



Committee on the ICAC
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PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

**REPORT OF AN INQUIRY INTO MATTERS RAISED BY
PAUL GIBSON MP**

DECEMBER 1991

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**COMMITTEE ON THE
INDEPENDENT COMMISSION AGAINST CORRUPTION**

MEMBERS

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

STAFF

Ms R Miller, Clerk to the Committee
Mr D M Blunt, Project Officer
Miss G 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."

TERMS OF REFERENCE

"That, in view of the comments on the ICAC made by the Hon Member for Londonderry in the Legislative Assembly on 12 September, 1991, the Parliamentary Joint Committee on the ICAC inquire into and report to both Houses upon:

- 1 The procedures and structures for the management and control of ICAC investigations and operational activities;
- 2 The relationship between the ICAC and other agencies involved in investigating or prosecuting corruption;
- 3 The Witness Protection facilities available to those assisting the ICAC with its investigations.

In carrying out the Inquiry the Committee shall have regard to any matters that may prejudice pending criminal proceedings as confidential matters which, accordingly, should be dealt with in private.

In conducting the Inquiry the Committee shall have due regard to the terms of s.64(2) of the Independent Commission Against Corruption Act 1988."

CHAIRMANS' FOREWORD

REPORT OF AN INQUIRY INTO MATTERS RAISED BY PAUL GIBSON MP

- This report is essentially concerned with the management and control of ICAC investigations and a number of related matters which emerged in the context of a particular ICAC operation which took place in July 1990.

The Committee's inquiry arose out of a speech in the Legislative Assembly on 12 September 1991 by the Member for Londonderry, Mr Paul Gibson MP. This speech contained a number of serious allegations in relation to the ICAC's dealings with Mr Louie Bayeh. It raised serious questions about the management of ICAC operations and the ICAC's competence generally. A number of the matters raised by Mr Gibson were referred to the Committee by both Houses of Parliament under s.64(1)(e) of the ICAC Act.

I would emphasise that it is not the role of the Committee to investigate corruption. Indeed, under s.64(2) of the ICAC Act the Committee is precluded from doing that. Therefore, the Committee has made no comment in this report on what may or may not have happened at the luncheon at the La Fontana restaurant (see Chapter 3).

However, due to the serious nature of the matters raised by Mr Gibson, the Committee has taken the view that it is important in the public interest that the ICAC's dealings with Mr Bayeh be clearly set out and open to public scrutiny. Chapter 3 of the report contains a detailed chronology of the Bayeh matter and significant aspects of the evidence taken by the Committee in relation to this matter. It is up to readers of that chapter to come to their own conclusions about the ICAC's handling of this matter.

It should be noted that in deciding to publish this material the Committee had been mindful of the fact that criminal proceedings are pending against Mr Bayeh. The Committee has sought the advice of the Office of the Director of Public Prosecutions as to which material could be published without prejudicing those proceedings.

The Committee's findings and recommendations in relation to the three terms of reference are summarised at the front of this report. As with the reports of the former Committee in its "Inquiry into Commission Procedures and the Rights of Witnesses", this report contains extensive quotes from the evidence taken before the Committee. This will enable readers to fully appreciate why the Committee has reached its findings and recommendations.

- I would like to express the Committee's appreciation to all those who made submissions and gave evidence before the Committee, including a number of present and former staff of the ICAC. The co-operation of the ICAC has been evident throughout this inquiry. I would specifically like to express the Committee's appreciation for the wealth of material prepared for the Committee by the ICAC's General Counsel, Kevin Zervos.

CHAIRMANS' FOREWORD

CONTINUED

REPORT OF AN INQUIRY INTO MATTERS RAISED BY PAUL GIBSON MP

I believe the tabling of this report within three months of Mr Gibson's speech in the Legislative Assembly in September is a testament to the diligence and commitment of the Committee. The workload upon all members of the Committee has been onerous over the last three months. It is only the dedication of members of the Committee and the bipartisan spirit in which they have gone about this task which has enabled this report to be completed in such a short time.



M J Kerr MP
Chairman

FINDINGS AND RECOMMENDATIONS

REPORT OF AN INQUIRY INTO MATTERS RAISED BY PAUL GIBSON MP

MANAGEMENT AND CONTROL OF ICAC OPERATIONS

- 4.6.1 When Mr Bayeh first approached the ICAC in July 1990 the procedures and structures for the management and control of ICAC investigations and operational activities were inadequate. There was not a single line of command or an effective command structure. There was no completed investigation manual and there was no standard operating procedure for the management of informants.
- 4.6.2 The position has improved significantly since July 1990. The Committee notes that the ICAC now has a well developed operations strategy. There is now in existence a completed investigation manual. There is now a standard operating procedure entitled "Command and Responsibility - Operations Department" which clearly spells out the command structure in the Operations Department. There is also a standard operating procedure on dealing with informants.
- 4.6.3 The Committee hopes that these improvements to the procedures and structures for the management and control of ICAC investigations and operational activities would ensure that complex matters such as the approach by Mr Bayeh would now be handled more effectively.
- 4.6.4 Whilst acknowledging the need for flexibility and the use of multi-disciplined teams by the Commission, the Committee believes it is essential that the command structure outlined in SOP 1/91 "Command and Responsibility - Operations Department" is followed. Until such time as matters reach the public hearing stage, investigations should be run by Chief Investigators who are under the command of the Director of Operations through the Deputy Director.
- 4.6.5 The Committee sees considerable merit in Mr Roden's proposal for the establishment of a position of Deputy Commissioner, and recommends the establishment of such a position. There are a number of issues to be resolved before an appointment is made, including the duties and necessary qualifications of the person holding the position. The Committee would wish to be involved in the resolution of these issues. The Committee has noted that the agreement between the Government and the non-aligned Independents in the Legislative Assembly provided for the appointment of the Commissioner of the ICAC, amongst other office holders, to be subject to the approval of an all-party Parliamentary Committee. The Committee would suggest that a similar arrangement be applied in respect of the proposed position of Deputy Commissioner of the ICAC.

FINDINGS AND RECOMMENDATIONS CONTINUED

REPORT OF AN INQUIRY INTO MATTERS RAISED BY PAUL GIBSON MP

- 4.6.6 The Committee has not come to a position concerning Mr Roden's proposal for a distinction to be drawn between the roles of the person managing the Commission and those presiding over hearings. The Committee has included Mr Roden's statement to the Committee and his evidence as an appendix with a view to encouraging further discussion and consideration of this proposal.

RELATIONSHIP BETWEEN THE ICAC AND OTHER AGENCIES

- 5.10.1 The evidence before the Committee indicates that the ICAC and other agencies involved in investigating or prosecuting corruption have developed effective working relationships. Indeed the Committee commends the steps which have been taken, particularly by agencies with responsibilities in respect of complaints against Police, to develop formal and informal liaison mechanisms to ensure matters are dealt with efficiently and effectively.
- 5.10.2 The Committee commends both the ICAC and other investigative agencies upon the mutual co-operation and assistance which is characterising their relationships. The Committee is particularly impressed with the assistance which the NSW Police Service has been providing to the ICAC, including the provision of investigative manuals and the availability of the head of the IPSU to address ICAC investigators on investigative procedures.
- 5.10.3 The Committee would draw the Government's attention to the increasing number of referrals which the Office of the Director of Public Prosecutions is receiving from the ICAC. The Office of the Director of Public Prosecutions may require extra resources in order to ensure these referrals are dealt with in a timely manner.

WITNESS PROTECTION

- 6.4.1 The Committee supports the ICAC's decision not to establish its own witness protection facilities. In most cases where individuals assisting the ICAC require protection it will be appropriate for the Commission to make use of the witness protection facilities of either the NSW Police or the Australia Federal Police. However, in exceptional circumstances it might be most appropriate for the ICAC to consider using the facilities of another agency, such as the Criminal Justice Commission.
- 6.4.2 The Committee draws attention to the need for complementary State and Federal witness protection legislation and is concerned at the delay which has occurred in the finalisation of a national legislative scheme. The Committee calls on the Government to take all possible steps to ensure that work on a national legislative scheme is completed as soon as possible.

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INTRODUCTION

1.1 BACKGROUND TO INQUIRY

1.1.1 On 12 September 1991 the Member for Londonderry, Mr Paul Gibson MP, made a speech in the Legislative Assembly on a matter of parliamentary privilege.¹ The speech outlined the representations Mr Gibson had made on behalf of "a person in the community" and a number of threats and an assault to which he was subsequently subjected. The Legislative Assembly unanimously agreed to a motion put by Mr Gibson, that "this House:

- 1 views with grave concern the actions of certain persons in assaulting and threatening the honourable member for Londonderry;
- 2 re-affirms the principle that any action which attempts to obstruct or impede a member in properly carrying out his or her duty as a member constitutes a contempt of this House; and
- 3 calls upon the responsible authorities to fully investigate, as a matter of the greatest urgency, the matters raised by the honourable member today."

1.1.2 Mr Gibson's speech outlined his dealings with the NSW Police and the ICAC in relation to the matters raised by the individual who had approached him, namely Mr Louie Bayeh. The speech also outlined Mr Bayeh's dealings with the NSW Police and the ICAC. The speech contained a number of very serious allegations in relation to the ICAC's dealings with Mr Bayeh and its handling of this matter generally. Furthermore, serious questions were raised about the management of ICAC operations and the capacity of the ICAC to pursue matters such as this. (The major points raised in Mr Gibson's speech are discussed in Chapter 2.)

1.2 REFERENCE FROM PARLIAMENT

1.2.1 On Thursday 19 September 1991, the Premier moved the following motion in the Legislative Assembly;

"That, in view of the comments on the ICAC made by the Hon Member for Londonderry in the Legislative Assembly on 12 September, 1991, the Parliamentary Joint Committee on the ICAC inquire into and

¹ NSW Parliamentary Debates, 12 September 1991, pp 1114-1118, 1130-1134, 1135-1146.

report to both Houses upon:

- 1 The procedures and structures for the management and control of ICAC investigations and operational activities;
- 2 The relationship between the ICAC and other agencies involved in investigating or prosecuting corruption;
- 3 The Witness Protection facilities available to those assisting the ICAC with its investigations.

In carrying out the Inquiry the Committee shall have regard to any matters that may prejudice pending criminal proceedings as confidential matters which, accordingly, should be dealt with in private.

In conducting the Inquiry the Committee shall have due regard to the terms of s.64(2) of the Independent Commission Against Corruption Act 1988."

1.2.2 There was considerable debate on the Premier's motion and the Members for Ashfield and Auburn raised concerns about the protection available to persons giving evidence before the Committee while it conducted such an inquiry.² At the conclusion of the debate, the Attorney-General tabled written advice from the Solicitor-General. That advice was that:

"I confirm advice previously given that: -

- 1 The motion attached if passed would comply with s.64(1)(e) of the Independent Commission Against Corruption Act 1988 ("the ICAC Act"). The final sentence was in fact inserted at my suggestion in order to ensure compliance with s.64(2) of that Act.
- 2 Witnesses who give evidence before the Joint Committee are absolutely privileged against liability in defamation; see ICAC Act, ss.63 and 71, Parliamentary Evidence Act 1901, ss.4(2), 12 and 14."

1.2.3 The same motion was passed by the Legislative Council the following week.

² NSW Parliamentary Debates, 19 September 1991, pp 1394-1411.

1.3 COMMITTEE'S APPROACH

- 1.3.1 In view of the seriousness of the matters raised in Parliament by Mr Gibson, the Committee decided to begin work on this reference immediately. As a first step the Chairman wrote to a number of agencies and individuals who it was thought may be able to provide assistance in relation to the second and third terms of reference. Submissions on these issues were requested by 25 October. The major submissions and the evidence taken by the Committee in relation to these terms of reference are outlined in chapters 5 and 6.
- 1.3.2 At the same time the Committee moved to piece together what exactly happened in the ICAC's dealings with Mr Bayeh and to begin to take evidence in relation to the first term of reference. In accordance with the direction in the reference from Parliament about confidentiality, much of this evidence was taken "in camera". The first witness to appear before the Committee was Mr Vic Anderson, the ICAC's Director of Operations at the time Mr Bayeh first approached the Commission. Mr Anderson gave evidence on 24 September. On 26 September the Committee received evidence from Mr Roy Waldon and Ms Deborah Alderton, the two ICAC officers who attended the luncheon at the La Fontana restaurant.
- 1.3.3 By this stage the ICAC had notified the Committee that it had nominated Kevin Zervos, General Counsel, as a contact person for the purpose of this inquiry. During the course of the inquiry Mr Zervos provided the Committee with a wealth of material, including statements of facts, analyses of the evidence before the Committee, various Commission documents and tape recordings. Mr Zervos also gave evidence at two hearings on 14 October and 07 November.
- 1.3.4 On 14 October the Committee received evidence from Ms Gabrielle Drennan and Mr Peter Wallace, the two ICAC officers who had carriage of the Bayeh matter, as well as Mr Zervos. Mr Peter Lamb, the current Director of Operations with the ICAC, appeared before the Committee on 15 October.
- 1.3.5 Evidence was taken in relation to the second and third terms of reference on 06 and 07 November. A full list of witnesses appears as an appendix to the report. Evidence was also taken on 06 November in relation to the first term of reference from the Hon Adrian Roden QC, Assistant Commissioner with the ICAC. Representatives of the NSW Police Service who appeared before the Committee on 07 November were also questioned at length about the first term of reference and the Bayeh matter. Mr Zervos also gave evidence in relation to these issues on 07 November. As a result of matters discussed during that evidence, Mr Zervos attended a meeting of the Committee on 12 November. He brought along two audiotapes of conversations involving Mr Bayeh recorded with Mr Bayeh's consent at the ICAC premises on 24 July 1990 (see 3.2.6 below).
- 1.3.6 The Committee held a deliberative meeting to consider the evidence taken in this inquiry on 14 October. At that meeting the Committee resolved its general position on the salient issues. A draft report was then prepared and circulated to Committee

members in advance of a deliberative meeting on 02 December.

- 1.3.7 It should be noted that a number of persons came forward to assist the Committee with this inquiry. Evidence was taken from a number of persons on the undertaking that their evidence, and indeed their names, would be treated in the strictest of confidence. Whilst the Committee recognises that this was an unusual step to take, it was felt that the Committee would not have been properly fulfilling its role without pursuing every possible lead.
- 1.3.8 It should be emphasised, however, that the Committee has only drawn conclusions which could be based upon evidence to which the Committee could point. This means evidence which was given in public or "in camera" evidence which witnesses have consented to being made public and to which the ICAC has had an opportunity to respond.
- 1.3.9 During the course of the inquiry Paul Gibson MP was invited to appear before the Committee to give evidence. In a letter to the Chairman dated 14 November Mr Gibson declined the Committee's invitation to appear, indicating that he had nothing further to add to what he had said in the Legislative Assembly on 12 September.
- 1.3.10 The reference from Parliament directed the Committee to "have regard to any matters that may prejudice pending criminal proceedings as confidential matters which, accordingly, should be dealt with in private". As noted in paragraph 1.3.2 above, the Committee therefore took evidence "in camera" in relation to the ICAC's dealings with Mr Bayeh. However, in order for this report to address the public interest matters raised by Mr Gibson and indeed for the findings and recommendations contained in this report to be placed in proper context, the Committee felt it was necessary for an account of the ICAC's dealings with Mr Bayeh to be included. To ensure that publication of this material would not prejudice pending criminal proceedings the advice of the Office of the Director of Public Prosecutions was sought on relevant sections of a first draft of this report. A number of paragraphs were removed from the report in view of the advice that was received. The Committee was advised that there was no problem with the publication of any of the other material in the report concerning the ICAC's dealings with Mr Bayeh.

MATTERS RAISED BY PAUL GIBSON MP

2.1.1 This chapter seeks to briefly summarise the major points raised by Mr Gibson in his speech in the Legislative Assembly on 12 September 1991.

2.1.2 Mr Gibson questioned the ICAC's handling of the matter involving Mr Bayeh. He said that the investigation was "botched by ICAC in the early stages". He was particularly critical of the ICAC's actions in relation to the luncheon at the La Fontana restaurant (see section 3.2 below). Mr Gibson suggested that perhaps the ICAC should have supplied the money which Mr Bayeh allegedly paid to a Police Officer at the luncheon or that the money should have been reimbursed by the ICAC. He said the ICAC made a mistake by not noting the serial number of the bank notes and made another mistake by not having Police officers on hand to make an arrest when the money was paid. Mr Gibson further stated that the "whole process was done by ICAC" and that the arrangements for the meeting "were done at ICAC's office".³

2.1.3 Mr Gibson also made some more general comments in relation to the ICAC's management of investigations.

"Initially ICAC was run by a lot of naive lawyers who knew nothing about police work. The people now at ICAC are spot on."⁴

2.1.4 Mr Gibson made a number of comments about the relationship between the ICAC and the Internal Police Security Unit, suggesting that he was the victim of buckpassing as he pursued this matter.

"Over the next few months I was bounced backwards and forwards between the Independent Commission Against Corruption and internal security, without any appreciable progress. I began to form the opinion that I was getting the run-around, presumably in the hope that I would drop off the case."⁵

"As I said, I have come up against ICAC and internal security, about which I will say a little more presently, and it has been passed from one body to another. We have gone around in a circle and got

³ NSW Parliamentary Debates, 12 September 1991, pp 1135-1137.

⁴ *ibid*, p 1138.

⁵ *ibid*, p 1114.

absolutely nowhere."⁶

- 2.1.5 Mr Gibson also made critical comments in relation to the ICAC and the question of witness protection. He said the ICAC did not have the legislative power or resources to provide witness protection. He asked, "who do we go to for protection of our lives as members of Parliament? There is nowhere to go."

"Also with ICAC we find that if you are looking into an investigation such as this and you take the case as far as you can take it, what happens when you start to get into the serious bit and you need witness protection? I will tell you what happens when you need witness protection. ICAC cannot supply it because it does not have the legislative power, the resources, the finance or the manpower to do it. If you require witness protection when you are investigating NSW police where do you go for witness protection? - you go back to the NSW police. It is like leaving your chooks with Colonel Sanders to mind for the weekend. That is exactly what happened in this case."⁷

⁶ *ibid*, p 1136.

⁷ *ibid*.

BAYEH MATTER

3.1.1 As set out in the preceding chapters, Mr Gibson's allegations about the ICAC were concerned with the ICAC's dealings with Mr Louie Bayeh. During this inquiry the Committee has been keen to piece together exactly what happened in the Commission's dealings with Mr Bayeh, particularly on the day of the luncheon at the La Fontana restaurant. Set out below is an outline of the events of that day and the ICAC's dealings with Mr Bayeh generally.

3.2 OUTLINE OF EVENTS⁸

24 JULY 1990: Before the Luncheon

3.2.1 At approximately 9.30 am on Tuesday 24 July 1990 the ICAC received a phone call from Mr Bayeh's solicitor, indicating that his client wished to make a serious complaint. The call was put through to Ms Gabrielle Drennan, a Principal Lawyer with the Commission. Ms Drennan said in evidence to the Committee that she did not know why the call was put through to her, other than that she was one of the more senior lawyers and had done some work generally on police corruption.

3.2.2 Ms Drennan spoke to the solicitor for five or ten minutes and invited him to attend the Commission immediately. Ms Drennan indicated to the Committee that she conferred with the Director of Operations before the solicitor arrived. When the solicitor arrived Ms Drennan and Mr Peter Wallace, a Chief Investigator with the Commission, met with him in an interview room for approximately one hour from 10.00 am to 11.00 am.

3.2.3 During this meeting the solicitor advised Ms Drennan and Mr Wallace that Mr Bayeh believed he had recently been "set up" and charged with a number of offences including possession and supply of heroin. Mr Bayeh had contacted a senior Police officer to find out who was behind the "set up". He was told that for a payment of \$10,000 he would be provided with this information. Discussions took place between Mr Bayeh and various Police officers about arrangements for the payment and on Monday 23 July 1990 Mr Bayeh was told that the following day he would receive a telephone call at about 12.00 noon giving details about the meeting place where the \$10,000 should be handed over. Mr Bayeh's solicitor made it clear that Mr Bayeh's motivation in approaching the ICAC was to have the charges against him dropped. In return for this he may be prepared to provide the Commission with information about Police corruption in the Kings Cross area over a 20 year period.

⁸ This section relies heavily on a document prepared for the Committee by Kevin Zervos, General Counsel of the ICAC entitled "The Louis Bayeh Matter: Statement of facts". Any quotes in this section are taken from that document unless otherwise indicated.

- 3.2.4 Following this conversation, Ms Drennan and Mr Wallace advised the solicitor that the ICAC was interested in the matter and that Mr Bayeh should attend the Commission immediately. Ms Drennan asked Ms Deborah Alderton, a senior criminal analyst, to conduct a criminal record check upon Mr Bayeh. At this time it appears that Ms Drennan and Mr Wallace made a decision that "because of the shortness of time about the best the Commission could do was to monitor the call to Bayeh from the person advising the location of the hand-over and monitor any subsequent transaction".
- 3.2.5 Mr Bayeh arrived at the ICAC at about 12.00 noon. He said the meeting with police had been set down for 1.00 pm to 1.30 pm that day. Ms Drennan and Mr Wallace asked him to delay the luncheon but Mr Bayeh said he did not consider that a viable option. Mr Bayeh indicated that the officer who was to receive the money that day was only an intermediary and he did not want that officer harmed (ie. he would not be prepared to give evidence against him). Nor did he want his own involvement disclosed. He also indicated that at that stage he was not certain he would be prepared to go ahead with the deal and make the payment.
- 3.2.6 At approximately 12.30 pm Mr Bayeh received a call on his mobile phone, and indicated it was from the police officer who was to act as the intermediary. Mr Bayeh returned the call and his side of the conversation was recorded with his consent. Discussion took place about meeting at the La Fontana restaurant at Leichhardt at 3.00 pm that day. "However, Bayeh insisted the meeting not be put back to 3.00 pm, saying that he wanted to meet earlier as previously arranged being 12.00 to 12.30 pm. He did this despite having been previously asked by Wallace and Drennan to delay the meetings". [It should be noted that this telephone conversation was recorded with Mr Bayeh's consent. However, for obvious reasons it was impossible to get a warrant for a telephone intercept, and only Mr Bayeh's end of the conversation was recorded. For the ICAC to have recorded the other end of the conversation would have been illegal.]
- 3.2.7 Mr Wallace then requested Mr Anderson to organise for AFP surveillance of the luncheon. At approximately 1.00 pm Ms Drennan and Mr Wallace, together with Mr Anderson, came to the office of Mr Roy Waldon, a Senior Lawyer with the Commission, to discuss the possibility of getting a warrant for a listening device. A decision was made that there was insufficient time in which to do so. There was also doubt as to whether the Commission had enough reliable material to obtain a warrant. Furthermore, the Commission was not sure at that stage whether Mr Bayeh could be trusted "to wear a wire in circumstances where the Commission could not control the environment or him". There was also discussion about the possibility of marking the money or recording the serial number of the notes. It was decided that there was insufficient time. In any case Mr Bayeh had not yet got the money from the bank.
- 3.2.8 There was some discussion about who would attend the luncheon. There was little time left before the luncheon and there were no suitable investigators available. It was decided to send Mr Waldon and Ms Alderton - a mixed pair who did not look like

Police officers or investigators, and who would not arouse suspicion. Mr Waldon and Ms Alderton viewed Mr Bayeh so that they could identify him at the restaurant. They were told to merely observe what happened.

At the Luncheon

- 3.2.9 Mr Waldon and Ms Alderton arrived at the restaurant at approximately 2.00 pm. Mr Bayeh was already there, seated at a table with six other men. At about 2.15 pm Mr Bayeh and the man seated to his left got up from the table and had a discussion at the back of the restaurant for 5 to 10 minutes. At about 3.00 pm Mr Bayeh left the restaurant with two men seated at another table. (Mr Bayeh later said he had gone to the local branch of the National Australia Bank and withdrawn \$12,000 on his gold Mastercard.) Mr Bayeh returned to the restaurant at about 3.15 pm. He again left the table with the man to his left. This time they went into the toilets at the rear of the restaurant. After 5 minutes they came back into the restaurant and Mr Waldon noticed a square bulge in the man's pocket.

After the Luncheon

- 3.2.10 At approximately 3.30 pm Mr Bayeh left the restaurant and returned to the ICAC. Mr Waldon and Ms Alderton remained at the restaurant for some time. Upon leaving at about 4.35 pm they notice what they thought was the AFP surveillance team sitting in a car opposite the restaurant. They returned to the Commission at approximately 5.00 pm and dictated notes describing what they had observed.
- 3.2.11 Upon returning to the Commission Mr Bayeh was interviewed, in the presence of his solicitor, by Ms Drennan and Mr Wallace. This interview was recorded with Mr Bayeh's consent. Arrangements were made for Mr Bayeh to have a "24 hour contact arrangement with Commission response". Mr Bayeh made it clear that he was interested in having the charges against him dropped and those responsible for the "set-up" charged, without his role in the operation being disclosed. He also made it clear that he would not give evidence. Ms Drennan prepared a minute for the Assistant Commissioner (Mr Temby was absent at the time) and the Director of Operations detailing the dealings with Mr Bayeh on 24 July.

AFTER 24 JULY 1990

- 3.2.12 Between 25 July and 09 August 1990 there were a number of discussions involving Mr Bayeh, his solicitor, Ms Drennan and Mr Wallace. These discussions centred around the possibility of Mr Bayeh giving evidence about the events of 24 July, the possibility of him providing the Commission with evidence about other matters (police corruption generally) and Mr Bayeh's demands in return for this sort of co-operation. These demands included the dropping of the charges against him, total immunity from prosecution, 24 hour surveillance on his home for 12 months, reimbursement of money paid to Police and legal fees, income maintenance of \$1,000 per week, the purchase of a property overseas at a cost of about \$300,00 - \$400,000, and payment of \$3 million.

- 3.2.13 On 30 July Ms Drennan submitted a comprehensive report to the Commissioner (who had now returned) concerning the Commission's dealings and subsequent negotiations with Mr Bayeh. Ms Drennan suggested that whilst the \$3 million payment was out of the question "there was room for negotiations in relation to the property and income maintenance". Following further negotiations, Ms Drennan submitted another report to the Commissioner on 09 August. This recommended that the ICAC not agree to Mr Bayeh's conditions. Mr Temby endorsed the views expressed by Ms Drennan in her minute.
- 3.2.14 Ms Drennan and Mr Wallace met with Mr Bayeh's solicitor on 09 August to convey the ICAC's response to Mr Bayeh's conditions. Ms Drennan and Mr Bayeh's solicitor then "discussed the categorisation of this matter, the meaning of complaint under the ICAC Act and the role of the Operations Review Committee. It was explained that in the circumstances in which the matter arose the Commission had not regarded it as a complaint but rather the provision of information. [Mr Bayeh's solicitor] requested that it be treated as other than a complaint".
- 3.2.15 It appears that Mr Bayeh subsequently contacted the Internal Police Security Unit in relation to this matter. The IPSU then contacted the ICAC in October 1990. From that time "there have been numerous discussions and dealing between officers of IPSU and the Commission in relation to the Bayeh matter". Statements were taken from various ICAC officers and Ms Drennan provided the IPSU with the tapes of the debriefing interview which took place with Mr Bayeh after the luncheon at the La Fontana restaurant.
- 3.2.16 It then appears that Paul Gibson MP took up Mr Bayeh's case in November 1990. After Sandra Nori MP contacted Mr Temby, Mr Gibson met with the former Commission Secretary, Mr David Catt, on 19 February 1991 to discuss the matter. Mr Gibson sought information from the Commission and subsequently made further representations on behalf of Mr Bayeh in relation to the charges against him and for Mr Bayeh to receive witness protection. In response to these representations, Peter Lamb who had by now taken up the position of Director of Operations with the ICAC, arranged for a threat assessment to be undertaken in relation to Mr Bayeh. Mr Gibson and Mr Bayeh subsequently meet with Mr Lamb on 19 July 1991. However, no new evidence was provided to Mr Lamb. It was at this meeting that Mr Gibson mentioned that he had received threats to his personal safety. Mr Lamb suggested that Mr Gibson should treat these threats seriously and report them to the Police. Mr Gibson said he had reported the threats. In any case Mr Lamb notified the Police about these threats and offered his assistance.
- 3.2.17 It is unclear what action was taken on this matter by the IPSU between October 1990 and June 1991. However it appears that there was a perception at least that it had taken too long for this matter to be resolved. When the current head of the IPSU, Mr Robert Myatt, appeared before the Committee on 07 November the following exchange took place:

"MR MYATT:

A: ... In about June this year I was tasked to get stuck into, if you like, the operation. We did just that. What is known as our reactive team was committed to finalising that matter because it had to be conceded that the matter had been proceeding for some considerable time...

CHAIRMAN:

Q: That was in response to it having taken too long up to that stage?

A: Yes, I think that is fair comment."

3.2.18 From June of this year the matter was pursued with some vigour by the IPSU. A brief was prepared which went to the Director of Public Prosecutions, who gave his advice in relation to the matter on 17 September 1991. The Attorney-General read that advice in Parliament.⁹ The relevant extract is reproduced below.

"In July 1990 the above defendant went to the ICAC to complain about the charges and to advise them of a lunch organised at the La Fontana Restaurant at Leichhardt at which he might pay money to police for information about the charges he alleged had been fabricated.

The defendant alleges he paid \$12,000 to a police officer at that lunch. He states he left the restaurant with two friends and withdrew \$12,000 made up of \$5,000 in \$100 notes and \$7,000 in \$50 notes. He says he returned to the restaurant with the money and subsequently went to the toilet at the same time as the police officer. There he says he handed over the money.

Essentially the assessment of this allegation depends upon evaluating the assertion of the defendant. That evaluation must be made against the background that in order to prove a criminal charge proof must exist to establish the offence beyond reasonable doubt. Normally that is difficult where the evidence is only from one witness.

In this case the lunch itself was witnessed by two employees of the ICAC and Federal police officers as well as two of the defendant's friends. The fact that he drew out \$12,000 cash on the day can be verified from bank records and by the testimony of his two friends. The payment of the money, however, cannot be verified. He was observed to go to the toilet area of the restaurant at the same time as

⁹ NSW Parliamentary Debates, 17 September 1991, pp 1191-1193.

the police officer. One of the ICAC officers noticed a bulge in one of the policeman's pockets when he returned from the toilet area. He cannot say, however, that this bulge was not there before the policeman went into the toilet. He can only say he is "fairly certain". Moreover the defendant says the policeman put money into different pockets.

In evaluating this question it is also necessary to look at the creditworthiness of any possible witnesses. I have done that and I have recorded my evaluation in another document. It would not be appropriate to publish that evaluation at this stage.

There is the further consideration that since the defendant is presently being prosecuted he is not compelled to give evidence about aspects of this matter which touch on the charges laid against him by the police. If a prosecution of this matter were to proceed before the hearing of the charges against him it would be necessary to indemnify the defendant to enable him to give evidence. This would require the termination of the charges against him and there is no basis for taking such an action. Any prosecution after the charges against the defendant could only be contemplated if he were acquitted because if he were convicted, the basis of his complaint to the ICAC would have been proved to be wrong.

Evaluating all these matters I can only conclude that no prosecution of any police officer on the basis of this evidence would be justified at this stage."

3.3 THE ICAC's JUSTIFICATION FOR ITS ACTIONS

3.3.1 On 06 November Mr Zervos provided the Committee with a number of documents in relation to the inquiry. One of these was entitled "Analysis of the Evidence". This document provided the Commission's response to the evidence presented to the Committee up to that point, including suggestions that the ICAC should have handled the Bayeh matter differently. The following extract from that document provides the Commission's justification for its actions in this matter.

"The Independent Commission Against Corruption had been established just under 18 months when Louis Bayeh approached the Commission. The matter was handled professionally and efficiently by those officers involved. It was not "botched" as has been alleged. While with the benefit of hindsight one may speculate about other ways in which the matter might have been handled, it is important to recognise that the officers involved responded to an urgent and complex situation

professionally and properly, in a manner appropriate to the circumstances which confronted them. Those officers were experienced in dealing with matters of criminal investigation and prosecution and the management of informants.

Louis Bayeh's allegations were brought to the attention of Commission staff only three hours before Bayeh was supposedly due to meet police officers who had allegedly solicited a bribe of \$10 000. By the time Bayeh's lawyer had arrived at the Commission premises and discussed the matter in necessary detail, one and a half hours had elapsed. It was thought necessary to obtain from Bayeh a first hand account of the circumstances surrounding the matter. It was not appropriate to act on a second hand account. When Bayeh arrived at noon, less than half an hour was left before the meeting with police was due to occur. The matter arose without any warning to the Commission, although Bayeh's meeting with police had been planned for some time. Indeed Commission officers responded quickly, undertaking a series of comprehensive discussions with Cohen and Bayeh in just under 2 hours....

From the outset Commission officers urged Bayeh to postpone the meeting so that the Commission could arrange for any hand-over or other development to be monitored carefully. Bayeh indicated that this was not a viable option. Later during the discussions with Commission officers when the police contact telephoned Bayeh and asked that the meeting be postponed until later in the day, Bayeh refused. In so doing Bayeh deliberately thwarted the Commission's attempts to deal with the matter as thoroughly as possible by limiting the Commission's time to put arrangements in place. Bayeh's failure to cooperate in this respect cast suspicion over his motives in approaching the Commission and doubts as to whether he could be trusted.

While Bayeh agreed to wear a microphone to the meeting with police and to return to the Commission to provide details of the meeting if a warrant for the device could not be obtained, he made it clear that that would be the extent of his cooperation. Bayeh insisted that his involvement in the matter not be revealed. After careful deliberation by Commission officers experienced in the area of listening device warrants, it was decided that a warrant would not be sought. The urgency of the situation was a contributing factor. While one may speculate that it might have been possible to obtain a warrant over the telephone, it was felt that the material provided by Bayeh was insufficient to justify the use of a listening device. More importantly there was no basis for the Commission to trust Bayeh to wear such a device. The Commission officers were concerned that Bayeh might have disclosed the fact that he was wearing the device or done

something else which may have embarrassed the Commission. Because the Commission could not control the situation, there was concern for the safety of Bayeh and Commission officers in the restaurant during the meeting. Given the fact that this was the first incident in which the Commission had responded to such a matter with so little warning, it was necessary for the officers involved to treat the matter with caution. The Commission's decision to monitor the lunch was explained to Bayeh and he understood why that approach was being taken.

In order for the Commission to monitor the meeting as carefully as possible, two Commission officers were sent to the restaurant to watch proceedings. Because of the circumstances, there was a shortage of appropriate investigative staff who might attend the restaurant. After careful deliberation amongst senior Commission officers, it was decided that a man and woman should be sent to give the appearance of a couple who did not resemble police officers and who would not be identified by the police present at the restaurant. The man chosen was a senior lawyer at the Commission and the woman a senior analyst. The pair were given an overview of the situation and given explicit instructions that they should attend the restaurant solely to monitor the meeting. That was the extent of their involvement. To assist the monitoring of the meeting, the Commission arranged for the Australian Federal Police to provide surveillance (including the taking of photographs) of the restaurant and the subsequent departure of the parties.

At the conclusion of the lunch, Bayeh returned to the Commission and related the events to Commission officers....

The Commission officers discussed Bayeh's safety with him and offered to provide security. Bayeh stated that he did not want the kind of personal protection the Commission could offer. A 24 hour response arrangement was made between Bayeh and the officers so that Bayeh could contact the Commission if the need arose....

At no stage did Bayeh complain to the Commission about its handling of the matter. It was not until much later and after the Commission refused to meet Bayeh's demands including the payment of \$3 million that comments (by Gibson) were made about the Commission's handling of the matter....

At all times the Commission acted properly and appropriately. The meeting at the restaurant was looked upon by the Commission as one incident in a potentially large and complex operation. The timing of the matter demanded prompt and careful attention by the officers involved. At each stage of the matter, proper consultation with senior management took place. The Commission's approach brought together

the relevant and important expertise of all the officers involved. It should be noted also that the Commission worked closely alongside the relevant law enforcement agencies as the matter progressed. The Commission believes that its officers acted professionally and properly in the handling of the Bayeh inquiry....

In judging whether what was done was right one has to place oneself in the circumstances that then existed. Those who have said they would have done the operation differently have also said that they would have changed some of the circumstances. For instance, Bayeh would have been brought under control and the meeting would have been put off. However, that did not happen; it could not be effected, despite attempts. Bayeh already made the arrangements for the luncheon and he would not put off the meeting. It is being unrealistic and harsh to have expected more from those who handled the Bayeh matter in the situation that they found themselves with one or two hours to mount an operation which presented itself without warning....

The decision to monitor the lunch was explained to Bayeh and he understood why this approach was being taken. After the luncheon Bayeh returned to the Commission to be interviewed on what had transpired. That was part of the approach that Bayeh understood and had agreed to. At no time in the Commission's dealings with Bayeh did he complain about the handling of this matter. It was not until much later and after his unreasonable demands had been refused that comments were made by Gibson about the Commission's handling of the matter."

3.3.2 It is also worthwhile noting the following extracts from Mr Zervos' evidence before the Committee on 14 October:

"MR ZERVOS:

A: Mr Gibson has stated that naive lawyers, instead of police, were running the ICAC and that they knew nothing about police work. As is evident from an examination of the statement of facts, at all times the Director of Operations was involved in the matter. The matter was being handled by a chief investigator and a principal lawyer. Both these people have impressive and impeccable qualifications. Both these people knew what they were doing. It is alleged by Mr Gibson that the ICAC botched up the investigation in the early stages. I refute such a suggestion. There simply was not sufficient time to mount the appropriate type of operation necessary in relation to this matter. This was considered part of a larger ongoing investigation. An assessment process had to take place in relation to Mr Bayeh. The Commission had to determine Mr

Bayeh's bona fides. We had to be certain that we could trust Mr Bayeh and that we could rely upon him. There were doubts and concerns about Mr Bayeh's bona fides and reliability. At that stage there was no basis for trust. Such trust was necessary before the Commission could properly and responsibly give him money and/or fit him with a listening device. It was not certain prior to the lunch that Bayeh was in fact going to pay money to the police. Mr Bayeh was keeping his options open and it was a decision that he made during the lunch. I have already impressed upon you the fact that this was a payment to an intermediary and further payments were likely to major participants...

A: I think the air of urgency that was created by Mr Bayeh and the shortness of time that was available for us to mount the sort of operation that one would need, simply was not capable of being able to be done. But there are a number of factors that were operating at the time.

We were working against a moving landscape. There was much being said; there was much happening, and it was all within a very short period of time. The prudent course to take was to monitor what was happening, and there are a number of reasons for that and I have already explained them. The alternative could very well have been to do nothing. That was never an alternative in our mind. At the very least we needed to react to the situation and respond appropriately in the circumstances. We did not know whether we were being set up; we did not know whether we could trust Mr Bayeh. He was very unclear and uncertain about what was going to happen, and we had to determine that in the course of an hour or two.

It was a very difficult situation to be in, and it required a high degree of care and caution. I think the officers in the circumstances did that. I think the Commission did all that it could do and at the same time exploit the situation for its benefit and in the interests that it is working for."

3.3.3

Finally, the following comment from Mr Tink, in a question to Ms Drennan on 14 October, is also instructive:

"MR TINK:

Q: So if one of Bayeh's gripes, if I can put it that way, is that an exchange of money took place between him and somebody else and ICAC was there and ICAC did nothing about it, on the riding instructions, as it were, that he had given ICAC before the lunch

began, if he chose to go into a toilet somewhere and privately exchange money, if you assume for a moment that all he says is right, exchange money in a toilet out of public view and out of view of the ICAC officers and say later, "Well, the exchange took place there, why didn't you do something about it?" he was really just giving you an impossibly tall order, was he not?

MS DRENNAN:

A: In my view he was..."

3.4 ALTERNATIVE APPROACHES

3.4.1 A number of witnesses who appeared before the Committee were asked how they would have handled this matter if they "had their time over again", or if they were in charge of the matter. These witnesses include the three people who have occupied the position of Director of Operations with the ICAC: Vic Anderson, who was Director of Operations from 10 April 1989 to August 1990; Kevin Zervos, the ICAC General Counsel who was acting Director of Operations from September to December 1990; and Peter Lamb, the current Director of Operations who took up his position in December 1990. Other witnesses who gave an opinion as to how they may have proceeded differently are two senior members of the NSW Police Service, Robert Myatt, the Head of the IPSU, and Peter Coe, the Head of the State Protection Group.

3.4.2 Vic Anderson has had a long and distinguished Police career. He started as a constable in the Victorian Police in 1958 and retired as an Assistant Commissioner of the Australian Federal Police in July 1988. During that period he had some time as Director of the Australian Bureau of Criminal Intelligence and Director of Investigations with the National Crime Authority. Mr Anderson was a member of the steering committee which was responsible for the formulation of the Independent Commission Against Corruption Act 1988. He assisted Mr Temby with recruiting to the Commission and from 10 April 1989 to August 1990 he was the Director of Operations. The following exchange took place when Mr Anderson gave evidence before the Committee on 24 September:

"MR TINK:

Q: What would you do differently if you had your time over in relation to the way this matter proceeded on the day? How would you be involved in the matter differently, assuming there was room for improvement?

MR ANDERSON:

A: There is certainly room for improvement on the way it went. I make no bones about that. It needed a greater deal of direction

and it needed the direction from one person, because that is the only way you can properly run an investigation. With the time limits that were placed on it, it would be difficult, and taking into consideration the position at the time regarding devices and warrants and so forth, it would be difficult to wire him up satisfactorily under warrant in the time; although, perhaps it could be achieved. It just depends. The other thing is that we might have more people available. Just at the time we were looking for people to do that job, they were not there. People were out doing other things and the staff were just not available. That is probably why these particular two were used. But certainly, with knowledge that there was money to be passed over and that the money was available, it should have been copied, or at least the numbers of those notes should have been copied, and there should have been a senior New South Wales police officer around there somewhere who would then be in a position to direct those officers to perform certain things, to go to a police station, and that type of thing...

MR MUTCH:

Q: Have you ever been involved in any operation at any time where money that is handed over in that sort of situation would not have been obtained in the first instance by the police officers and, secondly, have the numbers recorded?

A: Not that I can recall, No.

Q: So it really would be a fundamental breach of practise?

A: Yes, it is.

Q: Would not it be useless to do it unless you had the numbers recorded——?

A: The recording of the numbers is procedure.

Q: Otherwise you would not have evidence that it was handed over?

A: No, that is exactly right. Unless you saw it. You know, you could be in a situation where having not recorded the numbers you could actually see the transaction.

Q: In that instance it would have to be an actual videotape or actual police officers witnessing?

A: Yes.

MS BURNSWOODS:

Q: But it was in the toilets?

A: Well, I have been involved in a matter where the transaction was observed without the numbers being recorded, a transaction between two people was observed and an arrest took place straight after.

MR MUTCH:

Q: That was not a situation that had been prepared in advance, though?

A: Well the fact that there were police officers watching there—it was prepared in advance and the two villains were not aware.

Q: But it was not an entrapment situation?

A: No, it was not.

CHAIRMAN:

Q: In relation to the money and recording the serial numbers, are there other methods of dusting banknotes in terms of identifying the money later for evidence?

A: Yes. There has been great progress made in lifting fingerprints from banknotes, which was almost impossible at one stage but now it is fairly simple.

Q: Was that available? I mean, we are only talking about something like 12 to 14 months ago, are we not?

A: It is certainly available and it has been available for years to my knowledge."

3.4.3

Peter Lamb appeared before the Committee on 15 October. He has also had a distinguished Police career. After 30 years experience in the area of investigations into fraud, organised crime and narcotics, on both a national and international scale, he had reached the rank of Assistant Commissioner of the Australian Federal Police. He took up the position of Director of Operations with the ICAC in December 1990. The following exchange took place when he gave evidence before the Committee:

"CHAIRMAN:

Q: If you are not qualified, say so, but are you able to give the Committee your impression of the handling of the Bayeh matter by the Commission?

MR LAMB:

A: I was not, as you appreciate, with the ICAC at the time and my knowledge of it is somewhat limited and based on brief perusals of the file and of dealings with Mr Gibson from time to time. So I am not confident I could adjudicate on the operation per se.

Q: Would you be in a position to say that there is anything you would have done differently had you been Director of Operations at the relevant time?

A: With the benefit of hindsight we could all do that, of course. But, yes, I think I would have probably done it differently, although I have to say that I do not think it was done badly. It was better to have done, it seems to me, what was done than to have done nothing.

Q: But with the benefit of hindsight and the fact that the Commission has now much more experience and more knowledge, what would be done different if the same situation occurs again?

A: First off, I think in the handling of Mr Bayeh—having handled criminals of that element for some 30 odd years—I think I would have handled him somewhat differently. I would have taken control of Mr Bayeh and the operation, perhaps, myself. He obviously is a very difficult person—a complex person. Secondly, I think that I would have gone to great lengths to have the meeting put off. If we had not been able to succeed in that, I then would have attempted to obtain listening devices, marked money, to have people on the ground, running it on the ground at the venue, and things of that nature."

3.4.4

Kevin Zervos, the General Counsel of the ICAC, appeared before the Committee on a number of occasions during the course of this inquiry (see paragraph 1.3.3 above). Mr Zervos has considerable experience in criminal law matters and in dealing with the Police and other investigative agencies in task forces. He spent some time assigned to the Office of the Special Prosecutor, R V Gyles QC, in relation to the "bottom of the harbour" tax frauds. He also spent a number of years with the Office of the Commonwealth Director of Prosecutions, where he rose to the rank of Senior Assistant Director with responsibility for major fraud matters. In view of his

experience in criminal investigations and his former position as Acting Director of Operations with the ICAC, he was asked on 07 November what he would have done differently in this matter with the benefit of hindsight.

"CHAIRMAN:

Q: Having heard all the evidence or with the benefit of hindsight, you said that everybody has said given what they know now, they would have done it differently. I think you were an acting Director of Operations for a period of time.

MR ZERVOS:

A: Yes, that is correct.

Q: How would you have done it differently if you had been in that position now?

A: I probably would have approached it differently then and I probably would approach it differently now after what I have heard. I too would have tried to take control of the situation. I would have tried as much as I possibly could to delay the meeting so that it would give us valuable time, but in looking into the matter that is exactly what the officers involved tried to do.

Q: I was asking you about the differences rather than the similarities.

A: Yes, I know, but the difficulty with answering the question is that if the circumstances were different I would do things differently, but the reality is that these are the circumstances that occurred at the time that I find myself in and I think that we are being harsh and unfair—

Q: No, I was not asking for a critique. I was asking what you would have done differently given what we now know.

A: The approach that I would have taken at the time would be to try and have the meeting put off so that I could then implement certain measures.

Q: Which would have been what?

A: Would have been to obtain a listening device, arrange for money to be provided to be recorded with the objective that this was part of a larger ongoing inquiry, and I would have let the matter

run as opposed to carrying out arrest. I think that would have—

Q: You would not have effected an apprehension at the time?

A: —jeopardised the whole operation. I say this making a fairly big proviso, that I had the time to do all those things...

Q: There is one other difference you have given, if you were dealing with it as at then, about which you have given evidence. I think you said you would have regarded it as a complaint.

A: Yes.

Q: In consequence the Operations Review Committee would have had jurisdiction?

A: It does not have jurisdiction. In my opinion the matter is a complaint.

Q: You would have treated it as a complaint at that time?

A: I see it as a complaint and I also see it as a matter that was current, and is still current basically because of this inquiry. But it probably came to an end when IPSU had completed its investigation and the Office of the Director of Public Prosecutions made its decision in relation to the material it had before it. I agree with you that the matter is a complaint and at some time when the decision is made that it not be investigated further, it is to be referred to the ORC.

Q: That is a difference. Are there any other differences if you had been dealing with it then?

A: No, not that I can think of."

3.4.5

On 07 November the Committee took evidence from a number of representatives of the NSW Police Service. The main purpose of this hearing was to pursue the second and third terms of reference before the Committee (see Chapters 5 and 6 below). At one stage the Committee went "in camera", however, and the following exchange took place. It should be noted that Detective Superintendent Robert Myatt is Acting Manager of the Internal Police Security Unit. Superintendent Peter Coe is Commander of the State Protection Group and Chief Superintendent Patrick Cassidy is a District Commander, and at the time of the hearing, Acting Assistant Commissioner, Professional Responsibility.

"MR TINK:

Q: I would like your opinion on whether if you, in the shoes of ICAC in relation to this Bayeh matter, might have done things differently or just the same... For preference you want to have a face-to-face talk with whoever it is who would provide the factual allegations to get the warrant [for a listening device]. Preferably you would want to assess them face-to-face?

A: Well, much more than preference. It is necessary because if you are going to get a warrant for a listening device, you can get them by telephone in urgent cases but if you are going to get a warrant for a listening device to be implanted on a person or in some premises, then you have to prepare an affidavit for a Supreme Court judge, so there would be no police officer in my view who would want to try to give some evidence for an affidavit off the top of his head. You would want to be putting the statement as an attachment to that affidavit to show that there it is, because that is the basis of what you are saying, the information that you are giving on oath.

Q: So if you are going absolutely flat out, you would probably need a couple of hours to get it all together?

A: Well, two hours would not be sufficient to get a warrant if you prepared an affidavit, because you have to take a statement, you have to prepare an affidavit from that, you have to have our people from legal services look at it and put that affidavit before a Supreme Court judge. You just do not get really before a Supreme Court judge in two hours, but you do have that facility there for the telephone warrant. It can be issued over a telephone but that is only issued for 24 hours. A warrant, if you put an affidavit forward, is issued for 21 days, so a 24-hour telephone warrant is of limited value to you because if that appointment, if you like, falls through, normally it is the next day that it is on so you have to go through the process again.

Q: Just moving forward to what then seems to have happened, Bayeh wanted to go ahead with this meeting and it seems the Independent Commission Against Corruption people were put in a difficult situation of either just in effect dismissing it altogether for the purposes of that day or going along to see what happened, which I think is what they did, or something else we had to look at, whether there were other options open to them to handle the matter short of a wiretap of some description. Now, in relation to that, I understand the practical difficulty. You mentioned marking money a minute ago. I think

I am right in saying Bayeh did not go to the bank until the lunch was halfway through and then he says he came back with some money. Then one assumes there might have been an opportunity to look at a transaction taking place and get some direct evidence of "I saw X hand Y such and such". Of course the problem there was that according to Bayeh, he handed over the money in the toilet.

I suppose only with the benefit of hindsight, we are all aware that they are Bayeh's allegations, but it seems to me that from the perspective of the Independent Commission Against Corruption looking forward on what might or might not have happened later in the day, it could have been any one of a range of things. It is very difficult to predict forward, so in all those circumstances it chose the course of going to observe on the basis it could have led to something more. The only question that arises from all that is whether or not it would have been reasonable to in some way have had some police on hand to take the bull by the horns and do a search immediately after the transaction was said to have taken place. I am sorry, that is all a bit garbled, but is there anything to that in that matrix?

A: ... the investigator must control that complainant. You just cannot have a complainant going off, if it happened, of their own volition and withdrawing money from a bank and handing it over. I mean that evidence must be doubted at some later time because the credibility of the complainant will come in. That is why you need to have the money photographed and you need to know what that money was. You mentioned the police. You need the police to be able to stop those police officers after the lunch, if that is the case, and to be able to say, "Right, I have got reason to believe that you have in your pocket X amount of dollars and I am going to search you for that", and you are entitled to do that because we are talking about a serious offence. If the money is then in the pocket of the person, then if we do not have a listening device, we are then down to evidence of the people, what they are going to say had taken place. If we have a listening device, we certainly have what did take place but you still have that evidence of the money...

Q: It really is an enormous dilemma, is it not? The Independent Commission Against Corruption got the rounds of the kitchen in Parliament and so forth and it was easy to make the whole thing look a bit silly in terms of there was a transaction that took place and holes in the pocket and that sort of thing, leading to a very real expectation that there was another way of doing it and it was not a transaction that should have been allowed to take

place without there being some apprehension of people involved. It seems to me the more you look at it, that is really a conclusion you can only draw with the benefit of a lot of hindsight.

A: I think in hindsight we can always come up with the best way. I do not think any investigator who has ever investigated a matter and put it before the court, having seen everything and all the evidence in court and then walking out after the matter is finally resolved, would not find a better way, and I guess that is what we call experience.

Q: The other side of the coin is that everybody could have gone rushing in there on some supposition and it could equally have been possible that nothing was going on, given the nature of the source of the information, and people involved in undertaking an arrest or whatever else, cutting a lot of corners to get a warrant, could have been in a lot of trouble for improper procedure.

A: That is a fair comment.

Q: You do not really know until it is all over which way to call something like that, given the source of the information particularly and the lack of time to check it out.

A: That is exactly why one of the things that I have stressed to the people at ICAC, and not only to them but to any investigator, is that you must really look at the complaint that you have. You must test the motives of your complainant, not just in complaints against police but complaints against anyone. You must do that homework and you must look at that, and it is very difficult because you do not know what is going to happen down the track. It is not an easy role and you must look at those motives and thoroughly test them, and sometimes you have to even look at them—"Can it stand the test of cross-examination?" That is what an investigator has to look at, that is where the difficulty is. You have to look so far down the track when you start an investigation. You are looking at it today, but you have got to be wondering what is going to happen in two years' time.

MR GAUDRY:

Q: In that regard it is most important that you control the agenda, rather than the plaintiff or informant doing so?

A: That is absolutely imperative. It just cannot be any other way. It has to be controlled by an investigator, and it does not have to be me or people from my branch. It depends on who it is who has it, and they must control that, because of these things that can happen during an investigation...

Q: As the provision of information that may lead later to the conviction on corruption charges, how would you rate it out of 10, that particular incident at La Fontana? Was it a useful exercise or did it leave so many loose ends that it was not a useful piece of information in terms of investigative work?

A: I think one would have to look at the Director of Public Prosecutions' decision on that. The Director of Public Prosecutions has not found sufficient evidence to proceed against any police officer at this time. I could not comment any more than that. This is a consideration that as an investigator you may be biased about, but it all comes down to the Director of Public Prosecutions putting himself in the position, I guess, of the magistrate or the jury, to say: who am I going to believe? That is what it comes down to, because it is the story of Bayeh saying that sure there is evidence to show that the money was taken out of the bank, but the vital piece of evidence is in the toilet at La Fontana. I do not mean that in a funny sense. I mean that is where it happened. There are so many different things—if he does not fold his handkerchief neatly; I do not know. That is where the Director of Public Prosecutions is left.

MR COE:

A: Could I make one comment, not being specific about it because I had no part to play in that. I think what has been said, and the theme, is simply that it demonstrates the importance of having trained investigators to control it from the first moment that a complaint or some information is given. It is important that that takes place. It emphasises the need for trained investigators in agencies like the ICAC. Our organisation has assisted both the National Crime Authority and the ICAC over the years by providing trained investigators...

MR TINK:

Q: The end result of what we have been talking about is, that being so, he really did not do anything that from your perspective was out of the ordinary, given what he had to work with and the way in which they elected to go, which was to send two people along to the meeting to observe. That was as far as it went. What I

understand you to be saying is that that really was about all they could do?

A: I guess what Bob said before was that in hindsight you can say that you would not yourself have approached it that way. Those things are very easy. It is a decision that an investigator takes at the time. I would probably not have taken that decision, but others may have.

Q: What would you have done?

A: I think there was probably an opportunity to gain evidence at the time of the visit to the La Fontana. Mr Myatt has outlined that even if you were not successful in gaining a warrant under the Listening Devices Act, you would have had provision to put a police officer there to stop, search and detain, to see whether or not the money had been paid. I would not have utilised the complainant's own money from the bank. You have no control over that. There are facilities in our organisation, and I imagine in others, to access money that can be used for such a purpose.

CHAIRMAN:

Q: Did you want to respond to that also, Mr Myatt?

MR MYATT:

A: Yes. Mr Coe is an experienced investigator and has been a detective for many years. I share his views. He is saying also what I have said. Sure, in hindsight as I said, we would all do things differently on most occasions, I guess. I do not think any investigator has ever said, "Well, that is the perfect brief". But control is the major thing. You must control things, an investigator must control things. If we believe Mr Bayeh, we cannot prove that.

MR TINK:

Q: What I understood Mr Coe to say was that if he had been in that situation where there was a suggestion that there could be a transaction taking place, with that knowledge you would go to the site of the transaction on the basis that you would be able to do a search.

A: You would have surveillance, for a start. You would have your own money, for a start, that you had some control over and you knew what it was.

- Q: Assume that you could not get your own money.
- A: With respect, you cannot assume that, because if you are going to get involved in those things, you have got to have your own money...
- Q: This is important in relation to the facts in this matter as I understand them. I understand that the lunch was going ahead, so the investigators had to say "Well, will we go or won't we go?". It was not for them to be saying to Bayeh, as I understand it, "Look, it is our money or nothing". They were rolling along to observe what was an inherently fluid situation. Bayeh ducked out of the restaurant half way through the meal and apparently, so he says, got some money. Given that all they knew was that Bayeh was saying that the transaction might take place, would it have been reasonable on that information alone, knowing that he was not going to be amenable to using your money, to have made provision for a search to take place?

MR COE:

- A: If I comment, I make no criticism of what took place because I was not privy to the decisions that were made. From the point of view of an investigator I would not have gone along on the lines that I believe the ICAC took, because you have no control over the amount of money. You run the risk of Mr Bayeh losing \$10,000 simply because you have made a decision that you are going to be there to observe. I do not think that is the appropriate action to take. If you are going to be there at all, you are going to be there to be able to take some positive action, and in my opinion that action would be to stop, search and detain. You have then disclosed a serious criminal offence that would be left to the courts to decide who is telling the truth: Mr Bayeh; weighing the evidence that is found in someone else's possession; and you can account for the notes that are on that person. There are too many risks in losing it by being there just to take observation.
- Q: It has been put to us by the ICAC that it was an initial matter that from its point of view it was keen to follow through. Would it be fair to say that if a transaction had taken place between someone like Bayeh passing \$10,000 to—I am not sure which police officer it was alleged to be—

CHAIRMAN:

- Q: It does not matter.

MR TINK:

Q: A fairly senior police officer. To be able to get evidence admissible in a criminal court to come to grips with a transaction of that nature would be a significant matter in its own right, would it not? It would be something from your point of view that would be well worth doing, would it not? Just getting evidence of that transaction sufficient to deal with the person who is the recipient of the money would be useful?

MR MYATT:

A: The evidence we would need to get there—evidence to get somewhere on that sort of thing would be to find the money on the person. Do you mean to let it run so we can get somewhere else, to get further along the track in some other situation?

Q: It was put to us by the ICAC that it was concerned to follow it through to some larger picture.

CHAIRMAN:

Q: May I just interrupt. Forgive me if I am wrong, Mr Tink, but was it not suggested that the ICAC had in mind that there was a broader picture of corruption and it did not want to apprehend people at that time and pick them up for something that was more a bribery incident. This was more of an intelligence operation in relation to a much larger picture. Does that make sense in terms of that argument?

A: That really is costly intelligence. We are asking a member of the community to put up \$12,000 so that we can get some intelligence. I do not believe that that is a proper role. I could never ask someone that.

CHAIRMAN:

Q: You would still want to be in a position to prove that bribery took place even if you did not make the apprehension?

A: Yes. If you were going to do it along the lines of going to further something, you must then have your listening device in place, implanted. Then you could do it. If we are talking about a one-off situation, maybe you do not need your listening device because you can make the arrest, there is the evidence, and that is the money that you handed to someone earlier in the day to give to another person. You have the number of the notes. But

if you are looking at it as an ongoing situation, then you would need, I would suggest—if that was the idea behind it—you must have your listening device so that you do have some evidence.

MR GAUDRY:

Q: Or your marked notes?

A: Even your marked notes are no good to you if it is an ongoing situation because if you are going to let it go for a week, you do not have the notes; they would be gone somewhere. You would not use your dust then either because the person would know or could know later on if they put their hand under a light that they have been dusted. So you have only got your marked notes. In an ongoing situation the marked notes are not enough; you must have your listening device for your evidence at a later time.

MR TINK:

Q: To be able to apprehend a police officer accepting money in that situation would be no small matter would it?

A: That is exactly what I am saying.

Q: The ICAC has given evidence that it was part of an ongoing broad operation. Would you like to comment on the fact that if that be the scenario and that was the evidence they led, they had two inexperienced operators, two lawyers from memory observing, and two Federal Police in a car outside. The lawyers left before the alleged culprits left, and we do not know what happened to the Federal Police. Would you see that as a scenario of an ongoing investigation by the ICAC?

MR CASSIDY:

A: I think that is the difficulty with the whole of the comments that are being made here now. We are dealing with supposition and we do not know the whole of the circumstances that were in the investigators' minds at the time that they approached this whole scenario.

Q: We have had nothing put to us that once those two untrained operators, the lawyers, left that restaurant there was any other ICAC personnel or State police officer anywhere at the scene. I can only assume that there were none, from the evidence led. I have to have some difficulty in saying that the view of ICAC,

that it was an ongoing operation, holds up."

3.5 KEY ISSUES

3.5.1 At the conclusion of the taking of evidence in relation to the Bayeh matter there were two key issues which stood out. The first of these is the question of "control". This is a particularly important issue in relation to the use of informants, and is basically a question of who controls the agenda. The issue was first raised by Ms Burnswoods in the hearing with Ms Drennan on 14 October.

"MS BURNSWOODS:

Q: One of the things that keeps striking me is that it seems as if Bayeh came to the Commission essentially wanting something, and yet from the time he made the first contact he seems to have been able to keep refusing suggestions that were put to him, to keep determining whether the lunch would be delayed for instance, whether he would get the money, when he would get the money. For instance, it seems to me that if marking the money was going to be a real problem because of time, it might have been possible to insist that he go and get the money at the earliest possible moment... he made this refusal to give evidence at any stage clear pretty much from the beginning?... I suppose the question then is why would you have had high expectations of it all leading to very much, of it being a viable long-term and successful investigation?"

3.5.2 The issue of control was pursued with representatives of the NSW Police at the hearing on 07 November (see 3.4.5 above). Mr Gaudry then took the matter up with Mr Zervos when he appeared before the Committee later that day.

"MR GAUDRY:

Q: The matter of most interest to me in this whole thing has perhaps come forward from the discussion this morning with the officers from the police, and that is who controls the situation.

MR ZERVOS:

A: Yes.

Q: Therefore I am concerned that at that time this whole issue was precipitated by the fact that the agenda was set by Louie Bayeh rather than by the officers of the Commission.

A: Well, maybe that is an appropriate point for me to really take this matter up. It seems to me in the evidence that has been

taken by this Committee, in particular from the New South Wales Police Service, that the issue of control is essential. One of the points that I have been trying to make before the Committee is the fact that the Commission did not have control of the situation at the time. That was not the case through any want of trying to take control of the situation by the Commission. We were frustrated, I submit, in taking control of the situation that we were then confronted with.... The arrangement for the luncheon had already been put in place. We tried to have him put that off. An opportunity arose for him to do so and he did not take it. Short of grabbing the telephone ourselves and rearranging the luncheon with the particular police officer, we could not put it off... The officers made a decision that because they did not have control of the situation, the very point that was being made by the New South Wales Police Service, rather than doing nothing, which is the only alternative available if you do not have control, they did something about it. They arranged for the meeting to be observed, and the point that I have made and I think is also clearly apparent reading the material, is that this was always considered to be part of a larger ongoing investigation.

We were told that Mr Bayeh was to meet an intermediary, that the money that was to be passed on would go to somebody more senior and that there were more senior police officers involved in this matter. So therefore it was important that we observe what took place for two good reasons. Firstly, to ensure that what Bayeh was telling us was true and correct and to determine for ourselves his veracity, credibility and bona fides in relation to his approach to the Commission. Secondly, to see where it was going to lead us and to gather further intelligence and information. I know that there have been a number of people that have come forward and said that they would have done it differently, but each and every one of them makes the point that in doing it differently they would have had control of the situation and then they would have implemented certain measures...

Q: ... it is clear and unequivocal: it must be the member who controls the informant, not the informant who controls the member.

A: Sure.

Q: That was patently not the case, in that Bayeh determined that the meeting would go on, he would not accept direction in terms of the meeting, he would not allow time for the Commission to

put into effect two items that were essential to the success of an ongoing operation, one being the matter of the money and its marking and the second one being the wiring so that there was some transcript evidence available of what took place in the discussion?

A: Yes.

Q: So, in effect, whether the people be experienced or well-intentioned, the actual operation itself was precluded from having a successful flow-on by the fact that he was in charge?

A: They did not have control, and that is something that they recognised themselves. But if you take what you are saying to its logical extension, if you do not have control then you do nothing. And that was not an alternative in the minds of the officers. They did not have control because he came to the Commission, the luncheon had already been arranged, and they tried as best they could in the circumstances to take control and they did the very thing that everyone else has said they would try to do, but they were not successful in their dealings with him. Short of just stopping him from going to the lunch, which they were in no position to do, there was no basis for them preventing him from leaving the building. That would be the only way they could have stopped what was happening.

3.5.3

The other outstanding issue was an alternative investigative option raised by a number of those who appeared before the Committee. This was the option of having NSW Police officers in attendance at the restaurant to detain and search the alleged recipient of the money from Mr Bayeh. This was dealt with in some depth by Mr Coe when he appeared before the Committee on 07 November (see 3.4.5 above). This option was taken up with Mr Zervos on the afternoon of 07 November.

"MR TINK:

Q: Did you hear the evidence given by Mr Coe this morning about search?

MR ZERVOS:

A: Yes.

Q: Have you any comment to make about that?

A: I think he made his comments not quite appreciating the full facts of the matter. His view was that he would deal with the \$10,000 payment only and did not seem to appreciate the larger

ongoing investigation that may arise. I do not know whether that was necessarily conveyed to him and, therefore, he gave that answer. It would seem to me that once you arrested the police officer in question or searched him, any hope or chance of allowing the matter to run and to secure evidence against the major and more senior offenders would have been lost by that action.

Q: The collective answer seemed to be that to get that far would have been pretty good going; that it was not a bad snitch in itself...

I understand all that but you might have in fact been better off had you apprehended the fellow who, for the purpose of argument, has received the money in as much as that could have been a substantive starting point. I mean it may well have been that he said, "Okay, I will do a deal" or something. That cannot be ruled out.

A: I would have to agree. That could very well have been an approach. It would have been a nice simple approach to the matter. However, at the time it was considered to be something more than just this transaction and that there was the potential for more to come out of it.

Q: No, but the apprehension of the fellow at that time might, in itself, have given you a launching pad to go further. You may well have been able to come to some arrangement with him to talk to him.

A: I see the point you are making. That has happened in some of the matters that I have been involved in, not necessarily with the Commission but where you have been involved in a particular series of crimes and you apprehend one of the wrongdoers in the course of these transactions and you obtain their co-operation and you let the matter run, that is a very rare event and it is subject to a lot of ifs.

CHAIRMAN:

Q: History might have been different if they had not have apprehended the burglars at the Watergate."

3.5.4

An off-hand comment from one of the witness who appeared before the Committee may be instructive in relation to this issue. He suggested that some agencies have not been as effective as they may have otherwise been due to an obsession with the "Mr Bigs" of organised crime. He commented that "a bird in the hand is always

worth two in the bush".

3.5.5 In response to this "detain and search" option and the evidence of the NSW Police representatives generally Mr Zervos drew attention, in a letter dated 14 November, to the differences between the roles of the Police and the ICAC.

"The Commission was established because our legal system was unable to effectively tackle the problem of official corruption. It was recognised that important though it is that the guilty be brought to justice, this is an area in which exposure of the problem of official corruption and doing something about the problem was more important than securing convictions.

In accordance with its charter, the New South Wales Police Service investigates criminal offences when they occur. Far too often people are investigated and prosecuted for criminal offences, while no attention is given to the underlying problem which brought about the wrongdoing in the first place. The law enforcement effort is mainly devoted to dealing with criminal offenders. The Commission is able to examine and deal with the overall problem of official corruption and make recommendations to Government to take action in relation to it. This approach to the problem of official corruption is a far more effective way than traditional and conventional methods. The focus of the Commission is invariably on the wider issues that may be involved. While in the Bayeh matter there was an alleged payment of a bribe, it was viewed as part of a larger ongoing inquiry involving other senior police officers. Consequently, the Commission approached the matter with the view that it may have led to exposing endemic and institutionalised corruption within the police force.

Official corruption is difficult to detect, costly to investigate, and requires great skill to prosecute. While that should not deter our commitment, quick and simple solutions while seemingly effective may not expose the overall problem."

3.5.6 At the conclusion of this section dealing with alternative ways of approaching the Bayeh matter and the key issues emerging from this evidence, it is worth noting the following quote from Mr Zervos' evidence before the Committee on 14 October:

"MR ZERVOS:

A: ... in these sorts of situations when people are looking at operational matters it is easy to sit back and assess them and look at aspects of the operation in isolation. You cannot do that. You have to look at it in its entirety. You have to try and understand the situation that the Commission was confronted with at the time. That is very important when exercising a

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judgment in relation to the matter. I should also add that from my years of experience in this sort of work, you could have a number of experts in this particular area, each giving a valid opinion as to how the matter should have been approached, each being right and none being wrong, and each being very different to the other.

MR HATTON:

Q: For the record, I accept what Mr Zervos has said."

3.6 CONCLUSIONS

3.6.1 The Committee's functions are defined in s.64 of the ICAC Act. The reference from Parliament specifically draws attention to s.64(2) which imposes a number of restrictions upon the Committee. Consequently, the Committee is precluded from commenting upon what may or may not have happened at the luncheon at the La Fontana restaurant.

3.6.2 However, the Committee has taken the view that, due to the serious nature of the matters raised by Mr Gibson, it is important that the ICAC's dealings with Mr Bayeh be clearly set out and open to scrutiny. Therefore the Committee has provided in this chapter a detailed chronology of the Bayeh matter and has published the significant aspects of the evidence taken in relation to this matter. It is up to readers of this chapter to come to their own conclusions about the ICAC's handling of this matter.

3.6.3 Perhaps the last word in relation to this matter should be left to Kevin Zervos and Vic Anderson. In a letter to the Chairman, dated 14 November, Mr Zervos stated that,

"Admittedly, with the benefit of hindsight and after informed and reflective consideration, the Bayeh matter could have been handled differently. Some aspects could have been handled better. It is easy to criticise something after it has happened and to find aspects of it that may have been improved upon. However, the Commission did not handle the matter badly and is not deserving of criticism in this regard.

The officers were at all times keen to do the best they could in the situation they faced. They wanted to pursue the matter and to handle it professionally and competently. Their actions and decisions were considered and they genuinely believed they were taking the right approach in the circumstances. This emerges clearly from the evidence."

Vic Anderson made a similar point in a letter to the Chairman, dated 30 September.

"I have no doubt whatsoever that, whatever mistakes may have been made during the operations referred to by Mr Gibson, were made in good faith and with a desire by all concerned at the Commission to carry out their responsibilities. The staff at the ICAC were at that time, and I am sure still are, intent upon achieving the Commission's objectives... The work load on all staff at the Commission is extremely demanding with individual officers working long hours in a difficult environment. The Committee may wish to take this fact into consideration."

- 3.6.4 Despite the restrictions upon what the Committee can state with regard to this matter, attention is drawn to two matters. Firstly, as set out in the quotes from the hearing with the NSW Police in 3.4.4 above, and the discussion with Mr Zervos in 3.5.2 above, it has become evident to the Committee that where an officer of an agency such as the ICAC is dealing with an informant, the question of control is crucial. Clearly, if an operation is to be successful the agenda must be set by the agency, not by the informant.
- 3.6.5 Secondly, the Committee was concerned and surprised that a matter of this magnitude had not gone before the Operations Review Committee. This is largely a result of the classification of the matter as information rather than a complaint (as discussed at 3.4.4 above). The Committee is concerned that the Operations Review Committee, which is a key accountability mechanism established under the ICAC Act, may not be receiving reports from the Commission about significant operations such as the Bayeh matter. This is an issue worthy of further attention and may be an area for a future inquiry by the Committee.

MANAGEMENT AND CONTROL OF ICAC OPERATIONS

4.1 PROCEDURES AND STRUCTURES - JULY 1990

- 4.1.1 The first term of reference with which the Committee was charged concerns the procedures and structures for the management and control of ICAC investigations and operational activities. It soon became clear to the Committee that the procedures and structures in place at the time of the Bayeh matter in July 1990 are very different to those in place today. When Mr Anderson, the Director of Operations with the ICAC at the time of the Bayeh matter, appeared before the Committee he was asked to describe the systems that were in place at that time.

"CHAIRMAN:

- Q: What procedures and structures for the management and control of Independent Commission Against Corruption investigations and operational activities were in place while you were at the Independent Commission Against Corruption, first internally, and second, externally?

MR ANDERSON:

- A: Internally the procedures were that complaints came into the complaints department which filtered them to deal with any that were inconsequential, if I may put it that way. Any that seemed to require investigation were then forwarded up to the operations department where we had a look at them to see what should be done with them. There was an investigations committee which met weekly and discussed all matters that were before the Commission. That consisted of the Commissioner and the senior officers of the Commission. Beyond that there was the operations review committee which sat monthly and heard the Commissioner on all the matters that were before the Commission.
- Q: With the benefit of hindsight, which I appreciate is always 20-20 vision, what procedures and structures could have been improved or in place that would have made for a better operation?
- A: One of the difficulties at the time, and I am happy to say appears to have been overcome now, was that there was not a

single command structure in relation to investigations. There was a difficulty where some of the lawyers were in fact detailing investigators off to conduct investigations without the knowledge of the operations department. Having remonstrated with some of the investigators about the way they went about things, because I was dissatisfied with what I termed to be an undisciplined approach, I found that rather than improve things, that led them not to come to me but to go direct to the lawyers, and the lawyers tended to accept that and go on with the jobs on their own.

In addition to that, there was a heck of a lot going on at this time. We were trying to develop a set of procedures for the Commission, including an investigation manual. We were attempting to train the people in the different situations that applied at the Commission compared to where they had been before, whether or not they had been serving police officers. I am not making excuses; I am trying to give an explanation. There were many things that we, on reflection, could have done better. I have no doubt about that. But the situation when we first started was that there was a lack of trust between the police investigators and the non-police investigators, and that came from both sides. Initially there was a reluctance on the part of some of the police officers to be involved in the investigation of police. That occurred despite the fact that we tried to test them out on this as much as possible at the recruiting stage. To me that seems now to have been overcome. Some of the people with whom we had difficulty have now gone and I am satisfied that most of those things have been overcome. There will always be individual cases where that will arise from time to time."

4.1.2 Mr Anderson was also asked for his response to Mr Gibson's comment that the wrong people were running ICAC investigations.

"CHAIRMAN:

Q: Mr Gibson has commented that initially the Independent Commission Against Corruption was run by a lot of naive lawyers who knew nothing about police work and that the people now at the Independent Commission Against Corruption are spot-on. Would you like to comment on that statement?

ANDERSON:

A: Personally I think that where some of the breakdown occurred was the lack of that single line of command in the investigations

area. Too many people had a finger in the pie. To maintain the discipline in investigations you must have that single command. Though people did all these things with the greatest hope of getting things going properly, I think it interfered with the better running of the organisation at the time. I do not think anyone did any of this for any reason other than to see the Commission succeed in its task."

4.2 DEVELOPMENT OF THE OPERATIONS DEPARTMENT

4.2.1 It is clear that there has been substantial development of the ICAC Operations Department. The following brief history was presented to the Committee by Kevin Zervos.¹⁰

"The Operations Department of the Commission commenced work under the direction of Mr Vic Anderson. Mr Anderson occupied the position of Director of Operations between April 1989 and August 1990. During that period, the Operations Department comprised the Commission's investigators and analysts. At June 1989 the Operations Department comprised 24 staff. That number grew to 45 in June 1990. At present there are some 66 staff members involved in operations work which now includes the staff of the Assessment section. Mr Anderson established the Operations Department. He was responsible for recruitment and the establishment of procedures and facilities, including establishing links with other agencies.

In August 1990, after Mr Vic Anderson retired from the position, Mr Kevin Zervos assumed the role of Director of Operations for a period of a little over three months. During this time, the Operations Department underwent a structural reorganisation. A number of important changes occurred including the establishment of teams comprising investigators, analysts and support staff, the absorption of the Assessments Section into the Operations Department, and the creation of two deputy director positions -one with responsibility for technical services, security, the property management function and assessments, and the other investigations, analytical and support staff.

In December 1990 Mr Peter Lamb was appointed Director of Operations. Mr Lamb has further developed the Operations Department which is now operating with practically a full complement of staff and facilities. Recent initiatives include the establishment of a Strategic Intelligence Research Group, the introduction of an Operations Strategy Document and Standard Operating Procedures."

¹⁰ This quote is taken from a document prepared for the Committee by Kevin Zervos entitled "The Operations Department: Background".

4.2.2

It appears that significant developments in the Operations Department were initiated by Mr Zervos during his term as Acting Director of Operations. These reforms were further developed and have been progressively implemented by Peter Lamb. The following quotes is taken from Mr Lamb's evidence before the Committee on 15 October.

"CHAIRMAN:

Q: When you became the Director of Operations what was your impression of the structure and effectiveness of the Operations Department?

MR LAMB:

A: I took over from Mr Zervos, and prior to taking up the position he had contacted me and we had talked through some of the changes that he had in mind based on his term as the acting director. We agreed to develop certain strategies and put those strategies in place relative to the creation of teams and the development of lines of command and responsibility. Most of those things we have put in place in the last seven or eight months.

Q: Were you aware of any tensions between investigators and lawyers in investigation teams?

A: I think in any environment... there will always be tension between lawyers and police and investigators. Yes, there are tensions there in that respect also....

Q: Have you taken any steps to alter the structure and procedure for the management and control of the Commission's investigations and operation activities since you became Director?

A: Yes, I have. We have put in place an investigation strategy and at the same time developed a command and control document together with a series of other standard operating procedures that puts the control and directions of investigations clearly under the day-to-day direction of the chief investigators, who answer, through the deputy directors, to myself. There is some grey area between when that responsibility ends and the responsibility of the lawyers takes over. But that is somewhat difficult to define.

Q: Is that greyness capable of better definition in your view?

A: Yes. I have given it a lot of thought as I am sure Mr Zervos and others have who have acted in that position. It is a very difficult thing. The ICAC, as you would appreciate, is a strange animal. It is not a traditional law enforcement environment so we are continuously looking at that problem. I am not sure that it is solvable.

Q: Is there anything you would like to see being done?

A: I think the main thing is that we continue to think about it and to work at it; that we do not just walk away from it and pretend that it does not exist.

Q: Have you issued instructions that chief investigators are to run investigations until the hearing stage when principal lawyers take over?

A: Yes."

4.3 PROCEDURES AND STRUCTURES - NOVEMBER 1991

4.3.1 During this inquiry the Committee has been provided with direct evidence of the new procedures and structures which exist within the Operations Department. The Committee has been provided with Part One of the Investigation Manual which provides information on Commission Procedures. The Committee has also been provided with a list of the Operations Department's Standard Operating Procedures (which is reproduced below), together with copies of the following Standard Operating Procedures (S.O.P's):

SOP 1/91: Command and Responsibility - Operations Department

SOP 12/91: Use of Listening Devices Part I - Policy and Procedure

SOP 17/91: Informants

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Informants	17/91
Intelligence and Information Reporting	18/91

- 4.3.2 The Committee was particularly impressed with SOP 1/91 "Command and Responsibility - Operations Department". This document clearly spells out the line of command within the Operations Department. The document distinguishes between functionally based commands (such as the Assessments Section or Technical Services Group) and Operational Commands. Of most relevance to the Committee's inquiry, the document clearly states the duties of the Chief Investigator in charge of each investigative team. These duties include the initiation, management and control of investigations, supervision of field activities, and the preparation of reports, plans and briefs of evidence. (A copy of this SOP is included as appendix one to this report.)
- 4.3.3 The Committee was also impressed with SOP 17/91 "Informants". This document seeks to establish a firm and consistent policy for the management of informants by the ICAC. As well as covering such things as secrecy of identity and payments to informants, this document also focuses on control and accountability. It is clearly stated that it must be the member who controls the informant, not the informant who controls the member. The document sets out the responsibility of the controller and seeks to ensure that all contact between controllers and informers is subject to supervision.
- 4.3.4 It was also pointed out to the Committee that a further Standard Operating Procedure is being prepared at the moment dealing with witness protection, bribery and extortion. This SOP will contain a program of action for ICAC officers in these areas.
- 4.3.5 It is clear that the procedures and structures for the management and control of ICAC investigations and operational activities are very different now to what they were in July 1990. This was an issue that Mr Gaudry sought to pursue with both Mr Lamb and Mr Zervos, in order to determine the difference that these new procedures would make if a similar situation to the Bayeh matter was to recur.

"MR GAUDRY:

Q: Returning to the point of who controls the game, and that takes us back to the Bayeh situation, what sort of procedures would you have to ensure that that type of situation did not occur again?

MR LAMB:

A: We have a command control document that spells out quite clearly the functions of the various people in the operations department. Within that command and control document comes a set of, I suppose, what are very similar to a duty statement. They are things that police are very familiar with. The majority of our investigators are police and they comprehend very quickly the command and control documents. They spell out who they

are answerable to, who they answer to, with what, when and how. It is a pretty definitive document. That puts in place what they will do, who they will report it to and when they will do it."

"MR GAUDRY:

Q: In relation to these manuals, SOP and SOP 17/91 - Informants, when were these authored?

MR ZERVOS:

A: The SOPs have been brought into existence only recently, in the last couple of months. I should add that the investigation manual has been a document that we have been working on and refining for some time now, but the standard operating procedure as it is designated there came into existence only recently. It has been in existence in other forms—in some parts not at all. This has really been a development that has occurred only in recent times.

Q: At the time of the Bayeh matter then, I take it, this was not in existence?

A: That is correct....

Q: Just to re-emphasise that these operating manuals are now in place within the Commission to cover the very matters in which we have an interest?

A: Yes, that is correct Mr Gaudry..."

4.3.6

Perhaps the most appropriate way of concluding this section on the development of the Operations Department and the differences between the procedures and structures in place in July 1990 and November 1991 is the following quote from the letter Mr Zervos sent the Committee on 14 November.

"At the time the Bayeh matter arose the Commission had been established for just under 18 months. It was still in the process of establishing the Operations Department including the creation of operational procedures and directions.

The Commission now operates with practically a full complement of staff and facilities. Operational procedures and directives have been established to give added guidance to staff. There is much more direction and support given to the officers of the Commission than there was when the Bayeh matter took place. The Commission, like all

new organisations, underwent a maturation process and has now developed its investigative capabilities to a high and professional standard."

4.4 WHO CONTROLS INVESTIGATIONS?

4.4.1 One of the issues of greatest concern to the Committee in the course of this inquiry has been the question of who controls investigations. That is, where the responsibility of the Chief Investigator ends and that of the Principal Lawyer begins. As the quotes from Vic Anderson (4.1.1 and 4.1.2 above) and Peter Lamb (4.2.2 above) demonstrate there is at times some tension between investigators and lawyers, and some confusion over their respective roles in investigative teams.

4.2.2 Mr Zervos sought to impress upon the Committee that there is a need for flexibility in the way ICAC investigations are run. He emphasised that it is important to realise the unique position of the Commission and the fact that multi-disciplined teams are used. The following quotes are taken from his evidence before the Committee on 14 October and his letter to the Chairman dated 14 November.

MR ZERVOS:

A: ... I think it is important to understand that in any multi-disciplined operation there are traditional roles and concepts. One has to bring about change so that people work together differently to what they were used to in the past and, therefore, more effectively and efficiently. I think that is one of the problems in looking at this matter that way. As I understand the Committee's questioning today it is incorrect to examine this matter purely on a traditional approach basis. The Independent Commission Against Corruption is a new and innovative body. We all come together—whether lawyers, investigators, accountants, criminal analysts and support staff—as officers of the Commission. We work together in teams for the same objectives. Our particular professional background is important in relation to aspects of work that may arise in the course of an investigation. We try not to create categories within the Commission, because it is very important to work together as a team and not to allow a situation to occur where you have groups within an organisation that could create an office within an office. The fact of the matter is that it is just simply not an effective way to deal with this sort of criminal problem. You have to bring the different disciplines together and you have to make sure they work. When I became the Director of Operations I tried to bring about a structure and a system so that we put together a winning formula that in some way dealt with the fact that people were coming together from traditional areas of law enforcement and other different fields

of endeavour. I think the changes that have occurred have improved the situation remarkably."

"Fundamental to a successful investigation and prosecution of official corruption is the early involvement of lawyers in the investigative process to ensure that the evidence gathering is proceeding on the right track. Official corruption is a difficult and complex problem. This is a specialist area requiring specialist skills. It cannot be effectively or properly handled by maintaining traditional perspectives. It is imperative that a multi-disciplined approach be taken when investigating and prosecuting official corruption. That is what occurred in the Bayeh matter.

People with different backgrounds have different approaches. Hence, there is a tendency for there to be different opinions about how to do things. These sorts of differences make for a better organisation. Constructive criticism and a healthy exchange of views is an important check mechanism to a body like the Commission with onerous public responsibilities and extraordinary powers."

4.4.3 Whilst acknowledging that there is an essential role for legal advice and input from lawyers in ICAC investigations, the Committee believes that the special expertise of trained investigators needs to be properly acknowledged and respected. This is particularly the case in respect of seconded Police officers who will come into the Commission from a position where they exercise considerable authority over investigations into complex criminal activities. If the expertise of these people is to be properly utilised, they must be given sufficient authority and responsibility to be able to make investigative decisions, under the supervision of the Director of Operations, through the Deputy Director.

4.4.4 Flexibility is important. However, the Committee believes that it is essential, if the public is to have confidence in the effectiveness of ICAC investigations, that the command structure outlined in SOP 1/91 "Command and Responsibility" is followed and implemented. If a policy is to be of any use it must be followed. Flexibility, and a multi-disciplinary team approach must not be allowed to become an excuse for the command structure to be subverted. SOP 1/91 is unequivocal. Until they reach the hearing stage investigations should be run by Chief Investigators who are under the direction of the Director of Operations through the Deputy Director.

4.5 MR RODEN'S PROPOSAL FOR A DEPUTY COMMISSIONER

4.5.1 On 06 November the Committee received evidence from the Hon Adrian Roden QC, Assistant Commissioner of the ICAC. The Committee sought Mr Roden's assistance with this inquiry on two grounds, namely: the Committee's perception that, in Mr Temby's absence Mr Roden was Acting Commissioner at the time Mr Bayeh approached the ICAC; and a letter Mr Temby had recently sent to the Presiding Officers of Parliament concerning Mr Roden's presence on the senior management

committee of the Commission. The Committee was particularly interested in Mr Roden's views on the procedures and structures for the management and control of ICAC investigations and operational activities.

- 4.5.2 Mr Roden prepared a written statement for the Committee in which he discussed the true nature of his responsibilities within the Commission, the Bayeh matter and his views on the Committee's first term of reference. He made it clear in this statement that he had never been Acting Commissioner. Of most interest to the Committee in the context of this inquiry was his suggestion that the present management and control structure within the Commission could leave "a gap" in the temporary absence of the Commissioner. He suggested the establishment of a position of Deputy Commissioner, who would work with the Commissioner and take over in his or her absence. He added that such a structure "would have resulted in a more satisfactory structure to handle the Bayeh matter when it arose." This proposal for a Deputy Commissioner is discussed below and is the subject of findings and recommendations at the end of this chapter.
- 4.5.3 It should be noted that Mr Roden's proposal for a Deputy Commissioner was put forward in the context of a more thorough-going proposal for the way ICAC operations should be managed and controlled. This proposal was for a clear distinction to be made between the management of the ICAC as an organisation and the handling of individual investigations. Mr Roden's proposal is that the Commissioner (and a Deputy, together if necessary with Assistants) should be responsible for the management of the ICAC. Individual investigations that involve hearings, however, should be presided over by persons brought in from outside the Commission and possibly called "Special Commissioners". He suggested that there should be a set of new provisions in the ICAC Act providing powers to these "Special Commissioners" and clarifying their independence (including sole responsibility for their reports).
- 4.5.4 The Committee believes that Mr Roden has raised some very important issues with this proposal. What he is proposing would involve a fundamental change to the way the ICAC is presently operating and to the way the ICAC Act envisages the Commission operating. Under Mr Roden's proposal, Mr Temby (and future Commissioners) would no longer preside over hearings and prepare reports. The Committee believes these proposals require further debate and consideration before a definitive conclusion can be reached. In putting forward this view, the Committee is in no way dismissing the proposals, which are viewed as most important. Indeed, the Committee has included Mr Roden's statement and evidence as an appendix to this report with a view to encouraging further debate and consideration of the proposal.
- 4.5.5 Returning to the Deputy Commissioner proposal, Mr Roden spoke to the proposal when he appeared before the Committee on 06 November.

"MR RODEN:

A: There is a general impression in the community that in some way I am a No. 2 in the hierarchy of the Commission. I think that is unfortunate. Quite apart from my own position, in that I might be regarded as sharing some of the responsibility for statements, decisions or policies in which I have had no part, it seems to me that not only is there a misconception as to the structure of the Commission but also this extends to a mistaken belief that there is something by way of check or balance within the organisation which is not there. That is perhaps all the more important by reason of the position from which I came to the Commission. If there is a mistaken belief in the community—and I believe that there is—it is that the Commissioner has sitting on his right hand, assisting and advising him, a recently retired judge of the Supreme Court, and that is not in fact the case. It is not a matter of what I think the position should be. It simply seems to me that if that view is held and it is wrong, it is wrong that such a view should be held. The view seems to have been shared where one might expect the greatest knowledge of the true position to be. In the recent annual report, that false impression is conveyed. The letter that I received from this committee, expressing an interest in my role as "acting Commissioner" at a certain stage, indicates that the same view is held here. There is a link between what I say about that and a proposal that I make in the statement that has been tabled. Establishing a position of deputy Commissioner is important for a number of reasons, some of which are set out in the document. Perhaps I should elaborate on those a little.

Under the present structure, the Commissioner is the only person at the Commission who, in the normal course of events, has access—either direct or indirect—to every person who works there and to everything that occurs there. Every other person at the Commission has responsibility in a limited area only. Obviously, the lower you go in the hierarchy, the more limited each person's responsibility is. Immediately below the Commissioner come the people on the level of directors, general counsel and the Commission solicitor, as the secretary is now called, each of whom is responsible, as I understand it, for only one area. That means that there is nobody to whom the Commissioner can turn for advice who is likely to be au fait with all that is going on within the Commission. Putting the same thing vice versa, no one has right of access to everything that is happening there and can tap him on the shoulder and say, "Hey, maybe you shouldn't be doing it this way. Maybe it should

be done that way".

The other problem with the absence of such a person is what the position is to be in the absence of the Commissioner. I mentioned that in my statement. In fact, two weeks would be the longest that Mr Temby, as Commissioner, has ever been absent—if it is as long as that. Quite apart from presiding over hearings out of Sydney, being overseas or being interstate for conferences or any other purpose, people do get ill. I wonder what would happen if the Commissioner were, of necessity, away from his post for, say, two or three months. As I understand it, nobody in the Commission has been aware of everything that has gone on within all the departments of the Commission. No person would automatically be in charge in the absence of the Commissioner. There is power under the Act, as you are no doubt aware, to appoint an acting Commissioner. In my view, there would be no natural or obvious candidate for such an appointment within the Commission, particularly bearing in mind the qualifications required. An acting Commissioner would be required to have the qualifications as specified in the Act for the Commissioner.

If anyone within the Commission were appointed to act in the Commissioner's stead, it would almost certainly be a person who was unaware of what was going on within certain sections of the Commission. That is a real problem."

4.5.6 Mr Roden was asked to elaborate on the suggestion in his statement that the "gap" left by the temporary absence of the Commissioner may have had an effect on the way in which the Bayeh matter was handled.

"CHAIRMAN:

Q: Turning to paragraphs 31 and 32, do you believe that the gap in the temporary absence of the Commissioner was a significant factor in the way the Bayeh matter was handled?

MR RODEN:

A: I cannot answer that because I do not know how it was handled. I do say in paragraph 32 that it would have resulted in a more satisfactory structure to handle it. I say that because in the absence of the Commissioner there would have been a deputy Commissioner who would have been in real terms acting Commissioner and somebody would have been there who would have had responsibility to say which way it should go.

Q: There would have been some significance in that?

A: There certainly could have been. I understand the suggestion that has been made is that the wrong people may have handled it. I do not know and I make no comment about that. Presumably if somebody had been in charge of the organisation as a whole and this matter had been regarded as being of sufficient importance, it would have been referred to him or her and then it would have been channelled in the right direction...

MR TINK:

Q: Do you think then that this is an example of a situation where it is important to have somebody in overall control, if I can use that expression, at all times?

A: Indeed. I think it is as good an example as you would find. Indeed, if you asked me to make up an example for you, I do not think I could do better. There was what apparently was regarded as a very important matter, and there should have been somebody there who, if necessary, could have said to the Director of Operations and to the lawyers involved, "This is what will be done". There was nobody, as I understand it, who had the authority to do it. Mr Anderson, of course, had the power to tell his investigators, the operations staff, what, if anything, they were to do. So far as the lawyers are concerned, I think—and Mr Zervos would understand better than I what the structure is—the lawyers are responsible to the Commission secretary, as the position was styled at that time, and the Commission secretary would have been in a position to tell the lawyers what to do and the Director of Operations to tell the investigators what to do, but as I understand it, there was no one who could give an order or a direction which was bound to be obeyed both by investigators and by lawyers. I might be wrong in that understanding of the structure, but that is as I see it.

Q: This, then, is really at the heart of what we perhaps should be looking at now with the benefit of hindsight to consider in terms of a structural change to look at how to get around this problem for the future.

A: I would think for that type of organisation, any law enforcement body, investigative body, call it what you will, there should be a chain of command so that at any time someone is in charge. If the Commissioner of Police is away, the deputy Commissioner runs the show, and if he is away, I suppose the senior assistant

Commissioner does."

4.5.7 One of the Committee members sought Mr Roden's response to a suggestion that a suggestion that there could be a "clique" or group within the ICAC who exercise undue influence due to their access to the Commissioner. Mr Roden replied in part that he "would not say there is anything that is so firmly fixed in my mind as fact that I would be justified in saying to this Committee that there is support for the proposition that was put to me". Some discussion followed as to the possible effect of the creation of a position of Deputy Commissioner on any tendency for a clique to form.

"CHAIRMAN:

Q: Just following up that, in general terms I suppose any study of history would tell you that where there is a centre of power you may get cliques forming.

MR RODEN:

A: Of course.

Q: Even if they only enjoy the security of tenure of Catherine the Great's lovers but there would be an advantage in what you are suggesting, the deputy Commissioner, as a check and balance in relation to people forming that sort of magic circle.

A: I think it would be a very definite check. This notion that there is a second person who knows everything that goes on, it has got so many advantages. If the Commissioner falls under a bus, it is essential really that there be somebody else...

MR NAGLE:

Q: If there is a clique around Mr Temby, would not appointing another deputy Commissioner create a new power structure around him and perhaps create new cliques, with people currying favour with him?

A: I am not an expert on cliques. I do not think to overcome the problem of having a right-wing Commissioner and a left-wing deputy you need to have a centre-left assistant Commissioner as well. Of course I suppose there are all sorts of possibilities and problems. If you did have two cliques with a head to each clique, you are better off than having one because that is by definition a check and balance.

The deputy Commissioner is really somebody else like the Commissioner who is number two to him - because in any organisation you have to have a number one - but who does all the things he does, takes over in his absence, and when he is there is constantly providing the potential for a second point of view that will be taken into consideration. That is as I see it."

4.5.8 Mr Roden was asked whether he was aware of Mr Temby's views on his proposal for a Deputy Commissioner. He said that he thought Mr Temby was "not unsympathetic" to this approach. Mr Zervos was pressed for a Commission response to the proposal when he appeared before the Committee on 07 November. Mr Zervos also indicated that Mr Temby would support the proposal.

"CHAIRMAN:

Q: Getting back to Mr Roden's concern that Mr Temby is mortal and may become sick for, say, 12 months. Obviously on Mr Roden's evidence Mr Temby has been very conscientious as to holidays and everything else. He has been very much on board, but that might not happen in future. What happens then in relation to leadership at the Commission?

MR ZERVOS:

A: The way it has worked when he has been away, albeit for short periods of time, is that the office is still in communication with him wherever he may be, in the event that there is need to communicate with him. However, if he is ill and unable to take control of the organisation there has been no thought given to what could happen. Perhaps he is the best person to ask.

Q: There is provision in the Act. I assume that someone would approach the Premier to approach the Governor to have someone appointed in an acting capacity.

A: Yes. There is a mechanism available.

MR GAUDRY:

Q: Mr Roden's concern about that is that should someone be appointed from outside the Commission he would not have the compass of all the matters dealt with. Therefore you would have a leader who did not have the ability to direct.

A: I appreciate what you say.

CHAIRMAN:

Q: At least he has sounded the alarm bell.

A: The Commissioner would be keen to have a deputy Commissioner. This has not been done by design on his part.

Q: That is not the suggestion.

A: It would be a very important position and a very rare person who could fill the requirements of such a position."

4.6 FINDINGS AND RECOMMENDATIONS

- 4.6.1 When Mr Bayeh first approached the ICAC in July 1990 the procedures and structures for the management and control of ICAC investigations and operational activities, were inadequate. There was not a single line of command or an effective command structure. There was no completed investigation manual and there was no standard operating procedure for the management of informants.
- 4.6.2 The position has improved significantly since July 1990. The Committee notes that the ICAC now has a well developed operations strategy. There is now in existence a completed investigation manual. (The Committee has sighted Part One of this manual. Whilst what the Committee has seen of this manual is impressive, it should be noted that the Committee has been seeking access to this manual for nearly 11 months.) There is now a standard operating procedure entitled "Command and Responsibility - Operations Department" which clearly spells out the command structure in the Operations Department. There is also a standard operating procedure on dealing with informants.
- 4.6.3 The Committee hopes that these improvements to the procedures and structures for the management and control of ICAC investigations and operational activities would ensure that complex matters such as the approach by Mr Bayeh would now be handled more effectively.
- 4.6.4 Whilst acknowledging the need for flexibility and the use of multi-disciplined teams by the Commission, the Committee believes it is essential that the command structure outlined in SOP 1/91 "Command and Responsibility - Operations Department" is followed. Until such time as matters reach the public hearing stage, investigations should be run by Chief Investigators who are under the command of the Director of Operations through the Deputy Director.
- 4.6.5 The Committee sees considerable merit in Mr Roden's proposal for the establishment of a position of Deputy Commissioner, and recommends the establishment of such a position. There are a number of issues to be resolved before an appointment is made, including the duties and necessary qualifications of the person holding the position. The Committee would wish to be involved in the resolution of these issues.

The Committee has noted that the agreement between the Government and the non-aligned Independents in the Legislative Assembly provided for the appointment of the Commissioner of the ICAC, amongst other office holders, to be subject to the approval of an all-party Parliamentary Committee. The Committee would suggest that a similar arrangement be applied in respect of the proposed position of Deputy Commissioner of the ICAC.

4.6.6

The Committee has not come to a position concerning Mr Roden's proposal for a distinction to be drawn between the roles of the person managing the Commission and those presiding over hearings. The Committee has included Mr Roden's statement to the Committee and his evidence as an appendix with a view to encouraging further discussion and consideration of this proposal.

RELATIONSHIP BETWEEN THE ICAC AND OTHER AGENCIES

- 5.1 As outlined in 2.1.4 above one of the matters raised by Mr Gibson was the relationship between the ICAC and other agencies involved in investigating or prosecuting corruption. Although Mr Gibson's comments were largely directed at the relationship between the ICAC and the Internal Police Security Unit, the second term of reference required the Committee to inquire into and report on the relationship between the ICAC and other agencies more generally. Consequently, the Chairman wrote to a number of relevant agencies inviting submissions on this issue. This chapter outlines the submissions and evidence received from each agency.
- 5.2 NSW POLICE
- 5.2.1 The NSW Police Service supplied the Committee with a detailed submission describing its relationship with the ICAC. The submission described both the formal and informal links and lines of communication between the two bodies. A monthly schedule of relevant matters is prepared by the Internal Affairs and Internal Police Security Branches and forwarded to the ICAC. The ICAC may request further information on matters of interest. Since 1988 the NSW Police Service has provided written advice to the ICAC on over 180 matters.
- 5.2.2 Since May 1989 significant numbers of NSW Police have been seconded to the ICAC as Investigators and Unit Investigators. The total number of secondments to date is 32, and as at 30 September 1991 there were 12 Police on secondment. The usual length of secondments is two years. To date there has been no difficulty in placing officers returning to the NSW Police Service.
- 5.2.3 The submission noted that a number of "joint operations" and "joint ventures and intelligence gathering operations" had been entered into between the NSW Police and the ICAC. These operations have resulted in corrupt/criminal conduct being identified and criminal proceedings being brought against the offenders. Much of this liaison occurs between the head of the Internal Police Security Unit (IPSU), Superintendent Myatt, and the ICAC's Deputy Director of Operations, Chief Superintendent Schuberg. Mr Schuberg was appointed in June this year and the position he occupies is established within the NSW Police Senior Executive Service. The submission noted that the NSW Police Service has recently supplied Mr Schuberg with its investigation manuals and teaching material. Furthermore, at Mr Schuberg's suggestion, Mr Myatt recently addressed ICAC investigators on investigative procedures within the NSW Police Service. Mr Myatt was asked to elaborate on this assistance when he appeared before the Committee on 07 November.

"CHAIRMAN:

Q: Could I just ask Superintendent Myatt about your availability to address ICAC staff on investigative procedures...

MR MYATT:

A: ... yes, in fact on Friday, 1st November, I did address a seminar of investigators from the Independent Commission Against Corruption at the police academy at Goulburn in relation to the requirements of extortion and bribery investigations. That covered the need for the investigation to be aware of the Listening Devices Act, the use of surveillance, the duties performed by the investigator, all of the mechanisms in relation to those investigations such as the use of money and how to obtain the evidence and so on. It was a one-hour presentation and the people there were investigators.

Q: At whose initiative did that take place?

A: Mr Schuberg invited me. He asked me to take part in that seminar.

Q: And that was in response to what was obviously a perceived need with the Independent Commission Against Corruption, I take it?

A: Yes, I believe that to be the case."

5.2.4 The Commissioner of Police, Mr Lauer, is a permanent member of the ICAC's Operations Review Committee (ORC). Many of the matters considered by the ORC are referred to the NSW Police for investigation and report back to the Commission. These include matters relating to the conduct of Police officers.

5.2.5 The overall impression from the submission from the NSW Police was that "the NSW Police Service has developed an extremely workable relationship with the ICAC in both the formal and informal senses."

"The NSW Police Service has always and will continue to have an excellent working relationship with the ICAC and through the continued liaison and mutual assistance corrupt conduct will continue to be addressed."

The submission came with covering letters from the Chairman of the Police Board indicating the Board's agreement with the comments contained in the submissions and also from the Acting Commissioner indicating the Police Minister's agreement with the comments.

5.2.6 In view of the delay in the investigation of the Bayeh matter by the IPSU outlined in Chapter 3, the major issues of concern to the Committee in relation to the relationship between the ICAC and NSW Police related to the investigation of complaints against Police and the potential for delay and duplication. The potential for such delay and duplication was highlighted by Mark Findlay, the Director of the Institute of Criminology when he appeared before the Committee on 06 November. Mr Findlay drew attention to the large number of bodies which have a responsibility for dealing with complaints against Police and the lack of a formal mechanism joining these bodies into a network to "effectively process complaints against Police". He suggested the establishment of an oversight committee with representatives from the NSW Police, Ombudsman and ICAC to formalise and facilitate the notification of complaints between these agencies.

5.2.7 When the Ombudsman and Deputy Ombudsman appeared before the Committee on 06 November they suggested that such an oversight Committee was unnecessary because of the notification provisions contained in the Police Regulation (Allegations of Misconduct) Act and ICAC Act, and the procedures which have been established to facilitate notification. The NSW Police representatives who appeared before the Committee endorsed that view.

"CHAIRMAN:

Q: Could you describe the procedures in place to counter any potential difficulties in terms of overlap between the Ombudsman, the Independent Commission Against Corruption and police in respect of complaints against police?

MR FAVRET:

A: The procedures that are in place are that we currently provide to the Commission on a monthly basis all matters that are reported to the internal affairs branch and the internal police security branch by way of schedule. The Commission would then determine which matters it considers to be relevant to it and have an interest in and a declared interest in. We would provide either formal documentation into those or they would make contact direct with the investigator of the particular matter. Also the Ombudsman has regular meetings with Commission staff in relation to the same issues which should, we believe, prevent any overlap of investigation or inquiry...

Q: Yesterday the Committee heard evidence from Mark Findlay, the director of the Institute of Criminology, who saw some merit in a proposal for an oversight committee involving representatives of the Ombudsman's office, the Independent Commission Against Corruption and police to formalise and facilitate the notification process. The Ombudsman gave

evidence that really there were mechanisms in place to achieve that. I wonder if you would like to give any response to that proposal.

MR CASSIDY:

A: We would agree with the Ombudsman's observation in that regard...

MR TINK:

Q: The Police Association has said it has quite a lot of concern on behalf of its members for the situation where they might, in certain cases, be faced with a whole raft of different groups looking at them, whether it be ICAC, DPP, the Ombudsman, internal affairs, IPSU, police tribunal—I do not know if there are any others but it is not a bad start—it seems to me that in fact most of those groups have their place. I mean, they all have a particular charter and when you go into it in detail the various bits and pieces fit together; for example, the Ombudsman, internal affairs and the police tribunal are all an integral part of the Police Regulation (Allegations of Misconduct) Act, you have got the ICAC, which seems to have a separate but very relevant reference. I am not quite sure about the IPSU. The key point is assume that be right, then the very important thing from the Police Association perspective is to ensure that you have that integration and communication so that things are not being done twice if it can possibly be avoided. That is really the thrust of what you are saying here.

A: And that is exactly what happens.

Q: Everybody is bending over backwards to ensure that the most appropriate body, if there be more than one that has got an interest, looks at it.

A: Indeed.

Q: Is that what it comes down to?

MR FAVRET:

A: In essence we do not try to keep too many secrets so that we all know what is going on, if that puts it into simple terms for you, so that there cannot be that duplication of effort.

Q: We have heard there are times when it happens. I think it

happened in relation to the Gundy matter where there was an interest by the Ombudsman and also by the police attached to the Coroner. Maybe it is not in every case where you can reach agreement.

A: They are very few and far between...

MR CASSIDY:

A: All organisations, of course, would realise that the duplication of effort would be a waste of time and money on each organisation's behalf, so obviously it is in all our interests to co-operate with each other and try and ensure that does not occur. There would be very little scope for that these days with the co-operation that exists between those bodies.

5.3 OMBUDSMAN

5.3.1 The submission from the Ombudsman indicated that any difficulties in the relationship between the Ombudsman's Office and the ICAC had largely been resolved by discussion between Mr Landa and Mr Temby, and that the two agencies were co-operating successfully. The submission noted that after consultation between the two bodies the ICAC had decided that it would leave the majority of complaints about Police to be dealt with under the Police Regulation (Allegations of Misconduct) Act. It also noted that in two cases over the past two years notification of serious complaints under s.11(2) of the ICAC Act by the Ombudsman's Office had resulted in formal investigations by the ICAC. In each case the Ombudsman's Office recommended this course of action "not only because of the subject matter of the complaints, but because of the greater powers of the ICAC to obtain information".

5.2.2 The only matter of concern raised by the Ombudsman related to a difficulty in the inter-relationship of the ICAC Act and Ombudsman Act. The Ombudsman's submission outlined an approach from the ICAC for information in relation to a Corruption Prevention Project. The Ombudsman submitted that the provision of the information sought by the ICAC would have placed the Ombudsman's Office in breach of the secrecy provisions of s.34 of the Ombudsman Act. At this time the Ombudsman may act "co-operatively" with the ICAC and provide it with information only where the ICAC is exercising a principal function under s.13(1) of the ICAC Act relating to the investigation of corrupt conduct. The Ombudsman called for the amendment of s.34(1) of the Ombudsman Act to provide the Ombudsman with a wider discretion to release information to the ICAC.

5.3 AUSTRALIAN FEDERAL POLICE

5.3.1 The Committee received a brief letter from the Deputy Commissioner (Operations) of the Australian Federal Police (AFP). That letter indicated that the AFP "has enjoyed an excellent relationship with the ICAC and when appropriate, co-operates

with the Commission in its inquiries". The AFP officer in charge of the NSW Region, Assistant Commissioner Baer, appeared before the Committee on 07 November. He confirmed that there was an excellent relationship between the two bodies and frequent exchanges of information. He said there were currently two AFP officers on secondment with the ICAC. He also described the procedures whereby AFP surveillance may be used by the ICAC, involving a request through the NSW Police Commissioner to the AFP Commissioner. Mr Baer was asked about the sort of matters referred to the AFP by the ICAC. He confirmed that, of course, they were matters involving apparent breaches of Federal law. He also said that there were some matters, such as the ICAC's current inquiry into the release of confidential government information, which crossed jurisdictional boundaries.

5.4 NSW CRIME COMMISSION

5.4.1 The Committee received a brief letter from the Chairman of the NSW Crime Commission, Mr J Ford, outlining the relationship between the Crime Commission and the ICAC. The letter described the close relationship which developed in the early days of the ICAC as a result of the secondment of the Crime Commission Secretary to the position of Secretary of the ICAC. Regular meetings between the Secretaries of the two Commissions took place until early 1991 when an agreement had been reached regarding the reporting of possible corrupt conduct to the ICAC by the Crime Commission. Apart from this formal agreement, the letter said there was also a great deal of co-operation on operational matters of mutual interest, including intelligence dissemination. There was also some sharing of administrative and policy information and there had been recent discussion about the sharing of some operational resources. A Commissioner with the Crime Commission, Mr Phillip Bradley, appeared before the Committee on 06 November. He said that the frequency of reporting by the Crime Commission of matters to the ICAC was not all that high, but that most of the matters reported involved suspected Police corruption.

5.5 NATIONAL CRIME AUTHORITY

5.5.1 The Committee received a submission from the National Crime Authority (NCA) which outlined the relationship between the NCA and the ICAC. The submission noted that a close relationship had been formed and that the NCA provides the ICAC with information and intelligence. It also noted that on one major matter a joint task force was established with the ICAC under the provisions of the NCA Act to facilitate the rapid transfer of operational information and intelligence to the Commission. Representatives of the NCA appeared before the Committee on 07 November. They confirmed that the ICAC also provides the NCA with information in a complimentary manner.

5.6 CRIMINAL JUSTICE COMMISSION

5.6.1 The Committee received a submission from the (Queensland) Criminal Justice Commission (CJC), which described the relationship between the CJC and the ICAC.

The submission stated that there was no formal agreement between the two agencies to date although discussions had recently commenced about the possibility of entering into a Memorandum of Understanding. The relationship to date has been characterised by "mutual co-operation by way of informal agreement and liaison". Specifically, the submission noted that the ICAC had provided the CJC with valuable assistance during its establishment and "in the preparation and continual updating of its operating procedures". Senior officers of the two agencies had held discussions about a number of issues of concern and the CJC had received "nothing but assistance from the ICAC in this regard". The submission noted that as part of the review of the CJC being conducted by the Parliamentary Criminal Justice Committee the Commission had recommended a number of amendments to the CJC Act, based upon provisions of the ICAC Act. The submission also referred to ongoing liaison between officers involved in the corruption prevention, education and research areas of each body. When the CJC's Director of Operations, Assistant Commissioner Carl Mengler, appeared before the Committee on 07 November he confirmed that there was a high degree of co-operation between the two bodies.

5.7 OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

5.7.1 The Committee received a submission from the Office of the Director of Public Prosecutions (DPP) which described the relationship between the Office of the DPP and the ICAC. The Committee also received evidence from the Solicitor for Public Prosecutions, Mr Steve O'Connor, on 06 November. Mr O'Connor emphasised that the relationship between the two bodies is based on a series of checks and balances and is an "arms-length" relationship.

"MR O'CONNOR:

A: In summary, this relationship is based, first, on a system of checks and balances in procedures adopted in considering the availability of charges and thereafter framing any charges that are to be laid and second, on the degree of flexibility in the approach that both organisations adopt in their dealings with each other, such as the absence of subpoena being served on the Office of the Director of Public Prosecutions for files required for the conduct of inquiries, and also the setting of time frames for advice to be given by the Office of the Director of Public Prosecutions. Often these time frames are used as basic guidelines for the monitoring of cases rather than as deadlines to be met slavishly.

Where further inquiries are to be conducted appropriate allowance is made. Alternatively, a longer period of time may be required to receive advice from counsel. Therefore, matters are assessed on an individual basis to ensure that a restrictive time limit will not prejudice the collection of evidence or the need for proper consideration to be given to a matter. Each

matter is therefore monitored with purpose. Although professional discussion is fostered between both organisations, there is a conscious realisation that each organisation is to maintain an arm's length relationship. Through the need for respective accountability, the reality of checks and balances exists. Finally, as I said in my submission, the relationship is harmonious and at the same time is consistent with our independent roles."

It was emphasised in both the submission and Mr O'Connor's evidence that the relationship between the two bodies is harmonious yet officers of each body are conscious of the need to ensure the respective objectivity of each body.

5.7.2 The submission from the Office of the DPP also noted a further aspect of the relationship between the two bodies. That is the secondment of Crown Prosecutors to the ICAC to act as General Counsel and Counsel Assisting in inquiries. Both the ICAC and the Office of the DPP benefit from the involvement of senior Crown Prosecutors in the work of the ICAC and the Committee has already expressed its support for this practice, particularly in terms of the savings for the ICAC in terms of counsel fees.¹¹

5.7.3 Two issues of concern were raised by the submission from the Office of the DPP and Mr O'Connor's evidence. Firstly, the submission raised the proposal discussed in the ICAC's 1991 Annual Report that transcripts of ICAC hearings should be able to be used in prosecutions. This proposal was put forward as a result of difficulties faced by the ICAC in getting material from witnesses available in an admissible statement form in accordance with the requirements of the Justices Act. There was some discussion of this issue with Mr O'Connor. This issue had also been discussed at some length at the Committee's public hearing with Mr Temby on 14 October.¹² The Committee has not come to any firm view on this issue. However, it is clear that some members of the Committee have some concerns with the proposal from the ICAC. Mr O'Connor said that a working party including representatives of the Office of the DPP and the ICAC was working on the issue and that they were considering all the issues. He indicated that a proposal would be put to the Criminal Law Review Division of the Attorney-General's Department shortly.

5.7.4 Secondly, the submission raised the issue of the increasing number of referrals which the Office of the DPP is receiving from the ICAC.

"The increasing number of referrals from the ICAC has created difficulties for the ODPP. Requests made by the ODPP to Treasury for an enhancement to meet these demands have been unsuccessful.

¹¹ Committee on the ICAC, Collation of Evidence, 14 October 1991, pp 57, 61.

¹² *ibid*, pp 8, 68-73.

There is also now the prospect of referrals arising out of the present Informers Inquiry and a separate large body of referrals coming from the Building Royal Commission. The lack of a designated task force within the ODPP to exclusively service referrals from the ICAC has caused severe strains on the ability of ODPP to immediately respond across the board. Despite present staffing restrictions, all current matters have been processed by the ODPP within time. However, the future ability of the ODPP to satisfactorily cope with these demands is a matter of concern to both offices, which will necessitate further Treasury consideration."

Although the submission stated that to date all referrals from the ICAC have been processed in time, it is evident from the ICAC's 1991 Annual Report and evidence before the Committee of Mr Temby that there has been at least one case in which there was a problem.¹³ In any case it is quite clear that the number of referrals from the ICAC is increasing and that this must have resource implications for the Office of the DPP. The Committee would draw the attention of the Government to this issue.

5.8 JUDICIAL COMMISSION

5.8.1 The Committee received a written submission from the Chief Executive of the Judicial Commission. The submission noted that while the Judicial Commission is fully aware of its reporting duty under s.11 of the ICAC Act, to date the Commission has not had cause to refer any matter to the ICAC. The submission also noted that arrangements were in place for regular (three-monthly) meetings between officers of the two bodies. The submission went on to say that, following consultation, two matters concerning judicial officers had been referred to the Judicial Commission by the ICAC. In relation to such references under Part 5 of the ICAC Act it was highlighted that there may be a need for Part 6 of the Judicial Officer Act 1986 to be amended to provide the necessary authority for the Judicial Commission to take action in accordance with such referral from the ICAC. The submission concluded by noting the benefits of the consultation and liaison process operating between the Judicial Commission and the ICAC, and stated that that process was working well.

5.9 DEPARTMENT OF LOCAL GOVERNMENT AND CO-OPERATIVES

5.9.1 The Committee received a written submission from the Minister for Local Government and Minister for Co-operatives, the Hon G B P Peacocke MP, in relation to the relationship between the Department of Local Government and Co-operatives and the ICAC. The submission pointed out that there was some overlap in the functions of the ICAC, Ombudsman, Department of Local Government and Police in

¹³ ICAC, Annual Report to 30 June 1991, pp 48-49.

Committee on the ICAC, Collation, 14 October 1991, pp 66-67.

respect of complaints about Local Government matters. However, the submission pointed out that formal liaison meetings are held between the agencies as well as regular informal contact to reduce the likelihood of concurrent investigations. The submission referred to the current review of the Local Government Act and the ICAC's current inquiry into Conflicts of Interest in Local Government. It stated that these initiatives should "clarify the role of the Department as the key investigative body into allegations of conflict of interest, and will establish clear relationships and processes with the other bodies involved."

5.10 FINDINGS AND RECOMMENDATIONS

- 5.10.1 The evidence before the Committee indicates that the ICAC and other agencies involved in investigating or prosecuting corruption have developed effective working relationships. Indeed the Committee commends the steps which have been taken, particularly by agencies with responsibilities in respect of complaints against Police, to develop formal and informal liaison mechanisms to ensure matters are dealt with efficiently and effectively.
- 5.10.2 The Committee commends both the ICAC and other investigative agencies upon the mutual co-operation and assistance which is characterising their relationships. The Committee is particularly impressed with the assistance which the NSW Police Service has been providing to the ICAC, including the provision of investigative manuals and the availability of the head of the IPSU to address ICAC investigators on investigative procedures.
- 5.10.3 The Committee would draw the Government's attention to the increasing number of referrals which the Office of the Director of Public Prosecutions is receiving from the ICAC. The Office of the Director of Public Prosecutions may require extra resources in order to ensure these referrals are dealt with in a timely manner.

WITNESS PROTECTION

6.1.1 The third term of reference required the Committee to inquire into and report upon the witness protection facilities available to those assisting the ICAC with its inquiries. The Committee received submissions and took evidence from representatives of a number of agencies which are involved in witness protection. Much of that evidence related to the proposal for a national legislative scheme for protection. Although this issue is not strictly within the Committee's terms of reference, the urgency of the need for such a scheme was impressed upon the Committee. The Committee has therefore decided it would be appropriate for this issue to be addressed in this report and it is discussed briefly in this chapter.

6.2 THE ICAC'S ARRANGEMENTS FOR WITNESS PROTECTION

6.2.1 The ICAC has the legislative power to provide witness protection under s.50 of the ICAC Act, which provides,

"50 If it appears to the Commissioner that, because a person -

- (a) has appeared, is appearing or is to appear at a hearing before the Commission to give evidence or to produce a document or other thing; or
- (b) has produced or proposes to produce a document or other thing to the Commission under this Act otherwise than at a hearing before the Commission; or
- (c) has assisted, is assisting or is to assist the Commission in some other manner,

the safety of the person or any other person may be prejudiced or the person or any person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary to avoid prejudice to the safety of any such person or to protect any such person from intimidation or harassment."

6.2.2 Soon after its establishment the ICAC came to the view that it would not be setting up its own specialist witness protection facility "unless that is absolutely necessary". The key reasons for this view were "duplication and expense". It was felt that the Commission's needs should be able to be met "by use of existing State and Federal

facilities on a cost recovery or shared basis."¹⁴

6.2.3 It is apparent that the ICAC has made sparing use of witness protection facilities. As at 27 March 1991 the Commission had spend less than \$34,000 on witness protection.¹⁵ This experience seems to bear out then ICAC's early view that it was unnecessary for it to establish its own witness protection facilities.

6.2.4 The arrangements which have been made for the ICAC to be able to use the facilities of either the NSW Police or AFP provide the Commission with a degree of choice. These facilities are provided to the ICAC on a user-pays basis, although in the case of the NSW Police, there is no charge for salaries (except for over-time). The costs incurred involve such things as Police over-time and meal allowances, accommodation, airfares and consumables. The facilities offered range from 24 hour "on call" pager protection, to close personal protection and re-identification/relocation of individuals.

6.2.5 In arranging to use the NSW Police and AFP witness protection facilities the ICAC is following the practice of the NCA. The NCA does not protect witnesses itself, except in emergencies or other exceptional circumstances, instead relying upon the AFP facilities. The Committee sees no need for the ICAC to establish its own witness protection facilities at this stage. However, in addition to the arrangements which are in place to use the NSW Police and AFP facilities, the Committee would draw the ICAC's attention to the facilities provided by the Queensland Criminal Justice Commission. The Committee was impressed by the submission it received from the CJC and also by the evidence of its Director of Operations, Assistant Commissioner Carl Mengler. It may be of assistance to the ICAC at least in terms of increased choice, for the Commission to have a further option of using the CJC's witness protection facilities should the NSW Police and AFP be inappropriate in particular circumstances.

6.3 COST

6.3.1 One of the issues which surprised the Committee in this area was the extraordinary cost of witness protection. Related to this is the risk of authorities providing protection being seen to "buy" evidence. This issue arose in relation to the Bayeh matter and the conditions Mr Bayeh was seeking to impose in return for giving evidence about Police corruption. This issue was discussed with Ms Drennan when she appeared before the Committee on 14 October.

"CHAIRMAN:

Q: In relation to the \$3 million which you said was unacceptable in

¹⁴ ICAC, Report on Witnesses for the Parliamentary Joint Committee, December 1989, p 16.

¹⁵ Committee on the ICAC, Collation, 27 March 1991, p 29.

your minute of 30th July, you went on to say in the same minute that there was scope for dealing with Bayeh on his demands for property and maintenance, is that correct?

MS DRENNAN:

A: Yes.

Q: Does the ICAC have that sort of money to effect that sort of dealing?

A: The \$300,000 or \$400,000?

Q: Yes?

A: I frankly do not know. Budget is not my area. What I was seeking to get at in that minute was that there was room for negotiation in that it is practice to relocate a witness. That involves expense. Whether it went to the extent of \$300,000 or \$400,000, I do not know. It seemed a lot of money to me but it is not a matter in respect of which I had experience. That is done by other people...

The Commission clearly cannot buy evidence, nor can other law enforcement agencies in my view. It is, however, accepted I think as appropriate that witnesses who suffer as a result of that role be compensated, for instance to the extent that they are not out of pocket. That was the basis upon which we had negotiations with Bayeh. To have paid him \$1,000 a week may have on the face of it seemed a lot of money. We had not gone into the mechanics of how his weekly income was assessed. He told us that he supported a family I think of four children and an aged father. \$1,000 a week in those circumstances perhaps is not quite as large as it might have looked at first blush. The request for \$3 million came totally unexpectedly and was regarded as totally impossible. The other conditions that he sought initially which were protection and securing the premises are fairly standard in some cases with witness protection measures taken as is appropriate."

6.3.2

This matter was taken up with Peter Lamb when he appeared before the Committee on 15 October.

"MR GAY:

Q: Further on, section 26 states that it was considered—and the commission was contacted later—that the \$3 million payment

could not be agreed to, that the commission could not buy evidence, but there was room for negotiations in relation to the property and to income maintenance. That was a property for \$300,000 to \$400,000 and an income of \$1,000 a week. My question is: was that a realistic attitude by the commission? Is it part of its normal procedure, or was that not entertained with any great certainty at all?

MR LAMB:

A: I think I could best answer the question by talking about my experience once again. I have been responsible for the relocation both in Australia and overseas—in my former position—of many informants and many criminals. I had never caused that amount of money to be paid. But, having said that, I think if I were dealing with Mr Bayeh, and that was his asking price, I would have had another one and we would have commenced negotiations from there... it is a traditional law enforcement method of obtaining information and or evidence. It is used quite often, and the money and the things that are talked about there are primarily related to the protection of the witness and his family. As you would appreciate, to relocate someone and his family is a very expensive business, particularly if that relocation requires close protection, which means 24-hour protection; it is very expensive."

6.3.3

Mr Gaudry also raised this issue with representatives of the NSW Police Service and Mr Mengler of the CJC on 07 November 1991.

"MR GAUDRY:

Q: ... it is obvious that witness protection can be very expensive. You say it ranges perhaps up to \$30,000.

MR COE:

A: Yes.

Q: Would that cover most replacement within Australia situations?

A: Yes, that would be an average figure. It is something that it is very hard to give an accurate assessment on because each case has its own idiosyncrasy. But \$30,000 would be an average figure. It is a very expensive program to run.

MR CASSIDY:

A: In fact in the submission it points out that figures range from \$10,000 up to \$100,000.

Q: Is witness protection afforded to informers or only to people involved in an actual court case situation?

MR COE:

A: People who are capable of entering the program must meet certain criteria, and that is defined in our witness security program. A lot of informers who become witnesses are capable of entering the program, but in the strict sense of being an informer the answer would be no. They must meet the criterion of becoming a witness. It is not just being capable of telling a law enforcement agency certain things have taken place. They have to be prepared to take the next step and be prepared to stand up in court and give the evidence.

Q: So it is not a tradeable item in terms of selling information?

A: No, and that is certainly what we have to be very careful about, to ensure that it does not become a tradeable item. We undertake their security and protection on the basis that there is a return for the people of New South Wales—that return being for them to give evidence that will lead to the authors of organised crime and very serious crime."

"MR GAUDRY:

Q: What procedure do you have to avoid what I would class the trading of information, where someone might come forward with information that they are willing to give you but at a package of costs that they want to negotiate?

MR MENGLER:

A: That is a very difficult area to speak about. Everyone of those cases has to be treated on its own merits. You have to establish the gravity of the type of offence they might have been involved in, above all else. I am not a believer in indemnities and I think that by way of prosecutions today you can usually still charge a person with an offence when they are co-operating with you and do something else with them in some other way. We had a tendency in about the last 10 years to rush around with indemnities. Then a witness can effectively play you off a

break, so to speak, in the end. It is very much a tactical area. It all depends on the gravity of the issues that are there at a given time as to the decision that must be made. Of course, you have to verify that they are of assistance and they know what they are talking about. They have to be of some value, some great value to you. It is no good having someone who tells you about two street drug dealers on the corner.

Q: Would you not get to a situation where they upfront the package and then perhaps come later with the information; the other way around, that is?

A: It can happen. Once again that is the nature of the dirty beast that we are astride, that law enforcement is astride. It bucks all the time. Anyone who thinks that it is a smooth ride is a fool, and a lot of people think it is smooth. They only want the smooth ride bit. But it bucks every day and will continue to do so in the future...

The point I make to you is it is quite clear that people with knowledge but not involved in criminality themselves—who are married to someone or know someone—have a great deal of knowledge that can strike at the very heart of serious crime. They have got to be considered as well as witnesses. They may never be witnesses; in point of fact they may not want to be. At times we have got to start looking at these people and understanding that they are trying to assist but do not want to be witnesses. Once again, law enforcement over the last few years has had a tendency to use them and throw them out, and it is not right."

6.3 NATIONAL LEGISLATION

6.3.1 The NCA first drew attention to the need for national witness protection legislation in its 1985-1986 Annual Report. In that report it said that specific legislation was required "to permit and regulate witness protection in Australia".¹⁶ The Joint Committee on the NCA conducted an inquiry into Witness Protection in 1987 and 1988. The Committee's report, presented to Parliament in 1988, recommended the formulation of complimentary State and Federal witness protection legislation.¹⁷ A National Steering Committee was formed in 1989 to develop complimentary legislation. The Committee last met in November 1989 at which time general agreement had been reached on principles for inclusion in Commonwealth and State

¹⁶ National Crime Authority, Annual Report 1985-86, pp 42-43.

¹⁷ Joint Committee on the National Crime Authority, Witness Protection, 1988, Australian Government Publishing Service, Canberra.

legislation.

6.3.2 The NSW Police Service submission to the Committee succinctly summarised the reasons why such legislation was important, particularly in the context of procedures for re-identification.

"The process of total re-identification means a complete identity change which is achieved by the issuing of new documentation and records.

However, while the informal arrangements (in existence between agencies at the State and Federal level) operate satisfactorily it is extremely desirable that the witness protection program be formalised in specific Commonwealth legislation with the support of complementary State legislation.

Commonwealth legislation is necessary on a wide range of matters, such as taxation, immigration, passports and social security while the most significant State issue relates to the issue of new birth certificates. As the New South Wales legislation would seek to complement that of the Commonwealth, there would be serious difficulties in attempting to legislate in isolation from the Commonwealth."

6.3.3 Despite the agreement reached at the last meeting of the National Steering Committee in 1989, most of those who gave evidence to the Committee concerning witness protection, complained about the lack of progress which had been made on this issue. Again, most of those who gave evidence on this issue indicated that the development of such legislation was a matter of some urgency. Perhaps the most compelling evidence in this regard was given by Assistant Commissioner Carl Mengler from the CJC.

"MR MENGLER:

A: I am aware that moves have been made toward a national scheme for probably some 15 years to my knowledge and there is not a great deal of interest shown in it. For the sake of the future of the nation and witnesses it is imperative that we do have a national scheme.

CHAIRMAN:

Q: When you say there is not a great deal of interest shown, you would expect interest by the Federal Government?

A: I would expect interest from every government and more so the Federal Government.

- Q:** Yes, that is right, because it would be a national scheme.
- A:** Yes.
- Q:** And you regard it, I think you said, as imperative in terms of the fight against organised crime and corruption?
- A:** Absolutely....
- Q:** Given your experience in law enforcement, are you aware of instances where, because that scheme has not been in place, opportunities have been missed to combat organised crime and corruption?
- A:** Yes, I am aware of people who have been significant witnesses in major prosecutions who have actually been murdered. I am going back 10 years, I suppose.
- Q:** There is nothing to say those circumstances may not occur again?
- A:** The circumstances are still very real"

6.4 FINDINGS AND RECOMMENDATIONS

- 6.4.1 The Committee supports the ICAC's decision not to establish its own witness protection facilities. In most cases where individuals assisting the ICAC require protection it will be appropriate for the Commission to make use of the witness protection facilities of either the NSW Police or the Australia Federal Police. However, in exceptional circumstances it might be most appropriate for the ICAC to consider using the facilities of another agency, such as the Criminal Justice Commission.
- 6.4.2 The Committee draws attention to the need for complementary State and Federal witness protection legislation and is concerned at the delay which has occurred in the finalisation of a national legislative scheme. The Committee calls on the Government to take all possible steps to ensure that work on a national legislative scheme is completed as soon as possible.

APPENDIX ONE

ICAC STANDARD OPERATING PROCEDURE 1/91 "COMMAND AND RESPONSIBILITY - OPERATIONS DEPARTMENT"

INDEPENDENT COMMISSION AGAINST CORRUPTION

STANDARD OPERATING PROCEDURE 1/91

COMMAND AND RESPONSIBILITY - OPERATIONS DEPARTMENT

01 COMMAND

Command is the authority which an Officer of the Commission's Operations Department lawfully exercises over others of that Department by virtue of positions and appointment, and includes:

- (a) the authority and responsibility for effectively using available resources and for planning, organising, directing, coordinating and controlling the Commission's activities and operations, and
- (b) responsibility for health, welfare, morale, discipline and the development of assigned personnel.

NOTE: For the purpose of this Procedure "Commander" includes a Manager or Chief Investigator who has command of a unit, section, group or team.

02 DEFINITIONS

For the purpose of this Standing Operating Procedure, the terms "Command" and "Commander" shall have the following meanings:

2.1 Command

Includes any Unit, Section, Group or Team approved by the Commission to be formed within the Operations Department.

2.2 Commander

Includes an Officer of the Commission who has command of a Unit, Section, Group or Team. The following personnel are deemed Commanders:

- . Chief Analyst;
- . Chief Investigators;
- . Manager, Technical Services Group;
- . Manager, Assessment Section; and
- . Security Manager.

03 COMMAND STRUCTURE

The Command structure covers all facets of the duties of the Commission's Operations Department, and places responsibilities for those duties on personnel who are readily identifiable. Essentially the Command structure provides senior and experienced officers to ensure appropriate responses to the operational demands of the Commission.

04 ABSENCE OF A COMMANDER

The effectiveness of the Commission's Operations Department depends upon ensuring a Command is never without a Commander. All Commanders will nominate an Officer responsible for the Command in his/her absence and advise the relevant Deputy Director of Operations accordingly. The Officer nominated will have the same duties and responsibilities as the Commander for the length of the nomination.

05 LINE OF COMMAND

All personnel of the Operations Department are attached to the "Commands" of either Unit 1 or Unit 2, and are responsible to the Director of Operations through the relevant Deputy Director of Operations.

06 DIRECTOR OF OPERATIONS

The line of command commences with the Director of Operations who has overall command of the Commission's Operations Department. Directly responsible to the Director of Operations for the consistent implementation of Commission policy are:

- (a) Deputy Director of Operations (Unit 1) - accountable for four Corporate Support Commands functionally based and which support operational commands. These commands are:
 - (i) Security;
 - (ii) Assessment Section;
 - (iii) Technical Services Group; and
 - (iv) Property.

- (b) Deputy Director of Operations (Unit 2) - accountable for the following Operational Commands:
 - (i) Investigation Teams; and
 - (ii) Chief Analyst.

07 FUNCTIONALLY BASED COMMANDS

The Commission's functionally based commands as referred to in Point 06 (a) devolve around particular aspects of operational duty ranging from investigative to supportive duties. The principal responsibilities of each are described hereunder:

7.1 Security

The Security Manager shall:

- (a) implement and administer the Commission's Protective Security Program;
- (b) supervise Security Police Officers and other designated security personnel and receptionist staff in the performance of their duties;
- (c) participate in the development of protective security policies for the Commission;
- (d) perform security vetting of Commission staff, consultants and contractors;
- (e) be responsible for Commission computer security, access to computer network and audit trails of the network;
- (f) conduct staff security awareness training;
- (g) investigate security breaches and incidents;
- (h) provide security advice for specific operational procedures; and
- (i) purchase, secure and issue approved Commission firearms and handcuffs.

7.2 Assessment Section

The Manager shall:

- (a) be responsible for the management of the Assessment Section including the supervision of assessment, specialist and support staff;
- (b) analyse and prepare reports on allegations of corrupt conduct, identifying relevant issues and approving or recommending appropriate courses of action;
- (c) be responsible for the preparation of reports, agendas and meeting papers to service the Operations Review Committee; and

- (d) provide strategic advice to the Deputy Director of Operations on issues and procedures in relation to reports and complaints of possible corrupt conduct.

7.3 Technical Service Group

The Manager shall be responsible for:

- (a) provision of technological planning and advice to the Commission;
- (b) management of technical information gathered by listening devices and observation posts;
- (c) the editing, enhancing, processing and organisation of audio and video product resulting from gathered information;
- (d) assisting Corruption Prevention and the Education Department with technological developments;
- (e) analysis of seized or surrendered items. (e.g. computer disks and audio visual tapes);
- (f) issue and custody of operations equipment (e.g. phones, radios, portable photocopiers, laptops and audio briefcases) for record of interview;
- (g) staff training for operational equipment; and
- (h) provision of general electronic services to the Commission.

7.4 Property

The Manager shall:

- (a) recommend and implement procedures for the registration and control of material (property) received by the Commission as a result of its investigative activities;
- (b) design and implement procedures for the regular disposal of property in accordance with the Independent Commission Against Corruption Act 1988, and relevant Commission policy;
- (c) manage the transfer of property (where it is documentary) to a computer based scanning/imaging system;
- (d) conduct regular audits of property and property records to ensure evidentiary integrity and compliance with procedures; and
- (e) maintain computer and other records in support of the property management process and the use by the Commission of its coercive powers.

08 OPERATIONAL COMMANDS

The Commission's Operational commands are referred to in Point 05 (b). The principal responsibilities are described hereunder:

8.1 Investigation Teams

The following are the duties of the Chief Investigator of each team:

- (a) at the direction of Director and Deputy Director of Operations initiate, manage and control investigations into allegations of corrupt conduct;
- (b) develop and implement effective and efficient case management techniques within a team environment;
- (c) prioritize and allocate work tasks and monitor progress and performance;
- (d) prepare and approve reports, investigative plans of action, briefs of evidence and other documentation;
- (e) supervise and where necessary lead operations involving the executions of search warrants and other field activities; and
- (f) liaise with external organisations including representing the Commission's interests at meetings and seminars.

8.2 Chief Analyst

The Chief Analyst has specific responsibility for:

- (a) managing the intelligence function;
- (b) advising on complex and detailed analysis in relation to specific operational requirements;
- (c) undertaking complex and detailed analysis requirements and preparing associated reports;
- (d) tasking analytical staff, as requiring to meet operation needs, and overseeing the performance standards achieved;
- (e) training staff in analytical techniques relevant to the work of the Commission;
- (f) assisting in the development, implementation and review of ADP systems to supplement the intelligence function;

- (g) liaising at senior level with relevant outside bodies as appropriate to meet operational needs;
- (h) contributing to the development of strategies to prevent official corruption; and
- (i) the Strategic Intelligence Research Group.

APPENDIX TWO

**STATEMENT AND EVIDENCE OF
THE HON ADRIAN RODEN QC**

**BEFORE THE COMMITTEE ON
06 NOVEMBER 1991**

ICAC

INDEPENDENT COMMISSION AGAINST CORRUPTION

11th November, 1991.

Mr. D.M. Blunt,
Project Officer,
Committee on the ICAC,
121 Macquarie Street
SYDNEY 2000

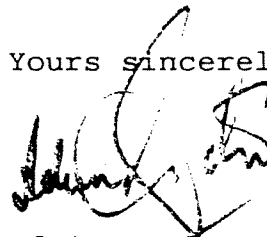
Dear Mr. Blunt,

I return the transcript of my evidence given before the Committee on Wednesday last, with some minor alterations noted.

As I mentioned to you on the telephone, there is an error in the recording of the Chairman's question on page 54 which begins "Were you concerned". There also appears to be an error in the recording of a question by Mr. Tink on page 68, where the word "wages" is obviously incorrect.

I also confirm that I have no objection to my evidence being made public. That applies both to the written statement that was tabled, and to my oral evidence.

Yours sincerely,



Adrian Roden.

MINUTES OF EVIDENCE

TAKEN IN CAMERA BEFORE

THE COMMITTEE ON THE
INDEPENDENT COMMISSION AGAINST CORRUPTION

At Sydney on Wednesday, 6th November, 1991.

The Committee met at 9.20 a.m.

PRESENT

Mr M. J. KERR (Chairman)

Legislative Council

The Hon. D. J. GAY

Legislative Assembly

Mr B. J. GAUDRY
Mr J. E. HATTON
Mr P. R. NAGLE
Mr A. A. TINK

(IN CAMERA)

ADRIAN RODEN, Assistant Commissioner, Independent Commission Against Corruption, 191 Cleveland Street, Redfern.

CHAIRMAN: You have prepared a document to assist the Committee. Would it be convenient to have that tabled?

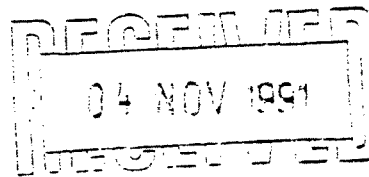
Mr RODEN: Yes.

ICAC

INDEPENDENT COMMISSION AGAINST CORRUPTION

4th November 1991

The Hon. M.J. Kerr MP,
Chairman,
Committee on the ICAC,
121 Macquarie Street
SYDNEY 2000



Dear Mr. Kerr,

Further to my letter of 1 November, I now enclose a statement which I trust will be of assistance to your Committee at the hearing on Wednesday next. I shall be grateful if you will kindly arrange for copies of the statement and of this letter to go to members of the Committee in advance of the hearing.

In the statement, I seek to deal with three matters:

1. The true nature of my role and responsibilities within the Commission.
2. The Bayeh matter.
3. My views on your Committee's first Term of Reference.

To assist in a reading of the statement, I summarise each of the matters very briefly below.

For some time I have been concerned that there is misunderstanding about my position at the Commission. My concern was increased following publication of the Commission's last Annual Report. My responsibilities in fact relate to specific investigations - not to management and control of the Commission generally. Those matters are explained in paragraphs 2 to 17 of my statement.

In particular I have never been Acting Commissioner, and I had no authority or responsibilities in the Bayeh matter. I was unaware of the luncheon at the La Fontana restaurant until after it occurred. Those matters are explained in paragraphs 18 to 26 of the statement.

My views on "the procedures and structures for the management and control of ICAC investigations and operational activities" (your Committee's first Term of Reference), were first expressed publicly in November 1989. They are expanded upon in paragraphs 27 to 37 of the statement.

I shall be pleased to explain any of those matters further, if required, on 6 November.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adrian Roden', with a large, sweeping flourish extending upwards and to the right.

Adrian Roden.

**PARLIAMENTARY JOINT COMMITTEE
ON THE ICAC**

STATEMENT OF ADRIAN RODEN

1. I am a member of the New South Wales Bar and a retired Supreme Court judge. I presently hold office as an assistant commissioner of the Independent Commission Against Corruption.

2. At the Commission, my present responsibility is to preside over its current investigation into the unauthorised release of information from government departments and authorities. I have responsibility for all aspects of that investigation. That includes, but is not limited to, exercising the Commission's coercive powers, presiding over public and private hearings, and in due course preparing the Report.

3. I have no other role or duty as an officer of the Commission. I am there for the sole purpose of heading that investigation.

INVITATION TO APPEAR

4. The Parliamentary Joint Committee on the ICAC has invited me to give evidence on two grounds, stated as follows:

- * (my) role as Acting Commissioner when Mr Bayeh first approached the Commission and the luncheon at the La Fontana restaurant occurred; and
- * a letter Mr Temby recently sent to the Presiding Officers concerning (my) presence on the senior management committee of the Commission.

5. My views are sought on the Committee's first term of reference, namely:

- * to inquire into and report upon the procedures and structures for the management and control of ICAC investigations and operational activities.

CORRECTION

6. With regard to the first of the stated grounds for the invitation extended to me, it should be clearly understood that I have never been Acting Commissioner.

7. My role at the Commission has changed since my first appointment. That fact, and the nature of my responsibilities there, have not been generally known outside the Commission, and I believe there has been an erroneous belief within the community that I have been, and am, in some sense a second-in-command to the Commissioner.

8. The recently published Annual Report of the Commission contained material which in my view lent support to that erroneous belief. It included my name in a list of "Senior Commission personnel as at 30 June 1991", and also showed me as a member of senior management. It was incorrect in both respects. Unfortunately I did not see the Report in draft form, or at all, before its publication.

9. When the Report was published and I saw it, I drew the Commissioner's attention to the inappropriate references made to me. I asked that the Report be corrected before further copies were sent out, and that the error and the true position be explained to those who had already received copies. It is in consequence of that request that the Commissioner wrote to the Presiding Officers on 11 October 1991.

MY POSITION AT THE COMMISSION

10. To understand the position occupied by me, and indeed by assistant commissioners generally, it is necessary to appreciate the command structure within the Commission. There are a number of departments, each headed by a director. They are presently the director of operations, director of administration, and director of corruption prevention. Each director is directly responsible to the Commissioner, as are general counsel (of whom there are usually two) and the solicitor to the Commission (formerly Commission secretary). None of them reports to or through an assistant commissioner. That has always been the case. In that respect, the organisation chart on p.115 of the Annual Report is accurate.

11. When I was first asked to accept appointment to the Commission, it was on the understanding that in order to assist in getting it established, I would work there for two years on a part-time basis, working on approximately half the normal number of working days. In particular, in view of the nature of my experience and qualifications, it was envisaged that I would preside over hearings.

12. During my early months at the Commission, my opinion was sought on a number of matters arising as the new body was being developed. I recall advising on the design of the hearing rooms, a guide to procedure at hearings, and possible amendments to the ICAC Act, among a number of matters related to the law or hearing procedure. I sat on the senior management committee, and took part in discussions on a wide range of subjects.

13. I was also appointed to the Operations Review Committee, of which I became ex officio deputy chairman.

14. I was soon asked to head the North Coast land development investigation. It then occupied the bulk of my time, and despite the terms of my original appointment it was necessary

for me to work on a full-time basis. During the currency of that investigation, I continued to sit on the senior management committee.

15. In July 1990, I completed the Report in the North Coast matter, and it was published. At about the same time I was asked to take responsibility for the investigation into the unauthorised release of government information. Related hearings were to commence after my return from a planned two months absence, subject only to an initial private hearing which was held on 11 July 1990.

16. At about the same time, it was agreed that I would no longer sit on senior management, and that I would work at the Commission on the same basis as any other assistant commissioner; that is, on an *ad hoc* or project basis, having responsibility only for specific investigations which I would head.

17. Throughout the period I have worked at the Commission, both before and after that time, I have had no responsibility for operational matters, except those directly related to my own investigations.

ABSENCES OF THE COMMISSIONER

18. As stated above, I have never been Acting Commissioner. So far as I am aware, no-one has ever held that position.

19. On occasions when the Commissioner has been about to go out of Sydney, I have been asked to hold myself in readiness for certain purposes. That is because there are certain powers which can only be exercised by the Commissioner or an assistant commissioner. They include signing summonses and notices requiring production of documents. Normally I only exercise those powers in my own matters. However, I am sometimes asked to do so in other matters in the absence of the Commissioner, and I do so only if general counsel certifies to me that it is appropriate.

20. When the Commissioner is absent, none of the directors of departments within the Commission is responsible to me. That has always been the position.

THE BAYEH MATTER

21. I had no knowledge of the luncheon at the La Fontana restaurant until after it had occurred. There was no reason for me to be informed of it in advance or at all, or for me to be informed of Mr. Bayeh's approach to the Commission. I had no responsibility or authority in the matter.

22. I have recently been shown minutes addressed by Gabrielle Drennan to both myself and the director of operations, and dated 24 and 26 July 1990. They are by way of report of what

had occurred. Neither asked or called for any response from me; neither was within my area of responsibility. I have no recollection of seeing them at the time. If I did see them, I would have regarded them as calling for no action on my part.

23. I do recall some discussion of the matter. As I recall, it was with the then director of operations, Mr. Anderson. He told me that there was an informant who was seeking to place some conditions on giving information to the Commission. My recollection is that Mr. Anderson regarded the conditions as unreasonable. That recollection could be faulty. I was told some details of the conditions, but any attempt I made now to say what they were, would only be a reconstruction. He canvassed my opinion.

24. One thing I can remember saying, is that if a person had information that was relevant to a matter under investigation, the Commission could seek to obtain it by exercising its coercive powers, without having to meet demands made by the potential informant. However, I would not have pretended to advise the director of operations on how to negotiate with a criminal informant. The Commissioner was absent at the time, and due back the following Monday. As I recall, the matter was to be taken up with him then. I left Sydney on Saturday 28 July 1990.

25. Since receiving the invitation to give evidence before the Parliamentary Joint Committee, I have been shown a minute addressed by Ms. Drennan to the Commissioner on 30 July 1990. I had not seen it before. It is not addressed to me, and I was out of the country by the time it was written.

26. It only concerns me in that it says:

"On the morning of 27 July I was informed by Mr. Anderson that the Assistant Commissioner had approved the course of action recommended in paragraph 23 of my minute of 26 July."

I neither had nor purported to exercise any power to approve any course of action with regard to the matter. No doubt when asked to express an opinion, I did so. But it would be wrong to suggest that I had any authority in the matter, or pretended to say what should or should not be done.

PJC - FIRST TERM OF REFERENCE

27. My views are sought on "the procedures and structures for the management and control of ICAC investigations and operational activities". That is a subject on which I formed views shortly after I became involved in the Commission's first substantial and lengthy investigation.

28. In a Paper entitled "A Delicate Balance", presented to the Fourth International Anti-Corruption Conference in Sydney

in November 1989, I made some relevant proposals in paragraphs 80 to 82. Basically I suggested a separation of functions between those heading individual investigations, and those responsible for running the Commission. For ease of reference, I repeat paragraph 81:

"81. Indeed I see difficulty for the commissioner who in a quasi-judicial capacity is presiding over the hearing of a substantial corruption inquiry which might occupy him for a period of months, and at the same time is expected to manage, supervise and maintain control over his "department". A great deal of delegation, it seems, would be needed. There may be better ways of ensuring that each job is done by the person best fitted for it".

29. The view I then held has since firmed.

30. Except possibly for matters that may be disposed of quickly and relatively easily, I believe that investigations that involve hearings, should generally be presided over by persons brought in from outside the Commission. That has now been done in a number of instances.

31. So far as management, supervision and control of the affairs of the Commission are concerned, there is a need, in my view, to ensure continuity. That in turn means that there should be a management and control structure that does not leave a gap in the temporary absence of the Commissioner. For that to be achieved, it seems to me that there should be a person holding office as Deputy Commissioner, who works with the Commissioner and takes over in his or her absence.

32. What I have proposed in the two preceding paragraphs would have resulted in a more satisfactory structure to handle the Bayeh matter when it arose.

ASSISTANT COMMISSIONERS

33. The present statutory position regarding assistant commissioners is unsatisfactory. It confuses the two roles of (i) presiding over particular investigations (which in practice they do), and (ii) participating in the management and control of the Commission (which in practice they do not do).

34. In my view, there should be express provision for the appointment of persons to head individual investigations. They should not be referred to as assistant commissioners. The word "assistant" is inappropriate, as each of them should be independent and in charge of his or her own matter. A more appropriate title would be simply "Commissioner", or if that title is to be retained and reserved for the person heading the Commission, "Special Commissioner" would adequately describe the role. The provisions of s.6(3) of the Act should not apply to them.

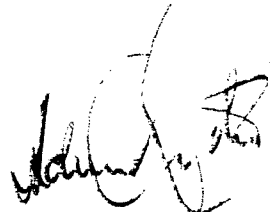
35. There could then be a Deputy Commissioner, and if need be, assistant commissioners, whose roles would be accurately described by those titles, who would deputise for and assist the Commissioner, and to whom the provisions of s.6(3) would properly apply.

WITHIN THE ORGANISATION

36. The Commission is necessarily a multi-disciplinary body. It operates effectively with multi-disciplinary teams. In particular, qualified and experienced investigators and lawyers have important contributions to make. It is imperative that they work well together, and that their different roles are not confused. A management and control structure that ensures this, is imperative. In the investigations I have handled for the Commission, there has been no difficulty on that score, and it is my understanding that that is generally the case in all investigations.

37. A similar arrangement is necessary, if important investigative steps are taken in a matter before it is made the subject of a formal investigation for the purposes of Division 2 of Part 4 of the Act. I am unfamiliar with the practice of the Commission in that regard. It seems that that would have been relevant in the Bayeh matter.

Sydney
4 November 1991



Adrian Roden

(IN CAMERA)

CHAIRMAN: Do you wish to make any further opening remarks elaborating on that document?

Mr RODEN: As I say in the covering letter, in the statement I cover three matters: the true nature of my role and responsibilities within the commission; the Bayeh matter; and my views on the substance of this committee's first term of reference. The second of those is the catalyst of this inquiry, with the first and third being the important matters from my point of view. With regard to the first of them, I would like to explain why I am worried about the misconception that I think exists as to the nature of my role, and why I regard it as important that the true nature of my role be understood.

There is a general impression in the community that in some way I am a No. 2 in the hierarchy of the commission. I think that is unfortunate. Quite apart from my own position, in that I might be regarded as sharing some of the responsibility for statements, decisions or policies in which I have had no part, it seems to me that not only is there a misconception as to the structure of the commission but also this extends to a mistaken belief that there is something by way of check or balance within the organisation which is not there. That is perhaps all the more important by reason of the position from which I came to the commission. If there is a mistaken belief in the community—and I believe that there is—it is that the commissioner has sitting on his right hand, assisting and advising him, a recently retired judge of the Supreme Court, and that is not in fact the case. It is not a matter of what I think the position should be. It simply seems to me that if that view is held and it is wrong, it is wrong that such a view should be held. The view seems to have been shared where one might expect the greatest knowledge of the true position to be. In the recent annual report, that false impression is conveyed. The letter that I received from this committee, expressing an interest in my role as "acting commissioner" at a certain stage, indicates that the same view is held here. There is a link between what I say about that and a proposal that I make in the

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statement that has been tabled. Establishing a position of deputy commissioner is important for a number of reasons, some of which are set out in the document. Perhaps I should elaborate on those a little.

Under the present structure, the commissioner is the only person at the commission who, in the normal course of events, has access—either direct or indirect—to every person who works there and to everything that occurs there. Every other person at the commission has responsibility in a limited area only. Obviously, the lower you go in the hierarchy, the more limited each person's responsibility is. Immediately below the commissioner come the people on the level of directors, general counsel and the commission solicitor, as the secretary is now called, each of whom is responsible, as I understand it, for only one area. That means that there is nobody to whom the commissioner can turn for advice who is likely to be au fait with all that is going on within the commission. Putting the same thing vice versa, no one has right of access to everything that is happening there and can tap him on the shoulder and say, "Hey, maybe you shouldn't be doing it this way. Maybe it should be done that way".

The other problem with the absence of such a person is what the position is to be in the absence of the commissioner. I mentioned that in my statement. In fact, two weeks would be the longest that Mr Temby, as commissioner, has ever been absent—if it is as long as that. Quite apart from presiding over hearings out of Sydney, being overseas or being interstate for conferences or any other purpose, people do get ill. I wonder what would happen if the commissioner were, of necessity, away from his post for, say, two or three months. As I understand it, nobody in the commission has been aware of everything that has gone on within all the departments of the commission. No person would automatically be in charge in the absence of the commissioner. There is power under the Act, as you are no doubt aware, to appoint an acting commissioner. In my view, there would be no natural or

(IN CAMERA)

obvious candidate for such an appointment within the commission, particularly bearing in mind the qualifications required. An acting commissioner would be required to have the qualifications as specified in the Act for the commissioner.

If anyone within the commission were appointed to act in the commissioner's stead, it would almost certainly be a person who was unaware of what was going on within certain sections of the commission. That is a real problem.

In paragraph 81 of a paper I presented in 1989, I referred to the difficulty I see in any person trying to combine the role of presiding person at a substantial investigation and the person running the commission. In my experience presiding over a substantial investigation is akin to the task of a royal commissioner, only with less support. I would not feel I would be capable of doing any other job at the same time that I was doing that. It would be asking much too much of anyone to have full-time responsibility for running ICAC while presiding over such an investigation. I know that much delegating can be done, but my view is that neither presiding over an investigation nor running the commission is a matter in respect of which it is appropriate to have a great deal of delegation. The community would expect the people appointed to those jobs to do them.

Perhaps the other matter I should like to refer to and elaborate on briefly is the proposal that all but the least substantial of investigations be presided over by persons from outside the commission when the investigations involve hearings. No doubt you have read what I have said about the appropriate title for people with that sort of responsibility. I am inclined to think that the use of the term assistant commissioner is inappropriate for people in my position, or in the position of Mr Helsham, Mr Collins and Mrs Beazley, who also have been appointed in the same way. That title is unfortunate and misleading. Those people should have complete independence

(IN CAMERA)

in respect of the investigations over which they preside. That also is a matter referred to in my 1989 paper, in paragraph 83.

The Act provides that the preparation of reports is one matter that the commissioner cannot delegate. Within the context of having substantial investigations presided over by someone other than the commissioner, that is not an appropriate provision. In the case of the North Coast land development investigation there was a robust discussion between the commissioner and me as to the preparation of the report. I was left with full responsibility for that report. Indeed, I would not be willing to embark upon an investigation on any other terms. That may involve honouring the limitation of the delegation power in the breach, but I suppose nominally one could say that the report presented by the presiding person is accepted and adopted by the commissioner when it is published under the cover of a letter he signs. However, so far as the statute is concerned, the relevant provision should be amended to provide that responsibility for the report rests with the person who conducts the investigation. That should cover all aspects of the report: not only determination of questions of fact, which no-one else could attempt to do, but matters such as recommendations, in which the commission might have a view. The particular presiding person's recommendations, if he sees fit to make them, should be contained within the report—with the commission free, of course, to make its own comments or recommendations if it sees fit.

Those matters might be of assistance to the committee, further to what appears in the statement.

Mr GAY: Given the earlier part of your evidence about there being no real deputy, and the role of the commissioner in hearings and management, have you been dissatisfied in any way with the performance of senior management with regard to their budgetary control over expenditure, travel and so on within the operations of the commission?

Mr RODEN: That is an area that I know very little about. Perhaps I

(IN CAMERA)

should say one thing. You used the expression senior management, as I do in my statement. Until about July last year I was a member of the senior management committee. That does not mean that I was a decision-maker in respect of matters under management control until July last year. The senior management committee is not a decision-making body—or at least it was not. I can only speak of it at the time I was there. It was a weekly gathering of senior management, which consisted of the commissioner, the next level to which I referred, and me. Each person reported to the others on such of his activities or the activities of his department during the previous week as he regarded appropriate to report upon; and indicated what matters were coming up in the future that might be of interest. From time to time the commissioner informed senior management of matters that might involve policy decisions or other matters of that nature. They were discussed, but it was not a decision-making body. Really, on the matters to which you refer, budgetary and so on, I am not in a position to make any valuable comment at all.

Mr GAY: Given the commission's public stance that it is looked upon to provide direction for public authorities as to propriety, confidentiality, proper control of budgets and expenditure, do you believe that the commission's controls are adequate for a body established to oversee those matters?

Mr RODEN: I honestly do not know what they are. I have not had any concern at any time with this area and I simply could not tell you about it. There must be others on the administrative staff who have responsibility for this.

CHAIRMAN: Do you think there should be such control, and if so what should it be?

Mr RODEN: Obviously there should be budgetary controls. I am anything but expert in how bureaucracies look after themselves and their affairs. I am sure that someone else would assist you much better in this

(IN CAMERA)

matter.

CHAIRMAN: You did sit as a member of the Operations Review Committee?

Mr RODEN: I do.

CHAIRMAN: Were you concerned or surprised that the Bayeh matter was not referred to that Committee?

Mr RODEN: As a member of that Committee I would know nothing about it. The procedure, as you are aware, is that when a matter comes before the commission it comes by way of complaint, report, reference or own motion. The Bayeh matter, I suppose, would have to be put into the complaint category.

CHAIRMAN: Do you think it justifies that definition?

Mr RODEN: I do not know, and I do not know enough about it. If it is anything it is a complaint. Bayeh is a member of the community. As I understand it, he came along to the commission and said, "There is some corrupt conduct going on and I want to help you do something about it" or "I think you should do something about it". Whatever he might have said, it would appear to be in the nature of a complaint. It certainly does not fit any of the other three categories.

CHAIRMAN: In your view, that should have found its way to the Operations Review Committee.

Mr RODEN: If it was regarded as a complaint the first step would be for there to be preliminary inquiries. That is the step that the commission takes in order to determine whether a complaint will mature into a formal investigation. Only if it becomes an investigation certain of the powers become available to the commission. If a decision was made not to investigate, then by statute it would have been required to go to the ORC. If a decision was made to investigate, then it would not go before the ORC until such time as there was a decision to discontinue the investigation. I cannot say what

(IN CAMERA)

decision was made, whether it would be treated as a complaint, whether it would then be investigated or not, and if the decision was that it was to be investigated, whether there has ever been a decision to discontinue. I really know more about Bayeh from what I have read in the newspapers and heard on radio and television through Mr Gibson's remarks than I know from the commission itself.

CHAIRMAN: Turning to the document that you provided for the Committee, especially paragraphs 25 and 26 concerning the reference to you of Miss Drennan's minute of 30th July, 1990, is there anything you would like to elaborate on in those comments.

Mr RODEN: I do not think so.

CHAIRMAN: They are self-contained?

Mr RODEN: They are as clear as I can make them. If the minute was dispatched on 30th July, as I presume it was, from Miss Drennan to the commissioner, that was after I had gone away, and as far as I know I was never aware of that document until after I received the invitation to come here. I was then furnished with whatever material was available at the commission that might have been relevant.

CHAIRMAN: Turning to paragraphs 31 and 32, do you believe that the gap in the temporary absence of the commissioner was a significant factor in the way the Bayeh matter was handled?

Mr RODEN: I cannot answer that because I do not know how it was handled. I do say in paragraph 32 that it would have resulted in a more satisfactory structure to handle it. I say that because in the absence of the commissioner there would have been a deputy commissioner who would have been in real terms acting commissioner and somebody would have been there who would have had responsibility to say which way it should go.

CHAIRMAN: There would have been some significance in that?

Mr RODEN: There certainly could have been. I understand the

(IN CAMERA)

suggestion that has been made is that the wrong people may have handled it. I do not know and I make no comment about that. Presumably if somebody had been in charge of the organisation as a whole and this matter had been regarded as being of sufficient importance, it would have been referred to him or her and then it would have been channelled in the right direction.

CHAIRMAN: In paragraph 36 you say that it is imperative that the different roles of investigators and lawyers are not confused. Do you think there was any confusion in relation to those roles in the commission up to any date?

Mr RODEN: I do not think so. I have worked on the matters that I have handled in what I call a multi-disciplinary team. There has always been one lawyer and at least one investigator, the investigator each time so far as I am concerned being a seconded police officer, although some investigators are not. I have not found any difficulty. They work together. I find that as they work together they get an understanding of what the other is doing. I think that has led to a greater understanding between lawyers and investigators and in particular seconded police than might otherwise have been the case. There is a natural tendency, I think, in each group for some people to feel that their group knows a lot more about it than the other group. That is just human nature. With those with whom I have worked there has been mutual respect and understanding. I have always had the legal work that I want done and the investigative work that I want done by appropriate people.

CHAIRMAN: In terms of general principles and in particular for future reference, what is the best means of avoiding that confusion?

Mr RODEN: Education, which I think results from experience, which I think the lawyers and the investigators at the commission now have. Assuming that the commission does not have a 100 per cent turnover, in dribs and drabs and ones and twos investigators will move onto other things and other people will come in. There should have developed a new multi-

(IN CAMERA)

discipline ICAC culture so that instead of the investigators thinking like police and the lawyers thinking like lawyers, with perhaps an unjustified degree of contempt held by each for the other, there will be an attitude held by ICAC people which involves respect and understanding between the two professions.

Mr GAUDRY: Do you see that involving a form of induction phase on the job?

Mr RODEN: It could. I think those things are most successful when they are not formal. There can be in-service training seminars and that type of thing but I picture a situation where in a room there might be a team of four or five investigators and their support staff. Among them there will be three or four who have been there for a while and know the way things go on at the commission. That sort of thing rubs off among work mates a little more effectively than it is acquired by a series of lectures. I am sure there could be the more formal type of education but I think the commission has gone a long way towards establishing that type of understanding among the people who are there now.

CHAIRMAN: Do you see value, in order to reduce or dispel confusion, in having access to a manual?

Mr RODEN: I am not a set of instructions or manual lover and I never have been. I have the same attitude to the law. I think there should be more understanding and discretion with less legalism and strict words. Someone talking to me about something else this morning said something very much in point. He was referring to a debate about whether on a certain subject it was better for expression to be made in general principles or by a list of illustrations. He said that the trouble with a long list of illustrations is that a person, when confronted by a particular situation, will look down the list and say: "Mine is not there. I do not have to worry about it".

I think it is much more important to have a general understanding than a list of rules. Also, as the lawyers and the investigators get to understand

(IN CAMERA)

what they all do, and with the pressures of work and the exigencies of the service, sometimes people might, quite justifiably, step across the border. If there is a summons to be served and it is normally done by investigators and they are all very, very busy and there is a lawyer who happens to live in the same area and someone says, "On your way home would you pop in and serve this summons on Mr Hatton", I cannot see why that should not be done. That is but an illustration, and there must be many other things that could be done that way.

CHAIRMAN: But people do need guidance even if not codes of conduct.

Mr RODEN: Yes, indeed. I think it is an important fact, but I do not think that is an area where there is a real problem at the moment.

Mr TINK: I just wanted to clarify something in paragraph 26 of your statement, if I could. Am I right in assuming where you say, "No doubt when asked to express an opinion, I did so", you would have said something along the lines of generally concurring with what was proposed but not on any basis which indicated that you were in a position to approve it because you say you were not in that chain of command in that sense? Is that the essence of what has been put there?

Mr RODEN: Yes. I should perhaps clarify that. What I am talking about there is not the proposal that led to whatever happened happening at the luncheon at the restaurant. This is all after that time. I do mention in paragraphs 23 and 24 the little recollection that I do have. It is commonplace at the commission, as it is at any workplace—it certainly is at the bar and it certainly is on the bench—that people will pop into one another and discuss their problems, if not in express terms in general terms, and if what happened is what I think happened, that on the last day or two, the Thursday or Friday, or whatever, before I left on the Saturday while Mr Temby was still away until the Monday, Mr Anderson mentioned it to me, that would have been, so far

(IN CAMERA)

as I am concerned, perfectly normal and natural.

I do remember, as I mention there, that he said something about this fellow demanding various things or laying down various conditions. If that was to be a negotiation between a criminal turned informer and a highly placed police officer, I would regard that as something that he would know something about and that I would know little or nothing about. And I did mention that one thing there that struck me, of course, as a lawyer, that if the fellow says, "I will tell you subject to conditions X, Y and Z", we have the power—whether it would be a wise thing to do or not is another matter—to slap a summons on him, call him into a private hearing and ask him questions. How far we would get, I do not know, but I thought that was a piece of advice it was appropriate for me to give.

Mr Anderson may have said, "I think it would be a good idea to go along with what he says", or, "I do not think we should". I may have expressed a view, but it certainly would not have been a very informed view, and I certainly would not have suggested for a moment that that carried the stamp of approval. Whatever it was that they referred to, in any event as I understand it, would have awaited the commissioner's return on the Monday.

Mr TINK: Do you think then that this is an example of a situation where it is important to have somebody in overall control, if I can use that expression, at all times?

Mr RODEN: Indeed. I think it is as good an example as you would find. Indeed, if you asked me to make up an example for you, I do not think I could do better. There was what apparently was regarded as a very important matter, and there should have been somebody there who, if necessary, could have said to the Director of Operations and to the lawyers involved, "This is what will be done". There was nobody, as I understand it, who had the authority to do it. Mr Anderson, of course, had the power to tell his investigators, the operations staff, what, if anything, they were to do. So far

(IN CAMERA)

as the lawyers are concerned, I think—and Mr Zervos would understand better than I what the structure is—the lawyers are responsible to the commission secretary, as the position was styled at that time, and the commission secretary would have been in a position to tell the lawyers what to do and the Director of Operations to tell the investigators what to do, but as I understand it, there was no one who could give an order or a direction which was bound to be obeyed both by investigators and by lawyers. I might be wrong in that understanding of the structure, but that is as I see it.

Mr TINK: This, then, is really at the heart of what we perhaps should be looking at now with the benefit of hindsight to consider in terms of a structural change to look at how to get around this problem for the future.

Mr RODEN: I would think for that type of organisation, any law enforcement body, investigative body, call it what you will, there should be a chain of command so that at any time someone is in charge. If the Commissioner of Police is away, the deputy commissioner runs the show, and if he is away, I suppose the senior assistant commissioner does.

Mr GAUDRY: Just following on, you are not inferring by that, though, that you could not commence operations of any sort unless there was a determination from the very top? It is just having a person there in ultimate responsibility? At the low level there would often be, I guess, the Director of Operations?

Mr RODEN: The only reason I am pausing is that for certain of the coercive powers to become available it is necessary that there be an investigation. That is the formal step provided for in division 2 of part 4. Section 20 reads:

The commission may conduct an investigation on its own initiative on a complaint made to it, on a report made to it or on a reference made to it.

The practice within the commission is that no matter reaches that stage of being a formal investigation without a determination by the commissioner that

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it shall. There was one occasion when the commissioner was absent, and before he left he spoke to me about a matter that might arise. I think I am correct in saying that it was the subject of a complaint; it was possible that during his absence it would be necessary for certain of the coercive powers to be exercised in relation to it and for that purpose, if necessary, I was to determine that it was to be the subject of an investigation. I am not completely certain if I have those facts right, but, in any event, in answer to your question, that was a specific request to me to act in that way in respect of that particular matter. I do not really know what would happen in another situation in the absence of the commissioner if it were necessary to make a formal determination that a matter should become the subject of an investigation in order that the coercive powers be exercised.

Mr GAUDRY: But in this particular instance it might have been just a stage of gathering of information rather than using any of those coercive powers, and, so, would have been available under the operational phase of ICAC?

Mr RODEN: Yes.

Mr GAY: Could I just clarify two questions: the first is just a clarification of your suggestions in the command structure to improve this in future. First of all, the commissioner does not sit on inquiries; second, you appoint a deputy commissioner and; third, the assistant commissioners carry on with the inquiries. Is that a fair summation?

Mr RODEN: I would rather express it this way: that you have a division of powers between the running of the commission, which is the commissioner's business and the running of individual investigations. On the running of the commission side, the commissioner runs it, there should be a deputy and maybe assistants as well but at least a deputy. That is to say, somebody other than the commissioner who in the normal course of events has access to everything that is going on there and takes over in his absence. On

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the other side I am saying the people who are presently called assistant commissioners should be given a title which reflects the independence that they have in running individual investigations; that whatever title is used, it should not suggest that they are assisting somebody else.

CHAIRMAN: Your preference is special commissioner?

Mr RODEN: Special commissioner is a term I have suggested is possible, indicating they are commissioners for special purposes. Let me just continue; that independence should be carried right into the report, preparation and presentation. Once you achieve that division and you do have a deputy commissioner, then it may be more realistic for the commissioner to involve himself or herself in individual investigations. Certainly smallish run-of-the-mill ones in the normal course of events would be more easily handled without having to call someone in from outside. But I think there is another advantage I have not referred to—I may have done in 1989—in having the outside commissioner.

The investigators and lawyers who work on an investigation are the investigators and lawyers who are employed by the commission, whose boss is the commissioner and whose second boss would be the deputy, if there were one. If you have an independent outside commissioner I think you have another check and balance. If the outside commissioner working with these lawyers and investigators appears to be doing something that he should not—showing prejudice, bias, not prepared to follow a line of investigation that he should—the lawyers and investigators who belong to the commission can go to the commissioner and say, "Look, we do not think this fellow is doing his job". Similarly, there is not the opportunity for the commissioner, if he is that way inclined, to dominate the lawyers and investigators who are not only those serving him on the particular investigation but also his subordinates in their day-to-day work. There is that advantage that, although you take advantage of the already existing infrastructure of the commission rather than having to

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set one up as you do with every royal commission, you are not saddling yourself with the disadvantage that that entails, that you have got the same boss and the same people working under him that are in that relationship in their day-to-day working.

Mr GAY: The second question is that in certain evidence that this Committee has been given in this inquiry, it has been suggested that there is a clique or a group within the commission who exercise undue influence due to their ability to access the commissioner. Do you see any evidence of such a clique and have you any concerns along these lines.

Mr RODEN: Gee, that is tough. The commissioner I suppose—not I suppose, the commissioner is free to decide for himself whom he will consult when he wants to consult people before he makes a decision. It would be surprising if there were not some people that he consulted more than others. As all the people there are human beings, it would be surprising if there were not some who felt they might be left out a little more than they thought their merit justified. They might be right in some instances; they might be wrong in others. I really do not know enough about what goes on when the commissioner consults those people he consults to say whether there is a clique or there is not a clique. I can understand a possibility that people would believe there was a clique. The commissioner came to the post with a number—I am not sure what number—of people who worked with him before in the Federal DPP, and I think one or two who worked with him before and did not come with him immediately joined the commission later. There are other people at the commission who have not worked with him previously, so it is almost a situation where you have got people with different languages or religions or colours of their skin. It is easy for someone who wants to say there are two groups to pick out who is in each group, so that is a circumstance that could give rise to that feeling. I do not really think I can say any more on that.

Mr GAY: The second part was did you have any concerns given your

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explanation?

Mr RODEN: There were occasions when I felt—and this is purely a personal feeling—that I could have been consulted more than I was, although I could not say there was anything wrong in my not being consulted because there was no particular reason why I should, if you like. It is simply that my feeling was in my own view—and I could be completely wrong—that I was qualified to have and express what might be a valuable opinion on those matters. I would not say I had any concern in consequence of that. I suppose in the light of what I said a few moments ago I have got to say I am a human being too and these impressions do arise, but I would not say there is anything that is so firmly fixed in my mind as fact that I would be justified in saying to this Committee that there is support for the proposition that was put to me.

CHAIRMAN: Just following up that, in general terms I suppose any study of history would tell you that where there is a centre of power you may get cliques forming.

Mr RODEN: Of course.

CHAIRMAN: Even if they only enjoy the security of tenure of Catherine the Great's lovers but there would be an advantage in what you are suggesting, the deputy commissioner, as a check and balance in relation to people forming that sort of magic circle.

Mr RODEN: I think it would be a very definite check. This notion that there is a second person who knows everything that goes on, it has got so many advantages. If the commissioner falls under a bus, it is essential really that there be somebody else.

CHAIRMAN: Could I just perhaps formulate that in terms of extra checks and balances provided by the use of special commissioners. This would ensure against staff who have better access to a commissioner dominating investigations if they have access to that special commissioner.

Mr RODEN: They would have access to the special commissioner,

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sure. My feeling was that there would not be, between the staff and the special commissioner, the staff and boss relationship in the day-to-day sense. If I am working for you day-to-day and I am a lawyer serving on the royal commission that you head, you give me orders, I obey them. If I do not like them, tough luck, I obey them. But if, on the other hand, somebody else is my day-to-day boss and not only my day-to-day boss but my day-to-day boss in the very organisation within which you are presiding over an investigation and directing me, if I am getting directions that I think are inappropriate, as I see it it would be my duty to go to my boss, who would be the ICAC commissioner saying, "Look, I do not like the way this fellow is doing things". I think that is just one extra check and balance. It also means, of course, that over any five-year period or three-year period or term of appointment of any one commissioner you are going to have a greater number of people handing down ICAC reports, so that you are more likely to reflect different shades of opinion than would be the case if it were the one person.

I should like to stress one of the points I made earlier because it is not referred to in the written statement, that is, the desirability of some attention being paid to the statutory provision relating to the reporting power. If I can just read, for the benefit of the transcript more than anything else, what I wrote at paragraph 83 of that paper, or part of it, I said this two years ago:

One further thought on independence, the present New South Wales situation has assistant commissioners who preside over hearings also acting as assistants to the commissioner in the performance of other duties. When so doing, and indeed at all times, assistant commissioners are subject to direction by the commissioner. So long as that situation remains I believe that there ought to be express provision for their independence when presiding over investigation hearings and in related roles including report preparation.

I went on:

I hasten to add that there is no difficulty in that regard at the present time in the New South Wales ICAC but I do believe that our legislation needs examination to ensure that

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that will always be the position and that its acceptance will not depend on the goodwill of the incumbent from time to time.

That really is the position at present. As I say, as between Mr Temby and myself when I head an investigation, I write the report and that is accepted, but if he chose to say or if another commissioner chose to say to me or to another person heading an investigation "it is my report, not yours" and then to treat the report as a draft and do with it as he thought fit, that would be within the letter of the law as it presently is, and I do not think that should be the case.

Mr NAGLE: If there is a clique around Mr Temby, would not appointing another deputy commissioner create a new power structure around him and perhaps create new cliques, with people currying favour with him?

Mr RODEN: I am not an expert on cliques. I do not think to overcome the problem of having a right-wing commissioner and a left-wing deputy you need to have a centre-left assistant commissioner as well. Of course I suppose there are all sorts of possibilities and problems. If you did have two cliques with a head to each clique, you are better off than having one because that is by definition a check and balance.

Mr HATTON: The deputy commissioner should be in the role of a manager?

Mr RODEN: Yes, I think so.

Mr HATTON: And a person who is worth his salt as a professional manager should be able to maintain that independence and ability to overview an organisation to ensure there is proper co-ordination and co-operation and that the structure works in a structural sense.

Mr RODEN: Yes.

Mr HATTON: I think that is separating the commissioner as it were from that management in some way, or at least dividing the role of the commissioner and the management or giving assistance to the commissioner in

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the management. All those three are embodied in that concept and I think that is the most valuable thing that I have picked up from your suggestion. I am quite concerned that you have pointed up a very great weakness there, that we have only one person who has overview, and that is something we must address urgently.

Mr RODEN: In political terms one possibility would be to have a commissioner who was like a Minister and a deputy commissioner who was like a professional public servant, head of a department. You could have that sort of relationship. That is another possibility.

CHAIRMAN: Is that not analogous to the commissioner and the Operations Review Committee in terms of a Minister and departmental head?

Mr RODEN: I think the Operations Review Committee is something entirely separate and it has a very limited statutory role. It has a role in practice which goes beyond that.

CHAIRMAN: Perhaps does that show a need for a role that could be filled by a management board rather than a personality?

Mr RODEN: I think that is getting away from the role that I see for a deputy commissioner. The deputy commissioner is really somebody else like the commissioner who is number two to him - because in any organisation you have to have a number one - but who does all the things he does, takes over in his absence, and when he is there is constantly providing the potential for a second point of view that will be taken into consideration. That is as I see it.

Mr NAGLE: I just want to take you to paragraph 16. Earlier you were talking about the complete independence of the assistant commissioners in each of their inquiries and you said you had a robust discussion with Mr Temby about things. From reading that and listening to what you have said, have you ever been or are you now dissatisfied with the performance of senior management at the commission.

(IN CAMERA)

Mr RODEN: I do not think senior management operates as an entity, so it is not a decision-making body. Therefore, there is no series of decisions that it has made that I could approve of or complain about. Each member of senior management has a job to do, running the operations, running the administration or whatever it might be. There is no job which is performed by senior management or the senior management committee as an entity. So it is difficult to be satisfied or dissatisfied with what senior management has done. They are a series of individuals. If you wanted me to, although I probably would not be happy to do so, I could express an opinion that Mr so and so in my opinion does a good job and Miss so and so does not, or whatever it might be.

CHAIRMAN: I do not think that would be helpful to the Committee.

Mr RODEN: No, I do not think it would, but what I am trying to say in response to Mr Nagle's question is that he wants me to express an opinion on the performance of senior management. There is no performance of senior management because it is not a decision-making body. It as a body cannot be judged. Only the individuals could, if one chose to do so.

Mr GAUDRY: Given that your structural recommendations are not new, have you canvassed them with the commissioner, and I am interested in his view of them because they would require a change obviously to the statute?

Mr RODEN: I do not want to verbal him. I do not think I would be far wrong if I said that he has at one stage expressed a view that is not unsympathetic towards this sort of approach—the idea of having somebody, and I do not know whether deputy commissioner was the term, working there who would fulfil the role that a lot of people thought I was fulfilling. But he is big enough and old enough and capable enough to speak for himself on that. I think that is a fair statement of a view that he expressed.

Mr TINK: In relation to any possible changes, it seems to me that three parts of the Independent Commission Against Corruption Act are relevant.

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Subsection 6(3) states:

An Assistant Commissioner shall assist the Commissioner, as the Commissioner requires.

Section 107 covers delegation to assistant commissioners by the commissioner. Schedule 1 covers the Governor having the power to appoint an acting commissioner. To me that all seems to mean that the nature of the delegation specified in section 107 is such that it relates to the mechanics of particular hearings, if I can put it that way. In my mind it does not relate to management or to having an oversight of multidisciplinary teams in the absence of the commissioner such that one person would be in a position to give advice or to have responsibility for giving advice, for example, about the Bayeh matter. The schedule to the Act now provides that the Governor may appoint somebody to act in the commissioner's place. Given that that is the nature of the delegation as provided in the Act, nobody comes to mind whom the Governor could appoint who necessarily has the right overview of the situation. In that sense, the Act could be amended.

Mr RODEN: If this proposed restructuring were to take place, subsection 6(3) would apply to the deputy commissioner and any assistant commissioners there may be; that is to say, those who were assisting the commissioner in running the commission as distinct from operating a specific investigation. The power to delegate would also be to the deputy commissioner and assistant commissioners, if any, who were assisting in the running of the organisation. You could change your provision relating to the Governor appointing an acting commissioner and have the deputy commissioner ex officio acting in the absence of the commissioner and down the line, in order of seniority, you would have assistant commissioners involved as well.

So far as the people presiding over investigations are concerned, I envisage an entirely new set of provisions. They would be given such powers as were deemed appropriate, not by delegation from the commissioner but by

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reason of their appointment as special commissioners, or whatever the term may be.

Then all delegation and devolution of power would be from commissioner to deputy commissioner and to any assistant commissioners who might be there for the purpose of running the show. There would be a separate set of provisions so that special commissioners could be appointed to preside over investigations. They would have powers given to them by the Act and not by delegation by the commissioner.

CHAIRMAN: I thank you for your assistance. Are there any observations that you want to make on the Bayeh matter or anything else?

Mr RODEN: The statement was put together at short notice. I may give thought to some of these matters and may comment later. Reading the transcript might prompt me to say something else.

(Conclusion of evidence in camera)

APPENDIX THREE

LIST OF WITNESSES AT COMMITTEE HEARINGS

COMMITTEE HEARINGS

<u>Date of Hearing</u>	<u>Name of Witness</u>	<u>Open/Closed</u>
20.8.91	Mr Schuberg (Deputy Director of Operations, ICAC)	Closed*
24.9.91	Mr Anderson (Former Director of Operations, ICAC)	Closed
26.9.91	Mr Waldon (Senior Lawyer, ICAC)	Closed
	Ms Alderton (Senior Criminal Analyst, ICAC)	Closed
14.10.91	Mr Temby (Commissioner, ICAC)	Open**
	Ms Sweeney (Solicitor, ICAC)	Open**
	Confidential Witness	Closed
	Mr Wallace (Sporting Administrator)	Closed
	Ms Drennan (Principal Lawyer, ICAC)	Closed
	Mr Zervos (General Counsel, ICAC)	Closed
15.10.91	Mr Lamb (Director of Operations, ICAC)	Closed
06.11.91	Confidential Witness	Closed
	Confidential Witness	Closed
	Mr Llyod (Senior Crown Prosecutor, Office of the Director of Public Prosecutions)	Closed
	Mr Roden (Assistant Commissioner, ICAC)	Closed
	Mr Findlay (Director, Institute of Criminology)	Open
	Mr Landa (Ombudsman)	Open
	Mr Pinnock	Open

COMMITTEE HEARINGS CONTINUED

<u>Date of Hearing</u>	<u>Name of Witness</u>	<u>Open/Closed</u>
06.11.91	Mr O'Connor (Solicitor for Public Prosecutions, Office of the Director of Public Prosecutions)	Open
07.11.91	Mr Favret (Staff Officer, Professional Responsibility, NSW Police)	Open***
	Mr Cassidy (Acting Assistant Commissioner, Professional Responsibility, NSW Police)	Open***
	Mr Myatt (Head of Internal Police Security Unit, NSW Police)	Open***
	Mr Coe (Head of State Protection Group, NSW Police)	Open***
	Mr Baer (Assistant Commissioner, Head of NSW Region, Australian Federal Police)	Open***
	Mr Lenihan (Chief Executive Officer, National Crime Authority)	Open
	Mr Keely (AFP Superintendent on secondment to the National Crime Authority)	Open
	Mr Mengler (Director of Operations, Queensland Criminal Justice Commission)	Open
	Mr Bradley (Commissioner, NSW Crime Commission)	Open
	Mr Zervos (General Counsel, ICAC)	Closed

* Evidence not regarding Committee's Inquiry into matters raised by Paul Gibson MP.

** Six-monthly review with the Commissioner.

*** Brief closed hearing also held.

APPENDIX FOUR

MINUTES OF THE PROCEEDINGS OF THE COMMITTEE



PARLIAMENT OF NEW SOUTH WALES

MINUTES OF PROCEEDINGS

OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

TUESDAY 16 JULY 1991

AT PARLIAMENT HOUSE, SYDNEY AT 10.00 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

An apology was received from Mr Gaudry.

Mr Russell Grove, Clerk of the Legislative Assembly; Ms Ronda Miller, Clerk Assistant (Committees); Mr David Blunt, Project Officer; and Miss Grace Penrose, Assistant Committee Officer, were also in attendance.

Mr Grove opened the meeting by informing Members of the provisions of the Independent Commission Against Corruption Act 1988 relating to the constitution, procedures, functions and powers of the Committee.

Mr Grove then read the following entries in the Minutes and the Proceedings of the Legislative Council and the Votes and Proceedings of the Legislative Assembly:

Entry no 33(5), Minutes of Proceedings, No 1, Tuesday 02 July 1991;

Entry no 32, Votes and Proceedings, No 1, Tuesday 02 July 1991.

Mr Grove then informed the Committee that section 67(1) of the Act provides that there shall be a Chairman and Vice-Chairman of the Committee, who shall be elected by and from the members of the Committee.

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Mr Grove then called for nominations for the office of Chairman.

Resolved on the motion of Tink, seconded by Mr Mutch:

That Mr Kerr be elected Chairman of the Committee on the Independent Commission Against Corruption.

Mr Grove then called for nominations for the office of Vice-Chairman.

Resolved on the motion of Mr Kerr, seconded by Mr Mutch:

That Mr Gay be elected Vice-Chairman of the Committee on the Independent Commission Against Corruption.

Mr Grove further informed the Committee that section 71(b) of the Act provides for the proposal for the appointment of the Committee to be deemed to have originated in the Legislative Assembly. Mr Grove also informed the Committee that according to the practice of this Parliament, the operations of a Committee are governed by the standing rules and orders and the practice of the House in which the Committee originated.

Resolved on the motion of Mr Hatton, seconded by Mr Nagle:

- 1 That arrangements for the calling of witnesses and visits of inspection be left in the hands of the Chairman and the Clerk to the Committee.
- 2 That, unless otherwise ordered, parties appearing before the Committee shall not be represented by any member of the legal profession.
- 3 That, unless otherwise ordered, when the Committee is examining witnesses, the press and public (including witnesses after examination) be admitted to the sitting of the Committee.
- 4 That persons having special knowledge of the matters under consideration by the Committee may be invited to assist the Committee.
- 5 That press statements on behalf of the Committee be made only by the Chairman after approval in principle by the Committee or after consultation with Committee members.

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16 July 1991

- 6 That, unless otherwise ordered, access to transcripts of evidence taken by the Committee be determined by the Chairman and not otherwise made available to any person, body or organisation: provided that witnesses previously examined shall be given a copy of their evidence; and that any evidence taken in camera or treated as confidential shall be checked by the witness in the presence of the Clerk to the Committee or an Officer of that Committee.
- 7 That the Chairman and the Clerk to the Committee be empowered to negotiate with the Presiding Officers through the Clerk of the Legislative Assembly for the provision of funds to meet expenses in connection with travel, accommodation, advertising, operating and approved incidental expenses of the Committee.
- 8 That the Clerk be empowered to advertise and/or write to interested parties requesting written submissions.
- 9 That upon the calling of a division or quorum in either House during a meeting of the Committee, the proceedings of the Committee shall be suspended until the Committee again has a quorum.
- 10 That the Chairman and the Clerk make arrangements for visits of inspection by the Committee as a whole and that individual members wishing to depart from these arrangements be required to make their own arrangements.

Mr Grove then called upon Mr Kerr to take the Chair. Whereupon Mr Kerr took the Chair and made his acknowledgments to the Committee.

The Committee discussed outstanding business from the former Committee

Resolved on the motion of Mr Gay, seconded by Ms Burnswoods:

That the sub-committee on procedures to deal with minority/dissenting views appointed at the meeting of the former Committee on 12 March 1991 be reactivated, consisting of Mr Hatton, Mr Nagle, and Mr Turner.

The Committee then deliberated over future public hearings with Mr Temby.


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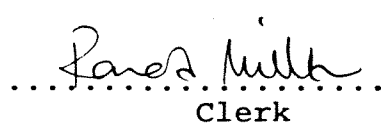
Resolved on the motion of Mr Turner, seconded by Mr Nagle:

That the next public hearing with Mr Temby be held at 10.00 am on Monday 14 October 1991, and that Mr Temby be advised that the Committee wishes to adopt new procedures at that hearing.

The Committee proposed a visit of inspection to the ICAC premises at Redfern and a discussion with Mr Temby prior to the next public hearing on Monday 14 October.

The Committee adjourned at 10.45 am until 6.30 pm, Tuesday 20 August 1991.


.....
Chairman


.....
Clerk

NO 2

TUESDAY 20 AUGUST 1991

AT PARLIAMENT HOUSE, SYDNEY AT 6.00 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

The Minutes of the meeting held on 16 July 1991, as circulated, were confirmed.

The Committee deliberated.

Resolved on the motion of Mr Nagle, seconded by Mr Mutch:

- 1 That the Committee note the correspondence and related material from Mr Ian Temby QC, dated 09 May 1991; Mr Reg Blanch QC, dated 09 May 1991; Ms Deborah Sweeney, dated 27 June 1991; Ms Deborah Sweeney, dated 10 July 1991; Ms

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Deborah Sweeney, dated 10 July 1991; Ms Deborah Sweeney, dated 22 July 1991; Mr Wall, received 23 July 1991; The Hon Peter Collins MP, dated 30 July 1991; Ms Deborah Sweeney, dated 08 August 1991; and the Premier, dated 19 August 1991; and where appropriate advise those who have written to the Committee of the advice received from the Commission.

- 2 That the correspondence received from Mrs Narelle Horiatopoulos, dated 13 August 1991 be referred to the ICAC for comment and advice.

The Committee discussed the Options for Future Inquiries paper but deferred a decision until the next Committee meeting.

The Committee then went into an "in camera" hearing concerning the complaint from Mr Williams.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Mr Geoffrey Esmond Schuberg, Detective Chief Superintendent, was sworn and examined.


Evidence concluded and the witness withdrew.

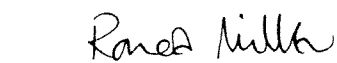
Resolved on the motion of Ms Burnswoods, seconded by Mr Hatton:

That the Committee send a reply to Mr Williams finalising his complaint in a form agreed on by both the ICAC and the Committee.

It was noted that Mr Nagle was against the resolution of the Committee in regard to Mr Williams.

The Committee adjourned at 7.30 pm until 6.30 pm, Tuesday 10 September 1991.


.....
Chairman


.....
Clerk

TUESDAY 10 SEPTEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

The Hon D J Gay

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Tink
Mr Turner

Apologies were received from Ms Burnswoods, Mr Mutch and Mr Nagle.

The Minutes of the meeting held on 20 August 1991, as circulated, were confirmed.

The Committee deliberated.

Resolved on the motion of Mr Gay, seconded by Mr Gaudry:

That the correspondence received from Mr Ian Dodd, dated 22 August 1991; Mr Ian Dodd, dated 05 September 1991; and Mr Barry O'Keefe, dated 06 September 1991 be referred to the ICAC for comment and advice.

The Committee noted the correspondence and related material from Mr Michael Bersten dated 22 August 1991.

The Committee discussed the outcome of the meeting of the sub-committee on minority/dissenting views.

Resolved on the motion of Mr Turner, seconded by Mr Hatton:

That the Committee adopt the procedures recommended by the sub-committee.

The Committee then discussed the procedures for the public hearing with Mr Temby on 14 October 1991.

The Committee then discussed procedures for dealing with unsolicited complaints.

Resolved on the motion of Mr Hatton, seconded by Mr Tink:

That the following procedures be adopted for dealing with unsolicited complaints:

Meeting of the Committee on the ICAC
10 September 1991

- 1 The Committee should not act on unsolicited complaints which contain potentially defamatory material.
- 2 The established procedure should be followed in dealing with unsolicited complaints, that is:
 - (a) the complaint should be considered by the Committee and a decision made as to whether or not it is within the Committee's jurisdiction; (if it is outside jurisdiction the complainant should be informed of the provisions of s.64 of the ICAC Act and told that the Committee cannot act on the complaint);
 - (b) complaints that are within jurisdiction should be forwarded to the ICAC for comment and response;
 - (c) the Commission's response should be considered by the Committee when it is received and the complainant advised of the Commission's response.
- 3 Initially, the Commission's response to the complaint should only contain as much information as the Commission is prepared for the Committee to disseminate to the complainant. However, this will not preclude the Committee from receiving further information.
- 4 When the Committee considers the response it may then seek further advice from the Commission. This may be necessary if the Commission's initial response raises further matters or the Committee feels the initial response is inadequate. When the Commission provides further advice on the matter it may be appropriate to indicate that certain information is provided for the information of the Committee only and is not to be disseminated.

The Committee then discussed the advice received from Mr Ian Knight, Assistant Crown Solicitor dated 09 September 1991; and Mr Geoff Schuberg, dated 03 September 1991; regarding the Williams matter.

Resolved on the motion of Mr Hatton, seconded by Mr Gaudry:

That the Committee request advice from the Crown Solicitor as to whether it would be prudent for amendments to be made to the ICAC Act to remove all doubt as to the legal status of the Committee in dealing with defamatory material.

Meeting of the Committee on the ICAC
10 September 1991

Resolved on the motion of Mr Tink, seconded by Mr Hatton:

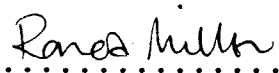
That Mr Williams be advised that the Committee is satisfied that the ICAC has conducted a thorough investigation into his complaint and agrees with the ICAC's recommendation that the matter be formally closed.

Following advice from Mr Hatton on the negotiations between the non-aligned Independents in the Legislative Assembly and the Government, the Committee deferred consideration of options for future inquiries until the next meeting.

The Committee then discussed general business.

The Committee adjourned at 7.05 pm until 9.00 am, Thursday 26 September 1991.


.....
Chairman


.....
Clerk

8.30 AM, THURSDAY 12 SEPTEMBER 1991

AT ICAC PREMISES, CNR CLEVELAND AND GEORGE STS, REDFERN

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Nagle
Mr Tink

Apologies were received from Mr Gay, Mr Hatton, Mr Mutch and Mr Turner.

The Committee met with Mr Ian Temby QC, Commissioner of the ICAC; Ms Deborah Sweeney, Commission Secretary; and Ms Davenport, General Counsel.

Discussion commenced concerning the Committee's procedures for dealing with unsolicited complaints.

Mr Temby indicated that the Commission was comfortable with the procedures adopted by the Committee at its meeting on 10 September 1991, but may wish to provide the Committee with extra information concurrently with advice which would be made available to complainants.

Discussion followed on: the Crown Solicitor's advisings which related to the question of how to deal with unsolicited complaints; the rights of ICAC employees; and the complaints received from Mr Ian Dodd and Mr Barry O'Keefe AM, QC concerning a suppression order made by the Commission.

At 9.15 am the meeting was joined by Mr Kevin Zervos, General Counsel; Ms Stella Walker, Director of Administration and Public Affairs; and Ms Ann Reed, Director of Corruption Prevention.

These officers provided briefings on the Commission's investigative, public education and corruption prevention functions.

The Committee adjourned at 9.55 am until 9.00 am 26 September 1991.


.....
Chairman


.....
Clerk

WEDNESDAY 18 SEPTEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

The Hon D J Gay

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

Apologies were received from Ms Burnswoods and Mr Mutch.

The Committee deliberated.

The Minutes of the meeting held on 10 September 1991 and 12 September 1991, as circulated, were confirmed.

The Committee deliberated over the Gibson matter.

Resolved on the motion of Mr Nagle, seconded by Mr Gay:


That the Committee meet on Thursday 19 September to hold an "in camera" hearing with Mr Gibson.

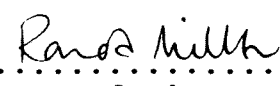
Resolved on the motion Mr Nagle, seconded by Mr Gay:

That the Committee adopt the strategy/timetable for the inquiry into the Gibson matter.

The Committee noted the correspondence from Mr Temby, dated 29 August 1991; Mr Barry O'Keefe, dated 17 September 1991; and Mr Dodd, dated 13 September 1991.

The Committee adjourned at 7.00 pm until Thursday 19 September 1991.


.....
Chairman


.....
Clerk

TUESDAY 24 SEPTEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

An apology was received from Mr Gaudry

The Committee deliberated.

The Committee then went into an "in camera" hearing concerning the complaint from Mr Gibson.


The witness was admitted.

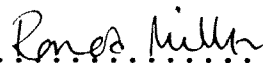
The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Mr Victor Arthur Anderson, Security Consultant, was sworn and examined.

Evidence concluded and the witness withdrew.

The Committee adjourned at 7.40 pm until Thursday 26 September 1991.


.....
Chairman


.....
Clerk

THURSDAY 26 SEPTEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 9.00 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

An apology was received from Mr Gaudry

The Committee deliberated.

The Committee then went into an "in camera" hearing concerning the complaint from Mr Gibson.

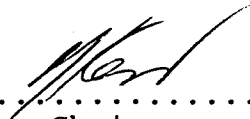
The witnesses were admitted.

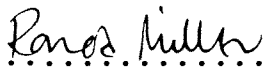
The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Mr Roy Alfred Waldon, Lawyer, was sworn and examined.
Ms Deborah Joy Alderton, Criminal Analyst, was affirmed and examined.

Evidence concluded and the witnesses withdrew.

The Committee adjourned at 10.40 am sine die.


.....
Chairman


.....
Clerk

MONDAY 14 OCTOBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 10.00 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

The Committee deliberated.

The Committee then went into an "in camera" hearing concerning the complaint from Mr Gibson.

The witness was admitted.

The Clerk read Legislative Assembly Standing Order No. 362 relating to the examination of witnesses.

Kevin Zervos, General Counsel of the Independent Commission Against Corruption, was sworn and examined. Evidence concluded and the witness withdrew.

The Committee then went into a public hearing concerning the Independent Commission Against Corruption.

The media and public were admitted.

The Clerk read Legislative Assembly Standing Order No. 362 relating to the examination of witnesses.

Deborah Anne Sweeney, Solicitor to the Independent Commission Against Corruption, was sworn and examined. Ian Douglas Temby, Commissioner of the Independent Commission Against Corruption, was affirmed and examined. Evidence concluded and the witnesses withdrew.

The media and public withdrew.

The Committee then went into "in camera" concerning the complaint from Mr Gibson.

Meeting of the Committee on the ICAC
14 October 1991

The Committee briefly deliberated on the Williams matter.

Resolved on the motion of Mr Nagle, seconded by Mr Hatton:

That Mr Temby be asked to write to Mr Williams either providing details as to the outcome of the Commission's investigation into his complaint; or advising him of the reasons why the Commission is unwilling to provide this information.

The Committee adjourned for lunch.

The witness was admitted.

The Clerk read Legislative Assembly Standing Order No. 362 relating to the examination of witnesses.

Peter Grant Wallace, Sporting Administrator, was sworn and examined.
Evidence concluded and the witness withdrew.

The witness was admitted.

The Clerk read Legislative Assembly Standing Order No. 362 relating to the examination of witnesses.

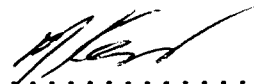
Gabrielle Ann Drennan, Principal Lawyer to the Independent Commission Against Corruption, was sworn and examined.
Evidence concluded and the witness withdrew.

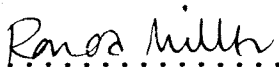
The witness was admitted.

The Clerk read Legislative Assembly Standing Order No. 362 relating to the examination of witnesses.

Kevin Zervos, General Counsel to the Independent Commission Against Corruption, was sworn and examined.
Evidence concluded and the witness withdrew.

The Committee adjourned at 5.15 pm until Tuesday 15 October 1991.

.....

Chairman

.....

Clerk

TUESDAY 15 OCTOBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

The Hon D J Gay
The Hon S B Mutch

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Tink
Mr Turner

Apologies were received from Ms Burnswoods, Mr Hatton and Mr Nagle.

The Committee deliberated.

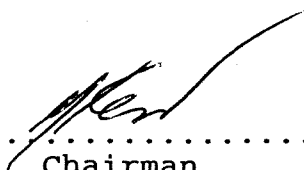
The Committee then went into an "in camera" hearing concerning the complaint from Mr Gibson.

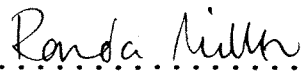
The witness was admitted.

The Clerk read Legislative Assembly Standing Order No. 362 relating to the examination of witnesses.

Peter Lamb, Director of Operations of the Independent Commission Against Corruption, was sworn and examined. Evidence concluded and the witness withdrew.

The Committee adjourned at 7.00 pm until Wednesday 06 November 1991.


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Chairman


.....
Clerk

WEDNESDAY 06 NOVEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 9.30 AM

MEMBERS PRESENT

Legislative Council

The Hon D J Gay

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink

Apologies were received from Ms Burnswoods, Mr Mutch and Mr Turner.

The Committee deliberated.

The Committee then went into an "in camera" hearing concerning the complaint from Mr Gibson.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Kevin Paul Zervos, General Counsel, Independent Commission Against Corruption, under previous oath tabled information relating to the Gibson inquiry.

Evidence concluded and the witness withdrew.

Kevin Paul Zervos and his assistant Sarah Vallance were admitted to the "in camera" hearing.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Ian Scott Lloyd, Senior Crown Prosecutor, Officer of the Director of Public Prosecutions, was sworn and examined.

Evidence concluded and the witness withdrew.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Adrian Roden, Assistant Commissioner, Independent Commission Against Corruption, was sworn and examined.

Evidence concluded and the witness withdrew.

Meeting of the Committee on the ICAC
06 November 1991

The Committee adjourned for lunch.

The Committee then went into a public hearing concerning the Gibson matter.

The media and the public were admitted.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Mark Findlay, Director, Institute of Criminology, was sworn and examined.

Evidence concluded and the witness withdrew.

The witnesses were admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

David Evatt Landa, New South Wales Ombudsman, and John Edward Pinnock, Deputy New South Wales Ombudsman, were sworn and examined.

Evidence concluded and the witnesses withdrew.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Stephen Edward O'Connor, Solicitor for Public Prosecutions, was affirmed and examined.

Evidence concluded and the witness withdrew.

The Committee then went "in camera" for a brief deliberative meeting.

Resolved on the motion of Mr Gaudry, seconded by Mr Tink:

That the letter to Mr Gibson inviting him to appear before the Committee in relation to its inquiry, as circulated, be sent.

The Committee adjourned at 4.10 pm until Thursday 07 November 1991.

.....
Chairman

..... Randa Miller
Clerk

THURSDAY 07 NOVEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 10.15 AM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Tink
Mr Turner

Apologies were received from Mr Gay, Mr Hatton, Mr Mutch and Mr Nagle.

The Committee deliberated.

The Committee then went into a public hearing concerning the complaint from Mr Gibson.

The media and the public were admitted.

The witnesses were admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Paul Andrew Favret, Staff Officer, Professional Responsibility, NSW Police; Peter David Coe, Head of State Protection Group, NSW Police; Patrick John Cassidy, Acting Assistant Commissioner, Professional Responsibility, NSW Police; and Robert John Myatt, Head of Internal Police Security Unit, NSW Police, were sworn and examined.

The Committee then went into a brief "in camera" hearing with the NSW Police officers.

Evidence concluded and the witnesses withdrew.

The Committee then resumed the public hearing into the Gibson matter.

The media and public were admitted.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Phillip William Baer, Assistant Commissioner, Head of NSW Region, Australian Federal Police, was sworn and examined.

Meeting of the Committee on the ICAC
07 November 1991

The Committee then went into a brief "in camera" hearing with Phillip William Baer.

Evidence concluded and the witness withdrew.

The Committee then resumed the public hearing into the Gibson matter.

The media and public were admitted.

The witnesses were admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Dennis Michael Lenihan, Chief Executive Officer, National Crime Authority; and Mr Michael Keelty, AFP Superintendent on secondment to the National Crime Authority, were sworn and examined.

Evidence concluded and the witnesses withdrew.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

John Carl Mengler, Assistant Commissioner of Police, Queensland, on secondment as Director of Operations, Queensland Criminal Justice Commission, was sworn and examined.

Evidence concluded and the witness withdrew.

The Committee adjourned for lunch.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Phillip Bradley, Commissioner, NSW Crime Commission, was sworn and examined.

Evidence concluded and the witness withdrew.

The witness was admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses.


Kevin Paul Zervos, General Counsel, Independent Commission Against Corruption, under previous oath, was examined.

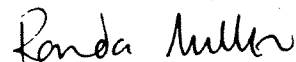
Meeting of the Committee on the ICAC
07 November 1991

The Committee then went into a brief "in camera" hearing with Kevin Zervos.

Evidence concluded and the witness withdrew.

The Committee adjourned at 3.30 pm until Tuesday 12 November 1991.


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Chairman


.....
Clerk

NO 12

TUESDAY 12 NOVEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Turner


Apologies were received from Mr Nagle and Mr Tink.

The Committee deliberated.

Kevin Zervos, General Counsel, Independent Commission Against Corruption, and Sarah Vallance, Officer, Independent Commission Against Corruption, were admitted.

Two audio-tapes were played in relation to the Gibson inquiry.

The Committee adjourned at 7.45 pm until 6.30 pm on Thursday 14 November 1991.


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Chairman


.....
Clerk

THURSDAY 14 NOVEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon D J Gay

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

An apology was received from Mr Mutch

The Committee deliberated.

The Minutes of the meetings held on 06, 07 and 12 November 1991, as circulated, were confirmed.

The Committee noted the correspondence from Ms Julie Walsh, dated 29 October 1991; Mr Ian Temby QC, dated 30 October 1991; Mr E J Lindsay MP, dated 30 October 1991; the Hon G B P Peacocke MP, dated 04 November 1991; Mr P Bradley, dated 11 November 1991; Mr Steve O'Connor, dated 11 November 1991; and Mr Paul Gibson MP, dated 14 November 1991.


Resolved on the motion of Mr Tink, seconded by Mr Hatton:

- 1 That Ms Walsh be informed of the Committee's functions under the ICAC Act, but that her letter be referred to the ICAC for attention.
- 2 That Mr Williams be informed of the action taken by the Committee in relation to his complaint, and the response received from Mr Temby.

The Committee then deliberated on the evidence taken in the inquiry into the matters raised by Mr Paul Gibson MP.

The Committee addressed the questions identified in the paper which had been circulated entitled, "Inquiry into matters raised by Paul Gibson MP, Salient Issues: Questions to be Resolved by the Committee".

The Committee adjourned at 7.25 pm until 6.30 pm Monday 02 December 1991.


.....
Chairman


.....
Clerk

MONDAY 02 DECEMBER 1991

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

The Hon D J Gay
The Hon S B Mutch

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

An apology was received from Ms Burnswoods.

The Committee deliberated.

The Minutes of the meeting held on 14 November 1991, as circulated, were confirmed.

The Committee noted the correspondence received from Mr Ian Temby QC, dated 15 November 1991; Mr Paul Favret, dated 20 November 1991; Mr J L Magann, dated 14 November 1991; Mr Steve O'Connor, dated 27 November 1991; Mr Kevin Zervos, dated 27 November 1991; and Mr Neville Unicomb, dated 21 November 1991.

Resolved on the motion of Mr Gay, seconded by Mr Turner:

- 1 That the letters from Mr J L Magann and Mr Neville Unicomb be referred to the ICAC for comment and response.
- 2 That Mr J L Magann be provided with copies of the reports from the former Committee's Inquiry into Commission Procedures and the Rights of Witnesses.

The Committee then deliberated on the draft report on the Inquiry into Matters Raised by Paul Gibson MP.

Findings and Recommendations read and agreed to.

Chapter One read and agreed to.

Chapter Two read and agreed to.

Chapter Three read and amended.

Paragraph 3.2.13 read and amended.

Paragraph 3.2.13 as amended, agreed to.

Paragraph 3.2.14 deleted.

Paragraph 3.2.15 read and amended.

Paragraph 3.2.15 as amended, agreed to.

Paragraph 3.4.5 read and amended.

Paragraph 3.4.5 as amended, agreed to.

Chapter Three as amended, agreed to.

Meeting of the Committee on the ICAC
02 December 1991

Chapter Four read and agreed to.
Chapter Five read and amended.
 Paragraph 5.2.7 read and amended.
 Paragraph 5.2.7 as amended, agreed to.
Chapter Five as amended, agreed to.
Chapter Six read and agreed to.

Resolved on the motion of Mr Gaudry, seconded by Mr Hatton:

- 1 That the Report, as amended, be adopted and tabled by the Chairman as the Committee's report.
- 2 That the Chairman and Project Officer be authorised to correct minor grammatical and typographical errors.

The Committee then deliberated on the report from the Project Office on the Fifth International Anti-Corruption Conference in Amsterdam, 8-12 March 1992, and the proposed Committee Visit to the Hong Kong ICAC.

Resolved on the motion of Mr Nagle, seconded by Mr Turner:

- 1 That the Committee be represented at the Fifth International Anti-Corruption Conference in Amsterdam between 8-12 March 1992.
- 2 That the Committee conduct a visit of inspection to the Hong Kong ICAC over 5-7 days in early 1992.

The Committee adjourned sine die.

.....
Chairman

.....
Clerk

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Sydney NSW 2000
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Fax 287 6625