

RELEVANT ISSUES FOR NSW

*T*hroughout its study tour the Committee was conscious of the significant differences between Hong Kong and NSW, particularly the differences in the political structures. Therefore, the Committee is not going to lift ideas from the Hong Kong ICAC and seek to apply them directly to the NSW ICAC. However, the Committee was impressed with what it saw in Hong Kong. This is only to be expected - the Hong Kong ICAC has been in existence for 18 years and has a worldwide reputation as a competent and professional organisation. This section of the report summarises some of the most important lessons that the Committee feels can be gained from the Hong Kong experience. These issues are put forward by the Committee as matters for consideration with a view to encouraging discussion - they are not put forward as definitive recommendations for reform at this stage.

OPERATIONS REVIEW COMMITTEE

The NSW Operations Review Committee has been under review by the Committee for some time. The Committee hopes to finalise a report on this issue shortly. The Committee was therefore keen to find out as much as possible about Hong Kong ICAC's Operations Review Committee. There were three key issues that emerged during the Committee's discussions with Mr Peter Graham and with members of the ORC. Firstly, the Committee was impressed with the use of a sub-committee which meets two days before the ORC to consider non-pursuable and minor complaints. This relieves the ORC of a substantial workload in respect of minor matters and enables it to focus on more serious complaints. However, effective oversight of minor complaints is maintained by the fact that the sub-committee is chaired by a non-official member of the Committee (ie. an outsider) on a rotating basis. Staff of the Operations Department are regularly called before the ORC or the sub-committee to justify the recommendations in their reports.

The second significant matter discussed in relation to the ORC and the processing of complaints was the daily record sheet, prepared at 7.00 am each morning, logging all complaints received during the preceding 24 hours. Once a matter is logged on one of these sheets an investigation cannot be stopped until either the Attorney-General agrees to a prosecution or the ORC endorses a recommendation that the investigation be terminated.

The third issue to emerge from the Committee's discussions with ICAC staff and members of the Operations Review Committee was the formalised structure put in place to advise the subjects of investigations once the Operations Review Committee

had advised that an investigation should be discontinued. Copies of the form letters used have been reproduced above.

COMPLAINTS COMMITTEE

Although it meets infrequently and considers only 10-20 complaints each year, it is clear that the Complaints Committee is an important accountability mechanism. ICAC staff confirmed that this Committee subjects the ICAC to intense scrutiny and can be quite tenacious. The existence of this Committee means that there is a formalised, recognised structure for the consideration of complaints against the ICAC. In NSW the Parliamentary Joint Committee and the ICAC have reached agreement on a mechanism for dealing with such complaints. However, it would be fair to say that this mechanism is not all that satisfactory and both the Committee and the Commission have some concerns about it.

The question of how to best deal with such complaints has been discussed in recent reports of both the Joint Committee on the National Crime Authority and the Queensland Parliamentary Criminal Justice Committee. The Queensland Committee recommended that the Parliamentary Committee should continue to be responsible for dealing with such complaints as it helped it gain an appreciation of possible problems with CJC procedures, which in turn assisted it to pursue its monitoring and review function in respect of the CJC. The NCA Committee, on the other hand, favoured giving responsibility for the handling of such complaints to either the Ombudsman or the Inspector-General of Intelligence. Ultimately, the Committee recommended that the Inspector-General of Intelligence be given this role, a recommendation to which the Commonwealth Government has agreed. The Parliamentary Joint Committee on the ICAC has not yet come to a considered view on this issue. However, the Hong Kong Complaints Committee model appears to have merit and it is put forward for further consideration.

ADVISORY COMMITTEES

The Committee was particularly interested to find out as much as possible about the Hong Kong ICAC's Advisory Committees. These are discussed above at some length in the accounts of briefings from the various departments of the ICAC. As those accounts state, the senior staff of the ICAC with whom the Committee met were unanimous in their view that these Advisory Committees play a valuable role and make an important contribution to the work of the ICAC's various departments. It needs to be emphasised that these committees are advisory or consultative bodies, which enable the ICAC to receive the benefit of the expert advice of the members of the committee, rather than accountability mechanisms (such as the ORC or Complaints Committee). Again, whilst the Committee has no intention of imposing

this aspect from the Hong Kong model on the NSW ICAC, it does see considerable merit in these Advisory Committees and suggests that careful consideration be given to the applicability of this structure in NSW. Advisory Committees on Corruption Prevention and Public Education could be of great assistance to the NSW ICAC's work in these areas.

PROFESSIONAL ADVISORY PANELS

The Committee was impressed by the steps which the Hong Kong ICAC had taken to establish panels of professionals able to provide advice to investigators on complex matters within their area of expertise. As stated previously a panel of volunteer accountants was established with the assistance of the Hong Kong Society of Accountants in 1989. The panel has eleven members with particular expertise in a range of areas including banking, stockbroking, insurance, import/export, manufacturing, construction and real estate. Panel members are kept up-to-date on relevant ICAC developments. The main benefit to the ICAC is in the free advice which the panel gives to ICAC investigators on particular questions. This has been particularly valuable in respect of the major fraud and commercial crime cases with which the ICAC has been dealing in recent years. Such panels, of accountants and possibly other relevant professional groups as well, may be worthy of consideration by the ICAC and other Australian agencies.

STAFF TRAINING

Although the Committee did not actually visit the ICAC's Operations Department Training School, the Committee was impressed by what it heard about the facilities provided. Even though many investigators come to the Hong Kong ICAC with considerable experience from other agencies or from British Police forces (although this is decreasing as localisation proceeds) the ICAC puts a high priority upon training. This training must be of a high quality judging by the accounts the Committee received of the quality of the briefs lawyers receive from the ICAC and the support expressed for the capabilities of the ICAC's investigators. The Corruption Prevention and Community Relations Departments also place a strong emphasis upon training. The Committee is not about to suggest that the NSW ICAC establish its own training school. Clearly, the Hong Kong ICAC is of a size where such an establishment is justifiable whereas that would not be the case with the NSW ICAC. However, the Committee was impressed with the emphasis placed upon training by the Hong Kong ICAC, particularly with regard to its investigators. The Committee has not in the past paid much attention to the NSW ICAC's use of training for its staff although it will probably do so in future. The Committee noted that the Hong Kong ICAC accepts overseas participants in its training courses and that in 1990 an officer from the Internal Affairs Department of the Australian Customs Service

attended the Command Course. It may be worthwhile for the NSW ICAC to consider sending a small number of staff to these courses.

SANCTIONS AGAINST FALSE REPORTS

The Committee has received a number of complaints from persons claiming to have been the subject of vexatious or even deliberately false reports of corrupt conduct to the NSW ICAC. These people have complained that at present they have no means of redress in this situation and that there are no sanctions against persons making false reports. The Committee therefore noted with considerable interest the following provision in the Hong Kong Independent Commission Against Corruption Ordinance:

"13B Any person who knowingly -

- (a) makes or causes to be made to an officer a false report of the Commission of any offence; or
- (b) misleads an officer by giving false information or by making false statements or accusations,

shall be guilty of an offence and shall be liable on conviction to a fine of \$20,000 and to imprisonment for 1 year."

STRATEGIC INTELLIGENCE

The Committee was most interested in the strategic intelligence work of the Hong Kong ICAC and a delegation met with officers of G Group as discussed above. The Committee has been encouraging the NSW ICAC to develop its strategic intelligence capabilities and was impressed by the work of G Group in identifying trends in corruption and preparing profiles of certain Government departments or industries. Most significantly, the Committee was told that there was no threshold level of intelligence required before trends in corruption could begin to be identified. This suggests that the NSW ICAC should be in a position to prepare at least an interim overview of corruption trends in NSW.

EDUCATION: STRATEGIES

The Committee was impressed with some of the strategies used by Hong Kong ICAC's Community Relations Department to get its message across. These strategies include having an officer address each induction course for new public servants, and having an officer address each final year high school and college class. These seem to

be appropriate target audiences for anti-corruption messages. The Committee was also impressed with the anti-corruption packages which have been prepared for different industries and are sent out by ICAC regional offices. Of course, the Committee recognises the limitations upon the resources of the NSW ICAC in the public education area. It may be that other agencies or industry representative groups should take responsibility for the preparation of such packages, with the assistance where necessary of the ICAC.

EDUCATION: COMPETITION WITH OTHER GOVERNMENT AGENCIES

Although the Committee was very impressed with the Community Relations Department of the Hong Kong ICAC it was disturbed by one problem which the department faces in getting its message across. As previously discussed, the problem is one of competition from other government agencies with public service messages. The Hong Kong ICAC cannot compel schools to use its education material. Rather, it must seek to convince teachers of the value of using its material. In this it is in direct competition with a number of other Government agencies also wishing to get their messages through to the classroom. Consequently, the ICAC needs to devote considerable resources to promoting its material to teachers instead of educating students or the public directly.

The Committee is concerned that the potential exists for a similar situation to develop in NSW. In the area of citizenship studies there are already a range of agencies seeking to get materials into the classroom - these include the ICAC, the Law Society and the NSW Parliament. (This is not to mention other government agencies with educational agendas such as the Health Department and the Environment Protection Authority). In order to ensure against such a situation developing in NSW the Committee suggests that some sort of co-ordinating body be established in relation to either "citizenship"-type studies or else in relation to all Government agencies wishing to get educational materials into the classroom. Perhaps a committee with representatives from the relevant Government agencies and educational authorities should be established, chaired by an eminent person.

POLICE COMPLAINTS

As outlined in the accounts of the meetings with the Ombudsman, Police Complaints Committee and representatives of the Royal Hong Kong Police the Committee received a great deal of information about the system for dealing with complaints against police in Hong Kong. The basic impression that the committee came away with was that the issues currently being addressed in respect of police complaints in Hong Kong are very similar to those being addressed in NSW. A similar balance has been struck between internal police investigation and civilian oversight. The Hong

Kong system is perhaps a few steps ahead in relation to the informal resolution of minor complaints, but NSW is now moving down the same path (and will move further in this direction under the recommendations outlined in the recent report of the Ombudsman Committee). It would be very pleasing if the Hong Kong record of having 27% of complaints informally resolved could be replicated in NSW. The Committee was also impressed by the high level of statistical information provided on complaints against police in Hong Kong and would draw the attention of both the NSW Ombudsman and NSW Police Internal Affairs Branch to this level of statistical sophistication.