PART 1

THE INDEPENDENT COMMISSION AGAINST CORRUPTION
LESSONS FROM THE FIRST TWELVE MONTHS

INTRODUCTION

The New South Wales Independent Commission Against Corruption (ICAC) had been in operation for a period of nearly 18 months prior to the Institute's public seminar on 29 August 1990. The Institute's Advisory Committee decided that the Independent Commission Against Corruption might well form a useful topic for review at one of our public seminars. This was confirmed by the debate generated through the papers and the seminar itself.

The ICAC in New South Wales, under its Legislation, and the Commission's established procedures, intends to operate within an atmosphere of public comment and accountability. The Commission has been anxious to present a responsive profile regarding the exercise of its investigative function. The co-operation and participation of the Commissioner in the Institute's seminar manifests such a commitment.

Prior to the seminar, the Parliamentary Committee on the ICAC (chaired by Mr M.J. Kerr, MP) continued its wide ranging investigation into a variety of ICAC operational matters. The Committee generously presented at the Institute's seminar, copies of a discussion paper by the retired Mr Justice Moffitt, on the secrecy provisions of the *ICAC Act*, as they relate to it's public hearings.

The paper by the Commissioner of the ICAC, Mr Ian Temby QC, should be understood against the atmosphere of criticism and concern which was generated primarily by parties involved in recent ICAC investigations. The Commissioner is at pains to emphasise the success of the ICAC in its short period of operation, while at the same time highlighting what he considers to be the responsible way in which it has exercised its investigative powers.

Peter McClellan QC raises a detailed challenge to this assertion, from the perspective of Counsel with considerable experience representing clients before the Commission. McClellan poses a number of actual examples where he alleges clients have been disadvantaged, and barristers unfairly restricted in exercising their responsibilities, through the procedures adopted by the Commission in its investigations. His paper suggests a number of significant reforms both in terms of legislation and practice, which he considers would relieve such difficulties.

Brian Toohey commends the operations of the ICAC as another means for the public exposure of corruption and covert criminality, which otherwise may not be effectively addressed. Toohey's position reveals the somewhat symbiotic relationship between the media and the ICAC. In addition, his paper deals with the need to balance the respective benefits of public disclosure, against the negative effect on reputation which such exposure might bring about.

The final paper examines broader issues in the relationship between theory and policy. The creation of corruption imagery, and the threat which this forms as collective public deviance receives discussion. The politics behind the creation and development of corruption control mechanisms such as the ICAC is considered in terms of public expectation, market models of deviance, and "moral panic" discourse.

Recent High Court decisions of *Balog*, and *Stait v the ICAC* indicate that the scope and significance of the *ICAC Act* may invite several interpretations. The ICAC itself clearly takes a less limiting view of its powers to find corrupt conduct, than does the High Court. No doubt due to its public profile, its preference for public hearings, and the political expectations it shoulders, the ICAC will be a subject for community debate in this state for some time to come.

Mark Findlay[*]

---

* Mark Findlay was the co-convener of the public seminar entitled "ICAC: Lessons From the First Twelve Months". He is joint editor of this issue of *Current Issues in Criminal Justice*.