



INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

ANNUAL REPORT
TO 30 JUNE 1989

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INDEPENDENT COMMISSION AGAINST CORRUPTION

NEW SOUTH WALES

All correspondence to:

Commission Secretary
Box 500, GPO SYDNEY 2001

Cnr. Cleveland & George Streets
REDFERN NSW 2016

Telephone: (02) 319 0900
Facsimile: (02) 699 8067

September 1989

The Hon J.R. Johnson, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon. K.R. Rozzoli, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Sirs

In accordance with section 76 of the Independent Commission Against Corruption Act 1988, the Commission hereby furnishes to each of you its Annual Report for the year ended 30 June 1989.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ian Temby', with a long horizontal stroke extending to the right.

Ian Temby QC
Commissioner

INDEPENDENT COMMISSION AGAINST CORRUPTION

ADDRESS: 191 CLEVELAND STREET (CNR GEORGE STREET)
REDFERN 2016

POSTAL: G.P.O. BOX 500
SYDNEY 2001
DX 557

TELEPHONE: (02) 319 0900
(008) 463 913
(008) 463 909

FACSIMILE: (02) 699 8067

Members of the public wishing to communicate with the Commission can write, ring (the switch is open for the purpose between 8 am and 6 pm Monday to Friday) or call in to the Commission premises. All public hearings of the Commission are advertised in the Law Notices, and anyone interested can attend.

Senior Commission personnel are as follows:

Ian Temby QC	Commissioner
Adrian Roden QC	Assistant Commissioner
Vic Anderson	Director of Operations
Kevin Zervos	General Counsel
David Catt	Commission Secretary
Stela Walker	Director of Administration and Public Affairs

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COMMISSIONER'S OVERVIEW

The Independent Commission Against Corruption came into being on 13 March 1989. On the morning of that day a first sitting of the Commission was convened. The statement made on that occasion appears as Appendix I to this Report.

Nothing has happened which invalidates anything then said, although of course the Commission and its staff have learned much through experience. Several of us had the opportunity to give close consideration to the functions and procedures of the Commission during a prior period, which in my case amounted to some four working months. I was then engaged as a consultant to Government, charged with the responsibility of ensuring all steps necessary for the setting up of the Commission were taken. Those who worked most closely with me during that period were David Catt, who came from the position of Secretary to the State Drug Crime Commission to fill the same position with this Commission, and Stela Walker who is in charge of administration of the Commission, including finance, premises, equipment and staff policy and recruitment. Kevin Zervos joined as General Counsel to the Commission just before the starting date, and Vic Anderson accepted appointment as Director of Operations not long afterwards. Finally the Hon. Adrian Roden QC agreed to become Assistant Commissioner on his retirement from the Supreme Court at the end of March.

This is a fine group, each of whom enjoys a wealth of invaluable experience. They are competent and committed people, as I believe all who work with the ICAC are and will be. The devotion to duty of the individuals mentioned, who with myself comprise the Senior Management Committee of the Commission, and indeed staff generally, is notable. All of us realise that we have an important job to do, which must be done using firm but fair methods.

I express my appreciation to the Commissioner of Police who has been a steady supporter of the Commission, and readily agreed to arrangements for secondment of police officers which were put to him late last year. By 30 June the Commission was employing a total of 16 people as investigators and analysts, all but two of whom had been seconded from the police force. Recruitment of directly employed staff in the area of operations and generally is proceeding at a steady pace. I hope that by the end of the year the staff will amount to about 100, which will be approaching the envisaged establishment. Everyone employed has been carefully chosen, and required to undergo very strict security vetting, including provision of personal and financial particulars. There is no way of guaranteeing that breaches of security will not occur, but those factors together with a proactive approach by the Commission should minimise the risk. All who work within the Commission realise that much of what they do is sensitive, and that fairness to individuals requires us to use our powers in a manner both restrained and careful.

During the planning period a lot of attention was devoted to obtaining suitable premises. The Commission has secured a long lease over old, restored premises in Cleveland Street, Redfern, opposite Prince Alfred Park. They are of a size sufficient to accommodate the likely needs of the Commission, at least in the medium term, and to house task forces from time to time. It is pleasing to note that the first Police-ICAC task force began to operate during the month of July 1989. At the time of writing, the premises are being fitted out to meet the Commission's purposes. When complete they will include two hearing rooms, one large and one small, with a third room being available for hearing purposes from time to time. The first two will be on the ground floor, which will also have adequate facilities for complaints officers. Most of that floor will be open to the public, and anyone who wants to is free to come and see how the Commission works. The rest of the building will be securely maintained for exclusive use by Commission staff and those with whom they must deal.

As at 30 June the Commission had seven formal investigations under way. A public hearing had been held in respect of each of the first two, and private hearings in respect of one of them and one other. It is likely that two others will proceed to the hearing phase by August, one of which is suitable for a private hearing and the other of which calls for a public hearing. My hope is that four reports will have been completed and forwarded to the Parliament by the end of 1989.

Questions as to whether matters should be investigated, and if so whether at a public or private hearing, are of high importance and treated accordingly. As to the former, it is only if a matter is being investigated that the special powers of the Commission can be exercised. We all realise that those powers go beyond the ordinary, and they must not be used lightly or otherwise than where necessary to expunge or discourage corrupt practices. The decision to investigate is taken formally, in every instance by myself as Commissioner, on the basis of one or more submissions put to me by or through senior staff, and generally after extensive discussions so as to ensure that the scope and purpose of the investigation laid down is appropriate - sufficiently broad not to provide an artificial fetter upon proper inquiries, but not so broad that the investigation loses focus and becomes bogged down.

As to the latter decision, that is, whether public or private hearings are called for, it needs to be remembered that the Commission works under a statute which lays down a clear general rule, which is that hearings will be in public. There is much to be said for that approach, because private hearings cannot be scrutinised for their fairness and could become instruments of oppression in wrong or unwise hands. Sometimes the public interest will militate against evidence being heard in public, although I would ordinarily expect that even then the results of the Commission's endeavours will be made public.

It has been suggested more than once that the reputation of innocent people can be harmed by publicity arising out of Commission hearings, based upon hearsay evidence. That is a sweeping contention which has little if any content. The principal point to be borne in mind is that just the same thing can happen at hearings before the ordinary courts of law. Indeed there the position is worse, because if an individual who is a stranger to the litigation is traduced he or she has no right of reply. The Commission has adopted procedures, reproduced in Appendix II, which are designed to facilitate fairness to individuals. It has also been announced at the hearings already held that those against whom adverse findings might be made will always be called to give evidence, and others who might be harmed by evidence given can always put their point of view before the Commission, either by appearing as a witness or by providing a statement, preferably in the form of an affidavit or statutory declaration.

Hearsay evidence is very rarely received at Commission hearings. With notably few exceptions evidence given at Commission hearings is direct in its nature. It must be closely linked to the scope and purpose of the investigation and the hearing, which are required to be announced. The Commission and its staff are too busy to pursue fanciful allegations. Indeed we have more difficulty in deciding which aspects of an investigation should be abandoned than we do in chasing or relying on gossip and rumours.

By the end of calendar 1989 the Commission will be well staffed and resourced, and will have the capacity to perform all its statutory functions. It will not be until close to that time that a corruption prevention strategy will be settled. However that is a part of the charter which is taken seriously. Indeed it is my judgment that in the medium to long term the most important work of the Commission will be done in that area. Planning is not yet complete, but a handful of people with professional training and expertise in various fields - audit, engineering, geography, computing, and there may be others - is envisaged. They will be available either to assist investigators or take over from them, if it appears that a matter involves a systems failure as well as or rather than individual (generally criminal) misconduct. Those who work in corruption prevention will also be available to provide advice to the public sector of New South Wales on request.

In conclusion the purpose of any investigation is to discover the truth. That differs from what happens in the courts of law. There justice is dispensed according to law. The courts decide on the basis of evidence which the parties choose to place before them. Judges are not charged with the responsibility of ascertaining exactly what did happen: that is simply not their function. Once the Commission decides to investigate a matter, that is what we must do. As a matter of duty the task of ascertaining the true facts must be carried through to the point where nothing significant remains to be explored.

Often at the outset we know only a certain amount - enough to warrant use of our statutory powers. We cannot say where the evidence will lead us. That is dictated by the evidence - the objective facts and circumstances as they are discovered. If that leads us into areas where we are unwelcome, then we must press on despite indirect threats at best and fulminations at worst. Corrupt practices tend to exist in dark corners. It must be expected that perpetrators will not appreciate the light of exposure being cast upon them.

IAN D. TEMBY

Sydney

September 1989

Chapter 1

ESTABLISHMENT AND ORGANISATION

The Independent Commission Against Corruption came into existence nearly one year after election of a new Government committed to its creation. This chapter deals briefly with the gestation and birth of the new body, its basic characteristics, and such features as have been developed in the first few months.

The Legislation

At the general election held on 19 March 1988 the coalition parties won government. Establishment of an Independent Commission Against Corruption was a central plank in the election policy of those parties. Introduction of necessary legislation was a priority of the new Government.

On 26 May 1988 the Hon. N.F. Greiner MP, Premier, Treasurer and Minister for Ethnic Affairs, introduced the Independent Commission Against Corruption Bill. In speaking of the rationale and the objectives of the Independent Commission, the Premier emphasised the following points:

"....this initiative is a component of the government's program to restore the integrity of public administration and public institutions in this state. Nothing is more destructive of democracy than a situation where the people lack confidence in those administrators and institutions that stand in a position of public trust. If a liberal and democratic society is to flourish we need to ensure that the credibility of public institutions is restored and safeguarded, and that community confidence in the integrity of public administration is preserved and justified...."

"....the establishment of the ICAC is not a political stunt. The commission will not be set up to pillory our political opponents or to engage in political

witchhunts...."

"....the independent commission will not be a crime commission. Its charter is not to investigate crime generally. The commission has a very specific purpose which is to prevent corruption and enhance integrity in the public sector...."

"....the independent commission is not a purely investigatory body. The commission also has a clear charter to play a constructive role in developing sound management practices and making public officials more aware of what it means to hold an office of public trust and more aware of the detrimental effects of corrupt practices. Indeed, in the long term I would expect its primary role to become more and more one of advising departments and authorities on strategies, practices and procedures to enhance administrative integrity. In preventing corruption in the long term, the educative and consultancy functions of the commission will be far more important than its investigatory functions...."

"....This commission will have very formidable powers. It will effectively have the coercive powers of a royal commission....There is an inevitable tension between the rights of individuals who are accused of wrongdoing and the rights of the community at large to fair and honest government.

There will be those who will say that this legislation is unjustified interference with the rights of individuals who may be the subject of allegations. Let me make a number of points in response to that sort of claim. First, though the commission will be able to investigate corrupt conduct of private individuals which affects public administration, the focus is public administration and corruption connected with public administration. The coercive powers of the commission will be concentrated on the public sector.

Second, corruption is by its nature secretive and difficult to elicit. It is a crime of the powerful. It is consensual crime, with no obvious victim willing to complain. If the commission is to be effective, it obviously needs to be able to use the coercive powers of a royal commission. Third, the commission will be required to make definite findings about persons directly and substantially involved. The commission will not be able to simply allow such persons' reputations to be impugned publicly by allegations without coming to some definite conclusion. Fourth,

the commission's activities will be monitored by a parliamentary committee. This committee will not be involved with specific operational matters, but will be concerned with looking at the overall effectiveness of the commission's strategies. Fifth, there will be an operations review committee, which will advise the commission on action to be taken in relation to complaints. In contrast to the parliamentary committee it will be closely involved in operational matters, and will have the necessary forensic expertise to provide the commissioner with advice on operations."

The Bill was debated extensively in the Legislative Assembly and introduced into the Legislative Council. It was allowed to lapse and a second Bill, incorporating various changes resulting from Parliamentary debate, was introduced. Having been passed by both Houses of Parliament this Bill was assented to by the Governor on 6 July 1988.

The Government had undertaken that certain further amendments would be made to the legislation before it was commenced. On 2 August 1988 the Premier introduced the Independent Commission Against Corruption (Amendment) Bill 1988. It had a swift passage through both Houses of Parliament and received the royal assent on 9 August 1988.

Administration of the legislation was allocated to the Premier. The legislation lay ready for commencement at an appropriate time.

Appointments and Proclamation

On 13 September 1988 the Premier announced in Parliament the appointment of Mr Ian Temby QC as Commissioner for the ICAC. Rather than commence the legislation and his appointment forthwith, the Government appointed Mr Temby as a consultant to take such action as was necessary to enable the Commission, when the legislation was commenced, to begin operations immediately.

Mr Temby took up his consultancy on 10 October 1988. He was supported in the performance of his functions by a small staff.

The Independent Commission Against Corruption Act ("the Act") commenced on 13 March 1989. On that date the Commission came into existence and the appointment of Mr Temby as Commissioner for the Independent Commission Against Corruption took place.

The Commission is constituted as a corporation without members. Under s.4(3) of the Act the functions of the Commission are exercisable by the Commissioner.

The Governor can appoint a person as an Assistant Commissioner to assist the Commissioner and to perform the statutory functions of that office. Amendments were made to the Act, which took effect on 5 May 1989 which permitted the office of Assistant Commissioner to be held on a full or part-time basis.

On 1 April 1989 Mr Roden QC took up his appointment as Assistant Commissioner.

The Commission is independent from Government and is accountable to the Parliament and through the Parliament, to the people of New South Wales. This report will seek to explain why these principles are important.

Purpose for Existence

The Commission exists to minimise corruption in the public sector of New South Wales.

With experience, it may be possible to state the above proposition in more general and conceptual terms. So, for example, the purpose of the Commission is, by minimising official corruption, to improve the integrity of public administration which is central to good government and the maintenance of the democratic process. There would be

recognition that the integrity and efficiency of the public sector, in a mixed economy, is critical to the economic performance of the state.

The Commission recognises the requirement, set out in s.12 of the Act, that the Commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns. It further recognises that as a creature of statute it has functions, powers and duties that are delineated and must not be departed from or exceeded: further, that as a creature of the Parliament it can be abolished by the same body.

Aims and Objectives

The Commission aims to minimise official corruption by means of:

- . exposing corruption through hearings and reports to Parliament;
- . providing evidence which leads to the prosecution of offenders;
- . recommending improvements in laws, management systems and administrative procedures;
- . publicising the detrimental effects of corruption;
- . deterring corrupt activity.

The primary objective of investigations is to seek out facts and establish the truth. The primary aim of the other work of the Commission is to strengthen the ways in which corruption can be prevented.

Functions

The principal functions of the Commission are set out in s.13 of the Act. It is useful to set out the provisions of that section in full:

- "13(1) The principal functions of the Commission are as follows:
- (a) to investigate any circumstances implying, or any allegations, that corrupt conduct may have occurred, may be occurring or may be about to occur;
 - (b) to investigate any conduct which, in the opinion of the Commission, is or was connected with or conducive to corrupt conduct;
 - (c) to communicate to appropriate authorities the results of its investigations;
 - (d) to examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct;
 - (e) to instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated;
 - (f) to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct;
 - (g) to co-operate with public authorities and public officials in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct;
 - (h) to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct;
 - (i) to educate and disseminate information to the

public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration;

- (j) to enlist and foster public support in combating corrupt conduct.

(2) The principal functions of the Commission also include the following:

- (a) to investigate any matter referred to the Commission by both Houses of Parliament, with a view to determining:
 - (i) whether any corrupt conduct may have occurred, may be occurring or may be about to occur; or
 - (ii) whether the laws governing, or the practices or procedures of, any public authority or public official need to be changed with a view to reducing the likelihood of the occurrence of corrupt conduct;
- (d) to develop, arrange, supervise, participate in or conduct such educational or advisory programmes as may be described in a reference made to the Commission by both Houses of Parliament."

The functions can be grouped under five main headings:

- . investigative;
- . policy making - review and revision of methods of work, procedures, laws and practices;
- . advisory;
- . educative;
- . communicating to appropriate authorities the results of investigations.

It is clear that the Legislature, by giving the Commission these wide-ranging functions, expects it to deal with official corruption in a comprehensive way.

Key Definitions

There are a number of terms used in s.13 which are defined in the Act. It is necessary to refer to those terms and their definitions to appreciate the extent of the Commission's functions. The terms are "corrupt conduct", "public authority" and "public official".

"Corrupt conduct" is defined in Part 3 of the Act. By s.8:

"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.
- (2) Corrupt conduct is also any 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 involves any of the following matters:

official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition); bribery; blackmail; obtaining or offering secret commissions; fraud; theft; perverting the course of justice; embezzlement; election bribery; election funding offences; election fraud; treating; tax evasion; revenue evasion; currency violations; illegal drug dealings; illegal gambling; obtaining financial benefit by vice engaged in by others; bankruptcy and

company violations; harbouring criminals; forgery; treason or other offences against the Sovereign; homicide or violence; matters of the same or a similar nature to any listed above; any conspiracy or attempt in relation to any of the above."

Conduct, however does not amount to corrupt conduct unless it could constitute or involve a criminal offence, a disciplinary offence, or reasonable grounds for dispensing with the services of or otherwise terminating the services of a public official. "Criminal offence" means a criminal offence under the law of the State or under any other law relevant to the conduct in question. "Disciplinary offence" includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

The definition of corrupt conduct incorporates reference to "public authority" and "public official". These terms are defined in s.3 as follows:

" 'public authority' includes the following:

- (a) a Government Department, Administrative Office or Teaching Service;
- (b) a statutory body representing the Crown;
- (c) a declared authority under the Public Sector Management Act 1988;
- (d) a person or body in relation to whom or to whose functions an account is kept of administration or working expenses, where the account:
 - (i) is part of the accounts prepared under the Public Finance and Audit Act 1983; or
 - (ii) is required by or under any Act to be audited by the Auditor-General; or
 - (iii) is an account with respect to which the Auditor-General has powers under any law; or
 - (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts if requested to do so by a Minister of the Crown;

- (e) a local government authority;
- (f) the Police Force;
- (g) a body, or the holder of an office, declared by the regulations to be a body or office within this definition;

'public official' means an individual having public official functions or acting in a public official capacity, and includes any of the following:

- (a) the Governor (whether or not acting with the advice of the Executive Council);
- (b) a person appointed to an office by the Governor;
- (c) a Minister of the Crown, a member of the Executive Council or a Parliamentary Secretary;
- (d) a member of the Legislative Council or of the Legislative Assembly;
- (e) a person employed by the President of the Legislative Council or the Speaker of the Legislative Assembly or both;
- (f) a judge, a magistrate or the holder of any other judicial office (whether exercising judicial, ministerial or other functions);
- (g) an officer or temporary employee of the Public Service or a Teaching Service;
- (h) an individual who constitutes or is a member of a public authority;
- (i) a person in the service of the Crown or of a public authority;
- (j) an individual entitled to be reimbursed expenses, from a fund of which an account mentioned in paragraph (d) of the definition of 'public authority' is kept, of attending meetings or carrying out the business of any body constituted by an Act;
- (k) a member of the Police Force;
- (l) the holder of an office declared by the regulations to be an office within this definition;
- (m) an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of, a public authority or any

person or body described in any of the foregoing paragraphs;".

The clear intention of the statutory provisions is to define corrupt conduct very widely. The Commission has a power to investigate conduct within or concerning the state and local government public sectors which affects or may affect the honest and impartial performance of official functions.

The conduct may not necessarily be criminal. This broadening of focus distinguishes the operations of the Commission from, for example, the National Crime Authority and the State Drug Crime Commission. These two bodies are responsible for investigating activities which may lead to the arrest and charging of people, the preparation of briefs of admissible evidence and the imposition of pecuniary penalty orders.

The Commission is not authorised to investigate allegations of corruption concerning Commonwealth bodies.

No other institution in New South Wales has the functions of the Commission. There are, however, other agencies the investigations of which can involve corrupt conduct. It is for this reason that the Commission has established liaison with a number of law enforcement and other agencies.

Coercive Powers

The Commission has been given powers, which exceed those given to the police, to perform its investigative function. A number of the powers of the Commission are analogous to those possessed by specialist law enforcement agencies such as the National Crime Authority, and the State Drug Crime Commission, and a royal commission where the full range of powers has been invested by letters patent. Other powers of the Commission are without precedent, at least in Australia.

The Parliament determined the range of powers necessary for the

Commission to perform its investigative functions. The Commission has a heavy onus to use the powers properly and only for statutory purposes.

All the powers of the Commission are set out in the Act. In what follows the more important powers are highlighted.

The coercive powers of the Commission are predicated upon the commencement of an investigation. Chapter 3 will describe the steps taken by the Commission in deciding that a formal investigation will be conducted. It is sufficient to say here that the powers set out in ss.21, 22, 23 and 30 are available "for the purposes of an investigation".

Under s.21 the Commission may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information. "Produce" in this context means to create and furnish a document to the Commission. This special power relates only to the public sector.

Under s.22 the Commission may, by notice in writing served on a person (whether or not a public authority or public official), require that person to attend before the Commissioner or Assistant Commissioner to produce specified documents. This may be seen as roughly analogous with a combination of the subpoena and discovery powers which the courts enjoy.

Under s.23 the Commissioner or an officer of the Commission, duly authorised by the Commissioner, may:

- . enter and inspect any premises occupied or used by a public authority or public official in that capacity.
- . inspect any documents or other thing in or on the premises.
- . take copies of any document in or on the premises.

This is again a special power, again limited to the public sector. The section does not authorise the inspection of a document or the taking of copies of a document, so far as the document concerns the relationship between the State Bank or the Government Insurance Office and a client of that bank or office.

Under s.30 the Commission may hold hearings. Only the Commissioner or Assistant Commissioner can conduct a hearing.

As a general rule hearings must be held in public. The Commission cannot conduct a hearing in private unless it is satisfied that it is desirable to do so in the public interest for reasons connected with the subject-matter of the investigation or the nature of the evidence to be given.

Under s.35 the Commissioner may summons a person to appear before the Commission at a hearing to give evidence, or to produce such documents as are referred to in the summons, or both. This is the same as the subpoena power normally invested in courts of law.

The Act sets out circumstances in which the person affected by a requirement may seek to limit the operation of that requirement. These provisions are complex and need not be examined in detail. It is sufficient to say, by way of example, that a person who is not a public authority or public official can be excused by the Commissioner from complying with a notice under s.22 where that person establishes legal professional privilege. Similarly, in relation to s.35, if a person objects to answering questions on the ground of self-incrimination, the person must still answer but the answer is not (except in limited circumstances) admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings.

Generally speaking, it is clear that the Parliament has weighed up the competing interests of compulsory provision of information to the ICAC, the confidences arising in certain types of relationships (lawyer/client, clergy/parishioner) and the authority of other public agencies. It must be said that the Act strongly favours disclosure to the Commission.

Search Warrants

Commission officers can, pursuant to search warrants and in connection with an investigation,

- . enter premises
- . search those premises for documents connected with any matter that is being investigated
- . seize any such documents found in or on the premises and deliver them to the Commission.

Section 40 provides that either an authorised justice or the Commissioner, on application by an officer of the Commission, may issue a search warrant if satisfied that there are reasonable grounds for doing so. Since search warrants should, as far as practicable, be issued by an authorised justice, the Commissioner must also think it "fit in the circumstances" before he issues a search warrant.

Following issue of a search warrant, generally speaking, the regulatory scheme set out in the Search Warrants Act and Regulations applies. This scheme provides the occupier of the premises the subject of the search certain protections, and requires the applicant for the warrant to report to an authorised justice upon execution of the warrant.

During the period to 30 June 1989 twelve search warrants were issued by authorised justices, and none by the Commissioner.

Other Powers

The primary object of the powers mentioned is to obtain documents or oral evidence under oath or affirmation which is relevant to an investigation. Section 19 of the Act expressly authorises the Commission or an officer of the Commission to apply for the issue of a warrant under the Listening Devices Act, 1984. Exercise of this power may make available to the Commission direct evidence of oral communications which can be used in hearings or subsequent criminal proceedings instituted by the Director of Public Prosecutions.

Another power of the Commission is to refer matters to other authorities for investigation or other action. Unlike the powers already mentioned, the exercise of this power is not conditioned on the existence of an investigation. Part 5 of the Act contains the details of the scheme. In essence, the Commission can impose requirements on the authority to which the matter has been referred in relation to the action to be taken including reporting back to the Commission. The Commission must consult with the authority before it refers the matter. The Act also lays down steps the Commission can take if it is dissatisfied with the action taken by the authority to which the matter has been referred.

Contempt and Offences

The Legislature has given the Commission, principally in connection with the conduct of hearings, powers to deal with contempt. The Act, in s.98, specifies conduct which amounts to contempt. Generally speaking, contempt involves interference with the conduct of a hearing or a significant derogation from the authority of the Commission. The Commission is empowered to inquire into and certify a contempt but cannot impose punishment. Only the Supreme Court can impose a punishment following certification of a contempt by the Commissioner.

The Act creates a number of offences. Generally speaking, the object of these penalty provisions is to punish or deter conduct which interferes with the efficient and effective performance of the investigative function of the Commission. It is the responsibility of prosecution authorities to pursue breaches of the offence provisions.

Organisation

The Act sets out the statutory powers and functions of the Commission. But it takes decision-making and resources to translate words into action.

Certain key decisions were taken during the period of consultancy of the then Commissioner-designate, and communicated to the Premier as Minister responsible for administration of the Act. One was that every effort would be made to keep the Commission fairly small, efficient and effective, and vital. Hong Kong has a population about the same as New South Wales. The corresponding body of the same name in that colony is practically all of these things, but small it is not. It has an authorised establishment of about 1150. In contrast, this Commission should not have to exceed about 150 staff.

The Parliament has given the Commission unprecedented freedom from normal public service constraints. Because it is funded entirely from the consolidated fund, the Commission must and should be subject to the Public Finance and Audit Act 1983. That in turn involves obligations under annual reports legislation. The Commission was not, however, brought within the Public Sector Management Act 1988. Instead s.104 of the ICAC Act was enacted.

This section recognises and authorises a number of principles and practices:

- . the Commission may, with the concurrence of the Premier, fix the salaries, wages, allowances and conditions of employment of any staff in so far as they are not fixed by or under another Act or law;
- . staff may be on contract;
- . the Commission may second staff from other public sector bodies, including the Police Force; and
- . the Commission may engage consultants.

It has been decided, following consideration of that section and the functions to be performed, that:

- . The Commission will not seek to have staff to do everything. Rather it will make use of consultants so as to avail itself of expertise readily available elsewhere, and keep its standing establishment down.
- . The organisation will depend upon leadership and co-operative effort rather than positional command.
- . The organisation will be skills based rather than staffed on traditional job classification lines.
- . No staff will enjoy "permanency" as, in effect, exists in the public service. Many, particularly the more senior, will be engaged for a finite term, others will be seconded for fixed terms, and every staff member will be employed on the basis that the employment can be terminated if necessary.
- . Because of its tremendous power as an employer, the Commission must devise mechanisms to ensure staff are treated fairly and given opportunities to develop their skills and knowledge.

The Commission, in the exercise of its statutory functions and powers, is not subject to the jurisdiction of the Ombudsman or the provisions of the Freedom of Information Act 1989. An officer of the Commission, who is a police officer seconded to the Commission, could be the subject of a complaint under the Police Regulation (Allegations of Misconduct) Act 1978.

Senior Management

It was a priority of the Commissioner to fill senior management positions as soon as practicable so that the occupants of those positions could assist in strategic planning, implementation of systems of work and selection of staff.

The Act contemplated the establishment of positions of Director of Operations and Director of Administration. The Commission created those positions, the latter with slightly extended functions and therefore title, as well as positions of Commission Secretary and General Counsel. The four people who occupy these positions, together with the Commissioner and Assistant Commissioner, make up the senior management group.

The positions of General Counsel, Commission Secretary and Director of Administration and Public Affairs were filled as at the commencement of the Act on 13 March 1989. The position of Director of Operations was filled on 10 April 1989.

An organisation chart will be found at Appendix III.

Brief details of the occupants of senior management positions, and their functional responsibilities, are as follows:

Commissioner, Ian Temby QC

Mr Temby was educated at Perth Modern School and the University of Western Australia. He obtained a law degree and was admitted to practice as a lawyer at the end of 1966. He then practised in Perth, successively as a solicitor and a barrister. He became a Queen's Counsel in 1980, and conducted a general practice with

emphasis upon administrative, industrial and criminal law. Mr Temby was President of the Law Society of Western Australia in 1983, and President of the Law Council of Australia in 1983-4. He was the first Director of Public Prosecutions for the Commonwealth of Australia, for a period of four and a half years from March 1984.

The Commissioner has responsibility for the management of the Commission, and the setting of policy. He discharges all statutory functions and powers, and in particular presides over hearings and prepares reports. He chairs the Operations Review Committee.

Assistant Commissioner, Hon. Adrian Roden QC

Mr Roden was born and educated in Sydney. He holds a law degree and diploma in criminology, each awarded by Sydney University. Shortly after becoming entitled to practice as a lawyer he went to Tanganyika (now Tanzania) where he practised his profession, in both the public and the private sectors. He was a member of the Legislative Council for Tanganyika from 1958. Mr Roden returned to New South Wales in 1965 and practised at the Sydney Bar until 1977, being appointed as a Queen's Counsel in 1974. He was then appointed as a Judge of the District Court, and as a Judge of the Supreme Court in 1978, from which he retired in early 1989. He was a member of the NSW Law Reform Commission 1981-87. His particular professional interest is with the criminal law.

Mr Roden has had delegated to him practically all statutory powers. He presides over hearings and writes reports. He is a member of the Operations Review Committee, and chairs the Commission's ADP Committee.

Director of Operations, Mr Vic Anderson

Mr Anderson started his working life as a seaman with the Royal Australian Navy, in which he served for some 12 years. He became a member of the Victoria Police Force in 1958, and left in 1974 to join what was then the Commonwealth Police. He rose through the ranks to become Assistant Commissioner of the Australian Federal Police in 1985. During this time, from 1983 to 1985, Mr Anderson was Director of the Australian Bureau of Criminal Intelligence. From January 1987 until his retirement in July 1987 he was Director of Investigations for the National Crime Authority. Prior to taking up his full-time position with the Commission, Mr Anderson had been a part-time consultant to the Commissioner-designate and the Commission. He had earlier worked as a consultant for the Government in relation to the independent commission proposal.

Mr Anderson has responsibility for all operational staff except lawyers, and is the Commission's principal advisor regarding the conduct of investigations generally.

General Counsel, Mr Kevin Zervos

Mr Zervos is a lawyer with considerable experience and expertise in the investigation and prosecution of large and complex commercial crime. He was formerly a Senior Assistant Director with the Commonwealth Director of Public Prosecutions in each of the Sydney and Melbourne offices. He holds science and law degrees from Monash University, and was admitted to practice in 1978.

Mr Zervos provides high level legal and strategic advice to the Commission and has principal responsibility for investigations once they reach the hearing phase.

Commission Secretary, Mr David Catt

Mr Catt is a solicitor who has had considerable experience in the State public sector. He holds an arts/law degree from

Sydney University, a postgraduate law degree from Tulane University, and was admitted to practice as a lawyer in 1972. He worked in private practice for some years, and then taught at the Macquarie University Law School for four years. He was most recently the Secretary to the State Drug Crime Commission.

Mr Catt provides secretariat services to the Commission and is principally responsible for the assessment of matters prior to them becoming formal investigations. He is in charge of legal services and the complaint handling resources of the Commission.

Director of Administration and Public Affairs, Mrs Stela Walker

Mrs Walker went to school in Canberra, joined the Commonwealth Public Service as a junior clerk in 1974, and worked in various agencies in the Australian Capital Territory over the next 14 years. She was most recently a Senior Assistant Director with the Commonwealth Director of Public Prosecutions, being the most senior non-lawyer in that organisation, and responsible for all aspects of administration throughout the nation. She now ensures provision of all administrative support to enable the Commission to undertake its work. She also has responsibility for the Commission's small media relations unit, and for corruption prevention.

Chapter 2

ACCOUNTABILITY

The Commission must be independent and distanced from Government in order to operate in a fair and impartial manner. But it cannot be utterly autonomous: that would be wrong in principle in a Parliamentary democracy. The statutory provisions which are designed to ensure accountability relate to:

- . the Operations Review Committee
- . the Joint Parliamentary Committee
- . reporting to Parliament.

The Commission recognises the importance of informing the public as to its work. This is done principally through the media as mentioned in this chapter. Finally, brief reference is made to administrative steps the Commission has taken to investigate complaints against its officers.

Operations Review Committee

The Operations Review Committee is one of two bodies established under the Act to monitor the activities of the Commission. The Act sets out its functions, membership and aspects of its procedure.

Under s.59 of the Act the Committee advises the Commissioner whether the Commission should investigate a complaint made under the Act, or discontinue an investigation of such a complaint. It also advises the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.

The Commissioner is required to consult with the Committee on a regular basis, and at least once every three months.

The Commissioner and the Committee have agreed upon terms of reference for the Committee as follows:

1. To advise the Commissioner whether the Commission should discontinue or not commence an investigation of a complaint.
2. To advise the Commissioner at least every three months whether the Commission should continue an investigation.
3. To advise the Commissioner whether the Commission should discontinue an investigation conducted on its own initiative or on a report made to it.
4. To receive from the Commissioner a report relating to the completion of an investigation.
5. To advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.
6. To bring to the attention of the Commissioner any matters relating to the operations of the Commission which the Committee considers important.

These terms of reference ensure that the Committee performs a role which is more extensive than its core statutory function.

The Operations Review Committee consists of eight members. They are the Commissioner as Chairman; the Assistant Commissioner; the Commissioner of Police, Mr J.K. Avery; Mr W. Robinson, Director, Legal Aid Commission, appointed on the recommendation of the Attorney General and with the concurrence of the Commissioner; and four people appointed by the Governor on the recommendation of the Minister and with the concurrence of the Commissioner, to represent community views. These people are Major General R. Grey; Mr J.M. Davenport; Sister M. McGovern; and Professor B. Fisse.

At its first meeting in April, the Committee resolved to meet monthly. During the reporting year it met on three occasions, with a further meeting held on 7 July. The Committee meets at the Commission premises.

The Committee is serviced by officers of the Commission. The Commission Secretary is secretary to the Committee and, in that capacity, attends its meetings to take minutes.

The Committee considered at its meetings, up to and including the meeting held on 7 July, 79 complaints where its advice was sought as to whether an investigation should be commenced. The Committee also provided advice in relation to the continuation of four investigations.

From the Commission's point of view, the Committee plays an important role, and has done so from the beginning. It is not a rubber stamp: on occasions the Committee has recommended a course of action which differs from that recommended by Commission officers. The Commissioner has shown a strong tendency to follow the advice of the Committee. Put simply, the object of the Committee is to monitor whether the Commission is performing its investigative functions efficiently and fairly, especially in relation to matters within jurisdiction which are brought to it by members of the public.

Parliamentary Joint Committee

Constitution of a Parliamentary Joint Committee is provided for in Part 7 of the Act. By s.64 of the Act the functions of the Joint Committee are as follows:

- . to monitor and to review the exercise by the Commission of its functions;
- . to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- . to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- . to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the

Joint Committee thinks desirable to the functions, structures and procedures of the Commission;

- . to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The Joint Committee is not authorised:

- . to investigate a matter relating to particular conduct; or
- . to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- . to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

The Parliament has by this provision given the Committee clear guidelines as to its responsibilities. It cannot involve itself in the handling of individual matters. It can, however, obtain information from the Commission (and other sources) which will assist it in performing its general monitoring, review and reporting functions.

Under s.65 of the Act the Joint Committee consists of nine members, three of whom are drawn from the Legislative Council, with the remainder from the Legislative Assembly.

Members are as follows:

Mr R.D. Dyer MLC, Mr D.J. Gay MLC, Mr S.B. Mutch MLC, Mr J.B. Hatton MP, Mr M.J. Kerr MP, Ms S. Nori MP, Mr A.A. Tink MP, Mr J.H. Turner MP, Mr P.F.P. Whelan MP.

Mr Kerr MP was appointed Chairman at the first meeting of the Committee.

Following establishment of the Committee but prior to its first meeting, the Commissioner and Assistant Commissioner on 26 April 1989 met informally with members of the Committee. There was a

useful exchange of views about the work priorities of the Commission, the role of the Joint Committee and the kind of working relationship which the Commission and the Committee should strive to develop. The meeting was the subject of a Commission media statement.

On 16 May 1989 following discussions between the Committee and the Commissioner, the Chairman of the Committee advised the Commissioner that it would consider the question of televising public hearings of the Commission. The Chairman requested a copy of a submission dealing with the matter which had been made to the Commission on behalf of all Sydney metropolitan TV stations and general comment. The Commission provided the requested submission and shortly thereafter an issues paper. The stance adopted was that televising Commission hearings should be permitted on a basis both limited and controlled, if at all.

The Commission has extensive powers to report to Parliament. The reporting is direct to the Presiding Officers of both Houses of Parliament. This manner of reporting emphasises the independence of the Commission from Government, and its accountability to the Parliament and people of New South Wales.

Part 8 of the Act deals with four kinds of reports to Parliament.

Reports on Investigations

The Commission is empowered to prepare a report in relation to any matter that has been or is the subject of an investigation. Generally the Commission must prepare a report in relation to a matter referred to it both Houses of Parliament, or in relation to a matter which has involved a public hearing.

A report may include a statement of the Commission's findings as to whether there is or was any evidence or sufficient evidence warranting consideration of:

- . the prosecution of a specified person for a specified offence; or
- . the taking of action against a specified person for a specified disciplinary offence; or
- . the taking of action against a specified public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

A report must include such a statement in relation to any person substantially and directly interested in the subject-matter of the investigation concerned, or named in the reference made by both Houses of Parliament.

As at 30 June the Commission had almost completed its first hearing, but obviously no reports had been prepared.

Special Reports

The Commission may, at any time, make a special report to Parliament on any administrative or general policy matter relating to the functions of the Commission. In the period to 30 June 1989 no such occasion arose.

Annual Report

Section 76 of the Act requires the Commission, within four months after each 30 June, to prepare a report of its operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament. The section spells out matters which must be included in the report:

- . a description of the matters that were referred to the Commission;
- . a description of the matters investigated by the Commission;
- . any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions;

- . the general nature and extent of any information furnished by the Commission during the year to a law enforcement agency;
- . the extent to which its investigations have resulted in prosecutions or disciplinary action in that year;
- . the number of search warrants issued by authorised justices and the Commissioner respectively in that year;
- . a description of its activities during that year in relation to its educating and advisory functions.

The Commission is also required to submit an annual report under the Annual Reports (Departments) Act. One annual report has been prepared in compliance with both sets of statutory provisions. The only difficulty is the Annual Reports (Departments) Act requires the Commission to submit the annual report to the responsible Minister (the Premier) together with a copy to the Treasurer, whereas the Independent Commission Against Corruption Act requires the Commission to submit the annual report to the Presiding Officer of each of the Houses of Parliament. The Premier has been informed of the Commission's decision to present the Annual Report direct to the Presiding Officers with a copy to be made available to the Premier, Treasurer and Minister for Ethnic Affairs.

Reports relating to Authorities

Under s.77 of the Act the Commission may, as a last resort, report to Parliament in relation to its dissatisfaction with action taken by an authority to which a matter has been referred for investigation or other action.

Media Relations

The Commission strives to maintain a professional relationship with the media. In much of what the Commission does confidentiality is important to operational integrity. Yet, in the conduct of public hearings, there is tremendous scope for

media coverage and comment. In that and other ways the media can inform the public as to what the Commission is doing, and thus help make the Commission properly accountable to the public.

The Commission does not seek to be a secret or closed institution. We are happy to talk about how we are organised, what our aims are, how we seek to achieve those aims, and generally give historical information. However, the Commission does not use the media to achieve operational ends in an indirect way. It does not ordinarily even confirm or deny the receipt of allegations, unless the person making them has first disclosed their despatch to the Commission. In such circumstances the Commission may state whether or not material has been received: not infrequently those who say they have sent us material have not done so.

Complaints Against Staff

The Commission has recently established an administratively based scheme for handling complaints against its officers. Members of the public who wish to make such a complaint are encouraged to do so in writing. The Commission Secretary, who has general responsibility for the scheme, will report to the Commissioner in respect of each matter. Those requiring investigation will be allocated to an appropriate member of senior management for the purpose. Ultimately what is proposed will be reviewed and approved or otherwise by the Commissioner personally. In respect of the more serious and difficult matters a person, external to the Commission, will be engaged to assist in the process.

Chapter 3

INVESTIGATIONS

It was decided at the outset that in the first few months of the Commission's life attention must be concentrated upon setting up the organisation and conducting investigations. This chapter gives some detail as to how material is received and processed by the Commission, and how decisions are taken whether or not to investigate. All of this is done pursuant to a strategy which is now stated.

Investigations Strategy

The object of any investigation is to ascertain and record the true facts. Commission investigations are special in two respects: purpose, and means. The purpose of any ICAC investigation is to ascertain and record the true facts relative to alleged corrupt practices in the public sector of New South Wales, with a view to exposure or prosecution, and in either event deterrence. The means include careful selection of matters to be investigated, and the use of special powers under the Act, which are invoked to discover the truth.

Choice of matters to be investigated depends upon several factors, particularly the nature and apparent cogency of information received, the workload of the Commission from time to time, and the need to have the activities of the Commission spread, but not too thinly. If too much is taken on then nothing will be done well. If all resources are devoted to a particular area, then corruption is likely to flourish elsewhere. To take one example, the Commission must not become, in effect, a standing royal commission into local government and land development within the State.

Processing Material Received

The Commission can conduct investigations as a result of a complaint from a member of the public, a report from a public authority, a reference from the Parliament, or of its own motion: ss. 10, 11, 73 and 20. It must obtain advice from the Operations Review Committee before deciding whether to discontinue, or not to commence, an investigation of a complaint from a member of the public: ss. 20(4) and 50. In all other respects the approach adopted is much the same whatever the source of material received might be.

The first step is to record the complaint or report, and the next stage is examination. This is generally done in the complaints section, which comprises four officers having skills and experience in dealing with the public, analysis of material received, and the conduct of basic further inquiries. If necessary, assistance may be provided by a lawyer or an investigator (or both) assigned for the purpose. If the matter falls outside the jurisdiction of the Commission, as is frequently the case because it relates to Federal Government or exclusively to the private sector, then no further action is taken in respect of it save that information might be utilised or stored for other investigations, whether current or future.

If the matter lies within the Commission's area of responsibility, then a report is prepared in relation to it, which goes to the Commission Secretary. If he takes the view the matter should not be pursued by the Commission, then it may be referred to another agency, or be the subject of no action of any sort. If either of those seems to be the appropriate course, and the matter has come to the Commission by way of complaint, the Commission Secretary takes the matter to the Operations Review Committee for advice. However that Committee need not be consulted before a decision is taken to proceed. Each such decision is made by the Commissioner. All cases of difficulty are referred by the Commission Secretary to the Commissioner.

Approval of investigations is done in a formal manner. A report is prepared, the views of the General Counsel are obtained and recorded, and a document is prepared which states the scope and purpose of the proposed investigation. Generally before approval is given there will be discussions, sometimes extensive, and the proposed scope and purpose will be considerably refined. In that way the investigation becomes reasonably focused. If during its course the necessity to do so arises, then the scope and purpose will be changed.

This process need not take a long time. The average period between receipt of a complaint or report of corrupt conduct and the decision to investigate has to date been in the order of a month. If a situation arose in which special statutory powers had to be exercised in a matter of real importance very quickly indeed, for example because otherwise evidence would be irretrievably lost, the decision could and would be made within hours. A body such as the ICAC cannot afford to concentrate on procedures to such an extent that outcomes become of secondary significance.

Possible Outcomes

As a result of an investigation all or any of the following might occur:

- . public hearings, in which event there must be a report to the Parliament;
- . field investigations, perhaps supplemented by private hearings where the public interest so requires (see s.34) which could be followed by a report to the Parliament or simply the dissemination of advice or information or both to appropriate agencies;
- . preparation of a brief to prosecute;
- . referral of the matter or an aspect of it to the police or some other appropriate agency, either for such attention as is thought to be appropriate by the recipient, or with a direction that a report as to action taken be provided within a given time;

. the taking of action by way of corruption prevention.

To this stage matters have been referred to other agencies in what might be described as an informal manner, without any direction being given pursuant to s.54. The great majority of hearings have been in public. That will continue to be the case. There has been little emphasis upon corruption prevention, but the Commission is committed to increasing its interests in activity in that area, and constantly looks for matters which have corruption prevention potential.

Current Investigations

The Commission formally records that no matters had been referred to it by the Parliament as at 30 June 1989. As at that date no investigations had been completed and hence none had resulted in prosecutions or disciplinary action. There were seven matters formally under investigation by the Commission. Such details as can be provided follow. Only the first two were public knowledge as at 30 June.

1. Waverley Municipal Council. The investigation commenced on 15 March. A hearing was announced in May, and conducted in the latter part of that month and throughout most of June. A report to the Parliament is in the course of preparation. It may be held up somewhat because of a legal challenge. The investigation centred upon certain agreements entered into between the former Engineer/Planner of a Sydney suburban municipality and a large development company, and payments made by the latter to the former pursuant to those agreements: were they normal commercial dealings, or a cloak for the payment of moneys to influence a senior municipal officer in the discharge of his duties?

2. Tweed Shire Council. The investigation was approved by the Commissioner on 3 April, and its scope and purpose was widened

on 15 June to encompass the entire Northern Rivers Region of New South Wales. The hearing commenced four days later. It is being conducted by the Assistant Commissioner, Mr Roden QC. The investigation is quite wide ranging, with land development, "fees" paid to "consultants", and political donations, at its centre. Several further weeks of the hearing are scheduled. It is hoped that the sittings can be brought to a close in October, and the Commission will aim to report late in the now current year or early in 1990.

3. The next matter concerns use of land beside the Silverwater Prison Complex in Auburn, and a licence to fill that land granted by the then Corrective Services Commission, apparently at the behest of the then Minister for Corrective Services. One matter of interest is the fact that public tenders were not called, and the consequences flowing therefrom. Further details need not be given because a public hearing will be announced in late July or early August, before this report is tabled. That investigation was approved on 12 April.

4. On 20 May an investigation into fast tracking systems within the Land Titles Office was approved. At the end of the period under review no decision had been taken as to whether a public hearing should be held in relation to it.

5. The next matter concerned a former member of Parliament, against whom a former constituent complained. A private hearing was convened to take evidence from a potential key witness who had dealings with both. The evidence he gave was accepted, with the result that there was no available corroboration of the allegations. The matter is incomplete.

6. On 26 May an investigation was approved into allegations that several senior police officers were guilty of corrupt practices in relation to two drug investigations. By 30 June it appeared that only one of those aspects might have substance, and it was being actively pursued.

7. On 8 June the Commissioner granted approval to an investigation of corrupt practices in a Government department or agency. The matter is potentially large, difficult and important. Further details cannot be given.

Matters Not Pursued

The Commission has to decide that certain matters will not be investigated. Otherwise it would be swamped with work, and nothing would be done to a high standard. In what follows some cases are mentioned which illustrate the approach taken, concluding with a matter which has acquired a notorious status over a period now approaching 15 years.

On 3 June 1988 a police report into the Early Release of Prisoners was finalised. That report was sent to the Commissioner-designate by the Police Department under cover of a letter dated 17 January 1989. The report followed previous police investigations, the Special Commission of Inquiry conducted by the Hon. Mr Justice Slattery, and the trial of the former Minister for Corrective Services and certain of his cohorts. The conclusion reached in the report was that there was no evidence to suggest or establish that public officials were concerned in the corrupt release of any identified prisoner, but it was also noted that without coercive powers there were limitations upon how far such a police investigation could go.

The report was considered by the Commissioner-designate and later by the General Counsel. The conclusion reached by each was that the principal offenders in a criminal conspiracy had been dealt with, it would be pointless to try and deal with them again for the same activity in relation to any other prisoners prematurely released, even assuming that category existed, and a Commission investigation was likely to be fruitless and would not be in the public interest. In the course of the police inquiry various rumours which have floated round the prison system and elsewhere

were shown to be devoid of substance. There was no reason to think that there were any loose ends of significance which needed to be tied. The matter should be looked upon as closed.

During April the Commission received a report of possible corrupt conduct in relation to the Government Insurance Office. It appears that public authority has for some time past been the victim of frauds, some of them on an organised basis, involving participation by professional people and others who render services for people said to have been injured in motor vehicle accidents. Over a period of several weeks there were extensive discussions between officers of the Commission and the GIO, and it was announced on 10 May that the Commission would not be investigating the insurance frauds in question, which are reported to amount to \$300M.

There were two prime reasons. One is that the matter was being handled by a GIO/police task force which was making decent progress. Secondly, while the Commission can take cognisance of and become involved in the investigation of frauds upon government departments or agencies, it is ordinarily more interested in corrupt practices within such departments and agencies. A third and minor factor was that the Commission at that stage of its existence was not in a position to take on a very large and complex matter which had the capacity to absorb most institutional energy and resources.

By letter dated 7 June, Alderman Leo Kelly of the Blacktown Council wrote to the Commission with information concerning the proposed Parklea Markets. The matter was given attention as a matter of urgency, and a long internal report prepared, which is dated 29 June. The view reached by Commission officers was that the matter should not be investigated, and the Operations Review Committee later concurred and so recommended to the Commissioner, who agreed. The fact that a matter is complex, has caused passions to rise and allegations to fly, and has attracted strong proponents and equally strong opponents, does not mean that the

Commission can play a useful role in relation to it, even if some of the allegations include reference to possible corrupt conduct. There have been proceedings of recent times in the Land and Environment court, the democratic process is clearly operating in relation to the markets proposal, and a person said to be an important potential witness lacks credibility because he claimed to have "been to see Temby", which simply never happened. Certain aspects seem to relate to maladministration rather than corruption. Much of what has been said in the course of an extended and sometimes vituperative public debate is obviously excessive to the point of error, other material lacks cogency, and what is left is not best dealt with by the Commission.

The Botany Council Case

In April 1975 charges were laid against the Hon. (as he came to be) Laurence John Brereton and Geoffrey David Cahill. It was alleged that they had conspired to corrupt four aldermen of the Botany Council, and that Mr Brereton had offered a bribe to the aldermen. The charges related to a proposed re-zoning of land. They concerned corrupt conduct within the meaning of the Act.

The following are matters of record:

- . the committal proceedings were heard by the then Chief Stipendiary Magistrate, Murray Farquhar, who has since gone to prison for his involvement in a perversion of the course of justice;
- . both defendants were discharged by the Magistrate, who held there was insufficient evidence to connect Cahill with the conspiracy alleged, and, as to Brereton, although there was a prima facie case against him he could not be guilty of conspiring with himself, and the bribery charge was wrongly laid because the old common law offence had been done away with when a like offence was created under the Local Government Act 1909;

- . the then Solicitor-General directed that Brereton be indicted ex officio for attempted bribery, on the basis that the decision of Mr Farquhar was erroneous in law;
- . in about the middle of 1976 the recently appointed Attorney-General, the Hon. Frank Walker, formally directed that no further action be taken against Mr Brereton.

The Commission received a report pursuant to section 11 of the Act from the present Mayor of Botany, in which he requested investigation and resolution of allegations which continue to hang over the Council and its affairs, and a complaint from two retired police officers involved in the original case who continue to feel disquiet as to the outcome and the circumstances in which it was reached. One of those former policemen, who still lives in New South Wales, was very helpful when interviewed. The Commission also obtained access to the files of the Police and Attorney-General's Departments and other papers, from all of which this short history is drawn.

The indictment which the Solicitor-General directed on 12 September 1975 was signed by Mr Davidson, a Crown prosecutor. It was presented in the District Court in October, but by prior arrangement Mr Brereton was not present, and he has never been arraigned.

Mr Brereton made three applications that the matter not proceed against him, in October and December 1975 and May 1976. The third was made less than three weeks after a State election which produced a change of government. Advice on the applications was sought from the Crown prosecutor who signed and presented the indictment. On 18 June 1976 Mr Davidson (the Deputy Senior Crown Prosecutor) produced a lengthy written advice to the Attorney-General that there were not proceedings on foot as a result of the filing of the indictment, and he recommended that the solicitors for Mr Brereton be so informed. It can be seen that the advice was narrow in scope. If correct it means that, having

been discharged by the Magistrate, and not having been brought before the District Court, Mr Brereton had not been a person charged since the occasion of his success before Mr Farquhar CSM.

No advice on the merits was ever sought by the Attorney-General, as would surely have been prudent. According to Mr T.W. Haines, who was then an Assistant Under-Secretary with the Attorney-General's Department and is now the Head of that Department, Mr Walker had him approach the Senior Crown Prosecutor, Mr Wallace QC, to ask whether he agreed with Mr Davidson as to the procedural aspects outlined above. He said he did not.

On 5 July 1976 Mr Haines made a one page submission to the Attorney-General. It contained a very short statement of the position, summarised Mr Davidson's advice (which was attached) noted that "it is a matter for the Attorney-General whether any, and if so what, further action is to be taken", and sought direction. The document was endorsed by Mr Walker on the same day, thus:

"Having regard to the conclusions arrived at by the Deputy Senior Crown Prosecutor in his report and his recommendation of 18 June 1976, it is not my desire that any further action be taken against Laurence John Brereton and I formally so direct."

It may be thought that the decision and the apparent reasons for it represented a triumph of procedure over substance, an outcome regrettably not unknown to the law. Mr Walker can be criticised for not having sought advice as to the merits. The question should have been whether the case against Mr Brereton was of such strength as to justify taking or continuing the unusual course of proceeding against him by way of ex officio indictment. It was more than usually important that the real issue be addressed because Mr Brereton was a political colleague of Mr Walker. But he did not ask, and so far as the available materials show nobody proffered advice as to what really mattered. Mr Walker's relative lack of experience as a Minister provides a possible explanation.

With the exception of one aspect about to be mentioned, the relevant events all occurred more than 13 years ago. That is of profound significance, for two reasons. The first is that no proceedings against Mr Brereton can be taken now: indeed it is a number of years too late. Cases such as *Herron v. McGregor* (1986) 6 NSWLR 246; *Whitbread v. Cook (No 2)* 5 ACLC 305; *Watson v. Attorney General (NSW)* (1987) 8 NSWLR 685; *Cook v. Purcell* (1988) 14 NSWLR 51 make abundantly clear that a prosecution will be stayed as an abuse of process if brought after long and unexplained delay. This doctrine has had a resurgence in New South Wales of recent times. There have been several cases in which prosecutions stayed pursuant to it related to events distinctly more recent than early 1974. If the case against Mr Brereton should have been pursued, then it is far too late to rectify the situation now. It would be quite wrong to proceed further against him.

The second reason is that the prospects of the Commission now discovering the truth - whether as to the original alleged corrupt conduct, or subsequent events - are quite remote. With the passage of time memories do fade: sometimes they are converted to a more convenient or less embarrassing position than accords with historical fact. The purpose of investigation is to ascertain the truth. That cannot now be done, and it must be doubted whether any very useful purpose would be served by making the attempt. There are plenty of allegations of current or recent corrupt conduct which are distinctly more pressing, and far more likely to be fruitful in the fight against corruption.

The only matter which does not belong to ancient history is that Mr Walker told the Parliament, on 2 April 1987, that he was not aware of Mr Wallace's opinion. That is not consistent with notes on the Attorney-General's Department file. It may be that Mr Walker has misled the Parliament, or alternatively it may be that the notes (made by Mr Haines) are inaccurate. Mr Walker is no longer a member of the Parliament, and in any event that matter is not close to this Commission's charter. It could not possibly justify an investigation.

The Commissioner has accepted advice, which follows careful examination of the matter, and the preparation of more than one report, that it should not now be investigated. He also obtained advice from the Operations Review Committee, which expressed the view after deliberation that the matter should not be pursued. In case it matters, that advice was given after 30 June. The matter is dealt with at some length in this report, because it has caused disquiet and debate in political and legal circles, and more importantly within sections of the public. It is now too late to do anything useful about it.

It is to be hoped that, with the establishment of this Commission, there will not be room for a repetition of events of the sort recounted above.

Chapter 4

EDUCATION AND CORRUPTION PREVENTION

Only some progress can be reported in these areas.

Corruption Prevention

By s.13(1)(e)-(g) of the Act, the Commission is given important responsibilities relative to corruption prevention. During the latter part of 1989 a strategy in that area will be developed, and staffing of the corruption prevention unit will commence. It is envisaged that a handful of people with appropriate skills, for example in relation to audit, engineering, geography, computing and so on, together with appropriate support staff, will comprise this unit. It is unlikely to number more than a dozen people in total. Services will be made available to Government departments and agencies on request, and the corruption prevention specialists will also work with or in lieu of investigators if it appears that a systems failure, in addition to or rather than individual corrupt conduct, has occurred.

Education

Section 13(1)(h)-(j) requires the Commission:

- . to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct;
- . to educate and disseminate information to the public on the detrimental effects of corrupt conduct, and on the importance of maintaining the integrity of public administration;
- . to enlist and foster public support in combating corrupt conduct.

To this stage most work in this area has been done by a senior staff member who has training and experience as a journalist and fills the position of Manager, Media and Public Affairs. With the passage of time it is likely that the Commission will widen its activities in the education area, and some school curriculum development work may be done.

Public confidence in the Commission is of paramount importance, and vital to the success of its mission. The first priority was therefore to introduce the ICAC to the public of New South Wales in a straightforward and approachable manner. This was undertaken, after appropriate preparation, by means of the first sitting of the Commission, a public awareness campaign and a public attitude survey, and dissemination of an information brochure.

On 13 March 1989 the ICAC legislation came into force and the Commissioner presided over the first public sitting of the Commission at its new premises at 191 Cleveland Street, Redfern. In his address the Commissioner outlined the philosophy and aims of the Commission and stressed the importance of the Commission's independence and public accountability. His address is reproduced as Appendix I.

In the week prior to this sitting, a public awareness campaign was conducted to alert the public to the existence of the ICAC and the mechanisms for lodging complaints. Advertisements were placed in the metropolitan and country press and the Commissioner was interviewed extensively by the media. A media kit was prepared to coincide with the first sitting and this was distributed to all media outlets throughout the State.

To help the ICAC establish an understanding of the public's perception of corruption and attitudes on methods of dealing with it, a public attitude survey was commissioned. It covered people in both the Sydney metropolitan and country areas of the State. The survey was conducted by Irving Saulwick and Associates, who

could do the job without great expense to the Commission by asking questions in relation to the ICAC at the same time as regular newspaper poll was conducted.

Details of questions asked are not provided in this report because the survey will be repeated from time to time, probably using a deal of the same material, in order to measure attitudinal changes. However survey findings clearly showed a high majority of respondents were rigorous in their views as to what constituted corruption, felt it was widespread in the New South Wales public sector, and that serious attempts should be made to tackle the problem.

During March an information brochure was compiled explaining what the ICAC is, the importance of minimising corruption, and how complaints should be lodged. It was distributed extensively throughout the State to court houses, local government bodies, libraries and community centres of various sorts. Information received indicates that the brochure has been a significant tool in heightening public awareness of the existence of the Commission, and the need to fight corruption.

Country Visits

The ICAC is not just Sydney based - it travels. Commission officers will visit country centres on a regular basis. It is important that people outside the Sydney metropolitan area have, and feel they have, access to the Commission. The Riverina was the first area visited, between 2 and 4 May. Three staff members were present for a day in each of Griffith, Wagga and Albury. The second visit was to the Central West, between June 12 and 15. Three staff members visited Broken Hill and Dubbo. The media in each town gave prominence to the ICAC presence, both in the week before and on the day of the visit. The number of complaints received at the five towns mentioned was 3, 5, 6, 9 and 5 respectively.

Further country trips are scheduled for the latter part of this year, and the aim is to ensure that by the end of the first quarter of 1990 people throughout the State who wish to have direct dealings with Commission officers will have had an opportunity to do so with relative ease. The assistance of the office of the Ombudsman in advising as to the places to visit and the frequency of visits is acknowledged.

Each city or town in New South Wales having a population in excess of 15,000 will be visited at least once each year, or alternatively people living in a city or town of that size will have an opportunity at least that often to travel no more than about 100km, that is to say a journey of not much more than an hour each way, to confer direct with Commission staff. Major centres will be visited more often.

Media Liaison

A media committee was formed to liaise with the Commission about its requirements and to have input into, among other things, the establishment of a media room in the ICAC premises. The Commission regards this media committee as an important mechanism in the communication process.

The Commission recognises and acknowledges the vital role the media plays in keeping the public informed. The Commission's general approach is that it is working for the public of NSW and the public should know what it is doing. This is limited by the need to maintain confidentiality in relation to current investigations. When investigations are pending or have not yet reached the public hearing stage, a responsible media can assist the public cause by exercising restraint. Of necessity, some aspects of the Commission's work are confidential. ICAC staff are all subject to s.111 of the Act, which provides severe penalties for those who disclose information other than for statutory purposes.

Such public hearings as the Commission conducts, and publicity emanating from them, also fulfil an important educational function. In that way the public generally gets to know that the Commission is active, that corrupt practices can and do occur in the public sector of the State, and the nature of those practices. A particular target group comprises people who do or might become involved in corrupt practices. Press coverage of hearings is important if those people are to be deterred from so conducting themselves.

It is also important to note that the presence of media representatives at Commission hearings helps to ensure that they are conducted fairly. Anyone who wishes to behave in a bullying or otherwise disgraceful manner to witnesses or others would always prefer to do so behind closed doors. This is the prime justification for the universal rule that the courts of the land are open to the public, and it is of equal application to Commission hearings.

A small number of media statements have been issued in the period to 30 June and they are listed in Appendix IV.

Since 13 March senior ICAC staff have delivered a number of speeches and taken part in some important seminars and conferences. A list of these occasions is at Appendix V. These speaking engagements are a valuable means of disseminating information about the ICAC legislation and the operations, aims and functions of the Commission.

Chapter 5

CONSULTATION AND CO-OPERATION

The Act reflects a Parliamentary intention that the Commission have a pre-eminent, but not exclusive, role in minimising corruption. The Commission is committed to developing successful working relationships with other agencies, and disseminating widely information regarding its role.

Legislative Provisions

The Commission, in exercising its principal functions relating to the investigation of conduct, is required, by s.16 of the Act, to work as far as practicable in co-operation with law enforcement agencies. It may also work in co-operation with the Auditor-General, the Ombudsman, the National Crime Authority, the Australian Bureau of Criminal Intelligence and such other persons and bodies as the Commission thinks appropriate.

Part 5 of the Act enables the Commission to refer any matter for investigation or other action to relevant authorities. Also of importance in the relationship between the Commission and other bodies is s.11, which imposes a duty to report corrupt conduct to the Commission.

Program of Liaison

During Mr Temby's consultancy to Government, he conferred extensively with office holders whose co-operation with or knowledge of the Commission and its intended work was important to its commencement of operations. During this period he met with several Ministers, the Presiding Officers of Parliament, certain Members of Parliament, the Chief Justice, the Auditor-General, the Ombudsman, the Chief Executive of the Judicial

Commission, the Commissioner of Police, the Chairman of the State Drug Crime Commission, the Director of Public Prosecutions, the heads of central agencies and various department heads.

In December 1988 the Commissioner-designate wrote to heads of all public authorities informing them of the impending establishment of the Commission, its role and their responsibilities under the Act - see Appendix VI. There developed a widespread misapprehension that the Commissioner-designate wrote only to mayors and presidents of local government bodies, and that this action signified the commencement of "targeting" of local government. The intention of the letter, and its wide distribution, was rather to assist the public sector generally in understanding the impact the Commission could have upon it.

The program of liaison in relation to each of the functional areas of the Commission's work has been maintained and extended following the formal commencement of the Commission.

So far as the investigative function is concerned, the Commission has worked closely with the Police Department, the Ombudsman's Office and the Department of Local Government to co-ordinate action. Useful working relations have been developed with the Australian Federal Police and the National Crime Authority. A representative of the Commission attends the periodic meetings of the National Operations Conference convened by the latter. Liaison has been established with the Australian Bureau of Criminal Intelligence, the Taxation Office, the Department of Immigration and Ethnic Affairs, the Local Government Association and Shires Associations and the legal profession.

Good working relations have been established with key agencies to facilitate the development of the advisory role of the Commission. The Commission has accepted invitations to join government working groups that are examining matters including conflict of interest in the local government area, codes of

conduct for public officials, and superannuation and corruption.

The Commission will continue to place great store on the development of good working relationships with other agencies. As the Commission grows out of its infancy, there will be greater scope for it to disseminate to other agencies accumulated knowledge, information and expertise.

During the period to 30 June 1989 the Commission furnished information to law enforcement agencies as follows:

- . C89/003 to State Drug Crime Commission.
Allegation of drug dealing by prison officer.
- . C89/162 to State Drug Crime Commission.
Allegations concerning corruption in Department of Corrective Services, and of drug dealing and stolen property handling by, and sexual favours for, prison officers.
- . C89/240 to Commissioner of Police.
Allegation that premises are being used as a brothel and that police are taking no action to prevent this activity.
- . C89/251 to State Drug Crime Commission.
Reports prepared by Department of Corrective Services relating to adequacy of internal investigations into alleged drug dealing and abuses at a prison.
- . C89/508 to Commissioner of Police and State Drug Crime Commission.
Allegation of misconduct by police officer in drug investigation.

- . C89/547 to Commissioner of Police.
Alleged conspiracy by police officers and others
to wrongly convict a person of drug trafficking.
- . C89/553 to Commissioner of Police.
Allegation that police did not properly
investigate an offence.

Certain matters were referred pursuant to Part 5 of the ICAC Act.

Chapter 6

LEGAL CHANGE

Most legal issues that arose during the period under review related to the conduct of investigations or the engagement of staff to perform and support investigations.

The Commission intends during the next reporting year to undertake a program of legal and related research. It is expected that this will result in significant anti-corruption recommendations for legal change.

Legal Change to Date

The ICAC Act was amended during the Autumn sittings of Parliament in a number of respects. The office of the Assistant Commissioner was changed from full-time to one which may be held on a part-time or full-time basis. Limitations on appeals to the Government Related Employees Appeal Tribunal and the Industrial Commission relating to the appointment, promotion, removal and discipline of members of staff of the Commission were imposed. These ensure the Commissioner has extensive control in all staffing matters. An amendment was made to the Defamation Act 1974 to provide a defence for publication of a fair report of proceedings at a hearing held in public by the Commission and to transfer to the Defamation Act the statutory base for the defence of absolute privilege for publication to or by the Commission or to an officer of the Commission. The Commission recommended these amendments and was pleased the Government acted promptly in introducing them into the Parliament. The amending legislation (Independent Commission Against Corruption (Amendment) Act 1989 No 28 and Defamation (Independent Commission Against Corruption) Amendment Act 1989 No 29) was assented to on 21 April 1989 and proclaimed to commence on 5 May 1989.

The Act provides for the making of regulations relating to, among other things:

- . the disclosure of pecuniary interests and other matters by officers of the Commission (s.110)
- . security checks of officers of the Commission and applicants for appointment or engagement of officers of the Commission
- . the issue of identity cards to officers of the Commission and their use
- . the use and custody of the seal of the Commission (s.117).

Two Regulations were made dealing with these matters. Both the Independent Commission Against Corruption (Disclosure of Financial Interests) Regulation 1989 - No. 228 and the Independent Commission Against Corruption (General) Regulation 1989 - No. 229 were published in the Government Gazette No. 38 of 7 April 1989.

The scheme of security vetting and disclosure of interests established by the Regulations is comprehensive and stringent. The fact that the scheme is set out in Regulations, which have the status of law, are laid before both the Houses of Parliament and are generally available, is itself significant. The alternative - an administratively based scheme characterised by extensive discretionary powers - was not considered satisfactory.

The ICAC Act, when enacted, included an amendment to the Public Finance and Audit Act 1983 which had the effect of placing the Commission in a Schedule of Statutory Bodies (Schedule 2). This also subjected the Commission to the provisions of the Annual Reports (Statutory Bodies) Act. Upon examination, it was considered that this position was unsatisfactory. Although the Commission is a statutory body, it is funded from the Consolidated Fund and does not engage in trading operations. In this respect it is unlike most statutory authorities. The accounting standards and financial requirements specified in the

Annual Reports (Statutory Bodies) legislation were inappropriate to the Commission. At the request of the Commissioner, steps were taken to bring the reporting requirements of the Commission, particularly in regard to financial matters, into line with those of a government authority funded from the Consolidated Fund. On 23 June 1989 the necessary regulation and proclamation, published in the Government Gazette (No. 78), transferred the Commission from Schedule 2 to Schedule 3 of the Public Finance and Audit Act.

During the period of Mr Temby's consultancy to Government and since the Commission's formal establishment, a number of New South Wales laws of particular interest to the Commission were enacted. Mention is made here of three such laws.

The State Drug Crime Commission (Further Amendment) Act 1988 changed significantly the constitution and functions of the State Drug Crime Commission and its Management Committee. The Act was assented to on 12 December 1988 and proclaimed to commence on 1 February 1989. New South Wales has two specialised law enforcement agencies - the ICAC and the State Drug Crime Commission - which can exercise coercive powers. Whilst the charter of the latter has been expanded to enable it to investigate organised crime matters which have been referred to it, there is little likelihood, in practice, that the operations of the Commission and the State Drug Crime Commission will cut across each other.

The Freedom of Information Act 1989 was assented to on 21 March 1989 and commenced on 1 June 1989. The Commission, along with a small number of other bodies, is exempt from the provisions of this Act. The legislation is, however, of interest to the Commission because of its potential to improve the standard of public administration in New South Wales. The Commission will monitor the extent to which documents, obtained pursuant to the Freedom of Information Act, provide source material for complaints concerning possible corrupt conduct to the Commission.

The Confiscation of Proceeds of Crimes Act 1989 had not commenced by 30 June 1989. This Act repeals the Crimes (Confiscation of Profits) Act 1985. The 1985 legislation, when introduced, was the most comprehensive proceeds of crime legislation in Australia. Its operation, however, was a disappointment. The new legislation retains features of the old but incorporates a number of provisions which have been tested in other jurisdictions. The Commissioner is given certain powers under the new Act in relation to restraining orders, which are similar to those he possessed under the old legislation. It is unlikely that the Commissioner will wish to exercise these powers with any frequency. The Commission, however, will have a keen interest in the operation of the Act, particularly in relation to investigations which lead to a submission of a brief to the Director of Public Prosecutions.

Judicial Decision

Shortly after the end of the reporting year, legal proceedings were instituted against the Commission by Messrs Balog and Stait. The Commission had authorised them to appear at the public hearing concerning the Waverley Municipal Council as persons "substantially and directly interested" in the subject matter of the hearing.

The plaintiffs sought a declaration and ancillary relief from the Supreme Court in relation to the making by the Commission of its report to Parliament concerning the Waverley investigation. The proceedings involved a matter of statutory interpretation, principally relative to s.74 of the ICAC Act. Mr Justice Smart reserved his decision on 13 July 1989.

Extraterritorial Operation of ICAC Act

The jurisdiction of the Commission must be limited because it is a creature of State statute. It is, however, a matter of concern

that the reach of the Commission's coercive powers can be avoided by a person crossing a State boundary. The Commission sought counsel's advice as to whether there are means by which this position can be alleviated.

Counsel advised that a notice under s.21 (to furnish a statement of information), or s.22 (to produce a document) or a summons under s.35 (to give evidence or produce documents) cannot be served effectively outside the territorial limits of New South Wales, and that a person who is served outside those territorial limits cannot be prosecuted or arrested for failure to comply with the notice or summons.

On the question of whether the New South Wales Parliament can legislate to permit the service and execution of summonses under s.35 outside the territorial limits of New South Wales, Counsel noted that such a summons could be served outside New South Wales if it fell within the terms of s.16 of the Service and Execution of Process Act 1901 (C'th). That section provides:

- (1) When a subpoena or summons has been issued by or out of a Court, or by a Judge, a Police, Stipendiary or Special Magistrate or a Coroner, in any State or part of the Commonwealth, requiring any person to appear and give evidence or to produce books or documents, in any civil or criminal trial or proceeding (including any proceeding before a Coroner), such subpoena or summons may upon proof that the testimony of such person or the production of such books or documents is necessary in the interests of justice by leave of such Court Judge Magistrate or Coroner on such terms as the Court Judge or Magistrate or Coroner may impose be served on such person in any other State or part of the Commonwealth.
- (2) If such person fails to attend at the time and place mentioned in such subpoena or summons, such Court Judge Magistrate or Coroner or any other Police, Stipendiary, or Special Magistrate having jurisdiction in the State or part of the State or part of the Commonwealth in which the subpoena or summons was issued may on proof that the subpoena or summons was duly served on such person, and that a reasonable sum was tendered to him for his expenses issue such warrant for the apprehension of such person as such Court Judge Magistrate or Coroner might have issued if the subpoena or summons had been served in the State or part of the Commonwealth in which it was issued.

- (3) The powers of a Supreme Court of a State or other part of the Commonwealth, or of a Judge of such a Court, to grant leave under sub-section (1) of this section may be exercised by an officer of the Court authorized in that behalf by rules of court made by virtue of sub-section (1) of section 27 of this Act.

The term "court" is defined in s.3, to include any judge or justice of the peace acting judicially.

It is clear that a summons under s.35 of the Act is not a summons within s.16 of the Service and Execution of Process Act, as it is not issued by or out of a court, or by one of the designated classes of people within that section. However, the question that arises is whether if s.35 was amended to permit the issue by a justice of a summons to appear before the Commission, such a summons if so issued could be served outside the jurisdiction by virtue of s.16.

Such a summons could be served outside New South Wales if a hearing before the Commission is a "civil or criminal trial or proceeding (including any proceeding before a Coroner)" within s.16 of the Service and Execution of Process Act. Counsel reviewed the authorities and formed the opinion that a hearing before the Commission is a "proceeding" within the meaning of that section.

Based on that view, counsel advised that an amendment to the Independent Commission Against Corruption Act could permit extra territorial service of ICAC Act summonses pursuant to s.16 of the Service and Execution of Process Act. There would have to be a provision authorising a justice to issue a summons to a person, whether or not that person is within New South Wales, to appear before the Commission at a hearing at a time and place named in the summons to give evidence or to produce documents or other things referred to in the summons, whether or not those documents or other things are located within New South Wales.

Other Changes to ICAC Act

Under sections 21 and 22 the Commission can require a public authority or a public official, and in the case of s.22 another person, to produce documents. Production must be before the Commissioner or the Assistant Commissioner, and the individual concerned must be specified in the notice.

These powers are used regularly, especially the power under s.22. The requirement that production must be before the Commissioner or the Assistant Commissioner, as specified is proving burdensome. Amongst other things it means that if something arises which renders it necessary or desirable that the person named be elsewhere on the date specified in the notice, he cannot respond to the situation. It is desirable that the section be amended to allow production before any of the Commissioner, the Assistant Commissioner or an officer of the Commission authorised in writing by the Commissioner. It is envisaged that the power to accept production would be reserved to senior legal staff of the Commission, in the first instance the Commission Secretary. No change is suggested to the provisions that permit the Commissioner and Assistant Commissioner only to require production under sections 21 or 22.

A number of New South Wales prisoners have desired to make a complaint to the Commission but have been concerned about confidentiality of their communications. The Minister for Corrective Services has advised that he will recommend to the Governor an amendment to the relevant Prison Regulation. The Commission, however, would like to see an amendment to the Act which incorporates a provision equivalent to s.12 (3) of the Ombudsman Act 1974. This section provides:

" (3) Where a person is detained by, or in the custody of, a public authority and informs the public authority or another person having superintendence over him that he wishes to make a complaint to the Ombudsman, the public authority or other person so informed shall -

- (a) take all steps necessary to facilitate the making of the complaint; and
- (b) send immediately to the Ombudsman, unopened, any written matter addressed to the Ombudsman."

This provision would have general application and provide legislative protection for people who are detained by police and public health officials as well as corrective services officials.

The Commission will be using task forces in the performance of its functions. Section 15 of the Act provides:

"The Commission may, in connection with its principal functions -

- (a) arrange for the establishment of task forces within the State; and
- (b) seek the establishment of joint task forces with authorities of the Commonwealth or other States or Territories; and
- (c) co-operate with State task forces, Commonwealth task forces, joint task forces or other task forces; and
- (d) co-ordinate or co-operate in co-ordinating any such task forces."

The obligation to secrecy imposed by s.111 does not apply to task force personnel. It should do so, either in terms set out in s.111, or in the more limited circumstances outlined in s.16 (4). Section 16 is concerned with the bodies with which the Commission can co-operate and to which it can disseminate information. Section 16 (4) stipulates that the secrecy provision applies to people in respect of information which the Commission has classified as confidential.

A number of people who have complained to the Commission have expressed concern about prejudice they may suffer for so doing. There is protection under the laws of defamation in relation to a complaint made to the Commission. No specific offences,

however, have been created which penalise, for example, a person for wilfully preventing a person from making a complaint or dismissing a person from employment for making a complaint. Consideration should be given to the creation of these offences.

Commonwealth Legislation

The law regarding the conduct of investigations is a complex of Commonwealth and State law. Discussion so far has centred on State law. There are three aspects of Commonwealth law which should be mentioned. They relate to telephone intercepts, and dissemination of information by the Commissioner of Taxation and the Cash Transactions Agency.

In May 1989 the Law and Justice Legislation Amendment Bill was introduced into the Commonwealth Parliament. The Bill included amendments to the Telecommunications (Interception) Act 1979 the object of which is to enable the Commission to apply for warrants for the interception of telephone conversations. The Commission will be subject to the regulatory scheme under which the New South Wales Police Department and the State Drug Crime Commission can now apply for and obtain warrants. The Attorney General is preparing complementary State legislation. It is anticipated that the necessary legislation will be passed by the Commonwealth and State Parliaments in their Budget sittings. The Commission is in the course of working out precisely how to utilise the powers it will then enjoy.

One of the objects of the Taxation Laws Amendment Act 1989 (No. 3) is to facilitate the dissemination of tax information by the Taxation Office to law enforcement agencies. The scheme will benefit traditional law enforcement agencies such as Police Departments. The amendment, however, does not extend the scheme to three New South Wales agencies - the Commission, State Drug Crime Commission, and Business and Consumer Affairs. The Commission, for its part, will be seeking through the Premier an appropriate amendment to the legislation. The Commission and

the State Drug Crime Commission are in a similar position regarding dissemination of information by the Cash Transactions Agency. Commonwealth legislation should be amended to allow the Commission to receive information directly.

Chapter 7

ADMINISTRATION

Just under half the staff of the Commission work in the area of administration and support. Their aim is to enable the productive work of the Commission to be done. They support the Commissioner and senior management:

- . together with those involved in operations, to run successful investigations;
- . to enable the corruption prevention specialists (when engaged) to function;
- . to further the public education work of the Commission.

Of course those who work in administration must also ensure that proper controls are exercised, but their chief role is to provide the wherewithal: money, premises, equipment, and services including information handling. If all of this is done well the Commission can do its job: if not, it is bound to fail.

Staffing

It is only through people that any institution can get results. Those who work with the Commission are special in two respects: the way they are chosen and employed, and the information they must provide as a condition of engagement. All staff of the Commission have been very carefully chosen.

About a quarter have been seconded from the police force. After expressions of interest to work with the Commission were sought, those interested in applying did so direct to the Chief of Staff of the Commissioner of Police, who transmitted the applications direct to the Commission. Interviews were conducted and choices

made by the Commission with the assistance of an expert outside consultant. The ICAC and the office of the Commissioner of Police then liaised in relation to the record of integrity of applicants, and arrangements for their release. It is anticipated each seconded police officer will work with the Commission for a period not exceeding three years.

Most of the senior staff of the Commission are employed on contract, with a maximum period of five years. Apart from the Commissioner, who by statute cannot serve for more than five years, there is no reason why periods of service should not be extended beyond that term. However the Commission believes that successful outcomes will not be maintained without the vitality which will flow from infusions of new talent from time to time, and accordingly a degree of staff turnover should be sought. To put much the same proposition in another way, individuals can grow stale with the passage of time, and it is best if they move on before that happens. The ICAC must not be allowed to become just another reasonably successful agency.

As to security vetting, the extent of disclosure which can be required is laid down by regulations which are of course in the public domain. The Commissioner has decided that everybody involved in operations, and all others except junior support staff, must disclose financial as well as personal particulars, and everyone is required to disclose their personal details. There will be found at Appendix VII a copy of the minute which went to all staff in relation to security vetting.

As at 30 June 1989 the Commission had a staff of 61. A breakdown of this staff is shown on the next page.

Executive	6	Commission Employees	43
Investigative	16	Seconded Police Officers	14
Legal	9	Temporary Staff	4
Administrative	30		
	----		---
TOTAL	61	TOTAL	61
	=====		=====

On 16 December 1988 the Premier approved the structure, terms and conditions of the staff of the Commission. By and large these terms and conditions are the same as or closely similar to those applicable within the New South Wales Public Service. Staff are eligible to join the State Authorities Superannuation Scheme and service with the Commission will count as service with respect to long service leave. Seconded police officers bring with them the conditions and entitlements applicable within the Police Force.

Since December the Commission has concentrated on the recruitment of suitable staff. Staff recruited are of high quality and dedication. The Commission is about to embark on another recruitment campaign for staff for all areas of the Commission.

Committees

The organisational structure revolves around leadership and co-operative effort, rather than a strict hierarchical command. For this reason a number of committees are integral to the overall management of the Commission.

The Senior Management Committee meets weekly. It comprises the Commissioner, Assistant Commissioner, General Counsel, Director of Operations, the Secretary to the Commission and the Director of Administration and Public Affairs. The Committee contributes to overall management of the Commission. It

identifies and considers key issues, and decides priorities and future directions of the Commission.

The Investigations Committee comprises senior management, save for the Commissioner and the Assistant Commissioner. It generally meets weekly, but probably fortnightly meetings will in time suffice. Team leaders are called in to meetings as and when necessary. The Committee is responsible for monitoring and reviewing the progress of investigations, setting operational priorities, and allocating appropriate resources between investigations.

The ADP Steering Committee is chaired by the Assistant Commissioner. Its members are the Director of Operations, the Director of Administration and Public Affairs, and representatives of the Secretary to the Commission and from the ADP section. The Committee is responsible for developing an ADP strategy plan for the Commission, and overseeing the use of computer facilities throughout all areas of activity.

The Occupational Health and Safety Consultative Committee comprises representatives of all the major groups of staff within the Commission. The Committee's first task was to consider the various options available in relation to furniture systems. The Committee is to be reconstituted, and given the responsibility of considering all health and safety issues, including the handling of occupational overuse syndrome within the Commission. Assistance with this task will be provided by the Property, Services and Safety Co-ordinator.

The importance of staff development and training is recognised throughout the Commission. It is through capable, highly efficient staff that the Commission will achieve its aims. To date, the greatest part of the training undertaken has been on the job. Action is currently in train to develop an induction program.

Because of the relatively small size of the Commission, use will be made of outside organisations for the provision of training. Co-operative arrangements with other agencies will also be instituted. In-house seminars have been and will continue to be a feature of the training commitment of the Commission.

Accommodation

The Commissioner-designate and a handful of staff worked in small, temporary premises in Macquarie Street from October 1988 until suitable, permanent accommodation could be found.

After assiduous searching, suitable premises were located at 191 Cleveland Street, Redfern and the Commission took up occupation on 6 March 1989.

The building is large enough to cater for the long term needs of the Commission. However, because of the specialised requirements of the Commission, especially in relation to hearing rooms and other public areas, an extensive refurbishment program is under way. The permanent fit-out will provide for two hearing rooms, facilities for public education and adequate accommodation for the staff of the Commission. All work should be completed by November of this year.

An after hours bus service between Cleveland Street and Central Railway station has been instituted for the safety of staff.

Finance

The Commission is listed under Schedule 3 of the Public Finance and Audit Act 1983 as a body funded from the Consolidated Fund. As such the Commission prepares accounts under the Annual Reports (Departments) Act. This requires the production of financial statements which are audited by the Auditor-General. These statements, including notes, are at Appendix IX.

Commission expenditure to 30 June 1989 was \$2.908M. This included an amount of \$0.854M for expenditure associated with the fit-out of the Commission's permanent premises.

The Commission's accounts are currently being processed by the Premier's Department. The Commission expects to substantially take over this function during the 1989/90 financial year.

Overseas Liaison

The ICAC maintains liaison with the body of the same name in Hong Kong. During 1989-90 contact will be made with a number of other countries to obtain the benefits of their experience, especially in relation to corruption prevention. During the period under review no overseas visits were undertaken by Commission staff.

Consultants

Consistent with Commission policy to obtain services provided by outside experts rather than continually increasing the permanent staffing of the Commission, a number of consultants were engaged. These consultants provided services ranging from ADP support, media monitoring and the setting up of a library service, to the provision of specialised advice relative to the development of the structure and staffing of the Commission. Details are provided in Appendix VIII.

APPENDIX I

Commissioner's Address

The Independent Commission Against Corruption came into existence today - indeed at the very beginning of the day. This is the first sitting of the Commission and I take the opportunity to make some observations of a general nature concerning the newly constituted body and the way in which it will operate.

At this moment the Commission is a small body, comprising some 25 staff, about half of whom have started with us only within the last fortnight. However, over the period of some four working months since I took up the position of Commissioner Designate all necessary arrangements have been made. We are now in a position to embark upon the important task given to us by statute, which is to minimise corruption in the public sector of New South Wales.

Before turning to the important questions of how that can and will be done, a couple of more practical areas should be dealt with. One concerns these premises. Some of you may have thought they look rather ordinary. That is because we moved in only a week ago and this floor has been fitted out on a temporary basis. The building itself is very solid, was recently refurbished and will make a fine set of offices. We think they will be finished in about four months and at that stage will have:

- . a ground floor largely devoted to public purposes, including one major and one minor hearing room and adequate facilities for complaints officers to see members of the public.
- . above that two and a half floors of offices and amenities such as library, computer room, training and staff facilities and so on.

We are however in a position to commence work now. Hearings will be held here until the final facilities are available.

The second of my practical areas for comment concerns staff. There is nobody working here who has not volunteered for the purpose, and everybody is required to undertake a strict security vetting. I believe that we have a nucleus of a fine team which will grow over the next few months. The staff here are and will be notable for their competence, commitment and integrity. If anybody lets us down in any of these respects, they will be got rid of.

In outlining how the Commission proposes to perform its important tasks the necessary starting point is to stress its independence. The ICAC Act makes clear the the Commission is not subject to directions, whether from the Government of the day or any other body or person. It is for the Commission to decide what it will investigate and generally how its statutory charter will be carried out. Having said those things, it would be churlish not to acknowledge with thanks the ready assistance that has been received from many senior public servants and others, both by the Commission and myself personally. The Premier as Minister responsible for the ICAC Act has been steadily supportive.

To say that we are independent is not to say that the Commission will behave in a manner which is either whimsical or lacking in accountability. We are required to, and will, "regard the protection of the public interest and the prevention of breaches of public trust as (our) paramount concerns" - section 12 so mandates. So far as accountability is concerned this will be achieved in various ways. The Parliamentary Joint Committee which the ICAC Act sets up has an important role to play and the Commission will work with its members. The annual report we are required to provide to the Parliament will be forthright and readable. While very often - indeed almost invariably - current operational matters cannot be spoken of, we will adopt an open attitude in other areas when it comes to dealings with the public and the media. From time to time speakers will be made available by the Commission to address significant meetings and seminars. Our approach generally will be that we are working on behalf of the public and should be prepared to let them know what we are doing. This is, however, subject to the important caveat that successful outcomes and fairness to individuals cannot be obtained unless security is maintained relative to pending and current investigations.

In summary we will be open and accountable, but above all independent of any other group or interest and working for nobody but the public of the State. The ICAC Act makes clear that only the Commission can set the agenda for the Commission. That will be done. Nobody else will do it, in whole or in part.

Perhaps the most important function of the Commission is to conduct investigations, because it is only for the purpose of an investigation that the Commission can exercise the special powers conferred upon in my statute. They include the powers to summon witnesses and compel the production of documents which are common enough. But in addition the Commission may require public authorities and public officials to produce statements of information, can authorise members of staff to enter any public premises to inspect and copy documents thereon, and has power to issue its own search warrants. All of these go beyond the ordinary. Each will be used in a manner which is careful and considered, and of course only to further the search for truth which is the ultimate aim of any investigation. As to the last power, that of issuing search warrants, I hope it will be practicable to always do that through justices rather than the

Commissioner. It is always a worthwhile discipline to have to go before an outside judicial officer to justify entering private premises.

The Act requires the Commission to exercise its functions with as little formality and technicality as possible. The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate. I envisage that extensive use will be made of written submissions, frequently non-contentious witnesses will not be called, and so I could go on. To do those things, is simply to dispense with some of the unnecessary procedures which plague ordinary courts of law. However, it is important not to do away with anything essential and in particular to maintain safeguards against hasty, ill-considered and potentially wrong conclusions. When serious allegations are made against individuals they will be given every opportunity to answer, and the Commission will be acute to ensure its hearings are not used as opportunities for the purveying of speculation, gossip and rumour.

Most of the time our hearings will be conducted in public. The Act stipulates that as the general rule. A positive decision must be made before a hearing can be held in private. That cannot be done unless the Commission is satisfied that it is desirable to do so in the public interest for reasons connected with the subject matter of the investigation or the nature of the evidence to be given. All of this is perfectly palatable to me and those who work for the ICAC. Indeed recent experience in Queensland shows pretty clearly that public hearings serve a most useful purpose, although of course they require that special care be taken to get everything right.

It is anticipated that quite soon, by which I mean during the early part of April, it will be possible to convene a hearing or hearings at which there will be announced investigations which have reached the stage that the calling of witnesses in relation to them can proceed. Even when that has happened we will be actively looking for other matters which require investigation. The Commission can act as a result of a complaint from a member of the public, a report from a public authority, a reference from the Parliament or on its own initiative. This is a broad range and it can be said already that the flow of information to the Commission will be substantial. That is important because it is only with public support that the Commission's tasks can be performed.

So far as the outcomes are concerned the Commission is required to report to the Parliament as to any investigation which has involved public hearings. It is empowered to prepare briefs of evidence which will be submitted to the Director of Public Prosecutions for this State. It can give advice which will minimise corruption opportunities and embark upon public education programmes. Finally it has extensive power to refer matters to other appropriate authorities, and it can call upon them to report as to what they have done. Doubtless all of these powers will be exercised from time to time. The last is of

particular importance because I am determined the Commission will not grow large and flabby, which means the cases it takes on, which must be done well and expeditiously, must be limited in number. The Act also enjoins us to do our work in co-operation with other authorities, both State and Federal, and that is something we are resolved to do. It is gratifying to see senior representatives of several such agencies present this morning.

In the medium term, which is to say before the end of the current calendar year, we will be attending to the discharge of our non-investigatory functions, namely public education and corruption prevention. Because of the need to keep the size of the Commission within manageable proportions, no more than a handful of staff will be devoted to either area. They will however, be of high calibre and capacity. I am anxious to ensure that each of these areas is given appropriate emphasis. So far as the long term is concerned, the Commission cannot succeed unless all of us strive to ensure that:

- . We work faithfully within our statutory charter.
- . We get to the truth of matters.
- . We are fair to individuals.
- . We deservedly obtain and retain public confidence.

In all that we do we will strive to be bold, prudent and earnest.

On a personal note could I say that while I do not sit as a judge, I consider myself morally bound by that which is sworn to by holders of judicial office, namely to do right to all manner of people without fear or favour, affection or ill will.

Thank you for coming this morning. Thank you for having listened to me. That completes the first sitting of the Commission.

APPENDIX II

Procedure at Public Hearings

The Commission's power to hold hearings is conferred by section 30(1) of the ICAC Act 1988. Such hearings may only be held "for the purposes of an investigation". They should accordingly be regarded as an aid to, or part of, the investigation process.

As a general rule, hearing will be conducted in public. The Act provides that the Commission may direct that a hearing or part of a hearing be held in private, but stipulates that such direction may only be given if the Commission is satisfied "that it is desirable...in the public interest for reasons connected with the subject matter of the investigation or the nature of the evidence to be given." (s.31).

The following procedure will be followed in respect of public hearings.

1. When, for the purposes of an investigation, the Commission decides to hold a public hearing, the Commission will generally give notice of that intention, both publicly and to such persons as the Commission believes are substantially and directly interested in any subject matter of the hearing.

2. The notice will state the general scope and purpose of the proposed hearing, and the date, time and place of the first sitting.

3. One purpose of the notice will be to enable those persons who may wish to appear and be represented to arrange for their applications to be made on the first sitting day.

4. As provided by the Act, hearings will be conducted and presided over by the Commissioner or an Assistant Commissioner (s.30(2)), presently Temby QC or Roden QC.

5. The courtesies which are customary in courts of law will be observed. Robes will not be worn. The person presiding may be addressed as "Commissioner" whether he be the Commissioner or an Assistant Commissioner.

6. The first day of a public hearing will generally be limited to the formal announcement of the general scope and purpose of the hearing, applications for persons to appear and be represented, and settling arrangements for the hearing.

7. Leave to appear for a person substantially and directly interested in the subject matter of the hearing or for a person who will be giving evidence at the hearing, will generally entitle the legal representative to ask questions of witnesses and to make submissions, but not to give advice to the person represented while he or she is in the course of giving evidence. Leave to appear may however be subject to limitations particularly when the person represented has an interest in part

only of the subject matter of the hearing.

8. Leave to appear may be granted in respect of a hearing generally, or in respect of a specified part of a hearing.

9. The hearings will be conducted with due regard to the provisions of section 17 of the Act, which provides:

(1) The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

(2) The Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and hearings shall be conducted with as little emphasis on an adversarial approach as is possible.

10. In the case of witnesses who have furnished statements to the Commission, such statements may, in the discretion of the person presiding, be read in lieu of examination-in-chief.

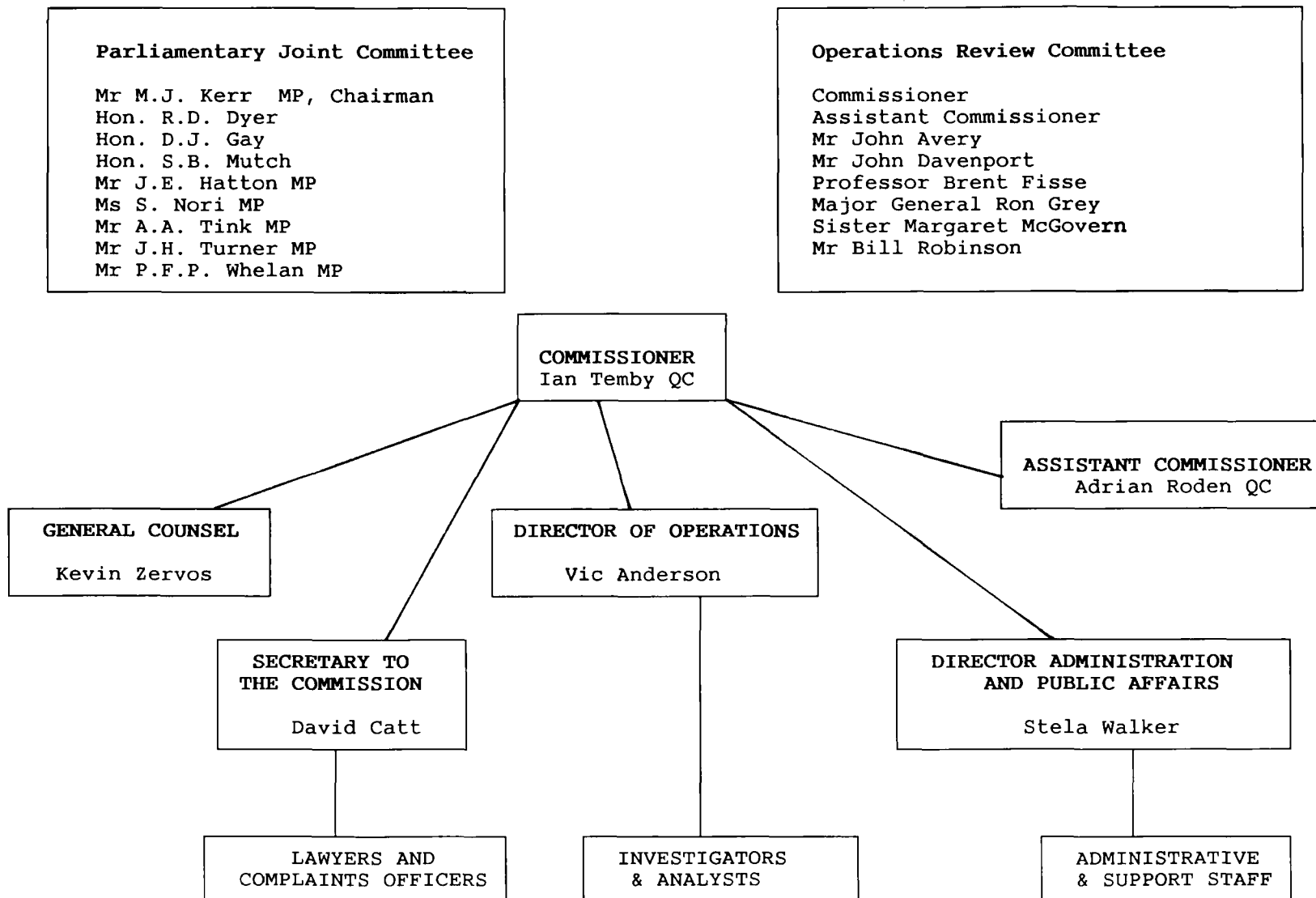
11. In the case of a person seeking to give evidence, or of a person proposed as a witness by any person appearing or represented at a hearing, the Commission will generally require that a statement of the proposed evidence be provided to counsel assisting the Commission.

12. In view of the provisions of section 17 of the Act the Commission may accept signed statements from persons not called as witnesses, or other informal proof, in relation to matters it considers not to be contentious.

13. Hearsay and other legally inadmissible material will generally only be received insofar as it appears to the person presiding that it may further the investigation for the purposes of which the hearing is being held. The Commission will not permit public hearings to become vehicles for the purveying of gossip, rumour or speculation. Questions must not be asked of, or propositions put to, a witness, without justification on the basis of the knowledge of, or instructions given to, the person asking the question.

14. Persons against whom corrupt conduct is alleged, will generally be called and given an opportunity of answering the allegations, but will generally only be called after the evidence of such alleged conduct has been led.

15. As required by section 74 of the Act, all public hearings will be the subject of report to Parliament.



APPENDIX IV

Media Statements

- March 13** - Media Kit - Commissioner's Address at the first sitting of the ICAC (produced in full at Appendix I); Facts Sheet; Powers and Functions of the ICAC.
- April 9** - Announcing the appointment of the Director of Operations and listing the members of the Senior Management group of the ICAC.
- April 26** - Advising a country visit by ICAC staff to Griffith, Wagga and Albury.
- April 27** - Members of the Joint Parliamentary Committee and the Operations Review Committee meet the Commissioner and view the ICAC premises.
- May 8** - Announcement of an investigation relating to Tweed Shire Council.
- May 10** - Announcement that the ICAC would not be investigating alleged insurance frauds in the Government Insurance Office.
- May 5** - Announcement of a public hearing in the Tweed investigation and the establishment of an ICAC office at Murwillumbah.
- June 2** - Advising a country visit by ICAC staff to Broken Hill and Dubbo.
- June 26** - Expansion of Tweed investigation to include the Northern Rivers region of NSW (announced at the Murwillumbah hearing earlier in June) and notification of the 008 number for the ICAC Murwillumbah office.

APPENDIX V

Public Addresses

Commissioner

Sydney University	25 February 1989
Corrective Services Department	16 February 1989
Maritime Services Board	22 March 1989
Police Powers Conference	23 March 1989
Business and Consumer Affairs	29 May 1989
Police Department	11 May 1989

Assistant Commissioner

Australian Academy of Forensic Sciences	11 May 1989
Senior Executive Outlook Day	1 June 1989
Magistrates Conference	2 June 1989

General Counsel

Law Week	2 May 1989
Fraud Management Seminar	5 May 1989
Institute of Criminology	21 June 1989

Commission Secretary

Western Sydney Regional Organisation of Councils	7 April 1989
Shires Association of NSW Annual Conference Workshop	6 June 1989
Parramatta City Council	13 June 1989

Mr R. Bromwich, Senior Lawyer

Advanced Criminal Law Course University of NSW	28 April 1989
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APPENDIX VI

Letter to Public Authorities

5 December 1988

Dear Sir/Madam

I am writing to you with the concurrence of the Premier, in my capacity as Commissioner Designate of the Independent Commission Against Corruption ("the Commission").

The purpose of this letter is to advise you that your department is one of the bodies to which the Independent Commission Against Corruption Act 1988 ("the Act") will, when it commences in the first quarter of 1989, apply. A further purpose of this letter is to explain the functions that the Commission will have and some of the duties and obligations which the Act will impose upon you and your department. At the outset, I stress that this letter is intended to be informative. I therefore invite contact with the interim office by telephone on 221-2888, or in writing at the above address, should there be any questions arising either from this letter or generally.

Commission Functions

The principal functions of the Commission will be to detect, investigate and reduce the likelihood of corrupt conduct within the public sector of New South Wales. In carrying out these functions, the Commission is required to regard protection of the public interest and the prevention of breaches of public trust as its paramount concerns.

Corrupt Conduct

Corrupt conduct, although widely defined in Part 3 of the Act, is limited to conduct that could constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for dismissal of a public official. The central concepts are:

- (a) conduct by any person that does or could adversely affect the honest, impartial exercise of official functions by any public official or public authority;
- (b) dishonest or partial exercise of official functions by a public official;
- (c) breach of public trust by a public official or former public official;
- (d) misuse of information or material acquired by a public official in the course of official functions; or
- (e) conduct by any person that adversely affects or could

adversely affect the exercise of official functions by any public official or public authority and which involves any of a wide range of matters including such things as official misconduct, bribery or violence.

Any of the above conduct is corrupt conduct, even if it occurred before the commencement of the Act and even if any persons involved are no longer public officials.

Public Authority

This concept is widely defined in section 3 of the Act. It includes, for example, government departments, certain statutory bodies, local government authorities and the police force. It also includes persons and bodies for whom an account of administrative or working expenses are kept, where the account is:

- (a) part of accounts prepared under the Public Finance and Audit Act 1983;
- (b) required to be audited by the Auditor-General; or
- (c) an account with respect to which the Auditor-General has powers under any law.

Clearly your organisation is a public authority as defined. Accordingly, the Act applies and the duties and obligations set out below should be carefully considered.

Public Official

This term is also widely defined in section 3 of the Act. It includes, for example, the Governor, persons appointed to an office by the Governor, judges, magistrates, State Members of Parliament, State public servants, employees of public authorities and members of the police force.

Duty to Notify Commission of Possible Corrupt Conduct

Under Section 11 of the Act, various persons, including the principal officer of a public authority, will be placed under a statutory duty to report to the Commission any matter which that person suspects on reasonable grounds concerns or may concern corrupt conduct. The principal officer is defined in the Act as the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.

This duty to notify the Commission of suspected corrupt conduct overrides any duty of secrecy or any other restriction on disclosure. It is a duty of immediate effect: the Act does not contemplate delay in the provision of information. In relation to that duty, the Act confers certain special protections and special penalties. In particular:

- (a) no criminal and no civil liability, other than under the Act, will attach to any person for compliance with any requirement under the Act;
- (b) it is an offence to wilfully make any false statement to mislead the Commission;
- (c) it is an offence to wilfully destroy or tamper with a document knowing that the document may be required in connection with an investigation by the Commission, with intent to prevent it from being so used;
- (d) it is an offence to intentionally delay or obstruct a Commission investigation by destroying a document, by sending a document out of New South Wales or by fabricating a document.

At a later stage I envisage issuing guidelines in relation to the duty to notify the Commission of possible corrupt conduct. This will not be possible until we have a better idea as to the nature and extent of the information which will be furnished. In the meantime, I ask you to interpret the duty to report widely. In every case you are asked to provide, in a reasonably organised form, a description of any allegation or reasonable suspicion of corrupt conduct, together with copies of any documents, including statements, that are or may be relevant. I suggest that if in doubt it will be best to provide information, rather than refrain from doing so and run the risk of breaching the statutory obligation.

While I am willing to receive information at this stage, please note that I cannot exercise any statutory powers until the Act commences.

A further point to note is that the Commission will be a relatively small organisation - probably no more than 100 staff for the first year or two. Efficient and effective discharge of the functions of the Commission dictates that the choice of matters for the exercise of investigative powers must be highly selective. It is important to stress that even complaints with substance will not necessarily be the subject of public or private hearings. The Commission can in any matter (unless the subject of a Parliamentary reference) decide to not pursue the matter, or decide that the matter should be treated as one of corruption prevention, rather than investigation with a view to prosecution or report to the Parliament.

Distribution of this Letter

To ensure that the information contained in this letter is widely known, please circulate copies of this letter or some document containing the same information to all appropriate officers.

Yours sincerely

Ian Temby QC
Commissioner Designate

APPENDIX VII

Minute Concerning Security Vetting

ALL STAFF

This minute relates to security vetting and the disclosure of personal and financial particulars. It applies to, and is to be read and digested by, all staff, whether on secondment or contract.

2. The community looks to us to investigate possible corrupt conduct in the public sector. To do that job, we must judge others. That is an aspect of investigations, in which we are all involved, directly or indirectly. That in turn means we must expect to be judged. We cannot do our jobs unless, individually and collectively, we maintain the very highest standards ourselves.

3. It is for that reason that all staff are required to undergo a very strict security vetting. So far as staff are concerned, the nature of the disclosures to be made, both personal and financial, is laid down in regulations. There are no exceptions. Senior Management make disclosure to me. Although I am not caught by the regulations, I decided that it would be anomalous if my personal and financial particulars were not recorded, and accordingly I recommended to the Operations Review Committee that disclosure be made by me to them. They agreed, and that has been done.

4. The fact disclosure is made will not lead to the consequence that your personal life is opened up to all and sundry. In the ordinary course the returns will not be seen by anybody save myself, the Director of Administration, the Personnel Officer, and if necessary secretaries working to them. However we will be undertaking checks of certain of the information provided, and in some cases those checks will be intensive. That does not, and will not, indicate a mistrust of any individual. The simple fact is that one day somebody will let us down, and we must take steps in anticipation of that happening. Blind trust would be foolish.

5. Just because you disclose something, eg. that your spouse or lover (or even you) has convictions, does not automatically mean you cannot stay on. All depends upon circumstances, especially seriousness. More often than not the fact disclosure is made of something embarrassing will suffice to ensure you cannot be blackmailed about it. That is perhaps the area of greatest security risk.

6. If in doubt, make disclosure. A failure to disclose something significant would mean you had to leave the ICAC.

7. Each staff member will be expected to complete the necessary documentation within a week after it is received by them.

Ian D. Temby

APPENDIX VIII

Consultancies and Contract Services

Library Locums

Setting up Library.

Griffin Rowe & Associates

Advice as to Commission premises and land lord, secure sites for interviews, and staff selection.

Saulwick Weller & Associates

Public attitude survey.

Prof. John Toon

Town planning expert advice.

V.A. Anderson & Associates

Staff selection advice.

Croll Communications

Media monitoring service.

Media Insight

Media monitoring service.

B.W. Pannell

Staff selection advice.

Bencallo Pty Ltd

ADP strategy development.

APPENDIX IX

INDEPENDENT COMMISSION AGAINST CORRUPTION

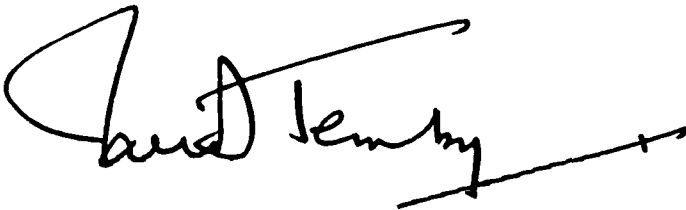
For the period 13 march to 30 June 1989

Statement by COMMISSIONER

Pursuant to Clause 8 of the Public Finance and Audit (Departments) Regulation 1986, I state that in my opinion:

- (1) The accompanying financial statements present fairly the receipts and payments of that part of the Consolidated Fund, and those accounts in the Special Deposits Account operated by the Department.
- (2) The Statements have been prepared in accordance with the provisions of the Public Finance and Audit Act 1983, the Public Finance and Audit (Departments) Regulation 1986, and the Treasurer's Directions.

Further, I am not aware of any circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

A handwritten signature in black ink, appearing to read 'Ian Temby', with a long horizontal stroke extending to the right.

Ian Temby QC
Commissioner

11 August 1989



BOX 12, G.P.O.
SYDNEY, N.S.W. 2001

AUDITOR-GENERAL'S CERTIFICATE
INDEPENDENT COMMISSION AGAINST CORRUPTION

The accounts of the Independent Commission Against Corruption for the period 13 March 1989 to 30 June 1989, have been audited in accordance with Section 34 of the Public Finance and Audit Act 1983.

In my opinion the accompanying summarised receipts and payments statements and statement of special deposits account balances, read in conjunction with the notes thereto, comply with Section 45E of the Act and are in accordance with the accounts and records of the Commission.

K J ROBSON, FASA CPA
AUDITOR-GENERAL OF NEW SOUTH WALES

SYDNEY
14 September 1989

INDEPENDENT COMMISSION AGAINST CORRUPTION

**Summarised Receipts and Payments of the Consolidated Fund and
the Special Deposits Account by Item
for the period ended 30 June 1989**

Details	Note	1987/88 ACTUAL	1988/89	
			ESTIMATE	ACTUAL
Receipts:		\$000	\$000	\$000
Unclassified receipts		-	-	5
Balance of salaries suspense	10	-	-	37
TOTAL RECEIPTS		-	-	42
Payments:				
Employee related payments	2(i)	-	1925	648
Maintenance and working expenses	2(ii) 13	-	785	1129
Plant and Equipment:				
Plant and equipment	2(iii)	-	300	76
Computer Purchases		-	90	113
Purchase of Motor Vehicles	2(iv)	-	300	-
Other Services:				
Accommodation Fitout - Redfern	2(v) 8	-	-	942
TOTAL PAYMENTS		-	3400	2908
Excess of Payments over receipts		-	3400	2866

INDEPENDENT COMMISSION AGAINST CORRUPTION

Summarised Receipts and Payments Statement of the Consolidated Fund and the Special Deposits Account by Program for the period ended 30 June 1989

Details	Note	Receipts			Note	Payments		
		1987/88	1988/89			1987/88	1988 89	
		Actual	Estimate	Actual		Actual	Estimate	Actual
<hr/>								
Program - Investigation of Allegations of Corruption		\$000	\$000	\$000		\$000	\$000	\$000
Consolidated Fund		-	-	5		-	3400	2908
Special Deposits Account	10	-	-	37		-	-	-
Grand Total - Net		-	-	42		-	3400	2908

INDEPENDENT COMMISSION AGAINST CORRUPTION

**Statement of Special Deposit Account Balances
as at 30 June 1989**

Previous Year			Account	Note	Current Year		
Cash	Securities	Total			Cash	Securities	Total
\$000	\$000	\$000			\$000	\$000	\$000
-	-	-	1140 Balance of Salaries Suspense	10	37	-	37
-	-	-	GRAND TOTAL - Special Deposits Account		37	-	37

INDEPENDENT COMMISSION AGAINST CORRUPTION

NOTES TO THE FINANCIAL STATEMENTS 1988-89

1. Accounting Policies

- (a) (i) The Commission was constituted by the Independent Commission Against Corruption Act, 1988 and proclaimed to commence on 13 March 1989 by His Excellency the Governor in Government Gazette No 30 on 10 March 1989.
- (ii) Prior to establishment of the Commission, the Commissioner-designate was appointed as a consultant to the Government from 10 October 1988.
- (iii) These are the first financial statements of the Independent Commission Against Corruption and represent receipts and payments of the Commission from 13 March 1989 and payments made by Premier's Department prior to this date in relation to preliminary establishment expenses of the Commission and costs of the Commissioner-designate's Secretariat.
- (b) The financial statements of the Independent Commission Against Corruption have been prepared on the cash basis applying to the Treasurer's Public Accounts except for salaries which have been reported on an accrual basis.
- (c) The financial details provided in the receipts and payments and summarised receipts and payments statements relate to transactions on the Consolidated Fund and Special Deposits Accounts and are in agreement with the relevant sections of the Public Accounts.

(d) A reference in the receipts and payments statement to an "estimate" figure means:

- (i) in the case of an annual appropriation, the amount provided in the estimates for appropriation by the relevant Appropriation Act;
- (ii) in the case of Special Deposits Accounts, the amount expected to be received and expended through the Special Deposits Accounts during the course of the financial year.

Note: Estimates are not audited by the Auditor General.

(e) A reference in the receipts and payments statement to an "actual" figure means the payments actually made by the Commission in respect of the item to which it refers with the exception of payment for salaries which are reported on an accrual basis as per (b) above.

(f) All totals have been rounded to the nearest one thousand dollars (\$1,000).

2. Significant Variations In Expenditure

Significant variations between annual appropriations and actual expenditures in 1988-89 were:

<u>DETAILS</u>	<u>ESTIMATE</u>	<u>ACTUAL</u>	<u>VARIATION</u>
	\$'000	\$'000	\$'000
Employee related payments	1,925	648	-1,277
Maintenance and working expenses	785	1,129	+344
Plant and Equipment	300	76	-224
Purchase of Motor Vehicles	300	Nil	-300
Accommodation Fitout	Nil	942	+942
- Redfern			

Reasons for these variations were:

- (i) Savings on Employee related payments resulted from the Commission's commencement of operations on 13 March 1989 being later than allowed for originally in the budget estimates.
- (ii) Overexpenditure on Maintenance and working expenses relates mainly to payments for rent, fees for services and minor stores. Amounts appropriated were based on preliminary estimates of the Commission's likely requirements and significantly underestimated the needs for accommodation, consultancy and transcription fees, and minor stores and equipment.
- (iii) The allocation for Plant and Equipment was not fully utilised due to the late commencement of operations and to the decision to lease equipment.
- (iv) The allocation for Purchase of Motor Vehicles was not required because of the Commission's decision to lease vehicles.
- (v) No specific provision was included in the annual appropriation to meet the cost of fitout of the Commission's permanent premises at Redfern.

3. Amounts Owed To The Independent Commission Against Corruption

An amount of \$4,351 was owed to the Commission as at 30 June 1989 in respect of current accounts for sales of transcript.

4. Amounts Owed By The Independent Commission Against Corruption

Estimated amounts owed by the Commission in respect of goods and services provided prior to 30 June 1989 but not paid until after that date were:

	1989
Maintenance and working expenses	\$283,075

The Commission is in the process of installing a computerised accounts payable system and has elected to provide an estimate calculated on the basis of amounts totalling \$112,102 paid for such goods and services in the month immediately following the end of the financial year and an amount of \$170,973 owed in respect of Counsels' fees.

5. The Independent Commission Against Corruption does not hold any public borrowings or repayable advances at 30 June 1989.
6. No amounts were written off as bad debts during the financial year.
7. There were no known contingent liabilities as at 30 June 1989.
8. As at 30 June 1989 it is estimated that commitments of \$4.5 million had been made in relation to the fitout of the Commission's permanent premises at 191 Cleveland Street, Redfern.
9. Material assistance was provided to the Commission by:
 - (i) the Police Department by payment of salaries of Police Officers seconded to the Commission through the Police Payroll System;
 - (ii) the Accounts and Staff and Salaries Branches of Premier's Department by providing accounting and staff services to the Commission.

10. The amount of \$37,452 was transferred to the Special Deposits Account No. 1140 representing 8/14ths of salary costs for the pay period 23 June to 30 June 1989.
11. The value of recreation and extended leave accrued by officers of the Independent Commission Against Corruption but unpaid for the 1988-89 financial year totals \$58,001 and \$77,848 respectively. These values are based on recreation leave for all staff at 30 June and extended leave for employees with more than 5 years service.
12. (a) The table below details the program receipts of Consolidated Fund and Special Deposits Account

Program Description	Balance of Salaries Suspense	Transcript Sales	Total Receipts
	\$000	\$000	\$000
Investigation of Allegations of Corruption	37	5	42
TOTAL	37	5	42

- (b) The table below details the program payments financed from Consolidated Fund and Special Deposits Account

Program Description	Employee Related Payments	Maintenance & Working Expenses	Plant & Computer Purchases	Accommodation Fitout- Redfern	Total Payments
	\$000	\$000	\$000	\$000	\$000
Investigation of Allegations of Corruption	648	1,129	189	942	2,908
Total	648	1,129	189	942	2,908

13. The following schedule dissects the "Maintenance and working expenses" figures provided in the "Summarised Receipts and Payments Statement of the Consolidated Fund and the Special Deposits Account by Item for the year ended 30 June 1989."

CONSOLIDATED FUND	1988-89	
	ESTIMATE \$'000	ACTUAL \$'000
EXPENSES IN CONNECTION WITH BUILDINGS		
Rent, rates, maintenance and cleaning etc	127	319
SUBSISTENCE AND TRANSPORT EXPENSES		
Travelling, removal and subsistence	100	90
Motor Vehicles	33	10
Freight	10	3
GENERAL EXPENSES		
Advertising and publicity	10	54
Books and periodicals	20	35
Fees for Services	250	385
Gas and electricity	25	3
Postal and telephone	75	29
Printing	25	14
Minor stores, provisions etc	100	138
Lease of office furniture & fittings	-	40
Minor expenses	10	1
Other	-	8
Total	785	1,129
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END OF AUDITED FINANCIAL STATEMENTS