANCE
OF THE SERIOUS FRAUD OFFICE

OPERATING STATEMENT FOR YEAR ENDING 30 JUNE 1994

REVENUE

	\$,000
Crown	4,511
Other	-
Interest	5
Total Revenue	<u>4,516</u>

EXPENSES

Personnel	2,831
Operating	1,403
Depreciation	212
Capital Charge	65
Total Operating Expenses and Capital Charge	<u>4,511</u>

Net Surplus/ (Deficit)	<u>5</u>
------------------------	----------

STATEMENT OF FINANCIAL POSITION

ASSETS

	Estimated at 30 June 1993 \$,000	Projected to 30 June 1994 \$,000
Cash and bank balances	371	193
Term deposits with the Crown	400	-
Prepayments	-	-
Debtors and Receivables	-	-
Fixed Assets	536	535
	<hr/>	<hr/>
Total Assets	1,307	728
	<hr/>	<hr/>

LIABILITIES

Creditors and Payables	200	122
Provision for Payment of Surplus	506	5
	<hr/>	<hr/>
Total Liabilities	706	127
Taxpayers' Funds	601	601
	<hr/>	<hr/>
Total Liabilities and Taxpayers' Funds	1,307	728
	<hr/>	<hr/>

CASH FLOW STATEMENT OF THE SERIOUS FRAUD OFFICE FOR YEAR ENDING 30 JUNE 1994

	\$,000
Cash Flows from Operating Activities	
Cash Provided from	
supply of Outputs - to Crown	4,511
- to others	-
interest	5
Cash Disbursed to	
cost of Producing Outputs - operating expenses	(4,312)
payment of Capital Charge to the Crown	(65)
	139
Cash Flows from Investing Activities	
Cash disbursed to	
purchase of Fixed Assets	(211)
	(211)
Cash Flows from Financing Activities	
Cash Disbursed to	
payment of surplus to the Crown	(506)
	(506)
Net cash flows from Financing Activities	
	(578)
Net increase/(decrease) in cash held	
Opening total cash balances at 1 July	771
	193
Closing total cash balances at 30 June projected	
	193

PROJECTED FINANCIAL PERFORMANCE FOR 1993/94

- 1 The projected net surplus is \$5000.
- 2 A net decrease of \$578,000 in cash held is forecast.
- 3 Revenue - Interest \$0.005 million
- 4 Liquid Ratio 1.58 : 1
- 5 Creditor payment period for creditors 8 days
- 6 Fixed assets - additions as a percentage
of fixed assets 39.4%
- 7 Taxpayers funds at year end \$0.601 million
- 8 Cash disbursed to producing outputs -
operating expenses \$4.312 million

Further information may be obtained from:

Corporate Services Manager

Physical Address: Level 2, Duthie Whyte Building,
120 Mayoral Drive
Auckland Central

Postal Address: PO Box 7124, Wellesley Street,
Auckland

Telephone: 0-9-303 0121

Facsimile: 0-9-303 0142

APPENDIX SEVEN

**Answers to Questions taken on Notice
by the Commissioner
on 4 March 1994**



INDEPENDENT COMMISSION AGAINST CORRUPTION

16 March 1994

Mr Malcolm J Kerr
Chairman
Committee on the ICAC
Parliament House
Macquarie Street
SYDNEY NSW 2000



Dear Mr Kerr,

I refer to the evidence given by the then Commissioner Ian Temby QC before the Parliamentary Committee on 4 March 1994. A number of matters are outstanding.

First, Mr Hatton asked whether the files referred by Gary Sturgess were acted upon "in terms of looking at corruption within the New South Wales Police Service or possible corruption within the political system". Mr Hatton then clarified that he was concerned whether files were given to the Commission and whether those files were then acted upon.

As indicated at the time, this matter was addressed when the Commissioner gave evidence on 31 March 1992 (see pages 12-15, 61-62) and when he gave evidence on 9 November 1992 (page 60). A letter written by Mr Temby, dated 15 October 1992 was also provided to the Committee and is contained in the collation of 9 November 1992.

The Commission referred to the ORC, at its meeting on 30 April 1993, the list provided by Mr Sturgess and documents prepared by Commission officers assessing that material. The material was discussed at length by the Committee and noted. There is nothing more that the Commission can usefully add concerning this matter.

Secondly, the Committee sought information about the Australian National Field Days at Orange. The Commission made available copies of a range of publicly available Commission publications. These included Corruption Prevention reports, the annual report and Investigation reports. In addition pencils and rubbers with anti-corruption messages were also available. Four publications with which the Committee may not be familiar, and which were disseminated, are enclosed.

E:\text_corr\LX940028.ext

The field days attracted attendance of 57,000 people and it is estimated that about 500 members of the public visited the ICAC marquee as well as large numbers of school children.

Thirdly, I confirm that the Commission is operating within its budgetary allocation. The consolidated fund recurrent appropriation noted in the response to question 1.6 is cash funding drawn down by the Commission. The net cost of services includes certain non-cash items such as depreciation. The Commission draws down cash in order to meet its projected commitments but manages the cash position in order to avoid excessive accumulation of funds.

The Commission depreciates all of its assets in accordance with standard accounting practices. The main classes of Commission assets are leasehold improvements, ie fit out of the Commission's premises, computer equipment and general plant and equipment.

Fourthly, the payment of \$390,000 to legal practitioners was primarily made up of payments to counsel appearing in the Milloo and Randwick Council investigations. The legal practitioners appearing in those matters were:

B M J Toomey QC
P W Neil
S J Rushton
B McClintock

In addition other sums were paid in respect of litigation and the services of Mr K Holland QC in his capacity as Assistant Commissioner.

Finally, in relation to Smith engaging the services of Mr Corry, the Committee is advised that Smith requested that the Commission suggest a lawyer whom he could instruct. He was content with the suggestion made and duly engaged Mr Corry.

Yours sincerely,



Gail Furness
Solicitor to the Commission