The tragic irony of Nick Greiner’s recent downfall as premier of NSW is that he was found to be corrupt by the same statutory authority he established to scrutinise the behaviour of public officials—from the lowest up to himself. Greiner took office after crusading fiercely on the corruption issue, he led one of the cleanest governments in the state’s history, and no reasonable person would regard him as corrupt in the usual sense reserved for crooks and other shonky characters. There were no brown paper bags full of funny money passed across the desktop to poor old Nick, no bribes, no kickbacks. He was essentially an honest, respectable bloke.

It’s easy to understand, therefore, the spontaneous anger among Greiner’s supporters when his conduct was found to be corrupt in terms of the Independent Commission Against Corruption (ICAC) Act of Parliament, and that it could involve reasonable grounds for his dismissal. The most vicious criticism of the findings of ICAC head Ian Temby came from the Deputy Premier and leader of the NSW National Party, Wal Murray. Murray said that Temby’s reading of the law was “wrong”. At his most outrageous, he used parliamentary privilege to attack Temby personally, repeatedly branding him a “liar”. To Murray, the premier was guilty of no more than “speeding at 70 in a 60 zone”.

The corrupt label may have nasty connotations and seem unfair to Nick Greiner. Yet comparing his behaviour with a minor traffic offence trivialised the high standards which Greiner himself set for his government, and then asked the public to accept as a measure of the conduct of public officials in the 1990s.

Greiner campaigned strongly against the Wran Labor Government over the issue of “jobs for the boys” before he took office. Under his government, he promised, there would be no more plum jobs for the party faithful or other blatantly political appointments. This informal rule was soon broken. His wife Kathryn was appointed to a $24,000 a-year part-time position on the state’s Electricity Commission board. Then Neil Pickard, a minister who stood to lose his seat in a redistribution, was given an $87,000 a-year job as NSW Agent-General in London. Neither of these incidents was a hanging offence because—Greiner’s verbal promise aside—no strict rules applied to how such appointments were to be made. Although embarrassing for Greiner, he explained them away with a technique he called “the politics of candour”: admit publicly that you have changed your mind and decided to break a commitment, and then hope the public will cop it.

It was a different matter altogether when it came to the appointment of officials to the State Public Service, and in particular the way in which a job was secured for Liberal Party defector Terry Metherell. Greiner had created great expectations of public accountability by introducing a special Public Sector Management Act. This Act set high standards for public administration by detailing specific statutory requirements on how vacant public sector positions were to be advertised, applicants assessed and appointments made.

But when Metherell hinted that he wanted to leave politics in exchange for a top public service job, Greiner knew he had an opportunity to win back a safe Liberal seat at a by-election and thus consolidate his shaky grip on power in the lower house. He agreed that a new job should be created for Metherell in the Environment Protection Authority. The job would not be advertised and Metherell would not be interviewed, meaning that the normal rules of the Public Sector Management Act were to be bypassed.

Instead, according to the advice Greiner accepted, Metherell would be appointed to the Premier’s Department after his name was tacked on as a late entry to some previously advertised senior jobs for which applications had already closed. Once appointed, he was to be seconded to his new environment job. Greiner again resorted to the politics of candour to explain it all to the public. Yes, he said, Metherell’s appointment was obviously political.

Temby’s key findings were that Greiner’s conduct was corrupt within the meaning of the ICAC Act because (under Section 8) it involved a partial exercise of his official functions and a breach of public trust. Furthermore (under Section 9), his conduct could involve grounds for dismissing him as premier.

A big part of Greiner’s predicament, and one which blunted the criticism of Temby by Wal Murray and others, was the very wide definition of what constituted corruption under the law. The legal sweep of corruption under the ICAC Act is as breathtaking as the list is long; it ranges from the findings which nobbled Greiner to very serious offences such as bribery, fraud, theft, drug dealing, treason and homicide.

The obvious point here is that the ICAC Act does not distinguish between criminal and non-criminal behaviour. Certainly, no findings of criminal or unlawful conduct were made against Greiner. So the meaning of the law in Greiner’s case implies a wider definition of corruption, such as an abuse of power. The public percep-
tion of corruption is generally understood to relate to criminal behaviour, particularly in the transfer of money as a bribe. This might mean that the law is out of step with the public's understanding—yet obviously Greiner's lawmakers did not think so when they framed the legislation.

It has been clear since the ICAC's inception that corruption is defined as something more than just unlawful activity. In Greiner's case, Temby had no choice but to apply the Act as it stood. Under his interpretation, Greiner used his position to achieve a "desired result" which was not properly open to him. Where Temby used such wide discretion in interpreting the law was the crucial point of his report: he found Greiner's conduct was corrupt because it involved "serious matters, and such as could provide reasonable grounds for his dismissal".

The complaint has been made by some NSW ministers in Greiner's defence that they would breach the ICAC Act almost every week in carrying out their normal ministerial functions. They argue that it would be easy to see favouritism in many of their decisions. Ministers are human, after all. They deal with a business circle or know the qualities of a pool of possible appointees, and personal considerations cannot be divorced completely from anyone's decision-making.

However, while voters might tolerate some lapses of judgement by their political leaders, they are surely entitled to some expectations. They don't elect leaders to exercise favouritism for their own political advantage, and to breach public trust in the process.

Greiner's problem was that he could not live up to his own standards when they were put under the microscope. When the Metherell affair blew up, he referred it to the ICAC in the hope that he would be cleared, but also on the understanding that its findings would be accepted in good faith. The fact that he could not accept the findings when they went against him only compounded his inconsistency.

In a recent Court of Appeal hearing to try to overturn Temby's findings, Greiner's legal counsel argued that Temby had used no rational basis for his findings, but had simply based them on Temby's personal opinion that he did not like what Greiner did. He also argued that Greiner should have been excluded from the section of the ICAC Act which relates to dismissal because he was not a public official.

This attack on Temby's interpretation was an amazing turnaround when contrasted with Greiner's speech on the second reading of the ICAC legislation to parliament. Greiner said then that the legislation should "apply to the highest and to the lowest officials, from the Governor to the Public Service clerk, members of parliament, ministers of the Crown and judicial officers, without exemption and without exception". The truth is that Greiner's demise was self-inflicted. However tough the rules might have been, it was he who wrote them. He also gave the public a right to expect more of its political leaders.

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