



INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

ANNUAL REPORT
TO 30 JUNE 1991

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J S McMillan, Rydalmere



INDEPENDENT COMMISSION AGAINST CORRUPTION

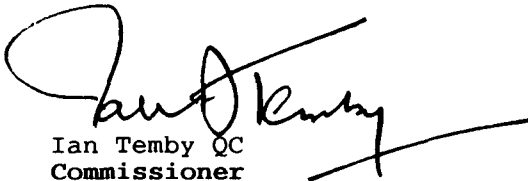
The Hon Max Willis, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

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

Dear Gentlemen

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 1991.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Ian Temby', is written over the typed name and title.

Ian Temby QC
Commissioner

INDEPENDENT COMMISSION AGAINST CORRUPTION

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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 1991 are listed below:

Ian Temby QC	Commissioner
Peter Lamb APM	Director of Operations
Ann Reed	Director of Corruption Prevention
Deborah Sweeney	Solicitor to the Commission
Stela Walker	Director of Administration and Education
Kevin Zervos	General Counsel
Chris Maxwell QC	General Counsel

CONTENTS

COMMISSIONER'S OVERVIEW	v
Chapter 1: ESTABLISHMENT AND FUNCTIONS	1
Establishment as a Corporation	1
Statutory Appointments	1
Aims and Objectives	2
Statutory Functions	3
Senior Management	6
Chapter 2: OPERATIONS	9
Operations Strategy	9
Complaints and Reports	15
Section 11	17
Inquiries and Investigations	22
Powers	24
Co-operation and Consultation	27
Dissemination of Information	28
Chapter 3: INVESTIGATIONS, HEARINGS AND REPORTS	30
Reports of Investigations	30
North Coast and Land Titles Office	31
Randwick College of TAFE	32
Department of Housing and Carpeting	32
Walsh Bay Redevelopment Project	33
Driver Licensing	34

Harassment of Edgar Azzopardi	36
Stait, Dainford and Waverley Council	38
Sutherland Licensing Police	41
Neal and Mochalski	41
Police and Truck Repairers	42
Maritime Services Board and Helicopter Services	43
Tendering for Vinyl Floor Products	44
Other Investigations	45
Matters not Investigated	51
Litigation	52
Costing of Investigations	53
Statutory Powers	54
 Chapter 4: HEARINGS - POWERS AND PROCEDURES	 55
Conduct of Hearings	55
Inquiry by Parliamentary Committee on the ICAC	56
Representation of Unincorporated Associations	60
Amendments to the Act - Hearings and Reports	60
Extraterritorial Summonses	63
Amendments to Reporting Powers	64
Recommended Changes to the ICAC Act	67
Commonwealth Legislation	68
Election Funding	69
Protection of Whistleblowers	69
Use of Commission Transcripts in Court Proceedings	70
Advice to Government	71

Chapter 5: CORRUPTION PREVENTION	73
Functions and Strategy	73
Completed Projects	74
Projects in Progress	75
Advice to Government Organisations	76
Sponsorship	79
Assistance with Corruption Prevention Strategies	80
Codes and Guidelines	82
Policy and Review	83
Seminars and Training	83
Summary of Work	85
Future Plans	86
 Chapter 6: PUBLIC EDUCATION	 87
Functions and Strategy	87
Education	88
Country Visits	89
Future Plans	90
Media Relations	91
Speaking Engagements	92
Commission Reports	93
 Chapter 7: ADMINISTRATION	 94
Organisational Framework	94
Operations Department	95
Legal and Policy Department	97
Corruption Prevention Department	97

Administration and Education Department	98
Staffing Levels	98
Recruitment	99
Staff Development and Training	100
Records Management	101
Information Technology	102
Library and Information Services	103
Finance and Accounts	103
Internal Audit	105
Overseas Travel	105
Committees	105
Consultancies, Contract Services, Major Acquisitions	106
 Chapter 8: ACCOUNTABILITY	 108
Parliamentary Joint Committee	108
Operations Review Committee	111
 APPENDICES	
1. Organisation Chart	115
2. Costs of Investigations	116
3. Procedure at Public Hearings	117
4. Public Education Strategy	121
5. Media Statements	126
6. Public Addresses	128
7. Financial Statements	131
8. Additional Financial Information	142
9. Dissection of Expenditure	144
10. Expenditure on Stores and Equipment	145
11. Consultancies	146

COMMISSIONER'S OVERVIEW

This Report relates to the ICAC's second full year of operation. It was one of solid achievement.

During the year eleven investigation Reports were made public through the Parliament, and a further two were published during July 1991. Two corruption prevention projects were completed during the 12 months, and the public education function commenced in a highly visible manner.

On the administrative side, the Commission came in precisely on budget. During the year staff numbers rose by about 20, and only about a dozen positions remain to be filled, mostly on the operations side. The standard of recruits has always been high, and it rose perceptibly during the year under review.

This Report contains the Commission's strategy documents in relation to both operations and public education. They can be found in Chapter 2 and at Appendix 4 respectively. The Report also contains cost details of each completed investigation, based on a formula presented to the Parliamentary Committee on the ICAC last March. The Commission thus continues to be open in the provision of information to the people (and taxpayers) of New South Wales.

While the work done is not cheap, no investigation to date has cost the Commission more than \$2M, and the median cost of investigations is \$0.33M. These figures reflect the very great benefits which flow from having a standing organisation with developed expertise in the conduct of corruption investigations. The Commission may not get everything absolutely right, but by now we know our game, can move into action quickly when that is necessary, and are well acquainted with the techniques which permit authoritative conclusions to be drawn in a manner which is painstaking but economical.

It is clear that the Commission continues to enjoy strong support from the public. I also have the impression that we are accepted by public servants, and especially public sector managers, as a worthwhile and useful institution. This is borne out by the fact that approaches for

Commission assistance are made more frequently and in a more frank and forthright way than was the case 12 or 18 months ago. The ICAC was then looked on by most in this class as a necessary evil.

The Commission is always looking to improve its processes. Further progress can now be reported, and a revised document outlining procedures at public hearings is contained in Appendix 3. Some contribution in these respects was made by the Parliamentary Committee's inquiry into the rights of witnesses. The resultant Report affirmed the Commission's view that as a general rule hearings in aid of investigations should be open. Much experience demonstrates that the public will not repose confidence in a body possessing special powers which does all of its work behind closed doors, and without public support the ICAC could not function effectively.

Special mention should be made of the Report on driver licensing, which was complemented by a major corruption prevention exercise. It is greatly to the credit of the Roads and Traffic Authority that a positive approach was taken to the Commission's work. The result of active co-operation will be a driver licensing system which is incapable of subornation except on an individual and sporadic basis. If all in the public sector try as hard as the RTA did to solve its pressing problems, the need for an ICAC would diminish distinctly.

At the time this is written, the Commission is expanding in three areas. The group responsible for corruption prevention work is to be considerably enhanced because their preventative work is so very useful. The same can be said for public education: the work done produces good results for little cost, and the unit is to be strengthened this year. The third initiative is the creation of a strategic investigations unit supported by a small strategic intelligence group.

At the end of the reporting year the Commission had three major public investigations under way. One relates to the unauthorised release of Government information, which has in some cases been sold, and in other instances traded, without the sanction or even knowledge of the individuals to which it relates. The matter has serious implications for both law enforcement and also the credit collection industry, and the privacy issues raised by it are of profound importance. It will be the subject of a Report close to the end of 1991.

Also at the public hearing phase is an investigation into the conduct of prison and police officers in the recruitment and use of informers for prosecution purposes. The investigation was commenced because of considerable disquiet about the use of informers in a series of notable prosecutions, most of which resulted in acquittal. The third matter relates to conflicts of interest, particularly within local government. Hearings are scheduled for October and November. It will concentrate upon issues, rather than particular instances of alleged corruption. Both these matters should be reported on during the first quarter of 1992, although that has to be said with some hesitation about the prison informers matter, the future progress of which is difficult to forecast.

This overview is considerably more sanguine than that which I prepared a year ago. However much remains unchanged, and I conclude now as I started then. The Commission is about making the system honest, helping people help themselves, and ascertaining the truth. We are not concerned with guilt or innocence: that is the business of others. The ICAC 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, our public education work helps people attain their rights without having to use illicit means.

Our commitment during 1991-92 is to do more, and do it better, without compromising individual rights.

Redfern
September 1991

Ian Temby QC
Commissioner

Chapter 1

ESTABLISHMENT AND FUNCTIONS

The Independent Commission Against Corruption came into existence on 13 March 1989. The Commission is now operating fully in respect of all its functions. This is the third Annual Report by the Commission to the Parliament. This chapter sets out the functions of the Commission and its senior management.

Establishment as a Corporation

The Commission is created as a statutory corporation by the Independent Commission Against Corruption Act 1988 (“the Act”) which provides for the appointment of a Commissioner. The Commission acts and performs its functions through the Commissioner, and those to whom he delegates functions and powers.

The Commission is independent from Government, but accountable to Parliament, through Reports about its investigations and through the Joint Parliamentary Committee. That Committee and the Operations Review Committee, the two statutory bodies which provide checks on the Commission’s operations, are described in Chapter 8. They are important means by which the independence of the Commission is balanced by accountability. Other means of accountability are provided by judicial review, the media and public opinion. All of them are dealt with later in this Report.

Statutory Appointments

The Commissioner is appointed by the Governor and can only be removed from office on the address of both Houses of Parliament. The Commissioner, Ian Temby QC, commenced his five year appointment on 13 March 1989.

The Act provides for the appointment of Assistant Commissioners to assist the Commissioner in carrying out the Commission’s functions. On

1 April 1989 the Hon Adrian Roden QC was appointed Assistant Commissioner. He has continued in that office to date, and handled two of the Commission's most significant investigations. The Hon Michael Helsham QC held a position as Assistant Commissioner from April 1990 until October 1990, to preside over a particular investigation. Bruce Collins QC was appointed Assistant Commissioner for a short period, from September to November 1990, to handle a particular investigation. He will take up a further short appointment in late July 1991 to preside over two investigations.

Aims and Objectives

The Commission's aim is to minimise corruption in the public sector of New South Wales. In doing so it is required by the Act to regard the protection of the public interest and the prevention of breaches of public trust as its paramount concern.

The Commission has three main functions and objectives:

- . Investigations.

To ascertain and report the facts of particular matters, with a view to exposing and deterring corrupt conduct, and having it prosecuted where appropriate.

- . Corruption Prevention.

To reduce opportunities for corruption by advising the public sector about changes in laws, procedures and work systems.

- . Public Education.

To inform the public and the public sector about the detrimental effects of corruption, and the positive consequences flowing from action to reduce corruption, and thereby to achieve desirable attitudinal change.

Statutory Functions

The Commission's functions are set out in ss13 and 14 of the Act. Section 13 was amended in December 1990 to more clearly spell out the Commission's functions following the decision of the High Court in *Balog and Stait v ICAC*, delivered on 28 June 1990, and reported in the Commission's 1990 Annual Report.

Section 13 now reads :

Principal functions

13. (1) *The principal functions of the Commission are as follows:*

- (a) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:*
 - (i) corrupt conduct; or*
 - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct; or*
 - (iii) conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur;*
- (b) to investigate any matter referred to the Commission by both Houses of Parliament;*
- (c) to communicate to appropriate authorities the results of its investigations;*
- (d) to examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct;*
- (e) to instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated;*
- (f) to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of*

their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct;

- (g) to co-operate with public authorities and public officials in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct;*
 - (h) to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct;*
 - (i) to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration;*
 - (j) to enlist and foster public support in combating corrupt conduct;*
 - (k) 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.*
- (2) The Commission is to conduct its investigations with a view to determining:*
- (a) whether any corrupt conduct, or any other conduct referred to in subsection (1)(a), has occurred, is occurring or is about to occur; and*
 - (b) whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct; and*
 - (c) whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.*
- (3) The principal functions of the Commission also include:*
- (a) the power to make findings and form opinions, on the basis of the results of its investigations, in respect of any conduct, circumstances or events with which its investigations are concerned, whether or not the findings or opinions relate to corrupt conduct; and*

- (b) *the power to formulate recommendations for the taking of action that the Commission considers should be taken in relation to its findings or opinions or the results of its investigations.*
- (4) *The Commission is not to make a finding, form an opinion or formulate a recommendation which section 74B (Report not to include findings etc. of guilt or recommending prosecution) prevents the Commission from including in a report, but this section is the only restriction imposed by this Act on the Commission's powers under subsection (3).*
- (5) *The following are examples of the findings and opinions permissible under subsection (3) but do not limit the Commission's power to make findings and form opinions:*
 - (a) *findings that particular persons have engaged, are engaged or are about to engage in corrupt conduct;*
 - (b) *opinions as to whether consideration should or should not be given to the prosecution or the taking of other action against particular persons;*
 - (c) *findings of fact.*

The Commission has been given functions and powers in respect of corrupt conduct as widely defined in ss7, 8 and 9 of the Act. The definition covers dishonesty or partiality in the exercise of official functions, misuse of official information, a breach of public trust, and specified offences including fraud, bribery, blackmail and perverting the course of justice. Corrupt conduct may be committed by public officials in the State and local government public sectors, or by private individuals seeking to adversely affect the exercise of a public official's functions.

To amount to corrupt conduct, conduct must constitute or involve a criminal or disciplinary offence, or reasonable grounds for dismissing a public official or dispensing with that person's services.

The Commission is now operating in terms of its three main statutory functions of investigation, corruption prevention and public education. Details of the work being done by the Commission in those three areas are set out in later chapters of this Report.

Senior Management

Matters of staffing and the organisational structure of the Commission are dealt with in Chapter 7. Set out here are brief details of statutory officers as at 30 June 1991 and other members of senior management, and their responsibilities.

Commissioner, Mr Ian Temby QC

Mr Temby was admitted to legal practice in 1966. He practised law in Western Australia until 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 took up the position of Commissioner-designate. He formally commenced as Commissioner on 13 March 1989.

The Commissioner is responsible for formulating and managing policy for the Commission, discharging the Commission's statutory functions and powers, and making decisions about, and conducting, investigations, including presiding over hearings and preparing reports for Parliament.

Director of Operations, Mr Peter Lamb

Mr Lamb joined the Commission as Director of Operations in December 1990 after a distinguished police career centred upon criminal investigations, intelligence gathering and organised crime. He had most

recently been an Assistant Commissioner of the Australian Federal Police, of which he had been a member for 30 years.

Mr Lamb has responsibility for the Commission's Operations and Assessments staff and work, and the security of the Commission and its staff.

Director of Administration and Education, Mrs Stela Walker

Mrs Walker has had a long career in administration in the Commonwealth public sector. She joined the Commission at its outset, on secondment from the Commonwealth Director of Public Prosecutions.

Mrs Walker and her staff have responsibility for public education, media relations, employment, finance and services, which enable the Commission to perform its work.

Director of Corruption Prevention, Ms Ann Reed

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

Ms Reed and her staff provide corruption prevention advice and services to the public sector.

Solicitor to the Commission, Mr David Catt and Ms Deborah Sweeney

Mr Catt, a solicitor with considerable public sector legal and policy experience, left the Commission in March 1991 to take up another public sector legal appointment.

Since March 1991 the duties of Commission Secretary have been performed on an acting basis by Ms Sweeney, a lawyer with public sector and criminal law experience. She is the joint author of "Commonwealth Criminal Law", published in 1990.

The title of the position was changed near the end of the reporting period; it was previously Commission Secretary.

The Solicitor to the Commission supervises the Commission's lawyers, and provides policy and legal advice and services to the Commissioner and Commission.

General Counsel, Mr Kevin Zervos

Mr Zervos has practised as a lawyer in the private and public sector, and before joining the Commission was responsible for complex fraud prosecutions in the office of the Commonwealth Director of Public Prosecutions.

General Counsel provide high level legal and strategic advice to the Commission, supervise preparation of hearings, and act as counsel assisting in some hearings.

General Counsel, Mr Christopher Maxwell QC

Mr Maxwell, a Crown Prosecutor in New South Wales, joined the Commission in November 1990, on secondment from the New South Wales Office of the Director of Public Prosecutions. An experienced advocate, he has acted as counsel assisting the Commission in several Commission hearings. His predecessor was Mr Ian Lloyd QC, also a Crown Prosecutor who was on secondment from that Office.

Chapter 2

OPERATIONS

This chapter deals with the legal provisions, policy and procedures relative to operational matters. An account of actual investigations conducted by the Commission is in Chapter 3. Operations staff and their functions are dealt with in Chapter 7.

Operations Strategy

The Operations Department is responsible for undertaking the investigative work of the Commission. It has undergone some change and development during the reporting year. One development has been the completion of an Operations Strategy which is basic to the work and processes of the Operations Department. It is produced here in full.

OPERATIONS STRATEGY

The Independent Commission Against Corruption exists to minimise corruption in the public sector of New South Wales. The Independent Commission Against Corruption Act 1988 gives the Commission functions in relation to investigations, corruption prevention and public education. The Operations Department of the Commission is responsible for investigations, but it does more. In particular, the department handles all complaints from the public and/or reports from public authorities. The aim of this document is to outline what the Operations Department does, and how and why it is done.

LEGAL CONTEXT

The Commission is empowered by the Act, - Section 13(1):

- (a) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- (i) corrupt conduct; or
 - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct; or
 - (iii) conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur;
- (b) to investigate any matter referred to the Commission by both Houses of Parliament;
 - (c) to communicate to appropriate authorities the results of its investigations.

The Commission has been given special statutory powers which can be exercised only “for the purposes of an investigation”. Any public authority or public official can be required, by written notice, to produce any document, or a statement of information. Staff of the ICAC authorised by the Commissioner may enter any premises occupied or used by a public authority or public official, inspect documents and take copies of them.

Hearings can be held, presided over by the Commissioner or an Assistant Commissioner, to which witnesses may be summoned. At such a hearing any person can be required to answer questions, notwithstanding most grounds of privilege. Objection can be taken to answer questions or produce any document or statement in which event the answer given or that which is produced cannot be used in proceedings before the courts or in disciplinary proceedings.

SOURCES OF WORK

The investigative work of the Commission results from one or more of:

- . Public Complaints

The Commission relies upon members of the public being prepared to come forward and provide information about corrupt conduct. Corrupt conduct is defined in the ICAC Act and includes a wide variety of behaviour. Broadly it is

the conduct of any person that adversely affects the honest or impartial exercise of official functions by a public official. This can range from bribery to illegal drug dealing and also incorporates behaviour which, whilst not criminal, may be serious enough to constitute a disciplinary offence or reasonable grounds for dismissing a public official. Reports of corrupt conduct can be by way of telephone, letter or personal visit. Information may be given anonymously. The information need not be in the form of proof but should contain enough specific information for an assessment to be made and possible further action taken.

- Reports from Public Authorities

Under s11 of the ICAC Act, the principal officers of public authorities have an obligation to report suspected incidents of corrupt conduct. Public authorities include government departments, local and municipal government and other public sector instrumentalities. This does not relieve the public authority of responsibility for the development and application of its own anti-corruption strategies. Matters referred to the Commission should be pursued in the normal way unless the Commission advises otherwise. Reports must be made in a timely manner, i.e. as soon as reasonable suspicion arises that it concerns or may concern corrupt conduct.

- Parliamentary References

If both Houses of Parliament refer a matter to the Commission for investigation, that must happen. There have been no Parliamentary references to date.

- On its Own Initiative

The Commission is authorised to initiate its own investigations. This means that particular areas or issues of corruption brought into focus by the work of the Commis-

sion, but not necessarily as the result of a complaint, report or reference, can still be pursued using the investigative process. This also enhances the Commission's independence in permitting it to determine without condition its investigative direction.

- Through Co-operative Investigation

Commission investigators sometimes work closely with the investigative staff of other authorities. From time to time a joint task force will be created, charged with the responsibility of undertaking a specific investigation. The Commission has a policy of positive co-operation with other agencies such as the Auditor General, the Ombudsman, the National Crime Authority, the New South Wales Police Service, the Department of Local Government and so on.

PROCESS AND OUTCOMES

The operational work of the Commission comprises one or more of:

- Assessment

All reports and complaints of corrupt conduct are initially examined by officers of the Assessment Section. This is done to ensure the matter is within the jurisdiction of the Commission, and to assess the substance of the allegations being made. The assessment process can include requesting information from public authorities, analysing material and interviewing or re-interviewing complainants. Following assessment a decision is made as to whether the matter should be discontinued or proceed to preliminary inquiry.

- Preliminary Inquiry

If a matter proceeds to preliminary inquiry it is transferred to an investigative team. These teams are multi-disciplinary; they draw on the skills of investigators, analysts and support

staff. Assistance and guidance is also sought from Commission lawyers. At this point witnesses are interviewed, further information sought from other agencies as necessary, and a thorough analysis undertaken of all information and documentation.

- . Formal Investigation

A formal investigation is commenced if the preliminary inquiry indicates evidence of corrupt conduct of such significance as to warrant particular attention. Before a formal investigation commences, terms of reference are prepared, approved and signed by the Commissioner.

- . Hearings

If appropriate, a formal investigation will proceed to hearings which are generally held in public. The aim of hearings is to get to the truth of a particular matter.

- . Reports

The Commission can prepare a report to the Parliament in relation to any investigation, and must do so whenever it receives a reference from the Parliament, or has held public hearings. Such reports must contain certain findings, and opinions and recommendations are also included.

- . Prosecutions

Whether or not there has been a hearing, if Commission investigators can obtain evidence of criminal offences, such evidence will be assembled with a view to a charge being laid, subject to advice from the Director of Public Prosecutions whose officers handle the matter through the courts.

Statute requires the Commission to conduct its investigations with a view to determining whether any corrupt conduct has occurred, is occurring, or is about to occur, whether laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and whether any methods or work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.

PRINCIPLES

The investigative strategy of the Commission is based on the following principles:

- . Seeking the Truth

For corruption to exist and flourish it must occur in secret, out of reach of mechanisms of accountability and scrutiny. The investigative process must be capable of ascertaining whether and how corrupt conduct has occurred. Therefore, the aim of any investigation is to ascertain the truth using all legal methods for the purpose of doing so, but only such methods, in a manner which is fair to individuals and conducive to the public interest.

- . A Broad Focus

Minimising corruption through investigation can only occur if the operational work of the Commission is done in a wide range of areas, and involves matters of varying degrees of seriousness. To concentrate resources on one area only permits corruption to flourish in others; to investigate only extremely serious allegations means that many important issues capable of arising out of less serious allegations are never aired. Even minor allegations of corrupt conduct can serve to highlight more important underlying issues, and convey powerful messages about the detrimental effects of corruption.

- Filling Vacuums

To the extent traditional law enforcement and other agencies are able and willing to do work which relates to corruption, they should do so, if necessary with input from the ICAC. The Commission's capacity is reserved for such important work as others cannot or will not do.

- Targeting Corruption

The Commission commits significant resources to targeting and investigating corruption proactively. This means identifying areas where institutionalised corruption may exist, and is unlikely to come to light by normal means.

CONCLUSION

The success and effectiveness of the Commission's investigative activity depends to a very large extent on the willingness of the public to come forward with information. Whilst it is not always possible for all of the investigative process to occur in the public view, it does require public participation to make it work effectively.

Complaints and Reports

Complaints are received from members of the public in accordance with s10 of the Act. Reports of corrupt conduct are received from public authorities in accordance with s11 of the Act.

People sometimes provide information or make an inquiry about whether the Commission would investigate a particular type of matter, as distinct from complaints. These are classified as information and inquiries. Some complaints may be outside the jurisdiction of the Commission and are classified accordingly.

Matters are reported by public authorities in the form of individual reports outlining the suspected corrupt conduct or by way of a schedule containing a summary of such matters for a period of weeks or months.

The Commission has issued guidelines for the reporting of corrupt conduct by public authorities which include provision for authorities to seek approval from the Commission to report by way of schedule. Public authorities currently reporting in this manner include the Totaliser Agency Board, State Transit Authority, Family and Community Services, Home Care Services, the New South Wales Ombudsman, the Department of Local Government, the Department of School Education and the New South Wales Police Service.

During the year under review the Commission received 761 approaches from members of the public, 245 individual s11 reports and 2663 s11 reports by way of schedule.

The 761 approaches from the public were classified as 501 complaints, 88 inquiries or pieces of information, and 172 as not concerning corrupt conduct and therefore being outside the Commission's jurisdiction. The number of complaints categorised as outside jurisdiction is slightly less than for last year, and the information and inquiries remain about the same as last year's figures.

The approaches from the public were made in a variety of ways which are shown in the bar chart on page 18. The difference in country visits figures occurs because this year officers only recorded and counted those matters which concerned corrupt conduct, whereas previously all approaches were counted, although there were a fair number of matters outside the Commission's jurisdiction.

An analysis of complaints indicates that the two largest areas of complaint were local government (20.5%) and Police (18.7%).

Only 75 complaints were anonymous. Whilst the Commission will act on anonymous information if sufficient, it is easier to pursue information from identified complainants.

The Commission believes that complainant confidentiality is important, and does not disclose the identity of complainants to the media or otherwise on request. It may be necessary to make the identity of complainants known, for example, to persons complained about. Section 111 of the Act generally prohibits officers of the Commission from

disclosing information acquired in the course of their employment except for the purposes of the Act. This duty of secrecy helps to reinforce the policy of complainant confidentiality.

Complainants are also protected by s17K of the Defamation Act, which provides a defence of absolute privilege for publications to the Commission in connection with its functions.

However, if a matter proceeds to investigation and public hearings, it is likely that the identity of a complainant will be revealed or deduced.

During the year the Commission became concerned that public statements by complainants about complaints made to the Commission were being used for political purposes. The Commission has previously stated the desirability of maintaining confidentiality when a complaint or report of corrupt conduct is made to the Commission. Public announcements can cause harm to people's reputations, particularly if allegations have no substance, and if allegations do have substance information or documents can be lost or destroyed. Concerns were also expressed to the Commission by some media representatives about such public statements.

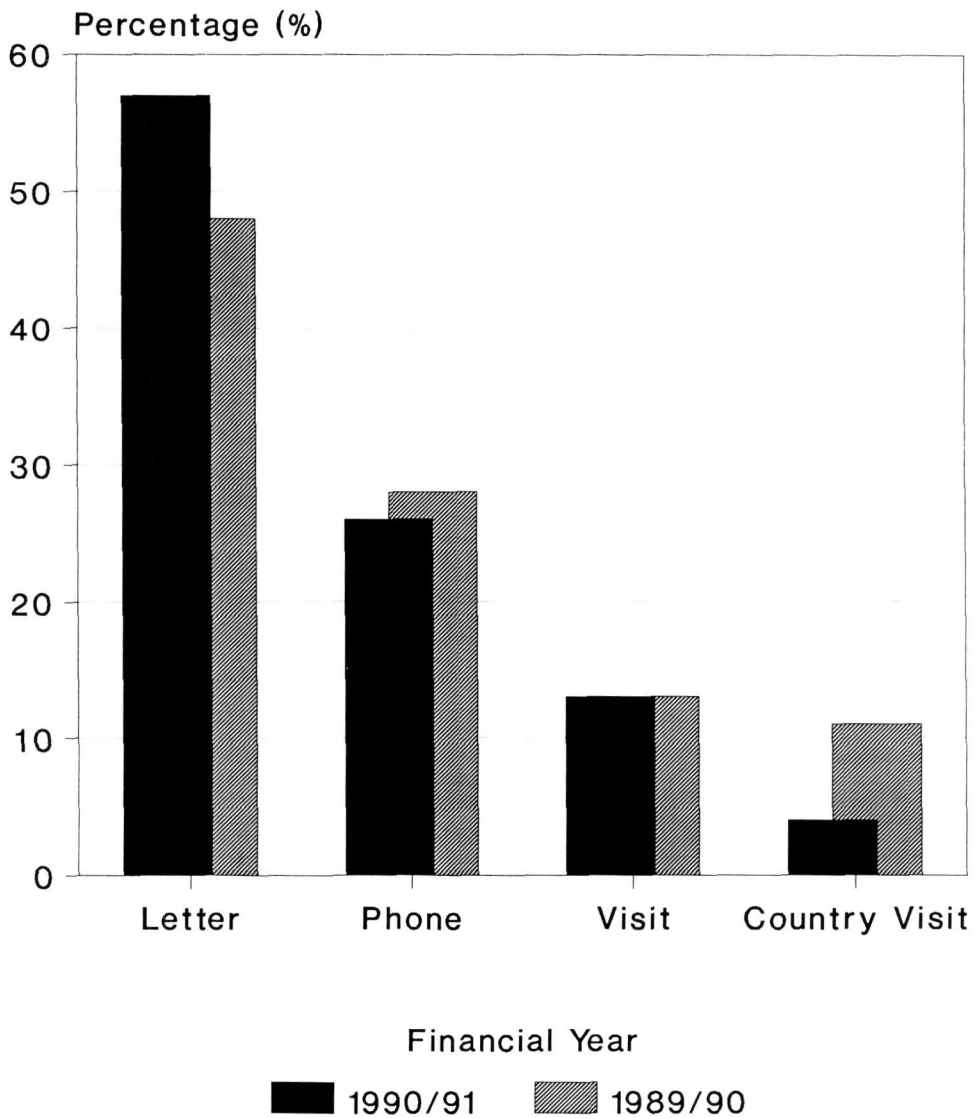
In March 1991 the Commissioner wrote to each member of the New South Wales Parliament, to the major political parties in the State and to each council, requesting that complaints and information be made and provided confidentially, whenever practicable, which should be almost always. The Commission received positive responses to the letters, and public statements about complaints to the Commission have decreased. It remains to be seen whether that will continue to be the case up to 14 September 1991, when Local Government elections are being held.

Section 11

Reports under s11 of the Act are received from the principal officers of public authorities in accordance with their statutory obligation to report to the Commission conduct which they suspect on reasonable grounds concerns or may concern corrupt conduct. This year 2663 reports were received in the form of schedules. Each matter in the

MODE OF COMPLAINT

1-7-90 to 30-6-91



schedules is assessed, and where necessary action is taken. In the great majority of cases it is left to the Department or agency concerned to pursue the matter.

The Commission has noticed an increasing trend for public authorities to report by schedule, with the Commission's concurrence. This is done in part for reasons of administrative convenience, and in part because of the nature of the matters reported. Some of the matters reported by schedule by some agencies have been referred to, and are being dealt with by, those agencies, but they consider they are obliged to inform the Commission about them. That is significantly the case with the Police Service and the Ombudsman's Office. Other agencies refer by schedule matters which originate there, but which are relatively minor and/or are being dealt with by the agent's disciplinary scheme or by the police. Serious matters tend to be reported individually, outside the scheme of schedule reporting.

The Commission received 245 individual reports of corrupt conduct this year. While this is about 70 more than received last year, it is still not as high as expected. The Commission has received individual reports from just over 50 authorities. It received in excess of 40 reports from each of the Police, the RTA, and local councils as a group. From each of the other Departments and agencies the Commission received between one and ten reports, mostly at the lower end of that range. It reflects well on the RTA that they have conscientiously reported. It reflects badly on other authorities, some with characteristics similar to the RTA, such as high staff numbers, significant operational budget and annual revenue received, a high degree of acquiring goods and services and a large capital works program, that they have reported so little. Similarly the Commission would have expected a higher reporting profile from authorities with investigative and management functions, or with a large public client base, and those which administer the rights and freedoms of a large client base.

The Commission recognises that some smaller authorities which report only a few matters are reporting at appropriate levels. However, in the case of authorities with the characteristics mentioned above, the Commission is not so confident. It suspects that insufficient efforts are being made by principal officers to find out about suspected corrupt conduct within their authorities, or to convey such information to the

Commission. The Commission intends to take up this issue with authorities which appear to be providing too few reports. Reports are an important means for the Commission to develop a picture of the nature and extent of possible corruption.

There has been some confusion in the public sector about the intention and effect of s11. The essence of s11 is the provision of information about the nature and extent of possible corrupt conduct. This does not necessarily mean that the authority hands over responsibility for the matter, or that the Commission will automatically pursue it. There will be some matters which the Commission feels it should pursue, perhaps to the extent of formal investigations. Timely reporting of matters will enable such decisions to be properly made. The Commission also desires that the fact of reports not be publicly disclosed.

During the year the Commission gave advice to the Ministry of Arts about principal officers of cultural institutions within the Ministry, and to the State Rail Authority, State Transit Authority, and Tow Truck Industry Council about the principal officers of those authorities. Their requests for advice revealed a complexity in the definition of principal officer in s11(5), which defines the principal officer of an authority in terms of three positions, being the head of the authority, its most senior officer, or the person normally entitled to preside at its meetings. In some organisations there may be different persons performing those functions.

The Commission's views were also sought by the Government about proposed regulations prescribing principal officers in the Health and Local Government portfolios. It suggested that the position should be classified in relation to Health authorities, but that prescription in the Local Government area might better await proposed changes to the Local Government Act about the management of councils.

In September 1990 the Commission published guidelines under s11(3) of the Act, to assist public officials who are required to report suspected corrupt conduct to the Commission, in the performance of that duty.

As noted above, the Commission has not received as many s11 reports as expected. Often it does not receive reports when events happen, but some time later. Reporting a matter to the Commission well after

it occurs, and when inquiries by the authority or the police are well advanced or completed, effectively deprives the Commission of a real decision about whether and how to deal with the matter. To enable the Commission to effectively perform its work, and make decisions about what it investigates, it needs to receive full and timely reports. Section 11 does not address the content, manner or timing of reports.

The purpose of the duty in s11(2) is to achieve a comprehensive flow of information about corrupt conduct to the Commission. If that is to occur, rather than that reporting be haphazard, principal officers must actively find out about matters rather than only report matters which come to their attention. This implies that principal officers should establish and maintain effective internal reporting systems so that they find out about matters, but s11 does not explicitly contain such a requirement.

Section 11(3) provides that the Commission “may issue guidelines as to what matters need or need not be reported”. That may mean that the Commission may issue guidelines, with examples, to explain the reporting duty, or that the Commission may specify that some matters of corrupt conduct need not be reported. The latter interpretation would mean that the Commission was intended to have a discretion to remove some types of conduct from the requirement to report. The Act has not elsewhere provided any mechanism to limit the information the Commission receives, so it may be that the guidelines envisaged in s11(3) were not intended to limit the information to be received by the Commission.

The Commission suggests that it should have a discretion, in relation to classes of matters, such as old matters, minor matters or minor disciplinary matters, to specify that they not be reported or that they be reported by special arrangement.

The older matters are the less likely it is that useful investigative or corruption prevention work can be done. Matters which involve minor disciplinary breaches are within the definition of corrupt conduct, but to report each such matter may be burdensome for an authority and not greatly assist the Commission. The Commission should therefore be able to make arrangements with agencies for periodic summary

reporting of some classes of matters, and to specify classes of matters which generally need not be reported.

The obligation in s11 falls mostly on the principal officers of public authorities, defined as noted above. It is sometimes a complex process to identify the principal officers of some authorities, particularly those with governing boards. This is in part because some authorities have more than one person fitting different limbs of the definition. A practical difficulty is that in some authorities the person responsible for the daily running of the authority, and so perhaps best placed to report matters to the Commission, is not the principal officer, who may be the Chairman of a Board which meets only periodically.

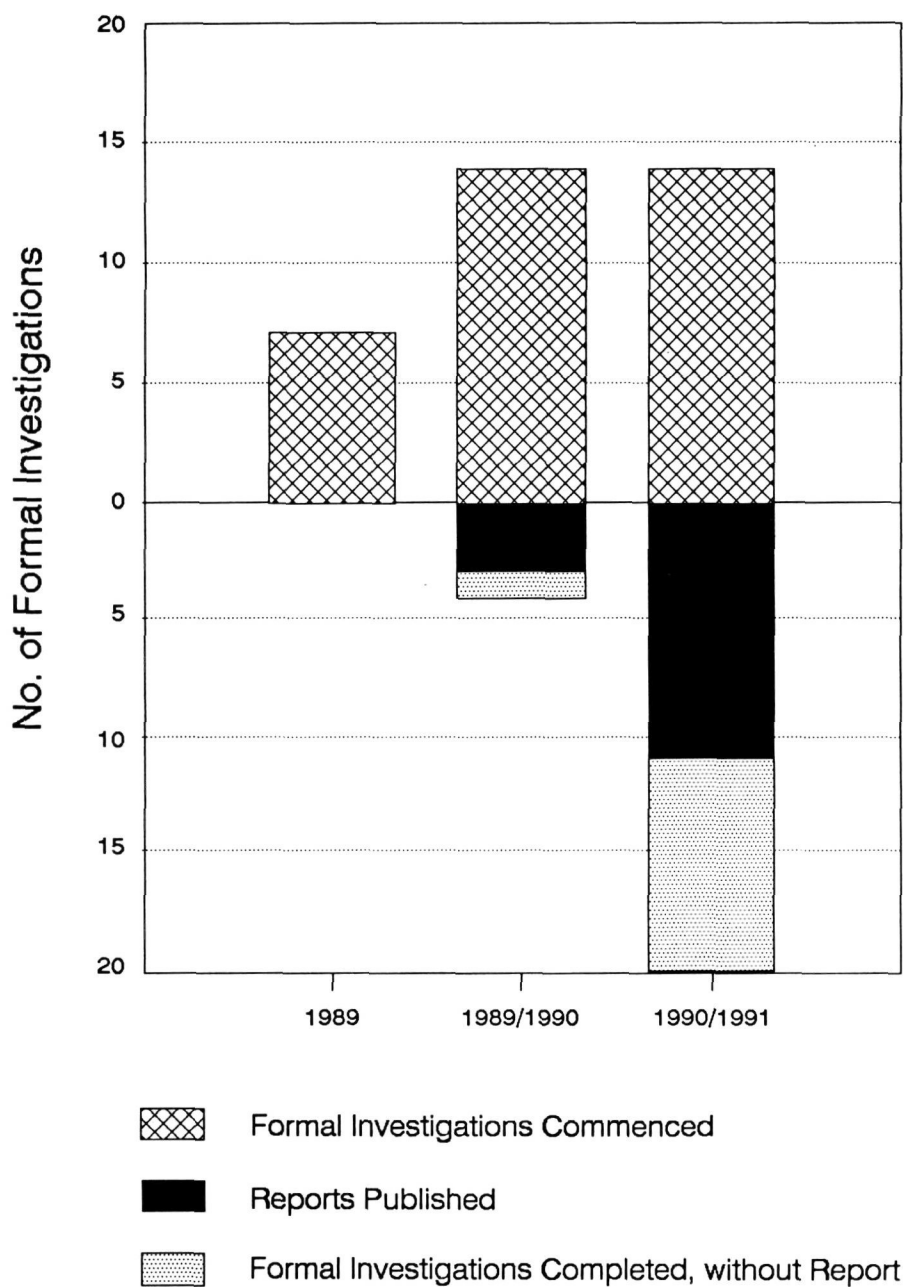
There is provision in s11(5) for the making of regulations to prescribe the principal officer of a public authority, but the regulation-making process is not simple. One way to simplify the situation would be to change the definition of principal officer to “the most senior officer of an authority responsible for the daily management of the authority”.

The other matters referred to above could be remedied by amendments to s11, to make provision for, or permit the Commission to issue, directions about the manner, timing and content of reports, that specified classes of conduct need not be reported or can be reported by special arrangement, and the nature of effective internal reporting arrangements.

Inquiries and Investigations

Complaints or reports of corrupt conduct are assessed when received. If the assessment indicates a significant matter of corrupt conduct of interest to the Commission preliminary inquiries are conducted. About 25% of individual complaints and reports received by the Commission proceed to this stage. The object of the preliminary inquiry process is to obtain additional information about the allegations in order to determine whether there is some significant corrupt conduct which requires investigation. If the preliminary inquiry does not reveal such, the matter does not proceed to investigation. In the case of complaints, the advice of the Operations Review Committee (“ORC”) must be sought prior to the Commission making a final decision. During the year 393 matters were referred to the ORC for advice. In each case the Commissioner accepted the advice given.

FORMAL INVESTIGATIONS



As at 30 June 1991 the Commission had commenced a total of 35 formal investigations. Fourteen were commenced during the reporting year and five of these were completed. Fifteen commenced prior to 1 July 1990 were completed during this last year. The investigations commenced and completed during the last three reporting years are represented in the diagram on the previous page.

Formal investigations are commenced when the Commission is of the opinion that its special powers are necessary to investigate and/or expose a significant matter of corrupt conduct. Considerably less than 10% of preliminary inquiries commenced become formal investigations. The approval of a formal investigation involves careful consideration of issues such as the seriousness of the matter, its complexity, the opportunity for corruption prevention work or to convey messages about corruption, and the other principles articulated in the Operations Strategy.

Powers

To perform its investigative function, the Commission has been given powers similar to those of Royal Commissions and specialist investigative agencies. The Commission recognises its responsibility to use its powers properly and only for statutory purposes. The Commission's powers are only used in the course of formal investigations.

They are set out in the Act, and the most significant of them are highlighted here. It is clear that in weighing competing interests Parliament has given the Commission adequate powers to enforce disclosures to it.

Statistics on the Commission's use of its powers in the year to 30 June 1991 are set out in Chapter 3.

The Commission may require a public authority or public official to produce a statement of information, under s21, and may require any person to produce specified documents or things, under s22. The second power applies to all persons and organisations, not just public officials and authorities. Both powers are exercised by notice in writing.

Sections 21 and 22 were amended in December 1990 to permit the production of statements, documents or things to officers of the Commission other than the Commissioner or Assistant Commissioners. The issue of notices is still controlled by the Commissioner or an Assistant Commissioner, but the things required to be produced are usually produced to a senior officer of the Commission. Now and again, as a matter of mutual convenience, production to a Commission investigator away from Sydney is organised.

Under s23 a Commission officer, authorised in writing by the Commissioner, may enter premises occupied by a public authority or public official, inspect any document or thing in the premises, and take copies of any document. The Commission has adopted the procedure of written authorisations specific to particular matters and premises.

Section 23 does not permit the inspection or copying of documents or things concerning the relationships between the State Bank or the Government Insurance Office and their clients. Nor can the Commission exercise the power in s23 in relation to State owned corporations: s36 (2) State Owned Corporations Act 1989.

The exercise of powers in ss21, 22 and 23 may be resisted on the grounds of legal professional privilege, but not public immunity privilege or any duty of secrecy: ss24 and 25. Nor does the privilege against self incrimination prevent compliance with ss21 or 22, although information, documents or things may not be used in proceedings against the person producing them (other than proceedings for an offence against the Act) if the person objects to production.

The Commission may hold hearings in the course of formal investigations, under s30. Only the Commissioner or an Assistant Commissioner can preside at a hearing. Hearings must generally be held in public: s31. The Commission may only hold a hearing in private if 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 permit a witness in a hearing, or a person who is substantially and directly interested in any subject matter of the

hearing, to be legally represented at the hearing. In practical terms, witnesses who want representation are always allowed it.

The Commission can summon a person to appear at a hearing to give evidence, or produce documents, or both: s35. If a witness objects to answering questions on the basis of self incrimination or for any other reason, s/he must still answer but the answer cannot be used against him/her in subsequent legal or disciplinary proceedings, other than proceedings for an offence against the Act.

Section 40 empowers an authorised justice or the Commissioner, on application by an officer of the Commission, to issue a search warrant if satisfied that there are reasonable grounds for doing so. A Commission officer may apply for a search warrant for premises in which he or she reasonably believes that there are or will be things connected with the Commission investigation. Applications for search warrants are vetted by the Commission's General Counsel. To date all search warrants have been sought from authorised justices, as a matter of Commission policy.

Search warrants authorise Commission officers to enter premises, search for and seize documents or things connected with a Commission investigation. The regulatory scheme in the Search Warrants Act 1985 and Regulations, which provides protection for the occupiers of premises being searched and requires a report to the authorised justice about the execution of a warrant, applies to warrants issued to Commission officers.

Section 19 of the Act permits the Commission to apply for the issue of a warrant for the use of a listening device under the Listening Devices Act 1984. That power is not utilised often. It was used only once in the reporting year.

Part 5 of the Act gives the Commission power to refer matters for investigation or other action to an appropriate person or body, before, after or during an investigation. The Commission must consult with the person or body before referring a matter. Authorities to whom matters are referred can only deal with them within the scope of their statutory powers. The Commission can take action following a referral to ensure that action is taken. During the year the Commission referred

14 matters to the RTA, arising out of the Driver Licensing investigation, one to the Director of Public Prosecutions, one to the Commissioner of Police, and one to a metropolitan council. All of these references arose out of investigations.

The Commission also has powers (ss98-100) to deal with contempt, principally in connection with the conduct of hearings. The Commission can inquire into and certify a contempt, to the Supreme Court, but cannot impose punishment. Only the Supreme Court can do that, after it conducts its own hearing. No contempt proceedings were commenced in the year under review.

The Act also creates a number of offences, in Part 9, the purpose of which is to punish and deter conduct which interferes with the Commission's pursuit of its investigative function.

Co-operation and Consultation

During the year the Commission was represented at a number of conferences, including the annual conferences of the Australian Bureau of Criminal Intelligence and the National Crime Authority. The Commission is represented on an inter-agency working party, convened by the New South Wales Crime Commission, dealing with procedures to be used by law enforcement agencies to obtain information from organisations.

The Commission maintains close co-operative and consultative ties with the New South Wales Police Service, members of which worked with the Commission on a number of operational matters, two of which became joint task forces. The larger was that involving investigation of allegations of corruption within the truck repair industry. The Commission has worked with the Internal Police Security Unit on other matters and maintained a monitoring role in relation to some sensitive investigations. The Police Service continues to provide information in connection with a number of continuing investigations.

The Commission has regular liaison meetings with the Australian Taxation Office and has settled a protocol for exchange of information with the Australian Bureau of Criminal Intelligence.

The Commission maintains a program of regular liaison meetings with a number of public authorities including the New South Wales Police Service, the Office of the Ombudsman, the State Transit Authority, the Judicial Commission, the Roads and Traffic Authority, the Department of Local Government, the State Rail Authority and the New South Wales Crime Commission. Liaison also occurs with the Australian Federal Police and the Australian Customs Service.

Because of the legislative scheme for handling complaints against police (the Police Regulations (Allegations of Misconduct) Act 1978) there was a need during the year for the Commission, in consultation with the Ombudsman and the Police Service, to develop a protocol for dealing with such complaints. The Commission has agreed to generally defer to the existing scheme, which means that allegations of misconduct against police are dealt with by the Police Service under the supervision of the Ombudsman. Where the Commission expresses an interest in a matter but ultimately decides not to investigate, this decision is conveyed to both agencies in writing to ensure that a matter is not left in abeyance on the assumption that it is being investigated by another agency.

Dissemination of Information

During the year the Commission provided information to the following agencies:

- New South Wales Police Service

Information about the misconduct of police, and about the commission of criminal offences.

- Australian Federal Police

Information about alleged misconduct by Commonwealth public servants, the commission of criminal offences, and crime intelligence.

- Australian Taxation Office

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

- Commonwealth Director of Public Prosecutions

Information about the whereabouts of a person of interest to that office.

- Other Commonwealth Agencies

Information alleging misconduct by public officials, including the commission of criminal offences, to the Department of Immigration, the Department of Social Security, Telecom and Australia Post.

- State Authorities

Information concerning allegations of impropriety and misconduct to the RTA, the Department of Local Government and the Auditor General's Office.

- Royal Commission Into Productivity in the Building Industry

The Commission appointed a liaison officer to assist with information provided to and received from the Royal Commission into Productivity in the Building Industry. A number of matters raised with the Royal Commission which were outside its Terms of Reference have been referred to the Commission and the Commission was able to provide information to the Royal Commission.

Chapter 3

INVESTIGATIONS, HEARINGS AND REPORTS

This chapter gives an account of Reports of investigations published by the Commission, public hearings held, and investigations conducted by the Commission without public hearings, during the reporting year. Between March 1989 and 30 June 1991 the Commission commenced 35 formal investigations, of which 24 had been completed, 14 of those being the subject of Reports to Parliament. Two further Reports were furnished to Parliament in early July.

This chapter also deals with litigation arising from investigations.

Reports of Investigations

During the year the Commission furnished 11 Reports on investigations to the Parliament, as follows:

- . Report on Investigation into North Coast Land Development (11 July 1990)
- . Report on Investigation into Registration of DP 787368 at the Land Titles Office (23 July 1990);
- . Report on Investigation into the Randwick College of TAFE (28 August 1990);
- . Report on Investigation into Dealings Between Homfray Carpets and the Department of Housing (3 October 1990);
- . Report on Investigation into the Walsh Bay Redevelopment Project (31 October 1990);
- . Report on Investigation into Driver Licensing (7 December 1990);

- . Report on Investigation into Harassing Telephone Calls Made to Edgar Azzopardi (4 January 1991);
- . Report on Investigation Relating to Stait, Dainford and Waverley Council (18 January 1991);
- . Report on Investigation into Sutherland Licensing Police (18 February 1991);
- . Report on Investigation Concerning Neal and Mochalski (19 April 1991);
- . Report on Investigation into Police and Truck Repairers (28 May 1991);

Shortly after the end of the reporting year the Commission furnished two further Reports to Parliament, on 10 July 1991, being the Report on Investigation into the Maritime Services Board and Helicopter Services, and Report on Investigation into Tendering for Vinyl Floor Products.

The TAFE and Neal and Mochalski Reports were tabled in Parliament. All the others contained recommendations pursuant to s78(2) of the Act, which the presiding officers acted on in accordance with s78(3), to make the Reports public. The following is an account of the Reports, most of which involved public hearings.

North Coast and Land Titles Office

The first of these Reports was dealt with in the Annual Report to 30 June 1990 at page 46 and following and page 88 and following. It is unnecessary to repeat what was then said. The Report disclosed questionable dealings between public officials and consultants and others in the private sector, some of which had to do with political donations. In the aftermath various prosecutions have been commenced and others are under consideration by the appropriate authorities. There is by now general acceptance of what was said in the Report, namely that the statutory regime requiring disclosure of political donations is gravely deficient. Comment on that question was contained in last year's Annual

Report at page 94. The North Coast Report is frequently referred to in the course of the current debate as to whether and how legislation relating to electoral donations should be rendered efficacious.

The Land Titles Office Report was dealt with in the Annual Report to 30 June 1990 at page 51. It disclosed no evidence of corrupt practices, but contained comment about fast tracking systems and the manner in which they should be utilised.

Randwick College of TAFE

This investigation began in September 1989, following a report to the Commission about an alleged offer of money to a teacher at the Randwick College of Technical and Further Education, to pass some apprentices who were otherwise expected to not graduate from their course.

A private hearing was held on 15 February 1990 and a public hearing on 10 July 1990. The Report, published on 28 August 1990, stated the Commission's findings that the teacher was not offered money, and that there was no evidence warranting consideration of prosecution of any person for a criminal offence. Evidence from witnesses about talk of bribes in the building industry was supplied to the Royal Commission into Productivity in the Building Industry.

Department of Housing and Carpeting

This investigation was commenced on 1 December 1989, into allegations of fraud and dishonesty by people connected with or involved in the supply and laying of carpets in premises used or occupied by various Government departments. There were allegations of secret commissions paid between employees of carpeting firms by inflating the prices charged to departments, and of substantially over-quoting the amounts of carpet required, with the surplus being sold by employees of the carpet companies for their own financial benefit.

The investigation and hearings focused on work performed by Homfray Carpets for the Department of Housing in the Sydney region to carpet the common areas of blocks of residential flats. Private hearings were

held in January and May 1990, and public hearings in July 1990. In all 14 witnesses were examined. A Report was furnished to Parliament on 3 October 1990.

The Commission's findings were that lax procedures by officers of the Department and the lack of a competitive tendering process resulted in a significant waste of public money, and that employees of carpet companies obtained for themselves substantial secret commissions.

The Report recommended consideration of disciplinary action against one public official and prosecution of six people for offences against s249B of the Crimes Act 1900. Disciplinary proceedings have been commenced in respect of the public official. Prosecutions have not yet been instituted; briefs of evidence in admissible form are being prepared.

The Report says a lot about how Government contracts should be let, and what should not happen. Those comments are applicable to all Government departments engaged in letting contracts.

Arising out of the investigation, officers from the Commission's Corruption Prevention Department worked with officers of the Department of Housing to change procedures. The project resulted in a report being provided to the Department, a summary of which was made public. The corruption prevention exercise is reported on in Chapter 5.

Walsh Bay Redevelopment Project

This investigation began on 6 March 1990 following receipt of a letter from the Deputy Premier, the Hon W J T Murray MP, calling for an investigation, and allegations by the Hon R J Carr MP, Leader of the Opposition, about improprieties in relation to the tendering process for the Walsh Bay Redevelopment Project. The investigation examined the tendering process, and allegations of disclosure of confidential information, both during the tender process, to one of the tenderers, and afterwards, to the Leader of the Opposition and members of his staff.

Public hearings, lasting 40 days, in which 34 witnesses were examined, commenced on 20 April 1990 and finished on 6 August 1990. The

Report, published on 31 October 1990, made no findings of corrupt conduct in relation to the tender process, but found that it went awry after an independent review committee exceeded its brief. The Report stated that two former officers of the Maritime Services Board disclosed confidential information about the tender process, and that in the case of one of them that amounted to corrupt conduct. Since that person had ceased to be a public official, action was no longer open. The Report contained no recommendations for prosecution.

Driver Licensing

This investigation commenced on 8 June 1989 and was the subject of a detailed report in last year's Annual Report. It concluded with the presentation of the Report to Parliament on 7 December 1990. The investigation was conducted by a joint task force comprising police and Commission officers. Before the Commissioner approved a formal investigation, a police task force had conducted inquiries following referral of evidence taken by the Parliamentary Staysafe Committee to the Commissioner of Police.

The investigation involved a hearing lasting 81 days in which 107 witnesses were examined, and almost 500 exhibits tendered.

The investigation established that endemic corruption existed in a number of motor registries in the Sydney metropolitan area. The most common conduct was the simple payment of money by driving instructors (with or without the knowledge of their pupils) to driver examiners. Only a minority of such persons were found to have engaged in such conduct, but most of those so engaged did so habitually.

Some clerks and managerial staff were involved in corrupt practices, generally concerned with knowledge tests and the purported conversion of interstate licences (which did not require any form of test). Concern was also expressed about the activities of some interpreters and translators.

The period under investigation was about a decade and commenced immediately after the Report of the last such inquiry, which was conducted in 1979. The Commission's investigation found that, not-

withstanding the contents of the 1979 Lewer Report, the management of the former Department of Motor Transport failed comprehensively to combat corrupt practices, which thus continued to flourish.

A significant change in attitude followed the establishment of the Roads and Traffic Authority in January 1988. A great deal has been done to improve attitudes and systems. That work has continued after the investigation, with input from the Commission, particularly in the form of a project by the Corruption Prevention Department, which is dealt with in Chapter 5.

The Report found that 26 examiners or former examiners were corrupt. The total amount received by way of bribes was conservatively estimated to be at least \$3M. Material has been requested by and provided to the Commissioner of Taxation concerning various individuals.

A total of 61 persons were found to have engaged in corrupt conduct. The Commission referred the cases of 14 driver examiners and 23 driving instructors to the Chief Executive of the RTA for consideration of the termination of the services of the employees and the cancellation of the instructors' licences. The Authority has advised that all 14 examiners were dismissed following the relevant disciplinary process; 17 instructors have had their licences cancelled and one suspended for six months. Six of the dismissed employees appealed against their dismissal; two appeals have been dismissed and the remainder are unresolved.

Material in respect of 13 individuals was referred to the Director of Public Prosecutions for consideration of charges under s87 of the ICAC Act for having given false or misleading evidence to the Commission. The Director has advised that, subject to briefs of evidence in admissible form being provided, prosecutions against all but two of those persons will be commenced. The briefs of evidence are presently being prepared.

The Report concluded that criminal prosecutions for bribery or similar offences were not practicably available. This was so because of the significant delay in acting upon some of the evidence obtained by or on behalf of the DMT, and the general lack of specific particulars of relevant conduct which must be available to successfully prosecute. The DPP has advised that no prosecutions for such offences are proposed.

The Commission received three complaints from persons named in the Report. One person's complaint concerned the substance of the finding of corrupt conduct against him. His letter was seen to be the reaction of a man upset at being found out and no action was taken. The second was an objection to the inclusion in the Report of part of a recorded conversation which words were, to some extent, in dispute at the hearing. The Commission was asked to delete the disputed words from the Report, which had already been distributed. The whole of the evidence on the issue was considered. The request was refused because the Commission took the view that the evidence was capable of supporting the use of the relevant words.

The third complaint was by a former employee of the DMT who read a paragraph as being a criticism of him for having failed to act. The piece was not so intended and he was advised of that fact, and the construction intended by the Commission, by letter.

Harassment of Edgar Azzopardi

This investigation commenced on 27 August 1990, following a report by the Police Commissioner to the Commission pursuant to s11 of the Act. The allegations concerned a large number of harassing telephone calls made to the home of Edgar Azzopardi from March to June 1990. Some of the calls were traced to Mount Druitt Police Station.

The Commission conducted 23 days of hearing, involving 30 witnesses. The Commission was assisted by the Police Commissioner's Office, which arranged the attendance of several Police officers to give evidence without the need for summonses.

During the public hearings further harassing telephone calls were made to the Azzopardi home. The investigation identified a 17 year old schoolboy, John Hando, as the caller.

The Report was furnished to Parliament on 4 January 1991. It contained findings that three Police officers from Mount Druitt Police Station, Constables Abel, Brown and Williams, acted corruptly in making or instigating harassing telephone calls to Azzopardi, failing to report others' calls to a senior officer, and lying to the Commission, in evidence

or statements, and that a fourth officer, Constable Hall, was present while calls were made but did not participate or encourage them, did not report that conduct to a senior officer and lied to Commission officers.

The Report recommended that the Commissioner of Police consider disciplinary action against all four officers, with a view to dismissing all but Hall. It further recommended that consideration be given to prosecutions of Abel and Brown for making harassing telephone calls and giving a false statement or evidence, and of Williams for encouraging the making of harassing calls and giving false evidence. It recommended that no consideration be given to the prosecution of Hall or Hando.

The Director of Public Prosecutions has instituted proceedings against Abel for making a false statement to the Commission, has advised that charges should be laid against Williams and Brown, and has decided to not prosecute Hall. The evidence relating to harassing telephone calls, which is an offence against Commonwealth criminal law, was referred to the Commonwealth Director of Public Prosecutions. As at 30 June 1991 advice from his Office was awaited.

Despite the Commission's recommendation that consideration not be given to the prosecution of John Hando, Mr Azzopardi commenced a private prosecution against him for offences against ss80(c) and 87 of the ICAC Act and s85ZE of the Crimes Act 1914. The State DPP subsequently took over the prosecution for the first two offences, relating to giving a false statement and false evidence, and terminated them. Hando pleaded guilty to an offence under s85ZE of the Crimes Act, of making a harassing telephone call. He was placed on a three month bond and ordered to pay Mr Azzopardi's legal expenses.

A disturbing aspect of the investigation was that a number of Police officers stated a belief that they should lie to protect their colleagues, contrary to the oath sworn by police officers and the National Code of Ethics for Police. The Commission wrote to the Commissioner of Police, who responded positively about ethics training for student police officers. The Report made some comments about the need for that positive ethos to be more widely spread through the Police Service.

Stait, Dainford and Waverley Council

This investigation, and the protracted litigation which delayed the publication of the Commission's Report, was the subject of a section of last year's Annual Report.

The investigation concerned allegations that the former Chief Engineer/Town Planner of Waverley Council, Donald Stait, had received corrupt payments from the Dainford property development group of companies.

The Report stated that consideration should be given to the prosecution of each of Balog, the Managing Director of the Dainford companies, and Stait for two offences under Part IV of the Crimes Act, and that consideration should not be given to the prosecution of the companies involved. Briefs of evidence have been furnished to the Director of Public Prosecutions.

The Report also contains the Code of Conduct for Local Government. This Code was developed in consultation between the Minister for Local Government and his Department, the Local Government and Shires Associations, and the Commission. The Minister, the Presidents of the Associations and the Commissioner jointly recommended that councils consider adopting the Code, with appropriate variations for local conditions. As at 30 December 1990 the Code had been adopted by 96% of Local Government Councils and 90% of County Councils.

Litigation against the Commission, in relation to this investigation, continued until mid January 1991, and included a new action commenced by Balog after the proclamation of the amendments to the ICAC Act in December 1990.

On 15 February 1990 Dainford Limited and others sued the Commission. The proceedings involved issues of natural justice and the power of the Parliament. The plaintiffs were unsuccessful before Young J and in the Court of Appeal, as was related in last year's Annual Report.

The plaintiffs' application for special leave to appeal to the High Court was heard on 6 August 1990. At the hearing the appellants added an additional ground of appeal, that the decision of the High Court on 28

June 1990 in *Balog v ICAC* meant that the hearing held by the Commission in 1989 was void as part of its announced scope and purpose was beyond the power of the Commission. Leave was refused.

In mid July 1990, Dainford Limited and others, and Balog, sued the Commission. They challenged the validity of the hearings conducted by the Commission on the basis that the announced scope and purpose was beyond the power of the Commission. The Dainford companies also sought to further restrict the content of Reports to Parliament made by the Commission. It was argued that the proceedings were proceedings within the meaning of s18(2)(c) of the Act and that no Report could be furnished until they were completed.

On 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 filed a statement of claim in the District Court seeking the recovery of \$60,000 from D G & K Stait (Holdings) Pty Limited and Donald Stait, being money paid pursuant to one of the option agreements which had been the subject of the investigation. Balog amended his summons and sought an interlocutory order requiring the Commission to defer making any Report to Parliament pending the resolution of the proceedings in the District Court. In the ordinary course of events this would have resulted in a further delay in publication of approximately four years.

On 8 August 1990, Cohen J refused the interlocutory relief sought. The Commission did not, however, proceed to publish the Report at that time. Although there was no order of the Court preventing publication the Commission wished to fully consider whether s18 of the Act prevented it from doing so. The plaintiffs in each of the proceedings had filed summonses in the Court of Appeal seeking leave to appeal against the interlocutory decisions of Needham AJ and Cohen J. In order to avoid unnecessary expense the Commission assured the plaintiffs that three days notice would be given of its intention to furnish the Report to Parliament.

The proceedings were expedited and the hearing was set down for 3 December 1990. By this time the plaintiffs had notified the Commission that they would only pursue the s18 issue.

On 29 November 1990, the Commission was advised that the Independent Commission Against Corruption (Amendment) Bill 1990 had passed all stages of Parliament. Among other things it amended s18. Following its proclamation the only proceedings which could delay the furnishing of a Report to Parliament were indictable criminal proceedings conducted by the Crown.

At the hearing on 3 December, counsel for the plaintiffs informed Finlay J that the plaintiffs had concluded that they could not succeed on the s18 argument once the amendments had been proclaimed and that no useful purpose would be served by proceeding at that time. Counsel foreshadowed a new challenge based on the new ss74A and 74B of the Act.

Following the proclamation of the amending Act on 7 December 1990, the Commissioner invited persons substantially and directly interested in the investigation to make submissions about the effect of the amendments at a public hearing on 18 December 1990. Submissions were made on behalf of Balog and the three companies involved in the investigation.

On 14 January 1991 the Commission notified the solicitors for Balog and the companies that it intended to furnish its Report to Parliament.

Balog and the companies then commenced new proceedings and sought an interlocutory injunction to prevent the Report being furnished. The plaintiffs sought a declaration that, as the investigation had been conducted when the reporting requirements were those stated in the then s74(5), the Commission could not now report under the new s74A without first informing the plaintiffs of any adverse findings which it might make under that section and giving the plaintiffs an opportunity to be further heard.

In the hearing before Abadee J, counsel for the plaintiffs stated that they would be satisfied with an undertaking that the Commission would

not include in its Report any statements as to the Commission's findings, opinions, recommendations and reasons for same which could not have been made prior to the amendments.

On 18 January 1991 the Commission wrote to the solicitors for the plaintiffs and gave an assurance in such terms. Abadee J decided that this was sufficient to resolve the matter and dismissed the summons.

The Report was furnished to Parliament that afternoon.

Sutherland Licensing Police

This investigation was commenced on 1 September 1989 following a report from the Ombudsman to the Commission pursuant to s11 of the Act. The investigation centred on alleged payments by a publican to licensing police in the Sutherland area. Ultimately the Commission found that payments of \$250 per week were paid by a publican to a licensing constable over a period of 18 months, that the payments were solicited by the police officer, and that a senior police officer interfered in an Internal Affairs investigation of the payments to the constable.

Private hearings were held in September and December 1989 and February 1990, and public hearings in March, April and August 1990. A further short hearing was held on 30 January 1991 to take submissions as to the effect of the amendments to s18. In all, 23 witnesses were examined over 22 hearing days. The Report was published on 18 February 1991. As well as the findings referred to above the Report deals with the issue of free meals and gifts of liquor to licensing police officers.

The Commission recommended consideration of prosecution of the police officer who received the \$250 payments. The DPP has requested a brief of evidence, which is being prepared. Disciplinary action was not available, as the officer had left the Police Service.

Neal and Mochalski

This investigation commenced on 11 May 1989 following reports to the Commission by the Cabinet Office and the Police Department, which

had conducted extensive inquiries, and a complaint by Mr Neal. He alleged a conspiracy to delay the supply of water to land owned by him. The Commission found that no such conspiracy had occurred, but that Mr Mochalski, who was then a Member of Parliament, sought advantage for himself whilst helping Mr Neal, and thus got himself into a conflict of interest situation.

The investigation was conducted by way of private hearings, because of pending unrelated criminal charges against Mr Mochalski. The Report was made public, although it was delayed because of s18 and those pending charges. It was published in April 1991, after the amendment to s18.

The Report contains no recommendations for consideration of prosecution or disciplinary action. It contains comments about standards of conduct in public life. The Commission was assisted in this regard by views solicited from and expressed by some Members of Parliament.

Police and Truck Repairers

This investigation was commenced on 6 September 1990 to examine allegations of police involvement in illegal activities related to the motor vehicle towing and repair industry, including the acceptance of "spotters' fees". The investigation was ultimately confined to the eastern Riverina region and to the heavy vehicle towing and repair industry. The Commission found that payments were made to police officers by truck repair firms for confidential police information. The Commission held a private hearing in November 1990, and public hearings in Wagga in December 1990 and in Sydney in February 1991. In all, 35 witnesses were examined over 14 hearing days.

The Report was published on 28 May 1991. It recommends consideration of dismissal of, or disciplinary action against, two police officers.

As a result of work done by a joint Police-ICAC team during the investigation, three police officers were charged with serious offences including breaking and entering and stealing. One has been sentenced

to two concurrent periods of ten months imprisonment and placed on a five year good behaviour bond; the others are awaiting trial.

Maritime Services Board and Helicopter Services

This investigation commenced on 18 September 1990, after extensive preliminary inquiries. The Commission received a report pursuant to s11 from the Maritime Services Board ("the Board") which had received a complaint that an officer of the Board had awarded a contract for helicopter surveillance of waterways to a business in which he had an interest. The Commission held a private hearing in April 1991, and public hearings in May and June 1991. Evidence was taken from 16 witnesses.

In the 1987-1988 boating season helicopter surveillance services were provided to the Board by Exploration Transport Services ("Extrans") and in the following year mostly by Blueridge Helicopters, which was Extrans under another name. Both were the businesses of Barry Edward Jones, an officer of the Board.

The Commission found that when tenders were called in 1987 Mr Jones submitted a tender for Extrans, disguising his involvement by using and signing other people's names, and also submitted a tender in his sister's name. Mr Jones was a member of the three person panel which evaluated the tenders. He did not disclose his interest in Extrans to the other members of the panel, nor adequately disclose it to senior members of the Board.

The Commission found that two reports by the Management Review and Audit Section of the Board, tasked to examine the propriety of the tender process and allegations of Jones' conflict of interest, were deficient. They reported, without proper investigation, that the tender and evaluation processes were properly undertaken.

The Report, furnished to Parliament on 10 July 1991, contains comments about the proper conduct of tenders and the performance of the Internal Audit function. It contains a finding that Mr Jones' conduct was corrupt, and suggests that consideration be given to his dismissal. The Board has dismissed Mr Jones. The Report also recommends that

consideration be given to the creation of a new criminal offence restricting public servants from entering into contracts with Government, or acting in matters in which they have an interest.

Tendering for Vinyl Floor Products

This investigation commenced in September 1990, after a report from the Department of Administrative Services (now the Commercial Services Group) which supplies goods and services to Government departments and authorities. The Department forwarded complaints from floor covering tenderers that the 1990-1992 contract for vinyl floor covering worth \$750,000 annually had been inappropriately let, that large parts of it had gone to General Flooring, and that the Government employee who had administered the tender process had then gone to work for General Flooring.

Private hearings were held in November 1990 and June 1991, supplemented by interviews and examination of documents. It was considered to be in the public interest to conduct the matter by private hearing, and for the Report to be made public.

The Commission found that the whole tendering process for vinyl floor coverings was effectively controlled by Les Lucas, a buyer/inspector expert in floor coverings. Lucas made the recommendation that General Flooring receive a large part of the 1990-1992 contract in the period from late 1989 to early 1990. He had been offered a position with General Flooring in November 1989, which he took up while on pre-retirement leave. He made no disclosure of this to those involved in the tender assessment process. The Commission found that Lucas favoured General Flooring.

The Commission also found that Lucas and his wife had been sent to Europe in 1988 at the expense of another supplier, Forbo Australia, for Lucas to inspect Forbo products in Sweden and Holland. All travel and accommodation expenses were paid for by Forbo. A few months later some new Forbo products were accepted by Lucas as suitable for Government work. Lucas did not tell the Department that he had travelled overseas to inspect Forbo's product, or ask the Department for approval, because he thought it would be refused.

The Report contains a finding that Lucas' actions constituted corrupt conduct, and recommendations for improvements in the Department's procurement systems, to achieve equity and economy. The Commercial Services Group has informed the Commission of initiatives being taken to build accountability into its tender processes.

The Commission proposes to conduct a detailed corruption prevention project on the operation of the supply process, and to examine the issues of public servants taking up employment, following retirement or resignation, with those with whom they dealt whilst working in the public sector.

Other Investigations

Investigation No. 20 relates to the unauthorised release of confidential Government information.

It was commenced on 24 May 1990 after a referral to the Commission pursuant to s11 by the Commissioner of Police. Internal Affairs Police had obtained from the premises of a private inquiry agent more than 500 files containing original police computer printouts, including criminal histories, registration checks and traffic histories. The agent informed the police that he had obtained the information from police officers through an anonymous intermediary for payment, and that other agents obtained police information in a similar manner.

Police records are contained in a computer system which police officers can access by inputting their registered numbers and individual passwords. The Police Service advised the Commission that security of passwords and registered numbers is such that police officers can use the registered numbers and passwords of other officers to access the computer records.

Public hearings commenced on 23 November 1990. Before then several private hearings had been held and approximately 20 search warrants had been executed on the premises of private inquiry agents, employees of the RTA, and a finance company which it was alleged had been obtaining confidential information from private inquiry agents.

As at 30 June 1991 evidence had been taken in 109 days of hearing from almost 290 witnesses most of whom had accessed, supplied or obtained confidential Government information, with or without payment.

The evidence indicates a significant practice amongst private inquiry and commercial agents of improperly obtaining and providing confidential Government information, obtained by them from public officials including police officers, employees of the RTA, various electricity authorities, and from Telecom and the Department of Social Security. The information is sought largely to locate people, for defence of insurance claims or to serve legal process to recover debts.

Authorities such as the Police Service, RTA and Department of Social Security, the records of which contain address and other details in respect of large numbers of people, are prime targets for those who want to improperly obtain information. A number of public officials have provided details from their employers' records to agents for payments, some becoming suppliers of information on a regular and long term basis. The evidence shows that agents provided information to other agents, for a fee, so that they shared their sources of Government information. The agents provided the information obtained to their clients, including banks, finance companies, insurance companies and solicitors.

Not all information was obtained by payment of money. The investigation uncovered what can be described as an information exchange arrangement between public officials, some involved on behalf of their employers in locating debtors, and those privately engaged in locating people, including banks and real estate agents.

The large scale dissemination of supposedly confidential information uncovered by the investigation raises issues about the privacy of records maintained by public authorities. Such issues will be considered in the Report of the investigation, which should be published before the end of the calendar year.

The following deals with investigations, conducted during the year, which did not involve public hearings and were not the subject of a Report to Parliament.

Investigation No. 8 (commenced 6 July 1989) examined alleged improper payments to a local government official in connection with his official duty relating to approvals of land use. A private hearing was held and the investigation has been discontinued.

Investigation No. 12 (commenced 19 September 1989) examined allegations of partiality on the part of an employee of a large public authority, in awarding contracts involving significant amounts of money to a company controlled by his wife and effectively run by him. A brief of evidence supporting multiple charges for fraud-related offences was referred to the Director of Public Prosecutions on 6 February 1991. As at 30 June 1991 the Director's response was awaited.

Investigation No. 14 (commenced 21 September 1989) examined allegations of improper payments to public officials in return for allocation of government contracts to particular suppliers. Private hearings were held, evidence was given which controverted the allegations, and the investigation was discontinued.

Investigation No. 16 (commenced 12 December 1989) examined the circumstances of the grant of development and building approvals in respect of a large retail and office block development. Private hearings were held and the investigation was discontinued.

Investigation No. 18 (commenced 12 March 1990) examined allegations that two police officers had solicited and been paid a sum of money by a person they charged. Private hearings were held. A conclusive finding could not be made about the allegations, but the hearing raised other issues about the conduct of the police officers. These matters were referred to the Commissioner of Police pursuant to s53 of the Act. As at 30 June 1991 the Commission was awaiting advice from the Police Commissioner about the examination of those matters.

Investigation No. 21 (commenced 8 June 1990) has to do with the conduct of persons in relation to the grant by the former New South Wales Film Corporation of residual rights to certain Australian films.

The Commission received a report from the Minister for the Arts requesting the Commission to examine whether former employees of the

Film Corporation influenced it to enter into distribution agreements for Australian films with Pepper Distributions Inc, which had no solid experience in the distribution of films. It was alleged that the terms of the agreements were favourable to Pepper and were entered into mostly without the consent of the producers, and that employees of the Film Corporation had a connection with Pepper and benefited from the agreements.

Material has been examined and interviews conducted. No hearings have been held and no coercive powers exercised. The investigation was still current as at 30 June 1991.

Investigation No. 22 (commenced 12 July 1990) was commenced after South Sydney Council referred to the Commission a complaint by two businessmen that a garbage collector had been requesting payments of \$20 per month over 12 months to remove garbage from their premises.

A listening device was used to record a conversation between the garbage collector, Leon Donnelly, and one of the businessmen, in which Donnelly requested \$40. He was then interviewed by Commission investigators and made full admissions.

The matter was referred to the Director of Public Prosecutions, who decided that Donnelly should be prosecuted for an offence under s249B(1)(b) of the Crimes Act, which prohibits the soliciting of corrupt payments.

Donnelly was charged, pleaded guilty, and was placed on a 12 month good behaviour bond. He was dismissed from his job. He appealed to the Industrial Commission, which at 30 June 1991 had reserved its decision.

Investigation No. 27 (commenced 6 December 1990) was commenced after the Commission received a report from the Mayor of a suburban Council about the possession by a planning consultant of confidential Council business papers. The consultant had refused to inform Council officers how he obtained the papers.

The matter was conducted by interviews. No hearings were held or coercive powers exercised. The material obtained by the Commission indicated a prima facie case against an alderman for an offence against a Local Government Ordinance for having given the papers to the consultant. The matter was referred to the Director of Public Prosecutions, who advised a charge was available. However, that advice was received after the time permitted to commence a prosecution had expired.

The investigation raised issues of general importance. It must be said that generally the more openly public authorities conduct their business, the less potential there is for corruption. However, some business of such authorities must be confidential. Planning matters may need to be dealt with in secret, if persons are not to make adventitious profits. If an alderman considers that his Council is conducting too much business in secret, then he should seek to change the procedure, not ignore it.

Investigation No. 28 (commenced 7 December 1990) examined whether an alderman had received a gift in return for favourable representations on a development application. Private hearings were held. The evidence showed no corrupt conduct. The alderman acknowledged that he must not accept benefits in connection with his public duties, and that care must be taken to avoid the appearance of such.

Investigation No. 29 (commenced 15 January 1991) examined whether a Council official had used his position to his private advantage. A brief of evidence has been prepared and will be referred to the Director of Public Prosecutions.

Investigation No. 30 (commenced 18 January 1991) concerns allegations that officers of a metropolitan Council were performing work for private clients, and that one officer referred applicants for planning approval to his brother's firm of architects. Public hearings will be held in August 1991.

Investigation No. 31 (commenced 14 February 1991) concerns alleged irregularities in the awarding and performance of roadworks contracts, and allegations of private work at public expense, in a rural council. Public hearings will be held in July.

Investigation No. 32 (commenced 22 March 1991) is concerned with the conduct of present and former councillors and employees of a metropolitan shire council, particularly in relation to the use and development of land.

Investigation No. 33 (commenced 28 March 1991) will examine conflicts of interest in local government, and as between local government and each of State government and the private sector, and how they are dealt with. It is more concerned with issues than specific allegations, although case studies will be used where appropriate to illustrate principles.

As at 30 June 1991 a questionnaire and background paper had been sent to all councils in the State, and responses had been received from many. It is proposed that a discussion paper will be released in early August and public hearings will be held in November.

Investigation No. 34 (commenced 10 April 1991) concerns allegations of assault and robbery by two off-duty Police officers. The investigation was still current as at 30 June 1991.

Investigation No. 35 (commenced 30 April 1991) will examine the conduct of public officials relative to the use of informers, prisoners and indemnified persons to assist in the investigation and prosecution processes. The decision to commence the investigation followed the receipt by the Commission of a number of complaints and other information, and a statutory report from the Director-General of the Department of Corrective Services.

Public hearings will commence in July 1991.

Last year's Report referred to two matters which were referred to the DPP. One involved an attempt to bribe an alderman. That person was charged, convicted and fined. The other related to a cash gift to a public employee. The DPP decided against a prosecution.

Arising out of the North Coast Land Development investigation one person pleaded guilty to an electoral offence and no conviction was recorded, three people have been committed for trial on a bribery

charge, and four people have been charged, one with bribery and false statement offences, and three with offences relating to giving false evidence to the Commission or conspiring to do so. Other matters are being considered by the DPP.

Matters not Investigated

In late January 1990, the Commission received a complaint alleging that then Deputy Commissioner of Police, Mr A Lauer, had caused the shooting of a person not to be properly investigated. The complaint was received shortly before interviews were to be conducted for the position of Commissioner of Police, and Mr Lauer was known to be an applicant.

Preliminary inquiries were conducted and documents were obtained. No coercive powers had to be exercised in order to ascertain the facts and accordingly no formal investigation was necessary. No information was obtained which suggested any impropriety by Mr Lauer or any other officer of the New South Wales Police. The matter was dealt with as a complaint in accordance with Commission procedures.

The Commission received complaints about the Sydney 200 Association, an unincorporated association established in June 1989 by the Civic Reform Association for fund raising purposes. The Civic Reform Association has three alderman on the Council of the City of Sydney, and includes the Lord Mayor Alderman Jeremy Bingham.

At 30 June 1990 the Association had a membership of 156 individuals, businesses and corporations including large development companies which negotiate development projects in the Sydney CBD from time to time.

Invitations to join the Association were sent out in September 1989, on the letterhead of the Lord Mayor's Office, but at the expense of the Association, to over 2500 businesses and companies in Sydney. Benefits offered in the letter of invitation to Association members included "direct input to city policy forums" and "availability of Civic Reform staff, aldermen, information, resources and research material".

The complainants stated that some perceived the benefits offered to Association members as promising preferential treatment by elected public officials to members in return for an annual membership donation of \$1000.

The Lord Mayor and the Executive Director of the Sydney 200 Association, Mr Rob Wendon, were invited to meet with senior Commission officers, and did so. Discussion at the meeting led to the Association writing to all its members emphasising that membership did not allow exclusive or preferential access to, or benefits from, the Lord Mayor or any group of Aldermen. In addition the Lord Mayor and Mr Wendon agreed to change the Association's promotional material to reflect the contents of the letter and ensure there would be no room for misunderstanding.

This action was considered to resolve the matter satisfactorily, such that no investigation was necessary.

Public officials must strive to provide representation impartially and equally to all members of the public. The democratic processes of Local Government should not be seen to be undermined by any body which provides benefits not available to the public at large. No public official should bring, or be seen to bring, his responsibilities in public office into conflict with his relationship with financial supporters, and should distance himself from fundraising activities.

Litigation

In August 1990 Barry Cassell, a person involved in the North Coast Land Development investigation, commenced legal action against the Commission, the Director of Public Prosecutions and the Attorney-General.

The essence of the action was that the Report of the investigation and hearings conducted during the investigation were not authorised by the Act, to prevent the Commission from providing the Report or a transcript of the hearings to the DPP or Attorney, and to restrain them from considering or acting upon the Report or transcript, on the basis that they were beyond power and improperly provided.

On 10 August 1990 Hodgson J of the Supreme Court dismissed the plaintiff's case. Mr Cassell appealed against that part of Hodgson J's decision relating to the Commission. The appeal has not yet been heard.

Costing of Investigations

During 1990 the Commission decided that it should cost investigations which resulted in public Reports, as an internal management tool. It then decided that as public monies are being dealt with, and in the interests of accountability, the results would be made public.

A formula was developed which takes account of direct and unique costs, and otherwise depends upon estimates and stated assumptions. It was developed by the Commission's Finance Branch and revised with regard being paid to the constructive advice of independent internal auditors whose services were provided by the Auditor-General's Office.

Under the revised formula the cost figures for each investigation, including hearing, are ascertained from:

- standard rates for hearings days including charges for presiding Commissioner, associate and hearing attendants;
- average salary costs for investigators, analysts, lawyers and support staff associated with particular matters, based on estimated person/days spent on the matter;
- actual hearing costs for counsel fees, transcription fees, witness expenses and general expenses incurred on country sittings, and
- actual investigative expenditures for travel, special supplies, temporary offices established in country areas, and miscellaneous general expenses.

A share of overheads, at present 37.5% of administrative and general charges, is assigned for each accounting period to formal investigations. This rate is determined on the basis of workloads within functional areas of the Commission. Overhead charges so assigned are then apportioned

as between individual formal investigations which have resulted in Reports in that period in accordance with a decimal factor based on a combination of investigative and hearing days.

The formula was put before the Parliamentary Joint Committee in March 1991. The costing exercise resulted in the table which appears at Appendix 2.

Statutory Powers

The table below records the Commission's use of its statutory powers during the year. Investigations involving public hearings are tabled individually, the remainder being grouped under "other".

EXERCISE OF STATUTORY POWERS FROM 1 JULY 1990 TO 30 JUNE 1991

Investigations	Search Warrants	s 21	s 22	s 23	s 35	Hearing Days	
						Public	Private
RTA Driver Licensing	-	-	-	-	-	4	-
Sutherland Licensing Police	-	-	-	-	-	8	-
Azzopardi	-	-	5	-	4	22	1
Confidential Information	35	31	49	9	325	83	26
Police and Motor Vehicle Towing	6	8	3	2	35	13	1
Maritime Services Board	2	-	-	2	11	7	1
Vinyl Floor Coverings	-	-	-	-	4	-	2
Informants	-	4	6	3	1	-	-
Other	2	-	23	6	6	13.5	7.5
TOTALS	45	43	86	22	386	150.5	38.5

Chapter 4

HEARINGS - POWERS AND PROCEDURES

This chapter deals with the legal, policy and procedural context of public hearings and Reports, including amendments to the Commission's reporting powers. It also touches upon an inquiry conducted by the Parliamentary Committee on the ICAC into the Commission's conduct of hearings, and legal changes suggested by the Commission.

Conduct of Hearings

The 1989 Annual Report included a statement of the Commission's Procedures for the conduct of public hearings. The procedures have been revised to take into account the Commission's experience in conducting hearings and recommendations by the Parliamentary Committee. The revised procedures are set out in Appendix 3.

During the year the Commission again revised and simplified the form of its summonses and statutory notices, and worked on simplifying the "Information for Witnesses" document, taking a "plain English" approach.

During the year the Commissioner made two rulings in hearings about the Commission's powers in connection with hearings. They were published in the Reports of the investigations in which they arose, being the Department of Housing and Homfray Carpets Report and the Police and Truck Repairers Report. Because of their relevance to Commission hearings generally, they are referred to here.

The ruling made in the Department of Housing hearing concerns ss37 and 38 of the Act. Section 37 provides that a witness in a Commission hearing is not excused from answering any question, but that if a witness objects to answering a question, the answer given cannot be used against him/her in civil, criminal or disciplinary proceedings. Section 38 permits the presiding Commissioner to make a declaration that all, or a class of, answers given by a witness are regarded as having been given on objection. Such orders are made when it is anticipated that there will

be an objection in respect of every, or almost every, answer. The objection provisions in ss37 and 38 apply to the production of documents as well as answers to questions.

The Commissioner had to consider an application for a retrospective declaration under s38, in relation to evidence previously given by a witness without objection. He concluded that the Commission has no power to make such an order. The ruling is at Schedule 3 on page 82 of the investigation Report.

In the police and truck repairers hearing the Commissioner heard an application for the exclusion from the hearing room of all witnesses waiting to give evidence. Such orders are commonly made in court proceedings. The Commissioner declined to make the order sought on that occasion, but stated that in some circumstances it may be appropriate to hear the evidence of a witness in the absence of another or others. Again the ruling is in the investigation Report as Appendix 2 at page 77.

Inquiry by Parliamentary Committee on the ICAC

In the latter part of 1990 the Parliamentary Committee on the ICAC conducted an Inquiry into "Commission Procedures and the Rights of Witnesses". The Committee published two Reports of its Inquiry, in November 1990 and February 1991. What follows is a summary of the Inquiry and the Reports. Those who are interested in reading the full Reports should approach the Committee for copies.

The functions of the Parliamentary Committee are dealt with in Chapter 8. It is sufficient to say here that the Committee is a separate body from the Commission, consisting of Members of Parliament from both Houses of Parliament, and one of its roles is to monitor the way the Commission carries out its functions.

The terms of reference of the Inquiry were:

1. to review the exercise by the Commission of its functions relating to witnesses and other interested parties who

appear at Commission hearings or who otherwise assist the Commission in its investigations; and

2. to report to both Houses of Parliament on any changes which should be made to Commission procedures or the Independent Commission Against Corruption Act 1988 (with particular reference to, but not restricted to, matters relating to Commission hearings and the rights of witnesses).

The Committee conducted the Inquiry in two stages, dealing with general issues relating to public and private hearings and possible damage to reputations, and the Commission's procedures for dealing with witnesses.

The Committee held public hearings in the first stage in October 1990, taking evidence from witnesses, including the Commissioner, about the benefits and disadvantages of public and private hearings. The Committee published the First Report of its Inquiry, dealing with the first stage, on 22 November 1990.

The Committee held public hearings in the second stage in December 1990, taking evidence from witnesses about their experience in Commission hearings, and from Kevin Zervos, General Counsel of the Commission. The Committee's Second Report, dealing with the second stage of the Inquiry, was published in February 1991.

The First Report considered benefits and risks of public hearings in investigating corruption. It concluded that the Commission should continue to conduct most of its hearings in public, and endorsed the procedures adopted by the Commission in conducting investigations. The Report adverted to unfair and unnecessary damage to reputations which may arise from public hearings, and recommended the use of procedures to avoid such damage, including use of suppression orders, notification of persons against whom allegations are to be made, and an early opportunity for a reply to such allegations. The Report also recommended that s31 of the ICAC Act be amended to permit the Commission greater discretion to conduct private hearings. The simple form of amendment proposed by the Committee, which left the Commission with some discretion and was less likely to cause problems

of interpretation, was supported, indeed initially proposed, by the Commission.

The Government has since sought the Commission's views about proposed amendments to the ICAC Act to give effect to the Committee's recommendations.

A precis of the Committee's comments and recommendations in its Second Report follows.

- . In respect of the requirement that the Commission conduct its hearings in a non-adversarial way, the Committee commended the Commission for seeking submissions in writing, and recommended that the Commission study the inquisitorial systems practised in courts in Europe and elsewhere, and their application to Commission investigations.
- . The cost of legal representation at Commission hearings should be considered further, as should the legal position of unincorporated associations seeking representation at Commission hearings.
- . The Commission should consider putting allegations to affected persons before the public hearing phase of the investigation. The Commission had informed the Committee that the Commission undertakes much work in the nature of assessment of allegations, field investigations and consideration of evidence before proceeding to public hearings. The Commission also informed the Committee that the decision as to whether a person should be informed of allegations against him before giving evidence depends on whether that could prejudice the investigation.
- . Persons making statements to the Commission should be provided with copies of their statements, save in exceptional circumstances. This accords with the Commission's policy.
- . The Committee emphasised the importance of the Commission returning property when it is no longer required and communicating with property owners about seized property when it is required to be retained. The Commission provides comprehen-

sive lists of property seized at the time of seizure, can provide fuller lists on request by the property owner, and responds promptly to requests for provision of copies of seized documents during investigations.

- . The Committee recommended that where persons are named in Commission Reports, not adversely, a statement should be included in the Report to the effect that no inference of wrongdoing can be drawn from the fact they are named. Further the Commission should consider contacting persons who are to be named in the Report, to give them an opportunity to address evidence against them. The Commission has proceeded in accordance with these recommendations.

The Commission regards the Committee's Reports as valuable, and as generally reflecting well on the Commission and its work. The recommendations in the Reports have been closely considered and adopted as appropriate, having regard to operational circumstances.

The Committee recommended that for the Commission to give content to the provisions of s17(2) of the ICAC Act, which requires the Commission to conduct its hearings with a non-adversarial approach, the Commission should "conduct a study of the inquisitorial system of criminal justice practised in Europe and elsewhere, and whether its application to Commission inquiries is appropriate".

The adversarial procedure is characterised by a contest between the parties, whereas in the inquisitorial system, the judge or magistrate plays a more active role in initiating the investigation and controlling the collection of evidence, and actively participates in the questioning of witnesses. It is often said that a fundamental distinction between the inquisitorial and adversarial systems is that the former is seeking to elicit the truth. The adversarial criminal system draws a distinction between the investigation and the prosecution or hearing phase, whereas that distinction is less marked when the inquisitorial approach is taken.

The Commission sees merit in the Committee's recommendation, and is considering how it could conduct such a study.

Representation of Unincorporated Associations

One of the recommendations in the Committee's Second Report was:

There are circumstances in which it would be appropriate for political parties and other unincorporated associations to be represented at ICAC hearings. The ICAC should seek a legal opinion as to whether this is possible under the ICAC Act at present. If the advice is that it is not possible, the Act should be amended.

Sections 32 and 33 of the ICAC Act empower the Commission to permit a person who is substantially and directly interested in any subject matter of a hearing to appear and/or be legally represented at a Commission hearing. "Person" is not defined in the ICAC Act. It is defined in the Interpretation Act 1987 to include "an individual, a corporation and a body corporate or politic".

The legal position of unincorporated associations, which includes community interest groups and political parties, is that they are not legal entities separate from their members, unless an Act of Parliament has so provided. In New South Wales the Associations Incorporation Act 1984 provides for the incorporation of associations, and gives them a legal personality and "the rights, powers and privileges of a natural person". The effect of this is that associations incorporated under that Act would be permitted to appear and be legally represented at a Commission hearing, but associations not so incorporated would not come within ss32 and 33 because legally they are not persons. The Commission has recommended that Government give consideration to putting forward an amendment to the Act to permit such associations to be represented at Commission hearings.

Amendments to the Act - Hearings and Reports

On 7 December 1990 the Independent Commission Against Corruption (Amendment) Act commenced operation. The Act effected certain amendments to the ICAC Act, some in relation to the reporting powers of the Commission, subsequent to the decision of the High Court in *Balog and Stait v ICAC* in June 1990, and some more generally in relation to Commission hearings.

Before the amendment s18 read as follows:

Court proceedings

18. (1) The Commission may do any or all of the following:

- (a) commence, continue, discontinue or complete any investigation;*
- (b) furnish reports in connection with any investigation;*
- (c) do all such acts and things as are necessary or expedient for those purposes,*

despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate, justice of the peace or other person.

(2) If the Commission does any of the things mentioned in subsection (1) -

- (a) the Commission shall, as far as practicable, ensure that any hearing or other matters relating to the investigation are conducted in private during the currency of the proceedings (so far as the hearing or other matters relate to or affect the subject-matter of the proceedings); and*
- (b) the Commission shall, as far as practicable, give such directions (having effect during the currency of the proceedings) under section 112 as will avoid prejudice to any person affected by the proceedings; and*
- (c) the Commission shall defer making any report to Parliament in relation to the investigation during the currency of the proceedings.*

(3) This section has effect whether or not the proceedings commenced before or after the relevant investigation commenced and has effect whether or not the Commission or an officer of the Commission is a party to the proceedings.

Subsection 2 was amended and a new s-s2A added, so that they now read:

(2) If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commission must, to the extent to which the Commission thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:

- (a) ensure that, as far as practicable, any hearing or other matters relating to the investigation are conducted in private during the currency of the proceedings; and*
 - (b) give directions under section 112, having effect during the currency of the proceedings; and*
 - (c) defer making a report to Parliament in relation to the investigation during the currency of the proceedings*
- (2A) Subsection (2) does not apply:*
- (a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings; and*
 - (b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.*

The effect of the amendment is to give the Commission the discretion to decide how to conduct hearings or whether to publish Reports having regard to the need to not prejudice an accused person's right to a fair trial.

The old s18(2) required the Commission to, as far as practicable, hold hearings in private and give directions prohibiting the publication of evidence, and prohibited the Commission from making a Report to Parliament about an investigation, whilst any proceedings related to any subject matter of the investigation were being conducted. This was too wide, and meant the Commission could not report on an investigation even if proceedings were only remotely connected to the investigation and could not be affected by the Report. Because the section did not restrict the type of legal proceedings to which it applied and because some legal proceedings can take several years to complete, the potential effect of the section was that a Commission Report could be delayed for several years. A further possibility permitted by the section was

that persons wanting to delay the publication of a Commission Report could commence proceedings and the Commission would be prevented from publishing the Report while ever those proceedings continued. This was not the intention of the section, which was to prevent prejudice to jury trials of criminal charges.

The new s18(2) applies only to prosecutions for indictable offences conducted by the proper prosecuting authorities, and only from the commencement of committal proceedings until the end of the jury trial. This properly achieves the aim of the section to avoid prejudice to criminal trials before juries, by avoiding publication of material which may reach jurors or potential jurors. When such proceedings are on foot the Commission is then required to make a judgment as to whether, and to what extent, it is necessary for the Commission to conduct hearings in private, restrict publication of evidence and defer making a Report to the Parliament.

The decision will depend on the circumstances of each case, including when the trial is to be held, the subject matter of the investigation, and what is said about the accused in the Report and how that might affect his trial. It is fundamental that an accused person is entitled to a fair trial, and it is recognised that publication of material before or during a trial may prejudice that right, but it is a matter of degree to be considered in each case. The Commission must exercise the discretion fairly and prudently.

Extraterritorial Summonses

Section 35 empowers the Commissioner to summons a person to appear at a Commission hearing to give evidence and/or produce documents. The power is of significant assistance to the Commission's investigations.

Because the Commission's powers only operate within New South Wales, s35 in its original form only permitted the Commissioner to issue summonses to people within the State. From time to time people whom the Commission considers important to the success of some investigations reside interstate, and therefore the Commission could not compel their attendance as witnesses. Some of those people have been co-operative, some more reluctant. In the end the Commission managed to secure the attendance of interstate witnesses through their voluntary co-

operation, sometimes after discussion. But the Commission was concerned that the powers of the Commission could be frustrated if a person sought to avoid them by going or remaining interstate.

This was addressed in the Commission's 1989 Annual Report. It was suggested to Government that s35 be amended to permit interstate service of Commission summonses. This was done by the amending Act proclaimed on 7 December 1990. The new subsections of s35 provide that a judge or magistrate may, on the application of the Commissioner, issue a summons for a person to appear at a Commission hearing. Such a summons can then be served interstate under the provisions of the Service and Execution of Process Act 1901, a Commonwealth Act which enables interstate service of court process.

The Commonwealth Government is presently undertaking a comprehensive review of the Service and Execution of Process Act, which will result in new procedures for interstate court and tribunal proceedings. The Commission has been consulted about the general form and effect of the proposed procedures.

Amendments to Reporting Powers

The Commission's 1990 Annual Report contained an account of litigation against the Commission by Messrs Balog and Stait, which culminated in a judgment by the High Court delivered on 28 June 1990 dealing with the Commission's powers to make findings in Reports of investigations. That did not end the litigation - see Chapter 3.

The Commission considered the decision and the confusion created by it, and called for change to the ICAC Act to clarify the Commission's powers. The worst case suggested was that the Commission could only provide the transcript of its proceedings to Parliament, with no commentary. This was clearly not a satisfactory or effective way for the Commission to do its work. Nor was it what Parliament had intended.

Parliament responded with amendments to ss13 and 74 and new ss74A and 74B to clarify the aims of Commission investigations and the Commission's powers to make findings in Reports.

The Commission's investigative functions and powers in s13 are now as stated in Chapter 1.

Section 74 states the Commission's obligations to furnish Reports in relation to matters in which it holds public hearings or matters referred by Parliament. What a Commission Report may and must contain is dealt with in ss74A and 74B which state:

Content of reports to Parliament

74A.(1) The Commission is authorised to include in a report under section 74:

- (a) statements as to any of its findings, opinions and recommendations; and*
- (b) statements as to the Commission's reasons for any of its findings, opinions and recommendations.*

(2) The report must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

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

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

(4) Subsection (2) does not limit the kinds of statement that a report can contain concerning any such "affected" person and

does not prevent a report from containing a statement described in that subsection in respect of any other person.

Report not to include findings etc. of guilt or recommending prosecution

74B.(1) The Commission is not authorised to include in a report under section 74 a statement as to:

- (a) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence); or*
- (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence).*

(2) A finding or opinion that a person has engaged, is engaging or is about to engage:

- (a) in corrupt conduct (whether or not specified corrupt conduct); or*
- (b) in specified conduct (being conduct that constitutes or involves or could constitute or involve corrupt conduct),*

is not a finding or opinion that a person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.

The effect of the amendments is that the Commission can make findings of fact, comment on the credibility of witnesses, choose between conflicting evidence, and state whether or not corrupt conduct occurred. Some of the Commission's investigations result in findings that there is no substance to allegations of corrupt conduct; such findings are as important to the public to know as are findings that corrupt conduct did occur.

The new s74A introduces a new term of "affected" person, defined to mean a person about whom substantial allegations have been made in an investigation. This term distinguishes such people from the term in

s32 of persons “substantially and directly interested” in any subject matter of a Commission hearing, used to describe people who may appear and be legally represented at such a hearing. This class of people may be wider than the class of “affected persons” and can include persons who have an interest in, or are affected by, the corrupt conduct of another, without there being any allegation against them. The distinction between the two classes, by amendment to s74, was advocated in last year’s Annual Report.

The Commission is obliged to include in Reports of investigations a statement about each affected person, as to whether the Commission is of the opinion that consideration should be given to the prosecution of the person for a specified criminal offence, or the taking of action against a public official for a specified disciplinary offence or with a view to dismissal or termination of the official’s services.

The Commission is not permitted to state that a person has been guilty of or committed a criminal or disciplinary offence, or that a person should be prosecuted for such an offence. That is as it should be. It is important to note that the Commission has never sought to make such findings or statements, or to be able to. The Commission is not a prosecuting agency; Commission investigations have a different and broader focus. Prosecuting is the function of the Director of Public Prosecutions and his Office and the Commission does not seek, and has never sought, to impinge on that function.

Recommended Changes to the ICAC Act

During the year the Government sought the Commission’s views about a proposal to amend s14(1) of the Act to enable the Commission to forward evidence of offences against laws of the Commonwealth or another State directly to the appropriate authority, and inform the Attorney-General of New South Wales, rather than providing the material through the Attorney. The Commission sees sense in such a proposal.

The Commission suggested also that s14(2) be amended to permit the Commission to provide information to some public authorities, such as councils, directly rather than through the Minister. There are some circumstances in which authorities seek information from the Commis-

sion, when to provide the information through the Minister is circuitous and inappropriate, and the only other means of providing the information is by referral under s53, which could be inappropriate and seem heavy handed. The provision in s14(2) is appropriate for State authorities but not so for local councils. The Commission does not seek to avoid responsible Ministers when providing material to Departments; the relationship between the Minister for Local Government and individual councils is less direct.

Commonwealth Legislation

Previous Annual Reports referred to amendments to the Telecommunications (Interception) Act 1979 to enable the Commission to apply for warrants to intercept telecommunications under that Act. The Commission is effectively unable in most cases to use telephone intercept facilities because warrants may only be obtained in connection with a restricted class of offences, which do not include corruption offences.

The Commission has therefore not availed itself of the powers to apply for telephone interception warrants. It was acknowledged by the State and Commonwealth Governments in agreeing that the legislation be amended to permit the Commission to apply for warrants that such powers would assist the Commission in the investigation of corruption, which is often covert.

In November 1990 the Commission recommended to the Commonwealth Attorney-General's Department, which is conducting a review of the Telecommunications (Interception) Act, that the Act be amended to include corruption offences amongst the offences for which a warrant may be obtained and to include Commission hearings in the proceedings in which telephone interception material may be used.

The Department has produced a draft report, which agrees with the second recommendation but not the first. The Commission has urged reconsideration of its submission.

In previous Reports the Commission recommended that Commonwealth legislation be amended to permit the Commission to obtain information from the Australian Taxation Office and the Cash Transactions Reports

Agency, at their discretion, to assist in its investigations. It made representations to that effect to the Government.

The Commonwealth Government has agreed to the amendments. The Cash Transactions Reports Act may be amended later this year. When these amendments occur the Commission will then be in a similar position to the New South Wales Crime Commission in respect of cash transaction reports information, and the New South Wales Police in respect of tax information.

Election Funding

In the 1990 Report the Commission recommended an amendment to the Election Funding Act 1981, following consideration of the provisions concerning disclosure of political donations in the investigation into North Coast Land Development. The issue of election funding is now being considered by the Joint Select Committee upon the Process of Funding of the Electoral System.

In April 1991 the Commission expressed its views to the Committee through General Counsel. The Commission submitted that donations to political parties should be open and public and the subject of full disclosure. When donations are made secretly it is difficult to distinguish between the honest on the one hand, and the corrupt and influence-seeking on the other. While public disclosure would not eliminate problems it would have a significant beneficial impact. The Commission advocated that disclosure provisions should ensure that the true source of donations is disclosed, and that the Election Funding Authority should be strengthened, to be independent and effective.

Protection of Whistleblowers

The 1990 Annual Report addressed the subject of legislative protection for complainants and others, known colloquially as "whistleblower legislation". In April 1991 the Commissioner participated in a seminar conducted by the Electoral and Administrative Review Commission (EARC) in Queensland. The EARC has published an Issues Paper, "Protection of Whistleblowers". The Commission will devote some time

to considering whistleblower protection in this State, assisted by the work done by the EARC. The issues are neither simple nor one-sided.

Use of Commission Transcripts in Court Proceedings

One of the Commission's functions, pursuant to s14(1) of the Act, is to assemble admissible evidence for prosecutions and provide such evidence to the Director of Public Prosecutions. Prosecutions are one possible outcome of a Commission investigation, but Commission investigations have a wider focus, being to investigate alleged corrupt conduct, find out the truth of each matter and report to Parliament. Nonetheless, the Commission realises that in some instances of corrupt conduct, and where there is evidence available, referral of that evidence to the DPP is an appropriate course of action. Clearly it was one contemplated by the Parliament.

The way in which the Commission conducts its investigations is different from, and less formal than, the way prosecutions are conducted in court, particularly committal proceedings in the Local Court. The Justices Act provides that committal proceedings generally proceed by way of statement and sets out a scheme of matters which must be contained in statements for committals.

The Justices Act does not apply to Commission hearings, nor do the rules of evidence. When Commission investigators take statements in the course of investigations, they do not contain the formalities required for committals, and they sometimes contain material which is not permitted in statements prepared for court, where the strict rules of evidence apply. This is as it should be, having regard to the broader aims of Commission investigations.

Commission prepared statements and transcripts of Commission hearings are not admissible in committal proceedings or trials.

If the DPP decides that a prosecution should occur arising from a Commission investigation, Commission investigators must have witnesses sign new statements which conform to the requirements of the Justices Act. This involves a great deal of work by Commission investigators and lawyers. The Commission is a small organisation with limited

resources. Gathering of evidence in admissible form means having to devote valuable time to matters already investigated, rather than to new matters.

The Commission realises that Parliament intended that prosecution be a result of at least some Commission investigations. It would be more efficient and effective if transcripts of Commission hearings were admissible as evidence in courts. Also, they have the added quality of being sworn evidence.

The Commission advocates that consideration be given to amending the Justices Act or the Evidence Act so that Commission transcripts can be used in court proceedings. While this may involve careful consideration having to be given to the content of transcripts, and editing where appropriate, it would be more efficient than having to take fresh statements.

Advice to Government

The Commission has realised, and stated in Reports of investigations, that the law relating to corruption offences in New South Wales is lacking. The Government is conducting a review of corruption offences, and has sought and obtained the Commission's views about draft legislative proposals to change the law relating to bribery, and create new offences relating to misuse of official information and failure to disclose private interests which affect public duties.

The 1990 Annual Report noted that the Commission was represented on the Working Party considering whether State laws should be amended to disentitle corrupt public officials from receiving superannuation benefits from public funds. In late 1990 the Commission was given the opportunity to comment on proposed legislation. The Commission commented that the proposed conviction based scheme was too narrow and would permit many public officials to resign or be dismissed with their full superannuation benefits.

In February 1991 the Commission made a submission to the Review of Legal Services to the Government Commission, which was established

in late 1990 to consider the roles of Government lawyers and private sector lawyers in providing legal services and advice to the Government. The Commission addressed the topic from the point of view of corruption prevention, and principles relative to engaging consultants.

Chapter 5

CORRUPTION PREVENTION

Functions and Strategy

The Commission's corruption prevention functions are to be found in s13(1)(d) to (g) and s13(2)(b) and (c) of the Act, which are set out in Chapter 1.

A Corruption Prevention Strategy has been in place since early 1990. It was published in last year's Annual Report. The principles on which the strategy is based continue to underlie the expanding and increasingly complex body of corruption prevention work:

- . Prevention is better than cure;
- . Corruption prevention is a management function;
- . Accountability makes for committed management.

The process set out in the strategy document has proved an accurate guide, with one exception. It did not anticipate the significant amount of work to be done in providing advice to Government agencies on request, mainly in regard to unusual tendering processes.

As envisaged by the strategy, formal studies known as Corruption Prevention Projects are the most significant area of work, in both time and impact. Two such projects were initiated and completed during the year, and four more were in progress as at 30 June 1991.

A Corruption Prevention Project is based on field research consisting of detailed observation and recording of procedures and practices surrounding a discrete area of operation within one or more Government organisations. The focus on opportunities for corrupt conduct makes

such work and its outcome different from either audit or management review.

Once a corruption opportunity is observed, an assessment is made about how typical are the practices and procedures which create the opportunity. In making recommendations for change, the temptation to identify loopholes or risks and then propose controls one-by-one is avoided. A high priority is given to identifying ways in which procedures can be streamlined and unnecessary controls or restrictions reduced or eliminated.

Recommendations are discussed in detail with the officials of the organisations to ensure that they are practical, achievable and efficient.

Completed Projects

Project No. 1 in relation to driver licensing and conducted for the Roads and Traffic Authority was initiated in July 1990 and paralleled the Commission's major investigation into driver licensing which was reported on in December 1990. The Project involved detailed observation of procedures and practices at 13 motor registries, the RTA Head Office and the company which manufactures photoliceses under contract.

The Report pointed to the need for dramatic improvement in the integrity of the system, to ensure that a licence is issued only to someone whose identity is proved without doubt and who has passed the necessary tests. Other key findings and recommendations addressed problems in testing procedures, registry management, security of photolicense manufacture and driving instructors' certification. Considerable improvements were recommended with regard to access for customers with English language difficulties.

The RTA offered valuable co-operation at all levels of the organisation. Great progress has been made in addressing the problems disclosed by the project.

Project No. 2, in relation to maintenance contracts within the Department of Housing, examined the system of letting and managing

contracts for the maintenance of the Department of Housing's 116,000 properties, which involved a budget of \$60M in 1990-91.

The Project found that the systems for ordering, supervising and checking some 250,000 works orders were complex and labour-intensive, and offered considerable scope for corruption. The major step to be taken by the Department is to computerise all aspects of maintenance processing, and build in control and monitoring measures. Another significant recommendation was for comprehensive review of the cumbersome, complex and sometimes contradictory maintenance instructions which have been issued incrementally since the mid-seventies.

For both Projects completed so far, a detailed Report was provided to the agency concerned. It was agreed those Reports should remain confidential for a period of some 18 months, to allow time to rectify the problems disclosed. A summary Report including the main findings and recommendations was published and disseminated to a wide range of Government agencies.

Some consideration has been given to the effectiveness of this system of reporting. Clearly it would be wrong to reveal corruption opportunities in such detail that they could be exploited before there had been time to rectify the deficiencies. However, it is apparent that not only the broad principles but also the detail of these Projects has wider application, and considerable material which may be of benefit can be lost in reducing the information to summary form.

The answer may be to provide more detailed public Reports for future Projects, with those details which must not be revealed immediately being provided to the agency in a confidential attachment.

Projects in Progress

Project No. 3 deals with cash handling in public hospitals. Large hospital complexes provide a variety of services for cash, many peripheral to the hospital's medical functions. This Project will identify the range of such services in two or three public hospital complexes, and examine procedures for collecting, receipting, banking and reconciling cash.

Project No. 4 concerns the disposal and replacement of council vehicles. It will examine procedures for disposal and replacement of cars and light trucks in two or three Local Government councils, identify opportunities for corruption and analyse the success or otherwise of different systems in maximising financial advantage to the council.

Project No. 5 will examine the system of allocating boat moorings in New South Wales by the Waterways Authority of the Maritime Services Board.

Project No. 6 relates to criminal history records. It will examine the accuracy and completeness of criminal history records in terms of laws, systems and procedures covering the recording, updating and transmission of information.

Advice to Government Organisations

Monitoring of progress in implementing the recommendations of Corruption Prevention Projects is increasing and will become a significant element of the Department's work during the coming year as the number of completed projects grows. The Department also monitors change suggested as part of advisory work following complaints or requests for assistance.

A large part of the Department's work consists of proposing improvements to practices and procedures where a complaint or report to the Commission has disclosed some deficiency. Corruption Prevention officers examine all complaints and reports to the Commission, and select those which may involve corruption prevention action. A broad range of Government activities has been addressed, including tendering and contract management procedures, staff selection, disclosure of private interests, outside employment, post-separation employment and disposal of Government assets.

Government organisations also requested advice from the Corruption Prevention Department in relation to many different aspects of public sector operations. Considerable advice has been sought regarding the probity of tendering processes. Generally, where the circumstances fall within the ambit of established Government guidelines, the Commission's

advice is that the process should follow, and be seen to follow, the appropriate guidelines. However, consultation and advice was provided for a number of unusual situations which did not appear to be covered fully by existing guidelines. In all cases, the Commission regards the responsibility for decision-making as resting with the agency concerned. The Commission's advice is offered, but not imposed.

Selected examples of work in this area follow.

The Department of Lands proposed to recommend suppliers and consultants for the development of a computerised land information system for Guangdong Province, China. There was a commitment to favour New South Wales industries where possible. The Commission suggested that a tender process be established which included that commitment as an important explicit criterion.

The Telecommunications Unit of the Commercial Services Group sought Commission comment on a process established to invite and evaluate expressions of interest for the proposed New South Wales Government telecommunications network. With one or two suggested changes, the process was regarded as an excellent model for ensuring a fair and equitable comparison of bids.

In commenting on a process for inviting private sector development of a teaching hotel on campus, the Commission advised a University that in its view a fresh start and significant change were required to eliminate the possibility of partiality or its appearance. Information had been provided to tenderers at different times and the process was complicated by the fact that one of the tenderers was a major benefactor of the University.

A firm which had tendered for a Government grant to assist its development of a waste wood facility had not gained approval from the local council. The Waste Management Authority was considering a proposal by the firm to use the grant for a different but related project. The Commission gave advice in terms of principles to assist the Authority's decision.

After exhaustive evaluation of expressions of interest for sludge management by the Water Board, it became apparent that the best solution could not be provided by any single tenderer. The Board was advised to stipulate its main criteria for evaluation and to invite tenderers to form consortia to meet the new criteria in a second round of bids.

In August 1990 the Commission was consulted regarding a proposal by the National Parks and Wildlife Service (NPWS) to enter into direct negotiations with Murray Publishers Pty Ltd to establish a head lease over the Perisher/Smiggins ski resort area. The NPWS advised that Murray Publishers held significant leases and exclusive franchises, such that no other company could reasonably operate a head lease.

The Commission's advice in principle was that "if indeed (Murray Publishers) has such a strategic position in relation to Perisher Valley/Smiggins Holes, then there may be scope to negotiate directly with the company to establish a head lease arrangement".

The Commission was invited, and agreed, to participate in a steering committee managing a consultant feasibility study to assess the return to Government from different leasing arrangements and development strategies.

Legislative amendment was required to permit the establishment of head leases. In speaking on the relevant Bill, the Minister for the Environment, the Hon T J Moore, spoke of the Commission's involvement in the following terms: "The ICAC has advised ... that it accepts there is no possible alternative to the existing principal operators in either of those areas".

This was clearly different from the Commission's stated position. The Minister subsequently issued a press release explaining that he had been given unclear advice about the Commission's position. He then released all correspondence relating to the Commission's involvement.

In February 1991 the Steering Committee considered a submission from the Perisher Skitube Joint Venture (PSJV) in which it expressed interest in an opportunity to tender for the Perisher/Smiggins head lease. Until

then, the NPWS had been unaware of any interest in the head lease other than that of Murray Publishers. The Commission advised that, as another party with a significant interest in the skifields had expressed interest in tendering, there was good reason to consider a tendering process following the completion of the feasibility study. This course was agreed at a meeting of the Steering Committee in July 1991, and a decision made to call for expressions of interest from a wide market, including overseas operators.

The events just described serve to illustrate important matters concerning both the Commission's corruption prevention role and more general principles regarding tendering.

The Commission's corruption prevention role is an advisory one. The advice given is dependent on the information provided, and that qualification is always clearly stated. Advice is offered, not imposed, because operational decisions are the responsibility of Government and its agencies. Therefore the Commission's advice or involvement should not be used to justify actions by Government agencies.

Government agencies frequently want to enter directly into contract negotiations with one party, when they consider there is only one party with an interest. The argument is that the market is known, and it would be a waste of time and resources to call tenders or expressions of interest. The Commission holds the view that in most cases the market is not really known until it is tested, and that direct negotiation with one party is unlikely to lead to the best value being obtained for public expenditure.

Sponsorship

Offers of sponsorship to Government agencies, both solicited and unsolicited, are both increasing and becoming more diverse in nature due to the growing commercialism of Government agencies and the trend to greater reliance on self-funding. The Corruption Prevention Department has provided advice, on request and on its own motion, on some widely differing matters involving sponsorship. Some examples follow:

- . A police sporting team sought and was offered sponsorship by local businesses. The Commission provided advice regarding possible conflicts of interest especially where a direct licensing or inspectorial role exists for police in relation to specific businesses.
- . The head of a Government agency was featured in a magazine article directly promoting the product of one of the agency's major sponsors. The Commission advised that it was inappropriate for an agency or a public official to endorse a commercial product, because the endorsement could be perceived as a reward for sponsorship.
- . A public official had assisted a commercial firm in the development of a new technological device which was of great benefit to his Department. The firm offered to pay for him to travel overseas to attend conferences at which he would demonstrate the device to other agencies. The Commission suggested it would be inappropriate to agree to such payment because the firm would directly benefit from increased sales achieved through the official's marketing of the device.

These and several other examples suggest a need for broad guidelines on sponsorship. These should form the basis for each agency to develop its own policy, focusing on its specific functions, appropriate areas for sponsorship and potential conflicts of interest.

Sponsorship issues have been the subject of discussion with the Office of Public Management ("OPM"). A suggestion was made that OPM consider development of broad principles, with the assistance of the Commission. This issue will be pursued during the coming year.

Assistance with Corruption Prevention Strategies

Officers of the Corruption Prevention Department assisted several agencies with the development or review of fraud and corruption control strategies.

The methodologies put forward tended to assess risks mainly in terms of the degree of financial risk to the organisation. Anti-fraud strategies

utilised risk management principles in devising appropriate controls. Although efficient, this approach tended to overlook areas of risk which may not involve direct financial loss to the agency but may nevertheless have severe detrimental effects.

An example is the bribing of driver examiners, the subject of a major Commission investigation in 1990. The outcome of widespread corruption was that unqualified drivers were licensed to drive, with concomitant risks to public safety and lack of integrity in the licensing system. Neither of these imposed a direct financial risk on the RTA. Nevertheless, there is universal agreement that appropriate controls must be put in place.

In providing assistance with fraud and corruption control strategies, the Commission's role has been to focus on the identification of non-financial as well as financial risks and the development of appropriate controls, balanced against the impact on efficiency. Very often measures taken can both improve efficiency and reduce corruption opportunities.

The Corruption Prevention Department was involved in the development of the guidelines for reporting by public authorities of possible corrupt conduct to the Commission (s11 guidelines) and an accompanying paper on effective reporting of corrupt conduct within Government departments and agencies, both of which were disseminated to public authorities in New South Wales in September 1990.

Since then, consultation has taken place with State and Local Government agencies on appropriate internal reporting mechanisms. Much of this work was done in association with corruption prevention strategies and codes of conduct, since internal reporting is an important element in effective corruption control.

Internal reporting models differed to take into account the size of the agency, its locational spread, and the ease with which the agency head could be approached by staff. It proved important to stress alternative reporting routes, including directly to the Commission. Confidentiality and a commitment to protect whistleblowers from reprisals were critical elements.

Codes and Guidelines

By the end of the reporting year extensive work had been done in assisting with the development of codes of conduct by a dozen or so Government agencies.

Based on the considerable experience achieved in this work, the Commission's approach can be expressed in these principles:

- . a code of conduct should be specific to the agency concerned;
- . its principles should reflect the organisation's corporate goals;
- . it should be developed through wide-ranging consultation with staff, from the ground up; and
- . it should provide comprehensive guidance through extensive use of examples relevant to the staff and operations of the agency.

The codes of conduct developed by the Tourism Commission and New South Wales Supply (Commercial Services Group) are particularly good examples. The two differ considerably, because in each there has been a strong and deliberate focus on corporate aims and the ethical issues faced day-to-day. The senior managers of both organisations have played a significant and effective role in development and promulgation of the codes.

Through the Corruption Prevention Department, the Commission continued to assist the development of specific aspects of the Government's property asset management guidelines. It was represented in a working group established by the Department of State Development to explore intellectual property issues as they affect the Government's dealings with private sector infrastructure proposals. Involvement also continued with the working party on integrity in the public sector.

Policy and Review

Corruption prevention work included review of legislation and policy with the main focus on reducing opportunities for dishonest or partial exercise of official functions. Amongst matters reviewed were the provisions of the Local Government Act relating to disclosure of pecuniary interests. The draft Casino Control Bill was reviewed and comment provided particularly with regard to issues of accountability.

Discussions were commenced with the Department of Planning about the provisions of the Environmental Planning and Assessment Act, 1979 regarding environmental impact assessment. The Commission expressed its concern that impartial decision-making is not assured where the proponent of an activity is also the determining authority.

Seminars and Training

In-house seminars were provided by staff of the Corruption Prevention Department to a number of Government organisations. In general, the target audience was the top level of senior management, but on occasion seminars were held for groups of managers with particular operational responsibilities, such as the Health Department's internal auditors.

About half of these seminars were by invitation of the relevant agency and the remainder were initiated by the Corruption Prevention Department, including two regional seminars held for State and Local Government managers.

The main aim of these seminars is to increase awareness in the public sector of the nature of corruption, its detrimental effects, and to discuss the ways in which organisations can combat corruption effectively and the Commission can assist them to do so. Each seminar targets the organisation's specific functions and special areas of concern.

Between July 1990 and June 1991, seminars were provided to:

- Department of Water Resources, Senior Management (12 September 1990);

- . Bathurst/Orange region, State and local government managers (27 September 1990);
- . Department of School Education, Senior Management (11 October 1990);
- . Electricity Commission, Senior Management (2 November 1990);
- . Grafton/Lismore/Coffs Harbour region, State and local government managers (23 November 1990);
- . Department of Minerals and Energy, Mines Inspectors (28 November 1990);
- . Department of Family and Community Services, Senior Management (20 December 1990);
- . Department of State Development, Senior Management (12 March 1991);
- . Department of Health, Western Region, Hospital Executives (18 April 1991);
- . Department of Health, Audit Managers and Public Hospital Inspectors (29 May 1991);
- . Registry of Births Deaths and Marriages, Senior Management (19 June 1991);
- . Department of Corrective Services, Prison Superintendents (25 June 1991).

Corruption Prevention staff also addressed professional organisations and community groups regarding the Commission's work, with special emphasis on practical aspects of corruption prevention.

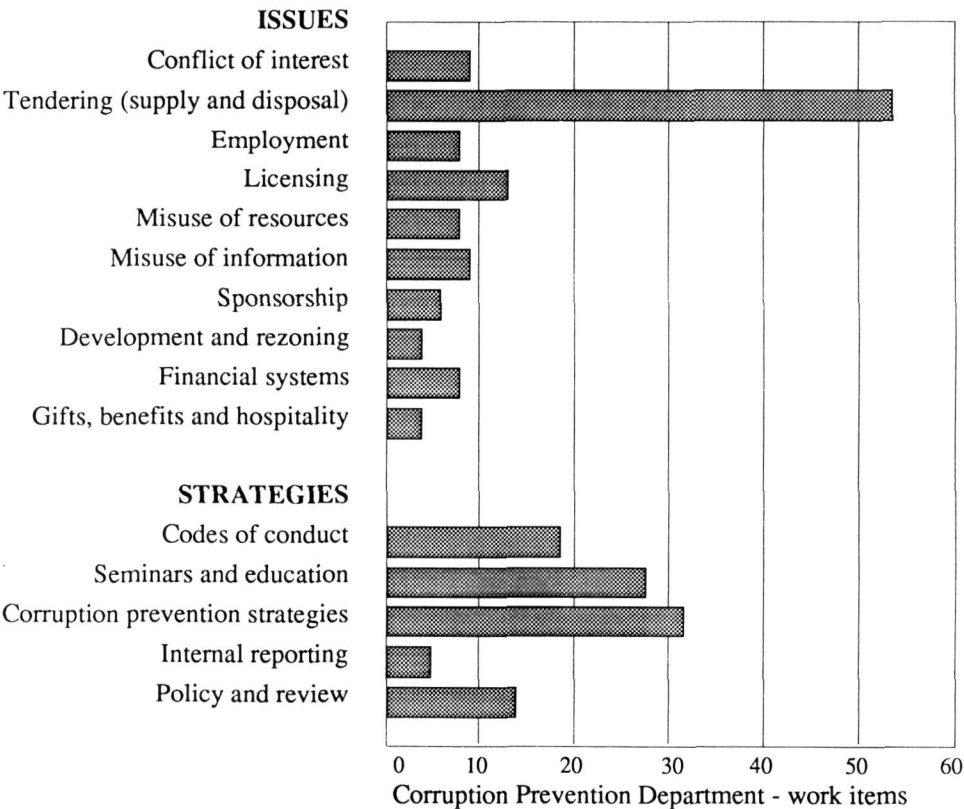
The link between Commission investigations and corruption prevention is an important one which is rarely stressed in media reporting. The

Commission’s Reports on investigation focus not only on individual misdemeanours but also place a strong emphasis on the system deficiencies which allow corruption to occur and go unnoticed. Each Report sets out important principles for improving faulty systems, which generally have a wider application than just the agency involved in a particular matter.

The Corruption Prevention Department took up the task of reviewing investigation Reports produced during the Commission’s first two years, to identify the key issues raised. This provided the basic material for a publication aimed at a very wide audience. The Commission’s Education Unit took responsibility for dissemination of the booklet entitled “The First Two Years - 19 Key Issues”. It has proved a valuable aid in corruption prevention seminar work.

Summary of Work

The graph below shows a break-down of corruption prevention items completed and in progress during the year to 30 June 1991.



Future Plans

The Corruption Prevention Department has expanded during the year but staffing still remains a priority. At 30 June 1991, the Department consisted of six professional and two support staff. New professional officers were to start in July and September, bringing the Department total to ten. There should be further increases up to a maximum of fifteen staff this year.

There is no shortage of work to be done. A number of new corruption prevention projects have been identified. The work in this area is intensive and occupies the majority of an officer's time for some months. Two or three projects per year is the most that should be attempted by each officer, if the quality of work is to remain high and the ability to carry out other corruption prevention work effectively is not to be eroded.

Some policy areas of particular interest have been identified for detailed work during the coming year. Sponsorship, post-separation employment and outside (secondary) employment are some of those areas. Another is the establishment of subsidiary commercial companies by Government organisations. No doubt others will take on importance as the year progresses. Clearly there should be sufficient flexibility to tackle important issues as they surface in a rapidly changing public sector environment.

Chapter 6

PUBLIC EDUCATION

Functions and Strategy

There are two main components to the public education function: the Education Unit and the Media Unit. This year the former was established and the latter enhanced. Staffing in both areas is small but specialised. Staff of the Education Unit commenced in November 1990.

The Commission's public education function is set out in s-ss13(1)(h), (i) and (j) of the Act which are reproduced in Chapter 1.

Put simply the Commission's aims in this area are:

- . to show that corruption does matter to all citizens in New South Wales because of its detrimental effects;
- . to persuade people that something can and must be done about corruption; and
- . to motivate individuals to play a part in fighting corruption.

The philosophy of the Commission's approach to public education can be summarised in the phrase "helping people help themselves". Without increased community involvement corruption cannot be effectively dealt with.

Based on this the Commission drew up its Public Education Strategy, which was released in October 1990. This Strategy outlines the principles, methods and processes to be used in relation to public education work. It is reproduced at Appendix 4.

Education

The aims of the Education Unit are to:

- . inform people about the functions of the Commission and show how individuals can assist the Commission in its work;
- . raise community awareness of the ethical standards they should expect from public sector employees and elected representatives; and
- . challenge community attitudes which allow corruption to continue.

The Commission's work in this area commenced modestly and slowly. The time taken was used to identify needs and priorities before increasing resources. The first step, as mentioned in previous Annual Reports, was to ensure the public knew of the Commission's existence and its role and functions. This ground work has provided the basis for the longer term, more complex work on awareness-raising and attitudinal change.

The Commission's information brochure has been redesigned and updated and copies of the new edition have been circulated widely in the community. The brochure is available in English and twelve community languages.

The Information for Witnesses brochure is being updated and special efforts are being made to express legal information in plain English.

The Commission's booklet, "The First Two Years - 19 Key Issues" has featured in public education activities as a basis from which to promote discussion in the community on reducing the incidence of corruption. This booklet has been distributed at exhibitions and to a wide cross-section of business, government and community organisations.

The Senior Citizens Week New Horizons Expo and the Royal Easter Show provided new opportunities for the Commission to go public. Displays at these events attracted considerable interest from members

of the public. The Commission's brown paper 'show bag', which contained the Issues Booklet and other information, proved very popular with people of all ages.

Shopping centre displays have also been organised on several occasions and will be a feature of public education work over the next twelve months.

The Commission has continued to conduct regular surveys of public attitudes towards corruption. Encouragingly, more people are indicating they believe something can and must be done about corruption, compared to those who believe corruption either does not exist or that nothing can be done to stop it.

Since December 1990, 23 Commission staff have addressed 23 service clubs, business groups and community based organisations. Requests from groups and clubs for Commission staff to give addresses will be met whenever possible.

A submission to include corruption topics in New South Wales Secondary School subjects such as Legal Studies, History and Social Science is being considered by the Board of Studies Curriculum Committee. Education on effective solutions to the problem of corruption in the public sector is necessary at the secondary school level to ensure the next generation is well-equipped to continue the work presently being initiated.

Country Visits

The Commission works for all the people of New South Wales. Providing access to the Commission outside the metropolitan area has been a continuing practice since the creation of the Commission.

The program of country trips begun within a few months of the Commission's establishment has continued unabated but with some refinements, mainly the scheduling of public education work close to or at the same time as visits to country centres.

Staff from the Assessments and Operations areas, at times accompanied by a member of the Media Unit, undertook ten country visits to 20 country centres during the year. Three centres, Newcastle, Wollongong and Goulburn, were visited twice.

The schedule follows:

August 1990	Wollongong/Goulburn;
September 1990	Queanbeyan/Cooma;
October 1990	Newcastle;
October 1990	Bathurst/Orange;
November 1990	Grafton/Coffs Harbour;
November 1990	Port Macquarie/Taree;
March 1991	Dubbo/Broken Hill;
April 1991	Wollongong/Goulburn;
May 1991	Griffith/Wagga/Albury;
June 1991	Newcastle/Gosford.

Meetings between the Education Unit and key community representatives were held in Wollongong, Wagga Wagga, Griffith, Albury and Bowral in the past year, to discuss the need for public support for the Commission's work. These meetings provided a good opportunity to answer questions about the Commission's role and functions and to stress the accessibility of the Commission to all members of the public.

Future Plans

As the public education function of the Commission continues to expand several new projects are planned.

A space within the Commission's premises at Redfern will be set aside for members of the public wishing to read more about the Commission's work or the topic of public sector corruption generally. Copies of Commission Reports, transcripts from hearings and examples of evidence will feature in this room. Displays and audio visual materials on how corruption can be effectively tackled will enhance the atmosphere of what will be a unique resource in New South Wales.

Modern communications techniques demand that organisations make professional use of the electronic media. To this end, the Commission will embark on the production of a video to illustrate the effects of corruption in society and to stimulate discussion on the issues that arise. An education kit will accompany the video.

Media Relations

The Commission has always sought to establish a good working relationship with the media. For such a body to maintain public confidence it is important that the public can see and understand what the Commission is doing. The Commission encourages informed debate about its powers, procedures and published Reports and the role the media can play in this process is considerable.

The Commission recognises the importance of the media in informing the public about what is happening within the Commission. It was in recognition of this role that the Commission again held a briefing, in February 1991, for editorial staff and journalists from major media outlets, including some country media, about the work of the Commission. Particular emphasis was given to explaining the changes to the Act following the High Court decision mentioned in Chapter 4.

On both occasions it has been held, the media briefing has proved most worthwhile, allowing as it does, dialogue on a number of issues. At this latest briefing media representatives raised an issue regarding confidentiality of complaints, particularly in relation to Local Government. The Commission was asked if it could assist. The Commission responded by writing to local councils and Members of Parliament, as reported in Chapter 2.

Some aspects of the Commission's work are confidential. However, to the extent permitted by s111 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 that it does.

The principal responsibility for liaison with the media rests with the Media Unit which also has responsibility for issuing media statements, providing access to transcripts and exhibits from public hearings of the Commission, compilation and dissemination of information about the Commission and the publication and distribution of Reports.

The Commission has sought to be consistent in its responses to media inquiries. To this end, the Commission prepared a statement on media policy and practice which was included as an appendix in last year's Annual Report. Subject to some minor amendments, the policy remains the same.

Apart from the standard media statement the Commission issued in relation to each country trip undertaken to take complaints, 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, a list of which is at Appendix 5.

Speaking Engagements

Speaking engagements are a valuable means of disseminating information about the Commission and how it operates. They also fulfil an important function of helping to educate the public about systems improvements which reduce the opportunities for corruption.

The Commissioner and senior staff gave a number of public addresses across a wide range of topics including "Protecting the Individual", "Of Dogs and Do-Gooders: Informants and their Protection", "Ethics in Management" and "Accountability in the Public Sector".

A list of these addresses is at Appendix 6.

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, statutory authorities, Local Government, universities, TAFE colleges, 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 who are unable to collect them.

As well, Reports have been given out at each public education function conducted in the reporting year, including public seminars, shopping centre displays, public addresses and the Sydney Royal Easter Show.

At times it has been appropriate, given the content of a Report, to take a more proactive approach to marketing it. For example, the Driver Licensing Report which disclosed widespread corruption had almost universal relevance to the general population: most people either drive or travel in cars. The Commissioner briefed the media on the Report and its recommendations and made himself available for interviews. Additional follow-up work was done in order to generate coverage in magazines and on television.

At other times, it has been more appropriate to issue a media statement with a Report.

The Commission's Reports have frequently been referred to in public education presentations to business and community groups because they provide observations on how corruption can be prevented as well as statements of findings from an investigation.

For example, topics such as tendering procedures, the obligations of public officials in the performance of their duties, and attitudes which help breed corruption, are clearly illustrated in the Reports.

Chapter 7

ADMINISTRATION

Organisational Framework

The offices of Commissioner, Assistant Commissioner, Director of Operations and Director of Administration are provided for by statute. The Act also permits the employment of such other staff as may be necessary to enable the Commission to exercise its functions. The Commission established its own structure, terms and conditions with the concurrence of the Premier.

Staff may be directly employed or employed on secondment. Terms and conditions of employment are identical in each case. Staff are not subject to the Public Sector Management Act, 1988.

Commission funds are provided by way of appropriation from Parliament. The costs of salaries and consultancy fees are met from the Commission's recurrent budget. The Commission will reach its total allocation in the 1991-92 financial year.

The Commissioner acts as the chief executive officer of the Commission. He provides the strategic direction of the Commission in all its work, and makes decisions that might involve significant expenditure. Members of senior management report directly to him.

Members of senior management assume responsibility for the efficiency and effectiveness of work in their departments. Members of senior management are appointed on term contracts. They are not members of the Senior Executive Service. The identities and roles of members of senior management are set out in Chapter 1. Four members of Senior Management are responsible for the management of departments, being Operations, Legal and Policy, Corruption Prevention and Administration and Education.

The Commission is a relatively small, specialised organisation. It achieves optimum efficiency by involving relevant staff, regardless of level, in decision-making and by ensuring that the organisation structure is lean and responsive. An organisational chart is at Appendix 1.

Operations Department

A major change in this Department during the year was the transfer of the Assessment Section from the Legal Department to the Operations Department.

Other notable events in the Operations Department were the establishment of two positions of Deputy Director of Operations, the establishment of an Intelligence Unit and the establishment of a classification of Assistant Investigator, in recognition of the importance of internal staff development and the need to provide appropriate career paths.

The Director of Operations is responsible for the Operations Department. Under him there are two Deputy Directors of Operations, investigative staff, analytical staff, security and technical staff, assessment staff and property management staff.

The Deputy Director of Operations, Unit 1, is responsible for technical services, assessments, security and the property management functions.

The Deputy Director of Operations, Unit 2, is responsible for the investigative arm of Operations which includes the supervision of the analytical group, investigators and support staff.

The Assessment Section is directed by the Manager, Assessments. Assessment staff obtain information from the public and public authorities, analyse it and recommend further action. The Assessment Section filters work throughout the whole office.

There are four levels of investigator - chief, senior, investigator and assistant investigator.

During the past year, a major review of the terms and conditions of seconded police officers to the Commission was undertaken. New South Wales Police officers are now employed under the same terms and conditions as directly employed staff. This was done in conjunction with a review of the salary structure for investigators which resulted in an increase in salary effective from 1 July, 1991.

Operations staff work in teams. Their main function is to inquire into allegations of corrupt conduct, in the preliminary inquiry stage and investigations. This involves conducting extensive field inquiries, analysing and reporting on information, and assisting with the conduct of hearings.

There is a group of analysts under the direction and control of the Chief Analyst, with expertise in both financial and criminal analysis. They are mostly assigned to teams to assist with formal investigations, but also assist with preliminary inquiries, by examining financial data or assessing information to discern patterns or relationships.

This year a small Strategic Intelligence Research Unit was created, under the direction of the Chief Analyst, to conduct research and devise information collection programs to provide the Commission with strategically oriented information. This information will assist the Commission in planning its investigative work, particularly proactive work. The Intelligence Unit will not collect or produce intelligence for its own sake. It will work to ensure that information collected by the Commission is accurate, relevant, current and purged at reasonable intervals.

The Technical Services Group provides technical support to the Commission generally and in the course of investigations.

The position of Security Manager was also filled during the past year. The Security Manager's role is to implement and administer the Commission's protective security program and supervise the Security Police Officers. Security vetting of Commission staff, consultants and contractors, information security and protection of staff are part of the Security Manager's role.

Legal and Policy Department

The provision of legal services and advice and policy development are the main functions of this Department which is managed by the Solicitor to the Commission.

The Research and Policy Unit was established late in the year, and as the year ended a Manager was being recruited. The aims and objectives of the Unit are to conduct research into trends and changes in conduct, attitudes, legislation and control mechanisms that concern corruption, to act as a resource for research undertaken by all Departments in the Commission and to evaluate Commission strategies and practices, all with a view to better informing the Commission and community.

From time to time the services of a Research Fellow will be sought to undertake specialised research.

The Legal group comprises lawyers at three levels - principal, senior and lawyer. They perform the following functions:

- . act as team members 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 investigations;
- . represent the Commission in litigation;
- . provide advice to the Assessments section, and assess matters for investigation;
- . provide legal and policy advice.

Corruption Prevention Department

This Department is responsible to the Director of Corruption Prevention. It has three levels of officer - principal, senior, and corruption prevention officer. Staff appointed to the Department come from a variety of professional backgrounds, and each has some special area of expertise.

All have experience in the review, development and implementation of policy.

The work done by the Corruption Prevention Department is set out in Chapter 5. It involves formulating policy and strategy in the corruption prevention area, assisting public sector agencies to develop and implement their own corruption prevention strategies, and reviewing practices and procedures of public sector authorities to reduce opportunities for corruption. It is work which often requires a creative and innovative approach.

Administration and Education Department

This department, run by the Director of Administration and Education, has two main functions: to provide the support necessary to allow the Commission to undertake its work and to educate public authorities, officials and the community about strategies to combat corruption.

Public education work is done through education programs, the dissemination of information and by fostering public support. Three members of staff are currently employed in the Education Unit - a senior education officer, an education officer and a support officer. Public education work is enhanced by media coverage of Commission activities. The media unit plays a key role in this respect. A detailed outline of the public education work undertaken during the year is contained in Chapter 6.

Administration includes areas such as computer services, general services, personnel, records and registry, finance and library and information services. This chapter provides further information about these functions.

Staffing Levels

Since 30 June 1990 the Commission's staff has increased from 117 to 132.5.

Details as at 30 June in each year are as follows:

	1989	1990	1991
Executive	6	8	8
Operations	16	29	38
Legal and Policy	9	14	9
Corruption Prevention	0	3	5
Administration and Support	30	63	72.5
TOTAL	61	117	132.5

(Note: Administration includes secretarial and administrative support staff assigned to other sections of the Commission. It also includes the education function. The reduction in the Legal and Policy Department occurred because of the transfer of the Assessments Section to the Operations Department).

Recruitment

The Commission appoints staff on merit and observes equal opportunity principles.

Recruitment is a continuing priority of the Commission and to streamline the process, a rolling recruitment program has been developed. This requires each department to review its staffing levels on a regular basis and advertise for new staff on the basis of actual and anticipated needs.

Thirty one recruitment campaigns have been conducted, for all areas of the Commission, in the past financial year. Some are not yet complete. Approximately 1500 applications have been received in total, the calibre of which has been high.

Some of the major campaigns conducted were for:

Corruption Prevention Officers;

Investigators;
Analysts;
Lawyers;
Education Officers;
Security Manager;
Support Staff;
Research Manager.

Staff Development and Training

The Commission recognises that in order to obtain the best from staff, staff development and training programs are essential.

Staff development and training activities during the year included computer training, both in-house and external, media training, management skills, stress management, continuing legal education, and training in investigation methods.

An eleven week Operations training program was conducted, designed to provide investigative staff with the range of skills necessary to undertake their work.

A staff induction program, which provides a complete overview of the workings of the Commission, is available to all new members of staff. In the past year four programs were conducted for 31 new employees.

A management training program is to be introduced in the coming financial year. It will provide management training in a variety of areas and will enhance the skills of managers within the Commission.

The introduction of an integrated computer system has necessitated the development of a computer training program. This program was developed following a training needs analysis. Tenders have been called and the evaluation and implementation of the program will take place in the latter half of this calendar year.

Staff are permitted to attend studies outside working hours as approved students. During the past financial year, 19 staff members have undertaken studies at various institutions.

An Office Procedures Manual was produced during the year. It provides a description of the operations of the Commission on a practical day to day basis. It has been circulated widely throughout the Commission and is issued to all new staff members as part of their induction.

The policies developed since the inception of the Commission are being brought together in a Policy Manual which will be made available to all staff.

Records Management

The importance of the records management function was recognised during the year by its elevation to Unit level. The Unit has responsibility for Commission records, archives and transcript services. Its main aim is to ensure that an adequate and accurate account of the work of the Commission is maintained and can be readily accessed.

In recognition of this and as part of the computer acquisition program, a number of computerised records management packages were evaluated. The selected package will be installed in the early part of the next financial year.

A thesaurus, based on the vocabulary used by the Commission, has been created for the control of file titling; this will be implemented as files are computerised, to ensure easy retrieval and uniformity throughout the Commission.

The development of an archival program has commenced. This will be a priority in the coming year. This work will result in a disposition schedule and is part of established and continuing co-operation with the Archives Office of New South Wales.

A transcript service continued to be provided to the public. Commission policy was altered during this year to provide for automatic and free

provision to witnesses of the transcript of their evidence. Otherwise transcript was charged at \$1 per page. A comprehensive policy for the provision of transcript will be promulgated in the coming year.

Information Technology

The Commission continued the two-stage computer acquisition program initiated in January 1990. 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. Responses from those short-listed in stage two were received in late June 1990. These were subjected to a rigorous evaluation based on criteria previously defined.

The Automated Data Processing Working Party acted as the evaluation committee and produced a report for the Commissioner. The process involved both the State Contracts Control Board and the Auditor-General's Office. The former reviewed the tendering and evaluation procedures. The latter reviewed the methodology used to evaluate the tenders and also provided comment on the recommendation of the working party. This review confirmed the findings of the internal process. The use of outside agencies offered an objective evaluation of the whole process.

This process resulted in a recommendation that Hewlett Packard be offered the role of prime contractor. Following negotiations, the computer contract between the Commission and Hewlett-Packard was executed in early February 1991. As prime contractor, Hewlett-Packard is currently building a system comprising Unix-based mid-range computers, a relational database management system, a purpose-built Commission wide application, networked PCs, an image system and an intelligence system. Phased implementation of the project is proceeding smoothly and is expected to be completed by December 1991.

Australian companies are well represented in this project. A consulting company DPXCEL was engaged to assist in the development of the Information Technology Plan and initial design of the overall system and system selection. Tower Technology is providing the imaging system. Specialised applications are being developed by Fraud Control

Services in conjunction with DMR Group Australia. NetMap International is developing the intelligence system.

The selected solution is cost-effective and will meet current and foreseeable needs of the Commission. The solution is strategically sound because it allows for future growth while providing optimum flexibility.

As a separate exercise, the Commission has responded to the need for an in-house desktop publishing system to meet the increasingly sophisticated requirements associated with the production of the Commission's published Reports. A PC-based desktop publishing system was selected. This enables the authors to be in control of the initial typesetting process. The overall system has proven extremely successful.

Library and Information Services

The Library and Information Services Unit has experienced a year of growth and development, and continued expansion of services provided.

The Unit is responsible for all information requests to government and non-government agencies, a full range of library services including a reference and research service, and the provision of on-line information services.

A newsletter, Biblio File, informs staff about relevant literature and the services provided by the Unit.

The Information Services Manager is the convenor of the Information Services Working Party which has as its aim the continual improvement of information services provided within the Commission.

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 continues to be adequately funded.

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 7. Additional financial information is set out in Appendix 8. A pictorial representation of the dissection of expenditure is at Appendix 9.

Details regarding monthly spending for stores and equipment purchases are contained in Appendix 10.

The Commission assumed control of all accounting functions previously performed by the Premier's Department on 1 October 1990. A computerised system for the processing of accounts has been introduced and is currently being further developed to ensure that it meets the needs of the Commission. An accounting manual has been drafted and will be implemented next financial year to coincide with the introduction of accrual accounting.

The Commission will convert to accrual accounting as of 1 July 1991. Extensive work has been undertaken throughout the year to prepare for this. A working party comprising Commission officers, representatives of the Treasury and an outside consultant was formed to manage the change process. Advice was also provided, from time to time, by the Auditor-General's Office.

This working party met regularly during the year. Major achievements in relation to the introduction of accrual accounting include the development and implementation of a computerised assets control system, the modification of existing procedures, and the development of new procedures to ensure a smooth transition to accrual accounting. The Commission has briefed a number of organisations on its methodology and implementation plan.

Internal Audit

The Commission has engaged the Auditor General's Office to provide it with internal audit services. Before the start of the year, an audit program was drawn up comprising three phases and covering the full range of accounting and budgetary functions. Good progress in all areas was made throughout the year. A steady refinement of procedures occurred and will continue into 1991-1992.

Overseas Travel

During the year the Commissioner attended and presented a paper at the International Association of Chiefs of Police Third Annual Asian-Pacific Executive Policing Conference in Seoul, Korea. The conference provided an opportunity to establish co-operative relationships with a wide range of agencies, as well as provide briefings on issues relevant to the region. There will be a need for a deal more travel in 1991-1992.

Committees

A number of committees are in place at the Commission. Each has a clearly defined membership and function. Once a committee has served its purpose, it is disbanded.

The Senior Management Committee consists of the Commissioner, both General Counsel, Director of Operations, the Director of Corruption Prevention, the Solicitor to the Commission and the Director of Administration and Education. This Committee assists the Commissioner in the overall management of the Commission. It meets weekly to consider key issues affecting the Commission.

The ADP Working Party is responsible for the overall direction and management of the ADP function. It oversees the development of the Commission's Information Technology Plan and the acquisition of the Commission's new computer system.

Several subsidiary working parties have been established to assist with the development of practices and procedures necessary to ensure a

systematic implementation of the computer acquisition. They deal with procedures, training, text retrieval and the intelligence system.

The Security Management Committee comprises the Director of Operations, the Director of Administration and Education, both Deputy Directors of Operations and the Security Manager. This Committee oversees the management of the Commission's protective security program.

The Occupational Health and Safety Consultative Committee consists of representatives of each Department within the Commission. It considers all health and safety issues affecting the Commission.

Membership of the Information Services Working Party 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.

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) Regulation 1988 do not apply to the Commission. Despite this, and in the interests of accountability, the Commission reports below on expenditure on 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 11.

A contract for purchase and installation of an integrated computer system over two years was signed in February 1991 at a contract price of \$2.456M. During 1990-91 \$1.034M was spent on this project.

Funds in the order of \$500,000 were earmarked in 1990-91 to continue an acquisition program for the Technical Services Group, ADP, Education and Services. This program aims to provide essential technical equipment and general supplies to help achieve the Commission's objectives. The only individual items exceeding \$30,000

were PABX modifications to the value of \$41,169 and \$38,235 for a communications system.

The Commission requires high levels of physical security. As part of this process the Commission contracts the Police Service to provide a security service. This service cost \$415,433 for the year in question.

The Commission aims to recruit only the highest quality staff. This remains difficult to achieve especially in the computing area. For this reason DPXCEL Pty Ltd were retained at a cost of \$76,431 to oversee the letting of the contract for the integrated computer system and its initial implementation.

The Commission is of the view that it is more efficient and economical to lease vehicles rather than buy them. This service is provided to the Commission by the Commonwealth Department of Administrative Services. The sum of \$195,000 was spent on the service, including some \$22,000 on providing an after hours bus service essential for the safety of Commission staff.

Transcription services were provided to the Commission by Spark and Cannon at a cost of \$233,000, including approximately \$31,000 on the hire of word processing equipment provided by Word Express. Part of the expenditure involved the local production of transcript for the hearing held at Wagga Wagga in relation to the police and truck repairers investigation.

Chapter 8

ACCOUNTABILITY

At the beginning of this Report it was said that the Commission is independent but accountable, in part through the operations of the Parliamentary Joint Committee and the Operations Review Committee. This Chapter deals with the constitution and work of those committees.

Parliamentary Joint Committee

Part 7 of the Act provides for the constitution of a joint committee of Members of Parliament, known as the Committee on the Independent Commission Against Corruption. Section 65 of the Act requires that the Committee consist of nine members, three from the Legislative Council and six from the Legislative Assembly.

Members of the Committee from April 1989 until May 1991 were:

Mr M J Kerr MP (Chairman), the Hon D J Gay MLC (Vice Chairman), the Hon R D Dyer MLC, the Hon S B Mutch MLC, Mr J E Hatton MP, Ms S C Nori MP, Mr A A Tink MP, Mr J H Turner MP and Mr P F P Whelan MP.

The members of the new Committee, elected in July 1991, are:

Mr M J Kerr MP (Chairman), the Hon D J Gay MLC (Vice Chairman), the Hon S G Mutch MLC, the Hon J C Burnswoods MLC, Mr B J Gaudry MP, Mr J E Hatton MP, Mr P R Nagle MP, Mr A A Tink MP, and Mr J H Turner MP.

The functions of the Committee, set out in s64 of the Act, are as follows:

- . to monitor and 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 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 thereby given the Committee clear guidelines as to its responsibility. It cannot involve itself in individual matters, but it

can obtain information from the Commission, and others, to assist it in performing its functions.

The Committee's Inquiry into Commission Hearing Procedures and the Rights of Witnesses was dealt with in Chapter 4. Apart from that, the Committee sought information and advice from the Commission on many occasions.

The Commissioner and senior managers met with the Committee in July and informed the Committee about the Commission's corruption prevention and public education work. At a meeting in September with the Chairman, Mr Kerr, the Commissioner encouraged the Committee to develop more its functions of reviewing Commission investigation Reports and research and project work, in addition to the monitoring function which had until then been its main activity.

The Commission provided to the Committee the s11 guidelines issued to public authorities, in September 1990, a summary of the findings and recommendations in Commission Reports published to date, in October, and information about anti-corruption agencies in other countries in May 1991.

The Commission also responded to requests for advice from the Committee about the following matters:

- . Complaints by three persons about the Commission's handling of matters.
- . The working relationship between the Privacy Committee and the Commission: the Commission was able to inform the Committee about a positive meeting between the Commission and the Privacy Committee in which issues about the relationship between the two organisations were resolved.
- . A complaint by a firm of solicitors about the Commission being involved in prosecutions beyond its powers: the Commission advised that the Commission does not conduct prosecutions, that being the function of the Director of Public Prosecutions, but that Commission investigators perform the formal role of laying

informations, there being no other person to perform that function. The Commission similarly informed the Law Society in relation to the same matter.

The Commissioner gave evidence before the Committee in public hearing twice, on 15 October 1990 and 27 March 1991. Advance notice was given of questions so that detailed and more useful responses could be given. On the first occasion the Commissioner gave evidence in relation to the Committee's Inquiry into Commission hearings and thereafter answered questions about matters related to the Commission's operations, including the Public Education Strategy, the Information for Witnesses in Commission Hearings document, the role of the Operations Review Committee, corruption prevention, assessment of complaints, and Commission Reports. A collation of the Commissioner's evidence was tabled by Mr Kerr in the Legislative Assembly on 29 November 1990.

On the second occasion the Commissioner provided information and answered questions about investigations, including a formula for costing investigations, public education and corruption prevention work, the Commission's budget and staffing, and matters arising from the Committee's Inquiry. A collation of the Commissioner's evidence was tabled by Mr Kerr on 18 April 1991.

On Monday 8 April 1991 the Commission held a seminar, at the Commission's premises, for the Committee to discuss with Commission officers the findings and recommendations of the Committee's Inquiry. Messrs Kerr, Dyer, Hatton and Tink attended and led discussion.

The Committee has been active during the year and the Commission has been busy responding to requests for information. There has been regular contact between the Committee and the Commission and the relationship between the Commission and the Committee is constructive. The Committee provides an important accountability mechanism for the Commission; in practice that is real and demanding.

Operations Review Committee

The functions of the Operations Review Committee (ORC) are set out in s59(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. The Committee has since operated in this way.

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 s11 report, or the Commission's own initiative.

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.

In March 1991, the appointed members were reappointed, with their concurrence. They are Mr L Glanfield, a senior officer of the Attorney-General's Department, on the recommendation of the Attorney-General, Mr J Davenport, Sister M McGovern, Mr D Brezniak, and Mr D Nutter. Mr A Lauer, as the new Commissioner of Police, replaced Mr Avery on the Committee.

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, nine were chaired by the Commissioner, the balance by Mr Roden. Procedures for the preparation of reports for consideration by the Committee are as follows:

- 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 almost every Commission officer involved in operational duty;
- the Deputy Director of Operations and Manager, Assessments have 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.

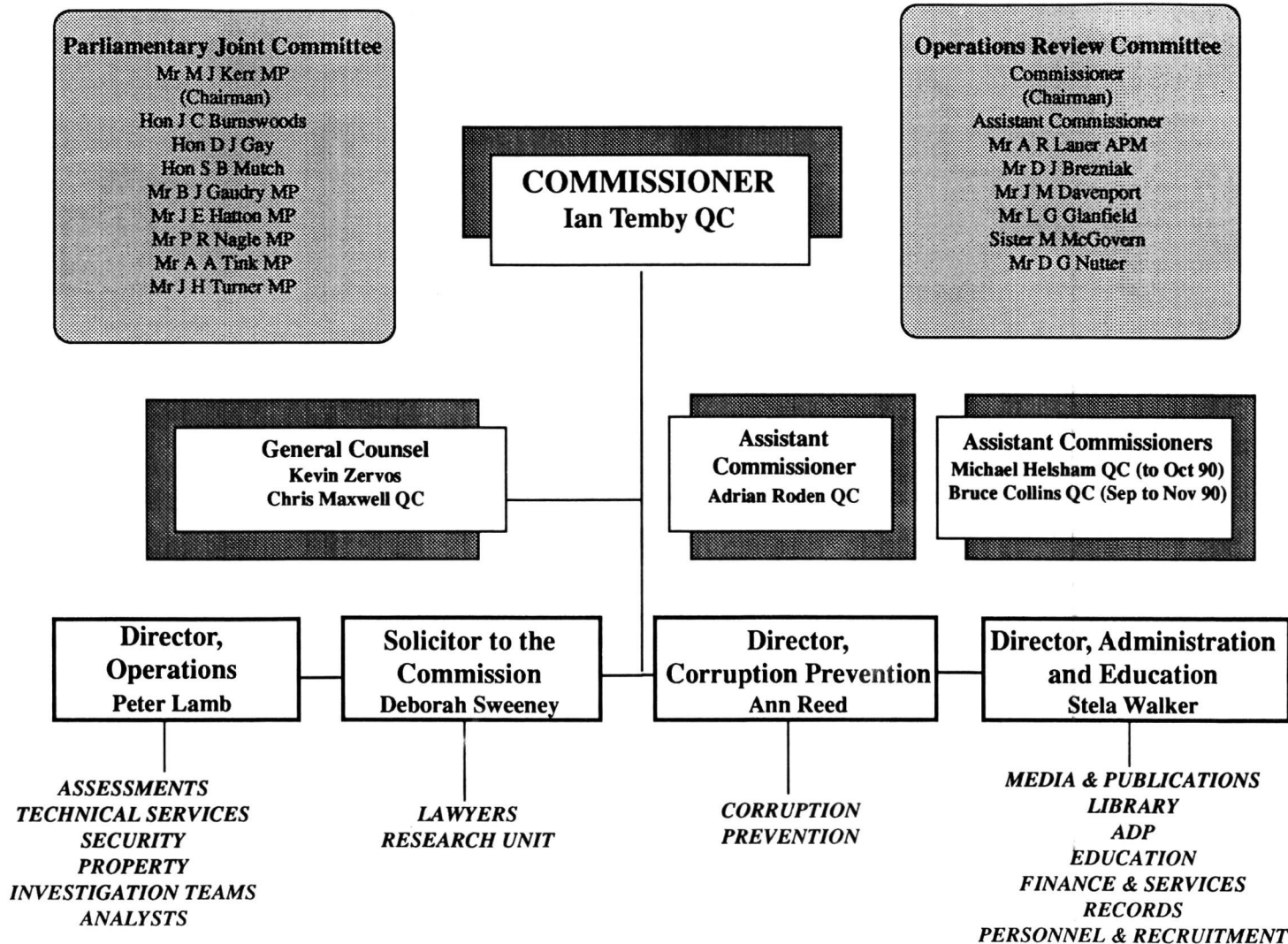
Commission files, in relation to reports under consideration by the ORC, are available for examination.

During the year, the ORC considered 393 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 three monthly reports in relation to the continuance or otherwise of formal investigations.

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

Organisation Chart



COSTS OF COMPLETED INVESTIGATIONS WITH FORMAL REPORTS

MATTER	HEARING COSTS	COUNSEL COSTS	REPORT COSTS	INVESTIGATIVE COSTS	OVERHEADS	TOTAL COSTS
PARK PLAZA (October 1989)	\$12,000	\$10,000	\$5,000	\$5,000	\$47,000	\$79,000
HAKIM (December 1989)	\$32,000	\$31,000	\$7,000	\$8,000	\$104,000	\$182,000
SILVERWATER (February 1989)	\$15,000	\$22,000	\$4,000	\$17,000	\$74,000	\$132,000
NORTH COAST (July 1990)	\$217,000	\$511,000	\$71,000	\$269,000	\$767,000	\$1,835,000
LAND TITLES (July 1990)	\$12,000	\$18,000	\$4,000	\$6,000	\$62,000	\$102,000
TAFE (August 1990)	\$4,000	\$1,000	\$2,000	\$1,000	\$16,000	\$24,000
HOUSING DEPARTMENT (September 1990)	\$18,000	\$3,000	\$11,000	\$79,000	\$263,000	\$374,000
WALSH BAY (October 1990)	\$96,000	\$120,000	\$16,000	\$47,000	\$239,000	\$518,000
DRIVER LICENSING (December 1990)	\$235,000	\$245,000	\$29,000	\$228,000	\$677,000	\$1,414,000
AZZOPARDI (December 1990)	\$57,000	\$33,000	\$7,000	\$19,000	\$229,000	\$345,000
WAVERLEY (January 1991)	\$52,000	\$172,000	\$24,000	\$69,000	\$274,000	\$591,000
SUTHERLAND (February 1991)	\$61,000	\$10,000	\$8,000	\$41,000	\$214,000	\$334,000
NEAL & MOCHALSKI (April 1991)	\$4,000	\$1,000	\$5,000	\$8,000	\$42,000	\$60,000
POLICE & TRUCK REPAIRERS (May 1991)	\$73,000	\$6,000	\$8,000	\$171,000	\$407,000	\$665,000
VINYL FLOORING (July 1991)	\$5,000	\$1,000	\$7,000	\$8,000	\$95,000	\$116,000
MSB HELICOPTERS (July 1991)	\$20,000	\$3,000	\$7,000	\$28,000	\$143,000	\$201,000

Note: See pp53-54 for the costing formula.

Appendix 3

PROCEDURE AT PUBLIC HEARINGS

The Commission's power to hold hearings is conferred by section 30(1) of the ICAC Act 1988. Such hearings may only be held "for the purposes of an investigation". They should accordingly be regarded as an aid to, or part of, the investigation process. They are not held to "present a case" after a completed investigation.

As a general rule, hearings will be conducted in public. The Act provides that the Commission may direct that a hearing or part of a hearing be held in private, but stipulates that such direction may only be given if the Commission is satisfied "that it is desirable... in the public interest for reasons connected with the subject matter of the investigation or the nature of the evidence to be given" (s31). Private hearings may be necessary to avoid prejudice to current indictable criminal proceedings (s18).

The Commission will hear and consider applications for all or part of a hearing to be private. Such applications will generally be heard in private if that is requested. Reasons for decisions will be given. Grounds for such applications must satisfy the public interest test in s31. They may include danger to personal safety or well-being, to protect an informant's identity, or unfair or unnecessary damage to reputation arising from anticipated evidence. This is not an exhaustive list.

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

1. When, for the purpose of an investigation, the Commission decides to hold a public hearing, the Commission will generally give notice of that intention, both publicly and to such persons as the Commission believes are substantially and directly interested in any subject matter of the hearing.
2. The notice will state the general scope and purpose of the proposed hearing, and the date, time and place of the first sitting.

3. One purpose of the notice will be to enable those persons who may wish to appear and be represented to arrange for their applications to be made on the first sitting day.
4. As provided by the Act, hearings will be conducted and presided over by the Commissioner or an Assistant Commissioner (s30(2)).
5. The courtesies which are customary in courts of law will be observed. Robes will not be worn. The person presiding may be addressed as "Commissioner" whether s/he be the Commissioner or an Assistant Commissioner.
6. The first day of a public hearing will generally be limited to the formal announcement of the general scope and purpose of the hearing, applications for persons to appear and be represented, and settling arrangements for the hearing.
7. Leave to appear for a person substantially and directly interested in the subject matter of the hearing or for a person who will be giving evidence at the hearing, will generally entitle the legal representative to ask questions of witnesses and to make submissions, but not to give advice to the person represented while he or she is in the course of giving evidence. Leave to appear may however be subject to limitations particularly when the person represented has an interest in part only of the subject matter of the hearing.
8. Leave to appear may be granted in respect of a hearing generally, or in respect of a specified part of a hearing.
9. The hearings will be conducted with due regard to the provisions of section 17 of the Act, which provides:
 - (1) The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.
 - (2) The Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and hearings shall be conducted with as little emphasis on an adversarial approach as is possible.

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

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

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

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

14. Statements or records of interview taken by ICAC investigators from significant witnesses will not as a matter of course be made available to other "affected persons". The question of access to such material will be determined by Counsel Assisting and a decision made dependent on various considerations.

15. When the Commission is aware that evidence will be given, in public hearing, of corrupt conduct by a person, the Commission will endeavour, where practicable and where it will not prejudice the investigation, to inform the person in advance. The person may then choose to attend and hear the evidence, or obtain a transcript of the evidence.

16. Where a serious allegation is made about a person in a public hearing, the Commission will endeavour to afford the person an early opportunity to respond, subject to the seriousness of the allegation and the circumstances of the investigation. Such response may be by evidence, in writing, or other means, as appropriate.

17. The Commission may make orders prohibiting publication of evidence, generally, or temporarily, or in specified circumstances (s.112). Such orders are most often used in relation to private hearings or current criminal proceedings. Orders may be made for reasons including, but not limited to, the following: to protect a person named in, but not the subject of, a Commission hearing; to prevent publication of an allegation pending a response by the subject of it; to protect the safety or welfare of a person; to protect minors; to protect trade secrets or law enforcement procedures; or for national security reasons.

18. Submissions on evidence may be taken in writing, or orally, or a combination of both, as appropriate to the circumstances of particular investigations.

19. As required by s74 of the Act, all public hearings will be the subject of report to Parliament. Each report must include, pursuant to s74A(2), a statement in respect of each "affected person" as to whether the Commission is of the opinion that consideration should be given to the prosecution of the person for a specified offence, or the taking of action against the person for a specified disciplinary offence or with a view to dismissing, or dispensing with or terminating the services of, the person. Reports may also contain findings of corrupt conduct in relation to an affected person. An "affected person" is a person against whom substantial allegations have been made in the course of, or in connection with, an investigation.

June 1991

Appendix 4

PUBLIC EDUCATION STRATEGY

THE LEGAL CONTEXT

The principal functions of the New South Wales Independent Commission Against Corruption in relation to public education are contained in sections 13(1)(h), (i) and (j) of the ICAC Act 1988. They are as follows:

- 13(1) (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.

THE PRINCIPLES

The Commission seeks to enlighten and educate the community about the detrimental effects of corruption and the ways in which the community can do something about it. The strategy to achieve this is based on three principles.

- **Knowledge Empowers**

It is only when people are aware of issues and understand their rights and responsibilities that they will be able to assist the Commission effectively with its aim of minimising corruption.

- **Collective Responsibility**

Minimising corruption is the responsibility of every citizen of the State. The more who contribute, and the more they contribute, the more will be done.

- **Permanent Change**

Permanent improvement can be brought about only through changed attitudes, which will lead to changed behaviour.

THE WORK

From time to time matters will arise out of the overall work of the Commission which may require specific public affairs attention. The strategy will therefore focus not only on the general but also the specific.

The work will come about in the following ways:

- As part of the overall work of the Commission to raise public awareness about the detrimental effects of corruption and what can be done about it.
- As a result of the work of the Corruption Prevention Department of the Commission when the emphasis passes from the remedial to the educative.
- As a result of investigations by the Commission which highlight a general trend or area of concern.
- From information provided to the Commission which, while not requiring the attention of either the Commission's investigative or corruption prevention arms, indicates that useful public education work can be done.
- Through feedback from public attitude surveys.

- Through feedback from the public in response to elements of the public education program.
- By regular liaison with appropriate bodies in both the public and private sectors.
- Requests from interested bodies which are judged to be of particular value.

THE PROCESS

Public education work will be done in the following ways:

- **Hearings**

One of the major ways in which the Commission can enlighten and educate the public is through open hearings. Hearings are the visible work of the Commission and the foundation on which reports are produced.

- **Reports**

The Commission is answerable to the public of New South Wales. The Commission should therefore report widely, and in detail.

The Commission produces reports in relation to investigations. It also produces an Annual Report.

Investigation reports outline the purpose of the investigation, its conduct and outcome. Quite often reports recommend change.

The Annual Report provides a summary of the Commission's activities over a twelve month period. It highlights the major achievements of the year and initiatives undertaken and strategies for the future.

Reports are widely disseminated and are made available, free of charge, to anyone who asks.

- **The Young**

Ethical values are set in the formative years. Children should be exposed to a range of values and standards from which they can draw to determine their own behaviour.

The Commission will consider ways in which this can be done, in a positive manner, so as to instil integrity and discourage corrupt practices.

- **Minority Groups**

Some groups in the community have special needs. This includes, but is not limited to, people from overseas who are not fluent in both spoken and written English. From time to time special programs which focus on such groups will be undertaken by the Commission.

- **Community Speakers**

Various groups within the community may have particular areas of interest or concern. In order to clarify such issues and meet general levels of interest, the Commission will provide community speakers.

Speakers will speak at community functions of appropriate size, in schools, at seminars and meetings generally.

- **Country Trips**

The Commission works for all the people of the State equally. For this reason a rolling program of country trips is undertaken. The trips will gather complaints of corrupt conduct, but will also publicise the work of the Commission by offering speakers to interested groups.

- **Media Liaison**

The media have a vital role to play in publicising the work of the Commission.

The Commission will therefore maintain effective liaison with the media to ensure that the work of the Commission is publicised throughout the State.

- **Special Events**

Special events such as launches will be held if appropriate to publicise a particular message or project. Occasional “Open Days” at the Commission premises may also be worthwhile.

- **Community Announcements**

The Commission’s message imparted in all these ways needs to be reinforced continually.

The Commission will develop a series of posters, pamphlets, leaflets, information kits and produce advertisement-type announcements to do this work.

CONCLUSION

The Commission will only achieve its aim through the co-operation, involvement and commitment of the people of New South Wales. The Public Education Strategy seeks to engender this co-operative spirit.

Appendix 5

MEDIA STATEMENTS

- | | |
|-------------------|--|
| 1 August 1990 | Commissioner's comment on the need for Government to amend the ICAC Act following the High Court judgment in Balog and Stait v ICAC. |
| 5 September 1990 | Statement about the appointment of Mr Bruce Collins QC as an Assistant Commissioner to preside over public hearings into harassment of Mr Edgar Azzopardi and his wife Pamela. |
| 25 September 1990 | Director of Corruption Prevention, Ms Ann Reed, to address postgraduate students and public service managers in Bathurst on preventing corruption before it occurs. |
| 3 October 1990 | Statement about the release of an investigation Report into dealings between Homfray Carpets and the Department of Housing. |
| 23 October 1990 | The launch by the Premier and Minister for Ethnic Affairs, Mr Greiner, of the Commission's ethnic communities public education campaign. |
| 31 October 1990 | Release of the investigation Report into the Walsh Bay Redevelopment Project. |
| 7 December 1990 | Release of the investigation Report into corrupt practices in relation to driver licensing. |
| 4 January 1991 | Release of the investigation Report into harassing telephone calls made to Edgar Azzopardi. |
| 18 January 1991 | Release of the investigation Report on property deals involving Stait, Dainford and the Waverley Council. |
| 18 February 1991 | Release of the investigation Report into Sutherland Licensing Police. |

- | | |
|------------------|---|
| 28 February 1991 | Commission comment on the Parliamentary Joint Committee's Report into ICAC procedures and the rights of witnesses. |
| 2 April 1991 | Commission request to members of local and State Government for assistance in the confidential handling of complaints of possible corrupt conduct. |
| 11 March 1991 | Release of the main findings of a corruption prevention project conducted by the Commission in the Department of Housing. |
| 26 April 1991 | Release of the main findings of a corruption prevention project conducted by the Commission within the Roads and Traffic Authority in relation to driver licences. |
| 1 May 1991 | Statement announcing an investigation into the use of informers as witnesses in prosecutions. |
| 16 May 1991 | Statement about the Commission's actions in relation to the Sydney 200 Association, a body associated with the Civic Reform Association which comprises aldermen of the Sydney City Council and others. |
| 17 May 1991 | Announcement of an investigation into the issue of conflicts of interest within local government. |

Regular statements were also issued advising of country visits by ICAC staff to Wollongong and Goulburn, Queanbeyan and Cooma, Newcastle and Gosford, Bathurst and Orange, Grafton and Coffs Harbour, Port Macquarie and Taree, Dubbo and Broken Hill, Griffith, Albury and Wagga.

Appendix 6

PUBLIC ADDRESSES

Commissioner, Ian Temby QC

“Protecting the Individual” 9 July 1990

Australian Bar Association Conference
Darwin

“Tackling Corruption in New South Wales” 26 July 1990

International Association of Chiefs
of Police, Third International Policing
Executive Conference, Seoul, Korea

“The ICAC: Working in the Public Interest” 29 August 1990

Institute of Criminology Seminar
Sydney

“Public Sector Ethics and 9 November 1990

Accountability”
Address to Public Accounts Committee
Seminar, Sydney

“Of Dogs and Do-Gooders: Informants 19 April 1991

and their Protection”
Electoral and Administrative Review
Commission Public Seminar, Brisbane

“Tackling Corruption - Why and How?” 6 May 1991

41st Annual Electricity Conference
Tweed Heads

<p>“Local Government: A new Direction Public Duty v Private Interest” Institute of Municipal Management National Congress, Canberra</p>	<p>21 May 1991</p>
<p>Address to the Labor Council of NSW on the functions of the ICAC</p>	<p>20 June 1991</p>
<p>“Ethics in Management” Australian College of Health Service Executives, 17th National Congress Sydney</p>	<p>21 June 1991</p>
<p>Director of Operations, Peter Lamb</p>	
<p>“Initiatives Against Fraud” Address to Fraud Management Seminar Sydney</p>	<p>10 May 1991</p>
<p>Assistant Commissioner, Adrian Roden QC</p>	
<p>Proposals of the Gibbs Committee Address to The Society for the Reform of the Criminal Law Seminar, Brisbane</p>	<p>2 April 1991</p>
<p>Director of Corruption Prevention, Ann Reed</p>	
<p>“Managerial Accountability” Executive Development Program for Women Graduate School of Management and Public Policy, University of Sydney</p>	<p>17 July 1990</p>

<p>“Consultants and the Public Sector” Australian Association of Consulting Planners Annual General Meeting, Sydney</p>	<p>25 July 1990</p>
<p>“Accountability in the Public Sector” Royal Australian Institute of Public Administration, Sydney</p>	<p>28 August 1990</p>
<p>“Making the Managers Manage” Institute of Municipal Management Sydney Metropolitan Group NSW Division</p>	<p>13 September 1990</p>
<p>Address to Master of Business Class Charles Sturt University Bathurst</p>	<p>27 September 1990</p>
<p>Address to Western Sydney Regional Organisation of Councils Sydney</p>	<p>1 March 1991</p>
<p>Corruption Prevention Seminar for Senior Managers, Department of State Development, Sydney</p>	<p>12 March 1991</p>
<p>“Corruption Prevention in Practice - the First 12 Months”, New South Wales Institute of Criminology Sydney University Law School</p>	<p>22 March 1991</p>

Appendix 7

FINANCIAL STATEMENTS

INDEPENDENT COMMISSION AGAINST CORRUPTION

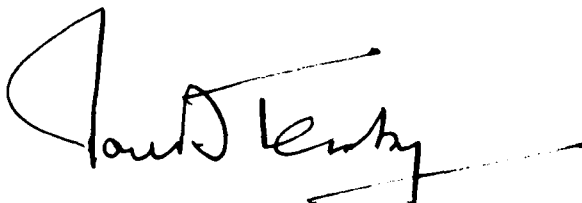
For the Year Ended 30 June 1991

Statement by COMMISSIONER

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

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

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

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

**Ian D Temby QC
COMMISSIONER**

26 July 1991



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

AUDITOR-GENERAL'S OPINION

INDEPENDENT COMMISSION AGAINST CORRUPTION

I have audited the accounts of the Independent Commission Against Corruption for the year ended 30 June 1991. The preparation and presentation of the financial statements comprising the accompanying receipts and payments statement, summarised receipts and payments statement and statement of special deposits account balances, together with the notes thereto, and the information contained therein is the responsibility of the Commissioner. My responsibility is to express an opinion on these statements based on my audit as required by Sections 34 and 45F(1) of the Public Finance and Audit Act 1983.

I conducted my audit in accordance with the provisions of the Act and the Australian Auditing Standards to provide reasonable assurance as to whether the financial statements are free of material misstatements. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are in accordance with the requirements of the Public Finance and Audit Act 1983, and Australian accounting concepts and standards, where applicable, so as to present a view of the Independent Commission Against Corruption which is consistent with my understanding of its operations.

In my opinion, the financial statements, within the confines of the cash basis of accounting described in Note 1(b), comply with Section 45E of the Act and are in accordance with the accounts and records of the Independent Commission Against Corruption for the year ended 30 June 1991, and the Statements of Accounting Concepts and Accounting Standards, where applicable.


J.R. MITCHELL, FCPA
ASSISTANT AUDITOR-GENERAL

SYDNEY
13 September 1991

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 1991

DETAILS	NOTE	1989/90	1990/91	
		ACTUAL	ESTIMATE	ACTUAL
RECEIPTS:*		\$000	\$000	\$000
Sale of transcripts		85	-	69
Sale of assets		1	-	1
Repayments previous years		-	-	31
Provision for commitments outstanding	9(b)	246	-	154
Balance of salaries suspense	9(a)	201	-	-
<u>TOTAL RECEIPTS</u>		533	-	255
PAYMENTS:*				
Employee related payments		4502	6432	6198
Maintenance and working expenses	13	4200	4198	4432
Other Services:				
Legal and other costs		1068	1100	534
Accommodation fitout - Redfern		4431	269	269
Capital works:				
Plant and equipment		107	107	107
Balance of salaries suspense	9(a)	-	-	116
<u>TOTAL PAYMENTS</u>		14308	12106	11656
Excess of payments over receipts		13775	12106	11401

* The provision for commitments outstanding and balance of salaries suspense are net figures.

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 1991

DETAILS	NOTE	RECEIPTS			NOTE	PAYMENTS		
		1989/90	1990/91			1989/90	1990/91	
		ACTUAL	ESTIMATE	ACTUAL		ACTUAL	ESTIMATE	ACTUAL
PROGRAM - Investigation, Community Education and Prevention of Corruption		\$000	\$000	\$000		\$000	\$000	\$000
Consolidated Fund		86	-	101		14308	12106	11540
Special Deposits Account		-	-	-		-	-	-
NET TOTAL - PROGRAM*		86	-	101		14308	12106	11540
NON PROGRAM -								
Consolidated Fund		-	-	-		-	-	-
Special Deposits Account		484	-	522		37	-	484
NET TOTAL - NON PROGRAM*		484	-	522		37	-	484
TOTAL								
Consolidated Fund		86	-	101		14308	12106	11540
Special Deposits Account	484	-	522		37	-	484	
GRAND TOTAL - NET	12(a)	570	-	623	12(b)	14345	12106	12024

* There were no inter-fund transfers .

INDEPENDENT COMMISSION AGAINST CORRUPTION

Statement of Special Deposits Account Balances as at 30 June 1991

PREVIOUS YEAR			ACCOUNT	NOTE	CURRENT YEAR		
CASH	SECURITIES	TOTAL			CASH	SECURITIES	TOTAL
\$000	\$000	\$000			\$000	\$000	\$000
238	-	238	1140 Balance of salaries adjustment suspense	9(a)	122	-	122
246	-	246	1820 Provision for commitments outstanding at 30 June	9(b)	400	-	400
484	-	484	GRAND TOTAL - Special Deposits Account		522	-	522

INDEPENDENT COMMISSION AGAINST CORRUPTION

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 1991

1. Accounting Policies

- (a)
 - (i) The Commission is constituted by the Independent Commission Against Corruption Act, 1988.
 - (ii) These financial statements incorporate the financial reporting requirements of the Public Finance and Audit Act 1983, the Public Finance and Audit (Departments) Regulation 1986 and Treasurer's Directions.
- (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 the 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 the 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) 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 \$4,551 (\$27,223 in 1989/90) were owed to the Commission as at 30 June 1991 in respect of accounts for sales of transcript. These amounts are aged as follows:

90 days & over	60 days	30 days	Current
\$4,451	Nil	Nil	\$100

It is considered that collection of five percent of the debts aged as 90 days and over is doubtful.

3. Amounts Owed By The Independent Commission Against Corruption

Amounts totalling \$421,051 (\$235,000 in 1989/90) were owed by the Commission in respect of goods and services provided prior to 30 June 1991 but not paid until after that date.

4. Public Borrowings and Repayable Advances

The Independent Commission Against Corruption does not hold any public borrowings or repayable advances at 30 June 1991.

5. Debts Written Off

Amounts totalling \$186 were written off as bad debts during the financial year.

6. Contingent Liabilities

There were no known contingent liabilities as at 30 June 1991.

7. Commitments Under Recurrent and Lease/Hire Agreements

Prior to 30 June 1991 the Commission entered into the following commitments:

- (a) Five year rental agreement which commenced on 1 March 1989, with annual payments for rent and outgoings totalling currently \$931,907 (\$952,907 in 1989/90).
- (b) Lease arrangements on several photocopiers with total annual rental of \$41,277 (\$41,000 in 1989/90).
- (c) Contracts in relation to accommodation fitout - Nil (\$111,000 in 1989/90).

8. Assistance Provided to the Commission

Material assistance was provided by the Accounts Branch and Staff and Salaries Branch of the Premier's Department who rendered staff and payroll services to the Commission.

9. Transfer to Special Deposits Account

- (a) The amount of \$122,062 (\$237,869 in 1989/90) was transferred to the Special Deposits Account No. 1140 being \$104,012 for 6/10ths of the salary costs of the payroll to cover the period 21 June to 30 June 1991, and \$18,050 for amounts owing in respect of the salary of temporary employees as at 30 June 1991.
- (b) The amount of \$399,964 (\$245,531 in 1989/90) 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.

PLEASE NOTE

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12. Dissection of Program

- (a) The table below details the program receipts of Consolidated Fund and Special Deposits Account. There were no inter-fund transfers.

Program: Investigation, Community Education and Prevention of Corruption.

Previous Year	Program Receipt Items	Actual
\$000		\$000
85	Sale of transcripts	69
1	Sale of assets	1
-	Repayments previous year	31
86	Total Program Receipts	101
	Non-Program Receipt Items	
246	Provision for commitments outstanding	400
238	Balance of salaries suspense	122
484	Total Non-Program Receipts	522
<u>570</u>	Total Receipts	<u>623</u>

- (b) The table below details the program payments financed from Consolidated Fund and Special Deposits Account. There were no inter-fund transfers.

Program: Investigation, Community Education and Prevention of Corruption.

Previous Year	Program Expenditure Items	Actual
\$000		\$000
4502	Employee related payments	6198
4200	Maintenance and working expenses	4432
1068	Counsel fees	534
4431	Accommodation fitout - Redfern	269
107	Capital plant and equipment	107
14,308		11,540
	Non-Program Expenditure Items	
37	Other	484
<u>14,345</u>	Total Payments	<u>12,024</u>

13. Dissection of Maintenance and Working Expenses

The following schedule dissects the "Maintenance and working expenses" figures provided in the "Summarised Receipts and Payments Statement of the Consolidated Fund and the Special Deposits Account by item for the year ended 30 June 1991."

Previous Year			
Actual	Consolidated Fund	Estimate	Actual
\$'000		\$'000	\$'000
	Expenses in Connection with Buildings		
1031	Rent, rates, maintenance and cleaning, etc	983	1075
	Subsistence and Transport Expenses		
261	Travelling, removal and subsistence	281	239
188	Motor vehicles	202	167
15	Freight	17	24
	General Expenses		
98	Advertising and publicity	105	245
71	Books and periodicals	70	36
874	Fees for services	980	951
218	Consultancy fees	235	166
103	Gas and electricity	135	135
158	Postal and telephone	170	158
129	Printing	110	195
327	Stores, stationery, provisions, etc	250	294
199	Lease of office furniture & fittings	100	89
16	Minor expenses	5	10
117	Other	140	97
130	Technical supplies	125	208
<u>265</u>	Computer supplies	<u>290</u>	<u>343</u>
<u>4,200</u>	Total	<u>4,198</u>	<u>4,432</u>

END OF AUDITED FINANCIAL STATEMENTS

Appendix 8

ADDITIONAL FINANCIAL INFORMATION

Significant Variations Expenditure

Significant variations between annual appropriations and actual expenditures in 1990-91 were:

DETAILS	ESTIMATE	ACTUAL	VARIATION
	\$'000	\$'000	\$'000
Employee related payments	6,432	6,198	-234
Maintenance and working expenses	4,198	4,432	+234
Legal and other costs	1,100	534	-566

Reasons for these variations were:

- (i) Savings on employee related payments resulted from the rate of recruitment being less than provided for by the estimate.
- (ii) Payments for advertising and publicity, printing, stores and stationery, technical supplies and computer supplies contributed significantly to over-expenditure of maintenance and working expenses. This resulted from the establishment of the Commission's Education Unit in November 1991 and from modifications to essential security systems.

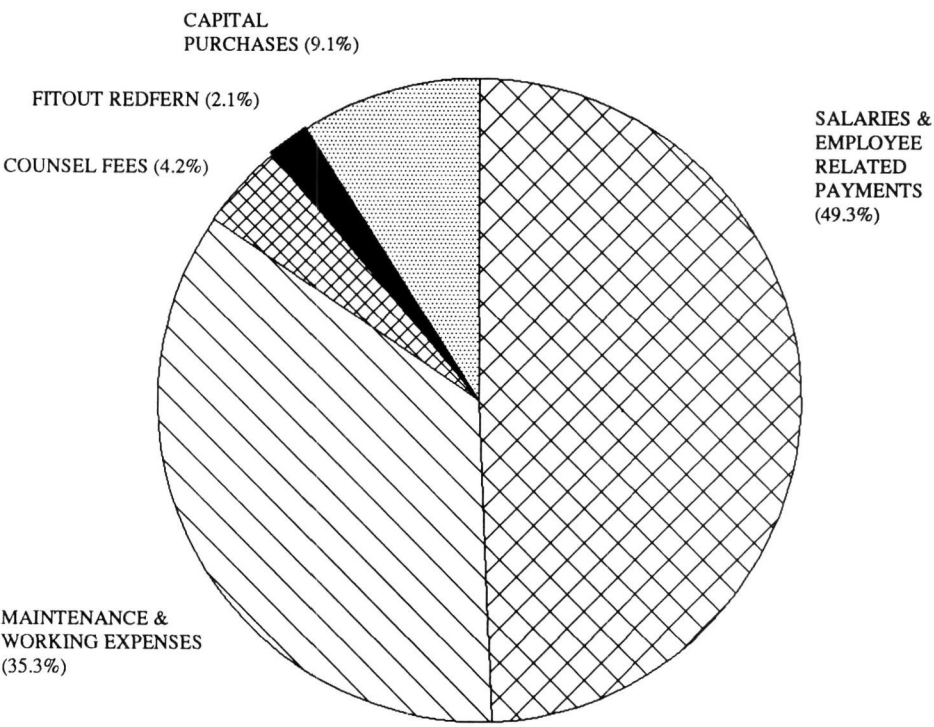
- (iii) Savings on legal costs arose from the increased use of Crown prosecutors in lieu of senior and junior counsel.

Interest Payments

During the financial year, an interest charge of \$30.31 was incurred for delayed payment of cabcharges.

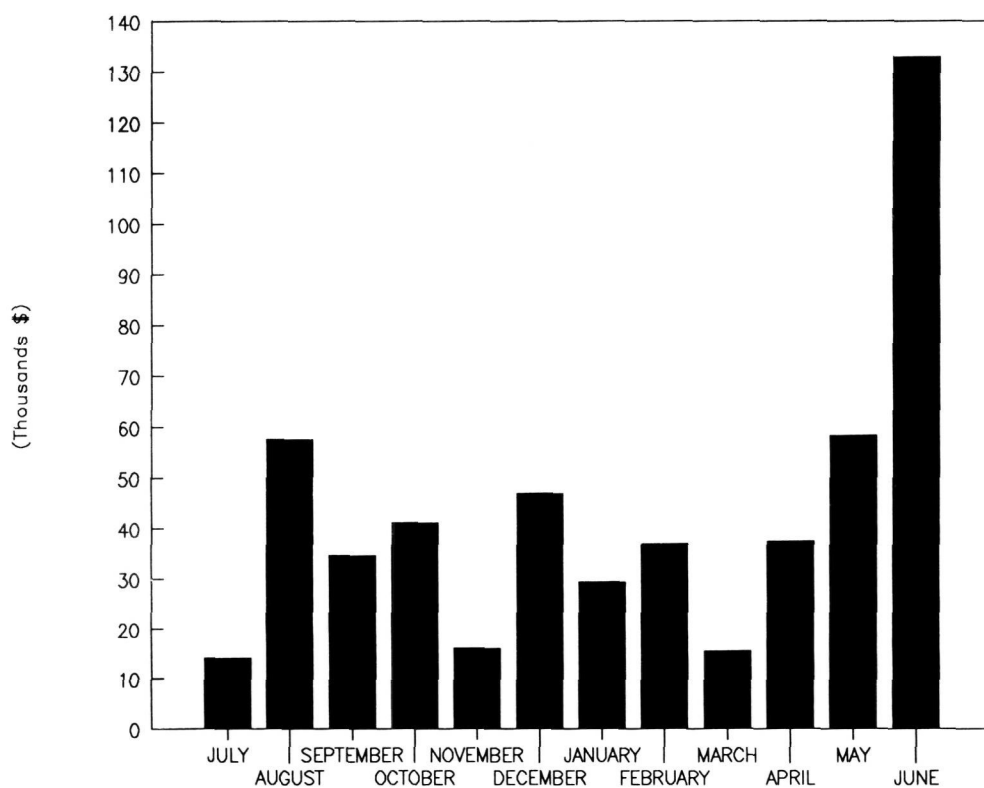
Appendix 9

DISSECTION OF EXPENDITURE



Appendix 10

EXPENDITURE ON STORES AND EQUIPMENT



NOTE: The graph represents monthly recurrent expenditures during 1990-91 on stores, computer and technical supplies excluding amounts transferred in respect of commitments at 30 June 1991.

Appendix 11

CONSULTANCIES

During 1990-91 the Commission spent a total of \$104,356 for specialised services from 12 different consultants, as listed, each at an individual cost of less than \$30,000.

V A Anderson & Associates

Investigation & Management Services

Auditor General's Office

Review of investigation costing methodology

R K Bailey & Associates

Accounting & Computer Services

Michael J Dever & Associates

Security Advice

Ethnic Affairs Commission

Education Services

W Flemming

Operational Procedures

Forensic Document Services

Forensic Services

A I Jones

Voice Analysis

Roy Morgan Research Centre
Public Attitude Survey

Privacy Committee
Research Services

V Pursell
Library Services

Turnbull Fox Phillips
Publicity Services

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