

**I·C·A·C**

INDEPENDENT  
COMMISSION  
AGAINST  
CORRUPTION

**Report on investigation into the  
theft of zoological specimens from  
the Australian Museum between  
1997 and 2002 and related matters**

ICAC REPORT

SEPTEMBER 2003



**Report on investigation into the  
theft of zoological specimens from  
the Australian Museum between  
1997 and 2002 and related matters**

**ICAC REPORT**

**SEPTEMBER 2003**

This publication is available in other formats for the vision impaired upon request. Please advise of format needed, for example large print or as an ASCII file. This publication is available in HTML format on the ICAC website **[www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)**

ISBN 1 920726 13 6

© September 2003 – Copyright in this work is held by the Independent Commission Against Corruption. Part III, Division 3 of the *Commonwealth Copyright Act 1968* recognises that limited further use of this material can occur for the purposes of ‘fair dealing’, for example; study, research or criticism etc. However, if you wish to make use of this material other than as permitted by the *Copyright Act 1968*, please write to the Commission at GPO Box 500, Sydney NSW 2001.

This report and further information about the Independent Commission Against Corruption can be found on the Commission’s website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

Cover image: This mammal skull was one of thousands of Australian Museum specimens recovered by the Commission.

### **Independent Commission Against Corruption**

ADDRESS Level 21, 133 Castlereagh Street  
Sydney, New South Wales, Australia  
2000

POSTAL ADDRESS GPO Box 500, Sydney,  
New South Wales, Australia 2001

DX 557 Sydney

TELEPHONE 02 8281 5999  
1800 463 909 (toll free, for callers  
outside metropolitan Sydney)

FACSIMILE 02 9264 5364

EMAIL [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

OFFICE HOURS 9.00am to 5.00pm, Monday to  
Friday



The Hon. Dr Meredith Burgmann MLC  
President  
Legislative Council  
Parliament House  
Sydney NSW 2000

The Hon. John Aquilina MP  
Speaker  
Legislative Assembly  
Parliament House  
Sydney NSW 2000

Madam President  
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988*, I am pleased to present the report of the Independent Commission Against Corruption of an investigation into the theft of zoological specimens from the Australian Museum between 1997 and 2002, and matters related thereto.

I presided at the hearings, which were conducted for the purposes of this investigation, and my findings, opinions and recommendations are contained in this report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely

A handwritten signature in cursive script that reads 'Irene Moss'.

Irene Moss AO  
Commissioner



# Contents

<b>Executive summary</b>	<b>7</b>	THE PERIOD FROM DECEMBER 1998 TO 16 OCTOBER 1999	25
<b>Chapter 1 – Introduction</b>	<b>8</b>	4.10 Museum security upgrade	25
1.1 Why was this investigation conducted?	8	4.11 Policy framework	26
1.2 How was this investigation conducted?	8	THE PERIOD FROM 16 OCTOBER 1999 TO 12 MARCH 2003	27
1.3 The hearings	8	4.12 Transfer to Palaeontology	27
1.4 The outcome of the investigation	9	4.13 Supervision	27
1.5 Section 78(2) recommendation	9	4.14 Reduced access	28
<b>Chapter 2 – The conduct of Hendrikus (Hank) van Leeuwen</b>	<b>10</b>	4.15 Museum volunteers	28
2.1 The Australian Museum: a brief overview	10	4.16 Casual staff	28
2.2 Van Leeuwen’s employment by the Australian Museum	10	4.17 Recruitment	29
2.3 Collections specimens and other Museum items taken by van Leeuwen	10	4.18 Collection management	29
<b>Chapter 3 – Formal findings of fact</b>	<b>16</b>	4.19 Loan practices	31
3.1 Formal findings concerning Hendrikus (Hank) van Leeuwen’s conduct	16	4.20 New policies	31
3.2 Statement pursuant to section 74A(2) of the ICAC Act	16	4.21 Taronga Zoo	32
<b>Chapter 4 – Preventing corruption: an examination of management deficiencies at the Australian Museum</b>	<b>17</b>	4.22 Conclusion	33
4.1 Introduction	17	4.23 Summary of recommendations	36
4.2 Overview of the Museum’s discovery of missing specimens and its response	17	Collection management	36
THE PERIOD FROM 2 DECEMBER 1996 TO DECEMBER 1998	19	Internal investigation	37
4.3 Van Leeuwen is employed as a pest controller	19	Staff training	37
4.4 Private collection and commercial ventures: conflict of interests	20	Reporting	37
4.5 Staff induction and training	21	Staff recruitment	37
4.6 Collection management	22	Security	37
4.7 Access and security	23	Mailroom	38
4.8 Staff supervision	25	Staff supervision and management	38
4.9 Disposal of Museum assets	25	Disposal	38
		Taronga Zoo	38
		Specific policies	38
		<b>Appendix 1 – The Commission’s role</b>	<b>39</b>
		<b>Appendix 2 – Corrupt conduct defined and the relevant standard of proof</b>	<b>40</b>



# Executive summary

This report deals with an investigation by the Independent Commission Against Corruption (the Commission) into the theft of zoological specimens from the Australian Museum between 1997 and 2002 and related matters.

The Commission's investigation determined that an employee of the Australian Museum, Hendrikus (Hank) van Leeuwen, had between 1997 and 2002 stolen from the Museum more than two thousand zoological specimens, many of significant rarity and scientific value.

The Museum is a public authority for the purposes of the *Independent Commission Against Corruption Act 1988* (the ICAC Act), and its operations are funded to a large degree from the public purse. Van Leeuwen was at that time an employee of the Australian Museum and, accordingly, a 'public official' for the purposes of the ICAC Act. Theft by a public official of the property of the public authority with which he is employed constitutes or involves the dishonest exercise of official functions and is corrupt conduct for the purposes of the ICAC Act.

More than two thousand zoological specimens identifiable as Museum property were seized during the course of searches conducted of the homes of van Leeuwen and others. Van Leeuwen admitted to taking Museum property without the Museum's authorisation or consent.

Private hearings were conducted for the purposes of this investigation.

## Investigation outcomes

Findings are made in this report that van Leeuwen engaged in conduct that was corrupt within the meaning of the ICAC Act in relation to taking Museum property without the Museum's authorisation or consent.

In Chapter 3 of this report a recommendation is made that the Director of Public Prosecutions consider the prosecution of van Leeuwen for offences under section 156 (larceny as a servant) of the *Crimes Act 1900* (NSW).

A total of 33 additional recommendations are made in Chapter 4. These recommendations are designed to assist the Museum to strengthen its systems and policies to provide a strong guidance framework for staff.

The recommendations cover the following areas of the Museum's operations:

- collection management;
- internal investigation;
- staff training;
- reporting;
- staff recruitment;
- security;
- mailroom procedures;
- staff supervision and management;
- asset disposal;
- the Museum's procedures for receiving specimens from Taronga Zoo;
- implementation of and amendments to specific Museum policies.

In Chapter 4 – Preventing Corruption – the Commission also emphasises the need for the Museum to ensure that:

- staff understand their roles and responsibilities as public officials;
- managers reinforce and support this understanding through strong and consistent leadership;
- the values, culture, management, decision making and systems of the Museum are all strong, integrated and reflective of the principles of public duty.

# Chapter 1 – Introduction

## 1.1 Why was this investigation conducted?

This is a report by the Independent Commission Against Corruption (the Commission) of an investigation conducted into the theft of zoological specimens from the Australian Museum between 1997 and 2002, and related matters.

The investigation determined that an employee of the Australian Museum (the Museum), Hendrikus (Hank) van Leeuwen, had stolen from the Museum between the aforementioned dates more than two thousand zoological specimens, many of significant rarity and scientific value.

The Museum is a public authority for the purposes of the *Independent Commission Against Corruption Act 1988* (ICAC Act), and its operations are funded to a large degree from the public purse. The Commission's charter ranges wider in such circumstances than uncovering theft, and the Commission was concerned also to determine what, if any, steps had been taken by the Museum's senior management at the relevant time to investigate the matter and to secure the Museum's collections.

## 1.2 How was this investigation conducted?

In early 1997 significant 'disappearances' of zoological specimens from the Museum's collections began to be reported by Museum staff. However, it was not until late 1998 that Museum management first took the steps of informing the police of the thefts and upgrading Museum security. But the Museum baulked at a more proactive investigation aimed at uncovering the culprit, apparently concerned that such action might amount to 'harassment', and so none was conducted. I will deal with this matter at greater length in Chapter 4 of this report. In the event, the 'disappearances', which were by then recognised by the Museum as regular and determined thefts of its specimens, continued.

Following an initial telephone notification of the matter to the Commission in late September 2002, Commission staff met with senior officers of the Museum on 3 October 2002 when the matter was formally reported.

An initial assessment of the matter by the Commission disclosed strong indicators that an insider, Hank van Leeuwen, was the likely perpetrator of the thefts. Van Leeuwen was at that time an employee of the Australian Museum and, accordingly,

a 'public official' for the purposes of the ICAC Act. Theft by a public official of the property of the public authority with which he is employed is conduct which constitutes or involves the dishonest exercise of official functions and is corrupt conduct for the purposes of the ICAC Act.

The Commission made the decision to investigate this matter rather than simply refer it to police because the suspected involvement of an employee in these thefts over a long period of time indicated that other issues which fall squarely within the Commission's jurisdiction may have been a factor in facilitating the thefts.

The Commission commenced its investigation by gathering and analysing all available information concerning the missing specimens. Commission officers interviewed Museum staff and commenced covert surveillance of the Museum's specimen collections.

The investigation was protracted but as events progressed evidence strongly corroborative of van Leeuwen as the perpetrator was obtained. I approved the making of applications to an authorised justice under the *Search Warrants Act 1985* for warrants authorising searches of the residences of van Leeuwen and a number of persons believed to be associated with van Leeuwen in the matter under investigation. The warrants were granted and, on 12, 13 and 17 March 2003, a series of searches were conducted by Commission officers with assistance from NSW Police officers. The searches resulted in the seizure of more than two thousand zoological specimens identifiable as Museum property. Seized also were other items of Museum property such as scientific tools, books and office equipment. Van Leeuwen was subsequently interviewed by Commission officers and admitted to taking Museum property without the Museum's authorisation or consent.

At this stage, in light of the evidence disclosed by the investigation, I authorised the conduct of hearings.

## 1.3 The hearings

Section 35 of the ICAC Act gives me the power to summons persons to appear before the Commission and give evidence. Persons so summoned must give evidence under oath or affirmation and they must answer all questions honestly and truthfully. Giving false or misleading evidence is an offence under the ICAC Act.

Given the nature of the allegations, I determined that it was in the public interest to hold hearings. My purpose in doing so was not so much to establish the conduct of van Leeuwen, already largely mapped, but to establish the extent to which the Museum had attempted to prevent the corrupt conduct of van Leeuwen and the circumstances surrounding what appeared to be ineffective preventative measures.

Gregory Farmer assisted me as Counsel during the hearings

Hearings were conducted in private. At that stage I was satisfied that this was in the public interest, to ensure the integrity of the investigation and the reputations of those involved. After consideration of the importance of the matters involved in this investigation and the nature of the evidence that had been obtained, I determined that a public reporting of this matter was necessary in the public interest.

Evidence was taken in private hearing from the following witnesses:

Hank van Leeuwen; and

Professor Michael Archer (the Museum's Director from January 1999).

I had made suppression orders pursuant to section 112 of the ICAC Act in relation to the evidence given by the witnesses during the course of the hearings. These orders are now lifted.

## **1.4 The outcome of the investigation**

In this report I have expressed my findings that van Leeuwen, by his theft of zoological specimens and other items the property of the Museum, engaged in corrupt conduct.

I make no findings against Professor Archer, but in light of his evidence and with regard to the Commission's duty 'to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct', I have set out in this report a number of recommendations intended to better protect the Museum's collections. The protection of such collections is important not only to ensure the integrity of scientific research but for the educative benefit of society in general; we should not be deprived of the knowledge generated by such research by reason of the self-centred interests of a few.

These findings and recommendations, and my reasons for so finding and recommending, are set out in the body of this report. In particular, in Chapter 3 of this report I have recommended that the Director of Public Prosecutions consider the prosecution of van Leeuwen for larceny.

## **1.5 Section 78(2) recommendation**

Pursuant to section 78(2) of the ICAC Act, the Commission recommends that this report be made public immediately. This recommendation allows either presiding officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.

## Chapter 2 – The conduct of Hendrikus (Hank) van Leeuwen

### 2.1 The Australian Museum: a brief overview

The Museum is governed by the Australian Museum Trust, which is established under the *Australian Museum Trust Act 1975*. The Trust is comprised of nine Trustees, the current President of the Trust being Brian Sherman. The Director of the Australian Museum, currently Professor Michael Archer, is Secretary to the Trust.

Whilst the Museum is a public authority for the purposes of the ICAC Act, it is also Australia's first and oldest natural history museum, having been established in 1827. The Museum administers significant collections of natural science and anthropological artefacts (the Collections). These are primarily located at the Museum's College Street premises and also, during the relevant period, its Marrickville storage facility. The primary Collections are categorised as Anthropology, Ichthyology, Palaeontology, Entomology, Mammalogy, Mineralogy, Petrology, Herpetology, Arachnology and Evolutionary Biology, and comprise over 13 million specimens in total.

Many of specimens in the Collections are rare and accordingly of great value in both scientific and monetary terms, and many are irreplaceable. For instance, the Collections contain specimens that are examples of extinct species or are subject to import/export restrictions under the Convention on International Trade in Endangered Species of Fauna and Flora (CITES). An illegal but thriving international trade exists in such specimens, which can have a value in this context running to tens of thousands of dollars or more.

The Collections are routinely accessed by Museum employees for the purposes of Museum research and projects, and also by persons external to the Museum for similar purposes. Van Leeuwen was one such Museum employee: he also routinely accessed the Collections for the purpose of carrying out his duties.

### 2.2 Van Leeuwen's employment by the Australian Museum

On 2 December 1996, David Horton-James, Head of Materials Conservation at the Museum, appointed van Leeuwen in a temporary capacity to the position of Assistant Conservator, a position that largely involved controlling insect pests in the Collections. It appears that Horton-James recruited van Leeuwen

by simply phoning a number of TAFE colleges which run pest control courses and asking the teachers to recommend a student. One teacher recommended van Leeuwen as having an interest in natural history. In fact, van Leeuwen was operating a commercial venture involving taxidermy and osteology reproduction, known as HvL & DS Enterprises. In addition, van Leeuwen had his own, quite extensive, collection of zoological specimens, which he kept at his Londonderry home. These facts were known to Museum at the time of his employment – a matter with which I deal further in Chapter 3 of this report.

Van Leeuwen was contacted by the Museum and commenced work. Given the nature of his pest control duties, van Leeuwen was given unrestricted and unsupervised access to the Collections, both at the Museum's College Street premises and at its off-site storage facility at Marrickville. Van Leeuwen appears to have acquired similarly unrestricted access to Museum vehicles for the purpose of transporting himself and his pest control equipment from one Museum site to another. However, van Leeuwen also used Museum vehicles to transport to his home many of the specimens, particularly the larger specimens, which he took from the Collections without authority.

### 2.3 Collections specimens and other Museum items taken by van Leeuwen

On 12 March 2003, Commission officers executed a search warrant in respect of van Leeuwen's Londonderry residence. The search of these premises revealed in all corners of his house and in an outside shed and several large chest freezers, thousands of zoological specimens, including skulls, skeletons, skins and complete animal specimens in alcohol ('wet' specimens), together with scientific tools such as callipers, scientific books and various pieces of office equipment. Many of the items were immediately identifiable – by the Museum scientists who assisted Commission officers to conduct the search – as Museum property, but others, in particular those that had had their identifying markings removed or obscured, had to be examined by scientists and compared to catalogued descriptions. The examination process, a protracted exercise engaged in by Museum and other scientists over several weeks, resulted in the recovery of many valuable Museum specimens.

Over the following days further search warrants were executed by Commission officers with Museum scientists assisting, as more information came to hand as to the whereabouts of a number of Collections specimens which were not in van Leeuwen's immediate possession but had been given by him to other persons to keep in their homes. For example, a number of large taxidermy specimens, namely a lion and several cassowaries, were seized from the Newcastle home of an associate of van Leeuwen. A giraffe skull, amongst other items, was seized from the home of another associate. Further Collections specimens were seized from the residence of van Leeuwen's daughter. The available evidence against these persons is being compiled by the Commission and, if criminal intent is indicated, their conduct will be referred to the Director of Public Prosecutions for consideration of criminal proceedings.

As a direct consequence of this investigation, the Commission has recovered for the Museum more than two thousand specimens taken from the Collections by van Leeuwen over the relevant period, together with scientific tools, books and office equipment.

Van Leeuwen candidly admitted, in recorded interviews with Commission officers and in his evidence before the Commission, to taking specimens from the Collections without authority or consent. Van Leeuwen said in his evidence that he commenced to take specimens 'three or four months after I started' and that '... the first time I took material from the Museum would've been at the Marrickville storage ... it would've been a skull.'

From this small beginning, van Leeuwen's thieving became a regular activity. He gave the following evidence as to his pattern of activity at Marrickville:

*[Counsel Assisting]*

*Q: Can you tell us - just dealing with the store - how many times you went to the store and took items?*

*[Van Leeuwen]*

*A: I can't exactly tell you how many times I took items but I was there probably every month.*

*Q: Once a month at the store?*

*A: Yes, doing inspections.*

*Q: On each of the occasions that you went there you took something?*

*A: I probably took something with me, yes.*

...

*Q: I mean, was it the situation that you would load up a car with a number of items at any one time?*

*A: I'd take a few, more than one item, yes.*

...

*Q: Was it a station wagon?*

*A: No, they were four wheel drives.*

*Q: Four wheel drives?*

*A: Yes.*

*Q: Did you load up the back seat or the rear compartment?*

*A: Probably the rear compartment, so it depends how many skulls might've fitted in there that I took.*

*Q: You put in as many skulls as the four wheel drive rear compartment would contain?*

*A: Yes, most likely I think.*

At the same time, taking advantage of the unrestricted access he had been given as a pest controller, van Leeuwen also stole from the Museum's premises at College Street. Van Leeuwen's evidence in this regard demonstrates both the extent of his activities and the simplicity of his *modus operandi*:

*[Counsel Assisting]*

*Q: Then putting aside the Marrickville store for a moment, you also took items that were at the museum itself... ?*

*[Van Leeuwen]*

*A: Yes.*

*Q: ... in College Street, didn't you?*

*A: Yes.*

*Q: Did you take items from the area known as the Spirit House?*

*A: Yes.*

...

*Q: Did you take - well, you tell us what other areas you took items from?*

*A: The collection areas.*

Q: The collection areas?

A: Yes.

Q: There's a number of them, isn't there?

A: Mammals.

Q: From mammals?

A: Birds.

Q: Is that a separate section?

A: Yes.

Q: Bird section, yes?

A: And the reptiles were in the Spirit House.

Q: Was there a section known as the Wet Section, or ...?

A: The – the tank store.

Q: Yes?

A: Yes.

Q: You took items from there as well?

A: Yes.

Q: Is that right?

A: Yes.

Q: Were your efforts in relieving the museum of its property limited to taking animal skulls or specimens, or did it also include taking other items of property?

A: No, just the animals, that was my major interest.

...

Q: And how would you get them from the Spirit House or the collection area opposite Flannery's office to your motor vehicle?

A: Just carry them in a box. Just through the museum.

Q: In a box, and just walk through the museum?

A: Yeah.

Q: When you took things from the museum, did you take a large number of items at any one time?

A: No. They would have been small items.

Q: Small items?

A: Yeah.

Q: One at a time or two at a time?

A: Three, four at a time. Just small items. Yeah.

Q: Where would you take them to transport them away from the museum?

A: Well, I'd take them down to the freezer room.

Q: Yes?

A: And from there I'd just take them home.

Van Leeuwen took the Museum specimens to his home where for the most part they were kept along with his own collection. The following evidence given by van Leeuwen in relation a taxidermy specimen of a lion which he took from Marrickville is illustrative of the audacious nature of van Leeuwen's conduct:

[Counsel Assisting]

Q: The lion?

[Van Leeuwen]

A: The big stuffed lion. Yes, that came from Marrickville.

Q: From Marrickville?

A: Yes.

Q: And what did you use to get that home?

A: Four wheel drive.

Q: Just put it in the back in this ...?

A: Yes.

Q: ...four wheel drive ...?

A: Yes.

Q: ... and took it home. And what did you do with the lion when you got it home?

A: Cleaned it.

Q: Then what?

A: I had it in my room – in my room.

Q: In your room?

A: Yes.

Q: At home?

A: Yes.

Q: *On display?*

A: Yes.

Q: *Who for?*

A: *For me.*

Q: *Who else?*

A: *Anybody who came to – that wanted to see the collection.*

The lion referred to is a heritage item, valued at around \$40,000. It had been a part of an exhibit of a pride of lions that had been on display at the Museum in 1911 and, unlike many of the other specimens which van Leeuwen took from the Museum, is readily identifiable as a Collections specimen.

#### **Van Leeuwen's motive: mere acquisitiveness or commercial purpose?**

Despite van Leeuwen's assertion that his conduct was motivated by an apparently simple acquisitiveness, there is evidence that he used at least one of the specimens, a crocodile skull, to make castings for retailing through an online osteology reproductions business known as 'Eternal Preservations'. Van Leeuwen gave evidence that a reproduction crocodile skull would retail for about \$900, and admitted that he had sold one such reproduction through this business. The Commission's inquiries have however not turned up any evidence of any international trading or dealing by van Leeuwen of any specimens or other articles either generally or specifically in breach of CITES.

There is, however, evidence that at the relevant time van Leeuwen was proposing to establish a private natural sciences museum. This museum, which was to be a joint venture between van Leeuwen and another person, was intended to house a 'collection to be displayed in walk-through simulated naturalistic environments'. During the course of the hearing van Leeuwen gave contrary evidence as to whether he intended to use Collection specimens he had taken in his proposed museum. Initially he admitted that he 'might have' put the Collections specimens to such use, but later in his evidence he flatly denied that the Collections skulls were for use in his museum.

Tellingly, however, once he had transported the Collections specimens to his home, van Leeuwen took steps to remove identifying Museum numbers from at least some of them, as the following evidence discloses:

[Counsel Assisting]

Q: *Whenever you got items home, I take it you did some work on them as soon as you got them home. Is that right?*

[Van Leeuwen]

A: *I would clean them up. Yes.*

Q: *And what did cleaning them up involve?*

A: *Getting the grime off them.*

...

Q: *Is that all you did to them?*

A: *And take the numbers off.*

Q: *And you took the numbers off?*

A: Yes.

Q: *By that you mean the number that someone at the museum had put on it ...?*

A: Yes.

Q: *... to record its identity in some way. Is that right?*

A: Yes.

...

Q: *Exactly, so you were taking the number off to avoid detection down the track?*

A: *Direct detection, yes.*

...

Q: *When you were at home taking the numbers off particular items you had an intention, didn't you, to use those items in the future?*

A: No.

Q: *Well. you had an intention to display them. Is that right?*

A: *To have them on show for me, yes. I didn't know what I was going to do in the future with them.'*

A document in evidence before the Commission discloses very clearly, in my view, van Leeuwen's intention with regard to the specimens he had taken from the Museum.

This document is titled 'The Zoological Museum Australia – Briefing Notes' and is a business plan dealing with van Leeuwen's proposal to establish a private natural history museum. In particular, the business plan describes van Leeuwen's collection of specimens as consisting of, amongst other things, 'over 900 animal skulls.' Van Leeuwen sought in the hearing to distance himself from the preparation and content of this document, but he had been questioned by Commission officers about certain of the statements it contained on 12 March 2003, shortly after his home had been searched. In a lawfully recorded interview with Commission officers on this date, van Leeuwen said:

*[Commission officer]*

*Q: Right, and it's [the business plan] saying that you have got 900 in all skulls. So that's virtually, you know, you've doubled the size of your collection. How did you double the size of your collection?*

*[Van Leeuwen]*

*A: By doing what I did at the Museum.*

*Q: Right. So you doubled the size of your collection by taking the items from the Australian Museum.*

*A: Yes, yes.*

...

*Q: ... what did you take the items for from the Australian Museum?*

*A: Yeah. It's not a silly question. It's something I've pondered over. Because I could, maybe. And because I'm so – it became an obsession, my collection, and I just collected 'em. There was no monetary gain in 'em 'cause I did absolutely not sell 'em. It was just to – I might have seen it as a loan. I don't know. It is just something I can't explain.*

*Q: Did you intend to open up your own exhibition of the skulls, and pelts and that?*

*A: They would have been part of the project, yeah.*

*Q: So if this ZINA project got off the ground they were going to be part of the exhibition?*

*A: They might have been part. I'm not – they would've, but it depends what we would have taken off the ground first.*

Whatever may have been van Leeuwen's real intentions as to what exactly he proposed to do with the specimens once he had taken them, I am in no doubt that he intended to permanently deprive the Museum of them as indicated by his own admissions and in particular his conduct of removing all identifying markings from the specimens.

#### **Van Leeuwen's transfer to moulder/caster**

Notwithstanding an increase in security by the Museum during 1998 and 1999, it would appear that van Leeuwen's extensive pilfering was little affected. However, on 16 October 1999, a change in van Leeuwen's work role meant that he lost access to many of the Museum's specimens. On this date, the Museum's Director, Professor Michael Archer, appointed van Leeuwen to the position of moulder/caster in the Museum's palaeontology division.

Whilst working as a pest controller, van Leeuwen had shown skull castings he had produced to Professor Archer who, impressed by van Leeuwen's skills in this area, assigned him to work on a display which the Museum was then setting up at its College Street premises. As his work as a moulder/caster kept van Leeuwen within a limited area of the College Street premises, he ceased his visits to, and his thefts from, the Museum's Marrickville storage site and, it would appear, from the College Street Collections areas. From this point in time, van Leeuwen engaged in taking specimens and other items of Museum property on an opportunistic basis, as illustrated by the following evidence given by van Leeuwen in the hearing:

*[Counsel Assisting]*

*Q: In 2002 some bats from Western Australia went missing. Do you recall that?*

*[Van Leeuwen]*

*A: I don't know, probably.*

*Q: You took them, didn't you?*

*A: What were they?*

*Q: They were bats.*

*A: Yeah.*

*Q: Sent over from a museum in Western Australia. Do you recall last year taking some bats?*

*A: I recall taking a bag of bats that was laying around, that's all, yeah.*

Q: *When you say laying around, what do you mean by that?*

A: *They were just laying around, it's – on a bench or something like that and I just grabbed them.*

...

Q: *And you saw a bag of bats?*

A: *Yes.*

Q: *And helped yourself?*

A: *And just took them into my office, yeah.*

Q: *And then took them home?*

A: *Down the track, yes.*

Notwithstanding his more limited area of activity, van Leeuwen continued to take from the Museum many valuable specimens, including a rare clouded leopard skin – a CITES protected specimen of considerable value.

## Chapter 3 – Formal findings of fact

### 3.1 Formal findings concerning Hendrikus (Hank) van Leeuwen's conduct

#### Findings of fact

I am satisfied to the requisite standard that between December 1996 and March 2003, van Leeuwen without authorisation removed from premises occupied by the Australian Museum more than two thousand Collections specimens and other items which were the property of the Australian Museum.

I am also satisfied to the requisite standard that van Leeuwen intended to permanently deprive the Museum of the more than two thousand Collections specimens which he so removed, and that he intended to use these specimens primarily for commercial purposes, for his own profit or benefit.

#### Finding of corrupt conduct

I find the conduct described above:

- (a) is corrupt conduct within the meaning of section 8 of the ICAC Act in that it involved a dishonest exercise of van Leeuwen's official functions within the meaning of section 8(1)(b) of the ICAC Act, namely the unauthorised removal of the property of the public authority with which he was employed, and of section 8(1)(c) of the ICAC Act, namely a breach of public trust arising from his position as a public official.
- (b) is conduct within section 9 of the ICAC Act in that it:
  - (i) could constitute criminal offences under section 156 (larceny as a servant) of the *Crimes Act 1900* (NSW);
  - (ii) could involve a disciplinary offence namely misconduct being theft of property of the Australian Museum;
  - (iii) could constitute reasonable grounds for dismissing van Leeuwen.

Accordingly, I find that the conduct referred to above constitutes corrupt conduct for the purposes of the ICAC Act.

### 3.2 Statement pursuant to section 74A(2) of the ICAC Act

In making this report I am obliged by section 74A(2) of the ICAC Act to make a statement in respect of each 'affected person' as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the prosecution of the person for a specified criminal offence, the taking of action against the person for a specified disciplinary offence, or the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An 'affected person' is one against whom, in the opinion of the Commission, substantial allegations have been made in the course of or in connection with the investigation. In relation to this investigation, I have determined that the only 'affected person' is van Leeuwen.

In accordance with the requirement of section 74A(2), I am of the opinion that consideration should be given to the prosecution of van Leeuwen for offences under section 156 (larceny as a servant) of the *Crimes Act 1900* (NSW) in regard to those matters dealt with above.

Van Leeuwen is no longer employed by the Museum, and accordingly consideration need not be given to taking action against him for any disciplinary offence or with a view to dismissing him or dispensing with or otherwise terminating his services as a public official.

Separately to this report, the Commission is also referring to the Director of Public Prosecutions the conduct of several persons associated with van Leeuwen in this matter (their conduct is referred to in Chapter 2 of this report), for consideration of their prosecution for offences involving the receipt and/or custody of stolen goods.

# Chapter 4 – Preventing corruption: an examination of management deficiencies at the Australian Museum

## 4.1 Introduction

This chapter will concentrate on the period of time from the commencement of van Leeuwen's employment at the Museum in 1996 until the Commission's investigation became publicly known in March 2003. The period before van Leeuwen's employment will only be referred to briefly. For the purposes of clarity, this chapter will be organised around a number of key dates:

2 December 1996	Van Leeuwen commenced employment with the Museum as a pest controller.
December 1998	Museum commenced its security upgrade and began introduction of 'swipe' card system.
16 October 1999	Van Leeuwen commenced work as a moulder and caster for the Museum.
12 March 2003	The Commission's investigation became public.

The quotes that are used throughout the chapter have been taken from recorded interviews and formal statements obtained during the course of this investigation and from evidence taken during private hearings conducted by the Commission.

## 4.2 Overview of the Museum's discovery of missing specimens and its response

Museum management were made aware of missing items as early as late 1997. Dr Tim Flannery, in a recorded interview with Commission officers, stated that he reported some missing skulls to Associate Museum Director, Gary Morgan, around that time. Dr Flannery was principal research scientist at the Museum until 1998. Jim Specht, Head of the Division of Anthropology at the Museum during the relevant period, said in a recorded interview with Commission officers that he had 'heard possibly about theft of some specimens' before he took up the position of Acting Associate Director for a few months from October 1998. He added that it was only after that:

*...when, I think, it was Sandy Ingleby from Mammals came in and reported the theft of the*

*clouded leopard skin that I really started to get an appreciation that there was something really going on.*

In late 1998, Museum management took some action in relation to the thefts. According to Horton-James, management meetings were held in November 1998 to discuss the thefts. He stated that staff discussed a number of options to deal with what by then were suspected thefts, including restricting access to the Collections and setting a trap for any thief.

The meetings finally concluded that many people could have accessed the Collections. In a recorded interview with Commission officers, Horton-James said that they felt that:

*there may well have been other people who...could easily have gained access to those storage areas and so since the access was so broadly available to people it's hard to narrow down the range of suspects.*

At that time, security guards and even members of the public could have accessed some of the areas from which specimens were missing.

The staff under suspicion at the time were van Leeuwen and two others, including a former staff member. Horton-James noted that van Leeuwen was a suspect because of his wide access to the Collections and his personal interest in and knowledge of natural history specimens. His behaviour had also placed him under suspicion. According to Horton-James, Museum management decided not to pursue any of the suspects directly 'because it would seem as though we were harassing those people.' They felt it would be contrary to 'the government's harassment policy to look at people and accusing them of something without any firm foundations.'

It appears that the Museum did not have the capacity to conduct adequate internal investigations. Nor had it made alternate provisions in the event that an investigation was required.

The meetings had made no general resolutions about taking inventory to try to better ascertain the scale of the thefts. However, Specht stated in his interview that at around this time he asked the Collection managers to take 'some kind of rapid inventory' to see if anything else was missing. Staff in the Mammal section stated that they had begun to notice disturbances in the Collection and lights left turned on for no reason. In November 1998, they found a number of boxes slightly out of place with lids ajar.

This led to a more general search of the Collection. It was found that 120 specimens were missing, presumed stolen. The items had been removed from their boxes. Some reliable volunteers had placed the missing items in that area in 1996/97 during a reorganisation. Therefore, staff felt sure that the items had been taken since that time. The Museum reported the matter to the NSW Police. While Professor Archer was not employed at the museum at the time of the police investigation he says that he understands the police found no evidence against van Leeuwen and that they were unable to establish if in fact items had been stolen. The police advised the Museum to improve its security system. The Museum updated its alarm and access control software and began the process to install 'swipe' cards throughout the Museum.

In January 1999, Professor Michael Archer took up the position of Museum Director. In his evidence before the Commission, he stated that soon after he commenced duty, he 'heard rumours in the halls' about the assumed thefts and 'sought a briefing from the assistant and the associate directors to find out what this was about...'. His executive managers told him that the police had been contacted and that the Museum had acted on police advice and was implementing security improvements. Professor Archer says that he also signed increased security procedures into place.

According to Professor Archer, the Museum also informed Malcolm Long, then Trust President, of the matter:

*I ... confirmed that by discussions with the Trust President by ringing him, who didn't deny that they had been ... [informed] of the matter. There is nothing in the Trust minutes to record that ...but it was confirmed also by Margaret Rose who is one of the members of the Trust from the time when that report occurred.*

The Museum did not inform the Commission of the thefts.

Professor Archer stated that he was told that three persons had been identified as potential suspects. Other groups, such as security officers and some contractors, also had access to wide areas of the Museum. However, Professor Archer acknowledged that he was aware that staff considered van Leeuwen to be the most likely suspect as he had a private collection of a significant size and access to all areas of the museum. Professor Archer says he asked for any

evidence linking any of the suspects to the thefts in discussions with Collection Managers but no evidence was provided. Subsequently, the Museum continued to improve its security arrangements and these steps are detailed in sections 4.10 and 4.12 below.

Professor Archer says that between 1999 and 2003 he urged staff to come forward with any evidence that might implicate van Leeuwen in wrong-doing of any kind. Professor Archer says he investigated every report of misbehaviour brought to him. He says he urged continued assessment of the potential losses, ultimately with the view – as he says he noted in emails and discussions with senior management and Dr Flannery – of contacting the Trust for a second time (they had been informed prior to Professor Archer's appointment) when the assessment of losses was complete with a view to making an insurance claim for the missing material.

Professor Archer has told the Commission that he and his management team were, in 1999, managing the 'tail end' of a process that had been concluded by the Trust, police and senior management in 1998. However, Professor Archer has also told the Commission that he intended to ask the police to resume their involvement in 1999 when the procedures that had been put in place by him were successful in identifying that a larger number of specimens had been stolen than previously thought.

In January 2002, Dr Flannery, who was by then Director of the South Australian Museum, informed Professor Archer that he was aware that certain important specimens were missing from the Museum. A student who had travelled to the Museum to study the Collection had informed Dr Flannery that a considerable number of rare specimens that he was familiar with were missing. As Dr Flannery said in his interview with Commission officers, his student was 'greatly distressed to find that specimens he was going to write up as new species were missing.'

In the interview, Dr Flannery said:

*I'd written Mike Archer, the director, a long email explaining the nature of the problem. How – what a catastrophe it was for the Museum in January this year [2002].*

Dr Flannery said that he was concerned about the consequences of the thefts. In his email to Professor Archer, he advised him to inform the Trust:

*I wrote to Mike in January saying and my first concern is for – for the Board [Trust]. You know, to make sure the Board [Trust] knows that this has all happened, you know.*

In his email and a subsequent telephone call in January 2002, Dr Flannery informed Professor Archer about a recent theft at the South Australian Museum and explained what it had done in response.

Despite Dr Flannery's urging, Professor Archer did not contact the Trust about the thefts. Professor Archer says that the conversations between Dr Flannery and himself took place at a time when the Trust had as much knowledge of the thefts, if not more, than he.

Professor Archer did not, at this time, inform the Commission about the thefts. Professor Archer stated that he was not aware of the requirement under section 11 of the ICAC Act that he was obliged to inform the Commission. He also stated that he had intended to inform both the Police and the Trust about the thefts when the Museum had a better idea about the extent of the loss:

*when we have the value of what was perceived to be lost clarified, we would take it to the Trust with a recommendation and the expectation that the police would be invited again to look at the matter and make a decision again as to whether or not they were willing ... to investigate it...'*

Professor Archer also says that he advised Dr Flannery of his intended approach.

Professor Archer stated that he had intended to lodge an insurance claim if the police did not investigate the matter:

*At that point I instructed the – the head of corporate and commercial services to inform government that we would – inform the government insurers and we would probably be making a claim if the police wouldn't act on this again, if they wouldn't pick up the – the investigation again, and in the middle of that process of course ICAC became involved and we suspended that insurance claim.*

Professor Archer ordered an inventory in February 2002. It found that 339 mammals, 32 reptiles and between 32 and 46 fish specimens were missing. Professor Archer stated that the Museum only surveyed the CITES materials in the Collections because:

*We were still making the assumption that specimens... were being taken for their intrinsic financial worth, so we surveyed the entire Collection for those sorts of things.*

It is possible, given that over 2,000 Museum specimens have been found at van Leeuwen's home, that a wider inventory might have identified a larger number of missing specimens.

## THE PERIOD FROM 2 DECEMBER 1996 TO DECEMBER 1998

### 4.3 Van Leeuwen is employed as a pest controller

As mentioned in Chapter 2, van Leeuwen was appointed in a temporary capacity to the permanent position of Assistant Conservator (pest control) in 1996. He was not subject to referee checks, apart from the initial recommendation of his TAFE teacher. The Museum did not have a Recruitment Policy at that time; however, the NSW public sector Personnel Handbook would have provided guidance about proper practice.

#### Recommendation

**That the Museum ensure that, where appropriate, merit selection processes are employed when filling vacant positions.**

#### Recommendation

**That the Museum ensure that all new staff are subject to adequate referee checks prior to appointment and that the Museum amend its Recruitment Guidelines 2001 to reflect this.**

A letter to the Commission from the Museum's Deputy Director, Patrick Filmer-Sankey, dated 3 April 2003, describes van Leeuwen's employment status throughout his six years in the Museum's employ as 'temporary'. There are 13 letters on van Leeuwen's personal file extending his 'temporary' employment. The last letter was dated 10/7/2000, extending his employment until 31/8/2000. There were no further advice letters from the Human Resources Unit as this date (31/8/00) had not been recorded on the computer system. Filmer-Sankey's letter states that there is:

*no adequate explanation for this except perhaps to note that all the position coding was changed around that point in time and the absence of an end date (which would have prompted the Manager of the need to request another extension of employment) may in fact have been a processing error or oversight.*

None of the letters extending van Leeuwen's employment refer to the legislative provision under which he was employed. Professor Archer stated that van Leeuwen was employed under the provisions of section 38 of the *Public Sector Management Act 1998* (PSM Act). (This was replaced by the *Public Sector Employment and Management Act 2002*). Under the provisions of the PSM Act, a person may be employed under section 38 as a casual employee to carry out work that is 'irregular or intermittent', or for a 'short period pending the completion of a selection process', or on a 'short-term basis' or in an 'emergency'. Van Leeuwen's employment at the Museum does not appear to have met any of these criteria.

According to Professor Archer, at that time the Museum employed a number of staff on this basis. All of them had been employed in this manner for over two years. In 1999/2000, the Museum applied for these staff to be made permanent. Probably for the reasons noted above, van Leeuwen's name was not included on this list and the fact of his temporary status was subsequently forgotten by the organisation. As a consequence, he remained a temporary employee under section 38 until he was dismissed in 2003.

## Recommendation

**That the Museum ensure that temporary staff are employed in accordance with the provisions of section 38 of the Public Sector Management and Employment Act 2002.**

## 4.4 Private collection and commercial ventures: conflict of interests

When van Leeuwen was recruited by the Museum, he already had an extensive private natural history collection and worked privately as a taxidermist and caster. Horton-James indicated to Commission investigators that van Leeuwen's interest and skills positively influenced his decision to employ him, although he had some concerns about conflict of interest issues.

Horton-James stated that he referred to the Museum's Conflict of Interest Policy 1988 when employing van Leeuwen. That policy states that:

*activities not being of the same kind as the person would carry out as part of their official duties at the Museum ... do not require official approval for them to be carried on outside working hours.*

Horton-James initially considered that under this policy provision van Leeuwen's situation did not present a conflict of interests, as he was not working privately as a pest controller. He stated that he also discussed this with the then Deputy Director who also did not consider that van Leeuwen had a conflict of interests. The policy also states that:

*private employment ... outside one's salary as a public servant are prohibited... unless expressly approved by me under my delegation as Director.*

This would seem to cover van Leeuwen's work as a taxidermist and caster, however, this does not appear to have been considered by the Museum at the time.

The Museum's Conflict of Interest Policy was promulgated in 1988. Neither the policy nor the Museum's Code of Conduct 1993 provided a clear definition of a conflict of interest. The policy required staff with private collections of the kind maintained by the Museum to declare these in writing to the Deputy Director by 31 August 1988. There was no requirement in the policy that staff employed subsequent to that date make such declarations. Despite there being no apparent requirement to do

so, Horton-James asked van Leeuwen to provide him with a list of the items in his collection, which he did. He also requested that van Leeuwen inform him of any additions to that collection, which he also did on some subsequent occasions. Horton-James stated in his interview with Commission officers that he required this because he was still concerned about:

*the possible issue of his access to items in the Collection and his own personal private interest in natural history collections...*

Predictably, van Leeuwen did not inform Horton-James of the additions to his collection which came from the Museum.

Horton-James was also aware that prior to working at the Museum, van Leeuwen had done some voluntary pest control work at Taronga Zoo. He had developed close working relationships with key Zoo staff. This potential conflict was not addressed at the time. These relationships later assisted van Leeuwen to obtain specimens from the Zoo which the Zoo believed he was collecting for the Museum.

By his own account, Horton-James was concerned about what he personally perceived to be van Leeuwen's potential conflicts of interest. However, the policy of the time did not provide him with assistance or guidance in this area. It seems that, despite his initial concerns, he took no particular action to manage van Leeuwen's potential conflicts or to provide any additional supervisory safeguards.

#### 4.5 Staff induction and training

It appears that van Leeuwen did not receive adequate training upon induction or at any later time on the Code of Conduct and issues such as corrupt conduct and conflicts of interest. The Museum's Staff Development Policy 1992 (which has not since been updated) did not include provision for staff induction. However, Filmer-Sankey advised in a letter to the Commission dated 3 April 2003, that:

*... up to approximately mid 1999...all temporary and permanent staff were required to attend the HR [Human Resources] office in the first few days of their appointment where they were made aware of company policies and their availability from Organisational Development Unit and the Intranet.*

The letter also stated that staff were also required to attend a:

*... one day induction seminar within their first three months of employment which included a more detailed information session on the Museum policies and procedures.*

In relation to the induction process, Professor Archer stated that:

*...when van Leeuwen came in, the process was extremely efficient. There would've been absolutely no excuse for van Leeuwen to claim that he wasn't aware of the policies of the Museum.*

In relation to the information he received on induction, van Leeuwen stated that:

*...we did get a little tour around the Museum to introduce ourselves to the people. That was it. ...If we wanted policies we could get them out of the 'I drive or intranet or something like that. It was just assumed that we had to know.'*

Van Leeuwen's recollection of the one-day induction seminar was that:

*...we had to draw the person next to us and things like that...I had to draw her and she had to draw me and we just sat there and introduced...*

Van Leeuwen said there was no explanation about policies and procedures and he wasn't given a copy of the Conflict of Interest Policy, although he may have received the Code of Conduct. The experience does not appear to have increased his understanding of issues such as conflicts of interest. Indeed, at least some of his supervisors also appear to have been unclear about them.

Van Leeuwen did not seem to understand what constitutes corrupt conduct in the New South Wales public sector. Although he obviously knew it was wrong to take the specimens from the Museum, he wasn't aware that theft constituted corrupt conduct, despite this stipulation in the Museum's 1999 Corruption Prevention Policy and Procedures. In a recorded interview with Commission officers, van Leeuwen stated that when he heard in 2003 that the Commission was involved:

*I was only aware of the Commission when Danny got pulled in...and I thought well there's nothing corrupt here, which I thought was strange.*

## Recommendation

**That the Museum provide a comprehensive induction program for all new staff. This should include training about the Museum's:**

- **Corruption Prevention Policy and Procedures 1999;**
- **Code of Conduct 2003;**
- **Conflict of Interest Procedures 2003.**

## Recommendation

**That the Museum ensure that staff receive regular information through newsletters, staff meetings and other internal communication channels about the Museum's:**

- **Corruption Prevention Policy and Procedures 1999;**
- **Code of Conduct 2003;**
- **Conflict of Interest Procedures 2003.**

## 4.6 Collection management

The Museum's Collections Policy appears to have been somewhat uncoordinated and incomplete during this period. There were a number of general and individual Collection Policies. Some Collections were not covered by any policy. It is likely that this absence of consistent guidance contributed to the apparent disorganisation of the parts of the Museum's stored Collections which were of interest to van Leeuwen. Professor Archer noted that:

*When I first used the Collections...as a student in 1976, I had to take brushes to wipe the mould off the specimens before I could examine them.*

In an interview with Commission officers, another staff member, Patricia Ennis, recalled that by 1989 the Mammal Collection had been organised by one person on her own for a number of years and:

*the general Collection and curation, ongoing care of the specimens was not well maintained or particularly regular.*

Ennis added that in the early nineties, 'there was a fairly major disruption in staffing and some temporary people were brought in to assist in reorganising the storage of Collection...and there was a lot of reboxing and relabelling...and moving around of specimens' in the four main areas of the Collection.

This disorganisation may have contributed somewhat to the Museum's early inaction in response to the thefts. Ennis noted that when they first realised specimens were missing:

*it was hard initially to recognise which specimens had vanished over the passage of time through bad curation and which had actually been taken.*

She also said that when they moved the Mammal Collection from the storage site at Marrickville to the new location at Homebush, it was poorly secured, labelled and organised. She added that the Museum would have 'no idea what material may have been at Marrickville, what might have vanished in the past'.

It was also difficult for staff to be sure that a specimen was missing, as specimens moved freely between different sections of the Museum itself without proper records being kept of their movements. Accordingly, an item might have been missing or it might have been taken to the photography section, for example, for some reason. It might also have been with a researcher. As Professor Archer noted, the Museum regularly has around 90 researchers using specimens from the Collections:

*...which means removing them from the Collection spaces, taking them into laboratory spaces...and the laboratories are large, they commonly have many, many specimens around there, a researcher could be working at any one time with several hundred specimens and it's not ...impossible for specimens to be lost sight of even within a lab space.*

Specimens were also left for considerable periods of time unsecured in staff offices before being returned to their correct storage place. In addition, at least some offices could be accessed by the general staff key, which meant they were difficult for staff to secure.

The specimens that were easily identified by staff as being missing, were generally those that were well-known to individual staff, such as the echidna skulls Dr Flannery reported as missing in 1997 and the primate skulls reported as missing by primate specialist Colin Groves in April 1998. Sometimes it was a matter of coincidence that staff realised a specimen was missing. The Museum did not in the first instance identify the losses by any systematic process such as a stocktake. It did, however, later gain a better understanding of the extent of the losses via limited inventories in November 1998 and February 2002.

## 4.7 Access and security

Van Leeuwen was somewhat selective in his choice of specimens, in that he took specimens that he liked or did not already possess. This could indicate that he had the opportunity to take more than he did. He was able to take so many items so easily for two main reasons. Firstly, his position as pest control officer afforded him easy and legitimate access to all areas of the Museum's Collection. In his interview with Commission officers, Dr Flannery stated that before he left the Museum in 1998:

*...the materials conservation people, those who check the pests and insects of the collection also had clear access and that's pretty standard for any museum around the world.*

Secondly, the Museum's security system was inadequate to stop van Leeuwen. In a recorded interview Van Leeuwen said:

*...there was absolutely no security at that particular time, or there was security, but very minimal security.*

Dr Flannery described security in 1998 as consisting of:

*...a series of keys that were held by researchers and a few other people and I guess the security guards were among them.*

Professor Archer, however, stated that he believed that the security processes the Museum had in place in 1998 were 'as good as almost any museum in the world'. The main Museum had security guards, however it appears that their focus was on risks from outside the Museum, such as visitors or intruders. They did not look for risks from inside the Museum, such as from staff. Van Leeuwen was able to take items from one area of the Museum, carry them through other areas of the Museum, leave the Museum with the items and then load them into a vehicle and drive away with them. The Museum's security system at the time did not prevent or, it appears, even make it difficult for him to do so. In fact, van Leeuwen stated that if it had been difficult he would not have done so.

The Museum did not have good perimeter security. Staff were able to leave the Museum with specimens and goods without being challenged. Van Leeuwen stated that he carried specimens from the Spirit House or the Collections areas in a box through the Museum to his work area in the freezer room. He would leave them there for the rest of the day, and

possibly overnight, before walking them out of the Museum to the Museum vehicle he was using that day. Staff bags were not searched when staff left the Museum. Van Leeuwen was allowed to carry a sizeable canvas bag to and from the Museum on a daily basis. It is possible that he used it to transport stolen items. There was no policy prohibiting staff taking large bags into or out of the Museum.

### Recommendation

**That the Museum ensure that no person may remove a specimen from any of the Museum's premises without a written authority from the appropriate manager. Security guards should be given authority to stop a person from removing a specimen from Museum premises until the written authority is provided.**

### Recommendation

**That the Museum investigate the cost-effectiveness of a form of electronic tagging which would trigger an alarm if an item were removed from Museum premises.**

### Recommendation

**It is not uncommon for organisations that hold items that have value on the open market to introduce policies of random staff bag searching. The Museum could consider developing a policy to introduce random searching of staff bags by security officers as staff leave the Museum.**

The Museum's mailroom was not secured and there appears to have been no security provisions to ensure that incoming mail found its way safely to its intended owner or that outgoing mail was actually posted. No records were kept so that this could be checked on later. It seems that all mail, from ordinary letters to valuable exhibits on loan from other museums, was handled in the same manner. Ennis stated that on at least two or three occasions specimens had been removed from parcels addressed to her section. The thief had removed the specimens from the parcel and then returned it to the sorting room for her to collect.

## Recommendation

**That the Museum review its mailroom procedures to ensure:**

- **Incoming and outgoing mail is kept secure;**
- **A record is kept of all incoming mail, its contents and the date it is delivered to or collected by the recipient;**
- **All mail is the responsibility of the mailroom until it is mailed, delivered to or collected by the recipient.**

The security at the off-site storage area in Marrickville was similarly lacking. Van Leeuwen stated that the first items he stole were from the Marrickville site. He stated that he was required to 'sign out' a key to access the store, but there was no one at the store to check his activities after that. He stated that he visited the Marrickville storage site approximately monthly during the two and a half years he was a pest controller. He admitted that he stole items on most of these visits. When questioned, he agreed that he 'most likely' filled the rear compartment of the four-wheel drive Museum vehicle with as many skulls as it would contain. Sometimes he took larger items, for example the taxidermy specimen of the lion.

In addition to apparently inadequate security, it seems that the security measures that were in place at the Museum were sometimes poorly utilised. For example, the locks that provided the main security at this time were not routinely used. Ennis noted that when staff were searching for Dr Flannery's missing echidna skulls in late 1997:

*...at this stage the compactors had locks on them but they weren't – the locks were just left open.*

Interestingly, van Leeuwen stated that he suggested at a meeting about the missing items that staff should close the back door as a way of improving security:

*...one of the blokes went out the back door, downstairs to have his cigarette and he used to chock it open.*

## Recommendation

**That the Museum provide staff with awareness training in Collection security, including the importance of the effective utilisation of existing security measures.**

It appears there was no policy or security provision preventing staff from bringing friends into the non-exhibit areas of the Museum. A staff member recalled being perturbed at finding van Leeuwen showing his then business partner some of the Museum's Collection. However, the staff member did not take any follow-up action, such as discussing the inappropriateness of this with van Leeuwen or reporting it to his supervisor.

## Recommendation

**That the Museum provide that all persons visiting the Collections or storage areas must have prior approval and an appropriate written authority or visitors pass which must be visible at all times.**

The Museum's poor recording practices also contributed to its ineffective security. For example, in 1997, when the Museum's walk-in freezer failed, van Leeuwen and his business partner offered assistance to the Museum by bringing in their truck and taking home numerous specimens to macerate them (remove the flesh from the bones). The Museum kept no record of what van Leeuwen and his business partner took or returned. In her interview, Ennis noted that they took several large bags of material away, 'but we weren't able to check at that stage what they did take.' She speculated that this might have been when van Leeuwen took some of the specimens later found to be missing from the freezer, including a polar bear skin. As she said, '...I believe it may well have been taken out of the freezer at the time the freezer broke down.' Van Leeuwen is unclear whether he took the polar bear skin at this time or later. However, he stated in an interview that he took it from outside the walk-in freezer where it had been left, 'in the corner that's why I took it with me before it really went putrid.'

## Recommendation

**That the Museum maintain a record on the Collections database of the specimens held in frozen storage including:**

- **The type of specimen;**
- **Where the specimen came from;**
- **The date the specimen was placed in the freezer;**
- **The staff member with responsibility for the specimen;**
- **What is to be done with the specimen;**
- **By what date this action is to be taken and by whom.**

The poor recording practices extended to the Museum's loans system. Ennis noted in her interview that a lot of material 'in the early days' was out on unofficial loans. Some of this would have been recorded, some not. It was quite common at this time for the Museum to lend specimens to leading researchers but not record the loan officially. As Professor Archer noted:

*The loans process in the past ... allowed some specimens to in effect go missing because their whereabouts wasn't kept track of.*

The loans system appears to have been quite loose generally. Ennis noted that one researcher would sometimes return a loaned specimen to the Museum in a plastic drum, without advising anyone at the Museum. The specimen would then remain in the Museum's delivery area until someone realised it was there and notified the appropriate staff member.

### 4.8 Staff supervision

Loose supervision practices was another factor that assisted van Leeuwen in his dishonest activities. During this period and until he moved to moulding and casting in 1998, he was nominally supervised by Horton-James. According to van Leeuwen, Horton-James did not supervise his day-to-day activities:

*I was the Pest Control Officer I did it myself, I... was the qualified person.*

Van Leeuwen also did other work for the Museum, such as taxidermy and specimen preparation. He also did contract pest control work for other agencies for which the Museum was paid. In this work, he was

responsible to other Museum staff such as various Collections managers. It does not appear that van Leeuwen had a work roster to indicate to other staff where he was supposed to be working. It is easy to see how these factors resulted in confused reporting lines and supervisory responsibility. This situation would have assisted van Leeuwen in his dishonest activities.

### 4.9 Disposal of Museum assets

A number of unwanted plant items were found at van Leeuwen's house. He stated that some of these were items that the Museum had thrown out. For example, van Leeuwen stated that he was told to 'get rid of' a photocopier so he took it home. Van Leeuwen said he was unaware of any policies about disposing of unwanted items:

*No, they used to throw them upstairs or out, and people could take what they wanted.*

He added that it was common knowledge at the Museum that, 'Opposite the storage you've got this big wall and anything that appeared on near that wall... was more or less to be thrown out' and anyone could take what they wanted from this area.

## Recommendation

**That the Museum review its asset disposal policy to ensure that items are disposed of in a manner consistent with State government policy.**

## THE PERIOD FROM DECEMBER 1998 TO 16 OCTOBER 1999

### 4.10 Museum security upgrade

In December 1998, on police advice, the Museum began to upgrade its security systems. It updated alarm and access control software and installed 'swipe' cards to some areas, including the Spirit House, which is part of the Mammal Collection. In January 1999, the 'swipe' card system was further expanded to other areas, including the William Street Mammal section and all external doors. During the 1999/2000 financial year, the Museum contracted Australian Protective Services to assess the Museum's suitability for the Commonwealth Government's Art Indemnity Australia scheme. This was a comprehensive review of systems and practices used by the Museum for the protection of people, property, Collections and information and for exhibits indemnified under

this scheme. As a result of this review, the Museum further expanded the 'swipe' card system to numerous doors throughout the Museum. These improvements appeared to have the effect of gradually reducing van Leeuwen's access to the Collections. In an interview with Commission officers, a staff member recalled that he was not pleased about this:

*He complained bitterly about having to give up access to some areas...and he said that he wouldn't be able to do his job properly.*

However, van Leeuwen's statement to the Commission indicated that his thieving was not prevented by these security improvements. He stated that he continued to take specimens throughout his employment as a pest control officer up until he was transferred to the Palaeontology section on 16 October 1999 to work as a moulder and caster. He indicated that his access was not removed until that time:

*I had no access any more...I couldn't get to the stuff.*

He also commented that even after this period of security improvement, sometimes doors were left open, a practice that would have nullified the desired effect of the 'swipe' card system.

Given van Leeuwen's proclivity for the 'easy' theft, it is possible that the improved security and his more limited access reduced the number of thefts during this period. The February 2002 inventory indicated that around 400 more specimens were missing since the November 1998 inventory. However, it is difficult to say conclusively that these specimens had been taken since November 1998. It is possible that at least some of them had been missing but not identified as such at the time of the earlier inventory, particularly as the earlier inventory had not included the reptile, birds and fish Collections.

According to Professor Archer, when it became aware of the thefts, the Museum also contacted Traffic Oceania, an organisation that monitors illicit trade in such items. Traffic Oceania reported that it could find no evidence of trade in these specimens.

#### 4.11 Policy framework

The Museum promulgated its Corruption Prevention Policy and Procedures in 1999.

Professor Archer stated in evidence that he had no knowledge of this policy:

*It wasn't drawn to my attention, no.*

However, the 'Introduction From The Director', which prefaces the Corruption Prevention Policy and Procedures document, is in Professor Archer's name.

The Introduction states:

*An initial and critical stage of the Policy is to make all staff aware of corruption, maladministration and serious and substantial waste of public money, when they can occur, how to recognise the problem and what action to take to reduce the risk to our organisation. An official channel of communication is now available to encourage the reporting of incidents (disclosures). Actions taken following a reported incident will vary. ... In some cases, a major investigation may be undertaken.*

Professor Archer's lack of awareness of the policy would have made it difficult for him to implement the policy in the way the Introduction describes or to meet his responsibilities as stated in the policy to improve awareness, detection and prevention of corruption.

Professor Archer also stated that he was unaware that theft was a form of corruption or that he, as Museum Director, had a responsibility to report corrupt conduct to the Commission. However, the Corruption Prevention Policy and Procedures 1999 makes these matters quite clear:

- At 1.6, the policy lists 'theft' as an example of 'a common form of corruption';
- At 2.1 it states that, 'The Director is responsible for ensuring that there is a strong policy and adequate resources for improving awareness, detection and prevention of corruption...';
- At 6.4 it notes that for both serious and minor matters of corrupt conduct the 'current procedure for reporting the matter to the ICAC' is that the 'matter will be reported by the Director as soon as it is practicable to do so';
- At 6.5 it notes that, 'if the matter is serious or urgent, phone contact will be made with the ICAC's Commission Secretary or the Senior Lawyer... Otherwise a report will be submitted to the ICAC in writing.'

The position of ‘Commission Secretary’ does not exist in the Commission. The Commission advises that for urgent matters, telephone contact should be made with the Commission’s Manager of Assessments.

## Recommendation

**That the Museum amend section 6.5 of its Corruption Prevention Policy and Procedures to provide that, ‘if the matter is serious or urgent, phone contact will be made with the ICAC’s Manager of Assessments’.**

## THE PERIOD FROM 16 OCTOBER 1999 TO 12 MARCH 2003

During this time, it appears that the amount of thefts committed by van Leeuwen decreased as a result of his reduced access to the Collections and some further improvements to security. The Museum also made some positive amendments to its recruitment, loans, conflicts of interests and Collection management policies and its Code of Conduct. However, some areas, such as stocktake and the movement of specimens inside the Museum, remained problematic.

### 4.12 Transfer to Palaeontology

On 16 October 1999, Professor Archer transferred van Leeuwen from pest control to a ‘temporary’ position in Palaeontology as a moulder and caster. Van Leeuwen did not participate in a merit selection process to gain this position.

When Professor Archer put this proposal to him, Horton-James stated that he made Professor Archer aware of his concerns about van Leeuwen. Horton-James stated in an interview that he:

*... took Professor Archer aside and mentioned to him privately... that I did have some concerns about Hank and that Hank had been a suspect in the disappearance of these collection items.*

He stated that Professor Archer:

*...said to me privately that that was OK and that he really wanted to pursue this issue of casting the skulls for sale in the Museum shop so the Museum could make some money out of it.*

However, Professor Archer stated in his evidence that he couldn’t recall Horton-James expressing his concerns that van Leeuwen had been involved in the thefts:

*I can’t say that I’m certain. I’ve had many – thousands of conversations with people in the building. I don’t specifically recall a conversation with him about that.*

In his evidence, Professor Archer stated that he does, however, recall ‘conversations about that with Sandy Ingleby and... ultimately with Tim Flannery’.

Subsequently, in his submissions to the Commission, Professor Archer has denied having such a conversation with Horton-James.

Professor Archer stated in evidence that he did not investigate staff suspicions about van Leeuwen for two main reasons. Firstly, he stated that staff did not provide strong evidence against van Leeuwen:

*I pleaded with staff to give me any hard evidence as had the police, as had the previous management and it was determined that there was nothing.*

Secondly, he felt that staff were harassing van Leeuwen:

*There was, in my judgement and in the judgement of the head of Human Resources in the institution, a component of harassment based on the presumption of guilt that was directed at...Hank van Leeuwen.*

Professor Archer circulated an email warning staff about harassment of other staff and told the Commission that he had done so in response to complaints from three staff, one of whom was van Leeuwen. Professor Archer said he was concerned that the harassment claims could result in legal action against the Museum:

*...and it’s my responsibility not to allow the institution to be at legal risk on matters of this kind.*

### 4.13 Supervision

It appears that the level of supervision of van Leeuwen did not improve with his move to Palaeontology. When Commission investigators questioned him earlier this year, van Leeuwen described his then current employment situation as:

*...a bit of a floater... one person is supervising, another signs my daily sheets, another signs my car sheets.*

He stated that when he took up the new position:

*I was supposed to report direct to Mike [Archer] and then they sorted it out that I got different people to report to, because it was a bit of a mess.*

It appears that Museum staff or groups outside the Museum who wanted casts could approach van Leeuwen directly with work requests rather than approaching a supervisor who could manage and keep track of the workflow. Van Leeuwen stated that he encouraged this:

*See, I had to look for work where I was. I had to create my own sort of work, because no one actually gave me work and I don't sit around twisting [sic] my thumbs.'*

This sort of confused reporting responsibility can provide opportunities for corrupt behaviour and makes it more difficult to detect such behaviour when it occurs.

## Recommendation

**That the Museum ensure that all staff have a direct supervisor who is responsible for assigning and monitoring work, approving leave, performance management etc.**

### 4.14 Reduced access

Although it does not appear that he was more closely supervised in Palaeontology, van Leeuwen's thieving decreased significantly after he changed positions. According to van Leeuwen, this was due to his reduced access to the main Collections. However, he continued to take items opportunistically. Van Leeuwen stated in his evidence that he took 'things that were floating around, that were laying around the Museum.' This included skulls and latex moulds that, according to him had been 'thrown out'. It appears that he also took eight bats from the mailroom in August 2002. This is despite the improved level of security provided by that time. In 1999, IAB (Internal Audit Bureau) Assurance and Advisory Services conducted a Fraud Risk Assessment of the Museum. Its report noted that the Museum's security system included security staff, electronic surveillance monitoring, 24 hour back-to-base security in the main Museum areas, random patrols, uniquely numbered keys, access cards and an audit trail of attempted access.

### 4.15 Museum volunteers

Van Leeuwen was assisted by a number of volunteers in his work in Palaeontology. It appears that he enlisted some of them to assist him, perhaps unwittingly, in his activities. Commission cameras have recorded van Leeuwen and one of his volunteers removing crates and casting materials from the Palaeontology section. The Museum did not and does not have a policy on the recruitment and management of volunteers. Professor Archer stated in his evidence that:

*...there is a big volunteer team in the Museum..... but, because they're not employees they don't come under the same sort of level of scrutiny that... staff do.*

He added, 'We're going to tighten that policy up very, very rigorously'. A sound and well-implemented policy that covered recruitment, referee checking, access, accountability, training in Code of Conduct and conflicts of interests and so on for volunteers would have improved the Museum's corruption resistance in this area.

## Recommendation

**That the Museum develop a policy on recruitment, referee checks, access, accountability, supervision and training of volunteers to improve the Museum's corruption resistance in this area.**

### 4.16 Casual staff

The Museum continued to employ high numbers of casual staff for at least part of this period. The 1999 IAB Fraud Risk Assessment noted that of the 369 Museum staff at that time, 106 were casual employees. It found that the appointment process for these casual employees was managed entirely at the department level, with no Human Resources involvement in terms of the processes followed and the checks performed on appointment. The Fraud Risk Assessment report noted that, as a consequence, the assessment process may have been less than adequate and if so, this may have represented a risk to the Museum.

## 4.17 Recruitment

Possibly in response to the IAB findings, the Museum promulgated its Museum Recruitment Guidelines in 2001. It appears that these Guidelines could address some of the issues raised by van Leeuwen's recruitment and employment. For example, the Guidelines require the Museum to publicly advertise permanent positions that are vacant or that are to be filled for more than three months on a temporary basis. If adhered to, the Guidelines should help prevent staff remaining, like van Leeuwen, in permanent positions on a temporary basis for years. The Museum has also advised, in correspondence to the Commission dated 3 April 2003, that:

*All temporary employees are extended in periods of up to four months to ensure that the Museum does not extend anyone beyond the two years permitted within the Act.*

The Museum also advised that it has 'tightened up' processes to ensure that senior managers are aware of the employment status of their staff. However, it appears that new staff are still not subject to referee checks – the 2001 Museum Recruitment Guidelines do not refer to this requirement for prospective appointments. Nor do the Guidelines refer to the legislative requirement that staff who will be working with children must be subject to a police check, although the Museum has since advised that this is now a requirement.

## 4.18 Collection management

In 1999, the Museum developed its Collection Development and Maintenance Policy. This policy stated that it was not intended to replace the previous Collections policies, but rather to set an overall policy for the Museum Collections. It provided for the development of object inventories, Collection databases and controlled access to Collections. It noted that only a small percentage of the Museum's total Collections holdings had been registered on computer databases, but stated that 'extensive efforts' would be made over the next few years in adding Collections information to computer databases. The Museum also promulgated its Collection Security Guidelines 1999. A brief and basic document, it provided a 'baseline for security procedures in Collection areas'. The Museum expected that Collection managers would use this as the basis for developing specific security procedures for their respective areas.

## Recommendation

**That the Museum amend the reporting requirement in the Collection Development and Maintenance Policy 1999 to require that the Associate Director must advise the Director about specimens that are missing believed stolen, as soon as possible. (At present it requires that the Associate Director advise the Director as soon as practical only about missing specimens above a certain value, as specified in the Procedures Manual. The Associate Director must only notify the Director annually about any other missing objects.)**

Despite the Collection Development and Maintenance Policy 1999 and Collection Security Guidelines 1999, it appears that there remained at least some disorganisation in the Museum's Collections during this period. Ennis noted that she discovered some specimens missing from boxes as late as December 2001 and December 2002. She believed they were probably taken much earlier, but had been overlooked as the boxes were 'hidden behind skins on shelves' and so hadn't been noticed when staff first checked to see what was missing. Professor Archer said in evidence that the situation is improving:

*...there are 13 different Collections in the museum and they all have catalogues. Not only are there written and traditional paper catalogues...but there are electronic catalogues and increasingly more and more of the Collection is ... cross-audited and cross-checked and this will improve our ability to assess the status of any particular item.*

## Recommendation

**That the Museum review its Collection Security Guidelines 1999 to provide more specific guidance to Collection managers about the Museum-wide minimum standards for Collection security which they are required to implement.**

In 2001, IAB Assurance and Advisory Services conducted a review of the Museum's Collections management. The objective was to determine if the system was adequate to provide reasonable assurance that purchases and acquisitions were properly authorised and documented and appropriately

catalogued and safeguarded, with adequate stocktakes performed on a regular basis. Education, Archives, the Research Library and two science Collections (Entomology and Ornithology) were not included in the review.

The IAB report included a number of findings that are pertinent to this investigation. It indicated that the Museum had progressed its stated aim to continue adding Collections information to computer databases. The report found that the zoological Collections such as mammalogy were well advanced in recording their Collections onto the database. It found the Museum's security system to be generally satisfactory, although it noted that the Museum still did not record the movement of specimens from their normal storage location to other locations (e.g. laboratories).

## Recommendation

**That the Museum develop a plan with time frames, accountabilities, resource allocation etc that will progress it towards the following outcomes:**

- **All specimens for which the Museum is responsible, whether in the Collections, on display, in storage or elsewhere should be identified and recorded on the computer database;**
- **Each specimen should be assigned a dedicated and identified physical location in the Museum;**
- **Each specimen's assigned physical location should be noted on the computer database.**

## Recommendation

**That the Museum use the database system to record the movement of specimens from their assigned physical location to other locations in the Museum. Such a record should be kept for every movement of a specimen from its assigned location even for a short time. This system should record:**

- **The name of the person moving the specimen;**
- **The name of the accountable person giving permission for the move;**
- **The date the specimen was moved;**

- **The new location of the specimen;**
- **The name of the person accountable for the specimen while it is away from its assigned location (if different from the person who removed it);**
- **The date it is due to be returned to its assigned location;**
- **A record of any extensions of this return date and the new return date;**
- **The date it was returned to its assigned location;**
- **A verification from the accountable person that the specimen was returned to its assigned location.**

## Recommendation

**That the Museum assign responsibility for maintaining the Collection database for the Homebush storage facility, including inventory, stocktake, records, movements and loans.**

## Recommendation

**That the Museum consider the use of a form of electronic tagging to assist in identifying and locating specimens within the Museum premises.**

The IAB report's main concerns involved the Museum's stocktake processes. It noted that not all Collection managers undertook annual stocktakes. Those that did so conducted varying levels of stocktake. Most only sighted a random sample of 10 to 20 specimens. The report stated these sample sizes were inadequate. It recommended that one day each year should be set aside by each Collection manager to conduct sample stocktakes. The number of items that can be located in that time would determine the sample size. The report also noted that no stocktake reports had been provided by any Collection managers for that year (2001). The Museum responded that it would implement a new system of partial inventory, focusing on items of high value and random checks of other parts of the Collections.

## Recommendation

**That the Museum implement the recommendation of the 2001 IAB Assurance and Advisory Services report in relation to stocktaking, namely that each**

**Collection manager set aside one day each year to conduct sample stocktakes. The number of items that can be located in that time would determine the sample size.**

---

The report also noted that some Collection managers occasionally conducted an inventory of an entire section of their Collection, for example when changing storage locations. However, it appeared that the results of these inventories were not documented. The report recommended that this data should be incorporated into the Certificate of Stocktake to provide a more accurate picture of the volume of specimens that have been sighted. The Museum accepted this recommendation.

#### 4.19 Loan practices

During this period, (October 1999 to March 2003), the Museum's loan practices improved somewhat. It became Museum practice to enter into some form of loan agreement with the borrower of an item. However, it appears that the provisions of the loan agreements might need to be strengthened to more comprehensively protect the Museum's interests. An illustration of this was a case in which the Museum loaned a specimen to a well-known scientist. The transaction was covered by a loan agreement. However, van Leeuwen then borrowed the specimen from the scientist and made casts of it which, according to a staff member, he gave to Western Plains Zoo. Western Plains Zoo then made a profit from selling the casts.

*He... was actually giving them away at a Western Plains function. Auctioning them off, raising money for Western Plains Zoo, so Western Plains is thinking 'Great he's giving us this money'.*

Dr Sandra Ingleby, Collection Manager of the Mammals section, noted that the Museum was not in a position to complain about this, as the loan agreement gave the Museum no control over what the scientist did with the specimen while it was on loan. The Museum also currently has a loan database to track the movement of specimens that leave the Museum. Professor Archer stated, 'our loans processes are now very, very rigorous'. He added that he has encouraged Collections managers to try to locate specimens that might still be on loan but for which there is no existing paperwork.

#### Recommendation

**That the Museum ensure that its loan policy requires the following:**

- **The Museum maintains a loans database to record and track all loans;**
  - **The Museum enters into a loan agreement with a borrower for each specimen on loan;**
  - **A copy of the loan agreement is signed by the Museum and the borrower and retained at the Museum;**
  - **The loan agreement specifies the purposes for which the borrower may use the specimen;**
  - **A staff member(s) (loans officer) is assigned responsibility for managing loans;**
  - **The loans officer(s) conducts regular reviews (bi-annual) of the loans database and follows-up overdue loans;**
  - **The loans database links with the Collections database.**
- 

#### Recommendation

**That the Museum ensure that the loans database records the following details:**

- **Description and Museum number of the specimen on loan;**
  - **Name and details of the borrower;**
  - **Expected return date of the specimen.**
- 

#### 4.20 New policies

The Museum promulgated its Corrupt Conduct Reporting Policy in 2001. This policy informed staff that corruption must be reported to the Commission under section 11 of the ICAC Act (although it did not stipulate that this was the responsibility of the principal officer of the Museum).

#### Recommendation

**That the Museum ensure that its Corrupt Conduct Reporting Policy 2001 clearly states that it is the responsibility of the Museum's Director to report corrupt conduct to the Independent Commission Against Corruption.**

---

The Museum has taken steps to improve its guidance to staff on conflicts of interests issues. It recently produced a draft Code of Conduct 2003. The section on conflicts of interest provides a good definition and some examples to assist staff to understand this difficult issue. It also places the onus on staff to identify whether they have such conflicts and to report them to their supervisor. The Museum is also implementing its new Conflicts of Interest Procedures 2003. This appears to be a useful document to assist staff and managers to manage a conflict of interest situation. It specifically requires staff with private collections similar to those held in the Museum to declare such collections to the Director within three months of the promulgation of the procedure or, in the case of new employees, within three months of their appointment. The issue of conflicts of interest is also discussed in the Museum's Collection Development and Maintenance Policy 1999.

## Recommendation

**That the Museum require all new staff to sign to acknowledge receipt of a copy of the Code of Conduct 2003. This acknowledgement should be retained on each staff member's personnel file.**

## Recommendation

**That the Museum amend the provisions in the section of the Code covering gifts and benefits. The section presently advises that it is 'reasonable' for staff to accept free or discounted tickets to performances and exhibitions etc. The Code warns staff, however, to 'be mindful of the intent, extent and frequency of such offers and to consider the possible public perception that may be attached to their acceptance'. The Museum could consider the following amendments:**

- **That it explicitly define a threshold under which token gifts may be accepted by staff;**
- **Staff should not accept a gift of more than token value unless it would be perceived as rude or offensive to decline (e.g. gifts from a visiting overseas delegation);**

- **Gifts of more than token value are to be retained by the Museum for its purposes;**
- **All gifts/benefits should be reported to a nominated officer in the Museum (eg Director, Corporate Services) and recorded in a register.**

## Recommendation

**That the Museum include in the Secondary Employment section of its Code of Conduct a statement that the provisions apply whether staff are working full-time, part-time or are only temporarily employed.**

The Museum advised that Human Resources is making a 'concerted effort' to ensure that new staff sign a written acceptance of the terms and conditions of their employment which can be kept on their personal file. Further, Human Resources provides an induction session for all new employees, at which they are given general advice about the existence of the Museum's policies and procedures and made aware of specific policies such as the code of conduct and grievance procedures, harassment awareness and so on. Human Resources is currently reviewing the induction process with a view to re-introducing the one-day induction seminar. The Museum's staff training budget has been allocated to areas of 'essential training' such as harassment awareness, child protection, first aid, OH&S and customer service. It would be useful to add security awareness to this list.

## 4.21 Taronga Zoo

Taronga Zoo allowed van Leeuwen to remove a number of specimens which Zoo staff stated they believed were bound for the Museum. However, van Leeuwen kept these items. Neither the Zoo nor the Museum, or ideally the two organisations working together, had a system operating to ensure that these items reached their correct destination.

The Zoo did not indicate by clear verbal or written directions that the specimens van Leeuwen collected belonged to the Museum. It did not require van Leeuwen to sign any forms or release papers. As a Zoo staff member stated in a recorded interview with Commission officers, 'We haven't gone to the extent of having a receipt.' As communication between the Zoo and the Museum was poor, the Museum did not

become aware of the situation for several years. Van Leeuwen stated that the Zoo staff must have known he was taking the items for his personal collection as he had been doing so since 1981, long before he worked at the Museum. He added that he did work for the Zoo without charge and he received these items in return.

The Zoo's Animal Acquisition and Disposition Policy does not state that dead specimens cannot be given to private individuals. However, this would appear to be against the intent of the policy which provides that dead specimens 'may be disposed of for the purpose of research, education or display.' It also states that the priority for use of dead specimens will be given to research. Specifically, specimens may be provided to:

- Museums or university Collections for either research or display
- The Zoological Parks Board Education Centre for display

Van Leeuwen used Museum vehicles to collect specimens from Taronga Zoo for his own private collection. The use of the official vehicle contributed to the Zoo staff's impression that he was collecting the specimens for the Museum.

## Recommendation

**That the Museum and Taronga Zoo develop, record and distribute among staff a clear MOU covering the identification, removal and verification of specimens sent from the Zoo to the Museum. Each organisation should then reinforce and support this agreement by appropriate amendment to its own local policy.**

## 4.22 Conclusion

It does not appear that van Leeuwen began his employment with the Museum with a premeditated plan to steal. It seems that he took the items in response to a very tempting opportunity to easily obtain specimens in which he had an overwhelming interest. In short, he took the stolen specimens because he wanted them and because he could. He was able to successfully steal thousands of valuable specimens over several years because the Museum did not have the necessary systems in place to protect them.

There is no evidence to suggest that, prior to 1998 when the bulk of the thefts took place, the Australian Museum had less effective security measures in place than other museums. Professor Archer stated that he believed that the security processes the Museum had in place in 1998 were 'as good as almost any museum in the world'. The Commission accepts that this may well have been the case. Certainly it is likely that, prior to these events, the Museum had not seriously considered the possibility of theft on such a scale or indeed the possibility of theft at all. However, the thefts have highlighted the need for the Australian Museum to maintain adequate systems to prevent such losses in the future. This is possibly a process that many other museums both in Australia and overseas need to put in place, as museum theft is not a rare or unusual occurrence around the world. According to Interpol, in 1998 the annual international dollar value of art and cultural property theft was exceeded only by trafficking in illegal narcotics, money laundering and illegal arms trafficking.

Although it appears that the majority of specimens identified by the Museum as stolen have been recovered, some irreplaceable items, such as skulls of the extinct Tasmanian Tiger (Thylacine), are still missing. There may now be some doubts about the provenance of some of the specimens from which van Leeuwen erased the Museum registration numbers.

Between 1997 and 2002, Museum management, particularly the various Directors, received a number of reports about missing specimens. In late 1998 the Museum reported the thefts known of at the time to the NSW Police. Professor Archer also understands that the thefts were reported to the Trust in 1998. However, both the Museum's management and the Trust failed to report the thefts to the Commission at that time.

The Museum's Corruption Prevention Policy and Procedures 1999 and the Corrupt Conduct Reporting Policy 2001 state that corruption must be reported to the Commission under section 11 of the ICAC Act. The Corruption Prevention Policy and Procedures 1999 states that it is the Director's responsibility to do so. It is possible that Museum Directors prior to 1999 were not aware of their reporting responsibilities to the Commission. The Museum also did not update the Trust in early 2002 or inform the Commission when more information came to light about the scale of the thefts.

Professor Archer maintains that he was unaware that, as principal officer of the Museum, he was required to report this to the Commission; that he was unaware of the Museum's own policy requirements and that in any case he was unaware that theft constituted corruption. This is despite the fact that the 1999 policy which was issued under his name, clearly lists theft as 'a common form of corruption'. It also seems that no other senior staff member was well enough acquainted with that policy to apprise Professor Archer of his reporting responsibilities.

## Recommendation

**That the Ministry for the Arts or the Museum (as appropriate) develop an induction program for Museum executive management aimed at educating them about their responsibilities as public sector managers. There should be particular emphasis on:**

- **Understanding what constitutes corrupt conduct;**
- **Responsibility to report corrupt conduct to the Commission;**
- **Awareness of existing Museum policy, particularly Corruption Prevention Policy and Procedures 1999, Code of Conduct 2003, Conflicts of Interests Procedures 2003.**

## Recommendation

**That the Museum Trust clarify for the Museum the matters of significance, such as thefts, that it wishes to be notified about.**

Staff statements made in recorded interviews indicate that there was a strong feeling among many staff at the Museum that the thefts had been committed by someone who worked for the Museum. Some went further and named van Leeuwen as the prime suspect. Given this strong suspicion that the thefts were an 'inside job', but faced with no evidence to proceed with and with advice from the police to this effect, the question arises as to whether the museum should nevertheless have conducted a more extensive internal investigation. In hindsight, the answer to this question is clearly in the affirmative. At the time the thefts first came to the attention of the Museum, the answer is less clear.

The strong suspicion that the thefts had been committed by a staff member, and the possibility that the person might still be on staff and a potential threat, suggests that the Museum should have conducted a more systematic and thorough internal investigation than the limited steps it did take.

However, even if the Museum had made the decision to investigate the thefts itself, it did not have the capacity to conduct or outsource such an investigation.

## Recommendation

**That the Museum develop an internal investigation policy and procedure which assigns resources and responsibilities for conducting an internal investigation (whether by trained Museum staff or contractors).**

The incompleteness of the Museum's inventory remains a cause for concern. Given the incomplete inventory and the poor security and Collection management practices of the time, notably at the old storage site at Marrickville, it is not possible for the Museum to ever really be sure of what has been taken over the years, a situation with its origins prior to the time of Professor Archer's appointment. It is possible that van Leeuwen stole items from the Museum that it is as yet unaware it has lost and has not recovered. It is also possible that other persons stole items both during and prior to van Leeuwen's employment at the Museum. Van Leeuwen has admitted to stealing the majority of the items known to be missing. However, in his statement to Commission investigators he denied taking a number of missing items including two yellow-tailed black cockatoos missing from a freezer, a vacuum pump and 60 litres of silicon rubber. This begs the question of whether other persons have misappropriated items from the Museum. It is noteworthy that the Museum Trust reported the theft of around 500 items to the Commission. However, over 2,000 items stolen from the Museum have so far been identified from the items removed during the search of van Leeuwen's house. This suggests that, despite improvements in inventory and cataloguing since the thefts came to light in late 1998 and early 1999, the Museum has some way to go before being able to claim mastery of these areas.

The Museum estimates it holds around 13 million 'items' worth around \$500 million at current estimate for the purposes of insurance. In some cases, an 'item' represents a bulk Collection of several hundred or thousand individual specimens. So the actual number of individual specimens is probably well in excess of 13 million. An incomplete knowledge of the extent of the Collections and their value presents a high-level corruption risk for the Museum. The Museum cannot miss specimens that it does not know it possesses. And if it does not miss them, it cannot take steps to get them back or prevent more from being taken in the same manner. If the total Collection is not valued correctly, the Museum cannot be appropriately recompensed through insurance. The Museum would have been markedly undercompensated for its actual total loss (of over 2000 items) had it proceeded in 2002 with its insurance claim for the 500-odd items it had identified as missing.

The Museum has increased its inventory in many Collection areas. However, some remain seriously incomplete. It is important that the Museum continue its program of database recording to ensure that all its holdings are identified and adequately recorded. It would seem that no corruption risk management plan devised for the Museum will be complete or effective unless this important step is taken.

The Museum must also improve its stocktake processes. Professor Archer stated that:

*Our estimates are at the moment ... that any single specimen in the Collection would be sighted somewhere between every five and every 100 years.*

He acknowledges, however, that 100 years is 'a little bit severe' and the Museum must improve this frequency.

Since 1998, the Museum has improved some of its systems and developed policies in some areas that were previously lacking. There are still some areas, however, that require attention and these have been highlighted throughout this report. They include staff referee checks; staff induction and training, particularly in areas relating to ethical behaviour; Collection stocktaking; loans management; staff supervision; internal reporting; volunteer management and some aspects of Collection management. However, even if the Museum had a full complement of sound policies, they would be ineffective unless implemented properly. This investigation

has highlighted that policy implementation and evaluation are areas in which the Museum could improve its practices.

The Museum has implemented numerous security enhancements in recent years. Professor Archer stated that the Museum 'would probably have to regard ourselves to be almost state-of-the-art at the moment'. The Museum's focus appears to have been very much on static security measures such as guards, electronic access systems, locks etc. This, of course, is essential to maintaining the security of such a large and important Collection. However, static security is only effective when it is used correctly. A number of statements have been made throughout this investigation about security measures that were misused. For example, locks that were left unlocked and 'pass card' doors left open. To obtain the full benefit of any security system, managers must ensure that it is utilised to its full extent. To do this, they need the cooperation of staff who must be helped by managers to understand that the security of the Collection is their individual responsibility as much as that of the security officers. They must be educated to understand the need for these security measures so they feel it is important rather than inconvenient to comply with them fully. They should also be encouraged to be alert to potential risks to the Collections and be encouraged to report them to management. By bringing about this cultural change, the Museum would complement and strengthen its static security provisions, by adding a level of 'dynamic' security.

To protect its Collections of Australia's heritage, some of it irreplaceable, the Museum needs to continue to strengthen its systems and policies to provide a strong guidance framework for staff. However, the Museum also needs to do more than this. It needs to ensure that staff understand their roles and responsibilities as public officials. Managers need to reinforce and support this understanding through strong and consistent leadership and by ensuring that the values, culture, management, decision making and systems of the Museum are all strong and integrated and reflective of the principles of public duty.

## 4.23 Summary of recommendations

### Collection management

1. That the Museum develop a plan with time frames, accountabilities, resource allocation etc that will progress it towards the following outcomes:
  - All specimens for which the Museum is responsible, whether in the Collections, on display, in storage or elsewhere should be identified and recorded on the computer database;
  - Each specimen should be assigned a dedicated and identified physical location in the Museum;
  - Each specimen's assigned physical location should be noted on the computer database.
2. That the Museum use the database system to record the movement of specimens from their assigned physical location to other locations in the Museum. Such a record should be kept for every movement of a specimen from its assigned location even for a short time. This system should record:
  - The name of the person moving the specimen;
  - The name of the accountable person giving permission for the move;
  - The date the specimen was moved;
  - The new location of the specimen;
  - The name of the person accountable for the specimen while it is away from its assigned location (if different from the person who removed it);
  - The date it is due to be returned to its assigned location;
  - A record of any extensions of this return date and the new return date;
  - The date it was returned to its assigned location;
  - A verification from the accountable person that the specimen was returned to its assigned location.
3. That the Museum consider the use of a form of electronic tagging to assist in identifying and locating specimens within the Museum premises.
4. That the Museum ensure that no person may remove a specimen from any of the Museum's premises without a written authority from the appropriate manager. Security guards should be given authority to stop a person from removing a specimen until the written authority is provided.
5. That the Museum implement the recommendation of the 2001 IAB Assurance and Advisory Services report in relation to stocktaking, namely that each Collection manager set aside one day each year to conduct sample stocktakes. The number of items that can be located in that time would determine the sample size.
6. That the Museum maintains a record on the Collections database of the specimens held in frozen storage including:
  - The type of specimen;
  - Where the specimen came from;
  - The date the specimen was placed in the freezer;
  - The staff member with responsibility for the specimen;
  - What is to be done with the specimen;
  - By what date this action is to be taken and by whom.
7. That the Museum ensure that its loan policy requires the following:
  - The Museum maintains a loans database to record and track all loans;
  - The Museum enters into a loan agreement with a borrower for each specimen on loan;
  - A copy of the loan agreement is signed by the Museum and the borrower and retained at the Museum;
  - The loan agreement specifies the purposes for which the borrower may use the specimen;
  - A staff member(s) (loans officer) is assigned responsibility for managing loans;
  - The loans officer(s) conducts regular reviews (bi-annual) of the loans database and follows-up overdue loans;
  - The loans database links with the Collections database.
8. That the Museum ensure that the loans database records the following details:
  - Description and Museum number of the specimen on loan;
  - Name and details of the borrower;
  - Expected return date of the specimen.

## Internal investigation

9. That the Museum develop an internal investigation policy and procedure which assigns resources and responsibilities for conducting an internal investigation (whether by trained Museum staff or contractors).

## Staff training

10. That the Ministry for the Arts or the Museum (as appropriate) develop an induction program for executive management aimed at educating them about their responsibilities as public sector managers. There should be particular emphasis on:
  - Understanding what constitutes corrupt conduct;
  - Responsibility to report corrupt conduct to the Commission;
  - Awareness of existing Museum policy, particularly Corruption Prevention Policy and Procedures 1999, Code of Conduct 2003, Conflicts of Interests Procedures 2003.
11. That the Museum provides a comprehensive induction program for all new staff. This should include training about the Museum's:
  - Corruption Prevention Policy and Procedures 1999;
  - Code of Conduct 2003;
  - Conflict of Interest Procedures 2003.
12. That the Museum ensures that staff receive regular information through newsletters and other internal communication channels about the Museum's :
  - Corruption Prevention Policy and Procedures 1999;
  - Code of Conduct 2003;
  - Conflict of Interest Procedures 2003.

## Reporting

13. That the Museum Trust clarify for the Museum the matters of significance, such as thefts, that it wishes to be notified about.
14. That the Museum amend the reporting requirement in the Collection Development and Maintenance Policy 1999 to require that the Associate Director must advise the Director about specimens that are missing believed stolen, as

soon as possible. At present it requires that the Associate Director advise the Director as soon as practical only about missing specimens above a certain value, as specified in the Procedures Manual. The Associate Director must only notify the Director annually about any other missing objects.

## Staff recruitment

15. That the Museum ensures that, where appropriate, merit selection processes are employed when filling vacant positions.
16. That the Museum ensures that all new staff are subject to adequate referee checks prior to appointment and that the Museum amend its Recruitment Guidelines 2001 to reflect this.
17. That the Museum ensures that temporary staff are employed in accordance with the provisions of section 38 of the Public Sector Management and Employment Act 2002.
18. That the Museum develops a policy on recruitment, referee checks, access, accountability, supervision and training of volunteers to improve the Museum's corruption resistance in this area.

## Security

19. That the Museum provide staff with awareness training in Collection security, including the importance of the effective utilisation of existing security measures.
20. It is not uncommon for organisations that hold items that have value on the open market to introduce policies of random staff bag searching. The Museum could consider developing a policy to introduce random searching of staff bags as staff leave the Museum.
21. That the Museum provide that all persons visiting the Collections or storage areas must have prior approval and an appropriate written authority or visitors pass which must be visible at all times
22. That the Museum review its Collection Security Guidelines 1999 to provide more specific guidance to Collection managers about the Museum wide minimum standards for Collection security which they are required to implement.
23. That the Museum investigate the cost effectiveness of a form of electronic tagging, such as a barcode, which would trigger an alarm if the item were removed from the Museum.

## Mailroom

24. The Museum review its mailroom procedures to ensure:
- Incoming and outgoing mail is kept secure;
  - A record is kept of all incoming mail, its contents and the date it is delivered to or collected by the recipient;
  - All mail is the responsibility of the mailroom until it is mailed, delivered to or collected by the recipient.

## Staff supervision and management

25. That the Museum ensure that all staff have a direct supervisor who is responsible for assigning and monitoring work, approving leave, performance management etc.

## Disposal

26. That the Museum review its asset disposal policy to ensure that items are disposed of in a manner consistent with state government policy.

## Taronga Zoo

27. The Museum and Taronga Zoo develop, record and distribute among staff a clear MOU covering the identification, removal and verification of specimens sent from the Zoo to the Museum. Each organisation should then reinforce and support this agreement by appropriate amendment to its own local policy.

## Specific policies

### Draft Code of Conduct 2003

28. That the Museum require all new staff to sign to acknowledge receipt of a copy of the Code of Conduct 2003. This acknowledgement should be retained on each staff member's personnel file.
29. That the Museum amend the provisions in the section of the Code covering gifts and benefits. The section presently advises that it is 'reasonable' for staff to accept free or discounted tickets to performances and exhibitions etc. The Code warns staff, however, to 'be mindful of the intent, extent and frequency of such offers and to consider the possible public perception that may

be attached to their acceptance'. The Museum could consider the following amendments:

- That it explicitly define a threshold under which token gifts may be accepted by staff;
  - Staff should not accept a gift of more than token value unless it would be perceived as rude or offensive to decline (eg gifts from a visiting overseas delegation);
  - Gifts of more than token value are to be retained by the Museum for its purposes;
  - All gifts/benefits should be reported to a nominated officer in the Museum (eg Director, Corporate Services) and recorded in a register.
30. That the Museum include in the Secondary Employment section of its Code of Conduct a statement that the provisions apply whether staff are working full-time, part-time or are only temporarily employed.

### Site Management Policy and Procedures for Homebush Storage Facility 2000

31. That the Museum assign responsibility for maintaining the Collection database for the Homebush storage facility, including inventory, stocktake, records, movements and loans.

### Corrupt Conduct Reporting Policy 2001

32. That the Museum ensure that its Corrupt Conduct Reporting Policy 2001 clearly states that it is the responsibility of the Museum's Director to report corrupt conduct to the Independent Commission Against Corruption.

### Corruption Prevention Policy and Procedures 1999

33. That the Museum amend section 6.5 of its Corruption Prevention Policy and Procedures to provide that, 'if the matter is serious or urgent, phone contact will be made with the ICAC's Manager of Assessments.'

## Appendix 1 – The Commission's role

The *Independent Commission Against Corruption Act 1988* is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of New South Wales, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or of conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct within the meaning of the ICAC Act.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the Act. The Australian Museum is a public authority for the purposes of the ICAC Act and employees of the Museum, such as van Leeuwen, are public officials for the purposes of the ICAC Act.

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, based on an ethos of probity.

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and co-operating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

It is not part of the Commission's role to prosecute for offences that an investigation undertaken by the Commission may reveal. However, the Commission may form and express an opinion as to whether or not any act, omission or decision which falls within the scope of its investigation has been honestly and regularly made, omitted or arrived at, and whether consideration should or should not be given to the prosecution or other action against any particular person or persons, be they public officials or not.

## Appendix 2 – Corrupt conduct defined and the relevant standard of proof

Corrupt conduct is defined in section 7 of the *Independent Commission Against Corruption Act* as any conduct which falls within the description of corrupt conduct in either or both subsections (1) or (2) of section 8 and which is not excluded by section 9 of the ICAC Act. An examination of conduct to determine whether or not it is corrupt thus involves a consideration of two separate sections of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Section 8(1) provides that corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Section 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection. Such offences include:

- official misconduct (including breach of trust, extortion and imposition) (section 8(2)(a));
- bribery (section 8(2)(b));
- obtaining or offering secret commissions (section 8(2)(d)); and
- any conspiracy or attempt in relation to any of the above (section 8(2)(y)).

Section 9(1) provides that, despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) a criminal offence, or
- (b) a disciplinary offence, or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- (d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament—a substantial breach of an applicable code of conduct.

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. The second is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of section 8(1) and/or section 8(2) of the ICAC Act. The third and final step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

In applying the provisions of section 9 of the ICAC Act it is appropriate to recall the approach outlined by Priestley JA in *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125. His Honour said that the word ‘could’ was to be construed as meaning ‘would, if proved’. In the course of discussing the proper construction of section 9(1)(a) of the ICAC Act, he said:

*Despite section 8, conduct does not amount to corrupt conduct unless, in the case of a criminal charge which could be tried before a jury, the facts found by the ICAC as constituting corrupt conduct would, if the jury were to accept them as proved beyond reasonable doubt, constitute the offence charged ...*

Such a construction is applicable to sections 9(1)(b), (c) and (d).

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there is no right of appeal against findings of fact made by the Commission nor, excluding error of law relating to jurisdiction or procedural fairness, is there any appeal against a determination that a person has engaged in corrupt conduct. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a royal commission and its investigations and hearings have most of the characteristics associated with a royal commission. The standard of proof in royal commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

*... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences. (at 362)*

This formulation, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170, is to be understood:

*... as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct. (at 171)*

Also relevant are *Rejtek v McElroy* (1965) 112 CLR 517, the report of McGregor J into Matters in Relation to Electoral Redistribution in Queensland in 1977 and the report by the Hon W Carter QC into An Attempt to Bribe a Member of the House of Assembly (Tasmania) in 1991.

As indicated above, the first step towards considering a finding of corrupt conduct is to make a finding of fact. Findings of fact and determinations set out in this report have been made applying the principles detailed in this Appendix.

I·C·A·C

INDEPENDENT  
COMMISSION  
AGAINST  
CORRUPTION

