

ICAC 5C10



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

**COLLATION OF EVIDENCE
OF THE COMMISSIONER OF THE ICAC, MR IAN TEMBY QC
ON GENERAL ASPECTS OF THE COMMISSION'S OPERATIONS**

WEDNESDAY 27 MARCH 1991

PARLIAMENT HOUSE, SYDNEY

TOGETHER WITH WRITTEN ANSWERS TO QUESTIONS FROM
THE MEDIA AND PUBLIC AFFAIRS MANAGER

COMMITTEE ON THE
INDEPENDENT COMMISSION AGAINST CORRUPTION

MEMBERS

Mr M J Kerr, MP (Chairman)
The Hon D J Gay, MLC (Vice - Chairman)
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Ms S C Nori, MP
Mr A A Tink, MP
Mr J H Turner, MP
Mr P F P Whelan, MP
The Hon R D Dyer, MLC
The Hon S B Mutch, MLC

STAFF

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

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."

FOREWORD

As part of its role in monitoring and reviewing the exercise by the Commission of its functions, the Committee has established a regular pattern of public hearings with the Commissioner of the ICAC, Mr Ian Temby QC. These hearings enable Committee members to question the Commissioner about matters of concern, issues arising from Commission reports and general aspects of the Commission's operations. By conducting these hearings in public and subsequently producing a collation of the Commissioner's evidence, the Committee hopes to assist in informing the debate on the ICAC.

The first of these public hearings with the Commissioner was held on 30 March 1990. The second was held on 15 October 1990. The third, the subject of this collation, was held on 27 March 1991.

As with the second hearing in October 1990, Mr Temby was provided with a series of questions on notice in advance of the hearing. During the hearing these questions were generally referred to by number to save time. Where this occurred they are reproduced in full in the appropriate place. It should also be noted that in some cases the order in which the questions were put has been altered to enable the answers to be categorised under appropriate subject headings, for easy reference.

Included as an appendix to this collation is a set of written answers to questions which were put to the Media and Public Affairs Manager with the ICAC, in December 1990. There has been considerable interest in the relationship between the ICAC and the media, and the Committee has taken the view that these written answers should be placed on the public record.



M J Kerr MP
Chairman

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OPENING STATEMENT

CHAIRMAN:

Q: I formally invite you to make any opening statements you wish to make?

MR TEMBY:

A: I indicate to Committee members I have with me two senior officers that most of you will not have met previously. On my right is Mr Peter Lamb who is the Director of Operations for the Commission. He started with us late last year. On my left is Deborah Sweeney who is the Commission Secretary following the recent departure of David Catt.

Investigations and Prosecutions

What I want to say falls into three areas. Firstly, the Commission is now operating in terms of its three statutory functions; they being investigations, corruption prevention and public education. With respect to the two latter, I will provide full briefings when we come to the particular questions, but so far as investigations are concerned, some figures may be found to be of interest.

On Friday last I approved the Commission's 32nd formal investigation and I anticipate that the 33rd formal investigation will be commenced tomorrow. There are two reports recently being prepared for publication. One arose entirely out of private hearings and that is a matter that Committee members are aware of. The other concerned the heavy vehicle towing and repair industry, particularly in the Riverina district. Those reports are in the course of being prepared and there are eight other investigations which are current, only one of which is presently public. That relates to the disclosure and sale of confidential government information. That is a big and important matter about which I hope to be able to say something more a little later.

As Committee members know the Commission does not see it as a prime function of the Commission to initiate prosecutions. There has, however, been a considerable amount of activity on that front. To this stage a total of 16 charges have been laid against 11 people, resulting in findings of guilt in four cases. In one of those cases the individual concerned was sentenced to imprisonment but has appealed. In one other a fine was imposed. In another case a bond was ordered to be entered into and, finally, there was no conviction entered in the fourth case.

CHAIRMAN:

Q: In relation to those prosecutions, was the Director of Public Prosecutions the initiating body there?

A: In every case we went to the DPP to obtain advice. On the basis of that advice Commission investigative staff laid the complaints but the prosecution was handled by the DPP. Not all of those I have mentioned arose from completed Commission investigations. In one of those cases there was no formal Commission investigation at all. It was a fairly simple case of an attempted bribe in relation to a local government body. That is the case in which a fine was imposed. Five of the charges against three people arose out of the heavy vehicle towing and repair matter that I mentioned. The charges were laid by a joint police-ICAC task force during the course of the investigation.

CHAIRMAN:

Q: I may have been given to understand that Commission officers had sworn informations to initiate prosecutions. Is that correct?

A: Yes.

Q: I noticed in the second reading speech it was said:

The proposed Independent Commission Against Corruption will not have the power to conduct prosecutions for criminal offences or disciplinary offences or take action to dismiss public officials. Where the Commission reaches the conclusion that corrupt conduct has occurred, it will forward its conclusion and evidence to the Director of Public Prosecutions, department head or Minister or whoever is the appropriate person to consider action.

I wondered whether I might get your views on the separation between investigative and prosecutorial bodies?

A: I have no difficulty with the traditional separation, although I think that for very large fraud or fraud-type investigations, if you want to get results, some early involvement by prosecutors or potential prosecutors in the investigative process is practically necessary, and indeed some continued involvement by investigators during the prosecution phase is also practically necessary. Experience tells me that. But subject to that possible qualification, I have no difficulty with the proposition that there ought be, as is traditional, separation between investigative and prosecution functions, and there is. What we do is not inconsistent in any sense with the second reading speech. We send the material to the Director of Public Prosecutions and we say "Please assess and advise what steps should be taken". The Director of Public Prosecutions does that and there then has to be a complainant. In default of anybody else, one of our officers acts as complainant. But the prosecution is in

all senses handled by the office of the Director of Public Prosecutions.

MR WHELAN:

Q: Does he keep you informed of the results or the maintenance of the prosecution?

A: Yes, and in contested matters our people are normally lending a hand in one way or the other to help the prosecutors to understand the material or make contact with witnesses or things like that; the sorts of things in a general sense that police have to do in the prosecution of decent, ordinary crime.

Q: Take the North Coast for arguments sake. There were recommendations that went to the Director of Public Prosecutions and some public announcement has been made about the issuing of prosecutions and it has gone quiet since then. Do you ring him up and say, "Can you tell us what is happening"?

A: Yes, we do. There are some matters there that are not resolved, and the sooner they are, the better.

Of greater significance are the numbers that are pending. At the present time there are 77 proposed charges against 32 proposed accused persons which are with the DPP for consideration.

I think that Committee members have all received a copy of our recent booklet that relates to issues. That booklet brings together the Commission's three functions. It arises out of the investigative work of the Commission. It draws together 19 key issues that have arisen out of the 12 reports that we have furnished to the Parliament to date. Because it is issues based, the contents are important from a corruption prevention viewpoint, and it is hoped the booklet will also be useful in the public education area. It is going to be given very wide dissemination, starting with, but by no means limited to the Royal Show. If I might, I seek leave to table that booklet.

Q: Certainly. I should inform you that the members of the Committee received a copy of the booklet very recently. There is no objection to the tabling.

Public Statement about Complaints

A: The second preliminary matter I wanted to raise, if I might, concerns public statements about complaints to the Commission. Committee members will recollect that on my last appearance here I was asked whether the Commission had concerns about persons making public statements to the effect that they made a complaint to the Independent

Commission Against Corruption. I then said there were concerns, for reasons that were stated, both in relation to complaints and also reports under section 11 of the Act. As to the latter, the point made was that the Premier had written to Heads of Departments suggesting that reports should be kept confidential, and by and large that had been and has been honoured. As to complaints, I then said six months ago that the high desirability of maintaining confidentiality when something was sent to the Commission had been raised at an address I gave to a Shire's Association convention—that forum being picked because local government elected officials seemed to be particularly prone to that type of conduct.

The matter was touched upon in the guidelines under section 11 of the Act, where it was made clear that there was no need for the fact of a report to be made public, and it was desirable that that should not happen. It was also raised with senior Commission officers when I met with media representatives during the course of last month. The view expressed by several of those present, particularly from country and suburban newspapers, was that there was a high potential for complaints to the Independent Commission Against Corruption to be used for political ends, which if announced they—the media—would have to report as being newsworthy; but they said they would then feel they were being used, and the Commission might also feel it was being used.

I propose, subject to any view that might be expressed by Committee members, to write to each member of the New South Wales Parliament, to the various political organisations, and to each council in the State with a request that the letter be distributed to all elected members and senior staff. The purpose of the various letters will be to request and urge that complaints and information be made and provided respectively on a confidential basis, whenever practicable, which should be nearly all the time. The prime reasons are that if an announcement is made, there can be abuse of Commission processes. The result can be, if the information received is of substance, that information or documents become lost or cease to exist, and apart from that there can be an inappropriate effect upon personal reputation. Unless there is any indication to the contrary, I will take it that this is viewed as a justified course of conduct.

MR DYER:

Q: May I just interpose, briefly? With regard to that latter issue, is it your impression, Mr Commissioner, that that practice is becoming worse, or is it stable or declining? That is, the making of public statements to the effect that a complaint has been made to the Commission for a political or other purpose personal to the person making the complaint?

A: I would say that I had no impression that the occasions when complaints are made to such an end have increased. Indeed, I would not wish to be understood as saying that I think that at any stage the complaints, at base, are maliciously motivated. It does seem to me, however, that very often the announcement about the complaint is designed to secure some political end. I cannot say—because you would need to survey it and we have not done this—that the incidence of such announcements has increased. Nor do I have any sense of diminution, despite certain steps that we have taken which I have mentioned. I think it is reasonable to fear that in a local government election year the tendency might be for an increase unless steps are taken. Let me stress: these letters do not seek to speak by way of command. The phrase they use is "request and urge" that whenever practicable information, complaints and reports be provided to us on a confidential basis, and the reasons are given.

MR GAY:

Q: In light of your answer and your decision to send this letter—recently we had a situation in the Parliament where a motion was moved in the Legislative Council to refer the matter to you concerning electoral reform—what would be your feelings concerning the publication of that matter and then a discussion about it through Parliament?

A: I would welcome a Parliamentary reference at any time. Such a reference would have to be passed through both Houses, rather than just one of the Houses. I do not imagine they are going to be frequent in their number, but certainly any Parliamentary reference would be welcome and would be considered most seriously. I imagine that such a reference would arise from either of two things: either a Parliamentary view that there were public policy issues that ought to be addressed by the Commission—and the sorts of consequences that could flow from inappropriate disclosure would not seem to be connected with such a situation; or a matter, which was in the public domain more or less and was causing such grave public disquiet, that a Parliamentary view was formed that the matter should be sent off. That would be like the prelude to royal commissions, sometimes, in the past. As the Commission is there as a standing organisation, I imagine that as a matter of decent likelihood if there was that degree of public disquiet, we would probably be aware of the matter and active in relation to it by the time any Parliamentary resolution was passed.

Q: You do not see any problems that it would be used for political motives, given your concerns particularly in local government that such a thing is happening? Would it not be better, if there was a problem, just to have it privately referred to you rather than to have it canvassed politically?

A: That may be. I do not want to be put in a position, you will understand, of having to indicate any view that I might have about the political motivation or repercussion from any particular case. And, really, distant from them, I could not safely do so. I can say that viewing the generality of what we have seen it is inescapable that from time to time, and particularly at local government level, announcements that some things have been sent to the Independent Commission Against Corruption have not been purely motivated by desire to see the public good enhanced. There has been, pretty clearly, at least sometimes, an ulterior political motive. It has to be said that just now and again, it is announced by way of a splash in the newspapers that something is coming to us, and we never get it. It is hard to be amused then, is it not?

MR WHELAN:

Q: Is there a draft of the letter that you sent?

A: The letter is settled and ready to go. I do not have a copy of it with me.

Q: Do you think the Act should be amended to enable one House to refer a matter to you, taking the example of the upper House resolution? As you know, both Houses must pass a resolution?

A: Yes, of course. I do not think I would wish to say more than that I cannot see any strong objection in principle to that happening. But I have not really thought about it.

MR HATTON:

Q: The Independent Commission Against Corruption or the State Drug Crime Commission or the Judicial Commission must not subvert the freedom of the Parliament to discuss anything it wants to and let the political chips fall where they may?

A: Yes, sure.

Q: That is probably what I am coming to, but attacking it from a different direction?

A: If I can say, that has to be right. I have said I would welcome a Parliamentary reference and of course we would get on with the job. If there is going to be Parliamentary debate about something which is going to head our way or in which we ought to be involved, we would much rather be told about it in a timely manner, before there was such debate, so that if steps had to be taken, they could be taken before everybody was tipped off to the fact that we might be interested. The fact is that documents do disappear. It is not unknown for government files to disappear.

MR WHELAN:

Q: Is your suggestion motivated by the activity of members of Parliament using it for base political purposes?

A: No. Principally my concern is with local government.

Q: Or is it because you think the media are handling reporting irresponsibly?

A: No, it is not the latter. I do not have any real difficulty about the media's role in any of this. If it is announced in some Council debate that something has been sent to the Independent Commission Against Corruption and there is agitated discussion about it, as may be the case, you expect the local media or newspaper to report that. I cannot criticise the media for that. That is news. Let me make it clear that my prime concern is with local government. It seemed appropriate, however, to write also to State members of Parliament, because there is at least the same potential at that level of government, and because I have no desire to make local government feel that they are being exclusively singled out.

Q: It does give the impression though that there may be a by-product of your letter, either that the media are not acting responsibly, or an attempt to either suppress a member of Parliament raising the matter, a legitimate matter, a non-political reference, and that suppression could be very evident, and also to try to influence the media into not reporting a matter that a member has raised?

A: I would not dream of doing that. I do not think the letters could possibly give rise to the latter impression. I do not think they could give rise to either of the impressions. What they say is that when practicable it is desirable from our viewpoint that reports, complaints and information be conveyed to us without attendant publicity, for reasons that are stated. I do not think anybody, even the most thin skinned, could see that as a desire on our part to muzzle anybody. We speak in terms of requests and we explain why. If there be any doubt, let me say now on this public occasion that I am as far from wishing to tell the Parliament what to do as one could imagine, and I think that is attested to by the Commission's conduct over a couple of years now.

MR TURNER:

Q: Should some consideration be given to penalty or reprimand for people who do make the threat that something is going to Independent Commission Against Corruption and it never turns up on your desk—a public threat I should say?

- A: That is fairly closely linked to the question whether there should be some duty to maintain confidentiality about complaints, which has been raised previously. I am inclined to think that is not practicable, and I am wary about creating offences in circumstances where with some frequency breach is likely.
- Q: Should consideration be given to a public response from you that a complaint has not in fact been received?
- A: We would in an appropriate case say so. I do not think that we have ever had to, but we have from time to time, just occasionally, commented about stuff that we have got, and if appropriate I would not be shy about commenting about something we had not got.

Costing of Investigations

- A: The third matter I wanted to mention in opening concerned the costing of investigations, concerning which again material was provided to Committee members just yesterday. I would like, if I may, to have the single page document headed "Costing of Investigations" tabled.

(document tabled)

COSTING OF INVESTIGATIONS

1. The Annual Report to 30th June 1991 and each report thereafter will include cost figures for all investigations the subject of public reports.
2. This will be done according to a formula which takes account of direct and unique costs, and otherwise depends upon estimates and stated assumptions.
3. The formula was developed by the Commission's Finance Branch and revised with regard being paid to the constructive advice of independent internal auditors whose services were provided by the Auditor-General's Office.
4. Under the revised formula the cost figure for each investigation, including hearing, are ascertained from:
 - * standard rates for hearing days including charges for presiding Commissioner, associate and hearing attendants
 - * average salary costs for investigators, analysts, lawyers, and support staff associated with particular matters, based on estimated person/days spent on the matter
 - * actual hearing costs for counsel fees, transcription fees, witness expenses and general expenses incurred on country sittings
 - * actual investigative expenditures for travel, special supplies, temporary offices established in country areas, and miscellaneous general expenses
5. A share of overheads, at present 37.5% of administrative and general charges, is assigned for each accounting period to formal investigations. This rate is determined on the basis of workloads within functional areas of the Commission.
6. Overhead charges so assigned are then apportioned as between individual formal investigations which have resulted in reports in that period in accordance with a decimal factor based on a combination of investigative and hearing days.

It is meant to be, and I hope it is, basically self-explanatory. We thought that in order to assist in the management of the Commission we should put a dollar figure on investigations, because it is not until you know what something has cost that you can work out how relatively well or otherwise it has been done and the sort of benefits that have flowed from that expenditure. I do not say one can do that in a precise, mathematical way, but one has to know what the cost has been before one can start to reach any conclusions about benefits.

Having decided we should do that for ourselves, because it is public money that is involved, it seemed to us to be proper that the information should be conveyed to the public. We propose that should be done annually, in each annual report, and the next annual report will contain the costing of all completed and reported upon investigations to date. It will be done according to the formulae that is shown on this sheet of paper. I stress that it is not a precise dollar and cents figure that will be thrown up by these formulae, because the amount of effort that would be expended in getting precise figures would be absurdly large and I do not think you could get a perfectly reliable figure in any event. The formulae will throw up strongly indicative costings which are at least good enough to let judgments be made as to what the cost has been, against which benefits can be sought to be measured. If there are any queries about the formulae which are proposed to be followed, I would be happy to answer them and seek to justify them. That is the rationale that lies behind them.

MR HATTON:

Q: Do you agree that the preliminary figures would show that the Independent Commission Against Corruption is far and away more cost effective as a form of inquiry than, say, a royal Commission or similar type of inquiries?

A: With respect, my late father used to say that comparisons are invidious. I only answer the question because it has been asked. The answer is, yes. The benefits that flow from having a standing organisation which does not have to learn the job anew each time it starts doing a job are very considerable in terms of cost. I can give some idea. I think it is likely that the North Coast investigation will be shown to have cost something less than \$2 million. That was, by anybody's standards, a very large royal Commission and that is a pretty modest figure. A couple of others have been tentatively costed on this formula. A couple of our middle-range investigations, the cost according to this formula is \$200,000 or \$250,000, and again there are several of them that can be compared with medium-range royal Commissions. That gives some idea, but it will all be in detail in the next annual report.

CHAPTER ONE

GENERAL BRIEFINGS

CHAIRMAN:

Q: 1.1 The Committee would appreciate general updates/briefings on:

(a) the status of current investigations which have been the subject of public hearings, and any forthcoming reports;

A: I have largely covered that. Two other things may be said, and one is that in relation to the heavy vehicle towing and repair industry matter, which we called Operation Yara, it has been recently decided that a report should be written on the basis of what has been received to date, which is confined to the heavy vehicle towing and repair industry and which is confined to the Riverina region, the region around and principally from the Hume Highway to the east of Wagga Wagga. The terms of reference which have been announced enable the Commission to look at the vehicle towing and repair industries, not just limited to heavy vehicles. But all we have heard to date relates to trucks and things like that and I have decided that the report should be written on that more narrow area. The evidence heard to date is all in a broad geographic area and I have decided we should report on the basis of what has been heard to date, confined to that geographic area. If and when we get more information that is worth being pursued, and which should be pursued, then of course a fresh investigation can be commenced.

Can I say something about the current investigation into the release and in some cases sale of confidential government information. This is a very large and important matter. To date we have heard from in excess of 130 witnesses over in excess of 40 sitting days, and admissions have been received of the inappropriate handling of government information meant to be confidential by more than one official from each of the Police Service, the Roads and Traffic Authority, several county councils and also some Commonwealth instrumentalities, including Social Security, Telecom and Customs. Typically, the information has been sold to private investigators or mercantile agents, principally for process serving, debt collection or insurance litigation purposes. There has also been a lot said about information being exchanged, some of which is

then passed on to people in the private sector. The investigation raises important issues concerning standards of conduct in private life and the rights of privacy of ordinary citizens. It is a matter which will merit close consideration by, I suggest among others, this Committee, when the report is handed down. That is all I can say usefully in relation to investigations, unless there are any queries.

MR GAY:

Q: I have a general query on the sale of government information. Do you have any problems as you mention that you are covering Commonwealth departments as well as State departments?

A: Principally, we are interested in State departments. A picture has emerged, and I am not pre-empting judgments that Assistant Commissioner Roden will have to make. So much evidence has emerged that, on the basis of the record, one can say what the position is. There is an extensive trade in confidential information. Fairly naturally, the recipients do not care whether they are receiving State or Federal information. In order to find out the nature of the trading—what Mr Roden has called the information exchange club—one has needed to look at Federal agencies, at least to some extent, to find out what is going on there. That does not derogate for one moment from the proposition that the area of greatest interest is State departments and instrumentalities. That is where most of the effort has gone. Incidentally, a certain amount of information concerning Commonwealth instrumentalities has been received. That is not a central issue and it will not be a central issue in the report, although it will have to be mentioned. There are no constitutional difficulties. For instance, we are not interested in which social security recipient was the subject of a release or sale of information concerning his or her affairs. That is material we do not receive. We are interested in the fact that such information is being traded.

Q: Is this an open inquiry?

A: There is a bit of evidence in private but, by and large, it is an open inquiry.

Q: If witnesses are giving evidence concerning Federal public servants and you wish to check the validity of that evidence, are you having any problems gaining access to Federal public servants?

A: There has been a degree of difficulty which we are getting over. Some Federal public servants have been called and it is right and proper that that should happen. A person may come in and say: "I am a State public servant. I have been swapping information, which is meant to be confidential,

with so and so who is a Federal public servant and the information I receive in return is meant to be confidential". It is proper that we should give the public servant an opportunity to respond and say whether that is right. That is really where our interest stops. The answer to the other part of your question is: yes, there has been some degree of difficulty, but to date it has not proved insuperable and I am sure it will not.

MR DYER:

Q: If, as a result of Assistant Commissioner Roden's inquiry and subsequent reports, it becomes apparent at a Federal level that this practice of trading information is widespread, would it be your view that there should be some reference to an appropriate Federal authority to follow up the matter at that level?

A: Yes, there would have to be. Under the statute, we are able to do that and that should certainly happen. You would understand that, in a sense, once again this is examining and documenting an urban myth. I think Committee members have heard me say before that it is worth doing that. Until you have examined, documented and measured the problem people can always say, "That is what is always said, but who knows?" Once you have measured the problem you know that you have a problem and you can then decide what, if anything, you are going to do about it. A big trade is going on. There are extensive holdings by some private investigators concerning ordinary citizens.

MR WHELAN:

Q: Would Commissioner Roden in his report be referring generally to the Government or, for arguments sake, to the Privacy Committee?

A: We have had discussions with the State Privacy Committee and, if we have not had I am sure we will, with its Federal counterpart. The real answer to your question is that the report will be a report on the investigation, as is required by statute. Appropriate follow-up action will then be taken. We can do more with State bodies than we can with Federal bodies, but that is simply as it should be.

MR DYER:

Q: Would the nature of the reference to the Federal authorities primarily be a matter for the Operations Review Committee or would it be confined to the recommendations in the report?

A: As I have said, the report will be a report on the investigation. I would not want to prejudge what Mr Roden might do; though, doubtless, there will be discussions

about it. We have not talked about this yet. It must be evident that there will have to be a passing on to the Federal authorities of what we have received. It would be a derogation of duty for us to do otherwise.

It is worth mentioning that, since I last appeared before the Committee, the Commission has published four investigation reports: the driver licensing report, the Azzopardi report, the Waverley Council matter and the Sutherland licensing police matter. It is likely that that rate will be maintained this year.

Q: 1.1 The Committee would appreciate general updates/briefings on:

(b) the Commission's Corruption Prevention work;

A: So far as corruption prevention work is concerned, a quite detailed report prepared by the Director of Corruption Prevention was prepared and has been made available to the Committee and I table this report for the information of honourable members.

(document tabled)

CORRUPTION PREVENTION STATUS REPORT MARCH 1991

This paper presents a summary of work done by the Commission's Corruption Prevention Department during its first year of formal operation.

CORRUPTION PREVENTION PROJECTS

This is the most important and intensive work done by the Corruption Prevention Department.

Each project focuses on a discrete area of operation within a Government organisation. The project is based on direct observation and detailed recording of procedures and practices. The information produced is significantly different from that generated by a Commission investigation, as the analysis concentrates on the system and its deficiencies rather than on specific allegations of corrupt activity or individuals.

Each project results in a confidential report which explains the system, where and why it is open to corruption, and develops detailed recommendations for change to minimise the incidence of, and opportunities for, corrupt practices. There will be periodic monitoring and review of the focus area of operation.

The approach is a practical and efficient one which looks for realistic solutions. The system must not be made unworkable. It is generally preferable to find solutions which eliminate the loophole rather than add more controls. However, where there are conflicting objectives, a decision must be made as to which prevails. In some cases this may require stricter controls, even additional staff resources.

Department of Housing - Maintenance Contracts

This project followed the Commission's Investigation into dealings between Homfray Carpets and the Department of Housing (report of September 1990). It was completed and a summary report, together with the main findings and recommendations, released early in March. Recommendations were discussed in detail with relevant managers in the Housing Department to ensure they are practical and achievable.

The findings and recommendations contain some lessons for other organisations in managing service contracts, as well as addressing deficiencies within the Housing Department's system.

Roads and Traffic Authority - Driver Licensing

This project was initiated during the Commission's Investigation into Driver Licensing (report of December 1990) and focuses on the driver licensing system operated by the RTA. The first stage of the study - dealing with the photo-licensing system - was completed in early October and a preliminary report made to the Authority to enable some action to be taken where appropriate.

The second stage deals with the remainder of the driver licensing function, including knowledge and driver testing, test booking and allocation of examiners, licensing of driver instructors, use of interpreters. It is almost complete.

The project examines a very complex system at the point where major changes are being proposed through the implementation of DRIVES - a new integrated computer system. Project work therefore addressed existing manual procedures which will remain, proposed computer procedures, and the interface between the two.

Future projects

The Corruption Prevention Department has identified a number of systems with deficiencies allowing the potential for corruption. Such identification is achieved from current investigations, from information received by the Commission by way of complaint or report, or from government agencies requesting advice. At present four projects have been advanced to a stage of preliminary research to define the scope of the project. Selection of projects depends on several criteria, including relative importance in terms of risk exposure; achieving an appropriate variety of subject matter and agency; and the potential benefits for a wider audience.

CODES OF CONDUCT

A number of codes of conduct have been referred to the Corruption Prevention Department for advice and assistance. The Commission was involved in 1989 with the development of the Local Government Code of Conduct, as part of a working party with representatives of the Department of Local Government, Ombudsman's Office and Local Government Associations. The code has now been adopted with or without minor modifications by almost all councils in NSW.

These State Government agencies have been assisted in developing codes of conduct and/or related policies:

- . Chief Secretary's Department
- . Commercial Services Group
- . Department of Corrective Services
- . Department of Housing
- . Hunter District Water Board
- . Department of Planning
- . Electricity Commission
- . Public Works Department
- . Maritime Services Board
- . Department of State Development
- . State Rail Authority
- . Department of School Education
- . Tourism Commission
- . Roads and Traffic Authority

Through this work a considerable amount of expertise has been developed in the Department. Our work in this area now concentrates on establishing a process which will result in a code tailored to the functions of the particular agency and the ethical problems facing its staff in performing different functions.

WORKING PARTIES

Assistance has been or is being provided to working parties and steering committees in the following matters:

- . Water Board - Fraud Control Plan steering committee.
- . Commercial Services Group - Fraud Management Plan steering committee.
- . Local Government Code of Conduct.
- . Working Party on Integrity in the Public Sector - probity issues for the public sector.
- . State Rail Authority - working party to develop an integrated code of conduct.
- . Chief Secretary's Department - working party to develop code of conduct and anti-corruption strategies.
- . National Parks and Wildlife Service - steering committee on Perisher-Smiggins Head Lease.
- . Roads and Traffic Authority - fraud control plan.

POLICY AND OTHER SPECIAL PROJECTS

The majority of these projects result from ICAC initiatives rather than external calls for assistance. Examples include:

- . Code of Conduct for Commission staff.
- . Guidelines under s.11 of the ICAC Act.
- . Effective mechanisms for internal reporting of corrupt conduct within government agencies.
- . Review of issues arising from the Commission's Investigation Reports.

A considerable amount of advisory work has arisen in the area of internal reporting mechanisms, either as part of a broader fraud control or anti-corruption plan, or following directly from the Commission's issue of s.11 Guidelines in September 1990.

GOVERNMENT GUIDELINES

Corruption Prevention staff have been involved in input into three important cross-government guidelines:

- . Guidelines for private sector participation in public sector infrastructure, issued by the Department of State Development.
- . Property asset management guidelines, issued by the Property Services Group. This has been a continuing involvement as particular aspects have been developed in more detail, particularly circumstances where auction or tender are not the most appropriate means for disposal of Government property.
- . Guidelines for the engagement and use of consultants, issued by the Office of Public Management.

REVIEW

Some work is being done in reviewing issues relevant to a broad range of government agencies, or across government. Examples include pecuniary and other interests in local government and conflicts of interest generally, together with the related issues of post-separation employment and outside or secondary employment.

ADVICE ON COMPLAINTS

The Corruption Prevention Department provides input to complaints matters and has an increasing involvement in this area. Corruption Prevention staff are in a position to assist in detailing the nature of deficiencies to be addressed by the responsible agency, and in monitoring improvements.

Staff from the Department view all complaints and s.11 reports received by the Commission immediately after they are registered. In this way, those with corruption prevention interest are marked for future attention when more information is available; in addition, Corruption Prevention staff gain an understanding of the range of matters with which the Commission deals.

REQUESTS FOR GUIDANCE

With increasing frequency the Commission is being approached for guidance where a Government agency is considering a course of action not in accordance with normal practice, because of special circumstances. Such requests are generally dealt with on a confidential basis. Most relate to tendering and contract arrangements.

SEMINARS

The Corruption Prevention Department has a program of seminars for senior management in government agencies. In the last half of 1990, this included a seminar for Chief Executive Officers, two seminars in country centres for senior managers of State and Local government, and five seminars in-house in Government Departments. This year's program has twelve in-house seminars in the first half of the year. Generally preparatory work is done in consultation with internal auditors so that seminars can address particular areas of concern to the agency as well as more general corruption prevention issues.

In addition, Corruption Prevention staff are frequently involved in seminars and addresses to professional organisations, for example consulting planners, internal auditors, municipal managers.

Seminars to government agencies:

- . Chief Executive Officers, State Government, 7 July 1990.
- . Department of Water Resources senior management, 12 September 1990.
- . Senior managers, State and Local government agencies, Bathurst/Orange area, 27 September 1990.
- . Department of School Education senior management, 11 October 1990.
- . Electricity Commission senior management, 2 November 1990.
- . Senior managers, State and Local government agencies, Grafton, Coffs Harbour and Lismore, 23 November 1990.
- . Department of Minerals and Energy, Mines inspectors, 28 November 1990.
- . Department of Family and Community Services senior management, 20 December 1990
- . Western Sydney Regional Organisation of Councils, 1 March 1991
- . Department of State Development senior management, 12 March 1991

Seminars and addresses to professional and educational institutions:

- . Royal Australian Planning Institute and Local Government Planners' Association, 21 June 1990.
- . University of Sydney Executive Development Program for Women, 17 July 1990.

- . Australian Association of Consulting Planners, 25 July 1990.
- . Royal Australian Institute of Public Administration, 28 August and 12 October 1990.
- . Institute of Municipal Management, NSW Division, 13 September 1990.
- . Charles Sturt University, Master of Business Class, 27 September 1990.
- . Institute of Internal Auditors, 27 February 1991.
- . Institute of Criminology, 22 March 1991

Seminars programmed for the first half of 1991:

- . Office of State Revenue
- . Public Trust Office
- . Department of Health Audit Managers and Public Hospital Inspectors
- . Department of Health Central Western Region Hospital Executives
- . Commercial Services Group Business Unit Managers
- . Director of Public Prosecutions
- . Fish Marketing Authority
- . Registry of Births Death and Marriages
- . Department of Lands/Central Mapping Authority
- . Department of Tourism
- . Department of Corrective Services

A: I would like to mention to the Committee the way in which the only completed corruption prevention project was carried through to finality. By way of preface, a lot of the work done in Hong Kong has been very effective. Hong Kong works on a strictly confidential basis between the Independent Commission Against Corruption and the agency under consideration. We thought about that but decided we should follow a somewhat different course. If their course was followed the education benefits, both within the public sector and more generally, would largely be lost. Accordingly, what we did in the Housing Department matter, and with the concurrence of that department, was to prepare a short precis which included the recommendations that have been made. That precis and those recommendations are settled with the agency concerned and are then made public. The report itself, which is a far more detailed document, has not been made public, but it will be at an appropriate time down the track. The idea is that the department or agency concerned must be given every opportunity to fix up the problem before the nature of the problem is made known generally. At every stage there is a great deal of consultation because we look upon those we are dealing with as clients. So the steps are: to prepare a precis and recommendations which are made public. In the Housing Department matter a joint media statement was put out in my name and in the name of the departmental head. The report will then become public at an appropriate time. In that case we are looking at about 18 months down the track, by which time the problem should have been solved. That is the general way in which we propose to approach those matters. That corruption prevention project is finished.

The Roads and Traffic Authority project, which is much larger, is at an advanced stage. Recently, I received from the Chief Executive of the Roads and Traffic Authority, Mr Fisk, a long, detailed and most encouraging letter as to the various steps the Roads and Traffic Authority has taken as a result of our report. It is taking our report seriously and the range of remedial steps it has taken is very impressive indeed. I anticipate that there will be about four more corruption prevention projects which will be initiated during the course of this calendar year. I do not imagine that they will all be completed during that time; the projects will be of varying size. That gives some idea as to the number of reports we are likely to put out on an annual basis. I hope that the document the Committee has received is self-explanatory and does not need to be expanded upon.

MR TINK:

Q: Broadly, on corruption prevention, I am pleased to see the executive summary findings and recommendations in the maintenance contract report for the Department of Housing. That is an excellent step. I hope continuing consideration

will be given to a manual which will incorporate those sorts of summaries for members of the Senior Executive Service, in the way we have discussed in the past. As you have said, to a considerable degree problems with corruption are management problems. That is an area where we need, at an intermediate level, some information on a regular basis which is far more significant than the 19 key issues but which does not necessarily involve a full reading of all the reports on a regular basis?

A: We will certainly be doing more to ensure that those who need to receive such information will receive it. The question really is: what is the best way in which to do it? I am a bit sceptical about bulletins which are meant to go into loose-leaf folders because they often fall into disarray. It may be better to make a more extensive use of available government publications. There are various ways of doing it and we will be doing the sorts of things that you will be urging; though it may be that the precise methods adopted will be a trifle at variance with those you have mentioned. I am sure that does not sound negative. For example, I have become more conscious of the desirability of a precis that contains an outline of a report. You would have seen that that has been done in the last couple of investigation reports. I imagine that will become the general rule but it might not become the invariable rule. Your suggestion was a valuable one and we are doing more than we have in the past in that respect.

MR DYER:

Q: In the Department of Housing report and the recommendations arising from the Homfray Carpets investigation are you confident, having regard to the huge task involved and the decentralised character of all the work orders that are generated, that this matter can be effectively addressed?

A: Yes, so long as nobody imagines I am saying that perfection will be achieved. I do not think it will be, and I do not imagine the departmental head thinks so either. The Homfray report showed that there were grave deficiencies in some respects. The subsequent corruption prevention exercise looked at the system as it operates in far greater detail. There was consultation not just at top level but down at management level during the course of that exercise, so it should be the case that the people concerned understand and agree with what we are urging. It is very much in their interests to get it right. That is the sort of approach we seek to adopt. It is very much over to them. We will do some monitoring but they have to manage the show. We cannot and do not seek to do it for them. I would be very surprised and disappointed if there is not general and substantial improvement across the board.

Q: 1.1 The Committee would appreciate general updates/briefings on:

(c) the Commission's Public Education work;

A: Two public education officers commenced duty with the Commission late last year, and a support officer is being recruited at the moment. They are active on a number of fronts. We have had discussions with the Board of Studies about introducing corruption issues in relevant secondary school subjects. Mr Hatton might remember suggesting this, I think about six months ago. We have acted upon that suggestion, but I cannot yet tell you what the outcome is. They are involved also in putting out appropriate publications. A revised general information pamphlet has been printed, and I should like to table that. The content is much as was contained in the initial (rather ugly) purple and grey brochure. This is more elegant. There are some changes. It is designed to be more user-friendly and accessible. I hope it is. More importantly, it has been translated into 13 major community languages, including a modified version for use within the Aboriginal community. Those translations will be available shortly. This is in significant part a follow-up to the first major public education exercise we undertook, which Committee members will recollect was aimed at the major minority groups in the community and took place in about November last year.

Other publications under development include an information for witnesses brochure, and a brochure for complainants, outlining the process the Commission follows after complaints have been lodged. Public education is responsible for providing community speakers, although those speakers come from all parts of the Commission. If there is a group of 50 interested citizens, we will provide a speaker, given adequate notice, anywhere. We are starting to combine some speaking engagements with country trips. That will continue during 1991 at least to the extent of last year. We are also involved in special events, of which there have been two to date. One was the Senior Citizens Week New Horizons Expo. The second, and in terms of exposure the more significant, is at present the Royal Easter Show where our stand is well attended and where responses from the general public are very positive indeed. I know that at least one Committee member has visited the stand.

Public education is responsible for running public attitude surveys, which will continue at six-monthly intervals. We have started a new series with rather different questions on the whole than previously. The survey results continue to be encouraging. Indeed, the most recent set of figures show that about 4.5 times as many people think that corruption is a serious issue that must be stamped out, than think you can never stamp it out. In terms of that resolution-apathy dichotomy that is the highest ratio that

has been surveyed to date. The other significant figure that emerges from the public attitude survey is that a small proportion of respondents, when asked what they would do about corruption, said the thing they would do is contact the ICAC—from which we conclude that the general public does not understand that we are working for them. A major aim of the public education program this year will be to get that message across. Again, there might well be questions, but that is about as much information as I can usefully provide the Committee.

MR TINK:

Q: I compliment you on the stall at the Easter Show, which I visited yesterday. I was intrigued to see the concept of the brown paper bag, which traditionally has been a pro-corruption tool and has been turned into an anti-corruption tool. That is interesting. Presumably you are trying to express complicated abstract concepts as simply as possible. From what I saw yesterday that seems to be working. It is always difficult to encapsulate difficult concepts. I was most impressed.

A: Thank you. I do not doubt that there will be change as we learn. There may be room for the message to be further simplified and we will keep on trying. That is, what you saw yesterday is not what you will see in two years' time. I think we can do more by way of video, which is a very good medium of getting a message across. People see television as the most accessible medium. Video displays are likely to be something we will use, and we have other ideas. Thank you for your comment.

Q: 1.1 The Committee would appreciate general updates/briefings on:

(d) the Commission's budget and staffing position.

A: In summary budgeted expenditure this year is about \$11.75 million. The most significant capital expenditure included in that is on the networked computer system which is now being installed. That will cost about \$2.4 million all up, of which about \$1.3 will be spent this year out of a budgeted allowance for this year of about \$1.6 million. I can say confidently that we will come in on or below budget. We are lagging slightly in recruitment. As at the end of February the Commission had 120 effective full-time staff members. We hope to have 140 or close thereto at 30th June. The lag is chiefly attributable to the need to ensure that quality is maintained. It would be most remiss of us just to employ people for the sake of boosting our numbers. A significant contributing factor is that as a result of the substantial hike in State police salaries we have to consider our salary scales. What we do with investigations may well have impact elsewhere, so that is a fairly large undertaking. Until we have done that,

recruitment cannot continue, at least as fully as we would wish. To anticipate a question, the Commission continues to be adequately resourced.

MR HATTON:

Q: The Commission has operated for a year cheaper than did the Chelmsford royal Commission, which ran at about \$13 million. That is not a bad comparison.

A: I note what you say.

Q: 1.1 The Committee would appreciate general updates/briefings on:

(e) the work of the Operations Review Committee and its present membership; and

A: The Committee continues to meet monthly, or rather 11 times a year. The Police Commissioner—previously Mr Avery, now Mr Lauer—is an ex officio member. The appointed members are Mr Glanfield, a senior officer within the Attorney-General's Department, and, as community representatives nominated by the Premier, Mr Brezniak, Mr Davenport, Sister McGovern and Mr Nutter. I anticipate that the membership of the committee will be unchanged following reconstitution, which is presently under way. Gillian Scoular, the Manager of the Assessments Section, acts as secretary to the Committee. The Committee continues to function well. That must be true from the Committee's viewpoint, as all members were willing to continue to serve. From our point of view the Committee is not just an important accountability mechanism; it actually helps in terms of quality control and in the timeliness of our work - to have to sign off files by providing a report to other than a simply internal body. It is a highly desirable mechanism. The Committee is far more important than I thought it would be when it was established—and I was never opposed to it for a moment. It is a very useful part of what we do, and the not inconsiderable work that goes into it is well rewarded.

MR TINK:

Q: As you know, this Committee shares membership with the Committee on the Office of the Ombudsman. Recently the Ombudsman raised with us, without expressing a view one way or the other, the possibility that consideration might be given to an operations review committee in relation to his activities. I assume you have some knowledge of the Ombudsman's jurisdiction and his general work. I do not know if it is appropriate for you to comment, but in that context as far as you know it, would you have any comment about a review committee for the Ombudsman?

A: Yes, although I have to make such comments with all deference, of course. I find it hard to imagine that a body like the ICAC, and in a general sense the Office of the Ombudsman can be seen to be a body like the ICAC, could not benefit from having appropriate community input on appropriate terms. Indeed, I think I can safely say that although we have not decided, and might not decide to do so, we are looking at establishing one or two other non-statutory groups to provide input into what we do. For example, one could imagine some input, probably less frequently, into the public education work being of some utility. We are thinking also about another group of advisers. That is a very general comment. You would have to go to our Act to see what are the functions of the ORC and then work out what if anything would be appropriate in a different context. You cannot just take a body from one committee and drop it into another committee, because it will not work quite like that. In a general sense I should have thought that the benefits we receive are so considerable that it must be worthy of consideration elsewhere.

MR DYER:

Q: You referred to the reconstitution of the Operations Review Committee. Is that because the members' initial terms have expired?

A: It will be a second reconstitution. They hold office for a year. I am not sure if they have yet been reconstituted, but it will have to happen before they next meet. I am told that they have been reappointed. On the last occasion there was a change of two members, but as I say there is no change this time.

CHAIRMAN:

Q: I believe that question 1.1(f) has been answered?

Q: ... 1.1 (f) any legal proceedings in which the Commission is currently involved.

A: Not quite. There are no proceedings pending except for one appeal. Mr Cassell sued us and lost at first instance, and has appealed.

MR HATTON:

Q: I shall just formally ask 1.2(a),(b),(c), and (d).

Q: 1.2 The Committee would like specific information on:

(a) fees paid to counsel since March 1990 (when this information was last provided).

- (b) the amount spent on witnesses protection since July 1990 (when this information was last provided);
- (c) the number of occasions on which the Commission has recommended to the Attorney General that a person be granted an indemnity from prosecution or given an undertaking that answers given by a witness will not be used in evidence against that person, since July 1990 (when this information was last provided); and
- (d) the number of occasions on which the Commission has supported on application to the Attorney General or Premier's Department for financial assistance for legal representation.

(A) first of all?

A: I seek to table a document which shows fees paid to counsel to date which is, with respect, the most convenient way to do it. That sum totals \$1.3 million.

(document tabled)

FEES PAID TO COUNSEL

Since the figure of \$388,948.05 was reported in March 1990, the Commission has paid further fees totalling \$909,689.47 to Counsel. The total expenditure to date of \$1,298,638 is divided between investigations as follows:

Tweed hearing	\$510,698
Tweed - associated litigation	\$15,427
Waverley hearing	\$172,125
Waverley - associated litigation	\$63,550
RTA hearing	\$244,510
RTA - associated litigation	\$5,346
Hakim hearing	\$30,925
Silverwater hearing	\$21,600
Land Titles hearing	\$18,075
Kumagai Gumi hearing	\$10,222
Walsh Bay hearing	\$120,219
Azzopardi hearing	\$33,400
Tamba hearing (ie supply of confidential information to private agents, etc)	\$48,466
Other	<u>\$4,075</u>
TOTAL	<u>\$1,298,638</u>

Of this expenditure \$1,067,537 was incurred during 1989/90 and \$231,101 in the current financial year.

- Q: The second one, the amount spent on witness protection since July, I would like to also ask you about your comment on the necessity for witness protection; where you think that sort of function is heading, the general relevance, as inquiries become involved in more sensitive areas?
- A: I am not quite certain whether the figure I am about to mention has been expended since July but I will give you the information more generally. To date we have spent \$33,734.92 on witness protection and that all related to the man Stephen Lennon who is mentioned in the Driver Licence report. That, in witness protection terms, is a very modest figure. The extent of the protection was not very great. He was under protection for a time but it was not of a very intensive nature and he came with appropriate people to look after him when he gave evidence. There has been one other witness who has had to be looked after, and that is a man called Sidney Paul Cool, who was a witness in the heavy vehicle towing and repair industry matter. He is a prisoner, but some special arrangements had to be made to get him to and from Wagga Wagga and we might be getting a bill for that, but we have not got one yet. They are really the only two witnesses who admitted to involvement in criminal activities and then became important witnesses in Commission investigations. They are the only two I can think of that can be so categorised, that we have had to use so far.
- Q: The importance of (b) and (c) to me, Mr Chairman, is really a question I asked the Attorney General in the Parliament and that is, given the ICAC, the State Drug Crime Commission, the Judicial Commission and the reforms in the police force we still have a major drug problem in New South Wales and some people would say the heavy drug capital is still Sydney. We are talking here about witness protection and we are talking about indemnity from prosecution. This is certainly no implied criticism whatsoever of the ICAC, but it appears to me that the ICAC is not getting into those heavy areas and there does not seem to be this necessity for witness protection or indemnity from prosecution in order to get into that heavy area. I suppose that is all bound up with those two questions?
- A: I note what you say and I do not disagree with it. I am going to Brisbane to deliver a paper at a conference there, on whistleblowing legislation, as it is called, on 19th April and I will be speaking about those matters which are cognate to what you have raised, on that occasion. The Committee will receive a copy of that paper. I can also say that there is likely to be an investigation announced within the next three months which will be of interest and benefit in the context in which we are speaking.

Finally, could I say that I recognise how useful indemnified witnesses can be but I think it is no bad thing at all that the Commission has not had to use such witnesses, except to a fairly modest extent at least, in the early years of its existence. Had we acquired a reputation as a place that relied upon criminals to nail people—that is the way we got results—there would have been even more expressions of concern than there were. If you think back 12 months ago there were plenty of expressions of concern about the way we were behaving. Things have settled down since because it is now realised we are not a dangerous or irresponsible institution, but there were expressions of concern 12 months ago and there would have been a lot more if we had been placing heavy reliance upon witnesses of this sort. I am not constitutionally disinclined to do that but—and it may be there will be an increase in the incidence with which we use these people—you would always rather be relying upon witnesses who did not fall into that category, and I make no apology for having said, in the context of both those witnesses, that a lot of support for the evidence they give has to be forthcoming before you can confidently rely upon what they say.

- Q: I would speak for myself but we are pleased you are not involved in that area because that has been a real morass, particularly to the prisoner witness industry, but it does concern me, and it may concern other members of the Committee that the ICAC does not seem to be getting into that area. I do not know whether you have any further general comment to make?
- A: The only other thing I would say is that you have particularly talked about the drug industry. We try not to be territorial in our approach, either positively or negatively. Of course, if we can help consistently with our charter in combating the undeniably serious social problem that drugs represent, we will seek to do so but it is corruption which we have to concentrate upon. If we came across or could find out something which was principally public official corruption and incidentally drugs, we would happily do it. If, however, the matter is principally drugs and only incidentally public official corruption, it is likely to be left with the SDCC where I think it properly belongs. We talk to that body and we have had discussions from time to time; every month we talk at senior level. The Deputy Director of Operations from our end talks to somebody senior from their end.
- Q: My comment, as I said right at the start, is certainly not critical in any way and I recognise the role of the State Drug Crime Commission, but I make the statement do you agree whether essential for the success of drug trafficking is corruption of public officials?

- A: There would be a good deal of drug trafficking without the corruption of public officials, but a lot of drug trafficking does depend on the corruption of public officials, just as there are areas which have traditionally attracted corruption, brought corruption in their wake. They are well known to both you and I, and Sydney has not become an exception to that historical rule simply because an ICAC has come into existence.
- Q: One further supplementary question on that. Obviously one of the big problems, if we are looking at the drug area, are areas that are "outside" your jurisdiction such as the wharves or the Australian Federal Police, anything to do with import-export mechanisms and so on. Have you any comment to make in terms of the ICAC's role in relationship with the Federal authorities in that area or prospective involvement?
- A: I think the only comment I can usefully make is that since Mr Lamb came on board we have obtained more useful information by way of criminal intelligence. I expect that process of increase to continue by reason of certain steps we will be taking, and we are well positioned to make appropriate judgments as to where such material should go in order to ensure that it will be acted upon and not fall into the wrong hands or fall into a black hole.
- Q: Particularly now I would think?
- A: Yes.
- Q: I just formally ask for the answer to (c) regarding persons granted indemnity from prosecution, the number of occasions?
- A: Since that date the only such person is Allan Reid who was dealt with in the Sutherland report who, I suppose, arguably should have been bracketed with the other two I mentioned earlier, although you would not want in any sense to bracket him entirely.
- Q: And (d)?
- A: The Commission is often asked to confirm whether a witness in a Commission hearing has been granted leave to appear and it is often asked to provide information about hearing dates and times so that those responsible for administering the scheme can make judgments as to grants and amounts that should be granted. Otherwise, we have provided substantive comments on applications on four occasions. At the request of the Attorney General's Department we have provided information concerning Reid, in order to permit him to assess Reid's application, but we did not support the application or otherwise. Stephen Lee, a witness in the driver licensing investigation, applied for section 52 assistance on the basis he had assisted the Commission and

the police. The Commission was asked to comment and made statements of fact correcting certain of Mr Lee's assertions but did not support his claim or otherwise. Thirdly, the Australian Transport Officers Federation, which paid for representation of most of the driving examiners in the RTA matter, applied for section 52 assistance in relation to the preparation of closing submissions, which was inevitably a large task. Costs of counsel during the hearing were paid for by the ATOF. That application was positively supported by the Commission on the basis that if we did not get closing submissions from that quarter, then I felt that I would have been left in a seriously disadvantaged and unbalanced state, and the application was acceded to. Finally, in relation to the Azzopardi matter, Assistant Commissioner Collins, with my concurrence, wrote at an early stage suggesting considerations that might be borne in mind by government in deciding whether or not assistance should be granted to Mr Azzopardi. The letter fell a little short of positively supporting an application but not far short, and the application was granted. We frankly felt that if that particular gentleman was not represented, then that would have been unfortunate.

CHAPTER TWO

RESPONSE TO COMMITTEE REPORTS

MR DYER:

Q: 2.1 The Committee would appreciate the Commission's general response to the Committee's first and second reports on its "Inquiry into Commission Procedures and the Rights of Witnesses."

A: The general comment that I make is that the reports were valuable. The Committee knows that I generally support statutory amendments of the sort that were suggested in the first report. The second report contains material to which we are presently giving consideration. Committee members are aware that there is not absolutely everything, in the second report in particular, with which we agree. But that is not a matter that needs to be pursued now. I also believe that both reports generally reflect well on the Commission and generally endorse the work that the Commission is doing. And finally, much of what has been urged upon the Commission in the second report—and what was urged was not of enormous breadth or scope—but much of what has been urged upon us had, before that report was brought down, been implemented. As I say, other matters presently are under consideration. That is a general comment.

Q: 2.2 In view of the recommendations contained in the first report of November 1990, has the Commission amended its document "Procedures at Public Hearings"?

A: Extensive work has been done by way of revision of the Procedures at Public Hearings document. It is presently in the hands of one of the General Counsel, Mr Zervos, for completion and settling. The job has proved to be more difficult than Committee members would have imagined because of the need to try to ensure that all situations which are reasonably likely to arise are identified and addressed. To give one example, which is related to that comment, it is urged that the Commission should at least by and large give people a chance to come in on the same day as they are adversely named, or the following day, to give an account of themselves. Experience shows that when one does that, and we are doing it more now than we were previously, not infrequently the response is along the lines of: how dare you, I have got to be given a chance to get legal advice and consider my position and it is all going to take time. We say "fair enough."

To give another example, recently at the urging of the Police Service we agreed with them that ordinarily officers of that Service would be given a week's notice before being called, which was seen by the Police Service as being necessary so that arrangements could be made for their legal representation. That is something which cuts across what the Committee urged, although I do not say that what the Committee urged was not proper in principle and sensible enough. So the job is not an easy one.

Secondly, we have been anxious to have the job done once only if possible, so as not to have an initial version of these procedures and then an interim version and then a final version following the statutory amendments that are likely to flow from the Committee's first report. I do not know whether there is going to be early statutory change. I think the prospects of that happening are probably diminishing, although we should know the position in that respect fairly soon. If there is not going to be early statutory change, we will go through that three-step process. The hope was that there might be early statutory change, which would mean that we could see the Act amended and then do it once only.

Finally, and importantly, at least by and large we are following what the Committee suggested, and as Committee members know, a good deal of what had been suggested had been implemented at an earlier time. To give an example, we are more inclined than we were previously to get witnesses in to hear what is said concerning them. That is being done to a fair extent in the current hearings, and it seems to work quite well.

Q: 2.3 With regard to specific recommendations contained in the Second Report of February 1991:

(a) Does the Commission intend to conduct a study of the inquisitorial system of criminal justice practiced in Europe and elsewhere and its application to ICAC inquiries?

A: As to the suggestion that the Commission should conduct a study of the inquisitorial system, as it is described, in Europe and elsewhere, no final decision has been taken but we have now set up a small research unit; small means literally one person at the moment, being a junior criminologist, but it will comprise three or four people in the end. This is one of the projects that is being examined with a view to being taken up. The best answer I can give at the moment is, probably yes. We are not going to restrict ourselves, if we take it on, to Europe. An institution of particular interest to me is a statutory grand jury that operates in California, and has operated for about the last two decades, concerning which I have done a good deal of reading. They have particular

responsibility for what is called in America local government, which you might know includes prisons and schools and a great deal of what covers our public sector. It is everything except State Parliament and State government in the strict sense. Amongst the things they can do is commence proceedings which are quasi-criminal in nature and which have the effect of vacating the office of a public officeholder. That work is quite like the work that we do and it might well be worth examining what they do there.

Q: 2.3 (b) In view of the problems associated with the cost of legal representation before the Commission, does the ICAC see any merit in the proposal for a duty solicitor to advise witnesses of their rights before they appear at Commission hearings?

A: We are all for people having legal advice, and where they will benefit from it, legal representation. But I am not persuaded that the best way of doing it is through a duty solicitor scheme. I say that for a couple of reasons. One is that unless somebody else was prepared to volunteer, I suppose we would have to pay for that person. If we paid for that person, no matter how well the system was set up, I would not expect people to trust the individual who was there as duty solicitor to give them independent advice, even if that person objectively could be relied upon. If we were paying, many would reckon that we were calling the tune. That is a difficulty, unless as I say somebody else is prepared to meet the cost, and I do not quite know who would volunteer for that.

Q: Supposing for the sake of argument that the Attorney General's Department or the Legal Aid Commission was to pay?

A: There is no objection to it, but that takes me on to the second point, which is that I do not think a duty solicitor at the Commission would be as useful as a duty solicitor is at Petty Sessions, for example, where they can give referral advice, they can hold hands and provide shoulders and all of those things, which are quite important, and they can also do some actual advocacy, which is to say, address in mitigation of penalty. A duty solicitor for the Commission would have difficulty in getting across what we were doing, and would have difficulty in advising all, because to give useful advice to more than one would quickly give rise to conflict problems. That means that realistically it may be that most of the time the duty solicitor could not do any more than advise the person as to their right to object to answering questions, which we do in writing and sometimes do in any event. I have to say that I think the job of duty solicitor would be a fairly dreary one and it would be hard to attract any quality to undertake the task. Having said all of that, we are by no means opposed to it if somebody wants to arrange it. I

feel reticent about arranging it myself, because I would not reckon it had the right appearance to it, but it may well be worth trying.

Q: 2.3 (c) Has the Commission come to a firm view as to whether it is possible under the ICAC Act as it stands for political parties and other unincorporated associations to be represented at Commission hearings?

A: The question is not easy to answer and there are conflicting views concerning it. However, I can say that if there is doubt about the right of unincorporated associations to be represented before the Commission we will be seeking to have section 32 amended so as to clarify the position. I have no difficulty in saying that unincorporated associations should be able to apply for leave to be represented. I do not say their position would be precisely the same, in a practical sense, as the position of witnesses. Clearly, it would not be but they should have the right to apply. If the position cannot be satisfactorily clarified I will be suggesting that it should be done through statute. Surprisingly, it is not an easy question to answer.

Q: 2.3 (d) Does the Commission see merit in Mr Helsham's three-tiered approach and the Committee's recommendation that public hearings should, as far as possible, be the end process of ICAC inquiries?

A: Yes, the Commission sees merit in that approach. As far as possible, public hearings are the end result of ICAC inquiries. It is for that reason that an enormous amount of work is being put into the assessment process. It has been made clear today and on previous occasions that the great majority of matters assessed never reach the hearing stage. My only additional comment or qualification—and I am not equivocating—is that hearings are in aid of the investigation. Accordingly, they are part of the investigation. It needs to be emphasised that they are not and cannot be the conclusion of a completed investigation, as prosecutions are.

Q: Are you saying in effect that, in substance, Mr Helsham's approach does happen in practice?

A: Yes, I am saying that.

Q: 2.3 (e) Does the Commission see merit in putting allegations to affected persons before a matter proceeds to the public hearing stage, or inviting them to put their case to the Commission at an early stage?

- A: Decisions have to be made on a case by case basis. Not infrequently this is done and this will continue to be done. But in some cases we would not get the results that we would achieve if we disclosed our hand fully. A good example is the driver licensing matter. We would not have got as far as we did in relation to what I think was an important investigation if videotapes had been shown to all witnesses before they were called to give evidence. The Committee would know that the approach we took was sanctioned fully by the courts. They said—undoubtedly rightly—that the right of counsel assisting to cross-examine would not have sensible content if we had to disclose our hand fully. So we have to make these decisions on a case by case basis. Sometimes it will be appropriate to do so and we have not infrequently done precisely that. It would be fair to say that more often than not we do that, but we cannot limit ourselves by saying we always will.
- Q: 2.3 (f) Does the Commission believe it would be helpful for an amendment to be made to the ICAC Act to provide for a specific offence which would make it an offence for a person to disclose the contents of a statement to anyone than their legal representative?
- A: I am sceptical about the suggestion that it should be an offence for a person to disclose a statement made to the ICAC other than to his or her lawyers. I doubt whether that would be at all effective against those who are disinclined to play by the rules. I suppose in most fields of human activity—and certainly in the field in which I am presently active—there are those who play by the rules and there are the smarties who do not. The latter will always be a problem. It does not matter how many offences you create; they will always do as they want. I do not want to urge the creation of an offence which is more than likely to catch a person in the former category who has made an error of judgment or a slip but which will not catch the smarties as they will probably be covering their tracks. Section 114 subsection (4) is broad and is at least related to the area under discussion. Sometimes it could be of use, but I am not inclined to believe that we should be urging the creation of an offence of that sort at the moment.
- Q: 2.3 (g) Does the Commission see merit in the proposal for a statement to be placed in the front of ICAC reports indicating that no inference of wrongdoing can be drawn against a person merely because they are named in an ICAC report?
- A: In the preface to a forthcoming report, of which Committee members are aware but about which I do not want to talk further if I do not have to, this appears:

It is important to stress that the mere fact that people have been named in this report does not of itself constitute an adverse finding against them. No inference of wrongdoing should be drawn merely because a person's name appears in the report.

That is a different form of words from those the Committee has suggested. In that report no adverse section 74 findings are made, though the report certainly contains material which could be viewed as being generally adverse in nature. So that is a version of what the Committee suggested. I have no difficulty with it. I imagine that some form of words will become commonplace; indeed, the general rule. Just in case there is anything that I have not thought through, I am disinclined to give a solemn undertaking to the Committee that we will always do this, though I cannot at present think of any circumstance in which it would not be appropriate to do so.

Q: You can appreciate the sensitivity felt by a person such as Mr Riordan, who is named in the report, notwithstanding the fact that there is no inference of guilt appearing on the face of the report involving that person?

A: As you have asked me that question, I believe he overreacted considerably.

Q: I may well be of that view.

A: I thought he overreacted considerably. I do not have sympathy for the individual whose name you mentioned. However, I can see that some individuals might obtain solace from a statement of the sort that I have just read or the sort that the Committee recommended. I have no difficulty with that.

MR HATTON:

Q: Obviously, it would help in press reporting. It brings it right upfront and it certainly would help when the report goes into school libraries and places like that. We think it ought to be in a prominent position.

A: It is in the preface to the report. The preface is one-and-a-half pages long and I have made sure that it is on the first page. That is about as good as I can do.

CHAPTER THREE

MATTERS ARISING FROM PREVIOUS HEARINGS

MR MUTCH:

Q: 3.1 At the hearing on 15 October 1990, in answer to a question about the Commission's intelligence role, Mr Temby indicated that the Commission was developing a new data base and examining the applicability of the NCA's Strategic Intelligence Unit. What progress has been made in this area?

A: We are in the course of setting up what will be called a strategic intelligence research group. It will be as small as you would expect with a couple of analysts working on it. That will enable us to do more work of a pro-active nature than we have presently done. This is not unrelated to the point Mr Hatton was making earlier. We will be identifying an area of concern and drawing material together from within the Commission, and more notably elsewhere, and deciding upon action plans. It is resource-intensive work. Very often you do not get results from it; nonetheless, I accept that it has to be done. The new computer system will enable us to extract information from our holdings more rapidly and effectively than we can at present. However, it remains my view—and Mr Lamb strongly agrees with this—that we should not collect intelligence, in any sense, for its own sake. We should hold what we get and, from time to time, seek material for strategic purposes. But our intelligence holdings are likely to continue to be very small compared to bodies such as the New South Wales Police Service, the Australian Federal Police and the National Crime Authority—all of which have intelligence responsibilities. We do not.

Q: 3.2 At the hearing on 15 October 1990, Mr Temby mentioned that the issue of post-separation employment was one on which the Commission could embark on considerable corruption prevention work. What progress has been made in this area?

A: Work is being done in relation to police secondary employment issues. Committee members might recollect that this matter was touched on in the Sutherland report. We will be doing more work in this area but at present it is not a high priority. It is a matter that will have to be tackled down the track.

- 3.3 At the hearing on 15 October 1990, Mr Temby indicated that the Commission had faced difficulties due to delays by lawyers providing written submissions. Has the situation improved? If not, what steps can be taken to resolve this problem?
- A: I have nothing to add to what has been said, save to give the Committee the good news that in the heavy vehicle towing and repair matter written submissions were called for. They were obtained within the time laid down, or 24 hours thereafter. So the system worked perfectly well in that case. There was no holdup which was brought about by the very slight delays that were experienced. I think more often than not that will be the case.
- Q: 3.4 At the hearing on 15 October 1990, Mr Temby referred to a new accounting system that was being developed for costing completed investigations. What progress has been made in this area? When will this information be included in investigation reports?
- A: This has been dealt with.
- Q: 3.5 At the hearing on 15 October 1990, Mr Temby said that consideration was being given to putting the information provided for witnesses into an accessible brochure format. What progress has been made in this area?
- A: This form will undergo a slight reformatting and include an input from plain English experts. A more accessible brochure should be printed next month, but I do not anticipate great change.
- Q: 3.6 At the hearing on 30 March 1990, Mr Temby discussed a proposal for media lock-ups when major reports are released.
- (a) Why have no such lock-ups taken place?
- A: One could imagine media lockups being useful to try to ensure that the media gives a report considered coverage rather than just looking for any big names that might be contained in it. Committee members would know that this was touched upon on a previous occasion. Considerable progress was made in the Tweed report towards a media lockup. We were working closely with the Parliamentary presiding officers and their officials. In the end they decided not to proceed with the proposal which involved a lockup for the media, and another lockup for affected persons, because it was feared that there might be litigation which would stop the report being published—which litigation would have been directed at them after they were provided with the report. We did not have a lockup for the driver licensing report, but special

arrangements were made to give the media access to the report in a timely manner, immediately after it became public. I made myself available to answer questions an hour thereafter. That seemed to work fairly well and I imagine we will do that sort of thing in relation to future large reports.

I am not at all opposed to the notion of lock-ups, but because our statutory responsibility is to give the reports to the presiding officers and to the Parliament, we can only work with them. The decision has to be theirs, as happened with the North Coast report. Again, I am happy to take up anything that has not been adequately covered. I think that tells you the position reasonably well.

Q: 3.6 (b) The Committee has received a submission from Mr Eddie Azzopardi in which he recommends that participants in hearings should be given access to a report on a confidential basis before it is released to the media. Does the Commission see any merit in this proposal?

A: If we did that with complainants, we would have to do so with all affected persons, because complainants should not be put in a better position than people who stand to be damnified by a report. In fact, the latter have the prime claim, I would urge. If it is to be done with a considerable class, I assume that from time to time there would be abuses, which might be people rushing off to the media and doing some sort of massaging before the report is made public. Or, it could be, and this would be an abuse from our viewpoint, although perhaps not from others, rushing off to a court to get an injunction to stop the report being published; and we want to get our reports published. In any event, publication must be made by the Presiding Officers. If they consider it appropriate, having received a report from us, to give it to a class of people one hour before it was made public, I could not stop them; but they would have to think long and hard as to whether there might not be abuses. I certainly am not inclined to put Mr Azzopardi in any specially privileged category, although I think he would wish to put himself in such a category.

MR GAY:

Q: Certainly care must be taken to ensure that witnesses receive their report?

A: And I am sure that you know that we do a lot of work in that respect. On one occasion it was said we did not do that as well as we might have, and that might be right, although we thought we had covered it. We put a lot of effort into getting copies of the reports to the affected persons just as soon as possible after they become public. The process starts before they become public. In the

driving licence matter the process of sending couriers to people commenced well before the report was put in press boxes and elsewhere. It was designed to ensure ideally that people received the report five minutes after it was published. I do not say we achieved that, but that was the intent. We did not blow the whistle and start the process when the report was placed in boxes here. We started earlier.

MR HATTON:

Q: That covered question 3 in my letter.

A: Yes.

Q: 3.7 At the hearing on 15 October 1990 Mr Temby foreshadowed a possible Code of Conduct for Members of Parliament in the context of a report on the relationship between a Member and a constituent. What progress has been made on this issue? (The Committee will be guided by the Commission's views as to whether this matter should be discussed if the report has not been tabled by 27 March.)

A: I would prefer not to say anything more about that. You will hear more about that shortly. I would prefer not to say anything more about 3.7.

Q: 3.8 At the hearing on 17 December 1990, Mr Tink and Mr Zervos discussed the matter of Mr Toomey and the appearance of impartiality. (This matter is discussed in chapter nine of the Committee's second report.) Mr Tink believes this matter is yet to be resolved satisfactorily and would like to discuss it with Mr Temby.

A: It is for Mr Tink to take it further if he wishes.

MR TINK:

Q: I do. This is the most serious matter I have had to raise since being a member of the Committee. That is because in the North Coast report Mr Roden laid down some general principles, one of which was that the appearance of impartiality as well as impartiality in fact should be respected and maintained. It seems to me that in relation to the role of counsel assisting in that inquiry on information that we have so far there is arguably some point to the proposition that that appearance of impartiality was not fully observed. The particulars are that during the course of the North Coast hearing Mr Loosely's name was mentioned. That was not something that anyone had any forewarning about. In evidence to us, counsel assisting said at that time Mr Loosely was a client of his. That appears at page 154 of his evidence to us. It then transpired that although he took the step of

standing back from cross-examining Mr Loosely, which was quite appropriate, he nevertheless took it upon himself to make submissions in relation to Mr Loosely.

At page 6096 of the transcript of 20th November 1989 the unfortunate position, I think, developed where in answer to questions from the Assistant Commissioner, counsel assisting was put in a position of asserting that Mr Loosely could not be guilty of misconduct because of certain matters. There are other references, but that is the most stark. There are references about discussions elsewhere in the transcript. It seems to me, without hearing more from counsel assisting—and we have been waiting a few months for a response from ICAC—I am concerned that although there was I think no conflict of interest in fact, it is highly undesirable for the situation to have developed whereby counsel assisting, who was acting for Mr Loosely in an unrelated matter, was in a position of making assertions suggesting that Mr Loosely could not be guilty of corrupt conduct, albeit for a technical reason.

If the appearance of impartiality is important—Mr Roden said it is, and I believe it is—people involved in ICAC hearings should above all others be beyond reproach in that respect. I understand that the matter arose out of the blue, as it were, and that the person concerned had no warning that this name would arise—but of course that is one of the features of ICAC hearings. However, when the name arose I am concerned with what happened in relation to the principle thereafter enunciated. More to the point, I am concerned that we have not yet had a response from ICAC as to matters put to Mr Zervos a few months ago, and also at a hearing before Christmas?

- A: A couple of specific points: First, I thought Mr Loosely had been a client of senior counsel assisting. I thought, and think, that he had been but was not then. I am not sure that that makes a difference, but I think that is the fact. Second, I had not known something was awaited from us. I thought an approach had been made to senior counsel assisting. I was not clear whether it was from here or whether we would make the approach. As far as I know I thought it was being made by the Committee, and as far as I know he has not responded, and of course we cannot make him. I had not known there was anything outstanding from our end.
- Q: On behalf of the Committee I wrote to Mr Zervos on 17th January and raised these matters, hoping that we could deal with the matter by correspondence?
- A: I am sorry if we have not followed up as we should have. I had not known that that was the case. We will do that. Whether I can say to you much more than Mr Zervos has already said I am not certain, but I can at least try

again. I can say that Mr Zervos has written to senior counsel assisting in that matter inviting him to respond. So far as we know he has not yet done so, and, as I say, we cannot make him. My understanding is that Mr Loosely previously had been a client of senior counsel assisting in an unrelated matter. During the evidence phase it was considered prudent, notwithstanding that the matter was not related, for junior counsel assisting to take the particular witness. I think that was right, if only because as hearings are in aid of investigation, you do not know what will emerge. By the time the thing was finished, we knew what emerged. For reasons that are explained in the report there was no real prospect of Mr Loosely being named for prosecution purposes, and of course he could not be disciplined because he was not a public official.

In a large matter such as that there is, as Committee members would understand, extensive discussion before counsel assisting makes closing submissions. In that matter they were made over a series of days in various compartments, and were got up for address purposes as Mr Toomey was speaking. Major participants, not necessarily in order, to the process were Mr Toomey, Mr Buchanan and Mr Zervos. Mr Zervos played a very large part at that stage. In the course of that process the conclusions reached—which I think were clearly right—were that Mr Loosely, to the extent that it was appropriate for him to be mentioned, would be dealt with in the course of general submissions rather than by way of particular concentration upon him because there was no prospect of prosecution relative to what he had given evidence about, and because he could not be disciplined. The intention was that there be a general address touching upon him and other matters as appropriate.

Put another way, the conclusion reached was that there did not need to be a separate Loosely address and, as I am informed, there was not. The conclusion then reached was that in those circumstances Mr Toomey could properly do it, and he proceeded to do so. I suppose that involved a judgment on the part of ICAC officers involved, particularly Mr Zervos, and a judgment on the part of Mr Toomey. I think the judgment they made was open to them.

Q: Given that there is that proposition about appearance, and I have never sought to suggest it was anything other than appearance, and given that the issue had arisen and had been discussed in the context of cross-examination, and given that counsel assisting had seen that as a problem to the extent that he quite properly stepped back and said he would not cross-examine that witness, but for those reasons would leave it to his junior; given that situation and that this was the sort of matter where precisely the same approach could and, I would say, should have been taken in relation to submissions, there was a relatively easy option available. It could have been said that there are special

circumstances that have been recognised in relation to the cross-examination of this witness, and for that reason we will deal with this witness in a different category, for no other reason than that there is that difficulty, nothing to do with the witness, and the precaution should be again adopted in relation to submissions as was adopted in relation to cross-examination, that is, to step back and let the junior do it. Though one can read submissions prepared by a junior, which I think was Mr Toomey's original intention, inevitably propositions are tested between the bench and the bar table, as they were in this instance, and questions and answers flow back and forth in relation to testing those propositions. It seems to me that is where this difficulty arose. The proposal was put up and counsel assisting was put in the position of saying, "Although it is said the witness might be liable for various reasons, I say he is not liable for these reasons". The view is that there was an easy alternative in terms of the principle, and it was a regrettable situation that developed as a perception matter only.

- A: I am not sure to what extent one could have foreseen that position was likely to have developed and I have always understood the discussion that ensued was really theoretical in nature. That is one point. Secondly, there was a clear difference between the position when the witness was giving evidence when one did not know what would emerge and the position when closing submissions were under way when the evidence was in. That difference was not necessarily a definitive difference and I understand your position to be the difference was not a sufficient difference, but there was a difference. Finally, while I say that the judgments made by the individuals mentioned were judgments that, in my view, were open to them, that is not to say that the viewpoint you expressed lacks all legitimacy. I do not say that. Finally, we are not forgetful people.

CHAPTER FOUR

CORRUPTION PREVENTION

CHAIRMAN:

- Q: 4.1 (a) With which Government agencies has the Commission now engaged in formal corruption prevention exercises?
- (b) In each of these cases, has the corruption prevention exercise arisen from:
- a complaint and/or investigation?
 - an approach from the agency for assistance?
 - an initiative of the ICAC? or
 - another source?
- (c) Where corruption prevention exercises are initiated by the Commission, what is the process involved? How does the Commission come to a decision to initiate a corruption prevention exercise?
- Q: 4.2 (a) Which Government agencies have now developed Codes of Conduct or guidelines to prevent corrupt conduct?
- A: 4.1 and 4.2(a) have been completely dealt with.
- Q: Arising from 4.1, does the Operations Review Committee provide information in relation to proposed prevention corruption projects?
- A: They do not see the proposed reports. They do, not infrequently, suggest to me that particular matters should be sent to the Corruption Prevention Department for consideration and I have always acted upon those recommendations.
- Q: That is really the purpose of the question.
- Q: 4.2 (b) Can the ICAC compel agencies to develop Codes of Conduct or develop corruption prevention strategies?

(c) How does/will the Commission respond to non-compliance by agencies with corruption prevention strategies or requests for corruption prevention strategies to be developed?

A: The answer to 4.2(b) is no. Nor would compulsion be an effective way to achieve useful results. You do not get results if you try and make people do things in this area. It has to be done by sweet'suasion. So far as non-compliance with corruption prevention strategies is concerned, to the extent that has not already been answered, we provide assistance in various ways. We seek to help with implementation. We seek to monitor and will recommend action where necessary but the managers have to be left to manage and, in the end, it is the Ministers that make them manage, not the ICAC.

Q: What are the legal consequences of an employee violating a code of conduct and perhaps allied to that, does the introduction of a code of conduct effectively expand the range of situations in which an employee can be subject to disciplinary action?

A: That will depend upon the particular employment terms and, I suppose, approach of the department or agency concerned. Compliance with the terms of a code of conduct could be made the terms of an employment contract, in which event consequences for breach would flow. That is not a matter about which, so far as I am aware, we have ever expressed any dogmatic views. We see the primary purposes of a code of conduct as being to provide an ethical environment within which individuals can work and helping them decide how to comport themselves in particular situations, so principally it is an aid to management and staff rather than being a potential disciplinary tool, although the exact status it has is very much for management.

Q: 4.3 (a) Now that it is over twelve months since the Local Government Code of Conduct was issued, what effect has it had in terms of Local Government performance?

(b) Has there been any change in the number of complaints being received by the Commission in relation to Local Government since the Code of Conduct was issued?

4.3 (c) How does/will the Commission measure the effectiveness of this Code of Conduct and other corruption prevention strategies?

A: As to 4.3(a) and (b) the code has been adopted by a very great majority of councils, generally only in the second half of last year after considerable discussion and, in some cases, revision. It is premature to expect clear changes in performance and it would be difficult to measure

such changes. We have not collated the figures because I am not sure where one would measure from and I am not sure that the answers thrown up would be useful. I just do not think that accurate or useful answers can be given as to the flow of information. It might be useful at some stage—and we are likely to do this—to measure what we got in given six-month periods, at annual rests over a number of years, to see where the trends are. We are likely to do that but I do not think it will be very useful to do it one-off so far as local government is concerned.

As to measuring effectiveness, there is no way that we know to do so with respect to particular codes or strategies. There are ways of measuring general effectiveness, not all of which are anecdotal, although at the anecdotal level I have no doubt that there is far greater consciousness of the need for corruption prevention and the possibility of corruption prevention than there was two years ago.

Q: 4.4 Does the Commission charge Government agencies a fee for its assistance in corruption prevention exercises?

A: No fees are charged. Charging fees would probably lead to reluctance on the part of agencies to seek assistance. It seems much better not to do so. Apart from anything else the work we do should not be limited in its usefulness to the particular agency. We are always trying to spread the results to other agencies. The Housing Department summary has been widely distributed and we have had a number of queries in relation to people coming in and wanting us to lend them a hand in similar circumstances.

Q: 4.5 How does the Commission's corruption prevention work tie in with the development of risk management strategies?

A: Corruption prevention work always considers risk management principles. That is to say, the resources involved in prevention should be in proportion to the risk involved. However, it needs to be remembered that risk management strategies often simplistically consider only direct financial exposure whereas corruption prevention must take into account other risks facing government agencies. For example, bribery of driver examiners cost the RTA, and before that the DMT, no money. There was no financial risk, but there was very high risk in terms of road safety and integrity of the driver licensing system, and that needs to be borne steadily in mind.

Q: 4.6 On which pieces of legislation has the Commission provided advice from a corruption prevention point of view?

A: We have provided advice in relation to the Election Funding Act in the Northern Rivers investigation and the Park Plaza report; the Crimes Act concerning bribery and false

pretences offences in the Northern Rivers report, and contributed to a working party considering proposals that corrupt officials should lose the public contribution to superannuation benefits and that is, at this stage, all.

Q: 4.7 What work has the Commission done on the question of "whistle-blower" protection?

A: I mentioned earlier that I am attending a conference on 19th April and perhaps I could simply provide a copy of my paper which probably will take the matter about as far as I presently can.

Q: Perhaps that might be tabled?

A: I have not got it prepared. If we were sitting on 17th April I probably would not be able to table it, but it will be provided. I think that is all that needs to be said there.

Q: 4.8 The investigation report into Driver Licensing contained a chapter on the importance of the internal audit function in corruption prevention. What has been the reaction to this material?

A: That section of the report was used as the basis for a seminar to the Institute of Internal Auditors, which was extremely well received. They were obviously encouraged by the interest that we have shown in them.

Q: 4.9 The investigation report into Sutherland Licensing Police raised concerns about the lack of precise rules relating to the duty of lawyers to tell the truth when acting on the instructions of their clients. Has the Commission received any reaction/feedback on this matter?

A: There has been pleasing feedback and I would wish to table a copy of the Law Society of New South Wales publication *Caveat*, dated 1st March. This followed on discussions I had with the President and the Chief Executive. In summary, the Society commented upon the report in a neutral manner. It went on:

The Law Society is of the view that a solicitor who lies to another party, whether on behalf of, or on the instructions of, a client acts dishonourably and is guilty of professional misconduct. A solicitor has a clear duty to act honestly and fairly in all dealings not only with the solicitor's own client but also with the courts and third parties. A solicitor's relations with third parties are the subject of specific comment in paragraphs 3291 and 4201 of the *New South Wales Solicitors' Manual*.

That is a satisfactory and indeed most pleasing response which clarifies the position, I would suggest, very adequately.

Q: 4.10 The investigation report into North Coast Land Development recommended that discussions be held between the Commission and the Law Society concerning solicitors' obligations to ensure that clients are not seeking to use their trust accounts for improper purposes. What has been the outcome of these discussions? What contribution does the Commission propose to make to the NCA inquiry into money laundering?

A: The Commission has had contact with the Law Society through its Chief Executive. We are informed the Law Society is proposing a new regulation dealing with this subject. So far as the NCA is concerned, we have discussed with them their work in the money laundering area and have offered co-operation, including access to any material we have on that topic. I have to say we do not have a great deal.

Q: 4.11 The investigation report into North Coast Land Development recommended that consideration be given to registration of lobbyists, as a basis for regulation of their activity. What progress has been made on this area?

A: This is a matter not for the Commission but for government. The Committee might consider it to be an example of the sort of matter that could be the subject of a report to Parliament pursuant to section 64(1)(c), although I have to say that I would see all of the 19 key issues in the booklet as being of greater importance than this question of registering lobbyists.

CHAPTER FIVE

ALLEGATIONS ABOUT POLICE

CHAIRMAN:

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

Exposed: How crims plotted to finish Lauer

By KEITH GOSMAN
and SUSAN BORHAM

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

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

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

The sensational report—described by one insider last night as "political dynamite"—was co-ordinated by ICAC director of operations Peter Lamb. Senior investigator for NSW Police Internal Affairs Len Topping also had an input into the report. It includes strong warnings about the current level of nefarious activity within Sydney's traditional criminal element.

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

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

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

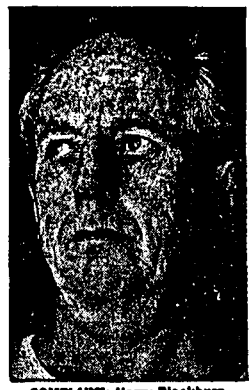
"The complaint lacks all substance. The commission believes there is absolutely no reason to doubt the integrity of Mr Lauer."

Three key events triggered the ICAC investigation:
● A visit by two NSW police to the Gold Coast late last year, during which they interviewed Sydney criminal Les Jones, one of the Mr Bigs of Australia's illegal gambling industry.

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



SENSATIONAL REPORT: Peter Lamb.



COMPLAINT: Harry Blackburn.

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

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

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

The ICAC report explains the relation between these three events.

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

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

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

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

During the extraordinary Gold

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

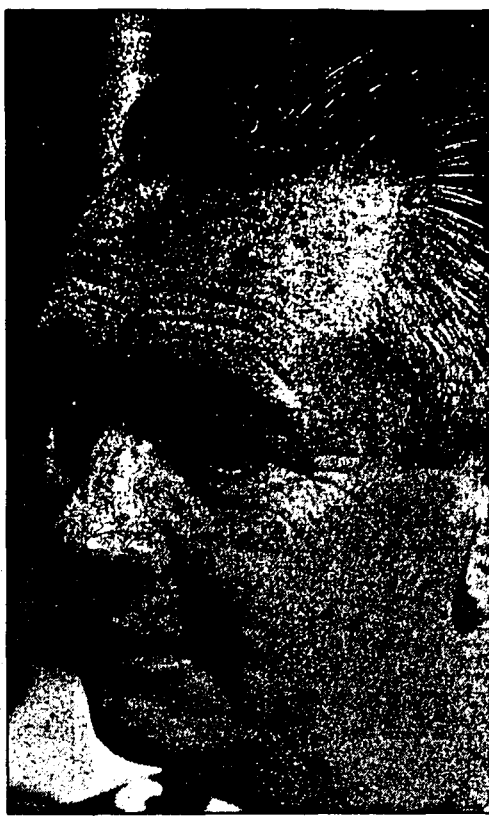
Jones allegedly revealed an attempt would be made to smear Mr Lauer over an investigation into the shooting at Marrickville in 1987 of one of Jones's key associates—a man named Bi Dinh, also known as Johnson.

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

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

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

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



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



NOTED: Lennie McPherson.

officer from the State Intelligence Group, Bruce Johnson.

NSW Police Board chairman Judge Barrie Thorley said the Board had been "very much aware" of the secret ICAC report and would not disclose its contents. But Judge Thorley added the Board's nomination of Mr Lauer as new Police Commissioner reflected its confidence in him.

After the announcement of his promotion last week, Mr Lauer confirmed that organised crime figures had tried to prevent his appointment.

He revealed "a number of leading criminal figures" in NSW and Queensland had deliberately tried to prevent him from being chosen to succeed Mr Avery.

"I think elements of that problem still exist in the community who are willing, if given the opportunity, to even seek to intervene in the selection processes for a Commissioner of Police," Mr Lauer said.

"The only thing I can draw from it ... certainly they didn't want me and they should clearly know now they have failed again."

Mr Lauer had been in charge of the investigation into Harry Blackburn (a former head of the NSW Police Scientific Squad) which resulted in his arrest in July 1989 over a series of rapes in southern Sydney.

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

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

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

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

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

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

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

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

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

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

Why the report must be made public:
See Editorial Page 32.

Public's right to know

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

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

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

That is an outrageous state of affairs.

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

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

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

He should.

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

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

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

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

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

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

MR HATTON:

Q: May I ask you a further question about corruption prevention?

Q: In view of the evidence at the Azzopardi Inquiry concerning allegations that police are encouraged to perjure themselves in order to stick together, will you instigate an inquiry to include allegations that unofficial advice or instruction encouraging this practice, occurred at Goulburn Police Academy?

You were asked whether you would instigate an inquiry into allegations of unofficial advice or instruction encouraging the practice of cover-up. Perjury by two police may be unofficial practice at the Goulburn Police Academy, and that greatly concerns me?

A: There is a lot on this subject contained in chapter 4 of the Azzopardi report and you would be aware that we did not give it merely scant attention. The report and in particular that chapter are likely to have a useful impact. At the request of the Police Commissioner we sent 500 copies of the report to him—that is the previous Commissioner—in order that there could be decent dissemination within the Police Service. As it happens I had an informal discussion at a social function with the Assistant Commissioner in charge of training late last week, I do not think he would mind me saying that—there is nothing secretive about it. He was saying how useful that report would be from a training viewpoint and it is being used or will be used for that purpose.

Having said that I should in frankness add that I imagine in addition to formal training instruction and advice some is given informally from time to time both at the Goulburn Police Academy and elsewhere. I imagine that is true of the Police Service and also of other fields of human activity. I do not think that the Commission could change that, which has to do with human nature. I do not think any further investigation is justified and I do not think we could make progress with a further investigation. As I say, chapter 4 says a lot. I know it is being taken seriously and acted upon.

Q: I would just add that I know, especially with police who have a difficult and dangerous job and often a job of upholding the law that is not seen to be a bad thing to punish people for something that the community's general standards accept, such as illegal gambling and prostitution. They develop a fortress mentality. Is the Independent Commission Against Corruption particularly looking at how we can help overcome that from the point of view of public perception of police, the co-operation of the public with police and, of course, the necessity of police themselves in the efficacy of the carrying out of

their duties not to adopt a fortress mentality and cover up for their mates, as it were?

A: Fitzgerald was not the first to say, and I will not be the last to say, that a significant contributing factor to difficulties within police ranks is unnecessary laws that do not have general community support. One useful thing that can be done is get rid of unnecessary laws not enjoying general community support from the statute book. That, if done, would get rid of several of the traditional areas of police corruption, and that is something to which attention should be given—although I cannot say that we presently have a project that is alive in that respect, but it is clearly something that everybody should always bear in mind.

CHAIRMAN:

Q: There is a problem there. Although there may be acceptance of some type of behaviour, that acceptance might be totally wrong in terms of the long-term welfare of the community. It is basically a political matter as to what is going to be law. That is ultimately a matter for the representatives of the people, I should have thought?

A: Yes. It is a political matter. Mr Chairman, you will understand that I was not talking about laws that police do not accept; I was talking about laws that the community does not accept. Perhaps, and this is not a political discussion but a philosophical discussion, you can sometime justify laws that do not have community acceptance. I think I would be inclined to urge otherwise and I would certainly say that their number would be very few. But in the end, yes, it is a political judgment that has to be made as to what content the law should have. What everyone, in particular, legislators, should bear in mind is that the more laws requiring enforcement there are, the greater the job the Police Service has to do. And the more laws there are that do not have general community support, the more difficult the job of police will be and the more difficult will be the job of those who have to keep corruption out of police ranks. That is one comment.

The other comment is that the Commission can, and in various ways does, help otherwise to achieve the end that you would see is desirable. We make speakers available on request. We seek to provide support for the Police Service to the extent practicable. That is to say, we try not to be seen as carping external critics. I take the view that police, like lawyers, are fundamental to civilisation, but even more fundamental to civilisation. So we support where appropriate, and criticise only where it seems to be necessary. There is a whole series of ways in which we try to help. Once again, ultimately, it is the Commissioner and his staff and everyone in the Police Service who have to clean up their own act. No one outside can do it. And

they have done a lot, as we know.

MR HATTON:

Q: As my fellow Committee members would well know, I am not sure that lawyers are fundamental to civilisation?

A: You can be critical of a lot of what members of my profession do, but if you do not have problem-solvers and courts, then people are going to solve their own problems and there will be violence.

Q: I am only joking. The social issues committee of this Parliament may be able to look at the problems faced by police in that regard.

Another question arises about the warning of junior officers by more senior police.

Q: Did you form a view that the warning of junior officers by more senior police officers in case of phone tapping was to frustrate an inquiry into illegal and improper activities? Will/have you undertaken additional inquiries?

In other words, tipping them off to frustrate an inquiry, if that is in fact what happens?

A: What I think you are talking about is dealt with in the Azzopardi report at page 5. I really cannot usefully add anything.

MR DYER:

Q: May I ask a question that arises from the matters referred to by Mr Hatton. In the Upper House I asked the Police Minister about whether it might be appropriate to update the training of police at the Goulburn academy in the area of the obligation the police undoubtedly have to give truthful evidence. In substance the response I received was that it is not so much a matter of what happens at the Goulburn academy as what happens in the meal room in a police station. How can we deal with that? Is that a matter of some type of continuing education on an informal decentralised basis?

A: I think it is partly that, but there is another process already under way that is going to be very important. Police are taking accountability more seriously than they have done in the past. That is to say, carefully defining the role between superior or supervisory officer and inferior officers, making clear just who the superior is, giving that person supervisory responsibility and making clear that a failure down here reflects upon the supervisor who will be held to account for that failure. I saw this most recently in a report of the internal affairs branch where it was spelt out briefly but very clearly.

It is a process that I think is only under way and there is a lot more that needs to be done. It is the sort of process that would never be completed, I think. But to the extent you can make superior officers answer for their sins, including the sins and omissions of their inferiors, you will be contributing to this considerably. One other comment is that we all know we have a very young police force with half the officers having less than five years service. I think that is right. That means that there is perhaps a shortage of numbers at supervisory level. That is a problem that will be worked through over the next two to three years. It is also surely the case that the number of senior officers in the sergeant to inspector rank whom one could guarantee could lead their juniors astray, is ever so much less than it used to be. I have an expert on my right who confirms that that is a very true statement.

CHAIRMAN:

Q: There is always a conflict between keeping order and the rule of law.

MR HATTON:

Q: In relation to the Azzopardi matter the issue of people lying to the Commission was raised. I have in my possession a copy of a letter sent by Mr Blanch to Mr Azzopardi which states that the Director of Public Prosecutions has decided not to proceed against people who tell lies to the Commission in particular instances. Obviously that will not be in all instances. The letter states:

A significant reason for terminating the prosecution—

That is the private prosecution taken out by Eddie Azzopardi concerning people lying to the Commission. The letter continues:

—is the desirable public policy of encouraging persons appearing before the ICAC to tell the truth eventually even after initial lies. The broader public interest in the success of ICAC hearings may outweigh the particular interest in prosecuting an individual lie particularly if that lie is subsequently corrected.

Mr Blanch said further that Mr Azzopardi had raised other material that will be considered. This matter has exercised my mind quite a lot. It is a judgment that only you can make, Mr Commissioner. Obviously it is not in the interests of the Independent Commission Against Corruption to have a person lie to the Commission and be able to get away with it, even though the lie was subsequently corrected, sometimes under pressure. On the other hand, there is the problem that was put forward by Mr Blanch that if that policy is pursued too vigorously, people may be

discouraged from changing their minds. Have you any comment to make that might clarify that situation further?

A: That really puts the position neatly, if I might say so, and for reasons that are explained in both the Driver Licence report and the Azzopardi report, written, of course, by different Commissioners, our general tendency is to favour the latter consideration, although I cannot put it higher than that. If everybody who could be proved to have told us lies was automatically prosecuted for the offence which is roughly equivalent to perjury under the Independent Commission Against Corruption Act, we think that would make it far more difficult to get people to tell us the truth, even if only ultimately. It is the truth in which we are finally and definitively interested. I am quite certain that seriously undesirable consequences would flow if there were such prosecutions in a reflex action although the person did in the end come clean, or roughly so.

MR DYER:

Q: I wanted to follow a matter that Mr Hatton was putting regarding the Azzopardi matter. I appreciate the public policy reasons to which you were referring in regard to the desirability of encouraging witnesses to come forward and give evidence. However, the matter that concerns me primarily regarding the Azzopardi case is that it was not one witness but a group of witnesses who initially lied to the Commission and subsequently reversed that evidence. I would not like to think that a group of witnesses in a future inquiry could take the view that they could lie until such time as evidence emerged obliging them to correct their evidence, with impunity and no fear as to the consequence of a possible prosecution.

MR HATTON:

Q: That is covered in a supplementary question. The Commissioner could answer that at the same time, that is supplementary question number one on the last sheet of our business paper.

MR TEMBY:

A: While that is being found, we said in the Azzopardi report that there should be prosecutions of several of these police officers and in at least some cases we said that the prosecution should include a section 87 prosecution. That was certainly the case concerning Brown and it was the case concerning Williams. I think with respect the question does not reflect accurately the quite discriminating approach that was taken in the report. Having said that, I have no difficulty with the proposition that where there has been a concerted group attempt to pull the wool over the Commission's eyes, one can imagine circumstances in

which there should be prosecutions even against people who have come clean. I am sure you understand, I am not saying that there should never be a prosecution of somebody who recants, any more than I am saying there should always be a prosecution of someone who does not recant. Perjury prosecutions are not easy and one does not encounter them with enormous frequency. I do not want us to get to the point where all we prosecute for is perjury. That is not the case we have got.

CHAPTER SIX

FRIVOLOUS COMPLAINTS

MR TINK:

- Q: There is a separate item on the papers headed "Frivolous Complaints", and there is a letter from an alderman detailing his concerns about that.
- Q: 6.1 The Committee has recently received a letter from a person who believes he has been the subject of a frivolous complaint to the ICAC. What action can be taken by someone who has been the subject of a frivolous complaint?

This is relevant to what we have been discussing and also to section 81 of the Act, which provides a penalty for people making wilful or false statements. In the context of that letter and the application of section 81 I wonder whether there is anything you could add to the matters raised by Mr Hatton? If a decision is taken that on balance public policy is best served by not vigorously prosecuting people for perjury—and I can understand some of the reasons for that—what other avenues might there be, or improvements could be made, to allow people who have had this type of complaint made against them to set the record straight, either with the help of the Commission or otherwise?

- A: So far as frivolous complaints are concerned it is very much a matter of viewpoint. The very great majority of complainants or informants I am certain consider that what they are bringing forward is of genuine significance. Typically they believe it is of earth-shaking importance. That is their viewpoint. A good example is the person who sees a house go up next door which is contended to be in breach of building regulations, or simply in the view of that person horribly tasteless, or a rezoning happened just down the street that could have an impact upon their own land. We get very many complaints from people like that. Their process of reasoning is that what has happened is so appallingly inappropriate that people of good sense and good will could not have permitted it to happen. Therefore, the fix must be in.

Viewed from a distance and objectively, one can see that the reasoning is likely to be fallacious. But typically they hold that view in a very genuine way indeed. From their viewpoint there is nothing frivolous about the

complaint. From the viewpoint of the person who is the subject of the complaint, the thing is absurdly frivolous, devoid of all possible content, and from the viewpoint of that person they might say that it is such nonsense that it has to be maliciously motivated. We sit in the middle and try to be objective about it. "Frivolous" is not a word we frequently use, but you get fairly close to it when you say that the matter is not of such substance as to warrant Commission investigation. As I say, it is very much a matter of viewpoint. We get very few complaints, as I indicated earlier, or approaches that seem to be simply malicious, devoid of all content, and just put forward in order to cause harm. I have made comment about announcements which attend complaints, but so far as complaints are concerned our strong impression is that very few of them are malicious.

Most complaints that are received are dealt with internally and no one ever knows they have been received. The biggest group are those that are beyond jurisdiction. The next biggest group, and it is very large, are those that are dealt with internally. There is nothing in it that could interest the Commission, although in terms of jurisdiction, theoretically it could. There is nothing useful we could do with the information received, or there is no useful benefit that could flow from a Commission investigation, or it is relatively so slight even if not entirely devoid of content that we just should not handle it. The next biggest group involves us making some inquiries of some outsiders. For instance, the making of a telephone call to a council or the Department of Planning or the Department of Local Government to get some information in order to enable us to wrap up a matter. That group does not involve a person who is the subject of the complaint, if there is any individual that is the subject of the complaint, ever knowing about it. We go outside, but only to a limited extent. The next group of cases involves those that are assessed to the extent where some interviews are conducted so that it may become known within a limited circle that the Independent Commission Against Corruption is interested in such and such. If anyone is silly enough to talk about it publicly, it may become publicly known. That group is fairly small—measuring a number of dozens a year, but no more. That is very small compared with what we get in a year.

Finally there are those that we formally investigate. If there are public hearings, then by definition it is known to all and sundry. Probably, if it is a public investigation, although it is not supported by public hearings, at least within a circle it will get to be known. Although, I have to say that we conducted a matter that was concluded on the basis of private hearings, and it was a highly sensitive matter and nobody knows about it. I can think of one council that is up in arms because, having commenced a formal investigation, we went and got some

documents from it. It is up in arms because it chose to let it be known that we had done that. There is another council that we went to, having commenced a formal investigation, to get documents from it. Everyone kept quiet and no one knows about it. That suits us fine. What I am saying is that to a significant extent people create the misfortune of possible opprobrium for themselves because they talk about what has happened.

Q: Part of the answer was discussed earlier in that the point will be made to people in local government and State Government, and people who work in municipal governments on the payroll, that no one should be talking about it?

A: That is the hope. That is not going to solve the problem entirely. There will continue to be cases in which people feel hurt by the fact that we have conducted an assessment of a matter including getting some information and talking to some people, and they do not know who the complainant is and they are terribly affronted and they want us to do a fullscale investigation and clear them. With due respect to them, their numbers ought be small particularly if in many cases they are prepared to keep quiet themselves and not let their outrage be known. I am not talking about any particular case, you understand, but many cases will be thus resolved.

So far as the rest are concerned, we cannot carry out fullscale investigations with respect to everything just because it happens to get, more or less, in the public domain—otherwise the important work we have to do would not get done. If we are going, on demand, to identify complainants and expose them to the chill winds that then might blow from the person who feels so aggrieved, we are going to have a discouraging effect upon potential complainants. I really do not think there is an answer that is simple and definitive. I think there are steps that can be taken and these letters are a good example, which should help to diminish the problem. I should say that the Assessments Section is now working more satisfactorily than it was 12 months ago. We have now moved it from where it was in Legal and Secretariat into the Operations Department. It is now being run in a more professional manner and probably also in a more solicitous manner—although I would not want to give the impression that I think there has been a lack of sensitivity in the past. I think we are doing the job better there than we were.

So things are being done, but I am afraid I do not have an answer. I do not think it is an answer to say that on demand we should make the identity of complainants known always, because that is going to have a discouraging effect. If we carry out a fullscale investigation, you can practically take it for granted that the complainant will become known, and that is probably as it should be. But if

all we have done is assess the matter to the point where we say it is not a matter that we should formally investigate, I really cannot see it as appropriate to always let the complainant's identity be known. Some of these people who approach us do so in a fairly tremulous state. I do not want to give the impression that I lack sympathy for the gentleman who has written and who is named in the papers. I do not lack sympathy for him. I have sympathy. I can understand a sense of grievance. But I cannot provide an answer to that. As I said, if anyone can, I will be delighted. I cannot provide an answer to it.

CHAIRMAN:

- Q:** In relation to the subject-matter that Mr Tink raised, it would seem to me that unless a complaint is made under section 11, persons about whom demonstrably baseless allegations or complaints are made would have recourse to defamation, on the face of it?
- A:** I think that is—no, I am sorry, I would not even want to say I think that is true, because I would need to think about it before expressing a view.
- Q:** I said demonstrably baseless allegations?
- A:** The difficulty from our viewpoint is that the allegations may be demonstrably baseless, but nonetheless genuine, genuinely held views. A great majority are. We would not want to expose those people.
- Q:** The defamation action would have to be commenced against the person complained about, as a private action. All I am saying is that arguably that is a recourse they may well have?
- A:** It is, and we would not want to particularly tell that person who the complainant was and subject them to a defamation action, for the reasons I have sought to articulate.

CHAPTER SEVEN

SECTION 38

CHAIRMAN:

Q: 7.1 In the report on the Department of Housing and Homfray Carpets an appendix is included headed "Ruling as to Section 38 and Eric McBeth". In that ruling and earlier in the text of the report (p 56) Mr Temby outlines how Mr McBeth first appeared before the Commission without legal representation and did not object to answering any questions. A lawyer later appeared on his behalf and sought a retrospective declaration under s.38 of the ICAC Act so that Mr McBeth's answers could not be used in disciplinary proceedings. Whilst expressing sympathy for Mr McBeth, Mr Temby ruled that such a declaration could not be made retrospectively.

In view of this situation, should s.38 be amended to enable declarations under the section to be made retrospectively, at least where a witness has appeared without legal representation?

A: Mr Chairman and members of the Committee, the answer is that I do not consider that an amendment to section 38 is justified. The rights of objection are there; they can be exercised or not. The rights are pointed out, certainly once, and often more than once where it is considered appropriate. As many have heard it said in a different context, hard cases make bad law. One could have sympathy for the position of Mr McBeth, a patently honest witness who got himself into a mess. As it happens the Commission did not urge prosecution. I do not pretend to know what has happened in a disciplinary or employment context, and we have not been pursuing that matter. I have sympathy for the position of Mr McBeth, a pleasant and patently honest man who, as I say, got himself into a mess. If the Commission was empowered to make these declarations retrospectively, we would be faced with applications constantly. They would be more or less meritorious, often lacking in all substantial merit. I just do not think that substantial benefits would flow.

MR DYER:

Q: Accepting what you have said in that regard, would Mr McBeth's case be an example of where a duty solicitor or some such official could assist a witness? Would that be

of some advantage?

A: Funnily enough, I do not think Mr McBeth would have objected anyway. He did not want to object at the time, I am quite sure. He wanted to come along and talk to us and tell us exactly what had happened. He did not want to protect himself; he wanted to tell us what had happened—and people often do. Later on a lawyer on his behalf made the application. I do not criticise the lawyer, it was a proper application. I do not think Mr McBeth would have objected anyway. Numbers of people do not want to, even wrongdoers. He was a wrongdoer only in the sense that he made a mess of his job, let me make that clear. There is nothing criminal about Mr McBeth, nothing at all. The answer is that I do not think it would have made any difference at all.

APPENDIX**Written Answers to Questions by the
Media and Public Affairs Manager of the ICAC
Ms Roberta Baker**

Background

Ms Roberta Baker was due to give evidence at a public hearing of the Committee on 17 December 1990. This hearing was held as part of the Committee's Inquiry into Commission Procedures and the Rights of Witnesses. Unfortunately due to time constraints it was not possible for the Committee to take evidence from Ms Baker on that occasion. Consequently, a number of written questions were forwarded to Ms Baker and her written response was received on 25 January 1991. That response is reproduced on the following pages.

**Parliamentary Joint Committee on the
Independent Commission Against Corruption**

**INQUIRY INTO COMMISSION PROCEDURES
AND THE RIGHTS OF WITNESSES**

Questions for Ms Roberta Baker, Manager, Media and Public Affairs

Q: Could Ms Baker outline her professional background and her duties with the ICAC?

A: My journalistic background is in newspapers. I began my training 14 years ago in 1977 on a twice weekly newspaper in Deniliquin, southern NSW. I moved to Wagga where I began work as a D grade journalist on The Daily Advertiser, rising through the ranks to Chief of Staff in charge of the editorial office. After almost four years I went to Adelaide briefly where I worked on The News as a sub-editor. I then travelled overseas for two years. For eight months I worked as a sub-editor on the Coventry Evening Telegraph. I also did some casual subbing in Fleet Street. On return to Australia I worked for the Albury Border Morning Mail as a sub-editor before taking up a position in April 1987 as Press Secretary to the then Attorney General, Terry Sheahan. In August 1988 I began work in Canberra as the first press officer for the Commonwealth Director of Public Prosecutions, Ian Temby QC. Mr Temby invited me to fulfill a similar position with the ICAC. I began in that position in January 1989.

My duties with the Commission include liaison with the media, issue of media statements and the provision of official comment on operational and other matters, providing access by the media and others to transcripts and exhibits relating to public hearings held by the Commission, compilation and dissemination of information about the Commission, and publication and distribution of Annual and Investigation Reports.

Q: A number of confidential submissions received by the Committee have raised concerns about media briefings given during the currency of an inquiry. Particular concern has been expressed about the media being notified of the forthcoming appearance of certain witnesses, before those witnesses are notified themselves. Could Ms Baker outline the nature and scope of any media briefings during the currency of an inquiry and the arrangements by which the media are notified of the forthcoming appearance of witnesses.

A: I primarily respond to requests for help and information from the media and the general public, rather than provide media briefings. I have never informed the media which witnesses were

to appear at a Commission hearing before those witnesses were so informed. As a matter of course I am not informed of the names of witnesses due to appear until the necessary arrangements have been made, which includes informing the witness. I am also not informed of the line of questioning to be adopted. Within these limits, I provide on request the names of witnesses due to appear that day or the next day. This information has generally already been canvassed in the public hearing. On request I also provide other information of a factual nature such as the spelling of someone's name, how often a particular witness has appeared, etc. This information is also on the public record.

Q: Concern has been expressed about the access the media have to restricted areas of the ICAC premises in contrast to the lack of facilities for witnesses and legal representatives. Concern has also been expressed about the cost of transcripts for witnesses, in contrast with the free provision of transcripts to the media. Whilst Mr Zervos has addressed the second concern, it would be appreciated if Ms Baker could comment on the first concern.

A: No-one, including the media, has access to restricted areas of the Commission other than by prior arrangement. The media have the use of a Media Centre on the ground floor. Witnesses and their legal representatives have the use of two interview rooms and a room for visiting counsel on the ground floor in the non-public area behind the hearing rooms. In addition a large room at the rear of the minor hearing room can be made available. Each of these rooms has a telephone and Commission staff are available to meet any reasonable request for assistance such as photocopying etc.

Before refurbishment of the ground floor of the Commission building was completed in November 1989, the situation was different. During the hearings held before that date an area on the first floor was used as a hearing room. A small area outside this room was used as a public foyer. Journalists, in particular radio journalists, would use the telephone in the public foyer to file their stories, often in the presence of witnesses who had already given evidence and those who were yet to do so. I received several complaints about this practice. At that time my office was directly opposite one door leading off from the foyer. It was deemed more appropriate that journalists use the telephone in my office to file stories. On some other occasions I allowed journalists with general inquiries into my office as this was considered preferable to answering their queries in view of others in the foyer.

In addition to information already supplied by Mr Zervos about the provision of transcripts to the media I would like to add the following.

Transcript is available to any interested person to peruse, including the media, within the confines of the Commission, both on the day of a hearing and at any subsequent time. Generally,

TELEGRAPH - 28/7/89
AUSTRALIAN - 28/7/89

**INDEPENDENT COMMISSION
AGAINST CORRUPTION**

**NOTICE OF
PUBLIC HEARING**

The Commission has decided to hold a public hearing having the following general scope and purpose.

TO INVESTIGATE:

- The facts and circumstances pertaining to the grant, performance and enforcement of a licence to excavate, fill and otherwise operate upon certain land at or near the Silverwater Prison Complex to Bradshaw Waste Industries Pty Ltd by the Corrective Services Commission or the Department of Corrective Services after January, 1982;
- The conduct of persons including present and former public officials in relation thereto during the currency of the licence and to date; and matters related to the foregoing.

TO ASCERTAIN whether any such conduct amounts to corrupt conduct within the meaning of section 7 of the Independent Commission Against Corruption Act 1988.

A first sitting will be held commencing at 11 a.m. on Tuesday, August 15 at 191 Cleveland Street (corner of George Street), Redfern. A second sitting will commence at 10.30 a.m. on Monday, September 11 at the same address. Persons claiming to be substantially and directly interested in the subject matter of the hearing may seek leave at either sitting to appear, and to be represented at the hearing. Such persons are encouraged to contact the Commission prior to the first sitting to advise of their interest.

Members of the public having information which might be of assistance to the Commission are encouraged to provide it in writing to Box 500, G.P.O. Sydney 2001, or ringing on (02) 319 0900.

Contact Officers are Gillian Scoular and Roger Brown.

DAVID CATT
Commission Secretary

30 JUL 1988

Rex Jackson to appear before ICAC

By ALEX MITCHELL

JAILED former Corrective Services Minister Rex Jackson will be called before the Independent Commission Against Corruption (ICAC) in a new inquiry starting in two weeks.

He is the key witness concerning a controversial 1982 tender between his former department and one of Sydney's largest waste disposal firms.

Jackson, 60, is serving a 10-year sentence at Berrima Prison for accepting bribes in return for the early release of prisoners.

ICAC commissioner, Mr Ian Temby, QC, will hold hearings into a Corrective Services Department tender with Bradshaw Waste Industries Pty Ltd to excavate and fill Crown land adjacent to Silverwater prison at Parramatta.

Bradshaw Waste Industries is headed by millionaire Mr John Bradshaw, a former friend of the disgraced minister and one of Sydney's most generous sponsors of horse and dog racing.

Last night's dog meeting at Wentworth Park featured two races sponsored by Mr Bradshaw's companies.

Before his imprisonment, Jackson was a prolific punter and patron of the prestigious Greyhound Breeders, Owners and Trainers Association, which then controlled Harold Park.

In sentencing Jackson in September 1987, trial Judge Adrian Roden said: "His fall of grace must be attributed to his apparently insatiable appetite for gambling. His financial affairs were in tatters."

Ironically, Mr Roden, QC, is now the ICAC's assistant commissioner, currently probing alleged corrupt links between developers and politicians on the far North Coast.

Other witnesses in the Silverwater inquiry are likely to be:

● Mr Vern Dalton, former chairman of the Corrective Services Commission, who is now director-general of Mrs Virginia Chadwick's Family and Community Services Department.

● Retired prison superintendent Harry Duff who was in charge of Silverwater when the contract was let.



REX JACKSON: a prolific punter

● Former union representative at Silverwater, George Tolley, who is now industrial advocate of the NSW branch of the Australian Workers Union.

The first public hearing will be at the ICAC's headquarters in Redfern on August 15 with a second sitting scheduled for September 11.

The ICAC has invited members of the public or other interested parties to provide any written information they might have on the Silverwater contract.

In a separate inquiry, the ICAC is digging in to the early prisoner release scheme — revealed in *The Sun-Herald* in June 1983 — which brought about Jackson's political downfall in 1984.

ICAC investigators are examining all departmental files relating to prisoners who gained early release during Jackson's career as Corrective Services Minister, which began in October 1981.

They are also combing confidential reports on the Jackson affair compiled by senior police officers, as well as files supplied by the Premier Nick Greiner's office soon after the ICAC came into existence in March this year.