



## COMMITTEE ON THE ICAC

### ***MATTER RAISED BY ANDREW TINK MP***

- Minutes of Evidence taken by Committee on 05 February 1993
  
- Correspondence between Committee, Mr Tink and the ICAC:
  - ◇ Ian Temby QC - 17 February 1993
  - ◇ Andrew Tink MP - 05 March 1993
  - ◇ Malcolm Kerr MP - 10 March 1993
  - ◇ Andrew Tink MP - 23 March 1993
  - ◇ Ian Temby QC - 01 April 1993
  - ◇ Andrew Tink MP - 21 April 1993
  
- Crown Solicitor's Advice dated 28 June 1991, to former Committee

**CORRECTED**

**MINUTES OF  
EVIDENCE TAKEN BEFORE**

**COMMITTEE ON THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION**

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**At Sydney on Friday, 5th February, 1993**

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**The Committee met at 10 a.m.**

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**PRESENT**

**Mr M. J. Kerr (Chairman)**

**Legislative Council**

**The Hon. J. C. Burnswoods  
The Hon. D. J. Gay  
The Hon. S. B. Mutch**

**Legislative Assembly**

**Mr B. J. Gaudry  
Mr. J. E. Hatton  
Mr. J. H. Turner  
Mr. P. J. Zammit**

ANDREW ARNOLD TINK, Member of the New South Wales Legislative Assembly, of [REDACTED], sworn and examined:

**CHAIRMAN:** Did you have some material you wished to place before the Committee?

**Mr TINK:** Yes. I have prepared a written statement. I also have a video which I would like to make part of the submission but also to hold on to in order to make a small presentation in a moment.

**CHAIRMAN:** Did you wish to read your written statement?

**Mr TINK:** Yes, I might proceed to do that and show the video during the course of that. Perhaps I can begin by reading the statement. As you know, until recently I was a member of the parliamentary ICAC Committee. You are therefore aware that I have always been and remain a strong supporter of the Independent Commission Against Corruption. Whilst many people make these claims, I believe that in my case it can be demonstrated by my strong support for a number of commission initiatives, amongst them initiatives relating to internal audit and data protection. Whilst it is true in the latter case that I do not agree with every recommendation that Mr Roden made, I do feel that I have indicated by strong support on the record as a private member of Parliament over the last couple of years on that particular issue and others. It is equally true that I have not been shy to criticise the commission as a member of the Committee and otherwise where I believe it has been in error. In particular, I made public criticisms of the findings of Mr Temby in the Greiner-Metherell matter which were similar to criticisms later made by the Court of Appeal.

It is with this background that I come before you today to raise an issue which I believe broadly relates to whether or not ICAC staffing should be made subject to the Public Sector Management Act of 1988. The particular issue that I wish to raise concerns the appointment of Mr Paul White as Media and Public Affairs Manager of the ICAC. This appointment came to my attention on or about 27th January this year at the time of the

release of the ICAC report on prison informers. In considering the video that I am about to show you I think it is important to bear in mind the following comments made by Mr Temby in his report on the investigation into the Metherell resignation and appointment at page 51, as follows:

It is not a criminal offence to lie, and as I was reminded so often during the course of the hearing, the ICAC is not a "court of morals". However some plain facts can be stated. One is that whenever politicians are speaking to journalists, on the record, they are also speaking through them, actually or potentially, to the public generally. That is the public they are sworn to serve. I do not think it is an old-fashioned irrelevancy to say that politicians ought to ensure that what they say to the public, the people, to whom they must give an account of themselves, is never misleading. They are most important role models.

Pausing there, it can be seen that Mr Temby places a very high onus upon politicians to never be misleading with the media, which I assume by implication he would extend to the media itself. Indeed, this is implicit from the commissioner's comments at page 166 of his annual report to 30th June, 1990, as follows:

The Commission recognises the important role the media plays in disseminating information and comment regarding the operation of the Commission. The Commission will use its best endeavours to enable the media to achieve a high standard of reporting in relation to the Commission.

Moreover, the Australian Journalists' Association code of ethics as set out in its annual report of 30th June, 1991, states amongst other things the following in relation to its members:

They shall report and interpret the news with scrupulous honesty by striving to disclose all essential facts and by not suppressing relevant, available facts or distorting by wrong or improper emphasis.

It is with these comments in mind that I now ask you to view an excerpt of a video of Stuart Littlemore's "Media Watch" program screened on the Australian Broadcasting Corporation on 18th May, 1992, which relates to some

of the coverage by Mr White as a "7.30 Report" journalist of the Greiner-Metherell inquiry. Just pausing there, this video which I will table contains an edited version of "Media Watch" The beginning is cut out of it and a slight segment in the middle, but at the end of the tape—I am not proposing to show it today—on this same tape there is a full video of the whole of that "Media Watch" program, or at least as much of it as I could find. In the transcript itself the relevant extracts are set out of the edited version with Littlemore's commentary in light type and the "7.30 Report" excerpts to which it refers in dark type. I will show the excerpt from the video and I set out a transcript of the edited version of the video, as follows:

LITTLEMORE: . . . And therewith a serious journalistic problem.

Dempster, according to the diary, was close to Metherell through the resignation crisis. His name and his words are studied through its pages. That emerged on Tuesday (12 May 1992) during the hearing, which adjourned at four. Dempster and the 7.30 Reporter Paul White were there. They returned from ICAC to the ABC where it was decided to deal with the Dempster mentions in a "two-way", that's a link-up between the compere and White in which the day's evidence was discussed.

**DEMPSTER: Paul White has been at the ICAC Inquiry all day and he joins me now. Paul, what have we got here, confidential conversations, personal observations, what?**

**WHITE: Well Quentin, what we've got is attention solely focused on these diaries.**

LITTLEMORE: Well, so far so good, except, why did White go back from the ABC to the empty ICAC hearing room to do his end of it? A facile and very expensive bit of set dressing. Or was he in fact only pretending to be at ICAC? Still, to more important matters. Here's how they did it.

**WHITE: They've lived with the cynicism and hypocrisy of their own posturing.**

**DEMPSTER: They've got the journalists figured out. Thanks Paul.**

**WHITE: Quentin, there's one other thing, Quentin, I should report in the**

interest of balance if we have time. It appears that you get a detailed mention several times in the doctor's diaries.

**DEMPSTER:** In what context?

**LITTLEMORE:** And that's where it all went horribly wrong. Amateur actors, passing off their exchange as if it were the first Dempster had heard of heard of his embroilment in the matter, and as if his answers were spontaneous.

**WHITE:** Apparently it says "Quentin rang today to see where we stood and fill us in on the situation in Sydney", so you're obviously a good source of information.

**DEMPSTER:** I was trying to induce him to record a television interview.

**LITTLEMORE:** And the same disingenuous deception was worked on Wednesday night (13 May 1992) too.

**DEMPSTER:** Paul, I understand I got another mention today.

**WHITE:** Yes, you got another mention, in fact Dr. Metherell said that again under cross examination that he had given you these controversial diaries and that he had asked you to look after them and that he trusted you implicitly. What in fact happened?

**DEMPSTER:** Well, he did give them to me on 24th April on the day that the ICAC Inquiry was announced. He gave them to me in his office at Parliament House, asked me to keep them but not to use them.

**LITTLEMORE:** On Thursday night (14 May 1992) Dempster, though a key player, was out of the action and on the bench.

**DEMPSTER:** Now, ICAC, and I'm leaving the reporting of the proceedings to Paul White—this is in light of the mentions I have been getting and the possible perception of conflict of interest— Paul.

**LITTLEMORE:** Of which the Herald:

**FEMALE VOICE:** Understood that Peter Manning, Controller of News and Current Affairs at ABC TV sent Mr. Dempster a memo yesterday instructing him not to do any more "two ways" with Paul White.

**LITTLEMORE:** Firmly slamming the stable dor as the horse disappeared over the horizon. There was no conflict of interest at all, and properly handled

there would have been no perception of one either. Dempster's involvement was that of a resourceful and diligent journalist. But he was let down by those who thought the "two way", and worse still, the deceptive and dishonest way it was conceived, was the appropriate vehicle for dealing with his role. . . . It's silly, it's indefensible, and it's unacceptable. They make an oxymoron of journalistic integrity . . .

Thus Littlemore says that there are two issues arising from the video: first, the relatively minor matter involving the pretence that White was reporting from the ICAC building; and, second, the serious matter involving White and Dempster passing off their exchanges as if they were the first Dempster had heard of his embroilment in the matter, and as if his answers were spontaneous. The next part of the video is a short clip from the Channel Two news of 29 January 1993 showing Paul White acting as the ICAC spokesman in connection with Justice Cole's decision on open ICAC hearings. It was only in late January 1993 that I became aware that Mr White was working at the ICAC. What concerns me is that Mr White, who as a journalist reporting crucial ICAC hearings, was involved in conduct described by a fellow journalist as "deceptive, dishonest, indefensible and unacceptable, making an oxymoron of journalistic integrity", has now been appointed ICAC's media spokesman.

At the time that the "Media Watch" program came out, I was concerned by it and contemplated whether or not I should take any action. On reflection, however, I thought that at the end of the day, ABC management at least had handled the issue appropriately by allowing Stuart Littlemore to broadcast his "Media Watch" program. Accordingly, I decided to let the matter rest there. However, upon learning that Mr White is now employed by the ICAC itself I felt that I should raise the issue with the Committee, given the nature of the criticisms made by Mr Littlemore. In that regard, Mr Littlemore is a journalist of long standing and a senior media lawyer in New South Wales. It seems to me that given Mr Littlemore's very serious criticisms of Mr White's handling of the programs, given the importance to

the ICAC of the issues raised in the programs, and the position now held by Mr White at the ICAC, the matter should be referred to you for your consideration, especially in the context of whether or not the Public Sector Management Act 1988, and in particular Section 26, should apply to the ICAC. Section 26(1) is in the following terms:

26.(1) A department Head shall, for the purpose of determining the merit of the persons eligible for appointment to a vacant position under this Section have regard to:

- (a) the nature of the duties of the position; and
- (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.

The importance of this issue from the ICAC's perspective is surely demonstrated by the following quotes from a speech by Mr Temby to the St James Ethics Centre on 7th April, 1992, entitled "To Tell a Lie":

" . . . the truth is an absolute, and we must never forget it. Either a particular event occurred, or it did not. Similarly with statements. Similarly with the very fact of existence . . . "

" . . . the onus of persuasion must rest upon those who seek to justify known departures from the truth. I take that to be the definition of a lie . . . "

" . . . those who tell lies, even if driven to some form of acknowledgment, wish to avoid use of the word."

I therefore leave the matter with you to deal with as you think fit. In doing so, I end where I began, by saying that I have been and remain a strong supporter of the ICAC. However, this should not prohibit me from criticising the ICAC where I believe I have an obligation to do so. Mr Chairman, I think you know that I have spent a few days giving this matter the most careful thought. I have not come here lightly and in some ways it is a bit difficult for me to do so. I do not bear any personal grudge or animosity towards anybody concerned, I do not even want to particularly say anything about where the matter should go from here. I think it is entirely a matter for the



Committee. It may well be that the matter should not go any further. I raise those issues for you to look at. I considered whether it was an appropriate matter to raise in the Parliament or in some other way and, on reflection, I thought the most appropriate place to raise it was here in this forum.

**Mr TURNER:** Mr Tink, in viewing the exchange that occurred which gave rise to the report, was your impression that it was a very convenient vehicle for Mr Dempster for put on the public record his position?

**Mr TINK:** Mr Turner, if I can avoid it, I do not want to go into my personal views of the video. I guess if I did not have a strong view on the program I would not be sitting here. What is of concern to me is Mr Littlemore's comments. As a member of Parliament, perhaps I have certain views on the media at times which are not those of the general public, perhaps not even which are reasonable. What is of concern to me is Mr Littlemore's comments. I think it is also significant, even though it was only mentioned in passing, that plainly something happened at the ABC with the involvement of Peter Manning, if the *Sydney Morning Herald* article, which is referred to in that video, is in fact correct. As I say, when the matter first ran I was concerned about it. The ABC management, in a media sense, handled the matter appropriately by allowing Stewart Littlemore to have his say. That was one way of dealing with it. I therefore let it go. What has motivated me to come here now is the knowledge that Mr White is now working for the ICAC. I think that raises an issue which you need to look at.

**(The witness withdrew)**

**GREGORY EUGENE SMITH**, General Counsel Assisting the Independent Commission Against Corruption, of [REDACTED], examined:

**CHAIRMAN:** Mr Smith, would you like to respond to Mr Tink's statement?

**Mr SMITH:** I came down with Mr White at late notice because we received notice that there was going to be some evidence given which might be critical of Mr White. The matter is obviously one which Mr White and the commission need to look at. We have not had any previous notice of it so we would like some time—it is obviously something we have to look at. You have looked at a video; it is unusual and we would like more time. I would also like to say that so far as the commission is concerned the selection processes used were in accordance with the highest of standards and I was a member of the selection committee.

**CHAIRMAN:** I think you understand the difficulty the Committee was placed in and we have had to improvise to ensure fairness.

**Mr SMITH:** We appreciate the courtesy you have shown us.

**(The witness withdrew)**

**(The Committee adjourned at 1.12 p.m.)**

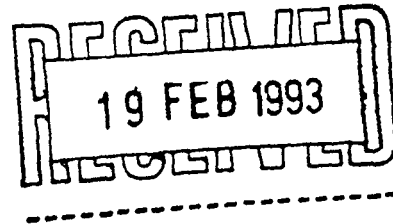


## INDEPENDENT COMMISSION AGAINST CORRUPTION

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Mr Malcolm Kerr  
Chairman  
Committee on the ICAC  
Room 1129  
121 Macquarie Street  
SYDNEY NSW 2000

17 February, 1993



Dear Mr Kerr,

I have received your letter forwarding the evidence given by Mr Tink MP to the Committee for the Commission's comment and response. Because of the process whereby Mr Tink was called to give evidence in a public hearing with very short notice to the Commission, an unwarranted slur against the Commission and Mr White is on the public record. Fairness requires that the Commission's response should also be put in the public domain, as quickly as possible.

As to the substance of Mr Tink's evidence several things can and should be said. Mr Tink seemed to present Mr Littlemore's opinions as if they were not just authoritative but conclusive. Many would argue with that.

It is surprising that Mr Tink would adopt Mr Littlemore's description of "deceptive, dishonest, indefensible and unacceptable, making an oxymoron of journalistic integrity" conduct which entailed, on Mr Littlemore's account, Mr White telling Mr Quentin Dempster something he already knew, that he was mentioned in Dr Metherell's diaries. Surely the Committee will not agree with Mr Littlemore's description.

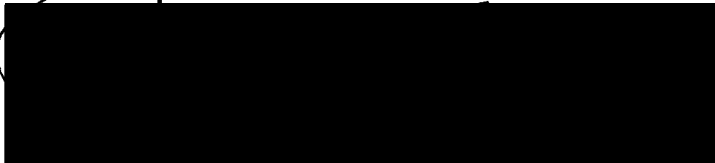
It is a common practice for Members of Parliament to put to Ministers questions in Parliament when both the Member and the Minister are previously aware of the question and the Minister has a prepared answer. The pretence is that the question and answer are spontaneous, but everyone in the House, and many outside it, know that this is not so. Surely neither the Committee nor Mr Tink would say that such a practice involves dishonesty nor casts doubt upon the integrity of the Members involved. This may be seen as analogous to the conduct which Mr Littlemore objected to.

It is worth noting that, although ABC management chose to change the format from an interview style to one in which Mr White presented reports alone, they did not cavil at the accuracy of his reporting. Mr White was kept on the story. Mr Dempster was taken off it, and understandably so.

The Commission will provide a separate submission as to whether Commission staff appointments should be covered by s26 of the Public Sector Management Act. However it should be said immediately that Mr White was employed after a selection process which involved advertising, interview of qualified applicants, obtaining reports from referees, and security vetting. His referees included a former very senior Supreme Court Judge, a Queen's Counsel and two senior journalists. He was the best available applicant for the position, on the basis of the criteria set out in s26 of the Public Sector Management Act. If the Commission had been bound by that section, the result would have been precisely the same.

Accordingly the argument is irrelevant to the stated conclusion.

Yours sincerely,

A large black rectangular redaction box covers the signature area. A handwritten mark, possibly a checkmark or a stylized signature, is visible to the right of the redaction.

**Ian Temby QC**  
**Commissioner**



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE ASSEMBLY

MEMBER FOR EASTWOOD

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5 March 1993

Mr. Malcolm Kerr, M.P.,  
Chairman,  
Parliamentary ICAC Committee,  
Parliament House,  
Sydney.

Dear Mr. Kerr,

I refer to Mr. Temby's response to the issues I raised with your Committee concerning the appointment of Paul White as ICAC's media spokesperson.

What most disappoints me about Mr. Temby's reply is that he has made no attempt to judge Mr. White's conduct depicted in the video against the standards Mr. Temby himself has set for others. It appears that is a judgement which will now be left to the Parliamentary Committee.

Instead, Mr. Temby has misconceived the role of questions without notice in an attempt to draw a favourable analogy with Mr. White's conduct. In that regard the Clerk has advised that questions without notice are so described to distinguish them from questions on notice in the sense that they are answered orally and immediately. However, there is no pretence that they are in all cases surprise questions which is at the heart of the conduct depicted in the video.

Precisely because Mr. Temby has not indicated that he has applied his own standards to the conduct in question, I am not in a position to accept his arguments about the Public Sector Management Act.

Yours sincerely,

ANDREW TINK, M.P.  
Member for Eastwood



Secretariat  
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Sydney NSW 2000

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## COMMITTEE ON THE ICAC

10 March 1993

Mr Andrew Tink MP  
Member for Eastwood  
Room 1124  
Parliament House  
SYDNEY NSW 2000

Dear Mr Tink

I refer to your letter of 05 March 1993 concerning Mr Temby's response to the issues you raised in relation to the appointment of Paul White as ICAC's media spokesperson.

Your letter was considered by the Committee at its meeting last night.

The Committee resolved that I should write to you to request that you clarify exactly what you want the Committee to do about this matter. The Committee asked that you elaborate on the nature of the "judgement" you expect the Committee to make as referred to in the sentence, "[i]t appears that is a judgement which will now be left to the Parliamentary Committee".

The Committee will next be meeting on 26 March 1993. It would be appreciated if your advice could be received in advance of that meeting.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Malcolm Kerr'.

Malcolm J Kerr MP  
Chairman

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PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE ASSEMBLY

MEMBER FOR EASTWOOD

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160 Rowe Street  
Eastwood NSW 2122

23 March 1993

P.O. Box 19, Eastwood 2122  
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Mr Malcolm Kerr, M.P.,  
Chairman,  
Parliamentary ICAC Committee,  
Room 1129,  
121 Macquarie Street,  
SYDNEY NSW 2000  
FAX NO 230 3057

Dear Mr. Kerr,

I refer to your letter of 10 March 1993 concerning Mr. Temby's response to issues I raised in relation to the appointment of Paul White as ICAC media spokesman.

In my view the key issues and matters for the Parliamentary Committee under Section 64 of the ICAC Act are:

- a) Whether or not Mr. Temby has and/or should have made an attempt to judge Mr. White's conduct depicted in the video against the standards Mr. Temby himself has set for others.
- b) Whether the Parliamentary Committee should report to Parliament on the matter, and
- c) Whether or not the matter is relevant to the wider issue of the applicability of the Public Sector Management Act to the ICAC which, I understand, has been referred to the Committee by the Premier.

Whilst I do not believe that Mr. White's further employment at the ICAC should be questioned, my view is that there should be some acknowledgment on the record by the ICAC that the conduct of its now employee depicted in the video falls short of the standards that Mr. Temby has set for others.

If Mr. Temby does not acknowledge this, then I believe the matter is an appropriate one for the Committee to consider and report to Parliament on especially because the ICAC itself has repeatedly stressed the importance of perceptions which I think are at the heart of the issues I have raised.

In the end, it is a matter for the Committee as to what further action, if any, to take on these issues.

Yours sincerely,

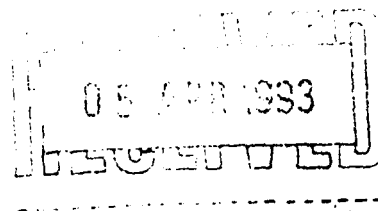
ANDREW TINK, M.P.  
Member for Eastwood



INDEPENDENT COMMISSION AGAINST CORRUPTION

1 April 1993

Mr M J Kerr MP  
Chairman  
Committee on the ICAC  
Parliament House  
SYDNEY NSW 2000



Dear Mr Kerr

I refer to your letter of 29 March, with which you enclosed letters from Mr Tink MP of 5 and 23 March.

The only relevant functions of your Committee are pursuant to s64(1)(a) and (b) of the ICAC Act, to monitor and review the exercise by the Commission of its functions, and if thought fit to report to Parliament. The functions of the Commission are prescribed by s12 and following. None of them have to do with the appointment of staff. The Commission then has powers, which are quite different from functions. General powers are conferred by s19, and specific powers by other sections. The Commission has the ability, by virtue of s104, to employ staff. That may be called a power, but it is not a function. It is necessary to enable the Commission to exercise its functions, but it is something quite distinct from a function.

Accordingly, it is urged, this is not a matter concerning which the Committee can report.

Nor should it. That is said for two reasons.

The first is that neither I, nor the selection committee which recommended Mr White's appointment to me, was mindful of the Littlemore criticism at the relevant times. Indeed, I did not even know of it. Of course it is not conceded that the criticism was justified, in its terms or at all: see the earlier letter. But even if it was, the selection process was proper, precise and in accordance with merit selection principles. As it happens, the same result would have been achieved had the relevant sections of the Public Sector Management Act applied to the Commission.

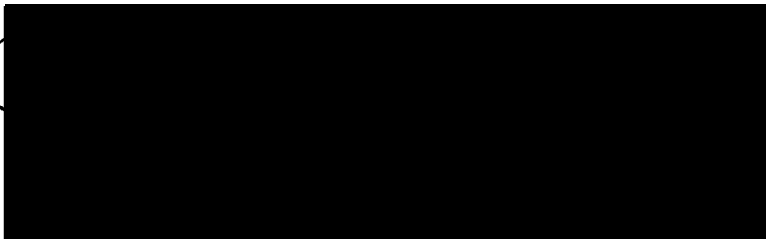
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As to the final point made by Mr Tink, I repeat what was said in the earlier letter, and what I said to the Committee on Friday last. The incorporation of certain principled provisions in our Act cannot be sensibly resisted, but the Public Sector Management Act should not be applied to the Commission. More importantly, there is no reason at all why Mr White's appointment should be seen as relevant in this respect.

I urge the Committee not to report as to the matter.

Yours faithfully



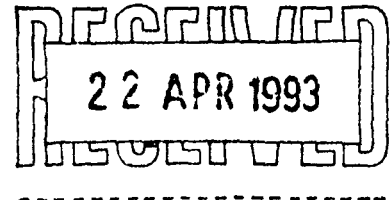


PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE ASSEMBLY

MEMBER FOR EASTWOOD

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21 April 1993



Mr. Malcolm Kerr, M.P.,  
Chairman,  
ICAC Committee,  
Parliament House,  
Sydney.

Dear Mr. Kerr,

I refer to Mr. Temby's letter to you of 1st April, 1993, concerning the appointment of Mr. Paul White.

As to Mr. Temby's argument that this is not a matter concerning which the Committee can report, I refer you to advice dated 28th June, 1991 from the State Crown Solicitors Office concerning the review of employment of staff by the ICAC which states inter alia:

"If Mr. Temby is saying that the Committee cannot monitor and review within the meaning of Section 64 (1) (a) of the ICAC Act the employment by the Commission of staff pursuant to Section 104, then I cannot agree."

Accordingly, I believe that it is within the Committee's power to report to Parliament on this matter.

Whilst Mr. Temby says that he was not aware of Mr. Littlemore's criticisms, I assume that Mr White himself would have been aware of them. If my assumption is correct, I find it surprising that, in the context of determining Mr. White's standard of work performance in connection with his application for employment, this issue would not have arisen in the course of discussions about Mr. White reporting ICAC matters for the ABC.

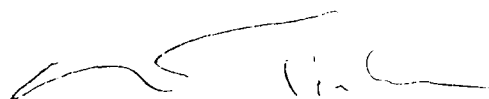
Whether or not it was discussed in the interview process my concern remains that Mr. Temby has made no attempt to judge Mr. White's conduct depicted in the video when he became aware of it against the standards Mr. Temby himself has set for others. To put it bluntly, and putting Mr. Littlemore's comments to one side, does Mr. Temby maintain now that the conduct as specified

in the video meets the standards he required in dealings with the media as specified in the Metherell Report and referred to at the St. James Ethics Centre? I believe the Committee is entitled to know, especially as Mr. White has been appointed as the public face of ICAC.

I also believe that the Committee can and should consider the issues raised and report to Parliament on them, or, at the very least, table the transcript and exchange of correspondence on this matter.

I look forward to you advising what action the Committee considers appropriate.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Tink', with a long horizontal stroke extending to the right.

ANDREW TINK, M.P.  
Member for Eastwood



Mr M J Kerr, MP  
Chairman  
Committee on ICAC  
Secretariat  
121 Macquarie Street  
SYDNEY NSW 2000

30 JUL 1991

Dear Mr Kerr

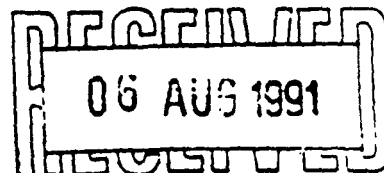
I refer to your letter seeking advice on the position of the Committee in relation to it reviewing the employment of staff by ICAC.

I have received advice from the Crown Solicitor and it is to the effect that, if Mr Temby is saying that the Committee cannot monitor and review, within the meaning of s.64(1)(a) of the Independent Commission Against Corruption Act 1988 the employment by the Commission of staff pursuant to s.104 then, with respect, this view is not supported.

A copy of the Crown Solicitor's advice is enclosed. I trust this advice is of assistance.

Yours faithfully

  
PETER COLLINS, MP  
Attorney General



# State Crown Solicitor's Office

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XXXXXXXXXX

28 June 1991

Re: Review of employment of staff by the ICAC.

1. Following receipt by the Attorney General of a letter from the Chairman of the Parliamentary Committee on the ICAC you have, by letter dated 24 June 1991, sought my advice on the following matters:

1. Is the employment of staff by the ICAC a matter which is properly reviewable by the Committee?
2. If the answer to 1. is no, is the employment of staff by the ICAC properly reviewable by any other agency or body?

2. Mr Temby apparently takes the view that the Committee's functions set out in s.64 of the Independent Commission Against Corruption Act 1988 ("the ICAC Act") include monitoring and reviewing the exercise by the Commission of its functions; that the Commission's functions are set out in ss.13 and 14 of the ICAC Act and that the employment of staff, dealt with in s.104, is not a function of the Commission but incidental to its functions. On this basis he says the employment of staff is not properly reviewable.

3. The Committee apparently feels Mr Temby may be taking a restrictive view in view of the broad functions provided for under s.64(1).

4. If Mr Temby is saying that the Committee cannot monitor and review within the meaning of s.64(1)(a) of the ICAC Act the employment by the Commission of staff pursuant to s.104, then I cannot agree.

Section 3(2)(a) of the ICAC Act provides that a reference to a function includes a reference to a power, authority and duty. Thus the reference to functions in s.64 includes powers, authorities and duties. The fact that s.3(2)(b) provides a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty does not mean a reference to the exercise of a function does not include the exercise of a power or authority. Section 3(2)(b) is designed to overcome the difficulty of using the word "exercise" in relation to a duty, one performs a duty rather than exercises it.

If the employment of staff cannot be described as a function, because it does not appear in either of the two sections which are headed "Principal functions" and "Other functions" (and that is not certain), it is, I consider, a power or authority conferred upon the Commission and thus the Committee has the function under s.64(1)(a) to monitor and review its exercise by the Commission and the function under s.64(1)(b) to report to both Houses on any matter connected with the exercise of it to which, in the opinion of the Committee, the attention of Parliament should be directed.

5. I should point out that other functions of the Committee in s.64 are not expressly restricted to the functions of the Commission. The function of reporting under s.64(1)(b) includes reporting on "any matter appertaining to the Commission". That under s.64(1)(c) is on any matter appearing in, or arising out of, each annual and other report of the Commission.

6. I consider the restriction in s.64(2)(a) is a restriction on investigating a matter relating to particular corrupt conduct and not upon particular matters relating to the Commission.

7. I answer your questions:

1. Yes.
2. Unnecessary to answer.

  
I V KNIGHT  
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for Crown Solicitor



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## COMMITTEE ON THE ICAC

01 May 1991

The Hon J R A Dowd QC, MP  
Attorney-General  
Level 20  
Goodsell Building  
Chifley Square  
SYDNEY NSW 2000

Dear Mr Dowd

I am writing to seek, through you, the advice of the Crown Solicitor on a matter which has come before the Committee on the ICAC.

Earlier this year the Committee received a complaint from a person whose secondment with the ICAC had been terminated. The complaint concerned the way in which the termination had been carried out and the reasons for the termination.

There has been some correspondence between the Committee and the Commission on this issue. The last letter which the Committee received from Mr Temby, and which was considered by the Committee at its meeting last night, contained the following advice.

"I am of the view that the Committee's request for details about the termination of ... secondment is not part of its statutory functions. My reasoning is as follows. The Committee's functions, as set out in section 64 of the ICAC Act, include monitoring and reviewing the exercise by the Commission of its functions. The Commission's functions are set out in sections 13 and 14 of the ICAC Act. Employment of staff, which is dealt with in section 104, is not a function of the Commission, but incidental to its functions. In my view it is not properly reviewable by the Committee."

The Committee feels that Mr Temby may be taking a restrictive view of the Committee's functions, in view of the broad functions provided for under s.64(1) of the ICAC Act 1988.

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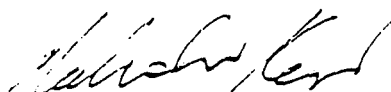
The Hon J R A Dowd QC MP  
01 May 1991

I would seek the Crown Solicitor's advice on the following questions.

- 1 Is the employment of staff by the ICAC a matter which is properly reviewable by the Committee?
- 2 If the answer to (1) above is no, is the employment of staff by the ICAC properly reviewable by any other agency or body?

Should your officers or the Crown Solicitor's officers require any further information they should contact the Project Officer, Mr David Blunt, on 287 6624.

Yours sincerely



M J Kerr MP  
Chairman