

**ANTI-CORRUPTION INITIATIVES OF THE
NSW GOVERNMENT: 1988 - 1992**

Paper presented by Malcolm Kerr MP

to

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My colleague Peter Nagle MP has already outlined the extent and nature of the corruption problem which existed in the state of New South Wales in the mid 1980's. He has also outlined some of the steps taken to address this problem by the Government which was in power before 1988.

What I propose to do is to briefly discuss the initiatives taken by the present Government, which came to power in NSW in 1988, in fighting corruption. I will discuss reforms which have already been put into place and also some proposals for further reform which are currently under consideration.

INDEPENDENT COMMISSION AGAINST CORRUPTION

The most obvious initiative of the present Government in this area has been the establishment of an Independent Commission Against Corruption (ICAC). The creation of such a body fulfilled a commitment made during the 1988 election to establish a permanent royal commission into public sector corruption in NSW.

To a limited extent the NSW ICAC reflects the model of the Hong Kong ICAC. Under the Independent Commission Against Corruption Act 1988 the ICAC has the same three principal functions as the Hong Kong ICAC: investigations; corruption prevention; and public education. However, that is probably where the similarities end.

The ICAC is independent of the Executive Government. It is accountable directly to the Parliament and reports to the Parliament on investigations in which public hearings have been conducted.

In conducting investigations the ICAC has recourse to coercive powers which have not been given to Police in Australia. These powers include the right to compel a witness to answer questions at a hearing. Indeed, a distinctive feature of the NSW ICAC is the capacity to hold hearings, including public hearings, as part of the investigative process. This is based on the royal commission model of anti-corruption work in Australia in which exposure of corrupt behaviour has played a significant role in changing community attitudes and practices.

The ICAC has a staff of 130 (one tenth the size of the Hong Kong ICAC) and an annual budget of about \$12AUS million. The terms corrupt conduct and public official are defined widely in the ICAC Act. To date the ICAC has formally commenced 50 investigations, and has reported to Parliament on 18 of these investigations.

There are a number of important accountability mechanisms in relation to the ICAC. As mentioned above, the ICAC reports to the Parliament. Secondly, there is Parliamentary Joint Committee which monitors and reviews the exercise by the Commission of its functions, but cannot itself investigate allegations of corruption or reconsider findings or decisions of the ICAC in particular matters. I am the

Chairman of this Parliamentary Joint Committee.

One of the main ways in which the Committee fulfils its responsibilities to monitor and review the work of the ICAC is through regular public hearings with the Commissioner. The Committee has also conducted two major inquiries. The first of these was into Commission procedures and the rights of witnesses (this addressed the question of public vs. private hearings). The second was into allegations that the Commission had bungled a sensitive investigation.

As would be expected, there is inevitably some tension in the relationship between my Committee and the ICAC. However, I believe that both bodies respect the important roles that each has to play and I have appreciated the frankness of the Commissioner and his staff and the high degree of information provided to the Committee upon request.

The other major accountability mechanism is the Operations Review Committee, which advises the Commission on which matters should be investigated. The role of the Operations Review Committee is currently under active review by my Committee.

OTHER INITIATIVES TO DATE

Codes of Conduct

Since coming to office in 1988 the Government has encouraged the preparation of Codes of Conduct. These codes spell out the responsibilities of officers in various agencies or segments of public administration and set standards of ethical behaviour.

The first such code introduced in 1988 covered Government Ministers. This code is not just a piece of paper - it has practical effect. When a Minister was forced to resign in early 1989 it was as a result of the breach of this code of conduct.

Other important codes of conduct include those developed for senior executives and for Local Government elected members and staff. These codes have been developed over time with substantial input from those whose behaviour is covered. This means that the codes are not only practical but also "owned" by those who are most affected. The ICAC has had a significant input into the development of some of these codes.

Recently, my Committee has received a reference from the NSW Parliament to develop a Code of Conduct for Members of Parliament. This reference also requires my committee to examine the adequacy of the pecuniary interest disclosure provisions relevant to Members of Parliament and senior executives.

Freedom of Information

A particularly significant initiative of the present Government has been the introduction of comprehensive freedom of information legislation. This legislation allows individuals access to personal records held by Government departments and also allows access to policy material.

Whilst there are exemptions under the legislation for "cabinet papers" (a term which has been defined broadly) and there has been some criticism of these exemptions, this legislation has undoubtedly been a success.

In practice the two most common users of the legislation have been the media and the parliamentary opposition. This is evident from the number of newspaper articles which commence by referring to hitherto secret documents which have been released under freedom of information and the number of opposition parliamentary questions based upon information released under freedom of information. The end result has been that the Executive Government has been subjected to more thorough and informed scrutiny in both the Parliament and the media.

Public Service Reforms

A number of reforms to the public service have also had a significant impact in reducing opportunities for corruption, even if the reasons for the original policy may not have been centrally concerned with corruption. One example has been the move towards "letting the managers manage". This catch phrase connotes providing managers with responsibility to get on with their jobs with a clear understanding of their responsibilities and clear paths of accountability.

One example where this has had an impact on opportunities for corruption is in purchasing and tendering. Responsibility for purchasing has been devolved to public sector managers in various government agencies, rather than having one single Government agency responsible for purchasing across the public sector. This has broken down what may have been a loci of entrenched, centralised corruption.

Steps have been taken to ensure that letting the managers manage does not create a myriad of opportunities for lower scale corruption. A great deal of attention has been paid to the development of appropriate tendering procedures. The ICAC has been active in this area, as has the Legislative Council's Standing Committee on State Development.

Other significant reforms in the public sector include the development of performance indicators for organisations and individual workers. This requires formal performance appraisal and assessment, and therefore increased scrutiny, of organisations and individuals.

Parliamentary Reform

Significant and far-reaching reforms have taken place in the NSW Parliament since 1988, and particularly in the last 9 months. The major features have included more time for the consideration of legislation, greater scope for members to raise matters of public importance and introduce private members bills, and the development of the Committee system.

I have already mentioned the Parliamentary Joint Committee on the Independent Commission Against Corruption. There is now also a Committee on the Office of the Ombudsman. This reinforces the Ombudsman's accountability to the Parliament and independence from the Executive Government. More recently a system of Estimates Committees has been established which allows for more thorough review of departmental budget estimates and spending proposals. Lastly, there has been a move to refer complex pieces of legislation to Select Committees for detailed scrutiny and the canvassing of community views. I am presently Chairman of Select Committees considering new Defamation laws and a proposal for Fixed Four Year Parliaments.

FUTURE INITIATIVES

Defamation Law Reform

As I just mentioned I am currently Chairman of a Select Committee of the NSW Parliament which is considering legislation designed to reform the defamation laws so as to provide for greater media scrutiny of the processes of Government.

Superannuation Benefits Disentitlement

The Government has recently announced that legislation is to be introduced which will provide that public officials convicted of corrupt conduct will be disentitled from any publicly funded superannuation benefits.

This legislation has been designed to address the problem experienced in another state of Australia in recent years where a public official of high standing was convicted of serious corruption offences yet was still entitled to receive a very large superannuation payment, which included a significant contribution from public funds.

Consolidation of Bribery and Corruption Offences

For some time now the Government has been working on a proposal to rationalise the laws relating to bribery and corruption. This will include the enactment of a new part in the Crimes Act which will establish a comprehensive scheme of offences concerning official corruption, bribery and misconduct by public officials. All existing common law offences relating to bribery and corruption will be repealed and replaced with new statutory offences. All existing offences contained in other legislation will be rationalised with consistent penalties and provisions being provided

in the new legislation.

Disclosure of Political Donations

For some years now NSW has had election funding laws which have provided for the disclosure of political donations. However, the legislation has contained major loopholes which have enabled the true source of political donations to be concealed. A Joint Select Committee of the NSW Parliament is currently considering this issue. The Committee's report is due out by the end of March and is keenly awaited. The Committee will be reporting on means to ensure that the spirit of the legislation is followed and that the true source of political donations is disclosed. The Government has been encouraging a national approach to this issue across all the states of Australia.

CONCLUSIONS

Since corruption became an important issue in NSW in the mid 1980's a number of important initiatives have been taken by both the former and current Governments. In some of these initiatives NSW was clearly following the lead of other states and countries. However, in other ways, NSW has set important precedents.

In my view the most important initiatives of the previous Government in this area were the provision for the Ombudsman to have a role in the investigation of complaints against Police and the establishment of the Office of the Director of Public Prosecutions.

Parliamentary reforms, the introduction of freedom of information legislation and the work which is presently under way in relation to defamation law are some of the major steps which have been taken by the present Government.

Clearly, though, the most important step in both a real and symbolic sense has been the establishment of the Independent Commission Against Corruption. There are a number of features of the ICAC which make it a fairly unique body and, I would hope, a model to be followed in other states of Australia and elsewhere. The key features which make the ICAC unique are: its independence from Executive Government; its accountability to the Parliament; its use of public hearings; and its reporting to Parliament on investigations.