



New South Wales



Report of an audit of applications for and execution of search warrants by the Independent Commission Against Corruption

by

**The Inspector of the
Independent Commission Against Corruption**

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A. BACKGROUND

1. THE INSPECTOR'S AUDIT FUNCTION

Section 57B(1)(a) of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) authorises the Inspector of the Independent Commission Against Corruption (the Inspector and the Commission or the ICAC) to

audit the operations of the Commission for the purpose of monitoring compliance with the law of the State.

The Inspector's audit role must be read in the context of the Inspector's other functions prescribed under s. 57B, namely ss. 57B(1)(c) and (d).

Section 57B(1)(c) of the ICAC Act authorises the Inspector

to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission.

Section 57B(1)(d) of the ICAC Act authorises the Inspector

to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality and propriety of its activities.

Section 57B(2) states that the functions of the Inspector may be exercised on the Inspector's own initiative.

2. THE SUBJECT OF THE AUDIT

From time to time, as part of its investigations into alleged serious and systemic corrupt conduct, the Commission obtains warrants, commonly known as search warrants, pursuant to the *Law Enforcement (Powers and Responsibilities) Act 2002* (The LEPR Act). The warrants authorise officers of the Commission to search persons and premises for documents or things connected with any matter being investigated under the ICAC Act and to seize such documents or things and deliver them to the Commission (s. 41 of the ICAC Act).

By letter dated 21 October 2008, as the Inspector of the ICAC, I wrote to the Commissioner of the ICAC as follows (omitting formal parts):

Pursuant to section 57B(1)(a) and (d) of the *Independent Commission Against Corruption Act 1988* (the Act), I propose to audit and assess the effectiveness and appropriateness of the procedures of the Commission in relation to the application for and execution of search warrants.

The proposed audit and assessment will examine:

1. the Commission's compliance with the formal and procedural requirements under Part 4, Division 4 of the Act, Part 5, Division 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, the *Law Enforcement (Powers and Responsibilities) Regulation 2005*, the now repealed *Search Warrants Act 1985* and other relevant legislation;

2. the reasons behind the Commission's decisions to apply for search warrants;
3. the manner in which the Commission executed the search warrants; and
4. any other matters set out in section 57B of the Act.

For the purposes of this exercise, I would in the first instance like to review the Commission's files and records relating to:

- a) all applications for search warrants issued by the Commission during the period from 1 July 2007 to 30 June 2008, whether they were granted or refused by authorised officers;
- b) all applications for search warrants proposed by the Commission's Investigation Division during the period from 1 July 2007 to 30 June 2008 but which were rejected by the Commission's Legal Unit and/or senior management; and
- c) all applications for search warrants issued by the Commission from 1 July 2008 to date (whether granted or refused) but only in respect of investigations which have since closed.

I appreciate that my proposed review of the Commission's files may cause disruption to or otherwise prejudice the Commission's ongoing investigations, which is why under (c) I am only requesting those files in respect of investigations that have already closed.

If you are concerned that disclosure of any records to me under (a) or (b) may prejudice or compromise the Commission's ongoing

investigations, I am also happy for those records to be excluded from the scope of this request.

Upon reviewing the materials identified above, I may request further information from the Commission and/or its officers for the purpose of completing my audit and assessment.

I welcome any comments you may have on the proposed ambit of this audit and assessment.

The Commissioner replied on 12 November 2008 as follows:

I refer to your letter of 21 October advising that you propose to audit and assess the effectiveness and appropriateness of the Commission's procedures in relation to the application and execution of search warrants.

The ambit of the audit appears appropriate. I do not have any concerns that your review of search warrant applications for the period 1 July 2007 to 30 June 2008 will prejudice or compromise any ongoing investigations.

The Commission will provide you with any assistance you require to conduct the audit.

a. Documentation provided by the ICAC

On 14 November 2008 I received from the Commission three folders containing documents relating to 54 search warrants issued to it in respect of 12 separate investigations.

Examinations of the original records relating to search warrants issued out of the Downing Centre and Central Local Courts on application by the ICAC were conducted and those records were compared with the documents supplied to the Inspector by the ICAC.

The ICAC records were often reprints of the application rather than photocopies of the copy signed by the authorising officer. In some cases the reprints did not appear to be contemporaneous with the printing of the initial application, which could be discerned by formatting differences (such as a difference in spacing or the inexplicable insertion of 'MSOffice' within the documents). Thus, because the ICAC records are reprints, they did not contain the relevant signatures.

Minor differences between the Court's and ICAC's records were that:

- The dates on the applications were sometimes different to those in the Court records. See, for example, 1134/07 (E07/0528/7/4) or 345/08 (E07/1036/7/2);
- The ICAC documents do not contain handwritten notes that appear on the Court records. Those notes appear to have been made contemporaneously with the application;
- The ICAC records contained only a template of the authorised officer's record rather than the completed form. However, keeping a record of this does not seem necessary having regard to the ICAC's functions;
- Some ICAC records did not contain a signed version of the "Report to the Authorised Officer about Execution of Warrant" (Report to Authorised Officer).

Discrepancies which extended beyond mere formatting or other minor inconsistencies were:

- Two search warrant applications appear to have different investigators noted in the ICAC and Court records. Those search warrants are 346/08 (E07/1036/7/1) and 347/08 (E07/1036/7/3);
- One warrant in the ICAC records contains a document relating to another search warrant. That document was the 'Report to Authorised Officer (Form 20)' in search warrant number 1136/07 (E06/0020/7/2); and
- Warrant number 627/08 (E07/1851/7/1) was the only warrant to contain a progressive checklist.

The following warrants could not be compared as their Court counterparts were not available:

- 556/07 – E07/0698/7/3 (Only contained in ICAC records);
- 557/07 – E07/0698/7/4 (Only contained in ICAC records);
- 303/08 – E07/1036/7/6 (Only contained in ICAC records);
- 92/08 – E07/0678/7/8 (Only contained in ICAC records – access not granted by Burwood Local Court);
- 93/08 – E07/0678/7/9 (Only contained in ICAC records – access not granted by Burwood Local Court);
- E07/1898/7/1 (Only contained in ICAC records with no mention of Court number);
- E07/1898/7/2 (Only contained in ICAC records with no mention of Court number);

- E07/1898/7/4 (Only contained in ICAC records with no mention of Court number);
- E07/1898/7/5 (Only contained in ICAC records with no mention of Court number).

The Registrar of Burwood Local Court refused to make its records available for inspection because a certificate had been issued pursuant to cl. 11 of the Regulations made pursuant to the LEPR Act which has the effect of sealing the court records from public inspection. As only two warrants were issued out of Burwood Local Court it was not considered necessary to take further steps to gain access to those records.

b. Findings on the comparisons

It appears from the inspection of the Court records that there were no substantial or intentional inconsistencies with the documents provided by the ICAC. The audit was, therefore, conducted on the basis of the documents provided by the ICAC.

3. RELEVANT LEGISLATION

a. *The Independent Commission Against Corruption Act 1988*

In NSW, the relevant statutory provisions which govern the ICAC's application for and execution of search warrants are contained in Division 4 of Part 4 of the ICAC Act,¹ Division 4 of Part 5 of the LEPR Act and the *Law Enforcement (Powers and Responsibilities) Regulation 2005* (the Regulation). The ICAC has adopted a policy that search warrants be sought from authorised officers as defined under the LEPR Act and not from the ICAC Commissioner who, under the ICAC Act, is authorised to issue search warrants.

Within Division 4 of Part 4 of the ICAC Act, s. 40(4) provides that to apply for a search warrant under s. 40(4), an ICAC officer must have

... reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under this Act or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises.

Section 41 authorises the person(s) named in the warrant to enter the premises and to search them for documents or other things connected with any matter that is being investigated under the ICAC Act and to seize any such documents or other things found in or on the premises and deliver them to the Commission.

¹ Section 48(1) of the ICAC Act provides that Division 4 of Part 5 of LEPR Act (other than ss. 69-73A) applies to a search warrant issued under the ICAC Act.

If, in the course of such a search, the person executing the warrant finds a document or thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Commonwealth, a State or a Territory; and if such person believes on reasonable grounds that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, then he/she may seize it (s. 47(1)).

Section 42 imposes a duty on a person executing a search warrant to “produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.”

Section 43(1) permits the use of “such force as is reasonably necessary” for the purpose of entering premises under a search warrant. A person authorised to enter the premises may also, “if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search.”²

Section 45 prohibits the execution of a search warrant by night (between 9pm and 6am) unless the authorised justice specifically authorises execution of the warrant between those hours.

Section 46(a) provides that a search warrant expires no later than one month after its issue.

Section 47(2) provides that the ICAC may retain any items seized under a search warrant “for so long as its retention by the ICAC is reasonably necessary for the purposes of an investigation to which it is relevant”; and if

² Section 43(2) of the ICAC Act.

the retention of the item is not, or ceases to be, reasonably necessary for such purposes, the Commission must cause it to be delivered to the person who appears to be entitled possession of the item; or the Attorney General or the DPP, with a recommendation as to what action should be taken in relation to the item.

Section 48(1) provides that Division 4 of Part 5 of the LEPR Act (other than ss. 69-73A) applies to a search warrant issued under the ICAC Act.

b. *The Law Enforcement (Powers and Responsibilities) Act 2002*

Division 4 of Part 5 of the LEPR Act replaces and re-enacts ss. 11-23 of the *Search Warrants Act 1985*. The provisions relating to search warrants are essentially the same under both Acts, the major difference being the use of the term “authorised justice” under the 1985 Act, whereas the LEPR Act used the expression “authorised officer”. Both terms include a magistrate or a Clerk of a Local Court.

Section 3 of the LEPR Act states that an occupier of premises includes a person in charge of the premises.

Section 60 provides that an application for a search warrant (except a telephone warrant) must be in writing in the prescribed form. The information given by the applicant in connection with the application must be verified before the authorised officer on oath or by affirmation or by affidavit.

A telephone warrant (which includes one made by radio, facsimile or any other communication device) is not to be issued under s. 61 unless the authorised

officer is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

Under s. 62(1), an application for a search warrant must include:

- details of the authority of the applicant to make the application;
- the grounds on which the warrant is being sought;
- the address or other description of the premises to be searched;
- if the warrant is required to search for a particular thing – a full description of that thing and, if known, its location;
- if a previous application for the same warrant was refused – details of the refusal and any additional information required by s. 64; and
- other such information that may be required by the Regulations.

When determining whether there are reasonable grounds to issue a warrant, an authorised officer is to consider under s. 62(2), inter alia:

- the reliability of the information on which the application is based, including the nature of the source of the information; and
- if the warrant is required to search for a thing in relation to an alleged offence – whether there is sufficient connection between the thing and the offence.

The applicant may withhold the identity of any informant if the applicant is satisfied that disclosure of the informant's identity might jeopardise the safety of the informant.³

Section 63 makes it an offence, punishable by a fine of 100 penalty units and/or 2 years' imprisonment, for a person to give to an authorised officer, in connection with an application for a search warrant, information that the person knows to be false or misleading in a material particular.

Section 64 provides that once an application for a search warrant has been refused, no further application for the same warrant must be made unless the further application provides additional information that justifies the making of another application.

Section 66 provides that a search warrant must be in the form prescribed by the Regulations.

Section 67 deals with the occupier's notice which is required under s. 67(2) to be in the prescribed form and to specify:

- the name of the person who applied for the warrant;
- the date and the time when the warrant was issued;
- the address or other description of the premises to be searched; and
- contain a summary of the nature of the warrant and the powers it confers.

³ Section 62(4) of the LEPR Act.

Section 67(3) requires that, on entry into or onto the premises or as soon as practicable thereafter, the occupier's notice be served on a person who appears to be an occupier of the premises and appears to be of or above the age of 18 years (unless no such person is present or the authorised officer otherwise agrees to postpone the service of the notice).

Section 68 provides that unless satisfied on reasonable grounds that immediate entry is required to ensure the safety of any person or the effective execution of a search warrant, a person executing the warrant must, before entering the premises:

- announce that the warrant authorises his or her entry into the premises; and
- give any person then in or on the premises an opportunity to allow entry.

Section 74 requires a report to be submitted to the authorised officer within 10 days after the execution or expiry (whichever is earlier) of the warrant. The report must:

- state whether or not the warrant was executed;
- if the warrant was executed – set out briefly the result of the execution of the warrant (including a brief description of anything seized);
- if the warrant was not executed – set out briefly the reasons why the warrant was not executed; and
- whether or not an occupier's notice has been served.

Section 76 provides that a warrant is not invalidated by any defect, other than a defect that affects the substance of the warrant in a material particular.

There is no express requirement that an applicant for a search warrant who discovers an error in his application after the application has been granted must report the error to the authorised officer who granted the warrant. However, it is arguable that since the ICAC's own approval process requires approval from the Solicitor to the Commission, that the Solicitor to the Commission (or any other ICAC lawyer) upon learning of the error has a duty, as an officer of the Court, to inform the applicant that he or she must advise the Court as to the correct facts. If the applicant refuses to act on the advice of the ICAC lawyer then the Commissioner should be notified so that appropriate steps can be taken by the ICAC in respect of advising the court as well as taking any internal disciplinary action considered appropriate.

c. The Law Enforcement (Powers and Responsibilities) Regulation 2005

Clause 8 requires a person who seizes a thing while executing a search warrant in any premises to provide the occupier with a receipt acknowledging seizure of the thing if the occupier is then present and it is reasonably practicable to do so. A copy of the receipt must be attached to the s. 74 report to the authorised officer.

Clause 11 enables an authorised officer to issue a certificate to "seal" the Local Court's records (or parts thereof) relating to an application for a search warrant if he or she is satisfied that disclosure of any such record:

- could disclose a person's identity which in turn is likely to jeopardise that or any other person's safety; or

- may seriously compromise the investigation of any matter.

Such a certificate may be revoked by any authorised officer under cl. 11(4) if they are satisfied that disclosure of the relevant matter is no longer likely to jeopardise any person's safety or seriously compromise the investigation of any matter.

d. ICAC Procedures

The relevant guidelines for the benefit of officers of the ICAC in force between July 2007 and June 2008 were contained in Procedure Number 9 "Procedures for Obtaining and Executing Search Warrants" (the Procedures) approved on 28 June 2006.

It sets out the legal requirements of Division 4 of Part 5 of the ICAC Act and Division 4 of Part 5 of the LEPR Act.

It then goes on to state the laws governing the application for a search warrant and places certain responsibilities, in paragraph 2.1, upon officers for the drafting and approval of the application. The relevant parts are:

1. The Case Officer will discuss with the Case Lawyer the need for a search warrant, whether it should be executed in the absence of any occupier and whether application should be made that the Application, Occupier's Notice, or report to the authorised officer not be made available for inspection.
2. All applications must be approved by the Team Chief Investigator, who will give consideration to whether any police officers or officers of other agencies should be authorised under the warrant and notify the

Executive Director, SOD of any application to be made. In the case of a search warrant to be executed on a parliamentary office, approval must be obtained from the Commissioner or Deputy Commissioner.

3. The Case Officer will be responsible for drafting the search warrant application using the legal macro. A separate application must be prepared for each warrant sought.

The guidelines then go on to state the issues which the application must address. The application must address those things that the authorised officer is required to consider: the reliability of the information; the nature and source of the information; and whether there is sufficient connection between the thing(s) sought and the matter under investigation.

The Case Officer is required to provide the warrant, occupier's notice and the cl. 11 certificate together with a "progressive checklist" (set out in Appendix A to the procedures), passing through the Team Chief Investigator, to the Case Lawyer for review and settling. The Case Lawyer is to ensure that the documents comply with the relevant provisions of the ICAC Act, the LEPR Act and the Regulations and is to identify any policy or other issues which the case lawyer believes should be brought to the attention of the Executive Director, Legal, that may affect approval.

The draft documentation is to be referred to the Executive Director, Legal, for approval both as to the documentation and the making of the application. If the Executive Director, Legal, does not approve that documentation it is to be returned to the Case Lawyer for appropriate amendment. If the Executive Director, Legal, does not approve the making of the application he or she will discuss with the Executive Director, Strategic Operations Division (SOD) and the Commissioner or Assistant Commissioner responsible for the investigation

to resolve the issue.

If approved the documentation is to be returned to the Case Lawyer who will provide it to the Case Officer for submission to the Senior Property Officer for numbering. The Senior Property Officer will return the original warrant to the Case Officer and retain a copy. The Case Officer will then arrange for swearing and issue.

Where the search warrant affects premises occupied by a public authority, as defined in the ICAC Act, consideration is to be given as to when and whether any prior liaison should take place with an appropriate public officer in charge of the said authority. Prior liaison shall not occur without the express approval of the Executive Director, SOD.

The Case Officer who is allocated the responsibility for the execution of a search warrant is accountable to the Commissioner for the entire operation. She or he shall assess the personnel required, allocate tasks, ensure team members are skilled in the operation of the equipment to be used and ensure that such equipment is in working order and ready for immediate use. He or she is to establish the search teams under their personal direction, prepare operational orders, brief the search team and the Case Lawyer on the proposed execution of the warrant, ensure that each search team member reads and understands the authority of the warrant and ensure that they are aware of their role and any potential risks. She or he is to ensure that the search team is fully aware of the exact location and description of the premises to be searched, including entrances and other access and is to ensure that only the premises mentioned in the warrant are entered.

The Team Property Officer is responsible for being aware of the property

control procedure as set out in Procedure Number 27: the composition, care and control of the search kits; maintaining the seizure records in the field including the "Property Seizure Sheets" and the "General Receipts"; and controlling the property seized or volunteered until such time as it is registered with the property section of the ICAC.

The Case Lawyer is responsible for providing advice on any legal issues relating to the proposed execution of the warrant.

The Manual sets out in some detail the powers and obligations of those executing the warrant as well as the rights of the occupier to see a copy of the warrant, to receive the occupier's notice, to be given a receipt for and to request a copy of any documents seized.

There are also separate sections dealing with execution on a lawyer's office and on a parliamentary office.

The requirements when searching a person or when damage is caused to property are also set out.

As mentioned earlier, the Case Officer is required to provide the warrant, occupier's notice and the cl. 11 certificate together with a "progressive checklist" (set out in Appendix A to the Procedures), passing through the Team Chief Investigator, to the Case Lawyer for review and settling. The following statement appears at the top of the progressive checklist in Appendix A: "This form must accompany each stage of the application".

As this progressive checklist was present in only one search warrant provided by the ICAC, namely E07/1851/7/1, I asked for the progressive checklist in

respect of the remaining warrants by letter dated 23 January 2009.

The Commissioner's reply dated 28 January 2009 was:

With the exception of warrant E07/I851/7/1, no search warrant progressive checklists were completed for any of the search warrant documentation previously provided.

The version of the Commission's Operations Manual Procedure 9 which was current for the period of the audit made provision for a progressive checklist. The progressive checklist was intended as a short-cut guide to Commission officers preparing search warrant documentation. However the need for each step to be sign off proved unnecessarily onerous and as a consequence it ceased to be used. When Procedure 9 was formally reviewed in 2008 it was decided that the requirement the Progressive Checklist be signed at each stage of the search warrant application and accompany the search warrant document was unnecessary. The Commission's current Operations Manual Procedure 9 (approved in August 2008) provides for an "authorisation checklist" which only requires two signatures. The first is that of the Executive Director, Investigation Division to show that he has approved the making of an application. The second is that of the Executive Director, Legal to show that he has approved the search warrant application and associated documentation.

The new guidelines or procedures which were approved on 7 August 2008 are substantially in the same terms as the earlier procedures but provide that the Case Officer may use the Case Officer's checklist at Appendix B to the Procedures as an aid to ensure all steps required by this procedure are taken. Use of this checklist is not mandatory.

The authorisation checklist in Appendix A of the Procedures consists only of notations from the Executive Director, Investigation Division of approval that an application for a search warrant is appropriate with the name, date and signature and that the application, warrant, occupier's notice and (if appropriate) clause 11 certificate were provided to and approved by Executive Director, Legal.

As will appear later in this report, there is nothing to indicate that this change of procedures has led or is likely to lead to errors.

4. PRELIMINARY ISSUES RELATING TO THE EFFECTIVENESS OF THE AUDIT

The first issue to be determined is whether the ICAC has given documentation to the Office of the Inspector relating to all of the search warrants it has caused to be issued over the subject period.

The courts have no index against which a search can be made of all search warrants the ICAC has caused to be issued. A "raid" on all files held by the ICAC may be permissible by law but is totally impracticable. Further, I have received no complaint relating to any search warrant issued or executed during the period under review.

It should be emphasised that there are no grounds to believe that the ICAC has withheld any search warrants or associated documents.

The second issue is whether the contents of the applications for search warrants are true to the best of the applicant's knowledge and belief.

It is neither possible nor practicable to cross-examine every deponent upon every affidavit. However, an examination of the material available to the respective deponents shows that a belief was held by reason of information obtained from individuals, lawfully obtained telephone intercepts or listening devices or from the results of previous search warrants. An examination of each application shows an internal consistency of information together with internal support for the conclusions derived and raises a high degree of probability that the contents of those affidavits were true and correct.

In some cases the information furnished to the Inspector contained reports of independent observers who have noted events occurring during the execution of the search warrants.

B. THE AUDIT

1. AUDIT METHODOLOGY

This audit was divided into two parts. The first part covered the ICAC's compliance with the law and involved an examination of the documentation used in support of an application for a search warrant, the documents issued by the court, the procedure of the actual searches and the furnishing of a report to the authorised officer.

The second part went further than mere compliance with the law and looked to see whether the conduct of the ICAC and its officers in following the letter of the law amounted to effective, appropriate and proper use of its accepted legal powers. The purpose of this audit was not solely to determine compliance by the ICAC with the formal requirements for the issue of search warrants, but also to determine whether the application for and execution of those warrants constituted an abuse of power, impropriety or other form of misconduct including unreasonableness, unjustness, oppression or improper discrimination. Furthermore, the audit attempted to assess the effectiveness and appropriateness of the procedures of the Commission as they relate to the legality or propriety of its activities.

This involved examining each of the search warrants to determine the reasons for taking the steps necessary for their issue, as well as the manner in which those warrants were executed and the use to which the material discovered as a result of those warrants was used.

It is not the function of the Inspector to examine the minutiae of the procedures followed by the ICAC. Rather, is to look at whether those procedures amount to maladministration, defined in s. 57B(4) of the ICAC Act as being contrary to law or unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives and also, pursuant to s. 57B(1)(d), to assess the effectiveness of the procedures of the Commission relating to the legality or propriety of its activities.

The documents reveal a total of 54 search warrants in 12 investigations. In the second part of this audit I examined each of those investigations separately.

2. PART ONE – COMPLIANCE WITH THE LAW

In this part, it was not necessary to go through the steps taken in each individual application for and execution of the search warrants. Suffice it to say that, having examined each closely I am satisfied that:

- Each applicant had “reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under this Act or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises”.
- The person executing the search warrant produced the warrant for inspection by an occupier of the premises when so requested.
- No unreasonable force was used for the purpose of entering premises under the search warrant.
- The warrants were executed within the hours of the day permitted by them and within the period of their validity.
- The items seized were documents or other things then connected with a matter that was being investigated under the ICAC Act.
- The applications were all in the prescribed form and duly verified.
- The occupier’s notices were all in the prescribed form and served in each case on a person who appeared to be an occupier of the premises and who was of or above the age of 18 years.

- A report was submitted in each case to the authorised officer within 10 days after the execution or expiry (whichever was earlier) of the warrant which:
 - § stated whether or not the warrant was executed;
 - § if the warrant was executed – set out briefly the result of the execution of the warrant (including a brief description of anything seized);
 - § if the warrant was not executed – set out briefly the reasons why the warrant was not executed; and
 - § stated whether or not an occupier’s notice had been served.

No attempt has been made to interview occupiers who were the subject of a search warrant. Nor has there been an examination of what items seized (if any) had been returned. As will be seen in the second part of this audit report, many of the items seized contributed to findings of corruption and recommendations for consideration of prosecution. In the cases where consideration of prosecution had been recommended, the documents seized would probably form part of the brief for the DPP.

The Office of the Inspector has not to date receive any complaint arising out of the application for, or execution of, any of the search warrants under review, or in respect of the seizure or retention of any item seized in the course of execution of any such search warrants.

It is also worthy of note that before any warrant is executed a document called “Operational Orders” is prepared and copies given to each of the participants in the execution of that warrant. Copies of operational orders were included with each search warrant.

The operational orders contain:

- general information about the subject matter of the investigation in respect of which the search warrant has been issued;
- the reasons for the use of the search warrant; and
- a description of the premises to be searched including a map of its location, in some cases a photograph of the premises, and a description of the physical features such as fences.

In addition there is a risk assessment covering such matters as: the likelihood of children being on the premises; physical barriers to be overcome; cultural or religious sensitivities associated with the subject of the search warrant; threats of violence from the subject or from other sources; whether firearms are likely to be on the premises; the risk of physical injuries to an ICAC operative or to any other person; and the presence of dogs or hazardous material on the subject premises.

There are also instructions as to the means of executing the warrant containing details of a pre-execution briefing, co-ordination and timings, allocation of personnel to specific tasks, the nearest police station, whether or not a police officer is required to be present. In many cases the operational orders include a profile of the subject of the search warrant including photographs of the person. In those cases where it is suspected that a child could be on the premises, instructions are given to delay the commencement of the execution until a time when the child will have left the premises for school.

a. Conclusion

Having, pursuant to s. 57B(1)(a) of the ICAC Act, audited the operations of the Commission for the purpose of monitoring its compliance with the law of the State, I have concluded that in relation to the search warrants audited, the ICAC has complied with the relevant law and the ICAC's own procedures concerning applications for and execution of search warrants.

3. PART TWO – EFFECTIVE, APPROPRIATE AND PROPER USE

Whether the conduct of the ICAC and its officers in following the letter of the law amounted to effective, appropriate and proper use of its accepted legal powers

In this part the use of search warrants and the part they played in assisting the ICAC to perform its primary function of combating serious and systemic corruption will be examined.

a. ICAC File Number E06/0020/7/

This file concerned the investigation of an allegation that a RailCorp employee, Guy Hetman, had received corrupt benefits in relation to the awarding and administration of contracts for RailCorp work.

Mr Hetman was a civil engineer employed by RailCorp in the Metro South Division and was in a position where he could allocate work. It was alleged that he allocated a large amount of work to Sage Engineering Pty Ltd (Sage), regardless of the type of work, and that the company was claiming for false hours and for machinery that was not on site. By December 2006, Mr Hetman had been involved in the allocation of work to Sage totalling approximately \$3.72 million. The directors of Sage were Susan and Dominic Murdocca.

Enquiries with the Australian Securities and Investments Commission (ASIC) established that Mr Hetman was the sole director of a company, GRT Consulting Group Pty Ltd (GRT), incorporated in May 2005, and that its registered office and principal place of business were recorded as 14 Lentara Court, Georges Hall which was the same as Mr Hetman's residential address.

The website of GRT indicated that Mr Hetman was a director of the company and that he used his RailCorp email address as the registered email and tech email address for that site.

Financial enquiries of the GRT bank account, opened in May 2005, show Mr Hetman as its sole signatory. Between May 2005 and February 2007, ten payments were received into that account from a Sage bank account totalling \$106,355.15. Of the remaining GRT income, \$7,550 was from Mr Hetman.

RailCorp served a disciplinary notice on Mr Hetman on 15 November 2006. Twelve days later he lodged a secondary employment form revealing GRT and stating that he was the company's managing director.

Between August 2003 and September 2006, Sage was paid by RailCorp for the removal of 9005 tonnes of waste. These payments totalled in excess of \$3.32 million and Mr Hetman was involved as either the requesting officer or the authorising officer in the overwhelming majority of those projects. In October 2006, RailCorp requested the production of weighbridge receipts for the disposal of the waste. In response, Sage stated that general waste was deposited at waste disposal sites operated by Brandown Pty Ltd (Brandown) and waste metal at sites operated by Sell and Parker Pty Ltd (Sell and Parker). ICAC enquiries revealed that Sage deposited only a total of 123.14 tonnes of mixed waste at the Brandown sites and 16.2 tonnes at Sell and Parker sites. In November 2006, Sage nominated to RailCorp five further addresses at locations where waste was deposited. Each of these addresses was owned by relatives of Mr Murdocca or his wife. Officers of Liverpool Local Council inspected these areas and found no evidence of waste disposal having taken place and no development applications having been submitted requesting approval to allow the disposal or sorting of waste at those sites.

The search warrants

Search Warrant E06/0020/7/1 was issued on 10 September 2007 authorising the entry of premises used by Sage, being Unit 301 5 Celebration Drive, Bellavista to search for documents relating to that company, GRT, RailCorp, Guy Hetman and Dominic and Susan Murdocca.

The Report to Authorised Officer says that the warrant was executed at 9:35am on 18 September 2007 and that documents were seized relating to Sage Civil Engineering Pty Ltd, work undertaken for RailCorp and documents relating to GRT Consulting Pty Ltd and Guy Hetman. There is also an "Independent Observer Field Form" filled in by Inspector Colin Lott of The Hills Police Station.

Search Warrant E06/0020/7/2 was issued on 10 September 2007 authorising the entry of premises at 14 Lentara Court, George's Hall to search for documentation of the same type as in the previous search warrant. These premises were the residential address of Mr Hetman.

The objective of the warrant was to seize any documentation relating to the operations, interests and ownership of Mr Hetman and his company GRT and documents relating to his business and any personal relationship to the company Sage and the directors of that company, Susan and Dominic Murdocca, and work carried out by GRT or Sage for RailCorp.

The Report to Authorised Officer stated that it was executed on 18 September 2007 between 9:25am and 11:50am and business records relating to GRT, tax records relating to Mr Hetman and GRT, financial records relating to GRT,

Mr Hetman and Sage, including computers and other electronic storage media "as detailed in the attached property seizure record" were seized.

Result

The information revealed as a result of these search warrants contributed to the ICAC's "Fifth Report, Investigation into bribery and fraud at RailCorp", published 25 September 2008, in which it made findings of corrupt conduct against former RailCorp employee Guy Hetman, and Domenic Murdocca, a director of Sage Civil Engineering Pty Ltd.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Guy Hetman, Domenic Murdocca, Susan Murdocca and Peter Murdocca for various criminal offences.

b. ICAC File Number E07/0528/7/

This file concerned a number of employees of RailCorp improperly and dishonestly allocating work. Those employees included Ljupce Petrovski, Guy Hetman, Ivan Stanic, Anif Painting and Decorating Pty Ltd, Mick Kouraos, Mark Palombo and others.

The allegation relating to Mr Petrovski was that he engaged in corrupt conduct involving the dishonest and partial exercise of official functions in relation to the allocation of work by RailCorp to Mac Water Truck Pty Ltd (Mac Water), a company of which his wife Elicia Petrovski was the sole director.

On 3 July 2005, Ms Petrovski registered Mac Water as a subcontractor with Total Plant Services Pty Ltd (TPS), a plant service manager used by RailCorp.

ASIC records show that on 14 March 2007, three days after Petrovski was identified as the owner of Mac Water by RailCorp officers, the director/secretary of Mac Water was changed from Ms Petrovski to Sarah Murphy (Accountant). Furthermore the ASIC records were backdated to indicate that the change came into effect on 20 February 2007. TPS records showed that on 15 March 2007, Sarah Murphy sent a fax to TPS advising them that she was the new director of Mac Water. On 4 May 2007, Mac Water extended its contract with TPS from 2007 to 2009 and listed its director as Sarah Murphy.

ASIC records listed the business address of Mac Water as 10 Glenshire Pl, St Andrews from 25 January 2007.

Call charge records for Mr Petrovski indicate a large number of calls made to Bruce Myles who was the Team Manager, Project and Support, at RailCorp's Clyde Depot – the same location where Mr Petrovski worked. Mr Myles had been identified as the father of Sarah Murphy (nee Myles).

The search warrants

Search Warrant E07/0528/7/1 was issued on 10 September 2007 and authorised the search of 32 Vine Street West, Marsden Park, occupied by Mr Petrovski, for documents relating to Mac Water.

Search Warrant E07/0528/7/2 was issued on 10 September 2007 and authorised the entry of a motor vehicle being a 1987 Mitsubishi Canter dump truck owned by Mac Water with registration number 77120C. The Report to Authorised Officer says that it was not executed because the vehicle was

within the curtilage of the premises subject to another search warrant and was searched using the power of that warrant.

Search Warrant E07/0528/7/3 was issued on 10 September 2007 and authorised the entry of a motor vehicle being a 1987 UD tanker owned by Mac Water with registration number AF43NI. The Report to Authorised Officer states that the warrant was not executed because the subject motor vehicle was no longer in the possession of the Petrovskis.

Search Warrant E07/0528/7/4 was issued on 10 September 2007 and authorised the entry into premises at 10 Glenshe Place, St Andrews. These premises were occupied by Ms Murphy.

The involvement of Ms Murphy started on 27 June 2005 when, according to ASIC records, Sarah's Accounting and Taxation (owned by her) registered Mac Water and listed the director/secretary as Ms Petrovski and the principal place of business as 32 Vine St West, Marsden Park. The Report to Authorised Officer indicated that the warrant was executed at 10.30am on 18 September 2007 and that accounting business records relating to Mac Water, Mr Petrovski and other members of his family were seized.

Result

In its "Seventh Report, Investigation into bribery and fraud at RailCorp", published in November 2008, the ICAC made findings of corrupt conduct against Ljupce Petrovski and others.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of George Laidlaw, Brett

Schliebs, Laze Kotevski, Christian Hansen, Carlo Araldi, Joseph Hili, Nat Severino, Ljupce Petrovski, Ian Affleck, Scott Penny and John Skinner for various criminal offences

c. ICAC File Number E07/1020/7/

This file centred on an investigation concerning an allegation that Ivan Stanic was incorrectly allocating RailCorp work to a company called Anev Painting and Decorating Pty Ltd (Anev). It was alleged that the director of Anev, Nick Kouraos, was involved in an improper relationship with Mr Stanic. It was further alleged that Anev did not hold the correct insurances nor did its staff have the correct qualifications to undertake work of the subject type. RailCorp inquiries identified that Mr Stanic may have been awarding work to other contractors outside of procurement policies and procedures.

Mr Stanic was employed by RailCorp as the project supervisor in the South Region and reported to Guy Hetman. He was appointed to this position in August 1996.

Anev was registered in January 2003 by Mr Kouraos. In July 2005, he registered another company, Anev General Maintenance Pty Ltd (Anev GM).

Mark Palombo registered the business name Delux Quality Cleaning Services (Delux) in March 2001. In February 2005, he registered the business name Delux Quality Cleaning and Property Maintenance (Delux PM). Commission inquiries found evidence of money being transferred from accounts held by Mr Palombo in his name and that of Delux to accounts held by Mr Stanic.

Road Transport Authority (RTA) records showed that, in February 2003, Mr Palombo sold a vehicle to Susan Stanic, believed to be Mr Stanic's sister. He also sold a vehicle to Mr Kouraos.

In January 2006 RailCorp established the RailCorp Corridor Maintenance Panel which set out a list of businesses. Work was to be allocated to one or more of those on the panel. RailCorp inquiries indicated that Mr Stanic had caused a significant amount of panel work to be given to non-panel members including Anev, G & F Plant Hire, Delux, Metal Fencing Specialists, Local Repairs, L J Tolkien and Sean Pittway Diving.

RailCorp employees were permitted to allocate panel work to non-panel members only if a certificate of exemption was issued in relation to this work. No such certificate had been issued.

The search warrants

Search Warrant E07/1020/7/1 was issued on 11 September 2007 and authorised the entry upon and search of premises at 14/2 Catherine Street, Rockdale for documents relating to Anev.

This warrant was executed on 19 September 2007 between 9.15am and 11.38am and business records of Anev including documents relating to RailCorp work undertaken by that company were seized.

Search Warrant E07/1020/7/2 was issued on 11 September 2007 and authorised the entering into premises at 8 Hunter Street, Fairfield (the residential address of Mr Stanic) to search for records relating to Anev, G & F

Plant Hire, Local Repairs, Leslie J Tolkien, Delux, Sean Pittway Diving and Metal Fencing Specialists.

There is no copy of the report on the execution of the search warrant in this file. There is, however, an Independent Observer Field Form signed by Sgt Johann Korn of Fairfield Local Area Command dated 18 September 2007 at 1.30pm, stating that the warrant was executed on that date at 9.30am.

Search Warrant E07/1020/7/3 was also issued on 11 September 2007 and authorised the entry into premises at 43 Buring Crescent, Minchinbury to search for documentation relating to Delux, Delux PM, and works performed for RailCorp.

The premises at Buring Crescent were registered with the Department of Fair Trading as the principal place of business of Delux PM.

As of 7 February 2005, the persons carrying on that business were Mark Palombo of that address and Manuel Palombo of an address at Erskine Park. The persons carrying on that business as of 20 March 2001 were Mark and Elizabeth Palombo; both of that address. Searches at the RTA and telephone register list that address as the residence and principal place of business of Mr Palombo and the Delux businesses.

This file contains no report of the results of the execution of the search warrant. The Court held documents include the first of two pages of the Report to Authorised Officer.

Result

The information gained from the execution of these search warrants contributed to the findings in the Commission's Third Report into Bribery and Fraud at RailCorp, which examined Mr Stanic's allocation of work to the three identified contractors. Mr Stanic had continued to give work to Anev and Delux, even though they were not registered suppliers on RailCorp's Corridor Maintenance Services Panel, from which RailCorp employees were required to source businesses to allocate RailCorp work.

The Commission examined Mr Stanic's allocation of the work to the three contractors identified above. Mr Stanic had continued to give work to Anev and Delux, even though they were not registered suppliers on RailCorp's Corridor Maintenance Services Panel, from which RailCorp employees were required to source businesses to allocate RailCorp work.

The investigation identified deposits totalling more than \$113,000 made into Mr Stanic's bank account that did not relate to his RailCorp wages and for which there was no obvious explanation.

Mr Stanic was dismissed from RailCorp in December 2007 following evidence given at the Commission's public inquiry that he had received corrupt payments from RailCorp contractors.

The ICAC made findings of corrupt conduct against Mr Stanic and contractors Paul Szoboszlay (Director of Wire and Steel Industries Pty Ltd), Mr Kouraos (Director of Anev) and Mr Palombo (Principal of the Delux companies).

d. ICAC File Number E07/1021/7/

This file concerned an investigation into the allegation that Joseph Akkawi, then a RailCorp employee, engaged in corrupt conduct involving the dishonest and partial exercise of official functions and the receipt of corrupt benefits in relation to the allocation of work by RailCorp to T J & Associates Pty Ltd (TJ & Associates), a company of which Mr Akkawi was the sole director.

The search warrants

Search Warrant E07/1021/7/1 was issued on 10 September 2007 and authorised the entering of premises at 25 Omaha St, Belfield, said to be the premises of Mr Akkawi.

The Report to Authorised Officer states that the warrant was executed on 18 September 2007 between 9.35am and 11.26am. The items seized included business records of TJ and Associates including invoices for work it had done for RailCorp.

Result

The ICAC's "Sixth Report, Investigation into bribery and fraud at RailCorp", published on 25 September 2008, examined the corrupt conduct of Joseph Akkawi, a RailCorp employee who misled RailCorp about the true nature of his involvement with a company he owned that undertook work for RailCorp and from which he benefited financially. It found that he derived personal financial benefits from TJ & Associates of between \$100,000 and \$500,000 as a result of payments received from RailCorp and made findings of corrupt conduct against him.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Akkawi for the common law offence of misconduct in public office.

e. ICAC FILE Number E07/1022/7/

This file concerned an investigation of allegations that an employee of RailCorp, Allan Michael Blackstock, and a former employee of RailCorp, Brett Schliebs, had engaged in corrupt conduct involving the dishonest and partial exercise of official functions and the receipt of corrupt benefits in relation to the allocation of RailCorp work to contractors.

In his position at RailCorp, Mr Blackstock was involved extensively in the procurement of wire-feed welding services from private contractors for railway track maintenance purposes. According to records held by the ASIC, Precision Wirefeed Welding Pty Ltd (Precision) was registered as a company in October 2003 with two directors, Graham John Chambers and Youssef Madrajat. On 14 September 2004, Mr Chambers ceased to be a director. Since that time, Mr Madrajat was the sole director of the company.

Mr Chambers was in a de-facto relationship with Mr Blackstock's mother-in-law. Despite Mr Chambers no longer being a director of Precision, Commonwealth Bank of Australia records indicated that Mr Chambers was still a signatory on that company's bank account, together with Mr Madrajat.

One procedure used by RailCorp for the procurement of services from private contractors involved the establishment of a panel of contractors to provide particular services. Under the procurement guidelines for RailCorp, its employees must engage one of the contractors on the panel for those services

unless a certificate of exemption is obtained. In December 2001, a wire-feed welding panel was established, made up of two firms, Hard Face Technologies Pty Ltd (Hard Face) and Skilled Engineering Pty Ltd. At that time Jim Joveski was the panel administrator. Mr Blackstock subsequently became the biggest user of wire-feed welding services. In December 2002, Mr Joveski left the position and it appeared that Mr Blackstock then moved into it. Thereafter, the use of the panel declined and finally ceased to operate in December 2003.

In March 2004, representatives from Hard Face alleged to RailCorp investigators that Mr Blackstock had attempted to direct work away from that company after issuing a large number of unwarranted defect notices in relation to welds and made further allegations which led to other contractors providing wire-feed welding services to be interviewed.

The first invoice submitted by Precision for work is dated 3 January 2004, about two months after the firm was registered as a company. Mr Blackstock signed the invoice acknowledging receipt of the services. The first payment from RailCorp to Precision was made on 23 January 2004, and from that date until 23 April 2007, it paid Precision the amount of \$3,632,512.44.

A supplier invoice report of work done by Precision for the period 13 July 2004 to 17 January 2005 was generated. The majority of the work was requested by Mr Blackstock and in the item description column was written, "Precision are the cheapest on the panel." At this stage there was no wire-feed welding panel in existence. Michelle Sheridan was the second most frequent person to request Precision during this period. She worked in the same office as Mr Blackstock in a position junior to him.

Joseph Akkawi was the Finance Manager in the Asset Management Unit of the South Region of RailCorp. On 16 April 2005 he provided a statement to RailCorp stating there was no prescribed panel supplier.

Since receiving the report from RailCorp on 1 March 2007, the ICAC conducted inquiries into the links between Mr Blackstock and Precision. A detailed analysis of Mr Blackstock's financial position was also undertaken. A number of lawful telephone intercepts revealed close cooperation and business dealings between Mr Blackstock and Mr Madrajat.

The search warrants

Search Warrant E07/1022/7/1 was issued on 5 September 2007 and authorised the entering of premises at 6 Karingal Court, Glenmore Park occupied by Mr Blackstock and his family.

The warrant was executed on 12 September 2007 between 9.55am and 2.35pm. The documents seized related to the financial affairs of Mr Blackstock and his association with Mr Madrajat as well as documents relating to motor vehicle registered number LY176N, property ownership records and cash believed to be corrupt payments.

Search Warrant E07/1022/7/2 was issued on 5 September 2007 and authorised the entering of a marine vessel, being a white Whitley vessel with registration LY176N, kept on a trailer if not in use. It authorised the search for cash believed to be corrupt payments, documents of title and other documents evidencing an interest in the property Unit 17, 28-34 Ocean Pde, The Entrance and the above marine vessel and documents relating to Precision.

As a result of lawful telephone intercepts, information was available of payments from Mr Madrajat to Mr Blackstock which was subsequently confirmed by surveillance. The search warrant was executed on 12 September 2007 between 2.42pm and 2.50pm. No items of evidential value were located. Photographs were taken of the marine vessel in situ with the cover removed and the identifying registration number available. No items were seized.

Search Warrant E07/1022/7/3 was issued on the same day authorising the entry of a Toyota Landcruiser owned by Mr Blackstock registered number AG87QJ.

The Report to Authorised Officer about the execution of the warrant stated that it was not executed because the vehicle was parked inside the garage at the premises 6 Karingal Court, Glenmore Park. This address was the subject of a separate warrant (E07/1022/7/1) and the search of the vehicle was therefore carried out under the authority of that warrant.

Search Warrant E07/1022/7/4 was issued on 5 September 2007 and authorised the search of Unit 3, 78 Hanley Crescent, Condell Park.

These premises consisted of a two-storey unit with factory space on the ground and first levels used as the business premises of Precision and Mr Madrajat and, as such, were believed to contain documentation relating to work by Precision for RailCorp as well as other aspects of the investigation.

The Report to Authorised Officer stated that the warrant was executed at 10.05am on 12 September 2007 and documents were seized relating to RailCorp work conducted by Precision, relating to Mr Schliebs and BC

Consulting Pty Ltd and financial documents relating to Mr Madrajat and Mr Blackstock. It also referred to the searching of three vehicles present on the premises.

Search Warrant E07/1022/7/5 was issued on 5 September 2007 and authorised the entering of premises known as 69 Juno Pde, Greenacre occupied by Mr Madrajat and the seizure of certain items.

A note on the ICAC documents says that the warrant was executed between 10.03am and 11.11am on 12 September 2007. The Report to Authorised Officer says that it was executed on 12 September 2007 and that the property seized consisted of two personal computers.

The operational orders at paragraph 3.1.9 stated that "the warrants are being executed at 9.00am to ensure that the small children, who reside at the Blackstock and Madrajat premises, have left the residences."

Search Warrant E07/1022/7/6 authorised the entry into a motor vehicle being a white Isuzu tabletop truck owned by Precision with registration number AF99ML to search for electric tags and other items. This warrant was not executed because the vehicle was parked on the ground floor of 3/78 Harley Crescent, Condell Park and searched under the authority of the warrant for those premises.

Search Warrant E07/1022/7/7 authorised the entry of a motor vehicle being a white Isuzu tabletop truck owned by Precision with registration number ZKS473 and to search for items as in the previous search warrant. This warrant was not executed because the vehicle was parked on the ground floor

of 3/78 Harley Cres, Condell Park and searched under the authority of the warrant for those premises.

Search Warrant E07/1022/7/8 authorised the entry of a motor vehicle being a white Isuzu tabletop truck owned by Precision with registration number AK23PS and to search for items identical with those in the previous search warrant. This warrant was not executed because it too was parked on the ground floor of the same premises, and was searched under the authority of the warrant for those premises.

Search Warrant E07/1022/7/9 was issued on 11 September 2007 and authorised the entry of premises at 67 June Pde, Greenacre, a dwellinghouse, and permitted the seizure of items relating to the investigation. Those premises were believed to be the residential address of Mr Madrajat.

The warrant was executed on 12 September 2007 between 9.17am and 11.18am and the items seized were described as "a small quantity of Precision Wire-Feed Welding Pty Ltd documents and associated records as outlined in the attached property seizure record." There is no property seizure record attached in the documents provided by the ICAC.

There is an document titled "Independent Observer Field Form" signed by Senior Assistant Superintendant Michael Hovey of the Department of Corrective Services, in which he comments "search conducted with due respect to occupants."

Result

The material seized as a result of these search warrants contributed to the findings in the ICAC's "First Report, Investigation into bribery and fraud at RailCorp", published on 13 August 2008.

That part of the investigation focused on the conduct of Mr Blackstock, a former RailCorp employee who corruptly arranged for RailCorp work to be given to Precision, a company in which he had a private interest.

It found that Mr Blackstock and Mr Madrajat set up Precision during September 2003, concealing Mr Blackstock's involvement and hence enabling him to abuse his position at RailCorp by providing work to the company. The Commission found Precision received in excess of \$4 million from RailCorp between January 2004 and September 2007. Mr Blackstock received payments totalling \$1.3 million, while Mr Madrajat benefited by \$1.1 million.

The report also examined the submission of false timesheets by Mr Blackstock and another RailCorp employee, Shane Ward.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Blackstock, Mr Madrajat, Mr Ward, Mr Clarke and Mr Chambers for various criminal offences.

f. ICAC File Number E07/1080/7/

This file concerned an investigation under the ICAC Act arising from an allegation or complaint that former and current RailCorp contractors, Brett

Anthony Schliebs, Wayne Howie and others had engaged in fraud in relation to the awarding and performance of contracts for RailCorp work.

In 2004, RailCorp received an allegation that RailCorp employees Allan Michael Blackstock and Mr Schliebs were in business together in a company called Precision Wire Welding Pty Ltd (Precision), being operated out of their accountant's office. It was alleged that Mr Blackstock was improperly awarding wire-feed welding work to that company. According to ASIC records, Precision was registered as a company on 22 October 2003 and Youssef Madrajat was the sole director of it. It was alleged that Precision appeared to be routinely overcharging RailCorp.

Further inquiries indicated that Mr Blackstock and Mr Madrajat were business partners in Precision. Although Mr Schliebs did not have a proprietary interest in the commercial operation of Precision, he was fully aware of Mr Blackstock's involvement and was regularly involved in Precision's activity.

A further company subcontracting from RailCorp, Penny Hire Pty Ltd (Penny Hire), was overcharging RailCorp by charging for a truck and operator while only providing an operator. Mr Schliebs was involved in allocating some of the work to Penny Hire.

The registered office of Penny Hire was the same as that of Precision. Its director was Scott Brian Penny. A review of the Precision bank account revealed that between August and December 2005 there was a series of transfers to a bank account operated by Mr Penny to the value of \$60,332.50. Between April 2006 and January 2007, Penny Hire received \$111,400.50 for RailCorp work.

Following his resignation from RailCorp, Mr Schliebs began working as a private contractor on RailCorp projects. He registered a company called BC Consulting Pty Ltd (BC Consulting) in December 2006. Its registered office was at the same address as Precision and its principal place of business were the premises listed as Mr Schliebs' residential home.

Mr Schliebs had been undertaking RailCorp work through larger companies engaged by RailCorp to undertake engineering work, namely Multi Civil and Rail Services Pty Ltd (MCR) and Delkor Rail Pty Ltd (Delkor).

Mr Schliebs had been employed through MCR as a protection officer/site supervisor at a RailCorp project at Camellia referred to as Sandown. RailCorp employee Jose Argueta has been involved in the management of this project.

In a lawful telephone intercept on 17 July 2007 between Mr Schliebs and a subcontractor called 'Matt', Matt asked Mr Schliebs for work instructions. Later, he received a call from Matt advising that he had finished the job and Mr Schliebs told him that he would put him down for ten hours' work. Further lawful telephone intercepts took place between Mr Argueta and Mr Schliebs in which details of the work were discussed. As a result of further lawful telephone intercepts, improper activities were revealed with Joseph Hili, the sole director of Hili Excavations Pty Ltd.

There was a further intercept on 26 July 2007 between Mr Schliebs and RailCorp employee Paul Simpson regarding the awarding of work and improper charges.

The search warrants

Search Warrant E07/1080/7/1 was issued on 5 September 2007 and authorised the entry of premises at 12 Resolution Drive, Unanderra occupied by MCR.

The warrant was executed on 13 September 2007 between 9.50am and 3.50pm and a number of documents, computers and associated business records relating to work carried out by Mr Schliebs and others for MCR were seized.

Search Warrant E07/1080/7/2 was issued on 5 September 2007 and authorised the entry of premises at 78 The Lakes Drive, Glenmore Park occupied by Mr Schliebs.

The report to authorised officer revealed that the warrant was executed on 12 September 2007 at 9.47am and that a number of business documents were seized relating to the assignment of work to BC Consulting since February 2007, a laptop computer, an external hard drive used by BC Consulting, other electronic storage media, a railway work plan for work undertaken by Mr Schliebs either as BC Consulting or as an agent for Delkor or MCR.

Search Warrant E07/1080/7/3 was issued on 5 September 2007 and authorised the entry into premises at 47 Harthouse Rd, Ambervale occupied by Penny Hire.

The Report to Authorised Officer states that the warrant was executed at 9.47am. Business records of Penny Hire and records relating to work done by Penny Hire for RailCorp were seized on 13 September 2007.

Search Warrant E07/1080/7/4 authorised the entry of premises known as R4/391 Park Rd, Regents Park. These premises were occupied by Delkor, a company which provided engineering services to RailCorp.

Mr Schliebs' contact at Delkor was Doug Ingram, also a former RailCorp employee. It was believed, as a result of telephone intercepts, that these two were using their RailCorp connections to gain commercial advantage when quoting or submitting tenders to RailCorp.

The Report to Authorised Officer revealed that the warrant was executed on 13 September 2007 at 9.56am and that the documents seized related to RailCorp/ARTC projects involving Delkor, Mr Schliebs and/or BC Consulting and included electronic media.

Search Warrant E07/1080/7/5 was issued on 11 September 2007 and authorised the entry of a motor vehicle, being a silver Nissan Tiida sedan with registration number AJ24ZD and belonging to Western Sydney Automotives Pty Ltd.

ICAC surveillance had established that Mr Schliebs was driving this vehicle between his home and RailCorp sites where he was working. It was believed likely that documentation relating to his business activities the subject of the investigation were in or likely to be brought into that vehicle within the next 72 hours.

The Report to Authorised Officer revealed that the warrant was not executed. It was a loan vehicle from a motor dealer provided to Mr Schliebs while his

vehicle was being repaired. He had returned the loan vehicle to the dealer prior to the time when the execution of the warrant was planned.

Result

The material seized as a result of these search warrants contributed to the "Seventh Report, Investigation into bribery and fraud at RailCorp", published on 19 November 2008.

In that report, the ICAC examined the corrupt conduct of a number of RailCorp employees including George Laidlaw, Mr Petrovski and Christian Hansen, and former RailCorp employee turned contractor Mr Schliebs. The activities of these individuals included selling stolen RailCorp scrap metal, receiving improper benefits from contractors, failing to declare conflicts of interest and secondary employment when setting up businesses to undertake RailCorp work while already employed by the organisation, falsely claiming travel and accommodation allowances and allowing a contractor to continue to work at RailCorp sites despite being banned after failing a drug test.

The ICAC made findings of corrupt conduct against the following former RailCorp employees and contractors: Mr Laidlaw, Mr Schliebs, Laze Kotevski, Christian Hansen, Carlo Araldi, Mr Hili, Nat Severino, Mr Petrovski, Ian Affleck and Mr Penny and John Skinner of TPS.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Laidlaw, Mr Schliebs, MR Kotevski, Mr Hansen, Mr Araldi, Mr Hili, Mr Severino, Mr Petrovski, Mr Affleck, Mr Penny and Mr Skinner for various criminal offences.

g. ICAC File Number E07/1898/7/

The warrants in this file were in connection with an investigation under the ICAC Act of complaints that George Laidlaw used his position as an employee of RailCorp to corruptly steer commercial opportunities to commercial contractors nominated by him in return for financial benefits from those contractors and also that he improperly disposed of RailCorp property and colluded with contractors to defraud RailCorp.

As a result of lawful telephone intercepts it was learnt that Mr Laidlaw was paying cash for a trip to England where his mother was living and that in previous travels back to June 2005, Flight Centre records revealed that there were a total of five international flights and one domestic holiday booked and paid for by Mr Laidlaw. All of the payments amounting to \$20,460 were by cash. Only one corresponding cash withdrawal from Mr Laidlaw's account to the value of \$3000 had been located.

On 18 March 2008, in a call lawfully intercepted by the Commission, Mr Laidlaw (then in the UK) discussed with Teresa Laidlaw (then at home) about sending envelopes from Australia to England. Mr Laidlaw told Mrs Laidlaw that he might try and change the money at the Post Office and put it into his mother's bank account and that he would "just fetch a cheque back."

On 19 March 2008 there were three lawfully intercepted telephone calls between Mr and Mrs Laidlaw in which money was discussed. In the first call, Mr Laidlaw told Mrs Laidlaw that he tried to change money at the Post Office but as they would not change it, he was going to put it in his mother's Trustee Savings Bank account.

In the second call he asked Mrs Laidlaw to check the Internet for currency exchange information and to see how many British pounds he would get for \$8000AUD. Mrs Laidlaw told him £3718 and he again told her that he would put it into his mother's account.

During the third call Mr Laidlaw confirmed that he had put money into his mother's account that he was charged £300 commission.

The belief was held by the Commission's officers that there would be evidence of cash expenditure on the premises which would illustrate that Mr Laidlaw had been living beyond his means and had been able to do so because of the receipt of illicit cash payments. It was also believed that there would be financial documentation on the premises that would assist the Commission to generate a more comprehensive financial profile including documents relating to bank accounts and other investments not yet identified.

The search warrants

Search Warrant E07/1898/7/1 was issued on 18 April 2008. The Report to Authorised Officer reveals that it was not executed because it was issued by Magistrate Moore and, inadvertently, no occupiers notice was issued. That Magistrate had left the Court when the error was detected. A fresh application was made to a further magistrate on 18 April 2008 who issued a search warrant and an occupier's notice for the premises.

Search Warrant E07/1898/7/2 was issued on 18 April 2008 and authorised the entry of a motor vehicle with registration number BFP85F, registered in the name of Theresa and George Laidlaw. Mr Laidlaw was due to fly into Sydney on Saturday 19 April. Information contained in lawfully intercepted

telecommunication indicated that Mrs Laidlaw would meet him at the airport and drive him home and that, at that time, he would be in possession of financial documentation for the purpose of laundering illicit funds through his mother's bank account in England.

The Report to Authorised Officer revealed that the warrant was executed on 19 April 2008 at 10.25am but no items were seized.

Search Warrant E07/1898/7/3 was issued on 18 April 2008 and authorised the entry of a motor vehicle with registration number ARO2UG. This was in connection with the same investigation.

Search Warrant E07/1898/7/4 was issued on 18 April 2008 and authorised the entry and search of a motor vehicle with registration number AD95KU, registered to Teresa Laidlaw and George Laidlaw. The Report to Authorised Officer form in the file is blank. At the top of the form of the search warrant appear the words "not served".

Search Warrant E07/1898/7/5 was issued on 18 April 2008 and authorised the entry and search of a motor vehicle with registration number BEY58B, registered to Teresa Laidlaw and Rebecca Anne Laidlaw. The file included a Report to Authorised Officer dated 22 April 2008 stating that the warrant was executed at 10.27am on 19 April 2008 and that no items were seized.

Search Warrant E07/1898/7/6 was issued on 18 April 2008 and authorised the entry of premises at 77 Douglas Street, Blacktown. The Report to Authorised Officer dated 22 April 2008 stated that the warrant issued by Registrar Joseph Karen was not executed as a fresh application was made to Magistrate Moore who issued a subsequent search warrant. The occupier's

notice was not served on Mr Laidlaw.

Result

The Commission's "Seventh Report, Investigation into bribery and fraud at RailCorp", published on 19 November 2008, examined the corrupt conduct of a number of RailCorp employees including Mr Laidlaw, Ljupce Petrovski and Christian Hansen, and former RailCorp employee turned contractor Brett Schliebs.

The activities of these persons included selling stolen RailCorp scrap metal, receiving improper benefits from contractors, failing to declare conflicts of interest and secondary employment when setting up businesses to undertake RailCorp work while already employed by the organisation, falsely claiming travel and accommodation allowances, and allowing a contractor to continue to work at RailCorp sites despite being banned after failing a drug test.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Laidlaw, Mr Schliebs, Laze Kotevski, Mr Hansen, Carlo Araldi, Joseph Hili, Nat Severino, Mr Petrovski, Ian Affleck, Scott Penny and John Skinner for various criminal offences.

h. ICAC File Number E06/0743/7/

This operation concerned an investigation into the suspected corrupt offering or giving of benefits by developers to officers or counsellors of Wollongong City Council as inducements or rewards for showing favours to them in relation to council decisions including decisions relating to development applications.

A further matter of investigation, of specific reference to this file concerning the activities of Ray Younan and Gerald Carroll, was the suspected interference with, attempted defrauding of, and corrupt solicitation of benefits from witnesses and suspects in investigations then being conducted by ICAC.

The ICAC had information that Mr Younan and Mr Carroll had been approaching Commission witnesses, that Mr Younan had introduced Mr Carroll as an ICAC officer and that he had stated that for a fee he would be able to make an ICAC investigation "go away". Mr Younan was paid \$30,000 by one person and a further amount by another as a result of these representations.

It was believed that one such person approached by Mr Younan and Mr Carroll was Frank Gigliotti. The ICAC conducted surveillance which covered two meetings involving either Mr Younan or Mr Carroll and Mr Gigliotti.

The search warrants

Search Warrant E06/0743/7/9 was issued on 24 October 2007 and authorised the entry of premises at 7 Angourie Place, Bow Bowing occupied by Mr Younan.

The Report to Authorised Officer about the execution of the warrant stated that it was executed at 9:55am on 25 October 2007 and that a number of items were seized. However, on the accompanying "Independent Observer Field Form", the time of execution is stated as 7.15am. In the section entitled "Any Comments" are words which cannot be completely read, but those which are clear say "Unhappy with execution due to time of morning and the fact family not dressed. Unhappy with number of staff."

Search Warrant E06/0743/7/10 was issued on 24 October 2007 and authorised the entry into premises at 4 Sunderland Crescent, Bligh Park. These premises were, on reasonable grounds, believed to be the premises occupied by Mr Carroll.

The issuing of the search warrant followed upon a number of lawful telephone intercepts and surveillance of people, including Mr Younan and Mr Carroll, and information from the RTA recording the subject address as Mr Carroll's residence. It was also the address recorded for the subscriber of the mobile phone service used by him.

The Report to Authorised Officer about the execution of the warrant stated that it was executed at 7.17am on 25 October 2007. The warrant was executed after a short delay experienced gaining entry to the premises. The items seized included two personal computers, a Telstra mobile phone contract in the name of Gerald Carroll, bank records, Westlink M7 tollway documents, cash receipts and money transfers, receipts for deposits into the account of Ray Younan, a business card, scrap pieces of paper and other documents. The Independent Observer Field Form shows that the items taken totalled 15 and that the occupier's notice was served on Mr Carroll.

Search Warrant E06/0743/7/11 was issued on 24 October 2007 and authorised the entry of premises 8 Eliza Court, Horsley occupied by Frank Gigliotti.

The report to the authorised officer about the execution of the warrant revealed that it was executed at 10.15am on 25 October 2007. The documents seized comprised bank statements and other financial documents claimed to assist the investigation by providing account details, deposits and

withdrawals, three computers and diaries said to provide information about meetings.

Search Warrant E06/0743/7/12 was issued on 24 October 2007 and authorised the entry of premises being a silver Ford utility motor vehicle with registration number AQ96TN. This was a vehicle observed by ICAC surveillance officers at 7:55 on 17 October 2007 as being driven by Mr Younan.

The Report to Authorised Officer states that the warrant was not executed for the following reason:

At the time of commencing the search of 7 Angourie Place Bow Bowling, vehicle AQ96TN was sighted parked in the driveway of number 5 Angourie Place. During the search of 7 Angourie Place vehicle AQ96TN was moved and was not sighted again. It was not necessary to execute the warrant at a later date.

Search Warrant E06/0743/7/13 was issued on 24 October 2007 and permitted the entry of premises known as a black Ford Territory 4WD motor vehicle with registration number AXH38X. This was a vehicle observed by surveillance officers at 6.10am on 11 October 2007 being driven by Mr Younan. Endorsed on a copy of the search warrant was a note that it was not executed.

Result

The information obtained as a result of these warrants contributed to ICAC's findings against Mr Younan and Mr Carrol set out in Part 3 of its "Report on an investigation into corruption allegations affecting Wollongong City Council" at pages 14 and 15 and in Chapter 11.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the DPP with the respect to prosecuting Mr Younan and Mr Carroll for various criminal offences.

i. ICAC File Number E07/0042/7/

This file concerned an investigation into allegations that Douglas Norris, an employee of the NSW Department of Housing, and others engaged in corrupt conduct involving the payment of money or benefits to him or other persons in return for the improper assistance in the allocation of public housing provided by the Department of Housing to various persons. The ICAC was also investigating an allegation that Mr Norris was involved in the manufacturing and use of false documents in the application for public housing and that he was involved in undermining a complaint made by an applicant for public housing to the department relating to his corrupt conduct in 2005.

Information from witnesses, as well as lawfully recorded conversations supported the belief that documents relevant to the investigation would be on his premises.

The search warrants

Search Warrant E07/0042/7/1 was issued on 16 July 2007 and authorised the entry of Mr Norris's premises at 128 Georges River Road, Kentlyn.

There was no report that the warrant was executed but endorsed upon a copy of the warrant is a note that it was executed between 9.20am and 12.30am on 17 July 2007.

The written operational orders directed to all persons executing or involved in the execution of the warrant include the following:

Doug Norris has two school-aged children, Jessica and Rachel. School holidays will be over when the warrant will be executed. It is anticipated that the warrant will be executed after 9am when his children are at school. There is a risk of trauma to the children if they are present at the time when the warrant is executed.

Those orders also point out that surveillance observation showed that Mr Norris normally took his children to school and was home by about 9.20am. It was also common for his wife to remain at home during the day as she worked part time at the university. The execution of the warrant was scheduled for after 9.20am.

Result

In its "Report on an investigation into corrupt conduct of an officer at the Department of Housing's Miller Office and other persons", published on 31 January 2008, the ICAC made findings of corrupt conduct against Mr Norris and other persons.

The ICAC was of the opinion that consideration should be given to obtaining the advice of the DPP with the respect to prosecuting Mr Norris and other named persons for criminal offences. It also contained a statement pursuant to s. 74A(2) of the ICAC Act that the Commission was of the opinion that the Department should consider disciplinary action against Mr Norris with a view to his dismissal.

j. ICAC File Number E07/0678/7/

This file related to an investigation arising from a complaint of corrupt manipulation by Christian Sanhueza, Clive Taylor and Dario Romero in the awarding and administration of New South Wales Fire Brigade (NSWFB) contracts.

In late March 2007, the project development manager for the NSWFB became concerned about the award of a contract for the construction of the West Wallsend Fire Station to Midas Capital Pty Ltd (Midas) at the cost of \$938,000.

He also became aware that the NSWFB had awarded Midas a contract in the sum of \$144,950 to undertake preliminary works involving the preparation of the West Wallsend site for construction following receipt of a quote from Midas dated 10 December 2006. On 29 December 2006 Midas lodged an invoice for the full amount of the preliminary works to the NSWFB. Another company, H A Bristow and Sons, had submitted a quote as subcontractors for the preliminary work dated 22 December 2006. It was believed unlikely that the preliminary works could have been completed by Midas between 22 and 29 December 2006.

A company search of Midas revealed that Mr Sanhueza was a director and secretary of Midas at the time when the quote for construction was sought from Mr Taylor. Mr Sanhueza resigned as director and secretary of Midas a few days after it was awarded the construction contract.

On 30 March 2007, senior officers of the NSWFB questioned Mr Sanhueza about the West Wallsend project. He confirmed that he was a director and company secretary of Midas at the time quotes for the construction contract were called and had recommended Midas to Mr Taylor, who was the West

Wallsend project manager. He agreed he had failed to declare his interest in Midas and explained that it was not unusual to make such an omission in the private sector. He said that Mr Taylor was aware that he was a director and secretary of Midas when Mr Taylor included Midas on the tender list. He also advised he held an interest in Cavet Pty Ltd and the Carney Group which had undertaken capital works for the NSWFB. He terminated his engagement with the NSWFB.

Examination of the project files by the NSWFB revealed that quotes for the West Wallsend project had been submitted by businesses named Phixet and Joclem Pty Ltd (Joclem) in February 2007. A search of records at the Department of Fair Trading revealed that Phixet had been the registered name of a business providing general maintenance services from 1988 to 30 August 2006. ASIC records revealed that Joclem had been deregistered on 5 July 2007. It was suspected that the purported quotes from Phixet and Joclem with respect to the West Wallsend construction project were false.

The NSWFB requested its internal audit bureau to conduct a review of the Midas contract and other capital works projects managed by Mr Sanhueza and Mr Taylor on behalf of the NSWFB. As a result of this review, the belief was formed that Mr Sanhueza and Mr Taylor used their positions at the NSWFB improperly to ensure that companies controlled by Mr Romero or Mr Sanhueza were awarded capital works projects by the NSWFB.

An examination of documents provided to the Commission by the NSWFB revealed that all of the 18 capital works contracts administered by Mr Sanhueza and Mr Taylor were awarded to companies controlled by Mr Sanhueza or Mr Romero. The belief was further formed that a significant number of the quotes submitted by various companies with respect to the 18

projects administered by Mr Sanhueza or Mr Taylor were either false or submitted by fictitious persons in order to disguise the collusive arrangements entered into between Mr Sanhueza, Mr Taylor and Mr Romero. The invoice submitted by Midas to the NSWFB in respect of the preliminary works conducted at West Wallsend also appeared falsely to claim for work that had not been performed.

Rasem Guirguis was an architect working for a company trading as Barrelle Guirguis Architects. He had been involved in providing architectural drawings for the NSWFB projects before and after Mr Sanhueza or Mr Taylor started working for the NSWFB. In an interview with ICAC officers on 20 February 2008 he stated that, in late May 2006, Mr Taylor told him that if he wanted to continue working for the NSWFB he would have to supply Mr Sanhueza and Mr Taylor with two large screen LCD/Plasma Televisions and two notebook computers (laptops) which Mr Taylor had already selected.

Mr Guirguis also told the ICAC officer that, on 1 June 2006, he was picked up by Guirguis in a NSWFB vehicle and driven to Cabramatta where they went to a Khai Hi-Fi Pty Ltd store at which Mr Taylor identified the LCD/Plasma television sets he wanted Mr Guirguis to purchase for Mr Sanhueza and himself. Mr Guirguis paid a \$500 deposit on television sets and two wall-mounting brackets at a total value of \$22,800. The balance was later charged to Barrelle Guirguis Architects. Mr Taylor arranged for the television sets to be delivered to 7 Gowan Street, Denham Court and 8 Governor's Way, Macquarie Links being the residential addresses of Mr Sanhueza and Mr Taylor respectively.

Mr Guirguis also informed the ICAC officer that, on 24 April 2006, he bought two Toshiba brand notebook computers with carry-bags of a total value of

\$7,051 and that they were collected by either Mr Sanhueza or Mr Taylor from him at his business address at a later date. Mr Guirguis provided a copy of the receipts evidencing the purchases.

The search warrants

Search Warrant E07/0678/7/1 was issued on 3 September 2007 and authorised the entry of premises at 7 Gowan Place, Denham Court occupied by Christian Alexis Sanhueza and Denise Angeles Sanhueza.

The Report to Authorised Officer stated that the warrant was executed at 7.02am and concluded at midday on 4 September 2007. The items seized are said to be listed in an attached property seizure record sheet which was not in the documents provided by ICAC.

Search Warrant E07/0678/7/2 authorised the entry of premises at 114 Granville St, Fairfield.

ASIC enquiries indicated that Mr Romero was a then current director of Mollix Pty Ltd, a director and shareholder of the Carney Group, and a director, secretary and shareholder in Byldcon Pty Ltd and Ceachei Pty Ltd (Ceachei). His address in the respective company records was listed at 114 Granville St, Fairfield. This was also the principal place of business and the registered office of Ceachi.

ASIC records indicated that Mr Romero was a previous shareholder and a then current director of Midas, which had projects under construction for the NSWFB. Mr Sanhueza and Mr Taylor were both directors when Midas was

contracted to fulfil work on behalf of the NSWFB. At the same time, Mr Sanhueza and Mr Taylor were both project managers of the NSWFB.

The Report to Authorised Officer stated that the warrant was executed between 7.02am and 8.40 am on 4 September 2007. The documents seized are referred to as listed in an attached property seizure record. No such record was provided by ICAC.

Search Warrant E07/0678/7/3 authorised the entry of premises at 8 Governors Way, Macquarie Links occupied by Mr Taylor. The premises were owned by Pimlico Capital Pty Ltd, of which Mr Taylor was a director and secretary.

This search warrant authorised execution by day between 6.00am and 9.00pm or night, that is between 9pm and 6 am.

On 4 September 2007 ICAC officers had executed search warrant E07/0678/1 on the premises occupied by Mr Sanhueza. Shortly after commencing the execution of the warrant, ICAC lawfully intercepted a telephone call between Mr Sanhueza and Mr Taylor in which Mr Sanhueza informed Mr Taylor that ICAC officers were executing a search warrant at Mr Sanhueza's premises.

Shortly after this telephone conversation, the ICAC lawfully intercepted a further conversation between Mr Taylor and Anna Marie Taylor, believed to be his wife, during which Mr Taylor discussed the relocation of documents. Mrs Taylor stated "I was thinking of putting them in the fridge – in that bar fridge – all that information, and then taking it out of there, 'cause they open the boot

of my car, and it's a goldmine." Mr Taylor replied, "um, I was gonna open a storage thing down at Ingleburn. It's \$48 a month."

On 4 September ICAC officers observed Mrs Taylor in a vehicle parked outside the Storage King storage facility at 40 York Rd, Ingleburn with what appeared to be paperwork in her hand. A short time later she was observed returning to the premises. The manager of the storage facility advised that Mrs Taylor had rented storage space to store documents.

It was believed that notwithstanding this, documents relevant to the ICAC's investigations were still at the premises because it was unlikely that all relevant documents had been removed in the available time.

The Report to Authorised Officer stated that the warrant was executed at 10.38pm and concluded at 12.40am on 5 September 2007. The items seized were said to be in attached Property Seizure Record sheets. No such sheets were provided by the ICAC to the Inspector.

Search Warrant E07/0678/7/4 authorised the entry of Unit 259, 40 York Rd, Ingleburn. This was the storage facility referred to earlier. It, too, permitted execution by day or night.

The Report to Authorised Officer stated that it was executed on 5 September 2007 between 1.00am and 2.15am. The seized items were referred to as being in the attached Property Seizure Record sheets. Those sheets were not provided by the ICAC to the Inspector.

The occupier's notice was served on Mrs Taylor, the renter of the storage space, at her residence at 8 Governors Way, Macquarie Links at 12.42am after which ICAC officers proceeded to 40 York Rd, Ingleburn.

Search Warrant E07/0678/5 was issued on 6 September 2007 and authorised the search of premises occupied by Patricia Noemi Xuereb.

On 4 September 2007 the ICAC executed a search warrant on Mr Sanhueza's residence and documents relevant to the investigation were seized. On 4 September 2007 the ICAC lawfully intercepted a conversation between Mr Sanhueza and Patricia Noemi Xuereb, an officer of the NSWFB. During that conversation Ms Xuereb stated that she was at home. They discussed the execution of a search warrant by the ICAC at Mr Sanhueza's home. Mr Sanhueza advised Ms Xuereb that the ICAC had seized all his documents and records, including his computers. Ms Xuereb then stated, "I'm going to see what I've got here and make sure it disappears."

It was believed that Ms Xuereb was referring to the fact that she had documents relating to the ICAC's investigation at her home and that she would take action to remove and destroy those documents.

Accordingly, an application was made in E07/0678/7/5 for a warrant to search the premises of Ms Xuereb at 24 Alroy Crescent, Hassall Grove.

That warrant was executed on 6 September 2007 between 6.00pm and 8.16pm and a number of documents were seized.

Search Warrant E07/0678/7/6 was issued 2 November 2007 and authorised the entry and search of premises known as A Schwartz & Co of Suite 3, 27-29 Oxford Road, Ingleburn.

The search warrant executed on 4 September 2007 (E07/0678/7/1) at Mr Sanhueza's residence resulted in the seizure of documents which indicated that Andrew Schwartz of A Schwartz & Co was Mr Sanhueza's accountant. The belief was formed that Mr Schwartz had provided and assisted Mr Sanhueza with taxation and other financial advice, and that he may have assisted Mr Sanhueza with the registration and/or administration of various companies the subject of the investigations.

There had also been a number of lawful telephone intercept calls between Mr Sanhueza and Mr Schwartz where they discussed documentation required to submit returns to the Australian Taxation Office. These calls enhanced the belief that Mr Schwartz was Mr Sanhueza's accountant and had knowledge of his various business and/or companies associations.

The warrant was executed on 5 November 2007 and a number of business documents relating to each of the companies was located and seized.

Search Warrant E07/0678/7/7 issued 28 November 2007 and related to premises at 101 Greendale Road, Greendale.

Material seized in the execution of the search warrant on 4 September 2007 (E07/0678/7/1) at the residence of Mr Sanhueza and information from his personal laptop computer indicated that a number of NSWFB projects were sub-contracted to a company called M D Sullivan Pty Ltd (MD Sullivan), also trading as Top Mark. ASIC records showed the directors of this company were Mark Dean Sullivan and his wife Raeoni Karen Sullivan. From this information it appeared that Mr Sullivan had material concerning projects then being investigated. ASIC records showed that the registered office and principal place of business of MD Sullivan was 101 Greendale Road, Greendale.

A survey of the property showed that there were two residences at that address. A notice pursuant to s. 22 of the ICAC Act dated 31 October 2007 requiring the production of documents by 8 November was served on Mr Sullivan on 2 November 2007. These documents were not produced despite numerous follow-up telephone calls to him requesting information. Lawfully intercepted telephone calls between Mr Sanhueza and Mr Sullivan revealed that they were discussing the ICAC investigation and the fact that it was likely that documents would be required by the Commission.

The warrant was executed between 8.15am and 9.35am on 29 November 2007 and a number of relevant documents relating to the NSWFB projects were seized.

Search Warrant E07/0678/7/8 issued on 28 February 2008 authorised the entry of premises at 7 Gowan Street, Denham Court (the residential address of Mr Sanhueza) to search for a Toshiba LCD/Plasma Television, Toshiba Notebook computer and any wall-mounting brackets. Execution by day or night was authorised.

During the execution of the search warrant on Mr Sanhueza's premises in September 2007, ICAC officers had noticed two television sets but no suspicion was attached to them. At the same time, one of the notebooks was seized but returned. The things to be searched for under this search warrant were the television sets and notebook at the home of Mr Sanhueza.

The search warrant was executed on 28 February 2008 at 6.45pm and the television sets and laptop computer were seized.

Search Warrant E07/0678/7/9 authorised the search by day or by night of Mr Taylor's premises at 8 Governor's Way, Macquarie Links to search for the television set and notebook which Mr Guirguis had supplied to Mr Taylor.

It was executed on 28 February 2008 at 7.30pm and the television set and computer were seized.

Result

In its "Report of an investigation into tendering and payments in relation to NSW Fire Brigades capital works projects", published on 18 December 2008, the Commission examined the conduct of Mr Sanhueza, Mr Taylor and others. It found that Mr Sanhueza's and Mr Taylor's scheme affected 39 NSWFB projects, and resulted in the companies controlled by Mr Sanhueza receiving \$6,075,120. After paying the subcontractors that did the actual work, Mr Sanhueza received at least \$1,399,922 and Mr Taylor received \$1,010,000.

The report found that, between late 2005 and 2007, Mr Sanhueza and Mr Taylor submitted false tenders and quotes to the NSWFB to manipulate the awarding of capital works contracts to companies controlled by Mr Sanhueza and made corrupt conduct findings against Mr Sanhueza, Mr Taylor, Mr Guirguis, Soliman Hanna and Ms Xuereb.

The Commission expressed the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Sanhueza, Mr Taylor and his wife Anna-Marie, Mr Guirguis and Ms Xuereb for various criminal offences.

k. ICAC File Number E07/1036/7/

By letter dated 28 January 2009 the ICAC advised:

The Commission has discontinued its investigation in E07/1036/7 and does not propose to make a report. Relevant material has been provided to the Department of Corrective Services for it to complete its own investigation. Reference to this matter in your report would not prejudice any investigation.

The Commission was investigating an allegation that an employee of the New South Wales Department of Corrective Services was engaging in corrupt conduct involving the payment of money or benefits in return for trafficking contraband, including prohibited drugs, into a Correctional Centre, on behalf of inmates. Five search warrants were issued resulting in the seizure of a small amount of cannabis.

l. ICAC File Number E07/1851/7/

The Commission was investigating allegations made that a former employee of the New South Wales Department of Housing and others engaged in corrupt conduct involving the corrupt manipulation of the awarding of NSW Department of housing contracts to a particular company in return for money or benefits paid to the said former employee.

Search Warrant E07/1851/7/1 was issued on 16 June 2008 and authorised the entry into premises occupied by the former employee and the seizure of documents relating to his business affairs.

The warrant was executed at 10.57am on 19 June 2008 and financial and business records relating to the subject matter of the investigation were seized.

The file also contains an Independent Observer Field Form.

Search Warrant E07/1851/7/2 was issued on 21 July 2008 and authorised the entry of premises this known as Crossley, Maclean & Associates in commercial premises at Campbelltown.

This was a company alleged to be involved in the activities the subject of the investigation.

The warrant was executed on 23 July 2008 at 9.47am and relevant business records were seized.

m. ICAC File No. E08/0913/7

By letter dated 9 February 2009 the ICAC advised:

The Commission's investigation in matter E08/0913 (Operation Crespo) has been closed. This matter involved an allegation in relation to the issuing of certificates of occupancy by a principal certifying authority. The Commission found no evidence of corruption.

Search Warrant E08/0913/7 was issued on 13 August 2008 authorising the entry of premises and the search and seizure of documents relating to the investigation. The premises were occupied by the person then being investigated. The report to the authorised officer about the execution of the

warrant shows that it was executed between 8.00am and 3.00pm on 14 August 2008 and items were seized.

D. CONCLUSION

To enable the ICAC to carry out the functions cast upon it under Division 1 of Part 4 of the ICAC Act, the ICAC Act makes available a number of tools which, if wrongly used, would impinge upon the privacy and rights of Australian citizens and residents.

In conducting the second part of this audit, I have, pursuant to s. 57B(2) of the ICAC Act, looked to see if there are grounds for reporting the existence of evidence of abuse of power, impropriety, or other forms of misconduct on the part of the Commission or officers of the Commission under s. 57B(1)(b). I have also looked to see if there were grounds for reporting the existence of evidence of maladministration including unreasonable invasions of privacy and action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives under s. 57B(1)c).

In addition I have attempted to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities (s. 57B(1)(d)).

Examination of the application for and execution of search warrants in each of the above cases reveals the following:

- Search warrants were applied for and used as one of the tools authorised by the ICAC Act to enable the ICAC to carry out its functions;

- Each search warrant was applied for only in circumstances where a belief was reasonably formed in the light of information available from other sources that the application was soundly based;
- In all cases it was appropriate to apply for and execute the search warrant in the light of the information then available.
- In all but those cases where execution was not undertaken or where execution revealed no evidential material, the issue and execution of the search warrant were effective in locating material which contributed to the findings and recommendations made by the Commission in its published reports;
- There was no evidence of abuse of power, impropriety, or other forms of misconduct on the part of the Commission or officers of the Commission;
- There was no evidence of maladministration, including unreasonable invasions of privacy, or of any action or inaction of a serious nature that was contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

His Honour Harvey Cooper, AM

Inspector of the Independent Commission Against Corruption

March 2009



New South Wales

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