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**Transcript of Hearing in Kyogle  
1 October 1992**

**TABLE OF CONTENTS**

Chairman's Opening Statement .....	1
Patrick Vincent <b>Knight</b> .....	2
<i>Submission</i> .....	3
<i>Addition to Submission (during oral evidence)</i> .....	15
Harold John <b>Standfield</b> .....	23
David William <b>Lovell</b> .....	33
<i>Submission</i> .....	34
Anthony <b>Lazaredes</b> .....	50
<i>Submission</i> .....	52
Val Crozier <b>Johnston</b> .....	54
<i>Submission</i> .....	55
Robin Lyle <b>Rodgers</b> .....	60
<i>Additions to Submission (during oral evidence)</i> .....	60
<i>Submission</i> .....	61
Robert Henry <b>Standfield</b> .....	65
<i>Submission</i> .....	66
Robert George <b>Boden</b> .....	77
<i>Submission</i> .....	78
Peter Neil <b>McIntyre</b> .....	80
<i>Submission</i> .....	81
<i>Additions to Submission (during oral evidence)</i> .....	87

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**Witness Details: Kyogle hearings**  
**1 October 1992**

- 1 Patrick Knight, Kyogle Shire Engineer  
(see copies of correspondence received by Committee, see chapter 2 and pp. 74-75 of ICAC Report)
  
  - 2 Murphy Standfield, Contractor  
(see chapter 2 and pp 77-80 of ICAC Report)
  
  - 3 David Lovell, former Deputy Shire President
  
  - 4 Tony Lazaredes, former Shire Councillor
  
  - 5 Val Johnston, Shire Councillor
  
  - 6 Robin Rodgers, Bonalbo Post Office
  
  - 7 Bob Standfield, Shire Councillor  
(see chapter 3 and pp 76-77 of ICAC Report)
  
  - 8 Bod Boden, draper
  
  - 9 Peter McIntyre, teacher
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**MINUTES OF EVIDENCE**

**TAKEN BEFORE**

**THE COMMITTEE ON THE ICAC**

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**At Kyogle on Thursday, 1st October, 1992**

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**The Committee met at 10.20 a.m.**

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**PRESENT**

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

**Legislative Council**

**The Hon. L.C. BURNSWOODS MLC  
The Hon. S. MUTCH MLC**

**Legislative Assembly**

**Mr B.J. GAUDRY MP  
Mr P.ZAMMIT MP  
Mr J.H. TURNER MP**

**WJ&RG**

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**CHAIRMAN:** The Committee is a Standing, that is a permanent, Committee of the New South Wales Parliament. It is established under the Independent Commission against Corruption Act, and its functions are set out in section 64 of the Act. The major function of the Committee is to monitor and review the exercise by the ICAC of its functions. The Committee holds regular public hearings with the Commissioner of the ICAC, and has conducted a number of inquiries. In 1990 the former Committee conducted an extensive inquiry into the rights of witnesses before the ICAC. The Committee has recently commenced a review of the ICAC Act and has released a discussion paper which identifies provisions of the ICAC Act which the Committee feels may be in need of amendment.

Section 64 (2) of the ICAC Act imposes a number of restrictions on the Committee. The Committee is prohibited from investigating a matter relating to particular conduct. Furthermore the Committee cannot reconsider the findings, recommendations, determinations or other decisions of the Commissioner in relation to a particular investigation or complaint. Therefore the Committee has not been able to consider the findings of the ICAC in its report on the investigation into road works in the Shire of Kyogle.

The Committee is not here to re-hear the matters considered by the ICAC. Anyone expecting the Committee to act as some sort of appeal mechanism to alter the ICAC Report, and in effect clear anybody, would be disappointed. That is not the role of the Committee. In fact, this Committee is specifically excluded from doing that.

The purpose of the Committee's visit to Kyogle is to enable the Committee members to hear at first hand from residents of the Kyogle area who have concerns about the conduct of the ICAC's inquiry into road works in the Shire of Kyogle. In view of the experience of that inquiry the Committee is keen to hear any suggestions as to how the ICAC's procedures may be improved in the future.

The Committee is interested in the procedures of the ICAC and how they can be improved — not the ICAC's findings about individuals.

Earlier this year the Committee received a written submission from Patrick Knight about the ICAC inquiry. The Committee sought the ICAC's comments and response in relation to this submission, and I would like to table that response by the ICAC to Mr Knight's submission.

The people with whom the Committee is meeting today have been chosen for two reasons. Most of the people the Committee is meeting during the morning have either made written submissions to the Committee or have telephoned the secretariat to register their concerns about the ICAC inquiry and have asked to be able to meet with the Committee. Most of those whom the Committee is meeting with this afternoon are people who, the Member for Lismore has suggested, would be helpful for the Committee to meet, as they were not personally involved in the ICAC inquiry and have an independent view of the ICAC.

Thursday, 1st October 1992

The Committee intends to conduct today's meeting in as informal a way as possible. That having been said, this hearing is a public hearing, and the public and the media are welcome to attend.

In order to avail themselves of the Parliamentary Evidence Act it would be necessary for those people giving evidence to receive summonses when they arrive. That is not to compel attendance, but rather to ensure that the provisions of the Parliamentary Evidence Act are complied with. Those who are giving evidence today will be asked to take the oath or affirmation, and once these formalities are complied with everything that is said will then be covered by Parliamentary privilege. Is there anything anybody would like to add to those opening statements before we ask Mr Knight to give evidence?

**PATRICK VINCENT KNIGHT, [REDACTED] Shire Engineer and Chief Town Planner, sworn and examined:**

**CHAIRMAN:** Mr Knight, you have been served with a summons under my hand. Is that correct?— **A.** That is correct.

**Q.** Are there any documents you would like to table before the Committee or any opening statements you would like to make?— **A.** Yes. There is a submission I wish to table. There also some supporting documents which I wish to table.

**Q.** Do you wish to make any opening statement to the Committee?— **A.** I have a written submission. I would like to take you through that submission.

(Submission, twelve pages, follows)

SUBMISSION TO THE  
COMMITTEE ON THE ICAC  
MEETING AT KYOGLE. 1 OCTOBER 1992  
SUBMISSION BY PATRICK KNIGHT

This submission is in three parts.

Firstly a number of issues are examined where the ICAC demonstrated improper or inappropriate behaviour during the Kyogle Inquiry.

Secondly I draw some conclusions and observations.

Thirdly I make recommendations regarding the Kyogle incident and the ICAC generally and proposed amendments to the ICAC Act.

## 1. The Issues

### 1.1 Bias and Preconception of ICAC

Throughout the entire hearing and in the report there is a bias that suggests there was a belief by the ICAC investigators and Assistant Commissioner Collins of a certain scenario of sinister activities carried out by shire employees and associates.

I consider that this belief coloured the whole proceedings and despite the lack of supporting evidence led to the investigation, hearing and report being tainted by bias and lack of objectivity.

The Counsel Assisting's opening address was an example of the bias. Some assumptions in that address were elevated to facts when they were not facts at all.

### 1.2 Selective Calling of Witnesses

There was selective calling of witnesses. Witnesses were called that supported the ICAC's preconceived notion of what happened. There was a lack of objectivity. Potential witnesses who had submitted statements contrary to the ICAC scenario were not called.

### 1.3 ICAC Witnesses Protected in the Witness Box by Collins ICAC Targets Harrassed. Other Witnesses Belittled

Witnesses that supported the ICAC line were protected in the witness box by Collins. Gould and Smith when pressed by other counsel were supported by interference from Collins.

Despite these witnesses being discredited under cross examination, Collins goes to extraordinary lengths to give credibility to those persons where they were contradicted by other witnesses. (eg Smith Page 21, para 5)

Page 46, para 2 is an extreme example of where Collins bias leads him to believe the evidence, where it suits him, of the discredited Mathew Brown.

In contrasting manner Collin's, not content with pressure on me from the counsel assisting, treated me in the most beligerant manner for two days in the witness box. His questions presented a preconcieved view of what the facts were and when technical questions arose he asked me to adopt or reject assumptions which had no relation to the evidence.

He spent a great deal of time questioning my professional judgement, but, failed to present other expert professional engineers to support or refute my position.

Collin's treated the workers from Bonalbo with great insensitivity. Most of these persons were unfamiliar with a court situation and were somewhat overwhelmed by the occasion. Collins and his sophisticated friends from Sydney seemed to be amused by these people and he was less than respectful in his treatment of them. He even told "amusing" jokes to the gallery at these persons expense.

#### 1.4 Questions of Professional Judgement

Whilst I was in the witness box Collins made me attempt to recall in minute detail matters of professional judgement and decision making of three years earlier relating to the Wiangaree deviation roadworks and related hiring of plant.

It was extremely difficult for me to recall the detail that Collins wanted and any gaps in my memory were construed by him as evidence of some sinister motive. I believe it was unreasonable of Collins to expect me to remember matters in such detail and it was a further example of him failing to understand professional engineering judgements and processes.

I was amazed when Collins responded to an objection by Steve Norrish QC with the comment that it would be difficult for a barrister to remember, in detail, professional judgements he may have made in a courtroom situation of a week ago.

#### 1.5 Report Does Not Follow the Evidence

The report does not follow from the evidence (even despite the selective selection of witnesses). The report often ignores critical sections of evidence when that evidence does not support the ICAC line.

An example of this is page 57 "Excavation for Col James" where two council employees admit to wrongdoing then give the excuse that overseer Moss put them up to it. Despite Moss having no recollection of such an incident, Collins uses the evidence of the confessed wrongdoers to find that Moss was corrupt.

#### 1.6 Collins Misconstrues the Evidence

Collins reasoning and logic in the report is flawed. He bases many of his conclusions on biased interpretations of the evidence, assumptions not supported by the evidence, his assumption of expertise in fields in which he has none (local government accounting, management and engineering) and a perverse version of logic.

Collins elaborate attempt to misconstrue the evidence confirms his bias and commitment to ensure the ICAC scenario was confirmed.

### 1.7 Findings Biased

The Statutory "findings" of the report in chapter 6 are outrageous, based as they are on an unfair, biased and unjust procedure.

Collins compounds the injustice by making damaging unfounded malicious comments and casting of damaging aspersions not supported by the evidence. An example is the third paragraph on page 78.

### 1.8 Report Damages Reputations of Innocent Persons

The reasoning, conclusions and casting of aspersions in the nonstatutory part of the report (Chapters 1,2,3,4 &5) border on criminal defamation. In these chapters Collins makes totally unfounded slurs on the character of several persons.

These matters are very damaging to the reputations of persons named.

The ICAC absolve themselves from any blame in this matter by stating on page -vi-, "In setting out what happened individuals have been named in this Report. That is unavoidable if the facts are to be told and understood. However, the mere fact that somebody's name appears in this Report does not mean that adverse judgements against them have been made by the Commission, or should be made by others. The statutory statements concerning affected persons are contained in Chapter 6."

### 1.9 The ICAC Went Out of its Way to Damage Reputations.

I would like to quote a few examples of ways the ICAC needlessly damaged reputations.

The second term of reference never had any credibility. The complaint on which it was based was so flawed that a few hours of inquiry by competent investigators would have revealed this.

Despite this, the ICAC went through the full public hearing process on this matter with all the reputation damaging press reporting that this process entails.

It was totally unnecessary and demonstrates the ICAC lack of regard to innocent persons reputations and their total lack of regard to your committees recommendations in this area.

During the hearing, the ICAC counsel brought up matters of complaint by ICAC informants of supposed wrongdoing by certain persons in cases where the ICAC had already had received satisfactory answers. These reputation damaging accusations were allowed to be fully aired in public before they were eventually refuted in further evidence.

Nevertheless the reputation damage had been done and it served no purpose in ICAC's pursuit of the truth as they already knew the answers.



### 1.10 The Investigators 1

I have spoken to a number of witnesses since the hearing and have been told of a number of instances of coercion. In the Bonalibo area, witnesses were pressured for hours by a number of investigators to provide information that supported the ICAD scenario. I have been told of circumstances where at the end of this process witnesses were then pressured to sign untrue statements.

### 1.11 The Investigators 2

The competence of the investigators is extremely questionable.

The persons who made the complaints to ICAD were either members of a clique or persons who had an axe to grind with council staff because of some past occurrence. Checking of their character and motives should have been high on the investigators list of priorities.

They obviously did not and it is demonstrated by the ICAD elevating their fantasy conspiracy theories to a status requiring a public hearing.

The worrying matter is that the investigators did not seriously inquire outside this clique and therefore became their captive.

### 1.12 The Lack of Principles of Natural Justice

<sup>P</sup> Affected persons are not given notice of their supposed wrongdoing. They are therefore unable to adequately collect evidence and find witnesses to defend themselves.

Despite this flawed justice system, the ICAD goes on to report damaging findings, conclusions and observations that can irreparably damage persons reputations.

### 1.13 Collins Assumes the Role of Expert Witness

In the hearing, during the submission stage and in the report Collins assumes the mantle of expert witness in the fields of local government accounting, professional engineering, management, geology and meteorology.

Despite having no expertise in these fields Collins assumed this knowledge to support his assumptions, to draw conclusions, to criticise persons and generally justify his reasoning and findings.

This is again contrary to the principles of natural justice as Collins's supposed expert knowledge is unable to be tested by cross examination.

It was an extreme example of Collins arrogance and lack of concern for a just hearing.

1.14 The ICAC Failure to Investigate the System of RTA Grants and Identify System Problems that Led to the Scraper Hire Problem

The ICAC report made adverse observations, conclusions and findings about me on matters relating to administration of RTA funded roadworks and hire of roadmaking plant.

I gave evidence relating to difficulties in administering these works which seriously impacted on my decision making processes because of uncertainties regarding the announcement, timing and quantum of RTA grants.

Collins failed to obtain any evidence from other Council engineers or practitioners to ascertain whether these difficulties were material to my actions or whether other councils were affected in a similar manner to Kyogle and summarily dismissed my evidence.

He demonstrated that he did not want to consider any reasonable explanations for behaviour or do any homework on checking out these explanations. He was hell bent on only finding sinister motives or mistakes on my part.

1.15 The Investigators Failure to Investigate the Council and Local Community Background to Enable Complaints Against Council Officers to be Put in Context

The ICAC Kyogle investigation was prompted by complaints from Councilors Sandra Davies, Berwin Smith and Gladys Missingham plus two contractors Russell Coakes and Mathew Brown. The ICAC investigating team obviously put great weight on the complaints of these persons. What they obviously failed to do was investigate the background and motives of these persons and put their complaints in context.

1.151 The 3 Councilors Smith, Davies and Missingham

There are nine councilors on Kyogle Shire and during the 4 year term between 1987 and 1991, these three councilors had formed the unofficial "opposition" of the Council. Their views were generally anti staff, confrontationalist and against long term financial strategies needed to rescue the organisation from a difficult financial situation. In 1988 they organised a public meeting that was little more than a kangaroo court where there were populist demands made for the resignation of the Shire Clerk (Mr Thew) and myself (Shire Engineer) and we were blamed for rate rises the Council itself, with the blessing of the Local Government Department had approved.

The majority of council had over the years tended to reject the radical views of these three and they became increasingly redundant in the decision making processes of Council.

I believe that this culminated in a great deal of frustration on the part of the three and Cllr Berwin Smith in particular started spreading his conspiracy rumors.

1.512 The Two Contractors, Coakes and Brown

Both Coakes and Brown had disagreements and conflict with me regarding the quality of works they had performed in the past for Council or requiring Council approval. They felt grieved by decisions I had made and had obvious motives for taking action against me. Brown in particular had strong feelings against Murphy Standfield (and has been charged for assaulting Standfield) who also figured in the enquiry.

1.513 Berwin Smiths Connection with the League of Rights

The League of Rights is an extreme right wing, racist, anti-semitic, anti-aboriginal, anti-democratic subversive organisation that preys on the fears of depressed rural areas and spreads fear with world conspiracy theories and the like. The Leagues activities are well documented in a speech to the Australian Senate by Senator Ron Boswell which I table.

The Smith family organised a League of Rights meeting in the Kyogle Uniting Church Hall in 1983 which was addressed by Jacki Butler (Editor of the Leagues newspaper). The Uniting Church Minister (Rev Bill Lockart, now at Bundaberg) was deceived by Berwin Smith's wife who told him that the meeting was to be addressed by a good christian lady.

The meeting was stacked by League of Rights activists and the Rev Lockart was quickly silenced when he attempted to show up Ms Butler for what she was.

It may be coincidental that Oral Gould, the Council employee at the Bonalbo Depot who kept a diary on his fellow employees, who became an ICAC informant, and was a close associate of Berwin Smith started his diary shortly after the 1983 League of Rights meeting.

Berwin Smith is well known in the Kyogle area for his belief in conspiracy theories. He has spread the Sawyer theories (seat of world government in Canberra) and has rumoured that there was a conspiracy in Kyogle Shire involving "hundreds of thousands of dollars"

1.514 Berwin Smiths Conspiracy Theory Bought By ICAC

I do not know the precise nature of Berwin Smith's complaint to ICAC. I do know however that he boasted of his involvement outside the Kyogle Courthouse during the hearing and made the following statements to Peter McIntyre.

McIntyre: "But ther've only been two or three examples of the RTA being ripped off. It's only involved small amounts of money"

Smith: "But they did, senior staff were involved, councilors were in on it, it was a giant conspiracy to fund shire roads using RTA funds and they were using money collected from private works at Bonalbo to pay people off."

McIntyre: "But how can you be so sure that senior council staff and Councilors were involved"

Smith: "It was just too big for them not to be, they must have known, they were definitely involved no question of that."

I presume that this conversation was similar to the line that Smith said to ICAC.

Smiths council conspiracy theory is cloud cuckoo land stuff. The disturbing thing is that the ICAC investigating team bought it, they became obsessed with it and they managed to sell it to Temby who authorised a full investigation and public hearing on the strength of it.

The other disturbing matter is that the most cursory investigation of Smith's background and motives would have revealed the truth.

#### 1.6 The Actions of the Media

I was particularly disturbed by the performance of the local media. The local press selectively reported the most reputation damaging evidence in a most sensational way. They had no regard for the reputations they were destroying or the anguish caused to persons caught up in the ICAC process. Even persons that are eventually cleared are tainted by their association with the ICAC and are unlikely ever to lose this label.

As an example of the damage caused by press reporting I table a scrap book of press cuttings from the Kyogle Inquiry.

The damage caused by this type of media reporting is a major concern and the way in which hearings are conducted and reported needs to be the subject of an amendment to the Act which ensures reputations and lives are not needlessly damaged.

#### 1.7 ICAC Continues to Damage Reputations with Publications Long After the Report has been Submitted to Parliament

The ICAC has published the booklet "In whose Interest" and circulated tens of thousands of copies. This book, in the section 16 "Another Tender Tale" contains assumptions, errors of fact and matters quoted out of context that are most damaging to my reputation, prospects of future employment and career advancement.

The ICAC has also had published in "The Earthmover & Civil Contractor" April 1992 edition, an article titled "A lesson for councils and contractors" This article is similarly flawed and as a national magazine has helped to destroy my reputation throughout Australia.

I am fearful that these articles are evidence of a vendetta against me by the ICAC, and those ICAC staff who still believe Berwin Smith's story and wish to get me one way or the other.

Copies of both of these publications are submitted.

#### 1.8 Actions of ICAC Solicitor Jan Daley

The ICAC solicitor Jan Daley made no attempt to organise the calling of witnesses so as to minimise the disruption to Kyogle Shire Council employees and other witnesses.

Witnesses were summoned, threatened with imprisonment and kept hanging around the court for needless days, even weeks waiting to be called to the box.

At the end of the hearing Ms Daley then sought to defraud witnesses by refusing to pay witnesses their legitimate expenses.

#### 1.9 The Effect of the Investigation on Me and My Family

Even though Collins' report finds that I was not corrupt and that I was honest and hardworking he nevertheless makes contradictory and unsupported observations and conclusions in the body of the report that slur my integrity.

The main damage however was done long before, during the hearing and resultant trial by media.

Despite being cleared of corrupt conduct my reputation has been irreparably damaged and continues to be damaged by ICAC "educational" publications.

The mere association with the ICAC in a hearing tends to permanently taint a persons reputation.

I have been studying for the past four years for my Masters degree and am almost finished. I had high hopes for substantial career advancement in local government. Since the ICAC hearing my career prospects have vanished and I very much doubt if I could obtain any other position in local government in NSW.

The affect on my family has been devastating. My wife and children have had to endure months of media speculation and the questioning looks and comments of persons in this small community. My wife is disabled and she suffered a severe deterioration in her condition during the ICAC period. This may not have been related to the ICAC matter, but, it is difficult to believe that the stress of the situation was not a contributing factor.

## 2. Conclusions and Observations

2.1 I believe the ICAC investigating team was deceived and used by Councilor Berwin Smith and his associates Councilors Davies and Missingham. I do not know whether it was a part of a larger League of Rights action, but, the actions of Smith and the informant Gould were certainly consistent with the tactics and methods of the League as set out in Senator Boswell's speech.

2.2 I believe the ICAC investigating team (Dan Daley, Allan Herman, Andrew Connor and others) believed Smith's conspiracy theory and set about to have a big bust in Kyogle.

I believe the investigating team was incompetent, that it failed to investigate the motives of Smith and his associates, and that on the untested theory of Smith and what they perceived as suspicious circumstantial evidence convinced Commissioner Temby to go ahead with a full investigation and public hearing.

2.3 I believe that Commissioner Temby failed to exercise proper control and supervision over the investigating team. Surely some cursory periodic review of their activities and blinkered vision would have alerted him to the developing problem?

2.4 Assistant Commissioner Bruce Collins had achieved public success in his handling of the Azopardi case. Where constant bullying of witnesses in the stand had yielded appropriate confessions.

I believe that although there was little evidence to support Berwin Smith's accusations, Collins also believed it and believed a repeat of the Azopardi tactics would lead to similar confessions at Kyogle.

2.5 It is now history that there was a virtual reign of terror by the ICAC investigating team on the small village of Bonalbo and the council workers at the Bonalbo depot.

Workmates were encouraged to spy on each other and workers were terrified to speak out because of the powers of the ICAC. The damage done to morale at the depot and the town was immeasurable. Even now a year later the wounds have not healed and the council depot is a place of fear and mistrust and suspicion. It is not an atmosphere conducive to productive work.

2.6 What Went Wrong: Was There an ICAC Cover Up?  
Collin's strategy fell apart because Berwin Smith's accusations were revealed as fantasy.

I believe it was some time into the public hearing before Collins came to this conclusion. By this time the ICAC team had committed the taxpayers to enormous cost (reputably around \$1 Million) and the scenario based on Smith's conspiracy theory was in tatters.

I believe at this stage there was an attempted cover up to conceal the ICAC's embarrassment by misconstruing the evidence and seemingly justifying the hearing by attempting to pin minor procedural misdemeanors on the likes of myself and overseer Lex Moss.

## 2.7 Conclusion

I believe that the ICAC cell that conducted the Kyogle investigation and inquiry has acted incompetently and improperly and has been deceived and used by Councilors Berwin Smith, Sandra Davies and Gladys Missingham for their political purposes.

I believe that due to the extreme powers given to the ICAC and the zealot manner in which they approach their task that there is an opportunity for "cowboy" cells to develop within the ICAC. As there is no effective oversight of the ICAC's activities these "cowboy" cells can on occasions run amuck and cause a great deal of unnecessary anguish and harm to individuals reputations and have the power to cause serious miscarriages of justice.

I believe NSW needs a body like the ICAC to root out corruption in our society. This body however must act fairly, reasonably and justly in its treatment of individuals and there must be checks and balances to ensure the corruption agent itself does not become corrupt.

I believe the Kyogle incident is an example where the ICAC has abused its power and betrayed the trust put in it by the citizens of NSW.

Unless the ICAC Act and organisation can be reformed and its culture changed to ensure that incidents such as happened at Kyogle never happen again then I believe the current ICAC should be disbanded and a completely new body formed to fight corruption in NSW.

### 3. Recommendations

The experience, issues and conclusions I have made relating to the ICAC Kyogle investigation have led me to submit the following recommendations:

#### 3.1 Matters Relating to the Kyogle Investigation and Inquiry

I recommend that a judicial enquiry be established to investigate

- (a) The conduct of the investigating team relating to their collection of information, interview procedures, analysis of information and recommendations to Commissioner Temby.
- (b) The possible criminal conspiracy and deception of the ICAC by Councilors Berwin Smith, Sandra Davies and Gladys Misingham.
- (c) The Conduct of Assistant Commissioner Bruce Collins and his objectivity in conducting the hearing and writing the report.
- (d) The actions of ICAC solicitor Jan Daley in defrauding witnesses of their expense entitlements.
- (e) The failure of Commissioner Temby to properly supervise the Kyogle operation.

#### 3.2 General Matters

I recommend the ICAC Act be amended to

- (a) Provide an internal management and control system that provides adequate supervision and control of the activities of the ICAC teams and individuals.
- (b) Provide an independent investigation unit (similar to that existing in the police department) to investigate complaints against the conduct of ICAC staff.
- (c) Provide for a recruiting and personnel review system that ensures unsuitable "zealot" type persons are not employed.
- (d) Provide a management system that ensures that the culture of the ICAC is changed to ensure that the ICAC conducts itself in a just, fair, caring and reasonable manner.
- (e) Provide an affordable appeal or review mechanism so the ordinary citizens (not just premiers) can have the conclusions and findings of a report reviewed by an independent person.
- (f) Establish guidelines to provide for complaints of a mainly procedural nature to be handled by the ICAC by referring them back to the Public Authority concerned with instructions to put their house in order. The ICAC to monitor progress and ensure necessary actions are taken. In these matters if the ICAC is not satisfied with the authorities action then it may enter into a more formal investigative stage.
- Similarly of the public authority is unhappy with the ICAC's instructions then the authority should be able to seek an independent review.
- (g) Where matters are of such gravity that a hearing is necessary, a private hearing should first be conducted and this should only proceed to a public hearing if this is necessary to establish ~~is~~ the truth.



(h) If matters proceed to a public hearing "affected persons must be put on notice of their alleged wrongdoing and be permitted to present evidence and call witnesses in their defense.

(i) Assistant Commissioners must be compelled to refrain from using their own experience in the role of "expert witnesses" If expert witness evidence is required then appropriate witnesses must be called that can then be tested by cross examination.

(j) The press must be suppressed from printing or broadcasting any unsubstantiated or hearsay evidence.

(k) The term "corrupt conduct" should be redefined to match the normal interpretation of this term.

(l) Restrict the publishing by ICAC of material based on reports (such as that in "In Whose Interests") that is damaging to individuals reputations.

Note: I do not object to educational material on corruption, but, it must be presented in a manner that deals with issues in general terms and does not identify or damage the reputations of specific persons or organisations.

(m) Provide strong fines/imprisonment for persons who seek to provide the ICAC with false or misleading complaints

(n) Hearings should be conducted in a less legalistic and adversarial manner so that unrepresented persons can participate without serious disadvantage.

(o) Ensure persons such as the workers at the Bonalbo Depot are treated with sensitivity and respect by both ICAC investigators during interviews and presiding officers at hearings.

(p) Restrict the nature of published ICAC reports to include only conclusions, observations and findings supported by the evidence to a level of proof satisfactory to a court, and that the report only be completed after affected persons have been able to present a proper defence of their actions in accordance with the principles of natural justice.

In the absence of these conditions reports should not be made public.

## ADDITIONS TO SUBMISSION

At page 3 at end of 1.8 the witness said:

\*What I am saying here is that I think it is a total cop-out. The observations and slurs contained in the Report, even though they are not statutory statements, still are extremely damaging, particularly when they are not supported by the evidence.\*

At page 3, 1.9, after second paragraph, the witness said:

\*Mr Collins himself in the final submission by counsel assisting says words to that effect.\*

At page 3, 1.9, after fourth paragraph, the witness said:

\*The recommendations I refer to are those recommendations where you call on the ICAC to do proper investigations before they go into the full public hearing stage. There is no doubt in my mind that in the Kyogle situation ICAC totally ignored your recommendations.\*

At page 3, at end of page, the witness said:

\*As an example of this there was an accusation that a certain person had wrongfully obtained tyres from the shire council. Before the hearing had even started, receipts of that transaction proving that it was a legitimate transaction, had been produced to the ICAC. Nevertheless, the ICAC allowed this evidence to be presented in public, damaging a person's reputation. There was no need for it.\*

At page 4, 1.13, after first paragraph, the witness said:

\*He had the hide to say that we did not have a wet season in Kyogle.\*

At page 11, after 3.2.e, the witness said:

\*I think this is extremely important. In Queensland they have a CJC and there are review mechanisms there. I seem to recall that Commissioner Newman went through several layers before he eventually cleared himself. I and the people affected by this Kyogle hearing having no review mechanism. We are stuck with it for life.\*

At page 11, 3.2.f, after first paragraph, the witness said:

\*I am suggesting that where there are matters that can be put in order by the authority concerned they should be given back to the authority to deal with, but that should be monitored. I think the Kyogle example is probably one where there were problems identified, but if they had been brought to the attention of the Council and the Shire President they would have been dealt with, and the record of the Shire Council was such that all matters of that nature were dealt with. It is extremely important that that mechanism be put into the Act so that matters of problems are not kept secret by the ICAC as they were here. They had been running for over a year compounding the problems, and then only able to be solved by a full-blown hearing. Is it not cracking a peanut with a pile-driver? In these matters if the ICAC is not satisfied with the authority's action then it may enter into a more investigative stage, so obviously it should monitor what happens.\*

At page 11, at end of 3.2.f, the witness said:

\*I say this because there are recommendations of Commissioner Collins and other reports that he has dealt with, and I particularly refer to the South Sydney report. He made recommendations on town planning matters that are plainly ludicrous in terms of sensible management of the town planning area. I think there is a problem that those in the legal profession, in the absence of knowledge or of doing their homework on other professions, make recommendations on management procedures which are clearly not in the best interests of the public. I know in the South Sydney situation, Collins recommended that it is corrupt conduct by planners to give help to developers in how to fill out their development applications. There is an article on this in the planners' magazine which says that this type of recommendation overturns years of work in trying to encourage this sort of activity. In local government we are serving people. We are not to be behind a counter handing out forms and then receiving them and treating them bureaucratically. We are there to help the people, and if we can help them by assisting them to fill out forms of this type, then that is our job. What I am saying is that when the ICAC refers a matter to a public authority, if the public authority thinks the ICAC is out of line, there should be some mechanism to review that referral.\*

At page 12, at end of (h) the witness said:

\*The ICAC always says that no-one is accused in a hearing, but the reality is that they are. They are accused probably far worse than if it was a normal criminal case, and persons need to be able to defend themselves. In a criminal case at least you are accused of a certain thing and you can call witnesses and give evidence. In the ICAC these things just come out as the days roll on, and at the end of the day you have no

opportunity to present your own case. The Commissioner's findings are made on the selected witnesses that he chooses to call.\*

At page 12, at end of (i) the witness said:

\*In the Kyogle case Collins assumed a considerable knowledge on engineering, geology and on other matters. His conclusions were based on his own knowledge. I consider it totally unreasonable that a person be permitted to do this, because obviously Collins as a barrister has limited knowledge of these matters and also his own knowledge cannot be tested by cross-examination. I believe Collins's knowledge in these matters was flawed but I had no opportunity to test his knowledge in the witness box.\*

At page 12, at end of (l) the witness said:

\*In the magazine In whose interests I refer to item 16 entitled 'Another Tender Tale'. My objection is that these booklets are spread far and wide. They assume that the observations and conclusions of the report are fact — which I obviously strongly dispute. Using these as matters of fact just spreads the falsehood and the damage far and wide. I do not believe it is a reasonable thing.\*

**CHAIRMAN:** Thank you. Is there anything else you wish to add to your evidence?— **A.** I would like also to bring to you my initial letter of complaint. I submit it to the Committee.

(Letter dated 10th March 1992)

**Mr MUTCH:** I was concerned about the last paragraph in the article in 'The Earth-mover and Civil Contractor' where it says:

The 88-pages detail of practices which many might consider within the bounds of reasonable practice, are simply not acceptable, and should act as a warning to contractors...

What you are saying is that the findings of the Assisting Commissioner were in some respects as it was recently ruled by the Supreme Court, that the Commissioner himself used subjective thought process, and in that situation created new law. The whole tenor of your submission is that new laws or legal requirements have been created. Would that be correct?— **A.** Yes.

**Q.** In terms of the things that you say are reasonable practice, would you consider they would be reasonable practice in every shire in New South Wales?— **A.** I think you have to be specific on the practices. This is a difficulty with the whole thing. You have to look at each action and practice in context. I am not saying that everything that happens in Kyogle Shire is absolutely perfect. Of course it is not. It is like any organization. But there

Thursday, 1st October, 1992

P.V. Knight

were various actions, incidents, that were dealt with by the Commissioner, that did have explanations due to the system in which we operate. My complaint is that the Commissioner took these incidents out of context and drew conclusions from them that I thought were unreasonable.

Q. In relation to the requirements under the Local Government Act to advertise for tenders in excess of \$50,000, you noted that the first contract for the equipment was less than \$50,000 — \$43,000. Then I noted the RTA requested that further work be done. Why were not tenders called after that occurred? Did you have a reason then to believe that the work would not exceed \$50,000?— A. When I gave evidence there was difficulty about the type of material that was being excavated and we had a geologist report that indicated that we would need very heavy equipment to excavate it — far heavier than the equipment that we eventually chose to use. There was always this fear that we would grind to a halt, and eventually it was the uncertainty of knowing when that would occur. There is always that uncertainty when work is done in a piecemeal fashion. It is often alleged that that type of piecemeal work is done to avoid the provisions of the Local Government Act. I understand that concerns were raised, and I understand it was a legitimate question to ask. I have no difficulty with that. What I have difficulty with was the failure to look at the circumstances.

Q. You would say, going back to some of the statements that you made, that at that point perhaps there ought to have been a review of what had happened and perhaps a comparison with other councils and a drawing in of expert witnesses?— A. The whole problem was the way in which the RTA doles out grants. The RTA has annual grants. This was a job that covered three or four annual grant allocations. Initially it was to be done as one job under the bi-centenary scheme, and we were tooling up to write contract specifications for that. The bi-centenary scheme ran out of money and the project was dropped from that funding area. We were then faced with the problem of having to do a large job piecemeal. That particular job was not designed to be done piecemeal. It was a very inefficient way to do it. If the RTA had said 'In the next three years you will get funding of this quantum and in this order', we could have made appropriate plans to do all those things that we should have done. The difficult is that we have one year's grant of \$270,000 or something, which after we did the preliminary work left only a small amount for bulk earthworks. We faced the prospect that at the end of that grant on 30th June we would have to stop and wait until the budget and some time after that to get our next grant. This is the system that causes all the problems. If you know what you are going to get on a long-term project you can properly plan and schedule it. We in local government do not have that luxury. I have been in local government for about 22 years, and I complain about it year after year after year, that we need some long-term grant commitment so that we can programme and schedule these jobs. But we do not. It is this sort of piecemeal allocation of funds that creates these problems.

Q. I think you mentioned that you had delegated authority to purchase the scraper?— A. To hire equipment.

Q. Was that ever challenged by any councillors at any time around the period of the particular hire that we are talking about?— A. No.

Q. You still enjoy that delegated authority?— A. Yes.

Q. In the evidence you have given, you have just said that you felt you could have gone in without counsel, and that is one of the observations that ICAC regularly make, that there is really no need for you to have counsel to go down there; all you have to do is to go and have a chat to them and tell them your ideas. But having given evidence, do you believe the synopsis shown in the report adequately reflects your evidence?— A. No.

Q. You believe it has been deliberately convoluted, or do you think it has been selectively quoted, or how would you describe what you said as being what you got back in your report?— A. I believe that what has been quoted has been selected to suit what I consider to have been pre-determined conclusions.

Q. I am not sure what the form of our report will ultimately take, but it is quite possible that all your evidence you have given us, and certainly your prepared statement, will be part of our report which will be a public document. Do you see any conflict there in the sense that you were put on a stand by certain people with their comments, whereas your comments are very strong comments now going out into the public arena. Do you have any qualms about that?— A. I have some qualms about that, yes.

Q. One of the matters you referred to in the recommendations is some form of closed hearing?— A. Yes, I do have qualms about that.

Q. In relation to reports, I understand from the officer here that on at least one occasion ICAC has sent a draft report to an affected person for comment. What are your views on that scenario? Do you think that ICAC should send out the report prior to its being available for comment by the affected person?— A. I think it would certainly assist.

Q. At page 75 of the report, the last paragraph, in connection with your heading, it says that consideration should be given to taking disciplinary action. Were you ever disciplined?— A. Yes, I was.

Q. What form did that take?— A. To set the scene, the council when it received the report asked myself and the shire clerk to present a report on the report in writing, which we did, and you have a copy. The council met on 27th February to determine it. The council meeting opened at about 5 o'clock, and at about a quarter past five the shire clerk and myself were told to leave the meeting. The meeting then carried on for several hours, and at some time during the evening Mr Lex Moss plus his barrister plus his union representative were invited into the council meeting to give their case, and they were heard, I understand for at least an hour. Then they also heard another person, Mr Wayne Albert. At about 11 o'clock that night the council asked myself and the shire clerk up and asked us about gradings for foremen and other classifications. They were apparently considering demotion of Mr Moss. We gave them our advice and were asked to leave again. After about ninety minutes I was then called up to the council, at about one o'clock

in the morning, and read a resolution critical of me in about five or six parts. At no time did the council give me the opportunity to address them on the matter, apart from my written report, or to give my verbal account of the matter. About an hour after I was dismissed from the council meeting, the council called up Mr Thew, I think around 2 o'clock, and read to him a resolution critical of him. The meeting concluded shortly after that.

Q. Were you there to be served with that resolution?— A. Yes.

Q. Have you heard anything from the DPP about any further action that might be taken against you in relation to corrupt conduct?— A. I was never found to be corrupt.

Q. You have not heard anything further since that took place, in relation to any further action?— A. No, nor would I expect to, because Collins cleared me of any corrupt conduct.

Q. One of your recommendations — this is where you have a free kick — numbered 3 (d), is that there should be provided a management system that ensures that the culture of ICAC is changed to ensure that ICAC conducts itself in a just, fair, caring and reasonable manner. I presume you have seen the letter from ICAC of 7th July to Mr Blunt in reply to your letter to Mr Rixon?— A. Yes.

Q. In the fourth paragraph there is an observation by the Commission that says that the Commissioner will continue to hold hearings in public as much as can be done consistent with fairness to individuals and the circumstances of a particular investigation. How does that lie with your recommendation and their comment of fairness and your view of fairness?— A. Whilst I concede that there are circumstances where public hearings should remain, I consider that they are certainly not done consistent with fairness to individuals in the circumstances of the particular investigations, and I believe that the Commission does far too lightly enter public hearings when there is no real necessity to do so to carry out the objectives of their Act. I believe that holding public hearings should be done as a last resort. I think I agree with the findings of this Committee, that where proper investigation is done in interviews with the persons involved, if those procedures fail to get to the nub of the matter and there is evidence to suggest that something corrupt has happened, then there may be circumstances to go into a public hearing, but I do not believe that the Commission acts in that way. I believe it goes into public hearings far too lightly, when the circumstances do not warrant it. When it goes into those public hearings it certainly does not hold them in a manner that is consistent with fairness to individuals.

Q. It would be true to say, I guess, that in a town like Kyogle if it went into a private, closed hearing, it would be closed in name only when everyone would know that there was an inquiry in the town. What are your views on that in a country town? I am a country person, and there may be more damage arising by innuendo surrounding a private hearing than from a public hearing?— A. Obviously there would be some damage and innuendo, but nothing could be as damaging as the harmful experience of what happened here. I think a private hearing would be proper.

Q. You are referring to the newspaper reports?— A. Yes, and the radio reports.

Q. On page 11 your recommendation (f) is that at some stage in the investigation the ICAC will have to come back to the council and in discussion with council management look at the situation that occurred and work towards overcoming difficulties or perhaps misunderstandings, and from that would flow I imagine management changes or perhaps some form of discipline. Then you would have seen yourself as having a hearing, rather than what occurred with council where some decisions were made without your having a chance there to put forward your case?— A. That is correct. I see it as a desirable reform, that matters could be handled in that manner. In the situation we had, the matters were kept secret from council from 1989 to when the hearing started in 1991. I do not profess to be a legal man or having resources to provide all the answer to ICAC. All I am putting forward here are suggestions and recommendations arising out of my experiences. The experience has certainly indicated to me that a group such as yourselves needs to investigate fully these matters and try to tidy up the Act so that ICAC does act in the interest of the citizens of New South Wales.

Q. How would you see it acting by coming into the organization at your suggestion?— A. I would see it as an investigator or a solicitor summoning the shire president and the shire clerk, or something like that, and issuing them with some sort of report on problems or alleged conduct or processes within the council that are not suitable, putting that to the executive persons, and those persons responding to that. Perhaps there would be some initial response, but obviously there could be a considered response days or weeks afterwards. The ICAC team would consider the council's response and proposed action plan, and if it was thought that was an adequate response, the ICAC team would endorse that and require the council to carry it out and ICAC would monitor the progress of those actions. Then the ICAC, if it monitored the progress and action was not being taken to its satisfaction, it might kick into a higher gear with the type of thing that happened here. Likewise ICAC sometimes does not understand council management and may suggest inappropriate actions. Then there should be some sort of mechanism by which the public authority can have those instructions or recommendations reviewed. I think some of the persons in the ICAC do not fully appreciate the background and the workings of the councils, so they can get it wrong sometimes.

Q. Would it follow from that, that you think that any specialized investigation by ICAC, going into a specialised area, should have in addition to counsel assisting some impartial person from that field to provide expert advice?— A. You certainly need impartial persons supplying expert advice. There was enormous time wasted in the Kyogle hearing collecting truckloads of documents for people who did not have a clue. I know the deputy shire clerk and the shire clerk had days of questioning on matters that could have been cleared up in five minutes in a non-courtroom situation. Once you put a person in a box it is a different situation. It is difficult to have a reasoned conversation to work out a problem when you are in a witness box with someone cross-examining you.



**The Hon. J. BURNSWOODS:** Have you any comment on the approach that ICAC took to the councillors, as distinct from the staff, or any testing or comment as to their role?— **A.** I found the approach quite peculiar. ICAC's officers, particularly Jan Daley from memory, seemed to have close contact with councillors Smith, Missingham, and Davies, who were the minority opposition types on the council, but she made no effort to communicate on a detailed level, or to get a great deal of background information, from the shire president or the deputy shire president.

**Q.** Did all the councillors give evidence?— **A.** No. The only councillor that I can recall being in the witness box was councillor Smith, and also councillor Standfield being questioned about his pecuniary interest.

**CHAIRMAN:** Thank you, Mr Knight, for being with us today.

(The witness retired)