



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE ICAC

**REPORT
ON -**

**Inquiry into Section 52
of the ICAC Act**

AND

**Legal Representation
before the ICAC**

JUNE 1993

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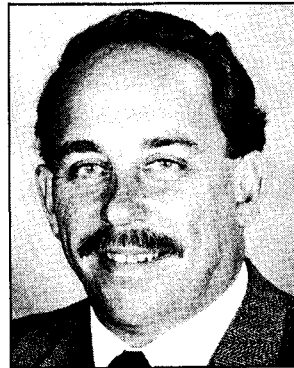
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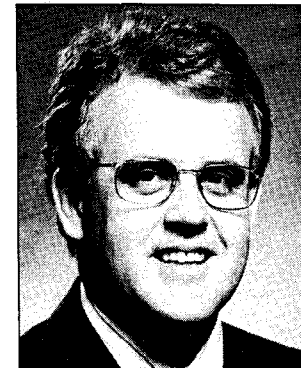
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COMMITTEE FUNCTIONS

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."

CHAIRMAN'S FOREWORD

This report deals with the difficult issue of legal representation before the ICAC. The Committee has considered this matter carefully over twelve months. I believe the Committee's findings and recommendations strike an appropriate balance between the many competing considerations in this area.

On the one hand the Committee has been mindful of the need to ensure that the rights of witnesses appearing before the ICAC are protected. In this regard the Committee has delineated the categories of witnesses for whom legal representation is important, namely "affected persons" and persons "substantially and directly interested" in the subject matter of a hearing. The Committee has also sought to ensure equity between witnesses, regardless of whether they are public officials or private individuals.

On the other hand the Committee has been concerned to ensure that the ICAC does not become bogged down in legal argument or overrun by lawyers. Similarly, the Committee has been aware of the obvious constraints upon the public purse. Hence, the Committee's recommendations concerning the need for the decision-maker in respect of applications for financial assistance for legal representation to be able to determine the appropriate level of representation in each case.

It should be noted that during the course of this inquiry the Committee has been conducting a comprehensive Review of the ICAC Act. Obviously, the Review of the ICAC Act has had to take priority over this inquiry. The complexity of a number of the issues being considered in the Review of the ICAC Act has meant that it has taken the Committee longer than anticipated to complete both inquiries.

On behalf of the Committee I would like to thank all those who made submissions to, or gave evidence before, the Committee during this inquiry. I would also like to thank the ICAC for its co-operation and assistance during this inquiry.



Malcolm J Kerr MP
Chairman

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-1- INTRODUCTION

1.1 BACKGROUND TO THE INQUIRY

1.1.1 This inquiry arose from a request from the former Attorney General, the Hon Peter Collins QC, MP, for the Committee to review and report upon the provisions of the ICAC Act relating to the provision of legal or financial assistance to witnesses appearing before the ICAC. During the ICAC's Metherell inquiry, Mr Collins declined a number of applications for financial assistance under section 52 of the ICAC Act from Brad Hazzard MP and Dr Terry Metherell. On 07 May 1992 Mr Collins wrote to the Committee Chairman requesting that the Committee re-examine section 52 "to see whether there is not a more satisfactory scheme possible". Mr Collins suggested that the Committee examine the procedure for making an application for assistance, the matters to which the decision-maker is to have regard, and the appropriate decision-maker. Mr Collins letter is reproduced as appendix one.

1.1.2 In the second half of 1990 the former Committee conducted an inquiry into the rights of witnesses appearing before the ICAC. The former Committee's Second Report on Commission Procedures and the Rights of Witnesses contained a chapter on Legal Representation. Some of the issues discussed in that chapter included the need for legal representation and the cost of legal representation. The major finding of relevance to this inquiry was paragraph 3.8.1.

"All persons in peril of being prejudicially affected by an ICAC inquiry should have access to legal representation at ICAC hearings. However, the cost of legal representation is prohibitive for most private citizens. The cost of legal representation before the ICAC is an issue which requires further attention."

1.1.3 Consequently, when the Committee received the request from the former Attorney General to examine section 52, the Committee decided to widen the inquiry to include the cost of legal representation generally, so as to address the need recognised by the former Committee for a focussed inquiry into this issue.

1.1.4 In order to properly address the question of financial assistance for legal representation before the ICAC and to place section 52 in its proper context, it was necessary for the Committee to examine the operation of the ex gratia payment scheme operated by the Premier's Department. Whilst the operation of this scheme extends beyond the ICAC, it is the scheme under which most public funding for legal representation before the ICAC is made available.

1.2 CONDUCT OF THE INQUIRY

1.2.1 The Committee held a brief meeting on 08 May 1992 to consider the former Attorney General's request. The Committee decided to accede to his request and resolved to conduct an inquiry with the following terms of reference:

"1 To review the provisions of s.52 of the ICAC Act concerning legal or financial assistance to witnesses appearing or about to appear before the Commission, with particular reference to:

- (a) the procedure for making an application for assistance;
- (b) the matters to which the decision-maker is to have regard; and
- (c) the appropriate decision-maker.

2 To examine proposals for mechanisms to reduce the cost of legal representation before the ICAC."

1.2.2 The Committee advertised for submissions from interested individuals and organisations by 12 June 1992. In all the Committee received ten submissions. A list of those who made submission is included as appendix two.

1.2.3 The Committee held a public hearing as part of this inquiry on Tuesday 04 August 1992. The witnesses who appeared before the Committee were:

- ◇ Simon Stretton, ICAC
- ◇ Deborah Sweeney, ICAC
- ◇ Laurie Glanfield, Attorney-General's Department
- ◇ Roger Wilkins, Cabinet Office
- ◇ Patrick Griffin, Public Interest Advocacy Centre
- ◇ Patrick Fair, representing Law Society of NSW

1.2.4 Unfortunately, Peter McClellan QC, who had made a submission to the Committee, was unable to appear before the Committee at this hearing. A brief public hearing was held on Tuesday 22 September so that the Committee could question Mr McClellan about issues arising from his submission. Between 04 August and 22 September the Committee was largely preoccupied with other matters, including laying the ground work for its review of the ICAC Act. However, during this time there was some work done on identifying and

clarifying the key issues to emerge from the hearing on 04 August and identifying options for reform.

- 1.2.5 Following the brief hearing with Mr McClellan on 22 September a draft report was prepared. This was considered by the Committee at its meetings on 03 and 09 November 1992. A second draft was considered by the Committee at its meeting on 27 November. A third draft was then prepared and was considered by the Committee at its meeting on 18 December 1992.
- 1.2.6 At the meeting on 18 December 1992 the Committee divided on a motion that the draft report be adopted. The Committee adopted the report but deferred detailed consideration section by section.
- 1.2.7 The Committee next considered this matter on 05 February 1993. The Committee resolved to write to the Legal Aid Commission seeking its advice on the question of the appropriate decision-maker under s.52. The advice of the Legal Aid Commission was received on 05 April and considered by the Committee at its meeting on 19 April 1993.
- 1.2.8 The Committee's next two meetings on 11 and 18 May 1993 were largely devoted to deliberating on the Review of the ICAC Act. Having finalised its report on that matter, the Committee met on 25 May 1993 to conclude its deliberations on s.52 and legal representation. A number of amendments were made to the third draft report and the amended report was adopted.

-2- ICAC AND LEGAL REPRESENTATION

2.1 RELEVANT PROVISIONS OF THE ICAC ACT

2.1.1 The relevant provisions of the ICAC Act concerning legal representation before the Commission are set out below.

"32 If it is shown to the satisfaction of the Commission that any person is substantially and directly interested in any subject-matter of a hearing, the Commission may authorise the person to appear at the hearing or a specified part of the hearing."

"33 (1) The Commission may, in relation to a hearing, authorise:

- (a) a person giving evidence at the hearing; or
- (b) a person referred to in section 32, to be represented by a legal practitioner at the hearing or a specified part of the hearing.

(2) The Commission is required to give a reasonable opportunity for a person giving evidence at the hearing to be legally represented.

(3) A legal practitioner appointed by the Commission to assist it may appear before the Commission."

"33A (1) A group or unincorporated association may be authorised to appear at a hearing or authorised or required to give evidence at a hearing.

(2) Accordingly, references in sections 32 and 33, and in other provisions of this Act, to a "person" extend for this purpose to a group or unincorporated association.

- (3) However, this section does not affect the application in any other context of the principle that a reference to a word in the singular form includes a reference to the word in the plural form."
- "34 (1) A legal practitioner appointed by the Commission to assist it, or a person or a person's legal practitioner authorised to appear at a hearing, may, with the leave of the Commission, examine or cross-examine any witness on any matter that the Commission considers relevant.
- (2) Any witness so examined or cross-examined has the same protection and is subject to the same liabilities as if examined by the Commissioner or an Assistant Commissioner."
- "52 (1) A witness who is appearing or about to appear before the Commission may apply to the Attorney General for legal or financial assistance.
- (2) The Attorney General may approve the provision of legal or financial assistance to the applicant if of the opinion that this is appropriate, having regard to any one or more of the following:
- (a) the prospect of hardship to the witness if assistance is declined;
- (b) the significance of the evidence that the witness is giving or appears likely to give;
- (c) any other matter relating to the public interest.
- (3) On giving the approval, the Attorney General may authorise the provision to the witness of legal or financial assistance determined by the Attorney General in respect of the witness's appearance before the Commission. The assistance is to be provided out of money provided by Parliament for the purpose.
- (4) The assistance may be provided unconditionally or subject to conditions determined by the Attorney General."

2.1.2 Section 17 of the ICAC Act is also significant in relation the question of legal representation before the ICAC.

- "17 (1) The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.
- (2) The Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and hearings shall be conducted with as little emphasis on an adversarial approach as is possible."

2.2 ROLE OF LEGAL REPRESENTATION BEFORE THE ICAC

2.2.1 There are a number of roles that legal representatives can play before the ICAC. The Director-General of the Attorney General's Department, Laurie Glanfield, summarised the two principal purposes of legal representation before the ICAC when he appeared before the Committee on 04 August 1992.

"I see at least two principal purposes. The first is to assist a witness or an interested person to give evidence for the benefit of the Independent Commission Against Corruption. The second is to ensure that the legal rights and the interests of a witness or an interested person are protected." (p.25)

2.2.2 When Patrick Fair appeared before the Committee representing the Law Society on 04 August 1992 he spoke about the role of legal representation before the ICAC largely in terms of assisting witnesses and others under investigation to cope with the trauma of an ICAC investigation.

"[T]he legal profession's perspective on this issue, of course the legal profession's role in assisting witnesses before the Independent Commission Against Corruption is to see that they understand what is happening to them before the Commission and that the Commission does not exceed its powers — if that is possible — in its dealing with those people, and also that they suffer as little stress and trauma as a result of their experience before the Commission as possible.

In that role the legal profession comes into contact with witnesses who are called before the Commission when they are in their most vulnerable position, and also encounters quite directly the impact of the force of the Commission's powers in a way which neither the Commission itself nor other members of the community are in a position to experience. I think the position which the legal profession will express before the Commission comes from that perspective. Secondly, the impact of the Commission on witnesses is substantial....

[S]ome of the submissions relating to witnesses are put on the basis that the Independent Commission Against Corruption's powers are relatively limited and that it can only express opinions. Unfortunately, the profile of the Independent Commission Against Corruption is such — and its role is so widely known — that that is not how members of the public coming before the Commission perceive their position. They feel extremely vulnerable in relation to what the Independent Commission Against Corruption might say about them or what it might find about them and what in fact it is doing with them. And the power which the Commission has in dealing with them sufficiently serious that whether or not it can in fact make a criminal finding against them is really a secondary consideration because clearly it is a State body and many people are not used to being dealt with — in the manner that the Independent Commission Against Corruption deals with people — by State institutions.

In relation to witnesses, the Law Society would submit that it is a common reaction of witnesses called before the Independent Commission Against Corruption that they feel some fear. They definitely feel weakness out of ignorance and in some cases experience trauma. We would endorse the comments of Peter McClellan, Q.C., in relation to those matters. I think the position is well set out in his submission to the Committee in relation to both the role that solicitors play in explaining to witnesses their need to co-operate and their position in relation to the Independent Commission Against Corruption, and also in moderating their behaviour so that they might perform a useful function in informing Independent Commission Against Corruption about what they know and what might be relevant to the Commission's inquiries."

- 2.2.3 The role of legal representation before the ICAC was put most fully in the written submission the Committee received from Peter McClellan QC. He argued that, in addition to assisting those under investigation, legal representation for witnesses and others under investigation could also benefit the ICAC. He also argued that the public interest will be best served where it can be shown that persons prejudicially affected by ICAC inquiries have had effective representation.

"I have no doubt that a person who is capably represented during an investigation will benefit. The public interest in ensuring that a fair and fully informed inquiry takes place is also best served by adequate representation for an affected person. Public confidence in the ICAC will be maintained if adverse findings are made where there can be no suggestion that the person was prejudiced by a lack of adequate representation. It must be understood that my remarks are not intended as a criticism of the ICAC or the investigative process. I would make the same comments about persons who may be affected by a judicial or quasi-judicial process.

It is my view that effective representation can be of great assistance to the tribunal as well as the person under investigation. The areas where representation can be of significant assistance are:

- (a) In providing general support and guidance for persons being investigated. Guilty or innocent, the process of an investigation is traumatic for most people. It is often so traumatic, especially the giving of evidence, that people are not able to offer a proper account of their actions. The stress can sometimes make the evidence of truthful people appear unreliable. (Let me hasten to say I have also known the opposite to occur.) Of course a good inquirer will be on the look-out for these difficulties, but he or she, however astute, will not always be able to identify or adequately alleviate the problems.*
- (b) Where the investigation actively seeks the assistance of the investigated, a number of matters can arise. If a statement is required, legal assistance may prove valuable, especially in ensuring that a full account of relevant information, rather than some truncated and sometimes misleading account of events is given. My experience suggests that otherwise intelligent and articulate people may not have an acute appreciation of matters relevant to their particular predicament. I acknowledge that there is also a potential for obfuscation in this process. The inquiry process must also be alert to these problems. However the benefit in having an experienced person assist with the preparation can be considerable and will often assist in shortening the inquiry.*
- (c) It is not uncommon to find that an allegation will be supported by evidence which deserves stringent challenge. Although counsel assisting has an obligation to undertake this task, he or she will not always be able to do it with the same effect as counsel assisting has to balance the interests of all whereas counsel for one interested party can dedicate all energies to the interests of that party. There is also a not unnatural reluctance of a person being investigated to entrust to counsel assisting the confidences which may be necessary to form the basis for an effective cross-examination.*
- (d) From time to time it may be necessary for a representative to intervene to protect a person being investigated when they are giving evidence. Hopefully the need will not often arise. However it is more likely that assistance can be given to the person through the re-examination process. An advocate who has been given full instructions by a client and whose role is only to protect that client will be well placed to assist the investigation by ensuring that the client's position is fully understood by the investigators.*

- (e) *Perhaps of greatest value is the opportunity afforded the advocate to make submissions on behalf of his client. Few lay people will understand the ICAC Act. Even fewer will have an understanding of the potential accusations and/or criminal offences which can arise for consideration during an inquiry. The recent "Metherell investigation" provides a clear illustration of the advantages of adequate representation to a person being investigated. Counsel assisting formed the view and submitted that all the persons under investigation had committed or were implicated in conduct which constituted bribery. The law of bribery is a mystery even to some lawyers. Aiding and abetting even more so. There is no possibility that any of these people could, without legal assistance, have reasonably responded to this submission. Their representatives did, in detail, and the submissions were accepted by the Commissioner."*

- 2.2.4 Peter McClellan QC also responded in his submission to suggestions that legal representation was unnecessary in ICAC inquiries and that witnesses should have no fear about going along and merely telling the truth.

"It has sometimes been suggested that legal representation is unnecessary in an investigation. It is asserted that there is no problem if every one just goes and 'tells it as it is'. Attractive as this may be, I doubt if any one who has been investigated or who has intimate knowledge of an investigation would share the view. Letter writers to newspapers and, sometimes, editorial writers do not appear to understand the dynamics of an investigation and perhaps do not accept (as I am sure the investigators do) that even the most able investigators are at risk of 'getting it wrong'. Such people overlook the public interest in ensuring that a person under investigation has a reasonable opportunity to put his case. It is the fundamental right of an accused person in criminal proceedings to representation. Given the nature of the proceedings, such a right must be afforded a person under investigation by the ICAC."

- 2.2.5 Also instructive in establishing the role of legal representation before the ICAC is the following exchange between the Committee Chairman and Peter McClellan QC when he gave evidence before the Committee on 22 September 1992.

"CHAIRMAN:

Perhaps first of all I think you mentioned you appeared for Mr Humphrey in relation to the Commission's inquiry relating to Mr Greiner and Mr Moore. Mr Humphrey being Director-General of the Premier's Department is no doubt a very articulate person and he was fully conversant with the facts of that inquiry. Why couldn't he just go along and tell the truth, tell what he knew without any legal representation whatsoever?

Mr McClellan:

Firstly, yes he is a very intelligent, articulate person, probably known to many members of the Committee. And secondly, of course, there was no question but that he could go to the inquiry and tell the truth. However, there were a number of matters beyond that which I would believe required that if he was to be treated fairly he should be represented.

Firstly, any one appearing before an ICAC inquiry is necessarily on foreign ground. No-one, unless they have been there before and that is most unlikely, would be familiar with the environment in which they are required to give their evidence, or indeed the way in which the Commission conducts itself. And most people will react with considerable apprehension as a consequence of that lack of familiarity. Secondly, a person such as Mr Humphrey will need assistance in ensuring that the material which he is able to put before the inquiry is directed to the issues which the inquiry is likely to want to investigate and my experience would suggest that a lawyer familiar with the inquiry process is able to assist in that respect. But perhaps of greatest significance in the circumstances of Mr Humphrey, but this will vary from person to person, is the benefit which a person such as Mr Humphrey can derive from a legal representative who is able to make effective submissions to the Commission in dealing with his particular circumstances.

You would all understand, I am sure, that Counsel-Assisting that inquiry made a submission, which of course he was able and it was proper for him to make, that those being investigated were party to bribery and that Mr Humphrey had aided and abetted the bribery. Now, a great many lawyers, not to say senior public servants would not really even profess to begin to understand what is involved in bribery, the technical nature of the conditions which surround the offence are difficult. Aiding and abetting would add a further complication. There would be no question but that Mr Humphrey would not have been able to himself, unrepresented, deal effectively with the submission which was put. And the fact that he had a legal representative I am sure would be seen by him and others as being a significant advantage for him in those circumstances.

The submission of Counsel-Assisting, of course, was not accepted by the Commissioner and not accepted substantially for the reasons put forward by those appearing for the relevant affected persons. Now, they are circumstances relevant to Mr Humphrey, there will be in relation to other people various reasons turning on much of the same general area why it is appropriate for them to be represented if they end up before an ICAC inquiry." (pp. 2 and 3)

2.3 DISTINCTIONS BETWEEN WITNESSES

2.3.1 To date the majority of witnesses appearing before the ICAC have not had legal representation. The following figures were included in the ICAC's submission to the inquiry, dated 15 June 1992.

"The information requested by the Committee about representation of witnesses at Commission hearings is as follows:

- ◇ Total number of witnesses: 1,280
- ◇ Witnesses with no representation: 796
- ◇ Witnesses represented by a solicitor: 298
- ◇ Witnesses represented by junior counsel: 99
- ◇ Witnesses represented by senior counsel: 87."

2.3.2 The Committee subsequently requested more detailed statistics from the ICAC on the different categories of witnesses appearing before the Commission. These figures are contained in appendix two to the report. Based upon these figures the Committee would emphasise that Members of Parliament represent a small minority of witnesses who have appeared before the Commission. The recommended changes to the operation of s.52, apply equally to all members of the public, including MPs.

2.3.3 It appears that the key factor as to whether witnesses have had legal representation is the particular nature of their involvement in an ICAC inquiry. The ICAC in its submission sought to draw a distinction between "witnesses pure and simple" and "affected persons".

"Witnesses in Commission hearings will be of different types performing different functions. Some will be co-operative, purely providers of information, assisting the Commission. There will be others of whom counsel assisting the Commission will need to ask hard questions, perhaps more in the nature of cross-examination than examination.

In the Commission's view witnesses pure and simple will rarely need legal representation. Some may benefit from legal advice, probably mostly about the right to object to answering questions and the consequences thereof. The Commission, through either presiding Commissioners, Commission lawyers or Commission publications is capable of informing witnesses about the provisions of ss.37 and 38 of the ICAC Act and the consequences flowing therefrom. Some witnesses may prefer to discuss their own situations with a private lawyer. It must be borne in mind that the purpose of Commission hearings is to ascertain the truth, and the role of witnesses is to come along and tell the truth.

Legal representatives for simple witnesses rarely play other than a most limited role, other than advising witnesses of the right to object to answering questions.

The role lawyers perform in courts, such as objecting to lines of questioning, is more limited in Commission hearings because of the investigative nature of those hearings and the provisions of s.17 of the ICAC Act. Their presence may serve as a comfort to a witness. Lawyers have sometimes assisted the Commission by advising recalcitrant witnesses to be more co-operative; than can be in both the witnesses' and the Commission's interests.

A distinction can be drawn between the positions of simple witnesses and 'affected persons'. Again, in respect of the latter lawyers sometimes perform a limited role. One role which lawyers for 'affected persons' can perform for their clients, is to cross-examine witnesses giving evidence against their clients. That can assist the Commission.

Lawyers for 'affected persons' can also make a contribution by making submissions as to findings on behalf of their clients. That is probably best done when the lawyers have been present during the evidence which is to be the subject of the submissions and if the lawyers have participated in questioning witnesses. It could be done on the basis of transcript, but not as well as by observing live witnesses.

Submissions best assist the Commissioner, and thereby clients, if they do more than simply respond to submissions of counsel assisting."

2.3.4 The term "affected person" appears in section 74A of the ICAC Act. Section 74A(2) specifies that certain statements must be contained in a Commission report in respect of "affected persons". Section 74A(3) defines "affected person" as follows.

"(3) An "affected" person is a person described as such in the reference made by both Houses of Parliament or against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned."

This term was introduced into the Act in November 1990 it replaced the term "persons substantially and directly interested in the subject matter of the investigation" which had been included in sections 74(5) and 74(6) which were repealed. However, the term person "substantially and directly interested in any subject matter of a hearing" is used in section 32 in relation to right of appearance of an affected person at a hearing. This change to the Act followed comments in the ICAC's North Coast Report which drew attention to what the Commission saw as the "unfortunate" use of the term in two separate contexts of the Act.

"The persons in respect of whom the Act requires findings as to whether there is or was evidence etc., are all those regarded as substantially and directly interested in the subject-matter of the investigation. That is unfortunate,

because the term "substantially and directly interested in the subject-matter" is also used in the Act in another context.

The only persons, other than witnesses, who may appear and be represented at a hearing before the Commission, are person substantially and directly interested in the subject-matter of the hearing (which must be part at least of the subject-matter of the investigation). They can include people who may be affected by the corrupt conduct of others, without there being any suggestion that they are themselves guilty of any misconduct. Yet, in order to obtain leave to appear, they need to be classified in a manner that requires that they be the subject of a finding in the Report.

This problem would be overcome if,

- (a) s. 32 of the Act were amended to give the Commission power to grant the right of appearance to such persons as the Commission is satisfied have a sufficient interest in any subject-matter of the hearing, and
- (b) s.74(6) were amended, so that it only applies to persons in respect of whom substantial allegations have been made."

2.3.5 When Peter McClellan QC appeared before the Committee on 22 September he made the point that the definition of a person as substantially and directly interested may be more relevant than a definition of a person as an affected person.

"...the preamble and the question used the expression again "affected" person. Again can I just say, it is perhaps a small point but the more appropriate question with respect is whether or not a person meets the test of substantially and directly interested as s.32 contemplates. There may not be a great difference in substance but it is possible that someone who is substantially and directly interested may not end up being an affected person." (p.5)

2.3.6 In addition to the distinction between "affected persons" and "witnesses pure and simple" referred to above, Peter McClellan QC drew a distinction between public officials and private individuals under investigation by the ICAC. He said that any ICAC investigation involving a holder of public office will only involve that person because of their position as a public official. He stated that, "it is obvious that an inevitable possibility for a person holding a public office is investigation by the ICAC". He suggested that all public officials granted leave to appear before the ICAC under s.32 should therefore be legally represented.

2.4 COST OF LEGAL REPRESENTATION

2.4.1 The cost of legal representation was discussed in the former Committee's Second Report on Commission Procedures and the Rights of Witnesses, dated February 1991. That report provided a number of examples of the cost of legal representation before the ICAC. These included:

North Coast inquiry

- ◇ Ocean Blue group of companies: \$1.4 million
- ◇ National Party of Australia NSW: \$150,000
- ◇ Private individual: \$110,000
- ◇ ICAC Counsel Assisting: \$510,697.80

RTA inquiry

- ◇ Australian Transport Officers' Federation: \$100,000

The former Committee concluded that the cost of legal representation before the ICAC was prohibitive for most private citizens. Nothing that has come before the present Committee in this inquiry has changed the Committee's view on this matter. The cost of legal representation before the ICAC remains prohibitive for most private citizens, or for anyone not receiving financial assistance.

2.4.2 One new point concerning the cost of legal representation was raised during this inquiry which was not raised during the former Committee's Inquiry into Commission Procedures and the Rights of Witnesses. This was the suggestion that a significant proportion of the cost of the ICAC is presently being borne by private individuals who are funding their own legal representation. This cost is not recorded when the ICAC publishes its costing of its investigations. It was suggested to the Committee that this unaccounted cost may be larger than the annual budget of the ICAC.

2.4.3 The witness who gave most attention to the question of how to reduce the cost of legal representation before the ICAC was Patrick Griffin of the Public Interest Advocacy Centre. When he appeared before the Committee he discussed the problem of lawyers being paid hourly rates to appear at commissions and inquiries such as the ICAC.

"The other issue concerns what might be called the rate of legal aid or how one goes about calculating the entitlement, and there are various ideas around the country for that. The one most favoured by lawyers seems to be an hourly rate. One can also work out a daily rate or can in fact set a fixed lump sum amount

to cover the whole of the inquiry, no matter how it develops. I think in making decisions on all of those questions people need to keep in mind the nature of the inquiry, the skills involved and the fact that no rules of evidence apply in such inquiries, which raises the question as to whether or not you really need the most expensive legal person at your side as opposed to ordinary civil legal proceedings where some degree of legal expertise may be required."

The Chairman questioned Mr Griffin further on this question, particularly in view of the supportive comments made in the Public Interest Advocacy Centre submission for the procedures adopted by Royal Commissions in determining questions of financial assistance for legal representation. Mr Griffin was able to draw on the experience of a recent Queensland Royal Commission to make some useful suggestions for reducing the cost of legal representation.

"CHAIRMAN:

Is there something of a contradiction in your submission, on the one hand the experience of the Chelmsford Royal Commission and one you have just said in relation to the procedures of Royal Commissions as a model for handling the question of legal aid before the Independent Commission Against Corruption? You also refer to the scandalous costs of Royal Commissions, including the Chelmsford Royal Commission, and how do you resolve that apparent contradiction?

Mr GRIFFIN:

I do not think there is a contradiction. I think the model that was developed in Chelmsford was quite sound. Unfortunately, once the trough was produced the lawyers had a great temptation to sup at it endlessly. I mention at the end of my submission that the Chief Justice of New South Wales has recently had cause to comment that hourly billing rates in the legal profession tend to reward inefficiency. Likewise, if one conducts a Royal Commission, human nature is such that if you tell the lawyers involved that they can charge an hourly rate with no ceiling on those fees in gross terms and with no ceiling on the Royal Commission as to when it is due to report, a combination of greed and all sorts of other factors tend to come into play.

In that respect it is interesting to look at a Royal Commission in Queensland into Ward 10B at Townsville General Hospital. At the same time that the Chelmsford royal Commission was looking into such practices in New South Wales, Mr Carter, Q.C., a former Supreme Court Judge in Queensland, was looking at the psychiatric practices of Ward 10B at Townsville General Hospital. Newspaper reports would suggest that the Chelmsford inquiry ran for over two years and cost in the range of \$15 million. I have obtained from the

Queensland authorities some details of the Ward 10B psychiatric inquiry.

That inquiry ran for six months. The Commissioner who was an ex Supreme Court Judge was placed on a salary equivalent to a Supreme Court Judge's salary. His counsel assisting were placed on a fixed amount for the duration of the six-month Royal Commission and applications for legal aid within Queensland were made direct to the Legal Aid Commission, not to any special fund. I am informed by one of the parties this amounted to figures they quoted me this morning of \$722 per day for a solicitor and \$1,150 per day for counsel, but the sting is in the tail. In Queensland they allowed no fees for preparation, so those gross fees were calculated to cover all work taken into account in actually appearing in the inquiry and representing the people. I am not suggesting that those fees were adequate as I do not know enough about it, but I am suggesting there is a totally different way to go about both the question of representation and controlling costs. One of those ways is frankly to line item budget inquiries. I accept that is less of a problem with the Independent Commission Against Corruption due to the nature of the organisation, nonetheless it still becomes a problem when inquiries are open ended in their extent and their length."

- 2.4.4 Simon Stretton, the ICAC's General Counsel, also discussed this issue in evidence before the Committee on 04 August 1992.

"Mr STRETTON:

I have a couple of things arising out of Mr Fair's evidence but a further general matter, perhaps more importantly, relates to the issue of quantum which has not been to a great degree addressed today, and that is after you have got past the issues of who decides whether everyone gets it, whether a Queen's Counsel is justified or not, you get to the final question of how much do you pay for a Queen's Counsel and how much do you pay the junior counsel or the solicitor. Of course, it is public money and it is money which must be spent responsibly. You can draw parallels to other areas where public money is spent in payment of private lawyers to justify a degree of austerity and responsibility. I point to the legal aid scale. The Legal Aid Commission has a scale which it pays to private lawyers and there is a de facto scale within the Director of Public Prosecutions office where monies are paid to private lawyers.

It may be that the Committee should consider that there be a scale prescribed with reference to the spending of these public moneys, even a prescription of the official scale under the Supreme Court Act, which is referred to in, I think, paragraph 6 or paragraph 7 by Mr Fair. That is the result of the Legal Fees and Costs Board, which has quite a degree of experience over the years deciding what are reasonable fees for the payment of costs not only inter partes, that is

between parties, but where there are assessments of the reasonableness of solicitor client fees under the Legal Practitioners Act, those scales are applied. So there is a lot of expertise that has gone into determining these reasonably restrained scales and there is a good argument to say that one or other of those scales ought to apply. That would have the effect of imposing a degree of austerity and perhaps discouraging any element of the profession — and I am sure it is a small element — that might be tempted to drag out matters for the purpose of fees.

The issue of actual quantum is an important one. As the Committee would know, charges can vary enormously. You can have lawyers who are prepared to charge on the scale whereas the market rate, I think the phrase has been used, is double or triple that. There is a good argument for restraint in terms of scale... "

2.5 LEVEL OF REPRESENTATION

- 2.5.1 During this inquiry considerable attention focussed on the level of legal representation necessary before the ICAC. There was a broad consensus between all those who appeared before the Committee that representation by senior counsel was rarely required. The Public Interest Advocacy Centre in its submission stated that "the myth that the services of QCs are essential" needed to be firmly debunked. The Director-General of the Attorney General's Department stated that

"... there appears to have been a practice which I think the Committee has noted in its past reports, for Queens Counsel, junior counsel and a solicitor to be instructed for any witness. It is our view that in many cases a solicitor experienced in advocacy would be more than adequate to protect a witness's interests and to advise the witness as to his or her ability to answer or not answer questions or to object to them." (p.27)

- 2.5.2 Patrick Griffin of the Public interest Advocacy Centre made a strong case for limiting the level of representation before the ICAC.

Mr GAY:

In your model you felt that there was no need for Q.C.s. You felt that legal representation should be limited to a junior barrister rather than a silk.

Mr GRIFFIN:

I go much further than that. I use Q.C.s as a shorthand way of saying that is a clear example where the fees being charged are indefensible.

Mr GAY:

I do not question that, I am not a lawyer. I agree with you on the fee cost. But, in an adversarial situation where you have a top flight Q.C. as counsel assisting—I am not questioning the fact that the Commissioner may be a Q.C., that is accepted in the judgment role — yet, under your model, you limit the representation for the witness to a much lower extent.

Mr GRIFFIN:

Certainly if that representation is going to come from the public purse, yes. I do not necessarily, I must confess from my own experience, see a great distinction between Q.C.s and others in terms of the net result in an inquiry. I can certainly understand in complex litigation you might justify paying the sort of fees being charged by Q.C.s, if you get the right person to do the case. As I mentioned in my submission, I appeared as a solicitor advocate for the whole two years of the Chelmsford Royal Commission. I was at a bar table day after day, quite often staffed by up to six Q.C.s, attendant juniors and instructing solicitors. In my view and the view of some others there, my clients did not suffer as a result of the representation by a solicitor who is reasonably competent as an advocate.

Because rules of evidence do not apply and because there are very few disputes about technical matters, one's ability to represent parties before an inquiry is very much dependent upon the quality of presentation and your ability as an advocate. It seems a great pity, to my way of thinking, that the whole debate about costs before inquiries, for example, automatically assumes some role for counsel. Why are we proposing schemes whereby people are paying, at worst, for one Q.C., one junior and two instructing solicitors and, at best, a junior counsel and instructing solicitor? The duplication in an inquiry where the aim of that inquiry is to discover the truth of a particular matter, in my view, cannot be justified."

- 2.5.3 Peter McClellan QC also addressed the question of the level of representation in his submission to the Committee. Mr McClellan made the point that circumstances varied from witness to witness and that there could be no general rule.

"The second question is the level of representation. Inquiries can be lengthy. Some last many weeks or months. The cost of representation by Queen's Counsel, with junior and solicitor and associated clerical assistance, can be considerable. However, representation by Queen's Counsel or junior counsel throughout the whole of an inquiry may be unnecessary. In some cases Queen's Counsel may not be needed at all. In many cases the cheapest effective representation may be provided by junior counsel with access to

Queen's Counsel for the purpose of consultation. Sometimes the highest level of assistance may only be required to cross-examine a particular witness or maybe for submissions. There are many variations, any one of which may be effective in a particular case. There can be no general rule. Each case must be determined on its merits." (p.6)

- 2.5.4 The question of how the appropriate level of representation for a witness could be determined was discussed with Patrick Griffin of the Public Interest Advocacy Centre. He suggested that guidelines could be developed to assist the decision-maker in determining the appropriate level of representation.

"Ms BURNSWOODS:

In your model hinging the grant of assistance on establishing a case and getting leave to appear, and then you say that the scale of fees and so on are set elsewhere or the extent of legal aid is left to an outside body. How would you decide the level of representation that each of these people get? Are you proposing, say, to ban Q.C.s. and solve the problem that way?

Mr GRIFFIN:

No.

Ms BURNSWOODS:

Who would make the decision as to the level of representation?

Mr GRIFFIN:

I do not want to ban anybody but what I want is that people who are receiving money from public sources be paid only a reasonable amount.

Ms BURNSWOODS:

Who would decide it and on what criteria?

Mr GRIFFIN:

It can be done in a number of ways. You can use a body like the Legal Aid Commission that has some years of experience in looking at work and looking at fees and working that way. You could have someone like the Fees and Costs Board who have some experience. You could set up a committee to do it. You could do a survey of what is paid in similar inquiries in other parts of Australia and ask yourself why the cost in Sydney and Melbourne seems so

disproportionately large compared to the cost of inquiries of the same nature in other places. It just seems to me that the one thing we have to avoid is some notion that one is entitled to bring 'market' rates to a public inquiry.

Ms BURNSWOODS:

I agree with you that the mechanics of achieving it strike me as difficult.

Mr GRIFFIN:

It will never be a scientific decision. It will be a question of looking at what work is to be undertaken; what level of expertise and experience is required to do that work adequately and what is a fair amount in the light of those two factors.

Ms BURNSWOODS:

You are suggesting that the original decision on leave to appear would not go into the question of the level of representation. The whole discussion about level of representation would be left to a different body?

Mr GRIFFIN:

I am suggesting it could be either. I am suggesting that leave clearly has to be a question for the Commissioner heading the inquiry. Whether the Commissioner then decides on the extent of legal aid provided or whether that question is answered by an independent body outside the Commission I think is a matter of personal view."

- 2.5.5 Another important aspect of this question is the effect upon the level of representation throughout an inquiry of the ICAC's selection of counsel assisting. Mr Nagle took this matter up with the ICAC's General Counsel at the hearing on 04 August 1992. Mr Gay also pursued the same issue with Patrick Griffin of the Public Interest Advocacy Centre.

"Mr NAGLE:

... if a Commissioner is a Queen's Counsel and the counsel assisting is a junior barrister, a fair amount of fear is removed by a person not thinking he is about to face a Commissioner and counsel assisting who are both senior counsel. A person may think he or she is in jeopardy and has to match those big guns with big guns. Is that the situation?

Mr STRETTON:

I can understand how anyone in any litigation, as well as in an inquiry before the Independent Commission Against Corruption, might want to match a Queen's Counsel on the other side."(p.21)

"Mr GAY:

Would I be going too far to suggest that you believe the Independent Commission Against Corruption may be over equipped in having Q.C.s as the counsel assisting?

Mr GRIFFIN:

They can certainly be criticised for that. I do not know enough about particular inquiries to give examples, but the degree to which whenever the legal fraternity become involved in any matter, they look first to the level of representation of the other parties before deciding what representation they want, rather than looking first to the nature of the beast with which they are dealing and what is adequate to do the job—it worries me. I am sure even non-lawyer committee members would be familiar with the fact that quite often senior lawyers are briefed, both in court cases and inquiries, partly because of this desire to keep matching what someone else might have."(p.61)

- 2.5.6 Mr Nagle suggested to the ICAC's representatives at the hearing on 04 August 1992 that it might be better for the ICAC to always brief junior counsel as counsel assisting.

"Mr NAGLE:

Would it not be better for all counsel assisting the Commissioner to be of the junior Bar and not of the senior Bar?

Ms SWEENEY:

Most of them or the preponderance of them are, and where senior counsel have been used, they are not used all the time.

CHAIRMAN:

The question was "Would it be better?" I should have thought that question is susceptible of a yes or no answer.

Mr STRETTON:

Despite the fact that I am a junior counsel I would have to say no, but I do not entirely disagree with you in that many cases are perfectly happily able to be coped with by junior counsel. Some may involve complex questions of law or very complex questions of fact, matters of great difficulty where I can see a justification, in cases like that, for having more senior counsel, whether that person is a Queen's Counsel or not."(pp 22-23)

2.5.7 It must be noted that the ICAC in its submission to the inquiry stated that in some cases where it briefs junior counsel as counsel assisting individuals have still briefed senior counsel.

"The Commission has noted a tendency to over-representation by Queen's Counsel in matters where their skills are not necessary. The Commission has tended to be generally conservative in its use of senior counsel as counsel assisting. Leaving aside those matters in which Commission General Counsel who were senior counsel acted as counsel assisting, the Commission has had several hearings without senior counsel or with senior counsel only involved for part of the hearings. When the Commission has briefed junior counsel and communicated that fact to 'affected persons', those persons have sometimes still briefed senior counsel.

Even when the Commission briefs senior counsel it is not a necessary concomitant that affected persons should have senior counsel. The role of counsel assisting is quite different from that of counsel for affected persons. Commission hearings are not litigation inter partes. Counsel for affected persons are not required to 'present a case'."(p.3)

-3- FINANCIAL ASSISTANCE FOR LEGAL REPRESENTATION

3.1 EX GRATIA PAYMENT SCHEME

- 3.1.1 There are two separate schemes for the provision of financial assistance for legal representation to witnesses appearing before the ICAC. The first of these is the *ex gratia* payment scheme. This scheme provides for Ministers of the Crown and public officials who appear not only before the ICAC but also before the courts, Royal Commissions and other Commissions of Inquiry in connection with their official duties. The Committee sought a submission from the Cabinet Office in relation to the operation of this scheme and the Acting Director General of the Cabinet Office, Roger Wilkins, gave evidence before the Committee on 04 August 1992. The Cabinet Office submission contained an extract from a letter from the Cabinet Office to the Attorney General dated 7 August 1989 which set out the guidelines for the operation of the *ex gratia* payments scheme in respect of witnesses appearing before the ICAC.

(Reproduced in full over page)

EXTRACT FROM A LETTER FROM THE CABINET OFFICE TO THE
ATTORNEY GENERAL DATED 7 AUGUST 1989 COMPRISING THE
GUIDELINES FOR THE GRANT OF EX GRATIA LEGAL ASSISTANCE TO
STATE PUBLIC OFFICIALS APPEARING BEFORE THE ICAC

".....(T)he guidelines for legal assistance for State public officials should be as follows:

- (i) No Minister or public official will be granted legal assistance unless the involvement in the hearing relates to, concerns, or arises out of their official functions. The Premier will be guided by your advice on this issue.
- (ii) No Minister or public official should be granted legal assistance unless they provide sufficient grounds to show that they may be found to have a substantial and direct interest in the subject matter of the hearing. The Independent Commission Against Corruption will eventually determine that question, but in advance of any determination by the Commission, the Premier will be guided by your advice on this question.
- (iii) In each case, Minister and officials will need to make an application to you in the first instance indicating fully the circumstances of their involvement.
- (iv) You are then to forward your advice to the Premier together with your assessment of the matters indicated above, and the Premier or Cabinet will then make a determination in light of your advice and on the merits as to whether legal assistance should be granted.
- (v) Legal assistance should be provided at a level recommended by you and reasonable and proper costs should be moderated by the Crown Solicitor. *Funds will be made available by the Premier's Department on an ex gratia basis.**

The Premier understands that these guidelines are consistent with the practice of former Governments in relation to inquiries such as Royal Commissions, Special Commissions of Inquiry and other ad hoc inquiries.

* Note:

On 29.11.91, the Premier adopted the policy that the cost of providing ex gratia assistance should be met from the existing budgetary allocation of the Minister who has applied for, or recommended, the provision by the Premier of ex gratia assistance.

3.1.2 When he appeared before the Committee on 04 August 1992 Mr Wilkins indicated that there is a notional allocation in the Premier's Department budget of \$400,000 for the ex gratia payment scheme. he added that,

"It is not necessarily an indication of what the costs might be. That is often recouped through supplementation. It should be indicated also that now funds are required to be made available out of departmental budgets. That pool of money would only be used for exceptional cases in which people within the Premier's own portfolio are having their costs met out of the ex gratia scheme."
(p.42)

In view of the fact that the cost of the ex gratia scheme is now being met from departmental budgets, the Hon Jan Burnswoods asked Mr Wilkins whether the figure allocated and/or expended each year would continue to appear in the budget papers. Mr Wilkins took the question on notice and replied in writing in a letter dated 7 August 1992.

"I am writing to you in reference to the question asked by Mrs Burnswoods MLC during the course of the evidence which I gave to your Committee on 04 August 1992. As you would no doubt recall, she asked whether there would continue to be information available about how much Departments are spending on ex gratia legal costs before the ICAC now that the payment of those costs has been delegated to individual Departments.

I am advised by the Treasury that Departments have been directed that the costs involved are to be met from existing budget allocations and accounted for under an appropriately worded Other Services item. This means that ex gratia payments in general terms will be separately accounted for although the costs of ICAC ex gratia payments may not be separately itemised."

3.1.3 In answer to questions from the Hon Jan Burnswoods MLC Mr Wilkins went on to outline the mechanics by which decisions about the granting of assistance, and the level of assistance, under the ex gratia scheme are made. One point of particular significance from this evidence is the tendency to rely upon the Crown Solicitor for representation and to limit the level of representation to the provision of a solicitor only.

"Ms BURNSWOODS:

Point five in the 1989 letter, the guidelines, deals with the levels of assistance. Can you tell the committee anything about the way in which decisions about the level are made? I am referring to the attachments to the letter. It is just an extract from the letter of August, 1989, the guidelines. Point five deals with the level.

Mr WILKINS:

I cannot tell you an enormous amount about how decisions on level are made. In general terms, as far as ordinary public servants are concerned, one of the things is that decisions are made in such a way as to try to contain costs. They are told that they have to use the Crown Solicitor. I am not sure about this but I think that generally they do not get a barrister; sometimes they do. Sometimes the Attorney General will tell us that a different level of representation should be given to someone. I assume that you have spoken to the Attorney General people about this, but the level is in some way related to an assessment about the complexity and perhaps the profile of the person concerned. ...

But I think you would look at things like complexity and the profile of the person concerned and try to make a determination about the correct level of representation. As I suggested, at the moment I guess the policy is to try to constrain costs as much as possible so that unless there is some problem with say the Crown Solicitor appearing because of conflict of interest or something like that, and perhaps in some cases you want the Crown to be held in reserve to make submissions on behalf of the Crown as opposed to some particular crown employee, then a letter would go to the person saying, "Yes, the Premier has agreed to meeting your costs but you should do it through the Crown Solicitor".

Ms BURNSWOODS:

I suppose that kind of thinking shows up in the examples of people who have been given assistance, basically in chronological order. I notice on the second page comments about all being represented by an officer from the Crown Solicitor's office, which presumably reflects a concern to contain costs. On the first page there is none of that information at all.

Mr WILKINS:

I think it is fair to say that financial impact is something you learn about and the ways in which to pull back on costs. Your interpretation of a series of events over time is probably a reasonable interpretation.

Ms BURNSWOODS:

But you would guess that the level of assistance is related in part to the costs of getting assistance.

Mr WILKINS:

I think that is right, and I am not sure that that is an illegitimate consideration anyway; it is perfectly legitimate.

Ms BURNSWOODS:

The letter gives three examples of people who have been refused assistance, two of whom obviously on the basis that they were not viewed as public officials. So in fact that only leaves one public official who was denied assistance. Do you know any of the criteria that might be involved? It seems a very small number of refusals when in effect only one Minister or public servant has been refused assistance.

Mr WILKINS:

Basically the reality is that it is difficult. There is a fairly strong presumption that people get assistance if they are substantially and directly affected. It is difficult to prejudge a case and it is difficult to come to a conclusion that a person is not entitled to legal representation because they are coming to you at a time before there has been any sort of inquiry. If we say that we think a person is corrupt then we are prejudging precisely what the Independent Commission Against Corruption was set up to look at. Unless there is some very clear discrediting feature it would be difficult to knock them back. You might have noticed that the sergeant was knocked back on the basis that he was not substantially and directly interested, which is almost a technical point. That is something that the Independent Commission Against Corruption can and will eventually tell a person whether he or she is substantially and directly concerned.

Ms BURNSWOODS:

Which implies that no-one else may have a strong and obvious interest, on reading through the mechanics of applying?

Mr WILKINS:

That is right. What does not show up on that are the people who might ring you up and say, 'I have to give evidence down at the Independent Commission Against Corruption, could I get legal representation?' and you say, 'No, do not worry about it'.

Ms BURNSWOODS:

Or, 'Don't bother applying, you will not get it anyway'.

Mr WILKINS:

Yes. There is no formal application as such. They just ring up the legal officers and maybe even the Attorney General's people, who might say, 'Don't worry about it, if you are not going to get representation you probably do not need it'.

Ms BURNSWOODS:

I am pleased to get that information about how these sorts of figures will show up in budget papers or wherever else.

Mr GAUDRY:

That means there is some link between yourself and the Independent Commission Against Corruption prior to making decisions.

Mr WILKINS:

That will come through the Attorney General's people. When it arrives on our desk at the Cabinet Office, we have a recommendation from the Attorney telling us whether a person is known to be substantially and directly involved because the Independent Commission Against Corruption has said that or whether the Attorney thinks it is almost certain that the person will be. You might notice in the guidelines that there is provision, where a ruling has not been made, for the Attorney General to make an assessment about whether it is likely that a person will be substantially and directly affected. I do not know whether the Attorney General's officers actually contact the Independent Commission Against Corruption and discuss the matter with them or not, but often the person making the application is asked to indicate the level of involvement. I assume it could be made on the basis of just information supplied by the applicant. I am not sure. You will have to ask the Attorney General's people." (pp 48 - 50)

3.2 SECTION 52

- 3.2.1 The second scheme for the provision of financial assistance for legal representation before the ICAC exists under s.52 of the ICAC Act. This provides for witnesses to make application to the Attorney General for financial assistance and applies to private individuals, that is, to those other than public officials who are covered by the *ex gratia* scheme. This inquiry was sparked by difficulties which the former Attorney General

experienced in determining applications under s.52. He made a submission to the Committee which outlined what he perceived to be weaknesses or problems with the structure of s.52. The Director General of the Attorney General's Department, Laurie Glanfield, gave evidence before the Committee on 04 August 1992 in relation to the operation of s.52.

- 3.2.2 In the 1990/91 financial year there was a budget allocation of \$500,000 for assistance under s.52, of which \$164,000 was spent. The 1991/92 allocation is again \$500,000. Mr Glanfield pointed out that this figure "falls into a category of items called 'protected items'. Therefore, there is no money left over. It is simply provided by Treasury. Similarly, if there is an over expenditure Treasury would normally top up the shortfall of funds." Furthermore, Mr Glanfield assured the Committee that there is no relationship between these funds and the funding for the Legal Aid Commission, which has an annual budget of \$84 million, funded pursuant to an agreement between the State and Federal Governments.

Procedure for making applications

- 3.2.3 In his letter to the Committee, dated 7 May 1992, in which he requested that the Committee review the provisions of s.52, the Attorney General drew particular attention to three areas of its operation. The first of these was the procedure for the making of an application under s.52. The Attorney General's letter referred to the lack of specification of the details to be provided by applicants. The former Attorney General's submission referred to problems in verifying the details provided by applicants and difficulties in considering applications received shortly before applicants are to give evidence before the ICAC.

"Applications for assistance under section 52 are more often than not received shortly before the applicant is to appear before the ICAC. Clearly, it is preferable for an applicant to apply immediately he/she receives a summons and the co-operation of the ICAC would be required to ensure that witnesses are notified as soon as possible of the need for their attendance, particularly if the ICAC's views are to be obtained on section 52 applications.

Applications are often inadequate or are submitted subsequent to a witness's appearance. Section 52 provides that an application for assistance may be made by a witness who is appearing or about to appear before the ICAC. There is no discretion under section 52 for consideration to be given to a request for assistance after the application has given evidence. The Committee will no doubt agree that an information sheet setting out the terms of the section, the procedures to be adopted when making an applications, that is, to whom applications should be sent, the form of applications details and material to be submitted etc will ensure that full applications are made at the appropriate time. The ICAC may issue the sheet upon request or when a

summons is served."

In a written response to the former Attorney General's submission the ICAC stated that it attempts to give reasonable notice to witnesses but acknowledged that this is not always possible.

"The co-operation of the ICAC in early notification of witnesses is desired to facilitate early applications for assistance.

The time for service of summonses in past investigations ranges from a couple of days to several weeks, with the bulk somewhere in the middle of the range. The Commission attempts to give reasonable notice to witnesses and has attempted to reduce or eradicate cases of short notice, but the exigencies of investigations sometimes require that witnesses be called at relatively short notice."

Criteria for making determinations

3.2.4 The second concern raised by the former Attorney General related to the matters to which the decision-maker is to have regard in making determinations about applications under s.52. Section 52(2) specifies three criteria to which the Attorney General may have regard in making such determinations. These are:

- "(a) the prospect of hardship to the witness if assistance is declined;
- (b) the significance of the evidence that the witness is giving or appears likely to give;
- (c) any other matter relating to the public interest."

3.2.5 In relation to the "hardship" test the former Attorney General in his submission to the Committee pointed out that there is no definition of hardship in s.52. He stated that "no assistance is provided as to how the decision-maker should view hardship or how it should be assessed". Mr Glanfield suggested in his evidence before the Committee that the hardship test under s.52(2)(a) could "simply be the application of the Legal Aid Commission's means test which takes into account income and liquid assets of the applicant". The Legal Aid Commission's means test could be applied by the Attorney General or any other decision-maker under s.52.

3.2.6 In relation to the "significance of evidence" test the former Attorney General in his submission again drew the Committee's attention to the practical difficulties faced by the decision-maker in applying this test.

"No guidance or confirmation of the particular witness's role in the ICAC hearing or the significance or otherwise of his/her evidence is given other than those details provided by the witness applicant." (p.2)

The ICAC provided a written response to the former Attorney General's submission. On this point the ICAC stated that,

"The Commission has responded to requests for such information from the Attorney General's Department in the past although such requests have not been frequent. Sometimes it is possible to say in advance that a particular witness' evidence is likely to be significant but sometimes, and more often, that assessment cannot be made before the evidence is given."

Furthermore the ICAC submission gave four examples where the Commission had made submissions to the Attorney General in respect of applications under s.52.

- 3.2.7 One issue of significance in relation to s.52 that was dealt with very briefly at the hearing on 04 August 1992 related to the drafting of the section. Mr Nagle asked Mr Glanfield whether the various tests under s.52(2) were to be read as conjunctive. Mr Glanfield replied that,

"I would have thought that the Parliamentary Counsel has been very careful in the way he specifically avoided using "and/or" after (b) so that you then go back to the opening words "having regard to any one or more". So the Attorney General in forming a view could have regard to one of those or any combination of them." (p.40)

Reasons

- 3.2.8 During the hearing on 04 August 1992 Mr Tink raised the question of whether the decision-maker under s.52 should be required to give reasons for the determinations made on applications. Mr Tink asked both Mr Glanfield and Mr Wilkins for their views on this issue.

"Mr GLANFIELD:

The provision is a particular discretion in the Attorney General. Although he is required to have regard to one or more of three items, ultimately it really is a non-reviewable discretion. If reasons were to be given there are implications for that and that is the subsequent review of whether those decisions were reasonable or not. My general view is that where decisions are being made, that as a matter of practice reasons should be given. There are circumstances though where the giving of reasons will not assist. It may well be in this particular case that unless the section provides much greater assistance, that the

giving of reasons is unhelpful in any event. The reasons may simply be, for example, that the Attorney General took the view that there was no prospect of hardship to the witness. It is a reason but I do not think it helps. I think anybody who is dissatisfied with the decision would seek reasons and then seek to test those in the courts. The ultimate effect of that would be that the matter comes back to the Attorney General for him to make another decision. We would go around in circles and a lot of money would be wasted. I am not persuaded that it would assist in any way....

Mr WILKINS:

I do not really know. I have not got a view on that. I suppose the danger, if looked at from one point of view, is that you might say a person should have a right to have the matter reviewed in some way and at least have reasons. Once you give reasons you are opening it up to administrative appeals and you are creating a considerably ramified system of legal aid. You might be creating a whole new area in which people might want legal costs, to challenge whether or not they should get legal costs. On the other hand, obviously it is important that a person has his or her application properly assessed, and part of that may be the giving of reasons. I do not have a concluded view. I would have to think about the costs involved in a scheme of the sort you suggest. Perhaps there may be some better way of doing it....

In that case section 52 in my view would have to be completely reworked. You would have to think what you would do with these reasons, what sort of appellate body and review process might be established. It is not simply a matter of giving reasons and that solves your problem. I think that is the beginning of another whole set of issues. I would certainly have to think a lot more about it before I could say whether I thought that was necessarily a good idea. You might notice the grounds or the matters to which the Attorney General has to have regard. Section 52(2) is put in a very discretionary form. You might find that the reasons he gives under the section as it is currently drafted might be that he does not consider it in the public interest. You may be no further advanced if he says: "We do not think your evidence is significant. We do not think it is in the public interest", and he has given reasons. What you are wanting is presumably a much more complex chewing over of the issues, with much more detailed information. That may, I think, make it administratively quite difficult as well. I mean, one would have to reframe or recast the section in the whole scheme of things."

Decision-maker

3.2.8 The third matter of concern raised by the former Attorney General in his letter to the Committee of 07 May 1992 was the question of who is the appropriate decision-maker

under s.52. Three separate issues or alternatives arose in this regard at the Committee's hearing on 04 August 1992. These were: firstly, the question of whether the Attorney General or the Premier would be the most appropriate Minister to act as decision-maker; secondly, the question of the ICAC as the decision-maker; and, thirdly, other alternative decision-makers such as the Legal Aid Commission.

- 3.2.9 In his letter to the Committee on 07 May 1992 the Attorney General pointed out that he does not have general responsibility for administering the ICAC Act. In his submission to the Committee the former Attorney General suggested that the Minister administering the ICAC Act, the Premier, may be a more appropriate decision-maker. When Mr Wilkins appeared before the Committee on 04 August 1992 he said that he did not think it was a good idea for the Premier to be made the decision-maker. He suggested that, unlike the Attorney General who has access to the advice of Crown Law officers, the Premier's administration did not have the necessary expertise to provide advice to the Premier in respect of what were essentially decisions about legal aid. Mr Glanfield was pressed on this matter when he appeared before the Committee on 04 August 1992.

"Mr MUTCH:

[I] would have thought that the Attorney is the more appropriate person because he is the chief legal officer of the State and there are certain conventions that the Attorney follows in relation to providing legal assistance to people and upholding the rule of law, et cetera. In that respect I would have thought it was inappropriate to refer something off to the Premier. The other question, of course, is that the Attorney is put in a fairly invidious position as a politician. Particularly this has come to light in recent instances of legal aid application. The Attorney obviously was not influenced by those considerations but it is something that could bear down upon an Attorney at any particular time....

I would have thought that the Attorney was really the person who should have been responsible.

Mr GLANFIELD:

I was not suggesting it should have been the Premier. I was saying that the letter was trying to raise that there were a number of options. The Attorney General has the benefit of being seen by most people to be independent and that office, referred to in the Constitution, is somewhat hallowed and I can understand why it was given to the Attorney at the time. In relation though to the question of who the decision-maker might be if it were not the Attorney General—and you have suggested a retired judge might be appointed—I think there are probably a range of options here."

3.2.10 The ICAC was very reluctant to comment upon the question of who should be the decision-maker under s.52 other than to argue strongly that it should not be the ICAC. The Commission argued that for it to be the decision-maker in respect of s.52 applications would place it in an intolerable conflict of interests.

"The Commission expresses the view that the Commission would not be an appropriate decision-maker for applications for legal and financial assistance. That would place the Commission in a position of intolerable conflict.

The Commission may be prepared to say that a particular witness's evidence is significant, even essential, to a particular investigation. It is a different question to say that because a witness's evidence is perceived as crucial to an investigation that that witness requires legal representation. It is a different question again, and a very difficult question, for the Commission to say that one person should, but another should not, receive financial assistance for legal representation, when the Commission might be called upon to make findings about those persons' conduct.

It is one thing to say if a person were legally represented that would assist the Commission. It is quite another thing to say that the public should pay for that representation or not. That may require decisions to be made which could not be made at the beginning of the investigation without prejudging the very matters to be determined by the investigation.

Refusal by the Commission of an application for assistance might compound the sense of grievance occasioned by an adverse finding and thereby "muddy the waters" in relation to the Commission's principal functions. Refusal by the Commission of an application for assistance might lead to judicial review, which might unduly delay and thereby cause prejudice to an investigation. Refusal by the Commission of an application for assistance might give rise to claims of bias by the Commission which might delay the investigation hearing, or require a change of Commissioner for the hearing, give rise to litigation, or undermine confidence in the ultimate findings of the investigation. None of those things is desirable.

In the Commission's view it is best to keep separate the decisions as to financial assistance for legal representation and the decisions as to whether conduct was corrupt or otherwise."

3.2.11 Patrick Griffin of the Public Interest Advocacy Centre was asked for his comments on the ICAC's submission that it should not be the decision-maker under s.52.

"Ms BURNSWOODS:

I do not know whether you have read the Commission's submission but it is quite opposed to that. What sort of comment do you have on its view?

Mr GRIFFIN:

I was surprised by their submission. I can understand that it is comfortable for them not to have any involvement because to be involved in the level of legal aid potentially embroils them in more controversy but, by the same token, the Commission is the best body to make those decisions and to the extent that they have received the complaint, they have done the preliminary work on the investigation, they have a fair idea of the nature of the evidence that will come out during the inquiry and who will be called; from all those points of view they are better positioned than anyone else to make that assessment and to make it as part and parcel of their work. I have read the concerns they have about perceived bias or conflict. I think they can be overcome but I do not have a strong view as to which model you would prefer to go with; whether you have the extent of legal aid decided by the Commissioner himself or by some independent body outside the Commission. I think the guidelines that apply and the level of fees that are set at the end of the day are more important than who actually makes the determination."

- 3.2.12 During the Committee's hearing on 04 August 1992 another alternative decision-maker was suggested to the Committee. The ICAC suggested that the Legal Aid Commission may be a suitable decision-maker under s.52.

"CHAIRMAN:

The Commission's submission and, in fact, your elaboration of that submission, declined to comment on who would be the most appropriate decision-maker in relation to section 52. Do you, at least, have a submission as to a range of people who might be appropriate decision-makers?

Ms SWEENEY:

The Commission does not disagree with the view put by some of the submissions that the Legal Aid Commission may have a role, although there is no perfect system. It seems every system that has been suggested has some difficulties and there is nothing to say that the Legal Aid Commission would not have difficulties if they were to take on decisions about assistance for people appearing before the Commission, as well as decisions for people appearing in other courts. That was one possible view with which the Commission does not disagree."

- 3.2.13 Mr Glanfield was asked for his response to this suggestion when he appeared before the Committee.

"CHAIRMAN:

This is a matter you have touched on in your statement, but a number of submissions have suggested there may be a role for the Legal Aid Commissioner in decision-making under section 52. What is your response to that suggestion?

Mr GLANFIELD:

To the extent that I was raising the question of whether or not we should be applying a similar test to this form of financial assistance for persons who were being, perhaps, investigated or who were giving evidence, I think the role for the Legal Aid Commission might perhaps stop at the means test which it provides in criminal matters. I am not persuaded that those persons who are in custody, awaiting the hearing of their criminal matter, should be worse off than those who are simply asked to give evidence; although it may prejudicially affect them before the Independent Commission Against Corruption. The Commission is certainly an appropriate body for making decisions about means tests and legal aid, but it could be that any decision-maker could simply apply their test. It is not to suggest, and I do not think the Attorney General is suggesting, that this function should necessarily be performed by the Legal Aid Commission."

- 3.2.14 As outlined in the introduction, the Committee wrote to the Legal Aid Commission to seek its response to the suggestion that it should be made the decision-maker in respect of s.52 applications. The response from the Legal Aid Commission raised a number of concerns and clearly stated that the Legal Aid Commission did not wish to be given this extra responsibility. Amongst the concerns raised were the fact that the Commission's merit and means tests may not be relevant to persons involved in ICAC proceedings. The Commission has a policy, however, that these tests should be applied to ensure consistency in its approach to all legal aid applications. Furthermore, the Commission stated that its present arrangements for decision making in respect of controversial applications for legal aid would not be suitable for decisions under s.52 of the ICAC Act. The letter from the Legal Aid Commission is reproduced as appendix three.

-4- DUTY LAWYER PROPOSAL

- 4.1.1 The former Committee in its Second Report on Commission Procedures and the Rights of Witnesses, dated February 1991, put forward a number of options for resolving the problem of the cost of legal representation before the ICAC. One of these options was for the creation of a position of duty lawyer, or counsel assisting the parties to be called, to advise witnesses of their legal rights before the ICAC.
- 4.1.2 When Mr Temby appeared before the former Committee in March 1991 he was asked for his response to this proposal. His response is set out below.

"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." (p. 35-36)

- 4.1.3 The ICAC provided some further comments on this proposal in its written submission to the Committee. The ICAC identified a number of problems with the proposal.

"Presiding Commissioners and Commission lawyers are capable of advising witnesses, actual and prospective, about their right to object to answering questions and producing documents, and the consequences thereof. If witnesses wanted to consult somebody else for such advice, rather than hear it from an officer of the Commission, it is unlikely they would regard a duty lawyer as sufficiently independent. Whether or not the duty lawyer was provided and paid for by the Commission or someone else they would likely be perceived by at least some as just another Commissioner's officer. If the duty lawyer was provided by the Commission there may be a potential for conflicts of interest, for example if a witness had to be advised about conduct which had the potential consequences of a contempt citation, or constituted an offence against the ICAC Act.

It is likely that persons seeking legal advice would want to go beyond the bare statutory framework, to the particulars of their own situation. Once a duty lawyer was called upon to give such specific advice to more than one witness in a particular investigation, problems of conflict would eventually arise, perhaps sooner rather than later, and the system would not work. If, in order to overcome that problem there was more than one duty lawyer engaged, problem of frequent lack of work and boredom might arise. They would not have a full-time role, because the Commission does not hold hearings on a full-time basis."

-5- FINDINGS AND RECOMMENDATIONS

5.1 LEGAL REPRESENTATION BEFORE THE ICAC

- 5.1.1 Legal representation before the ICAC serves two principal purposes. Firstly, legal representatives can ensure that the legal rights and interests of witnesses and others under investigation are protected. This ranges from the provision of general guidance and support, and assistance in the preparation of detailed statements, through to rebuttal of allegations and the making of submissions on behalf of witnesses.
- 5.1.2 Secondly, legal representation may assist a witness or person under investigation to give evidence for the benefit of the ICAC. The ICAC can be particularly assisted by the presentation of submissions on behalf of "affected persons".
- 5.1.3 Furthermore, there are strong public interest reasons for ensuring that persons under investigation have a reasonable opportunity to put their case. Public confidence in the ICAC will be maintained if adverse findings are made where there can be no suggestion that the person was prejudiced by a lack of legal representation.
- 5.1.4 The majority of witnesses before the ICAC appear without legal representation. This will no doubt continue to be the case as "witnesses pure and simple" have little need for representation.
- 5.1.5 However, there are a number of classes or groups of witnesses and others under investigation by the ICAC for whom legal representation is important. These are:
- (i) "affected persons" as defined in s.74A(3);
 - (ii) persons "substantially and directly interested in any subject-matter of a hearing" (s.32); and
 - (iii) public officials who are under investigation by the ICAC as a result of the performance of their public duties.

5.2 FINANCIAL ASSISTANCE FOR LEGAL REPRESENTATION

- 5.2.1 The cost of legal representation before the ICAC is prohibitive for most private citizens. Therefore, if legal representation is to be utilised by those nominated above, most will require at least some level of public funding for this representation.
- 5.2.2 At present almost all public officials under investigation by the ICAC are receiving financial assistance for legal representation under the ex gratia payment scheme.
- 5.2.3 However, very few private citizens are receiving financial assistance under s.52 of the ICAC Act. Whilst the Committee does not believe that all private citizens should receive assistance under s.52, the Committee is of the view that s.52 should be amended to provide a rebuttable presumption in favour of the granting of assistance under s.52 to "affected persons" and persons "substantially and directly interested in the subject-matter of a hearing".
- 5.2.4 This will not increase the number of legal representatives at ICAC hearings, as most of these people are already represented.
- 5.2.5 Although this recommendation will result in an increase in the number of persons receiving financial assistance for legal representation before the ICAC, any increase in the level of public funding for legal representation before the ICAC will be effectively minimised by the recommendations set out below under the heading "Level of Representation".
- 5.2.6 The Committee draws attention to the statistics contained in appendix two to the report. The Committee would emphasise that Members of Parliament represent a small minority of all witnesses who have appeared before the ICAC. The recommended changes to the operation of s.52, will apply equally to all members of the public, including MPs.

5.3 LEVEL OF REPRESENTATION

- 5.3.1 It is important that the appropriate level of representation be utilised before the ICAC. The ICAC is an investigatory body which aims to discover the facts of a matter. It is important that it not become bogged down in legal argument or overrun by lawyers.
- 5.3.2 In most cases representation by a lawyer experienced in advocacy work will be sufficient. Senior counsel will generally only be appropriate where the decision-maker determines that complex matters of law need to be addressed at the hearing.
- 5.3.3 If there is to be a presumption in favour of the granting of assistance under s.52, it is essential that the decision-maker be given a discretion to determine the appropriate level of assistance. In most cases this will be assistance to provide for the services of a single advocate (not a senior counsel). Where a person wishes to go above this level of

representation they should fund it themselves. The ex gratia scheme should also operate along these lines.

- 5.3.4 In order to determine the appropriate level of assistance the decision-maker should be enabled to seek written advice from the ICAC on the significance of evidence to be given by a witness, and the complexity of the matters of law to be addressed at the hearing.
- 5.3.5 Financial assistance for legal representation before the ICAC should be paid according to a specially set scale, such as those used by the Legal Aid Commission. The Law Society and Bar Association could be asked to provide a list of solicitors and barristers prepared to act for persons receiving financial assistance according to this scale, and this list could be provided to those applying for assistance.
- 5.3.6 To some extent the ICAC sets the level of representation in a hearing by its selection of counsel assisting. Wherever possible the ICAC should seek to minimise the level of representation by engaging junior counsel as counsel assisting. Furthermore, the Committee draws attention to the cost to the ICAC of senior counsel who have been engaged by the ICAC as counsel assisting (see paragraph 2.4.1).
- 5.3.7 The Committee also draws attention to the evidence of Patrick Griffin of the Public Interest Advocacy Centre quoted at paragraph 2.4.3. The Committee endorses Mr Griffin's comments about the disadvantages of paying legal representatives appearing before commissions and inquiries according to hourly rates. The Committee particularly draws attention to Mr Griffin's comments about the advantages of engaging Commissioners and Counsel Assisting at a fixed rate for the duration of an inquiry. In the case of Commissioners a rate equivalent to the salary of a Supreme Court judge would appear to be appropriate.

5.4 SECTION 52

- 5.4.1 As outlined above, whilst the Committee does not believe that all private citizens should receive assistance under s.52, the Committee is of the view that s.52 should be amended to provide a rebuttable presumption in favour of the granting of assistance to "affected persons" and "persons substantially and directly interested in the subject-matter of a hearing". The decision-maker should be given a clear discretion to determine the appropriate level of representation and assistance. Should witnesses wish to go above this level of representation they should fund this themselves.
- 5.3.2 The Committee has considered two alternatives in relation to the question of who should be the decision-maker under s.52. The Committee has noted the concerns expressed by the Legal Aid Commission about the suggestion that it should be the decision-maker. The Committee recommends that the Attorney General remain the decision-maker in respect of s.52 applications. The Attorney General should exercise this function on the advice of crown law officers. In controversial cases, such as where an application has been made by

a Parliamentary colleague, the Attorney General should have the discretion to delegate this decision-making power to the Solicitor General.

- 5.4.3 The Committee recommends that, following the amendment of s.52 to implement the recommendations in sections 5.2 and 5.3, the Attorney General should publish the criteria against which s.52 applications are to be considered. The Attorney General should also publish the procedures by which applications are to be made. These written criteria and procedures should be provided to applicants, upon request.
- 5.4.4 The Committee raises for consideration the option of providing for the Attorney General's decisions under s.52 to be able to be reviewed. One option discussed within the Committee was for provision to be made for a person dissatisfied with the Attorney General's decision about an application to apply to have the proposed Legal Services Commissioner review the decision, with particular reference to the Attorney General's application of the published criteria against which applications are to be considered.
- 5.4.5 Most applications for financial assistance under s.52 will be made prior to or while a witness is giving evidence. However, there may be some cases in which an application for assistance will be made after the event (eg. where a witness is determined to be substantially and directly interested only after the hearing has proceeded for some time). Section 52(1) should be amended to enable applications to be made after a person has appeared before the ICAC. When the decision maker accedes to a retrospective application for appropriate assistance, consideration will need to be given to the question of whether assistance is granted from the moment that the determination is made or whether assistance is granted retrospectively from a certain point in the hearing.

5.5 ACCOUNTABILITY

- 5.5.1 The Committee is of the view that the full cost of ICAC inquiries to the public purse must be accounted for. This includes the cost of financial assistance for legal representation. The Committee believes that this cost should be included as a separate line item in the break-down of the cost of completed investigations which appears in ICAC Annual Reports. If necessary, a provision could be inserted into the ICAC Act requiring the decision maker under s.52 to provide the ICAC with total figures for assistance granted under s.52 in respect of each completed investigation on an annual basis. The heads of departments should similarly be required to provide the ICAC with total figures for assistance granted under the ex gratia scheme.
- 5.5.2 The Committee is also concerned that there should be full accountability for expenditure under the ex gratia scheme, both in relation to ICAC inquiries and other inquiries or legal action. The Committee recommends that, now that responsibility for expenditure under the scheme has been devolved to Government departments, all departments should be required to account for their expenditure under the ex gratia scheme in their Annual Reports.

5.6 OTHER OPTIONS

5.6.1 During its inquiry the Committee considered a number of other options to address the cost of legal representation before the ICAC. The Committee considered a proposal for a position of duty lawyer to assist witnesses before the ICAC. Chapter four sets out the ICAC's reservations about this proposal. It is as a result of these reservations that the Committee has not adopted this proposal.

5.6.2 Other proposals considered but not adopted by the Committee include:

- ◇ the Law Society's proposal that all witnesses before the ICAC be given financial assistance for legal representation; and
- ◇ a proposal that the ICAC be responsible for financial assistance for legal representation, and that this come out of the ICAC's annual budget.

5.7 CONTEXT

5.7.1 This inquiry into section 52 of the ICAC Act and the cost of legal representation has had a very specific focus. However, in conducting this inquiry the Committee has been mindful that the problems surrounding the question of legal representation must be seen in a wider context.

5.7.2 Specifically, attention is drawn to the issues discussed by the former Committee in its Second Report on Commission Procedures and the Rights of Witnesses, dated February 1991. In that report the former Committee called upon the ICAC to conduct a study of the inquisitorial system of criminal justice as it operates in Europe and elsewhere, and its application to ICAC hearings. The former Committee also recommended that the ICAC adopt a three-tiered inquiry model in which public hearings would only take place following thorough assessment and investigatory phases.

5.7.3 Attention is also drawn to the former Committee's First Report on Commission Procedures and the Rights of Witnesses, dated November 1991, in which a number of important recommendations were made to ensure procedural fairness and safeguard the rights of witnesses in ICAC hearings.

APPENDIX ONE

**Letter from Attorney General
to the Committee Chairman
dated 07 May 1992**



7th May, 1992.

Mr. Malcolm Kerr, M.P.
Committee Chairman,
Independent Commission Against
Corruption Committee
Parliament House,
Macquarie Street,
SYDNEY, N.S.W. 2000

Dear Mr. Kerr,

I am writing to you to request your Committee to review the present provisions of the Independent Commission Against Corruption Act 1988 relating to the provision of legal or financial assistance to witnesses appearing or about to appear before the Commission.

It seems to me that those provision, contained in section 52, should be re-examined to see whether there is not a more satisfactory scheme possible. Amongst the matters that I suggest should be looked at are the following:-

- (1) The procedure for making an application for assistance. There is at present no provision made for the detail which applicants should provide, or the means of verifying that detail, whether in relation to prospective hardship claimed by a witness, or the relevant evidence of the witness.
- (2) The matters to which the decision-maker is to have regard, including the practicability in some cases of forming a view of them at the time the application is made.
- (3) The appropriate decision-maker. The power is presently vested in the Attorney General. There is no provision for any report from the Commission itself, or counsel assisting it, about any of the matters referred to in the section. Nor does the Attorney General have general responsibility for the administration of the legislation. It needs to be considered whether the authority to provide assistance to the witness should be vested in the Attorney General, the Minister administering the legislation generally, the Commission or some other person; and whether there should be provision for consultation with interested parties.

In view of the importance of the Commission's functions, it would be of great assistance if your Committee would examine the present provisions afresh, and report to the Parliament on them, in time for any necessary legislative action in the Budget Session.

Yours faithfully,

Peter Collins, Q.C. M.P.
ATTORNEY GENERAL

APPENDIX TWO

Letters from the ICAC,

**containing statistics on the numbers of persons
in certain categories who have appeared
at ICAC hearings**

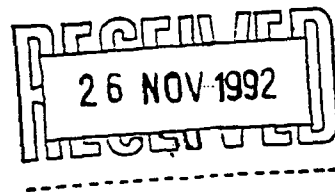
dated 26 November 1992 and 24 May 1993



INDEPENDENT COMMISSION AGAINST CORRUPTION

Mr David Blunt
Project Officer
Committee on the ICAC
121 Macquarie Street
SYDNEY NSW 2000

26 November, 1992



Dear Mr Blunt,

The Committee has asked for information about witnesses for its inquiry into legal representation at Commission hearings. The information the Committee sought was the number of witnesses the Commission has called in hearings in the following categories: Ministers of the Crown, Members of Parliament, other public officials, and private individuals, and the number of substantially and directly interested persons in each of those categories.

The figures are set out below. Because of the time in which the task of preparing the figures has had to be performed they are best approximations, albeit substantially reliable. I trust they will serve the Committee's purpose.

Some explanatory notes about the figures are necessary.

The number of witnesses does not include people whose statements were tendered but who were not called to give oral evidence.

The category of public officials (other than Ministers and Members of Parliament) includes some former or retired public officials who were private individuals at the time they gave evidence but whose relevance to the investigation arose from their public official status and whose evidence concerned conduct which occurred when they were public officials. An exception to this method of categorising is a group of former police officers who became private investigators, who gave evidence in the Unauthorised Release of Government Information investigation, and whose evidence was relevant because of their activities as private investigators. They have been included in the numbers of private individuals.

In a similar vein the number of Members of Parliament includes Mr Mochalski who was a former Member when he gave evidence, and the number of Ministers includes Mr R Jackson, who was a former Minister at the time he gave evidence.

The category of private individuals includes Commonwealth public servants who gave evidence in the Unauthorised Release of Government Information investigation, as they are not public officials for the purpose of the Independent Commission Against Corruption Act.

The numbers of substantially and directly interested persons involve some overlap with affected persons. The former term had both meanings during the early operation of the ICAC Act. The figures include persons who were assessed as substantially and directly interested at the end of a hearing, after all the evidence had been heard, as well as persons considered so earlier in investigations.

I have also provided a number for substantially and directly interested corporations and public authorities. Most of these were not witnesses or "affected persons" but simply appeared at hearings because they had an interest in the subject matter. Some of the substantially and directly interested corporations were small private companies, the principals of which were also substantially and directly interested, so there was some overlap there.

There were some substantially and directly interested persons who were not legally represented, by their choice. There were no substantially and directly interested persons in the Investigation into Local Government, Public Duties and Conflicting Interests, in which there were almost eighty witnesses.

The figures are as follows:

WITNESSES

Ministers of the Crown - 6:

Messrs Greiner, Moore, Murray (counted twice, in the North Coast Land Development and Walsh Bay Redevelopment Investigations), Causley (North Coast Land Development) and Jackson (Silverwater Filling Operation).

Members of New South Wales Parliament - 15:

Mr Carr (Walsh Bay Redevelopment), Mr Mochalski, Mr Singleton (Registration of DP787368 at the Land Titles Office), Mr Hazzard, Mr Blackmore, Messrs Beck, Enderbury, Page, Reed and Watkins and Mrs Walker (North Coast Land Development), Messrs Anderson, Downy, MacDonald and Ms Lo Po (Local Government, Public Duties and Conflicting Interests).

Members of Federal Parliament - 1:

Mr E Mack (Local Government, Public Duties and Conflicting Interests).

Other Public Officials - 543

Private Individuals - 703

SUBSTANTIALLY AND DIRECTLY INTERESTED PERSONS

Ministers of the Crown - 7:

Messrs Greiner and Moore, Mr Murray (counted twice, once in the North Coast Land Development Investigation and once in the Walsh Bay Development Investigation, which matter the Deputy Premier had referred to the Commission for investigation), Mr Causley (counted twice, once in the North Coast Land Development investigation and once in the Land Titles Office Investigation which matter the Minister had referred to the Commission for investigation), Mr Jackson (Silverwater Filling Operation).

Members of Parliament - 8:

Mr Carr (Walsh Bay), Mr Blackmore, Mr Mochalski, Mr Hazzard, Messrs Enderbury, Watkins, Beck and Page (North Coast Land Development).

Other Public Officials - 236

Private Individuals - 351

Corporations and Public Authorities - 68

Yours faithfully,



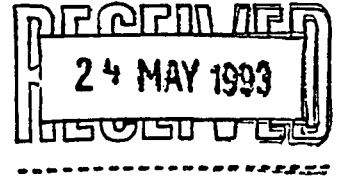
Deborah Sweeney
Solicitor to the Commission

ICAC

INDEPENDENT COMMISSION AGAINST CORRUPTION

24 May 1993

Mr David Blunt
Parliamentary Committee on the ICAC
121 Macquarie Street
SYDNEY NSW 2000



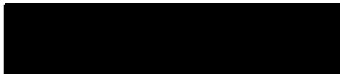
Dear Mr Blunt,

I refer to the Committee's request for further information about witnesses for its inquiry into legal representation at Commission hearings. The following figures date from December 1992 until 21 May 1993.

The number of public officials (including former public officials) who have been witnesses in that period is 55 and the number of private individual witnesses is 47. In addition, one member of Parliament (Mr Kinross), three private citizens and one public official gave evidence in the issues based hearing which preceded the Commission report "Integrity in Public Sector Recruitment".

The number of substantially and directly interested persons in hearings over the same period was 21 public officials, one public authority and 19 private citizens.

Yours sincerely,


Deborah Sweeney
Solicitor to the Commission

APPENDIX THREE

Letter from Legal Aid Commission,

**in response to the suggestion that it should be
the decision-maker under s.52**

dated 31 March 1993

LEGAL AID COMMISSION OF NSW

Our ref: 93/0122 R178
TAM:KB:nl
Phone: 2195882

31 March 1993

RECEIVED
05 APR 1993

Mr M.J. Kerr MP
Chairman
Committee on the ICAC
Room 1129
121 Macquarie Street
SYDNEY NSW 2000

Dear Mr Kerr

I refer to your letter of 17 February 1993. Your letter seeks the Commission's views on the proposal that the Commission be the decision maker in applications for legal assistance by witnesses appearing at the Independent Commission Against Corruption.

I am not in favour of the proposal and have set out below my reasons for this view, under appropriate headings.

Priorities for legal aid

As you may be aware the Commission, in the face of serious budgetary problems, considered a set of priorities for legal aid services in December 1992. The Commission also reluctantly resolved that from 1 January 1993 legal aid would not be available for a wide range of civil law matters, including many matters for which legal aid had previously been available.

The Commission does not provide, and has never provided, legal aid for ICAC proceedings. Although the proposal has not been put to a meeting of Commissioners, I am doubtful that the Commission would amend its December 1992 decision so as to make legal aid available for ICAC proceedings. The Commission is also conscious of how such an amendment would be perceived by members of the public, many of whom have already responded negatively to the Commission's December 1992 decision.

Consistency of approach to legal aid applicants

The Commission generally applies a means test, and in most non-criminal matters a "merit" test, to applications for legal aid. The Commission's merit test, addresses an applicant's "prospects of success" in the subject proceedings. An assessment of prospects of success in ICAC proceedings seems an inappropriate test. However, non-application of the merit test in relation to ICAC proceedings would create an inconsistency in approach to applicants for legal aid. Such an inconsistency may be difficult to justify.

The Commission's means test requires an applicant to have a weekly "disposable income" of not more than \$190, after deduction of tax, \$60 per dependant and housing allowance of up to \$128. The Commission also closely considers the net liquid assets of an applicant for legal aid. Although I have no information about the means of witnesses who have appeared before ICAC, my impression is that many such witnesses would not meet the means test requirements.

In one sense it seems appropriate that applicants for legal aid for ICAC proceedings should "compete", via the means test, with applicants for legal aid for other proceedings. On the other hand, while such an approach would create consistency, it may be unfair to applicants in ICAC proceedings, if funding were available for such proceedings. It may be more appropriate for applicants in ICAC proceedings to compete only against each other, but such a system would again create inconsistency for the Commission.

I consider therefore that the Commission would have to apply its means and merit tests but that these tests may be inappropriate and unjust to people seeking legal aid for ICAC proceedings, if funding were available.

Decision-making within the Legal Aid Commission

Your first numbered question raises the issue of decision-making in controversial circumstances. The Commission is of course from time to time required to determine applications for legal aid made in controversial circumstances.

The Commission's approach in the past has been for such applications to be determined by a meeting of Commissioners. This procedure attempts to ensure an appropriate level of decision-making and to protect individual Commission officers from the burden of decision-making in controversial circumstances. I consider that the likely frequency of applications would preclude the consideration of applications by a meeting of Commissioners. I therefore consider that the Commission would not be able to apply its existing procedure for decision-making in controversial circumstances, to applications for ICAC proceedings.

Review of Legal Aid Commission's decision

In the absence of amendment to the Legal Aid Commission Act 1979, applications for legal aid for ICAC proceedings would have to be determined under that Act. The Act provides that unless a decision is made by a meeting of Commissioners, an applicant has the right to have the decision reviewed by the independent Legal Aid Review Committee. In addition, decisions of the Commission, including those resulting from a meeting of Commissioners, may be capable of challenge in the Supreme Court.

While such systems of review are appropriate and commendable for the Commission's current "jurisdiction", I am not certain that they are appropriate for decisions about legal aid for ICAC proceedings. I am conscious that assessment of legal aid applications for ICAC proceedings may involve examination of extremely confidential and sensitive material.

In relation to your specific questions, I reply as follows.

- (1) As indicated above, the Commission has concerns about its ability to apply its existing procedures for decision-making in controversial circumstances, to applications for legal aid for ICAC proceedings. The Commission is aware of the matters which often surround decision-making in controversial circumstances, including questions in Parliament and media enquiries. It would seem that, unlike other types of proceedings, many ICAC proceedings are likely to be controversial. I consider that the Commission is not presently in a position to devote resources to dealing with the consequences of increased decision-making in controversial circumstances.

- (2) I have referred above to the Commission's means test and merit test. I have also referred to the difficulties I see in both applying and not applying these tests to applications for legal aid for ICAC proceedings. In relation to sub-section 52(2)(c), the Commission has in the past developed guidelines which attempt to define "public interest", but such guidelines have been quite specific, for example, in relation to environmental law matters. In relation to sub-section 52(2)(b), it seems to me that an assessment of "significance" would have to be made in each case, and that it may be impossible to develop any specific procedures.
- (3) I find it impossible to provide an estimate of the cost of decision-making, in the absence of statistics about the number of applications previously made under section 52. I have also referred above to the difficulties I foresee in identifying an appropriate level of decision-maker.

In summary therefore I am not in favour of the proposal. The Commission would of course be happy to provide information and training on its assessment tests and procedures to interested persons.

Please feel free to contact me if any clarification or further information is required.

Yours faithfully

A black rectangular redaction box covering the signature of Terry Murphy.

Terry Murphy
Acting Managing Director



Secretariat
Room 1129
121 Macquarie Street
Sydney NSW 2000
Tel: (02) 230 3055
Fax: (02) 230 3057

COMMITTEE ON THE ICAC

17 February 1993

Mr Brian Rayment QC
Chairman
Legal Aid Commission of NSW
Daking House
11-23 Rawson Place
SYDNEY NSW 2000

Dear Mr Rayment

I am writing to you to seek a submission from the Legal Aid Commission in relation to an inquiry being conducted by the Committee on the ICAC.

The inquiry concerns the operation of section 52 of the ICAC Act which provides for financial assistance for legal representation to be granted by the Attorney General to persons appearing before the ICAC. The former Attorney General requested that the Committee examine this issue in May 1992. A copy of the former Attorney General's letter of 07 May 1992 requesting that the Committee review section 52 is enclosed for your information.

The Committee conducted a one day public hearing into this matter on 04 August 1992. The Committee has been deliberating on this matter over recent months and has a draft report under consideration. A copy of the draft report, with the exception of the draft findings and recommendations, is enclosed for your information.

My reason for writing to you is that one of the issues addressed in the Committee's draft report is the question of who should be the decision maker in respect of applications under section 52. I would particularly draw your attention to paragraphs 3.2.8 - 3.2.14 of the draft report which deal with this question.

As outlined in paragraph 3.2.14 there appear to be two favoured options. One is to keep the Attorney General as the decision maker. The other is to make the Legal Aid Commission the decision maker. The Committee would welcome a submission from you in relation to the proposal that the Legal Aid Commission should be made the decision maker. The Committee would be particularly interested in your views on:

2

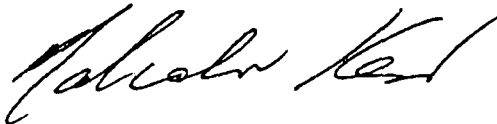
Mr Rayment QC
17 February 1993

- 1 whether the Legal Aid Commission would have any concerns about the possibility of being embroiled in political controversy as a result of making decisions about section 52 applications;
- 2 the procedures which the Legal Aid Commission would adopt to make decisions about section 52 applications [particularly in relation to the criteria set out in s.52 (2)(b) and (c)]; and
- 3 whether it would be necessary for the Legal Aid Commission to establish a separate unit to deal with section 52 applications and, if so, what the cost of this would be?

The Committee would appreciate receiving a submission from you in relation to these matters as soon as possible. The Committee would also be willing to accede to a request from you to give evidence to the Committee on this matter should you consider that to be necessary.

Please do not hesitate to contact me if you require any further information.

Yours sincerely



Malcolm J Kerr MP
Chairman

legalaid.001

APPENDIX FOUR

**Minutes of Proceedings
of the Committee**

PARLIAMENT OF NEW SOUTH WALES
MINUTES OF PROCEEDINGS OF THE
COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

TUESDAY 04 AUGUST 1992

AT PARLIAMENT HOUSE, SYDNEY AT 10.10 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

An apology was received from Mr Hatton.

The Committee then went into a public hearing concerning Section 52 of the ICAC Act and the Cost of Legal Representation before the ICAC.

The media and the public were admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses and the terms of reference for the inquiry.

Simon Stretton, General Counsel, Independent Commission Against Corruption, was sworn and examined.

Deborah Anne Sweeney, Solicitor, Independent Commission Against Corruption, under previous oath was examined.

Evidence concluded and the witnesses withdrew.

Laurie Glanfield, Director-General, Attorney-General's Department, was sworn and examined.

Evidence concluded and the witness withdrew.

Meeting of the Committee on the ICAC
04 August 1992

The Committee adjourned for lunch.

The media and the public were admitted.

Roger Wilkins, Cabinet Office, was sworn and examined.
Evidence concluded and the witness withdrew.

Patrick Griffin, Director, Public Interest Advocacy Centre, was sworn and examined.
Evidence concluded and the witness withdrew.

Patrick Fair, Solicitor, was sworn and examined.
Evidence concluded and the witness withdrew.

Simon Stretton, General Counsel, Independent Commission Against Corruption, under previous oath, responded to the day's evidence.

The media and the public withdrew

The Committee then held a brief deliberative meeting.

The Committee discussed the correspondence received.

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

- 1 That the letter from Deborah Sweeney, dated 07 July 1992, concerning steps taken by ICAC to ensure confidentiality of information about its investigations when statutory powers are exercised be deferred until the next Committee meeting for further consideration.
- 2 That Mr Tom Hogan be sent a copy of the letter from Deborah Sweeney, dated 07 July 1992, concerning correspondence the Committee had received from Tom Hogan and his solicitor in relation to his property and claims for witness expenses.
- 3 That Mr Johnson be sent a copy of the letter from Deborah Sweeney, dated 07 July 1992, in response to correspondence the Committee had received from Keith Johnson, Ballina Shire President, concerning the ICAC's handling of anonymous complaints and asked for his response to it.

That Mr Johnson be asked whether he would like to appear before the Committee in relation to this issue.


Meeting of the Committee on the ICAC
04 August 1992

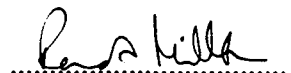
- 4 That Mr Knight and Bill Rixon MP be sent a copy of the letter from Deborah Sweeney, dated 07 July 1992, in response to correspondence received by the Committee in relation to the ICAC's inquiry into Roadworks in Kyogle Shire and asked for their response to it.

That the Committee write to Bill Rixon MP asking whether, in view of this response from the ICAC, he still believes there would be benefit to be gained from a visit to Kyogle by the Committee.

- 5 That the letter from Mr Wintour, dated 13 July 1992, be referred to the ICAC for comment and response.
- 6 That Alderman Crisp be sent a copy of the letter from Ian Temby QC, dated 14 July 1992, responding to correspondence the Committee had received from Alderman G A Crisp.

The Committee adjourned at 4.40 pm until 10 August 1992, at 10.00 am.


.....
Chairman


.....
Clerk

MONDAY 10 AUGUST 1992

AT PARLIAMENT HOUSE, SYDNEY AT 10.00 AM

MEMBERS PRESENT

Legislative Council

The Hon D J Gay
The Hon S B Mutch

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

Apologies were received from Ms Burnswoods and Mr Hatton.

The Committee then went into a public hearing concerning Pecuniary Interest Provisions and a Code of Conduct for Members of Parliament.

The media and the public were admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses and the terms of reference for the inquiry.

Michael Wesley Jackson, Associate Professor, Director of the Public Affairs Research Centre, University of Sydney, was affirmed and examined.
Evidence concluded and the witnesses withdrew.

Gerard Francis Carney, Associate Professor of law, Bond University, was sworn and examined.
Evidence concluded and the witness withdrew.

Jacqueline April Morgan, Executive Member, Privacy Committee of NSW, was affirmed and examined.
John Howard Gaudin, Research Officer, Privacy Committee of NSW, was affirmed and examined.
Evidence concluded and the witnesses withdrew.

Meeting of the Committee on the ICAC
10 August 1992

Patrick Griffin, Director, Public Interest Advocacy Centre, was sworn and examined.
Evidence concluded and the witness withdrew.

Gerard Francis Carney, Associate Professor of Law, Bond University, on former oath
was examined.
Evidence concluded and the witness withdrew.

The Committee adjourned for lunch.

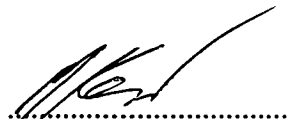
The media and the public were admitted.

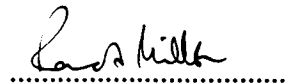
Gail Barton Furness, Principal Lawyer, Independent Commission Against Corruption,
was sworn and examined.
Elizabeth Gai Moore, Principal Corruption Prevention Officer, Independent
Commission Against Corruption, was sworn and examined.
Evidence concluded and the witnesses withdrew.

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

Jeffrey Paul Wilson, Asset Security Manager, was affirmed and examined.
Evidence concluded and the witness withdrew.

The Committee adjourned at 4.40 pm until 11 August 1992, at 10.00 am.


.....
Chairman


.....
Clerk

TUESDAY 11 AUGUST 1992

AT PARLIAMENT HOUSE, SYDNEY AT 10.00 AM

MEMBERS PRESENT

Legislative Council

The Hon D J Gay
The Hon S B Mutch

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Nagle
Mr Tink
Mr Turner

Apologies were received from Ms Burnswoods and Mr Hatton.

The Committee then went into a public hearing concerning Pecuniary Interest Provisions and a Code of Conduct for Members of Parliament.

The media and the public were admitted.

The Clerk read the Legislative Assembly Standing Order No.362 relating to the examination of witnesses and the terms of reference for the inquiry.

Edward Carrington Mack, Federal Member of Parliament for North Sydney, was affirmed and examined.

Evidence concluded and the witness withdrew.

Paul Desmond Finn, Professor of Law and Barrister of Law, Division of Philosophy and Law, Research School of Social Sciences, Australian National University, was sworn and examined.

Evidence concluded and the witness withdrew.

Simon Allen Longstaff, Executive Director and Philosopher, of the St James Ethics Centre, was sworn and examined.

Evidence concluded and the witness withdrew.

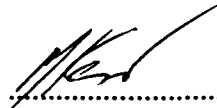
Patrick Griffin, Director, Public Interest Advocacy Centre, was sworn and examined. Evidence concluded and the witness withdrew.

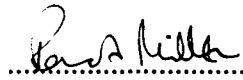
The media and the public withdrew.

Meeting of the Committee on the ICAC
11 August 1992

The Committee then went into informal discussions concerning Pecuniary Interest Provisions and a Code of Conduct for Members of Parliament with the Hon Max Frederick Willis, President, Legislative Council and John Evans, Clerk of the Parliaments.

The Committee adjourned at 4.40 pm until 02 September 1992, at 6.30 pm.


.....
Chairman


.....
Clerk

NO 27

WEDNESDAY 02 SEPTEMBER 1992

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Turner
Mr Zammit

The Committee noted the correspondence from: Hon Peter Collins QC, MP dated 07 August 1992; Roger Wilkins, dated 07 August 1992; Alderman Vic Smith, dated 14 August 1992; Luisa Pink, dated 14 August 1992; various letters in response to the Committee's reports on the Operations Review Committee and the Fifth I.A.C.C. and Hong Kong Study Tour; and Sir Max Bingham, dated 25 August 1992.

Meeting of the Committee on the ICAC
02 September 1992

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

- 1 That the letters from Patrick Fair, dated 30 July 1992; Allen Janas, dated 23 August 1992; and Tom Hogan, dated 29 July 1992, be referred to the ICAC for comment and response;
- 2 That Bill Rixon MP be informed that the Committee will be visiting Kyogle on 01 October;
- 3 That Robin Rodgers be contacted in relation to the Committee's visit to Kyogle; and
- 4 That Allen Janas be informed of the limits imposed upon the Committee's jurisdiction by s.64(2) of the ICAC Act.

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

That the Committee's concern be recorded over the leaking of the draft discussion paper.

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

That the Clerk to the Committee distribute material on confidentiality provisions related to Parliamentary Committee documents and the obligations of Members of Parliament and the sanctions which apply in this area.

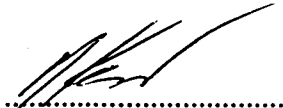
The Committee then deliberated on the draft Discussion Paper.

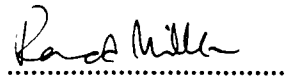
Resolved on the motion of Mr Gay, seconded by Mr Hatton:

- 1 That the draft Discussion Paper, as amended, be tabled in Parliament as the Committee's Discussion Paper and that Friday 02 October be the closing date for submissions.
- 2 That the Chairman write to the Attorney-General and Judicial Commission regarding the standards applying in relation to Judges, Ministers of the Crown and Members of Parliament, including in other jurisdictions.

Meeting of the Committee on the ICAC
02 September 1992

The Committee adjourned at 7.30 pm sine die.


.....
Chairman


.....
Clerk

NO 28

TUESDAY 22 SEPTEMBER 1992

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Turner
Mr Zammit

The Committee noted the correspondence from: Deborah Sweeney, dated 27 August 1992; Deborah Sweeney, dated 27 August 1992; Mr N McLeod, dated 25 August 1992; Mr Keith Johnson, dated 29 August 1992; Mr Ian Collie, dated 01 September 1992; Mr Mark Findlay, dated 09 September 1992; Mr Peter McClellan QC, dated 11 September 1992, Mr J Czapla, dated 14 September 1992 and Mr Mitchell dated 21 September 1992.

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

- 1 That the letter from Mr McLeod, dated 25 August 1992, be referred to the ICAC for comment and response.

Meeting of the Committee on the ICAC
22 September 1992

- 2 That Mr Wintour, Alderman Crisp and Mr Collie be advised of the restrictions imposed upon the Committee by s.64 of the ICAC Act and that Mr Collie be informed of the role of the Commonwealth Ombudsman in relation to his complaint.
- 3 That Ms Peters and Mr Wintour be provided with a copy of the ICAC's response to their complaints.
- 4 That Mr Johnson be invited to appear before the Committee at one of the hearings during the review of the ICAC Act.
- 5 That Mr Czapla be asked if he wishes his letter to be considered as a submission to the Committee's Review of the ICAC Act. That Mr Czapla be sent a copy of the Committee's Discussion Paper.

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

That the letter from Mr Mitchell dated 21 September 1992 be referred to the ICAC for comment and response.

The Committee then discussed arrangements for its one day visit to Kyogle on 01 October 1992.

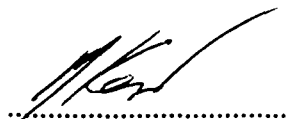
The Clerk then tabled a document on the confidentiality of Committee documents.

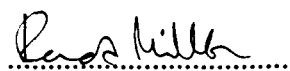
The Committee then went into a brief public hearing concerning Section 52 of the ICAC Act and the Cost of Legal Representation before the ICAC.

The media and the public were admitted.

Peter David McClellan, Queens Counsel, was sworn and examined.
Evidence concluded and the witness withdrew.

The Committee adjourned at 7.30 pm sine die.


.....
Chairman


.....
Clerk

THURSDAY 01 OCTOBER 1992

AT KYOGLE, AT 10.20 AM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon S B Mutch

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Turner
Mr Zammit

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

The Committee then went into a public hearing concerning the ICAC's conduct of hearings at Kyogle.

The public were admitted.

Patrick Vincent Knight, Shire Engineer and Chief Town Planner was sworn and examined.

Evidence concluded and the witness withdrew.

Harold (Murphy) John Standfield, Contractor, was sworn and examined.

Evidence concluded and the witness withdrew.

The Committee adjourned for lunch.

The public were admitted.

David William Lovell, farmer, was sworn and examined.

Evidence concluded and the witness withdrew.

Anthony Lazaredes, practising pharmacist, was sworn and examined.

Evidence concluded and the witness withdrew.

Val Crozier Johnston, company director and councillor and deputy president of Kyogle Shire Council, was sworn and examined.

Evidence concluded and the witness withdrew.

Robin Lyle Rodgers, post office agent, was sworn and examined.

Evidence concluded and the witness withdrew.


Meeting of the Committee on the ICAC
01 October 1992

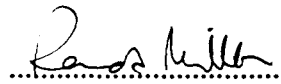
Robert Henry Standfield, service station operator, was sworn and examined.
Evidence concluded and the witness withdrew.

Robert George Boden, shopkeeper, was sworn and examined.
Evidence concluded and the witness withdrew.

Peter Neil McIntyre, relieving teacher and grazier, was affirmed and examined.
Evidence concluded and the witness withdrew.

The Committee adjourned at 3.45 pm until 12 October 1992, at 10.00 am.


.....
Chairman


.....
Clerk

NO 30

MONDAY 12 OCTOBER 1992

AT PARLIAMENT, SYDNEY, AT 10.00 AM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon S B Mutch

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Zammit

Apologies were received from Mr Gay, Mr Nagle and Mr Turner.

Meeting of the Committee on the ICAC
12 October 1992

The Committee then went into a public hearing concerning its inquiry into a Review of the ICAC Act.

The media public were admitted.

Patrick Fair, Solicitor, under previous oath was examined.
Evidence concluded and the witness withdrew.

Michael Charles Bersten, solicitor, under previous oath, was examined.
Evidence concluded and the witness withdrew.

Kevin Thomas Fennell, Deputy Auditor General of New South Wales, was sworn and examined.
Evidence concluded and the witness withdrew.

The Committee adjourned for lunch.


The media and the public were admitted.

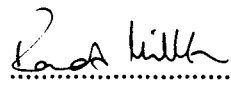
Keith Henry Johnson, self-employed farmer, was sworn and examined.
Evidence concluded and the witness withdrew.

Warren Francis Hart, Director of Human Resources for the Sydney Water Board, was sworn and examined.
Brian Douglas Lenne, Manager of Audit and Review, Sydney Water Board, was sworn and examined.
Evidence concluded and the witnesses withdrew.

Mark James Findlay, Director, Institute of Criminology, under previous oath, was examined.
Evidence concluded and the witness withdrew.

The Committee adjourned at 4.45 pm until 15 October 1992, at 3.30 pm.


.....
Chairman


.....
Clerk

THURSDAY, 15 OCTOBER 1992

AT PARLIAMENT, SYDNEY, AT 3.30 PM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon D J Gay

Legislative Assembly

Mr Hatton
Mr Kerr
Mr Turner
Mr Zammit

Apologies were received from Mr Nagle, Mr Mutch and Mr Gaudry.

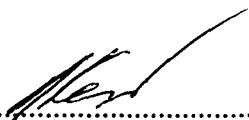
The Committee noted the correspondence from Mr Ian Temby QC, dated 15 October 1992; the Hon John Hannaford MLC, dated 01 October 1992; Ms Deborah Sweeney, dated 09 October 1992; Ms Deborah Sweeney, dated 15 September 1992; Mr John Tuckfield QC, dated 30 September 1992; Ms C Peters, dated 29 September 1992; and Mrs Joy Humphries, dated 02 October 1992.

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

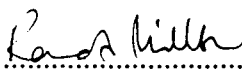
That Mr Mitchell and Mr Janas be provided with copies of the ICAC's response to their complaints.

That the letters from John Tuckfield QC and Ms Peters be forwarded to the ICAC for comment and response.

The Committee adjourned at 3.40 pm until 26 October 1992, at 10.00 am.



Chairman



Clerk

MONDAY, 26 OCTOBER 1992

AT PARLIAMENT, SYDNEY, AT 10.00 AM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon S B Mutch

Legislative Assembly

Mr Kerr
Mr Gaudry
Mr Turner
Mr Zammit

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

The Committee then went into a public hearing concerning its inquiry into a Review of the ICAC Act.

The media and public were admitted.

Ernest Paul Knoblanche, Queens Counsel, was sworn and examined.
Evidence concluded and the witness withdrew.

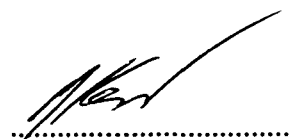
Athol Randolf Moffitt, Queens Counsel, under previous oath, was examined.
Evidence concluded and the witness withdrew.

The Committee adjourned for lunch.

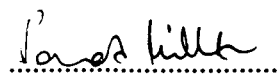
The media and public were admitted.

Adrian Roden, Queens Counsel, under previous oath, was examined.
Evidence concluded and the witness withdrew.

The Committee adjourned at 4.10 pm until 03 November 1992, at 11.10 am.



Chairman



Clerk

TUESDAY 03 NOVEMBER 1992

AT PARLIAMENT HOUSE, BRISBANE AT 11.12 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Kerr
Mr Gaudry
Mr Turner
Mr Zammit

Apologies were received from Mr Nagle, and Mr Hatton.


The Committee then deliberated over the forthcoming public hearing with Mr Ian Temby QC and the questions on notice.

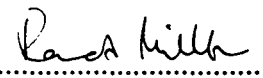
The Committee considered the draft report on the Inquiry into Section 52 of the ICAC Act and the Cost of Legal representation before the ICAC.

The Chairman tabled the draft report on the Inquiry into Pecuniary Interest Provisions and a Code of Conduct for MPs.

The Committee deferred further consideration of both draft reports to a future meeting. The draft findings and recommendations of the report on the Inquiry into Pecuniary Interest Provisions and a Code of Conduct for MPs were returned to the Secretariat.

The Committee adjourned at 1.00 pm until 09 November 1992, at 9.00 am.


.....
Chairman


.....
Clerk

MONDAY 09 NOVEMBER 1992

AT PARLIAMENT, SYDNEY, AT 9.00 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Kerr
Mr Gaudry
Mr Hatton
Mr Turner
Mr Zammit

An apology was received from Mr Nagle.

The Committee then went into a public hearing concerning its inquiry into a Review of the ICAC Act.

The media public were admitted.

Adrian Roden, Queens Counsel, under previous oath, was examined.
Evidence concluded and the witness withdrew.

Ian Temby QC, Commissioner, Independent Commission Against Corruption, under previous oath, was examined.
Evidence concluded and the witness withdrew.

The Committee adjourned for lunch.

The Committee held a brief deliberative meeting.

The Committee considered the amended findings and recommendations on the draft report on the Inquiry into Section 52 of the ICAC Act and the Cost of Legal representation before the ICAC.

The key issues arising from the Kyogle hearing were discussed.

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

That the draft letter on the key issues arising from the Kyogle hearing be held for 24 hours to enable the Hon Jan Burnswoods MLC and the Temporary Project Officer to amend some of the questions.

Meeting of the Committee on the ICAC
09 November 1992

That the draft letter then be sent to the ICAC for a response.


That the Chairman write to the RTA concerning the Kyogle inquiry.

The media and the public were admitted.

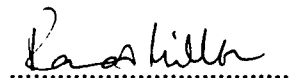
The Committee then went into a six-monthly review of the operations and general functions of the ICAC with Commissioner Ian Temby QC.

Ian Douglas Temby QC, Commissioner, Independent Commissioner Against Corruption, under previous oath, was examined.
Evidence concluded and the witness withdrew.

The Committee adjourned at 3.45 pm until 24 November 1992, at 6.30 pm.



.....
Chairman



.....
Clerk

TUESDAY 24 NOVEMBER 1992

AT PARLIAMENT, SYDNEY, AT 6.30 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Kerr
Mr Gaudry
Mr Hatton
Mr Nagle
Mr Turner
Mr Zammit

The Committee noted the correspondence from Tom Hogan, dated 30 September and 9 November 1992; Andrew Tink MP, dated 7, 16 and 22 October 1992; Hon Wal Murray, dated 19 October 1992; Dr Simon Longstaff, dated 26 October 1992; Mr A W Mitchell, dated 4 November 1992; Warren Hart, Water Board, dated 09 November 1992; Ms Deborah Sweeney, dated 17 November 1992; and Mr Simon Stretton, dated 10 November 1992.

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

- 1 That Mr Hogan's letter of 09 November be referred to the Commission with a request for information on the progress which has been made on resolving the matter of Mr Hogan's witness expenses.
- 2 That Mr Pratt, and Mr Tink MP, be advised of the Committee's functions under s.64 of the ICAC Act, including the restrictions imposed by s.64(2).
- 3 That the Committee write to the ICAC seeking more detailed information in relation to Mr Mitchell's complaint in terms of the draft letter.
- 4 That Dr Longstaff's letter of 26 October 1992; Mr Hart's letter of 09 November 1992; and Ms Sweeney's letter of 17 November 1992 be considered in the context of the Committee's Review of the ICAC Act.
- 5 That the Chairman acknowledge the letter from the St James Ethics Centre and keep open the option of a round-table discussion with the major interests involved in the Review of the ICAC Act.

Meeting of the Committee on the ICAC
24 November 1992

- 6 That the Chairman write to Mr Temby in relation to Mr Stretton's letter of 10 November, asking whether there was any compelling reason why the Committee's usual practice of forwarding a copy of the ICAC's response to a complainant should not be followed in this case.

The Committee noted the late submissions to the review of the ICAC Act from Mr N G Pangas, dated 14 October 1992; Mr Cliff Long, dated 24 October 1992; and Mr Peter McIntyre, dated 11 November 1992.

The Committee considered the draft report on the Inquiry into Section 52 of the ICAC Act and the Cost of Legal representation before the ICAC.

The Hon Jan Burnswoods MLC tabled a letter to the Chairman concerning this draft report, and spoke to the letter.

The Committee considered the second draft report on the Inquiry into Pecuniary Interest provisions and Code of Conduct for MPs. The draft findings and recommendations were tabled for further consideration.

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

That further consideration of the draft report on the Inquiry into Section 52 of the ICAC Act and the Cost of Legal Representation before the ICAC and the draft report on the Inquiry into Pecuniary Interest Provisions and a Code of Conduct for MPs be deferred until the Committee's next meeting.

The Committee also deferred discussion of the issues arising from the Review of ICAC Act until its next meeting.

The Committee then considered issues arising from Mr Temby's evidence before the Committee on 09 November 1992.

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


That the Chairman write to Mr Temby to bring to his attention the view of the Committee that the public hearing on 09 November 1992 was not the appropriate forum for him to criticise a member of the Committee staff over the matter of delivering a paper expressing a point of view at an international conference.

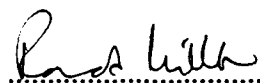
The Project Officer read to the Committee the text of a letter he proposed to send Mr Temby on this matter.

Meeting of the Committee on the ICAC
24 November 1992

Mr Zammit read to the Committee the text of letter he proposed to send Mr Temby on the question of contempt.

The Committee adjourned at 7.15 pm until 27 November 1992, at 3.30 pm.


.....
Chairman


.....
Clerk

NO 36

FRIDAY 27 NOVEMBER 1992

AT PARLIAMENT, SYDNEY, AT 3.30 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Kerr
Mr Gaudry
Mr Hatton
Mr Nagle
Mr Turner
Mr Zammit

The Chairman tabled correspondence from Ian Temby QC, dated 24 and 27 November 1992 concerning the Operations Review Committee

The Committee noted that the proposed date for the meeting with the Operations Review Committee was Friday 05 February 1993.

Meeting of the Committee on the ICAC
27 November 1992

The Chairman tabled as late submissions to the Review of the ICAC Act submissions from Tim Robertson, dated 24 November 1992; and the Hon Mr Justice Clarke, dated 27 November 1992.

The Committee agreed to take evidence from Justice Clarke at 9.00 am on Tuesday 08 December 1992.

The Committee authorised the Chairman to write to Mr Temby seeking a detailed written response to the key submissions to the Review of the ICAC Act, including late submissions.

The Committee considered the draft Collation of Mr Temby's Evidence from 09 November 1992.

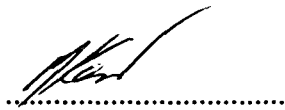
Resolved on the motion of Mr Hatton, seconded by Mr Nagle:

That the draft Collation, as circulated, be adopted as the Committee's report, subject to minor typographical and grammatical changes.

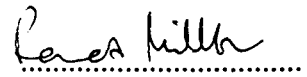
The Committee discussed the inquiry into s.52 and Legal Representation. The Committee deferred detailed consideration of the draft report to a meeting to be arranged in December.

The Committee discussed the inquiry into Pecuniary Interest Provisions and a Code of Conduct for MPs. The Committee deferred detailed consideration of the draft report to a meeting to be arranged in December.

The Committee adjourned at 4.40 pm until 08 December 1992, at 9.00 am.



Chairman



Clerk

FRIDAY 18 DECEMBER 1992

AT PARLIAMENT, SYDNEY, AT 10.00 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Kerr
Mr Gaudry
Mr Nagle
Mr Turner
Mr Zammit

An apology was received from Mr Hatton.

The Committee noted the correspondence from Deborah Sweeney, dated 26 November and 04, 07 and 14 December 1992; Ian Temby, dated 27 November and 07 December 1992; Hon Wal Murray MP, dated 27 November 1992; Brad Hazzard MP, dated 27 November and 03 December 1992; Patrick Fair, dated 01 and 17 December 1992; Neil O'Connor, dated 02 December 1992; Stuart Taylor, dated 03 and 14 December 1992; Simon Stretton, dated 07 December 1992; Warren Hart, dated 09 December 1992; John Turner MP, dated 04 December 1992; Kevin Fennell, dated 09 December 1992; Oral Gould, dated 06 December 1992; and Judge Ducker, dated 02 December 1992.

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

- 1 That Mr Hogan be provided with a copy of Ms Sweeney's letter of 26 November 1992.
- 2 That the ORC's response to the Committee's report on the Operations Review Committee be discussed with the ORC on 05 February 1992.
- 3 That the letters from Mr Patrick Fair dated 01 December 1992; Mr Kevin Fennell, dated 09 December 1992; and from Mr Don Budge, Executive Director of the Northern Area Regional Organisation of Councils Inc (NAROC), forwarded by the Hon Wal Murray MP, be considered in the context of the Committee's Review of the ICAC Act.
- 4 That Mr Hazzard's correspondence be referred to the ICAC for comment and response with regard to the Metherell diaries.

Meeting of the Committee on the ICAC
18 December 1992

- 5 That Mr O'Connor's letter be referred to the ICAC for comment and response.
- 6 That Mr Taylor's letters be referred to the ICAC for comment and response, and that information be sought from the ICAC on the access which third parties may or may not have to records held by the ICAC.
- 7 That further consideration of the Kyogle inquiry be deferred until the ICAC's response is received to Mr Norrish's letter.
- 8 That the Committee write to the ICAC concerning the handling of complaints, Simon Stretton's response to Patrick Fair's complaint and Deborah Sweeney's response to the specific questions arising from Mr Mitchell's complaint, in terms of the draft correspondence.
- 9 That Mr Tuckfield be provided with a copy of Ms Sweeney's letter of 04 December 1992.
- 10 That Judge Ducker and the Chief Judge of the District Court be provided with a copy of Ms Sweeney's letter of 11 December 1992, and asked whether they are satisfied with the ICAC's actions on the matter raised in Judge Ducker's letter.

The Chairman tabled a facsimile received from Mr Hatton which set out his views on the draft reports on Legal Representation and a Code of Conduct for MPs, and the Review of the ICAC Act.

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

- 1 That further consideration of the draft report on Pecuniary Interest Provisions and a Code of Conduct for MPs be deferred until the new year.
- 2 That Mr Mutch be given until 12 February 1993 to put his concerns about the draft report in writing for circulation to the Committee.

The Committee then considered the draft report on Section 52 of the ICAC Act and the Cost of Legal Representation before the ICAC.

Meeting of the Committee on the ICAC
18 December 1992

Motion put by Mr Zammit, seconded by Mr Nagle:

That the draft report be adopted as the Committee's report.

The Committee divided:

Ayes

Mr Kerr
Mr Gay
Mr Mutch
Mr Nagle
Mr Turner
Mr Zammit

Noes

Ms Burnswoods
Mr Gaudry

There was further discussion on the draft report and the process by which it would be considered.

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

- 1 That consideration of the draft report paragraph by paragraph be deferred until the new year.
- 2 That Ms Burnswoods be given until 22 January 1993 to put her concerns about the draft report in writing for circulation to the Committee.

The Committee then considered the briefing note on the Review of the ICAC Act circulated by the Chairman.


The Committee determined its preliminary position on a number of key issues being considered in the review.

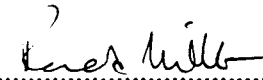
Resolved on the motion of Mr Gaudry, seconded by Mr Mutch:

That the Chairman circulate to Committee members a draft press release setting out the Committee's preliminary views for approval and release within the next few days.

Meeting of the Committee on the ICAC
18 December 1992

The Committee adjourned at 11.50 am until 05 February 1993, at 9.00 am.


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Chairman


.....
Clerk

NO 38

FRIDAY 05 FEBRUARY 1993

AT PARLIAMENT, SYDNEY, AT 9.00 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Hatton
Mr Kerr
Mr Gaudry
Mr Turner
Mr Zammit

An apology was received from Mr Nagle.

The Committee noted the correspondence from: John Turner MP, dated 23 December 1992; Ian Glachan MP, dated 23 December 1992; Hon John Fahey MP, dated 23 December 1992; Alderman Vic Smith, dated 29 December 1992; Hon Wal Murray MP, dated 04 January 1993; R A Hancock, dated 14 December 1992 and 05 and 12 January 1993; Deborah Sweeney, dated 12 January 1993; Deborah Sweeney, dated 14 January 1993; Deborah Sweeney, dated 15 January 1993; Allen Janas, dated 19 January 1993; Mr Gary Camp, dated 20 January 1993; Hon Jan Burnswoods MLC, dated 22 January 1993; Evan Whitton, dated 20 January 1993; G A Crisp, dated 22 January 1993; John Turner MP, dated 27 January 1993; Val Bellamy, dated 29 January 1993; and Simon Stretton, dated 28 January 1993.

Meeting of the Committee on the ICAC
05 February 1993

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

That the correspondence be dealt with as follows:

- 1 That Mr Temby be reminded of his undertaking given at the hearing on 09 November 1992 that the Commission would provide the Committee with a considered response on the question of whether the ICAC should be made subject to the Public Sector Management Act;
- 2 That the ICAC be provided with a copy of the letter from the Hon Wal Murray MP on the Kyogle inquiry;
- 3 That the Committee write to the ICAC in terms of the draft letter concerning the question of the ICAC's jurisdiction with regard to Commonwealth matters, raised in the correspondence from Mr R A Hancock;
- 4 That Mr Neil O'Connor be provided with a copy of the ICAC's response to his complaint about the treatment of Mr Val Bellamy;
- 5 That Mr A W Mitchell be advised that the Committee has made inquiries concerning the personnel practices of the ICAC and is satisfied by the answers which it has received;
- 6 That Mr Brad Hazzard MP be provided with a copy of the ICAC's response to his complaint about the Metherell diaries;
- 7 That Mr Allan Janas be reminded of the provisions of s.64(2) of the ICAC Act;
- 8 That the Committee write to the Legal Aid Commission requesting a submission on the Inquiry into s.52 and Legal Representation;
- 9 That Mr Bellamy's letter about the arrangements for Roger Rogerson's appearance before the ICAC be referred to the Commission for comment and response; and
- 10 That Mr Patrick Fair be provided with a copy of the ICAC's response to his complaint about the Water Board inquiry.
- 11 That the Chairman write to Senator Tate to seek advice on the Commonwealth Government's initiatives against fraud and corruption, and jurisdictional issues between the Commonwealth and the States.

Meeting of the Committee on the ICAC
05 February 1993

The Committee then discussed the procedures for dealing with unsolicited complaints about the ICAC to the Committee.

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

That the Committee endorse the revised "Procedures for Dealing with Unsolicited Complaints" document.

The Committee discussed its position on the Operations Review Committee's response to the Committee's report on the ORC.

The Committee noted that the Draft Report on the visit to Brisbane on 02-03 November 1992, would be referred to the ICAC for comment and response.

The Committee then went into a public hearing concerning the Review of the ICAC Act.

The media and the public were admitted.

Timothy Frank Robertson, Member of the Australian Bar, was affirmed and examined.

Evidence concluded and the witness withdrew.

Pierre Mark Le Grand, Director of Official Misconduct Division of the Criminal Justice Commission of Queensland, on former oath, was examined.

Evidence concluded and the witness withdrew.

Andrew Arnold Tink, Member of the New South Wales Legislative Assembly, was sworn and examined.

Evidence concluded and the witness withdrew.

Gregory Eugene Smith, General Counsel Assisting the Independent Commission Against Corruption, was examined.

Evidence concluded and the witness withdrew.


The media and the public withdrew.

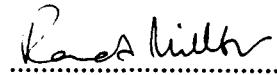
The Committee then held a brief deliberative meeting.

Meeting of the Committee on the ICAC
05 February 1993

The Committee adjourned to reconvene at the premises of the ICAC, 191 Cleveland Street, Redfern, for a meeting with the Operations Review Committee.

The Committee adjourned at 3.45 pm until Tuesday 09 March 1993, at 6.30 pm.


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Chairman


.....
Clerk

NO 39

THURSDAY 04 MARCH 1993

AT PARLIAMENT, SYDNEY, AT 9.30 AM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon S B Mutch

Legislative Assembly

Mr Kerr
Mr Gaudry
Mr Turner

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

The Committee noted the correspondence from: Ian Temby QC, dated 22 December 1992; W G Alcock, dated 04 January and 01 February 1993; Tamworth City Council, dated 27 January 1993; Deborah Sweeney, dated 09 February 1993; Deborah Sweeney dated 10 February 1993; Deborah Sweeney, dated 10 February 1993; R A Hancock, dated 12 February 1992; Hon Stephen Mutch MLC, dated 12 February 1993; Valy Jadresko, dated 15 February 1993; Ian Temby QC, dated 17 February 1993; Tom Benjamin, dated 18 February 1993; Richard Hayes, dated 21 February 1993; Ian Temby QC, dated 23 February 1993; Deborah Sweeney, dated 24 February 1993; and Ken Davies MLA, dated 26 February 1993.

Meeting of the Committee on the ICAC
04 March 1993

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

That the correspondence be dealt with as follows:

- 1 That the Chairman write to Mr Temby in the terms of the draft response in regard to his comments on 09 November 1992 regarding the Project Officer's conference paper ensuring the matter is put to rest.
- 2 That Mr Alcock's correspondence be referred to the ICAC with a request for a full report on the matters raised.
- 3 That the letter from the Tamworth City Council be considered in the context of the Review of the ICAC Act (chapter 8).
- 4 That the issues raised by the ICAC in Ms Sweeney's letter of 09 February 1993 be addressed in the procedures for dealing with unsolicited complaints following discussion at an officer level with the ICAC.
- 5 That Mr Bellamy be provided with a copy of the ICAC's response to his complaint about the ICAC's handling of Mr Roger Rogerson.
- 6 That Mr Hancock be provided with a copy of the ICAC's response to his complaint concerning the ICAC's jurisdiction to investigate "Commonwealth matters".
- 7 That the letter from the Hon Stephen Mutch MLC be considered in the context of deliberations on the draft report on Pecuniary Interest Provisions and a Code of Conduct for MPs.
- 8 That the Chairman write to the Premier forwarding a copy of Mr Temby's letter concerning the Public Sector Management Act, asking whether he has any comments and whether would like to pursue this matter any further.
- 9 That Mr Tink be provided with a copy of Mr Temby's response to issues raised in his evidence on 05 February 1993 and be asked whether he wishes to take the matter any further.
- 10 That the correspondence from Mr Tom Benjamin, and Mr Richard Hayes, be referred to the ICAC for comment and response.

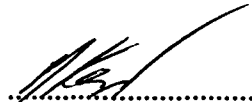
Meeting of the Committee on the ICAC
05 February 1993

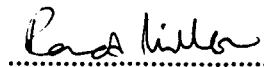
- 11 That the ICAC's comments concerning the Committee's draft report on its visit to Brisbane contained in Mr Temby's be addressed by amendments to the draft report.
- 12 That the Gloucester Shire Council be provided with a copy of the ICAC's response to their complaint concerning the distribution of ICAC Reports.

The Committee discussed the recent visit to the Operations Review Committee (ORC).

The Project Officer was asked to prepare a briefing note on the procedures for the appointment of members of the ORC and remuneration for members of the ORC.

The Committee adjourned at 9.55 am until Tuesday 09 March 1993, at 6.30 pm.


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Chairman


.....
Clerk

TUESDAY 09 MARCH 1993

AT PARLIAMENT, SYDNEY, AT 6.40 PM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon S B Mutch

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Turner
Mr Zammit

Apologies were received from Mr Gay and Mr Nagle

The Committee noted the correspondence from: Ms Deborah Sweeney, dated 02 March 1993; Mr Tom Benjamin, dated 18 February 1993; and Mr Andrew Tink MP, dated 05 March 1993.

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

- 1 That Mr Taylor be sent a copy of Ms Sweeney's response to his complaint; and
- 2 That Mr Tink be asked to specify the action which he wants the Committee to take on his complaint.

The Committee noted the late submissions to the Review of the ICAC Act received from Mr Hilton Jones and Mr Justice Clarke and agreed that these should be forwarded to the ICAC. Mr Hatton advised the Committee that Mr Jones works for him on a voluntary basis but that the submission from Mr Jones represented Mr Jones' views.

The Committee deliberated on the draft report on the Review of the ICAC Act.

The draft report, as circulated, was taken as read.

Introduction read and agreed to.

Chapter One read.

Further consideration of chapter one deferred until 26 March 1993.

Meeting of the Committee on the ICAC
09 March 1993

Chapters Two and Three read.

The Committee requested that the Chairman circulate draft conclusions to chapters two and three.

Chapter Four read and amended.

Draft section 4.3 deleted.

Chapter Four, as amended, agreed to.

Chapter Five read and amended.

Section 5b.6 amended.

Chapter Five, as amended, agreed to.

Chapter Six read and amended.

Section 6.6 amended.

Chapter Six, as amended, agreed to.

Chapter Seven read and agreed to.


Chapter Eight read and agreed to.

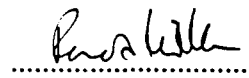
Chapter Nine read and agreed to.

Chapter Ten read and agreed to.

The Committee considered draft questions on notice for the public hearing with Mr Temby on 26 March 1993.

The Committee adjourned at 7.40 pm until Friday 26 March 1993, at 10.00 am.


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Chairman


.....
Clerk

FRIDAY 26 MARCH 1993

AT PARLIAMENT HOUSE, SYDNEY AT 10 AM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon S B Mutch

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Nagle
Mr Turner
Mr Zammit

Apologies were received from Mr Gay and Mr Hatton.

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

The media and public were admitted.

Ian Douglas Temby, Commissioner of the Independent Commission Against Corruption, on his former oath, was examined.

Paul Anthony Seshold, Executive Director of the Independent Commission Against Corruption, was sworn and examined.

Evidence concluded and the witnesses withdrew.

The meeting was then closed to the media and the public and the Committee deliberated.

The Minutes of the meeting held on 09 March 1993, as circulated, were confirmed.

The Committee noted correspondence from Deborah Sweeney, dated 10 March 1993; Ann Reed, dated 15 March 1993, Deborah Sweeney, dated 16 March 1993; Dr F D Marengo, dated 16 March 1993; Ian Temby QC, dated 19 March 1993; and Mr Andrew Tink MP, dated 23 March 1993.

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

- 1 That Mr Hancock be provided with a copy of Ms Sweeney's response to his complaint;

Meeting of the Committee on the ICAC
26 March 1993

- 2 That Mr Benjamin and Mr Hayes be provided with a copy of Ms Sweeney's response to their complaint;
- 3 That Mr Marengo's letter be referred to the ICAC for comment and response;
- 4 That Mr Temby be given an opportunity to respond more fully to the late submission from Mr Justice Clarke; and
- 5 That Mr Tink's be referred to the ICAC for comment and response.

The Committee deliberated on the procedures for dealing with unsolicited complaints.

The Committee endorsed the procedures as amended.

The Committee then deliberated on the draft report on the Visit to Brisbane.

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

That the draft report on the Visit to Brisbane, as amended, be the report of the Committee.

The Committee then deliberated on the draft report on the Review of the ICAC Act.


The Committee noted advice from the Crown Solicitor concerning the Committee's proposals for amendments to the definition of corrupt conduct.

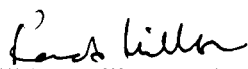
Further consideration of chapter one deferred.

Draft conclusions to chapters two and three read.

Further consideration of chapters two and three deferred.

The Committee adjourned at 12.50 pm until 3.00 pm on Monday 19 April 1993.


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Chairman


.....
Clerk

MONDAY 19 APRIL 1993

AT PARLIAMENT HOUSE, SYDNEY AT 3 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Gaudry
Mr Hatton
Mr Kerr
Mr Nagle
Mr Turner
Mr Zammit

In Attendance

Ms Ronda Miller (Clerk to Committee)
Ms Grace Penrose (Assistant Committee Officer)

The Committee went into a public hearing concerning the Review of the ICAC Act.

The media and public were admitted.

The Hon Athol Moffitt, QC, CMG, retired, on former oath, was examined.
Evidence concluded and the witness withdrew.

Timothy Frank Robertson, Member of the Australian Bar, on former oath, was examined.
Evidence concluded and the witness withdrew.

The meeting was then closed to the media and the public and the Committee deliberated.

The Minutes of the meeting held on 26 March 1993, as circulated, were confirmed.

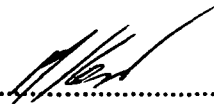
Meeting of the Committee on the ICAC
19 April 1993

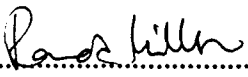
The Committee noted correspondence from Ray McRae, dated 25 March 1993; R G Humphrey, dated 29 March 1993; Terry Murphy, dated 31 March 1993; Ian Temby QC, dated 01 April 1993; R A Hancock, dated 02 April 1993; Deborah Sweeney, dated 05 April 1993; Beverley Duffy, dated 06 April 1993; Jim Young and Greg Woods QC, dated 29 March 1993; Ian Temby QC, dated 07 April 1993; A W Mitchell, dated 05 April 1993; Richard Hayes, dated 13 April 1993; Paul Seshold, dated 13 April 1993; and CENTROC, dated 12 March 1993.

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

- 1 That the letters from Mr Humphrey, Mr Temby, and CENTROC be considered in the context of the Committee's Review of the ICAC Act.
- 2 That the letter from Terry Murphy be considered in the context of the Committee's draft report on s.52 and Legal Representation.
- 3 That letters from Mr Hayes, Mr McRae, Ms Duffy, Mr Young and Dr Woods be referred to the ICAC for comment and response.
- 4 That copies of Mr Hancock and Mr Mitchell's correspondence be provided to the ICAC for information only.
- 5 That Mr Tink and Dr Marengo be provided with copies of the ICAC's response to their complaints.

The Committee adjourned at 4.17 pm until 6.30 pm Tuesday 11 May 1993.


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Chairman


.....
Clerk

TUESDAY 11 MAY 1993

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Gaudry
Mr Kerr
Mr Nagle
Mr Zammit
Mr Turner

Also in attendance: David Blunt, Project Officer.

An apology was received from Mr Hatton.

The Minutes of the meeting held on 19 April 1993, as circulated, were confirmed.

The Committee deliberated on the Review of the ICAC Act.

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

That the Committee consider the draft report on the Review of the ICAC Act at its meeting on 18 May 1993 and that draft questions to be referred to the Law Reform Commission on the primary facts and appeals issues be circulated on Thursday 13 May 1993.

The Committee noted correspondence from:

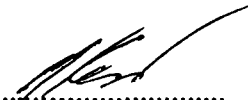
Deborah Sweeney, dated 16 April 1993; Mr Justice Clarke, dated 16 April 1993; Michael Photios MP, dated 20 April 1993; Andrew Tink MP, dated 21 April 1993; Ian Temby QC, dated 21 April 1993; Simon Stretton, dated 21 April 1993; Mr Justice Clarke, dated 23 April 1993; Deborah Sweeney, dated 30 April 1993; Deborah Sweeney, dated 30 April 1993; Deborah Sweeney, dated 04 May 1993; Deborah Sweeney, dated 04 May 1993; Superintendent R S Adams, dated 04 May 1993; Deborah Sweeney, dated 07 May 1993; and Deborah Sweeney, dated 06 May 1993.

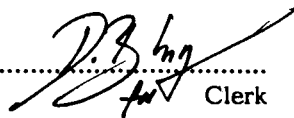
Meeting of the Committee on the ICAC
11 May 1993

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

- 1 That Mr Pinkerton and Mr Alcock be provided with a copy of the ICAC's response to their complaint;
- 2 That the letter from Mr Photios be referred to the ICAC for comment and response;
- 3 That the Minutes of Evidence and exchange of correspondence on the matter raised by Mr Tink be tabled in Parliament;
- 4 That Mr Hayes be provided with a copy of the ICAC's response to his complaint and advised that the Committee considers the matter closed;
- 5 That the correspondence on the primary facts issue be tabled in Parliament;
- 6 That Mrs McRae be provided with a copy of the ICAC's response to her complaint;
- 7 That Ms Duffy be provided with a copy of the ICAC's response to her complaint; and
- 8 That, in reply to the ICAC's response to the complaint from Mr Young and Dr Woods QC, the Committee seek advice on the effect in practice of the various Bar rules referred to in the complaint.

The Committee adjourned at 7.00 pm until 6.30 pm on Tuesday 18 May 1993.


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Chairman


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Clerk

TUESDAY 18 MAY 1993

AT PARLIAMENT HOUSE, SYDNEY AT 6.30 PM

MEMBERS PRESENT

Legislative Council

The Hon J C Burnswoods
The Hon D J Gay

Legislative Assembly

Mr Hatton
Mr Gaudry
Mr Kerr
Mr Nagle
Mr Zammit

Also in attendance: David Blunt, (Project Officer); Ronda Miller (Clerk Assistant - Committees)

Apologies were received from Mr Mutch and Mr Turner.

The Minutes of the meeting held on 11 May 1993, as circulated, were confirmed.

The Committee deliberated on the Review of the ICAC Act.

Draft Questions to be referred to the Law Reform Commission read and amended.

Question 1.1 amended.

Draft Questions, as amended, agreed to.

Introduction read and amended.

Section i.2 amended.

Introduction, as amended, agreed to.

Chapter One read and amended.

New Section 1.6 inserted

Original draft section 1.6 amended.

Chapter One, as amended, agreed to.

Meeting of the Committee on the ICAC
18 May 1993

Chapter Two read and amended.
Section 2.4 amended.
New section 2.6 inserted.
Original draft section 2.6 amended.
Chapter Two, as amended, agreed to.

Chapter Three read and amended
Section 3.b.3 amended.
Chapter Three, as amended, agreed to.

Chapter Eleven read and amended
Section 11.4 amended
Chapter Eleven, as amended, agreed to.

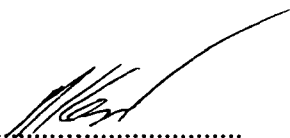
Resolved on the motion of Mr Gay, seconded by Mr Gaudry:

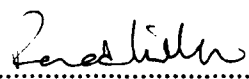
- 1 That the Report, as amended, be adopted and tabled by the Chairman as the Committee's report.
- 2 That the Chairman and Project Officer be authorised to correct minor grammatical and typographical errors.

The Committee then deliberated briefly on the draft report on Section 52 and Legal Representation.

Further consideration of that report was deferred until the next meeting. The Project Officer was asked to obtain from the ICAC an update on the figures for different categories of persons who have appeared as witnesses before the ICAC.

The Committee adjourned until 6.30 pm on Tuesday 25 May 1993.


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Chairman


.....
Clerk

TUESDAY 25 MAY 1993

AT PARLIAMENT HOUSE, SYDNEY AT 11.00 AM

MEMBERS PRESENT

Legislative Council

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

Legislative Assembly

Mr Hatton
Mr Gaudry
Mr Kerr
Mr Nagle

Also in attendance: David Blunt, (Project Officer); Grace Penrose (Assistant Committee Officer).

Apologies were received from Mr Turner and Mr Zammit.

The Minutes of the meeting held on 18 May 1993, as circulated, were confirmed.

The Committee noted the correspondence from: Mr Luis Vázquez Cano, dated 19 April 1993; Ms Luisa Pink, dated 17 May 1993; Ms Deborah Sweeney, dated 17 May 1993; and Ms Sweeney dated 24 May 1993.

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

- 1 That the Committee resolve to send delegates to the Sixth International Anti-Corruption Conference in Mexico in November 1993.
- 2 That the Project Officer take the necessary action to seek the Presiding Officer's approval for the Committee to be represented at this conference and ensure adequate provision is made in the Committee's 1993/94 budget.

Meeting of the Committee on the ICAC
25 May 1993

- 3 That the Committee write to the Cabinet Office informing them that the Committee is undertaking a Review of the ICAC Act and to the Law Reform Commission requesting advice in relation to the issues raised by Ms Sweeney in her letter of 17 May 1993 concerning s.112 of the Act.

The Committee then deliberated on the third draft report on Inquiry into Section 52 of the ICAC Act and Legal Representation before the ICAC.

Introduction read and amended.
Introduction, as amended, agreed to.

Chapter Two read and agreed to.

Chapter Three read and amended
Paragraph 3.2.14 amended.
Chapter Three, as amended, agreed to.

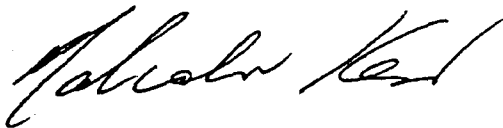
Chapter Four read and agreed to.

Chapter Five read and amended.
Section 5.2 amended.
Section 5.3 amended.
Section 5.4 amended.
Section 5.5 amended.
Chapter Five, as amended, agreed to.

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

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

The Committee adjourned at 1.10 pm until Tuesday 22 June 1993 at 10.00 am.



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Chairman



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Clerk