Prison informers

Where the grasses are greener

David Brown

The NSW ICAC has issued a contradictory but possibly useful report on prison informers giving a rare glimpse into a secret part of the justice system.

'What all this comes down to is that wrongful means must not be used to achieve noble ends.'

Report, Vol. 1, p. 188

The two-volume NSW Independent Commission Against Corruption (ICAC) *Report on the Investigation Into the Use of Informers* released in January is both constructive and problematic. Constructive in its acknowledgement that what many 'judges and legal commentators' have been saying about the dangers of the use of informers by criminal justice agencies has been, to use Commissioner Temby's words, 'demonstrably true' (Vol.1, p.58).[1] Constructive in its various recommendations aimed at stemming abuses, ensuring greater safeguards, and promoting more positive duties of disclosure and accountability on the part of criminal justice agencies.

Problematic in that once again we seem to have much wrongdoing but few wrongdoers. Former head of the Internal Investigations Unit and current Assistant Commissioner of the NSW Department of Corrective Services, Mr Ron Woodham, was found to have acted corruptly in relation to two matters and is recommended for disciplinary charges, one of the only two such recommendations in the Report. Woodham has since challenged the 'corrupt' finding in the NSW Supreme Court.

Problematic in the failure to coherently examine the jurisprudence of reward and to connect this discussion with the key issues of the nature of the prison regime and the forms of power exercised within it. Problematic in the inconsistency between the general theme that the end does not justify the means and the pragmatic approach to the use of informers which permeates the Report.

The Report in brief

In the Preface to the first volume, four themes are identified: the nature of 'favours' (p.vii) received by informers; the issue of whether the end justifies the means; the 'stark lack' (p.viii) of accountability mechanisms; and the need for the proper flow and handling of information by public officials.

In relation to the first theme the Report found that 'some prisoners were recruited in an unprincipled manner' (p.49) in 'covert' ways. The Commissioner saw the 'covertness' founded on:

> the assumption that benefits should be hidden, and that at the Commission hearing they should be denied where practicable, this presumably on the basis that the ICAC would condemn the provision of rewards to informers. [p.54]

A not unreasonable expectation one might have thought. Interestingly the next sentence reads: 'But that is not and never was the case'.

The Report adds that there is not 'anything wrong with such rewards, so long as appropriate safeguards are in place and appropriate disclosure made . . .' (p.62). The major recommendations of the Report are therefore

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concerned with establishing safeguards and promoting disclosure. The key requirements here are seen as a 'sceptical' attitude on the part of authorities (p.59), the 'fullest possible knowledge being possessed in relation to potential criminal witnesses' and their use 'only where substantial external support for what they say exists' (p.60). The last of these had already received the judicial imprimatur of the High Court in an important recent judgment in *Pollitt v R* (1992) 66 ALJR 613.[2]

Specific recommendations include:

- the strengthening of existing DPP guidelines on the use of informers,[3] such guidelines to apply also to police (p.80) and Corrective Services officials (p.83);
- each agency (and especially Corrective Services where files were in an 'appalling order and condition' (p.86) and where there had been systematic non-compliance (p.106) with defence subpoenas for information) should be required to collect information in 'a coherent fashion';
- consideration of legislation to require a formal statement setting out 'any and all considerations promised to or received by' the informer to be filed in court whenever an in-custody informant seeks to give evidence for the Crown of any alleged jail-yard confession (p.82); and
- consideration of the provision of a 'disclosure certificate' by the police officer in charge of the case that all unused material has been disclosed to the prosecution (p.98).

The last of these indicates Commissioner Temby's belief that the major problem lies in the failure of the police to disclose information about negotiations with informers to the DPP and hence the failure in turn to inform the defence and courts.

The case studies in the second volume of the Report are detailed and revealing. The nine case studies break down as follows: three prison murders (Holden, Mawson, Delprado), two prison bashings (Bragge and Booth), the targeting of an alleged prison and criminal heavy (Domican), the attempted discrediting of the victim of a police shooting (Brennan), the targeting of a political activist (Anderson), and the targeting of allegedly corrupt police (Operation Raindrop).

The nature of the cases indicates that the use of prison informants is reserved for particularly difficult to solve cases involving high profile or targeted individuals. It is not a mass practice used in run of the mill cases and while it seems to have developed in response to the partial demise of the police verbal (fabrication of confessional evidence by police) it is far from a complete substitute. Reports of the death of the police verbal are exaggerated, which might be pointed out to those instructing counsel appearing for the Police Service at the current ICAC inquiry into the relationship between certain police and criminals. At times it has seemed that such instructions are to deny the existence of police verbal, a somewhat forlorn and incredible enterprise.[4]

What the Report reveals

There is much in these case studies that reveals the networks through which prison informers were recruited, the wide range of rewards they were offered and the ways in which information about these processes was withheld from defence lawyers and from the courts. To that extent the case studies tend to contradict the claim made in the first volume that:

> there is no evidence that the rewards provided were consistently excessive, and absolutely no evidence that Woodham or anyone else provided benefits in order to obtain false statements from prisoners inculpating others. This investigation has not established any systematic misconduct on the part of public officials, whether viewed as groups or individuals. The abuses that occurred were relatively isolated. The suggestions which were made before the investigation commenced — that prison informers were being used to obtain unjustified convictions — are devoid of substance. [p.53, emphasis added]

There is a significant tension in the Report between such rather sweeping general overview statements and specific evidence on which one would hope such statements are based.

Whether the rewards provided were 'consistently excessive' is perhaps a matter of opinion. But let us be clear as to what those rewards were as revealed in the Report:

- actual early release;
- significant sentence discounts;
- indemnities for other, in some cases very serious, offences;
- recommendations for substantial financial rewards (in Denning's case $250 000);[5]
- statements (which were in some cases false and in others omitted key information such as the commission of further offences) in favour of informers at bail hearings, sentence hearings, applications for sentence discount hearings, applications for parole, applications for fixed sentences;
- consideration in relation to outstanding charges;
- assistance to friends or relatives with charges, bail;
- assistance with inter-state transfers;
- transfer into the Special Protection Prison;
- lower security classification;
- the movement of prisoner associates (in one case a sexual partner);
- access to programs and work release;
- greater access to phone calls;
- greater access to extra visits and to contact visits;
- turning a blind eye to drug possession, drug dealing, bashings;
- the promise to remove material from prison files;
- the placing of false information on prison files.

As to there being no evidence that officials provided benefits in order to obtain false statements, this is contradicted in particular cases, for example Anderson who was supposed to have confessed to Ray Denning on an occasion when they were not even in the same prison. And indirectly contradicted at other places in the Report, for example where it is stated 'as to actual lies told by informer witnesses, it is probably true to say one could investigate from now until the end of the century and not run out of examples' (p.59). It strains credulity to assume that officials had no idea that benefits were being offered in exchange for lies in relation to this 'end of the century' pool of examples. Indeed it assumes that 'lies' spring fully formed from the mouths of informers rather than being the *negotiated* product of the recruitment, coaching and inducement practices of key police and corrective services officials, practices which are clearly spelt out in relation to many of the case studies in Volume 2 of the Report.

As to there being no evidence that prison informers were being used to obtain unjustified convictions, the NSW Court of Criminal Appeal begged to differ in the Anderson appeal (*Anderson* (1991) 53 A Crim R 421) on just such a basis. Indeed Mr Temby quotes the coded communication between

two of the five prisoners in what he describes as 'a queue of informers that formed up behind Denning', 'expressing pleasure that "we can get someone convicted even when he is innocent like Anderson"'. Were it not for the good sense of both juries and appeal courts in some of the nine case studies and in other unexamined cases, many other unjustified convictions would have occurred. In other cases involving informers, miscarriages *have* arguably occurred.[6]

Indeed the Report acknowledges the potential for miscarriages of justice:

> At the present time the course of justice in criminal prosecutions could be perverted by various failings demonstrated in evidence, in particular lack of known and consistently applied policy in relation to the handling of informers, severe deficiencies in record keeping, frequent failures by the Crown to provide information to the defence in accordance with its legal obligations, and failure by Corrective Services to obey subpoenae in accordance with law. [Vol 2, p.ix]

But if 'suggestions . . . that prison informers were being used to obtain unjustified convictions — are *devoid of substance*' then it seems the worries are all in the future conditional, potentialities only, which is reassuring indeed.

Yet at another point in the Report it is stated:

> I cannot say whether the blanket approach adopted by Corrective Services personnel, whereby non-privileged documents from 'P' files were kept away from the courts, led to miscarriages of justice. That question was not investigated, as being beyond the terms of reference. However the possibility must be recognised, and that serves to emphasise how grave the situation has been. [p.106]

Simultaneously it seems, miscarriages of justice or 'unjustified convictions' are absolutely ruled out, a possibility, and in relation to a specific practice, a possibility which was not investigated.

Not to put too fine a point on it, there are numerous contradictory positions adopted within the space of a few pages, indicating either a certain lack of intellectual rigour or a desire to have it every which way. For example on page 60 it is said:

> All involved in the prosecution process — police investigators, prosecutors, judges, and, in the case of prison informers, officials from Corrective Services — should desire that convictions be recorded only against those who are objectively guilty.

Yet on page 66 it is said:

> the purpose of a contested trial is to decide whether or not the accused is guilty according to law. The trial does not aim to ascertain objective truth . . .

Now granted these are complex issues of legal philosophy, but the question remains, *which is it to be*?

Guilt ends and means

Does 'objective guilt' exist, already formed, prior to and outside of the operations of the criminal justice system or is the category of legal guilt at least in part a product or effect of that system? For what it is worth my vote goes to the latter position. The Report's confusion over such basic issues is again illustrated in the somewhat rhetorical conclusion to Volume One which quotes Aldous Huxley:

> Good ends . . . can be achieved only by the employment of appropriate means. The end cannot justify the means, for the simple and obvious reason that the means employed determine the nature of the ends produced.

I read this as saying that ends and means are connected, that ends are a product of means and cannot be evaluated separately from them. But the paragraph which approvingly introduces this quote of Huxley's offers the paraphrase 'What all this comes down to is that wrongful means must not be used to achieve *noble* ends' (p.118, emphasis added). But is not Huxley saying that we cannot talk of 'noble ends' in and of themselves without a consideration of the means used to achieve them?

To be more concrete, let us say hypothetically a police officer planted heroin on a suspect. Is it meaningful to say that this is an illegitimate means to the 'noble end' of securing the conviction of a suspected heroin user/supplier? Surely the end becomes somewhat less than *noble* once illegitimate means are used, not the least because it is not the role of the police officer to make a decision about the guilt of a suspect and then fabricate the evidence to accord to that belief and ensure that result.

Again all this might be seen as just a slip, the criticism semantic nit-picking. But if it is just a slip I suggest it is a revealing one, illustrative of considerable conceptual confusion. Of course this is not to suggest that such confusion might not have certain productive consequences for the ICAC, currently under attack from many quarters including its architects. Providing something for everyone: criticism, approval, condemnation, clearance, reform; all to be raked over and publicly re-presented through the medium of a news media likely to focus on the most sensationalist findings, picking and choosing (often from the press release rather than the Report itself) colourful quotes, not with reference to inconsistencies and contradictions but according to sets of undisclosed criteria of newsworthiness.

Ultimately though, the theme of the end not justifying the means does not really work in the Report to provide any very helpful guidance on the difficult decisions involved in determining the reliability of potential evidence emanating from prison informers and addressing concerns over the integrity of criminal justice processes. This is in part because there is little connection between general moral prescriptions such as 'The truth is an absolute' to be found on the final page of Volume One and the specific material and discursive practices through which a range of criminal justice agencies construct and produce a 'truth' or 'truths' for the particular purposes of determining legal culpability in relation to criminal charges. As in so many areas, absolutist or fundamentalist notions of truth tend to operate as a barrier to developing more nuanced and effective ethical standards precisely because they limit the roles of agency and reflexivity in the evaluation of human conduct. In providing generalist statements of principle which bear only in the most remote and abstract way on the complex legal and ethical contexts in which criminal justice officials are actually acting, they provide both little effective guidance and absolve individuals from being held responsible for the consequences of their own actions.

The nature of the prison regime

Another disappointment in the Report is the failure to link the abuses associated with the use of prison informants to an analysis of the nature of the prison regime. There is some discussion in the Report on the motivations behind perjury. Explanations provided include 'personal advantage', 'boredom', 'to engender some action', 'because they are induced to do so by threat or payment' (cf the claim previously discussed that there was no evidence of providing 'benefits in order to obtain false statements from prisoners inculpating others'

p.53). And in adopting Justice McHugh's discussion in *Pollitt* that the unreliability of prisoner informants 'arises not so much because the prisoner has been convicted of serious crime but because the character of that person has been altered for the worse by exposure to the values and culture of prison society' (p.57) the Report moves beyond the facile pathologising of prisoners practiced by many critics of the use of prison informers. This view, common amongst talkback radio ideologues is that prisoners are not to be believed merely because they have by definition been convicted of crimes and therefore are inherently untrustworthy or liars. Such views are another version of convict taint and forfeiture and the ICAC does well to follow Justice McHugh and move beyond them.

However while acknowledging the role of the 'values and culture of the prison society' a remarkable disconnection is achieved in that such values and culture appear to have been generated entirely autonomously of the activities of those who run and govern the prison. Autonomous of the battery of disciplinary and normalising practices laid down in Prisons Acts, Rules and Regulations and in the day to day routines and regimes of prison life. Strangely, one might think, the structures and agencies through which prisons are actually run seem to have no effect in shaping the prison values and culture.

A consequence of this sleight of hand is that discussion of the nature and history of, to take but one example, legitimate incentives within the prison system such as a proper remission system, is deemed irrelevant to the issues discussed in the ICAC Report. But the dubious growth in prison informers has been fuelled by repressive policies in relation to prison conditions,[7] the introduction of fixed parole terms under the banner of 'truth in sentencing' and especially the abolition of remissions in a number of states. This is particularly the case in NSW, where most of the problems and abuses seem to have arisen.

The promotion of informing as one of the few remaining incentives in the prison system encourages manipulative and dishonest behaviour, brings the criminal justice system into disrepute, and induces cynicism against a system which is seen to have a price for everything, in which even criminality can be turned into a commodity. Quite what would be wrong with a formalised system of remissions and other incentives oriented around the promotion of positive values associated with education, participation in programs, work, cultural activities, and so on, is not clear. Perhaps the difficulty is that this might put an onus on governments to actually provide such services!

The future of informing

Ultimately Commissioner Temby places the 'prime responsibility for fixing up the system' back on the DPP, the Police and Corrective Services. He adds that 'much will depend upon the willingness of senior officials in those organisations to recognise the need for, and implement, change' (p.83.) It will be interesting to see how these agencies respond to the Commissioner's challenge, given that this is arguably akin to putting the ball back where it was before.

Doubt as to the commitment of at least one of these agencies is justified on the basis of a brief 'postscript' to the report. On 11 November 1992, nearly at the end of the inquiry, the ICAC received a letter from the Office of the Solicitor, NSW Police Service, requesting that the Report 'not refer to the name or other identifying characteristics of 16 individuals', together with a request for permanent suppression orders. Among the 16 were Cavanough, Cook, Denning, Heuston, Many, Wakefield and Waters, in short the key informers, who together with their handlers had been the major subject of the whole inquiry.

The application was denied, the Commissioner describing it as having 'no proper basis' (p.112). He adds that the fact that the application was even made 'demonstrates an attitude which is protective, possessive, and excessive'. The application also signals the unrepentant nature of the police service in relation to the demonstrated abuses which emerged during the Commission's hearings and which now have been detailed in its Report. Such a response makes a faith in the preparedness of the key criminal justice agencies to voluntarily take up the Report's main recommendations appear somewhat naive.

In the week the Report was released a successful action was taken in the Administrative Law Division of the NSW Supreme Court by several police officers, investigated as part of the separate ICAC inquiry into the 'relationship between police (especially past and present 'Detectives and criminals... with particular reference to defined areas of criminality, including armed robberies and illegal gambling'). Justice Cole ruled on January 29 that allowing allegations by criminal informer Neddy Smith against the officers in open hearing unnecessarily damaged their reputations and amounted to a denial of natural justice.[8]

Commissioner Temby quickly announced his intention to appeal and moved hearings into closed session, noting that the decision would have significant implications for the future public conduct of Royal Commissions. The appeal was heard before the NSW Court of Appeal in February and judgment was delivered on 30 March.[9] Chief Justice Gleeson, with whom Justice Mahoney agreed, in the majority, upheld the Commissioner's appeal, holding that while there were clearly dangers to the reputations of the police officers involved the Commissioner had not made any error of law in exercising the statutory discretion open to him to hold the hearings in public.[10] Gleeson CJ stated that 'there is a fallacy in passing from the premise that the danger of harm to reputation requires the observance of procedural fairness to the conclusion that fairness requires that proceedings be conducted in all respects in such a way as to minimise damage to reputation' (p.13).

Justice Kirby, President of the Court of Appeal dissented. Arguing that 'the categories of procedural fairness are not closed' he placed particular weight on 'the limitations which Mr Smith placed upon the testing of his evidence' (p.31) in holding that procedural fairness required a different exercise of the discretion. The limitation referred to was Smith's indication that, as Gleeson CJ put it, he was not willing 'to implicate criminals who were not police officers', adding his bemusement at 'why he might think he would be at greater risk of reprisals from alleged criminals who were not police officers than from alleged criminals who were police officers is not apparent'(p.5). Noting that his approach was 'necessarily confined to the peculiar facts of this case' Kirby P concluded that 'Natural justice forbade, in the circumstances, the conduct of an inquiry in public in which a notorious criminal secured a free kick against persons who he accused in public but denied the chance of fully testing and answering in public those accusations' (pp.38-9).

This skirmish over the conduct of the continuing inquiry into the relationship between police and criminals featuring

notorious criminal Neddy Smith in the key role as informer in relation to alleged police involvement in armed robberies highlights the uneasy relationship between that inquiry and the Informers Report.[11] Much media comment on the Report referred to the irony of the ICAC criticising police, corrective services and prosecution agencies for their handling of informers while at the same time relying heavily in its other inquiry on an informer such as Neddy Smith.

While the ICAC does run the risk of infringing its own prescriptions on informers the irony is not as clear as has been suggested given the actual findings of the Informers Report, as outlined above. For the Report seems to be run through with a sense that the various 'stratagems' were well intentioned, 'noble ends', and a supportive attitude to the use of informers. An attitude forged under the banner of generalist statements of principle such as the one quoted earlier that 'The truth is an absolute' with its attendant call to public officials: 'the only safe approach is to deal honestly with all. Honesty cannot be selective' (p.118).

The ICAC Report has usefully contributed to public exposure of the abuses and dangers involved in the use of prison informers. This exposure, together with an increasing awareness amongst the judiciary and the general public from whence juries are drawn, of the many dangers in the use of prison informers, dangers productive of miscarriages of justice, may work to stem the further growth of some of the practices so revealed. It seems unlikely however that this will be the last we will hear of the use of prison informers. The ICAC itself will see to that.

References

1. The report is remarkably coy in not nominating the 'various commentators' referred to, although some of the culprits emerge from Justice McHugh's judgment in *Pollitt's* case (see ref.2.) where citations *are* given. This discrete approach to the citation of sources is compounded by the absence of any bibliography to the Report, reducing its usefulness as a resource and research document. Perhaps this complaint is mere academic affectation, but given the time and resources allocated to the inquiry, compliance with the usual norms of citation and reference might have been expected. For those who do not have *Pollitt* close at hand the articles cited by Justice McHugh are: Brown, D. and Duffy, B., 'Privatising Police Verbal: The Growth Industry in Prison Informants', in K. Carrington, M. Dever, R. Hogg, J. Bargen and A. Lohrey (eds) *Travesty! Miscarriages of Justice*, Pluto Press, Sydney, 1991, pp.181-231; Brown, D., 'Prisoner Informants: The New Growth Industry', (1991) *Australian Society* June; Gibney, J. and Woodyatt, T., 'Gaolhouse Verbal', (1991) 16 *Legal Service Bulletin* 16. For a comment on the ICAC Informers Report see: Brown, D., 'Justice on the word of criminals: a conundrum', *Sydney Morning Herald* 1.4.93.
2. In the leading judgment on this point Justice McHugh pointed out that the conventional corroboration warning 'seems inappropriate' in relation to the evidence of prison informers for the reason that if the accused is already in custody charged with an offence there will already of necessity be some independent evidence connecting the accused with the crime. So that paradoxically a conventional corroboration warning might actually operate to the disadvantage of the accused: 'such a direction might unwittingly induce the jury to believe that it is safe to act upon the evidence of a prison informer because his or her evidence is 'corroborated' (p.57). Justice McHugh went on to state that 'because evidence by prison informers is inherently unreliable, it follows that a confession allegedly made to a prison informer must be the subject of a direction at least as stringent as that required when a disputed confession is alleged to have been made while the accused was in police custody' (p.58). So that the jury should be directed that it is dangerous to act on the evidence of a prison informer unless 'substantially confirmed by independent evidence' and that 'only in the most exceptional case, if at all, could the evidence of a fellow prisoner be regarded as independent evidence for this purpose'. Justices Deane, Dawson and Gaudron, and Toohey supported this conclusion with varying emphases.

   In *R v Clough* (NSW CCA, 3 September 1992, unreported) Hunt CJ at CL 'gathered' a number of propositions from the *Pollitt* judgments (at pp.15-17) and went on to suggest that while the direction to be given:

   > must be moulded to fit the circumstances of the particular case, and not follow any set formula, it should, however include warnings-
   >
   > (a) that the experience of the courts over the years has demonstrated that the evidence of such witnesses is potentially unreliable, together with an explanation as to why that is so;
   >
   > (b) that it is for that reason necessary to scrutinise the evidence of the particular witness in question with great care;
   >
   > (c) that in the absence of evidence of substantial confirmation provided by independent evidence that the confession was in fact made, it is dangerous to convict upon the evidence of that witness;
   >
   > (d) that such independent evidence is unlikely to be provided by a fellow prisoner, because he is likely to be motivated to concoct his evidence for the same reasons; and
   >
   > (e) that, having regard to the potential unreliability of the evidence, there is a risk of a miscarriage of justice if too much importance is attached to it. [pp.17-18]

3. On 16 February the NSW DPP issued an amendment to prosecution guidelines as recommended in the ICAC Report. Under s.13 of the *Director of Public Prosecutions Act* 1986 Guideline 11 dealing with prosecution duties of disclosure was amended by the addition of a section dealing specifically with informers. The addition (in italics) states:

   > The guiding principle is always full disclosure of the case-in-chief for the prosecution and all other evidence relevant to the guilt or innocence of th accused *including, in the case of informers to be called as witnesses:*
   >
   > *(a) the informer's criminal record;*
   >
   > *(b) whether Police or Corrective Services have any information which might assist in evaluating the informer's credibility, particularly as to:*
   >
   > *(i) motivation,*
   >
   > *(ii) previous animosity against defendant(s)/accused,*
   >
   > *(iii) favourable/different treatment by corrective services,*
   >
   > *(iv) mental health/reliability of informer,*
   >
   > *(v) the extent to which public officers have given evidence or written reports on behalf of the informer (e.g. to Courts, Parole Boards)*
   >
   > *(c) whether any monetary or other benefit has been claimed, offered or provided;*
   >
   > *(d) whether the informer was in custody at the time of giving assistance;*
   >
   > *(e) whether an indemnity has been granted or requested;*
   >
   > *(f) whether any discount on sentence has been given for assistance in the matter;*
   >
   > *(g) other current or former criminal proceedings in which the informer has given evidence or was proposed to give evidence.*
   >
   > Such full disclosure may only be limited where there is a real need to protect the integrity of the administration of justice, including the need to prevent the endangerment of the life or safety of witnesses or interference with the administration of justice.
   >
   > In addition on the same date an amendment was issued by the DPP to the statement of prosecution policy dealing with informers.

4. See Brown, M., 'Questions draw hint that the bad old days may linger', *Sydney Morning Herald* 23.11.92. Disgraced former detective Roger Rogerson had earlier shown surprising candour in relation to police practices of verbaling and planting evidence in comments during both a television and print media interview. 'Verbals are part of police culture. Police would think you're weak if you didn't do it . . . The hardest part was thinking up excuses to explain why people didn't sign up . . . they're still doing it.' Murphy, C., 'Tailor made confessions', *Sun-Herald* 13.10.91, p.22.

   And on planting or 'loading up' suspects:

   > Someone would either tap you on the shoulder or come knocking on your door and you'd be given a present . . . the planting of a gun or explosives . . . you know, a couple of sticks of geli, found in their car or in their possession . . . it's so much easier to plant drugs because they're so small . . . it was all done in th interests of, ah, truth, justice and ah, and ah, keeping things on an even keel, and keeping the crims under control. ['Police Story', ABC TV *Four Corners* September 1991]

5. For more detailed treatments of the many benefits obtained by Raymond Dennning see: Robert Brook, 'Raymond Denning's Best Planned Escape', in K. Carrington and others (eds), above, pp.102-128; Anderson, Tim, *Take Two: The Criminal Justice System Revisited*, Bantam Books, Sydney, 1992, pp.83-104; 319-352, especially p.329.
6. See for example *Chidiac v The Queen* (1991) 65 ALJR 207; *Doney v The Queen* (1990) 65 ALJR 45; Brook, R., 'The Conviction of Neil Chidiac: Verdict Unsatisfactory', CEFTAA Occasional Paper, Sydney, 1992. And see generally Carrington and others, above.
7. Previous work has emphasised the deterioration in prison conditions under punitive NSW prisons Minister Michael Yabsley as a major condition encouraging the use of prisoner informers, along with the increasing limita-

tions on police verbal and the rise in the power of the Internal Intelligence Unit of the Corrective Services Department. (Brown and Duffy 1991, above, pp.198-202). But some of the individual cases investigated by the ICAC occurred prior to the Yabsley regime and the IIU was established in 1985. It may have been worth investigating whether another condition for the rise of prison informants was the state of the internal administration of the Department of Corrective Services during and after the scandal surrounding the early release on licence scheme in NSW in the early 1980s and the role of key senior officials common to both periods. The Jackson licence release scheme was referred to the ICAC in August 1988 by then Premier Greiner (*SMH* 'Jackson's jail release scam to go to ICAC' 19 August 1988). For a detailed treatment of this period see Chan, Janet, *Doing Less Time*, Sydney Institute of Criminology, 1992.

8 *Lance William Chaffey & Ors v Independent Commission Against Corruption* Supreme Court of NSW Administrative Law Division 29 January 1993 unreported.

9. *Independent Commission Against Corruption v Chaffey & Ors* NSW Court of Criminal Appeal 30 March 1993 unreported.

10. Under s.31(1) of the *Independent Commission Against Corruption Act* 1988 the Commissioner has a discretion to hold hearings 'in public or in private, or partly in public and partly in private'. The legislation had been amended in 1990, the earlier form of s.31(1) providing that 'a hearing shall be held in public, unless the Commission directs that the hearing be held in private'. The amendment was prompted by the concerns of the Joint Parliamentary Committee of Parliament set up under s.63 of the *ICAC Act* 'to monitor and to review the exercise by the Commission of its functions' that 'reputations can be unfairly and unnecessarily damaged in public hearings'. Under s.31(3) 'the Commissioner is obliged to have regard to any matters which it considers to be related to the public interest.' Section 12 provides that 'in exercising its functions, the Commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concern'.

11. A further development in this inquiry is the laying of a charge of contempt of the ICAC against *Sydney Morning Herald* reporter Ms Deborah Cornwall. The charge relates to her refusal to reveal her sources in relation to an article in which she quoted an unnamed police officer stating that 'it was Neddy who dobbed in' a nominated prisoner for a murder and that this person 'might be interested to know that. He is doing life at the Bay as well'. Mr Temby has argued that the statement was wilfully false information designed to discredit Smith and warn off other potential ICAC informants. The journalists code of ethics protecting the confidentiality of sources is not usually regarded as extending to the provision of knowingly false information. While Ms Cornwall appeared to acknowledge before the ICAC that she had been misled, in a later hearing before the Supreme Court her counsel challenged the contention that the statement was obviously false. The matter has been set down for late April. See Malcolm Brown, 'Herald reporter to face contempt charge', *SMH* 26.3.93; Brown, Malcolm, 'Contempt charge to go to hearing', *SMH* 27.3.93.

References from page 71

References

1. Baker, D., 'Maladministration and the Law of Torts' (1985) 10 *Adelaide Law Review* 207 at p.208.
2. Schwartz, B., *Introduction to American Administrative Law*, 1958, p.207, quoted in J.S. Read, 'Damages in Administrative Law', (1988) 14 *Commonwealth Law Bulletin* 428 at p.441.
3. Hotop, S.D., *Cases and Materials on Review of Administrative Action*, 2nd edn., The Law Book Company Limited, Sydney, 1983, p.150.
4. Allan, T.R.S., 'Pragmatism and Theory in Public Law' (1988) 104 *Law Quarterly Review* 422 at pp.438-439.
5. Ison, T.G., 'The Sovereignty of the Judiciary', (1986) 10 *Adelaide Law Review* 1.
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Continued from page 79

Solicitors advising farmer retirees might well bring proceedings testing the applicability of these methods of calculating pensions when faced with particular needs of their clients. Resolving this uncertainty would certainly help farmer retirees take more decisive action over the handing down of the family farm. Another uncertainty is the fact the *Social Security Act* is always being amended.

The eligibility of farmers for pensions depends on findings of fact which are subjective in nature, and by implication, unpredictable. The current approach to assessing pensions is based on a new government policy as yet untested in the courts. The implication is that farmers are welfare recipients, not the holders of clear entitlements.

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LAWYERS AND SOCIAL WORKERS IN COLLABORATION

The School of Social Work at the University of New South Wales is conducting research into ways of facilitating and improving collaboration between social workers and lawyers. The project is funded by the Law Foundation of New South Wales and aims to examine areas of practice in which the roles of the two professions overlap or where they share common skills and knowledge.

The research will identify the respective tasks undertaken by social workers and lawyers in these areas, and the clarity of mutual understanding. It will place particular emphasis on articulating and publicising innovative strategies for collaboration between the two professions. A further aim is to develop new methods of teaching such skills and strategies to undergraduate students and in continuing education.

The researchers will conduct interviews with practitioners of both disciplines as well as convening group discussions on key issues identified. The results of the research will be published in early 1994 and will be disseminated as widely as possible.

The coordinator of the project, Mick Hillman, is the social work placement supervisor at Kingsford Legal Centre in Sydney. The centre is a compulsory placement for students enrolled in Australia's only combined Social Work/Law degrees program.

If you are interested in discussing or participating in this research, please contact Jane Hargreaves, (02) 697 4764 or Mick Hillman (02) 398 6366.