



INDEPENDENT  
COMMISSION  
AGAINST  
CORRUPTION

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**ANNUAL REPORT  
TO 30 JUNE 1990**

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INDEPENDENT COMMISSION AGAINST CORRUPTION

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 1990.

Yours faithfully

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

Ian Temby QC  
Commissioner

# INDEPENDENT COMMISSION AGAINST CORRUPTION

**ADDRESS:** 191 Cleveland Street (Cnr George Street)  
REDFERN NSW 2016

**POSTAL:** GPO Box 500  
SYDNEY NSW 2001  
DX 557 SYDNEY

**TELEPHONE:** (02) 318 5999  
(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 8am and 6pm 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 as at 30 June 1990 are listed below:

Ian Temby QC	Commissioner
Adrian Roden QC	Assistant Commissioner
Michael Helsham QC	Assistant Commissioner
Vic Anderson	Director of Operations
Kevin Zervos	General Counsel
Ian Lloyd QC	General Counsel
Ann Reed	Director of Corruption Prevention
David Catt	Commission Secretary
Stela Walker	Director of Administration and Public Affairs

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## COMMISSIONER'S OVERVIEW

It is important to state at the outset that the Commission is about making the system honest, helping people help themselves, and ascertaining the truth. It is not about guilt or innocence: that is the business of others. The Commission strives in its investigations to ascertain the truth, and it seeks through corruption prevention work to achieve systemic change so that levels of integrity are improved. Because knowledge empowers, the public education work of the ICAC will help people attain their rights without having to use illicit means. The raising of community consciousness as to the harmful effects of corrupt practices will be a major aim during coming months.

The last Annual Report of the Commission dealt with a period of just over three months, during the course of which it became established, and was becoming known by the people of the State. As at 30 June 1989 the organisation was beginning to take shape. Twelve months on, great progress has been made in each of those areas. More importantly, the Commission now has a record of achievement which is available for consideration: it is now a productive entity.

In the year to 30 June 1990 the Commission received well over 1000 approaches from members of the public. Some of them wished to make formal complaints, some merely to provide information. In some cases what was received fell outside the Commission's charter, or was too vague and general to be of any use. There were however many approaches which were utilised in investigative work, or have guided the Commission in deciding the areas in which it should be active. It cannot be too strongly stressed that the Commission sees itself as serving the people of New South Wales, and continues to look to the community for assistance and guidance. Corrupt practices are generally covert as well as insidious in nature. They cannot be rooted out unless individuals in the know do the right thing, and bring wrongful activities to the Commission's attention.

A highlight of the year was the establishment of a Corruption Prevention Department, and the appointment of the Commission's first Director of Corruption Prevention, Ms Ann Reed. She and her staff have experience which is varied, and spans both the public and the private sectors. Much useful work has been done in the short period since the Department came together. I am sure the Commission's most significant lasting contribution to improvement of standards of integrity and proper administration in the public sector will be through corruption prevention work.

The Commission functions well because it enjoys high standards of administration and investigative support. The building fitout is now practically completed. Major progress has been made on a computer acquisition program which will lead to an intelligence and data processing facility without superior among law enforcement or like bodies throughout Australia. Progress continues to be made both in recruiting high quality staff, and also putting in place appropriate procedures relative to them.

The finances of the Commission are in very sound shape. Reference to the financial reports in Appendix 9 will show that on the expenditure side, putting to one side one-off expenses such as the building fit-out, the amount actually spent was \$9.87M, which is precisely the same as the estimated expenditure. There was a need to re-allocate as between items, but it remains the case that the Commission came in on budget with respect to recurrent expenditure. In precise terms, the estimated amount of nearly \$10M was underspent by \$1,347.93. That is a remarkable achievement, particularly when it is remembered that the budget had to be prepared without much prior experience. The Commission had just started, and nobody was doing the same work anywhere else.

Because it would be artificial to do otherwise, this report makes mention of matters which were well advanced by 30 June - the formal end of the reporting period - but not completed until shortly afterwards. The absolute cut off date with respect to continuing matters was taken to be the end of July. With that explanation, it can be said that the Commission has now produced five investigation reports to the Parliament.

The first - in October 1989 - related to an alleged attempt to solicit a bribe of \$1M to obtain necessary approvals for development of the Park Plaza site in the Sydney CBD. The conclusion reached was that no such attempt had been made, and a public relations officer working with the developer had claimed a bribe attempt falsely. The report recommended that Ministers be placed under an obligation to report apparent corrupt conduct, pursuant to s.11 of the ICAC Act.

In December 1989 the Commission reported that senior police officers had not attempted to "load up" a suspect with heroin, as had been alleged in an anonymous letter to the Chairman of the Police Board who sought the assistance of the Commission. The report contained a recommendation that close consideration be given to amending the ICAC Act so as to make sensible

and comprehensible the Commission's obligations with respect to possible prosecutions. It was also suggested that the Police Rules could be improved by making clear that officers who sincerely believe a complaint is justified will not be disadvantaged even if the belief is mistaken.

In February 1990 the Commission reported on its investigation into the filling of certain public land near the Silverwater Prison. The conclusion reached was that a then Minister of the Crown had demonstrated partiality towards a contractor and, in consequence of that and also poor administration, substantial loss had been suffered by the State. The report contained a discussion of the proper relationship between Ministers of the Crown and senior public servants, and set forth four simple precepts which should be followed in deciding whether and when tenders should be called relative to dealings in public property. That report aroused much interest, and a lot of follow up activity, which is continuing.

Special mention should be made of the Commission's Report into North Coast Land Development. It followed the longest, and most important and difficult, investigation and hearings the Commission has embarked upon to date. The report was prepared by Assistant Commissioner Roden QC. It contained:

- Extensive reference to matters which affect standards of conduct and levels of integrity in the public sector;
- A recommendation that laws concerning bribery and false pretences should be changed;
- Discussion demonstrating that the statute dealing with the reporting of political donations does not achieve its ostensible purpose, and change is called for;
- A recommendation that consideration be given to regulating the activity of lobbyists;
- Recommendations as to disposal of Crown land and related matters;
- Discussion of the ICAC Act, and recommendations for its amendment, particularly so as to clarify the Commission's reporting powers.

The report led to a deal of publicity and comment, much of which was unfortunately superficial or intemperate or both of those things. It may be

understandable that the media concentrates upon personalities and politics. The Commission of course does neither. Anybody who read the newspapers, but not the report itself, would think that it had to do with the Deputy Premier principally, and other politicians to an extent. In fact, the report is about the activities of developers and lobbyists, and how they subverted proper standards of behaviour in the public sector. However the position is improving because at the time of writing a deal of public discussion concerning the important general issues, especially disclosure of political donations, has begun and seems likely to continue.

The fifth report made public by the end of July 1990 concluded there was no substance to allegations of an illicit system for the fact tracking of registration of plans at the Land Titles Office.

It has to be said that the last year has not been devoid of difficulty and disappointment. In particular, the Commission has been subjected to a plague of litigation, one consequence of which was that what should have been its first report has been held up by 12 months, and is still not out. The need for amendment of the Commission's statutes so as to avoid ambiguity, achieve clarity, and prevent avoidable litigation, is clear and pressing.

Unless litigation gets in the way, which will largely depend upon the speed and effectiveness with which the ICAC Act can be put into proper shape, I am confident that five further reports will be made public by about Christmas 1990.

I conclude on this note. The people are sick and tired of corruption, and demand action. If corruption is to be tackled, in anything like an effective manner, then only the ICAC can do the job. Its ability in that regard will be greatly enhanced by necessary statutory change, and bipartisan support for a difficult job which is performed always in the public interest.

September 1990

Ian Temby QC  
Commissioner

# **Chapter 1**

## **ORGANISATION**

### **Establishment as a Corporation**

The Independent Commission Against Corruption came into existence on 13 March 1989. This is therefore the second Annual Report by the Commission to the Parliament, and the first that deals with a full year of operation.

This chapter deals with the functions of the Commission and how it is organised to carry them out.

The Liberal/National Party Government, which had won office in March 1988, made establishment of an independent commission against corruption a key electoral undertaking. Establishment of the Commission a year later fulfilled the promise given, and followed extensive consideration by Parliament of its authorising legislation.

The Commission is created as a statutory corporation under the Independent Commission Against Corruption Act 1988 ('the Act'). Unlike most statutory corporations which are established to carry out functions over time, this Commission does not have members. Rather the legislation provides for the appointment of a Commissioner for the Independent Commission Against Corruption. The actions of the Commissioner are those of the Commission.

The Commissioner is appointed by the Governor, and he can only be removed from office on the address of both Houses of Parliament. This condition exemplifies the hallmark of the Commission - its independence from the Government of the day.

This independence is secured by the absence of any statutory provision which subjects the Commission to the direction and control of a Minister. It is also evidenced by the fact that the Commission, in its reports on investigations and other matters, reports directly to the Parliament and not to the Government.

The Commission sees its independence as critically important. It is balanced by a consciousness of the need not to let independence develop into arbitrariness.

There are important means by which the independence of the Commission is balanced by its accountability, in part to external bodies, in part otherwise. Chapter 8 describes the two principal statutory mechanisms and observes that, together, they constitute a significant constraint on Commission operations. Mention is made elsewhere in the report of other controls - judicial review, reports to Parliament, the role of the media, and public opinion.

## **Statutory Appointments**

The Commissioner, Mr Ian Temby QC, commenced his appointment as Commissioner on 13 March 1989. His term of office is for five years. Prior to 13 March 1989, Mr Temby, from 10 October 1988, served as a consultant to Government to advise upon and set in train steps by which the Commission could be established as a going concern.

The Act provides for the appointment of Assistant Commissioners to assist the Commissioner in the discharge of statutory functions.

On 1 April 1989, the Hon Adrian Roden QC, took up his appointment as Assistant Commissioner. On 4 April 1990, the Hon Michael Helsham QC, was appointed as an Assistant Commissioner. The latter appointment was for a four month period, and principally to preside over a particular hearing.

## **Aims and Objectives**

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

The Commission fulfils its aim by carrying out three main functions, with the following objectives.

- **Investigations**

To ascertain the facts of stipulated matters and report on the results of investigations with a view to exposing and deterring corrupt conduct, and having it prosecuted when appropriate.

- **Corruption Prevention**

To lessen the opportunities for corruption by advising upon the revision of laws and practices, and by assisting public authorities in identifying and implementing systems of work to achieve operational integrity.

- **Public Education**

To inform members of the public of the detrimental effects of corruption and to persuade them that action should be and can be taken to alleviate the problem.

### **Statutory Functions**

It is from a reading of ss.13 and 14 of the Act that the summary statement of aims and objectives derives. These sections are reproduced below:

"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 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 and 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 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 and 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;
- (b) to develop, arrange, supervise, participate in or conduct such educational or advisory programs as may be described in a reference made to the Commission by both Houses of Parliament.

14(1) Other functions of the Commission are as follows:

- (a) to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against a law of the State in connection with corrupt conduct and to furnish any such evidence to the Director of Public Prosecutions;
- (b) to furnish to the Attorney General other evidence obtained in the course of its investigations (being evidence that may

be admissible in the prosecution of a person for a criminal offence against a law of another State, the Commonwealth or a Territory) and to recommend what action the Commission considers should be taken in relation to that evidence.

(2) If the Commission obtains any information in the course of its investigations relating to the exercise of the functions of a public authority, the Commission may, if it considers it desirable to do so -

- (a) furnish that information or a report on that information to the Minister for the authority; and
- (b) make to that Minister such recommendations (if any) relating to the exercise of the functions of the authority as the Commission considers appropriate."

## **Senior Management**

An organisation is only as good as the people who work for it. Chapter 7 describes the way in which the Commission has been structured and staffed.

Set out below are brief particulars of statutory officers and other members of senior management, and their functional responsibilities.

### ***Commissioner, Mr Ian Temby QC***

Mr Temby was educated and practised law in Western Australia prior to his appointment in March 1984 as the first Director of Public Prosecutions for the Commonwealth of Australia. He held this position until late 1988, after which he accepted appointment as Commissioner Designate.

It is the Commissioner's responsibility to manage and formulate policy for the Commission, to discharge all statutory functions and powers, and to decide when investigations will be conducted and which of them will be carried through, including presiding over hearings and preparing reports. He chairs the Operations Review Committee.

### ***Assistant Commissioner, The Hon Adrian Roden QC***

Mr Roden was born and educated in Sydney. Except for a period in Tanganyika (now Tanzania), Mr Roden practised as a barrister in New South

Wales prior to his appointment to the District Court and then to the Supreme Court in 1978, from which he retired in early 1989. He was a member of the New South Wales Law Reform Commission from 1981 to 1987.

*Assistant Commissioner, The Hon Michael Helsham QC*

Mr Helsham practised as a barrister for many years prior to his appointment to the Supreme Court, of which he was a Judge from 1968 to 1986. For the last ten of those years, he was Chief Judge in Equity. Since his retirement from judicial office, he has been a member of two Commissions of Inquiry. The first was the Lemonthyme Commission, an inquiry into world heritage aspects of large areas of Tasmania. The other was a Judicial Commission of Inquiry into the suitability of two Queensland Judges to continue holding their positions. Mr Helsham holds, in addition to his Office as Assistant Commissioner, the position of Grievance Mediator for the Senior Executive Service in New South Wales.

It is the responsibility of each Assistant Commissioner to carry out the statutory functions and powers delegated to him by the Commissioner including the conduct of particular investigations, presiding over hearings and preparing reports.

*Director of Operations, Mr Vic Anderson*

Mr Anderson has a long and distinguished career in law enforcement. He served in the Victorian Police Force prior to joining the Australian Federal Police where he rose to the rank of Assistant Commissioner in 1985. Prior to his retirement in July 1987, he served successively as Director of the Australian Bureau of Criminal Intelligence and Director of Investigations for the National Crime Authority. Mr Anderson assisted both the Government and the Commissioner designate in implementing the independent commission proposal prior to taking up his full time appointment, which he will be leaving in the latter part of 1990. It is hoped he can then be prevailed upon to do some work for the Commission on a consultancy basis.

Mr Anderson is responsible for the gathering and analysis of information for the purpose of performing the Commission's investigative role, and the security of the Commission and its staff.

***General Counsel, Mr Kevin Zervos***

Prior to his appointment as General Counsel, Mr Zervos held the position of Senior Assistant Director with the Commonwealth Director of Public Prosecutions. He has considerable experience in the investigation and prosecution of large and complex commercial crime.

***General Counsel, Mr Ian Lloyd QC***

Mr Lloyd holds a commission as Crown Prosecutor, and is on secondment from the New South Wales Office of the Director of Public Prosecutions. He has practised extensively in the criminal jurisdiction, not only in New South Wales but overseas, including Hong Kong.

It is the responsibility of General Counsel to provide legal and strategic advice to the Commission, to oversight preparations for hearings, and to act as counsel assisting at some hearings.

***Director of Corruption Prevention, Ms Ann Reed***

Ms Reed is, by profession, an architect and town planner, and she has had considerable experience in environmental planning and policy formulation. She has worked extensively in both the private and public sectors.

It is her responsibility to provide corruption prevention services on behalf of the Commission.

***Commission Secretary, Mr David Catt***

Mr Catt is a solicitor with considerable public sector experience. He was formerly the Secretary to the State Drug Crime Commission.

It is his responsibility to provide legal, complaint handling and secretariat services to the Commission, including general responsibility for relations with outside bodies, and the provision of policy advice.

***Director of Administration and Public Affairs, Mrs Stela Walker***

Mrs Walker has had a long career in the Commonwealth public sector. Immediately before her appointment to the Commission she discharged the

duties of a Senior Assistant Director in charge of national administration with the Office of the Commonwealth Director of Public Prosecutions.

It is her responsibility to assist, facilitate and enable the Commission to undertake its work. She also has responsibility for media relations and public education.

## **Chapter 2**

### **COMPLAINTS AND OPERATIONS**

Three factors guide the operational strategy adopted by the Commission. They are that it is the pre-eminent body in the anti-corruption field, it is highly selective in the work it takes on, and it seeks always to co-operate with other agencies.

#### **Operational Strategy**

The Commission has been established for the specific purpose of tackling corruption in the public sector of New South Wales. No other institution has that particular purpose. The Commission's unique position is demonstrated by the requirement on public authorities to report suspected corrupt conduct to the Commission (s.11) and by the authority of the Commission to refer matters to other agencies for investigation or other action (s.53).

However, the Commission does not assert that it has sole or principal responsibility for tackling corruption. Public sector managers must be in the forefront of that effort, and every right thinking member of the community also has a role to play.

The Act gives the Commission the discretion to decide which matters of possible corrupt conduct it will investigate. The Act guides to some extent the exercise of that discretion by stating factors by reference to which matters need not be investigated. It also controls the exercise of the discretion by stipulating that the Commission must obtain the advice of the Operations Review Committee before it decides not to commence or to discontinue an investigation of a complaint. Chapter 8 contains details of the Operations Review Committee and its role.

The Commission has stated publicly on a number of occasions that it is not to be looked on as a grievance resolution body. Members of the public need to understand that the Commission cannot pursue every allegation of corrupt conduct that comes to its attention. They are entitled to know, however, that the Commission has examined material carefully before taking a decision as to whether it will be pursued or not.

It follows from what has been said that the Commission must co-operate with other agencies in the course of receiving reports of possible corrupt conduct

and in determining what matters it should pursue, as opposed to referral or pursuit by other agencies.

With these factors in mind, the strategy can be stated as follows.

The object of an investigation is to ascertain and accurately record the facts. Commission investigations are special in two respects: purpose, and means. The purpose of any 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 or both, and in any 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.

### **Corrupt Conduct**

To carry out the strategy, the Commission has been given specific statutory functions and powers.

The Commission can investigate "any circumstances implying, or any allegations, that corrupt conduct may have occurred, may be occurring, or may be about to occur and any conduct which, in the opinion of the Commission, is or was connected with or conducive to corrupt conduct": s.13(1).

"Corrupt conduct" is defined in ss.7, 8 and 9 and extends generally to any conduct of any person that adversely affects or could adversely affect the honest or impartial exercise of official functions or which constitutes or involves the dishonest or partial exercise of official functions or a breach of public trust. It also includes conduct that adversely affects or could adversely affect the exercise of official functions and involves any one of a number of specified criminal offences, including bribery, blackmail, perverting the course of justice and the like.

Conduct, however, does not amount to corrupt conduct unless it could constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for dismissing or dispensing with the services of a public official or otherwise terminating those services.

The clear intention of the statutory provisions is to define corrupt conduct widely. In short, the Commission has the 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 Commission may conduct an investigation on its own initiative, on a complaint made to it by a citizen, on a report made to it by a public official, or on a Parliamentary reference made to it: s.20(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. It is to exercise its functions with as little formality and technicality as is possible and hearings are to be conducted with as little emphasis on an adversarial approach as is possible: s.17. It may continue its activities despite any connected proceedings before a court but, in that event, as far as practicable, any hearing should be in private and the publication of the evidence should be prohibited under s.112. Also in that event, the Commission is to defer making any report to Parliament in relation to the investigation during the currency of the proceedings: s.18.

## **Powers**

The Commission has been given powers, which the High Court of Australia has described as "far reaching", to perform its investigative function. The Commission has a heavy onus to use the powers properly, and only for statutory purposes.

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

The coercive powers of the Commission are predicated upon the commencement of an investigation. This is a formal step which is explained later in this chapter. 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.

Under s.23 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.

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. Nor does the section apply in relation to a State owned corporation or subsidiary or to persons who are public officials by virtue of their connection with such a corporation or subsidiary: s.36(2) State Owned Corporations Act 1989.

## **Hearings**

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.

The Commission may authorise a person who is substantially and directly interested in any subject-matter of a hearing to appear and may authorise that

person or a witness to be legally represented. In practical terms, witnesses are entitled to such representation.

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 set forth 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 Commission from complying with a notice to produce documents or other things under s.22 where that person establishes legal professional privilege: s.24(2). However, public interest immunity from disclosure will not prevail where the Commission requires the production of any statement of information or of any document or other thing: ss.21, 22 and 24. Nor will the privilege against self-incrimination prevail in such circumstances, although the information, document or other thing may not be used in proceedings against the person concerned, except proceedings for an offence against the Act: s.26.

Similar limiting provisions apply in relation to a summons to give evidence and/or produce documents under s.35: see s.37.

Generally speaking, it is clear that the Parliament has weighed up the competing interests of compulsory provision of information to the Commission, the confidences arising in certain types of relationships (for example, lawyer/client) 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 a search warrant 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: s.41.

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. Search warrants should, as far as practicable, be issued by an authorised justice. That has happened in every case to date.

Following issue of a search warrant, generally speaking, the regulatory scheme set out in the Search Warrants Act 1985 and Regulations applies. This scheme provides the occupier of the premises the subject of the search certain protection, and requires the applicant for the warrant to report to an authorised justice upon execution of the warrant.

## **Other Powers**

Section 19 of the Act expressly authorises 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. 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. The Commission can recommend action be taken by the authority to which the matter has been referred, provide it with information and require it to report to the Commission within a stipulated time. The Commission must consult with the authority before it refers the matter. The Act also lays down steps the Commission can take (culminating in a report to Parliament) if it is dissatisfied with the action taken by the authority to which the matter has been referred.

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 by both Houses of Parliament or in relation to a matter which has involved a public hearing: s.74.

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: s.74(5).

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: s.74(6).

These provisions have been the subject of extensive litigation which is dealt with in Chapter 3.

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 do that after conducting its own hearing: s.99.

The Act creates a number of offences: Part 9. The object of the 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.

## **Process**

So far mention has been made of the Commission's investigative strategy and the functions and powers that exist to implement it. This section describes the procedures followed by the Commission in determining what matters should be investigated, and if selected for investigation, what the outcomes can be.

Broadly speaking, the stages are:

- determine jurisdiction;
- if within jurisdiction, determine whether the matter warrants formal investigation;

- if the Commissioner decides an investigation is warranted, conduct the investigation.

The first step is to record the complaint or report, and the next stage is examination. This is generally done in the Assessment Section, which comprises 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). If the matter falls outside the jurisdiction of the Commission, as is frequently the case because it relates to the Federal Government or exclusively to the private sector, or has nothing to do with possible corruption, there is limited scope for action. The complainant will be told of the position. If there is any doubt about the matter, the complainant will be asked to provide further information to clarify the jurisdictional issue. On occasion, the complainant will be referred to another agency which may be able to assist.

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. He may take the view that the matter should not be pursued, or that it should be referred to another agency. 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 with a formal investigation. Each decision to do that is made by the Commissioner.

Complainants (unless anonymous) and heads of public authorities who drew matters to attention or provided information are informed of decisions taken.

Approval of investigations is done in a formal manner. A report is prepared, the views of a 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 may 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. If a situation arose in which special statutory powers had to be exercised quickly in a matter of real importance, for example, because otherwise evidence would be irretrievably lost, the

decision could and would be made within hours. A body such as the Commission cannot afford to concentrate on procedures to such an extent that outcomes become of secondary importance.

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, which could be followed by a report to the Parliament or simply the dissemination of advice or information to appropriate agencies or both;
- 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.

A few supplemental points should be made.

The Commission is geared to receive complaints in writing, by phone, or by personal visit. The Commission appreciates that, for many complainants, submitting a complaint in writing is burdensome. Although the Commission encourages complainants to supplement their complaints in writing, the fact that this is not done does not mean inquiries will not be made. There have been plenty of instances where complaints concerning complex facts and circumstances have been pursued although simply oral.

The Commission is not authorised to put aside complaints on the basis of their anonymity. Because the Commission is not able to go back to the complainant, such complaints are often difficult to follow up. However, there have been examples where anonymous complaints contain sufficient credible information or raise such serious allegations as to justify inquiries. This is particularly so in relation to anonymous complaints from persons who identify themselves as employees of the organisation the subject of complaint.

The Premier issued a memorandum outlining procedures which departments could follow in dealing with complaints of possible corrupt conduct (Memorandum No. 89-43, August, 1989). This document is not widely known throughout the public sector and its existence is therefore specifically brought to notice.

So far as reports are concerned, the Commission, after the end of the year under review, but before finalisation of this report, issued guidelines under s.11(3) of the Act. This provision states that "the Commission may issue guidelines as to what matters need or need not be reported". The guidelines are reproduced at Appendix 2.

The Commission has prepared two manuals, for the guidance of its officers, concerning the handling of complaints and the conduct of investigations. One manual relates to the practice and procedure of the Assessment Section. It includes targets (turnaround times) in relation to various work activities. The other is of wider scope and deals with all aspects of operational work.

### **Profile of Complaints**

During the year under review, the Commission received 1091 approaches making allegations or urging action. In addition, it received some 69 communications simply conveying information.

These approaches were made in a variety of ways. Most, 48%, were received by letter, 28% by telephone, 13% by personal visit to the Commission premises and 11% on visits by the Commission to country areas.

A quarter of these approaches did not concern possible corrupt conduct and were classified as outside jurisdiction.

Of the matters notified concerning possible corrupt conduct, 84% were received by way of complaint, and 16% by way of reports from heads of departments under s.11. This latter figure does not include summary notifications of matters by certain departments where the Commission took no action and did not open separate files.

Of the matters within jurisdiction only a small minority, 2%, were made the subject of formal investigation or incorporated therein.

A breakdown of the complaints/reports indicates the two largest areas of complaint, by far, were Local Government, 36.5% and Police, 15.9%.

A good number of reports under s.11 were received, but probably not as many as should have been made. These reports are important to the work of the Commission because usually they involve the communication of information from the "inside". Publication of the guidelines under s.11, which were mentioned earlier, will further assist heads of agencies in bringing matters forward, in a timely manner, whenever required by statute.

The proportion of complaints and reports made the subject of formal investigation is small. This does not mean the other complaints and reports were not examined; it simply means that they were not thought to warrant the thorough treatment reserved for full investigations. More is said later in this report about the nature of matters examined and investigated.

### **Formal Investigations**

During the first full year of operations, 14 investigations were commenced. That is double the number approved in the period March - June 1989, some of which were notified as matters concerning corrupt conduct in the preceding several months.

Earlier, mention was made of the factors taken into account by the Commissioner in commencing an investigation. These factors include:

- the seriousness of the matter raised;
- the age of the matter;
- the probability of benefit flowing from the use of the coercive powers, particularly in light of any previous investigation;
- the corruption prevention potential of the matter;
- the prospect of the investigation "sending messages" to public authorities and others concerned;
- the difficulty of the matter: the Commission does not do much easy work.

The Commission does not try and pick winners in any sense. It is not a factor that there is every prospect, as a result of a Commission investigation, that the Director of Public Prosecutions will institute criminal proceedings against persons. At least ordinarily, if a criminal brief can be prepared without Commission involvement, that is precisely what should happen.

Chapter 3 describes those investigations where public hearings have been held or reports furnished to Parliament. This chapter describes those matters where investigations have been undertaken, not involving public hearings. In all, twenty one investigations are reported upon. This is the total number of formal investigations commenced before 30 June 1990.

For the sake of completeness, it is here recorded that the Parliament has not referred any matter to the Commission.

*Investigation No. 5 (commenced 11 May 1989)*

This investigation concerns the conduct of a person, as a Member of Parliament, in his dealings with a constituent.

The matter has been conducted in private and remains incomplete because of the currency of related legal proceedings.

*Investigation No. 8 (commenced 6 July 1989)*

This investigation concerns alleged dishonesty of a Local Government official in performing his public duty in connection with approvals of the use of land.

As at 30 June 1990, the investigation, which is still proceeding, had not been made public.

*Investigation No. 9 (commenced 20 July 1989)*

This investigation concerned allegations that a Chief Executive Officer of a country District Hospital was abusing the privileges of his office and that this situation was condoned by officers of the Department of Health.

The investigation was conducted without hearings. During July 1989 a Commission team consisting of an investigator and a financial analyst conducted an investigation on the spot, examined records and interviewed relevant officials. The team found generally that there had been a lack of

attention by the Chief Executive Officer to matters involving maintenance and reimbursement of accounts. Action taken by Department of Health officials was appropriate.

The results of the investigation were conveyed to the appropriate authorities.

***Investigation No. 12 (commenced 19 September 1989)***

This investigation concerns allegations of partiality on the part of an employee in a large public authority in the State public sector, in awarding contracts totalling significant amounts of money, to companies in which he, his spouse, or his friends are involved.

The investigation was still current at 30 June 1990.

***Investigation No. 14 (commenced 21 September 1989)***

This investigation concerns allegations that two employees of a large statutory authority acted partially and dishonestly in awarding contracts for the supply of materials. The investigation was still under way 30 June 1990.

***Investigation No. 16 (commenced 12 December 1989)***

This investigation examines the circumstances surrounding the grant of development and building approvals in respect of a large retail/office block development.

The investigation was still current at 30 June 1990.

***Investigation No. 18 (commenced 12 March 1990)***

This investigation examines whether certain Police officers solicited and accepted bribes.

The investigation was still current as at 30 June 1990.

***Investigation No. 19 (commenced 26 March 1990)***

This investigation considered allegations that certain employees of a State body, who were working in a remote area, had awarded cleaning contracts in an irregular way to members of their families.

The investigation was conducted by means of interview of persons and examination of documentation. Hearings were not held.

At 30 June 1990, a report, which will be provided to the relevant authorities, was being finalised.

*Investigation No. 20 (commenced 24 May 1990)*

This investigation examined the circumstances relating to the possible misuse by public officials and others of information held in computerised databases by large State agencies.

The investigation was still current at 30 June 1990.

*Investigation No. 21 (commenced 8 June 1990)*

This investigation examines the conduct of persons in relation to the grant by the (former) New South Wales Film Corporation of residual rights to certain films.

The Commission received a report from the Minister for the Arts requesting that it consider the relationship between the Film Corporation and Pepper Distributions Inc. in relation to distribution agreements entered into between these bodies between October 1983 and April 1987. These agreements concerned some 20 Australian films which had been released previously. Accordingly, the agreements were not for the initial release of the films but came into effect when the distribution rights first granted expired.

It is alleged that former employees of the Film Corporation influenced it to enter into these agreements with Pepper, a company with no track record in the distribution of films. It is said the terms of the agreements were favourable to the distributor and were entered into, in the main, without the consent of the producers. It is alleged that the employees had a connection with the distributor and benefited from the agreements.

Considerable material has been examined and interviews conducted with persons concerned.

It is worthwhile to note some general features which have emerged from these matters, and those dealt with in the next chapter:

- the Commission has inquired into the conduct of a wide range of public officials, from Ministers of the Crown to driving examiners, and other people who have dealt with public officials;
- the investigations have focused largely on the interface between the public and private sectors. Activities involving land, procuring goods and services, and delivering services to customers of public agencies have come under scrutiny;
- the Commission has observed many conditions which give rise to breaches of public trust. Knowing that is the first step to minimising corruption opportunities.

## **General Matters**

Section 76(2) of the Act stipulates that among the matters which must be included in the Annual Report are:

- 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 under the Act in that year.

This chapter includes this information and other data for the purpose of indicating outcomes of the operational work of the Commission, and the use of powers and procedures to achieve results.

There is tabulated on the following page the number of occasions the Commission used statutory powers during the year under review. Those investigations which made significant use of powers are tabulated separately; the remaining investigations are grouped under the heading 'other'.

Investigation	Search Warrants					Hearing Days	
		s.21	s.22	s.23	s.35	Public	Private
North Coast Land Development	3	3	48	2	63	92.5	5.5
Silverwater Filling Operation	3	4	3	-	19	6	-
Frank Hakim Raid	-	-	4	-	12	12	2
Drivers' Licence	14	34	72	2	93	74	1.5
Park Plaza Site	3	-	-	-	4	-	5
Sutherland Licensing Police	2	-	1	1	30	11.5	4.5
Carpeting	14	8	27	3	9	-	3
Walsh Bay Redevelopment Site	-	23	24	-	34	31.5	-
Other	13	1	33	1	23	8	8
TOTAL	52	73	212	9	287	235.5	29.5

s.21 = statement of information

s.22 = documents produced

s.23 = enter public premises

s.35 = summons to give evidence/produce documents at hearing

It should be noted that a number of witnesses gave evidence at hearings voluntarily and were not summonsed officially. Such witnesses included Members of Parliament and Police officers.

During the year, the Commission conducted hearings in the course of 15 investigations. In four of those investigations, hearings were held exclusively in public whilst seven hearings were held exclusively in private. In the other four investigations, hearings were held in private and in public.

The general rule, of course, is that hearings be conducted in public: s.31(4). That statutory requirement was followed by the Commission, with the result that of a total of some 265 hearing days, 235.5 were in public.

The Commission applied for and obtained from a justice one warrant for a listening device under the Listening Devices Act, 1984.

The Commission, under s.49(1) of the Act, on one occasion only, recommended to the Attorney General that a person be granted an indemnity from prosecution. The indemnity was granted to Stephen Roy Lennon, a witness in the investigation concerning the grant of driving licences. Mr Lennon, a former driving examiner and former Police officer, had agreed to assist the police investigation by admitting his criminality in respect of his activities while an examiner. Later he visited various registries and other places to gather evidence, which was recorded on audio tape using a listening device. In order that he be able to give evidence of his criminal activities, he was indemnified against prosecutions arising out of activities during his employment with the then Department of Motor Transport.

Mr Lennon was the only witness for whom the Commission made witness protection arrangements during the year.

During the year the Commission furnished three reports on investigations to the Parliament. These reports were entitled as follows:

Report on Investigation Relating to the Park Plaza Site (October 1989);

Report on Investigation Relating to the Raid on Frank Hakim's Office (December 1989);

Report on Investigation into the Silverwater Filling Operation (February 1990).

Shortly after the close of the reporting period, in July 1990, the Commission furnished two further reports:

Report on Investigation into North Coast Land Development (July 1990);

Report on Investigation into Registration of DP 787368 at the Land Titles Office (July 1990).

Each of these five reports included a recommendation by the Commission that it be made public forthwith. In accordance with s.78(3) the inclusion of this recommendation in each report enabled a Presiding Officer of either House of Parliament to make the report public. The Presiding Officers exercised this discretion on each occasion when the Houses of Parliament were not sitting.

Two of these five reports contained statements that there was sufficient evidence warranting consideration of prosecution of certain persons for specified offences.

The Park Plaza Report contained statements that there was sufficient evidence warranting consideration of prosecution of Mr Brett Taylor pursuant to s.86(c) and 87 of the Act. These sections concern failure to answer relevant questions at a hearing and the giving of false and misleading evidence. The report was referred to the Director of Public Prosecutions who determined that no prosecution should be instituted, which was not surprising as the report had indicated that prosecution advice was merely an available option, and reasons for not proceeding were stated.

The Report on Investigation into North Coast Land Development includes numerous statements pursuant to s.74(6) of the Act. On 24 July 1990 the Director of Public Prosecutions announced that prosecution action would not proceed against eight people. He stated that findings in relation to ten other persons were at various stages of investigation or commencement of prosecution.

Further mention of these reports is made in Chapter 3 in the context of an account of the investigations to which they relate.

During the course of the public hearing in aid of the Commission's investigation concerning driver licensing, a number of witnesses gave evidence which was demonstrably either false or misleading in a material particular. The evidence given by a number of those witnesses has been examined, with a view to referring it to the Director of Public Prosecutions for consideration and, if appropriate, prosecution. In one case, the papers have in fact been referred to the Director who has recently advised that in his view a number of charges under s.87 can be made out. Under this section, the giving of evidence before the Commission which is, to the knowledge of the witness, false or misleading in a material particular carries a maximum penalty of \$2,000 and/or imprisonment for five years. It is likely that the report will be

published first and charges then be laid, because otherwise the report might be held up for months if not years.

### **Matters not Investigated**

There can be useful results flowing from inquiries conducted even though those inquiries do not proceed by way of formal investigation.

This section highlights a number of such matters and the outcomes achieved. The matters mentioned are illustrative only.

### ***Prosecution***

1. The Commission received a report from the Mayor of a local council in Sydney, stating that a constituent had attempted to bribe an alderman with \$1,000 cash in order to obtain Council approval for a development application in respect of property the constituent owned. Commission officers inquired into the matter and formed the view that sufficient admissible evidence had been obtained to submit a brief of evidence to the DPP in relation to bribery offences. At the time of writing charges had not been laid.
2. In a similar matter, the Commission received an allegation that a person who had leased shop premises from a large statutory authority had handed to an employee \$1,000 cash as a gift for the help he gave. Preliminary inquiries were conducted and statements and exhibits obtained. Subsequently, the Commission furnished to the DPP a brief of evidence in relation to a possible bribery offence. At the time of writing charges had not been laid.
3. Allegations were received that a former University Registrar had mishandled University funds and property by improperly purchasing computing equipment on behalf of a third person; had used University funds on behalf of a third person without authority; had purchased computing equipment free of sales tax and then sold it to a third person for a price including sales tax; and had misused funds of other tertiary organisations, including one of which the Registrar was an office holder. The matter was also brought to the attention of the Police who worked in cooperation with Commission investigators. The former Registrar was arrested and charged by Police with numerous offences.

4. A country Member of Parliament together with an office bearer of the local P&C Association telephoned alleging that the principal of the local primary school was misappropriating school funds and engaging in fraudulent activities. The concerned parent had previously brought her concerns to the attention of a senior member of the Police Service who did not instigate any criminal investigation but rather advised the matter be reported to the Department of School Education. The parent objected to this course as she believed that the Education hierarchy would not take effective action because the principal was a popular local figure. The Commission had investigators in the area. They conducted preliminary inquiries involving interviews and inspection of documents. The Department of School Education then sent in auditors who identified irregular financial arrangements and called in the Police. The principal was suspended and allowed to go on long service leave pending disposition of criminal charges relating to embezzlement and theft.

### *Disciplinary Action*

5. The Commission received a complaint from an employee of a large public authority concerning another employee who allegedly used authority property and staff in the construction of his private house. The Commission and the authority agreed that as the authority had the capacity to investigate the matter, it should do so, keeping the Commission informed. Following preliminary inquiries, the authority suggested that the complainant should be counselled because his complaint did not appear to have credibility, that there had been some previous work related problems concerning the complainant, and that the families of the employees under investigation had suffered as a result of the investigation. The Commission rejected this suggestion. It pointed out that the allegations had in fact been generally substantiated, that any work related problems of the complainant were a separate issue and that the complainant was not to be blamed for the effect the investigation may have had on the families of those under investigation. At the Commission's suggestion, the authority formally expressed its gratitude to the complainant for bringing the matter to the Commission's attention. The complainant's allegations resulted in one officer being charged with a disciplinary offence and suspended from duty for a period, another officer being relocated, and a third officer being counselled by the authority.

6. An anonymous telephone complainant alleged that an electrical contractor provided a car to a procurement officer of a large NSW department in return for contracts for departmental work. Inquiries by the Commission and the department did not find any evidence of favouritism in the award of contracts to the contractor. However, the officer was identified and found guilty of disciplinary offences in relation to undertaking private employment with the electrical contractor and abuse of leave conditions. In view of the officer's long period of service with the department and his previous record, the department head decided to accept his resignation and made appropriate adjustments to his leave entitlements.

### ***Loss of Public Office***

7. A Minister reported allegations concerning the behaviour of a board member of a statutory authority for which he was responsible. It was alleged that the board member had attempted to influence board decisions in a way which would favour his son's business, had improperly claimed expenses from the authority, and had improperly availed himself of the authority's facilities. The Commission conducted preliminary inquiries and formed the view that although the member had acted imprudently, there was no evidence of corrupt conduct. The Commission declined to formally investigate the matter and referred it back to the Minister for action as he saw fit. Subsequently the board member resigned his office.

### ***Reinvestigation/Review***

8. The Commission received an allegation by telephone from a complainant alleging that Police had been bribed into failing to lay charges against a person who had maliciously damaged his son's car. The complainant had already pursued the matter with the Police, who maintained, allegedly falsely, that the offender could not be identified. The Commission, following preliminary inquiries, decided not to formally investigate the matter and referred it to the Police Service. It conducted an investigation through its Internal Affairs Branch. At the time of writing it appeared that a Police officer would be charged departmentally and the offender (previously unidentified) would be criminally charged.

9. The Commission received a complaint of corrupt conduct in relation to the waiver of \$98M stamp duty payable by John Fairfax Limited on legal documents relating to the sale of assets by that company in the process of its corporate reconstruction. The Commission made preliminary inquiries of the Office of State Revenue in relation to the procedures regarding the grant of exemptions from stamp duty for corporate reconstructions, in particular, in relation to John Fairfax Limited. In making these inquiries, the Commission decided it was not necessary at the outset to use its coercive powers to override the secrecy provision in the Stamp Duties Act 1920. The Commission was advised that the decision relating to the application for stamp duty exemption by John Fairfax Limited followed normal office procedure. Normal procedure consisted of assessment of the application, following a thorough process of obtaining information, and the making of a recommendation, through various senior officers, to the Minister. In the John Fairfax Limited case, the Minister accepted the request for exemption on the basis that, after proper examination, the application met the Ministerial criteria and the reconstruction was for the public benefit. The Commission accepted this position.

### *Systems Improvements*

10. The Commission received from a department head a report implicating a former employee in the disappearance of a set of magnetic computer tapes which were of potentially high commercial value, due to the information contained on them. The Commission, following preliminary inquiries, referred the matter to the Police for investigation on the basis that it involved a case of theft. The Commission was concerned about the issue of computer security generally within the department. It requested advice of action taken and proposed to reduce risks. The department advised that several changes had been implemented recently to improve the physical and data security of commercially sensitive information. These changes involved the re-storage of commercially sensitive data to areas of greater proven physical security within and outside the department, and the exercise of greater vigilance in implementing various data security procedures.
11. A complainant, who was a student at a Technical and Further Education (TAFE) college, alleged that her pottery teacher stole clay, purchased for student use, to make pottery objects which he fired in the TAFE kiln. The complainant alleged that the teacher made thousands of

dollars from the sale of these objects. The department investigated the matter. It advised that the teacher had been granted a right of private practice, which allowed him to work in a business capacity provided it did not interfere with his teaching duties. It concluded that there had been no wilful misappropriation of materials or misuse of departmental equipment. However, to prevent any future misunderstandings, the College Principal introduced new procedures for kiln firings. The procedures included the taking of an inventory of pots fired in the kiln and stocktaking of clay purchased by the department.

### ***Conciliation***

12. A complaint was received from a doctor who alleged that an Area Director of Medical Services, Department of Health, misused his public position by, among other things, threatening the complainant by stating that he would no longer support his permanent appointment to a hospital. The Commission referred the matter to the Department of Health for investigation and report. The Chief Executive Officer of the Area Health Service concerned stated that changes in administration, a crisis in medical staff numbers and extreme fiscal restraint had led to frustration and misunderstanding. However, the situation between the Area Director and the complainant was not irreconcilable. Both doctors agreed to meet and discuss their differences with the Chief Executive Officer, as moderator.

### **Dissemination of Information**

During the year the Commission furnished significant information to law enforcement agencies. It should be noted that all information disclosed in public hearings, subject to any suppression order, is in the public arena and available to law enforcement agencies. A number of agencies, including the Australian Taxation Office, monitor public hearings closely.

The principal recipients of information from the Commission and the general nature of that information were as follows:

#### ***NSW Police Department***

Information relating to alleged misconduct of Police and commission of criminal offences; crime intelligence.

### ***Australian Federal Police***

Information concerning alleged misconduct by public servants including the commission of criminal offences; crime intelligence.

### ***Australian Taxation Office***

Information concerning the financial position of various persons, particularly in respect of income received and apparently not declared in taxation returns.

### ***Department of Immigration, Local Government and Ethnic Affairs***

Information concerning business migration matters; particulars of false names and addresses used in improperly/illegally obtaining motor drivers' licences.

### ***National Crime Authority***

Crime intelligence concerning possible breaches of security of information systems and other information considered likely to assist the NCA in its investigations.

### ***State Drug Crime Commission***

Crime intelligence considered likely to assist the Commission in its investigations.

### ***Australian Customs Service***

Information concerning an apparent breach of the Customs Act or regulations relating to the importation into Australia of property which was not properly disclosed.

During the year the Commission received, on a number of occasions, information from the Australian Federal Police and the National Crime Authority. However, most information received by the Commission from other agencies was pursuant to s.11, or on request or compulsion by the Commission.

## **Cooperation and Consultation**

The Commission, in the course of its operational work, deals with a large number of public authorities and officials. The contact may result from the public authority being the subject of complaint, its making a report of possible corrupt conduct to the Commission, the Commission referring a matter to it for investigation or other action, or the Commission having access to information held by another agency.

Generally speaking, the Commission has received cooperation from all agencies. This comment applies particularly to those agencies with which the Commission deals most frequently - the New South Wales Police Service and the Director of Public Prosecutions. Special mention should also be made of the Commission's close working relationship with the Australian Federal Police.

Other ways in which the Commission cooperated and consulted included membership of various bodies, and the conduct of discussions.

The Commission, during the year, was represented at Operations Conferences convened by the National Crime Authority. It was also represented on the Witness Protection Coordination Committee chaired by a senior officer of the New South Wales Police Service. This committee met infrequently. The Commission, until June 1990, was a member of the Witness Protection Assessment Committee which considers applications for entry and exit from the Special Purpose Prison, Long Bay. The Commission relinquished its membership of the Committee because, unlike other member agencies on the Committee, it is not a principal user of the facility.

During the year the Commission held discussions with senior officers of the Queensland Criminal Justice Commission concerning the measures necessary to get that new organisation under way.

The Public Accounts Committee of the Legislative Assembly for the Australian Capital Territory held discussions with the Commissioner and senior staff in September 1989. This was in the context of its consideration of matters relating to an independent advisory committee against corruption.

The Parliamentary Committee on the Queensland Criminal Justice Commission requested a meeting with the Commissioner to discuss matters of

mutual interest. This meeting, which involved also the participation of senior Commission officers, took place in May 1990.

The Parliamentary Committee on the National Crime Authority also sought a meeting with the Commissioner. This meeting took place in June 1990. The Committee was grateful for the exchange of views which occurred.

The Commission also held discussions with senior New South Wales Parliamentary Officers regarding the applicability of the sub judice rule to Commission hearings.

Consultation took place between the Chairman of the Standing Development Committee of the Legislative Council, the Hon J P Hannaford MLC and the Commissioner in relation to its coastal development inquiry and the Commission's North Coast Land Development investigation.

In July 1990, following the end of the reporting year, the Commission made a submission to the Inquiry of the Joint Parliamentary Committee of Public Accounts into Business Migration Program and Control of Visitor Entry. The submission drew to attention irregularities which became apparent during the investigation into North Coast Land Development.

Section 53(5) of the Act states that the Commission shall not refer a matter to a person or body except after appropriate consultation and after taking into consideration its views. Under s.54 the Commission can require the body to report by a stipulated time in relation to the matter and action taken.

During the year, s.53 was resorted to on five occasions. Two of these instances involved the Police Service. On both occasions the required report was not submitted within time. However, there was a reasonable explanation for delay in both cases, and reports were presented as soon as practicable in all the circumstances.

On another occasion, certain matters concerning Local Government officials were referred to the Ombudsman for investigation and report back. The Commission understood the referral occurred following "appropriate consultations". However, dispute arose regarding this and other matters and, in due course, the Commission revoked the referral under s.57(1) of the Act.

On two other occasions, matters concerning judicial officers were referred to the Judicial Commission. No reports were required back to the Commission.

Following consultation between the two Commissions, the view was taken that, for the Judicial Commission to consider the matters, the requirements of the Judicial Officers Act regarding the making of complaints needed to be followed. On this basis, the Commission Secretary had to make a written complaint, supported by a statutory declaration.

Chapter 6 looks again at s.53 in the context of a review of the Act.

## **Chapter 3**

### **HEARINGS, LITIGATION AND REPORTS**

This chapter is devoted to an account of hearings held in public, to litigation arising out of hearings and to public reports.

#### **Conduct of Hearings**

Last year's Annual Report included as an appendix a statement of procedure to be followed at public hearings. During the year under review, the Commission:

- revised the form of summonses to make clear the rights and obligations of a witness;
- produced and distributed an information sheet for witnesses together with a witness expenses claim form; and
- provided a comprehensive report on witness rights and protections to the Parliamentary Joint Committee, which made the document available for public comment.

The Commissioner gave evidence concerning hearings and witnesses before a public hearing of the Parliamentary Joint Committee on 30 March 1990. He stated, among other things, that the Commission would videotape witnesses giving evidence for the sole purpose of assisting the Commissioner's recall of that witness and his or her evidence. Both Mr Temby and Mr Roden addressed themselves to hearings in major speeches which are listed in Appendix 8, and in other addresses. And, not the least, the reports on investigations included material on the operation of hearings.

One such example is the Report on Investigation Relating to the Park Plaza Site which stated the more important reasons for the general rule that Commission hearings be held in public:

"1. The ICAC Act so provides - section 31(1). That would be a sufficient reason, standing alone. However those that follow would generate the same general rule, even if the Commission had unfettered discretion.

2. Although not a court of law, the Commission is required to act in a fair and just manner, and to reach important conclusions. These things are best done in the open, with the fact or possibility of public scrutiny. Any person inclined to act in a bullying or irrational manner would always wish to do so behind closed doors. And nobody will ever err in respects such as these.

3. The Commission is required by its Act to regard the protection of the public interest as a paramount concern - section 12. The work it does is for the public, it must be prepared to give an account of itself to the public, and to perform its tasks openly will be conducive to that end.

4. In particular matters it may be quite essential that the public should know a particular matter is under investigation so individuals can come forward with information. Each of the two public hearings conducted to date has proved the truth of that observation.

5. Finally, one of the functions of the Commission is that of public education, and publicity generated by open hearings can be of benefit in convincing the people generally that public sector corruption is a social evil which ought not be tolerated."

There is no doubt that public hearings have proved to be both the most controversial exercise of power by the Commission, attracting attention from the courts, politicians, the legal profession and the media. They are also the most effective, albeit most expensive, time consuming and resource intensive exercise of power by the Commission.

Senior Commission personnel have thought long and hard about the utility of public hearings. There has been concern about the cost (including payment of costs of legal representatives involved) and, from time to time, the coverage of hearings by the media.

The Premier has stated that the procedures of the Commission, including public hearings, will be reviewed. The Commission will express its views on these matters as it considers appropriate. But it must be said that public hearings have enormous benefits. They ensure that the public knows what the Commission is doing, so it cannot be seen as a "Star Chamber", and so that useful information can flow to the Commission. Public confidence in the Commission is vital, and would be largely lost if it had to work behind closed doors. That is not to say that some changes in statutory provisions as to procedures might not be desirable.

## **Investigation No. 1 - Waverley Municipal Council**

This investigation was the first undertaken by the Commission. It commenced on 15 March 1989. The investigation followed upon a report from the Mayor of Waverley Municipal Council. The nub of the allegation was that the former Chief Engineer/Town Planner of the Council, Donald Stait, had received corrupt payments from the Dainford property development group of companies.

The report on the investigation has not been furnished to the Presiding Officers of the Houses of Parliament because of the protracted litigation which is described below.

The investigation focused on three agreements by way of option to purchase real estate entered into between companies in the Dainford group, and family members and a company associated with Donald Stait.

The option agreements were entered into in the period between 1986 and 1988 and involved total payments of \$115,000. None of the options were exercised by the Dainford companies and all of the payments were retained by Stait interests. At all relevant times Mr Stait was a senior officer of Council, and Dainford companies had development applications before Council.

Public hearings commenced in May 1989. The hearing continued throughout June and was substantially completed on 4 July 1989. The last three days were concerned with argument on what the report could and should contain, and closing addresses by counsel. A further hearing was held on 23 March 1990 at which submissions were heard on the applicability of certain provisions of the Crimes Act 1900. This would have happened earlier had it not been for delay caused by litigation, as now detailed.

### **Balog v ICAC, Stait v ICAC**

Shortly after the main hearing concluded in July 1989 proceedings were commenced in the Supreme Court by Tibor Balog, Managing Director of Dainford Limited and associated companies. In the same month Mr Stait commenced proceedings, and the matters were heard together. Both plaintiffs were regarded by the Commission as persons substantially and directly interested in the subject-matter of the investigation.

Each plaintiff sought a declaration and ancillary relief in relation to the making by the Commission of its report to Parliament. Specifically, each sought a declaration that the Commission was not entitled in a report to Parliament to make any statement, finding or determination concerning them other than a statement in the terms of s.74(5) of the Act.

Section 74(5) and (6) provide:

"(5) 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 -

- (a) the prosecution of a specified person for a specified offence; or
- (b) the taking of action against a specified person for a specified disciplinary offence; or
- (c) 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.

(6) A report shall include such a statement in relation to the persons substantially and directly interested in the subject-matter of the investigation concerned or persons named in the reference made by both Houses of Parliament."

Smart J dismissed the summonses on 27 July 1989. His Honour considered that Parliament was entitled to a full report setting out the facts as found by the Commission and its conclusions based on all the materials including those compulsorily obtained. He noted that the function of the Commission was to investigate circumstances implying or any allegations that corruption may have occurred. A useful report must point to some conclusions or actions to be taken.

Both plaintiffs appealed to the Court of Appeal. The matter was expedited and heard before Samuels, Mahoney and Clarke, JJA. The appellants sought a declaration that the Commission could not make any finding or state any conclusion that a person, being substantially and directly interested, was guilty of a criminal offence or of conduct which might constitute a criminal offence. They argued that a determination of that kind could only be made by the Commission when a matter had been referred to it by Parliament. The appeals were heard on 31 July 1989 and the reserved judgment dismissing

them was given on 14 December 1989. Samuels and Clarke JJA said that the Commission did not have the power to make a finding that a person had committed a criminal offence, but that it did have the power to make a finding that a person had engaged in conduct which may constitute a criminal offence. Mahoney JA said that the Commission had both powers.

On 16 February 1990 Messrs Balog and Stait were granted special leave to appeal to the High Court. The matter was heard on 5 April 1990 at which time the appellants amended the grounds of appeal by leave. They added a ground that the Court of Appeal ought to have held that the Commission has no power to make any statement that corrupt conduct by the appellants may have occurred. Judgment was delivered on 28 June 1990. Both appeals were allowed with costs. The Court declared that the respondent (the Commission) was not entitled in any report pursuant to s.74 of the Act to include a statement of any finding by it that the appellants or either of them was or may have been guilty of a criminal offence or corrupt conduct other than a statement made pursuant to s.74(5) of the Act.

The Court stated in the course of its judgment that the Commission in its report could set forth or refer to the material elicited in the course of its investigation even if to deal with it in that way might inevitably implicate the appellants or either of them in criminal or corrupt conduct.

The need for statutory change, following the High Court judgment, is taken up later in this chapter.

### **Dainford Limited & Ors v ICAC**

On 15 February 1990 - the day before the Balog & Stait special leave applications just mentioned were to be heard - Dainford Limited and two associated companies commenced a new set of proceedings in the Supreme Court. In addition to the arguments put by the plaintiff in the proceedings described above, the new plaintiffs contended that any reporting power of the Commission beyond that contended by the plaintiffs in the Balog & Stait proceedings was beyond the power of the NSW Parliament. It was also contended that the plaintiffs had been denied natural justice because they had not been given sufficient opportunity to be heard on matters that might be decided adversely to them.

On 1 March 1990 Young J refused the relief sought and dismissed the proceedings. He rejected the proposition that the Act was beyond the power

of the Parliament. Young J considered that it had not been established that there was any real possibility that the Commission did not understand its obligation to accord natural justice to the plaintiffs or that it would fail to honour those obligations. The plaintiffs had also sought a declaration of the law as it then stood, after the decision in the Court of Appeal in the Balog & Stait matter, ie. that the Commission could not report a finding of guilt of a criminal offence. Young J declined to make such a declaration as it would be of no utility. He also referred to delay of the plaintiffs in bringing the proceedings.

The plaintiffs appealed to the Court of Appeal. The case argued before Priestly, Meagher and Handley JJA was substantially the same as argued before the Court in the Balog & Stait appeal. Questions relating to the legislative competence of the NSW Parliament were not argued fully, as the High Court decision in *Union Steamship Co. of Australia Pty Limited v King* (1988) 166 CLR 1 meant the Court must find against the appellants. It was conceded by them that only the High Court could entertain argument on that point.

The appeal was dismissed on 28 March 1990. In particular the Court rejected the arguments that there had been a denial of natural justice or that there was an obligation on the Commission to provide a draft report prior to publication. The Court found that the facts of the case did not support the argument that the appellants had been denied natural justice because the evidence and reasons upon which it might be found that Mr Balog was their directing mind had not been brought to their attention. The Court refused to interfere with the exercise of Young J's discretion in refusing to make the declaration sought.

Subsequently, the appellants applied for special leave to appeal to the High Court. This application is to be heard in early August 1990.

### **Dainford Limited & Ors v ICAC, Balog v ICAC**

In mid July 1990, after the end of the current reporting period, Mr Balog and Dainford Limited commenced further proceedings in the Supreme Court seeking declaratory and ancillary relief. Both summonses challenge the validity of the hearings conducted by the Commission on the basis that the announced scope and purpose of the hearings is beyond the power of the Commission. The Dainford companies also seek to further restrict the content of reports to Parliament made by the Commission. In particular they seek

declarations that the Commission is not entitled to resolve questions of credit of witnesses or to express a view that any particular person "should be prosecuted".

Each of the plaintiffs also sought declarations that the proceedings then commenced by them were proceedings within the meaning of s.18(2)(c) of the Act and therefore the Commission could not publish any report in relation to the investigation while they were pending.

On the morning of 31 July 1990, Needham AJ delivered his judgment on an interlocutory application made by the Dainford companies. He decided that the Commission was not entitled to publish a report which included a statement that a person "should be prosecuted" or that there was "good reason for prosecution" or any similar phrase. Orders were made in these terms in respect of the Dainford companies and Balog.

That afternoon two of the Dainford companies and Mr Balog filed a statement of claim in the District Court seeking the recovery of \$60,000 from D G and K Stait (Holdings) Pty Limited and Mr Stait. The payment was made in respect of one of the option agreements which was the subject matter of the investigation. Mr Balog then amended his summons, originally filed on 19 July 1990, to seek a declaration that the Commission could not make any report to Parliament arising out of the investigation until the resolution of the proceedings in the District Court.

That is the position reached at 31 July 1990. The Commission faces the unhappy prospect of further litigation, and a continued inability to publish its report. The great delay in that respect is strongly against the public interest.

## **Investigation No. 2 - North Coast Land Development**

As a result of information supplied to the Commission, on 3 April 1989 the Commissioner approved an investigation into land development and related matters in the Tweed Shire. After some initial investigations and as a result of other information being obtained the scope of the investigation was widened in June 1989 to include "the conduct of ... public officials concerned with the use and the development of land in the Northern Rivers region of New South Wales".

As at 30 June 1990, the report on the investigation had been prepared and revised to conform with the judgment of the High Court in Balog & Stait v

ICAC. It was furnished to each of the Presiding Officers and made public on 11 July 1990.

Initially in the investigation some private hearings were held for the purpose of taking important evidence. Public hearings subsequently commenced in June 1989 and continued for most of that calendar year. In the course of the investigation, search warrants were executed, and notices to produce documents or provide statements of information were served. In addition, a great number of people came forward voluntarily to provide information, and many documents were volunteered to the Commission or made available upon request.

The investigation and associated hearings were wide ranging and examined the conduct of public officials, either involved in or connected with particular land development projects, the activities of private consultants and their dealings with various public officials, and the payment and processing of political donations.

The investigation disclosed the payment of political donations in a manner and in circumstances designed to conceal the identity of the donors. These donations were made to influence and to induce favourable treatment. The donors, at the time of making the political donations, were either dealing with or about to deal with Government in relation to decisions concerning developments they were involved in.

It was also uncovered that a Tweed Shire Councillor was paid and received money from a private consultant in a covert manner and in relation to matters before the Tweed Shire Council. That Councillor and a Federal public servant and former State ministerial staff member were secret partners with another private consultant in a consultancy business. The Federal employee was paid improperly for assistance he was giving the business, and the Councillor was paid in respect of work done on projects in the Tweed Shire. The two consultants mentioned developed a network of contacts in the public sector and amongst certain Parliamentarians which they utilised in furtherance of matters involving them.

The report on the investigation, besides making findings and drawing conclusions from an examination of material before the Commission, included recommendations regarding amendment of laws and practices. These are referred to in Chapter 6.

Various legal proceedings arose out of the investigation.

### **Moppett Contempt**

On 16 November 1989 Douglas Moppett, Chairman of the National Party of Australia - New South Wales, issued a press release which was critical of the Commission's investigation into North Coast Land Development. The release quoted Mr Moppett as saying, "I believe it is no longer possible to await ICAC's final report before questioning whether the Commission is serving the public interest in its one-sided drawn out inquiry .... After five months of headlines no future exoneration will properly redress the unjustified cynicism that develops out of ICAC's failure to provide a prompt reply to matters impinging on people's reputations ....". On the following day Mr Moppett's statement was published in various media outlets and he conducted several interviews with radio and television journalists. He made a number of comments including the suggestion that the Commission's investigation was Macarthyist in nature, that submissions made were superficial and misleading, and that a preliminary and highly subjective finding had been made.

The Commissioner, pursuant to s.100 of the Act, summoned Mr Moppett to show cause on 19 December 1989 why he should not be cited to the Supreme Court for contempt of the Commission. It was indicated to his legal representative prior to this hearing and to him during the hearing that if he withdrew and apologised, the matter would go no further. Mr. Moppett declined to make any apology beyond saying he was sorry if the Commission was unhappy about what he had said. Accordingly he was cited for contempt to the Supreme Court. The essence of the Commission's case against him was that he had, by his comments, sought to interfere with a then current hearing and diminish the authority of a forthcoming report.

Mr Moppett made a statement to the Court apologising to the Commission and withdrawing his comments. By consent, the summons was then dismissed by Mathews J. Costs were awarded to the Commission.

### **Ocean Blue Litigation**

Two summonses were issued against the Commission in December 1989. The first was issued by Ocean Blue Club Resorts Pty Ltd and the second by an associated company, Ocean Blue Fingal Pty Ltd and two of its directors, Mr Glynn and Mr Steel. All of these persons were substantially and directly interested in the investigation.

The parties sought declarations that the Commission was not entitled in its report to make other than very restricted findings. Supporting injunctions were sought together with a declaration that the Commission could not make any recommendation that a public authority ought not deal with Ocean Blue Club Resorts Pty Ltd in relation to the Crown land at Fingal Head. That company also sought a declaration that it had been denied natural justice during the course of the hearing.

The plaintiffs argued that the Commission's powers were limited to reporting whether there was sufficient evidence to warrant consideration of prosecution pursuant to s.74(5) of the Act. In addition, it was argued by Ocean Blue Club Resorts Pty Ltd that Assistant Commissioner Roden denied it natural justice by failing to grant an application made by its legal representative that further material be adduced, and by the responses made by the Assistant Commissioner to submissions raised by that legal representative during the course of the hearing. It claimed there was an apprehension of bias.

The matter was heard before Wood J on 12 February 1990. He dismissed both summonses in his judgment handed down on 22 March 1990. His Honour adopted the reasons of the Court of Appeal in *Balog & Stait v ICAC*. He concluded that there was nothing to preclude the Commission from summarising the evidence, making findings of fact, reporting on the reasons for those findings, and stating conclusions. The one limitation of relevance stated was that the Commission could not purport to make formal findings of guilt of criminal offences. He stated that the function of the Commission is not confined to assembly of evidence for the purpose of commencing a prosecution and to confine the Commission to a role of receiving evidence and doing no more than passing it on to others, without comment or analysis, makes little sense and would not achieve the objectives of the Act.

He decided as a matter of fact that the conduct of the Assistant Commissioner was not such that there was an apprehension of bias on behalf of the Commission and accordingly, there was no denial of natural justice.

All plaintiffs then appealed to the Court of Appeal on all grounds, save the natural justice issue. Following the High Court judgment in *Balog & Stait v ICAC*, consent orders were made in the Court of Appeal on 2 July 1990 declaring that the Commission was not entitled in any report pursuant to s.74 of the Act to include a statement of any finding by it that the parties were or may have been guilty of a criminal offence or corrupt conduct other than a

statement made pursuant to s.74(5) of the Act. The remaining declarations sought were not pursued. Costs were awarded against the Commission in relation to all matters except the natural justice argument. The opposing parties paid their own costs in this regard.

### **Investigation No. 3 - Silverwater Filling Operation**

The commencement of this investigation on 12 April 1989 followed a report to the Commission pursuant to s.11 of the Act by Noel Day, the then Acting Director-General, Department of Corrective Services, at the direction of his Minister.

The allegations concerned arrangements made in 1982 and the subsequent letting of a contract to Bradshaw Waste Industries Pty Ltd ("Bradshaws") to perform filling operations on land adjacent to the Silverwater Prison Complex without the calling of tenders; the implications of the personal friendship between Mr Watt, the General Manager of Bradshaws and Rex Jackson, the then Minister for Corrective Services who was personally involved in the letting of the contract; the passing of considerable sums of money between Mr Watt and Mr Jackson at or about the relevant time; the loose terms and poor enforcement of the contract; and the disappearance of the relevant file from the office of the Department. The investigation included a public hearing which was held during August - September 1989.

The Commission's report on the investigation was made public on 7 February 1990 following its presentation to the Presiding Officers of both Houses of Parliament. It concluded that although partiality was shown by Mr Jackson to Bradshaws in the letting of the contract, it could not be established that money passing between Mr Jackson and Mr Watt at that time amounted to illicit payments. It also concluded that the action or inaction of Mr Dalton, Chairman of the Corrective Services Commission was not such as could give rise to criminal or disciplinary consequence. The report stated that a low standard of competence had been shown by officers of the Commission in failing to properly document the agreement between it and Bradshaws, in failing to properly supervise the contract and enforce its performance, and in failing to deal with Bradshaws in a businesslike manner.

The report included observations and recommendations regarding the relationship between Ministers and senior public servants, and the tendering process. These are referred to in Chapter 6.

#### **Investigation No. 4 - Land Titles Office**

This investigation was commenced on 20 April 1989 following a report from the Hon Ian Causley MP, (then) Minister for Natural Resources, and the Minister responsible for the Land Titles Office, to the Commission on 13 April 1989. Mr Causley informed the Commission of allegations which had been reported to him about an illicit system for the "fast tracking" of registration of plans at the Land Titles Office for payment of double the ordinary registration fee.

During 1989 field inquiries, including interviews and the execution of search warrants, were conducted by Commission investigators. In October 1989 the Commissioner decided to hold a public hearing because of unresolved issues. The first day of the public hearing was held in mid December 1989. The hearing resumed in early February 1990. Evidence was taken from witnesses involved with the particular deposited plan the subject of the report to Mr Causley, and from officers of the Land Titles Office. As well as evidence about the particular deposited plan, the Commission heard evidence about the systems in the Land Titles Office to handle inquiries from members of the public and Members of Parliament, including requests for urgent registration of plans. The Commission also obtained information from other public authorities about their systems for providing expedited services to the public.

The report was furnished to Parliament, after the close of the reporting year, on 23 July 1990 and made public that day. It had to be reconsidered because of the decision of the High Court referred to earlier. The Commission found that there was no evidence that the particular deposited plan had been processed unusually quickly, nor had a double payment been made. The Commission also found that there was no evidence of corruption within the Land Titles Office.

#### **Investigation No. 6 - Raid on Frank Hakim's Office**

On 7 April 1989 the Chairman of the New South Wales Police Board received an anonymous letter which he reported to the Commission under s.11 of the Act.

That letter alleged that Mr Lauer (then) Assistant Commissioner (Professional Responsibility), New South Wales Police, had unlawfully disposed of cannabis being a drug exhibit held in police custody in Katoomba, and that he and Superintendent Ernest Shepard "loaded" Mr Hakim with drugs when they

arrested him in February 1985. The Commission later became aware that the Ombudsman's Office had received a complaint from Mr Hakim which was similar in part to that contained in the anonymous letter.

The formal investigation commenced on 26 May 1989. Inquiries by Commission officers indicated that the allegation concerning Mr Lauer's conduct at Katoomba lacked substance. No record could be found at the Katoomba Court which disclosed any charge relating to a quantity of cannabis such as that referred to in the letter, and other persons who were alleged to have been at Katoomba at the time either were not there, or could not be found to exist. The general scope and purpose of the investigation was revised during August 1989 so as to delete the Katoomba matter.

A private hearing was held in August 1989 and evidence taken from two witnesses. In late September and early October 1989 further hearings were convened and evidence taken. With the exception of the first day, evidence was taken in public. The transcript of the earlier hearing was released and the suppression orders made concerning that hearing were lifted. The whole matter was then in the public domain.

Each of the five men named in the terms of reference gave evidence. Mr Hakim did not, following evidence given to the Commission by a consultant physician. He advised that in his professional opinion, Mr Hakim should not be called for two reasons. First he would make an unsatisfactory witness because he could not keep to a line of thought for more than a limited period, and secondly, if he were a witness and his period in the witness box was prolonged, and he came under pressure, there could be a detrimental effect of a lasting nature upon his health.

The report on the investigation was furnished to the Presiding Officers and made public on 18 December 1989. It found that there was insufficient evidence to warrant consideration of prosecution of any of the five persons named in the terms of reference, and concluded that the allegations lacked substance.

One matter arising out of the hearing is deserving of brief mention. It received some further attention in the hearings before Lee J in the Blackburn Royal Commission. In evidence before both the ICAC and Lee J, Mr Lauer asserted that a journalist named John Wells had, in effect, taken steps to his detriment by having a witness who gave evidence before the Commission come forward. It became clear after the taking of evidence before this

Commission was concluded that Mr Lauer had confused the journalist with a man named Jonathan Francis Wells, who is involved with amusement machines.

This matter was not dealt with in the Commission's report because it was not closely relevant to the issue under investigation, and it was decided that it did not justify a re-opening of the hearing. The Commission had made its position known to both Mr Lauer and Mr Wells.

As with this Commission's hearings, the matter apparently did not loom sufficiently large to be dealt with in the report prepared by his Honour.

### **Complaint by Mr Hakim**

In late January 1990 Mr Hakim complained to the Chairman of the Parliamentary Joint Committee on the Independent Commission Against Corruption, urging a full judicial inquiry or Royal Commission into the circumstances of his arrest in February 1985 on charges of possession of heroin and goods in custody. The letter to the Chairman of the Committee enclosed a letter forwarded by Mr Hakim to the Attorney General for New South Wales, the Premier, the Leader of the Opposition and the Attorney General for the Commonwealth of Australia.

Pursuant to a resolution of the Committee, Mr Hakim's complaint was on 28 February 1990 referred to the Commission for advice.

Mr Hakim's letter was, with one exception, an argued assertion of innocence. The exception was an allegation of bias against the Commissioner, who had presided at the hearing. It was contended that in 1984, as Commonwealth Director of Public Prosecutions, the Commissioner was aware of the contents of "telephone tap" material, which material formed the basis of the prosecution of Mr Hakim and others for what was known as the "early release conspiracy". Mr Hakim claimed that for this reason the Commissioner "had predetermined my character and was not in a position to properly adjudicate(sic) the evidence at the ICAC hearing".

The matter was reviewed. By letter dated 6 April 1990, the Commission Secretary informed the Chairman of the Committee that the Commission took the view that it should not seek to justify its reports, which must stand alone. As to the allegation of bias, it was pointed out that such concern had not been expressed by Mr Hakim previously, either through his solicitor, or directly to

a Commission officer who had spoken to Mr Hakim during the course of the hearings, at which time he had in fact expressed confidence in the Commissioner to deal with the inquiry. Further, no attempt was made by or on behalf of Mr Hakim, by litigation or otherwise, to prevent the Commissioner presiding. Finally, the material relied upon by Mr Hakim was misleading.

The fact was that the Commissioner, while Director of Public Prosecutions, affirmed an affidavit in the course of committal proceedings against Mr Hakim and others, which supported a claim for public interest immunity. The claim related to the contents of the affidavits which grounded the warrants authorising the telephone interceptions. If these affidavits were disclosed, police informants and investigative methodology would have been revealed. This action did not involve the Commissioner having recourse to the actual product of the interceptions. Finally, the Commissioner had no knowledge touching and concerning Mr Hakim and charges against him, beyond that which he obtained through newspaper reports. He had no doubt that he was well able to conduct a fair hearing and no well informed and fair observer could think otherwise.

### **Investigation No. 7 - Roads and Traffic Authority**

Evidence was taken in November 1988 by the Parliamentary Staysafe Committee which disclosed corrupt conduct including the payment of bribes to driving examiners employed by the Department of Motor Transport. The matter was referred to the Commissioner of Police who immediately established a taskforce to investigate the allegations. The Police commenced investigations with a view to prosecutions for offences disclosed by the evidence gathered by them.

The allegations and information under investigation by the Police taskforce were reported to the Commission by the Police Department pursuant to s. 11 of the Act in March 1989. The Commission examined the material gathered by the Police and formed the view that it disclosed widespread corrupt conduct of the type which the Commission had been established to address. Accordingly, on 8 June 1989, the Commissioner approved an investigation,

which had as its general scope and purpose to investigate the “facts and circumstances pertaining to:

- unlawful activities in relation to the issue of various classes of licences pursuant to the Motor Traffic Act and Regulations and the Motor Vehicle Driving Instructors Act;
- unauthorised communication of confidential or privileged information by officers of the Department of Motor Transport or the Roads and Traffic Authority;
- the unlawful manipulation of the points system administered by the Commissioner of Motor Transport, now the Chief Executive of the Roads and Traffic Authority,

within and relative to the Roads and Traffic Authority, formerly the Department of Motor Transport, and the conduct of persons in relation thereto, during the period 1 November 1979 to date.”

Following that approval, the investigation was conducted by a joint taskforce (pursuant to s.15 of the Act), made up of officers of the Commission and the New South Wales Police who were attached to the Police taskforce. It is the only joint taskforce established under the Act to date.

Prior to the establishment of the joint taskforce, statements had been obtained from a large number of witnesses some of whom admitted (in varying degrees) involvement in the payment and receipt of bribes relative to the issue of driver licences. The Police had also obtained the cooperation of a former corrupt examiner, who agreed to give evidence and to assist. The Police taskforce also obtained, pursuant to warrants issued under the Listening Devices Act 1984, a number of recordings, wherein driving examiners and instructors and some clerks made admissions as to their involvement in such corrupt activity.

Following establishment of the joint taskforce, material was also obtained through the execution of search warrants on a limited number of driving examiners and instructors, and in response to statutory notices issued to such persons, the RTA and various financial institutions. A large number of further statements were taken and other avenues of inquiry pursued.

Public hearings commenced in November 1989 and continued (although not continuously) until 19 June 1990. The evidence led during this time concerned corrupt conduct in the following areas:

- the payment and receipt of bribes for the granting of licences;
- unauthorised and unlawful disclosure of confidential information;
- the misuse of interpreting services, so that applicants for learners' permits were assisted in the completion of printed knowledge tests;
- assignment of practical driving tests on other than an impartial basis;
- the obtaining of licences in false or assumed names through contacts in the Department/Authority;
- the failure of the Internal Audit Section of the Department/Authority to deal adequately, and in some cases at all, with reports of corruption; and
- the failure of the management of the then Department to adequately address the matters reported on in a Report to the then Public Service Board by Mr W J Lewer in late 1979 (following allegations of corrupt activity within the Department of Motor Transport) and subsequent action, including the engagement of a private investigator to gather evidence of corrupt activity among driving examiners.

At 30 June 1990, the evidence was largely concluded. During the week commencing 16 July 1990 submissions were heard from persons who had been named adversely in evidence given to the Commission and against whom, on the basis of that evidence, findings could be made. The Commission had written to all persons in that category advising them of the evidence against them, and the opportunity to respond either by way of sworn evidence or submissions. Advertisements to the same effect were placed in all Sydney English language newspapers and a number of ethnic language newspapers, selected on the basis of the ethnic background of persons in respect of whom such evidence had been given.

Following evidence and submissions, written submissions will be received from counsel who have appeared at the hearings, being counsel assisting, counsel for the RTA, and counsel for a large number of driving examiners.

The taskforce was disbanded in January 1990, following a request from the Commissioner of Police for the release of those Police officers who could be spared, because of pressing needs elsewhere. The investigation was thereafter staffed by two remaining Police officers, who accepted secondment to the Commission, and various Commission staff.

The Commissioner expects to report to Parliament on this investigation before the end of calendar 1990.

### **Aristodemou Litigation**

The plaintiff sought declaratory orders in connection with his appearance as a witness before a Commission hearing. Mr Aristodemou had been a driving examiner employed by the Roads and Traffic Authority. In the course of the Commission's investigation, material and information had been obtained from him pursuant to a search warrant and a notice to produce information pursuant to s.21 of the Act. Whilst sworn to give evidence, Mr Aristodemou refused to answer a question whether he had been offered money in connection with the performance of his duties as a driving examiner.

The submissions to the Supreme Court on behalf of the plaintiff were that the Commission is bound to observe natural justice in conducting a hearing and that the rules of natural justice require that the particulars of any allegation to be made against a witness, and any material in the Commission's possession touching upon his involvement in corrupt conduct, should be given to the witness before he is compulsorily examined. It was contended on behalf of the plaintiff that it was unfair to require him to answer a question, the answer to which might be incriminating, without revealing the material the Commission might have to contradict him.

The Commission did not dispute that Commission hearings should be conducted in accordance with the rules of natural justice. Grove J found that the Commission had not failed to accord natural justice to the plaintiff.

His Honour noted that the rules of natural justice are flexible and adaptable to circumstance. Grove J said that it was fundamental to recognise that the Commission's hearing is part of an investigation, not an accusatory process in which formulated issues are to be resolved. The enforced provision to a witness of the information sought by the plaintiff would permit, and might encourage, a witness, if so disposed, to tailor his evidence in accordance with

his own perceived interests, which may not coincide with the Commission's aim to ascertain true facts.

Grove J noted that to disclose material to a witness, as sought by the plaintiff, would render nugatory the power in s.34 of the Act to cross-examine witnesses, as cross-examination of a witness to whom is revealed in advance all material at the disposal of the cross-examiner would be no real cross-examination at all. His Honour also confirmed the Commission's power to continue its investigative process after the commencement of proceedings, in the absence of any inhibiting order, and commented that the Courts may not be used as a vehicle for frustrating the legitimate conduct of investigations.

### **Aristodemou Contempt**

Mr Aristodemou refused to answer a relevant question put to him during a hearing being conducted by the Commissioner, namely whether Mr Aristodemou had been offered money in connection with the administration of a driving test. The question was asked and Mr Aristodemou refused to answer it on five separate occasions. The defendant did not dispute that he had refused to answer the question. Grove J found the contempt proved.

His Honour said of section 99(6) of the Act, which provides that a person shall not be punished for contempt of the Commission if he establishes that there was a reasonable excuse for the act or omission constituting the alleged contempt, casts an onus of proof on the defendant to a civil standard. Grove J considered that the defendant's reason for refusing to answer the question, that he feared his answer would be proved untrue by other evidence, did not constitute a reasonable excuse.

Following judgment the defendant returned to the Commission and answered the question. On the following day, 15 December 1989, Grove J imposed a fine of \$500 and ordered that the defendant pay the Commission's costs.

### **Investigation No. 10 - Park Plaza Site**

This investigation, approved on 29 July 1989, followed a report to the Commission by Bryce Osmond, the Chief Executive Officer to the Hon. W. T. J. Murray MP, the Deputy Premier, pursuant to s.11 of the Act.

Mr Osmond reported information he had received from Brett Taylor, public relations consultant to Kumagai Gumi Co Ltd. Mr Taylor had said that he had

been approached by a man named Wong who offered a quick approval by Sydney City Council of an amendment to a development approval for Kumagai Gumi's proposed Park Plaza development, for the payment of \$2M. Mr Taylor had also told Mr Bingham, the Lord Mayor of Sydney, of the approach from Mr Wong.

Private hearings were held in July and August 1989, the Commission having decided that the public interest would be best served by holding the hearing in private.

The Commission furnished a report to Parliament which was tabled on 10 October 1989. It concluded that there had been no solicitation of a bribe from Kumagai Gumi Co Ltd, but that Mr Taylor had fabricated the events in an attempt to further the interests of Kumagai Gumi Co Ltd in relation to the Park Plaza development approval.

### **Investigation No. 11 - Licensing Police**

The commencement of this investigation on 1 September 1989 followed a report from the Ombudsman to the Commission pursuant to s.11 of the Act.

The allegations involved the solicitation and receipt of payments by licensing Police in the Sutherland area, the provision of free meals and alcohol and other gratuities to licensing Police in that area, and the withdrawal of complaints made by citizens about the conduct of licensing Police in the Sutherland area in circumstances which suggested that some improper pressure had been applied.

The investigation proceeded initially by way of field investigations and private hearings held at the end of 1989 and early in 1990. A public hearing was then conducted, commencing on 29 March 1990 and continuing throughout April 1990, at which six Police officers were legally represented and eight witnesses examined at length. The public hearing is to resume on 6 August 1990 and is expected to be completed in late August. Progress at the hearing to 30 June 1990 was painfully slow.

During the public hearing the Commissioner announced that the receipt of gratuities by Police officers, in contravention of Police rules, would not be the subject of detailed evidence with a view to findings against individuals but would be the subject of corruption prevention recommendations. This was in

contradistinction to the more serious allegation of the solicitation and receipt of payments by licensing Police.

### **Investigation No. 13 - TAFE**

The investigation which began on 21 September 1989, arose from a report made to the Commission about an alleged attempt to bribe a teacher at the Randwick College of Technical and Further Education. It was reported that money was offered to the teacher as an inducement or reward to pass some sprinkler fitter apprentices who were expected otherwise to fail.

A formal investigation was approved in September 1989. Following various inquiries, a private hearing was held in February 1990 to take evidence from the teacher involved and an apprentice employed by O'Donnell Griffin Pty. Ltd., a company engaged in the installation of fire sprinkler systems in commercial and industrial buildings. The teacher alleged that he had been approached by a supervisor with O'Donnell Griffin who had asked him whether anything could be done about passing students employed by O'Donnell Griffin. An apprentice with O'Donnell Griffin, approached the teacher some time later and inquired whether he had been approached by his employer to pass the students.

At 30 June 1990 a decision had been taken to hold a public hearing. That hearing took place on 10 July 1990. On that date, Assistant Commissioner Roden lifted the suppression order in relation to the earlier private hearing. He also indicated that the investigation would not result in adverse findings. The necessary report will be tabled when the Parliament is next in session.

### **Investigation No. 15 - Carpeting**

This investigation was commenced on 1 December 1989. It concerns the conduct of persons connected with or involved in supply and laying of carpet in premises used or occupied by various government departments. The investigation has focused on the work performed by Homfray Carpets Australia Pty Limited for the Department of Housing in its Sydney region.

A private hearing was held in January 1990 and evidence obtained from two people who were carpet layers and contractors to Homfray. A further private hearing was held in May 1990 when the evidence of two former employees of Homfray and an officer with the Department of Housing was heard.

Evidence was given that these former employees and another current employee of Homfray prepared documents which inflated the amount of carpet required, the cost of the laying and the cost of installing stair nosings. Homfray and the contractors received the amounts to which they were entitled and the employees pocketed the balance. There was evidence that they received about \$180,000 over an 18 month period.

Public hearings were held at the beginning of July. At the time of writing, closing submissions were awaited. The necessary report to the Parliament will be completed within three or four months.

### **Investigation No. 17 - Walsh Bay Redevelopment Site**

This investigation inquired into the calling and processing of tenders in relation to the Walsh Bay Redevelopment Project, and associated matters, including the release and receipt of confidential information. It began on 6 March 1990.

Commencement of the investigation resulted from a letter of complaint from the Hon W T J Murray MP, Deputy Premier, and followed allegations made by Mr R J Carr MP, Leader of the Opposition, relating to tendering irregularities in the Walsh Bay Redevelopment Project.

Mr Carr alleged that Mr Murray and Ian Kortlang, the then Director of the Department of State Development, supplied information to one of the companies tendering for the Walsh Bay Redevelopment Project, and that the process for selection of the successful tenderer favoured CRI Limited.

Mr Murray complained about the leaking of confidential information to the Opposition.

Public hearings commenced on 20 April 1990 for the purpose of presenting an opening address and resumed on 1 May 1990 for the taking of evidence. At the time of writing, the matter had reached the stage of closing submissions.

### **Need for Statutory Change**

This chapter and the preceding one have dealt with the investigative work undertaken by the Commission. The Commission believes that it, and all those who have worked on its behalf, have done a great amount of work to good

purpose. It remains true, however, that the Commission would have wished there be a greater number of reports published by year's end.

One factor is that, where investigations involve hearings, it is appropriate that the presiding officer take responsibility for preparation of the report. Great demands, therefore, are placed on the time of presiding officers. Each of them can only do so much.

The most significant factor, however, for the less than optimum number of published reports is litigation commenced against the Commission. It has held up one report for the best part of 12 months, with no sign of resolution. More generally, it has created uncertainty as to how far the Commission can properly go.

The Commission recognises the role of the courts as a major accountability mechanism. However, the level of resort to the courts, by persons affected by Commission investigations, has been so great that defence of legal proceedings became during the year a major distraction (and cost) to the Commission.

The most important decision affecting the Commission was the judgment of the High Court in *Balog & Stait v ICAC*. Assistant Commissioner Roden examined the ramifications of this decision in an introductory section to the Report on Investigation into North Coast Land Development. His views are reproduced in this report as Appendix 3.

The Commissioner, when addressing the Australian Bar Association Conference in Darwin on 9 July 1990, stated:

"It is my view that, as a result of the recent High Court decision, the ICAC Act must be amended. The difficulty of construing and interpreting the statute is obvious enough. A series of learned Judges decided one way, and then five Justices at the highest level decided another way. The reason is that the relevant statutory provisions are to be found at various points, the Parliamentary intention has to be inferred, not having been clearly stated, and what needs to be done is to rectify that position. The Act should state in terms what a Commission report to the Parliament must contain, what it may contain, and what it must not contain. It is quite unsatisfactory that the matter should be left as one which has to be drawn out and divined from more general statutory provisions.

Could I conclude on this note. A body such as the ICAC which exists to serve the community, can function in such a way as to

protect in a proper way the interests of individuals who appear before it. However, it cannot do that unless enabled to bring down reports which are not just thorough but which are also prompt. Presently the statute and the judgment upon it, are such as to invite further litigation and accordingly there will certainly be further long delays so far as future reports are concerned.

The position can and should be rectified by statutory change which states precisely what our rights and responsibilities are when it comes to the preparation of reports.”

The Commission will be pursuing these matters with Government.

## **Chapter 4**

### **CORRUPTION PREVENTION**

The Commission has important functions in corruption prevention which are set out in s.13(1)(d) to (g) and s.14(2)(b) of the Act. These spell out what is mainly an advisory and cooperative role in working with Government organisations to review systems, procedures and practices and to recommend changes, with a view to reducing the opportunities for, and the incidence of, corruption.

These corruption prevention functions have been in operation since the Commission's inception, although in a limited way. The appointment of the Director of Corruption Prevention in April 1990 and the appointment of professional staff to the Corruption Prevention Department marked the start of formal and more concentrated efforts in this important area.

#### **Development of the Corruption Prevention Strategy**

In October 1989 correspondence was sent to Ambassadors or High Commissioners of some 45 countries, advising of the establishment of the Commission and focusing on its corruption prevention role. Information was sought as to whether there existed any organisation performing a similar role, and whether corruption prevention strategies or procedures had been or were being developed. Responses were received from most diplomatic posts and assisted in the development of the Commission's own corruption prevention strategy.

Also late in 1989, the Commissioner wrote to all Ministers of the New South Wales Government bringing to their attention the Commission's functions relating to corruption prevention and requesting advice as to anti-corruption measures introduced in the organisations under each Minister's administration. By the end of June 1990, a response had been received from all Ministers and a picture had emerged of trends in anti-corruption strategies being developed in New South Wales. This material will be followed up, as necessary, and will assist in the design and implementation of corruption prevention exercises.

With some assistance from these initiatives, an ICAC Corruption Prevention Strategy was developed early in 1990. It has been widely disseminated to Government organisations in New South Wales. The strategy, reproduced as

Appendix 4, will be reviewed periodically and may be amended to reflect changing priorities.

It is based on three important principles:

- prevention is better than cure;
- corruption prevention is a management function;
- accountability makes for committed management.

With these principles and the statutory functions of corruption prevention in mind, the strategy outlined the nature of work to be done by the Department and the ways this work will most likely arise. The experience in the first three months of formal operation of the Corruption Prevention Department accords well with the strategy's framework.

Corruption prevention work has been identified from a number of sources, both within the Commission and outside. Internally, corruption prevention work stems from formal investigations, as the focus passes from instances of apparent or proven corruption to the institutional conditions which could allow or allowed corruption to happen. Complaints and reports to the Commission which have not been formally investigated similarly indicate system deficiencies which have allowed or could allow corrupt conduct.

From outside the Commission, corruption prevention work has been generated by requests from Government organisations to assist in the development of codes and guidelines, to improve areas of operation where problems have been identified, and to advise on the probity of a proposed course of action. Other work arises from liaison with other agencies involved in related work, such as the Ombudsman's Office, the Department of Local Government and the Office of Public Management, and from changes in legislation or policy.

### **The Local Government Code of Conduct**

During the Commission's investigation into alleged corrupt conduct at Waverley Municipal Council, it became apparent that many Council employees had little understanding of the obligations conferred on them as public servants, because they were not provided with a code explaining such obligations.

In July 1989 the Minister for Local Government convened a working party to develop a Code of Conduct for all Local Government Councils and County Councils in New South Wales. The Commission was involved in this working party together with the Department of Local Government, the Local Government and Shires Associations, and the Ombudsman's Office.

The intention was to help guide elected members and staff as to the standards of conduct expected of them, and to provide an explicit public standard and common point of reference for the various external review authorities, the general public, members and Council staff. The Code explains in practical terms how such important principles as good faith, public duty, honesty and integrity should be manifested in the daily business of Council members and their staff.

The Code of Conduct Principles was issued in January 1990 and Councils were urged to adopt it, with such minor modifications as might be considered appropriate to local conditions. The Corruption Prevention Department surveyed Councils between April and June 1990 to find out how many had adopted the Code and whether they modified it in any way. It was very encouraging to find that of the 176 Local Government Councils and 39 County Councils in New South Wales, 84% had adopted the Code as it stands, or with minor modifications.

At 30 June 1990, this was the picture regarding adoption of the Local Government Code of Conduct Principles:

	Councils		Country Councils		Total	
Adopted	124	(70%)	24	(62%)	148	(69%)
With Modification	24	(14%)	9	(23%)	33	(15%)
<hr/>						
<b>Total adopted</b>	<b>148</b>	<b>(84%)</b>	<b>33</b>	<b>(85%)</b>	<b>181</b>	<b>(84%)</b>
Still considering	24	(13%)	5	(13%)	29	(14%)
Refused	3	(2%)			3	(1%)
No Reply	1	(1%)	1	(2%)	2	(1%)
<hr/>						
<b>TOTAL</b>	<b>176</b>	<b>(100%)</b>	<b>39</b>	<b>(100%)</b>	<b>215</b>	<b>(100%)</b>

Almost all councils which decided to modify the Code did so only in regard to one particular subclause, by which staff were required to obtain written approval from the Clerk or the Council before undertaking any speculative dealings in land in their Council area - that is, other than for their principal place of residence.

It is clearly important for staff to disclose such transactions because many staff may have knowledge of strategic plans and this knowledge could be used to obtain an unfair advantage in land dealings. However, many Councils considered that formal disclosure would be sufficient and a more appropriate requirement than obtaining prior approval. The working party, recognising the validity of this view, modified the Code accordingly, together with some other minor changes resulting from comments received from Councils.

The Code of Conduct and Manual were issued in final form by the Minister for Local Government in July 1990.

### **Formal Corruption Prevention Exercises**

The most significant area of corruption prevention work is in formal exercises or studies. Each exercise focuses on a discrete area of operation within a Government organisation. Each is based on extensive fact-finding involving direct observation and detailed recording of procedures and practice. The information produced is significantly different from that generated by a Commission investigation, as the analysis concentrates on system deficiencies rather than on specific allegations of corruption, or suspect individuals.

Each exercise develops detailed recommendations aimed at securing the revision of methods of work and procedures which are believed to be conducive to corrupt practices. There will be periodic monitoring and review of the focus area of operation.

The approach is a practical and efficient one which looks for realistic solutions. In theory, any procedure can be made corruption-proof, but in so doing the system must not be made unworkable. The task is to find ways in which work can be done with maximum efficiency while reducing to a minimum the opportunities for corruption.

There were two major exercises in progress at 30 June 1990, both arising from major investigations conducted by the Commission. These related,

respectively, to the system of driver licensing operated by the Roads and Traffic Authority of New South Wales, and to the system of letting and management of service-type contracts operated by the New South Wales Department of Housing. A number of other potential exercises are under consideration for future work.

### **Advice on Corruption Prevention Issues**

The second major area of work is the provision of corruption prevention advice both within the Commission and to other Government organisations. Internally, the Department provides input on corruption prevention issues in relation to complaints matters, reports to the Commission under s.11 of the Act, and during the course of investigations. The Corruption Prevention Department is in a position to identify the nature of system deficiencies and advise on both general principles and specific corrective work to be undertaken. Such advice generally includes a request for feedback at a specified future date to facilitate monitoring of the implementation and effectiveness of change.

An increasing amount of work is also being done in responding to requests by other Government agencies for advice on some particular process, frequently in the area of tendering. Such requests arise where some unusual circumstance exists and where there may be questions as to probity. While the Commission is not prepared to "rubber stamp" proposals to deal with such one-off situations, advice of a general nature can be and is given where possible.

### **Procedural Guidelines and Codes of Conduct**

From April to June 1990, the Corruption Prevention Department provided input to the development or review of three significant procedural guidelines which apply widely through the New South Wales government sector. These were:

- Guidelines for Private Sector Participation in Infrastructure Provision, issued by the Department of State Development in July 1990;
- Property Asset Management Guidelines, issued by the Property Services Group in May 1990;

- Guidelines for the Engagement and Use of Consultants, issued by the Office of Public Management in May 1990.

In all three cases, the Corruption Prevention Department is involved in continuing liaison with the relevant organisation and will make an input in future reviews of the guidelines. In the case of the Property Asset Management Guidelines, the Department will assist in the development of the next stage of guidelines which are to deal with asset disposal where special circumstances exist.

Codes of conduct in preparation by several Government agencies were provided to the Department with requests for comment and input. It is encouraging to see that many agencies recognise the importance of such codes in the creation and maintenance of an ethical environment, and that they are widely distributed and increasingly used in induction processes so that both new and established staff can achieve a common understanding of their obligations.

There were some common elements of the Department's input to a number of agencies in regard to matters which should be included in a code of conduct in the government sector, which are worth stating here.

The Commission considers it important that codes of conduct contain reference to the provisions of s.11 of the Act, regarding the reporting of suspect corrupt conduct to the Commission by the principal officer of a Government organisation. Both those with something to tell, and those with something to hide, should be aware that such provisions exist. In addition, each agency should set out in the code a mechanism by which any complaints will be communicated to the principal officer, and by which the complainant will receive some feedback on what has been done regarding the complaint.

The concept of managerial accountability is one of the three principles underlying the Commission's Corruption Prevention Strategy and should be expounded in ethical codes. People at all levels in an organisation should be made responsible not only for their own acts and omissions, but also for the acts and omissions of those they supervise. This makes for committed management and helps to ensure that problems are pinpointed before they become serious.

There is a current trend to increasing devolution of responsibility, both from centralised government out to individual organisations, and within the

organisations themselves, from executive to managers. The phrase most commonly used to support this trend is "Let the managers manage". It underlies one of the important principles of good management, one which is espoused in corruption prevention work - that is, to the extent that people are able to do the job, they should be allowed to get on with it.

However, a more important principle is managerial accountability, which contributes both to sound management and corruption prevention. If managers are to be accountable at all levels in an organisation then what must be done is to bring into effect policies and practices which "make the managers manage", and hold them responsible if they do not.

### **Working Groups**

There has already been some mention of the working party established to develop the Code of Conduct for Local Government, in which the Commission played an active role. While work in this area was substantially completed by 30 June 1990 the Corruption Prevention Department has been invited to participate in continuing work on some related matters which will require more detailed attention and perhaps additional guidelines. Included on the agenda are such matters as performance contracts for Council employees and negotiations between Councils and developers prior to the lodging of formal development applications.

The Commission has participated for most of the year in the Government's Working Party on Integrity in Government, which was established by the Premier in August 1989 to plan and review public sector reforms. The Working Party examined and advised the Premier's Department on a Code of Conduct for the Senior Executive Service and considered a range of measures designed to increase the accountability of the public sector. By June 1990 the working party had embarked on consideration of a Code of Conduct for all government employees. This will be a continuing task for 1990.

Commission staff during the year were involved with internal working parties in several Government agencies in the development of anti-corruption or anti-fraud plans. This type of work passed to the Corruption Prevention Department after its formal inception in April 1990 and will represent an increasing part of the Department's workload.

## **Seminars and Training**

Considerable work has been done to begin disseminating the concept and practice of corruption prevention through the New South Wales public and private sectors. Although the Commission will have a separate public education function, corruption prevention staff have played and will continue to play an important role in education, focusing on sound management practice incorporating corruption prevention principles.

In addition to public speaking engagements at external seminars, the Department was involved during June 1990 in organising a seminar on corruption prevention for all Chief Executive Officers of New South Wales Government organisations. This seminar was very well attended and gave rise to many requests for further detailed information on corruption prevention or assistance of various kinds.

A most important and valuable part of the Department's professional development was the organisation of an intensive two-week training course during June 1990. The course was developed and conducted by Gordon Henderson, a Group Head of the Corruption Prevention Department, Hong Kong Independent Commission Against Corruption.

A substantial part of the course was designed to provide corruption prevention staff with a detailed view of the way in which corruption prevention work is conducted in Hong Kong and the opportunity to review this in the context of Australian culture and New South Wales government structures and operations. Other parts of the training related to issues which have been the subject of corruption prevention assignments in Hong Kong and which have close parallels here, for example a range of matters relating to the tendering and licensing areas.

Numerous Commission staff participated in the training sessions, as did staff of the Department of Local Government and the Auditor-General's Office. This training program was valuable and assisted significantly in consolidating the program and methodology of the Corruption Prevention Department.

## **Future Plans**

Expansion of the Corruption Prevention Department is a high priority. At 30 June 1990, the Department consisted of four professional staff. Steps were in train to advertise for additional staff, with the intention to increase the

Department's size to approximately double during the first part of the 1990-91 year. At this stage it is anticipated that the eventual size of the Department will be in the order of 12 to 15 staff; however this may be reviewed as the scope and quantity of the workload is further revealed.

It is expected that formal corruption prevention exercises will form the most significant proportion of the Department's work program. Since resources are limited and there will be other important work to do, it will be necessary to select carefully from the potential subjects for such work. As with the Commission's investigation work, activities must be spread but not too thinly; and it is important that resources not be too concentrated in one particular area, lest others be neglected.

The nature of corruption prevention work is such that a major exercise, to be most effective, should be tightly defined to a particular area of operation within an organisation. Therefore the intention is not to study the whole of the system of any particular agency, as might be the case for a management review. If a corruption prevention exercise is effective - and this is to be subject to periodic monitoring - then its impact will undoubtedly spread to other areas in the organisation. It must be said, further, that the responsibility for effective corruption prevention and good management ultimately rests with the organisation, and that the Commission can only assist in this task.

The Corruption Prevention Department will continue the liaison already established with several organisations in regard to ethical codes and procedural guidelines, and its involvement with across-government working groups. A particular interest has been established in the area of tendering and supply of goods and services, and similarly in the disposal of Government property assets, both land and buildings. Considerable work will be done in these areas during the next year, including continuing involvement in the review and further development of broadly-based Government guidelines.

Following the successful corruption prevention seminar held for Chief Executive Officers, a rolling program of similar seminars for senior executives is planned for the next year, and there will be considerable effort put into corruption prevention education in the public sector.

## **Chapter 5**

### **PUBLIC EDUCATION**

Public education is the third of the principal functions of the Commission. Last year's Annual Report of the Commission stated that, on its establishment, the first priority was investigations, followed by corruption prevention. The Commission, at the end of the reporting year, had taken steps to ensure that the public education function would be implemented in the following six months. During that period the Commission will finalise its public education strategy and engage staff to implement it.

To date, efforts of the Commission in the public education field have been ancillary to its other principal functions. The objective has been to make the work of the Commission known and understood. This chapter outlines the most important aspects of that work.

#### **Media Relations**

The Commission's general approach to its work is that it is working for the public of New South Wales and the public should know what it is doing. The media plays a vital role in disseminating information about the Commission, especially its public hearings and reports.

Public confidence in the Commission is of paramount importance. The Commission encourages informed debate about its powers, procedures and published reports. The role of the media in this process is profound. It was in recognition of this role that the Commission conducted a briefing, in February 1990, for editorial staff and journalists from major media outlets regarding the work of the Commission.

Some aspects of the Commission's work are confidential. However, to the extent permitted by s.111 of the Act, which provides severe penalties for those who disclose information other than for statutory purposes, the Commission seeks to be open in all it does.

The principal responsibility for liaison with the media rests with the Media Unit.

Journalists have been provided with a centre on the ground floor of the Commission premises from which to work. They are given access to transcripts and exhibits at public hearings. This is done on a same-day basis to assist accuracy in reporting. To date this has proven successful.

The Commission has sought to be consistent in its response to media inquiries, particularly in relation to operational matters. To this end, the Commission has prepared a statement on media policy and practice which is set out in Appendix 6.

A copy of this statement is on display in the Media Centre along with guidelines for the media, and the Australian Journalists' Association Code of Ethics.

Apart from the standard media statement the Commission issued in relation to each country visit, occasions have arisen when it was considered appropriate for the Commission to make a public statement about a matter. This was done most often by way of a media statement. These are listed at Appendix 7.

## Country Trips

It is important that people outside the Sydney metropolitan area have and feel they have access to the Commission. Accordingly, the Commission began a program of visits to major country centres within a few months of its establishment. This practice was developed extensively during the reporting year.

Staff from the Assessments and Operations areas, at times accompanied by a member of the Media Unit, undertook 12 country visits, an average of one a month, covering a total of 19 centres. Some centres were visited twice in the year and in one case, Newcastle, three times.

In last year's Annual Report it was stated that the aim of country visits was to ensure that by the end of the first quarter of 1990 people throughout the State who wished to have dealings with the Commission would have had the opportunity to do so with relative ease.

That has certainly been the case in practice. The following list of country visits bears this out:

August 1989	-	Wollongong/Goulburn, Gosford/Newcastle
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September 1989	-	Port Macquarie/Kempsey
October 1989	-	Newcastle, Queanbeyan/Bega
November 1989	-	Bathurst/Orange
December 1989	-	Coffs Harbour/Grafton
February 1990	-	Tamworth/Armidale
May 1990	-	Griffith/Wagga/Albury, Gosford/Newcastle
June 1990	-	Port Macquarie/Kempsey, Broken Hill/Dubbo

Media coverage was received in most centres visited.

As part of the Commission's public education function, this program of country visits will be further expanded to make available appropriate Commission staff to address service clubs, chambers of commerce and other public bodies, on the work of the Commission.

### **Public Attitude Surveys**

To help the Commission establish an understanding of the public's perception of corruption and attitudes on methods of dealing with it, three public attitude surveys have been conducted.

The first took place in March 1989 and was briefly reported on in the Commission's first Annual Report. Full details of that survey were not provided then as it was planned to use the same questions again in order to measure attitudinal changes. The questions and format of the original survey have now been used on two more occasions in October 1989 and April/May 1990.

The survey was conducted by Irving Saulwick and Associates at the end of a regular newspaper poll that company conducts. In each case, the survey was conducted by telephone amongst a representative sample of 350 voters in both metropolitan and country New South Wales. Respondents were randomly selected with a distribution proportional to population distribution. Only one interview was conducted in any one household and the results were weighted to reflect the age and sex distribution of voters throughout the State.

The findings of the first survey in March 1989 were supported and reinforced by the findings of the subsequent surveys in October 1989 and April/May 1990.

These were that a significant cross-section of the voting population in New South Wales:

- believes that corruption is widespread in government organisations in New South Wales;
- believes that serious corruption exists, in particular in the Police Force, Local Government and the Department of Corrective Services;
- are rigorous in their view of what constitutes corruption;
- believes that attempts should be made to tackle the problem.

Summary of Survey Findings

1. Respondents were invited to name any State Government organisation which they thought likely to be corrupt.

The results may be summarised as follows:

	March 1989 %	October 1989 %	May 1990 %
Police Force	32	41	31
Local Government	14	12	14
State Government	14	12	9
Corrective Services Department	4	8	4

(Percentage figures have been rounded to the nearest whole number.)

No other organisation in NSW was named by more than 4% of respondents in this "unaided" question.

2. (a) Respondents were asked about ten government organisations: nine in New South Wales and the Commonwealth Government.

In each case they were invited to say whether they thought the specified organisation was very corrupt, quite corrupt, a little corrupt, not at all corrupt, or whether they had no idea whether it is corrupt or not.

(b) The results may be summarised as follows:

Organisation		Very Corrupt %	Quite Corrupt %	A little Corrupt %	Not Corrupt %	Don't Know %	No Answer %
State Rail Authority	Mar 89	6	7	38	10	34	4
	Oct 89	6	14	40	10	24	6
	May 90	6	12	40	9	24	9
Corrective Services Department	Mar 89	23	26	29	4	16	2
	Oct 89	27	26	25	2	15	5
	May 90	22	22	32	4	16	5
Public Works Department	Mar 89	11	14	34	12	26	4
	Oct 89	10	18	33	7	24	8
	May 90	9	15	36	7	24	9
Police Force	Mar 89	29	21	31	6	10	3
	Oct 89	25	22	30	4	9	10
	May 90	22	28	36	3	7	4
Metropolitan Water Board	Mar 89	8	9	22	16	39	6
	Oct 89	7	9	30	11	35	9
	May 90	5	10	28	11	36	11

Organisation		Very Corrupt %	Quite Corrupt %	A little Corrupt %	Not Corrupt %	Don't Know %	No Answer %
Judges in NSW	Mar 89	8	12	37	15	25	4
	Oct 89	7	16	36	19	17	6
	May 90	8	10	44	15	14	9
Magistrates in NSW	Mar 89	7	11	40	13	26	4
	Oct 89	7	13	39	15	20	6
	May 90	9	9	42	15	17	9
Local Govt in NSW	Mar 89	16	20	39	9	14	3
	Oct 89	13	27	35	7	12	5
	May 90	15	21	40	6	13	6
State Govt in NSW	Mar 89	14	16	44	7	16	3
	Oct 89	11	25	38	7	14	5
	May 90	9	22	42	7	12	8
C'wealth Govt	Mar 89	10	15	42	8	21	4
	Oct 89	14	22	34	9	16	6
	May 90	9	21	41	8	13	9

(Percentage figures have been rounded to the nearest whole number.)

3. Respondents continue to take a stern view of four "corruption scenarios". They are:

- (a) A friend of yours sells tickets on the railways and says you can travel free.
- (b) You are just over the breathalyser limit and the policeman says that if you give a decent donation for the Police Charity Fund he will not book you.
- (c) Five companies put in tenders for a government building. All could do the work. The Minister arranges for the job to go to the third lowest, because the Managing Director belongs to his club.
- (d) You want to build a tourist development on some land you own, and you ask your local councillor about rezoning. He offers to get the rezoning through council in return for an interest in the development.

Respondents were asked their views about these "corruption scenarios". In each case they were invited to say whether they thought the specified scenario was very corrupt, quite corrupt, a little corrupt, not at all corrupt, or whether they had no idea whether it was corrupt or not.

Although views have fluctuated a little over the three surveys, there is no evidence that the community tolerance of these behaviours has increased.

The results are summarised below:

		SCENARIOS				
		Very Corrupt %	Quite Corrupt %	A little Corrupt %	Not Corrupt %	No Answer %
Free Travel	Mar 89	43	20	30	4	3
	Oct 89	45	25	23	4	2
	May 90	41	27	29	2	1

		Very Corrupt %	Quite Corrupt %	A little Corrupt %	Not Corrupt %	No Answer %
Police Donation	Mar 89	62	22	12	3	1
	Oct 89	62	25	11	1	*
	May 90	59	28	13	*	*
Government Tender	Mar 89	62	21	11	4	2
	Oct 89	64	25	8	2	2
	May 90	60	24	13	3	1
Tourist Department	Mar 89	60	21	14	3	2
	Oct 89	71	20	6	1	1
	May 90	63	26	9	1	*

\* Less than 1%

(Percentage figures have been rounded to the nearest whole number.)

4. Respondents were asked to state which of the following statements best described how they felt on the subject of corruption:
- (a) There is so little corruption in government organisations in NSW that it is not worth worrying about.
  - (b) There is serious corruption in government organisations in NSW and efforts must be made to stamp it out.
  - (c) You can never really stamp out corruption in government organisations in NSW, so it is a waste of time and money to even try.

The results are summarised below:

	March 1989 %	October 1989 %	May 1990 %
Not worth worrying about	5	4	6
Serious - stamp it out	61	69	66
Can never stamp it out	26	22	22
Don't know	8	6	5

The figures still show a strong support for an anti-corruption program, despite a continuing minority who believe that corruption is endemic.

Public attitude surveys will be conducted regularly to ascertain shifts in public perceptions about corruption. Questions will vary as the circumstances require and results will be detailed in Annual Reports.

### **Commission Reports**

Commission reports of investigations are widely circulated free of charge as part of the education function of the Commission. They are distributed via an extensive mailing list to all New South Wales government departments and statutory authorities, local government, universities, TAFE colleges and colleges of advanced education, high schools, courts, Legal Aid Commission offices and public libraries.

Reports are also available at the reception desk in the Commission and are mailed out on request to members of the public unable to collect them.

### **Speaking Engagements**

During the year the Commissioner, Assistant Commissioner Roden, and members of senior management gave public addresses on aspects of the Commission and its operation.

These addresses were another important means of informing the public about the Commission and responding to general queries or criticisms made of the Commission.

A list of addresses given by the Commissioner, Assistant Commissioner Roden and senior staff is at Appendix 8.

## **Chapter 6**

### **LEGAL CHANGE**

This chapter records certain changes to the legal background against which the Commission works. More importantly, it suggests changes in the law which ought be made.

#### **Statutory Change**

The most important legislative change which occurred during the year was the empowering of the Commission to apply to authorised judges of the Federal Court for the interception of telecommunications.

The proposed amendment to the Commonwealth Telecommunications (Interceptions) Act 1979 was contained in the Law and Justice Legislation Amendment Bill 1989. Following passage through Parliament, the legislation was assented to on 17 January 1990 and the relevant amendments were proclaimed to commence on 14 February 1990. Amendments to the Telecommunications (Interceptions) (NSW) Act 1987, to enable the Commission to be authorised under Commonwealth law to intercept telecommunications and to provide for its records to be inspected by the New South Wales Ombudsman, were passed by the New South Wales Parliament. The amending legislation was assented to on 21 December 1989 and proclaimed to commence on 16 February 1990.

Besides legislative authority, a necessary pre-condition to use of telephone intercepts is agreement between the Commonwealth and New South Wales regarding cost sharing. Agreement was reached, following which the Commonwealth Attorney-General, by notice published in the Commonwealth Gazette dated 6 June 1990 declared the Commission to be an agency for the purpose of the Commonwealth law. It was only then, nearly 15 months after the Commission came into existence, that it became entitled to obtain telephone intercept material in its own right.

By the end of the reporting year, the Commission had not established facilities necessary to obtain information from a telephone intercept.

The reason for this position is that the Commission can only operate a telephone intercept facility within an established legislative framework which

limits stringently offences in respect of which warrants can be sought. At this stage in the development of the Commission, these offences, which include murder and drug trafficking almost never arise in Commission investigations. The Commission therefore has had to weigh the high costs involved in establishing facilities with anticipated return on investment. Even if the Commission were to share facilities with other law enforcement agencies, the costs would remain significant.

The Commission has had informal discussions with other law enforcement agencies as to whether there is practical scope for amendment of the law to widen the cases in which a warrant may be sought.

The Independent Commission Against Corruption Act 1988 was amended in minor respects only during the year under review. The Evidence (Religious Confessions) Amendment Act 1989 amended the Evidence Act 1898 so as to entitle members of the clergy to refuse to divulge the contents of religious confessions made to them in their professional capacity and the fact that they have been made. The amendment included a consequential amendment to the Independent Commission Against Corruption Act 1988 to omit a similar provision with the effect that the amendment of the Evidence Act 1898 will apply to hearings before the Commission. The amending legislation came into force on 19 December 1989.

The State Owned Corporations Act 1989 was the statutory vehicle by which the Government's corporatisation program was carried into law. It commenced on 22 September 1989. Section 36 states that for the purposes of the Independent Commission Against Corruption Act 1988:

- State owned corporations and their subsidiaries are public authorities; and
- directors, officers and employees of State owned corporations or of their subsidiaries are public officials.

This provision means that if the conduct of these agencies or persons concerns or involves corrupt conduct, the Commission has jurisdiction to investigate the matter.

## **Independent Commission Against Corruption Act 1988**

### ***Recommendations at 30 June 1989***

Last year's Annual Report recommended a number of amendments to the Act. These recommendations were based on less than six months' operating experience. The proposed amendments were considered by Government, as were others contained in submissions to the Premier and investigation reports to Parliament, but no amending legislation was brought forward.

The Commission adheres generally to its view that the amendments recommended in last year's Annual Report would be worthwhile. Amendment of ss.21 and 22 to permit an authorised Commission officer to accept production of written information would ease the burden on the Commissioner and Assistant Commissioners. Ensuring the confidentiality of communications to the Commission by prisoners and other persons under detention is important to the integrity of Commission operations as is imposition of the secrecy obligation on task forces working with the Commission.

A number of other matters mentioned in last year's Annual Report are worthy of further comment.

The first concerns the extraterritorial operation of the Act. Last year's Annual Report recommended an amendment to the Act empowering 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. Issue by a Justice, it was contended, would bring the process within the Commonwealth Service and Execution of Process Act 1901 which would provide for its recognition in all jurisdictions throughout Australia.

An alternative approach would be to secure an amendment to Commonwealth law to permit service of a Commission summons outside New South Wales. During the year, the Premier requested the Attorney General to raise this matter with the Commonwealth Government. Service of summonses on persons outside New South Wales to attend hearings is, of course, a problem not only for the Commission but also the State Drug Crime Commission. By year's end, the matter had not been resolved.

### *Recommendations since 30 June 1989*

Another matter which the Commission raised in last year's Annual Report was the creation of offences penalising wilful action which prejudiced complainants to the Commission. Further consideration has been given to this matter and it is dealt with below.

The Report on Investigation Relating to the Park Plaza Site (October 1989) recommended that s.11 of the Act be amended to impose a duty on Ministers to report possible corrupt conduct. The report stated (pp 29-30):

"Reports under s.11 have led to a significant number of the Commission's investigations to date. Several of those reports have been by Ministers of the Crown, or instigated by such Ministers. They are the key people in a democracy such as New South Wales, the most important elected officials, charged with the responsibility of administering the departments of State. They have shown a strong inclination to help the Commission with its work. It is now suggested that their right so to do should be converted into a duty.

Ministers are of course caught by the Act in a more general sense, because each is a public official - (see c) of that definition in s.3(1) of the Act. Hence the proposal is not that people presently beyond purview should be brought within grasp. It rather is that the Act should be made to accord with what is the developing reality.

It would not seem fitting to describe Ministers of the Crown as "Officers". Accordingly an appropriate amendment would be to add to s.11(1) the words "and to each Minister of the Crown". The Commission so recommends."

The Report on Investigation Relating to the Raid on Frank Hakim's Office (December 1989) also included an examination of factors which needed to be weighed in determining whether a hearing should be held in public or in private.

The same report recommended that close consideration be given to amending s.74(5) of the Act. This section provides relevantly for inclusion of a statement of the Commission's findings "as to whether there is or was any evidence of sufficient evidence warranting consideration of the prosecution of a specified person for a specified offence": s.74(5).

In light of the subsequent attention given to the reporting powers of the Commission, it is worth setting out in full the text of the Commissioner's analysis.

"It has to be said that s.74(5) is difficult to construe and interpret. It is easy enough to see what it and the succeeding sub-section are broadly designed to achieve. Putting to one side matters of discipline and termination, and concentrating upon more serious matters, the manifest statutory intention is that having heard evidence which savours of criminality the Commission must state clearly what consequences might justifiably flow, do so with respect to each affected individual, and particularise such charge or charges as might be thought appropriate. What cannot be done is to hear such evidence and then leave the question of what should be done entirely up in the air. There is also a clear intention that the Commission in performing this part of its task will do so by concentrating upon evidence that would be admissible for criminal purposes, and exclude such as is not so admissible but might have been received by the Commission pursuant to its broader powers - s.17.

More difficulty arises when close consideration is given to the actual words used, and attention is concentrated upon the legal test to be applied in making the statutory statement. In particular -

- (a) "Is or was" is nugatory, unless it is contemplated that an exhibit of critical importance might have been mislaid by the Commission.
- (b) If there is sufficient evidence to warrant consideration of a prosecution, there must be "any evidence" to so warrant, and the use of the two phrases disjunctively is a nonsense.

It is perhaps unfortunate that the statute did not use phraseology either more general, or more precise. As to the former, it might have been appropriate to permit the Commission to opine as to whether in all the circumstances consideration should be given to the prosecution of a specified person for a specified offence, on the basis of evidence admissible for that purpose, and that such a statement must be made with respect to each person substantially and directly interested in the subject matter of the hearing.

As a more precise alternative the ICAC Act could have used one of the various tests well known to the criminal law, as for example a *prima facie* case, a mere *scintilla* of evidence, a case which should support a safe and satisfactory verdict of guilty, or a case more likely than not to result in conviction. Each was available, none has been used in the Act, and therefore something different must have been intended.

In the end I have decided that the test to be used is whether the evidence admissible for criminal purposes is such as to justify the Commission putting forward a recommendation that consideration be given by the proper authorities - in this case the Director of Public Prosecutions for New South Wales, such counsel as he might retain, and his officers - to the launching of prosecution action. The position is not dissimilar to that which sometimes arises in the civil courts when the presiding judge considers perjured evidence has been given, and directs that the papers be sent to the Attorney General or the Director of Public Prosecutions for consideration with a view to prosecution. That approach is considered to be consistent with statute, practical, and one which avoids undesirable consequences." (pp 43-45)

The Report on Investigation into North Coast Land Development, (July 1990), contained two distinct sets of recommendations, concerning the Commission's enabling statute.

The first had as its object making the provision regarding the grant of legal representation to persons before Commission hearings more workable and making reporting of findings more relevant. The second concerns the reporting powers generally of the Commission.

As to the first, it is necessary to set out the provisions of ss.32 and 33. The provisions of s.74(5) and (6) are set out on page 43.

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

s.33.(1) The Commission may, in relation to a hearing, authorise -

- (a) a person giving evidence at the hearing; or
  - (b) a person referred to in s.32, to be represented by a legal practitioner at the hearing or a specified part of the hearing.
- (2) The Commission is required to give a reasonable opportunity for a person giving evidence at the hearing to be legally represented.
- (3) A legal practitioner appointed by the Commission to assist it may appear before the Commission."

The North Coast Report said:

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

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

This problem would be overcome if,

- (a) s.32 of the Act were amended to give the Commission power to grant the right of appearance to such persons as the Commission is satisfied have a sufficient interest in any subject-matter of the hearing, and
- (b) s.74(b) were amended, so that it only applies to persons in respect of whom substantial allegations have been made." (pp 619-620)

The second recommendation followed upon an analysis of the High Court judgment in *Balog & Stait v ICAC*. This analysis is set out at Appendix 3. Discussion of the judgment is also contained in Chapter 3.

The Report said:

"What has led to the uncertainty, and the different decisions reached by different courts, is the fact that the Commission's reporting powers are not clearly stated anywhere in the Act. Several provisions scattered through the Act are referred to whenever the matter is argued.

It should not be difficult to draft a single section which spells out in separate lists: -

- (a) what, if anything, the Commission is required to include in a Report;

- (b) what, if anything, the Commission is precluded from including in a Report;
- (c) if required, what matters the Commission may in its discretion include in a Report.

The third category should probably not be a list, but simply, "any other matter".

Part of the difficulty stems from the fact that different people have different philosophical attitudes to a body such as the Commission.

Some regard it as somewhat akin to a Royal Commission. Their view is that fact-finding and disclosure are its prime tasks. They favour wide reporting powers. Any criminal proceedings that follow are seen as a separate matter. If there is a conflict between what may be reported and the requirements of a fair trial, they give priority to the former, and are prepared to forego criminal proceedings if that is a necessary consequence.

Others regard it as primarily an investigative body, the purpose of which is to pave the way for criminal proceedings. They have uppermost in their minds the requirement of a fair trial, and would restrict both fact-finding and reporting powers accordingly.

There are of course various positions that can be taken between the two extremes.

The matter is a policy one to be determined by Parliament. Its resolution ought not to depend upon the legal interpretation of words which are not clear, and which may be given a meaning quite different from Parliament's intention." (pp 668-669)

Legislative change is the preserve of Parliament. However, there is every reason for the Commission to express its views prior to resolution of the matter. At the time of writing, the Commission was preparing a submission to Government regarding its reporting powers. Later in this chapter there is further mention of what the Commission has in mind.

### **Other Proposed Changes**

Last year's Annual Report and a number of investigation reports issued during or shortly after the end of the reporting year recommended amendment of laws (other than the Independent Commission Against Corruption Act 1988)

and revision of administrative practices. What follows brings the position up to date at the time of writing.

### *Access to Information*

The Annual Report to 30 June 1989 recommended that Commonwealth law be amended to permit the Commission to receive, at the discretion of the relevant Commonwealth authorities, tax information and cash transactions reports information to assist it in its investigations. These changes have not occurred. This state of affairs puts the Commission in a worse position than traditional law enforcement agencies such as the Police Forces throughout Australia. Given the small size and tight security of the Commission, and the great use to which such information could be put, that seems anomalous.

The Commission understands that the Premier has raised the matter with the Prime Minister on a number of occasions. Early resolution of the matter is sought.

### *Tendering*

The Report on the Investigation into the Silverwater Filling Operation (February 1990) recommended that all tendering rules throughout the public sector be amended to render them consistent with certain precepts which were stated as follows:

- "1) Public property must be utilised so as to maximise public benefit.

This applies to whatever is owned or controlled by Government and its instrumentalities, that is to say not just monies and goods, but also interest of all sorts in public land, and intellectual property of all types. The duty to ensure that maximum benefit is derived rests upon public officials within their respective spheres of activity.

- 2) All should have equal opportunities relative to public property.

This statement needs to be qualified. It assumes that there are no existing rights with respect to such property, which is therefore free to be dealt with. It also assumes that those who might want to enjoy opportunities have appropriate capacities. The fact many will not can justify an approach other than a traditional calling of tenders, for example, seeking expressions of interest, limiting the class that can

tender, and so on. In special cases it will justify a deal being done direct. One such will be where a concept put forward to a Government department or agency is unique. As the present case demonstrates, such an argument is easily put forward, and should not be accepted save after careful consideration.

- (3) Accordingly tenders should be called whenever large benefits will pass to or costs be incurred by either the State, or a party contracting with the State, in relation to public property.

This is a general rule. The emphasis must be upon the true nature of the deal proposed to be done, not its external manifestations. If the proposal is large, then others may be interested, and should be seen as entitled to put in a bid.

- (4) If that general rule is departed from, the reasons for so doing should be recorded.

This will enable the responsible Minister to give an account of what transpired should the necessity arise." (pp 26-27)

As noted in Chapter 4, this recommendation has led to considerable work by the Corruption Prevention Department of the Commission.

### *Relationship between Minister and Officials*

The report also dealt with what should be the relationship between a Minister and senior public officials:

"Within the public sector Ministers of the Crown have very great power, and are held in awe by most public servants. As to the power, the situation can hardly be otherwise. They are elected representatives, appointed to administer portfolios, and answerable in the Parliament for any failures. It is in all respects consistent with principle that Ministerial decisions as to matters within their proper purview, if not inconsistent with any Cabinet decision and not illegal, must prevail.

However Ministers cannot, and should not seek to, do everything themselves. Their proper role has to do with policy, strategy, resource allocation, and the sorting out of major problems. They should leave management of Departments and agencies within their portfolio to the properly appointed and tasked senior executives, and all matters of administration to appropriate functionaries. They should not involve themselves in matters of

small moment, or do favours. They are not running personal fiefdoms, and must not act as whimsical dictators.

A difficulty which can arise is that the Minister's wishes, actual or perceived, are translated into commands requiring instant obedience. Anybody who has held high office knows this can easily happen. Subordinate staff can take a mere intimation as conveying a decision, and then pursue the matter with a vigour which is excessive. Those who hold positions of power must be careful to deny operation to the old adage: "Your slightest wish is my command".

An appropriate balance will best be achieved if the Minister restricts his or her area of active involvement to matters of difficulty or controversy, and seeks and considers carefully the views of senior officers with respect to such matters.

The public interest requires that the best decisions be taken for the community generally, and few people are so knowledgeable and wise as to be able to always make the best decisions without consultation. Indeed it will frequently be necessary to obtain a range of views. A prime responsibility of senior public servants is to help Ministers make the best strategic and policy decisions.

That cannot happen unless the advice given by them is frank and fearless. And it should be pressed if necessary, unless and until the Minister has reached a decision, or said that he or she will hear no more. If the senior public servant considers that a Minister is embarking upon a course which is mistaken and contrary to the public interest, then he or she should always consider the option of putting considered views to the Minister formally and in writing. This step should not be undertaken lightly or too often, because excessive frequency may lead to a Ministerial perception of obstructiveness. But public servants are there to serve the public, not to please their Minister. Accordingly they must be prepared to press their views if the public's interest as they perceive it so requires.

No public servant should be heard to say that something was done because it is what the Minister wanted, and that is that."  
(pp 15-16)

This view did not go unnoticed by members of Parliament. The matter was raised by the Hon Michael Egan MLC in the Legislative Council on 27 March 1990 and also in correspondence by him with the Commissioner. Members of the Parliamentary Joint Committee questioned the Commissioner about it when he appeared before the Committee on 30 March 1990. Essentially what was being pursued in those discussions was the role of a Member of

Parliament, Minister or not, in handling representations. This emerged as an important matter in the Commission's Report on Investigation into North Coast Land Development.

That report included recommendations regarding change in law and administrative practices. Some matters are highlighted here. For a proper appreciation of what was said, reference should be made to the report itself.

A comprehensive review of the law of bribery of the State led to the recommendation in the North Coast Report that "the law relating to bribery and official corruption (should) be standardised, particularly with regard to the way in which the offence is defined, and with regard to the range of penalties. Attention should be paid to the question of the "third party bribe". (p 667). Similarly, discussion of the law of false pretences led to the conclusion the law required standardisation in a number of respects.

### *Election Funding*

A thorough review of the provisions of the Election Funding Act 1981 concerning disclosure of political contributions resulted in the recommendation that it should be amended with a view to removing the loopholes and strengthening its enforcement provisions. Mr Roden commented:

"Here is a law that is meant to govern the lawmakers. It is either being broken and not enforced, or avoided and not tightened. That provides little incentive to others to obey the law that governs them, and provides a poor example in the campaign against corruption." (p 531).

The detailed examination of facts and circumstances involving dealings with Government led to the observation that there is at present no law in New South Wales governing lobbying or lobbyists. Mr Roden recommended that consideration be given to regulating the activity, whether by legislation or self-regulation (p 669). He indicated that changes should be made regarding the disposal of Crown land to lessen the opportunities for corruption.

### *Standards of Conduct*

Finally, and most importantly, the North Coast Report dealt with matters touching standards of conduct and levels of integrity. Assistant Commissioner Roden observed:

"It is for the community to decide what level of integrity it requires of its public officials, and in particular the extent to which, if at all, it will allow access to decision-makers, and influence upon them, to depend upon considerations such as friendship or payment". (Preface, p xxv).

To facilitate debate on that matter, Mr Roden suggested three rules.

"Community attitudes allow public officials to accept from people with whom they deal "small tokens of appreciation", and to enjoy limited social contact with them. Subject only to that, three simple general rules, if observed by all public officials in their dealings with members of the public, would go a long way towards preserving the integrity of our public institutions.

1. No public official should accept a payment or benefit from any person with whom he deals in his official capacity, even if no favour is sought or suggested. If he becomes aware of any payment or benefit from such source, over which he has no control, it must be made known publicly, and a serious question will arise as to whether he can continue to deal with the donor.
2. No public official should display favour or bias towards or against any person in the course of her official duty, even if there is no payment or return favour. Equality of opportunity, including equality of access, should be the norm.
3. The appearance of impartiality should be respected and maintained, as well as impartiality in fact. Lavish entertainment by any person with whom a public official deals in the course of her duty, ought not to occur.

Adherence to such rules would not only protect our public institutions but would do much to maintain public confidence in them, and public respect for them." (pp 656-7).

## **New Recommendations**

During the year the Commission continued to monitor the operation of the Act. Many matters arose which raised the question of legislative change, some more serious than others. The serious matters should be drawn to attention. However, a commonsense approach should prevail. Not every difficulty or inconvenience caused by the statute necessarily justifies its amendment.

What follows is a statement of the principal concerns of the Commission.

## ***Reporting Powers***

Chapter 3 outlined the litigation which has put the reporting powers of the Commission in issue. This report has already stated the Commission's view that legislative change is necessary to ensure that the Commission can make reports which are as useful as is practicable. The Commission, in reporting upon the results of an investigation, should be able to draw conclusions and state opinions other than that a person is guilty of a criminal offence or a disciplinary offence. Specifically it should be able to express a view as to factors which support or militate against the prosecution of a person, a finding under s.74(5) or (6) having been made.

### ***Section 18***

Section 18(1) provides that the Commission's investigative and reporting powers are not to be restricted by legal proceedings. However, under subsection (2), during the currency of any such proceedings, any related Commission hearings are, as far as practicable, to be conducted in private, and similarly suppression orders are to be made under s.112. During the currency of the proceedings, the making of any report to Parliament in relation to the investigation must be deferred.

The principal concern of s.18(2) should be to prevent Commission action prejudicing a fair trial. In other words, the primary object of s.18 should be to ensure Commission action does not prejudice a jury - the fact finding tribunal - in any indictable criminal matter. However, s.18 presently is not limited to criminal proceedings, let alone a class of criminal proceedings. Therein lies the difficulty for the Commission. This difficulty had arisen in relation to the Waverley investigation at the time of writing - see Chapter 3 regarding litigation commenced by Balog & Stait and/or their companies.

Section 18 should be amended to reduce the scope of s.18(2), bearing in mind the points made above.

### ***Hearings - Public/Private***

Section 31 provides that Commission hearings shall be held in public unless the Commission directs that they be held in private because "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".

It has not often been considered appropriate to direct the holding of private hearings except for limited purposes in relation to a hearing that will be, or is otherwise, held in public. The public interest is usually best served by openly receiving evidence. The figures set out in Chapter 2 support this proposition.

The Premier has said that the Government will review the procedures of the Commission. This has been taken to include hearing procedure. In light of this development, the Commission considers that it would be untimely to make recommendations in this report regarding the matter. A couple of points, however, should be made.

The Commission would oppose any proposal that public hearings cease to be the norm. For the Commission to maintain credibility with the public, this aspect of its investigative work must not be forced behind closed doors.

This is not to say that some legislative change should not occur. For example, the Commission is increasingly requiring final submissions regarding evidence to be made in writing. Section 17(2) authorises this course. However, if the legislation made this position even clearer, the Commission would have no difficulty with that. Similarly, if the legislation gave the Commission greater scope to receive submissions in private, even where the evidence had been received in public, that would be no bad thing. After all, it is submissions which involve widely variable assessments of the evidence, as perceived by each person on whose behalf a submission is made, and which often concern attacks, legitimate or otherwise, upon the reputation and credibility of witnesses and other persons. Media reporting of such submissions may unfairly damage those persons when the submissions are treated as statements of fact rather than merely as counsels' opinions and arguments that seek to cast a particular light on the evidence.

### *Protection of Complainants and Others*

Since presentation of last year's Annual Report, the Commission has given further consideration to legislative protection for complainants and others. Its review was assisted by the Report of the Queensland Parliamentary Committee for Electoral and Administrative Review (EARC) on Whistleblower's Protection - Interim Measures (June 1990).

At the moment, the offence provisions of the Act are mainly concerned with penalising individuals who interfere with a person who is or is about to be

required to perform some duty in relation to the Commission. The issue is whether those who assist the Commission voluntarily should be protected, and if so, whether this should occur irrespective of their intention or motive.

The relevant sections of the Act are as follows.

Sections 27 and 28 provide that the Commission can apply to the Supreme Court for an injunction restraining conduct that is likely to impede an investigation or proposed investigation or to prevent irreparable harm being done because of corrupt conduct.

Section 50 empowers the Commission to make arrangements to protect persons appearing before it, producing material or assisting it in any other way, where their or another's safety is prejudiced or they are subject to intimidation or harassment.

Section 92 creates an offence where a person wilfully prevents or endeavours to prevent a summonsed witness from attending the Commission or a person from complying with a requirement under ss.21 or 22.

Section 93 provides that a person who causes any violence, punishment, damage, loss or disadvantage to any person on account of that person having appeared as a witness, given evidence to the Commission or complied with a ss.21 or 22 notice is guilty of an indictable offence.

Section 94 states that an employer who dismisses or prejudices an employee on account of the employee appearing as a witness, giving evidence or complying with a ss.21 or 22 notice is guilty of an indictable offence.

Section 109(5) and (6) provides that no criminal or civil liability attaches to persons, acting in good faith, who comply with a requirement under the Act, including providing material pursuant to ss.21 and 22. Section 109(4) grants witnesses and those producing documents the same protection as witnesses in the Supreme Court.

Section 17K(1) of the Defamation Act 1974 provides that a publication to the Commission is absolutely privileged. Section 17(2) says the section applies in relation to any hearing before the Commission or any other matter relating to the powers, authorities, duties or functions of the Commission.

A number of arguments can be advanced in favour of legislative protection for those who voluntarily provide information to the Commission on corrupt activities. "Whistleblowing" can be seen as contributing to more effective law enforcement by triggering the early detection of corrupt conduct and accordingly should be encouraged. In addition, corrupt activity thrives on secrecy and the improbability of detection and therefore a climate of openness is required in order to counteract that activity.

Further, the protection of those who reveal apparent corrupt conduct can strengthen confidence and morale in an organisation, and telling the truth should be neither difficult nor costly. Employment in an organisation should not require that a person accepts complicity in all activities which the employer has decided to pursue or conceal.

Forms of retaliation that a whistleblower may suffer include disciplinary action such as reprimand, transfer, demotion or even dismissal. Conduct such as subtle abuse in the workplace by management and other employees including scrutiny of timesheets and other work records, onerous orders, referral for psychiatric assessment or treatment and reported threats of demotion or dismissal for some unrelated misdemeanour may also occur. Such conduct should not be without an effective remedy.

It is contended that there are good grounds to provide additional protection to persons who voluntarily assist the Commission. However, those who report allegations of corruption are not always motivated by the public interest. They can be ill informed, or actuated by malevolence or self interest. Other legislatures have tackled this issue by restricting protection to those who act in "good faith" or "have a reasonable belief" in the accuracy of their complaint.

With these factors in mind, consideration should be given to the following amendments. Sections 93 and 94 should be extended to protect persons who have complained to the Commission in good faith. As well these sections should be amended to protect persons who have been summonsed to appear or who have been served with a notice under ss.21 or 22 before the time for compliance.

The Act is inconsistent in its description of the forms of victimisation which are proscribed. Section 93 prohibits the imposition of violence, punishment, loss, damage or disadvantage but does not encompass harassment, intimidation, prejudice or detriment. Section 50 incorporates harassment and intimidation but is silent as to prejudice or damage. These matters warrant review.

Section 109(5) does not extend to liability for disciplinary offences; it is confined to criminal and civil liability. A public official who provides information to the Commission could thereby breach a duty to maintain confidentiality which may constitute a disciplinary offence. The section should be amended to overcome this difficulty. As well, in line with the earlier discussion regarding good faith, the protection of s.109(5) and (6) should be extended to persons, acting in good faith, who make complaints or assist the Commission.

### ***Referral of Matters by the Commission***

Chapter 2 examined a number of practical problems associated with Part 5 of the Act which empowers the Commission to refer a matter to another body ("relevant authority") for investigation or other action.

The Commission is less than happy with the operation of Part 5. Two practical difficulties have emerged:

- It does not seem to have been drafted bearing sufficiently in mind that the source of authority for the relevant body to carry out the action is in its own authorising legislation. This is an important consideration in relation to, for example, the Ombudsman and the Judicial Commission operating under their own specific statutory charters. The matter was adverted to by the Ombudsman in his 1989 Annual Report.
- The Commission is not able to direct what action should be taken by the relevant authority; all it can do is recommend what action should be taken.

The Commission is not recommending at this stage amendment of Part 5 but rather drawing to attention difficulties with its operation. The Commission, in relation to its investigative function, on an informal basis, makes numerous requests of public authorities for information and the conduct of inquiries. If this practice were not available or if public authorities refused to cooperate, the need to ensure Part 5 operated well from the Commission's point of view would be greater.

## *Advice*

During the year, the Commission provided advice to the Government in relation to a number of matters where change in the law was under examination. Set out below are the principal matters.

The Attorney General has the responsibility to carry through the Government's initiative to modernise the laws relating to official corruption. He took the view that it would be best to split the project into two - to deal first with offences relating to administration of justice and subsequently, with offences relating to officials generally.

The Commission was given the opportunity to examine the Crimes (Public Justice) Amendment Bill 1990 before it was presented to Parliament. Suggestions were made but few were taken up. For example, it remains unclear whether the proposed offences can have application to the operations of the Commission. At 30 June 1990 the Bill had not passed both Houses of Parliament.

The Commission understands that its views will be sought in relation to the Government's proposals for reform of general corruption offences. The Commission has undertaken considerable research in anticipation of this step. As well, it has a lot to offer from practical experience.

The Commission provided the Premier's Department with advice in relation to possible change in the law requiring the disclosure of pecuniary and other interests by members of Parliament.

A senior officer of the Commission represented the Commission on a working party established by the Attorney General to report on whether State law should be amended to prevent publicly funded superannuation benefits being available to "corrupt" public officials or persons under investigation.

The working party consisted of representatives from the Attorney General's Department, the Cabinet Office, the Office of Public Management, the Superannuation Office, the Police Department and the Commission. It met extensively during the latter part of 1989. It finalised its report in early 1990. At the end of the reporting year, proposals were still under consideration by the Attorney General's Department.

The work of the Committee should be seen against the backdrop of changes in law in other Australian jurisdictions. The Commonwealth and Queensland Parliaments introduced in recent years statutory schemes withdrawing public funded superannuation benefits from public officials found guilty of corruption offences.

The Premier administers an ex gratia scheme whereby the legal costs of Ministers and other public officials may be met in legal proceedings commenced against them or in appearances before the Independent Commission Against Corruption, Royal Commissions, Special Commissions of Inquiry, the Ombudsman and other ad hoc bodies.

Resort has been had to this scheme in relation to representation of persons before the Commission. This has occurred more often than (successful) application to the Attorney General for financial assistance under s.52 of the Act.

The Premier's administration sought the Commission's advice in a review of the conditions under which the scheme might continue to operate. This review was still in progress at the end of the reporting year.

The Premier sought the Commission's views regarding a proposed amendment to the Public Sector Management Act requiring officers to declare financial interests. Advice was provided from a corruption prevention viewpoint.

## Chapter 7

### ADMINISTRATION

#### **Organisational Framework**

The independence of the Commission is reflected in its extensive authority to determine its own organisational shape.

The Act provides for statutory offices of Commissioner and Assistant Commissioner. In addition, it permits the Commission to employ a Director of Operations and Director of Administration and such other staff as may be necessary to enable the Commission to exercise its functions: s.104.

The Commission is empowered to fix the salaries, wages, allowances and conditions of employment of staff in so far as they are not fixed by another law. However the concurrence of the Premier to such arrangements is required: s.104(3).

Directly employed staff are not subject to the Public Sector Management Act, 1988. The Commission is authorised to make arrangements for the secondment of staff and the employment of consultants.

The costs of salaries and consultancy fees are met out of the Commission's recurrent budget. As an adjunct to the Commission's budget, the Treasury has stipulated a maximum staff number of 120 in 1989/90 and 140 in 1990/91.

These are the basic legal and administrative constraints governing the shape of the organisation.

The Commissioner acts as the chief executive officer of the Commission. He personally sets the strategic direction of the Commission in all its work. Decisions, involving the incurring of significant expenditure, are made by him. Members of senior management report directly to the Commissioner.

The senior management group assumes responsibility for the efficiency and effectiveness of work in various areas. During the year under review, this group was expanded by the appointment of a Director of Corruption Prevention and a second General Counsel. Members of senior management are appointed on term contracts. They are not members of the Senior

Executive Service. The identity and roles of members of senior management are set out in Chapter 1. Four members are responsible for management of departments within the Commission. These departments are the Operations Department, Legal and Secretariat, Corruption Prevention Department and Administration and Public Affairs.

Before turning to a description of the functions and staff of these departments, it is important to note the desire of the Commission to prevent the emergence of too many layers in the organisation and too many separate job classifications; to maximise the performance of different disciplines in the organisation and to use consultants on a project basis, where employment of staff on a permanent basis would be inefficient.

Directly employed staff, other than members of senior management, are employed on contract for an unspecified period. It is Commission practice, however, to specify a six month probation period and to review the continuation of each person's employment every 12 months. This practice also applies to officers on secondment.

An organisational chart is at Appendix 1.

## **Operations Department**

This department, which is responsible to the Director of Operations, consists of investigative staff, the analytical group and the technical and security group.

There are three levels of investigators - chief, senior and investigator. Investigators are either direct employees or seconded NSW Police.

Investigators inquire into allegations of corrupt conduct, assist in the taking of statements of persons required to appear before hearings, undertake field duties, and prepare reports relating to investigations. When they are involved with formal investigations, they are members of investigative teams.

Investigators also undertake preliminary inquiries involving, for example, the interviewing of persons and preparation of reports and correspondence.

The analytical staff come under the direction and control of a Chief Analyst. Their expertise includes both financial and criminal analysis. They are mostly involved with formal investigations. They may, however, assist with

preliminary inquiries, by, for example, examining financial data or assessing a whole range of information to discern patterns of conduct or other relationships. Analysts are assigned work on a project basis.

The technical and security group provides technical support in the field and at the office. This group also provides advice regarding protective security and liaises with other agencies in that regard.

## **Legal and Secretariat**

This department, which is responsible to the Commission Secretary and Solicitor, consists of the legal group and the assessment section.

The legal group is composed of lawyers at three levels - principal, senior and lawyer.

Lawyers perform the following functions:

- Act as a team member in formal investigations. This may involve interviewing witnesses, preparing statutory notices, preparing search warrants, instructing counsel in Commission hearings and advising the team about the legal aspects of the investigation;
- Represent the Commission in litigation;
- Assess matters for investigation;
- Provide legal and policy advice;
- Participate in management initiatives.

The assessment section is managed by a senior lawyer and is staffed by assessment officers. Their role is to obtain information from members of the public and to assess it to enable a proper and principled decision to be made as to whether and in what respects a formal investigation of the matter is called for or how otherwise the matter should be dealt with by the Commission.

Staff from both these sections assist the Commission Secretary with liaison and secretarial work. This is particularly the case so far as relations with the

Parliamentary Joint Committee and the Operations Review Committee are concerned.

### **Corruption Prevention Department**

This Department, which is responsible to the Director of Corruption Prevention, has three levels of officer - principal, senior and corruption prevention officer. Staff appointed to the Department come with a variety of professional backgrounds, mostly generalist in nature, although each officer has some special area of expertise. All have expertise in policy review, development and implementation.

The primary function of the Department is to formulate policy and strategy in the corruption prevention area, to educate public sector agencies and to assist them in developing and implementing their own corruption prevention strategies. Staff also review laws, practices and procedures of public sector authorities and public officials in order to reduce opportunities of corruption.

### **Administration and Public Affairs Department**

This department, which is responsible to the Director of Administration and Public Affairs, provides the support to allow the Commission to undertake its work.

Administration has staff engaged in finance and general services (including administrative support and records management), personnel training, library and ADP. This chapter includes further information regarding these functions.

The other main function is public education. During the year, no staff were dedicated to performing this function. A small but active media unit facilitated dissemination of information concerning the Commission. In the coming year, it is planned to recruit a number of public education officers to carry out the function in a systematic way. Further mention is made of public education in Chapter 5.

### **Staffing**

Since 30 June 1989 the Commission's staff has increased from 61 to 117.

Details are as follows:

	1989	1990
Executive	6	8
Operations	16	29
Legal & Secretariat	9	14
Corruption Prevention	0	3
Administration - Support	30	63
<b>TOTAL</b>	<b>61</b>	<b>117</b>

(Note: Administration includes secretarial and administrative support staff assigned to other sections of the Commission.)

Additional staff were recruited to allow the Commission to increase its workload and output. It is anticipated that by the end of 1990/91 the Commission's actual staff number will equal its maximum authorised number.

The Commission appoints staff on merit. It observes equal opportunity principles in recruitment.

In the year under review, the Commission undertook some 20 recruitment campaigns which covered positions in all areas of the Commission. The following were major campaigns:

- Director of Corruption Prevention;
- Principal and Senior Corruption Prevention Officers;
- Principal and Senior Lawyers;
- Analysts;
- ADP Personnel;
- Librarian;
- Assessment Officers;
- Executive Secretaries;
- Wordprocessor Operators;
- Support Officers.

The overall response to the positions advertised was good. A common thread running through applications was that applicants believed in the work of the Commission and had a strong desire to do work that makes a difference.

Staff turnover was at an acceptable level except in relation to investigators who were seconded New South Wales Police. More than half these officers returned to the parent body on transfer or promotion after less than 16 months' service. The Commission had anticipated that the period of secondment of New South Wales Police would be considerably longer, up to three years.

There were a number of reasons why Police requested to return to the Police Service. Some were concerned about "missed opportunities" in a service which is still going through considerable change; some did not take to the work of the Commission including investigations into Police; some found it difficult to accept working alongside direct contract investigators whose terms and conditions of employment were different. The Commission is addressing these issues in a number of ways, involving discussions with the New South Wales Police Service. It has also held discussions with the Australian Federal Police for the purpose of making arrangements for the engagement of Australian Federal Police officers.

## **Committees**

A number of committees operate within the Commission. Each has a clearly defined membership and function.

Committees are established only after other options have been ruled out. Once a committee has served its purpose, it is disbanded.

The following committees were in existence at 30 June 1990.

### ***The Senior Management Committee***

This committee consists of the Commissioner, the Assistant Commissioner (Mr Roden), General Counsel (Mr Zervos), Director of Operations, the Commission Secretary, the Director of Administration and Public Affairs and the Director of Corruption Prevention. The Committee assists the Commissioner in the overall management of the Commission. It identifies and considers key issues, and priorities. It meets weekly.

### ***The Investigations Committee***

This committee consists of members of senior management, excluding Commissioners but including both General Counsel. It generally meets

fortnightly. The Committee is responsible for monitoring and reviewing the progress of investigations, setting operational priorities, and allocating appropriate resources between investigations. It also maintains a watching brief over preliminary inquiries.

### ***The Witness Protection Management Committee***

The committee consists of the Director of Operations, a General Counsel, the Director of Administration and Public Affairs and the Coordinator, Technical and Security Group. It was constituted late in the year to consider applications for protection brought to the Commission.

### ***The Security Management Committee***

This committee comprises the Director of Operations, the Director of Administration and Public Affairs and the Commission's Security Officer. It has been established to oversight the management of the Commission's protective security program.

### ***The ADP Working Party***

This committee is responsible for the overall direction and management of the ADP function. It oversights the development of the Commission's Information Technology Plan and the tender process relating to the Commission's acquisition of computer equipment. More details are provided later in this chapter.

### ***The Information Services Working Party***

Membership includes the major information users within the Commission. Its function is to consider the overall information needs of the Commission and implement strategies to meet them.

### ***The Occupational Health and Safety Consultative Committee***

This committee consists of representatives of the major staff groupings within the Commission. It considers all health and safety issues affecting the Commission. Its work has included the preparation of a rehabilitation policy.

### ***Middle Management Meetings***

Meetings are held every six weeks and chaired by the Commissioner. All staff at middle management level attend, as does the Director of Administration and Public Affairs. Issues of general interest and importance to the Commission are raised and discussed.

### **Staff Development and Training**

With the rapid growth of staff throughout the year, it has been necessary to accord high priority to staff development and training.

A number of training programs were developed and presented.

The first of these was an intensive in-house computer awareness program which provided training in relation to various computer packages used within the Commission. This will be a continuing program ensuring all staff keep abreast of the changing computer environment within the Commission.

An Operations training program was designed to meet the needs of all operations staff. It is available in-house with assistance from an outside consultant. It is presented one day a week over an 11 week period. Participants are assessed on their performance.

An induction program was also devised. It provides new members of staff with an overview of the work of the Commission and advice regarding Commission policies and procedures. The standards of performance and policies behaviour required of officers are made clear. Sessions are conducted monthly.

In addition to the formal programs already mentioned, staff attended a variety of external training programs. These included courses relating to local government planning, financial analysis and reporting, ethics in management, stress management, asset tracing and money trails.

A management training program is currently being developed. This will assist and enhance the skills of the managers within the Commission. Topics such as time management, professional skills, assertiveness training, business administration and stress management will be dealt with.

Staff wishing to undertake external studies or training programs can be supported by financial assistance or study leave or both.

Staff development is part of the Commission's commitment to equal opportunity. If the Commission wishes to get the best from its members of staff, it must provide them with developmental opportunities. Training programs are reviewed from time to time in order to meet the needs of both the Commission and its staff.

## **Policies and Procedure**

A number of major policies were developed during the year. They were:

- code of conduct;
- performance appraisal;
- occupational health and safety; and
- flexitime.

The Code of Conduct is set out at Appendix 5.

Further policies including an ethnic affairs policy, records management policy, and study assistance policy will be issued progressively in the next reporting year.

A Practical Procedures Manual, which will form part of the Commission's induction package, is being developed. It will contain information relevant to the Commission and the way in which it works.

Mention is made in Chapter 2 of procedures and manuals developed in the Operations area.

## **Finance and Accounts**

The Commission is listed under Schedule 3 of the Public Finance and Audit Act 1983 as a body funded from the Consolidated Fund. Funds are appropriated by the Parliament to the Premier for allocation to the Commission. In this way, the Commission is subject to the normal budgetary

process, including preparation of estimates and compliance with productivity offsets.

The Commission has been adequately funded to date. While this position continues, there need be no concern as to a lack of guaranteed funding.

The Commission is required to prepare financial statements in accordance with the Annual Reports (Departments) Act 1985. Audited financial statements including notes are at Appendix 9. Additional financial information is set out in Appendix 10. A pictorial representation of dissection of expenditure is at Appendix 11.

Details regarding monthly spending for stores and equipment purchases are contained in Appendix 12. A computerised data based system including bar coding was developed for recording and tracking plant and equipment.

During the year the Commission processed accounts using the Premier's Department computer system and cheque drawing facilities. Steady progress is being made towards the Commission's aim of 1 October 1990 as the date on which it will assume control over those remaining accounting functions performed by the Premier's Department. The Commission extends its thanks to the Department for its assistance to date and until that change takes place.

The Commission engaged the Auditor-General's Office to provide it with an internal audit service. The Commissioner approved an initial audit program focusing on financial aspects for the 1989/90 financial year. Matters for examination are purchases/disbursements, payroll, asset control, receipts and debtors, cash at bank and on hand, general ledger and journals, and financial statements.

### **Information Technology**

In May 1989 the Commission established the ADP Working Party to oversee the formulation of an information technology strategic plan to guide the selection and acquisition of computing equipment and services.

The ADP Working Party is chaired by the Director of Administration and Public Affairs. Other members are an external consultant, an investigator, an analyst, a lawyer, a representative from the Technical and Security Group and three ADP personnel.

On completion of the plan in January 1990, the Commission embarked on a two-stage acquisition program with a view to implementing a suitably integrated, cost-effective and user-friendly solution. In the first stage, the computer industry was widely canvassed and invited to respond to a request for expressions of interest. The second stage involved the selection of those suppliers warranting further consideration.

A total of 36 responses was received in Stage 1 reflecting a high level of interest in meeting the Commission's requirements. Of these, 16 represented prime contractor bids, where the supplier indicated that it would accept responsibility for the implementation and support of all equipment necessary to meet the requirements. The remaining 20 responses were part bids relating to individual components of the requirements.

Stage 2 was initiated in May 1990 through the issue to the short-listed prime contractors of a request for tender document. The Commission is currently evaluating responses and expects a suitable solution to be forthcoming.

To meet short term needs, the Commission acquired additional equipment including IBM PC compatibles, laptops and printers to satisfy computing needs. These are deployed in stand-alone configurations and used mainly for word processing, spreadsheet and database applications using common industry software packages. Staff of the Commission are enthusiastic and committed to the use of technology to assist them with their work. The utilisation of PC equipment is high.

To cater for requirements which cannot be met by off-the-shelf software packages, the Commission has undertaken limited development of applications using database management software. Users are consulted and involved in the development of in-house programs.

### **Library and Information Services**

The Commission engaged a consultant to plan and commence library and information services. This work was taken over by the Commission's own librarian in January 1990. The library delivers both book and information services.

As to the former, the library includes a law collection which holds basic legal material and information relevant to the particular work of the Commission. Inter library loans are available through the Commission's library.

The library is also responsible for providing to operational staff information for use in investigations and inquiries. Records are held on microfiche or accessed externally, either on-line or manually. Commercial packages of a directory and bibliographic nature are available.

### **Accommodation**

At the end of the reporting year, the fitout of the Commission's premises had been completed. The Commission is now appropriately housed. Public hearings rooms on the ground floor opened on schedule. Staff have been provided with modern office accommodation. Only minor remedial works are outstanding. Some delays to the accommodation program were experienced. These were caused by bad weather and industrial disputes.

### **Overseas Travel**

During the year, two senior officers of the Commission visited the Hong Kong Independent Commission Against Corruption. While in Hong Kong, the officers conducted interviews with applicants for Commission positions which had been advertised overseas.

### **Consultancies, Contract Services, Major Acquisitions**

Part of the Commission's budget is expended on consultants, contract services and the purchase of major assets.

The provisions of the Public Sector Management (Stores and Services) Regulations 1988 do not apply to the Commission. Because of this, and in the interests of accountability, the Commission will report on the expenditure of consultancies, contract services and major acquisitions of more than \$30,000 in the reporting period. Expenditure on consultants of less than \$30,000 in each instance is listed in Appendix 13.

The Technical and Security Group of the Commission provides technical support to investigations. It does this in a number of ways using, amongst other things, technology. An acquisition programme was developed in order to adequately plan and implement the function.

Of a total acquisition programme in the order of \$330,000, \$52,621 was expended on one cluster of equipment. This equipment is supplied by only one company in Australia. Further details cannot be given for security reasons.

The Commission requires high levels of physical security. As part of this process the Commission has contracted the Police Service to provide it with a security service. This service cost \$320,192 for the year in question.

The Commission aims to recruit only the highest quality staff. This is not easy to achieve and especially difficult in the computing area. For this reason a number of companies were engaged to assist the Commission with its work.

DPXCEL Pty Ltd provided the Commission with the technical expertise necessary to develop its Information Technology Plan and embark on a tender process for the acquisition of its long-term computing solution.

This totalled \$82,227 for the year in question.

P S ORR & Associates provided the Commission with contract computing services to assist with the day-to-day computing needs of the Commission. This totalled \$35,553 for the year.

Each of these contracts was extended a number of times to enable the Commission to recruit the right staff.

This aim was achieved to a significant extent during the year. The only position still vacant is that of Manager, Information Services. Expenditure in the computer area is expected to decrease dramatically in the coming twelve months.

The Commission took the view that it was more efficient and economical to lease vehicles rather than buy them. This service is provided to the Commission by the Transport Services Group of the Commonwealth Department of Administrative Services. The sum of \$134,000 was expended in the reporting year. Of this, approximately \$20,000 was spent on providing an after hours bus service for Commission staff. The service runs for two hours per night and ensures the safety of Commission staff. Experience during the year supports the view that this overall approach is administratively efficient and effective.

Transcripts of hearings conducted by the Commission are made available to anyone who requests them. A charge of \$1 per page to a maximum of \$50 per day is charged. During the year the Commission received \$85,000 in this regard.

An additional \$27,000 is still outstanding. Spark and Cannon were engaged to provide the Commission with a transcript service, at a cost of \$322,000 during the year. Transcript charges are to be reviewed in the coming year.

Approximately \$50,000 was expended on the lease of technical equipment necessary for the production of transcript. This equipment was provided by Word Express. Part of this expenditure involved the supply of word processing equipment in support of the hearings conducted in Murwillumbah in relation to the North Coast investigation.

## **Performance Evaluation**

The Commission's current approach to evaluation is that monitoring and evaluation be built into the design and implementation of programs and activities.

The Commission is a relatively small organisation. Its work is subject to scrutiny by the Parliamentary Joint Committee and the Operations Review Committee, which are mentioned in the next chapter. Its role is very much in the public spotlight and constantly commented upon. This is the general environment in which the Commission operates.

So far as evaluation of resources are concerned, mention was made earlier of the scheme of personal performance evaluation. Use of financial resources is monitored on a monthly basis and subject to examination by both internal and external auditors. The Commission monitors the extent to which its recommendations made in reports on investigations and otherwise are adopted and carried through.

The Commission, as Chapter 5 outlined, has from the commencement of operations and on a regular basis since, polled public attitudes to corruption and the work of the Commission.

In short, the Commission places a high priority in all its work on the setting of aims and objectives, action plans and timely implementation. The Commission is committed to product and outcomes, and the use of appropriate procedures to achieve results.

## **Chapter 8**

### **ACCOUNTABILITY**

As has been said near the beginning of the first chapter of this report, the Commission is an independent but accountable body. An aspect of accountability, of great importance, is this report. It is furnished to the Presiding Officers of the two Houses of Parliament and it is designed to be informative and readable. In this concluding chapter other aspects of accountability are taken up: that seems a good note on which to close.

#### **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 for unauthorised purposes. 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 (Chairman), Ms S. Nori MP, Mr A.A. Tink MP, Mr J.H. Turner MP, Mr P.F.P. Whelan MP.

Last year's report spoke of informal discussions between the Commissioner and the Committee and of the Committee's request for preparation of an issues paper concerning televising of Commission hearings. The year under review saw the Committee, with a small staff consisting of the Secretary to the Committee, a Project Officer and a Stenographer, become quite active.

On 17 October 1989 the Commissioner met with the Committee in a closed session to answer questions regarding last year's Annual Report and other matters of concern to the Committee. Advance notice of questions to be asked enabled the Commissioner to provide considered and detailed responses.

At that meeting Mr Kerr advised the Commissioner that the Committee would undertake an inquiry into the televising of hearings of the Commission. The Committee also requested the Commissioner to prepare and submit a report relating to witness rights and protection.

So far as televising of Commission hearings is concerned, the Commission, as previously stated, had submitted an issues paper to the Committee on 20 June 1989. Following the Committee's formal decision to conduct an inquiry and the calling and receipt of public submissions, the Committee held hearings on 26 and 30 March 1990. The Commissioner appeared as a witness on the latter date.

On that occasion the Commissioner said that the choice (as to whether hearings should be televised) may be seen to lie between a negative answer or an affirmative answer on a basis which is restricted or qualified and perhaps to be trialed. He continued:

"All I want to say about the possibility of a trial period is that it should be of decent duration. It might be thought it should be 18 months or a couple of years. If the trial was of short duration or limited to a particular hearing it would be too easy for proponents and opponents to manipulate the situation.

If the answer to the question posed at the outset is to be affirmative, then I would urge that there be a general rule permitting televising on a known basis with the Presiding Officer having the discretion to prohibit the use of video tape either generally or in relation to particular witnesses or parts of the hearing."

On 10 July 1990 the Committee presented a report (dated June 1990) upon its inquiries. The report recommended that:

- ICAC hearings not be televised;
- in view of the recent report of a working party of the Public Affairs Committee and the General Council of the (British) Bar entitled "Televising the Courts", and also in view of the united and responsible manner in which the television networks have approached this inquiry, that the Attorney General appoint a working party to report on means of improving electronic media coverage of court proceedings in New South Wales. This working party should be chaired by an appointee of the Attorney General and include representatives of the New South Wales Bar Association, the Law Society of New South Wales and the electronic media.

The Committee, in making these recommendations, was concerned that if televising of Commission hearings occurred, this would put pressure on courts

and other commissions to follow suit. It was also concerned that televising of hearings could have a significant prejudicial effect on criminal proceedings which may result from investigations and public hearings of the Commission.

At the time of writing, the Commission has the report of the Committee under consideration. It is also examining an advising of the Crown Solicitor, which the Committee made available, that threw doubt on the authority of the Commission to permit televising of hearings for the purpose of publication by the media. It is not proposed, at least during the now current reporting year, to take any steps inconsistent with the Committee's considered view, for which the Commissioner is grateful.

The report on the Rights and Protection of Witnesses before the Commission was requested officially by the Chairman of the Committee on 31 October 1989. It was provided to the Committee on 22 December 1989. Following discussions between the Commissioner and the Chairman of the Committee, agreement was reached that the report be made public. This was achieved by Mr Kerr tabling the document in the Legislative Assembly on 1 March 1990.

The report is a comprehensive document which explains in concise terms the operation of the provisions in the Act which can affect witnesses. It deals with the coercive powers of the Commission, offences, contempt and witness protection. It also described Commission practice regarding the interview of persons who may become witnesses before the Commission.

The issues raised in the report were pursued by members of the Committee with the Commissioner when he appeared before the Committee in public hearing on 30 March 1990. A transcript of that hearing was prepared by Hansard. However, the Committee chose to collate the evidence by the Commissioner (except that relating to televising of Commission hearings) to make it more accessible. This document was tabled by Mr Kerr in the Legislative Assembly on 10 May 1990 and ordered to be printed.

Following these publications by the Committee, it received various comments and raised additional matters with the Commission by letter dated 12 June 1990. The Commission provided a substantive response in early July 1990.

### *Advice*

On a number of occasions, the Chairman, pursuant to resolution of the Committee, wrote requesting advice of the Commissioner.

One matter had the Committee reacting to press reports of the conduct of hearings by Assistant Commissioner Roden. The suggestion was that Mr Roden had not maintained the decorum befitting the seriousness of proceedings. The Commissioner, and through him Assistant Commissioner Roden, responded to the Committee. This course of dealings would not be reported here but for the fact it received some media attention (The Sun Herald, 18 February 1990). The Commission had hoped a matter so trivial and lacking in real substance would have been kept between it and the Committee.

Other matters on which the Committee sought and received advice included:

- background information relating to amendments to the Act recommended in the Commission's first Annual Report;
- attendance of Committee members at hearings of the Commission;
- delegation of powers by the Commissioner to Assistant Commissioner Roden;
- information relating to a briefing the Commission conducted for the media; (This briefing was principally concerned with the nature and purpose of hearings of the Commission.)
- protests by three persons (Ms T Lynch, Mr F Hakim and Dr J Trau) about the Commission's handling of matters concerning them. Mr Hakim's complaint related to the conduct of the investigation, presided over by the Commissioner, into the circumstances surrounding the Police raid on his office. The protests of Ms Lynch and Dr Trau related to the Commission's decisions not to investigate their complaints against public officials. In responding to the Committee's letter concerning Dr Trau, the Commission provided a comprehensive report on the procedures governing the submission of matters by the Commission to the Operations Review Committee.

Overall, the relations between the Committee and the Commission have been constructive. It is clear that the Committee sees it has a job to do and the Commission applauds that approach.

The new reporting year will start with an informal meeting, to take place in early July 1990, between the Commission and the Committee to discuss primarily the corruption prevention and public education work of the Commission. Regular contact, including the Commissioner's appearance before two public hearings of the Committee, is envisaged for that year.

### **Operations Review Committee**

Part 6 of the Act deals with the constitution and functions of the Operations Review Committee (ORC). The ORC was constituted in a practical sense on 15 March 1989 when the Governor appointed the first "appointed members".

The functions of the ORC are set out in s.59(1) of the Act as follows:

- to advise the Commissioner whether the Commission should investigate a complaint made under this Act or discontinue an investigation of such a complaint;
- to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.

The ORC, at a meeting held on 5 May 1989, resolved that its terms of reference be as follows:

- to advise the Commissioner whether the Commission should discontinue or not commence an investigation of a complaint;
- to advise the Commissioner at least every three months whether the Commission should continue an investigation;
- to advise the Commissioner whether the Commission should discontinue an investigation conducted on its own initiative or on a report made to it;
- to receive from the Commissioner a report relating to the completion of an investigation;
- to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee;

- to bring to the attention of the Commissioner any matters relating to the operations of the Commission which the Committee considers important.

On 4 August 1989, the Committee resolved that it be provided with statistical reports relating to the handling of complaints by the Commission.

It will be noted that the Commissioner seeks advice from the Committee in relation to matters where he is not required to do so. For example, he seeks advice in relation to the continuance of formal investigations where they have been commenced as a result of a s.11 report, or the Commission's own initiative.

The only matters in respect of which the Committee, in the normal course, does not provide advice are:

- complaints which do not concern possible corrupt conduct;
- reports of possible corrupt conduct from principal officers of public authorities made pursuant to s.11 of the Act which the Commission does not propose to investigate.

It would be contrary to the statutory scheme for the ORC to provide advice in relation to complaints which do not concern possible corrupt conduct. So far as s.11 reports are concerned, there is no statutory requirement for the advice of the ORC to be obtained in relation to those matters. Presumably the Legislature considered the relationship of principal officers to the Commission did not need to be oversighted in the same manner as the relationship between citizen, as complainant, and the Commission, as a public organisation.

Section 60 of the Act provides that the Committee shall consist of eight members, being the following:

- the Commissioner, who shall be Chairperson of the Committee;
- an Assistant Commissioner, nominated by the Commissioner;
- the Commissioner of Police;
- a person appointed by the Governor on the recommendation of the Attorney General and with the concurrence of the Commissioner;

- four persons appointed by the Governor on the recommendation of the Minister and with the concurrence of the Commissioner, to represent community views.

The Assistant Commissioner nominated by the Commissioner is Mr Roden QC.

The members initially appointed on 15 March 1989 were:

- Mr W. Robinson, Director, Legal Aid Commission (as he then was), appointed on the recommendation of the Attorney General and with the concurrence of the Commissioner;
- Major General R. Grey, Mr J. M. Davenport, Sister M. McGovern and Professor B. Fisse, to represent community views.

Under Clause 3 of Schedule 2 of the Act an appointed member cannot be appointed for a period exceeding 12 months but is eligible for reappointment. On 28 March 1990, the terms of Mr Davenport and Sister McGovern were renewed for a further 12 months. At the same time the following persons were appointed:

- Mr L. Glanfield, a senior officer of the Attorney General's Department, on the recommendation of the Attorney General;
- Mr G. Nutter and Mr D. Brezniak, to represent community views.

Section 59(2) of the Act states that the Commissioner shall consult with the Committee on a regular basis and at least once every three months. In practice the Committee meets on the first Friday of each month (except during the Christmas/New Year holiday period).

During the year under review, the Committee met on 11 occasions. Of those meetings, eight were chaired by the Commissioner, the balance by Mr Roden.

The Committee is serviced by officers of the Commission. A senior Commission officer attends meetings to take minutes.

Procedures have been established regarding the preparation of reports for consideration by the Committee. Under these procedures:

- a wide range of Commission officers are required to prepare reports which are presented to the ORC. This means that the work of the ORC affects every Commission officer involved in operational duty;
- the Commission Secretary has general responsibility to maintain the standard of reporting;
- pro forma documentation has been designed to achieve consistency and relevance in reporting;
- deadlines are imposed to ensure that members of the ORC receive papers sufficiently in advance of meetings to allow proper consideration of material.

Commission files, in relation to reports under consideration by the ORC, are always available for examination.

During the year, the ORC considered 451 reports concerning complaints which the Commission did not propose to investigate. In most instances the ORC advised the Commissioner to accept the recommendations of Commission officers. On other occasions, the ORC advised the Commission to conduct further inquiries and report back. In every instance, the Commissioner accepted the advice of the ORC in deciding a matter.

The ORC also considered 40 reports in relation to the continuance or otherwise of investigations. As well, it gave further consideration to three matters, where the complainant had objected to the Commission's original decision, following ORC advice.

There is no doubt that the role of the ORC serves as a tremendous discipline in relation to the work of the Commission.

**Independent Commission Against Corruption**  
**Organisation Chart**

**Parliamentary Joint Committee**  
Mr M J Kerr MP (Chairman)  
Hon R D Dyer MLC  
Hon D J Gay MLC  
Hon S B Mutch MLC  
Mr J E Hatton MP  
Ms S Nori MP  
Mr A A Tink MP  
Mr J H Turner MP  
Mr P F P Whelan MP

**Operations Review Committee**  
Commissioner (Chairman)  
Assistant Commissioner Roden  
Mr J K Avery  
Mr D J Brezniak  
Mr J M Davenport  
Mr L G Glanfield  
Sister M McGovern  
Mr D G Nutter

**COMMISSIONER**  
Ian Temby QC

**General Counsel**  
Kevin Zervos  
Ian Lloyd QC

**Assistant Commissioners**  
Adrian Roden QC  
Michael Helsham QC

**Director of Operations**  
Vic Anderson

**Commission Secretary**  
David Catt

**Director of  
Corruption Prevention**  
Ann Reed

**Director of Administration  
and Public Affairs**  
Stela Walker



**INVESTIGATORS**  
**ANALYSTS**  
**TECHNICAL & SECURITY  
SERVICES**



**LAWYERS**  
**ASSESSMENT  
SECTION**



**CORRUPTION  
PREVENTION  
OFFICERS**



**ADMINISTRATIVE &  
SUPPORT STAFF**  
**MEDIA & PUBLIC AFFAIRS**

## **Appendix 2**

# **INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988**

## **GUIDELINES UNDER SECTION 11(3)**

### **1. Introduction**

Section 11(2) of the Independent Commission Against Corruption Act 1988 ("the Act") requires the Ombudsman, Commissioner of Police and heads of government departments and other agencies to report suspected corrupt conduct to the Commission. The requirement helps the Commission carry out its investigative work. It also helps the Commission carry out its corruption prevention and public education work by providing information on the range and extent of possible corrupt conduct.

Section 11(3) allows the Commission to issue guidelines on what matters need or need not be reported. Their purpose is to ensure that the reporting requirement assists the Commission to perform its functions as efficiently and effectively as possible.

While the Act makes the Commission the State's primary anti-corruption agency, the Commission is not solely responsible for detection, investigation and prevention of corruption. The Act does not modify obligations which may otherwise exist to report or refer matters to other bodies such as the police, the Department of Local Government or the Ombudsman. Reporting to such other bodies should not be delayed merely because suspected corrupt conduct has also been reported to the Commission, particularly where it may involve a criminal offence which should be reported to the police. It is equally important that reporting to the Commission not be delayed because a matter has been referred elsewhere, or for any other reason.

It is also important that reports to the Commission be made without advising the person(s) to whom the report relates, and without publicity. Confidential handling of reports helps avoid prejudice to investigations and hurt or embarrassment to persons whose involvement is ultimately not established, or is benign.

Where the complaint was originally received from outside the department or agency, the Commission would prefer that the complainant not be advised of the referral until the Commission reports back to the department or agency, or at some earlier time agreed with the Commission. Where the complaint is made by a current employee, however, the Commission considers that the particular need to encourage such internal reporting warrants confidential advice to the employee that the matter has been referred, thereby avoiding the impression that no action has been taken on the matter.

Government departments and agencies must ensure that they have adequate internal systems for detection, preliminary investigation, reporting and prevention of corruption. The Commission itself cannot investigate every suspected instance of corrupt conduct. Whether the Commission becomes involved, and when, will depend upon a range of considerations including the capacity of the department or agency to deal effectively with the situation.

These guidelines are issued with this background in mind and on the basis of the Commission's experience to date. They are set out in four sections. These sections:

- Explain the general reporting requirements in section 11(2);
- Provide that some matters need not be reported to the Commission;
- Explain how and when reports are generally to be made to the Commission; and
- Explain special reporting arrangements which can be agreed between the Commission and the Ombudsman, Commissioner of Police, or head of a department or agency.

## **2. Explanation of the General Reporting Requirement in Section 11(2)**

### **Whose duty to report?**

Section 11(1) applies the duty to the Ombudsman, the Commissioner of Police, the "principal officer of a public authority" and "an officer who constitutes a public authority". "Public authority" is comprehensively defined in Section 3(1) of the Act to include all departments and agencies of state and local government. The "principal officer" is the

person who heads the authority, its most senior officer or the person who usually presides at its meetings. The Commission should be contacted for advice if it is unclear who is the "principal officer".

### **Can the duty be delegated?**

The duty to report belongs to the principal officer alone and cannot be delegated. Where another person is acting as principal officer during periods of leave or other absence, the duty applies to that person. The principal officer must ensure that there is an adequate internal reporting and referral system for him or her to find out about suspected instances of corrupt conduct.

While the details of this system are a matter for the principal officer, the Commission has prepared a separate document "Effective Reporting of Corrupt Conduct within Government Departments and Agencies" which it hopes will assist in its development.

### **What must be reported?**

The section requires the reporting of "any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct". These matters must be reported to the Commission in spite of any duty of secrecy or other restriction on disclosure.

The words "suspects on reasonable grounds" can be understood as meaning that a matter must be reported if the officer has reason to consider there is a real possibility that "corrupt conduct" is or may be involved. Certainly proof is not necessary. Because a statutory duty is being performed, a good faith report is protected from defamation action, even if the suspicion on which it is based turns out to be groundless. See also Defamation Act 1974, s.17K.

### **What is "corrupt conduct"?**

"Corrupt conduct" is defined in sections 7 to 9 of the Act. The definition is very broad and the essential elements set out below should not be regarded as a definitive statement. Reference should be made to the Act as indicated. Doubtful cases should be treated as if they involved "corrupt conduct", or advice should be sought from the Commission.

"Corrupt conduct" includes any dishonest or improper use of position by a public official and specifically includes misuse of information or material acquired in the course of official duties (even if the information or material is misused when the person is no longer a public official). "Corrupt conduct" also includes conduct by anyone which might lead directly or indirectly to the dishonest or improper use of position by a public official. These aspects of "corrupt conduct" are defined in section 8(1). "Public official" is defined in section 3(1) to include Ministers and others having public functions or duties as well as public sector employees.

"Corrupt conduct" also includes conduct by anyone which might directly or indirectly interfere with the carrying out by a public official of his or her functions where that conduct also involves any of a wide range of matters including for example official misconduct, bribery or violence. This part of the definition is in section 8(2).

Further points to note about "corrupt conduct" are:

- "corrupt conduct" includes a conspiracy or an attempt to engage in "corrupt conduct";
- "corrupt conduct" includes conduct which occurred before the Act commenced, on 13 March 1989;
- it does not matter that a person or persons who were public official(s) at the time of the "corrupt conduct" are no longer public official(s); and
- it may not matter that the conduct occurs outside New South Wales or Australia.

### **Relatively insignificant matters?**

Relatively insignificant matters are excluded from the definition of "corrupt conduct" by section 9 of the Act. Conduct otherwise included in the definition is not "corrupt conduct" unless it could be or involve:

- a criminal offence under New South Wales law or any other law which could apply in the particular circumstances; or

- a disciplinary offence which could lead to disciplinary action under any law including regulations; or
- reasonable grounds to dismiss or terminate the services of a public official.

It does not matter whether the passage of time, or changed circumstances such as resignation, mean that the person cannot now be charged with the criminal offence, disciplined or dismissed.

### **3. Matters Which Need to be Reported**

The general reporting requirement applies to matters no matter how old they are. However, the older a matter is the less likely that useful investigative work can be done or that the matter will help to understand current corruption problems. Nevertheless, the Commission may in some cases be able to take a matter further than other investigative agencies have been able to. "Serious" instances of past corrupt conduct will be of interest for corruption prevention and education work even if no further investigation is possible. Therefore, the Commission has decided that matters which occurred before the commencement of the Act on 13 March 1989 should be reported only where each of the following circumstances applies:

- the matter was handled without being referred to the police; and
- the matter is "serious" because one of the following applies:

The suspected conduct was part of an organised scheme;

or

The suspected conduct was systematic or occurred over a long period;

or

Any public official(s) involved were in senior or sensitive position(s);

or

The suspected conduct could be or could have been a criminal offence or a disciplinary offence sufficient for dismissal;

or  
The person(s) involved obtained or expected to obtain money or other benefit or advantage which could not, in the particular circumstances, be regarded as merely token.

#### **4. How and When to Report**

Unless the Commission has consented to special reporting arrangements (see Part 5), these rules should be followed.

1. The matter should be reported as soon as it comes to attention.
2. If the matter is "serious" (see Part 3) or urgent, phone contact should be made with the Commission Secretary or the Senior Lawyer (Assessments). This can be followed by a conference if necessary.
3. Otherwise, the report should be in writing. Where "serious" or urgent matters are reported by phone, a written report should follow as soon as possible unless otherwise agreed.
4. The report should include, in relation to each matter:
  - a short history and relevant documentation;
  - details of action already taken and intended further action;
  - if no further action is to be taken, the reasons for this; and
  - details of any other bodies to which the matter has been or will be referred.
5. A confidential means of transmission to the Commission should be used.
6. Where further action is taken, the Commission should be kept informed of significant developments as they occur.

#### **5. Special Reporting Arrangements**

Particular instances of "corrupt conduct" may not require direct involvement or immediate action by the Commission. For example, "corrupt conduct" consisting of a minor disciplinary offence or an isolated incidence of theft will

be adequately handled by the agency concerned or by the police. However, information about the conduct will still be useful for research and monitoring purposes and for corruption prevention work. Provided that a department or agency has adequate internal arrangements for detection, preliminary investigation and appropriate referral of corruption matters, the Commission may agree to abbreviated reporting at intervals for most matters covered by the general reporting requirement.

The Commission may, on request, agree to some or all of the following special reporting arrangements:

- no requirement to report matters involving only a complaint or complaints considered to be frivolous, vexatious or not made in good faith;
- no requirement to report matters which could only be or involve a disciplinary offence not serious enough to be grounds for dismissal;
- the requirements of Part 4 to apply only to "serious" matters as defined in Part 3 above. In this case the remaining matters will be reported at agreed intervals and initially without documentation other than a short history.

Where the Commission agrees to special reporting arrangements, it is highly desirable that these arrangements be published in the Annual Report of the department or agency. Such arrangements will be referred to in the ICAC Annual Report.

### **Requesting special reporting arrangements**

Requests for special reporting arrangements should be made in writing to the Commission Secretary as set out in the attached Schedule. The full reporting requirements of Part 4 continue to apply while requests are assessed.

The Commission already has informal special reporting arrangements with a number of organisations. These arrangements continue pending review.

### **Assessment of requests**

All requests will be acknowledged promptly and assessed in order of receipt. Requests will not be rejected, or proposed arrangements substantially

modified, without full consultation with the agency concerned. Should the Commission receive a large number of applications, assessment may be delayed. The Commission will endeavour to advise agencies when a substantial delay is expected.

## **SCHEDULE 1 - REQUESTS FOR SPECIAL REPORTING ARRANGEMENTS**

Requests for special reporting arrangements should be in the following form:

### **INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 GUIDELINES UNDER SECTION 11(3)**

#### **REQUEST FOR SPECIAL REPORTING ARRANGEMENTS**

##### **Name of Organisation**

##### **Background Information**

- Date of creation
- Statutory basis, if applicable
- Responsible minister, if applicable
- Whether subject to Annual Reports (Departments) Act 1985 or Annual Reports (Statutory Bodies) Act 1984
- Major functions and work undertaken
- Number of employees and brief profile of workforce and management structure
- Brief qualitative and quantitative description of any corrupt conduct detected in the past five years, including reference to:
  - disciplinary action taken and outcome;
  - referrals to other bodies such as the police or the ICAC and outcome;
  - organisational areas and management levels involved;
  - any patterns or systematic features of the corrupt conduct.

### Detection and Internal Reporting of Corrupt Conduct

Description of arrangements for internal reporting of corrupt conduct including copies of any relevant instructions or similar material provided to staff at various levels.

### Preliminary Assessment and Investigation

Description of resources available for preliminary assessment and investigation of suspected corrupt conduct.

### Corruption Prevention Strategy

Description of organisation's corruption prevention strategy or other standing arrangements for minimisation of corrupt conduct, and total budgetary expenditure on anti-corruption activity including assessment and investigation.

### Proposed Special Reporting Arrangements

Description of special reporting arrangements proposed, including suggested reporting intervals and form of documentation for "non-serious" matters. Reference should be made to any organisational features relevant to the arrangements proposed.

### NOTES

1. Requests should be personally signed and dated by the principal officer.
2. The request should include the name and telephone number of a contact officer able to provide further information and make appropriate arrangements for consultation if required.
3. The text of the request should stand on its own without use of annexures except where specified in these guidelines or otherwise absolutely necessary.

## **Appendix 3**

### **THE COMMISSION'S REPORTING POWERS**

**(Extract from the Commission's Report on Investigation into North Coast Land Development, July 1990, pp xiii-xxv)**

There has been recent litigation, both in the Supreme Court of New South Wales and in the High Court of Australia, relating to the Commission's reporting powers. Regard must be had to the outcome of that litigation, in determining what may and what may not properly be stated in this report.

#### **The litigation**

The litigation arose from two Commission investigations. One may conveniently be referred to as the Waverley investigation. The other is this present matter.

Two persons concerned in the Waverley investigation, sought court orders declaring that the Commission does not have the power to make certain types of finding. Their cases were considered in the Supreme Court, including the Court of Appeal, and then in the High Court. I shall refer to them as the Waverley cases.

Arising from the investigation with which I am presently concerned, similar cases were brought by Paul Edward Glynn, Robert William Steel, Ocean Blue Fingal Pty. Ltd. and Ocean Blue Club Resorts Pty. Ltd. I shall refer to them as the Ocean Blue cases.

Preparation of a Report on this investigation was completed before the High Court handed down its judgment in the Waverley cases. The Ocean Blue cases were at that time pending in the Court of Appeal. They were left in abeyance in that court, while the High Court judgment in the Waverley cases was awaited.

#### **The court orders**

That judgment has now been delivered. Its effect is to set aside an earlier

order of the Supreme Court, and in lieu thereof to make a declaration in the following terms:

*"... that the (Commission) is not entitled in any report pursuant to s.74 of the Independent Commission Against Corruption Act 1988 to include a statement of any finding by it that the respective appellants or either of them was or may have been guilty of a criminal offence or corrupt conduct other than a statement made pursuant to s.74(5) of that Act."*

Expressed in general terms, and subject to one exception, that means the High Court has ruled that in a Report such as this, the Commission may not make a finding in respect of any person that he or she was or may have been guilty of a criminal offence or of corrupt conduct. (The exception is a finding under s.74(5) of the ICAC Act. The significance of that provision need not be considered here. It is fully explained in Chapter 32 of this Report).

The Ocean Blue cases have now also been resolved. Orders have been made by consent, in similar terms to the High Court orders in the Waverley cases. That is to say, the Court of Appeal has declared that in this Report, subject only to the exception referred to above, the Commission may not make a finding that a person was or may have been guilty of a criminal offence or corrupt conduct. Although the orders only apply in terms to Mr. Glynn, Mr. Steel and the two Ocean Blue companies, it is obviously appropriate to regard the principle as applicable in respect of all persons whose conduct was considered in the course of the investigation.

Before the Report is published, it is necessary to ensure that it contains nothing which, by reason of the court orders that have been made, ought not to be there.

## **This Report**

The Report as originally prepared, did not include a finding that any person was guilty of a criminal offence. From the outset, I was of the opinion that it was no part of the Commission's function to make any such finding. Under our system, findings of criminal guilt may only be made by criminal courts, as part of the criminal process. This Commission's investigations, and Reports published by it, are not part of that process.

The Report as originally prepared, did not include a finding that any person

was guilty of corrupt conduct. "Corrupt conduct" is a term used and defined in the ICAC Act. It has a technical meaning given to it by the Act. From the outset, I was of the opinion that no useful purpose would be served by determining whether any conduct of any person, disclosed in the course of the investigation, amounted to corrupt conduct as defined in the Act. I said that to counsel during addresses in November 1989. Whether alleged conduct does or does not amount technically to corrupt conduct, is relevant for purposes of jurisdiction only. It determines whether the Commission can properly embark upon an investigation.

Accordingly, the recent court orders create no difficulty insofar as they declare that the Report may not include a finding that a person was guilty of a criminal offence or corrupt conduct. It was not intended that the Report include a finding to either effect, and there is none in the Report as originally prepared.

The court orders also declare that, subject to the exception mentioned, the Report may not include a finding that a person **may have been** guilty of a criminal offence or corrupt conduct. It is more difficult to assess the impact of that requirement. There is no problem about avoiding a finding in express terms to that effect. Indeed there is none in the Report as originally prepared. However, many statements that have been made in the Report, are capable of indicating or suggesting that a person may have been guilty of a criminal offence or corrupt conduct.

What has to be determined is whether those statements must be deleted before the Report can properly be published. I propose to approach that question, by considering one of the matters which the Commission is clearly empowered to state in its Reports.

### **Reporting the results of an investigation**

One of the Commission's principal functions is to communicate to the appropriate authorities the results of its investigations. Section 13 of the Act so provides. The High Court, in its judgment in the Waverley cases, expressly confirms that the Commission has the power, and in some cases an obligation, to perform that function. I quote from the judgment:-

*"It follows that while the Commission may, and in some instances must, report the results of its investigations to Parliament..."*

The matters which the Commission may, and in some instances must, investigate, are also set forth in s.13 of the Act. As one would expect of a Commission established to deal with corruption in the public sector, those matters include *"any circumstances implying, or any allegations, that corrupt conduct may have occurred..."*, and *"any conduct which, in the opinion of the Commission, is or was connected with or conducive to corrupt conduct"*.

What is involved in reporting the results of such an investigation? It must include, one would think, stating whether the allegations appeared to be well founded, and whether and in what circumstances conduct of the type described had occurred. In short, if you investigate something, and are then required to report the results of your investigation, what you must do is say what you have found out.

How is that to be done by a Commission which for the purposes of its investigation has held hearings and taken evidence? Surely not simply by stating what the evidence was. That could be achieved by providing the transcript without comment. If the Report is to be of value, it must analyse, distill and weigh the evidence, and consider the inferences available from it. The High Court, in passages which I shall shortly quote, refers to *"the material elicited by the Commission"* and *"the revelation of material"*, as among matters the Commission can properly report to Parliament.

As the evidence is considered in that way, and as the material elicited during an investigation is revealed in a Report, matters are likely to be stated suggesting that a person may have been guilty of a criminal offence or corrupt conduct. If they carry such suggestion, does that preclude the Commission from including them in the Report? The answer to that question is provided in the judgment in the Waverley cases. I quote again from the High Court:-

*"It is clear enough that there is a distinction between the revelation of material which may support a finding of corrupt conduct or the commission of an offence, and the actual expression of a finding that the material may or does establish those matters;"*

*"It must be clear that even if the material elicited by the Commission in the course of its investigation is such as to establish or suggest that the appellants or either of them have been guilty of criminal or corrupt conduct, the Commission may set forth or refer to that material in its report pursuant to s.74, notwithstanding that it cannot state any finding of its own. Of course, depending upon the nature of the material, even to deal with it in that way may inevitably implicate the appellants or one*

*or other of them in criminal or corrupt conduct. The Commission is nonetheless entitled to report upon the results of its investigation; it is merely precluded from expressing any finding other than under s.74(5)."*

Accordingly, I must take the position that material which it is proper to state as a result of the investigation, is not to be excluded from the Report because of any tendency it has to show that a person may have been guilty of a criminal offence or corrupt conduct.

### **Other findings of fact - the High Court**

Since the High Court judgment was handed down last week, there has been some public discussion about the extent to which it curtails or restricts the reporting powers of the Commission. In particular, questions have arisen as to whether the Commission may make findings of fact which fall short of findings that a person was or may have been guilty of a criminal offence or corrupt conduct. That is a matter I must consider if I am to ensure that the Report complies with the court orders by which the Commission is bound.

In the passage from the judgment which I have just quoted, there are two statements which may appear relevant to this question. They are, "(the Commission) cannot state any finding of its own", and "it is merely precluded from expressing any finding other than a finding under s.74(5)". Read in isolation, they suggest an overall prohibition on findings by the Commission.

They must, however, be read in context.

Both statements were made in the course of considering questions of guilt, related to criminal offences and corrupt conduct. The court was saying what the Commission can and cannot do in that regard. It was in that context that it said the Commission can report on the results of its investigation, notwithstanding that they may inevitably implicate a person in a criminal offence or corrupt conduct. It was in that context that it said the Commission cannot state findings of its own.

Support for the view that the High Court was there referring only to findings related to criminal liability or corrupt conduct, is to be found in the judgment itself, and in an appreciation of the question which the court was considering.

In each of the Waverley cases, the court was considering an application in which a declaration was sought in terms very similar to the order the court eventually made. The High Court was asked only to rule on the Commission's powers relating to findings of criminal liability and corrupt conduct. No other fact-finding power which the Commission might assert or seek to exercise was under challenge.

The judgment records that the appellants submitted "*that the Commission is precluded from reporting that corrupt conduct involving the appellants or either of them may have occurred, may be occurring or may be about to occur*". The court did not make an order in those wider terms.

Five short passages now quoted from the judgment are instructive in this regard:-

*"... it is apparent that (the Commission's) primary role is not that of expressing, at all events in any formal way, any conclusions which it might reach concerning criminal liability."*

*"... the Commission is intended to be primarily an investigative body and not a body the purpose of which is to make determinations, however preliminary, as part of the criminal process ..."*

*"If the legislature had intended ... to confer upon (the Commission) a power to express a finding concerning the criminal liability of a specified person, then it would have been unnecessary to include sub-s.(5) of s.74."*

*"... the only finding which the Commission may properly make in a report pursuant to s.74 concerning criminal liability is that referred to in sub-s.(5) ..."*

*"(The Commission's) investigative powers carry with them no implication ... that it should be able to make findings against individuals of corrupt or criminal behaviour."*

(In each case the emphasis is mine.)

It is only with regard to criminal liability and corrupt conduct that the Commission's power to report findings was under challenge in the High Court. It is only with regard to findings concerning the guilt of persons in respect of criminal offences or corrupt conduct that orders were made.

That is what can be drawn from the judgment of the High Court in the Waverley cases. I turn now to consider the Ocean Blue cases, which of course have a more direct bearing on the Report now being produced. The appellants' claims and the Court of Appeal judgment in those matters, refer specifically to this Report.

### **The Ocean Blue cases**

Mr. Glynn, Mr. Steel and the Ocean Blue companies, had before the Court of Appeal a wider challenge to the Commission's reporting powers, and in particular to its power to make findings, than was considered in the High Court. They originally sought declarations, including that the Commission is not entitled in any Report:-

- (a) to publish any adverse findings, conclusions or evidence as against them, or
- (b) to make a finding or reach a conclusion in respect of them:-
  - (i) that they are guilty of any conduct which may constitute a criminal offence;
  - (ii) that they are guilty of any conduct whether of a criminal kind or not which may be conducive of corrupt conduct;
  - (iii) which in any respect purports to arrive at or state the Commission's own opinion as to the ultimate effect or significance of any evidence gathered in the investigation, or
  - (iv) which is adverse to them.

When the High Court judgment in the Waverley cases was handed down, the Commission took the following position regarding the Ocean Blue cases. Accepting that the High Court's order regarding findings on criminal liability and corrupt conduct was binding, the Commission was ready to consent to orders in similar terms in the Ocean Blue cases. The Commission so informed the appellants. The Commission also informed the appellants that their claim for declarations further limiting or restricting its reporting powers, was still opposed, and that if they wished to pursue it, it would be resisted. From statements I had made during the public hearings, it was known that I intended to make findings of fact.

The appellants opted for consent orders in terms of the orders made in the Waverley cases. The claim to have the Commission's reporting powers, and in particular its powers to make findings, further limited or restricted was abandoned.

### **The present position**

It is on the basis of that appreciation of the litigation and judgments in both matters, that I have considered whether the Report that has been prepared, can now properly be furnished. The Act requires that it be furnished to the Presiding Officers of both Houses of Parliament "*as soon as possible after the Commission has concluded its involvement in the matter*". The litigation delayed presentation of the Report. That litigation is now complete in both matters.

In summary:-

1. The Commission is not entitled to include in a Report, a finding that any person was or may have been guilty of a criminal offence.
2. The Commission is not entitled to include in a Report, a finding that any person was or may have been guilty of corrupt conduct.
3. The Report prepared in this matter does not contain a finding to either effect.
4. No court order has been made restricting or limiting the Commission's reporting powers in any other way, nor is there any litigation pending in this or any other matter, in which such order is sought.
5. The Commission may report to Parliament the results of its investigations. The power to do so is unaffected by the fact that the matters revealed may inevitably implicate a person or persons in criminal or corrupt conduct. The power to do so is unaffected by the fact that the material elicited and reported upon, may establish or suggest that any person or persons have been guilty of criminal or corrupt conduct.
6. Provided that points 1 & 2 above are observed, the Commission may analyse, distill and weigh the evidence received at its hearings, and may consider and draw inferences from it, and reach conclusions and make

findings with regard to it, insofar as that is incidental to its power and duty to report the results of its investigations. In so doing, the Commission is not to be taken to be making determinations, however preliminary, as part of the criminal process. The Commission also has the power to evaluate the evidence for itself, for the purpose of deciding whether it warrants further consideration as contemplated in s.74(5).

Wherever reference is made in the Report to a finding or a conclusion, or to my being satisfied as to a fact, the intention is to convey that the investigation, in my assessment, has revealed that fact. It is something I am reporting as a result of the investigation. It should be read and understood in that way.

### **Adjusting the Report**

In order to ensure that those principles are both observed and seen to be observed in the Report, I have reviewed and revised it. In particular, I have tried to avoid the use of language which might give a false impression of departure from the requirements as they are now known. Other more substantial changes have been made, and the emphasis shifted still further from the conduct of individuals, to patterns of behaviour and means by which corruption in the public sector may be minimised. The changes to the Report as originally prepared, are numbered in hundreds.

Some matters remain that should be explained.

In some parts of the Report, I have referred to corruption or corrupt practices. Where that has been done, the words are used in their everyday sense, and not with the intention of indicating corrupt conduct, with its special meaning defined in the Act. Where used, such expressions are to be found in descriptions of behaviour or practices disclosed, not with relation to adverse findings concerning individuals.

The Report does contain summarised conclusions regarding each of a number of the persons named as substantially and directly interested in the subject-matter of the investigation. Those conclusions are not expressed in terms of criminal offences or corrupt conduct, and are not intended to refer to either. The conclusions are stated and summarised in that way for two reasons. One is that some of those persons are mentioned in a number of different places in the Report, and it is convenient to collect and bring the various references together. Another is that it is useful to collect and assess all relevant material

concerning each person, as a preliminary to later making the findings necessary under s.74(5) & (6).

For purposes explained in the Preface which follows, I have concentrated upon relevant patterns of conduct rather than people. Disclosing what occurred, and the circumstances in which it was able to occur, is regarded as more important than identifying those who were responsible. The parts played by individuals have been investigated and are reported upon, however, as they are necessary to an understanding and explanation of what has emerged from the investigation. It is really impossible to report the results of the investigation without referring to them.

It is also to be borne in mind that the many days of public hearing were widely reported. Circulation has been given to allegations of serious improprieties, in some cases affecting persons who hold high public office. There is, I believe, a legitimate expectation, on their part and on the part of the community at large, that, where possible, those matters not remain unresolved. Foreshadowed challenges to the Commission's power to make findings of fact, as distinct from findings of criminal or corrupt conduct, have not been pursued. I am certainly not prepared to assume that if they were, they would succeed.

It cannot have escaped attention that in the Waverley cases, the Court of Appeal was unanimously of one view as to the stated intention of the legislature, as expressed in the ICAC Act, and the High Court was unanimously of a contrary view. That must justify the conclusion that there is some ambiguity in the terms of the Act.

Against that background, may I express the hope that debate over a barren legalistic question as to the meaning of words in an Act of Parliament, will not be allowed to overshadow or detract from the important public debate which I believe is called for by the significant issues raised by this Report, and the investigation which led to it.

While the Act remains in its present state, there is always the prospect of Commission Reports being delayed by litigation, with uncertainty as to its outcome. Amendment is required as a matter of urgency. The intention of the legislature should be clearly expressed.

- A.R.  
2 July 1990

## **Appendix 4**

### **CORRUPTION PREVENTION STRATEGY**

#### **The Legal Context**

The principal functions of the New South Wales Independent Commission Against Corruption in relation to corruption prevention are contained in Sections 13(d), (e), (f) and (g) of the ICAC Act 1988. They are as follows:

- **“13(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;
- **13(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;
- **13(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;
- **13(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.”

#### **The Principles**

The concept of “corruption prevention” is based on the following principles:

- **Prevention is Better than Cure**

Corruption, in whatever form it takes, is invariably described as a disease or sickness in society. As with many diseases, it may be possible to cure after it has been identified, but with no certainty either that the cure is complete or that the disease has not done irreparable damage. Most people would agree that it is better to prevent than to cure.

- **Corruption Prevention is a Managerial Function**

Administrative and managerial failures in an organisation may give rise to loopholes that could be exploited by employees or others with a corrupt intent. There are certain common features of managerial weaknesses that are conducive to corruption: outdated policy, unenforceable legislation, inadequate instructions, excessive discretion, unnecessary procedures leading to delays, and lack of effective supervision. Corruption prevention aims to plug these loopholes by introducing administrative and managerial improvements to the system. If corrupt practices exist within an organisation, its normal operations will undoubtedly be jeopardised. It is therefore essential that managers at all levels, when carrying out managerial functions, watch out for possible corruption opportunities and introduce preventative measures where appropriate. Corruption prevention is, therefore, an integral part of good management.

- **Accountability makes for Committed Management**

A system of accountability, under which people are responsible for the acts or omissions of themselves and those they supervise, is a valuable tool in the attempt to eliminate opportunities for corruption. Senior officers should be obliged to account for their own conduct and for the conduct of those acting under their control. A management system which demands accountability should result in the pinpointing of problems before they become serious, and allow potential loopholes to be closed.

## **The Work**

There will be several means by which potential areas for corruption prevention activity will be identified. It is anticipated that the chief among these will be:

- as a result of investigations by the Commission, when the focus will pass from particular individuals to the institutional conditions which made corruption possible;
- complaints from members of the public and reports from principal officers of public authorities, when a decision has been taken that there

is insufficient information or evidence of corrupt conduct to warrant formal investigation;

- information provided to the Commission which, while not constituting a complaint or report of corrupt conduct, may highlight some particular deficiency in policies or procedures, thus giving rise to concern that they could be exploited for a corrupt motive;
- requests from organisations to examine aspects of their operation which they have identified as existing or potential problem areas;
- the identification of expected change, for example in policies and legislation, the enforcement of which may have the potential for corruption;
- regular liaison with appropriate bodies such as the Auditor-General, the Ombudsman, the Office of Public Management and the Department of Local Government;
- feedback from public education programmes.

From time to time the Commission will also target for examination such specific areas as it sees to be appropriate.

## **The Process**

Corruption prevention work will take a number of forms:

- **Formal Studies**

Formal studies will involve the critical examination of the existing system and procedures involved in a defined area of activities within an organisation to identify weaknesses and to recommend methods of improvement.

This is likely to be the most appropriate approach to matters arising out of an investigation or complaint or report to the Commission.

- **Monitoring**

Having made recommendations, it will be necessary to stay in touch with the client's progress in implementing them, and provide support where necessary. After the changes have been effected Commission officers will go back, if necessary, to observe whether or not they work as intended or whether they themselves have given rise to new opportunities for corruption.

- **Working Groups**

Corruption prevention involvement in the process of change, including the examination of draft legislation, advice on new procedures, systems or procedural manuals, will take place usually in the context of a working group's deliberations. Involvement in such groups will also be an opportunity to educate officials and authorities on corruption prevention issues. This method of involvement is an effective and efficient use of the limited resources available to the Commission for corruption prevention work, as are the conduct of seminars and participation in the development of codes of conduct.

- **Seminars**

Corruption prevention is essentially a managerial function. In order to assist managers in their execution of this function, seminars will be held for those in managerial and supervisory positions. Through analysis and discussion of typical managerial weaknesses identified as conducive to corruption and the identification by participants of potential problem areas in their own organisations and possible solutions, participants will acquire a basic knowledge of corruption prevention techniques which can then form an integral part of their managerial skills.

- **Codes of Conduct/Practice Rules**

Assistance will be given in drafting codes of practice, practice rules and other guidelines so that staff of client organisations are clear on the ethical standards required of them.

## **Conclusion**

Successful corruption prevention work will depend much on the co-operation and wholehearted involvement of the client organisation's management and staff. This is something which will require nurturing, principally by a demonstration of the contribution the Commission can make by way of its corruption prevention work to good management.

## Appendix 5

# INDEPENDENT COMMISSION AGAINST CORRUPTION

## CODE OF CONDUCT

### Introduction

The Independent Commission Against Corruption is constituted under the Independent Commission Against Corruption Act 1988 (ICAC Act).

Accountable to the public of New South Wales, through the Parliament, it stands independent of the government of the day.

The Commission has three principal functions under the Act - investigation, corruption prevention and public education. In carrying out their duties, individuals employed as officers of the Commission are obliged to:

*"... regard the protection of the public interest and the prevention of breaches of public trust as (their) paramount concerns."*  
(s.12 ICAC Act)

The legislation confers extraordinary powers on the Commission. Because of this, Commission staff must seek actively to achieve and retain public trust, if they are to deserve the responsibilities entrusted to them.

The work of the Commission could be seriously undermined if any of its officers were seen to be acting in a way which the Commission itself, or right-thinking members of the community, would find reprehensible in any public organisation.

This Code sets out the principles officers are expected to uphold, and prescribes specific conduct in areas considered central to the exercise of the Commission's functions. It will be reviewed regularly, and updated and expanded to reflect changes both within and outside the Commission.

The Code is not intended to be read as a set of rules, where each word is scrutinised for its legal meaning. It is intended to convey in plain words the obligations placed on, and the behaviour expected of, all officers of the Commission.

This Code applies to every individual employed as an officer of the Commission, whether by way of contract, term employment (appointment or secondment), temporary arrangement or on a fee for service basis.

## **1. Principles**

- Officers of the Commission must pursue the truth, without fear or favour.
- The name and powers of the Commission must be used with restraint and with due regard for the potential to affect the lives of individuals.
- The standards of ethical behaviour and accountability which the Commission promotes in its dealings with other government organisations must be met by its own officers.
- Officers of the Commission should establish and maintain effective relations with individuals and organisations outside the Commission, giving due recognition to their rights.
- Discrimination and partiality are not to be tolerated.
- The work of the Commission must not be compromised or affected by any personal interest.
- Public resources must be used efficiently and effectively.
- The security of information and the protection of persons working with or dealing with the Commission must be assured.

The following parts of the Code provide detailed guidance on how you are expected to apply these principles in practice.

## **2. Employment**

The ICAC Act places all officers under the control of the Commission. Appointment is not under the Public Sector Management Act. However, Parts 1, 3, 5 and 6 of the Public Sector Management (General) Regulation 1988, relating to particular conditions of employment, allowances and leave, have been adopted as Commission practice.

You should keep abreast of, and act in accordance with, the provisions of the ICAC Act and Regulations and the Commission's policies as set out in staff circulars and operational manuals. All requirements concerning secrecy, personal and financial disclosures, security and media contact, must be strictly followed.

This Code is intended to complement the above written instruments and should not be seen as replacing or overriding them. If you perceive any conflict between legislative or policy requirements and the Code, you must consult your supervisor.

Officers transferred from the New South Wales Police Service for a temporary period of employment, who continue to act as constables, are also required to know and abide by the Police Service Act and Regulations and the New South Wales Police Service's "Rules and Regulations" manual. If you perceive any conflict between the legislative or policy requirements of the Commission and the Police Service, you must consult the Director of Operations.

As an employee of the Commission, you have undertaken:

- not to engage in conduct of any kind at any time which may bring the Commission into disrepute;
- to abide by the strict secrecy provisions of the ICAC Act;
- to make full and open disclosures of your financial interests and personal particulars to the Commission from time to time as and when required.

### **3. Personal and Professional Conduct**

You should approach your duties with honesty, commitment and diligence, working to the best of your ability.

Where a decision or action is based on a statutory power, you must ensure that:

- the legislation under which the decision or action is taken authorises the taking of that decision or action;

- you have the authority or delegation to take that decision or action, or that authority has been given;
- any procedures required by law to be complied with have been observed;
- all relevant Commission policies and directions are followed;
- the decision or action and the reasons for taking it are properly documented.

You have a responsibility to ensure fairness in carrying out the work of the Commission. This means that you should:

- take all reasonable steps to ensure that the information upon which decisions or actions are based, is factually correct, and that you have obtained all the relevant information;
- deal with like situations in a like manner, i.e. be consistent;
- take all relevant information into consideration;
- not take any irrelevant information or opinions into consideration.

You should not act in any way which is discriminatory, and you should take care that your actions could not reasonably be regarded as discriminatory, bearing in mind that people may be aggrieved if a decision is not to their liking.

You should record, immediately and accurately, verbal communications on sensitive matters, and inform your supervisor if you have any special concerns.

You should not delay unnecessarily or unduly in making decisions or taking action.

You should be honest, but prudent in your official and other dealings with colleagues and the public.

You should seek and/or offer supervision appropriate to your position and duties.

You must obey any lawful instruction by an officer of the Commission empowered to make such instruction.

The multi-disciplinary nature of the Commission's work requires that you make special efforts in your communication with colleagues, and be willing to provide assistance and explain the reasons for your requests and advice.

You should keep abreast of changes within the Commission particularly as they relate to your duties, and to relevant changes outside the Commission.

#### **4. Accountability**

You are responsible for your own acts and omissions and will be held to account for them. If you are a supervisor or manager at any level, you are responsible also for the acts and omissions of the staff you supervise.

This does not mean that you will be held responsible for every minor fault of your staff.

It means that you will be called to account for unsatisfactory acts or omissions by your staff if they are so **serious, repeated or widespread** that you should know of them and correct them, if you are exercising the level of leadership, management and supervision appropriate to your position.

Therefore it is your responsibility to make sure, in regard to the staff under your leadership, that they understand:

- what their job entails and what their duties are;
- how they are expected to do their job;
- what results are expected.

You should ensure that procedures in your area of responsibility are established, promoted and followed, and that they are subject to regular review.

One of the ways in which accountability is promoted in the Commission is through periodic performance appraisal. You have received information on how the appraisal scheme works and should consult the Personnel Manager for any further explanation.

## **5. Use of Information**

Doing the Commission's work involves access to sensitive information which may be the subject of inquiry, investigation or consultation. Section 111 of the ICAC Act prohibits disclosure of information obtained in the course of your employment with the Commission, either during or after the period of employment, except in the exercise of the Commission's functions. Any breach of the requirements could result in your being charged with an offence against the Act.

If you believe that disclosure of information is justified, you must document the details of the information and the reasons you are seeking disclosure and seek written approval of a Senior Manager prior to making the disclosure.

You must exercise caution and sound judgment in discussing sensitive information with other Commission officers. It should normally be confined to those who require access to that information in order to conduct their duties, or those who can, by reason of their experience, provide useful assistance.

The Commission is entrusted by other agencies with information to assist in analytical work, inquiries, investigations or consultation. You must not access this information or use it for any purpose other than the Commission's work.

You must not use information gained in the course of your duties:

- in ways which are inconsistent with your obligation to act impartially;
- to cause harm or detriment to any person, body or the Commission;
- to gain improper advantage for yourself or for any other person or body.

Examples of the use of information for improper advantage could include:

- speculation in property or shares based on information about Government decisions or the affairs of a company;
- taking advantage for personal reasons of another person on the basis of information about that person held in official records or provided to the Commission in the course of investigation.

## **6. Public Comment**

You must not make official comment on matters relating to the Commission unless you are so authorised by the Commissioner.

When discussing the Commission's work outside the Commission, except for authorised official comment, you should confine the discussion to material which is in the public domain, and ensure that others are aware that you are discussing only material in the public domain.

This applies to published reports of investigations, annual reports, public relations material, transcripts of public hearings, media releases, and public addresses. If you are uncertain as to whether information is in the public domain you must consult the Media and Public Affairs Manager.

You should ensure that your personal views are not presented or interpreted as official comment. You are strongly advised not to air personal views which may affect adversely the Commission's reputation or the exercise of its functions.

The Commission's Media Policy requires that you refer all media inquiries to the Media and Public Affairs Manager who is the official spokesperson of the Commission.

## **7. Financial and Other Private Interests - Disclosure and Conflicts**

To ensure that the Commission's work is impartial and is seen to be so, it is imperative that no opportunity exists for your personal interests, associations and activities (financial or otherwise) to conflict with the proper exercise of your duties.

All members of staff have made a disclosure of personal particulars prior to commencing duties. The Commissioner, in accordance with the ICAC Regulations, may require you also to disclose your financial interests and those of your spouse, dependent children and other persons with whom you are closely associated. You may have made such disclosure prior to commencing duties, or you may be required to do so at other times.

You must submit in writing the details of any changes in your personal particulars and (if you have made a financial disclosure) the financial interests of yourself, your spouse, a dependent child or close associate. You should consult the Personnel/Recruitment Officer if you are unsure of what matters you should disclose.

If, in the course of your duties, you encounter information which involves persons, organisations or activities that you have or had a personal interest in or association with, you must make a written disclosure to a member of Senior Management. A decision will be made whether the matter represents a conflict of interests and whether your involvement with it should cease.

If you are in doubt whether to disclose a change in financial or personal circumstances or a potential conflict of interest, you should consult a member of Senior Management.

As a general rule, disclosure is always preferable. It is confidential and can do no harm, whereas a great deal of damage may be done if you have not made disclosure of an interest, association or activity which may embarrass the Commission.

There are many possible circumstances where a conflict of interest could arise. You have the responsibility to be aware of possible conflicts and bring them to the Commission's attention.

Some examples are given below, but you should not regard this as an exhaustive list:

- an inquiry or investigation involves someone to whom you are closely related, a former work colleague, or a company that you recently had an interest in;

- you are involved in calling tenders or organising the purchase of supplies, and you find that a close friend or relative is one of the tenderers;
- you are asked to provide corruption prevention advice to a government department where you recently were employed;
- an inquiry or investigation relates to a political figure or political party and you are a member of that party or an opposing political party.

## **8. Public Resources**

Public resources include financial, material and human resources. All should be utilised effectively, without waste and for the work of the Commission.

The financial resources of the Commission are allocated under the Public Finance and Audit Act 1983 and officers are bound by the Treasurer's Directions issued under that Act. Procedures for the purchase of stores and equipment are conducted according to Commission policy established by the Financial Manager.

You must be authorised to incur expenditure on behalf of the Commission and you must adhere to the above regulations and policy.

You must not obtain or use any stores items (for example stationery, furniture) for a purpose which is unrelated to the work of the Commission.

You must not use your work time, or the Commission's staff resources, for private purposes. However, there are some reasonable exceptions to this rule. For example:

- you may use the phone for private calls, if they are short, infrequent and do not interfere with work;
- you may add your mail to the Commission's for posting, but you must not ask anyone to make a special mail trip for you. You must provide the stamp.

You should exercise care when using equipment, and follow the service requirements, to ensure good condition is maintained.

Some equipment is shared by a number of staff in their duties. You should be aware of competing priorities and ensure that your use of the equipment does not needlessly limit access by others. You should not assume that your work has priority simply because you are in a hurry.

Commission vehicles may be used only for official business, which may include overnight garaging at your home address. This rule does not apply to staff whose employment terms and conditions include private use of a vehicle.

You must seek prior approval from your supervisor if you want to use the Commission's equipment for private purposes. When using Commission equipment for authorised private purposes, you must ensure:

- you use it only in your own time;
- the equipment is secure and properly cared for;
- your use does not limit the access of colleagues in doing their work;
- all consumables used must be provided by you.

## **9. Security**

Security of information is critical to achieving successful outcomes and ensuring fairness to individuals. Security of the Commission's premises is vital in this regard and also in regard to the personal safety of staff.

You should ensure that you are familiar with and follow security procedures in respect of the handling and disposal of information and access of officers and visitors to Commission premises.

## **10. Bribes, Gifts, Benefits, Travel and Hospitality**

Offences under the ICAC Act include the acceptance by officers of bribes, and the offering of bribes to officers. If you believe yourself or a colleague to have been offered a bribe you must provide a detailed written report to the Commissioner immediately that you become aware of this.

**You must never solicit any money, gift or benefit, travel or hospitality and you must never accept any offer of money.**

Accepting gifts or benefits could seriously damage the Commission's position. It is vital that:

- the impartial exercise of the Commission's functions not be influenced in any way; and
- the appearance not be created that any person or body is securing or attempting to secure the influence or favour of the Commission or any of its officers.

As a general rule, you should decline offers of gifts, benefits, travel or hospitality (accommodation, meals or entertainment). However, there may be rare occasions when to do so would be perceived as rude or offensive and these occasions require that you exercise sound judgment. For example:

- You must decline any offer from an individual or organisation you know to be the subject of an investigation by the Commission, or the subject or originator of a complaint or report to the Commission.
- You must decline any offer which is individually targeted and not available to colleagues or associates who share a common task and purpose. For example, you may accept a modest lunch which is offered to a working group, but should pay for your own when you are the only person being offered.
- You may accept an item which relates to the work of the Commission, such as a book on a relevant topic, but you must refuse items which are unrelated, for example alcohol or sporting goods.
- You may accept a gift, benefit, travel or hospitality only if it is of a token kind, and only when to refuse would be unnecessarily rude.

You should ensure that your spouse, dependent children and other close personal associates understand these requirements and that they apply also to those people.

If you have been offered or have received a gift, benefit, travel or hospitality you should inform your supervisor and seek advice as to the appropriate action and/or response. You should ensure that a member of Senior Management is informed in order that he or she may refer to the

Commissioner any offers which are substantial, financially or materially, or which may be seen to compromise impartiality.

## **11. Outside Employment**

If you are considering outside employment you must obtain the approval of the Commissioner prior to accepting or starting the employment.

Police officers temporarily transferred to the Commission, who are required to attend court hearings concerning matters initiated prior to transfer, are required to register court commitments in writing immediately following notification. Officers who, in the role of constable, respond to an incident which results in the commencement of police work unrelated to Commission duties, are required to inform the Director of Operations in writing promptly after the incident.

## **12. Notification of Corrupt Conduct and Complaints against Staff**

You must report to the Commission Secretary any instance of suspected corrupt conduct:

- revealed in the course of investigation work, if unrelated to that investigation;
- revealed in the course of corruption prevention work;
- in the course of duties generally.

If, in the course of your private life, you become aware of any instance of suspected corrupt conduct, you are strongly advised to report it to the Commission Secretary.

You must report directly to the Commissioner any instance of suspected corrupt conduct by a Commission officer, except in the case of suspected corrupt conduct by the Commissioner, which must be reported to the Commission Secretary.

You must notify the Commission Secretary of any complaint made against a Commission officer.

Under the Commission's policy on complaints against staff, the Commission Secretary is generally responsible and will report to the Commissioner in respect of each matter. Any matter requiring investigation will be allocated to an appropriate member of Senior Management, and what is proposed after investigation will be reviewed and approved or otherwise by the Commissioner personally.

In respect of any more serious or difficult complaint against a staff member, a person from outside the Commission may be engaged to assist.

### **13. Sanctions**

Sanctions may be applied if you are involved in:

- unacceptable behaviour, either in the course of your duties or in your private life;
- unsatisfactory performance of duties;
- breaches of the Code of Conduct;
- breaches of terms and conditions of employment;
- actions able to be prosecuted as breaches of the ICAC Act.

The sanction/s to be applied will depend on how serious and/or repeated breaches are considered to be. They may include:

- counselling by your supervisor, a member of Senior Management, or in extreme cases by the Commissioner;
- a record of behaviour being documented and placed on your file;
- not being recommended for salary increment;
- not being recommended for further term of employment;
- dismissal;
- prosecution.

Clause 3 of the terms and conditions of your employment states, in part, that your employment with the Commission may be terminated by either yourself or the Commission on the provision of two weeks' notice on either side, or pay in lieu. The Commission will not necessarily give a reason for terminating employment.

This provision will not be taken lightly by the Commission, and is likely to be used only for serious cases of gross inefficiency or where a substantial security risk is evident. It may not involve personal blame attaching to the officer involved.

In cases where no reason has been given for dismissing an officer of the Commission, you should discount any rumours you may hear, and positively discourage their circulation within or outside the Commission.

#### **14. Responsibilities of Officers who have left the Commission**

In accordance with the general terms and conditions of your employment, you must not without the permission of the Commission:

- make public or otherwise use any knowledge or information gained as a consequence of your employment with the Commission; or
- distribute, publish, mail or otherwise permit to go out of your possession any documents, items or things gained as a result, direct or indirect, of your employment with the Commission.

At the end of your employment with the Commission, you must return to the Commission any documents, items or things gained at any time as a result, direct or indirect, of your employment with the Commission.

## **Appendix 6**

### **POLICY AND PRACTICE IN RELATION TO THE MEDIA**

The purpose of this statement is to promote professional dealings between the Commission and representatives of the media by making known the procedures for dissemination of information by the Commission to the media.

The Commission recognises the important role the media plays in disseminating information and comment regarding the operation of the Commission. The Commission will use its best endeavours to enable the media to achieve a high standard of reporting in relation to the Commission.

The Commission is a statutory corporation established under the Independent Commission Against Corruption Act 1988. It is independent of Government but funded from the Consolidated Fund. The Commission acts through a Commissioner, Mr Ian Temby QC. There are two Assistant Commissioners - the Hon Adrian Roden QC and the Hon Michael Helsham QC. The Commission has a staff of some 120 people.

The Commission exists to minimise corruption in the public sector of New South Wales. It fulfils its aim by carrying out three main functions, with the following objects.

- **Investigations**

To ascertain the facts of stipulated matters and report on the results of investigation with a view to exposing and deterring corrupt conduct, and having it prosecuted when appropriate.

- **Corruption Prevention**

To lessen the opportunities for corruption by advising upon the revision of laws and practices, and by assisting public authorities in identifying and implementing systems of work to achieve operational integrity.

- **Public Education**

To inform members of the public of the detrimental effects of corruption and persuade them that action should be and can be taken to alleviate the problem.

Experience indicates that most media inquiries arise in relation to the investigative function. Briefly, the Commission is authorised to investigate possible corrupt conduct involving the State and Local Government sectors. The Commission can commence an investigation as a result of a complaint from a citizen, a report from a head of a public authority, on its own initiative or as a result of a Parliamentary reference. In most cases, except where a Parliamentary reference is given, the Commission will undertake some preliminary inquiries to determine whether the matter warrants the commencement of a formal investigation. It is not until an investigation is commenced that the coercive powers of the Commission become available. These powers include the holding of hearings, the production of documents and the obtaining of search warrants.

All who work for the Commission do so under statutory provision which restricts them from disclosing information acquired in the course of their employment. There are various exceptions to this rule. The only exception that is relevant is where disclosure of information is for the purposes of the Act or otherwise in connection with the exercise of a person's functions under the Act. The Commissioner decides when either of these requirements is satisfied. Staff generally are not authorised to convey confidential information, especially information concerning investigations, to outsiders.

The Commission has a small Media Unit which contributes to the performance of the public education function of the Commission. It comprises Roberta Baker and Philippa Scarf, who should be contacted by the media, and in that order.

This Unit's responsibilities include:

- liaison with the media;
- issue of media statements and the provision of official comment on operational and other matters;

- the provision of transcripts and exhibits relating to public hearings of the Commission;
- compilation and dissemination of information about the Commission;
- preparation of reports for publication and distribution.

Generally, the Commission is willing to speak about its aims and objectives, its organisation and the nature of its work. It must, however, be careful in what it says about operational matters. This is because disclosure of information may prejudice further inquiries by the Commission or the safety or reputation of individuals.

The following guidelines have been developed to achieve consistency in the making of comment on operational matters. The term "operational matters" refers to everything the Commission does in pursuance of its investigative function, other than public hearings. These the media can report directly.

1. As a general proposition, current operational matters will not be discussed.
2. When the Commission exercises any of its functions in the public domain, the media sometimes finds out and seeks further details. These will be provided to the extent practicable. For example, when the Commission, in relation to an investigation executes search warrants or uses its coercive powers to enter public premises, it will, in response to a media inquiry, confirm the action taken.
3. If an officer of the Commission interviews a complainant or some other person and it is not intended that this be public, no comment will be given to any media inquiry. The reason for this is straightforward: confidentiality is important to protect information, and possibly the safety of individuals.
4. At times a complainant makes public the fact that he or she has forwarded a matter to the Commission. If comment is sought by the media, the Commission will confirm receipt of the matter. However, no further details will be given. It is important that the Commission be able to get on with its assessment of the matter, without signalling its intentions prematurely.

5. When a person states publicly that he or she has sent a complaint or report to the Commission, and that has not happened, the Commission will, if circumstances warrant, deny receipt of it. Experience shows that sometimes people do, for their own ends, make such false claims.
6. If the media inquire whether the Commission has received a matter, and there has been no public comment by an actual or purported complainant, the Commission will neither confirm nor deny receipt of the matter. The need for confidentiality is the paramount consideration. People who provide or intend to provide information to the Commission need to feel they can do so in a confidential manner if they so desire. Any comment by the Commission in relation to such a matter which enters the public arena could result in prejudice to the matter, and the erosion of the public's expectation of confidentiality.
7. In all other matters, whether the Commission will comment or not, and the exact content of that comment if made, will be determined by the Commissioner.

The operation of these guidelines, in achieving their object, will be monitored over time. Any comment regarding their operation would be appreciated and should be directed to Roberta Baker.

## Appendix 7

### MEDIA STATEMENTS

- 25 August 1989 - Statement that the ICAC would not be investigating alleged corrupt practices in relation to Blacktown City Council and Parklea Markets.
- 14 September 1989 - Call by the Commissioner for more powers to coroners as a means of reducing the incidence of deaths in custody.
- 22 March 1990 - Statement that the ICAC would not be investigating matters relating to the killing of Australian Federal Police Assistant Commissioner, Mr Colin Winchester.
- 31 March 1990 - Announcement of the appointment of the Director of Corruption Prevention, Ms Ann Reed.
- 4 April 1990 - Announcement of the appointment of Assistant Commissioner, the Hon. Michael Helsham QC.
- 28 June 1990 - Statement in regard to the High Court judgment, Balog & Stait v ICAC.

Regular statements were also issued advising of country visits by ICAC staff to Gosford, Newcastle, Wollongong, Goulburn, Port Macquarie, Kempsey, Queanbeyan, Bega, Bathurst, Orange, Coffs Harbour, Grafton, Tamworth, Armidale, Griffith, Wagga Wagga, Albury, Broken Hill and Dubbo.

## **Appendix 8**

### **PUBLIC ADDRESSES**

#### **Commissioner - Mr Temby QC**

"The Proceeds of Crime - Should the Criminal Law Operate In Rem?" Australian Legal Convention, Sydney	17 August 1989
"Preventing Custodial Deaths" John Barry Memorial Lecture, Melbourne	14 September 1989
"Accountability and the ICAC" The Spann Oration, University of Sydney	8 November 1989
"The Setting Up of an Anti-Corruption Agency in NSW" 4th International Anti-Corruption Conference, Sydney	13 November 1989
"Corruption Prevention and the ICAC" National Goals and Directions Movement, Sydney	19 April 1990
"Occasional Address" Graduation Ceremony Police Academy, Goulburn	20 April 1990
"Corruption Prevention and the Internal Audit Function" Initiatives Against Fraud Seminar, Sydney	18 May 1990
Address to the 1990 Annual Conference of the Shires Association, Sydney	30 May 1990

#### **Assistant Commissioner - Mr Roden QC**

"Special Bodies with Special Powers" Australian Legal Convention, Sydney	17 August 1989
---	----------------

"The Place of Individual Rights in Corruption  
Investigations" 16 November 1989  
4th International Anti-Corruption Conference, Sydney

**General Counsel - Mr Zervos**

"The Role of the Commission in Law Enforcement" 11 July 1989  
1989 ALSA Conference - Organised Crime Seminar,  
Sydney

"Tackling Corruption in NSW" 5 December 1989  
Fraud Management Seminar, Sydney

"The Conduct of Hearings Before the ICAC" 23 March 1990  
State Legal Conference - NSW Law Society

**Director of Corruption Prevention - Ms Reed**

"Local Government Code of Conduct" 21 June 1990  
Royal Australian Planning Institute and  
Local Government Planners Association Seminar,  
Sydney

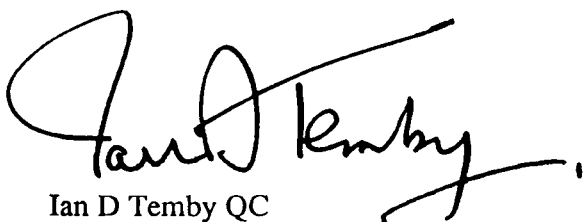
**Appendix 9**  
**FINANCIAL STATEMENTS**  
**INDEPENDENT COMMISSION AGAINST**  
**CORRUPTION**  
**For the Year Ended 30 June 1990**

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**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.



Ian D Temby QC  
Commissioner

10 August 1990



BOX 12 GPO  
SYDNEY NSW 2001

## AUDITOR-GENERAL'S CERTIFICATE

### INDEPENDENT COMMISSION AGAINST CORRUPTION

The accounts of the Independent Commission Against Corruption for the year ended 30 June 1990 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.

A handwritten signature in black ink, appearing to read "K.J. Robson".

K.J. ROBSON, FCPA  
AUDITOR-GENERAL OF NEW SOUTH WALES

SYDNEY  
13 September 1990

# INDEPENDENT COMMISSION AGAINST CORRUPTION

## Summarised Receipts and Payments Statement of the Consolidated Fund and the Special Deposits Account by Item for the Year Ended 30 June 1990

DETAILS	NOTE	1988/89	1989/90	
		ACTUAL	ESTIMATE	ACTUAL
<b>RECEIPTS:*</b>		\$000	\$000	\$000
Sale of Transcripts		5	—	85
Sale of Assets		—	—	1
Provision for commitments outstanding	9(b)	—	—	246
Balance of salaries suspense	9(a)	37	—	201
<b><u>TOTAL RECEIPTS</u></b>		42	—	533
<b>PAYMENTS:*</b>				
Employee related payments		648	5402	4502
Maintenance and working expenses	12	1129	3368	4200
Other Services:				
Legal and other costs		—	1000	1068
Accommodation Fitout - Redfern	7(c)	942	4700	4431
Capital Works:				
Plant and Equipment	1(f)(ii)	189	107	107
<b><u>TOTAL PAYMENTS</u></b>		2908	14577	14308
Excess of Payments over receipts		2866	14577	13775

\* There were no inter-fund transfers during either 1988/89 or 1989/90.

## INDEPENDENT COMMISSION AGAINST CORRUPTION

### Summarised Receipts and Payments Statement of the Consolidated Fund and the Special Deposits Account by Program for the Year Ended 30 June 1990

DETAILS	NOTE	RECEIPTS			NOTE	PAYMENTS		
		1988/89	1989/90			1988/89	1989/90	
		ACTUAL	ESTIMATE	ACTUAL		ACTUAL	ESTIMATE	ACTUAL
PROGRAM - Investigation, Community Education and Prevention of Corruption	9 1(f) (i)	\$000	\$000	\$000		\$000	\$000	\$000
Consolidated Fund		5	—	86		2908	14577	14308
Special Deposits Account		—	—	—		—	—	—
NET TOTAL - PROGRAM*		5	—	86		2908	14577	14308
NON PROGRAM -								
Consolidated Fund	9 1(f) (i)	—	—	—		—	—	—
Special Deposits Account		37	—	484		—	—	37
NET TOTAL - NON PROGRAM *		37	—	484		—	—	37
TOTAL								
Consolidated Fund		5	—	86		2908	14577	14308
Special Deposits Account	9	37	—	484	—	—	37	
GRAND TOTAL - NET*		42	—	570		2908	14577	14345

\* There were no inter-fund transfers during either 1988/89 or 1989/90.

# INDEPENDENT COMMISSION AGAINST CORRUPTION

## Statement of Special Deposits Account Balances as at 30 June 1990

PREVIOUS PERIOD			ACCOUNT	NOTE	CURRENT YEAR		
CASH	SECURITIES	TOTAL			CASH	SECURITIES	TOTAL
\$000	\$000	\$000			\$000	\$000	\$000
37	—	37	1140 Balance of Salaries Adjustment Suspense	9(a)	238	—	238
—	—	—	1820 Provision for Commitments out- standing at 30 June	9(b)	246	—	246
37	—	37	GRAND TOTAL - Special Deposits Account		484	—	484

# **INDEPENDENT COMMISSION AGAINST CORRUPTION**

## **NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1990**

### **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 financial statements reflect the first full year of the Commission's operations. Comparative figures for 1988/89 represent the Commission's receipts and payments 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 a cash basis except for employee related payments and certain maintenance and working expenses which have been reflected on an accrual basis in accordance with Treasurer's Directions.
- (c) The financial details provided in the summarised receipts and payments statements relate to transactions on the Consolidated Fund and Special Deposits Account and are in agreement with the relevant sections of the Public Accounts.
- (d) A reference in the receipts and payments statements to an "estimate" figure signifies, in the case of an annual appropriation, the amount provided in the estimates for appropriation by relevant Appropriation Act. Given that Special Deposits Account transactions were confined to "Balance of Salary Adjustment Suspense" and "Provision for

Commitments outstanding at 30 June", estimates of such amounts were not considered appropriate and as such not included within the financial statements.

- (e) A reference in the receipts and payments statements to an "actual" figure signifies the payments actually made by the Commission in respect of the item to which it refers with the exception of employee related payments and payments for certain outstanding commitments pertaining to maintenance and working expenses which are reported on an accrual basis as per (b) above.
- (f) Comparative actual figures for 1988/89 have been recast in the case of:
  - (i) Balance of salaries adjustment suspense as non program to reflect a better presentation in accordance with Treasurer's Directions; and
  - (ii) Plant and equipment as capital works which is consistent with changes made to the method of appropriation in 1989/90.
- (g) Figures within the financial statements have been rounded to the nearest thousand dollars (\$'000).

## **2. Amounts Owed to the Independent Commission Against Corruption**

Amounts totalling \$27,223 (\$4,351 in 1988/89) were owed to the Commission as at 30 June 1990 in respect of accounts for sales of transcript. These amounts are aged as follows:

<b>90 days &amp; over</b>	<b>60 days</b>	<b>30 days</b>	<b>Current</b>
\$6,481	\$2,769	\$4,895	\$13,078

## **3. Amounts Owed by the Independent Commission Against Corruption**

It is estimated an amount of \$235,000 (\$283,075 in 1988/89) was owed by the Commission in respect of goods and services provided prior to 30 June 1990 but not paid until after that date. The Commission is in the process of developing a computerised accounts payable system. Accordingly the figure quoted is an estimate based on valuations of \$108,000 for fitout works

completed but not paid for prior to 30 June 1990 and amounts totalling \$127,000 paid for goods and services in the month immediately following the end of the financial year.

#### **4. Public Borrowings and Repayable Advances**

The Independent Commission Against Corruption does not hold any public borrowings or repayable advances at 30 June 1990.

#### **5. Debts Written Off**

No amounts were written off as bad debts during the financial year.

#### **6. Contingent Liabilities**

There were no known contingent liabilities as at 30 June 1990.

#### **7. Commitments under recurrent and lease/hire agreements**

Prior to 30 June 1990 the Commission entered into the following commitments:

- (a) 5 year rental agreement which commenced on 1 March 1989, with annual payments for rent and outgoings totalling currently \$952,907.
- (b) Lease arrangements on several photocopiers with total annual rental of \$41,000 (\$16,000 in 1988/89).
- (c) Contracts in relation to the accommodation fitout estimated at \$111,000 (\$4.5 million in 1988/89).

#### **8. Assistance Provided to the Commission**

Material assistance was provided by the Accounts Branch and Staff and Salaries Branch of Premier's Department who rendered accounting, staff and payroll services to the Commission.

#### **9. Transfer to Special Deposits Account**

- (a) The amount of \$237,869 (\$37,452 in 1988/89) was transferred to the Special Deposits Account No. 1140 being \$77,166 for 3/5ths of the

salary costs of the payroll to cover the period 22 June to 30 June 1990, and \$160,703 for amounts owing in respect of the salaries of seconded police and temporary employees at 30 June 1990.

- (b) The amount of \$245,531 (\$nil in 1988/89) was transferred to suspense account 1820 "Provision for Commitments outstanding at 30 June" in the Special Deposits Account representing the end of year commitments for maintenance and working expenses which is in accordance with Treasurer's Direction 355.01.

## **10. Leave Liabilities**

The liability in respect of employees' accrued leave entitlements as at 30 June 1990 totalled \$208,742, and comprised recreation leave \$171,087 (\$58,001 in 1988/89) and extended leave \$37,655 (\$77,848 in 1988/89). These values represent total recreation leave due to all staff and extended leave entitlements for employees with more than 5 years public service.

(For ease of reference points 11 and 12 follow on individual pages.)

## 11. Dissection of Program

- (a) The table below details the program receipts of Consolidated Fund and Special Deposits Account. There were no inter-fund transfers during either 1988/89 or 1989/90.

Previous Period	Program Description	Transcript Sales	Assets Sales	Total Receipts
\$000		\$000	\$000	\$000
5	Investigation, Community Education and Prevention of Corruption	85	1	86
5	<b>TOTAL</b>	85	1	86

- (b) The table below details the program payments financed from Consolidated Fund and Special Deposits Account. There were no inter-fund transfers during either 1988/89 or 1989/90.

Previous Period	Program Description	Employee Related Payments	Maintenance & Working Expenses	Counsel Fees	Accom. Fitout-Redfern	Capital Plant & Equipment	Total Payments
\$000		\$000	\$000	\$000	\$000	\$000	\$000
2908	Investigation, Community Education and Prevention of Corruption	4,502	4,200	1,068	4,431	107	14,308
2908	<b>Total</b>	<b>4,502*</b>	<b>4,200</b>	<b>1,068</b>	<b>4,431</b>	<b>107</b>	<b>14,308</b>

- \* Includes payments totalling \$775,479 for salaries, oncosts and overtime of seconded police.

## 12. Dissection of Maintenance and Working Expenses

The following schedule dissects the "Maintenance and working expenses" figures provided in the "Summarised Receipts and Payments Statement for the Consolidated Fund and the Specail Deposits Account by item for the year ended 30 June 1990."

### Previous Period

Actual \$000	Consolidated Fund	Estimate \$'000	Actual \$'000
	<b>Expenses in Connection with Buildings</b>		
319	Rent, rates, maintenance and cleaning etc	1015	1031
	<b>Subsistence and Transport Expenses</b>		
90	Travelling, removal and subsistence	200	261
10	Motor vehicles	200	188
3	Freight	35	15
	<b>General Expenses</b>		
54	Advertising and publicity	175	98
35	Books and periodicals	50	71
385	Fees for services	900	1092
3	Gas and electricity	65	103
29	Postal and telephone	180	158
14	Printing	100	129
138	Stores, stationery, provisions etc	250	327
40	Lease of office furniture & fittings	65	199
1	Minor expenses	13	16
8	Other	120	117
-	Technical supplies	-	130
-	Computer supplies	-	265
<u>1,129</u> =====	Total	<u>3,368</u> =====	<u>4,200</u> =====

END OF AUDITED FINANCIAL STATEMENTS

## Appendix 10

### ADDITIONAL FINANCIAL INFORMATION

#### Significant Variations in Expenditure

Significant Variations between annual appropriations and actual expenditures in 1989-90 were:

DETAILS	ESTIMATE \$'000	ACTUAL \$'000	VARIATION \$'000
Employee related payments	5,402	4,502	-900
Maintenance and working expenses	3,368	4,200	+832
Accommodation Fitout - Redfern	4,700	4,431	-269

Reasons for these variations were:

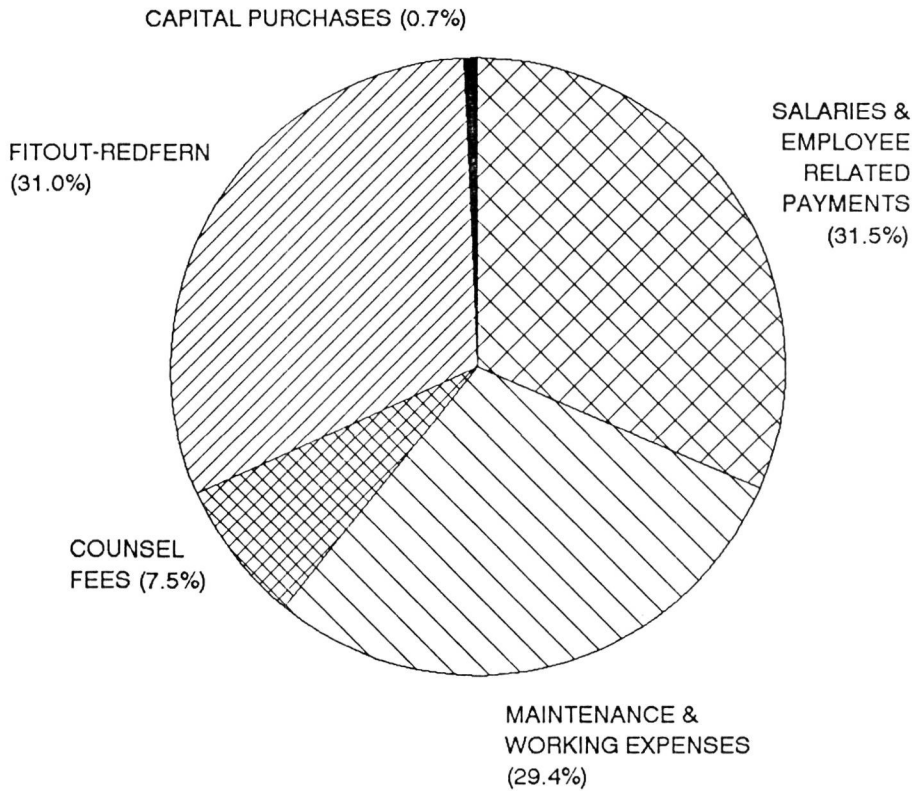
- Savings on employee related payments resulted from the rate of recruitment being less than provided for by the estimate;
- Payments for leased equipment, fees for services, technical supplies and computer supplies contributed significantly to overexpenditure of maintenance and working expenses. This resulted from rental agreements on furniture being extended due to delays in the fit-out program, the introduction of a series of special in-house training courses and the development of an equipment acquisition programme for the Technical and Security Group.
- Some delays were experienced in the fitout programme due to bad weather and industrial disputes. The remaining works are expected to be completed early in 1990/91.

## **Interest Payments**

During the financial year, interest charges of \$36.18 and \$27.38 were incurred for delayed payment of fees for media monitoring and cabcharges. Delays in procedures involving the drawing of Premier's Department cheques for payment of these accounts led to interest being charged. Direct payment of accounts by the Commission from 1 October 1990 should prevent this situation from occurring in future.

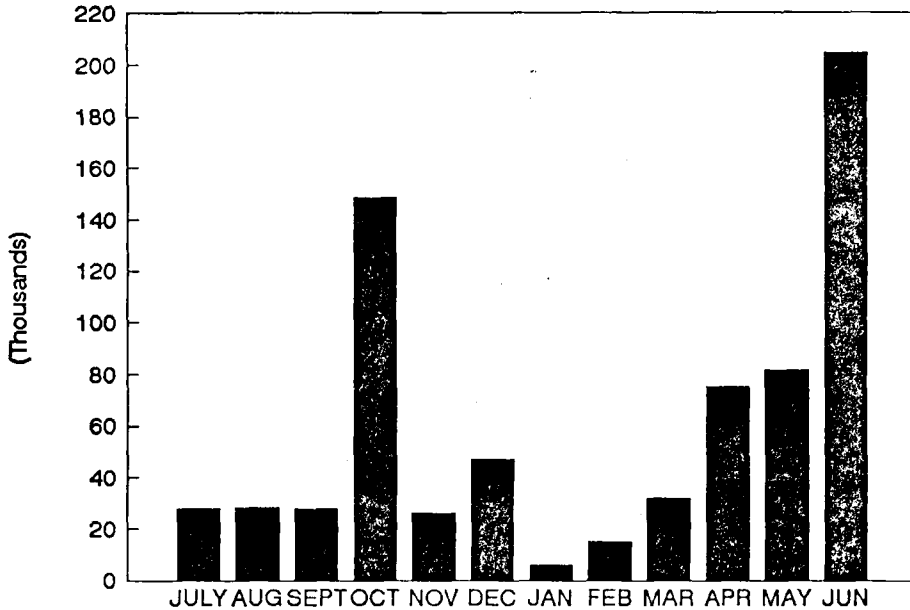
## Appendix 11

### DISSECTION OF EXPENDITURE



## Appendix 12

### EXPENDITURE ON STORES AND EQUIPMENT



- NOTES:**
- A) The rise in October reflects a bulk consignment of personal computers and peripherals; and
  - B) the rise at the end of the financial year resulted from deliveries received under the Technical and Security Group's acquisition program and from end-of-year accrued commitments.

## **Appendix 13**

### **CONSULTANCIES UNDER \$30,000**

During 1989/90 the Commission spent a total of \$113,367 for specialised services from eighteen different consultants, as listed, each at an individual cost of less than \$30,000.

#### **Forensic Document Services**

Forensic services

#### **F K Egan & Associates**

Property & valuation advice

#### **B W Pannell**

Staff selection & technical advice

#### **Fraud Management Services**

Staff selection & remuneration advice

#### **C Rowley**

Administrative services

#### **V Pursell**

Library services

#### **A G Lifestyle Management**

Occupational health & safety advice

#### **Safeco Occupational Health Service**

Vision testing

#### **J C Kelly**

Training Services

#### **Valuer General's Department**

Property & valuation advice

#### **Remuneration Planning Corporation**

Remuneration advice

**Auditor-General's Office**

Review of information technology plan

**Michael J Dever & Associates**

Security advice

**Fox Systems Pty Ltd**

Advice on development of records management system

**Ann Reed**

Staff selection advice

**Irving Saulwick & Associates**

Public attitude survey

**ICAC Hong Kong**

Training services

**Public Works Department**

Survey services

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