

GOCORP Interactive Gambling Licence:

Report on an Advice by
R W Gotterson QC

SEPTEMBER 1999

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ISBN 0 7242 7146 5

Printed by GOPRINT, Brisbane.

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Dear Sirs

In accordance with Section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its report titled *Gocorp Interactive Gambling Licence: Report on an Advice by R W Gotterson QC*. The Commission adopted Mr Gotterson's advice as its report.

Yours faithfully

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Dear Mr Butler

Re: Issue of Interactive Gambling Licence to Gocorp Limited

Pursuant to Section 66 of the Criminal Justice Act 1989, on 6 August 1999 the Criminal Justice Commission engaged me as an independent qualified person:

To examine the contents of a letter dated 2 August 1999 of the Leader of the Opposition, the Honourable Rob Borbidge MLA, and any other documentation and information in the possession of the Commission relating to the issuing of an Internet Casino Licence to Gocorp Limited;

To supervise the carrying out of any enquiries by the Commission as counsel considers appropriate in order to assess whether a reasonable suspicion of official misconduct exists concerning the issuing of the said licence;

To report on the results of any such examination and enquiries and advise whether a reasonable suspicion of official misconduct exists;

If counsel advises that a reasonable suspicion of official misconduct exists, to advise on the nature of the investigation of the suspected official misconduct that the Commission should conduct, including whether public and/or private hearings should be held.

Attached is my Memorandum of Advice in relation to the matter.

Yours sincerely,

R.W. Gotterson Q.C.
Brisbane

24 September 1999

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Glossary

AIEL	Australian Internet Entertainment Limited
Business Associate	A person whom the Minister reasonably believes is associated with the ownership or management of the applicant's operations or will, if an interactive gambling licence is issued to the applicant, be associated with the ownership or management of the licensed provider's operations
Commission	Criminal Justice Commission
CJ Act	<i>Criminal Justice Act 1989</i>
CSC	Compliance Steering Committee of the Queensland Office of Gaming Regulation
Executive associate	An executive officer of a corporation, partner or trustee, or another person stated by the Minister whom the Minister reasonably believes is associated with the ownership or management of the applicant's operations or will, if an interactive gambling licence is issued to the applicant, be associated with the ownership or management of the licensed provider's operations
Executive Director	Mr David Ford - the Executive Director of the Queensland Office of Gaming Regulation
Gocorp	GOCORP Limited (known as Australian Internet Entertainment Limited prior to 7.5.99)
ICAC	Independent Commission Against Corruption
IGPP Act	<i>Interactive Gambling (Player Protection) Act 1998</i>
Licence	A licence issued under Part 3 of the <i>Interactive Gambling (Player Protection) Act 1998</i>
MEPPC	Members' Ethics and Parliamentary Privileges Committee
MLA	Member of the Legislative Assembly
Navari	Navari Pty Ltd
Official misconduct	Official misconduct within the meaning of Section 32 of the <i>Criminal Justice Act 1989</i>
QAO	Queensland Audit Office
QOGR	Queensland Office of Gaming Regulation
QPS	Queensland Police Service
Regulations	<i>Interactive Gambling (Player Protection) Regulation 1998</i>
Supercom	Supercom Consultants Pty Ltd
Topki	Topki Holdings Pty Ltd
Treasurer	Mr David Hamill MLA - The Treasurer of Queensland
Under Treasurer	Mr Gerard Bradley

Chronology

18 March 1998	<i>Interactive Gambling (Player Protection) Act 1998</i> enacted by Coalition Government
19 May 1998	Governor dissolves Parliament
26 June 1998	Labor officially form Government
29 June 1998	Mr David Hamill appointed Treasurer
1 October 1998	<i>Interactive Gambling (Player Protection) Act 1998</i> and <i>Interactive Gambling (Player Protection) Regulation</i> commenced
16 October 1998	Australian Internet Entertainment Limited (AIEL) submitted a formal application for an interactive gambling licence
November 1998 - May 1999	Probity checks carried out by QOGR
7 May 1999	AIEL changed its name to Gocorp Limited
2 June 1999	Memorandum under the hand of the Under Treasurer recommends to the Treasurer that a licence should be granted to Gocorp
3 June 1999	The Treasurer grants a 15 year licence to Gocorp

Executive Summary

1. The Commission's instructions required me to examine certain documentation including a letter of the Leader of the Opposition, Mr Borbidge MLA, and information in the Commission's possession relating to the issuing of an interactive gambling licence to GOCORP Limited and on the basis of that examination to advise if a reasonable suspicion of official misconduct exists concerning the issuing of the licence, or if preliminary enquiries should be carried out before such an assessment could be made.
2. On the basis of my examination I recommended to the Commission, and the Commission authorised, the conduct of preliminary enquiries by way of interview of individuals and collection of further documentary material. I supervised the conduct of the preliminary enquiries.
3. The Commission's instructions envisaged a two step process:
 - (i) after conducting preliminary enquiries to advise whether a reasonable suspicion of official misconduct in the issuing of the licence exists; and
 - (ii) if there is a reasonable suspicion to advise on how the suspected official misconduct should be investigated, including whether public and/or private hearings should be held.
4. The functions of the Commission's official misconduct division include to investigate official misconduct or alleged or suspected official misconduct. For the purposes of this investigation, only conduct that is official misconduct or alleged or suspected official misconduct is within its investigative jurisdiction. Accordingly, the Commission's instructions required me to advise whether a reasonable suspicion of official misconduct exists in relation to the issuing of the licence.
5. For there to be a **reasonable suspicion** of official misconduct there must exist a state of affairs which creates in the mind of a reasonable person an actual apprehension, beyond mere speculation, of official misconduct.
6. **Official misconduct** is defined in the *Criminal Justice Act*. A holder of an appointment in a unit of public administration commits official misconduct when he or she acts officially in a way that is not honest or not impartial, or involves a breach of trust, or is a misuse of officially obtained information, and when in so acting, the appointment holder commits a criminal offence or a disciplinary breach justifying termination of office. In the case of elected appointment holders, the act must amount to a criminal offence. A person who does not hold an appointment may commit official misconduct when he or she adversely affects, or attempts to adversely affect, the honest and impartial discharge of functions or exercise of powers by an appointment holder and when his or her conduct amounts to a criminal offence.
7. The criminal offence element of official misconduct means that the investigator must identify the type or types of criminal offences that might possibly be committed in particular circumstances and then look for signs of them. Criminal offences in the nature of bribery - either offering or taking bribes - were identified as relevant for these enquiries and provided a focus for investigators.
8. Lobbying by, or on behalf of, an applicant is not itself official misconduct - it is not a criminal offence to lobby a government official for a result. This is so even when the lobbyist is an elected official.

9. Ordinarily, making a false or misleading statement to obtain a licence - which can be criminal offence - is not official misconduct because the appointment holder to whom it is made is not pressured towards dishonest or partial conduct by the statement. Dishonesty or partiality require a consciousness of wrongdoing or of favouritism respectively on the part of the appointment holder. With false or misleading statements ordinarily the recipient will believe that the statement is true and will not be conscious of actual or potential wrongdoing or favouritism on his or her part.
10. To detect conduct that could be official misconduct requires a careful examination of how individuals involved in the process of issuing the licence went about performing their respective responsibilities in that process. This approach was adopted in the preliminary enquiries. Some seventeen officers of the Queensland Office of Gaming Regulation, Queensland Treasury and the Premier's Department were interviewed by experienced investigative officers of the Commission. I personally interviewed Mr David Hamill MLA, Treasurer, Mr Darryl Briskey MLA, Parliamentary Secretary to the Treasurer, and Mr Gerard Bradley, Under Treasurer. Each interview involved an examination of the individual's conduct against relevant contemporaneous documents.
11. I am satisfied that the enquiries that have been undertaken by the Commission are sufficient for the purpose of ascertaining whether or not a reasonable suspicion of official misconduct exists concerning the issuing of the licence to GOCORP Limited.
12. The results of these investigations are that in my view:
 - (i) no reasonable suspicion of official misconduct on the part of any officer of QOGR concerning the issuing of the licence exists;
 - (ii) no reasonable suspicion of official misconduct on the part of any Treasury officer concerning the issuing of the licence exists;
 - (iii) no reasonable suspicion of official misconduct on the part of Mr DJ Hamill MLA or Mr DJ Briskey MLA concerning the issuing of the licence exists; and
 - (iv) no reasonable suspicion of official misconduct on the part of Gocorp, or any person associated with it, including Mr W T D'Arcy MLA, Mr D W Livingstone and Mr P J Pisasale, concerning the issuing of the licence exists.
13. I come to the above conclusions having reached the view that there is no evidence that any of the following conduct occurred:
 - deliberately fast-tracking the processing of the application to confer a competitive advantage on the applicant;
 - carrying out deliberately inadequate probity reviews, for example, by not investigating a person whose suitability should have been investigated;
 - deliberately reporting inadequately on the probity reviews;
 - deliberately making recommendations in favour of a grant of the licence when an honest recommendation should have been against the grant or in favour of the grant on more stringent terms;

- deliberately truncating a line of enquiry when it was realised that this may have lead to information being produced which was inimical to the granting of the licence;
 - any act of favourable treatment or any act which showed a lack of impartiality;
 - any act by an individual concerned with the process of issuing or granting the licence which involved the misuse of information obtained by these persons because of their positions;
 - any failure to act honestly in processing or granting the licence
 - any act which constituted a breach of trust by any individual concerned with the process of issuing or granting the licence.
14. Furthermore there is no evidence that any gifts or promises of money, property or other benefits were offered or given to any person to influence a decision.
 15. I consider that further investigations by the Commission of the circumstances surrounding the issuing of the licence are neither necessary nor warranted. I so advise.
 16. The processing of this licence application has served to highlight a number of resourcing issues for QOGR which, in my judgement, had implications for its probity investigation of the application. These issues relate to coverage of the whole probity investigation process with adequately trained and experienced personnel, investigation techniques and procedures for recording relevant probity information and for transmitting it to probity investigators.
 17. The participation of MLAs in lobbying activities is a matter of public interest. The degree of interest is heightened when the MLA has a direct or indirect financial interest in the outcome. The responsible authority, the Members Ethics and Parliamentary Privileges Committee of the Legislative Assembly, has circulated a draft Code of Conduct. It is desirable that a Code of Conduct which takes account of ethical issues raised by the GOCORP Limited application, be adopted as soon as possible.

Chapter 1

Introduction

The Commission's instructions

On 6th August 1999, the Commission resolved to engage the services of an independent qualified person pursuant to s.66 of the *Criminal Justice Act 1989* (the CJ Act) to conduct preliminary enquiries in relation to the grant by the Treasurer on 3rd June 1999 of an interactive gambling licence (the licence) to GOCORP Limited (Gocorp). The *Interactive Gambling (Player Protection) Act 1999* (the IGPP Act) provides for the granting by the Treasurer, as the responsible Minister, of interactive gambling licences. On the same day, 6th August, I was engaged by the Commission to conduct the preliminary enquiries.

Background to resolution

The Commission is required at all times to act independently, impartially, fairly and in the public interest: s.22 CJ Act. Having regard to this duty and to the need to ensure that it was seen to be discharging it, the Commission so resolved in light of the following factors which are set out in the Minute of the Resolution:

- (a) Allegations of improper conduct have been made in the media since 27 July 1999 concerning the circumstances surrounding the issuing of an Internet Casino Licence to Gocorp by the Treasurer of the State of Queensland, the Honourable David John Hamill;
- (b) The Commission commenced of its own initiative pursuant to Section 29(2) of the (Act) to obtain information in order to assess whether the circumstances surrounding the issuing of the said licence gave rise to a reasonable suspicion of official misconduct thereby enlivening the Commission's jurisdiction;
- (c) By letter to the Commission dated 2 August 1999 the Leader of the Opposition, the Honourable Rob Borbidge MLA, raised concerns of improper conduct including official misconduct concerning the issuing of the said licence;
- (d) The Commission has received a substantial quantity of documentation and other information from the Queensland Audit Office in relation to the circumstances surrounding the issuing of the said licence;
- (e) The Commission is required by Section 29(3)(d)(ii) of the Act to investigate cases of alleged or suspected official misconduct by persons holding appointments in units of public administration that come to its notice from any source.

Scope of brief

The preliminary enquiries that I am to conduct are detailed in the Minute of the Resolution as follows:

- (i) To examine the contents of the letter of the Leader of the Opposition and any other documentation and information in the possession of the Commission relating to the issuing of the said licence;
- (ii) On the basis of that examination, to advise if a reasonable suspicion of official misconduct exists concerning the issuing of the said licence or if preliminary enquiries should be carried out by the Commission before such an assessment can be made;
- (iii) To supervise the carrying out of any enquiries recommended under paragraph (ii);
- (iv) To report on the results of any enquiries recommended under paragraph (ii) and advise if a reasonable suspicion of official misconduct exists concerning the issuing of the said licence;
- (v) If counsel advises that a reasonable suspicion of official misconduct exists, to advise on the nature of the investigation of the suspected official misconduct that the Commission should conduct, including whether public and/or private hearings should be held.

GOCORP Limited (Gocorp)

Gocorp was incorporated in Queensland as a public company on 30th June 1998. Its name upon incorporation was Australian Internet Entertainment Ltd. Its name was changed to Gocorp on 7th May 1999. The change of name had no significance for the grant of the licence. In this advice the applicant company is referred to either as *Gocorp* or as *the applicant*. For the sake of simplicity, the name, Australian Internet Entertainment Ltd, is not used.

Prior to the incorporation of Gocorp, those involved in the promotion of the project which culminated in the grant of the Gocorp licence had considered using two other companies for the project, briefly, Australian-On-Line Gaming Pty Limited, and, then, Australian Online Entertainment Limited. Representatives of Australian Online Entertainment Limited met with QOGR representatives in relation to the project prior to the advent of Gocorp. I refer to this later in this advice.

Conduct of enquiries

I commenced work on preliminary enquiries on Monday 9th August 1999. The Commission then, and subsequently, has assured me that its resources are available to assist me and that I should not hesitate to request any assistance I consider necessary. I have been assisted in my enquiries by Mr S Lambrides, Detective Inspector C Reeves, Mr K Weimar and other officers of the Commission. All assistance that I have requested through Mr Lambrides has been provided to me.

My initial brief contained a large number of documents made available to the Commission by the Queensland Audit Office (QAO) which has been conducting parallel enquiries for the purpose of a special audit of the issuing of the licence. These documents were obtained from the Queensland Office of Gaming Regulation (QOGR) or supplied to the Auditor-General by a number of parties in response to notices issued by him under s.86 of the *Financial Administration and Audit Act 1977* for the purpose of his independent inquiry into the issue of this licence. Having perused those documents, I formed the opinions that it was impossible from them alone to determine whether a reasonable suspicion of official misconduct existed and, that any deliberation upon the issue whether a reasonable suspicion existed or not which was limited to documents alone would be based on incomplete and inadequate material. I so

advised the Commission on 17th August 1999 and recommended that two steps necessary for a proper deliberation upon this issue, be taken, namely:

- that individuals, being officers in the Premier's Department, the Queensland Treasury and QOGR who had some association with the process by which this licence was granted, be interviewed with respect to the circumstances surrounding the grant of the licence; and
- that further documents be sought from relevant Government departments or individuals.

On the same date, the Commission resolved to accept my advice and authorised me to take the investigative steps I had recommended.

Since that date, a number of investigative steps have been taken, including the following:

1. Officers of the Commission have attended at the offices of QOGR, where they inspected all its files, and were supplied with copies of a large number of documents.
2. A large number of tape recorded records of interviews conducted by officers of QOGR during the course of probity investigations in early 1999 have been transcribed and examined.
3. Officers of the Commission have conducted detailed interviews with 17 officers or former officers attached to the Queensland Treasury, the Premier's Department or QOGR.
4. I have conducted detailed interviews of the Treasurer, Mr DJ Hamill MLA, his Parliamentary Secretary, Mr DJ Briskey MLA and the Under Treasurer, Mr G Bradley.

QAO has continued to receive a large number of documents intermittently from numerous parties to whom notices were given. Copies of such of those documents as were considered relevant to my enquiries were made available to the Commission by QAO shortly after receipt. During the course of his investigations, the Auditor-General interviewed on oath some eleven individuals. Transcripts and/or tape recordings of those interviews have been supplied to the Commission.

I mention also that on two occasions, the Leader of the Opposition, Mr R Borbidge, wrote directly to the Commission or to myself conveying certain information and forwarding certain documents of relevance to my enquiries. This correspondence was in addition to Mr Borbidge's original letter dated 2nd August 1999 which listed a number of concerns of improper conduct relating to the issue of the said licence, the detail of which I will return to later in this advice. I also received correspondence, being a copy of a letter addressed to the Auditor-General, on one occasion from the Leader of the Liberal Party, Dr David Watson MLA, containing further information.

I have examined all of the abovementioned documents and have had regard to the information contained in them and the information disclosed in the course of interviews for the purpose of conducting my enquiries.

Liaison with the Queensland Audit Office

I was advised that the Chairman of the Commission had discussed with the Auditor-General the respective enquiries to be conducted by the two organisations and that they had agreed to co-operate with

each other to the extent permitted by the legislation governing the two organisations. The purpose of this was to ensure a timely and cost-effective investigation aimed at preventing, or at least reducing, any duplication of effort and to minimise the cost on the public purse.

The Commission's enquiries were in the nature of a forensic investigation aimed at ascertaining whether there was a reasonable suspicion of official misconduct on the part of any person. The QAO's enquiries were by way of audit.

Notwithstanding the difference in focus I report that there was full co-operation to the extent permitted by the respective legislation.

Focus of enquiries

It will be noted from the Minute of the Commission's resolution of 6th August 1999 that the advice I am to give the Commission, in the first instance, is as to whether a reasonable suspicion of official misconduct exists concerning the issuing of the licence. In view of the Commission's jurisdiction I consider this to be an appropriate initial focus. This prescription has served to focus my enquiries on that broad issue, namely, whether a reasonable suspicion of official misconduct exists. The issue comprises the key expressions *reasonable suspicion* and *official misconduct*. They each have had a prominent role both in defining the scope of this issue and in moulding the approach to, and content of, my enquiries. It is appropriate then that I explain how each expression had defined the scope and then how they have moulded the enquiries. I turn first to the definitional aspects of the expressions.

Chapter 2

Criminal Justice Act - interpretational issues

Reasonable suspicion

S.29(3) of the CJ Act invests the official misconduct division of the Commission with a number of functions, one of which is:

- (d) to investigate cases of -
 - (i) alleged or suspected misconduct by members of the police service; or
 - (ii) alleged or suspected official misconduct by persons holding appointments in other units of public administration;
- that come to its notice from any source, including by complaint or information from an anonymous source.

Therefore for present purposes **only conduct that is official misconduct or alleged or suspected official misconduct is within its investigative jurisdiction.**

Whilst, in this context, the CJ Act speaks of *suspected official misconduct*, it does not contain the expression *reasonable suspicion of official misconduct* or derivatives of it. However, the expression *reasonable suspicion*, or derivatives or analogues of it, are not infrequently encountered in other statutes both in Queensland and in other jurisdictions. Judicial exposition of its meaning in those statutory contexts does assist in discerning its meaning for the present context.

Useful guidance on the meaning is given in the decision of the Full Bench of the High Court in *George v. Rockett* (1990) 170 CLR 104. Under consideration in that case was s.679 of the *Criminal Code (Q)* which contains both the expressions *reasonable grounds for suspecting* and *reasonable grounds for believing* with regard to issuing warrants. At 115-6, the Court observed:

In considering the sufficiency of a sworn complaint to show reasonable grounds for the suspicion and belief to which s.679 refers, it is necessary to bear in mind that suspicion and belief are different states of mind (*Homes v. Thorpe* [1925] S.A.S.R. 286, at p.291); *Seven Seas Publishing Pty Ltd v. Sullivan* [1968] N.Z.L.R. 663, at p.666) and the section prescribes distinct subject matters of suspicion on the one hand and belief on the other. The justice must be satisfied that there are reasonable grounds for suspecting that 'there is in any house, vessel, vehicle, aircraft, or place - Anything' and that there are reasonable grounds for believing that the thing 'will ... afford evidence as to the commission of any offence'.

Suspicion, as Lord Devlin said in *Hussein v. Chong Fook Kam* [1970] A.C. 942, at p.948, 'in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove.' The facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief, yet some factual basis for the suspicion must be shown. In *Queensland Bacon Pty Ltd v. Rees* (1966) 115 C.L.R. 266, a question was raised as to whether a payee had reason to suspect that the payer, a debtor, 'was unable to pay [its] debts as they became due' as that phrase was used in s.95(4) of the *Bankruptcy Act 1925* (Cth). Kitto J. said (1966) 116 C.L.R. at p.303:

'A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a 'slight opinion, but without sufficient evidence', as Chambers's Dictionary expresses it. Consequently, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of its existence. The notion which 'reason to suspect' expresses in sub-s.(4) is, I think, of something which in all the circumstances would create in the mind of a reasonable person in the position of the payee an actual apprehension or fear that the situation of the payer is in actual fact that which the sub-section describes - a mistrust of the payer's ability to pay his debts as they become due and of the effect which acceptance of the payment would have as between the payee and the other creditors.'

See also the decisions of the Queensland Court of Appeal in *Gough v. Braden* [1993] 1 Qd.R. 100, 108 and *Wicks v. Marsh* [1993] 2 Qd.R. 583.

The passage from the judgment of Kitto J. cited with approval by the Full Bench had been relied on by Ormiston J. of the Supreme Court of Victoria in 1984 to illuminate the expression *has reason to suspect that a person has committed an offence* in s.16A of the *Companies (Vic) Code*. In *Commissioner for Corporate Affairs v. Guardian Investments Pty Ltd* [1984] V.R. 1019, his Honour expressed his conclusion this way at 1025:

... the word 'suspect' requires a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation as to whether an event has occurred or not.

I conclude from these authorities that for there to be a reasonable suspicion of official misconduct, there must exist a state of affairs which creates in the mind of a reasonable person an actual apprehension, beyond mere speculation, of official misconduct.

It may be inferred from this that my instructions envisage a two staged approach: the first stage is to ascertain whether a reasonable suspicion of official misconduct exists; and the second stage - to be undertaken only if a reasonable suspicion exists - is to advise on the nature of the investigation of the suspected official misconduct that the Commission should conduct, including whether public and/or private hearings should be held. A second stage investigation would be an investigation of the type contemplated in paragraph (d) of s.29(3) of the CJ Act. Thus, the occasion for me to consider whether there ought to be public and/or private hearings only arises if I advise that a reasonable suspicion of official misconduct exists.

Official misconduct

Official misconduct is defined for the purposes of the CJ Act as conduct that is in the general nature of official misconduct prescribed by s.32 and a conspiracy or attempt to engage in such conduct: s.31(1).

Section 32 is headed *General nature of official misconduct* and states:

32.(1) Official misconduct is -

- (a) conduct of a person, whether or not the person holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or
- (b) conduct of a person while the person holds or held an appointment in a unit of public administration -

- (i) that constitutes or involves the discharge of the person's functions or exercise of his or her powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial; or
- (ii) that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration; or
- (c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of the person or another person;

and in any such case, constitutes or could constitute

- (d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration - a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration; or
- (e) in the case of any other person - a criminal offence.
- (2) It is irrelevant that proceedings or action in respect of an offence to which the conduct is relevant can no longer be brought or continued or that action for termination of services on account of the conduct can no longer be taken.
- (3) A conspiracy or an attempt to engage in conduct, such as is referred to in subsection (1) is not excluded by that subsection from being official misconduct if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in subsection (1).

Section 32(1) does not appear to have a statutory antecedent in Queensland legislation. None is to be located in *The Criminal Code*. The apparent source of the definition of *official misconduct* in s.32(1) is found in ss.8(1) and 9(1) in Part 3 of the *Independent Commission Against Corruption Act 1988 (NSW)* (ICAC Act). To date, New South Wales, Queensland and Western Australia are the only Australian jurisdictions to have created ICAC-type commissions although similar bodies had been inaugurated elsewhere prior to 1988. Notwithstanding, those who drafted ss.8(1) and 9(1) and s.32(1) do not appear to have drawn from overseas legislation to draft the definitions of *corrupt conduct* and *official misconduct* respectively.

Section 8 of the ICAC Act is headed *General nature of corrupt conduct*. The expression *corrupt conduct* is defined in s.8(1) in terms that bear a strong similarity to paragraphs (a), (b) and (c) of s.32(1) of the Act. Section 9(1) is similar to the remaining two paragraphs of s.32(1), namely, (d) and (e). Although strongly similar for the most part, there are some differences in expression between s.32(1) on the one hand and ss.8(1) and 9(1) on the other. It is unnecessary for me to essay the differences in any detail for present purposes.

These provisions have been considered judicially on a number of occasions. I have had regard to the following decisions:

Section 32(1)

Walker v. Criminal Justice Commission (1992) Supreme Court of Queensland, unreported 92.439

R v. Blizzard [1993] 1 Qd.R. 151

Re Newnham [1993] 1 Qd.R. 502

Re Whiting [1994] 1 Qd.R. 561

Re Mullen [1995] 2 QdR 609

Re Watson [1997] 1 Qd.R. 340

Sections 8(1), 9(1)

Balog v. Independent Commission against Corruption (1989) 18 NSWLR 356; (1990) 169 CLR 625.

Greiner v. Independent Commission against Corruption (1992) 28 NSWLR 125.

Woodham v. Independent Commission against Corruption, Supreme Court of New South Wales, No. 30006 of 1993, unreported.

Drawing from these decisions as well as from the words of the section itself, I make the following observations on a number of aspects of s.32(1) which are relevant to my enquiries.

Whose conduct

Paragraph (a) of s.32(1) can apply to the conduct of any person whether the person holds an appointment in a unit of public administration or not. It is to be contrasted with paragraph (b) which can apply to the conduct of a person who holds or held an appointment in a unit of public administration only.

Two limbs to paragraph (a)

Operatively, paragraph (a) contains two limbs. They are found in the expressions *adversely affects* and *or could adversely affect*. Each limb operates quite differently from the other. The first limb is concerned with conduct which does produce an adverse effect. In other words, it requires that there be an actual cause and effect. By contrast, the second limb does not require an actual cause and effect. The word *could* in this context gives the connotation of having the ability or capacity to affect adversely. To ascertain whether any particular conduct has that attribute or not requires the making of an hypothesis about the potential effect of conduct.

Honest and impartial

The object of the conduct with which paragraph (a) is concerned is the **honest and impartial** discharge of functions or exercise of powers or authority. Paragraph (b)(i) contains the adjectival phrase *in a manner that is not honest or is not impartial* to qualify the words *discharge* and *exercise* which precede it. Although the paragraphs are slightly dissimilar in this regard, I consider that the words *honest* and

impartial have the same meaning when used in each paragraph. I note that paragraph (a) uses the connective *and* between the words. I doubt that the connective is used in this case for the purpose of requiring that the conduct in question affect adversely both the honest discharge or exercise **and** the impartial discharge or exercise. Were that so, there would be an odd difference between it and paragraph (b)(i) which uses the alternate *or* between the words and, also, there would be an inexplicable narrowing of paragraph (a). In my view, it is sufficient for paragraph (a) to apply that the conduct adversely affect either the honest or the impartial discharge or exercise.

The word **honest** or derivatives of it are frequently used in legislation as an attribute of conduct. In *Marchesi v. Barnes* [1970] VR 434, Gowans J. was required to consider the meaning of the expression *act honestly* as it impacted on directors' duties in s.124 of the *Companies Act 1961*. His Honour held that it referred to acting *bona fide* in the interests of the company in the performance of the functions attaching to the office of director. At 438, Gowans J. said:

A breach of the obligation to act *bona fide* in the interests of the company involves a consciousness that what is being done is not in the interests of the company and deliberate conduct in disregard of that knowledge.

This passage highlights the key elements which characterise a lack of honesty: consciousness that what is being done is wrong **and** deliberate conduct in disregard of that knowledge. It follows that the expression *is not honest* in paragraph (b)(i) connotes consciousness on the part of a repository of a function or power or authority of wrong doing in the discharge or exercise of the same **and** deliberate conduct in disregard of that knowledge. Section 32(1)(b)(i) is concerned with conduct of that kind. Section 32(1)(a), however, is concerned with the conduct of another person that influences or could influence the repository towards discharging functions or exercising powers or authority in a way that is not honest.

The word **impartial** is not as frequently used in legislation as the word **honest**. In s.8(1) of the ICAC Act, paragraph (a) contains the word *impartial* whereas paragraph (b) of that section contains its antonym *partial*. The *Oxford Dictionary* gives the following meaning for partiality:

Inclined antecedently to favour one party in a cause or one side of the question than the other; unduly favouring one party or side in a suit or controversy, or one set or class of persons rather than another; prejudice; biased; interested; unfair.

These meanings, it will be noted, include, but are not limited to, conduct involving preference for one of two or more competing interests. Notwithstanding, in *Greiner*, Mahoney J.A. at 161C expressed the view that for there to be partiality, two or more interests need to be in competition. Although he dissented as to the result in the case and neither of the majority, Gleeson C.J. or Priestly J.A., discussed the meaning of *partial*, in the later New South Wales case of *Woodham*, Grove J. at 7-8 adopted what Mahoney J.A. had to say in *Greiner* as to the meaning of the word. I respectfully suggest that in light of the dictionary definition, to require that invariably there be competing interests for there to be partiality may limit the scope of the word unduly.

Mahoney J.A. at 162C made observations on the mental element of partiality. Using his concept of preference, he said that the preference must involve not merely the consciousness of preferring and the intent to prefer, but, in the relevant sense, an appreciation of the fact that the selected person has been preferred for an unacceptable reason. These observations provide useful guidance as to the mental element of partiality in the context of s.32(1). To act in a manner that is not impartial - paragraph (b)(i) - the repository of the function or power or authority must be conscious that an individual is being

advantaged or disadvantaged, intend that the individual be so advantaged or disadvantaged, and also appreciate that the advantage is being conferred, or the disadvantage is being inflicted, for an unacceptable reason.

I have already referred to the second, or hypothesis, limb of paragraph (a). To allow for the elements of honesty and impartiality, the hypothesis that must be made becomes a rather complex one. It requires a consideration of whether or not the repository might act dishonestly or partially, and in that exercise there must be attributed to the repository the necessary mental elements of dishonesty and partiality which I have mentioned.

Paragraph (b) and connection with office

Paragraph (b) of s.32(1) refers exclusively to conduct of a person *while the person holds an appointment in a unit of public administration*. Giving effect to this phrase, Lee J in *Re Mullen* stated at p.613 that for paragraph (b) to apply *there must be misconduct by the officer in the course of or pertaining to the exercise of the powers, functions, duties or responsibilities attaching to his or her office*. His Honour specifically excluded from the ambit of official misconduct under paragraph (b), conduct which is essentially unconnected with the individual's office.

It follows from this that where a holder of an appointment in a unit of public administration commits an offence in a private capacity, that is, the officer is not acting in the course of discharging the functions or exercising the powers or authority attaching to his or her office, the conduct cannot be conduct for the purposes of paragraph (b).

Thus, in the context of the present matter, were a state parliamentarian, a local government councillor, or other holder of an appointment in a unit of public administration who supported a particular licence application, to commit an offence by making a knowingly false or misleading statement to officers of QOGR, the offence could not amount to conduct for the purposes of paragraph (b) as the conduct would be made in a private capacity and not in the course of discharging official functions or exercising official powers or authority. It is true that the offence could be conduct for the purposes of paragraph (a) of s.32(1) but would be so only if it had or could have had the necessary adverse effect on the QOGR officer or officers to whom the statement was made. However, by its nature, the offence could not be conduct for the purposes of paragraph (c) of s.32(1) because it could not possibly involve the misuse of officially acquired information or material.

Constitutes or could constitute

Section 32(1) requires that, in any case, the conduct in question constitute or could constitute a criminal offence or a disciplinary breach that provides reasonable grounds for termination. Section 9(1) of the ICAC Act uses the expression *could constitute or involve* when referring to criminal and disciplinary offences. In *Greiner*, all members of the New South Wales Court of Appeal held that in determining whether the conduct could constitute or involve such offences, an objective standard is to be applied: 143G, 145E-G, 166G-167D, 181D. The connotation given by the word *could*, it was held, was *would if proved*: 145G-146F, 187D. To my mind, the word *could* in the expression *could constitute* is to be given a similar meaning.

Paragraph (d)

Where the conduct in question is that of a person who is the holder of an appointment in a unit of public administration, paragraph (d) requires that that conduct constitute or could constitute either:

- a criminal offence; or
- a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration.

Criminal offence

Criminal offences comprise crimes, misdemeanours and simple offences. Crimes and misdemeanours are indictable offences; that is to say, the offenders cannot, unless express provision is made for it, be prosecuted or convicted, except upon indictment: *The Criminal Code* s.3(2), (3). A simple offence is any offence (indictable or not) punishable, on summary conviction, before a Magistrates Court, by fine, imprisonment, or otherwise: *Justices Act 1886* s.4.

Reasonable grounds for termination

Reasonable grounds for terminating means reasonable grounds for a successful termination of services: compare *Greiner* 145F, 187D, 192C. A question arises whether the expression *disciplinary breach that provides reasonable grounds for termination of a person's services* is capable of applying to Ministers, or Members of the Legislative Assembly (MLAs). The Solicitor-General has advised that it is not: Advice to the Commission dated 2nd November 1992. I respectfully agree. Particularly, for both Ministers and MLAs, there is no applicable code of conduct or discipline, breach of which might be characterised as a *disciplinary breach*. Absent a disciplinary breach, the possibility of a termination of services for a disciplinary breach cannot arise. A consequence of this interpretation is that for a Minister or an MLA, the conduct in question must be such that it constitutes or could constitute a criminal offence for para. (d) to be satisfied.

It should be noted that s.9(1) ICAC Act, at the time of the *Greiner* litigation, was more extensive than paragraph (d) and included a further ground, namely, (c) *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official*. This paragraph (c) stood independently of, and was not a mere qualification to, the disciplinary offence ground in s.9(1), paragraph (b). The additional ground in paragraph (c) made s.9(1) significantly different from s.32(1) with regard to the issue presently under discussion.

It remains to mention that s.9(1) has been amended since the decision in *Greiner* was given to include the following additional ground:

- (d) In the case of conduct of a Minister of the Crown, or a member of a House of Parliament - a substantial breach of an applicable code of conduct,

and also sub-sections (3), (4) and (5) have been added. No similar amendments have been made to s.32(1).

Evidentiary and Procedural Issues

The civil standard of proof applies to the determination of a Misconduct Tribunal of a charge of official misconduct: *Re Newnham* [1993] 1Qd.R. 502, 508; *Re Mullen* p.12. The civil standard of balance of probabilities is applied with acknowledgement that the graver the allegation, the greater should be the strictness of proof demanded.

To conclude that a party is guilty of official misconduct within the meaning of s.32(1) requires a Misconduct Tribunal to first satisfy itself that the requirements of s.32(1)(d) have been made out and in particular that the conduct constituted or could have constituted a criminal offence or a dismissable disciplinary breach: *Re Newnham* 510.

In the case of termination, the expression *could constitute or involve* requires the Misconduct Tribunal to point to an identifiable basis for saying that its reasons constitute reasonable legal grounds for a successful termination: compare *Greiner* 145G-146F, 187D.

The requirements of procedural fairness must be observed in the hearing of official misconduct charges: *Re Blizzard* 163; *Re Mullen* pp.614-615; s.23(1)(a) *Misconduct Tribunals Act 1997*.

My preliminary enquiries have been directed towards ascertaining whether or not there is a reasonable suspicion of official misconduct as that expression is defined in the CJ Act and as the definition and its New South Wales analogue have been interpreted by the courts.

Chapter 3

Moulding the enquiries to detect any official misconduct

For the purposes of my enquiries, any official misconduct the subject of reasonable suspicion must be official misconduct concerning the issuing of the licence. Any assessment of how official misconduct might be committed during the course of the issuing of the licence requires an understanding of the relevant provisions of the IGPP Act and how they are administered. I turn first to the legislation.

IGPP Act

Section 32(1) IGPP Act permits the Minister to grant a licence if satisfied

- (a) the applicant is a suitable person to hold an interactive gambling licence; and
- (b) each business or executive associate of the applicant is a suitable person to be associated with a licensed provider's operations.

The expression *licensed provider* is defined in s.11(1) to mean *a person who is licensed under this Act to conduct interactive games*. Thus, s.32(1)(b) is prospective in that it assumes that a licence is granted to the applicant and that the association of the business associate or executive associate continues after that point.

The expression *business associate* of **an applicant** is defined as:

person who the Minister reasonably believes -

- (a) is associated with the ownership or management of the applicant's operations; or
- (b) will, if an interactive gambling licence is issued to the applicant, be associated with the ownership or management of the licensed provider's operations. (Schedule 3).

The expression *executive associate* of **an applicant** is defined as:

an executive officer of a corporation, partner or trustee, or another person stated by the Minister whom the Minister reasonably believes -

- (a) is associated with the ownership or management of the applicant's operations;
or
- (b) will, if an interactive gambling licence is issued to the applicant, be associated with the ownership or management of the licensed provider's operations. (Schedule 3).

Section 33 IGPP Act deals with the suitability of an applicant to hold an interactive gambling licence. The section provides as follows:

- (1) In deciding whether an applicant is a suitable person to hold an interactive gambling licence, the Minister may have regard to the following matters
 - (a) the applicant's character or business reputation;
 - (b) the applicant's current financial position and financial background;
 - (c) if the applicant is not an individual - whether the applicant has, or has arranged, a satisfactory ownership, trust or corporate structure;
 - (d) whether the applicant has, or is able to obtain, appropriate resources and appropriate services;
 - (e) whether the applicant has the appropriate business ability to conduct interactive games successfully under an interactive gambling licence;
 - (f) if the applicant has a business association with another entity
 - (i) the entity's character or business reputation; and
 - (ii) the entity's current financial position and financial background;
 - (g) anything else prescribed under a regulation.
- (2) In subsection (1)

appropriate resources means financial resources

- (a) adequate, in the Minister's opinion, to ensure the financial viability of operations conducted under an interactive gambling licence; and
- (b) available from a source that is not, in the Minister's opinion, tainted with illegality.

appropriate services means the services of persons who have appropriate experience to ensure the proper and successful conduct of interactive games.

Section 34 IGPP Act is concerned with associates of the applicant, rather than the applicant itself and specifies matters to which the Minister may have regard in determining the suitability of an individual *to be associated with a licensed provider's operations*. They are:

- (a) the person's character or business reputation;
- (b) the person's current financial position and financial background;
- (c) if the person has a business association with another entity -
 - (i) the entity's character or business reputation; and
 - (ii) the entity's current financial position and financial background;
- (d) anything else prescribed under a regulation.

Although both s.33(1)(g) and s.34(d) include *anything else prescribed under a regulation*, the *Interactive Gambling (Player Protection) Regulation 1998* does not prescribe any matters for these sections.

Section 35 IGPP Act authorises the chief executive of QOGR to investigate an applicant and the business or executive associates of an applicant to help decide suitability *to hold an interactive gambling licence and to be associated with a licensed provider's operations* respectively. Section 58 IGPP Act facilitates the obtaining of a written report about a person's criminal history for the purposes of a s.35 investigation. Sections 33, 34 and 35 are directed towards determining the suitability of an applicant and its associates. It will be recalled that under s.32(1), the Minister may grant a licence only if both applicant and associates are suitable. However, that an applicant and its associates may establish their suitability does not require the Minister to grant the licence. Section 32(2) expressly provides that the Minister may refuse to grant an application even if satisfied as to suitability.

Associates

During the course of my enquiries, the importance of effective probity investigations of associates has been demonstrated. Given this, the development of the expressions *business associate* and *executive associate* in the Queensland gaming legislation, their objectives and their content warrant examination.

The *Gaming Machine Act 1991* has, since enactment, adopted a concept of *associate*: s.6. It differs very substantially from the definitions of *business associate* and *executive associate* in the IGPP Act.

The expressions *business associate* and *executive associate* are not defined as such in the *Casino Control Act 1992* although it does refer to persons to be associated with *ownership, management, control* of casino licences: ss.20(1), 26(1). The expressions first appeared in Queensland gaming legislation as defined terms in the *Keno Act 1996: Dictionary*. They are also defined in exactly the same terms in the *Lotteries Act 1997*, the IGPP Act and the *Wagering Act 1998*.

As is indicated above, the IGPP Act lays considerable stress on suitability of business associates and executive associates of applicants - s.32(1)(b), s.34, s.35(2). The definitions of associateship are widely drafted. They are, I think, meant to extend beyond directors, shareholders and chief executive officers, bringing within their scope all who are so associated with ownership or management of operations whether holding the position of director, shareholder or chief executive officer, or not. There is good reason for this. The stress on suitability reflects a legislative desire that unsuitable individuals not be associated with interactive gambling licences. Association at any plane is comprehended by the definition. The definitions capture the kind of association that might exist informally through the ability to exercise control or significant influence over an individual such as a director, shareholder, or chief executive officer as well as the kind of association that might exist formally through holding the position of director, shareholder, or chief executive officer.

The definitions of associateship of an applicant have two limbs. The first limb identifies an associate by reference to **current** association with ownership or management of the **applicant's** operations. The second limb identifies by reference to **future** association with ownership or management of the **licensed provider's** operations, i.e., assuming that the applicant is granted a licence. It is sufficient for an individual to satisfy either limb. It is not necessary that both be satisfied in order to be an associate.

Notwithstanding, the only matter on which the Minister is to be satisfied in respect of associates is suitability **to be associated with a licensed provider's operations**, i.e., suitability for a **future**

association. Given this, it is a little puzzling why the definitions of associateship include the first limb when no inquiry as to current association with operations is contemplated or authorised (by s.35(2)) and current association with operations is not a matter about which the Minister need be satisfied. Perhaps the exclusion is explained by the justifiable assumption that almost invariably current associates will be associates once a licence is granted to the applicant and by an objective of ensuring that no one with a current association is overlooked in the process of identifying those who will have a future association with the ownership or management of the licensed provider's operations.

Administration aspects

As I have noted, s.35(1) authorises the chief executive, the Under Treasurer, to carry out investigations as to all aspects of suitability of applicants and associates. The IGPP Act contemplates that the Under Treasurer will report to the Minister on investigations as to suitability and that the Minister will rely on such report in considering an application and in determining whether to grant or refuse it.

QOGR was established on 1st January 1995 by the amalgamation of the Casino Control, Art Unions and Machine Gaming Divisions of the Queensland Treasury Department. It is a portfolio office within Queensland Treasury. The mission of QOGR is:

To ensure the integrity, probity and equity of gaming activities, and protect the State's gaming revenues.

QOGR is managed on a day to day basis by the Executive Director who reports directly to the Under Treasurer on strategic issues. Within QOGR, there are four separate divisions, one of which is the Compliance Division. This Division is responsible for ensuring compliance with the gaming legislation administered by QOGR. The Division is responsible for:

- complaints, investigations and prosecutions;
- audit;
- casino, art unions, machine gaming and lotteries inspections;
- development and review of gaming rules;
- casino equipment approvals;
- approval of internal controls of the various gaming operators.

The Director of the Compliance Division reports directly to the Executive Director.

Within the Compliance Division, there is the Investigations Branch. The manager of the Investigations Branch reports directly to the Director of the Compliance Division. It is the responsibility of the Investigations Branch to conduct enquiries into all aspects of the suitability of applicants and associates for interactive gambling licences as well as applicants for licences issued under other gaming acts administered by QOGR. A number of investigators are assigned to the Investigations Branch and they,

together with the manager of that Branch, are directly involved in carrying out what are within QOGR called probity investigations, that is, investigations into the suitability of applicants and associates.

How might official misconduct be committed?

I now turn to a critical aspect of the investigation process which addresses the question: having regard to the provisions of the IGPP Act and its administration, how might official misconduct be committed during the course of the issuing of an interactive gambling licence?

Two key elements in the definition of official misconduct, in my view, are highly influential in the process of identifying how official misconduct might be committed. These are the element of honest and impartial discharge of functions or exercise of powers or authority and the element of criminal offence, or disciplinary breach justifying termination. Each element warrants careful attention.

The first key element

Bearing in mind that both dishonesty and partiality require the mental element of consciousness of wrong doing, one can speculate that deliberate lack of honesty or impartiality on the part of those involved in investigating, or making recommendations on, applications might take one of several forms, for example:

- deliberately fast-tracking the processing of the application to confer a competitive advantage on the applicant;
- carrying out deliberately inadequate probity reviews, for example, by not investigating a person whose suitability should have been investigated;
- deliberately reporting inadequately on the probity reviews;
- deliberately making recommendations in favour of a grant of the licence when an honest recommendation should have been against the grant or in favour of the grant on more stringent terms; or
- deliberately truncating a line of enquiry when it was realised that this may have lead to information being produced which was inimical to the granting of the licence.

Where an individual, A, so acts, he or she may have been influenced to do so by the conduct of another, B, who himself or herself might be a member of a unit of public administration or might be an outsider. In that circumstance, the conduct of B is caught by s.32(1)(a) whereas the conduct of A is caught by s.32(1)(b)(i) and quite possibly by s.32(1)(a) as well.

In similar vein, the repository of the power to grant the licence might also act with a lack of honesty or impartiality by, for example:

- deliberately deciding to grant the licence notwithstanding knowledge that a probity report failed to deal with any individual whose suitability should have been investigated; or
- by deliberately deciding to grant the licence in order to give the applicant a competitive advantage.

In this instance, too, the repository, A, might so act under the influence of another, B, who is a member of a unit of public administration or who is an outsider, in which case ss.32(1)(a) and 32(1)(b)(i) would apply in a similar way.

The second key element

Take first the position of the other person, B, in the examples I have given. If he or she is not a member of a unit of public administration, then his or her conduct could amount to official misconduct only if it constitutes or could constitute a criminal offence. There are two principal criminal offences that could be committed:

- s.87(2) *The Criminal Code* - official misconduct by gifts or promises of property or other benefits to the individual to be influenced; and
- s.172(2) IGPP Act - bribery by gifts or promises of money, property or other benefits to a gaming official or other person.

Where the other person, B, is a member of a unit of public administration, being a Minister or an MLA, the position is the same - the conduct must be such that it constitutes or could constitute a criminal offence because, it will be recalled, neither the position of a Minister nor the position of an MLA is terminable for a disciplinary breach.

However, where the other person, B, is a member of a unit of public administration (not being a Minister or an MLA), his or her conduct may amount to official misconduct if it constitutes or could constitute a criminal offence or a disciplinary breach justifying termination.

Next, there is the position of the repository, A. Where his or her conduct constitutes or involves the dishonest or impartial discharge of a function or exercise of a power or authority, that conduct might also constitute the commission of a criminal offence. Possible offences could be:

- s.87(1) *The Criminal Code* - official corruption by corruptly asking for or receiving a bribe; or
- s.172(1) IGPP Act - bribery by asking for or receiving money, property or a benefit for an improper purpose.

Or he or she might commit a disciplinary breach justifying termination.

The criminal offences that are identified above are of the nature of bribery. I have reviewed other criminal offences to determine whether there is any criminal offence of a different character that might have been committed during the process of issuing the licence. I have come to the conclusion that there is none. In this context, s.92 IGPP Act should be mentioned. It is an offence provision and provides that a person must not, for an application for a licence, state anything the person knows is false or misleading in a material particular. There is scope in the application process for an applicant or an associate to make a knowingly false or misleading statement intending that the individual to whom it is made shall act on it. However, I doubt very much that the making of such a statement could have the adverse effect required by s.32(1)(a). The reason for this is that where the individual to whom it is made accepts the statement as truthful and does not know of its falsity, then the necessary mental element of consciousness

in dishonesty or partiality on the part of that individual could not exist. Accordingly, in my investigations, I have discounted the making of a knowingly false or misleading statement by the applicant or an associate alone as evidence of possible official misconduct.

Sections 32(1)(b)(ii) and 32(1)(c)

Finally, I should refer briefly to s.32(1)(b)(ii), the breach of trust ground of official misconduct, and to s.32(1)(c) - the misuse of information ground of official misconduct.

In *re Watson*, Thomas J. expressed the view that the expression *breach of the trust placed in the person by reason of his holding the appointment* is not a term of art, and should be given its ordinary meaning: at 344. The IGPP Act places very considerable trust in the Minister by virtue of his being authorised to grant interactive gambling licences and in the chief executive by virtue of his being authorised to investigate suitability of applicants and associates. In the present context, conduct that would satisfy s.32(1)(b)(i) - dishonest or partial conduct, would almost certainly also satisfy s.32(1)(b)(ii) - breach of trust. But looking at it the other way, I am unable to identify any kind of possible conduct in this context that would be a breach of trust but would not also be a dishonest or partial discharge of functions or exercise of powers or authority, and would therefore be outside the scope of s.32(1)(b)(i).

Lastly there is s.32(1)(c). In the context of the issue of a licence, official misconduct might be committed by the improper communication of information or material by an individual who participates in the processing or granting of the licence, to the applicant in order to provide a benefit to the applicant. To fall within this section, the information or material must have been acquired by the individual in or in connection with the discharge of his or her functions or exercise of his or powers or authority as the holder of an appointment in a unit of public administration.

The processing of Gocorp's application

On 16th October 1998, Gocorp, then named Australian Internet Entertainment Limited, lodged an application for an interactive gaming licence with QOGR. The application was processed between that date and 2nd June 1999 when the Under Treasurer submitted a memorandum to the Treasurer containing a recommendation that a licence be granted to Gocorp and subject to a large number of conditions set out in Schedule A to an unsigned licence document which was also submitted to the Treasurer with the recommendation.

On 3rd June 1999, the Treasurer signified his approval of the recommendation by signing the memorandum. The licence document was signed by the Treasurer on 3rd June 1999.

During the processing of the application, probity investigations were carried out by the Investigations Branch of the Compliance Division of QOGR. In the course of these investigations, three persons were formally identified as business or executive associates of Gocorp, that is to say, a belief as to association on the part of the Minister or his delegate, as contemplated by the definitions of these expressions, was made and recorded. These persons were:

- Donald Wallace Livingstone on 2nd March 1999;
- William Theodore D'Arcy on 2nd March 1999;

- Paul John Pisasale on 23rd April 1999.

Mr D'Arcy is and has been for all relevant times an MLA. Mr Livingstone was an MLA until June 1998. He is currently employed as a policy advisor to the Honourable the Minister for Public Works and the Minister for Housing.

Mr Pisasale was a Labor councillor at the Ipswich City Council from 1991 to 1993 and has been an independent councillor since 1995.

All three had acknowledged Labor connections.

Each of these persons was the subject of probity investigations as were Gocorp and many other individuals and companies. A probity report documenting the results of these investigations was prepared within QOGR and submitted to the Treasurer with the memorandum dated 2nd June 1999.

Chapter 4

The investigation of the licence issuing process

The detection of any official misconduct in the process of the issuing of the licence is dependent first upon the detection of conduct at any one of three levels, namely:

- conduct by an individual involved in the process **or** external to it, which adversely affected or could have adversely affected, the honest and impartial discharge of functions or exercise of powers or authority by another individual or individuals involved in the process; **or**
- conduct by an individual involved in the process which constituted or involved the discharge of that individual's functions or the exercise of that individual's powers or authority in a manner that was not honest or impartial; **or** which constituted or involved a breach of trust; **or**
- conduct by an individual involved in the process which involved the misuse of information or material that was acquired in or in connection with the discharge of that individual's functions or the exercise of that individual's powers or authority.

If any such conduct is detected, it must next be examined to determine whether it is conduct that constituted or could have constituted a criminal offence, or if appropriate to the person concerned, a disciplinary breach justifying termination. Plainly, to detect conduct at any of these levels requires a careful examination of how those persons involved in the process of issuing the licence went about performing their respective responsibilities in that process.

This approach was used to detect whether there was any official misconduct here. The program of interviews commenced with officers of the Commission interviewing all those officers of QOGR who had been involved in the processing of the application, including those who conducted the probity inquiries, and in recommending the grant of the licence. Those interviewed included members of the Compliance Steering Committee (CSC) who, although not directly involved in the probity investigations, had some responsibility for them. Also interviewed were persons in the Treasurer's office and the Premier's office who were involved in finalising the terms and conditions of the licence or had been involved in any correspondence concerning the application.

In turn, I interviewed the repository of the power to grant the licence, Mr David Hamill MLA, his Parliamentary Secretary, Mr Darryl Briskey MLA and the chief executive and Under Treasurer, Mr Gerard Bradley, who made the ultimate recommendation that the licence be granted.

The interview of each person was conducted against a background of, and having regard to, his or her involvement as recorded in the extensive contemporaneous documentary material supplied to the Commission. It was critical to a proper assessment of the matter to explore each individual's recollection to determine whether he or she had been improperly approached to act other than honestly and impartially or whether any of them did, in fact, so act. In this context, it was necessary to make an assessment of the credibility of those involved and, accordingly, other than Mr Hamill, Mr Briskey and Mr Bradley, the detailed interviews were conducted by experienced police or financial investigators of the Commission. I personally interviewed Mr Hamill, Mr Briskey and Mr Bradley, with the assistance

of another experienced officer of the Commission. (Mr Briskey confirmed that he had no involvement in the granting of the licence and little knowledge of the application). I report that all those interviewed co-operated fully.

It is convenient to deal separately with the roles of QOGR officials and the roles of Treasury officials and the Treasurer in reporting on the results of the investigations.

Chapter 5

Impact of resources on QOGR probity investigations

Relevant Personnel of QOGR

I have already briefly outlined QOGR, its mission and its division and branch structure.

QOGR is responsible to the Queensland Treasurer for the regulation of the State's gaming industry. It is now the lead agency for the monitoring, regulation and enforcement of most forms of gambling within the State including gambling regulated by:

- *Casino Control Act 1982*
- *Breakwater Island Casino Agreement Act 1982*
- *Jupiters Casino Agreement Act 1983*
- *Gaming Machine Act 1991*
- *Art Unions Act 1992*
- *Keno Act 1996*
- *Lotteries Act 1997*
- *Wagering Act 1998*
- *IGPP Act*

The overall responsibility for QOGR rests with the Executive Director, Mr David Ford. Within QOGR there is an Office of the Executive Director, the Director of which is Ms Anthea Derrington. Others assigned to the Office of the Executive Director include Mr Rick Smith, Policy and Research Officer, and Mr Shaun Butler, Legal Officer.

QOGR's primary inspectorate and enforcement arm is the Compliance Division, headed by its Director, Mr Michael Sarquis, the responsibilities of which have already been listed. Among other things, the Director, Compliance, is responsible for the management and administration of the:

- Investigations Branch,
- Gaming Policy and Control Branch,
- Principal Inspectors,

- Gaming Audit Branch, and
- Gaming Inspections Branch.

The Manager, Investigations Branch is Mr Denis Cowell, who is responsible for the activities of three investigative areas, including the Probity Section which carried out the probity investigations in relation to the Gocorp application. The composition of the Probity Section is:

- Mr Ronald Austen - Senior Financial Investigator
- Mr Paul Ryan - Investigator
- Mr Al Fletcher - Senior Inspector

It is fair to say that since 1996, the number of principal pieces of legislation and the volume and range of gaming regulated by QOGR has more than doubled, placing pressures on staff to broaden their expertise and skills.

Compliance steering committee

Within QOGR, a Compliance Steering Committee (CSC) was formed, the members of which were:

- Director, Compliance - Mr Michael Sarquis
- Director, Licensing and Gaming Services - Ms Linda Woo
- Manager, Investigations - Mr Denis Cowell.

In the QOGR document *Policy on Probity Program* to which I make further reference shortly, the stated role of the CSC is to review the planning of investigations by the Probity Section, both long-term and investigations specific. It is required to ensure that all criteria of probity are met. It was, and is, envisaged that probity investigations and the extent of investigations would be constantly reviewed by the CSC.

Those interviewed

Each of the abovenamed officers was interviewed during investigations. Where the officer played a principal role in conducting the probity inquiries, in reporting on them, or in preparing recommendations, the interviews were conducted at a very detailed level.

Investigation experience

As their job descriptions suggest, two members of the Probity Section, Mr Austen and Mr Ryan, were assigned to investigative tasks. These two officers had more direct involvement with the probity

investigations for the Gocorp application and the preparation of the report of the investigations, than any other officer in QOGR.

Mr Austen was the principal investigator. He has been employed within the Public Service for 23 years. Prior to being appointed to his present position, he had worked in the Office of State Revenue and the Casino Control Division within Queensland Treasury. He has an Associate Diploma in Business Management and during his term with QOGR has undertaken various forms of on-the-job training together with specialist criminal courses conducted by the Queensland Police Service.

As part of a review process undertaken by the Compliance Division in 1996/97, Mr Austen had prepared a document titled *Program Compliance Action - Sub Program Probity* as a manual of procedures involved in probity investigations. That document noted as an issue for probity investigations that, at that time, only one officer was assigned to such investigations and that to cater for indisposition on the part of that officer, there should be some planning for multi-skilling within the area.

By January 1998, Mr Austen had also prepared a document titled *Policy on Probity Program* which was then included within the manual as Attachment P7. This important document identified four categories of persons who may be the subject of probity investigations. Categories 1 and 4 relate to hotel-casinos and common fund investors respectively. Category 2 relates to persons, either natural or incorporated, who have a direct involvement, other than via a hotel-casino, in the Queensland gaming industry, as a licence holder, or as one who is able to influence the decision making or management of the operations of the licence holder. A person in that position was described as an associate in the document. Some eleven steps were listed in the document as ones that might be taken to investigate a Category 2 member. Category 3 covers natural persons who are in a position to direct the operations of a Category 1 or 2 member or might influence the operations of a Category 1 or 2 member through owning a greater than 5% holding in it. For Category 3 members, a list of some four steps are prescribed as ones that might be taken to investigate the suitability of the member. The *Policy on Probity Program* document was, of course, prepared prior to the enactment of the IGPP Act.

After the Gocorp application had been lodged on 16th October 1998, Mr Austen prepared a further document titled *Probity Requirements Necessary for Approval of an Interactive Gaming Licensee*, having been assigned that task at a meeting of the CSC on 29th October 1998. This document consists of a cover page which lists the six matters in s.33 of the IGPP Act to which the Minister may have regard in deciding whether an **applicant** is suitable. There follows a number of pages which set out in tabular or text form investigative steps to be pursued in investigating each of these matters. It may be noted that this document does not in terms refer to s.32 of the IGPP Act and does not specifically address how **associates** of an applicant for an interactive gambling licence might be identified or investigative steps to be pursued in investigating the suitability of associates.

In February 1999, Mr Ryan joined the Probity Section, effectively doubling the human resources devoted to investigative work. He has been a public servant for 10 years. His prior investigative experience was primarily in vetting gaming machine licence applications and in dealing with issues associated with the gaming machine industry. According to Mr Cowell, Mr Ryan qualified well ahead of his rivals for the position. Nevertheless, he has had no formal training in investigative techniques, nor did he receive any form of induction into, or specific training in, probity investigations or the particular requirements of the IGPP Act with respect to probity issues. He had had no prior experience in carrying out probity investigations in relation to any application for a casino licence.

Links with the Queensland Police Service

As a result of a Cabinet decision in November 1992, from May 1993 until his retirement in July 1998, Detective Inspector Phillip Smith was assigned to QOGR on secondment from QPS's Crime Operation Branch. It appears that at that time the presence of a full-time police detective was thought necessary because of the extensive probity investigations that were required to be undertaken when casinos were first established in Queensland, but the need diminished with the passage of time. Among other things the officer's duties were:

- ! liaison between QOGR and the QPS
- ! investigating and assessing the suitability of companies/persons involved in the administration and/or control of any Queensland Casino.
- ! acting as liaison between QOGR and other law enforcement agencies in relation to intelligence matters.

Apart from those officers assigned to the Casino Control Squads, there are currently no Queensland Police officers permanently assigned to QOGR. Since July 1998 no member of the QPS has been permanently assigned to the Compliance area of QOGR. However, Mr Al Fletcher has been appointed as a Special Constable and acts in a liaison role carrying out fingerprint work and arranging for checks to be undertaken on behalf of QOGR by QPS.

Significantly, as a result of a joint QPS and QOGR agreement in early 1998, the Police Service seconded a senior detective from the Bureau of Criminal Intelligence of Queensland (BCIQ) to undertake the role of liaison officer between the two institutions. The police officer assigned to the QOGR was to be responsible for:

- ! the co-ordination of the casino crime squad activities on behalf of the QOGR;
- ! major probity investigations pursuant to the *Casino Control Act* and *Gaming Machine Act*;
- ! response to inquiries from interstate and overseas law enforcement agencies and regulatory bodies concerning gaming and probity inquiries;
- ! investigations into all junket promoters and representatives;
- ! responses to sensitive commercial inquiries relating to probity and casino related matters;
- ! the monitoring of domestic and international gambling trends and patterns relating to organised casino scams, cheating, money laundering and other related organised and major crime offences;
- ! maintenance of the international cheats index which is maintained from information of all Australian law enforcement agencies by the Australian Bureau of Criminal Intelligence.

Detective Inspector Martin Mickelson, then a Detective Senior Sergeant at BCIQ, occupied the role of Police Service liaison at QOGR from mid-1998 until early 1999. This was on a part time basis. In early 1999, senior QPS and QOGR representatives decided that Inspector Mickelson's role would, in effect,

be abolished and that any major police investigation required in relation to probity would be done by the Officer in Charge Casino Squad (a detective sergeant). In the result, an understanding was reached whereby significant probity investigations requiring major police investigation were to be undertaken by that officer, and routine probity investigations not of that character were to be conducted by Mr Fletcher and Mr Austen. Any police checks required by QOGR were to be done by the Police Information Centre and BCIQ. This understanding has continued to the present day.

Implications for the probity investigation

The matters to which I have referred had implications for the probity investigation of the Gocorp licence application.

The application was initially handled by Mr Austen. He prepared a project plan for the investigation in the form of a spreadsheet which outlined a basic framework for the investigation and the essential tasks and checks involved. This plan was submitted to the CSC meeting on 29th October 1998.

Mr Austen compiled a list of names of individuals who he considered ought to be relevant persons requiring scrutiny. These persons were:

Geoffrey Ian Koo

Gary Mark Ingberg

Paul Andrew Appleby

Nunzio Anthony Pace

Kevin William John Rowlands

Melville George Ronald Bell

Lois Margaret D'Arcy

Cheryl Louise Livingstone

James Frederick Wilson

Paul John Pisasale

John Terrence Ell.

Mr Appleby and Mr Koo were directors of Gocorp at the date of lodgment of the application. They, and the other Gocorp directors had filled out QOGR's *Personal History and Suitability of Persons Proforma* documents which were lodged with the application. None of the others on the list had done so.

On 16th December 1998, a letter which Mr Austen had drafted was sent by QOGR to Mr Don Livingstone, on behalf of the applicant, notifying that the abovenamed persons had *been identified as 'key persons' in the operational management of (the applicant) and as such will require licensing*. The letter

advised that the list should not be considered as final *as additional persons may be identified as 'key persons' and therefore will be subject to similar probity and licensing requirements.* Each person who had not filled out the Proforma document was required to do so.

Licensing of key persons is dealt with in Part 4 of the IGPP Act, the expression *key person* being defined in s.60(1). The concept of *key person* applies in circumstances where an interactive gambling licence has been granted, not at the application stage. It differs in this respect from the concepts of *business associate* and *executive associate*, although both of these two concepts look prospectively at an individual's association with the future management of a licence holder. Another significant difference is that the status of *key person* is not at all dependent upon the reasonable belief of the Minister whereas, as I have explained, both the status of *business associate* and the status of *executive associate* are so dependent.

Associates

As reported earlier, formal determinations that individuals were business associates or executive associates of Gocorp were made in only three instances and then well after investigations had begun. The names of two of these individuals, Mr W.T. D'Arcy and Mr D.W. Livingstone, were not included in the list in the letter dated 16th December 1998. No formal determination was made with respect to any person on the list, except Mr Pisasale.

This, in my view, indicates that in the initial stages of the investigations, the concepts of *business associate* and *executive associate*, on the one hand, and *key person* on the other, were not clearly delineated. This may have resulted in part from the omission of any reference to s.32 requirements in Mr Austen's documents specifically relating to probity investigations for interactive gambling licence applications. It may well have had the result that insufficient time was given over to thinking about what associateship entailed and to the separate task of identifying all who might be business associates or executive associates of Gocorp.

Mr Austen's illness and its consequences

Mr Austen became ill in mid-February 1999 and took sick leave from 22nd February to 12 April 1999. The continuation of the investigations fell to Mr Ryan. Mr Ryan conducted most of the interviews of those who had been required to fill out the Proforma document but had not been interviewed prior to Mr Austen's illness. Those interviewed by him included persons who resided in Sydney. He was the principal author of the Probity Report, the first draft of which had been completed by him by 13th April 1999. After Mr Austen returned to work, he assisted Mr Ryan with the preparation of an update version dated 11th May 1999 and of the final Probity Report dated 27th May 1999. When Mr Austen became ill, Mr Ryan was given the Gocorp probity material in binder form along with the list of persons that Mr Austen had prepared. Mr Ryan had never carried out an investigation of this type before. Mr Austen was not there to guide him.

The Commission's examination of the procedures, methodology and conduct of the probity investigation and the interviews conducted reveals that Mr Ryan set about his task in a diligent and energetic manner but that, through no fault of his own, he lacked the training and experience to have the primary carriage of a large-scale investigation requiring all of the following features:

- ! systematic recording, collation and analysis of information received;

- ! critical analysis of financial arrangements;
- ! examination or testing the truth of statements made to him;
- ! examination of the credibility and bona fides of those involved;
- ! testing the soundness and value of evidence; and
- ! exploring other potential avenues of enquiry.

I should also add that the CSC did not constantly review the probity investigations and the extent of investigations, as had been set out in the *Policy on Probity Program*. It was generally recognised that the CSC looked at the *higher level* issues and did not deal with the day to day investigations. It was more concerned with ensuring a probity program was in place and that its scope was appropriate. Furthermore, it would appear that Mr Austen's illness resulted in the CSC meeting less frequently than every month.

The Commission's investigations also indicate that while an understanding did exist whereby the expertise of detectives assigned to the Casino Crime Squad could be utilised to conduct major probity investigations on behalf of QOGR, assistance from this source was not sought in relation to the Gocorp probity investigation. Rather, QOGR relied upon its own personnel, even when Mr Austen was indisposed for a significant period.

Information from other sources

It appears to me that s.58 of the IGPP Act has substantial limitations. That provision allows QOGR to obtain police reports about the criminal history of individuals. The expression *criminal history* has the meaning given to it by the *Criminal Law (Rehabilitation of Offenders) Act 1986*, subject to certain modifications. In essence, the expression covers only the history of an individual's criminal charges and convictions. It does not extend beyond charges and convictions to include criminal intelligence or background information on a person. Thus the report that may be given under s.58 can contain only information relevant to charges and convictions. It cannot, for example, contain information about current investigations concerning the individual which might be critically relevant to a licence application.

I conclude from this that during critical stages in the Gocorp probity investigation, there may have been legislative impediments which may have constrained QOGR in determining what an individual's character or business reputation might be and, thus, his or her attendant suitability to be associated with the ownership or management of an applicant for an interactive gambling licence. This is a current issue and, in my view, justifies review.

I should mention that the Proforma document to which I have referred requires the individual to sign an authority for release to QOGR of information which, in regard to police matters, extends to any information relating to personal and criminal history. However, this authority does not address the limitations which I have outlined because there is no reciprocal legal or administrative obligation on any police officer or law enforcement agency requiring them to disclose that information in response to, or in reliance upon, the authority.

Chapter 6

Specific probity issues

There are several aspects to the probity investigations conducted by QOGR which, in view of the public controversy that has since surrounded the granting of the licence, warrant particular mention in this report. These aspects are dealt with in this chapter.

Political identities and Navari Pty Ltd

At the date of lodgment of the Gocorp application, 16th October 1998, Mr W.T. D'Arcy MLA and Councillor P.J. Pisasale were connected with Navari Pty Ltd (Navari), a substantial shareholder in Gocorp then owning 20% of the issued share capital of that company. A former MLA, Mr D.W. Livingstone, was also connected with Navari.

As a director of Navari, Mr Pisasale had completed a Proforma document which is dated 2nd December 1998. He was initially interviewed by Mr Austen on 29th January 1999. Mr Austen was not satisfied with some answers given by Mr Pisasale concerning relatively minor previous convictions which had occurred almost twenty years earlier. Mr Pisasale was re-interviewed by Mr Fletcher and Mr Cowell on 26th February 1999, at which time the matter of his previous convictions was explored in detail. A concern about his failure to disclose or to admit details of them led Mr Cowell to consider that Mr Pisasale might not be a suitable person to be involved with Gocorp's operations. Mr Cowell proposed that Mr Pisasale's unsuitability should be addressed in the following way: that Mr Pisasale should be offered the opportunity to resign as Chairman of Directors of Navari and that he and Mrs Pisasale should be required to undertake not to have any future involvement in the management or operations of Navari or Gocorp and to maintain their combined beneficial interest in Gocorp at less than 5%. Mr Cowell prepared a memorandum to be signed by the Under Treasurer dated 14th April 1999 recommending to the Treasurer that Mr Pisasale be identified as a business or executive associate of Gocorp and that the proposals with regard to resignation and undertakings be noted. The Under Treasurer made the recommendation and the Treasurer adopted it on 23rd April 1999. Mr Pisasale duly resigned as Chairman of Directors of Navari and the undertakings by him and Mrs Pisasale were duly given. The course of action in relation to Mr Pisasale taken by QOGR and the Treasurer was legally open to them, was appropriate in the circumstances, and showed that no leniency was given to him or Mrs Pisasale.

I have referred to the four categories of persons described in Mr Austen's Policy on Probity Program. Neither Mr D'Arcy nor Mr Livingstone would have qualified as a member of any category, including Category 3. Neither was a director of Gocorp or Navari, and neither, personally, owned any shares in Gocorp or Navari. Family companies associated with each of them owned shares in Navari. In the course of a careful perusal of minutes of meetings supplied by Navari to QOGR, it was noticed that both of these persons were actively involved in the affairs of Navari. Their involvement included:

- ! attendance at shareholders' meetings;
- ! appointment to Navari management teams tasked with overseeing various Navari projects, particularly the Internet Casino project;

! attendance at meetings of Navari as proxies for their spouses who were directors of Navari.

On the basis of this involvement, each was identified as having a significant association with the ownership and management of Gocorp. Consequently, in early March 1999, formal determinations were made that Mr D'Arcy and Mr Livingstone were business associates of Gocorp and probity investigations into their suitability were commenced. Each filled out a Proforma document and lodged it with QOGR. Mr D'Arcy's document is dated 25th March 1999 and Mr Livingstone's document is dated the following day. Mr Ryan interviewed Mr D'Arcy on 15th April 1999 and Mr Livingstone on 21st April 1999. Mr D'Arcy, Mr Livingstone and Mr Pisasale were each the subject of specific probity enquiries. As well, the financial dealings of Navari were probed during the interviews of these identities and of other individuals associated with Navari. Particular attention was paid to the circumstances of the acquisition of a long-term lease from the Gladstone Port Authority by Navari. This matter was canvassed extensively in interviews conducted by Mr Austen before his illness.

I mention that during the course of my enquiries, I have had the opportunity to read a number of documents and statements relating to the circumstances of this acquisition. In the material I have seen there is no ground for a reasonable suspicion of official misconduct on the part of any individual in connection with the acquisition.

In the course of the probity enquiries certain information came to the attention of QOGR. The information went to the issue of the character of Mr D'Arcy. The information was included in the probity report with the observation *it is considered that no further action is warranted at this time*.

The information was brought to the attention of the Treasurer who acted upon the advice of QOGR. Once again, this course of action was legally open to the Treasurer and, in my opinion, does not reveal any leniency extended to Mr D'Arcy.

I report that, in my view, the probity investigations conducted by QOGR personnel of Mr D'Arcy, Mr Livingstone and Mr Pisasale and of Navari, including investigations into the Gladstone acquisition, were detailed and sufficiently intensive for probity purposes. There is no evidence to indicate that those conducting these enquiries were pressured in any way to curtail or restrict them or to give an inadequate report of them. The course of events with the subsequent identification of Mr D'Arcy and Mr Livingstone as business associates of Gocorp is consistent with the absence of any pressure of that kind. In fact, I have gained the impression that the presence of the political identities led to a concentration of effort on them and on Navari and tended to distract those conducting the investigations from identifying another possible associate of Gocorp who was not a political identity. I now turn to that matter.

Mr Reginald Austin

Mr Reginald Austin was involved in companies which had promoted interactive gambling to both the Coalition Government and the Labor Government since 1996. Mr Austin was convicted on a plea of guilty of the offence of misappropriating as an agent the sum of \$92,986.48 on 22nd May 1997 at Hornsby Local Court in Sydney. He was fined \$2,000.00, placed on a recognizance of \$2,000.00 with a two year good behaviour bond, and ordered to pay costs.

Enquiries conducted by the Commission reveal that this information was not known to any QOGR officer prior to or during the conduct of the probity investigations. I have also established that this information had not been retrieved by any search conducted by, or at the request of, QOGR officers prior to the issue

of the licence. Police computer checks disclose that no enquiries were made in relation to Mr Austin in the relevant time span.

Had a police report on Mr Austin been sought and obtained, this conviction would have been disclosed in it. A conviction of misappropriation as an agent has obvious implications for the assessment of an individual's reputation and character. I am satisfied that had this conviction come to the attention of QOGR officers during the course of the probity investigations, it would have been regarded as very significant and would have influenced the course of further enquiries.

Mr Reginald Austin was not the subject of a formal determination that he was a business or executive associate of Gocorp. He was not required to fill out a Proforma document. He was not himself the subject of probity investigations and was not interviewed.

Mr Ron Austen told the Commission that prior to his illness, he formed the view that Mr Reg Austin might well be a business associate warranting further probity checks as to his possible involvement in Gocorp. It appears that he did not tell Mr Cowell or Mr Ryan this before he went on sick leave.

The Commission's investigations reveal that there is frequent reference to Mr Reginald Austin's name in the records of QOGR made both before and after the licence application was lodged.

Mr Ford's diary reveals a meeting with Mr Austin and his nephew, Mr Brad McCosker, as early as 31st October 1996. Subsequent meetings with Mr Ford occurred in January 1997 and in May and July 1998. Sometimes Mr Austin was accompanied by Mr McCosker. In interview, Mr Ford said that his understanding was that Australian On Line Entertainment Limited and Australian Internet Entertainment Ltd were *predecessors* of Gocorp and involved *one and the same people* as Gocorp.

All of these meetings with Mr Ford concerned aspects of the interactive gaming legislation and regulations and the making of an application for a licence. The prominence of the role taken by Mr Austin is illustrated in a note from Mr D'Arcy to Mr Ford dated 23rd June 1998 which stated: *docs that could be helpful in your conversation with Reg.*

Ms Derrington, Director of the Office of the Executive Director, also had contact with Mr Austin. She attended the meeting on 15th July 1998 with Mr Ford. Prior to that, she had met with Mr Austin on 1st July 1998 and had prepared a briefing note for the Treasurer for a meeting between the Treasurer and Mr Ford concerning *Australian Online Entertainment* scheduled for 9th July 1998. The briefing note recorded the following background:

Officers from (QOGR) have met with Mr Austin on a number of occasions in relation to his proposal to conduct gambling on the internet. Recent meetings were held on 14 May and 1 July 1998. In addition, QOGR officers have provided material to Mr Austin to assist his understanding of the regulatory framework for internet gambling.

The briefing note contained the following summary:

The main points to be raised with Mr Austin are:

- While the Government is keen for an internet gambling industry to establish in Queensland as soon as practicable, it has no desire to fast-track any particular application;
- Until the Act commences QOGR is unable to commence any part of the licensing progress;

- QOGR has received many inquiries from persons interested in pursuing an interactive gambling licence in Queensland;
- While Queensland is keen to be the first jurisdiction to licence an interactive provider under a comprehensive regulatory regime, the licensing process will not commence until all regulatory mechanisms are in place;
- QOGR aims to be able to receive applications for interactive licences in early September 1998;
- The high regard in which Queensland and other Australian jurisdictions are held as gaming regulators is not to be placed at risk by commencing licensing prior to completion of regulatory structures;
- Major provisions of the legislation are the player protection features and these should not be jeopardised through expediency for the sake of short term revenue gains;
- Who and when the first applicant is licensed will depend upon the probity and integrity checks to be performed, the cooperation received and the quality of the system and controls submitted for approval;
- Certain restrictions contained in commercial agreements entered into by the State may dictate what is permitted under an interactive licence.

I refer also to the minutes of a meeting of a group called the Interactive Working Party held on 29th September 1998. This meeting was attended by Ms Woo, Mr Sarquis and Mr Rick Smith of QOGR and by others. Ms Woo is recorded as informing the meeting that an application was expected from *Australian Internet Entertainment Services (Reg Austin)*.

It appears that the degree of Mr Austin's involvement, as I have outlined it, was not brought to the attention of those QOGR officers who were to carry out the probity investigations for the Gocorp application. Tape recordings of interviews conducted during the probity investigations were made. As far as I have been able to ascertain, transcripts of only a few of these interviews were prepared by QOGR. There was therefore no opportunity to reflect upon all that had been said by interviewees and to draw conclusions from it. During the course of the Commission's enquiries, transcripts of the QOGR interviews which had not already been transcribed were made and have been studied. Here, too, Mr Reg Austin was referred to as having a prominent connection with the project. I mention the following instances:

- ! Mrs Lois D'Arcy - *Austin introduced Navari to Interactive Gaming; he brought it here and Navari investigated whether it was possible.*
- ! Mrs Rosie Milton - *D'Arcy to finalise agreement with the Sydney group - AIE. I think there is a guy called Reg Austin - somebody to do with AIE.*
 - *You have to ask Reg Austin - he's AIE.*
 - *Australian-On-Line Gaming Pty Limited - that's Reg Austin's company.*
- ! Mrs Cheryl Livingstone - *All the main dealings - I talked to Brad, I talked to Reg. He put the money in from Brad's side.*

Mr Reg Austin did not meet the criteria set out in Mr Ron Austen's Policy on Probity Program for being an associate. He was not a director of Gocorp or of a shareholder of Gocorp. Nor did he

personally own 5% or more of the shareholding in Gocorp. He did not have what might be called a visible, formal connection with Gocorp which, on that kind of test, would associate him with it.

A substantial shareholder in Gocorp was a company called Topki Holdings Pty Ltd (Topki) which held, initially, 20%, and then 14.5% of the shareholding. Topki acted as a trustee. Its directors were partners in an accountancy practice in Sydney, one of whom had known Mr Reg Austin for a long time.

During the course of interviews conducted in Sydney by Mr Paul Ryan, a director of Topki informed Mr Ryan that Mr Austin introduced Topki to Gocorp. According to the director, Mr Austin said:

I am putting together this arrangement with a company and would you mind if I use your trustee company to consolidate the shareholding.

At the time of the interviews, Topki held 40 shares or 20% of the shareholding in Gocorp. It was explained that one share was held on trust for an Austin family superannuation fund and another for a D'Arcy family superannuation fund. Copies of declarations of trust for each of these two superannuation funds were provided to QOGR. The other 38 shares, it was said, were held by a company, Supercom Consultants Pty Ltd (Supercom), on trust for some 38 other superannuation funds.

A director of Supercom was interviewed by Mr Ryan in Sydney. The director stated: *Austin is Topki - he introduced Supercom to (Gocorp).*

At the interview, Mr Ryan asked the director whether there were declarations of trust with respect to each of the other 38 shares. The director said that there were. Mr Ryan requested the director to send copies of the declarations to him in Brisbane and left his address. The director agreed to do so. No copies of any trust declarations were sent to Mr Ryan. However, Mr Ryan did not pursue the matter with the director.

The QOGR probity investigators were alerted to two other matters concerning Mr Reginald Austin. One I have already alluded to - Mrs Livingstone's remark in her interview that he had put in money to the project. This disclosure, however, was not pursued. The Commission's investigations have revealed that Mr Austin has claimed that he had put \$400,000.00 of his own money into the project. The passage from Mrs Livingstone's interview to which I have referred indicates that she was aware of this claim at the time of her interview. Secondly, a probity investigator observed a resolution in minutes of Navari dated 18th December 1998 that Mr Austin was to have an option to take up *to the maximum allowable* shares in Navari. Mrs Milton, the Navari secretary, and Mrs D'Arcy, a Navari director, were asked about the option in their interviews, but neither knew much, if anything, about it. The option was not addressed in QOGR interviews with Mr D'Arcy, Mr Livingstone or Mr Pisasale, and was not otherwise pursued. Mr Austin, of course, was not questioned about it.

I note that Mr Reginald Austin is referred to briefly in the probity report but only in connection with the share held on trust by Topki for his family superannuation fund. It appears that no one within QOGR who read the report or drafts of it and had had dealings with Mr Austin, drew to the attention of the probity investigators their own level of contact with him.

In my view, QOGR did not pay sufficient attention to Mr Reginald Austin during the probity investigations and did not investigate his possible involvement sufficiently thoroughly. The shortcomings in the probity investigation were not a result of any pressure being applied on the probity investigators at any level. Those with information concerning Mr Austin did not consider

it necessary to communicate their knowledge to the probity investigators as they had confidence that any association Mr Austin had would as a matter of course be recognised by the probity investigators. I should add that many of those who had some dealing with Mr Austin were not aware of the full nature or extent of any interest that Mr Austin may have had at the time of their dealings.

I stress that I have made no determination as to the extent of any association that Mr Austin may have had with the ownership or management of Gocorp. The point I make is that there was sufficient information in QOGR's hands to warrant further probity enquiries concerning Mr Austin's possible involvement.

I have concluded that the shortcomings in the probity report in relation to Mr Austin (which were acknowledged in the course of their interviews by the probity investigators) were as a result of a combination of factors, principal ones of which are:

- ! a lack of proper procedures within QOGR for recording relevant probity information or for transmitting relevant probity information to probity investigators;
- ! inadequate investigative techniques, namely, a failure to make and study transcripts of all interviews, a failure to pursue documents that should be obtained and perused, and a failure to follow up on leads given at interview; and
- ! criteria for identifying an associate which are limited to visible, formal connections with an applicant and exclude association by influence on management exerted in less visible, but more subtle, ways.

These factors adversely impacted on the effectiveness of the interviews which were conducted by QOGR. I must say that in perusing the transcripts of interviews conducted by Mr Ryan, I gained the impression that he had a rather mechanistic interviewing style which sought to have the interviewee confirm information given in answers in the proforma document and which, through its rigidity, was not suited to examining inconsistencies or identifying new lines of enquiry. This, I think, reflected his lack of training and experience.

As a matter of fairness, this was the first application to be considered under the legislation and therefore there were no precedents to follow. It was suggested by one officer of QOGR that procedures would in the normal course of events improve in light of the experiences of dealing with the first few licence applications.

In explanation of the extent of the probity investigations, Mr Sarquis, Director, Compliance stated:

The nature of a probity investigation is different to a police investigation. The standards of proof are different. From our point of view, it is a risk management issue, we have limited resources, and we have to take into account a reasonable time frame when we conduct our inquiries.

I note that the Auditor-General makes a number of recommendations for improving the processing of an interactive gambling licence application by QOGR. These recommendations appear to me to be ones that will go towards addressing shortcomings to which I have referred in the process adopted for the Gocorp application. I respectfully agree with the Auditor-General's recommendations.

Mr Terrence Ell

I have noted previously that Mr Ell's name was included on the list of key persons set out in Mr Ron Austen's letter dated 16th December 1998. Although, Mr Ell was requested to fill out a Proforma document he did not complete one once QOGR believed he had no share holding in Navari. He was not the subject of probity investigations, and he was not interviewed by QOGR investigators. In fact, his name was deleted from the list by Mr Austen upon his being informed that Mr Ell had resigned as a director of Navari on 3rd December 1998 and had sold his shareholding in Navari to another shareholder. Mr Ell personally has never been recorded as a director or shareholder of Gocorp.

During the course of the probity investigations, it was noticed that Mr Ell's name continued to appear in minutes of Navari meetings after December 1998. This, it was explained to QOGR investigators, was due to the fact that Navari had enlisted his project management skills to assist it.

It was also noticed that, according to Navari minutes, at a meeting held on 22nd November 1998, Mr Ell had requested that a 5% shareholding in Gocorp owned by a company associated with him, Goldstem Pty Ltd, be placed in a blind trust behind Navari. The minutes for that meeting record agreement to Mr Ell's request on the proviso that any costs were met by Goldstem Pty Ltd. This matter was pursued in probity interviews in February 1999 when QOGR was informed that the agreement had been rescinded and that there was to be no blind trust. The rescission is confirmed by a Navari minute.

In light of the information given to QOGR, the proposed probity investigation of Mr Ell was not undertaken and he was not interviewed. It was, I think, quite reasonable for QOGR to proceed this way given what its probity investigators had been told.

The issue of whether or not QOGR was misled by persons who had been interviewed in relation to Mr Ell's involvement is a matter for QOGR. As I have already explained, false or misleading statements in this regard could not amount to official misconduct.

Seed capitalists

Gocorp was a new company with an issued capital of \$200.00 at the time that the application was lodged. It proposed to raise start-up or seed capital of \$7M from a number of individuals or corporations, known as seed capitalists, in amounts of \$500,000.00 or multiples of \$500,000.00. Once Gocorp had been started up, a public float was proposed from which the seed capitalists would be repaid at a premium.

During the probity investigations, enquiries were made as to the financial ability of capitalists to provide the funds to which they were committed. QOGR was advised that in the case of corporations, funds would be injected into them, enabling them then to direct funds to Gocorp. Criminal history checks were conducted into seed capitalists and, where they were corporations, into their directors and major shareholders.

Later in this advice, I refer to an incident in late May 1999 when the Treasurer's office relayed to QOGR a complaint that Gocorp had made to the effect that QOGR was conducting probity investigations into *prospective shareholders* of Gocorp, namely, the seed capitalists when it ought not be doing so. I refer also to Mr Sarquis' response to the Treasurer's office which accurately explained why it was that probity checks into seed capitalists were necessary. He also explained that

he had directed that the probity checks to be undertaken in regard to seed capitalists be criminal history checks and enquiries into ability to fund seed capital. The direction, I stress, was made during the course of investigations and well before the communication from the Treasurer's office was received.

Given that an objective of probity investigations is to determine whether a source of an applicant's funding is tainted, some might well hold the view that investigations by QOGR into the individuals who were to fund the seed capitalists was also warranted. However, that was not Mr Sarquis' view and what is important for present purposes is that his direction as to the scope of the probity investigations into seed capitalists was not made as a result of pressure from any source.

Probity reports

I have referred to the first draft of the probity report, an updated version and the final report. I advise that I have perused all three documents and have found that they exhibit a consistency of approach. There is nothing to suggest that any line of enquiry was truncated as investigations progressed or that there was a change of direction that might arouse suspicion.

Official material and information

I report also that I have not detected any misuse by any officer of QOGR of information or material acquired by them officially, in relation to the processing of the Gocorp application.

Chapter 7

Consideration of the time taken to process the application and grant the licence

One of the focuses of the Commission's investigations was whether any person involved in processing or granting the licence, had deliberately fast-tracked the process to confer a competitive advantage on Gocorp.

There was a suggestion that a significant financial benefit would accrue to the first applicant to obtain a licence. Some interviewed stated that they believed that the advantage did not accrue to the first licensee but rather to the first operating licensee. In any event, there is no evidence to suggest that there was deliberate fast-tracking. Indeed, the evidence suggests that significant disquiet was expressed by the applicant and on its behalf in relation to the length of time taken to process the application by QOGR and, indeed, the time taken for the regulations made under the IGPP Act to come into force.

Before I canvass that matter further, it is necessary to consider the issue of whether any other person who wished to make application for a licence had been disadvantaged by the failure of QOGR, or any other person, to publish widely the fact that the IGPP Act and the regulations had taken effect thereby depriving them of an opportunity to apply promptly.

The Executive Director of QOGR, David Ford, stated that there had been many enquiries from interested parties as Queensland's intention to enact legislation governing Internet gambling had been widely canvassed in gaming circles. Similar evidence was given by others. Information was sought on the legislation by interested parties and in many instances application enquiries were made. The Commission obtained a copy of a register maintained by QOGR of queries made in relation to either the legislation or application details. The register shows over forty enquiries in late 1997 and through 1998. Many of these enquiries were from interstate and some were from overseas.

There can be no doubt that the enactment of the IGPP Act and the subsequent making of the regulations was well known, or at least easily capable of ascertainment, by those interested in making an application. I should add that notwithstanding the significant number of enquiries made concerning the legislation, only a very small number of formal applications has been made.

The Gocorp application was lodged on 16 October 1998, just over two weeks after the substantive provision of the IGPP Act and the regulations came into effect.

Prior to the application being lodged, Mr Brad McCosker, the Chairman of the applicant at that time, had telephoned the Treasurer, Mr Hamill, to seek an indication of how long it would take for an application for a licence to be processed by QOGR. Mr Hamill asked one of his advisors, Andrew McMicking, to make enquiries with QOGR about the length of time necessary to process the application.

QOGR e-mail records suggest that the telephone call to Mr Hamill was made on or about the 8 October 1998. Those records also suggest that Mr McMicking telephoned Ms Debbie Caldwell of QOGR who passed the message to Ms Linda Woo. Mr McMicking states that Ms Woo telephoned him subsequently and advised him that the application would take approximately six weeks to process.

CHAPTER 7: CONSIDERATION OF TIME TAKEN TO PROCESS APPLICATION AND GRANT LICENCE

On the basis of the advice he had received, Mr McMicking drafted a letter dated 9 October 1998, which was signed by the Treasurer and sent to Mr McCosker. That letter included the following paragraphs

As you would appreciate, the issue of a licence to Internet operators will be subject to particular processing requirements and thorough probity checks. I am advised by the QOGR that these steps should take some six weeks once an application has been lodged.

Once this process is complete and OGR is satisfied with the nature and viability of your business and Internet services, I would expect a licence will be issued to your company. This will enable you to commence providing interactive gambling services.

This is a significant letter. Notwithstanding the indication that the application would be processed in approximately six weeks, the licence did not issue until 3 June 1999, over eight months later. This fact alone strongly suggests that there had been no fast-tracking of the application.

On the basis of this letter, Gocorp, no doubt, had an expectation that the licence would have issued much sooner. This expectation resulted in many approaches being made to the Treasurer's office by the applicant or on its behalf attempting to ascertain how much longer the process would take, and generally complaining about the length of time taken.

Indeed, in view of the perceived delay, on 16 December 1998, the applicant wrote to QOGR to seek an *interim* licence, whilst probity checks were on-going. Subsequently, a meeting was held with Mr Allan Farrar, a director of the applicant, and the Director of Compliance, Mr Michael Sarquis and Ms Linda Woo on 21 January 1998 concerning the matter. By letter dated 3 February 1999, Mr David Ford, advised that no provisional licence was possible under the IGPP Act and that the applicant would have to satisfy a number of requirements before QOGR would be in a position to complete its investigation and make recommendation as to its suitability to be granted a licence. This was almost four months after the application had been made. Yet again clear evidence, that no fast-tracking had taken place or was to take place.

Even as late as the final week before the licence issued, QOGR were seeking further details from the applicant. On about 26 May 1999 the Treasurer's Office was again contacted by representatives of Gocorp. These representations were passed to QOGR for its response. Gocorp advised the Treasurer's Office that QOGR had been seeking information from Gocorp in relation to prospective shareholders and it was suggested that this should not be the case. Its argument was that QOGR should simply seek information on current shareholders and subsequently seek information on any others if, and when, they became significant shareholders. The *prospective shareholders* to which reference had been made were seed capitalists nominated by Gocorp as intending to provide seed capital for the venture.

In a memorandum dated 27 May 1999 from Mr Michael Sarquis, Director (Compliance), he responded to the suggestion that no further probity enquiries be undertaken into the seed capitalists. Mr Sarquis referred to Section 33 of the ITPPA which provides that in deciding whether an applicant is a suitable person to hold an interactive gambling licence the Minister may have regard to whether the applicant has or is able to obtain appropriate resources and appropriate services. Appropriate resources is defined to mean financial resources which are adequate in the Minister's opinion to ensure the financial viability of operations and available from a source that is not, in the Minister's opinion, tainted with illegality. Mr Sarquis considered that in view of these statutory provisions, and irrespective of whether the seed capitalists ultimately became shareholders, it was necessary to conduct checks in relation to them to ascertain their ability to provide the seed capital and also their suitability to provide such financial resources.

The memorandum explained that as a consequence Mr Sarquis had directed that comprehensive probity investigations not be undertaken but QOGR's enquiries be limited to police checks of involved persons and the sighting of evidence of their ability to provide the funds. The memorandum continued that the police checks had been finalised and the information relating to the ability of the seed capitalists to provide the necessary funding had been received and was considered satisfactory.

On the same day Mr David Ford e-mailed Ms Caroline Turnour of the Treasurer's Office and confirmed that QOGR had acted in conformity with the legislation. He indicated that he would fax a copy of Mr Sarquis' memorandum to her that morning. Ms Turnour was a policy advisor in the Treasurer's Office who had a number of dealings with QOGR concerning the application for a licence by Gocorp.

This clearly shows that whatever approaches had been made through the Treasurer's Office by Gocorp or on its behalf, QOGR continued to process the application according to what it considered to be the requirements of the legislation.

Whether these checks were sufficient is discussed elsewhere in this advice but certainly there is no suggestion that the particular checks were limited because of any influence from Gocorp directly or through the Treasurer's Office.

Without exception all those in the Treasurer's Office, including Mr Hamill and Ms Turnour, indicated that all enquiries were forwarded through the normal channels to QOGR for consideration. They denied exerting any pressure or influence upon the process being conducted by QOGR.

On the other hand, all those involved in the process within QOGR from the Executive Director to the probity investigators were adamant that no undue influence or improper pressure had been placed upon them to conduct their enquiries in any specified fashion. They regarded all correspondence from the Treasurer's Office as normal ministerial correspondence and enquiries, including that correspondence which related to the length of time taken for the probity checks to be undertaken.

The following exchange of e-mail between Ms Caroline Turnour and Mr David Ford provides some insight into the last few days negotiations between QOGR and Gocorp and the fact that they were still at arms' length.

From: David Ford@qogr.qld.gov.au
Sent: Tuesday, 1 June 1999 13:34
To: Caroline Turnour
Subject: Interactive Licence

FYI, we are still waiting for stuff from GOCORP. As a consequence, we are running out of time to get the material prepared for the Treasurer for this afternoon. I have set an internal deadline of 2pm - after which I cannot guarantee that it will be possible to help them over the line this afternoon. If you are speaking with them, could you reinforce our concerns?

(You should be aware that material they promised yesterday evening did not arrive until after noon today - this is typical of the problem we have been having in finalising the licence. Further, I fear that some of the material they are drafting will need discussion rather than just being blindly accepted by us - I am concerned that they may be trying to use the deadline to simply back us into a corner.)

David Ford

Caroline Turnour 01/06/99 13:59:51
To: David Ford
Subject: RE: Interactive Licence

I spoke to Appleby [Chief Executive Officer of Gocorp] before lunch and he said that QOGR had everything now and that the issue of the length of the licence was going to be left up to the Treasurer. I told him we had a 4.30 deadline and wouldn't be able to accept it after that.

01/06/99 14:19
To: Caroline Turnour
Subject: Interactive Licence

Caroline

He was being less than fully honest. My people received the draft clauses here about 30 minutes ago! (And they are not as agreed last evening - so we need to go back yet again!)

Its all good fun!

David

Mr David Ford was asked what was the deadline he was referring to in the first of these three e-mails. He explained that it was an internal deadline which had been set to enable the draft licence to be forwarded to the Treasurer for consideration and possible signature on that day. He acknowledged that this internally set deadline which, had been communicated to Gocorp, was set with a view to accommodating Gocorp's urgent requirements. He explained that the seed capital draw-down for Gocorp's new equipment was needed within 24-48 hours. Mr David Ford further explained that at this point of the negotiations, subject to the finalisation of the licence conditions, there were no other outstanding probity issues left and QOGR was simply trying to assist by finalising the matter in a time-frame which was acceptable to Gocorp's commercial requirements, if possible.

It was quite clear from the first and second of these e-mail messages that QOGR had no intention of *blindly* accepting information provided by Gocorp without giving full consideration to the material and if necessary, seeking further clarification or augmentation.

To put beyond doubt the independence of QOGR, reference need only be made to the following e-mail message.

David Ford
01/06/99 16:15
To: Caroline Turnour
Subject: Interactive Licence - current state of play

Caroline

We are now at the point where there is no chance of a final licence document this afternoon. The latest draft we have from GOCORP contains at least six areas where we cannot agree to their proposals - most of which have been added by them since last night.

We are presently drafting responses on each issue for them and proposing alternative drafting, but the realities are that they will not have them until after the 4.30 deadline. On the basis of their performance

to date, this presumably means that they will respond sometime late tomorrow, which delays the licence by at least twenty-four hours. They only have their lawyers (who inserted the offending clauses) to thank!

David

Memorandum of 29 July 1998

At this point it is appropriate to turn to a matter that came to public attention through a disclosure of the Premier that a single page memorandum dated 29th July 1998, with a single page attachment to it, was sent by his Chief of Staff, Mr Rob Whiddon, to Mr Scott Flavell, a Senior Adviser in Queensland Treasury. Mr Whiddon signed the memorandum which is headed *Internet Gambling* and stated:

The Premier has requested that you urgently have an appropriate staff member discuss internet gambling with Bill D'Arcy MLA, who has raised some concerns with him.

The attachment was a computer printout of an ABC news release about a Tasmanian claim to be the world's first with an internet casino. The printout was marked in handwriting: *Attention: Bill D'Arcy*, and noted at the foot: *Bill, this is what I told all of you would happen. When will they wake up? Brad.* (This is a reference presumably to Brad McCosker).

For the purposes of my enquiries the significance of this memorandum lies in whether or not any improper influence in relation to the making of the regulations ensued.

In interview, Mr Whiddon stated that 29th July was during the first week of Parliamentary sittings for the new Government. Mr Whiddon explained the circumstances of the memorandum as he could best recall them as follows:

Somewhere along the line on this particular day it was probably the date of the memo I expect 29th July, this had been given to me either by someone in my office or dropped in by Mr D'Arcy. It would appear to be a document, and I am assuming this ... from McCosker, that he has given to D'Arcy saying find out what is going on the Tasmanian Government got the lead on us. My action was obviously to refer the matter to my counterpart in the Treasurer's office Scott Flavell senior adviser to David Hamill, and as you can see I have asked him to arrange for an appropriate staff member to make contact with Mr D'Arcy to discuss it with him.

Mr Whiddon stated that he had no knowledge that the printout or the notations on it related to anything specific that Mr D'Arcy or anybody else was doing. He said that he simply asked for Mr D'Arcy to be contacted and left the matter at that. It was not something on which he had been asked to prepare a briefing or to arrange a meeting with the Premier.

In interview, Mr Flavell stated that he had no clear recollection of the memorandum but that in accordance with his practice, he would have delegated anything to be done to QOGR. He did not himself do anything in response to it.

I should mention that in interview, Mr Hamill said that he had not seen or known of the memorandum until its public disclosure after the Gocorp licence had been granted. I have no reason to doubt the truthfulness of the accounts given by Mr Whiddon and Mr Flavell or of Mr Hamill's statement.

CHAPTER 7: CONSIDERATION OF TIME TAKEN TO PROCESS APPLICATION AND GRANT LICENCE

As a result of the representation a briefing note was prepared by QOGR for the Treasurer discussing the background to the time frame in which the Regulations were being prepared. The briefing note is headed *Briefing for the Treasurer Meeting with Bill D'Arcy MLA - Re Tasmanian Internet Casino*. However, the evidence indicates that the Treasurer did not meet with Mr D'Arcy over that issue.

The briefing note was delivered to the Treasurer's office. It was marked *noted* in the margin by the Acting Under Treasurer.

The Treasurer noted in his handwriting in the margin *The regulatory framework and licensing should be established in Qld ASAP*. He then initialled and dated the note 3/8/98.

The Treasurer's notation was consistent with the attitudes of both the current Government and the previous Coalition Government and was in line with QOGR's endeavours at the time.

Accordingly, I am satisfied that no improper influence ensued from this memorandum.

Chapter 8

Political lobbying

The difference between lobbying and official misconduct

It is fair to say that much of the speculation concerning the issuing of the licence to Gocorp has been based on the connection between it and the three Labor Party identities, Mr D'Arcy, Mr Livingstone, and Mr Pisasale.

There is no doubt that Mr D'Arcy and Mr Livingstone, whether by way of correspondence, telephone calls, formal meetings or informal conversations made representations to the Government of the day in relation to the legislative process leading to the enactment of the ITPPA or leading up to the issue of the licence to Gocorp. The majority of these representations related to what was considered to be delays in enacting the legislation, making the regulations, or issuing the licence. I have already referred to one representation made by Mr D'Arcy. The evidence suggests most of Mr D'Arcy's submissions were directed to the Coalition Government and Mr Livingstone's to the Labor Government after he had lost his seat in Parliament in June 1998. There is also little doubt that at the time these submissions were being made, they or members of their families had beneficial interests in Gocorp and/or in one or both of the two companies which the promoters of the project had considered be used as the project corporate vehicle prior to Gocorp. In this way, each had a financial interest in the subject matter of the submission.

There is evidence to suggest that Mr Pisasale made a single representation in relation to the time that processing of the application was taking.

There is some dispute as to the extent to which those in Government knew of any financial interest held by Mr D'Arcy and Mr Livingstone at the time that they were making their submissions. In any event, lobbying, even when it includes making submissions for specific legislation or seeking amendments to a Bill by an MLA, does not of itself constitute official misconduct. The reasons for this are, as I have explained, that lobbying cannot constitute a criminal offence and that as the position of a Minister or an MLA is not terminable for a disciplinary breach, no question of termination for disciplinary breach arises. Therefore neither Mr D'Arcy nor Mr Livingstone could be guilty of official misconduct arising out of any lobbying that they may have conducted whilst an MLA.

Furthermore, in the case of Mr Pisasale whilst a councillor, and in the case of Mr Livingstone, after he had lost his position as an MLA, and was employed as a policy advisor to the Honourable the Minister for Public Works and the Minister for Housing, they could not be guilty of official misconduct in relation to any lobbying that they may have conducted as it was not done in any official capacity but rather in a private capacity. It will be recalled that official misconduct for the purposes of paragraph (b) of s32(1) of the *CJ Act* must be misconduct by the officer in the course of or pertaining to the exercise of the powers, functions, duties or responsibilities attaching to his or her office.

It is true that the conduct could constitute official misconduct for the purposes of paragraph (a) of s32(1) but this would be so only if it had or could have had the necessary adverse effect on the members of the Government to whom the submissions were made. That is, the submissions would have had to be directed to affecting adversely the honest and impartial discharge of functions or execution of powers

or authority of those in Government. There is simply no evidence that any person in Government, whether from the Coalition Government or the Labor Government, considered that the submissions made to him or her by Mr Livingstone or Mr Pisasale (or for that matter Mr D'Arcy) had been intended to have any person in Government act in a way that was not honest and impartial. This conclusion is completely consistent with my assessment of the process by which the licence was issued by the Treasurer, Mr Hamill, and QOGR. It will be recalled that I consider that there is no evidence that any undue influence or pressure was exerted by the Treasurer's Office on QOGR and further that officers of QOGR acted honestly and impartially.

Notwithstanding my conclusions in this regard, I join in the recommendation made by the Auditor-General that MLAs involved in lobbying activities should formally declare any financial interests in the matter and that the minuting of that financial interest occur at all formal meetings.

In this regard I note that the Auditor-General considered that it would be desirable for the Parliamentary Committee - Members Ethics Parliamentary Privileges Committee (MEPPC) to issue as soon as practicable a code of conduct for MLAs and it may wish to consider some of the issues that arose in his audit. He acknowledged that the MEPPC had a draft code of conduct to which it has given due consideration.

The MEPPC has sought submissions on its draft code of conduct and in August 1998 the Commission made a submission to it. The issues which the Auditor-General suggest the MEPPC may wish to consider are consistent with the general thrust of the Commission's submission in August 1998.

The three issues which the Auditor-General highlighted are:

- whether the level of disclosure in the registers of Members and related persons' interests should be extended to enhance the associated accountability and transparency eg the extent of shareholding
- public duty versus private interest and the inherent responsibilities of public office holders
- perceived and potential conflict of interests of MLAs and guidance for MLAs to assist them to make consistent judgements about this.

I agree with the views expressed by the Auditor-General.

Member of Parliament receiving bribes

At this time it is appropriate to refer to a further provision of the *Criminal Code - s.59 Member of Parliament receiving bribes*.

It provides

Any person who, being a member of the Legislative Assembly, asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person upon any understanding that the person's vote, opinion, judgement, or action, in the Legislative Assembly, or in any committee thereof, shall be influenced thereby, or shall be given in any particular manner or in favour of any particular side of any question or matter, is guilty of a crime, and is liable to imprisonment for 7 years, and is disqualified from sitting or voting as a member of the Legislative Assembly for 7 years.

Although lobbying per se is not a criminal offence, where an MLA asks, receives, or agrees or attempts to receive or obtain property or benefit of any kind to act in the Legislative Assembly or a committee in the manner proscribed by s.59, then a criminal offence would be committed. There is no evidence that any MLA behaved in this manner in relation to the passage of the IGPP Act or the *Wagering Act 1998* which was enacted contemporaneously with it.

Although Mr D'Arcy and Mr Livingstone held financial interests directly or indirectly in companies which intended to apply for an interactive gambling licence once the requisite legislation and regulations were in force, there is no evidence that their action in the Legislative Assembly or any committee had been influenced or attempted to be influenced by the receipt or obtaining of any property or benefit. Indeed, the bills for IGPP Act and the *Wagering Act* were on motion, by leave, read a third time without any division or vote required for the passing of the legislation. This was primarily because there was never any significant opposition to the legislation which was largely seen by at least the major political parties as protecting on-line players.

Private use of official electorate resources

At this stage I should refer to a matter which I noted in the course of perusal of the documentation - the issue of the possible use of official electorate resources for private purposes by MLAs.

I have been advised that allegations of this nature made against public servants have been dealt with previously by the Commission by referring the matter back to the relevant department or agency to determine whether any disciplinary action is warranted.

It is my view that the use of official electorate resources is a matter for Parliament to regulate and is something that the MEPPC should consider specifically including in any Code of Conduct. A similar submission was made in the Commission's submission to the MEPPC in August 1998.

Chapter 9

The grant of the licence

Meetings with Gocorp delegations by the Treasurer

Mr D J Hamill MLA was sworn in as Treasurer during the last week of June 1998. Between then and the grant of the licence, he met with what might be called Gocorp delegations on two occasions.

Mr Hamill met with Mr Reg Austin and Mr Brad McCosker on 15th July 1998 for about half an hour at Mr Hamill's office. Mr Ford also attended the meeting. Mr Hamill recalled that the issue that Messrs Austin and McCosker were pursuing was *how do we go about getting a licence to operate these games*. He said that he was left with the impression that Mr McCosker was informed on what interactive gambling was about and that he was "the prime mover in terms of the application". Mr Hamill stated that this was the only occasion on which he met Mr Austin and Mr McCosker as Minister. He thought that he might have met one or both of them briefly in Sydney while on business as Shadow Treasurer in November 1997.

I have already referred to earlier meetings Mr Austin and Mr McCosker had with QOGR officers. I note that they also made representations in support of the project to members of the Coalition Government prior to July 1998.

The only meeting between Mr Hamill and Gocorp directors occurred on 14th May 1999 at Mr Hamill's office. The directors present were Mr Appleby and Mr Farrar. The principal issue discussed at that meeting was the tax rate applicable to an interactive gambling licensee. The topic of probity checks was not raised or discussed.

The recommendation to the Treasurer

The final probity report as prepared by Mr Paul Ryan was submitted to Mr Ron Austen on 27th May 1999. Mr Austen reviewed it and signed the report document which Mr Ryan had also signed. The executive summary to the report outlined the issues in relation to Mr Pisasale and Mr D'Arcy to which I have already referred. Each of those issues was explained in appropriate detail within the body of the report. As to Mr Pisasale, the executive summary advised that he had resigned as a director of Navari and that written undertakings had been received from Mr and Mrs Pisasale. As to Mr D'Arcy, as I have previously explained there was reference to certain information which went to the issue of Mr D'Arcy's character. The executive summary stated that *while this matter is of concern, it is considered that no further action is warranted at this time*.

The probity report formed the substantial component of a submission prepared within QOGR. The submission also contained two memoranda, each drafted within QOGR. Since the submission formally was to be one from the Under Treasurer, as chief executive, to the Treasurer, as Minister, each memorandum was drafted as one from the Under Treasurer to the Treasurer. One of the draft memoranda dealt with the grant of the licence.

In late May and very early June 1999, negotiations were continuing between officers of QOGR and Gocorp and its solicitors with respect to the conditions of the licence. One issue on which the parties were apart was the term of the licence. This topic was the subject of the other draft memorandum for the submission.

In due course, each draft memorandum was adopted by the Under Treasurer and became a formal memorandum from him to the Treasurer. Each was in the submission to the Treasurer on the Gocorp application. Both memoranda are dated 2nd June 1999. The memorandum on the grant of the licence is identified by its title *Interactive Gaming Licence - GOCORP LTD* and the memorandum on the term of the licence is identified by its title *Interactive Gambling - Term of Licence*. I refer to these memoranda as *the grant memorandum* and *the term memorandum* respectively. I turn first to the term memorandum. It explained that by 2nd June, the only unresolved difference related to the term of the licence to be granted to Gocorp should the Minister decide to grant it. In short, Gocorp and its promoters wanted a licence for a longer term than QOGR was willing to recommend. I mention that Gocorp's promoters had lobbied for an exclusive licence but this was opposed by both the present Government and the previous Government.

The term memorandum set out the issues in relation to the term of the licence as follows:

QOGR initially recommended a five (5) year licence term, given its concerns about future public policy and the rapidly changing nature of technology. Further, it was considered that initial capital outlays for interactive gambling would be minimal.

During discussions GOCORP made the following points:

- GOCORP argue that the capital raising, in particular their underwriter and seed capital participants, would not consider a term of less than 20 years, desiring some tangible form of support regarding business continuity in their capital raising. Indeed, a 50 year (or perpetual) term was seen as preferable.
- GOCORP states that their seed capitalists and the financial markets would not accept a five year term. Further, GOCORP argue that no other licensed gaming operator in Queensland has been reliant upon the licence in any capital raising nor do they target a global market.

In response QOGR advised:

- A shorter term provides the Government with an option to withdraw from this interactive gambling if public policy regarding this form of gambling alters in a material way. The longer the term the greater the commercial contractual risk facing the Government. Further, QOGR believes that, despite contrary argument from GOCORP, interactive gambling licensees require less capital outlay than terrestrial gaming licensees and have a potentially global market.
- Fewer secondary businesses, for example those supplying goods and services in the gaming/entertainment industry, stand to benefit from interactive gambling to the same degree as they benefit from terrestrial forms of gambling operations.
- Interactive gambling licensees are not required to develop convention centres nor do they pay large, up front payments for any form of exclusivity or extended term of licence. The term of the interactive gambling licence should not be of a prolonged duration due to the nature of the industry within which providers will be operating, in particular, the rapidly evolving technology and the relatively low cost of entry compared with other forms of gaming.

- There is no need to "protect" a licensee's investment or attempt to boost the value of a GOC through an extended licence term. GOCORP is not a GOC where it is in the interest of the Government to provide a long term licence (and exclusivity) in an attempt to increase the value of the entity.
- the interactive gambling regulatory regime in Queensland is a world first and requires rigid controls in the formative stages. While a licensee may not breach the licence conditions or the Act sufficiently to warrant licence cancellation, behaviour of the licensee may be such that the Government does not wish to renew the licence. GOCORP do not currently have a proven product.

Notwithstanding the above QOGR acknowledged GOCORP's need for capital raising to create a global presence and subsequently agreed to a 10 year term. Indeed, GOCORP is not in a financial position to develop any interactive operation whatever without a significant capital raising. A 10 year term aligns with that provided to Licensed Monitoring Operators (LMOs) who operate similar technologically-based gaming operations. This term is comparable with the 15 year exclusivity for wagering, 12 year exclusivity for Lotteries and 10 year exclusivity for Keno.

In response GOCORP conferred with their underwriter, Deutsche Bank, and their seed capitalists, and stated that a 20 year licence term was the absolute minimum.

QOGR has some concerns about a 20 year term:

- There is no up-front fee and yet an extensive licence term is proposed.
- Employment opportunities are considerably less than are applicable in the casino and gaming machine industries due to the heavily capital nature of interactive operations.
- There is no knowledge of where this industry will be in 5 years, let alone 20 years, especially given the rapidly changing technology and the global nature of the operation.
- To provide consistency, whatever term is given to GOCORP will need to be given to all interactive licensees, as is the case with the LMOs.
- With an extensive term, any future change of Government policy - State or Federal - may only be able to be implemented with significant compensation costs by the Government.

This analysis of issues relating to the term of the licence was, in my opinion, thorough, accurate and impartial. The term memorandum contained the following conclusion:

The nature of the impasse is primarily due to the current status of financial resources of GOCORP and the avenue through which GOCORP wish to raise their capital. To date in Queensland, gaming licences have not been utilised as the sole basis for raising capital and, while QOGR does not see this practice as desirable, there is no alternative if GOCORP is to be licensed.

For your information.

Neither QOGR nor the Under Treasurer themselves determined to recommend to the Treasurer that a licence for a particular term be granted. The grant memorandum advised the Treasurer that the application evaluation had been finalised and set out the substantive aspects of ss.32 and 33 IGPPA. This memorandum continued:

The QOGR has conducted a thorough analysis of the applicant and its business associates and advises that, on the basis of this analysis, there is no impediment to the grant of the licence. Attached, for your consideration in determining whether to grant the licence as sought is a copy of the report of QOGR's investigations.

The report does, however, disclose two (2) matters which I would specifically draw to your attention in your considerations.

The first of these matters was the present financial position of Gocorp and the second matter consisted of issues relating to Mr Pisasale and Mr D'Arcy which were referred to in both the executive summary and the body of the probity report.

As to the term of the licence, the grant memorandum stated as follows:

A key element of these negotiations has been the term of the licence with GOCORP initially seeking a perpetual licence and the QOGR a fixed five (5) years. The essence of GOCORP's argument is that a licence term of less than 20 years will materially affect their capacity to attract capital in a public float. (Note that, apart from the intellectual capital contribution of the founders, the licence will be about GOCORP's only asset in approaching the market). This advice has been supported by GOCORP's financial advisers (Deutsche Bank).

The QOGR is aware that the company sees this issue to be of such significance that it has written to you directly on the matter (copy attached). A memorandum outlining the issues involved is also attached.

At the end of the day, the QOGR retains its concerns at the issue of a licence of this length, especially in such a dynamic environment, and to an unproven company. It will also become the standard for all future licences. However, on the basis of GOCORP's dependence on a successful float for its financial viability, a 20 year term is thus included in the recommended conditions.

I pause here to note that immediately after these words on the grant memorandum signed by the Under Treasurer, there appear the following handwritten words in parenthesis:

(An alternative, with a 15 year term has also been prepared, should you wish to proceed this way.)

These words are in Mr Ford's handwriting. The Under Treasurer, Mr Bradley, explained how these additions came to be inserted in the memorandum he signed. Mr Bradley said that Mr Ford brought the submission as prepared by QOGR to him, raised the unresolved question of the term of the licence and stated that the submission contained two draft licence instruments, one for 20 years and the other for 15 years, for the Treasurer to sign should he decide to grant the licence. Mr Bradley said that he felt that the grant memorandum as drafted did not make it clear that there was the 15 year option and that he asked Mr Ford to write in the words in parenthesis on the memorandum. Mr Ford has confirmed Mr Bradley's account of this.

The grant memorandum concluded with the following recommendation:

1. That you grant the application for a licence under the *Interactive Gambling (Player Protection) Act* to GOCORP Ltd, subject to the conditions appended to the licence document attached.
2. That you signify the grant of this licence by signing the attached licence.

After Mr Bradley had signed both memoranda and the submission was complete, Mr Bradley and Mr Ford attended a meeting with Mr Hamill on 3rd June 1999 at which time the submission was presented to Mr Hamill. Mr Hamill stated in interview that he became aware of an issue with respect to the term of the licence only when Mr Bradley and Mr Ford brought the submission to him at the meeting. Mr Hamill was concerned that no recommendation for a specific term was being made to him in the submission. His attitude is evident from the following statement he made in interview:

I was of the view that well here's the expert regulator sort of saying well it didn't really seem to not to matter too much whether it was fifteen years or twenty years, yet you had this - originally, the regulator saying well five years sequentially and Gocorp saying you need at least twenty. I put it fairly and squarely back to the Office of Gaming Regulation through the Under Treasurer to say well you know upon your expert advice, I mean you're advising me as Minister, what do you deem to be the more appropriate course of action here and I also made it quite clear in that context of the meeting that you know there were people involved and associated with the applicant that I knew, but I wanted to make it absolutely clear that I was not seeking to advantage them or to disadvantage them. But it seemed to me that the only proper and appropriate course of action was for the application to stand or fall on its own merits and given at this point the Office of Gaming Regulation is satisfied that a licence be granted and that you know they finalised their probity check and the licence be granted, the only issue which was still open was the term of the licence.

Mr Hamill made his attitude known to Mr Bradley and Mr Ford at the meeting. As a result of this, Mr Bradley and Mr Ford had a discussion and Mr Bradley interlined in his handwriting the words *for a 15 year term* after the word *licence* in Recommendation 1 in the grant memorandum. Mr Bradley initialled the interlineation and dated it. Both Mr Bradley and Mr Ford have confirmed this course of events.

Mr Hamill stated in interview that he read the probity report and both memoranda at the meeting on 3rd June. He said that given the advice to him that the probity enquiries were finalised and that a 15 year licence was recommended, he considered that this gave rise to a justifiable claim on Gocorp's part to a licence and that there was no legal reason why he should refuse it. He therefore decided to grant a licence for 15 years and signed both memoranda and the 15 year licence instrument at the meeting. There is no doubt that legally Mr Hamill was entitled to make his decision in reliance upon the submission he had been given.

I have concluded that the conduct of Mr Hamill, Mr Bradley and Mr Ford as outlined above was not tainted with dishonesty or impartiality. Certainly there is not in my view any evidence to give rise to any suspicion of dishonesty or partiality. Nor is there any evidence that any of Mr Hamill, Mr Bradley or Mr Ford was subjected to pressure on the part of others which could amount to official misconduct.

I observe that there was no legal obligation on Mr Hamill to take the matter to Cabinet for decision. Mr Hamill stated in interview that he did not raise the application with the Premier or tell him that he had the application under consideration and was proposing to grant the licence. He was not under any legal obligation to do so. He said that his reason for not having told the Premier was because the business of the application was not out of the ordinary and the applicant had successfully completed the statutory requirements.

Official material and information

I report that I have not detected any misuse by Mr Hamill, or any officer of Queensland Treasury, of information or material acquired by them officially, in relation to recommending, granting or otherwise dealing with the Gocorp application.

Chapter 10

The results - no reasonable suspicion of official misconduct

I am satisfied that the inquiries that have been undertaken by the Commission are sufficient for the purpose of ascertaining whether or not a reasonable suspicion of official misconduct exists concerning the issuing of the licence to Gocorp.

The results of these investigations are that in my view:

- (i) no reasonable suspicion of official misconduct on the part of any officer of QOGR concerning the issuing of the licence exists;
- (ii) no reasonable suspicion of official misconduct on the part of any Treasury officer concerning the issuing of the licence exists;
- (iii) no reasonable suspicion of official misconduct on the part of Mr DJ Hamill MLA or Mr DJ Briskey MLA concerning the issuing of the licence exists; and
- (iv) no reasonable suspicion of official misconduct on the part of Gocorp, or any person associated with it, including Mr W T D'Arcy MLA, Mr D W Livingstone and Mr P J Pisasale, concerning the issuing of the licence exists.

I come to the above conclusions having reached the view that there is no evidence that any of the following conduct occurred:

- deliberately fast-tracking the processing of the application to confer a competitive advantage on the applicant;
- carrying out deliberately inadequate probity reviews, for example, by not investigating a person whose suitability should have been investigated;
- deliberately reporting inadequately on the probity reviews;
- deliberately making recommendations in favour of a grant of the licence when an honest recommendation should have been against the grant or in favour of the grant on more stringent terms;
- deliberately truncating a line of enquiry when it was realised that this may have lead to information being produced which was inimical to the granting of the licence;
- any act of favourable treatment or any act which showed a lack of impartiality;
- any act by an individual concerned with the process of issuing or granting the licence which involved the misuse of information obtained by these persons because of their positions;

- any failure to act honestly in processing or granting the licence
- any act which constituted a breach of trust by any individual concerned with the process of issuing or granting the licence.

Furthermore there is no evidence that any gifts or promises of money, property or other benefits were offered or given to any person to influence a decision.

I consider that further investigations by the Commission of the circumstances surrounding the issuing of the licence are neither necessary nor warranted. I so advise.